

PROFESSIONAL SERVICES AGREEMENT

between

BAY AREA HEADQUARTERS AUTHORITY

and

NAME OF CONSULTANT

for

SHORT PROJECT NAME

FISCAL YEARS 2012-13 to 201__-201__

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PROFESSIONAL SERVICES AGREEMENT
Between BAY AREA HEADQUARTERS AUTHORITY
And INSERT NAME OF CONSULTANT
For INSERT BRIEF DESCRIPTION

THIS AGREEMENT is made and entered into as of the **xx** day of **Month**, 2012, by and between the Bay Area Headquarters Authority (herein called BAHA), a public agency of the State of California and **Name of Consultant**, (herein called "CONSULTANT" **"CONTRACTOR" may be substituted, if appropriate**), a **pick one of the following:** partnership, **[state of incorporation]** corporation/ nonprofit corporation/joint venture organized under the laws of the state of **[state of incorporation]**.

RECITALS

WHEREAS, BAHA issued a Request for Qualifications (RFQ) / Request for Proposals (RFP) for Construction Management / General Contractor Services with guaranteed maximum price for the Regional Agency Headquarters Facility at 390 Main Street, San Francisco: Renovation & Seismic Retrofit (herein called "the Project"); and

WHEREAS, the services required for the Project cannot be performed satisfactorily by the officers and employees of BAHA; and

WHEREAS, the parties hereto now wish to enter into an agreement (the "Agreement") pursuant to which CONSULTANT will render professional services in connection with the Project as hereinafter provided.

NOW, THEREFORE, the parties hereto agree as follows:

1. **SCOPE OF SERVICES**

CONSULTANT's services are described in Attachment A, Scope of Work, attached hereto and incorporated herein by this reference. CONSULTANT agrees to perform or secure the performance of all specified services within the maximum payment specified in Article 3, subject to the prior written approval of a work plan by Stephen Wolf, (herein called "BAHA Project Manager"). As BAHA Project Manager, Stephen Wolf is responsible for communication with CONSULTANT and the administration of this Agreement. BAHA'S Executive Director or designated representative may substitute a new BAHA Project Manager by written notice to CONSULTANT.

CONSULTANT's point of contact and the individual authorized to communicate to BAHA on behalf of CONSULTANT is _____ name ("CONSULTANT Project Manager"). A change in the CONSULTANT Project Manager requires BAHA written approval.

1.1 PROGRESS REPORTS

CONSULTANT shall provide BAHA with [insert for cost reimbursement contracts or as necessary: monthly] progress reports according to the schedule and form approved by the BAHA Project Manager.

2. PERIOD OF PERFORMANCE

CONSULTANT's services hereunder shall commence on or after _____, 2012, and shall be completed no later than _____, 201____, unless extended by duly executed amendment or earlier terminated, as hereinafter provided. CONSULTANT's services shall be performed in accordance with the schedule included in Attachment B, Project Schedule, attached hereto and incorporated herein by this reference. [OPTIONAL FOR TASK ORDERS: CONSULTANT's services shall be performed in accordance with the schedule included in each Task Order.]

3. COMPENSATION AND METHOD OF PAYMENT

Subject to duly executed amendments, BAHA will pay CONSULTANT for its services as described in Attachment A, a total amount including (as applicable) labor, supervision, applicable surcharges such as taxes, insurance, and fringe benefits, indirect costs, overhead, profit, subcontractors costs (including mark-up), travel, equipment, materials and supplies, expenses and any fixed fee not to exceed [spell out amount] (\$_____) ("Maximum Payment"). BAHA shall make payments to CONSULTANT in accordance with the provisions described in Attachment C, Compensation and Method of Payment, attached hereto and incorporated herein by this reference.

All invoices shall be made in writing and delivered or mailed to BAHA as follows:

Attention: Accounting Section
Bay Area Headquarters Authority
Joseph P. Bort MetroCenter
101 - 8th Street
Oakland, CA 94607-4700

Payment shall be made by BAHA within thirty (30) days of receipt of an acceptable invoice, approved by the Project Manager or a designated representative.

4. KEY PERSONNEL

The key personnel to be assigned to this work by CONSULTANT and, if applicable, their hourly rates and the estimated hours to be supplied by each are set forth in Attachment D, Key Personnel, attached hereto and incorporated herein by this reference. Substitution of any of the personnel named in Attachment D or a decrease in the hours provided to the project by such personnel of more than 10% requires the prior written approval of the Project Manager or a designee. CONSULTANT shall maintain records documenting compliance with this Article, which shall be subject to the audit requirements of Article 15. CONSULTANT agrees that all personnel assigned to this work will be professionally qualified for the assignment to be undertaken. BAHA reserves the right to direct removal of any individual, including key personnel, assigned to this work.

5. AMENDMENTS

BAHA reserves the right to request changes in the services to be performed by CONSULTANT. All such changes shall be incorporated in written amendments, which shall specify the changes in work performed and any adjustments in compensation and schedule. All amendments shall be executed by the Executive Director or a designated representative and CONSULTANT and specifically identified as amendments to the Agreement. The BAHA Project Manager is not a designated representative, for purposes of approving an amendment.

6. TERMINATION

A. Termination for Convenience. BAHA may terminate this Agreement, in whole or in part, at any time by written notice to CONSULTANT. Upon receipt of notice of termination, CONSULTANT shall stop work under this Agreement immediately, to the extent provided in the notice of termination, and shall promptly submit its termination claim to BAHA. **FOR DELIVERABLES-BASED CONTRACTS USE THIS LANGUAGE:** CONSULTANT shall be reimbursed for costs incurred for incomplete deliverables up to the time of termination and a reasonable profit not to exceed ____%, plus reasonable termination costs, not to exceed the amount payable for such deliverables, **FOR COST REIMBURSEMENT TYPE CONTRACTS USE THIS LANGUAGE:** CONSULTANT shall be reimbursed its costs and a pro rata share of its profit on work performed up to the time of termination, plus reasonable

termination costs, not to exceed the Maximum Payment set forth in Article 3 . **FOR LABOR-HOUR CONTRACTS USE THIS LANGUAGE:** CONSULTANT shall be paid for hours worked and reimbursed for authorized expenses, plus reasonable termination costs, not to exceed the maximum amount payable for the terminated work. **FOR TASK ORDERS, INSERT:** For terminated deliverables-based Task Orders, CONSULTANT shall be reimbursed for costs incurred for incomplete deliverables up to the time of termination and a reasonable profit not to exceed _____%, plus reasonable termination costs, not to exceed the amount payable for such deliverables. For terminated time-and-materials Task Orders, CONSULTANT shall be paid for hours worked, plus authorized expenses and reasonable termination costs, not to exceed the maximum amount payable under the terminated Task Order. If CONSULTANT has any property in its possession belonging to BAHA, CONSULTANT will account for the same, and dispose of it in the manner BAHA directs. Except as provided above, BAHA shall not in any manner be liable for CONSULTANT's actual or projected lost profits had CONSULTANT completed the services required by this Agreement.

