

**STAFF REPORT FOR CALENDAR ITEM NO.: 13  
FOR THE MEETING OF: March 12, 2026**

**TRANSBAY JOINT POWERS AUTHORITY**

**BRIEF DESCRIPTION:**

Authorize the Executive Director to execute a professional services agreement between the Transbay Joint Powers Authority (TJPA) and Nossaman LLP for construction legal counsel services for the Downtown Rail Extension project, also known as The Portal, for a four-year term in an amount not to exceed \$4,800,000, and with three options to extend for one year each (total of seven years) in an aggregate amount not to exceed \$7,600,000.

**EXPLANATION:**

Construction legal counsel services are required currently as The Portal has now progressed into the pre-construction or engineering phase of the Federal Transit Administration (FTA), New Starts Capital Investment Grants Program (CIG). During this period, The Portal is to make significant progress in advancing the level of design and obtaining funding commitments to meet its local share requirement. TJPA has released a request for proposal for a progressive design build contract for civil and tunnel scope which includes advancing design for the program's largest scope elements. As funding permits, design of enabling works packages will similarly be advanced and released for construction. The current construction legal services contract expired February 28, 2026. This contract action will provide for continued legal services to support The Portal.

Scope of Services

TJPA requires the services of experienced legal counsel to provide legal advice on all aspects of construction law, advise on procurement matters, support negotiation and contracts development, modifications, changes, and related matters, as well as provide legal guidance to TJPA for its compliance with federal, state, regional and local laws.

Procurement and Evaluation Process

On September 18, 2025, TJPA issued Request for Proposal (RFP) No. 25-05 for Construction Counsel Legal services.

On November 3, 2025, TJPA received four proposals from the following:

- Hanson Bridgett
- Meyers Nave
- Nossaman LLP
- Wood Smith Henning Berman

TJPA convened a selection committee made up of representatives from TJPA and Caltrain. As with all TJPA procurements, each selection committee member signed a statement confirming their commitment to providing each proposal a fair and independent evaluation based on the metrics established by TJPA; confirming that the committee member had no disqualifying conflicts of interest; and affirming that no committee member had any prohibited communications concerning the procurement.

The criteria for evaluation of the written proposals consisted of the following up to a maximum of 220 points:

- Approach to providing services (30 points)
- Qualifications and experience of lead attorney(s) assigned (30 points)
- Qualifications and experience of other key staff assigned (20 points)
- Relevant experience of Respondent in representing governmental organizations (30 points)
- Relevant experience of Respondent in litigation matters related to construction of public works (30 points)
- Relevant experience of Respondent in transactional matters related to construction of public works (30 points)
- References (20 points)
- Reasonableness of rates and overall value to TJPA (15 points)
- Willingness and ability to provide the services e.g., no, or limited conflicts (15 points)

The selection committee convened and evaluated the four written proposals. Based upon the written scores, the following three proposers were invited to participate in oral interviews:

- Hanson Bridgett
- Meyers Nave
- Nossaman LLP

The oral interviews were evaluated and assigned up to a maximum of 200 points based on 11 questions developed by the selection committee focused on:

- Team organization and experience (55 points)
- Risk management, approach and experience (50 points)
- Subject matter expertise in discrete areas (25 points)
- Approach to the assignment (25 points)
- Budget management (30 points)
- Conflicts (15 points)

Upon a thorough review of all submitted materials, reference checks and interviews, the selection committee determined Nossaman LLP to be the highest ranked proposer. This determination was based on Nossaman's demonstrated experience, approach and qualifications of the many professionals to be assigned and available to this project. The Selection Committee Report is attached.

#### Qualifications of Nossaman LLP

Founded in 1942, with 165 attorneys and policy advisors across 12 offices in the U.S., Nossaman advises public agencies on large scale public works projects using design-bid-build (DBB), progressive-design-build (PDB), fixed design-build/operate (DBO), construction-manager-general-contractor (CMGC) and other delivery methods.

The firm has an extensive public works practice, representing more than 200 public agencies at the local, state and federal levels, including representation of or working closely with Alameda-Contra Costa Transit District (AC Transit), California Department of Transportation (Caltrans),

California High-Speed Rail Authority (CHSRA), City of San Francisco (City of SF), Peninsula Corridor Joint Powers Board (Caltrain) and San Francisco Municipal Transportation Agency (SFMTA). The Nossaman team that would be assigned to The Portal project has worked on, among other things: the Caltrans Presidio parkway project, the Caltrain electrification operations and maintenance contract, the Potrero Yards and Presidio Yards modernization projects for the SFMTA, the Florida Department of Transportation Port Miami Tunnel, the LA Metro Link Union Station, and the Massachusetts TA/DOT Purple Line Light Rail. Nossaman has organized their proposed support by service type and includes transactional requirements in support of project delivery and other agreement requirements; claims support which includes legal administrative and litigation services, and general legal construction resources.

Nossaman's team, led by Elizabeth Cousins, includes members located in its San Francisco, Los Angeles and Orange County offices.

#### Contract Term

TJPA established the base term of the contract as four years (March 2026 – February 2030). This term coincides with preconstruction, procurement of construction contracts and engagement with the contractors for design completion and construction pricing, and construction of the advance works contracts. The contract provides TJPA three options to extend at one year each (2030, 2031 and 2032). TJPA would have sole discretion to exercise these options to extend the term, which are planned to correspond with the commencement of significant construction.

#### Compensation

As described above, TJPA weighted qualifications, experience, and approach to providing the services more heavily than price for the evaluation of the proposals; it followed a Best Value Award Determination to select the highest ranked firm, which offers the highest overall benefit/value for the public agency. Nossaman LLP's proposal included the highest rates submitted amongst the four proposals received and their evaluation scores reflected this.

After completing the evaluation of respondents' qualifications and identifying Nossaman LLP as the highest-ranked respondent, TJPA used submitted fee information as the basis for negotiation. The TJPA successfully negotiated the proposed rates to align closer with the original independent cost estimate. The negotiated, fully-loaded hourly rates in the first year of the contract are: Partner \$725; Senior Associate (4 years or more experience) \$550; Junior Associate (1- 4 years or less experience) \$475; and Paralegal \$300. For comparison, the other proposers proposed partner rates ranging from \$535 to \$615 per hour; the TJPA's past prior construction counsel (Seyfarth Shaw) partner rate was \$610 in 2023.

As a result of negotiation, the total compensation under the agreement shall not exceed \$4,800,000 for a base term of four years. If TJPA elects to exercise the three option periods of one year each (seven-year total term), the total compensation over the full term of the contract shall not exceed \$7,600,000.

