

**THIS STAFF REPORT COVERS CALENDAR ITEM NO.: 10
FOR THE MEETING OF: September 9, 2010**

TRANSBAY JOINT POWERS AUTHORITY

BRIEF DESCRIPTION:

Authorize the Executive Director to execute agreements for Federal Advocacy Services with Holland & Knight and Chambers, Conlon & Hartwell, each in the amount of \$403,500 for a period of three years, with the option to extend each agreement for two two-year terms with defined increases in compensation if the options are exercised.

EXPLANATION:

The TJPA desires to have effective relationships with Federal authorities and agencies and be proactive in developing funding opportunities. In order to do so, the TJPA recognizes the need for continuous representation of its interests via qualified individuals and/or firms in Washington, DC who provide such professional services. The TJPA currently has agreements with Holland & Knight and Chambers, Conlon & Hartwell that will expire on September 30.

The TJPA issued a Request for Proposals (RFP) for Federal Advocacy Services on June 28, 2010. On July 27, the TJPA received nine proposals in response to the RFP. A Selection Committee reviewed the proposals for technical merit. Based on the committee's scores of the written proposals, the TJPA has negotiated agreements with the two highest-ranked firms, Holland & Knight and Chambers, Conlon & Hartwell. The Selection Committee Report is attached.

Staff is recommending two contracts for the provision of federal lobbyist services to help meet the significant on-going need for representation in Washington, DC. The visibility of the project, the intense federal activity leading up to the transportation bill reauthorization, and the need to expand the search for federal funding into new arenas call for a robust federal advocacy program that is best met by these two firms, who have worked together successfully over the past three years. The firms bring different but complementary attributes to the legislative effort. The two firms cover a broad range of expertise and have access to both political and administrative offices in Washington, DC.

Contract compensation will be paid via monthly retainer, a common practice for advocacy firms that will benefit the TJPA as provision of services will not be limited by high hourly rates. TJPA has adequate budget for both agreements. The compensation for both option periods has been negotiated and is outlined in each agreement. Each agreement includes a \$2,500 allowance per year for expenses such as travel.

RECOMMENDATION:

Authorize the Executive Director to execute agreements for Federal Advocacy Services with Holland & Knight and Chambers, Conlon & Hartwell, each in the amount of \$403,500 for a period of three years, with the option to extend each agreement for two two-year terms with defined increases in compensation if the options are exercised.

ATTACHMENTS:

1. Resolution
2. Agreements
3. Selection Committee Report

**TRANSBAY JOINT POWERS AUTHORITY
BOARD OF DIRECTORS**

Resolution No. _____

WHEREAS, On June 28, 2010, the Transbay Joint Powers Authority (TJPA) issued a Request for Proposals (RFP) for a consultant to provide Federal Advocacy Services; and

WHEREAS, On July 27, 2010, the TJPA received nine proposals in response to the RFP, and a Selection Committee evaluated these proposals for technical merit; and

WHEREAS, The Selection Committee found the proposals submitted by Holland & Knight and Chambers, Conlon & Hartwell to be the most responsive to the RFP and that the proposers are well qualified to perform the scope of services in a cost-effective manner; and

WHEREAS, TJPA staff has negotiated agreements with Holland & Knight and Chambers, Conlon & Hartwell for terms of three years each and an amount not to exceed \$403,500 each, with the option of extending each agreement for two two-year terms; now, therefore, be it

RESOLVED, That the TJPA Board of Directors authorizes the Executive Director to execute agreements for Federal Advocacy Services with Holland & Knight and Chambers, Conlon & Hartwell, each in the amount of \$403,500 for a period of three years, with the option to extend each agreement for two two-year terms with defined increases in compensation if the options are exercised.

I hereby certify that the foregoing resolution was adopted by the Transbay Joint Powers Authority Board of Directors at its meeting of September 9, 2010.

Secretary, Transbay Joint Powers Authority

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT ("Agreement") is entered into as of the _____ day of _____ 2010, by and between the TRANSBAY JOINT POWERS AUTHORITY ("TJPA") and Holland & Knight ("Contractor").

Recitals

A. The TJPA requires Federal Advocacy Services ("Services") for the Transbay Transit Center Program ("Program").

B. The Contractor submitted a written proposal ("Proposal") in response to the TJPA's Request for Proposals ("RFP"). Based on that Proposal, the TJPA's selection committee determined the Contractor to be one of two highest-ranked respondent to the RFP and the TJPA invited the Contractor for exclusive negotiations. This Agreement is the product of those negotiations.

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

D. The TJPA and the Contractor intend that this Agreement comply with certain contracting requirements of the City and County of San Francisco (the "City").

E. On _____, 2010, the TJPA Board of Directors adopted Resolution No. _____ authorizing the TJPA's Executive Director to execute this Agreement with the Contractor for the Services.

Now, THEREFORE, the parties agree as follows:

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

Charges under this Agreement will accrue only after prior written authorization certified by the TJPA's Finance Coordinator. 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.

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.

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

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

2. Term of the Agreement

Subject to Section 1, the term of this Agreement shall be for three years from the Effective Date of the Agreement, as described in Section 3 below, provided that (i) the TJPA shall have the right to extend this Agreement for an additional two two-year options by providing to the Contractor written notice of such extension on or before the expiration of this Agreement, and (ii) any such extension shall be subject to and conditioned upon the written agreement of the Contractor and the approval of such extension by resolution adopted by the TJPA Board of Directors.

3. Effective Date of Agreement

This Agreement shall become effective when the Finance Coordinator has certified to the availability of funds for the first notice to proceed ("NTP") and the Contractor has been notified in writing via an NTP.

4. Services Contractor Agrees to Perform

The Contractor agrees to perform the services listed in Appendix A, Scope of Services, attached hereto and incorporated by reference as though fully set forth within. 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, Contractor 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 in Appendix C attached hereto, and any properties that are subsequently added to this list.

5. Compensation

All work under this Agreement shall be compensated on a retainer basis, subject to any maximum price set forth in a particular NTP. In no event shall the total compensation under this Agreement for the base term exceed Four Hundred Three Thousand Five Hundred Dollars (\$403,500). In the event that this Agreement is extended, the total compensation shall be increased as described in Appendix B, "Fees". The breakdown of the Contractor's fees appears in Appendix B, "Fees".

Rates for services are to remain fixed during the entire contract period, including any option periods, except for reasonable cost of living increases and as noted in Appendix B.

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

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

6. Guaranteed Maximum Costs

a. The TJPA's obligation hereunder shall not at any time exceed the amount certified by the Finance Coordinator 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, officers and employees of the TJPA are not authorized to request, and the TJPA is not required to reimburse the Contractor for, commodities or services in excess of the price set forth in an NTP and in excess of the total compensation under this Agreement as stated in Section 5, unless the changed scope is authorized by written amendment and approved as required by law.

c. Officers and employees of the TJPA 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 Finance Coordinator.

d. The Finance Coordinator 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.

7. Payment

Invoices furnished by the Contractor under this Agreement must be in a form acceptable to the TJPA and must include a unique invoice number. Invoices shall include the first and last day of a calendar month and be submitted within thirty (30) days of the end of said calendar month. All amounts paid to the Contractor shall be subject to audit by the TJPA.

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

8. Submitting False Claims; Monetary Penalties

Pursuant to San Francisco Administrative Code Chapter 6, Article V, any Contractor, subcontractor, or consultant who submits a false claim shall be liable to the TJPA for three times the amount of damages which the TJPA sustains because of the false claim, plus a civil penalty of up to \$10,000, and other damages as provided by statute. A Contractor, subcontractor or consultant will be deemed to have submitted a false claim to the TJPA if the Contractor, subcontractor or consultant (a) knowingly presents or causes to be presented to an officer or employee of the TJPA a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the TJPA; (c) conspires to defraud the TJPA by getting a false claim allowed or paid by the TJPA; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the TJPA; or (e) is a beneficiary of an inadvertent submission of a false claim to the TJPA, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the TJPA within a reasonable time after discovery of the false claim.

9. Disallowance

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

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

10. Taxes

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

11. Payment Does Not Imply Acceptance of Work

The granting of any payment by the TJPA, or the receipt thereof by the Contractor, shall in no way lessen the liability of the Contractor to correct or revise unsatisfactory work, even though the unsatisfactory character of such work may not have been apparent or detected at the time such payment was made.

12. Qualified Personnel

The Contractor represents and warrants to the TJPA that the Contractor is qualified to perform the services as contemplated by this Agreement. The Contractor further represents and warrants to the

TJPA that it has all required licenses and approvals to perform the work contemplated by this Agreement, and that all work performed under this Agreement shall be performed only by personnel under the supervision and in the employment of the Contractor. All personnel engaged in the work shall be fully qualified and shall be authorized, licensed and certified under state and local law to perform such work if authorization, licensing or certification is required. The persons performing professional services under this Agreement on behalf of the Contractor are shown in Appendix ___ attached hereto, and shall not be changed or substituted without the prior written consent of the TJPA, but all personnel, including those assigned at the TJPA's request, must be supervised by the Contractor. The Contractor shall commit adequate resources to complete the project within the project schedule specified in this Agreement.

13. Reserved

14. Independent Contractor, Payment of Taxes and Other Expenses

a. Independent Contractor

The Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by the TJPA under this Agreement. The Contractor or any agent or employee of the Contractor shall not have employee status with the TJPA, nor be entitled to participate in any plans, arrangements, or distributions by the TJPA pertaining to or in connection with any retirement, health or other benefits that the TJPA may offer its employees. The Contractor or any agent or employee of the Contractor is liable for the acts and omissions of itself, its employees and its agents. The Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, Federal Insurance Contributions Act (FICA), income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to the Contractor's performing services and work, or any agent or employee of the Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or joint venture relationship between the TJPA and the Contractor.

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

b. Payment of Taxes and Other Expenses

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

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

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

15. Insurance

a. Without in any way limiting the Contractor's other indemnification obligations under this Agreement, the Contractor must maintain in force, during the full term of the Agreement, insurance in 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 with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products, and Completed Operations; and

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

(4) Professional Liability Insurance with limits not less than \$1,000,000 each claim, with respect to negligent acts, errors or omissions in connection with professional services to be provided under this Agreement.

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

(1) Name as Additional Insured the TJPA, its members, directors, officers, agents, and employees.

(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. All policies shall provide thirty (30) days' advance written notice to the TJPA of reduction or nonrenewal of coverages or cancellation of coverages for any reason. Notices shall be sent to the address specified in the Section entitled "Notices to the Parties".

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

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

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

g. Before commencing any operations under this Agreement, the Contractor shall do the following: (a) furnish to the TJPA certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VII 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, and

(b) furnish complete copies of policies promptly upon TJPA request. Failure to maintain insurance shall constitute a material breach of this Agreement.