B. Termination for Default. If CONSULTANT does not deliver the work products specified in this Agreement in accordance with the delivery schedule or fails to perform in the manner called for in the Agreement, or if CONSULTANT fails to comply with any other material provision of the Agreement, BAHA may terminate this Agreement for default. Termination shall be effected by serving a fifteen (15) day advance written notice of termination on CONSULTANT, setting forth the manner in which CONSULTANT is in default. If CONSULTANT does not cure the breach or describe to BAHA's satisfaction a plan for curing the breach within the fifteen (15) day period, BAHA may terminate the Agreement for default. In the event of such termination for default, CONSULTANT will be entitled to be reimbursed only for work performed in full compliance with the contract requirements as follows: **FOR DELIVERABLES-BASED CONTRACTS USE THIS LANGUAGE:** CONSULTANT shall be reimbursed for costs incurred for incomplete deliverables up to the time of termination, not to exceed the amount payable for such deliverables, **FOR COST REIMBURSEMENT TYPE CONTRACTS USE THIS LANGUAGE:** CONSULTANT shall be reimbursed its costs on work performed up to the time of termination, not to exceed the Maximum Payment set forth in Article 3 of the Agreement. **FOR LABOR-HOUR CONTRACTS USE THIS LANGUAGE:** CONSULTANT shall be paid for hours worked and reimbursed for authorized expenses, not to exceed the maximum amount payable for the terminated work. **FOR TASK ORDERS, INSERT:** For terminated deliverables-based Task Orders, CONSULTANT shall be reimbursed for costs incurred for incomplete deliverables up to the time of termination, not to exceed the

amount payable for such deliverables. For terminated time-and-materials Task Orders, CONSULTANT shall be paid for hours work, plus authorized expenses, not to exceed the maximum payable under the terminated Task Order. Such reimbursement will be offset by any costs incurred by BAHA to complete work required under the Agreement. In no event shall BAHA be required to reimburse CONSULTANT for any costs incurred for work causing or contributing to the default. If CONSULTANT has any property in its possession belonging to BAHA, CONSULTANT will account for the same, and dispose of it in the manner BAHA directs. BAHA shall not in any manner be liable for the CONSULTANT's actual or projected lost profits had the CONSULTANT completed the services required by this Agreement.

C. If it is determined by BAHA that CONSULTANT's failure to perform resulted from unforeseeable causes beyond the control of CONSULTANT, such as a strike, fire, flood, earthquake or other event that is not the fault of, or is beyond the control of CONSULTANT, BAHA, after setting up a new delivery or performance schedule, may allow CONSULTANT to continue work, or treat the termination as a termination for convenience.

7. INSURANCE AND FINANCIAL SECURITY REQUIREMENTS

CONSULTANT shall, at its own expense, obtain and maintain in effect at all times during the life of this Agreement the types of insurance and financial security listed in Attachment E, Insurance and Financial Security (Bond) Provisions, attached hereto and incorporated herein, against claims, damages and losses due to injuries to persons or damage to property or other losses that may arise in connection with the performance of work under this Agreement. All insurance must be placed with insurers with a Best's rating of A-VIII or better.

8. INDEPENDENT CONTRACTOR

CONSULTANT is an independent contractor and not an employee or agent of BAHA and has no authority to contract or enter into any agreement in the name of BAHA. CONSULTANT has, and hereby retains, full control over the employment, direction, compensation and discharge of all persons employed by CONSULTANT who are assisting in the performance of services under this Agreement. CONSULTANT shall be fully responsible for all matters relating to the payment of its employees, including compliance with social security, withholding tax and all other laws and regulations governing such matters. CONSULTANT shall be responsible for its own acts and those of its agents and employees during the term of this Agreement.

9. INDEMNIFICATION

CONSULTANT agrees to indemnify and hold harmless BAHA and those entities (if any) identified as additional insureds in Attachment E, Insurance and Financial Security (Bond) Provisions, and their commissioners, directors, officers, agents, and employees (collectively “BAHA Indemnified Parties”) from and against any and all claims, demands, actions, causes of action, damages, liability, obligation, costs and expenses (including attorney’s fees and costs) of any kind whatsoever, including (without limitation) those for personal injuries (including, but not limited to death, bodily injuries, emotional or mental distresses and losses of consortium), property damages or pecuniary, financial or economic losses of any kind whatsoever (collectively “Claims and Losses”) if the Claims and Losses are caused by CONSULTANT’s breach of obligations under this Agreement, willful misconduct, or negligent services performed under this Agreement. It is understood and agreed that Consultant has no obligation to indemnify and hold the BAHA Indemnified Parties harmless if the Claims and Losses are caused by the sole active negligence of the BAHA Indemnified Parties.

CONSULTANT further agrees to immediately defend the BAHA Indemnified Parties with respect to any Claims and Losses if such Claims and Losses are alleged to arise out of or relate to any allegations of CONSULTANT’s breach of obligations under this Agreement, willful misconduct, or negligent services performed under this Agreement. As part of this defense obligation, CONSULTANT agrees to either retain counsel to defend the BAHA Indemnified Parties or pay charges of the BAHA Indemnified Parties’ attorneys with regard to the Claims and Losses. CONSULTANT’s duty to defend shall apply and be enforced even if it is alleged that the acts, omissions or failures to act of parties other than CONSULTANT, including the BAHA Indemnified Parties, caused or contributed to the Claims and Losses.

The provisions set forth in this Section are intended to be applied to the fullest extent allowed under the law and, if any portion of it is found to be void or unenforceable, the remainder is to be severable and enforceable. This indemnification shall survive termination or expiration of this Agreement.

10. DATA TO BE FURNISHED BY BAHA

All data, reports, surveys, studies, drawings, software (object or source code), electronic databases, and any other information, documents or materials (“BAHA Data”) made available to CONSULTANT by BAHA for use by CONSULTANT in the performance of its services under this Agreement shall remain the property of BAHA and shall be returned to BAHA at the

completion or termination of this Agreement. No license to such BAHA Data, outside of the Scope of Work of the Project, is conferred or implied by CONSULTANT's use or possession of such BAHA Data. Any updates, revisions, additions or enhancements to such BAHA Data made by CONSULTANT in the context of the Project shall be the property of BAHA and subject to the provisions of Article 11.

11. OWNERSHIP OF WORK PRODUCTS

All drawings, designs, specifications, manuals, reports, studies, surveys, models, software, source code and source code documentation, documentation or system architecture and any other documents, materials, data and products ("Work Products") prepared or assembled and furnished to BAHA by CONSULTANT or its subconsultants pursuant to this Agreement shall be and are the property of BAHA. BAHA shall be entitled to copies and access to these materials during the progress of the work. Any such materials remaining in the hands of the CONSULTANT or in the hands of any subconsultant upon completion or termination of the work shall be immediately delivered to BAHA. CONSULTANT hereby assigns to BAHA ownership of any and all rights, title and interest in and to such Work Products, including ownership of any copyright, patent, trademark, trade secret, or other intellectual property or proprietary rights in the Work Product. CONSULTANT also agrees to execute all papers necessary for BAHA to perfect its ownership of the rights in the Work Product. Notwithstanding the above, "Work Products" are not intended nor shall they be construed to include CONSULTANT'S pre-existing intellectual property secured, developed, written, or produced by CONSULTANT prior to the execution of this Agreement or developed concurrently with this Agreement but not specifically for this Agreement; CONSULTANT shall retain all right, title and interest in any such pre-existing intellectual property.

CONSULTANT shall be responsible for the preservation of any and all such Work Products prior to transmittal to BAHA, and CONSULTANT shall replace any such Work Products as are lost, destroyed, or damaged while in its possession without additional cost to BAHA.