#### Authorization of Work

As with all TJPA contracts, the construction legal counsel services will be authorized under the contract based on written Notices to Proceed (NTPs). Each year, TJPA and Nossaman LLP will

discuss the scope of services required by TJPA for the upcoming year, anticipated level of support to provide the services, and the associated costs to do so. TJPA will issue an NTP, defining the scope, schedule, and budget in its sole discretion. Nossaman LLP would not be authorized to incur any costs except under an approved NTP.

If the contract award is approved, TJPA plans to issue NTP #1 under the contract to cover construction counsel legal services in FY26 in the amount of \$400,000. The funds are currently budgeted in the proposed FY26 Phase 2 Capital Budget. Since the existing construction legal counsel services contract expires at the end of February 2026, there will be no overlap in services or costs.

#### Professional Services Agreement

The RFP contained the anticipated form of professional services agreement (Agreement). Based on that form, staff negotiated a professional services agreement with Nossaman LLP for the services (enclosed herewith), and the firm has executed the Agreement. The Agreement is consistent with TJPA's standard form for professional services, with the substantive exceptions noted below:

- Edits to item no. 18 Incidental and Consequential Damages
- Edits to item no. 56. Administrative Remedy for Agreement Interpretation

#### Conflicts

Nossaman notified TJPA that its firm performs services for Caltrans, and explained it would seek informed written consent from TJPA and Caltrans as a requirement to starting work for TJPA. Should the Board approve the contract with Nossaman, the TJPA Executive Director and General Counsel would resolve this issue.

#### **RECOMMENDATION:**

Staff recommends that the Board of Directors authorize the Executive Director to execute the Agreement with Nossaman LLP to provide construction legal counsel services for The Portal, for a four-year term in an amount not to exceed \$4,800,000, and with three options to extend for one year each (total of seven years) in an aggregate amount not to exceed \$7,600,000.

#### **ENCLOSURES:**

1. Resolution
2. Professional Services Agreement with Nossaman LLP
3. Selection Committee Report

**TRANSBAY JOINT POWERS AUTHORITY  
BOARD OF DIRECTORS**

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

WHEREAS, The Transbay Joint Powers Authority (TJPA) has primary jurisdiction with respect to all matters concerning the financing, design, development, construction, and operation of the Transbay Program; and

WHEREAS, The Transbay Joint Powers Authority (TJPA) requires Construction Legal Counsel services for The Portal Project; and

WHEREAS, On September 18, 2025, the TJPA issued Request for Proposals (RFP) No. 25-05 for construction legal counsel services; and

WHEREAS, On November 3, 2025, the TJPA received four proposals to the RFP; and

WHEREAS, A selection committee, after evaluating the four written proposals, invited three proposers to participate in oral interviews; and

WHEREAS, A selection committee after evaluating the combined written and oral interview scores determined Nossaman LLP to be the highest ranked proposer; and

WHEREAS, Based on the selection committee's recommendation, the TJPA negotiated a professional services agreement with Nossaman LLP the form of which was presented herewith, to provide construction legal counsel services for Phase 2 of the Transbay Program; now, therefore, be it

RESOLVED, That the TJPA Board of Directors authorizes the Executive Director to execute a professional services agreement with Nossaman LLP to provide construction legal counsel services, relating to Phase 2 of the Transbay Program, also known as The Portal, for a four-year base term in an amount not to exceed \$4,800,000, with the option to extend the term for up to three additional one-year terms, and an aggregate amount not to exceed \$7,600,000.

I hereby certify that the foregoing resolution was adopted by the Transbay Joint Powers Authority Board of Directors at its meeting of March 12, 2026.

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

## PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT (“Agreement”) is entered into as of the \_\_\_ day of \_\_\_\_\_ 20\_\_\_, by and between the TRANSBAY JOINT POWERS AUTHORITY (“TJPA”) and Nossaman LLP (“Attorney”).

### Recitals

A. The TJPA requires Construction Legal Counsel Services for the Transbay Program (“Program”).

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

C. The Attorney represents and warrants that it is qualified to perform the services required by this Agreement as set forth in Appendix A Scope of Services.

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

E. On \_\_\_\_\_, 20\_\_\_, the TJPA Board of Directors adopted Resolution No. \_\_\_\_\_ authorizing the TJPA’s Executive Director to execute this Agreement with the Attorney.

Now, THEREFORE, the parties agree as follows:

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

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

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

c. The TJPA has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements or Program costs. The TJPA’s budget decisions are subject to the discretion of the TJPA Board of Directors. The Attorney’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 four (4) 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 three (3) additional consecutive terms of one (1)-year each at the identical terms set forth in this Agreement, except for any terms that are modified by the mutual agreement of the parties, for a total contract term of seven (7) years. The TJPA may exercise an extension option at the TJPA’s sole and absolute discretion by providing to the Attorney written notice of such extension on or before the expiration date of this Agreement.

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

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

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

The Attorney 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 an NTP. Such authorization may be for a partial or full scope of work.

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

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

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

## **6. Compensation**

a. All work under this Agreement shall be compensated on an as-needed and hourly basis, subject to any maximum price set forth in a particular NTP. In no event shall the total compensation under this Agreement exceed Four Million, Eight Hundred Thousand Dollars (\$4,800,000). In the event that the TJPA elects to exercise the three (3) one (1)-year options, the maximum compensation shall increase by an amount not to exceed Two Million, Eight Hundred Thousand Dollars (\$2,800,000). The breakdown of the Attorney’s fees appears in Appendix B, Calculation of Charges.

b. Hourly rates for services are to remain fixed during the entire contract period, including any option periods, pursuant to Appendix B.

c. No charges shall be incurred under this Agreement nor shall any payments become due to the Attorney until the services required under this Agreement are received from the Attorney and approved by the Chief Financial Officer as being in accordance with this Agreement. The TJPA may

withhold payment to the Attorney in any instance in which the Attorney has failed or refused to satisfy any material obligation provided for under this Agreement.

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

## **7. Guaranteed Maximum Costs**

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

b. Except as may be provided by laws governing emergency procedures, TJPA representatives are not authorized to request, and the TJPA is not required to reimburse the Attorney for, commodities or services in excess of the price set forth in an NTP and in excess of the total compensation under this Agreement as stated in Section 6, "Compensation," unless the changed scope is authorized by written amendment and approved as required by law.

