

**STAFF REPORT FOR CALENDAR ITEM NO.: 9
FOR THE MEETING OF: June 9, 2011**

TRANSBAY JOINT POWERS AUTHORITY

BRIEF DESCRIPTION:

Authorize the Executive Director to execute a renewal to the professional services agreement No. 03-02-DTX ENGR-001, *Engineering Design Services for Caltrain Downtown Extension Project*, (the "Agreement"), between the Transbay Joint Powers Authority ("TJPA") and Parsons Transportation Group ("Parsons") for a third three (3) year term in an amount not to exceed \$4,200,000 for services including, but not necessarily limited to, the following:

- Providing continued Preliminary Engineering Services for the Project
- Interfacing with and reviewing documents produced by Caltrain, the California High Speed Rail Authority ("CHRSA"), and the Federal Railroad Administration ("FRA");
- Providing support to the design team for the Transbay Transit Center on the interface between the Downtown Extension ("DTX") and the Transit Center and the rail systems to be installed in the Transit Center;
- Providing engineering support including structural engineering studies and cost estimates in support of TJPA property acquisition activities;
- Providing cost estimating and risk management services to assist in producing an updated Phase 2 Budget;
- Providing provisions for San Francisco Municipal Transportation Agency's ("SFMTA") Central Subway light rail crossing of DTX at Fourth Street; and
- Providing dual mode or limited electrified rail alternative contingency planning in the event that the California High Speed Rail and Caltrain Electrification projects are delayed.

The complete scope of services to be performed under this agreement consists of a series of tasks, described in the attached Agreement, Appendix A, "Scope of Work", which will be authorized by the TJPA on an as needed basis under written notices to proceed.

SUMMARY:

- On December 16, 2004, the Transbay Joint Powers Authority (TJPA) Board of Directors authorized the Executive Director to execute an Engineering Design Professional Services Agreement with Parsons for an initial three (3) year term and a maximum compensation of \$23,035,142.
- Parsons assisted with the development of the Program and performed the scope of services efficiently and in a cost effective manner. Through Term 1, \$13,811,557 was expended. In 2008, the TJPA negotiated a renewal with Parsons and recommended that the TJPA Board of Directors extend the agreement.

- On June 20, 2008, the TJPA Board authorized the Executive Director to renew the Agreement with Parsons for an additional three (3) year term and a maximum compensation of \$10,710,000. Parsons completed and delivered the studies, drawings, reports and other deliverables outlined in the initial authorization under the renewed Agreement.
- On October 14, 2010, the TJPA Board of Directors authorized the Executive Director to execute Amendment No. 1 to the Agreement, increasing the maximum compensation by \$1,210,000 and allowing for Parsons to continue providing on-going support for the Transit Center design interface and interfaces with CHSRA, Caltrain, and FRA.
- The TJPA has been satisfied with the performance of Parsons for the past six (6) years. The Agreement allows the TJPA to exercise one remaining three year option, and staff has negotiated a renewed agreement with Parsons and recommends that the TJPA Board of Directors authorize the Executive Director to award this agreement renewal for a third and final three year term to allow Parsons to perform needed continuing engineering services.

EXPLANATION:

The Caltrain Downtown Extension project requires a multi-disciplinary engineering design team to provide preliminary engineering services on behalf of the TJPA and assist in planning, managing and implementing this large and complex public infrastructure project. The project consists of a broad range of infrastructure improvements, including:

- a 1.3 mile extension of rail alignment in a mined and cut-and-cover tunnel with supporting systems through the rapidly developing South of Market section of San Francisco
- rail systems with associated electrification, signal and supporting infrastructure
- an operational plan for a Transit Center that will include rail and bus operations

The Parsons team provides a wide variety of technical expertise and extensive past experience in coordinating complex multi-disciplinary projects. The engineering team has expertise in transit tunnel design and construction; geotechnical engineering; railroad engineering; electrified rail systems; rail, bus and passenger operations planning; and other general civil engineering disciplines.

The continuing areas of responsibility of the engineering consultant are as follows:

- Project Management
- Agency Coordination
- Update of Design Criteria
- Rail Operations Analysis
- Rail and Civil Engineering Design
- Geotechnical Engineering
- Cut and Cover Structures
- Engineering Support
- Cost Estimating

- Dual Mode contingency planning
- Quality Assurance
- Advanced Preliminary Engineering Report Updates

Original Consultant Selection Background

A Request for Proposals for Engineering Design Services was issued in February 2004. In March 2004, two proposals were received, from Parsons (teamed with Arup & Jacobs Associates) and from Transbay Consultants (joint venture of HNTB, Earth Tech & SYSTRA). The SFMTA Contract Compliance Office was assisting TJPA with procurements at that time, and reviewed both proposals to make the determination that they complied with the requirements of and were responsive to the RFP.

The Executive Director convened a selection committee, composed of six individuals representing the TJPA member agencies and project stakeholders, to review the proposals based on the following evaluation criteria:

- Experience and qualifications of lead firm(s)
- Expertise in necessary disciplines
- Experience and qualifications of staff: relevant recent experience, professional qualifications and education, demonstrated abilities, results of reference checks
- Project understanding and approach: scope of work and the services required for each proposed task, special project issues and constraints, good quality control and a well-integrated design, schedule adherence, schedule and budget, ability to provide qualified and adequate staffing and services in a timely manner

Interviews were conducted with both proposers and Parsons was ranked highest in the selection process. A contract was negotiated and, as mentioned above, awarded in December 2004 and renewed in June 2008.

Consultant Performance Evaluation

Prior to making a recommendation to renew, TJPA staff conducted an evaluation of Parsons. Staff reviewed services and work products completed or in-progress and compliance with requirements of the contract. Assessment of whether the services and products were of satisfactory quality and whether such services and products were completed within the agreed-upon budget and within a reasonable schedule form the basis of renewal. TJPA staff found that services, work products, performance of Key Personnel, and the team's cost effectiveness in the performance of scope were consistently satisfactory to exceptional.

The basis of Parsons' performance under the scope of services was evaluated with respect to the following:

- Adherence to agreement and to its own Project Management Plan
- Quality of performance of Key Personnel and other staff assigned to the Program
- Quality of performance and cooperative working relationship of the Parsons team and its members, including its subcontractors, in relationship to the other members of TJPA staff and other contractors, including design, grant management, financial, construction management and other professionals

- Quality of deliverables and adherence to Quality Assurance Procedures
- Management of design budget
- Monitoring, reporting and updating of construction cost estimate
- Adherence to agreed schedule
- Monitoring, reporting and updating of progress of assigned work
- Timeliness in resolving issues, including issues arising from performance evaluations
- Working relationship between the Parsons team and other Program stakeholders

Current Contract Status

On December 16, 2004, the TJPA Board authorized the Executive Director to execute a contract with Parsons for a maximum compensation of \$23,035,142 and a term of three (3) years for Engineering Design services to the TJPA. Through Term 1, \$13,811,557 was expended. Upon completion of the scope under the initial term, the TJPA negotiated a renewal with Parsons and recommended that the TJPA Board of Directors extend the agreement.

On June 20, 2008, the TJPA Board of Directors authorized the Executive Director to execute a renewed Agreement with Parsons for Engineering Design services for a second term of three (3) years (2008 – 2011) for a maximum compensation of \$10,710,000.

Parsons had completed the scope outlined in Term 2 of the Agreement, but Parsons engineering services were still required for the continuation of preliminary engineering for the Caltrain Downtown Extension project originally envisioned in the contract and to maintain communication and coordination with CHSRA, Caltrain, and the FRA. Thus on October 14, 2010, the TJPA Board authorized the Executive Director to amend the Term 2 agreement to provide for additional services through June 30, 2011 in an amount not to exceed \$1,210,000 for a total contract value of \$11,910,000.

Through April 2011, \$11,063,499 has been incurred under the contract. Parsons engineering design services are still required for the continuation of advanced preliminary engineering for the Caltrain Downtown Extension project originally envisioned in the contract. Interfaces with the Transit Center design team, CHSRA, Caltrain, and FRA require the on-going support of an experienced and knowledgeable engineering design team.

Record of Negotiations and Agreement Provisions for Term 3

A series of negotiation meetings occurred from March 24, 2011 to May 16, 2011. Participating in the negotiations on behalf of the TJPA was Brian Dykes, Principal Engineer, assisted by Program staff. The Parsons consultant team was represented by Robert Sergeant, Parsons Team Project Manager, and Chukwuma Umolu, Deputy Project Manager.

Negotiation meetings consisted of discussion of updated contract terms, updated scope of work, cost and fee.

Services performed under this Agreement will be authorized by TJPA staff through the issuance of notices to proceed ("NTPs"). NTPs will establish scope of work and schedule requirements and specify deliverables. They will also specify the maximum allowable amount of compensation, including fixed fee. This process will facilitate management of contract

expenditures while providing engineering design services to the TJPA. The agreement renewal sets a new maximum contract limit amount of \$4,200,000 for the third three (3) year term.

RECOMMENDATION:

Staff recommends that the Board authorize the Executive Director to execute a renewed agreement for Engineering Design Professional Services for the Caltrain Downtown Extension project with Parsons for a third three (3) year term (2011-2014) in an amount not to exceed \$4,200,000.

ENCLOSURES:

1. Resolution
2. Agreement

**TRANSBAY JOINT POWERS AUTHORITY
BOARD OF DIRECTORS**

Resolution No. _____

WHEREAS, On December 16, 2004, the Transbay Joint Powers Authority (TJPA) Board of Directors unanimously resolved to authorize the Executive Director to execute a Professional Services Agreement (Agreement) for Engineering Design Services for the Caltrain Downtown Extension project with Parsons Transportation Group, Inc. (Contractor) for an initial three (3) year term with the option to renew the Agreement for an additional six (6) year term and a maximum compensation of \$23,035,142, of which \$13,811,557 was expended; and

WHEREAS, On June 20, 2008, the TJPA Board of Directors authorized the Executive Director to execute a renewed Agreement with Parsons for Engineering Design services for a second term (2008 – 2011) of three (3) years at a total cost not to exceed \$10,710,000 which was expended in full; and

WHEREAS, On October 14, 2010, the TJPA Board of Directors authorized the Executive Director to execute Amendment No. 1 to the Term 2 Agreement for Engineering Design Professional Services for the Caltrain Downtown Extension project with Parsons for a maximum compensation of \$1,210,000; and

WHEREAS, Parsons has completed and delivered the studies, drawings, reports and other deliverables outlined in the initial authorization under Amendment 1 of Term 2; and

WHEREAS, The TJPA wishes Parsons to provide continuing technical support to the TJPA in interfacing with and reviewing documents produced by Caltrain, the California High Speed Rail Authority (CHRSA), and the Federal Railroad Administration (FRA); providing support to the design team for the Transbay Transit Center on the interface between the DTX and the Transit Center; providing on-going cost estimating and risk management services; providing dual mode contingency planning, and other related services as required; and

WHEREAS, The TJPA has determined that Parsons, teamed with Arup and Jacobs Associates, is well qualified to continue to perform the scope of services in a cost effective manner; now, therefore, be it

RESOLVED, That the TJPA Board of Directors authorizes the Executive Director to execute a renewed agreement for Engineering Design Professional Services for the Caltrain Downtown Extension project with Parsons for a third three (3) year term (2011-2014) and a maximum compensation of \$4,200,000.

I hereby certify that the foregoing resolution was adopted by the Transbay Joint Powers Authority Board of Directors at its meeting of June 9, 2011.

Secretary, Transbay Joint Powers Authority

AGREEMENT BETWEEN
TRANSBAY JOINT POWERS AUTHORITY
AND
PARSONS TRANSPORTATION GROUP, INC.
FOR
ENGINEERING DESIGN SERVICES
FOR
CALTRAIN DOWNTOWN EXTENSION PROJECT
TERM 3 (2011 – 2014)

(Agreement No. 03-02-DTX ENGR-002)

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APPENDICES

- A. Scope of Work
- B. Form of Provisional Cost Reimbursement and Rate Agreement
 - Attachment A: Cost Disclosure Statement
 - Attachment B: Provisional Cost Reimbursement and Rate Data
- C. Project Organization Chart and Listing of Subcontractors
- D. USDOT Requirements for Agreement with the TJPA

**Agreement Between
The Transbay Joint Powers Authority
and
Parsons Transportation Group, Inc.
for
Engineering Design Services for the
Caltrain Downtown Extension Project
Professional Services
Term 3 (2011 – 2014)
(Agreement No. 03-02-DTX ENGR-002)**

THIS AGREEMENT is entered into as of the 9th day of June, 2011 by and between the TRANSBAY JOINT POWERS AUTHORITY ("TJPA") and Parsons Transportation Group, Inc. (the "Contractor").

Recitals

A. TJPA wishes the services of a consulting firm to provide professional engineering design and other support services (professional services) for the Caltrain Downtown Extension Project ("Project"), which is a part of the Transbay Transit Center Program ("Program")

B. Contractor submitted a written Proposal in response to a Request for Proposals issued February 2, 2004, which was orally presented and rated highest by the Contractor selection committee.