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

16. Indemnification

Contractor shall indemnify and save harmless the TJPA and its officers, directors, agents and employees from, and if requested shall defend them against, any and all loss, cost, damage, injury, liability, and claims thereof for injury to or death of a person, including employees of the Contractor or loss of or damage to property, arising directly or indirectly from the Contractor's performance of this Agreement, including, but not limited to, the Contractor's use of facilities or equipment provided by the TJPA or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on the TJPA, except to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Agreement, and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of the TJPA and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Contractor, its subcontractors or either's agent or employee. 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 Contractor's obligation to indemnify the TJPA, the Contractor 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 Contractor by the TJPA and continues at all times thereafter. The Contractor shall have the exclusive right to select and retain attorneys to defend against such indemnified claims (subject to the reasonable approval of the TJPA) and the TJPA shall cooperate with the Contractor and its attorneys, at no cost to the TJPA.

The Contractor shall indemnify and hold the TJPA harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons in consequence of the use by the TJPA, or any of its officers or agents, of articles or services to be supplied in the performance of this Agreement.

17. Incidental and Consequential Damages

Contractor shall be responsible for incidental and consequential damages to the TJPA resulting in whole or in part from Contractor's acts or omissions. Nothing in this Agreement shall constitute a waiver or limitation of any rights that the TJPA may have under applicable law to seek a defense, indemnity, or damages for such acts or omissions.

18. Liability of TJPA

The TJPA's monetary obligations under this agreement shall be limited to the payment of the compensation provided for in the Section of this Agreement entitled "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.

19. Reserved

20. Default; Remedies

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

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

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

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

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

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

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

21. Termination for Convenience

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

b. Upon receipt of the notice, the Contractor shall commence and perform, with diligence, all actions necessary on the part of the Contractor to effect the termination of this Agreement on the date specified by the TJPA and to minimize the liability of the Contractor and the TJPA to third parties as a

result of termination. All such actions shall be subject to the prior approval of the TJPA. Such actions shall include, without limitation:

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

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

(3) Terminating all existing orders and subcontracts.

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

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

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

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

c. Within thirty (30) days after the specified termination date, the Contractor shall submit to the TJPA an invoice, which shall set forth the reasonable cost to the Contractor for all services and other work the TJPA directed the Contractor to perform prior to the specified termination date, for which services or work the TJPA has not already tendered payment. The costs shall be determined as provided in Section 5, and shall be invoiced as provided in Section 7. The Contractor may also recover the reasonable cost of preparing the invoice.

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

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

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

22. 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; Taxes; Payment Does Not Imply Acceptance of Work; Responsibility for Equipment; Independent Contractor, Payment of Taxes and Other Expenses; Insurance; Indemnification; Incidental and Consequential Damages; Liability of TJPA; Proprietary or Confidential Information of 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; FTA Requirements; Prompt Payment of Subcontractors.

b. Subject to the immediately preceding subsection (a), upon termination of this Agreement prior to expiration of the term specified in Section 2, this Agreement shall terminate and be of no further force or effect. The Contractor shall transfer title to the TJPA, and deliver in the manner, at the times, and to the extent, if any, directed by the TJPA, any work in progress, completed work, supplies, equipment, and other materials produced as a part of, or acquired in connection with the performance of this Agreement, and any completed or partially completed work which, if this Agreement had been completed, would have been required to be furnished to the TJPA. This subsection shall survive termination of this Agreement.

23. Notices to the Parties

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

To TJPA: Ms. Maria Ayerdi-Kaplan, Executive Director
Transbay Joint Powers Authority
201 Mission Street, Suite 2100
San Francisco, CA 94105
(415) 597-4615 fax
MAyerdi-Kaplan@TransbayCenter.org

To Contractor: Julie Adair Minerva
Holland & Knight LLP
2099 Pennsylvania Avenue, NW, Suite 100
Washington, DC. 20006
(202) 955-5564 fax
julie.minerva@hklaw.com

Any notice of default must be sent by registered mail.

24. Proprietary or Confidential Information of the TJPA

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

25. Protection of Private Information

The Contractor agrees to comply fully with and be bound by all of the provisions of Chapter 12M of the San Francisco Administrative Code (the "Nondisclosure of Private Information Ordinance"), including

the remedies provided. The provisions of the Nondisclosure of Private Information Ordinance are incorporated herein by reference and made a part of this Agreement as though fully set forth. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in the Nondisclosure of Private Information Ordinance. Consistent with the requirements of the Nondisclosure of Private Information Ordinance, the Contractor agrees to all of the following:

a. Neither the Contractor nor any of its subcontractors shall disclose Private Information obtained from the TJPA or the City in the performance of this Agreement to any other subcontractor, person, or other entity, unless one of the following is true.

- (i) The disclosure is authorized by this Agreement;
- (ii) The Contractor received advance written approval from the TJPA to disclose the information; or
- (iii) The disclosure is required by law or judicial order.

b. Any disclosure or use of Private Information authorized by this Agreement shall be in accordance with any conditions or restrictions stated in this Agreement. Any disclosure or use of Private Information authorized by the TJPA shall be in accordance with any conditions or restrictions stated in the approval.

c. Private Information shall mean any information that (1) could be used to identify an individual, including without limitation, name, address, social security number, medical information, financial information, date and location of birth, and names of relatives or (2) the law forbids any person from disclosing.

d. Any failure of the Contractor to comply with the Nondisclosure of Private Information Ordinance shall be a material breach of this Agreement. In such an event, in addition to any other remedies available to it under equity or law, the TJPA may terminate this Agreement, debar Contractor, or bring a false claim action against the Contractor.

26. News Releases/Interviews

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

27. Ownership of Results

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

28. Works for Hire

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

and capabilities.

29. Audit and Inspection of Records

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

30. San Francisco Sunshine Ordinance

In accordance with S.F. Administrative Code Section 67.24(e), the Contractors' bids, responses to solicitations and all other records of communications between the TJPA and persons or firms seeking contracts shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefits until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

31. Public Access to Meetings and Records

If the Contractor receives a cumulative total per year of at least \$250,000 in TJPA funds or TJPA-administered funds and is a nonprofit organization as defined in Chapter 12L of the S.F. Administrative Code, the Contractor shall comply with and be bound by all the applicable provisions of that Chapter. By executing this Agreement, the Contractor agrees to open its meetings and records to the public in the manner set forth in Sections 12L.4 and 12L.5 of the Administrative Code. The Contractor further agrees to make good faith efforts to promote community membership on its Board of Directors in the manner set forth in Section 12L.6 of the Administrative Code. The Contractor acknowledges that its material failure to comply with any of the provisions of this paragraph shall constitute a material breach of this Agreement. The Contractor further acknowledges that such material breach of the Agreement shall be grounds for the TJPA to terminate and/or not renew the Agreement, partially or in its entirety.

32. Subcontracting

The Contractor will be permitted to subcontract additional portions of the work under this Agreement subject to the prior written approval of the TJPA Executive Director. Subcontractors shall be solely responsible to the Contractor throughout the performance of their services under this Agreement. Assignment by the Contractor of work to subcontractors shall not relieve the Contractor of any obligation to the TJPA for the work performed.

33. Assignment

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

34. Non-Waiver of Rights

The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other party at the time

designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter. There shall be no waiver except in writing, signed by the party to be charged.

35. Services Provided by Attorneys

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

36. Conflict of Interest

Through its execution of this Agreement, the Contractor acknowledges that it is familiar with the provisions of the Conflict of Interest Code of the TJPA; Section 15.103 of the San Francisco City Charter; Article III, Chapter 2 of San Francisco's Campaign and Governmental Conduct Code; and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitute a violation of said provisions.

37. Limitations on Contributions

Through execution of this Agreement, the Contractor acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts 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 elective officer if the contract 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 commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. The Contractor acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. The Contractor further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of the Contractor's board of directors; the Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in the Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by the Contractor. Additionally, the Contractor acknowledges that the Contractor must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126.

38. Prohibition on Political Activity with TJPA Funds

In accordance with San Francisco Administrative Code Chapter 12.G, the Contractor may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure (collectively, "Political Activity") in the performance of the services provided under this Agreement. The Contractor agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the TJPA's Chief Financial Officer. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event that the Contractor violates the provisions of this Section, the TJPA may, in addition to any other rights or remedies available hereunder, (i) terminate this Agreement, and (ii) prohibit the Contractor from bidding on or receiving any new TJPA contract for a period of two (2) years. The TJPA will not consider the Contractor's use of profit as a violation of this Section.

39. Equal Employment Opportunity/Nondiscrimination; Penalties

- a. Contractor Shall Not Discriminate

In the performance of this Agreement, the Contractor agrees not to discriminate against any TJPA or City employee working with such Contractor or subcontractor, applicant for employment with such Contractor or subcontractor, or against 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. Contractor further agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. The Contractor is encouraged to actively recruit minorities and women for its workforce and take other steps, such as on-the-job training and education, to ensure nondiscrimination in the Contractor's employment practices.

b. Subcontracts

The Contractor shall incorporate by reference in all subcontracts the provisions of Chapters 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code (copies of which are available from the TJPA upon request) and shall require all subcontractors to comply with such provisions. Contractor's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

c. Nondiscrimination in Benefits

The Contractor does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where the work is being performed for the TJPA elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Chapter 12B.2(b) of the San Francisco Administrative Code.

d. Condition to Contract

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

e. Incorporation of Administrative Code Provisions by Reference

The provisions of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. The Contractor shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters of the Administrative Code, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, the Contractor understands that pursuant to Section 12B.2(h) and 12C.3(g) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against the Contractor and/or deducted from any

payments due the Contractor.

40. Disadvantaged Business Enterprise (DBE) Requirements

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

41. Reserved

42. 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 and non-DBE 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 and non-DBE subcontractors.

43. Requiring Minimum Compensation for Covered Employees

The Contractor agrees to comply fully with and be bound by all of the provisions of the Minimum Compensation Ordinance (MCO), as set forth in San Francisco Administrative Code Chapter 12P (Chapter 12P), including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 12P are incorporated herein by reference and made a part of this Agreement as though fully set forth. The text of the MCO is available on the Web at <http://www.sfgov.org/olse>. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12P. Consistent with the requirements of the MCO, Contractor agrees to all of the following:

a. For each hour worked by a Covered Employee during a Pay Period on work funded under the

TJPA contract during the term of this Agreement, the Contractor shall provide to the Covered Employee no less than the Minimum Compensation, which includes a minimum hourly wage and compensated and uncompensated time off consistent with the requirements of the MCO. Note that the gross hourly compensation for covered employees is \$11.54 as of January 2009.