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

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

## **8. Payment**

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

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

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

Pursuant to San Francisco Administrative Code Section 21.35, any contractor, subcontractor, or consultant who submits a false claim shall be liable to the TJPA for the statutory penalties set forth in that section. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the TJPA if the contractor, subcontractor or consultant (a) knowingly presents or causes to be presented to an officer or employee of the TJPA a false claim or request for payment or approval; (b) knowingly makes,

uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the TJPA; (c) conspires to defraud the TJPA by getting a false claim allowed or paid by the TJPA; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the TJPA; or (e) is a beneficiary of an inadvertent submission of a false claim to the TJPA, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the TJPA within a reasonable time after discovery of the false claim.

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

If the Attorney 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 Attorney shall promptly refund the disallowed amount to the TJPA upon the TJPA's request. At its option, the TJPA may offset the amount disallowed from any payment due or to become due to the Attorney under this Agreement or any other Agreement.

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

## **11. Taxes**

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

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

The granting of any payment by the TJPA, or the receipt thereof by the Attorney, shall in no way lessen the liability of the Attorney 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 Attorney warrants to the TJPA that the services will be performed with the degree of skill and care that is required by current, good and sound professional procedures and practices, and in conformance with generally accepted professional standards prevailing at the time the services are performed so as to ensure that all services performed are correct and appropriate for the purposes contemplated in this Agreement. The Attorney represents and warrants to the TJPA that the Attorney is qualified to perform the services as contemplated by this Agreement. The Attorney 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 Attorney. All personnel engaged in the work shall be fully qualified and shall be authorized, licensed and certified under state and local law to perform such work if authorization, licensing or certification is required. The persons performing professional services under this Agreement on behalf of the Attorney are shown in Appendix A, and shall not be changed or substituted without the prior written consent of the TJPA. All personnel, including those assigned at the TJPA's request, must be supervised by the Attorney. The Attorney 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 Attorney, or by any of its employees, even though such equipment be furnished, rented or loaned to the Attorney by the TJPA.

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

##### **a. Independent Contractor**

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

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

## 16. Insurance

a. Without in any way limiting the Attorney'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 \$2,000,000 each claim, with respect to negligent acts, errors or omissions in connection with professional services to be provided under this Agreement.

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

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

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

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

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

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

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

f. Should any required insurance lapse during the term of this Agreement, requests for payment originating after such lapse shall not be processed until the TJPA receives satisfactory

evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the TJPA may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

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

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

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

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

## **17. Indemnification**

### **a. General Indemnity**

The Attorney shall indemnify and hold harmless the TJPA and its officers, directors, agents and employees from, and if requested shall defend them from and against, any and all claims, demands, losses, damages, costs, expenses, and liability (legal, contractual, or otherwise) caused by the negligent or wrongful acts of Attorney in connection with the performance of its services under this Agreement. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and the TJPA's costs of investigating any claims against the TJPA.

In addition to the Attorney's obligation to indemnify the TJPA, the Attorney specifically acknowledges and agrees that it has an immediate and independent obligation to defend the TJPA from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to the Attorney by the TJPA and continues at all times thereafter.

## **18. Omitted.**

## **19. Liability of TJPA**

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

## **20. Omitted.**

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

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

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

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

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 Attorney any Event of Default; the Attorney 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 Attorney under this Agreement or any other agreement between the TJPA and the Attorney 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 Attorney 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 Attorney written notice of termination. The notice shall specify the date on which termination shall become effective.

b. Upon receipt of the notice, the Attorney shall commence and perform, with diligence, all actions necessary on the part of the Attorney to effect the termination of this Agreement on the date specified by the TJPA and to minimize the liability of the Attorney 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 Attorney'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 Attorney and in which the TJPA has or may acquire an interest.

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

d. In no event shall the TJPA be liable for costs incurred by the Attorney 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 Attorney under this Section, the TJPA may deduct (1) all payments previously made by the TJPA for work or other services covered by the Attorney's final invoice; (2) any claim which the TJPA may have against the Attorney 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 Attorney, 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 Attorney shall transfer title to the TJPA, and deliver in the manner, at the times, and to the extent, if any, directed by the TJPA, any work in progress, completed work, supplies, equipment, and other materials produced as a part of, or acquired in connection with the performance of this Agreement, and any completed or partially completed work which, if this Agreement had been completed, would have been required to be furnished to the TJPA. This subsection shall survive termination of this Agreement.

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

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

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

To Attorney:                Elizabeth Cousins  
                                    Nossaman LLP  
                                    777 South Figueroa Street  
                                    34<sup>th</sup> Floor  
                                    Los Angeles, CA 90017  
                                    [ecousins@nossaman.com](mailto:ecousins@nossaman.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 Attorney agrees that all information disclosed by the TJPA to the Attorney 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 Attorney receives advance written approval from the TJPA; or (iii) required by law or judicial order.

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

a. If this Agreement requires the TJPA to disclose “Private Information” to the Attorney within the meaning of San Francisco Administrative Code Chapter 12M, the Attorney 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 Attorney is subject to the enforcement and penalty provisions in Chapter 12M.

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

All Attorney 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 Attorney 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 Attorney 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 Attorney 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 Attorney 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 Attorney or its subcontractors under this Agreement are not works for hire under U.S. law, the Attorney hereby assigns all copyrights to such works to the TJPA, and agrees to provide any material and execute any documents necessary to effectuate such assignment. With the approval of the TJPA, the Attorney 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 Attorney 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 Attorney 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 Attorney 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 Attorney shall include the same audit and inspection rights and record retention requirements in all subcontracts.

**31. Omitted**

**32. Omitted**

**33. Subcontracting**

The Attorney 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 Attorney throughout the performance of the Services under this Agreement. Assignment by the Attorney of work to subcontractors shall not relieve the Attorney of any obligation to the TJPA for the work performed. The TJPA shall be provided with a copy of each subcontract promptly upon execution. Any agreement made in violation of this provision shall be null and void.

**34. Assignment**

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

**35. Non-Waiver of Rights**

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

**36. Omitted**

**37. Conflict of Interest**

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

The Attorney's duties and services under this Agreement shall not include preparing or assisting the TJPA with any portion of the public entity's preparation of a request for proposals, request for qualifications, or any other solicitation regarding a subsequent or additional contract with the TJPA. The TJPA shall at all times retain responsibility for public contracting, including with respect to any subsequent phase of the project. The Attorney's participation, if any, in the planning, discussions, or

drawing of project plans or specifications shall be limited to conceptual, preliminary, or initial plans or specifications. The Attorney shall cooperate with the TJPA to ensure that all bidders for a subsequent contract on any subsequent phase of the project have access to the same information, including all conceptual, preliminary, or initial plans or specifications prepared by the Attorney, if any, pursuant to this agreement.