C. On December 16, 2004, the Transbay Joint Powers Authority Board of Directors unanimously resolved to authorize the Executive Director to execute an agreement for Engineering Design Services for the Caltrain Downtown Extension Project Agreement.

D. On January 7, 2005, the Executive Director executed an Agreement (Agreement No. 03-02-DTX ENGR-000) with Parsons Transportation Group, Inc. for Engineering Design Services (the "DTX Agreement").

E. On May 25, 2006, the TJPA Board of Directors authorized the Executive Director to execute Amendment No. 1 to the DTX Agreement to modify the Agreement to substitute the Parsons Team Program Manager.

F. On August 31, 2006, the TJPA Board of Directors authorized the Executive Director to execute Amendment No. 2 to the DTX Agreement to modify the Agreement to replace any reference to the Deputy Director/Chief Engineer with the Executive Director.

G. On November 16, 2006, the TJPA Board of Directors authorized the Executive Director to execute Amendment No. 3 to the DTX Agreement to modify the Agreement to substitute the Parsons Team Program Manager.

H. On February 14, 2008, the TJPA issued Amendment No. 4 to extend the initial contract duration from three (3) years to three (3) years and 109 days.

I. On June 20, 2008, the TJPA Board of Directors adopted Resolution No. 08-027, which authorized the Executive Director to execute a renewed Agreement for said services by the Contractor.

J. On October 14, 2010, the TJPA Board of Directors adopted Resolution No. 10-043, which authorized the Executive Director to execute Amendment No. 1 to the DTX renewed Agreement to provide additional technical review services.

K. The original agreement included a term of three years with an option for a second six-year term. The renewed Agreement exercised an option for an extension of a second three-year term. By this Agreement, the TJPA is exercising its option for a third three-year term.

L. Contractor represents and warrants that it is qualified to perform the services required by TJPA as set forth under this Agreement.

M. TJPA and Contractor intend that this Agreement comply with the regulations of the Federal Transit Administration of the United States Department of Transportation ("FTA").

N. On June 9, 2011, the TJPA Board of Directors adopted Resolution No. _____, which authorized the Executive Director to execute this Agreement for said services by Contractor.

Now, THEREFORE, the parties agree as follows:

Terms and Conditions

1. General

The Transbay Transit Center Program is comprised of four main components: (1) the transit center building, bus access ramps, and auxiliary features, (2) the extension of Caltrain, (3) the temporary bus terminal and storage area, and (4) the permanent bus storage area. The Transbay Transit Center Program is generally described and set forth in the Transbay Terminal/Downtown Caltrain Extension/Redevelopment Project Final Environmental Impact Statement /Environmental Impact Report dated March 2004, which is incorporated here by reference as if fully set forth.

As the consultant providing professional services under this Agreement, the Contractor agrees to provide the TJPA with various services required to complete the Scope of Work as set forth in Appendix A for the Caltrain Downtown Extension Project ("Project"). All work under this Agreement shall be authorized and performed at the sole discretion of the TJPA.

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

2. 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 and the amount of 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 TJPA at the end of any fiscal year (July 1 through June 30) 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.

TJPA has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. TJPA budget decisions are subject to the discretion of the Board of Directors of the TJPA. 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.

3. Term of the Agreement

Subject to Section 2, the term of this Agreement shall not exceed three (3) years from the Effective Date of Agreement. The TJPA at its option may extend this Agreement to include professional services for final engineering and design, and design services during construction, for an additional 109 days at the identical terms set forth in this Agreement, with the exception of modifications in Section 5, Services Contractor Agrees to Perform, Section 8, Compensation, and any other Agreement terms that are modified by the parties. In order to extend the Agreement, the TJPA shall give written notice of its intent to extend the contract before the expiration of the then current three year contract.

4. Effective Date of Agreement

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

5. Services Contractor Agrees to Perform

a. General Orientation and Scope

The Contractor agrees to perform the services provided for in Appendix A, "Scope of Services," attached to this Agreement and incorporated by reference as though fully set forth herein for the Caltrain Downtown Extension Project ("Project").

This Agreement is for Preliminary Engineering Services of the Project in connection with the final development and completion of all relevant and necessary site investigations, alternative and feasibility studies, functional and operational requirements, update of design criteria, design drawings, construction contracting strategy, cost estimates, schedules, engineering reporting and the identification of all project scope elements and technical and non-technical issues and/or constraints related to the Project.

The Contractor shall perform all services necessary to complete the Phase One work within the time periods indicated in the schedule shown in Appendix A, attached to and made a part of this Agreement.

Contractor acknowledges and agrees that subsequent to completion of Preliminary Engineering, the TJPA may exercise its option to extend this Agreement to include final engineering and design, preparation of construction contract documents for design-bid-build contracts and design services during construction. Contractor acknowledges and agrees that as part of any agreement or extension or modification of this Agreement for the performance of the final design phases (through Construction Documents), that such agreement, extension, or modification shall include a Fixed Budget Limit for all construction contract packages that will follow the Design-Bid-Build procurement method. The TJPA, at its sole discretion, may set the Fixed Budget Limit. The Fixed Budget Limit shall include the cost of basic construction (excluding construction contingencies and alternates, either additive or deductive, the cost of equipment, fixtures, and any other element that is to be incorporated or integrated into the Project). The Contractor shall be responsible for designing a Project where the lowest responsive bid submitted by a responsible bidder is within ten percent (10%) of the Fixed Budget Limit. In the event that estimates prior to bidding or actual bids indicate that the Project construction cost will exceed the Fixed Budget Limit, Contractor, at the request of the TJPA, shall revise the plans and specifications at no cost to the TJPA until the Project construction cost is within the Fixed Budget Limit, subject to the following conditions:

1. The TJPA, at its sole discretion, may apply additive or deductive alternates to the lowest responsive bid to meet the Fixed Budget Limit. Contractor and the TJPA will confer at all phases and decide on all alternates. Contractor shall design additive alternates with an estimated value of not less than ten percent (10%) and deductive alternates with an estimated value of not less than ten percent (10%) of the Fixed Budget Limit, with final determination by the TJPA as to the scope of such alternates and as to which alternates shall be a part of the bid package.

2. In the event that redesign services are necessary, the TJPA shall cooperate with Contractor in allowing design changes, including, if necessary, changes which reasonably affect the size and quality of the Project. Contractor must complete any redesign within two (2) months of notification by the TJPA of its intent to redesign.

3. In the event that redesign services are performed, the modification of the Contract Documents shall be the limit of the Contractor's strict responsibility arising out of the establishment of the Fixed Budget Limit. This, however, shall in no way limit the Contractor's responsibility or the TJPA's remedies in the event that the reason that the Fixed Budget Limit was exceeded was the result of the Contractor's negligent acts, errors or omissions.

4. Should the TJPA accept a bid which exceeds the Fixed Budget Limit, there shall be no additional compensation (i.e., no correlative proportional increase in fee) to the Contractor.

5. The Fixed Budget Limit and the associated conditions shall not apply to any contract documents that are prepared by the Contractor for the purpose of Design-Build procurement(s).

For this Project, Preliminary Engineering Design (PE) shall be defined as having achieved an overall 30% completion level of Final Design, i.e., 30% completion of what could eventually be the construction contract bid documents for a traditional design/bid/construction project. TJPA has not decided on a specific construction contract approach for the Project. Therefore, the completion of PE shall also be defined as having delivered to TJPA designs that are in all ways sufficient to define the scope, schedule, cost and quality of the entire Project, regardless of construction contracting packaging or procurement methodologies selected for the Project. In addition, the completion of PE shall be defined as having completed detailed designs sufficient to enable development of cost estimates inclusive of design contingency consistent with FTA recommendations for the level of design completion on top of base construction costs.

Contractor shall thoroughly familiarize itself with all aspects of and requirements for this Project. Contractor recognizes that it was selected for this Project partly because of its competence and expertise in scoping and designing similar large and specialized rail transit and tunnel projects. Therefore, TJPA will not consider any additional compensation at a later date due to the Contractor's failure to understand adequately and take into account all of the essential work requirements for each design phase of this highly complex Project. Furthermore, the Contractor shall utilize its knowledge and experience, and that of its subcontractors, to economically, efficiently and timely provide and perform all services as described in Appendix A "Scope of Services." The Contractor shall design an efficient, cost-effective, constructible, maintainable, safe and functional facility.

Both TJPA and Contractor recognize that the construction cost of a project of this nature and magnitude may escalate out of control if not properly managed and/or monitored. Therefore, as part of the services rendered to TJPA, the Contractor shall diligently seek to alert TJPA in writing of any and all potential significant increases to previously estimated construction costs, whether they be a result of design development, unforeseen operation requirements, review comments, scope changes, market changes, contracting strategies, errors in previous construction cost estimates, etc. At minimum, after every published set of preliminary construction cost estimates prepared by Contractor, the Contractor shall provide a written biweekly update to the TJPA Project Manager on any work elements that have not been accounted for or that were underestimated in its previous construction cost estimates provided to TJPA, and shall conduct biweekly meetings with the TJPA and representatives of funding agencies thereafter to review and implement methods for reducing or containing construction costs.

b. Extra Work

If the Contractor considers any work to be outside the defined scope of work, the Contractor shall notify the TJPA Project Manager in writing within five (5) working days of discovering such work. Neither Contractor nor any subcontractor shall be reimbursed for out-of-scope work performed without first obtaining approval of TJPA's Project Manager in accordance with the following procedures:

If the TJPA desires the Contractor to perform work additional to the defined scope of work in Appendix A, "Scope of Work", or if the Contractor discovers any work to be out-of-scope and necessary to the Project, the following shall apply:

1. The Contractor shall prepare and submit a proposal for the task to the TJPA Project Manager showing:
 - a. A detailed description by subtask of the work to be performed and the means and methods that will be used to perform it;
 - b. Milestones for completion for each subtask and deliverables at each milestone;
 - c. Personnel and the subcontractors assigned to each part of the work along with a justification as to why such personnel are qualified to perform the work;
 - d. A detailed cost estimate for each subtask showing:
 - i) Estimated hours and Direct Salaries by employee;
 - ii) Overhead of prime consultant and subconsultants;
 - iii) Proposed fee;
 - iv) Reasonable other direct costs or expenses.
2. The TJPA will review the proposal and promptly negotiate with the Contractor the cost and time to perform the additional work.
3. Upon completion of negotiation, the TJPA will direct the Contractor in writing to proceed with the additional work after obtaining appropriate TJPA approvals.
4. In the event that TJPA and Contractor cannot reach agreement on the terms of any additional task order, TJPA may either cancel the task order and have the work accomplished through other available sources, or TJPA may direct the Contractor to proceed with the task under such conditions as TJPA may require to assure quality and timeliness of the task performance. Under no circumstances may the Contractor refuse to undertake a TJPA-ordered task that the Contractor is qualified to perform. The TJPA and the Contractor shall continue to negotiate any outstanding terms while the work is being performed. The TJPA shall not deny the Contractor reasonable compensation for the approved additional task order performed.
5. If the Contractor proceeds to do work that it perceives to be out of scope without first obtaining TJPA's written approval in accordance with the above procedures, regardless of the amount or value of the work, the TJPA shall have no obligation to consider reimbursement at a later date for the work thus performed. Eagerness to respond to the TJPA's comments or concerns, expediency, schedule constraints, etc. will not be acceptable reasons to proceed with out-of-scope work without TJPA's prior written approval.

The following shall not be considered out-of-scope work, but shall be considered incidental to the "Scope of Work" outlined in Appendix A, and Contractor shall receive no additional compensation for performing said work:

- 1) All work required to comply with local, state and federal codes, regulations and standards, as interpreted by local or state agencies having approval or sign-off authority for this Project.
- 2) All work required to design the Project to current safe/sound industry standards or design practices. This applies to work items for which codes/standards may be silent/ambiguous or where the design needs to exceed the minimum requirements established by local codes, regulations and standards, due to the nature of the Project.
- 3) All work related to addressing review comments and/or incorporating appropriate review comments into the deliverable documents except as specifically noted in Appendix A the "Scope of Work".
- 4) Unless specifically stated in Appendix A as excluded from the "Scope of Work," all implied work required to complete the technical portion of the scope of work, which is consistent with the intent of the requirements of this Agreement and which is absolutely essential in order to achieve the purposes of Phase One and Phase Two of Preliminary Engineering Design documents for the Project as described in Paragraph 5.a above.
- 5) All work required to correct deficiencies and errors, including work related to resubmittals of work products that are evaluated reasonably by the TJPA to be incomplete or inadequate.

c. Design Deficiencies

The Contractor shall correct or revise any errors or deficiencies in its designs, drawings, specifications, cost estimates, calculations, design criteria, studies, reports and other work for which it is responsible under this Agreement without additional compensation, regardless of whether the errors, omissions or deficiencies are discovered during the current phase of work or subsequent phase of work or during construction.