If a Covered Employee of a Nonprofit Corporation works in San Francisco, than that employee is covered by San Francisco's Minimum Wage Ordinance, which is Chapter 12R of the San Francisco Administrative Code. As of January 1, 2009, Chapter 12R's minimum wage is \$9.79 per hour.

b. The Contractor shall not discharge, reduce in compensation, or otherwise discriminate against any employee for complaining to the TJPA with regard to the Contractor's compliance or anticipated compliance with the requirements of the MCO, for opposing any practice proscribed by the MCO, for participating in proceedings related to the MCO, or for seeking to assert or enforce any rights under the MCO by any lawful means.

c. The Contractor understands and agrees that the failure to comply with the requirements of the MCO shall constitute a material breach by the Contractor of the terms of this Agreement. The TJPA shall determine whether such a breach has occurred.

d. If, within thirty (30) days after receiving written notice of a breach of this Agreement for violating the MCO, the Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty (30) days, the Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the TJPA shall have the right to pursue the following rights or remedies and any rights or remedies available under applicable law:

(1) The right to charge the Contractor an amount equal to the difference between the Minimum Compensation and any compensation actually provided to a Covered Employee, together with interest on such amount from the date payment was due at the maximum rate then permitted by law;

(2) The right to set off all or any portion of the amount described in Subsection (d)(1) of this Section against amounts due to the Contractor under this Agreement;

(3) The right to terminate this Agreement in whole or in part;

(4) In the event of a breach by the Contractor of the covenant referred to in Subsection (b) of this Section, the right to seek reinstatement of the employee or to obtain other appropriate equitable relief; and

(5) The right to bar the Contractor from entering into future contracts with the TJPA for three (3) years.

Each of the rights provided in this Subsection (d) shall be exercisable individually or in combination with any other rights or remedies available to the TJPA. Any amounts realized by the TJPA pursuant to this subsection shall be paid to the Covered Employee who failed to receive the required Minimum Compensation.

e. The Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the MCO.

f. The Contractor shall keep itself informed of the current requirements of the MCO, including increases to the hourly gross compensation due Covered Employees under the MCO, and shall provide prompt written notice to all Covered Employees of any increases in compensation, as well as any written communications received by the Contractor from the TJPA, which communications are marked to indicate that they are to be distributed to Covered Employees.

g. The Contractor shall provide reports to the TJPA in accordance with any reporting standards

promulgated by the TJPA under the MCO, including reports on subcontractors.

h. The Contractor shall provide the TJPA with access to pertinent records after receiving a written request from the TJPA to do so and being provided at least five (5) business days to respond.

i. The TJPA may conduct random audits of the Contractor. Random audits shall be (1) noticed in advance in writing; (2) limited to ascertaining whether Covered Employees are paid at least the minimum compensation required by the MCO; (3) accomplished through an examination of pertinent records at a mutually agreed upon time and location within ten (10) days of the written notice; and (4) limited to one audit of Contractor every two years for the duration of this Agreement. Nothing in this Agreement is intended to preclude the TJPA from investigating any report of an alleged violation of the MCO.

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

k. Each Covered Employee is a third-party beneficiary with respect to the requirements of subsections (a) and (b) of this Section, and may pursue the following remedies in the event of a breach by the Contractor of subsections (a) and (b), but only after the Covered Employee has provided the notice, participated in the administrative review hearing, and waited the 21-day period required by the MCO. The Contractor understands and agrees that if the Covered Employee prevails in such action, the Covered Employee may be awarded (1) an amount equal to the difference between the Minimum Compensation and any compensation actually provided to the Covered Employee, together with interest on such amount from the date payment was due at the maximum rate then permitted by law; (2) in the event of a breach by the Contractor of subsections (a) or (b), the right to seek reinstatement or to obtain other appropriate equitable relief; and (3) in the event that the Covered Employee is the prevailing party in any legal action or proceeding against the Contractor arising from this Agreement, the right to obtain all costs and expenses, including reasonable attorney's fees and disbursements, incurred by the Covered Employee. The Contractor also understands that the MCO provides that if the Contractor prevails in any such action, the Contractor may be awarded costs and expenses, including reasonable attorney's fees and disbursements, from the Covered Employee if the court determines that the Covered Employee's action was frivolous, vexatious or otherwise an act of bad faith.

l. If the Contractor is exempt from the MCO when this Agreement is executed because the cumulative amount of agreements with this department for the fiscal year is less than \$25,000 (\$50,000 for nonprofits), but the Contractor later enters into an agreement or agreements that cause the Contractor to exceed that amount in a fiscal year, the Contractor shall thereafter be required to comply with the MCO under this Agreement. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between the Contractor and the TJPA to exceed \$25,000 (\$50,000 for nonprofits) in the fiscal year.

44. Requiring Health Benefits for Covered Employees

Unless exempt, the Contractor agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of Chapter 12Q are incorporated herein by reference and made a part of this agreement as though fully set forth. The text of the HCAO is available on the Web at <http://www.sfgov.org/olse>. Capitalized terms used in this Section and not defined in this agreement shall

have the meanings assigned to such terms in Chapter 12Q.

a. For each Covered Employee, the Contractor shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If the Contractor chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission.

b. Notwithstanding the above, if the Contractor is a small business as defined in Section 12Q.3(e) of the HCAO, it shall have no obligation to comply with part (a) above.

c. The Contractor's failure to comply with the HCAO shall constitute a material breach of this agreement. The TJPA shall notify the Contractor if such a breach has occurred. If, within thirty (30) days after receiving the TJPA's written notice of a breach of this Agreement for violating the HCAO, the Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty (30) days, the Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the TJPA shall have the right to pursue the remedies set forth in 12Q.5(f)(1-6). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the TJPA.

d. Any Subcontract entered into by the Contractor shall require the subcontractors to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. The Contractor shall notify the TJPA when it enters into such a subcontract and shall certify to the TJPA that it has notified the subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on subcontractor through the Subcontract. Each Contractor shall be responsible for its subcontractors' compliance with this Chapter. If a subcontractor fails to comply, the TJPA may pursue the remedies set forth in this Section against Contractor based on the subcontractor's failure to comply, provided that TJPA has first provided Contractor with notice and an opportunity to obtain a cure of the violation.

e. The Contractor shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying the TJPA with regard to Contractor's compliance or anticipated compliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

f. The Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.

g. The Contractor shall maintain employee and payroll records in compliance with the California Labor Code and Industrial Welfare Commission orders, including the number of hours each employee has worked on the TJPA agreement.

h. The Contractor shall keep itself informed of the current requirements of the HCAO.

i. The Contractor shall provide reports to the TJPA in accordance with any reporting standards promulgated by the TJPA under the HCAO, including reports on subcontractors and subtenants, as applicable.

j. The Contractor shall provide the TJPA with access to records pertaining to compliance with HCAO after receiving a written request from the TJPA to do so and being provided at least five (5) business days to respond.

k. The Contractor shall allow the TJPA to inspect the Contractor's job sites and have access to the Contractor's employees in order to monitor and determine compliance with HCAO.

l. The TJPA may conduct random audits of the Contractor to ascertain its compliance with HCAO. The Contractor agrees to cooperate with the TJPA when it conducts such audits.

m. If the Contractor is exempt from the HCAO when this Agreement is executed because its amount is less than \$25,000 (\$50,000 for nonprofits), but the Contractor later enters into an agreement or agreements that cause the Contractor's aggregate amount of all agreements with TJPA to reach \$75,000, all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between the Contractor and the TJPA to be equal to or greater than \$75,000 in the fiscal year.

45. First Source Hiring Program

a. Incorporation of Administrative Code Provisions by Reference

The provisions of Chapter 83 of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. The Contractor shall comply fully with, and be bound by, all of the provisions that apply to this Agreement under such Chapter, including but not limited to the remedies provided therein. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 83.

b. First Source Hiring Agreement

(1) The Contractor will comply with First Source interviewing, recruitment and hiring requirements, which will provide the San Francisco Workforce Development System with the exclusive opportunity to initially provide Qualified Economically Disadvantaged Individuals for consideration for employment for Entry Level Positions. The duration of the First Source interviewing requirement shall be ten (10) days, unless business necessity requires a shorter period of time.

(2) The Contractor will comply with requirements for providing timely, appropriate notification of available Entry Level Positions to the San Francisco Workforce Development System so that the System may train and refer an adequate pool of Qualified Economically Disadvantaged Individuals to participating Employers.

(3) The Contractor agrees to use good faith efforts to comply with the First Source hiring requirements. A Contractor may establish its good faith efforts by filling (i) its first available Entry Level Position with a job applicant referred through the First Source Program; and (ii) fifty percent (50%) of its subsequent available Entry Level Positions with job applicants referred through the San Francisco Workforce Development System. Failure to meet this target, while not imputing bad faith, may result in a review of the Contractor's employment records.

c. Hiring Decisions

The Contractor shall make the final determination of whether an Economically Disadvantaged Individual referred by the System is "qualified" for the position.

d. Exceptions

Upon application by Employer, the First Source Hiring Administration ("FSHA") may grant an exception to any or all of the requirements of Chapter 83 in any situation where it concludes that compliance with this Chapter would cause economic hardship.

e. Liquidated Damages

Violation of the requirements of Chapter 83 is subject to an assessment of liquidated damages in the amount of \$2,070 for every new hire for an Entry Level Position improperly withheld from the First Source hiring process. The assessment of liquidated damages and the evaluation of any defenses or mitigating factors shall be made by the FSHA.

f. Subcontracts

Any subcontract entered into by the Contractor shall require the subcontractor to comply with the requirements of Chapter 83 and shall contain contractual obligations substantially the same as those set forth in this Section.

46. Earned Income Credit (EIC) Forms

San Francisco Administrative Code Chapter 12O requires that employers provide their employees with IRS Form W-5 (Earned Income Credit Advance Payment Certificate) and the IRS EIC Schedule, as set forth below. Employers can locate these forms at the IRS Office, on the Internet, or anywhere that Federal Tax Forms can be found.

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

b. Failure to comply with any requirement contained in subparagraph (a) of this Section shall constitute a material breach by the Contractor of the terms of this Agreement. If, within thirty (30) days after the Contractor receives written notice of such a breach, the Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty (30) days, the Contractor fails to commence efforts to cure within such period or thereafter fails to diligently pursue such cure to completion, the TJPA may pursue any rights or remedies available under this Agreement or under applicable law.

c. Any subcontract entered into by the Contractor shall require the subcontractor to comply, as to the subcontractor's Eligible Employees, with each of the terms of this Section.

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

47. MacBride Principles – Northern Ireland

Pursuant to San Francisco Administrative Code Section 12F.5, the TJPA urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The TJPA urges San Francisco companies to do business with corporations that abide by the MacBride Principles. By signing below, the person executing this agreement on behalf of the Contractor acknowledges and agrees that he or she has read and understood this Section.