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

Through execution of this Agreement, the Attorney acknowledges its obligations under Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with, or is seeking a contract with, the TJPA for the rendition of personal services, for the furnishing of any material, supplies or equipment, or for the sale or lease of any land or building, from making any campaign contribution to (1) a TJPA elected official if the Agreement must be approved by the individual, a board on which that individual serves, or a board on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such Agreement or twelve months after the date the Agreement is approved. The prohibition on contributions applies to each prospective party to the contract; each member of the Attorney's board of directors; the Attorney's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 10% in the Attorney; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by the Attorney. The Attorney 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 Attorney 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 Attorney is subject to the enforcement and penalty provisions in Chapter 12G.

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

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

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

b. Subcontracts

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

c. Nondiscrimination in Benefits

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

d. Omitted

e. Omitted

f. Consideration of Salary History

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

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

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

Pursuant to the monitoring requirements outlined in Section XIII of the TJPA's DBE Program (49 CFR 26.37), the Attorney 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 Attorney shall submit the TJPA's "Progress Payment Report" with every invoice, the "Subcontractor Payment Declaration" within five days of each Attorney payment to a subcontractor, and a "Final Expenditure Report" with the completion of the Agreement.

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

The Attorney 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 Attorney in its Proposal of zero percent (0%). Failure of the Attorney 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 Attorney 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 Attorney shall submit the TJPA's "Progress Payment Report" with every invoice, the "Subcontractor Payment Declaration" within five days of each Attorney payment to a subcontractor, and a "Final Expenditure Report" with the completion of the contract.

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

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

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

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

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

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

If San Francisco Labor and Employment Code Article 111 applies to this Agreement, the Attorney 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. Attorney is subject to the enforcement and penalty provisions in Article 111. Attorney 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, Attorney 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 Attorney shall comply with the requirements of Article 121. For each Covered Employee, the Attorney shall provide the appropriate health benefit set forth in Article 121.3 of the Health Care Accountability Ordinance (HCAO). If Attorney chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission. Attorney is subject to the enforcement and penalty provisions in Article 121. Any Subcontract entered into by Attorney 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 Attorney 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 Attorney is subject to the enforcement and penalty provisions in Chapter 83.

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

The Attorney 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 Attorney’s or subcontractor’s operations to the extent those operations are in furtherance of the performance of this Agreement, shall apply only to applicants and employees who would be or are performing work in furtherance of this Agreement, shall apply only when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City and County of San Francisco, and shall not apply when the application in a particular context would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

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

The provisions of San Francisco Administrative Code Chapter 12F are incorporated herein by this reference and made part of this Agreement. By signing this Agreement, Attorney confirms that Attorney 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 Attorney 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 Attorney agrees that any violation of this prohibition by the Attorney, its employees, agents or assigns will be deemed a material breach of this Agreement.

#### **50. Omitted**

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

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

#### **52. Omitted**

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

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

#### **54. Omitted**

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

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

#### **56. Omitted.**

#### **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 Attorney 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 Attorney 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 Attorney 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 Attorney 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 Attorney 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 Attorney, its employees, agents or assigns will constitute a material breach of this Agreement.

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

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

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

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

The TJPA has executed an agreement with salesforce.com providing salesforce the right to name the new transit center the “Salesforce Transit Center” and the right to receive certain other benefits. The Naming Rights Agreement imposes requirements and obligations relative to the name of, references to, and logos associated with the transit center. The Attorney 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 Attorney’s use of the name and logos associated with the transit center.

## **66. Cooperative Drafting**

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

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

TRANSBAY JOINT POWERS AUTHORITY

Approved as to Form by:

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

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

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

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

ATTORNEY

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

\_\_\_\_\_  
Address

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

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

\_\_\_\_\_  
Title

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

\_\_\_\_\_  
Attorney Name

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

## **APPENDIX A**

### **SCOPE OF SERVICES**

The Attorney will work closely with the Transbay Joint Powers Authority's (TJPA) staff and other consultants to provide the Services. The Services shall consist of rendering legal advice and representation to the TJPA as requested and, when called upon, represent the TJPA before governmental agencies, courts, and third parties. Following is a non-exhaustive list of the types of activities for which the Attorney would be expected to provide legal services and expertise, in each case through a specific Notice To Proceed (NTP):

- A. Advise on all aspects of construction law.
- B. Advise on procurement matters related to construction, including invitations for bids/requests for qualification/requests for proposals, bidder questions, eligibility to bid, bid evaluation, and bid contests.
- C. Draft, negotiate, and enforce construction and professional service (including design) contracts, contract modifications and change orders, release of retentions, and related documents.
- D. Advise on insurance coverage, risk management, and bonding coverage for public works projects; and advise on construction liability issues.
- E. Monitor and advise on federal, state, and local legislation, regulation, and case law affecting the TJPA in design and construction matters; draft legislation as needed; testify before legislative bodies.
- F. Protect and defend against construction-related claims and litigation; pursue construction-related claims and litigation on the TJPA's behalf as needed.
- G. Advise on third-party claims due to construction of the Program and assist in the protection and defense of the TJPA against construction-related claims by third parties.
- H. Provide legal guidance to assure that the TJPA is in compliance with all federal, state, regional and local laws and regulations and agreements, including procurement requirements, related to construction and public works; federal, state and local environmental laws related to construction; public financing program requirements (including Transportation Infrastructure Finance and Innovation Act and Railroad Rehabilitation and Improvement Financing) related to construction; U.S. Department of Transportation law (including Federal Transit Administration, Federal Railroad Administration, and Federal Highway Administration) rules and regulations related to construction; labor, employment and civil rights laws related to construction; and applicable federal, state, and local regulations related to construction and public contracting, including bidding, award, bonding, debarment and suspension, fraud, false claims, and Buy America.
- I. Furnish day-to-day legal advice as needed; attend staff and other meetings as requested.
- J. Provide litigation services and support as needed.

**Staff Assigned**

Staff	Role
Elizabeth (Liz) Cousins – Principal	Partner
Yukiko Kojima	Partner
Brandon Davis	Partner
Jill Jaffe	Partner
Jim Vorhis	Partner
David Lee	Partner
Thomas Dover	Partner
Liz Klebaner	Partner
Brad Kuhn	Partner
Chris Gordon	Senior Associate
Natalie Cuadros	Senior Associate
Cameron Neubauer	Junior Associate
Aswini Endlur	Senior Associate
Cristina Mendez	Junior Associate
<p>The parties agree that if any personnel’s title changes during the course of this engagement, their rates will be updated to match the changed title.</p> <p>As team members transition to new categories at higher rates, Nossaman agrees to coordinate with TJPA and delegate appropriate tasks to team members in lower rate categories where the parties agree this provides efficiencies and overall best value for the Program.</p>	

**APPENDIX B**  
**Calculation of Charges**

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

The below hourly rates shall include all incidental expenses of the Attorney, including the costs of toll telephone calls, charges for sending facsimiles, transportation, travel, automobile rental, taxicab fares, parking, meals, secretarial services, photographs, renderings, maps, Internet, computer, overhead, administration, and other costs and charges incurred by the Attorney or the Attorney’s subcontractors related to electronic legal research. Litigation assignments, if any, assume a San Francisco Bay Area venue.