During PE, TJPA will not consider or evaluate any additional compensation required for completion of PE as a result of deficient, incomplete or inadequate work during Phase One, regardless of the reasons for the deficient, incomplete or inadequate Phase One work.

d. Key Personnel

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

The Contractor agrees to commit and assign Robert Sergeant to manage this Project full-time for the Contractor and to serve as the single official contact and spokesperson on behalf of the Contractor in all matters related to the Project. This Contractor Project Manager must have his/her permanent office for this Project located within the San Francisco Bay Area for the entire assigned duration of the Project. The Contractor further agrees that the following key team members shall be committed and assigned to work on the Project and shall also be staffed at the local Contractor offices within the San Francisco Bay Area for all such time:

Robert Sergeant - Project Manager
Chukwuma Umolu – Deputy Project Manager / Rail Engineering and Operations Design Manager,
Sampath Goolla - Civil Design Manager,
Kimo Okamitsu - Underground Structures Design Manager,
Nick O’Riordan - Geotechnical Design Manager, and
Stephen Klein - Tunnel Design Manager.

Contractor shall advise TJPA immediately any time one of the key members deviate from its committed role or time on the Project. TJPA may in turn require Contractor to provide a remedy and/or corrective actions for such deviations.

If substitutions for any of the key members listed in the Project Organization Chart (Appendix C) are required, the Contractor shall propose a replacement in writing to TJPA's Executive Director for approval. Substitutions will not be approved except for extenuating circumstances (e.g., illness or departure from company).

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

Contractor acknowledges that the contractor selection and the contractor fee were based, in part, on Contractor's proposed key team members as submitted in the response to the Request for Proposals and as negotiated for this Project. Therefore, TJPA will not approve any requests for substitution of any key team members within nine (9) months after the issuance of NTP, until it has investigated thoroughly and fully the causes and reasons for such requests and/or until the Contractor agrees to reduce part of its fee or provide other compensation to reasonably compensate the TJPA for the loss of the key team member.

e. Current Workload and Available Resources

The Contractor covenants that its current workload and the workload of its subcontractors will not affect the commencement and the progress of the work under this Contract. The Contractor shall have all the necessary professional, technical and support personnel, including those of the subcontractors, available, ready and mobilized to perform actual work within two (2) weeks of the receipt of NTP. In addition, the Contractor shall make good faith efforts to have all contracts signed with subcontractors within three (3) weeks of NTP.

f. Information and Data

The Contractor shall request in writing any information and data it will require from the TJPA for its work. The Contractor shall identify the timing and priority for which this information and data will be required in the Project Management Plan ("PMP"). The Contractor and TJPA shall reach agreement as to the availability and delivery time for this information and data prior to finalizing the Engineering Work Plan.

g. Project Management Plan and Performance Evaluations

Contractor shall update a Project Management Plan ("PMP") as necessary for the management of the contractor team for all the Scope of Work shown in Appendix A of this Agreement. The PMP shall include the Contractor team's quality assurance/quality control functions and procedures; organizational/reporting structure; internal and external communication protocol/procedures; document control procedures; scope, cost, and schedule control procedures, including sample forms for submitting invoices, additional work proposals; implementation schedule, and milestones for deliverables; procedures and formats for various reports; and a detailed work plan for completing all tasks in the Scope of Work. The PMP shall include a composite work plan derived from each major discipline and subcontractor describing the following: technical approach to complete all tasks; information needed from the TJPA and other team members/disciplines and target timeline for receipt of such information; major interdiscipline and City department coordination work efforts; timetable of Contractor submittals and TJPA and City reviews; potential roadblocks; and completion targets for critical activities. Upon receipt of TJPA staff's comments, Contractor shall revise the draft PMP for TJPA's final review within ten (10) working days after receipt of comments. If TJPA has no further comments on the document, the Contractor shall sign and deliver four (4)

copies of the final PMP to TJPA. If the need to modify the Final PMP arises, the changes will be mutually agreed upon by Contractor and TJPA's Project Manager. Any changes to the PMP shall be consistent with the Project scope, cost, schedule, and organization chart as shown in the Appendices to this Agreement. Failure to submit timely updates of Project Management Plans shall constitute cause for suspension of invoice payments.

The Contractor shall meet with TJPA on an annual basis to evaluate Contractor's performance for the Project with respect to the following:

- (1) Contractor's adherence to this Agreement and its own PMP
- (2) Quality of performance of Key Personnel and other staff assigned to the Program by the Contractor and its subcontractors
- (3) Quality of performance and cooperative working relationship of the Contractor's project team and its members, including its subcontractors, in relationship to the other members of the TJPA's staff and other contractors, including program management, design, grant management, financial, construction management and other professionals
- (4) Quality of deliverables and adherence to Quality Assurance Procedures
- (5) Management of design budget
- (6) Monitoring, reporting and updating of construction cost estimate
- (7) Adherence to agreed schedule
- (8) Monitoring, reporting and updating of progress of assigned work
- (9) Timeliness in resolving issues, including issues arising from performance evaluations
- (10) Working relationship between the Contractor's team and other stakeholders

Should TJPA be dissatisfied with any of the above categories of Contractor performance in the same evaluation, TJPA will render a negative evaluation on the Contractor's performance for that preceding evaluation. 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. Contractor's receipt of negative performance evaluations during the term of this Agreement will be considered by TJPA when determining whether to authorize the Contractor to proceed with Future Phases of the Agreement.

h. Presentations

In the performance of assigned tasks, the Contractor, if requested by TJPA, shall prepare graphic and written presentations, and participate in presentations of said material to TJPA, various City departments, commissions, and interested community groups.

i. Transmittal of Products

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

The Contractor's Project Manager and Principal or Lead Designers shall have thoroughly reviewed and approved all products and deliverables and signed off as such prior to transmitting to TJPA.

In addition to transmitting deliverables in hard copy, the Contractor shall provide TJPA with computer files on CD-R's or DVD media or other means mutually agreed on for all of the final work products, including the Final Engineering Reports. The files shall include but not be limited to all work products such as operating plans and design narratives and assumptions, the project schedule and construction

cost estimate breakdowns, and the design drawings. All word processing files shall be translated to Word for Windows. All spreadsheet files shall be translated to Excel. All engineering drawings shall be done on CADD in Autodesk's AutoCADD format.

j. Reproduction of Products

The Contractor shall arrange and provide for all printing (or other required reproduction) of work products produced in the course of its and its subconsultants' work.

k. Safety

Contractor shall have no responsibility for construction means, methods, sequences, techniques or health and safety precautions and programs of the Construction Contractor(s), including construction site safety, all of which shall remain the sole responsibility of the Construction Contractor(s). If Contractor is required to monitor Construction Contractor(s) work for compliance with the contract documents, which includes, the plans, drawings and specifications, Contractor shall have no responsibility to monitor the Construction Contractor(s) work in regard to any federal, state and local laws, rules and regulations pertaining to health and safety, which includes federal and/or state OSHA rules and regulations. Contractor shall be responsible for safety of Contractor's employees and the employees of Contractor's subcontractors only. Contractor is not responsible for the safety of any other person working on this Project.

l. Third Party Litigation

As part of its scope of work, Contractor agrees to testify at TJPA's request if litigation is brought by a Third Party against the TJPA in connection with Contractor's work. Unless the action is brought by Contractor, or is based upon Contractor's negligence, TJPA will compensate Contractor for the preparation and the testimony at Contractor's standard hourly rates, including markups, as defined in Appendix B, the Provisional Cost Reimbursement and Rate Agreement.

6. Program Direction

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

a. Directions to Contractor, which shift work emphasis between tasks, require pursuit of certain activities, or otherwise provide information and program guidance to Contractor in order to accomplish the services described in Appendix A.

b. Review and, where required, approval or acceptance of submittals or other products prepared by Contractor in the performance of its services.

Contractor acknowledges and agrees that it shall direct any request for clarification or other communication concerning program direction first to the Executive Director, or his/her designee.

7. Submittals and Responses

TJPA will review and comment on Contractor's submittals generally within four calendar weeks of submittal, or within the time periods specified in Appendix A. The TJPA and Contractor will establish a timetable of submittals and reviews in the initial coordination meetings and include such a timetable in the PMP.

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

The Contractor shall respond to all review comments in writing as to whether the comment(s) are incorporated into the design or not, and the reasons for incorporating or not incorporating the comment(s). Contractor shall provide written responses to high priority comments, e.g., those having effects on design criteria, code compliance, operational/functional requirements, construction costs, within fifteen (15) working days of receipt of comments; Contractor shall provide written responses to the balance of the TJPA comments within twenty-five (25) working days.

If Contractor considers certain TJPA review comments or directives, either written or oral, to require work efforts not included in Scope of Work, Appendix A and PMP, the Contractor shall provide TJPA with either a written request for clarification of intended work or a proposal to proceed with additional work within five (5) working days of discovering the perceived extra work, in strict accordance with procedures elsewhere in this Agreement, specifically including the provisions at section 5.b.

8. Compensation

a. Generally

All compensation due to the Contractor for all services performed under this Agreement shall be computed in conformance with the provisions of Appendix B attached hereto. Contractor's scope of work, cost breakdown summary by subtask, and schedule of activities shall be authorized by TJPA NTP. Contractor shall not exceed scope of work or subtask cost breakdown summary without written authorization by the TJPA.

Contract Limit: The maximum amount payable under this Agreement during the renewed three (3) year Term 3 (2011 - 2014) shall not exceed Four Million, Two Hundred Thousand Dollars (\$4,200,000) ("Contract Limit").

Contract Costs: The amount of compensation for the Contract Costs shall be limited to the allowable actual costs incurred by the Contractor and all subcontractors, including direct labor costs, indirect costs, other direct costs, and subcontractor direct labor and indirect costs for all services performed under this Agreement. The TJPA shall pay Contract Costs on a cost reimbursable, agreed price, or lump sum basis and/or a time and materials basis, as provided in a particular task order.

Contract Fee: The Contract Fee is a total fixed fee, payable over the term of this Agreement, based on the satisfactory performance of the Contractor. Notwithstanding any contrary provision of this Agreement, Contractor is not obligated to perform any services once the Contract Limit has been reached unless authorized by a mutually agreed upon modification to this Agreement, and the TJPA is not obligated to compensate the Contractor for services performed after the Contract Limit is reached unless authorized by modification to this Agreement.

The hourly rates, including direct labor, burden or markup, indirect costs, rates, and other direct costs, associated with this Agreement shall be subject to the provisional rate requirements set forth in paragraph Section 8(c) c. below and in Appendix B, "Provisional Cost Reimbursement and Rate Agreement", attached hereto and incorporated by reference as though fully set forth herein. The individual direct labor cost rates for Key Personnel may be subject to annual adjustment at the discretion of the Executive Director or designee, at a rate not to exceed the local Consumer Price Index escalation factor or 4%, whichever is less.

Compensation will be allowable only to the extent that costs incurred, or costs estimates included in negotiated, or otherwise established prices, are consistent with the Federal Cost Principles with Office of Management and Budget (OMB) Circular A-87 (Cost Principles for State, Local, and Indian Tribal Governments).

The Contractor shall inform the Executive Director or designee when total expenditures for all approved Annual Work Plans or Task Orders reaches eighty percent of the maximum compensation for this Agreement.

b. Actual Compensation

Actual compensation under this Agreement shall be in accordance Appendix B, Provisional Cost and Rate Reimbursement Agreement, except as modified in accordance with provisions of this Agreement.

Contractor acknowledges and agrees that the TJPA may compensate Contractor on a lump sum or cost-plus-fixed fee basis. The TJPA may additionally order and/or authorize work on a limited time-and-materials basis. The Contractor shall only be entitled to time and materials compensation upon written direction by the TJPA.

No charges shall be incurred under this Agreement, nor shall any payments become due to Contractor until reports, services, or both, required under this Agreement are received from the Contractor and approved by the Executive Director as being in accordance with this Agreement. TJPA, in its sole discretion, may withhold payment to Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation provided for under this Agreement. Withholding of payment shall be resolved in accordance with Paragraph g., Invoice Disputes.