48. Drug-Free Workplace Policy

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

49. Resource Conservation

Chapter 5 of the San Francisco Environment Code ("Resource Conservation") is incorporated herein by reference. Failure by the Contractor to comply with any of the applicable requirements of Chapter 5 will be deemed a material breach of contract.

50. Tropical Hardwood/Virgin Redwood Ban

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

51. Preservative-treated Wood Containing Arsenic

The Contractor may not purchase preservative-treated wood products containing arsenic in the performance of this Agreement unless an exemption from the requirements of Chapter 13 of the San Francisco Environment Code is obtained from the Department of the Environment under Section 1304 of the Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniacal copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Contractor may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of the Environment. This provision does not preclude the Contractor from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

52. Food Service Waste Reduction Requirements

Contractor agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this agreement as though fully set forth. This provision is a material term of this agreement. By entering into this agreement, contractor agrees that if it breaches this provision, the TJPA will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the sum of one hundred dollars (\$100.00) liquidated damages for the first breach, two hundred dollars (\$200.00) liquidated damages for the second breach in the same year, and five hundred dollars (\$500.00) liquidated damages for subsequent breaches in the same year is a reasonable estimate of the damage that the TJPA will incur based on the violation, established in light of the circumstances existing at the time this agreement was made. Such amounts shall not be considered a penalty, but rather agreed monetary damages sustained by the TJPA because of Contractor's failure to comply with this provision.

53. Graffiti Removal

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

The Contractor shall remove all graffiti from any real property owned or leased by the Contractor in the City and County of San Francisco within forty eight (48) hours of the earlier of the Contractor's (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the City's Department of Public Works or the TJPA. This Article is not intended to require the Contractor to breach any lease or other agreement that it may have concerning its use of the real property. The term "graffiti" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including by way

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

54. Modification of Agreement

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

55. Administrative Remedy for Agreement Interpretation

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

56. Agreement Made in California; Venue

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

57. Construction

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

58. 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 the Section entitled "Modification of Agreement".

59. Severability

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

60. Reserved

61. Compliance With Laws

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

62. Compliance with Americans with Disabilities Act

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

63. Authority to Execute Agreement

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.

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:

Maria Ayerdi-Kaplan, Executive Director

TJPA Legal Counsel

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

Secretary, TJPA Board

CONTRACTOR

By signing this Agreement, I certify that I comply with the requirements of the Minimum Compensation Ordinance, which entitles Covered Employees to certain minimum hourly wages and compensated and uncompensated time off.

I have read and understood the Section entitled "MacBride Principles—Northern Ireland", San Francisco's statement urging companies doing business in Northern Ireland to move towards resolving employment inequities, encouraging compliance with the MacBride Principles, and urging San Francisco companies to do business with corporations that abide by the MacBride Principles

Authorized Signature

2099 Pennsylvania Ave., NW, Suite 100
Address

Printed Name

Washington, D.C. 20006
City, State, Zip Code

Title

(202) 955-3000
Phone Number

Holland & Knight
Company Name

59-0663819
Federal Employer ID Number

PROFESSIONAL SERVICES AGREEMENT

APPENDIX A

SCOPE OF FEDERAL ADVOCACY SERVICES

A. Scope of Services

The scope of work provided will include but is not limited to the following areas:

1. Overall advocacy coordination for the TJPA at the federal level, which may include, but is not limited to:
 - a. Develop and implement appropriate federal legislative and post-legislative strategies for the Transbay Transit Center Program;
 - b. Preparing legislation, testimony, and report language as needed;
 - c. Identify potential sources of funds and strategize and formulate funding requests;
 - d. Supporting the Program in the Reauthorization of SAFETEA-LU;
 - e. Assist in coordinating activities during staff and Board visits to Washington;
 - f. Prioritize, prepare and submit formal requests in a timely manner, and do appropriate follow-up;
 - g. Regular written and oral communication with congressional delegation and key staff, members of relevant committees in both chambers and federal agency staff to further the Program; and
2. Regular written and oral communication to TJPA staff regarding specific and timely federal issues germane to the Program, including:
 - a. Timely reports on activities or actions of the federal government that could directly impact the Transbay Program
 - b. Provide recommendations to TJPA for action on critical issues, activities or bills for or against which TJPA should lobby; assist TJPA in developing policy positions regarding legislative or executive branch actions; and develop strategies for effectively communicating TJPA position and affecting outcome
 - c. Summarizing the firm's most recent efforts on behalf of the Transbay Program including
 - i. Testimony at Committee Hearings
 - ii. Meetings with legislators and staff
 - iii. Written correspondence on behalf of TJPA
3. Reauthorization of SAFETEA-LU:
 - a. The firm hired to perform advocacy services for the TJPA will be expected to be knowledgeable of developments in discussions regarding the reauthorization throughout the process and will be expected to have access to key discussions and decision-makers and be able to report back to the TJPA and provide insight and advice with respect to the Program and specifically work in support of funding for Transbay.
4. TIFIA:
 - a. The firm hired to perform advocacy services for the TJPA will be expected to have a strong understanding of, and experience with, the TIFIA loan program, and will be expected to monitor and analyze related legislation, regulations, and annual appropriations;
5. Provide formal reports (written or in person), upon request, to TJPA Board and staff on developments in Washington pertinent to the Transbay Program;
6. Work with the press staff to maximize coverage in the media for TJPA's interests;

7. Comply with all federal lobbying disclosure requirements and maintain the highest ethical standards both publicly and privately, including the avoidance of conflicts of interest, while representing the TJPA; and
8. Other services within the individual's and/or firm's ability as requested.

The Contractor shall meet with the TJPA if and as requested to evaluate Contractor's performance under the Contract with respect to the following:

- (1) Contractor's adherence to this Agreement
- (2) Quality of performance of key personnel and other staff assigned to the program by the Contractor and any subcontractors
- (3) Quality of performance and cooperative working relationship of the Contractor's project team and its members, including any subcontractors, with members of the TJPA staff and other contractors, including design, grant management, financial, construction management and other professionals
- (4) Management of authorized contract budget
- (5) Performance in accordance with agreed upon scope of work and schedule
- (6) Monitoring, reporting and updating of progress of assigned work
- (7) Timeliness in resolving issues, including issues arising from performance evaluations

Should the TJPA be dissatisfied with any of the above categories of Contractor performance in the same evaluation, the TJPA will render a negative evaluation on the Contractor's performance for that preceding quarter. In such cases, the Contractor shall be required to formulate and deliver to TJPA within five (5) working days a corrective action and schedule plan to be followed by the Contractor with results reported to TJPA on a monthly basis until the problem areas have been resolved or brought under control.

B. Persons Providing Services

The following employees of Contractor will provide the Services:

Name	Function
Julie Adair Minerva	Project Manager
Shawna Francis Watley	Transit Issues
Ann-Therese E. Schmid	Public Private Partnerships
John Buscher	Senate Democratic Caucus
Kathryn Hazeem Lehman	House Republican focus
Gerry Sikorski	House Democratic Caucus
Jim Davis	House Democratic Caucus

PROFESSIONAL SERVICES AGREEMENT

APPENDIX B

COMPENSATION FOR SERVICES

Contract Year	Monthly Retainer	Year Retainer Total
1	\$10,000	\$120,000
2	\$11,000	\$132,000
3	\$12,000	\$144,000
Contract Year	Other Direct Costs Allowance	Year Total
1	\$2,500	\$122,500
2	\$2,500	\$134,500
3	\$2,500	\$146,500
Contract Total		\$403,500
Option 1 (Contract Years 4-5)	\$12,500 monthly + \$2500 allowance	\$152,500
Option 2 (Contract Years 6-7)	\$12,750 monthly + \$2500 allowance	\$155,500
Contract Total with Options		\$711,500

The above amount shall include all incidental expenses of the Contractor, including the costs of toll telephone calls, document binding, filing fees, express mail, delivery charges, courier service, in - and out-of-house photocopying, charges for sending facsimiles, transportation, automobile rental, taxicab fares, parking, meals, secretarial services, printing, photographs, renderings, maps, Internet, computer, overhead, administration, and other costs and charges incurred by the Contractor or the Contractor's subcontractors. A travel allowance for travel authorized by the TJPA Executive Director will be \$2,500 per year.

PROFESSIONAL SERVICES AGREEMENT

APPENDIX C

PARCEL LIST

The private parcels listed below are planned to be acquired as part of the Transbay Transit Center Program in fee simple. This list is subject to change and requires verification by the TJPA.

Private Parcels			
	Address/Street	Block	Lot
1	580 Howard St.	3721	92-106
4	85 Natoma St.	3721	109-118
6	564 Howard St.	3721	19
7	568-576 Howard St.	3721	20
8	191 Second St.	3721	22
9	181 Second St.	3721	23
10	171 Second St.	3721	25
14	60 Tehama St.	3736	88
15	217 Second St.	3736	95
16	205-215 Second St.	3736	96
17	201 Second St.	3736	97
22	301 Brannan St.	3788	37
23	35 Stanford St. / 634 Second St.	3788	38
24	640 Second St.	3788	02
25	650 Second St.	3788	49-73
26	670 Second St.	3788	43
27	678-680 Second St.	3788	44
28	130 Townsend St.	3788	8
29	136 Townsend St.	3788	9
30	144-146 Townsend St.	3788	9A
31	148-154 Townsend St.	3788	10
32	164 Townsend St.	3788	74-85
33	166-178 Townsend St.	3788	12

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT ("Agreement") is entered into as of the _____ day of _____ 2010, by and between the TRANSBAY JOINT POWERS AUTHORITY ("TJPA") and Chambers, Conlon & Hartwell ("Contractor").

Recitals

A. The TJPA requires Federal Advocacy Services ("Services") for the Transbay Transit Center Program ("Program").

B. The Contractor submitted a written proposal ("Proposal") in response to the TJPA's Request for Proposals ("RFP"). Based on that Proposal, the TJPA's selection committee determined the Contractor to be one of two highest-ranked respondent to the RFP and the TJPA invited the Contractor for exclusive negotiations. This Agreement is the product of those negotiations.

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

D. The TJPA and the Contractor intend that this Agreement comply with certain contracting requirements of the City and County of San Francisco (the "City").

E. On _____, 2010, the TJPA Board of Directors adopted Resolution No. _____ authorizing the TJPA's Executive Director to execute this Agreement with the Contractor for the Services.

Now, THEREFORE, the parties agree as follows:

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

Charges under this Agreement will accrue only after prior written authorization certified by the TJPA's Finance Coordinator. 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.

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.