Notwithstanding the foregoing, TJPA will reimburse the firm for its reasonable and necessary actual costs incurred in the course of rendering services, consisting only of: costs of filing fees; fees fixed by law or assessed by public agencies (e.g., courts); messenger and overnight delivery services; postage; in-house photocopying/printing up to \$0.10 per page; and outside reproduction/binding/document preparation services. Attorney will not mark up out-of-pocket expenses.

Other direct costs actually incurred by the Attorney in performing the Services may be subject to reimbursement only if such costs are pre-approved by TJPA in writing. Attorney will not mark up such allowable costs and a receipt or invoice must be submitted documenting allowable costs. Any allowable travel costs must be consistent with TJPA’s Travel Policy.

1. **Hourly Rates.** Fees will be charged in increments of one-tenth of an hour. The firm will not charge any fee for time spent preparing, processing, or reviewing the firm’s own bills for services to TJPA; time spent in travel to/from attorney’s home and either the firm’s office or TJPA’s office; time spent in travel outside of the Bay Area.

**Base Term**

<b>Direct Labor Name/Title</b>	<b>Year 1 Fully Loaded Rate/Hour</b>	<b>Year 2 Fully Loaded Rate/Hour</b>	<b>Year 3 Fully Loaded Rate/Hour</b>	<b>Year 4 Fully Loaded Rate/Hour</b>
Partner	\$725	\$755	\$785	\$815
Senior Associate (4 years or more experience)	\$550	\$570	\$590	\$615
Junior Associate (1- 4 years or less experience)	\$475	\$495	\$515	\$535
Paralegal	\$300	\$315	\$330	\$345

## Option Years

<b><u>Direct Labor Name/Title</u></b>	<b>Year 5 Fully Loaded Rate/Hour</b>	<b>Year 6 Fully Loaded Rate/Hour</b>	<b>Year 7 Fully Loaded Rate/Hour</b>
Partner	\$845	\$875	\$910
Senior Associate (4 years or more experience)	\$640	\$665	\$690
Junior Associate (1- 4 years or less experience)	\$555	\$575	\$600
Paralegal	\$360	\$375	\$390

### **2. Price Adjustments.**

Attorney's Rates are to be firm from start date through the end of the term, including extensions.

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

#### 1. DEFINITIONS

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

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

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

**2. NO GOVERNMENT OBLIGATION TO THIRD PARTIES**

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

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

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

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

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

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

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

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

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

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

#### **5. FEDERAL CHANGES**

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

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

## 6. CIVIL RIGHTS REQUIREMENT

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

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

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

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

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

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

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

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

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

- (b). The contractor, sub recipient or subcontractor 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 contract, which may result in the termination of this contract 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.

Each Subcontract the Contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR Section 26.13[b]).

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

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

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

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

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

- (d). The Contractor is required to pay its subcontractors performing work related to this Agreement for satisfactory performance of that work no later than ten (10) days after the Contractor's receipt of payment for that work from the TJPA. In addition, the Contractor is required to return any retainage payments to those subcontractors within thirty (30) days after incremental acceptance of the subcontractor's work by the TJPA and Contractor's receipt of the partial retainage payment related to the subcontractor's work.
- (e). The Contractor must promptly notify the TJPA whenever a DBE subcontractor performing work related to this Agreement is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The Contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the TJPA.

**8. AMERICANS WITH DISABILITIES ACT**

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

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

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

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

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

**10. FLY AMERICA REQUIREMENTS**

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

- (a). The Contractor agrees to comply with 49 U.S.C. Section 40118 (the "Fly America Act") in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act.
- (b). The Contractor shall submit the "Fly America Certification" if the regulation is applicable to the particular Agreement.
- (c). The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier.

- (d). Notwithstanding the foregoing, transportation on a foreign air carrier is permissible when provided by a foreign air carrier under a code share agreement when the ticket identifies the U.S. air carrier's designator code and flight number. Transportation by a foreign air carrier is also permissible if there is a bilateral or multilateral air transportation agreement to which the U.S. Government and a foreign government are parties and which the U.S. DOT has determined meets the requirements of the Fly America Act.

#### **11. CARGO PREFERENCE REQUIREMENTS**

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

The Contractor agrees to:

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

#### **12. ENERGY CONSERVATION REQUIREMENTS**

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

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

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

#### **13. RECYCLED PRODUCTS**

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

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

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

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

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

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

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

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

**15. CLEAN AIR**

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

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

**16. CLEAN WATER REQUIREMENTS**

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

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

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

**17. BUY AMERICA REQUIREMENTS**

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

**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 contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the Agreement shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:
- (i). Except with respect to helpers as defined as 29 CFR Section 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and
  - (ii). The classification is utilized in the area by the construction industry; and
  - (iii). The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and
  - (iv). With respect to helpers as defined in 29 CFR Section 5.2(n)(4), such a classification prevails in the area in which the work is performed.

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

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

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

- (3). Whenever the minimum wage rate prescribed in the Agreement for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- (4). If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.
- (5). (A). The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the Agreement shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:
  - (i). The work to be performed by the classification requested is not performed by a classification in the wage determination; and
  - (ii). The classification is utilized in the area by the construction industry; and
  - (iii). The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

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

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

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

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

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

(1). Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three (3) years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR Section 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs

reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

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

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

- (i). That the payroll for the payroll period contains the information required to be maintained under Section 5.5(a)(3)(i) of Regulations, 29 CFR Part 5 and that such information is correct and complete;
- (ii). That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the Agreement during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR Part 3;
- (iii). That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the Agreement.

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

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

(3). The Contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the USDOT or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor

or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR Section 5.12.

(d). **Apprentices and Trainees**

- (1). Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first ninety (90) days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
- (2). Trainees - Except as provided in 29 CFR Section 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the

journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- (3). Equal employment opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.
- (e). **Compliance with Copeland Act Requirements** - The Contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this Agreement.
- (f). **Subcontracts** - The Contractor or subcontractor shall insert in any Subcontracts the clauses contained in 29 CFR Section 5.5(a)(1) through (10) and such other clauses as the USDOT may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier Subcontracts. The Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR Section 5.5.
- (g). **Agreement Termination: Debarment** - A breach of the contract clauses in 29 CFR Section 5.5 may be grounds for termination of the Agreement, and for debarment as a contractor and a subcontractor as provided in 29 CFR Section 5.12.
- (h). **Compliance with Davis-Bacon and Related Act Requirements** - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this Agreement.
- (i). **Disputes Concerning Labor Standards** - Disputes arising out of the labor standards provisions of this Agreement shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.
- (j). **Certification of Eligibility**
  - (1). By entering into this Agreement, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR Section 5.12(a)(1).