Such compensation for the cost plus fixed fee services shall be further subject to the following requirements:

- (i) Conform with (a) the work to be performed pursuant to an accepted PMP or approved by the TJPA as compensable out of scope work or ordered by the TJPA pursuant to section 5.b; (b) any compensation limits or sublimits set forth in such PMP or written approvals, and this Agreement; and (c) all other terms of this Agreement.
- (ii) Be necessary in order to accomplish the Work.
- (iii) Be reasonable for the services to be performed.
- (iv) Be actual net costs or prices to the Contractor or its subcontractors at any tier, (e.g. the cost or price less any refunds, rebates, or other items of value received by Contractor or its subcontractors at any tier, that have the effect of reducing the cost or price actually incurred). As used herein, the term "costs" shall include the following:
 - (a) Those Program costs recorded by Contractor that result, at the time of the request for reimbursement, from payment by cash, check, or other form of actual payment for items or services purchased directly for the work.
 - (b) Those Program costs incurred, but not necessarily paid, for (1) direct labor; (2) other direct costs that are not subcontracted; (3) indirect costs, but only if the Contractor is not delinquent in its payment of such costs which it is obligated to pay in providing services on this Program.
 - (c) The amount of reimbursement that has been paid by Contractor for subcontracted services under similar cost standards.
 - (d) Direct costs or prices incurred for work performed after the effective date of this Agreement, and presented for payment within 180 days of incurrence.

c. Provisional Rates

Within 30 days of award of this Agreement, the Contractor will submit information necessary to establish Provisional Rates for the performance of services under this Agreement. The TJPA shall not approve any invoice or make any payment under this Agreement until such time as the Provisional Rates are established. The parties will negotiate in good faith and enter into a Provisional Cost Reimbursement and Rate Agreement (herein called "rate agreement") on an annual or multi-year basis for the work to be performed for each of the Contractor's fiscal year(s). At the end of the Contractor's fiscal year(s), should the parties fail to negotiate a new rate agreement, Contractor agrees to accept the provisions of the previous rate agreement with the indirect cost reimbursement rates used from the previous year until such time as a new rate agreement is accepted. Any invoices submitted prior to the execution of the rate agreement will be recalculated, unless the parties agree that recalculation will not be required.

d. Disallowed Or Otherwise Not Recognized Costs

Contractor understands and agrees to the following:

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

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

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

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

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

e. Reimbursable Expenses

The TJPA shall reimburse the Contractor only for those authorized expenses identified in Appendix B to this Agreement.

f. Payment; Invoice Format

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

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

- Contract Number
- A unique invoice number
- Task or Subtask Number
- Name and position of employee
- Description of the work performed
- Hours worked by employee (Timesheets)
- Rate per employee
- Cost by employee
- Other Direct Costs
- Subcontractor Costs supported by itemization in the same format described above
- Fixed-Fee for current invoice period and Fixed-Fee paid to date
- Total Costs
- Percent of Schedule Completed and Budget Expended
- DBE Utilization Report (as an attachment)

g. Invoice Disputes

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

h. No Late Charges

TJPA shall make payment to Contractor at the address specified in the section entitled "Notices to the Parties." TJPA shall make a good faith effort to pay undisputed amounts within 45 days of receiving a proper invoice from Contractor. However, in no event shall TJPA be liable for interest or late charges for any late payments. The Contractor acknowledges that the provisions of Public Contract Code § 7107 do not apply to this Agreement or to the Program.

9. Certified Funds

a. The TJPA's obligation hereunder shall not at any time exceed the amount certified by the TJPA's Finance Coordinator for the purpose and period stated in such certification.

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 beyond the agreed upon contract scope unless the changed scope is authorized by amendment and approved as required by this Agreement.

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 is certified without certification of the additional amount by the TJPA Finance Coordinator.

d. The TJPA Finance Coordinator is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

10. Changes and Modifications

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.

a. Changes To Scope

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

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

b. Unilateral Change Orders

When time does not allow for a change order or modification to be negotiated, or when the TJPA and Contractor are unable to agree on the scope, cost, or time required to complete the change in the work, the TJPA may issue a Unilateral Change Order instructing Contractor to proceed with a change in the Contractor's engineering design services based on the TJPA's estimate of cost and time to perform the change in the work. Upon receipt of a unilateral change order, Contractor shall proceed with the ordered work. However under no circumstances shall the Contractor be required to perform work that is not consistent with engineering design services on a unilateral basis.

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

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

11. 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. A Contractor, subcontractor or contractor who submits a

false claim shall also be liable to the TJPA for the costs, including attorney's fees, of a civil action brought to recover any of those penalties or damages, and may be liable to the TJPA for a civil penalty of up to \$10,000 for each false claim. 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; (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.

12. Suspension and Debarment

By executing this Agreement, Contractor certifies that Contractor is not suspended, debarred or otherwise excluded from participation in federal assistance programs. Contractor acknowledges that this certification of eligibility to receive federal funds is a material term of the Agreement. Contractor agrees to comply with the requirements of 49 CFR 29, Subpart C throughout the period of this contract. Contractor further agrees to include a provision requiring such compliance in its lower tier subcontracts for service that equal or exceed \$25,000.

13. Taxes

a. 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 Contractor.

b. Contractor recognizes and understands that this Agreement may create a “possessory interest” for property tax purposes. Generally, such a possessory interest is not created unless the Agreement entitles the Contractor to the possession, occupancy, or use of TJPA real property for private gain. If such a possessory interest is created, then the following provisions apply:

- (1) Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that Contractor, and any permitted successors and assigns, may be subject to real property tax assessments on the possessory interest;
- (2) Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that the creation, extension, renewal, or assignment of this Agreement may result in a “change in ownership” for purposes of property taxation and therefore may result in a revaluation of any possessory interest created by this Agreement. Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report on behalf of the TJPA to the County Assessor the information required by Revenue and Taxation Code section 480.5, as amended from time to time, and any successor provision.
- (3) Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that other events also may cause a change of ownership of the possessory interest and result in the revaluation of the possessory interest (see, e.g. Rev. & Tax. Code section 64, as amended from time to time). Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report any change in ownership to the County Assessor, the State Board of Equalization or other public agency as required by law.
- (4) Contractor further agrees to provide such other information as may be requested by TJPA to enable TJPA to comply with any reporting requirements under applicable law with respect to possessory interests.

14. Payment Does Not Imply Acceptance of Work

The granting of any payment by TJPA, or the receipt thereof by Contractor, shall in no way imply the acceptance of work or lessen the liability of 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.

15. Responsibility for Equipment

TJPA shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Contractor, or by any of its employees, even though such equipment be furnished, rented or loaned to Contractor by TJPA. As discussed in this Agreement, Contractor shall indemnify and hold harmless TJPA for any such damage.

16. Independent Contractor; Payment of Taxes and Other Expenses

a. Independent Contractor

The Contractor shall be deemed at all times to be an independent Contractor and is wholly responsible for the manner in which it performs the services and work requested by TJPA under this Agreement. The Contractor shall not have employee status with TJPA, nor be entitled to participate in any plans, arrangements, or distributions by TJPA pertaining to or in connection with any retirement, health or other benefits that TJPA may offer its employees. The Contractor or any agent or employee of 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, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor's performing services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between TJPA and the Contractor.

Any terms in this Agreement referring to direction from 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 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). 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 TJPA, upon notification of such fact by TJPA, the Contractor shall promptly remit such amount due or arrange with 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 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 TJPA's financial liability so that 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.

17. Insurance

a. Without in any way limiting the Contractor's liability pursuant to the "Indemnification" section of 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; 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.
- (4) Professional liability insurance with limits not less than \$10,000,000 each claim and in the aggregate, 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 TJPA of reduction or nonrenewal of coverages or cancellation for any reason. Notices shall be sent to the address specified in the Section entitled "Notices to the Parties". Alternatively, Contractor shall submit the certificates of insurance and additional insured policy endorsements to the TJPA on a quarterly basis during the Contract term, evidencing that all required insurance remains in full force and effect. In addition, the Contractor shall provide thirty (30) days advance written notice to TJPA of reduction or non-renewal of coverages or cancellation of coverages for any reason. In the event of reduction or non-renewal of coverages or cancellation of coverages for any reason, Contractor shall file with the TJPA a certificate of the required new or renewed policy at least ten (10) days before the effective date of such cancellation, change or expiration.

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 four (4) years beyond the expiration of this Agreement or the filing of the Notice of Completion by the TJPA, whichever event occurs last, to the effect that, should occurrences during the contract 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 provide under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense cost 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 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 TJPA, in form evidencing all coverages set forth above, and (b) furnish relevant portions of copies of policies promptly upon TJPA request. Failure to maintain insurance shall constitute a material breach of this Agreement. TJPA agrees that if and when Contractor provides the TJPA with such policies, Contractor may exclude and withhold those portions of the policy that contain the Contractor's financial information.

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

18. Indemnification

a. General Indemnity

To the fullest extent permitted by law, the Contractor shall assume the defense of (with legal counsel subject to approval of the TJPA), indemnify and save harmless the TJPA, its members, directors, officers, and employees (collectively "Indemnitees"), from and against any and all claim, loss, cost, damage, injury (including, without limitation, injury to or death of an employee of the Contractor or its subcontractors), expense and liability of every kind, nature, and description (including, without limitation, incidental and consequential damages, court costs, attorneys' fees and costs of investigation), that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, from (1) the services under this Agreement, or any part of such services, and (2) any negligent, reckless, or willful act or omission of the Contractor and subcontractor to the Contractor, anyone directly or indirectly employed by them, or anyone that they control (collectively, "Liabilities"), subject to the provisions set forth herein.

b. Limitations

- (1) No insurance policy covering the Contractor's performance under this Agreement shall operate to limit the Contractor's liability under this provision. Nor shall the amount of insurance coverage operate to limit the extent of such liability.
- (2) The Contractor assumes no liability whatsoever for the sole negligence, active negligence, or willful misconduct of any Indemnitee or the contractors of any Indemnitee
- (3) The Contractor's indemnification obligations of claims involving "Professional Liability" (claims involving acts, errors or omissions in the rendering of professional services) and "Economic Loss Only" (claims involving economic loss which are not connected with bodily injury or physical damage to property) shall be limited to the extent of the Contractor's negligence or other breach of duty.

c. Copyright Infringement

The Contractor shall also indemnify, defend and hold harmless all Indemnitees from all suits or claims for infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark, or any other proprietary right of any person or persons in consequence of the use by the TJPA, or any of its members, director, officers, or employees of articles or services to be supplied in the performance of Contractor's services under this Agreement. Infringement of patent rights, copyrights, or other proprietary rights in the performance of this Agreement, shall be considered a material breach of contract, if not the basis for indemnification under the law.

19. Incidental and Consequential Damages

Nothing in this Agreement shall constitute a waiver or limitation of any rights which TJPA may have under applicable law to seek recovery for any injury or damages caused by the Contractor's acts or omissions, including but not limited to any incidental or consequential damages, but any such incidental or consequential damages are only recoverable to the extent they result from the Contractor's negligent acts or omissions.

20. Liability of TJPA

THE TJPA'S MONETARY OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 8 OF THIS AGREEMENT. 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 AND ANY AMENDMENTS TO THIS AGREEMENT.

21. Delays and Extensions of Time

Contractor acknowledges and agrees that its delay in prosecuting the work may result in monetary damages to the TJPA. Contractor acknowledges and agrees that the TJPA will hold Contractor responsible and liable for any delay costs to the extent caused by Contractor. The TJPA's right to recover for delay costs is limited by the provisions of paragraph 19 of this Agreement.

In the event the Contractor is delayed in the timely prosecution of this Agreement by the TJPA's vendors, suppliers, officers, or employees, or by an Uncontrollable Forces (as defined in Section 22) through no fault or lack of diligence on the part of the Contractor, the Contractor shall present a written request to the TJPA Executive Director for an extension of time of the performance of the work, together with supporting documents, within thirty (30) calendar days of commencement of the delay of the work. Contractor shall be deemed to have waived the right to request a time extension if not requested within this period, and shall not have a cause to make a claim of the same TJPA-caused delay at a later date. Approval of such extension of time by the TJPA Executive Director shall not be unreasonably withheld and shall be added to the time for completion of the work.

Any work delays which result in the extension of the term of the Agreement must be by written instrument executed and approved in the same manner as the Agreement, and may be subject to approval by the Federal Transit Administration ("FTA").

Any such extensions of time shall be the exclusive remedy to Contractor for TJPA-caused delays, except as provided in Appendix B, and with the exception of TJPA-caused delays in excess of 120 days, in which case Contractor may propose an equitable adjustment.

22. Uncontrollable Forces

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

23. Bankruptcy

In the event that either party shall cease conducting business in the normal course, become insolvent, make a general assignment for the benefit of creditors, suffer or permit the appointment of a receiver for its business or assets or shall avail itself of, or become subject to, any proceeding under the Federal Bankruptcy Act or any other statute of any state relating to insolvency or the protection of rights of creditors, then at the option of the other party this Agreement shall terminate and be of no further force and effect, and any property or rights of such other party, tangible or intangible, shall forthwith be returned to it.

24. 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 and without cause. The TJPA shall exercise this option by giving Contractor written notice of termination. The notice shall specify the date on which termination shall become effective, but in no case shall termination become effective less than 14 days from the date of the notice.

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

- (1) Halting the performance of all services and other work under this Agreement on the date(s) and in the manner specified by the TJPA.
- (2) Not placing any further orders or subcontracts for materials, services, equipment or other items.
- (3) Terminating all existing orders and subcontracts.
- (4) At the TJPA's direction, assigning to the TJPA any or all of the Contractor's right, title, and interest under the orders and subcontracts terminated. Upon such assignment, the TJPA shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.