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

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

2. Term of the Agreement

Subject to Section 1, the term of this Agreement shall be for three years from the Effective Date of the Agreement, as described in Section 3 below, provided that (i) the TJPA shall have the right to extend this Agreement for an additional two two-year options by providing to the Contractor written notice of such extension on or before the expiration of this Agreement, and (ii) any such extension shall be subject to and conditioned upon the written agreement of the Contractor and the approval of such extension by resolution adopted by the TJPA Board of Directors.

3. Effective Date of Agreement

This Agreement shall become effective when the Finance Coordinator has certified to the availability of funds for the first notice to proceed ("NTP") and the Contractor has been notified in writing via an NTP.

4. Services Contractor Agrees to Perform

The Contractor agrees to perform the services listed in Appendix A, Scope of Services, attached hereto and incorporated by reference as though fully set forth within. 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, Contractor 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 in Appendix C attached hereto, and any properties that are subsequently added to this list.

5. Compensation

All work under this Agreement shall be compensated on a retainer basis, subject to any maximum price set forth in a particular NTP. In no event shall the total compensation under this Agreement for the base term exceed Four Hundred Three Thousand Five Hundred Dollars (\$403,500). In the event that this Agreement is extended, the total compensation shall be increased as described in Appendix B, "Fees". The breakdown of the Contractor's fees appears in Appendix B, "Fees".

Rates for services are to remain fixed during the entire contract period, including any option periods, except for reasonable cost of living increases and as noted in Appendix B.

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

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

6. Guaranteed Maximum Costs

a. The TJPA's obligation hereunder shall not at any time exceed the amount certified by the Finance Coordinator 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, officers and employees of the TJPA are not authorized to request, and the TJPA is not required to reimburse the Contractor for, commodities or services in excess of the price set forth in an NTP and in excess of the total compensation under this Agreement as stated in Section 5, unless the changed scope is authorized by written amendment and approved as required by law.

c. Officers and employees of the TJPA 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 Finance Coordinator.

d. The Finance Coordinator 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.

7. Payment

Invoices furnished by the Contractor under this Agreement must be in a form acceptable to the TJPA and must include a unique invoice number. Invoices shall include the first and last day of a calendar month and be submitted within thirty (30) days of the end of said calendar month. All amounts paid to the Contractor shall be subject to audit by the TJPA.

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

8. Submitting False Claims; Monetary Penalties

Pursuant to San Francisco Administrative Code Chapter 6, Article V, any Contractor, subcontractor, or consultant who submits a false claim shall be liable to the TJPA for three times the amount of damages which the TJPA sustains because of the false claim, plus a civil penalty of up to \$10,000, and other damages as provided by statute. A Contractor, subcontractor or consultant will be deemed to have submitted a false claim to the TJPA if the Contractor, subcontractor or consultant (a) knowingly presents or causes to be presented to an officer or employee of the TJPA a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the TJPA; (c) conspires to defraud the TJPA by getting a false claim allowed or paid by the TJPA; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the TJPA; or (e) is a beneficiary of an inadvertent submission of a false claim to the TJPA, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the TJPA within a reasonable time after discovery of the false claim.

9. Disallowance

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

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

10. Taxes

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

11. Payment Does Not Imply Acceptance of Work

The granting of any payment by the TJPA, or the receipt thereof by the Contractor, shall in no way lessen the liability of the Contractor to correct or revise unsatisfactory work, even though the unsatisfactory character of such work may not have been apparent or detected at the time such payment was made.

12. Qualified Personnel

The Contractor represents and warrants to the TJPA that the Contractor is qualified to perform the services as contemplated by this Agreement. The Contractor further represents and warrants to the

TJPA that it has all required licenses and approvals to perform the work contemplated by this Agreement, and that all work performed under this Agreement shall be performed only by personnel under the supervision and in the employment of the Contractor. All personnel engaged in the work shall be fully qualified and shall be authorized, licensed and certified under state and local law to perform such work if authorization, licensing or certification is required. The persons performing professional services under this Agreement on behalf of the Contractor are shown in Appendix ___ attached hereto, and shall not be changed or substituted without the prior written consent of the TJPA, but all personnel, including those assigned at the TJPA's request, must be supervised by the Contractor. The Contractor shall commit adequate resources to complete the project within the project schedule specified in this Agreement.

13. Reserved

14. Independent Contractor, Payment of Taxes and Other Expenses

a. Independent Contractor

The Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by the TJPA under this Agreement. The Contractor or any agent or employee of the Contractor shall not have employee status with the TJPA, nor be entitled to participate in any plans, arrangements, or distributions by the TJPA pertaining to or in connection with any retirement, health or other benefits that the TJPA may offer its employees. The Contractor or any agent or employee of the Contractor is liable for the acts and omissions of itself, its employees and its agents. The Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, Federal Insurance Contributions Act (FICA), income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to the Contractor's performing services and work, or any agent or employee of the Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or joint venture relationship between the TJPA and the Contractor.

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

b. Payment of Taxes and Other Expenses

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

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

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

15. Insurance

a. Without in any way limiting the Contractor's other indemnification obligations under this Agreement, the Contractor must maintain in force, during the full term of the Agreement, insurance in 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 with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products, and Completed Operations; and

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

(4) Professional Liability Insurance with limits not less than \$1,000,000 each claim, with respect to negligent acts, errors or omissions in connection with professional services to be provided under this Agreement.

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

(1) Name as Additional Insured the TJPA, its members, directors, officers, agents, and employees.

(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. All policies shall provide thirty (30) days' advance written notice to the TJPA of reduction or nonrenewal of coverages or cancellation of coverages for any reason. Notices shall be sent to the address specified in the Section entitled "Notices to the Parties".

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

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

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

g. Before commencing any operations under this Agreement, the Contractor shall do the following: (a) furnish to the TJPA certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VII 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, and

(b) furnish complete copies of policies promptly upon TJPA request. Failure to maintain insurance shall constitute a material breach of this Agreement.

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

16. Indemnification

Contractor shall indemnify and save harmless the TJPA and its officers, directors, agents and employees from, and if requested shall defend them against, any and all loss, cost, damage, injury, liability, and claims thereof for injury to or death of a person, including employees of the Contractor or loss of or damage to property, arising directly or indirectly from the Contractor's performance of this Agreement, including, but not limited to, the Contractor's use of facilities or equipment provided by the TJPA or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on the TJPA, except to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Agreement, and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of the TJPA and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Contractor, its subcontractors or either's agent or employee. 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 Contractor's obligation to indemnify the TJPA, the Contractor 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 Contractor by the TJPA and continues at all times thereafter. The Contractor shall have the exclusive right to select and retain attorneys to defend against such indemnified claims (subject to the reasonable approval of the TJPA) and the TJPA shall cooperate with the Contractor and its attorneys, at no cost to the TJPA.

The Contractor shall indemnify and hold the TJPA harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons in consequence of the use by the TJPA, or any of its officers or agents, of articles or services to be supplied in the performance of this Agreement.

17. Incidental and Consequential Damages

Contractor shall be responsible for incidental and consequential damages to the TJPA resulting in whole or in part from Contractor's acts or omissions. Nothing in this Agreement shall constitute a waiver or limitation of any rights that the TJPA may have under applicable law to seek a defense, indemnity, or damages for such acts or omissions.

18. Liability of TJPA

The TJPA's monetary obligations under this agreement shall be limited to the payment of the compensation provided for in the Section of this Agreement entitled "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.

19. Reserved

20. Default; Remedies

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

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

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

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

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

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

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

21. Termination for Convenience

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

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

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

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

(3) Terminating all existing orders and subcontracts.

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

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

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

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

c. Within thirty (30) days after the specified termination date, the Contractor shall submit to the TJPA an invoice, which shall set forth the reasonable cost to the Contractor for all services and other work the TJPA directed the Contractor to perform prior to the specified termination date, for which services or work the TJPA has not already tendered payment. The costs shall be determined as provided in Section 5, and shall be invoiced as provided in Section 7. The Contractor may also recover the reasonable cost of preparing the invoice.

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

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

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

22. 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; Taxes; Payment Does Not Imply Acceptance of Work; Responsibility for Equipment; Independent Contractor, Payment of Taxes and Other Expenses; Insurance; Indemnification; Incidental and Consequential Damages; Liability of TJPA; Proprietary or Confidential Information of 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; FTA Requirements; Prompt Payment of Subcontractors.

b. Subject to the immediately preceding subsection (a), upon termination of this Agreement prior to expiration of the term specified in Section 2, this Agreement shall terminate and be of no further force or effect. The Contractor shall transfer title to the TJPA, and deliver in the manner, at the times, and to the extent, if any, directed by the TJPA, any work in progress, completed work, supplies, equipment, and other materials produced as a part of, or acquired in connection with the performance of this Agreement, and any completed or partially completed work which, if this Agreement had been completed, would have been required to be furnished to the TJPA. This subsection shall survive termination of this Agreement.

23. Notices to the Parties

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

To TJPA: Ms. Maria Ayerdi-Kaplan, Executive Director
Transbay Joint Powers Authority
201 Mission Street, Suite 2100
San Francisco, CA 94105
(415) 597-4615 fax
MAyerdi-Kaplan@TransbayCenter.org

To Contractor: Keith Hartwell, President
Chambers, Conlon & Hartwell, Inc.
500 New Jersey Avenue, NW, Ste. 400
Washington, DC. 20001
(202) 638-1045 fax
keith.hartwell@cch-llc.com

Any notice of default must be sent by registered mail.

24. Proprietary or Confidential Information of the TJPA

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

25. Protection of Private Information

The Contractor agrees to comply fully with and be bound by all of the provisions of Chapter 12M of the San Francisco Administrative Code (the "Nondisclosure of Private Information Ordinance"), including

the remedies provided. The provisions of the Nondisclosure of Private Information Ordinance are incorporated herein by reference and made a part of this Agreement as though fully set forth. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in the Nondisclosure of Private Information Ordinance. Consistent with the requirements of the Nondisclosure of Private Information Ordinance, the Contractor agrees to all of the following:

a. Neither the Contractor nor any of its subcontractors shall disclose Private Information obtained from the TJPA or the City in the performance of this Agreement to any other subcontractor, person, or other entity, unless one of the following is true.

- (i) The disclosure is authorized by this Agreement;
- (ii) The Contractor received advance written approval from the TJPA to disclose the information; or
- (iii) The disclosure is required by law or judicial order.

b. Any disclosure or use of Private Information authorized by this Agreement shall be in accordance with any conditions or restrictions stated in this Agreement. Any disclosure or use of Private Information authorized by the TJPA shall be in accordance with any conditions or restrictions stated in the approval.

c. Private Information shall mean any information that (1) could be used to identify an individual, including without limitation, name, address, social security number, medical information, financial information, date and location of birth, and names of relatives or (2) the law forbids any person from disclosing.

d. Any failure of the Contractor to comply with the Nondisclosure of Private Information Ordinance shall be a material breach of this Agreement. In such an event, in addition to any other remedies available to it under equity or law, the TJPA may terminate this Agreement, debar Contractor, or bring a false claim action against the Contractor.