CONSULTANT represents and warrants that all materials prepared under this Agreement are original or developed from materials in the public domain (or both) and that all materials prepared under and services provided under this Agreement do not infringe or violate any copyright, trademark, patent, trade secret, or other intellectual-property or proprietary right of any third party.

12. SUBCONTRACTS

A. Subconsultants approved by BAHA for subcontract work under this Agreement are listed in Attachment F, Subconsultant List, attached hereto and incorporated herein by this reference. Any subconsultants must be engaged under written contract with the CONSULTANT with provisions allowing the CONSULTANT to comply with all requirements of this Agreement, including without limitation Article 11, OWNERSHIP OF WORK PRODUCTS. Failure of a subconsultant to provide insurance in accordance with Article 7, INSURANCE REQUIREMENTS, shall be at the risk of CONSULTANT.

B. Nothing contained in this Agreement or otherwise, shall create any contractual relation between BAHA and any subcontractors, and no subcontract shall relieve CONSULTANT of his/her responsibilities and obligations hereunder. CONSULTANT agrees to be as fully responsible to BAHA for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by CONSULTANT. CONSULTANT's obligation to pay its subcontractors is an independent obligation from BAHA's obligation to make payments to CONSULTANT.

C. Any substitution of subcontractors must be approved in writing by BAHA's Project Manager in advance of assigning work to a substitute subcontractor.

13. ASSIGNMENT OF Agreement

CONSULTANT shall not assign this Agreement, or any part thereof without prior express written consent of the Project Manager or a designated representative, and any attempt thereat shall be void and unenforceable.

14. RECORDS

CONSULTANT agrees to establish and maintain an accounting system conforming to Generally Accepted Accounting Principles (GAAP) that is adequate to accumulate and segregate reasonable, allowable, and allocable project costs. CONSULTANT further agrees to keep all records pertaining to the project being funded for audit purposes for a minimum of four (4) years following the fiscal year of last expenditure under the Agreement; or until completion of any litigation, claim or audit, whichever is longer. Copies of CONSULTANT's audits, if any, performed during the course of Project development and at Project completion shall be forwarded to BAHA no later than one hundred eighty (180) days after fiscal year end close.

Agreement. For breach or violation of this warranty, BAHA shall have the right to terminate the Agreement without liability or, at its discretion, the right to deduct from CONSULTANT's maximum payment the full amount of such fee, commission, percentage, brokerage fee, gift or contingent consideration.

18. PROHIBITED INTERESTS

CONSULTANT covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree or have the potential of conflicting with the performance of services required under the Agreement or the impartial rendering of assistance or advice to BAHA. CONSULTANT further covenants that in the performance of the Agreement no person having any such interest shall be employed.

No member, officer, employee or agent of BAHA, during his/her tenure shall have any prohibited interest as defined by California Government Code Sections 1090, *et seq.* and 87100 *et seq.*, direct or indirect, in the Agreement or the proceeds thereof. Prohibited interests include interests of immediate family members, domestic partners, and their employers or prospective employers. Accordingly, CONSULTANT further covenants that it has made a complete disclosure to BAHA of all facts of which it is aware upon due inquiry bearing upon any possible interest, direct or indirect, which it believes any member, officer, agent or employee of BAHA (or an immediate family member, domestic partner or employer or prospective employer of such member, officer, agent or employee) presently has, or will have in the Agreement, or in the performance thereof, or in any portion of the profits thereunder. Willful failure to make such disclosure, if any, shall constitute grounds for cancellation and termination hereof by BAHA.

18.1 ORGANIZATIONAL CONFLICTS OF INTEREST

CONSULTANT shall take all reasonable measures to preclude the existence or development of an organizational conflict of interest in connection with work performed under this Agreement. An organizational conflict of interest occurs when, due to other activities, relationships, or contracts, a firm or person is unable, or potentially unable, to render impartial assistance or advice to BAHA; a firm or person's objectivity in performing the contract work is or might be impaired; or a firm or person has an unfair competitive advantage in proposing for award of a contract as a result of information gained in performance of this or some other Agreement.

CONSULTANT shall not engage the services of any subconsultant or independent contractor on any work related to this Agreement if the subconsultant or independent contractor,

or any employee of the subconsultant or independent contractor, has an actual or apparent organizational conflict of interest related to work or services contemplated under this Agreement.

If at any time during the term of this Agreement CONSULTANT becomes aware of an organizational conflict of interest in connection with the work performed hereunder, CONSULTANT shall immediately provide BAHA with written notice of the facts and circumstances giving rise to this organizational conflict of interest. CONSULTANT's written notice will also propose alternatives for addressing or eliminating the organizational conflict of interest. If at any time during the period of performance of this Agreement, BAHA becomes aware of an organizational conflict of interest in connection with CONSULTANT's performance of the work hereunder, BAHA shall similarly notify CONSULTANT. In the event a conflict is presented, whether disclosed by CONSULTANT or discovered by BAHA, BAHA will consider the conflict presented and any alternatives proposed and meet with CONSULTANT to determine an appropriate course of action. BAHA's determination as to the manner in which to address the conflict shall be final.

Failure to comply with this section may subject the CONSULTANT to damages incurred by the BAHA in addressing organizational conflicts that arise out of work performed by CONSULTANT, or to termination of this Agreement for breach.

19. LAWS AND REGULATIONS

CONSULTANT shall comply with any and all applicable laws, statutes, ordinances, rules, regulations, and procedural requirements of any national, state, or local government, and of any agency of such government, including but not limited to BAHA, that relate to or in any manner affect the performance of the Agreement. Those laws, statutes, ordinances, rules, regulations and procedural requirements which are imposed on BAHA as a recipient of federal or state funds are hereby in turn imposed on CONSULTANT.

20. CLAIMS OR DISPUTES

CONSULTANT shall be solely responsible for providing timely written notice to BAHA of any claims for additional compensation and/or time in accordance with the provisions of the Agreement. It is BAHA's intent to investigate and attempt to resolve any CONSULTANT claims before CONSULTANT has performed any disputed work. Therefore, CONSULTANT's failure to provide timely notice shall constitute a waiver of CONSULTANT's claims for additional compensation and/or time.

CONSULTANT shall not be entitled to the payment of any additional compensation for any cause, including any act, or failure to act, by BAHA, or the failure or refusal to issue a

modification, or the happening of any event, thing, or occurrence, unless it has given BAHA due written notice of a potential claim. The potential claim shall set forth the reasons for which CONSULTANT believes additional compensation may be due, the nature of the costs involved, and the amount of the potential claim.

Such notice shall be given to BAHA prior to the time that CONSULTANT has started performance of the work giving rise to the potential claim for additional compensation.

If there is a dispute over any claim, CONSULTANT shall continue to work during the dispute resolution process in a diligent and timely manner as directed by BAHA, and shall be governed by all applicable provisions of the Agreement. CONSULTANT shall maintain cost records of all work that is the basis of any dispute.

If an agreement can be reached which resolves CONSULTANT's claim, the parties will execute an Agreement modification to document the resolution of the claim. If the parties cannot reach an agreement with respect to the CONSULTANT claim, they may choose to pursue a dispute resolution process or termination of the Agreement.