- (5) Subject to the TJPA's approval, settling all outstanding liabilities and all claims arising out of the taxation 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 60 days after the specified termination date, the Contractor shall submit to the TJPA an invoice, which shall set forth each of the following as a separate line item:

- (1) 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, including actual, reasonable, documented termination and demobilization costs, for which services or work the TJPA has not already tendered payment. The costs shall be determined as provided in Section 5 above, and shall be invoiced as provided in Section 8 above. The Contractor may also recover the reasonable cost of preparing the invoice.
- (2) The reasonable cost to the Contractor of handling material or equipment returned to the vendor, delivered to the TJPA or otherwise disposed of as directed by the TJPA.
- (3) A deduction for the cost of materials to be retained by the Contractor, amounts realized from the sale of materials and not otherwise recovered by or credited to the TJPA, and any other appropriate credits to the TJPA against the cost of the services or other work.

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 related to the termination for convenience, 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.

g. The Contractor's obligation to carry insurance and its indemnification obligations as set forth in Sections 17 and 18 shall likewise survive termination of this Agreement.

25. Termination For Cause; Default; Remedies

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

- (1) The Contractor fails or refuses to perform or observe any material term, covenant or condition contained in this Agreement and such default continues for a period of ten days after written notice thereof from TJPA to the Contractor.
- (2) 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 Contractor's property or (e) takes action for the purpose of any of the foregoing.
- (3) 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, 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, 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 TJPA on demand all costs and expenses incurred by TJPA in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. TJPA shall have the right to offset from any amounts due to the Contractor under this Agreement all damages, losses, costs or expenses incurred by TJPA as a result of such Event of Default.

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.

d. Contractor's obligation to carry insurance and its indemnification obligations as set forth in Sections 17 and 18 shall likewise survive termination of this Agreement.

26. 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; Limitation on Contributions; Modifications of Agreement; Administrative Remedies for Agreement Interpretation; Agreement in California, Venue; Construction; Entire Agreement; Severability; USDOT 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 3, 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.

27. 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. 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. Contractor must comply with all applicable conflict of interest codes at all times during the term of this Agreement.

28. 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.

29. Notices to the Parties

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

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

To Contractor: Robert Sergeant, Parsons Team Project Manager
Parsons Transportation Group
50 Fremont Street, Suite 1500
San Francisco, CA 94105
(415) 546-1602 fax
Robert.M.Sergeant@parsons.com

Any notice of default must be sent by registered mail.

30. 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 TJPA. However, the Contractor may retain and use copies for reference and as documentation of its experience and capabilities. Should the TJPA or any other person, firm or legal entity, without the Contractor's participation, use, re-use, or modify the Contractor's drawings, specifications or other documents prepared under this Agreement, the TJPA agrees to notify the Contractor of such intended use. The Contractor shall not be responsible for any loss, costs or expenses incurred by any party arising out of such use, re-use or modification of the Contractor's drawings, specifications, and other documents.

31. 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.

32. 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.

33. Assignment, Subcontractors and Substitution

a. Assignments

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

b. Subcontractors

The Contractor is permitted to subcontract portions of the services to be performed under this Agreement as set forth in Appendix C to this Agreement. The Contractor shall not subcontract any part of its services to subcontractors that are not listed under this Agreement without the written approval of the TJPA's Executive Director.

c. Substitution

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

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. Earned Income Credit (EIC) Forms

San Francisco Administrative Code Chapter 12O requires that employers provide their employees with IRS Form W-5 (The 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 the 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.

36. Not Used

37. 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. The Contractor further agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. The Contractor is encouraged to actively recruit minorities and women for its workforce and take other steps, such as on-the-job training and education, to ensure nondiscrimination in the Contractor's employment practices.

b. Subcontracts.

The Contractor shall incorporate by reference in all subcontracts the provisions of Chapters 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code (copies of which are available

from TJPA upon request) and shall require all subcontractors to comply with such provisions. The Contractor's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

c. Non-Discrimination 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 the City, or where the work is being performed for the TJPA or 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.

38. 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.

39. 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.

40. 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.

41. 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.

42. 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.

43. San Francisco Sunshine Ordinance

In accordance with San Francisco 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 benefit 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.

44. 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 non-profit 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.

45. Limitations on Contributions

Through execution of this Agreement, 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 or 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.

46. 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 \$11.69 as of January 2011.

If a Covered Employee of a Nonprofit Corporation works in San Francisco, then 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, 2011, Chapter 12R's minimum wage is \$11.03 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 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 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 the TJPA 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 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.

47. 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 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 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 the TJPA has first provided the 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 the 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 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 the 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.

48. Prohibition on Political Activity with TJPA Funds

In accordance with San Francisco Administrative Code Chapter 12G, 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. Contractor agrees to comply with San Francisco Administrative Code Chapter 12G and any implementing rules and regulations promulgated by the TJPA's Chief Financial Officer. The terms and provisions of Chapter 12G 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 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.

49. 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. The 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.

50. 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. Any such decision by the TJPA shall be considered an administrative remedy and shall not operate as a waiver of the parties' rights to pursue other legal action or remedy.

51. No Third-Party Beneficiaries

This Agreement is intended solely for the benefit of TJPA and Contractor and is not intended for the use or benefit of any other party. Nothing contained in this Agreement is intended to make any person or entity who is not a signatory to this Agreement a third party beneficiary of any right created by this Agreement or by operation of law.

52. 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.

53. Construction

All Section captions are for reference only and shall not be considered in construing this Agreement. In the event of direct conflict between this Agreement and the Appendices, the Appendices shall control.

54. Entire Agreement

This Agreement sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions. This Agreement may be modified only as provided in Section 10.

55. 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, 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.

56. 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.

57. 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.

58. 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.

59. Disputes

a. Process. For any dispute involving a question of fact that does not involve a claim for additional compensation, the aggrieved party shall furnish the other party with a notice of dispute within fifteen (15) days of the determination of the dispute. The party receiving a notice of dispute shall submit a written reply within fourteen (14) days of delivery of the notice. The notice and response shall contain the following: (a) a statement of the party's position and a summary of the arguments supporting that position, and (b) any evidence supporting the party's position. Disputes arising in the performance of this Agreement which are not resolved by negotiation between the parties shall be decided in writing by the Executive Director, whose decision shall be administratively final and conclusive.

b. Performance of Work. Pending final resolution of a dispute hereunder, the Contractor shall proceed diligently with the performance of its obligations under the Agreement in accordance with the written directions of the TJPA.

c. Alternative Dispute Resolution. If agreed to by both parties, disputes may be resolved by a mutually agreed to alternative dispute resolution process.

60. 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.

61. USDOT Requirements

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

62. Disadvantaged Business Enterprise (DBE) Requirements

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

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

Pursuant to TJPA policy, the Contractor is encouraged to actively recruit minorities, women and other disadvantaged persons for its workforce and take other steps, such as on-the-job training and education, to ensure nondiscrimination in the Contractor's employment practices.

63. 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.

64. Intern Mentoring Program

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

65. 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.).

66. 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.

67. Food Service Waste Reduction Requirements

The 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, the Contractor agrees that if it breaches this provision, the TJPA will suffer actual damages that will be impractical or extremely difficult to determine; further, the 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 the Contractor's failure to comply with this provision.

68. Small Business Enterprise (SBE) Requirements

The Contractor shall comply with the SBE provisions contained in the TJPA Small Business Enterprise Program and incorporated into this Agreement as though fully set forth, including, but not limited to, achieving and maintaining the SBE goal of 30 percent. Failure of the Contractor to comply with any of these requirements, or to submit compelling documentation acceptable to the TJPA detailing the good faith efforts to comply, shall be deemed a material breach of this Agreement.

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

69. 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.

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

TRANSBAY JOINT POWERS AUTHORITY

Maria Ayerdi-Kaplan
Executive Director

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

Nila Gonzales
Secretary, TJPA Board

Approved as to Form:

TJPA Legal Counsel

Contractor

By signing this Agreement, I certify that I comply with the requirements of the Minimum Compensation Ordinance, which entitle 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

Printed Name

Title

Company Name

Address

City, State, ZIP

Phone Number

Federal Employer ID Number

Appendix A

SCOPE OF WORK

1. **Coordination with Train Operators:** Provide coordination with CHSRA and Caltrain as the Conceptual plans for the Peninsula Corridor are completed and rolling stock is identified. This could also include coordination with Amtrak. Work could include:
 - a) meetings between project teams,
 - b) analysis of vertical and horizontal alignment alternatives,
 - c) coordination of emergency ventilation and exiting requirements,
 - d) train operations planning,
 - e) coordination of electrification and signaling infrastructure,
 - f) analysis of rolling stock impact to planned DTX infrastructure, including station platforms and clearances,
 - g) Fourth and Townsend Station side vs. center platform configuration studies.
2. **Coordination with City of San Francisco:** Coordinate with City of San Francisco departments related to planning of development adjacent to DTX and utility modifications needed to accommodate DTX construction
3. **Coordination with Utility Providers:**
 - a) Work with utility providers to better define specific utility relocation needs, timing and processes (franchise vs. non-franchise relocations).
 - b) Prepare final designs for advance utility relocations to be completed by TJPA including joint trenches to facilitate work by power and communications providers and relocations of water and sewer lines to facilitate future DTX tunnel construction.
4. **Coordination with the TTC Designers:** This includes continuation of coordination with the Transbay Transit Center design team including the following:
 - a) Plan review
 - b) Structural interface coordination
 - c) Track and platform coordination
 - d) Systems (overhead contact system, communications, etc)
 - e) Fire/Life/Safety
5. **Workshops:** Participate in various workshops including: risk assessments, threat and vulnerability, security, project hazard analysis, value engineering, constructability or industry outreach.
6. **Geotechnical Update for Second Street Cut-and-Cover Subway:** Conduct supplemental geotechnical analysis of foundation requirements for the cut-and-cover “Throat Structure” segment in Second Street based on observations of the Transit Center excavation. This could also include incorporating “lessons learned” from the Transit Center excavation into the advanced preliminary engineering designs.
7. **Provisions for Muni LRT Crossing:** Provide coordination with SF Muni’s Central Subway team as related to the Fourth Street crossing of DTX by light rail tracks. This would focus on issues relating to stray current protection, relocation or protection of the major combined sewer in Fourth Street and bridging over the future DTX tunnel.
8. **Advanced PE Plan Update**
 - a) **Complete Revisions to Accommodate High Speed Rail:** Complete revisions to the Townsend Street alignment and Townsend Street Underground Station to address changes

needed to accommodate the CHSRA concept alignment and environmental document as well as changes originating from Caltrain. This could include the vertical and horizontal alignment, cut-and-cover subway structural design, additional design development to fully integrate the underground station with the existing King Street Caltrain station along with improvements planned to accommodate CHSRA at the surface station. This also includes revisions to the following plans:

- Utility and Sewer Relocation
- Mechanical – Emergency Ventilation
- Mechanical – Water/Air
- Electrical
- Overhead Contact System

b) **Other Updates:** Updates of PE plans to reflect decisions made in other Tasks, updates to TJPA design criteria or other changes as directed by TJPA. These could include the following disciplines:

- Utilities and Sewer Relocation
- Track Alignment
- Cut-and-cover Structures
- Mined Tunnel Structures
- Mechanical – Emergency Ventilation
- Mechanical – Water/Air
- Electrical and Lighting
- Corrosion Control
- Train Signal System
- Electrification/Overhead Contact System

c) **Construction Segment Packaging:** Separating the DTX PE plans and estimates into likely construction packages to facilitate either final design or design build.

9. **Cost Estimating:** Update the DTX construction cost estimate to reflect changes in the Advanced PE Update (Task 8).

10. **Engineering Support for Right-of-Way:** Provide engineering support including structural engineering studies and cost estimates in support of TJPA property acquisition activities.

11. **Dual Mode Contingency Planning:** Develop action plan and scope requirements to implement a dual mode or limited electrified rail alternative in the event that the California High Speed Train and Caltrain Electrification projects are likely to be delayed for a significant period of time after the completion of the Transbay Transit Center. This could include development of the following:

- a) PE plans for modifications at the Caltrain Bayshore Station to accommodate coupling and decoupling dual-mode or electric locomotives,
- b) PE plans for traction power substation to serve DTX near the intersection of Seventh and Townsend Streets,
- c) PE plans to extend OCS south along the Caltrain alignment to allow all-electric locomotives to be added to the Peninsula Corridor diesel consists for use in DTX.

12. **Design-Build Support Services:** Development of additional items of work that would be needed to deliver the DTX project all or in-part with design-build contracting. This could include the following:
- a) specifications,
 - b) draft design build contract,
 - c) proposed RFQ/RFP processes,
 - d) ranking/evaluation criteria.