26. News Releases/Interviews

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

27. Ownership of Results

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

28. Works for Hire

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

and capabilities.

29. Audit and Inspection of Records

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

30. San Francisco Sunshine Ordinance

In accordance with S.F. Administrative Code Section 67.24(e), the Contractors' bids, responses to solicitations and all other records of communications between the TJPA and persons or firms seeking contracts shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefits until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

31. Public Access to Meetings and Records

If the Contractor receives a cumulative total per year of at least \$250,000 in TJPA funds or TJPA-administered funds and is a nonprofit organization as defined in Chapter 12L of the S.F. Administrative Code, the Contractor shall comply with and be bound by all the applicable provisions of that Chapter. By executing this Agreement, the Contractor agrees to open its meetings and records to the public in the manner set forth in Sections 12L.4 and 12L.5 of the Administrative Code. The Contractor further agrees to make good faith efforts to promote community membership on its Board of Directors in the manner set forth in Section 12L.6 of the Administrative Code. The Contractor acknowledges that its material failure to comply with any of the provisions of this paragraph shall constitute a material breach of this Agreement. The Contractor further acknowledges that such material breach of the Agreement shall be grounds for the TJPA to terminate and/or not renew the Agreement, partially or in its entirety.

32. Subcontracting

The Contractor will be permitted to subcontract additional portions of the work under this Agreement subject to the prior written approval of the TJPA Executive Director. Subcontractors shall be solely responsible to the Contractor throughout the performance of their services under this Agreement. Assignment by the Contractor of work to subcontractors shall not relieve the Contractor of any obligation to the TJPA for the work performed.

33. Assignment

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

34. Non-Waiver of Rights

The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other party at the time

designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter. There shall be no waiver except in writing, signed by the party to be charged.

35. Services Provided by Attorneys

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

36. Conflict of Interest

Through its execution of this Agreement, the Contractor acknowledges that it is familiar with the provisions of the Conflict of Interest Code of the TJPA; Section 15.103 of the San Francisco City Charter; Article III, Chapter 2 of San Francisco's Campaign and Governmental Conduct Code; and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitute a violation of said provisions.

37. Limitations on Contributions

Through execution of this Agreement, the Contractor acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts 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 elective officer if the contract 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 commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. The Contractor acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. The Contractor further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of the Contractor's board of directors; the Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in the Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by the Contractor. Additionally, the Contractor acknowledges that the Contractor must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126.

38. Prohibition on Political Activity with TJPA Funds

In accordance with San Francisco Administrative Code Chapter 12.G, the Contractor may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure (collectively, "Political Activity") in the performance of the services provided under this Agreement. The Contractor agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the TJPA's Chief Financial Officer. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event that the Contractor violates the provisions of this Section, the TJPA may, in addition to any other rights or remedies available hereunder, (i) terminate this Agreement, and (ii) prohibit the Contractor from bidding on or receiving any new TJPA contract for a period of two (2) years. The TJPA will not consider the Contractor's use of profit as a violation of this Section.

39. Equal Employment Opportunity/Nondiscrimination; Penalties

- a. Contractor Shall Not Discriminate

In the performance of this Agreement, the Contractor agrees not to discriminate against any TJPA or City employee working with such Contractor or subcontractor, applicant for employment with such Contractor or subcontractor, or against 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. Contractor further agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. The Contractor is encouraged to actively recruit minorities and women for its workforce and take other steps, such as on-the-job training and education, to ensure nondiscrimination in the Contractor's employment practices.

b. Subcontracts

The Contractor shall incorporate by reference in all subcontracts the provisions of Chapters 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code (copies of which are available from the TJPA upon request) and shall require all subcontractors to comply with such provisions. Contractor's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

c. Nondiscrimination in Benefits

The Contractor does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where the work is being performed for the TJPA elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Chapter 12B.2(b) of the San Francisco Administrative Code.

d. Condition to Contract

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

e. Incorporation of Administrative Code Provisions by Reference

The provisions of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. The Contractor shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters of the Administrative Code, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, the Contractor understands that pursuant to Section 12B.2(h) and 12C.3(g) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against the Contractor and/or deducted from any

payments due the Contractor.

40. Disadvantaged Business Enterprise (DBE) Requirements

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

41. Reserved

42. 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 and non-DBE 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 and non-DBE subcontractors.

43. Requiring Minimum Compensation for Covered Employees

The Contractor agrees to comply fully with and be bound by all of the provisions of the Minimum Compensation Ordinance (MCO), as set forth in San Francisco Administrative Code Chapter 12P (Chapter 12P), including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 12P are incorporated herein by reference and made a part of this Agreement as though fully set forth. The text of the MCO is available on the Web at <http://www.sfgov.org/olse>. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12P. Consistent with the requirements of the MCO, Contractor agrees to all of the following:

a. For each hour worked by a Covered Employee during a Pay Period on work funded under the

TJPA contract during the term of this Agreement, the Contractor shall provide to the Covered Employee no less than the Minimum Compensation, which includes a minimum hourly wage and compensated and uncompensated time off consistent with the requirements of the MCO. Note that the gross hourly compensation for covered employees is \$11.54 as of January 2009.

If a Covered Employee of a Nonprofit Corporation works in San Francisco, than that employee is covered by San Francisco's Minimum Wage Ordinance, which is Chapter 12R of the San Francisco Administrative Code. As of January 1, 2009, Chapter 12R's minimum wage is \$9.79 per hour.

b. The Contractor shall not discharge, reduce in compensation, or otherwise discriminate against any employee for complaining to the TJPA with regard to the Contractor's compliance or anticipated compliance with the requirements of the MCO, for opposing any practice proscribed by the MCO, for participating in proceedings related to the MCO, or for seeking to assert or enforce any rights under the MCO by any lawful means.

c. The Contractor understands and agrees that the failure to comply with the requirements of the MCO shall constitute a material breach by the Contractor of the terms of this Agreement. The TJPA shall determine whether such a breach has occurred.

d. If, within thirty (30) days after receiving written notice of a breach of this Agreement for violating the MCO, the Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty (30) days, the Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the TJPA shall have the right to pursue the following rights or remedies and any rights or remedies available under applicable law:

(1) The right to charge the Contractor an amount equal to the difference between the Minimum Compensation and any compensation actually provided to a Covered Employee, together with interest on such amount from the date payment was due at the maximum rate then permitted by law;

(2) The right to set off all or any portion of the amount described in Subsection (d)(1) of this Section against amounts due to the Contractor under this Agreement;

(3) The right to terminate this Agreement in whole or in part;

(4) In the event of a breach by the Contractor of the covenant referred to in Subsection (b) of this Section, the right to seek reinstatement of the employee or to obtain other appropriate equitable relief; and

(5) The right to bar the Contractor from entering into future contracts with the TJPA for three (3) years.

Each of the rights provided in this Subsection (d) shall be exercisable individually or in combination with any other rights or remedies available to the TJPA. Any amounts realized by the TJPA pursuant to this subsection shall be paid to the Covered Employee who failed to receive the required Minimum Compensation.

e. The Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the MCO.

f. The Contractor shall keep itself informed of the current requirements of the MCO, including increases to the hourly gross compensation due Covered Employees under the MCO, and shall provide prompt written notice to all Covered Employees of any increases in compensation, as well as any written communications received by the Contractor from the TJPA, which communications are marked to indicate that they are to be distributed to Covered Employees.

g. The Contractor shall provide reports to the TJPA in accordance with any reporting standards

promulgated by the TJPA under the MCO, including reports on subcontractors.

h. The Contractor shall provide the TJPA with access to pertinent records after receiving a written request from the TJPA to do so and being provided at least five (5) business days to respond.

i. The TJPA may conduct random audits of the Contractor. Random audits shall be (1) noticed in advance in writing; (2) limited to ascertaining whether Covered Employees are paid at least the minimum compensation required by the MCO; (3) accomplished through an examination of pertinent records at a mutually agreed upon time and location within ten (10) days of the written notice; and (4) limited to one audit of Contractor every two years for the duration of this Agreement. Nothing in this Agreement is intended to preclude the TJPA from investigating any report of an alleged violation of the MCO.

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

k. Each Covered Employee is a third-party beneficiary with respect to the requirements of subsections (a) and (b) of this Section, and may pursue the following remedies in the event of a breach by the Contractor of subsections (a) and (b), but only after the Covered Employee has provided the notice, participated in the administrative review hearing, and waited the 21-day period required by the MCO. The Contractor understands and agrees that if the Covered Employee prevails in such action, the Covered Employee may be awarded (1) an amount equal to the difference between the Minimum Compensation and any compensation actually provided to the Covered Employee, together with interest on such amount from the date payment was due at the maximum rate then permitted by law; (2) in the event of a breach by the Contractor of subsections (a) or (b), the right to seek reinstatement or to obtain other appropriate equitable relief; and (3) in the event that the Covered Employee is the prevailing party in any legal action or proceeding against the Contractor arising from this Agreement, the right to obtain all costs and expenses, including reasonable attorney's fees and disbursements, incurred by the Covered Employee. The Contractor also understands that the MCO provides that if the Contractor prevails in any such action, the Contractor may be awarded costs and expenses, including reasonable attorney's fees and disbursements, from the Covered Employee if the court determines that the Covered Employee's action was frivolous, vexatious or otherwise an act of bad faith.

l. If the Contractor is exempt from the MCO when this Agreement is executed because the cumulative amount of agreements with this department for the fiscal year is less than \$25,000 (\$50,000 for nonprofits), but the Contractor later enters into an agreement or agreements that cause the Contractor to exceed that amount in a fiscal year, the Contractor shall thereafter be required to comply with the MCO under this Agreement. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between the Contractor and the TJPA to exceed \$25,000 (\$50,000 for nonprofits) in the fiscal year.