21. REMEDIES FOR BREACH

In the event CONSULTANT fails to comply with the requirements of the Agreement in any way, BAHA reserves the right to implement administrative remedies which may include, but are not limited to, withholding of progress payments and contract retentions, and termination of the Agreement in whole or in part.

The duties and obligations imposed by the Agreement 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 BAHA or CONSULTANT 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.

22. TEMPORARY SUSPENSION OF WORK

BAHA, in its sole discretion, reserves the right to stop or suspend all or any portion of the work for such period as BAHA may deem necessary. The suspension may be due to the failure on the part of CONSULTANT to carry out orders given or to perform any provision of the Agreement or to factors that are not the responsibility of CONSULTANT. The CONSULTANT shall comply immediately with the written order of BAHA to suspend the work wholly or in part.

The suspended work shall be resumed when CONSULTANT is provided with written direction from BAHA to resume the work.

If the suspension is due to CONSULTANT's failure to perform work or carry out its responsibilities in accordance with this Agreement, or other action or omission on the part of the CONSULTANT, all costs shall be at CONSULTANT's expense and no schedule extensions will be provided by BAHA.

In the event of a suspension of the work, CONSULTANT shall not be relieved of CONSULTANT's responsibilities under this Agreement, except the obligations to perform the work which BAHA has specifically directed CONSULTANT to suspend under this section.

If the suspension is not the responsibility of CONSULTANT, suspension of all or any portion of the work under this Section may entitle CONSULTANT to compensation and/or schedule extensions subject to the Agreement requirements.

23. WARRANTY OF SERVICES

A. In the performance of its services, CONSULTANT represents and warrants that it has and will exercise the degree of professional care, skill, efficiency, and judgment of consultants with special expertise in providing such services, and that it carries and will maintain all applicable licenses, certificates, and registrations needed for the work in current and good standing. In addition, CONSULTANT shall provide such specific warranties as may be set forth in specific Task Orders as agreed upon by the parties.

B. In the event that any services provided by CONSULTANT hereunder are deficient because of CONSULTANT's or subconsultants failure to perform said services in accordance with the warranty standards set forth above, BAHA shall report such deficiencies in writing to the CONSULTANT within a reasonable time. BAHA thereafter shall have:

1. The right to have CONSULTANT re-perform such services at the CONSULTANT's expense; or
2. The right to have such services done by others and the costs thereof charged to and collected from the CONSULTANT if within 30 days after written notice to CONSULTANT requiring such re-performance, CONSULTANT fails to give satisfactory evidence to the BAHA that it has undertaken said re-performance; or
3. The right to terminate the Agreement for default. CONSULTANT shall be responsible for all errors and omissions and is expected to pay for all deficient work as a result of errors and omissions.

24. DISPUTE RESOLUTION

A. Informal Resolution of Disputes. CONSULTANT and BAHA shall use good faith efforts to resolve all disputes informally at the project manager level. In the event such efforts are unsuccessful, either party may request that BAHA provide a written determination as to the proposed resolution of the dispute. Within twenty-one (21) calendar days of the request, BAHA's Project Manager shall provide a written determination as to the dispute, which shall include the basis for its decision. Upon CONSULTANT's written acceptance of the Project Manager's determination, the Agreement may be modified and the determination implemented or, failing agreement, BAHA may in its sole discretion pay such amounts and/or revise the time for performance in accordance with the Project Manager's determination.

If the Project Manager's determination is not accepted by CONSULTANT, the matter shall promptly be referred to senior executives of the parties having designated authority to settle the dispute. The senior executives will exchange memoranda stating the issues in dispute and their respective positions and then meet for negotiations at a mutually agreed time and place. If the matter has not been resolved within thirty calendar (30) days of commencement of senior management negotiations, the parties may mutually agree to try to settle the dispute by means of alternate dispute resolution methodologies.

B. Controversies Subject to Alternative Dispute Resolution.

Any claim or controversy concerning the interpretation, application, or implementation of this Agreement between BAHA and CONSULTANT which cannot be resolved through the informal efforts described above, may, by specific agreement of the parties, be submitted to alternative dispute resolution (that is, mediation or arbitration) with the parameters for such dispute resolution being agreed to by the parties at the time.

C. Other Remedies. If a dispute is not resolved through discussion or the parties do not agree to alternative dispute resolution, either party may pursue available legal remedies in a California State or Federal court of competent jurisdiction. CONSULTANT must file a government claim pursuant to Government Code Section 910 et seq. in order to initiate a civil action.

D. Pending Resolution. CONSULTANT shall continue to work during the dispute resolution process in a diligent and timely manner as directed by BAHA, and shall be governed by all applicable provisions of the Agreement.

E. Cost of Alternative Dispute Resolution Proceedings. Each party shall bear the costs and expenses incurred by it in connection with such alternative dispute resolution

processes. The cost of any mediator or independent decision maker shall be shared equally between the parties.

F. Survival of this Article. This Article shall survive completion or terminations of this Agreement, but under no circumstances shall either party call for an alternative dispute resolution of any claim or dispute arising out of this Agreement after such period of time as would normally bar the initiation of legal proceeding to litigate such claim or dispute under the laws of the State of California.

25. CHOICE OF LAW

All questions pertaining to the validity and interpretation of the Agreement shall be determined in accordance with the laws of California applicable to agreements made and to be performed within the State.

26. ATTORNEYS' FEES

If any legal proceeding should be instituted by either of the parties to enforce the terms of this Agreement or to determine the rights of the parties under this Agreement, the prevailing party in said proceeding shall recover reasonable attorneys' fees, in addition to all court costs.

27. PARTIAL INVALIDITY

If any term or condition of the Agreement is found to be illegal or unenforceable, such term or condition shall be deemed stricken and the remaining terms and conditions shall remain valid and in full force and effect.

28. BENEFIT OF AGREEMENT

The Agreement shall bind and benefit the parties hereto and their heirs, successors, and permitted assigns.

29. NO THIRD PARTY BENEFICIARIES

This Agreement is not for the benefit of any person or entity other than the parties.

30. ENTIRE AGREEMENT; MODIFICATION

This Agreement for Services, including any attachments, constitutes the complete Agreement between the parties and supersedes any prior written or oral communications. CONSULTANT represents that in entering into the Agreement it has not relied on any previous

representations, inducements, or understandings of any kind or nature. This Agreement may be modified or amended only by written instrument signed by both the CONSULTANT and BAHA. In the event of a conflict between the terms and conditions of this Agreement and the attachments, the terms of this Agreement will prevail.

IN WITNESS WHEREOF, the Agreement has been executed by the parties hereto as of the day and year first written above.

BAY AREA HEADQUARTERS AUTHORITY

NAME OF CONSULTANT

Steve Heminger, Executive Director

Insert Appropriate Name, Title

J:\CONTRACT\Procurements\Misc Professional Svcs\RFQ+RFP\BAHA Facility CMAR\BAHA Facility CMAR RFQ Appendix D_final.doc

ATTACHMENT A
Scope Of Work
Outline of Services

The services to be performed by CONSULTANT shall consist of services requested by the Project Manager or a designated representative including, but not limited to, the following:

If there is a Task Order task, include the following:

BAHA may request additional services on an as-needed basis. All such services shall be authorized by Task Order, initiated and developed according to the Detailed Task Order Process described below. Task Orders shall include, at a minimum, a detailed description of the work to be performed, a completion date for performance, a maximum payment amount, payment terms (deliverables-based or time and materials) and subconsultant participation (if any), in a completed form as shown in Attachment A-2, Task Order Form, attached hereto and incorporated herein by this reference.