APPENDIX B
FORM OF
PROVISIONAL COST REIMBURSEMENT AND RATE AGREEMENT

(Through December 31, 2008)

Pursuant to Agreement 03-02-DTX ENGR-001 between the parties, Parsons Corporation (hereinafter referred to as "Contractor") and the Transbay Joint Powers Authority (hereinafter referred to as "TJPA"), hereby agree to enter into a Provisional Cost Reimbursement and Rate Agreement (PCRRA) as follows:

This Agreement and the PCRRA are subject to federal regulations pertaining to grants to state and local governments, CFR 49, Part 18 "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments". The Federal Acquisition Regulations Title 48, CFR 31 are governing factors regarding allowable elements of cost and CONTRACTOR and all of its subcontractors agree that these regulations shall be used to determine the allowability of individual items of cost. Furthermore, the Cost Principles contained in Office of Management and Budget (OMB) Circular A-87 (Cost Principles for State, Local, and Indian Tribal Governments), pertain to this Agreement and the PCRRA.

Within 30 days of the award of this Agreement, the CONTRACTOR shall submit completed Cost Disclosure Statement, for CONTRACTOR and all subcontractors who will perform work in excess of \$500,000 during the term of the Agreement. The Cost Disclosure Statement will be as shown in Attachment A hereto.

I. BASIS FOR REIMBURSEMENT OF CONTRACTOR DIRECT LABOR COSTS:

- A. The Parties intend that CONTRACTOR perform services primarily on a cost reimbursable basis.
- B. The individual direct labor cost rates, exclusive of any burden or markups, shall be within the salary ranges as set forth in Attachment B hereto, "Hourly Salary Ranges".
- C. The individual direct labor cost rates for Key Personnel may shall be subject to annual adjustment, at the sole discretion and written approval of the Executive Director or designee, at a rate not to exceed the local Consumer Price Index escalation factor, or 4 %, whichever is less.
- D. Notwithstanding the above, at no time will any individual direct labor rate exceed one hundred twenty five dollars (\$125.00) per hour.
- E. The following direct labor costs may exceed the maximum hourly direct labor rate established above and are allowable only to the extent that they are authorized by prior written approval of TJPA's Executive Director or designee.
 - 1. Principal or Partner costs
 - 2. Senior Project Manager costs
 - 3. Expert and senior technical specialist costs
- F. The following direct labor costs are not allowable without the prior written approval of TJPA's Executive Director or designee.
 - 1. Premium costs incurred as a result of working overtime or holidays.
- G. Notwithstanding the above, and subject to approval by TJPA's Executive Director or designee, the Contractor may perform services on a lump sum or agreed price and/or time and materials basis. Contractor time and materials payments shall conform to Section VII below.

II. BASIS FOR REIMBURSEMENT OF SUBCONTRACTED DIRECT COSTS:

- A. The parties intend that CONTRACTOR obtain subcontracted services primarily on a cost reimbursable basis. The TJPA may additionally order and/or authorize work on a time and materials and/or lump sum or agreed price basis. For subcontractors performing services on a cost reimbursable basis:
1. CONTRACTOR will be reimbursed for subcontracted or subcontractor direct labor costs at any tier in accordance with the requirements of Sections I. B through I. F above.
 2. Reimbursement for subcontracted other direct costs at any tier, (i.e. subcontractor furnished materials and supplies) shall be in conformance with the requirements of Section III below.
 3. Reimbursement for subcontracted indirect costs at any tier shall be in conformance with the requirements of Sections IV, V, VIII and IX below.
 4. Subcontractor Fixed Fee at any tier, shall be in conformance with the requirements of Section VI below.
- B. Subject to approval by TJPA's Executive Director or designee, subcontractor(s) may perform, or be obligated to perform, services on a 'time and material' basis when the following conditions have been met:
1. CONTRACTOR has identified at least three subcontractors for any specific services to be performed on this basis or if this is not possible, then CONTRACTOR has furnished a written justification acceptable to TJPA, as to why the recommended subcontractor represents the most advantageous offer to the TJPA, considering qualifications, cost or price factors as may be appropriate.
 2. Total compensation for subcontractor labor, including indirect costs, will not, in aggregate, exceed \$100,000 per Contractor fiscal year.
- C. As used herein the term 'time and material' is defined as a subcontract that provides for acquiring supplies or services on the basis of (i) direct labor hours at specified fixed hourly rates that include wages, overhead, general and administrative expenses, and profit and (ii) materials or supplies at direct cost only with no overhead, profit or fee allowed.
- Subcontractor(s) time and material rates are allowable only to the extent that any individual rate complies with the following requirements:
1. Total reimbursement per individual, per day does not exceed eight hours or eight times the approved rate and forty hours in one week;
 2. For services performed on a time and material basis, the following costs shall be allowable only to the extent that they are a part of the overhead portion of the subcontractor's labor rate:
 - a. All subcontractor costs including, but not limited to subcontractor labor, associated with automobile travel within a 50 mile radius of the TJPA's Administrative Offices at 201 Mission Street, San Francisco, California;
 - b. All subcontractor costs associated with providing insurance as set forth in this Agreement other than TJPA furnished coverages.
- D. In the event the TJPA Executive Director or designee gives approval for specific subcontractor services pursuant to the above Sections II.B and II.C, CONTRACTOR shall thereafter obtain such subcontractor services accordingly.

III. BASIS FOR REIMBURSEMENT OF OTHER DIRECT COSTS:

- A. CONTRACTOR will be reimbursed for other direct costs (other than CONTRACTOR and subcontractor direct labor and indirect labor costs), hereinafter referred to as "ODCs". Unless otherwise authorized by TJPA's Executive Director or designee, such reimbursement will be restricted to those ODC costs whose individual costs are in excess of \$25.
- B. Reimbursement for CONTRACTOR ODCs is based upon the CONTRACTOR'S consistent treatment of these types of costs over CONTRACTOR'S company as a whole.
- C. The following ODCs are not allowable without the prior written approval of TJPA's Executive Director or designee.
 - 1. Relocation, travel and/or subsistence related to travel into or out of the area, or where TJPA offices are located.
 - 2. Tuition for training, seminars, technical associations meetings, or other similar events.
 - 3. Cost of any equipment, tools, or vehicles hired, leased or purchased for the performance of services. Provided such costs are allowed with the prior written approval of TJPA's Executive Director or designee, the depreciated value of such items purchased by CONTRACTOR shall be credited to TJPA at the completion of the work hereunder.

IV. BASIS FOR INDIRECT COST REIMBURSEMENT:

- A. The reimbursement rates for CONTRACTOR's and subcontractors' indirect costs are based primarily on CONTRACTORS and subcontractors' submission in accordance with Attachment A, together with supporting information, submitted by CONTRACTOR to the TJPA, and reviewed by TJPA.
- B. The indirect cost rates are also based on the treatment of certain costs as a part of the fringe benefit, overhead or general and administrative expense cost groupings, or any combination thereof, (as set forth in Section V.A. below) by CONTRACTOR and its subcontractors at any tier, as follows:
 - 1. All costs incurred in preparing, submitting and supporting any cost proposal (whether or not accepted by TJPA);
 - 2. All costs incurred in preparing, submitting and supporting any Change Order to the Agreement (whether or not accepted by TJPA);
 - 3. All costs of financial administration (including but not limited to establishing final rates, invoicing, reporting, budgeting, and auditing);
 - 4. All costs associated with direct labor fringe, including but not limited to employee compensated personal absence, payroll taxes and payroll additives.
 - 5. All costs associated with the costs of employee incentive compensation (including cash bonuses, suggestion awards, safety awards and other forms of incentive compensation) shall be allowable only as indirect costs. Furthermore, such costs shall be allowable only to the extent that they are paid or accrued:

- a. under an agreement (in effect for twelve months prior to award of this Agreement) entered into in good faith between CONTRACTOR and the employees, or,
- b. pursuant to an established organization wide plan or policy followed by the CONTRACTOR (for twelve months prior to award of this Agreement) so consistently as to imply, in effect, an agreement for such incentive compensation.

In no event shall direct distribution of any profits be allowable as a form of incentive compensation.

6. All costs associated with providing insurance coverages as set forth in this Agreement other than those provided by the TJPA.

V. PROVISIONAL INDIRECT COST RATES

- A. The provisional cost rate for CONTRACTOR overhead, applied to CONTRACTOR direct labor as set forth in CONTRACTORS submission dated [_____], 2011 is [_____]%. A complete listing of CONTRACTOR and subcontractor provisional indirect cost rates is included in Attachment B.
- B. There shall be no provisional rate applied to ODCs for either the CONTRACTOR or any of its subcontractors at any tier.
- C. There shall be no provisional rate for Facilities Capital Cost of Money for either the CONTRACTOR or any of its subcontractors at any tier.

VI. FIXED FEE

- A. The CONTRACTOR's and subcontractors' Fixed Fee shall be computed as follows:
 1. For CONTRACTOR and subcontractor direct labor costs and indirect costs as applied to CONTRACTOR and subcontractor direct labor costs, up to a maximum amount of one hundred fifty percent (150%) of direct labor costs:
 - a. A fixed fee of ten percent (10 %).
 2. There shall be no fee allowed for CONTRACTOR or subcontractor indirect costs in excess of one hundred fifty percent (150%) of direct labor costs.
 3. Subcontractor direct labor and indirect labor costs, up to a maximum amount of one hundred fifty percent (150%) of direct labor costs, are hereinafter referred to as "SDC's". Contractor shall apply a fixed fee of 2% to SDC's. There shall be no fee allowed for subcontractor indirect labor costs in excess of one hundred fifty percent (150%) of direct labor costs.
 4. There shall be no fee allowed for CONTRACTOR ODC's
 5. There shall be no fee allowed for subcontractors ODC's or SDC's at any tier
- B. There shall be no revision, either upward or downward, to the established fee for CONTRACTOR or subcontractors at any tier due to the establishment of a final rate for indirect cost reimbursement for any given fiscal year.

VII. BASIS FOR REIMBURSEMENT OF CONTRACTOR SERVICES PERFORMED UNDER TIME AND MATERIALS

- A. As used herein the term 'time and material' is defined as work performed on the basis of (i) direct labor hours at specified fixed hourly rates that include direct labor costs, indirect labor costs, and fee and (ii) if required and authorized, materials or supplies at direct cost only with no overhead, profit or fee allowed.

CONTRACTOR's time and material rates are allowable only to the extent that any individual rate complies with the following requirements:

1. Total reimbursement per individual, per day does not exceed eight hours or eight times the approved rate and forty hours in one week, unless authorized by the Executive Director or his/her designee. If overtime is authorized, indirect labor costs shall not be included in fixed hourly rates as reimbursement for overtime hours;
 2. For services performed on a time and material basis, the following costs shall be allowable only to the extent that they are a part of the overhead portion of the CONTRACTOR's labor rate:
 - a. All CONTRACTOR costs including, but not limited to CONTRACTOR labor, associated with automobile travel within a 50 mile radius of the TJPA's Administrative Offices at 201 Mission Street, San Francisco, California;
 - b. All CONTRACTOR costs associated with providing insurance as set forth in this Agreement other than TJPA furnished coverages.
- B. Reimbursement for CONTRACTOR's other direct costs shall be in conformance with the requirements of Section III above.
- C. Reimbursement for CONTRACTOR's indirect costs shall be in conformance with the requirements of Sections IV, V, VIII and IX.
- D. CONTRACTOR's Fixed Fee shall be in conformance with the requirements of Section VI above, except that there shall be no incentive fee for time and materials services.

VIII. CONTRACTOR CERTIFICATIONS

By signing this agreement CONTRACTOR hereby certifies to the following

- A. That the requirements and standards of 48 CFR 31.205-22 have been complied with regarding Legislative lobbying costs.
- B. That the computations, requirements and standards of 48 CFR 31.205-18 have been complied with regarding maximum compensation for CONTRACTORS Bid and Proposal costs and if requested by TJPA, these materials will be transmitted to TJPA.

IX. APPLICABILITY

- A. This PCRRRA shall apply to provisional cost reimbursement and direct and indirect rates, and shall cover the period from Notice to Proceed until December 31, 2008. In the future, and for each Contractor fiscal year, the parties anticipate entering into a similar form of agreement with respect to costs and rates.

- B. Nothing herein shall be construed to prejudice, waive, or in any other way affect any rights of the TJPA under the provisions of this Agreement, nor respecting limitation of the TJPA's obligations thereunder.
- C. The provisional rates set forth in this PCRRRA are applicable to all affected work authorized by the TJPA for this Agreement, pending final determination of such rates for CONTRACTOR and subcontractors by a cognizant United States Government Audit Agency, subject to approval by TJPA's Executive Director or designee.
 - 1. In the event CONTRACTOR does not have final rates determined by a cognizant United States Government Audit Agency, then such rates will be established by an independent, third party audit entity which shall be acceptable to the Executive Director or designee.
 - 2. Any reimbursements under this Agreement submitted prior to said final determination of such rates will be recalculated if these provisional rates differ from the audited rates, unless TJPA and CONTRACTOR mutually agree that recalculation will not be required, in which case the provisional rates will be considered as the audited rates.
 - 3. CONTRACTOR agrees to accept payment of these audited rates as its total compensation for all overhead, general and administrative costs for performing all services.
 - 4. The final approved audited rates for CONTRACTOR and its subcontractors shall be limited each fiscal year to a rate no more than that set forth in Section IV. A above. Such limitation shall not apply to any increases due solely to additional costs imposed by local, state or federal regulations, subject to the approval of TJPA's Executive Director or designee.
- D. CONTRACTOR shall submit Invoices and backup information in accordance with paragraph 8 (F), "Payment; Invoice Format" of this Agreement.