44. Requiring Health Benefits for Covered Employees

Unless exempt, the Contractor agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of Chapter 12Q are incorporated herein by reference and made a part of this agreement as though fully set forth. The text of the HCAO is available on the Web at <http://www.sfgov.org/olse>. Capitalized terms used in this Section and not defined in this agreement shall

have the meanings assigned to such terms in Chapter 12Q.

a. For each Covered Employee, the Contractor shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If the Contractor chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission.

b. Notwithstanding the above, if the Contractor is a small business as defined in Section 12Q.3(e) of the HCAO, it shall have no obligation to comply with part (a) above.

c. The Contractor's failure to comply with the HCAO shall constitute a material breach of this agreement. The TJPA shall notify the Contractor if such a breach has occurred. If, within thirty (30) days after receiving the TJPA's written notice of a breach of this Agreement for violating the HCAO, the Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty (30) days, the Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the TJPA shall have the right to pursue the remedies set forth in 12Q.5(f)(1-6). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the TJPA.

d. Any Subcontract entered into by the Contractor shall require the subcontractors to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. The Contractor shall notify the TJPA when it enters into such a subcontract and shall certify to the TJPA that it has notified the subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on subcontractor through the Subcontract. Each Contractor shall be responsible for its subcontractors' compliance with this Chapter. If a subcontractor fails to comply, the TJPA may pursue the remedies set forth in this Section against Contractor based on the subcontractor's failure to comply, provided that TJPA has first provided Contractor with notice and an opportunity to obtain a cure of the violation.

e. The Contractor shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying the TJPA with regard to Contractor's compliance or anticipated compliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

f. The Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.

g. The Contractor shall maintain employee and payroll records in compliance with the California Labor Code and Industrial Welfare Commission orders, including the number of hours each employee has worked on the TJPA agreement.

h. The Contractor shall keep itself informed of the current requirements of the HCAO.

i. The Contractor shall provide reports to the TJPA in accordance with any reporting standards promulgated by the TJPA under the HCAO, including reports on subcontractors and subtenants, as applicable.

j. The Contractor shall provide the TJPA with access to records pertaining to compliance with HCAO after receiving a written request from the TJPA to do so and being provided at least five (5) business days to respond.

k. The Contractor shall allow the TJPA to inspect the Contractor's job sites and have access to the Contractor's employees in order to monitor and determine compliance with HCAO.

l. The TJPA may conduct random audits of the Contractor to ascertain its compliance with HCAO. The Contractor agrees to cooperate with the TJPA when it conducts such audits.

m. If the Contractor is exempt from the HCAO when this Agreement is executed because its amount is less than \$25,000 (\$50,000 for nonprofits), but the Contractor later enters into an agreement or agreements that cause the Contractor's aggregate amount of all agreements with TJPA to reach \$75,000, all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between the Contractor and the TJPA to be equal to or greater than \$75,000 in the fiscal year.

45. First Source Hiring Program

a. Incorporation of Administrative Code Provisions by Reference

The provisions of Chapter 83 of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. The Contractor shall comply fully with, and be bound by, all of the provisions that apply to this Agreement under such Chapter, including but not limited to the remedies provided therein. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 83.

b. First Source Hiring Agreement

(1) The Contractor will comply with First Source interviewing, recruitment and hiring requirements, which will provide the San Francisco Workforce Development System with the exclusive opportunity to initially provide Qualified Economically Disadvantaged Individuals for consideration for employment for Entry Level Positions. The duration of the First Source interviewing requirement shall be ten (10) days, unless business necessity requires a shorter period of time.

(2) The Contractor will comply with requirements for providing timely, appropriate notification of available Entry Level Positions to the San Francisco Workforce Development System so that the System may train and refer an adequate pool of Qualified Economically Disadvantaged Individuals to participating Employers.

(3) The Contractor agrees to use good faith efforts to comply with the First Source hiring requirements. A Contractor may establish its good faith efforts by filling (i) its first available Entry Level Position with a job applicant referred through the First Source Program; and (ii) fifty percent (50%) of its subsequent available Entry Level Positions with job applicants referred through the San Francisco Workforce Development System. Failure to meet this target, while not imputing bad faith, may result in a review of the Contractor's employment records.

c. Hiring Decisions

The Contractor shall make the final determination of whether an Economically Disadvantaged Individual referred by the System is "qualified" for the position.

d. Exceptions

Upon application by Employer, the First Source Hiring Administration ("FSHA") may grant an exception to any or all of the requirements of Chapter 83 in any situation where it concludes that compliance with this Chapter would cause economic hardship.

e. Liquidated Damages

Violation of the requirements of Chapter 83 is subject to an assessment of liquidated damages in the amount of \$2,070 for every new hire for an Entry Level Position improperly withheld from the First Source hiring process. The assessment of liquidated damages and the evaluation of any defenses or mitigating factors shall be made by the FSHA.

f. Subcontracts

Any subcontract entered into by the Contractor shall require the subcontractor to comply with the requirements of Chapter 83 and shall contain contractual obligations substantially the same as those set forth in this Section.

46. Earned Income Credit (EIC) Forms

San Francisco Administrative Code Chapter 12O requires that employers provide their employees with IRS Form W-5 (Earned Income Credit Advance Payment Certificate) and the IRS EIC Schedule, as set forth below. Employers can locate these forms at the IRS Office, on the Internet, or anywhere that Federal Tax Forms can be found.

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

b. Failure to comply with any requirement contained in subparagraph (a) of this Section shall constitute a material breach by the Contractor of the terms of this Agreement. If, within thirty (30) days after the Contractor receives written notice of such a breach, the Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty (30) days, the Contractor fails to commence efforts to cure within such period or thereafter fails to diligently pursue such cure to completion, the TJPA may pursue any rights or remedies available under this Agreement or under applicable law.

c. Any subcontract entered into by the Contractor shall require the subcontractor to comply, as to the subcontractor's Eligible Employees, with each of the terms of this Section.

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

47. MacBride Principles – Northern Ireland

Pursuant to San Francisco Administrative Code Section 12F.5, the TJPA urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The TJPA urges San Francisco companies to do business with corporations that abide by the MacBride Principles. By signing below, the person executing this agreement on behalf of the Contractor acknowledges and agrees that he or she has read and understood this Section.

48. Drug-Free Workplace Policy

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

49. Resource Conservation

Chapter 5 of the San Francisco Environment Code ("Resource Conservation") is incorporated herein by reference. Failure by the Contractor to comply with any of the applicable requirements of Chapter 5 will be deemed a material breach of contract.

50. Tropical Hardwood/Virgin Redwood Ban

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

51. Preservative-treated Wood Containing Arsenic

The Contractor may not purchase preservative-treated wood products containing arsenic in the performance of this Agreement unless an exemption from the requirements of Chapter 13 of the San Francisco Environment Code is obtained from the Department of the Environment under Section 1304 of the Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniacal copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Contractor may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of the Environment. This provision does not preclude the Contractor from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

52. Food Service Waste Reduction Requirements

Contractor agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this agreement as though fully set forth. This provision is a material term of this agreement. By entering into this agreement, contractor agrees that if it breaches this provision, the TJPA will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the sum of one hundred dollars (\$100.00) liquidated damages for the first breach, two hundred dollars (\$200.00) liquidated damages for the second breach in the same year, and five hundred dollars (\$500.00) liquidated damages for subsequent breaches in the same year is a reasonable estimate of the damage that the TJPA will incur based on the violation, established in light of the circumstances existing at the time this agreement was made. Such amounts shall not be considered a penalty, but rather agreed monetary damages sustained by the TJPA because of Contractor's failure to comply with this provision.

53. Graffiti Removal

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

The Contractor shall remove all graffiti from any real property owned or leased by the Contractor in the City and County of San Francisco within forty eight (48) hours of the earlier of the Contractor's (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the City's Department of Public Works or the TJPA. This Article is not intended to require the Contractor to breach any lease or other agreement that it may have concerning its use of the real property. The term "graffiti" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including by way

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

54. Modification of Agreement

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

55. Administrative Remedy for Agreement Interpretation

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

56. Agreement Made in California; Venue

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

57. Construction

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

58. 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 the Section entitled "Modification of Agreement".

59. Severability

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

60. Reserved

61. Compliance With Laws

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

62. Compliance with Americans with Disabilities Act

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

63. Authority to Execute Agreement

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.

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:

Maria Ayerdi-Kaplan, Executive Director

TJPA Legal Counsel

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

Secretary, TJPA Board

CONTRACTOR

By signing this Agreement, I certify that I comply with the requirements of the Minimum Compensation Ordinance, which entitles Covered Employees to certain minimum hourly wages and compensated and uncompensated time off.

I have read and understood the Section entitled "MacBride Principles—Northern Ireland", San Francisco's statement urging companies doing business in Northern Ireland to move towards resolving employment inequities, encouraging compliance with the MacBride Principles, and urging San Francisco companies to do business with corporations that abide by the MacBride Principles

Authorized Signature

500 New Jersey Ave., NW, Suite 400

Address

Keith Hartwell

Printed Name

Washington, D.C. 20001

City, State, Zip Code

President

Title

(202) 638-7790

Phone Number

Chambers, Conlon & Hartwell

Company Name

20-0563927

Federal Employer ID Number

PROFESSIONAL SERVICES AGREEMENT

APPENDIX A

SCOPE OF FEDERAL ADVOCACY SERVICES

A. Scope of Services

The scope of work provided will include but is not limited to the following areas:

1. Overall advocacy coordination for the TJPA at the federal level, which may include, but is not limited to:
 - a. Develop and implement appropriate federal legislative and post-legislative strategies for the Transbay Transit Center Program;
 - b. Preparing legislation, testimony, and report language as needed;
 - c. Identify potential sources of funds and strategize and formulate funding requests;
 - d. Supporting the Program in the Reauthorization of SAFETEA-LU;
 - e. Assist in coordinating activities during staff and Board visits to Washington;
 - f. Prioritize, prepare and submit formal requests in a timely manner, and do appropriate follow-up;
 - g. Regular written and oral communication with congressional delegation and key staff, members of relevant committees in both chambers and federal agency staff to further the Program; and
2. Regular written and oral communication to TJPA staff regarding specific and timely federal issues germane to the Program, including:
 - a. Timely reports on activities or actions of the federal government that could directly impact the Transbay Program
 - b. Provide recommendations to TJPA for action on critical issues, activities or bills for or against which TJPA should lobby; assist TJPA in developing policy positions regarding legislative or executive branch actions; and develop strategies for effectively communicating TJPA position and affecting outcome
 - c. Summarizing the firm's most recent efforts on behalf of the Transbay Program including
 - i. Testimony at Committee Hearings
 - ii. Meetings with legislators and staff
 - iii. Written correspondence on behalf of TJPA
3. Reauthorization of SAFETEA-LU:
 - a. The firm hired to perform advocacy services for the TJPA will be expected to be knowledgeable of developments in discussions regarding the reauthorization throughout the process and will be expected to have access to key discussions and decision-makers and be able to report back to the TJPA and provide insight and advice with respect to the Program and specifically work in support of funding for Transbay.
4. TIFIA:
 - a. The firm hired to perform advocacy services for the TJPA will be expected to have a strong understanding of, and experience with, the TIFIA loan program, and will be expected to monitor and analyze related legislation, regulations, and annual appropriations;
5. Provide formal reports (written or in person), upon request, to TJPA Board and staff on developments in Washington pertinent to the Transbay Program;
6. Work with the press staff to maximize coverage in the media for TJPA's interests;

7. Comply with all federal lobbying disclosure requirements and maintain the highest ethical standards both publicly and privately, including the avoidance of conflicts of interest, while representing the TJPA; and
8. Other services within the individual's and/or firm's ability as requested.