**ATTACHMENT A-1,
TASK ORDER PROCESS**

---Remove if not a Task Order contract

Detailed Task Order Process:

Task Orders will be numbered sequentially. The period of performance shall be as set forth in the individual Task Order. The process for developing, signing and tracking task orders is summarized as follows:

Step 1 – The BAHA Project Manager (“BAHA PM”) prepares a draft Task Order to issue to CONSULTANT. The BAHA PM may solicit feedback from CONSULTANT to facilitate drafting the Task Order.

Step 2* – CONSULTANT prepares a proposal in response to the draft Task Order. A draft Task Order, as included in this Agreement as Attachment A-2, Task Order Form, attached hereto and incorporated herein by this reference, shall be provided to CONSULTANT for review and comment.

Step 3* – The BAHA PM reviews CONSULTANT’s proposal to determine if it meets the objectives of the draft Task Order and if CONSULTANT’s proposed costs are reasonable. The BAHA PM may solicit early feedback from the Director of the Bay Area Headquarters Authority at this time, if necessary. Any changes to the draft Task Order deemed appropriate by BAHA shall be incorporated in a draft Final Task Order.

Step 4* – The BAHA PM forwards the draft Final Task Order to the BAHA Contract Administrator for review and approval. Once approved, the BAHA PM forwards two copies of the Task Order to the Director of the Bay Area Headquarters Authority, for review and approval. The Director of the Bay Area Headquarters Authority signs both copies of a Final Task Order to signify approval and returns them to the BAHA PM.

Step 5 – The BAHA PM sends both copies of the signed Final Task Order to CONSULTANT, who signs both copies and returns one to the BAHA PM.

Step 6 – The BAHA PM sends one copy of the fully executed Task Order to the BAHA or BAHA Task Lead who initiates work, and sends another copy to BAHA Finance to encumber funds against the Task Order. The BAHA PM keeps the original fully-executed Task Order for the official project record.

Step 7 – Any services added to the Agreement by a Task Order shall be subject to all applicable conditions of the Agreement. Revisions to Task Orders shall require written approval by both the Director of the Bay Area Headquarters Authority and CONSULTANT. Revisions to Task Orders shall require written approval by both the Director of the Bay Area Headquarters Authority and CONSULTANT.

Step 8 – The BAHA PM is responsible for overseeing the successful conclusion of the Task Order, and will manage the progress of the work, track invoices against the Task Order budget, and track milestone completion against the Task Order schedule.

Step 9 – Once the BAHA PM determines the Task Order is complete, the BAHA PM will send written notification to CONSULTANT that the Task Order is complete and that all associated invoices are due to BAHA within 30 days. Any balance of budget is made available to spend on future task orders at the BAHA PM's discretion.

Step 10 – The BAHA PM will annually assess the need for a Contract audit.

**The BAHA Project Manager may revise the Task Order and/or CONSULTANT may be asked to revise the proposal based on feedback received during Steps 2 through 4.*

ATTACHMENT A-2
Task Order Form
 --- Remove if not a Task Order Contract

1. Task Order No. (include FY)	
2. Title of Task:	
3. BAHA Task Lead (if different from BAHA Project Manager):	
4. Description of work:	<i>Summarize key task expectations. For more information, see attached <u>Task Order Budget and Schedule and Detailed Description of Work</u> (attached).</i>
5. Original Maximum Payment:	
6. Amended Maximum Payment:	<i>Include each amendment to maximum payment, by amendment number, for particular fiscal year.</i>
7. Completion Date:	Date Schedule attached.
8. Payment terms:	<i>Check the one that applies (see below for more information):</i> <input type="checkbox"/> Time and Materials <input type="checkbox"/> Deliverables

9. Payment Terms [*complete A for Task Orders including one or more deliverables-based payments or B for Time and Materials Task Orders.*]

A. Deliverables-based.

	<u>Deliverable</u>	<u>Total Cost*</u>
1.		\$1
2.		\$1
3.		\$1
4.		\$1
5.		\$1
6.		\$1
7.		\$1
	Total:	\$7.00

*Due upon satisfactory completion as determined by the BAHA Project Manager.

B. Time and Materials

Specify hourly rate for applicable personnel and include estimate of expenses.

	<u>Personnel/Expense</u>	<u>Duties</u>	<u>Rate</u>	<u>Est. Hours</u>	<u>Total Cost</u>
1.			\$		\$1
2.			\$		\$1
3.			\$		\$1
4.			\$		\$1
5.			\$		\$1
Total:					\$5.00

<u>Activity</u>	<u>Lead</u>	<u>Estimated Amount Budgeted</u>
		\$1
		\$1
		\$1
		\$1
		\$1
		\$1
TOTAL MAXIMUM PAYMENT		\$6.00

BAY AREA HEADQUARTERS
 AUTHORITY

CONSULTANT

Title of Section Director
 Date:

Insert name and title of authorized individual
 Date:

J/Contract/BAHA pathname

Task Order Schedule

<u>Deliverable/Milestone</u>		<u>Due Date</u>
		Date

Detailed Description of Work

Task Order #: Title

1. Description of subtask 1.
Deliverable – deliverable name
2. Description of subtask 2.
Deliverable – deliverable name
3. Description of subtask 3.
Deliverable – deliverable name
4. Etc.

ATTACHMENT B
Project Schedule

Task #	Work to be Performed/Deliverables (#)	<u>Completion Date</u>

ATTACHMENT C
Compensation and Method of Payment

Choose 1 of the 4 options below and insert the applicable language plus any applicable additional attachments.

FIRM FIXED PRICE

A. Compensation. CONSULTANT shall be paid, as full compensation for the satisfactory completion of the work described in Attachment A, the firm fixed sum of agreed upon amount, which includes all labor, supervision, applicable surcharges such as taxes, insurance, and fringe benefits, as well as indirect costs, overhead and profit allowance, subcontractors costs, travel, equipment, materials and supplies. Any amendments to this Agreement shall be based on the hourly rates set forth in Attachment D, Key Personnel, attached hereto and incorporated herein by this reference. In no event shall the total compensation to be paid CONSULTANT under the Agreement exceed the Maximum Payment specified in Article 3 of the Agreement.

B. Progress Payments. Payment for CONSULTANT's services shall be due in the amounts indicated below, upon acceptance by Project Manager of the following deliverables or milestones, described in detail in Attachment A:

Task	Deliverables (#)	Amount Due
1	Do this (#1)	\$1,234
2	Do that (#2)	\$56,789
		0
	Excel is inside Word Tables. Highlight field, hit F9 or Table Formula = Format \$.	\$58,023.00 highlight #, hit F9

C. Method of Payment. CONSULTANT shall submit an invoice identifying the project deliverable or milestone for which payment is sought no later than thirty (30) days after BAHA's acceptance of such deliverable/milestone.

COST PLUS FIXED FEE

A. Compensation. CONSULTANT shall be compensated for its work on a cost plus fixed fee basis in general conformance with the Cost and Price Analysis submitted with CONSULTANT'S proposal, attached hereto as Attachment C-1, Cost and Price Analysis to Attachment C and incorporated herein by this reference, and within the Maximum Payment set forth in Article 3 of the Agreement. CONSULTANT will be reimbursed by BAHA for actual costs incurred for authorized and satisfactorily completed work and services rendered under this Agreement, plus a fixed fee, as provided below. Said hourly rates shall remain in effect for the term of the Agreement, unless BAHA prior written authorization is obtained for any changes. In no event shall the total compensation to be paid CONSULTANT under the Agreement exceed the Maximum Payment specified in Article 3 of the Agreement.