X. OTHER

A. The terms and conditions of this Agreement between the parties are incorporated by this reference.

B. All modifications to this agreement shall be in writing.

The parties have executed this Agreement as of _____, 2011.

TRANSBAY JOINT POWERS AUTHORITY

CONTRACTOR

Maria Ayerdi-Kaplan
Executive Director

Name and Title

Approved as to Form:

CONCUR

TJPA Legal Counsel

Does your firm have a working knowledge of these materials?

Do your employees have copies of these materials?

2. In order to evaluate your firm's compliance with the above principles, please answer the following questions, complete the schedules and attach all requested information.

a. Does your firm have federal government contracts?

b. Was your proposed indirect cost rate audited during the past year by a federal agency (sometimes referred to as "cognizant agency"), any other governmental entity, or a CPA firm? If yes, provide a copy of the audit report(s) and the resulting rate agreements, if any. Also, complete the following: (Identify all reports)

Audit Organization
Period of Audit
Report Date
Scope of Audit

Audit Organization
Period of Audit
Report Date
Scope of Audit

C. DESCRIPTION OF COST ACCUMULATION AND BILLING PROCEDURES

1. On what basis does your firm maintain its accounting records? Accrual _____ Cash _____

If on a cash basis, are steps taken to properly allocate expenditures that benefit more than one fiscal year? ____ Is any allocation procedure contained in a written procedure? ____ If written, please attach a copy.

2. Briefly describe your firm's system for accumulating and billing project costs by answering all of the following questions.

(provide separate attachments as necessary or required)

a. DIRECT LABOR

The CONTRACTOR and each Subcontractor will be compensated for the services of its personnel on the basis of reasonable, actual paid Direct Labor Costs (herein called "DLC") exclusive of any fringe benefits or overheads.

DLC must exclude principal or owner time dedicated to the general operation of the business. DLC must also exclude time associated which TJPA has identified as being allowable only to the extent that they are (i) specific classifications of DLC identified in the Agreement, Annual Work Plan or Task Order as may be the case or, (ii) are not associated with specific activities that TJPA has identified as being reimbursable on a basis other than as a direct cost.

The hourly rates of temporary or contract personnel which are classified as non-employees cannot be calculated as part of DLC, but must be treated as an Other Direct Cost (herein called "ODC").

Similarly, the hourly rates of Subcontractors cannot be calculated as part of DLC, but must be treated as a Subcontracted Direct Cost (herein called "SDC"). Therefore, with respect to direct labor charges by your firm:

- 1) Your firm must fully document all time spent by Principals and employees and charged to TJPA projects. TJPA requires that all labor charges be identifiable to the nearest half-hour and specify what activity or task is being performed.
 - a) Does your firm have a time sheet signed by the employee and verified in writing by the immediate supervisor?
 - b) Does the time sheet record all time both direct and indirect?
 - c) Are controls in existence to ensure that DLC are relevant to the project scope? _____
Are any such controls formalized in written procedures?
- 2) How many hours in your firm's normal workday? _____ hours
- 3) TJPA normally does not participate in overtime premium for direct labor personnel. Has your firm made provisions to exclude overtime premium and unpaid overtime from TJPA billings?
- 4) Does your firm have a compensation policy for the classifications of labor proposed for these services? _____ If so, please attach a copy.
 - a) Does your firm have guidelines for Salary Administration, i.e. the range of annual reviews, or salary adjustments? _____ If so, please attach a copy and indicate the average adjustment for the last three years.
 - b) Does your firm have any individual incentive compensation plans including, but not limited to bonuses, commissions or profit sharing plans? _____ If so, please attach a copy of each.
- 5) TJPA does not allow payment for uncompensated labor costs. Does your firm have procedures to ensure that uncompensated labor is not billed to TJPA projects?
- 6) If your firm is a partnership/sole proprietorship, does your accounting system use a drawing account to record all compensation to the owner(s)?
- 7) Does your firm hire professionals on a temporary basis to work on specific projects, rather than on a continuous employment relationship?
 - a) How many are currently working for your firm? _____
 - b) Who are they and what projects are they working on?
 - c) What was the total cost to your company of professionals hired on a temporary basis during the last completed fiscal year? 20_____, \$_____

Were these amounts in your direct labor base for that year? _____

b. OTHER DIRECT COSTS

Other Direct Costs (herein called "ODCs") are direct costs other than direct labor and direct materials that are identified specifically with a contract based on a beneficial or causal relationship.

The Federal Acquisition Regulations (48 CFR 31) provide that no contract will have a cost allocated to it as a direct cost if other costs incurred for the same purpose, in like circumstances, are treated as an indirect cost of that or any other contract.

Costs identified specifically with a contract are the direct cost of that contract. All costs identified with other contracts are direct costs of those contracts whether reimbursed or not.

- 1) a) Does your firm have an approval process for ODCs? _____
If so, are they in writing? _____
- b) Does your firm have procedures in place to ensure that ODC budgets are not exceeded? _____ If so, are these procedures in writing?
- 2) For each of the following cost categories estimate the amounts charged as direct and indirect costs by your firm during the last completed fiscal year. FY 20____

	Direct	Indirect
Travel	\$	\$
Reproduction		
Graphics		
Office Supplies		
Equipment		
Relocation Costs		
Computer Expenses		
Laboratory Testing		
Contract Labor		
Other Cost (specify)		

- 3) If any costs listed in 2 above are charged as both direct and indirect costs, identify them and explain how these and other costs directly identifiable with specific contracts are excluded from the indirect cost pool, to prevent duplication.
- 4) ODCs also include Subcontractors; does your firm lease office space to other consultants, or otherwise provide support services? _____ If so, describe the relationship.

c. INDIRECT COSTS

Indirect costs may consist of one or more pools of expenses which are grouped on the basis of the benefits accruing to the cost objectives represented by the distribution base or bases to which they are allocated. Since accounting practices vary, the use of particular groupings is not required. However, TJPA contract requirements specify **direct labor costs** as the basis for allocating indirect costs. Furthermore, TJPA requires that direct labor exclude: 1) fringe benefits, which must be classified as indirect costs; 2) Subcontractor, contract employees and other non-employee costs which must be classified as ODCs; and 3) principal, or owner labor cost dedicated to the general operation of the firm.

Indirect cost rates must be supported. A negotiated rate for indirect costs will be established. Your firm's final rate must represent your firm's actual cost experience for a completed fiscal year and must comply with all FAR and specific TJPA agreement requirements.

Rates must represent your firm's best estimate of the rates to be experienced during that particular year. If your rate does not use your last completed fiscal year, the estimated cost must be based on historical data and all known future changes. The computation should provide for the future changes that will occur in both your direct labor base and indirect expense pools. A proposed rate must comply with all FAR and TJPA agreement requirements. TJPA will consider rates audited and approved by a cognizant federal agency (i.e., EPA, DCAA), or other government entity, if the rate is further adjusted to comply with TJPA agreement requirements.

Each firm must be able to support its direct labor base and other labor cost components used to calculate the indirect cost rate by submission of data for the last three years. For this purpose complete the SCHEDULE OF SUMMARY COST AND SALARY DATA below for the last two completed fiscal years and the new fiscal year.

Complete the INDIRECT COST SCHEDULES (Schedules A, B and C, below) for your firm's last two completed fiscal years and the new fiscal year. The schedules may be modified as appropriate and will be reviewed by TJPA as part of negotiating a reimbursement agreement.

List each indirect cost account, the amount, and a description of each adjustment. Specifically show adjustments for: 1) FAR unallowable costs, and 2) the exclusion of those categories of cost *which* will be paid directly by TJPA as an ODC, or will be provided directly by TJPA or another firm. Also exclude comparable pool costs incurred in the performance of other contracts. For example, if travel is charged directly, then only general purpose travel should be included in the pool. Non-reimbursable direct travel should be excluded from the pool.

The following is a list of some of the more common costs unallowable per FARs. The list is not meant to be all inclusive, and accordingly, the consultant must refer to the FARs when preparing the INDIRECT COST SCHEDULE.

Advertising	Fines/Penalties
Bad Debts	Idle Facilities
Contingencies	Interest/Other Financial Costs
Contributions	Losses on Other Contracts
Entertainment	Organizational Costs

- 1) Does your firm routinely evaluate pool costs to identify and remove unallowable costs? _____ If so, at what interval? _____ If there is a written procedure for this removal, please attach a copy.
- 2) Does this CDS exclude any cost centers used by your firm? _____ If yes, identify these cost centers:
- 3) a. Does your firm own or have a financial interest in the facilities it leases or rents? _____ If yes, identify:

b. Does your firm own or have a financial interest in equipment it leases or rents? _____ If so, please identify those interests:

- 4) a. Does your firm share any facilities with other affiliates, subsidiaries, personal interests, etc.? _____ If yes, describe each sharing arrangement.
- b. Does your firm share any equipment with other affiliates, subsidiaries, personal interests, etc.? _____ If yes, describe each sharing arrangement.
- 5) TJPA will not allow Facilities Cost of Capital unless specifically proposed, reviewed, approved and audited. Does your proposed indirect cost rate include facilities cost of capital? _____ If yes, attach appropriate computation.

SCHEDULE OF SUMMARY COST AND SALARY DATA

For Fiscal Years Ending:	_____, 20____	_____, 20____	_____, 20____
	Actual	Actual	Proposed
Total Company Sales	\$ _____	\$ _____	\$ _____
Total Direct Labor	\$ _____	\$ _____	\$ _____
Total Direct Labor Hours	\$ _____	\$ _____	\$ _____
Total All Salaries	\$ _____	\$ _____	\$ _____
Total All Bonuses	\$ _____	\$ _____	\$ _____
Total Number of Principals/Owners (P/O)	\$ _____	\$ _____	\$ _____
Total Salaries	\$ _____	\$ _____	\$ _____
Total Bonuses	\$ _____	\$ _____	\$ _____
Total Number of Professional Employees	\$ _____	\$ _____	\$ _____
Total Salaries	\$ _____	\$ _____	\$ _____
Total Bonuses	\$ _____	\$ _____	\$ _____
Total Number of All Other Employees	\$ _____	\$ _____	\$ _____
Total Salaries	\$ _____	\$ _____	\$ _____
Total Bonuses	\$ _____	\$ _____	\$ _____

* To be considered an employee, an individual should be subject to withholding tax and be issued a Wage and Tax Statement (W-2) at year end and receive administrative support and supervision.

CERTIFICATION

I certify that to the best of my knowledge and belief that this Statement and the documents attached thereto are a complete and accurate disclosure of the information requested by this form.

Signature of Submitting Official (CEO or CFO)

Title

Date

Schedule A - General & Administrative Expenses MAI
Fiscal Year Ending: _____, 20____

Schedule of Actual Expenses, Unallowable Costs and Adjusted Costs

<u>Account No.</u>	<u>Description of Costs Removed</u>	<u>Adjusted General Ledger Costs</u>	<u>Unallowable Costs Notes</u>
	Salaries & Wages		
	Legal Fees		
	Audit Fees		
	Other Fees		
	Travel		
	Entertainment		(1)
	Advertising & Promotion		(2)
	Bad Debts		(1)
	Technical Publication		
	Periodicals		
	Conventions & Seminars		
	Interest Expense		
	Holiday		
	Vacation		
	Sick Leave		
	Personal Absence		
	Employee FICA		
	FUI		
	SUI		
	Workmen's Compensation		
	Health Insurance		
	Life Insurance		
	Pension Plan		(3)
	Tuition Assistance		
	Miscellaneous		
	Subtotal		
	B&P/IR&D		(4)
	Total		

Notes:

- (1) Unallowable cost per Government procurement regulation FAR 31.2.
- (2) Some advertising expenses allowable e.g. help-wanted employment advertising.
- (3) Employer contributions to pension plan may be in excess of that allowable under FAR.
- (4) See Schedule I for computation of allowable IR&D/B&P costs.