- (2). No part of this Agreement shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR Section 5.12(a)(1).
- (3). The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. Section 1001.

**FLY AMERICA CERTIFICATION**

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

*Certificate of Compliance*

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

Date \_\_\_\_\_

Signature \_\_\_\_\_

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

Title \_\_\_\_\_

*Certificate of Non-Compliance*

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

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

Date \_\_\_\_\_

Signature \_\_\_\_\_

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

Title \_\_\_\_\_

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

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**BUY AMERICA CERTIFICATION**

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

*Certificate of Compliance*

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

Date \_\_\_\_\_

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

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

Signature \_\_\_\_\_

Title \_\_\_\_\_

**OR**

*Certificate of Non-Compliance*

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

Date \_\_\_\_\_

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

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

Signature \_\_\_\_\_

Title \_\_\_\_\_

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

*Certificate of Compliance*

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

Date \_\_\_\_\_

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

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

Signature \_\_\_\_\_

Title \_\_\_\_\_

**OR**

*Certificate of Non-Compliance*

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

Date \_\_\_\_\_

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

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

Signature \_\_\_\_\_

Title \_\_\_\_\_

**NEW RESTRICTIONS ON LOBBYING CERTIFICATION**

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

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

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

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

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

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

Date \_\_\_\_\_

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

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

Signature \_\_\_\_\_

Title \_\_\_\_\_

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

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

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

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

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

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

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

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

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

## APPENDIX E

### PROPERTIES PLANNED FOR ACQUISITION

The parcels listed below are planned to be acquired (**full, partial or easement**) as part of the Transbay Program. This list is subject to change by the TJPA.

Private Parcels		
Address/Street	Block	Lot
201 Mission St.	3718	026
191 Second St.	3721	22
181 Second St.	3721	23
171 Second St.	3721	25
217 Second St.	3736	95
205-215 Second St.	3736	96
201 Second St.	3736	97
589 Howard St.	3736	098
235 Second St.	3736	123
180 Townsend St.	3788	013
699 Third St.	3788	014
301 Brannan St.	3788	37
35 Stanford St. / 634 Second St.	3788	38
640 Second St.	3788	02
650 Second St.	3788	49-73
670 Second St.	3788	43
678-680 Second St.	3788	44
130 Townsend St.	3788	8
136 Townsend St.	3788	9
144-146 Townsend St.	3788	9A
148-154 Townsend St.	3788	10
164 Townsend St.	3788	74-85
166-178 Townsend St.	3788	12

**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.

**Not Applicable**

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.

**Not Applicable**

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 \_\_\_\_\_ **Not Applicable**

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 \_\_\_\_\_ **Not Applicable**

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 October 31, 2025

Contractor Name Nossaman LLP

Authorized Representative Name Elizabeth Cousins

Signature 

Title Partner

**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: Nossaman LLP

Authorized Representative Name: Elizabeth Cousins

Authorized Representative Title: Partner

Authorized Representative Signature: 

Date: October 31, 2025



**Construction Legal Counsel Services  
Selection Committee Report  
March 12, 2026**

**Executive Summary and Recommendation**

In response to Request for Proposals (RFP) No. 25-05 Construction Legal Counsel Services for firms or individuals (Respondents) to provide services in the areas of construction law; federal and state public contracting law and compliance, particularly focused on design and construction for public works projects; insurance coverage, risk management, and bonding coverage for public works projects; and litigation services related to these areas, on an if-and-as-needed basis, issued on September 18, 2025, the Transbay Joint Powers Authority (TJPA) received four (4) proposals by the November 3, 2025 deadline. A selection committee comprised of subject matter experts in the legal and engineering fields were sent the proposals and evaluation documents on November 18, 2025 via email to evaluate and score the proposals. An evaluation panel meeting was convened via Teams on December 2, 2025, to discuss the proposals and for the panel to provide their evaluation scores for the written proposals.

During the evaluation meeting, the selection committee opted to exercise the right to conduct oral interviews with the three highest-ranked Respondents. The three Respondents were notified via email and oral interviews were scheduled via Teams, for January 2026. The lowest ranked Respondent was notified they would not move forward in the evaluation process via email.

Oral interviews were conducted the week of January 12, 2026 with the same selection committee members and were facilitated by the TJPA Procurement & Contract Compliance Manager. After interviews were completed, the selection committee met a final time on January 26, 2026 to discuss the interviews and for the selection committee to provide their scores, and determine the highest-ranked Respondent with the combined score of the written proposal and oral interview.

Based on the criteria outlined in the RFP, the selection committee recommends that the TJPA negotiate a professional services agreement to the highest-ranked Respondent, **Nossaman, LLP** to provide Construction Legal Counsel Services for a base term of four (4) years and the option, exercisable at the TJPA's sole discretion, to extend the term for three (3) one (1)-year extension periods, for a total contract term of seven (7) years.

**Background**

The TJPA is seeking services from qualified firms or individuals to provide Construction Legal Counsel Services for the Transbay Program (Program) who have qualifications and expertise in construction law; federal and state public contracting law and compliance, particularly focused on design and construction for public works projects; insurance coverage, risk management, and bonding coverage for public works projects; and litigation services related to these areas, on an if-and-as-needed basis

## **Schedule**

1) RFP advertised/posted	September 18, 2025
2) Deadline for Submission of Questions	September 25, 2025
3) Answers to Written Questions Posted	October 2, 2025
4) Proposals Due	November 3, 2025
5) Selection committee evaluation meeting	December 2, 2025 and January 26, 2026
6) Interviews	Week of January 12, 2026

## **Selection Committee Members**

Alfonso Rodriguez, TJPA Project Director

Deborah L. Miller, Shute, Mihaly & Weinberger LLP, Partner (General Counsel to the TJPA)

James C. Harrison, Olson Remcho, Partner (General Counsel to Caltrain)

## **RFP Outreach**

The TJPA posted the RFP on its website for the public to view and print; posted the RFP on DemandStar, a free e-procurement solution that allows the TJPA to cast a broader net to suppliers; and, also sent an announcement of its availability to all interested parties who have signed up for TJPA updates/contracting opportunity notifications. In total, the announcement was sent to approximately 900 contacts who have signed up on the TJPA website for notice of all TJPA professional services contracts, broadcast to over 500 Suppliers via DemandStar. The RFP announcement is enclosed as Attachment A.