B. Costs. Subject to the aforesaid maximum, the estimated cost for the performance of the work under this Agreement is _____dollars (\$___). Allowability of costs for shall be determined in accordance with 48 Code of Federal Regulations Part 31, or Office of Management and Budget Circular A-122, as applicable. CONSULTANT shall use actual labor rates and a fixed overhead rate of insert rate of Direct Labor and Fringe Benefits. The services and costs of subcontractors, if any, shall be paid by CONSULTANT and BAHA shall have no obligation, financial or otherwise, to CONSULTANT's subcontractors. Subcontractors' overhead rates shall be as specified in Attachment C-1. CONSULTANT shall not be permitted to charge a mark up of subconsultants' costs unless agreed in writing by the BAHA Project Manager.

C. Fixed Fee Payment. The fixed fee for work performed under this contract is _____dollars (\$___).

(1) The fixed fee is included in the Maximum Payment set forth above in Article 3. It is understood and agreed that the fixed fee sum is a fixed amount which cannot be exceeded because of any differences between estimated and actual costs of performing the work required by this Agreement, and in no event shall the total of payments to CONSULTANT exceed the Maximum Payment set forth in Article 3, except by duly executed amendment.

(2) The fixed fee will be prorated and paid monthly in proportion to the percentage of work required under this Agreement that is satisfactorily completed as determined by BAHA.

D. Monthly Payment. CONSULTANT shall be paid by BAHA on a monthly basis. CONSULTANT shall submit an invoice to BAHA within thirty (30) days after the end of each month for which payment is sought covering work and services completed to the end of such month, not covered by previously submitted invoices. Invoices shall include an estimate of the percentage of work completed and shall identify the work for which payment is being requested, showing: (1) costs attributable to direct labor, including current and cumulative hours worked by key personnel (for support personnel, classifications may be shown in place of names) itemized by work task, if appropriate, with billing rates; (2) all other direct and indirect costs for which reimbursement is being requested; (3) items (1) and (2) for subcontractors; (4) the payable

portion of the fixed fee sum; and (5) the amounts previously invoiced, the amount currently due, and the total amount paid or due, including this invoice. CONSULTANT shall also attach to each invoice such receipts or other information as may reasonably be required by BAHA. Invoices will be dated, numbered in serial order, and signed by CONSULTANT.

F. Withheld Amounts and Final Payment. BAHA shall withhold, as a retainage, 5% of the value of each payment due hereunder until all services required under this Agreement have been completed and accepted by BAHA. Final payment of any balance due CONSULTANT, including any amounts withheld, will be made promptly after satisfactory completion of the work under this Agreement, and after receipt and written acceptance by BAHA of the reports and working papers which are required to be furnished under this Agreement, and after any post audit of contract costs which may be conducted by BAHA. CONSULTANT acknowledges that certain costs may be disallowed as a result of such a post audit.

LABOR – HOUR

A. Compensation. CONSULTANT shall be compensated for services based on the hourly rates for the key personnel set forth in Attachment D, Key Personnel Assignment, attached hereto and incorporated herein by this reference, which include all labor, supervision, applicable surcharges such as taxes, insurance and fringe benefits as well as indirect costs, overhead and profit allowance, equipment, materials and supplies. Said hourly rates shall remain in effect for the term of the Agreement, unless BAHA prior written authorization is obtained for any changes. In no event shall the total compensation to be paid CONSULTANT under the Agreement exceed the Maximum Payment specified in Article 3 of the Agreement.

USE WHERE EXPENSES ARE PROVIDED FOR

B. Expenses. BAHA will reimburse CONSULTANT for all expenses deemed reasonable and necessary by BAHA incurred by CONSULTANT in the performance of this Agreement. Such reimbursement shall include travel and personal expenses incurred by employees or agents of all CONSULTANTS in accordance with 48 Code of Federal Regulations Part 31 or Office of Management and Budget Circular A-122, as applicable.

D. Method of Payment. CONSULTANT shall submit invoices for services rendered on a monthly basis, identifying the work for which payment is requested; the hours worked; any authorized expenses, together with receipts for such expenses; the amount requested; and the cumulative amount billed and paid under this Agreement.

OPTIONAL:

E. Withheld Amounts and Final Payment. BAHA shall withhold, as a retainage, 5% of the value of each payment due hereunder until all services required under this Agreement have been completed and accepted by BAHA. Final payment of any balance due CONSULTANT, including any amounts withheld, will be made promptly after satisfactory completion of the work under this Agreement, and after receipt and written acceptance by BAHA of the reports and working papers which are required to be furnished under this Agreement, and after any post audit of contract costs which may be conducted by BAHA. CONSULTANT acknowledges that certain costs may be disallowed as a result of such a post audit.

TASK ORDERS

A. Compensation. CONSULTANT shall be compensated for its work as specified in signed Task Orders. All Task Orders shall be developed according to the process established in Attachment A-1, Task Order Process, attached hereto and incorporated herein, and should include, at a minimum, a completed form as shown in Attachment A-2, Task Order Form. Payment terms may be based on acceptance of agreed-upon deliverables or upon time and materials reimbursement, depending on the requirements of each Task Order. For time and materials-based payment of Task Orders, labor rates in Attachment D, Key Personnel Assignments, shall apply. The hourly rates in Attachment D include all applicable surcharges such as taxes, insurance and fringe benefits as well as indirect costs, overhead and profit allowance, equipment, materials and supplies. Said hourly rates shall remain in effect for the term of the Agreement, unless BAHA prior written authorization is obtained for any changes. In no event shall the total compensation to be paid CONSULTANT under the Agreement exceed the Maximum Payment specified in Article 3 of the Agreement.

B. Expenses. For time and materials Task Orders, BAHA will reimburse CONSULTANT for all expenses deemed reasonable and necessary by BAHA incurred by CONSULTANT in the performance of this Agreement. Such reimbursement shall include travel and personal expenses incurred by employees or agents of all CONSULTANTS in accordance with 48 Code of Federal Regulations Part 31 or Office of Management and Budget Circular A-122, as applicable.

C. Method of Payment. CONSULTANT shall submit invoices for services rendered no more frequently than on a monthly basis. Invoices shall identify work for which payment is requested by Task Order number (including fiscal year). All invoices will be dated, numbered in serial order, and signed by CONSULTANT.

For Task Orders authorizing payment on the basis of satisfactory deliverables, CONSULTANT shall specify each deliverable for which payment is requested, the amount requested, and the total amount paid to date under the Task Order.

For Task Orders authorizing time and materials payment, CONSULTANT shall specify the work performed, hours worked, and amount due (by personnel), authorized expenses (with receipts for such expenses), the total amount claimed under the invoice and the amount paid to date under the Task Order.

ATTACHMENT D
Key Personnel Assignments

	<u>Name</u>	<u>Rate/hour</u>	<u>Est. hours</u>	<u>Task Description</u>
1.		\$xx		
2.				
3.				
4.				
5.				
6.				
7.				
8.				