The Contractor shall meet with the TJPA if and as requested to evaluate Contractor's performance under the Contract with respect to the following:

- (1) Contractor's adherence to this Agreement
- (2) Quality of performance of key personnel and other staff assigned to the program by the Contractor and any subcontractors
- (3) Quality of performance and cooperative working relationship of the Contractor's project team and its members, including any subcontractors, with members of the TJPA staff and other contractors, including design, grant management, financial, construction management and other professionals
- (4) Management of authorized contract budget
- (5) Performance in accordance with agreed upon scope of work and schedule
- (6) Monitoring, reporting and updating of progress of assigned work
- (7) Timeliness in resolving issues, including issues arising from performance evaluations

Should the TJPA be dissatisfied with any of the above categories of Contractor performance in the same evaluation, the TJPA will render a negative evaluation on the Contractor's performance for that preceding quarter. In such cases, the Contractor shall be required to formulate and deliver to TJPA within five (5) working days a corrective action and schedule plan to be followed by the Contractor with results reported to TJPA on a monthly basis until the problem areas have been resolved or brought under control.

B. Persons Providing Services

The following employees of Contractor will provide the Services:

Name	Title
Keith Hartwell	President/Senior Partner
Jason Tai	Principal
Christopher Johnson	Associate
Katie Manly	Associate

PROFESSIONAL SERVICES AGREEMENT

APPENDIX B

COMPENSATION FOR SERVICES

Chambers, Conlon & Hartwell LLC		
500 New Jersey Ave NW, Suite 400		
Washington	DC	20001
Contact: Keith Hartwell	Phone: (202) 638-7790	
Contract Year	Monthly Retainer	Year Retainer Total
1	\$10,000	\$120,000
2	\$11,000	\$132,000
3	\$12,000	\$144,000
Contract Year	Other Direct Costs Allowance	Year Total
1	\$2,500	\$122,500
2	\$2,500	\$134,500
3	\$2,500	\$146,500
Contract Total		\$403,500
Option 1 (Contract Years 4-5)	\$12,500 monthly + \$2500 allowance	\$152,500
Option 2 (Contract Years 6-7)	\$12,750 monthly + \$2500 allowance	\$155,500
Contract Total with Options		\$711,500

The above amount shall include the following expenses of the Contractor: charges for sending facsimiles, secretarial services, computer, internet, in-house photocopying, overhead, and administration. The costs of toll telephone calls, document binding, filing fees, express mail, delivery charges, courier service, out-of-house photocopying, transportation, automobile rental, taxicab fares, parking, meals, printing, photographs, renderings, maps, and travel may be billed as Other Direct Costs for an amount not to exceed \$2,500 per year. All travel must be authorized by the TJPA Executive Director.

PROFESSIONAL SERVICES AGREEMENT

APPENDIX C

PARCEL LIST

The private parcels listed below are planned to be acquired as part of the Transbay Transit Center Program in fee simple. This list is subject to change and requires verification by the TJPA.

Private Parcels			
	Address/Street	Block	Lot
1	580 Howard St.	3721	92-106
4	85 Natoma St.	3721	109-118
6	564 Howard St.	3721	19
7	568-576 Howard St.	3721	20
8	191 Second St.	3721	22
9	181 Second St.	3721	23
10	171 Second St.	3721	25
14	60 Tehama St.	3736	88
15	217 Second St.	3736	95
16	205-215 Second St.	3736	96
17	201 Second St.	3736	97
22	301 Brannan St.	3788	37
23	35 Stanford St. / 634 Second St.	3788	38
24	640 Second St.	3788	02
25	650 Second St.	3788	49-73
26	670 Second St.	3788	43
27	678-680 Second St.	3788	44
28	130 Townsend St.	3788	8
29	136 Townsend St.	3788	9
30	144-146 Townsend St.	3788	9A
31	148-154 Townsend St.	3788	10
32	164 Townsend St.	3788	74-85
33	166-178 Townsend St.	3788	12



Federal Advocacy Services Selection Committee Report August 2010

Executive Summary and Recommendation

In response to Request for Proposals No. 10-05 for a Federal Advocacy Services Consultant, issued on June 28, 2010, the TJPA received nine proposals from firms meeting all minimum qualifications on July 27, 2010. A selection committee convened on August 3, 2010 to evaluate and score the proposals.

Based on the criteria outlined in the RFP, the selection committee recommends that the Transbay Joint Powers Authority (TJPA) negotiate professional services agreements with **Chambers, Conlon & Hartwell, LLC** and **Holland & Knight LLP**, to provide federal advocacy services for a three year term each, with the option to extend either or both contracts for two additional two year terms each.

Background

The TJPA desires to have effective relationships with federal authorities and agencies, including, but not limited to, the federal delegation, their staff members, and the U.S. Department of Transportation. The TJPA also desires to be proactive in developing funding opportunities, and is looking to receive targeted information and analysis of federal legislation, regulations, and activities that relate specifically to the Program. The TJPA recognizes the need for continuous representation of its interests via qualified individuals and/or firms in Washington, DC who provide such professional services to successfully accomplish its goals.

The contracts to be negotiated will be for three years with options to extend for two additional two-year options. Compensation will be paid via monthly retainer, as is customary for lobbying firms.

Schedule

- | | | |
|----|--|----------------|
| 1) | RFP advertised/posted | June 28, 2010 |
| 2) | Receipt of proposals | July 27, 2010 |
| 3) | Selection committee evaluation meeting | August 3, 2010 |

Selection Committee Members

Emilio Cruz, TJPA Program Management Consultant
Nila Gonzales, TJPA Office Manager/Board Secretary
Nancy Whelan, TJPA Financial Consultant

RFP Outreach

An announcement of the RFP appeared in the *San Francisco Examiner* and on the *Politico* website in Washington, DC. It was also posted on the City Purchaser's Bids and Contracts website; a copy of the announcement is Attachment A. On the same day, the TJPA posted the RFP on its website for the public to view and print and sent 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 55 federal advocacy firms and 178 contacts who have signed up for notice of all TJPA professional services contracts.

The TJPA received nine proposals on or before the RFP submission date, from:

- Blank Rome Government Relations LLC
- Chambers, Conlon & Hartwell, LLC

- David Turch and Associates
- The Ferguson Group LLC
- Gephardt Government Affairs
- Holland & Knight LLP
- Smith Dawson & Andrews
- Townsend Public Affairs, Inc.
- Van Scoyoc Associates, Inc.

Selection Committee Evaluation

The selection committee met on August 3, 2010 to review the written proposals and evaluate strengths and weaknesses using the criteria listed in the RFP. Following the discussion, each committee member individually filled out scoring sheets (Attachment B). Proposed retainer price was scored according to a mathematical formula. The TJPA Contracts Compliance Manager collected the scoring sheets and tabulated the results.

Chambers, Conlon & Hartwell, LLC and Holland & Knight LLP finished in a virtual tie. Scores are shown in (Attachment C). Based on the results, the selection committee elected not to conduct interviews, and recommends that the TJPA negotiate contracts for services with these two firms.

All proposals submitted in response to this RFP are available for review at the TJPA. Proposals will be retained for two years, except for the selected consultant's proposal which will be maintained on permanent record.

Attachments

Attachment A, RFP Announcement
Attachment B, Scoring Sheets
Attachment C, Scores

Reference

Request for Proposals No. 10-05 for Federal Advocacy Services issued by the Transbay Joint Powers Authority on June 28, 2010.

Attachment A

ANNOUNCEMENT

REQUEST FOR PROPOSALS NO. 10-05 FEDERAL ADVOCACY SERVICES

The Transbay Joint Powers Authority (TJPA) is issuing a Request for Proposals (RFP) for FEDERAL ADVOCACY SERVICES for the Transbay Transit Center Program from firms or individuals with expertise in the federal legislative process and comprehensive knowledge and experience of the federal government's operations and procedures.

Proposal packages must be received by the TJPA no later than **5:00 p.m. on Tuesday, July 27, 2010**, at the address below. Late proposal packages will not be considered.

Transbay Joint Powers Authority
201 Mission Street, Suite 2100
San Francisco, CA 94105

Prospective Respondents may obtain copies of this RFP, including required forms, by visiting the TJPA's website at www.TransbayCenter.org (>TJPA>Doing Business with the TJPA>Current Contract Opportunities) or by contacting the TJPA at (415) 597-4620 or at FederalAdvocacy@TransbayCenter.org.

Attachment B
EVALUATION SCORE SHEET
Federal Advocacy Services RFP

Name of Respondent: _____

Name of Panelist: _____

	Description	Score	Notes
1.	<p>Qualifications and Experience of Firm <i>(maximum 90 points)</i></p> <ul style="list-style-type: none"> • Provide a brief description of the Respondent firm and include a summary of the firm's capabilities and experience in federal advocacy for both public and private entities with an emphasis on public projects. • Describe how the Respondent firm meets the qualifications described in Section 6.0. Provide two examples of success on behalf of public agency clients and discuss relevance to this Scope of Work. Be as specific as possible. • Describe the proposed staff that will be used to provide the Services. Specifically, provide their names, titles, business addresses, phone numbers, and brief resumes describing the relevant qualifications and work experience. Describe the role each staff member would play in providing the Services. Clearly show the extent and nature of the involvement of the key team members who would provide the Services. • Include any additional information that demonstrates the Respondent's qualifications to perform the Services and successful completion of similar services for other public agencies. 		
2.	<p>Approach to Providing Advocacy Services <i>(maximum 90 points)</i></p> <ul style="list-style-type: none"> • Describe the Respondent firm's approach to providing federal advocacy services. Include firm's approach to avoiding conflicts of interest and prioritizing client interests. • Describe how the Respondent would tailor its federal advocacy services to meet the needs of the TJPA. • Describe in detail how the Respondent would close the Phase 2 funding gap of \$1.95 billion. Provide a detailed timeline and strategy. 		
3.	<p>Price <i>(maximum 20 points)</i></p>		

TOTAL SCORE: _____

Panelist Signature: _____

Score Checked By: _____

Attachment C

Evaluation Scores (200 points max)

Firm	Panelist A	Panelist B	Panelist C	Total Score
Blank Rome Government Relations	90	91	161	342
Chambers, Conlon & Hartwell	185	189	195	569
David Turch and Associates	90	78	128	296
The Ferguson Group	140	94	150	384
Gephardt Government Affairs	110	120	166	396
Holland & Knight	185	190	193	568
Smith Dawson & Andrews	140	80	171	391
Townsend Public Affairs	130	130	150	410
Van Scoyoc Associates	150	155	180	485