The TJPA received four (4) proposals on or before the proposal due date, from:

- Hanson Bridgett
- Meyers Nave
- Nossaman LLP
- Wood Smith Henning Berman

## **Selection Committee Written Proposal Evaluation**

The selection committee met on December 2, 2025, to review the written proposal and evaluate strengths and weaknesses using the criteria listed in the RFP (and reproduced on the written proposal evaluation score sheet) (Attachment B). Each committee member individually filled out evaluation score sheets. The TJPA Procurement & Contract Compliance Manager tabulated and verified the scores. Based upon the written proposal evaluation scoring, the selection committee elected to conduct interviews with the three (3) highest-ranked Respondents: Hanson Bridgett, Meyers Nave, and Nossaman LLP.

## **Selection Committee Oral Interview Evaluation**

During the week of January 12, 2026, the selection committee conducted oral interviews with all three (3) highest-ranked Respondents. Each firm had ninety minutes to present and answer questions from the selection committee relevant to the needs of the TJPA. Following each interview, the selection committee discussed strengths and weaknesses of each Respondent, and then individually completed and signed interview scoring sheets (Attachment C) and a second selection committee evaluation meeting was held on January 26, 2026 so that the TJPA

Procurement & Contract Compliance Manager could tabulate and verify the final, combined scores.

**Recommendation**

Nossaman LLP was ranked highest by the selection committee and is being recommended to serve the TJPA in the capacity of Construction Legal Counsel Services. A summary of scores from the selection committee are shown in Attachment D.

\*\*\*\*\*

All proposals submitted in response to this RFP are available for review at TJPA offices.

**Attachments**

- Attachment A, RFP Announcement
- Attachment B, Evaluation Criteria Written Proposal Scoring Sheets
- Attachment C, Evaluation Criteria Oral Interview Scoring Sheets
- Attachment D, Evaluation Panelists Summary Scores

**Reference**

Request for Proposals No. 25-05 Construction Legal Counsel Services issued by the Transbay Joint Powers Authority on September 18, 2025.

## **Attachment A**

### **ANNOUNCEMENT REQUEST FOR PROPOSALS**

The Transbay Joint Powers Authority (TJPA) issues this Request for Proposals (RFP) for Construction Legal Counsel Services for the Transbay Program (Program) from firms or individuals (Respondents) with qualifications and expertise in construction law; federal and state public contracting law and compliance, particularly focused on design and construction for public works projects; insurance coverage, risk management, and bonding coverage for public works projects; and litigation services related to these areas, on an if-and-as-needed basis.

The TJPA plans to award one Respondent a contract for a four (4) -year base term with the option, exercisable at the TJPA's sole discretion, to extend the term for three (3) one (1)-year extension periods, for a total term of seven (7) years. Services are described in Section 3, Scope of Services in the RFP.

Proposal packages must be received by the TJPA no later than **2:00 p.m. on Monday, November 3, 2025**. Proposals must be submitted electronically in Adobe PDF (Portable Document Format) and sent via email or file sharing link to [RFP@tjpa.org](mailto:RFP@tjpa.org). Late proposal packages will not be considered.

Respondents may obtain copies of this RFP, including the forms to be submitted in the proposal package, by downloading the document from the TJPA [website](#) or by contacting the TJPA at (415) 597-4620 or by email: [RFP@tjpa.org](mailto:RFP@tjpa.org).

**Attachment B  
EVALUATION CRITERIA  
RFP 25-05 Construction Legal Counsel Services**

Reviewer \_\_\_\_\_

Respondent \_\_\_\_\_

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

Exceptional 100-75% Respondent provided extensive information and/or excellent documentation	Acceptable 74-50% Respondent provided satisfactory information and/or sufficient documentation	Marginal 49-25% Respondent provided partial information and/or included some documentation.	Poor 24-0% Respondent did not provide sufficient information and documentation as required
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**A. Approach to Providing Services (30 points)**

1. Does Respondent provide the size of the Firm, its formation structure, the number of years in business, the office location for team members proposed to be assigned to this matter, and whether the Firm is an SBE/DBE? Does the Respondent describe the team members proposed to provide the services, including name, title, business address, phone number, email address, and California State Bar number? Does the Respondent explain how and to whom tasks will be assigned and how the work and budget will be managed? Does the Respondent explain their understanding of the Transbay Program’s legal services needs, and describe how Respondent would tailor its services to meet the needs of the TJPA?

(30 points: Exceptional 30-24; Acceptable 23-16; Marginal 15-8; Poor 7-0)

Comments:	Points

**B. Qualifications and Experience of Lead Attorney(s) Assigned (30 points)**

1. Does Respondent explain how the lead attorney(s) is qualified to implement the proposed services? Does the Respondent clearly describe the extent and nature of the involvement of the lead attorney(s) in providing the Services?

(30 points: Exceptional 30-24; Acceptable 23-16; Marginal 15-8; Poor 7-0)

Comments:	Points

**C. Qualifications and Experience of Other Key Staff Assigned (20 Points)**

1. Does the Respondent clearly describe the extent and nature of the involvement of key individuals? Does the Respondent include a declaration of Respondent’s ability and willingness to commit and maintain staffing, both number and level, to successfully conclude the engagement being proposed? Does Respondent provide resumes for key individuals, describing their relevant qualifications and experience?  
(20 points: Exceptional 20-15; Acceptable 14-10; Marginal 9-5; Poor 4-0)

Comments:	Points

**D. Relevant Experience of Respondent in Representing Governmental Organizations (30 Points)**

1. Does the proposal demonstrate Respondent’s qualifications and experiences in representing and advising governmental agencies on public works projects in California? Did Respondent describe experience with/history of successfully providing these services, and serving agencies who receive federal, state, and local funding and debt financing? Does the Respondent indicate which attorney(s) from the proposed team worked on the matters?  
(30 points: Exceptional 30-24; Acceptable 23-16; Marginal 15-8; Poor 7-0)

Comments:	Points

**E. Relevant Experience of Respondent in Litigation Matters Related to Construction of Public Works (30 Points)**

1. Does the Respondent explain their qualifications and experiences in the scope of services areas listed in Section 3 of the RFP? Does the Respondent clearly describe matters handled by members of Respondent’s team that are proposed to be assigned to this matter, demonstrating at least 10 years of experience within the last 15 years advising public agency clients on construction of public work projects in California in litigation matters? Does the Respondent indicate which attorneys handled the matter, client represented, nature of the task or dispute, and outcome? For litigation, does the Respondent indicate the opposing party, opposing counsel, whether any trial was by court or jury, and the number of days in trial?  
(30 points: Exceptional 30-24; Acceptable 23-16; Marginal 15-8; Poor 7-0)