For contracts with deliverables-based payment, include note on Rate/Hour as follows:

* Applicable to development of payment provisions in amendments only.

ATTACHMENT E

Insurance and Financial Security (Bond) Provisions

1. INSURANCE

A. Minimum Coverages. The insurance requirements specified in this section shall cover CONSULTANT's own liability and the liability arising out of work or services performed under this Agreement by any subconsultants, subcontractors, suppliers, temporary workers, independent contractors, leased employees, or any other persons, firms or corporations that CONSULTANT authorizes to work under this Agreement (hereinafter referred to as "Agents.") CONSULTANT shall, at its own expense, obtain and maintain in effect at all times during the life of this Agreement the following types of insurance against claims, damages and losses due to injuries to persons or damage to property or other losses that may arise in connection with the performance of work under this Agreement.

CONSULTANT is also required to assess the risks associated with work to be performed by Agents under subcontract and to include in every subcontract the requirement that the Agent maintain adequate insurance coverage with appropriate limits and endorsements to cover such risks; the limit for the commercial general liability insurance in each subcontract shall not be less than \$1 million. To the extent that an Agent does not procure and maintain such insurance coverage, CONSULTANT shall be responsible for said coverage and assume any and all costs and expenses that may be incurred in securing said coverage or in fulfilling CONSULTANT's indemnity obligation as to itself or any of its Agents in the absence of coverage. In the event CONSULTANT or its Agents procure excess or umbrella coverage to maintain certain requirements outlined below, these policies shall also satisfy all specified endorsements and stipulations, including provisions that the CONSULTANT's insurance be primary without right of contribution from BAHA. Prior to beginning work under this contract, CONSULTANT shall provide BAHA with satisfactory evidence of compliance with the insurance requirements of this section.

(i). Workers' Compensation Insurance in the amount required by the applicable laws, and Employer's Liability insurance with a limit of not less than \$5,000,000 per employee and \$5,000,000 per accident, and any and all other coverage of CONSULTANT's employees as may be required by applicable law. Such policy shall contain a Waiver of Subrogation in favor of BAHA.

(ii). Commercial General Liability Insurance for Bodily Injury and Property Damage liability, covering the operations of CONSULTANT and CONSULTANT's officers, agents, and employees and with limits of liability which shall not be less than \$15,000,000 combined single limit per occurrence with a general aggregate liability of not less than \$15,000,000, and Personal & Advertising Injury liability with a limit of not less than \$15,000,000. BAHA, those entities named as additional insured in Part 3 of this Attachment E (if any), and their commissioners, directors, officers, representatives, agents and employees are to be named as additional insureds

(“Additional Insureds”). Such insurance shall be primary as respects any claims, losses or liability arising directly or indirectly from CONSULTANT’s operations. Such policy shall contain a Waiver of Subrogation in favor of the Additional Insureds.

(iii). Business Automobile Insurance for all automobiles owned, used or maintained by CONSULTANT and CONSULTANT’s officers, agents and employees, including but not limited to owned, leased, non-owned and hired automobiles, with limits of liability which shall not be less than \$5,000,000 combined single limit per accident.

(iv). Errors and Omissions Professional Liability Insurance for errors and omissions and the resulting damages, including, but not limited to, economic loss to BAHA and having minimum limits of \$5,000,000 per claim.

The policy shall provide coverage for all work performed by the CONSULTANT and any work performed or conducted by any subcontractor/consultant working for or performing services on behalf of the CONSULTANT. No contract or agreement between the CONSULTANT and any subcontractor/consultant shall relieve the CONSULTANT of the responsibility for providing this Errors & Omissions or Professional Liability coverage for all work performed by the CONSULTANT and any subcontractor/consultant working on behalf of the CONSULTANT on the project.

(v). Property Insurance. Property Insurance covering CONSULTANT'S own business personal property, tools, equipment, and other property to be used in performance of this Agreement and not intended to become a permanent part of the structure. Coverage shall be written on a “Special Form” that includes theft, but excludes earthquake, with limits at least equal to the replacement cost of the property. Such policy shall contain a Waiver of Subrogation in favor of BAHA.

(vi). Employee Dishonesty/Crime Insurance. An Employee Theft insurance policy covering CONSULTANT’s employees for loss of or damage to money, securities or other property resulting from theft. The following limits of liability should apply:

- (a) Employee Dishonesty - \$250,000; and
- (b) Client Property Blanket Bond - \$250,000.

CONSULTANT shall reimburse BAHA for any and all losses within the deductible and for insured losses, the cost to prove the loss, accountants' fees, defense costs including attorneys and any other fees associated with a claim. In lieu of a Client Property Blanket Bond, the policy shall contain a Joint Loss Payee endorsement or other Third Party coverage naming BAHA.

(vii). Contractors’ Pollution Liability Insurance. Contractors’ Pollution Liability insurance for bodily injury and property damage coverage with a combined single limit for bodily injury and property damage of at least \$5,000,000 per occurrence or claim and a general aggregate limit of at least \$5,000,000. This insurance shall include coverage for, but not be limited to sudden and accidental discharges; gradual discharges, clean-up of pollutants and disposal thereof; and, mold,

asbestos or lead, if an abatement contract. If CONSULTANT disposes of Hazardous Materials under this Agreement, CONSULTANT shall designate the disposal site and provide a certificate of insurance from the disposal facility to BAHA. The Additional Insureds identified in Section 1.A (ii) of this Attachment E are to be named as additional insureds. Such insurance shall be primary as respects any claims, losses or liability arising directly or indirectly from CONSULTANT's operations.

CONSULTANT's Business Automobile Liability coverage shall also be extended to cover pollution liability during loading; unloading and while in transit including, but not limited to, the perils of collision and upset. Coverage may be provided by endorsement to the general liability and automobile policies or by a separate policy.

B. Acceptable Insurers. All policies will be issued by insurers acceptable to BAHA, generally with a Best's Rating of A-VIII or better.

C. Self-Insurance. CONSULTANT's obligation hereunder may be satisfied in whole or in part by adequately funded self-insurance, upon evidence of financial capacity satisfactory to BAHA.

D. Deductibles and Retentions. CONSULTANT shall be responsible for payment of any deductible or retention on CONSULTANT's policies without right of contribution from BAHA. Deductible and retention provisions shall not contain any restrictions as to how or by whom the deductible or retention is paid. Any deductible or retention provision limiting payment to the Named Insured is unacceptable.

In the event that BAHA seeks coverage as an additional insured under any CONSULTANT insurance policy that contains a deductible or self-insured retention, CONSULTANT shall satisfy such deductible or self-insured retention to the extent of loss covered by such policy, for any lawsuit arising from or connected with any alleged act of CONSULTANT, subconsultant, subcontractor, or any of their employees, officers or directors, even if CONSULTANT or subconsultant is not a named defendant in the lawsuit.

E. Claims Made Coverage. If any insurance specified above is written on a "Claims-Made" (rather than an "occurrence") basis, then in addition to the coverage requirements above, then CONSULTANT shall:

- (1) Ensure that the Retroactive Date is shown on the policy, and such date must be before the date of this Agreement or the beginning of any work under this Agreement;
- (2) Maintain and provide evidence of similar insurance for at least three (3) years following project completion, including the requirement of adding all additional insureds; and
- (3) If coverage is cancelled or non-renewed, and not replaced with another claims made policy form with a Retroactive Date prior to the Agreement effective date, CONSULTANT shall purchase "extended reporting" coverage for a minimum of three (3) years after completion of work.