(Use this format for each Fiscal Year and Cost Center)

Schedule B - Overhead Expenses
 Fiscal Year Ending: _____, 20_____

Schedule of Actual Expenses. Unallowable Costs and Adjusted Costs

<u>Account No.</u>	<u>Description of Costs Removed</u>	<u>Adjusted General Ledger Costs</u>	<u>Unallowable Costs Notes</u>
	Salaries & Wages		
	Postage & Handling		
	Office Supplies		
	Small Equipment		
	Temp. Clerical Help		
	Other Outside Services		
	Relocation		(1)
	Business Meals		
	Telephone Expense - Local		
	Telephone - Long Distance		
	Telecopies		
	Real Estate Rent		
	Equipment Rent		
	Recruitment		
	Dues/Memberships		(2)
	Insurance		
	Property Taxes		
	Permits & Licenses		
	Depreciation/Amortization		
	Repairs & Maintenance		
	Holiday		
	Vacation		
	Sick Leave		
	Severance Pay		(3)
	Employer FICA		
	FUI		
	SUI		
	Workman's Compensation		
	Health Insurance		
	Life Insurance		
	Pension Plan		(4)
	Miscellaneous		
	Total		

Notes:

- (1) Moving charges are limited by FAR.
- (2) Nature and amount limited by FAR.
- (3) Severance pay is limited.
- (4) Employer contributions to pension plan may be limited.

(Use this format for each Fiscal Year and Cost Center)

Attachment A

Cost Disclosure Statement

Schedule C - Schedule of Bases Used to Allocate Indirect Expenses
Fiscal Year Ending: _____, 20_____

Pool - General and Administrative Expenses - Schedule A:

Base - Direct Labor Cost input (excluding fringe benefit expenses)

Pool - Fringe Benefit Expenses - Schedule B:

Base - Straight time direct labor dollars of all contracts and projects including labor costs of Bid and Proposals.

APPENDIX B:

ATTACHMENT B

PROVISIONAL COST REIMBURSEMENT AND RATE DATA

This data sheet is to be completed and submitted by the CONTRACTOR and each subcontractor performing in excess of \$500,000 of services during the term of the Agreement:

1. PROVISIONAL INDIRECT COST RATES

- a. The provisional cost rate for direct labor fringe benefits as set forth in CONTRACTOR'S or subcontractor's submission is ____%.
- b. The provisional cost rate for overhead expense for services performed in CONTRACTOR'S offices as applied to (identify bases) _____ is _____ %.
- c. The provisional cost rate for overhead expense for services performed in TJPA's facilities as applied to (identify bases) _____ is _____%.
- d. The provisional rate for general and administrative expense as applied to direct labor for services performed in CONTRACTOR'S offices is ____%.
- e. The provisional rate for general and administrative expense as applied to direct labor for services performed in TJPA's facilities is ____%.

2. FIXED FEE

CONTRACTOR'S Fixed Fee will consist of the following components set forth in Section VI.A. of the Provisional Cost Reimbursement and Rate Agreement (Provisional Rate Agreement).

- a. The fixed fee component in accordance with the Provisional Rate Agreement Section VI.A.1.a, will be 10% of the estimated Direct Labor Costs and indirect costs, up to a maximum of one hundred fifty percent (150%) of direct labor costs, that will be incurred by the CONTRACTOR and subcontractors and approved by TJPA. There shall be no fee for indirect costs in excess of one hundred fifty percent (150%) of direct labor costs. There shall be no fee for ODCs or any ODC-associated indirect costs.
- b. There shall be no fee for ODCs or any ODC-associated indirect costs.
- c. For providing subcontracted services consistent with the requirements of Agreement, CONTRACTOR'S Fixed Fee component shall be as set forth in Section VI.A.2 the Provisional Rate Agreement.

3. BASIS FOR DIRECT LABOR COST REIMBURSEMENT:

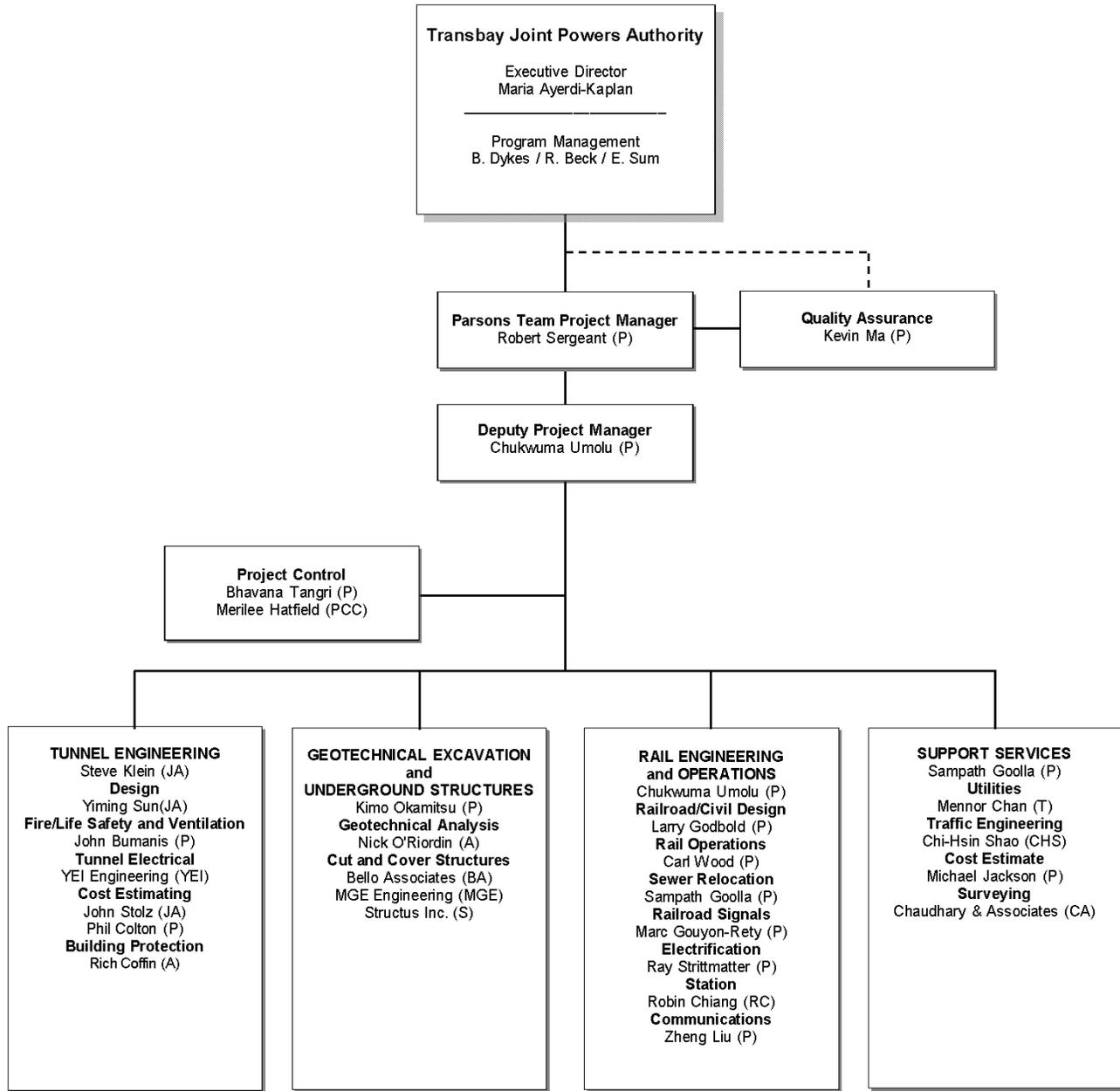
CONTRACTOR and subcontractors agree to the following direct labor cost rates, exclusive of any burden or markups, for its professional, technical, administrative and clerical personnel in the following employment categories:

CONTRACTOR AND SUBCONTRACTOR SALARY RANGES

<u>TITLE</u>	<u>GRADE</u>	<u>MINIMUM</u>	<u>MAXIMUM</u>
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APPENDIX C

PROJECT ORGANIZATION CHART AND LISTING OF SUBCONTRACTORS



LEGEND		
(P) Parsons	(CA) Chaudhary & Associates*	(RC) Robin Chiang & Company*
(A) Arup	(CHS) CHS Consulting Group*	(S) Structus Inc.*
(JA) Jacobs Associates	(MGE) MGE Engineering*	(T) Telamon Engineering*
(BA) Bello & Associates*	(PCC) Project Controls Consulting*	(YEI) YEI Engineers*

*DBE

APPENDIX D

USDOT REQUIREMENTS FOR AGREEMENTS WITH THE TJPA

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

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

The following provisions (1-11) apply to all Agreements (excluding micropurchases—purchases of \$3,000.00 or less).

1. DEFINITIONS

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

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

Project management guidelines, including the Master Agreement between FTA and the TJPA.

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

2. NO GOVERNMENT OBLIGATION TO THIRD PARTIES

** *This requirement applies to all Agreements.*

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

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

** *This provision applies to all Agreements.*

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

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

4. ACCESS TO DOCUMENTS

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

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

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

5. FEDERAL CHANGES

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

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

6. CIVIL RIGHTS REQUIREMENT

** *This requirement applies to all Agreements.*

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

- (a). **Nondiscrimination** - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. Section 2000d, Section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. Section 6102, Section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. Section 12132, and Federal transit law at 49 U.S.C. Section 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA or FRA may issue.
- (b). **Equal Employment Opportunity** - The following equal employment opportunity requirements apply to the Agreement:
- (1). **Race, Color, Creed, National Origin, Sex** - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. Section 2000e, and Federal transit laws at 49 U.S.C. Section 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 CFR Parts 60, (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. Section 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA or FRA may issue.
- (2). **Age** - In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. Section 623, and Federal transit law at 49 U.S.C. Section 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA or FRA may issue.
- (3). **Disabilities** - In accordance with Section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. Section 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA or FRA may issue.

7. DISADVANTAGED BUSINESS ENTERPRISE (DBE)

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

- (a). This Agreement is subject to the requirements of 49 CFR Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBEs) is 10 percent. The

TJPA's Anticipated DBE Participation Level for each Federal Fiscal Year is published on the TJPA website by August 1 of each year.

A separate Agreement goal of 30 percent DBE participation has been established for this Agreement.

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

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

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

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

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

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

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

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

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

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

** *This requirement applies to all Agreements.*

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

9. FLY AMERICA REQUIREMENTS

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

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

10. CARGO PREFERENCE REQUIREMENTS

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

The Contractor agrees to:

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

11. ENERGY CONSERVATION REQUIREMENTS

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

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

The following provision (12) applies to Agreements exceeding \$10,000.

12. RECYCLED PRODUCTS

****** *This provision applies to all Agreements to procure \$10,000 or more of any one item designated by the EPA under 40 CFR Part 247, Subpart B in a single fiscal year, and to all Agreements to procure*

any items designated in 40 CFR Part 247, Subpart B where the TJPA or the Contractor has used Federal funds to procure \$10,000 or more of any one item in the previous fiscal year.

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

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

The following provision (13) applies to Agreements exceeding \$25,000.

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

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

- (a). This Agreement is a “covered transaction” for purposes of 2 CFR Part 180, and the Contractor is required to comply with 2 CFR Part 180. In particular, the Contractor is required to verify that the Contractor, its “principals,” as defined in 2 CFR Part 180, and its “affiliates,” as defined in 2 CFR Part 180, are not “excluded” or “disqualified,” as defined in 2 CFR Part 180.
- (b). The Contractor shall submit the “Certification Regarding Debarment, Suspension, and Other Responsibility Matters.”

The following provisions (14-15) apply to Agreements exceeding \$50,000.

14. CLEAN AIR

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

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

15. CLEAN WATER REQUIREMENTS

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

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

The following provisions (16-19) apply to Agreements exceeding \$100,000.

16. BUY AMERICA REQUIREMENTS

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

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

17. BREACHES AND DISPUTE RESOLUTION

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

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

18. LOBBYING

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

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

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

19. AGREEMENT WORK HOURS AND SAFETY STANDARDS ACT

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

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

be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b) of this section.

FLY AMERICA CERTIFICATION

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

Certificate of Compliance

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

Date _____

Signature _____

Company Name _____

Title _____

Certificate of Non-Compliance

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

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

Date _____

Signature _____

Company Name _____

Title _____

Explanation: _____

BUY AMERICA CERTIFICATION

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

Certificate of Compliance

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

Date _____

Contractor Name _____

Authorized Representative Name _____

Signature _____

Title _____

OR

Certificate of Non-Compliance

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

Date _____

Contractor Name _____

Authorized Representative Name _____

Signature _____

Title _____

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

Certificate of Compliance

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

Date _____

Contractor Name _____

Authorized Representative Name _____

Signature _____

Title _____

OR

Certificate of Non-Compliance

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

Date _____

Contractor Name _____

Authorized Representative Name _____

Signature _____

Title _____

NEW RESTRICTIONS ON LOBBYING CERTIFICATION

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

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

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

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

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

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

Date _____

Contractor Name _____

Authorized Representative Name _____

Signature _____

Title _____

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

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

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

The certification in this clause is a material representation of fact relied upon by the TJPA. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the TJPA, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Bidder/Offeror Name: _____

Authorized Representative Name: _____

Authorized Representative Title: _____

Authorized Representative Signature: _____

Date: _____