Comments:	Points


**F. Relevant Experience of Respondent in Transactional Matters Related to Construction of Public Works (30Points)**

1. Does the Respondent explain their qualifications and experiences in the scope of services areas listed in Section 3 of the RFP? Does the Respondent clearly describe matters handled by members of Respondent’s team that are proposed to be assigned to this matter, demonstrating at least 10 years of experience within the last 15 years advising public agency clients on construction of public work projects in California in transactional matters? Does the Respondent indicate which attorneys handled the matter, client represented, nature of the task or dispute, and outcome?  
(30 points: Exceptional 30-24; Acceptable 23-16; Marginal 15-8; Poor 7-0)

Comments:	Points

**G. References (20 Points)**

1. Are the references provided from five (5) recent clients (preferably other public agencies)? Do the references speak to the legal services provided by the Respondent team members proposed to provide the services?  
(20 points: Exceptional 20-15; Acceptable 14-10; Marginal 9-5; Poor 4-0)

Comments:	Points

**H. Reasonableness of Rates and Overall Value to TJPA (15 Points)**

1. Are overall costs reasonable, justified, and competitive? Is the fee proposal correct and easy to understand?  
(15 points: Exceptional 15-12; Acceptable 11-8; Marginal 7-4; Poor 3-0)

Comments:	Points


**I. Willingness and Ability to Provide the Services (15 Points)**

1. Does Respondent clearly identify any known actual or potential conflicts of interest and their proposed approach to resolving? Does the Respondent describe their approach to avoiding future conflicts of interest and prioritizing the TJPA’s interests? Does the Respondent confirm their understanding of TJPA’s requirement to file the Fair Political Practices Commission Form 700 under Political Reform Act and their willingness to comply?

(15 points: Exceptional 15-12; Acceptable 11-8; Marginal 7-4; Poor 3-0)

Comments:	Points

**Attachment C**  
**INTERVIEW SCORE SHEETS**  
**Construction Legal Counsel Services RFP**

**FIRM NAME:**

**PANELIST:**

**DATE:**

<i>Description</i>	<i>Notes</i>	
Presentation (15 minutes maximum)		
<i>Questions (maximum 200 points)</i>	<i>Score</i>	<i>Notes</i>
<b>TEAM ORGANIZATION AND APPROACH TO WORK</b>		
<p>1. Please introduce your team, and identify each team member’s proposed role as TJPA’s construction counsel. Please explain how client requests for assistance will be managed (for example, who will be the point (or points) of contact on a day-to-day basis, who will perform legal research or document drafting, who will communicate results back to the client, and how will those results be conveyed (e.g., via Teams call, email, or written memo). Please provide an estimate as a percentage of the time each team member would typically be expected to spend on any particular assignment. If team members are not located in the Bay Area, please address their expected manner of interfacing with the client team.</p> <p><i>(30 Points)</i></p>		

<p>2. Please allow each team member to speak about their top two experiences/projects that they believe will be most pertinent to the work as construction counsel for the TJPA.</p> <p><i>(25 Points)</i></p>		
<p><b>RISK MANAGEMENT</b></p>		
<p>3. There are multiple avenues for risk for this megaproject, including insurance, bonding, financial/cost-overrun risk, delay risk, contractor driven change orders, owner desire for design changes, contractor litigation, and third-party litigation. Risk management for this project will be essential. Describe your view about construction counsel’s role in risk management.</p> <p><i>(15 Points)</i></p>		
<p>4. Please address your experience with these risk areas.</p> <p><i>(15 Points)</i></p>		
<p>5. What do you see as the top 3-5 risks for this project and why?</p> <p><i>(10 Points)</i></p>		
<p>6. Tell us about a time your legal advice went against the client’s preferred direction and how you handled it? What was the outcome?</p> <p><i>(10 Points)</i></p>		
<p><b>SPECIFIC SUBJECT MATTER EXPERIENCE</b></p>		
<p>7. Adhering to federal expectations and requirements will be essential. Please address your experience with</p> <ul style="list-style-type: none"> <li>• USDOT requirements for recipients of grants and loans on public works projects.</li> </ul> <p><i>(15 Points)</i></p>		
<p>8. If a neighboring building owner contends that the Transit Center construction is causing damages to its property or utility services, what would be your approach to</p>		

<p>addressing this problem? <i>(10 points)</i></p>		
<p><b>ARC OF THE PROJECT</b></p>		
<p>9. Incumbent: You are 5 years in on the project. What, if any, changes would you make to the structure of your team, work flow with client, approach to delivery of the services, or other matters to make the next 5 years even more successful?</p> <p>Non-Incumbent: You would be stepping into a role that another law firm has served for the last 5 years. The project is mid-stream, including the most significant contract (40-CT, the General Civil and Tunnel contract) is mid-procurement. What would be your approach to assuming the reins? Do you expect to be in a position to accept and implement the work product to date?</p> <p><i>(25 points)</i></p>		
<p><b>BUDGET</b></p>		
<p>10. Please describe your proposed billing structure. Please describe your approach to keeping legal costs within a tightly constrained budget. Describe any alternative billing structures or concessions your firm could offer to mitigate legal fees.</p> <p><i>(30 Points)</i></p>		
<p><b>CONFLICTS</b></p>		
<p>11. MN: Your proposal did not identify any conflicts. Please describe how you would navigate any that arise.</p> <p>HB: Your proposal did not identify any conflicts. Do you perceive any potential conflicts related to your firm’s work for any communities on the Peninsula, work for Caltrain, and/or work for other transit</p>		

<p>operators? Please describe how you would navigate any conflicts that arise.</p> <p>N: Your proposal did not identify any conflicts. Do you perceive any potential conflicts related to your firm's work for SFCTA or private property owners in the project area? Please describe how you would navigate any conflicts that arise</p> <p><i>(15 Points)</i></p>		
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**TOTAL SCORE:** \_\_\_\_\_ (200 maximum)

**Attachment D**  
**Evaluation Scores (400 points max)**

	Points Possible	Hanson Bridgett	Meyers Nave	Nossaman LLP	Wood Smith Henning Berman
Written Scores	200	163.33	161.67	166.67	72.00
Interview Scores	200	165.00	141.67	169.67	
Total Score	400	328.33	303.33	336.33	72.00

**(Average of three selection committee panel scores for components added together for total score)**