F. Failure to Maintain Insurance. All insurance specified above shall remain in force until all work or services to be performed are satisfactorily completed, all of CONSULTANT's

personnel, subcontractors, and equipment have been removed from BAHA's property, and the work or services have been formally accepted. CONSULTANT must notify BAHA if any of the above required coverages are non-renewed or cancelled for any reason. The failure to procure or maintain required insurance and/or an adequately funded self-insurance program will constitute a material breach of this Agreement.

G. Certificates of Insurance. Prior to commencement of any work hereunder, CONSULTANT shall deliver to BAHA Certificates of Insurance verifying the aforementioned coverages. Such certificates shall make reference to all provisions and endorsements referred to above and shall be signed on behalf of the insurer by an authorized representative thereof.

H. Disclaimer. The foregoing requirements as to the types and limits of insurance coverage to be maintained by CONSULTANT are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by CONSULTANT pursuant hereto, including, but not limited to, liability assumed pursuant to Article 9 of this Agreement.

2. FINANCIAL SECURITY (BONDS)

Prior to performing any construction related work under this Agreement the in, the Contractor shall file with BAHA on the forms provided herein, two surety bonds in the amounts and for the purposes noted below, duly executed by a reputable surety company satisfactory to BAHA. Contractor shall pay all premiums and costs relating to the required bonds.

A. Performance Bond. Performance Bond in the amount of 100% of the initial contract amount to guarantee faithful performance of the work under this Agreement, including the replacing of or making acceptable, any defective materials or faulty workmanship.

See Attachment E-1, Bonds to Accompany Contract.

B. Payment Bond. Payment Bond in the amount of 100% of the initial contract to inure to the benefit of persons performing labor or furnishing materials in connection with the work of the proposed contract. This bond shall be maintained in full force and effect until all work under this Agreement is completed and accepted by BAHA, and until all claims for materials and labor have been paid.

Both the Performance Bond and the Payment Bond shall be issued by a surety company(ies) acceptable to BAHA with a Best Guide Rating of A-, IX or better, listed in Circular 570: Federal Treasury Listing of Qualified Sureties with a bond amount within the underwriting limitation, and authorized to execute such in the State of California.

Should any surety or sureties be deemed unsatisfactory at any time by BAHA, notice will be given Contractor to that effect, and Contractor shall forthwith substitute a new surety or sureties satisfactory to BAHA. The direct and indirect costs for replacement bonds shall be the sole responsibility of the Contractor.

After the trade packages are awarded, all alterations, time extensions, extra work, additional work or any other changes authorized in the Contract, may be made without notice to, or securing the prior consent of, the surety or sureties on the Performance or Payment Bonds.

As trade packages are awarded and incorporated into the prime contract, Contractor will within ten days secure a “Consent of Surety” to increase the performance and payment bond amount to reflect the revised contract amount.

See Appendix D, BAHA Professional Services Contract, Attachments E, E-1 and E-2 for complete insurance bonding requirements, including the Consent of Surety Form.

3. The following entities are to be named as Additional Insureds under applicable sections of this Attachment E and as BAHA Indemnified Parties, pursuant to Article 9 of the Agreement.

- Metropolitan Transportation Commission (MTC)
- Bay Area Toll Authority (BATA)
- Bay Area Air Quality Management District (BAAQMD)

ATTACHMENT E-2: CONSENT OF SURETY

Bond Number: _____

CONSENT OF SURETY

To be attached to and form a part of Performance and Payment Bond No. _____
in the amount of \$____ on behalf of __ as principal and executed by_____, as Surety, in favor of
The Bay Area Headquarters Authority (BAHA), hereinafter called "Owner", for the Regional
Agency Headquarters Facility at 390 Main Street, San Francisco: Renovation & Seismic Retrofit.

In consideration of the mutual agreements herein contained the Principal and the Surety hereby
consent to the following:

Incorporate Trade Packages and Change Orders to date.

Penal Amount of Bond Increased

From:

To:

Nothing herein contained shall vary, alter or extend any provision or condition of this bond
except as herein expressly stated.

Signed, Sealed and Dated this _____ day of _____, 2012.

(Principal)

By: _____

(Surety)

By: _____

Attorney-in-fact

ATTACHMENT E-2: BONDS TO ACCOMPANY CONTRACT

PAYMENT BOND TO ACCOMPANY CONTRACT

KNOW ALL MEN BY THESE PRESENTS

THAT WHEREAS, the Bay Area Headquarters Authority ("BAHA") has awarded to _____ as Principal, hereinafter designated as the "Contractor," a contract for the work described as follows:

AND WHEREAS, Contractor is required to furnish a bond in connection with said contract, to secure the payment of claims of laborers, mechanics or material suppliers employed on work under said contract as provided by law;

NOW, THEREFORE, We the undersigned Contractor and Surety are held and firmly bound unto the BAHA in the sum of _____dollars ____ (\$_____), said sum being 100% of the estimated amount payable by the said the BAHA under the terms of the contract, for which payment well and truly to be made we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly and by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH,

That if Contractor, his or its heirs, executors, administrators, successors, assigns or subcontractors shall fail to pay any of the persons named in Section 3181 of the Civil Code, amounts due under the Unemployment Insurance Code with respect to work or labor performed under the contract, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of the Contractor pursuant to Section 13020 of the Unemployment Insurance Code with respect to the work and labor, that the surety hereon will pay for the same, in an amount not exceeding the sum specified in this bond; otherwise, the above obligation shall be void. In case suit is brought upon this bond, the said surety will pay a reasonable attorney's fee to be fixed by the court.

This bond shall inure to the benefit of any of the persons named in Section 3181 of the Civil Code, so as to give a right of action to such persons or their assigns in any suit brought upon this bond.

IN WITNESS WHEREOF, we have hereunto set our hands and seals on this _____ day of _____ A.D., 2012.

Contractor

Surety

[SEAL]

Attorney in Fact

PERFORMANCE BOND TO ACCOMPANY CONTRACT

KNOW ALL MEN BY THESE PRESENTS

THAT WHEREAS, the Bay Area Headquarters Authority (“BAHA”) has awarded to _____

_____ as Principal, hereinafter designated as the “Contractor,” a contract for the work described as follows:

AND WHEREAS, Contractor is required to furnish a bond in connection with said contract guaranteeing the faithful performance thereof;

NOW, THEREFORE, We, the undersigned Contractor and Surety, are held and firmly bound unto BAHA, in the sum of _____ dollars (\$ _____), to be paid to BAHA or its certain attorney, its successors and assigns; for which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors or assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH,

That if Contractor, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and agreements in the foregoing contract and any alteration thereof made, as therein provided, on his or their part to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless BAHA, its officers and agents, as therein stipulated, then this obligation shall become and be null and void; otherwise, it shall be and remain in full force and effect.

IN WITNESS WHEREOF, we have hereunto set our hands and seals on this _____ day of _____ A.D., 2012.

Contractor
Surety
Attorney in Fact

ATTACHMENT F
Subconsultant List

	<u>Name/Address of Subconsultant</u>	<u>Amount of Subcontract</u>	<u>Description of Work</u>
1.			
2.			
3.			
4.			
5.			
6.			