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December 18, 2013

**REQUEST FOR QUALIFICATIONS (RFQ) / REQUEST FOR PROPOSALS (RFP)
for
WORKSTATION, OFFICE, PUBLIC SPACE AND ANCILLARY FURNITURE AND
INSTALLATION
for the
REGIONAL AGENCY HEADQUARTERS FACILITY
AT 375 BEALE STREET, SAN FRANCISCO
PART 1: RFQ**

Dear Dealer:

The Bay Area Headquarters Authority (BAHA) invites Dealers to submit a Statement of Qualifications (SOQ) to provide and install workstation and office (i.e. systems furniture, conference furniture, seating, storage units), public space and other ancillary furniture for the Regional Agency Headquarters Facility at 375 Beale Street, San Francisco (formerly known as 390 Main Street). BAHA is a Joint Powers Authority between the Metropolitan Transportation Commission (MTC) and the Bay Area Toll Authority (BATA).

This document together with its enclosures comprises the Request for Qualifications (RFQ) for this project. You may download a copy of the RFQ from MTC's website at <http://www.procurements.mtc.ca.gov/>. Responses should be submitted in accordance with the instructions set forth in this Part 1: RFQ.

This RFQ will be used to create a list of firms that meet the Minimum Qualifications and Requirements listed in Section II of this RFQ. The prequalified firms will receive a separate Request for Proposals (RFP) (Part 2). A Dealer will be selected from the prequalified firms that submit a proposal in response to Part 2: RFP. Please see Section VIII, for detailed information on the Part 2: RFP evaluation process.

SOQ Due Date

Interested firms must submit one (1) original and ten (10) copies, as well as one electronic PDF version, of their SOQ by 4:00 pm, Tuesday, January 7, 2014. **SOQs received after that date and time will not be considered.** SOQs shall be considered firm offers to provide the services described for a period of one hundred and twenty (120) days from the time of submittal.

BAHA Point of Contact

Teri L. Green will be BAHA's Project Manager and point of contact for this contract. SOQs and all inquiries relating to this RFQ shall be submitted to Teri L. Green, Project Manager, at the address shown below. For telephone inquiries, call (510) 817-5750. E-mail inquiries may be directed to tgreen@mtc.ca.gov.

Teri L. Green, Project Manager
Bay Area Headquarters Authority
Joseph P. Bort MetroCenter
101 Eighth Street
Oakland, CA 94607-4700

Thank you for your participation.

Sincerely,



Andrew B. Tremier
Deputy Executive Director, Operations

AF:dr

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I. BACKGROUND AND PROJECT DESCRIPTION

A. Background

The Metropolitan Transportation Commission (MTC) was created by the state Legislature in 1970 (California Government Code § 66500 et seq.) to serve as the transportation planning, coordinating and financing agency for the nine-county San Francisco Bay Area. MTC's 21 commissioners also operate as the Bay Area Toll Authority (BATA).

BATA was created by the California Legislature in 1997 to administer the base \$1 auto toll on the San Francisco Bay Area's seven state-owned toll bridges. In August 2005, the California Legislature expanded BATA's responsibilities to include administration of all toll revenue and joint oversight of the toll bridge construction program with Caltrans and the California Transportation Commission. Caltrans owns and operates the state-owned bridges. Day-to-day staffing for BATA is provided by the Bridge and Highway Operations Department of MTC.

The Bay Area Air Quality Management District (Air District) was created by the California Legislature in 1955 as the first regional air pollution control agency in the country. The Air District is the public agency entrusted with regulating stationary sources of air pollution in the nine-county Bay Area.

The Association of Bay Area Governments (ABAG) was created by the state Legislature in 1961 (California Government Code § 66500 et seq.) to serve as the regional planning agency and council of governments (COG) for the nine counties and 101 cities and towns of the San Francisco Bay Area, including coastal communities, older industrial centers, rural towns and big cities.

The Bay Area Headquarters Authority (BAHA) was created as a Joint Powers Authority (JPA) between BATA and MTC. BAHA purchased 375 Beale Street (formerly known as 390 Main Street, San Francisco) in October 2011 and is renovating the building as the Regional Agency Headquarters Facility for MTC, BATA, the Air District and ABAG. The co-location of the regional agencies encourages further integration of regional planning efforts currently under the umbrella of One Bay Area.

The 375 Beale Street design team is led by architects from Perkins+Will (P+W) and workplace programming and interior designer Tom Eliot Fisch (TEF). Construction is currently underway to transform the existing 500,000 square foot eight-story building into a multi-agency, multi-functional regional facility with public amenities. Given the vast floor plates, the design includes creating an eight story atrium to allow for natural light throughout the structure. The regional agencies expect to commence relocation to 375 Beale Street starting in March 2015.

As the owner of the building, it is the desire of BAHA to develop a long term relationship with a Dealer to purchase new furniture for the office spaces occupied by the regional agencies. It is understood that the Dealer will be comprised of a manufacturer/dealer team. Either the manufacturer or the dealer will serve as the prime contractor ("the Dealer") and enter into a contract with BAHA. The other member of the team will be a subcontractor to the Dealer. All

furniture shall be designed and finished to provide a unified and cohesive look throughout the agency space. See Appendix A for reference floor plans.

The selected Dealer is expected to furnish all labor, supervision, materials, supplies, tools, equipment and expertise to perform the installation of all furniture including design, project management and coordination, and on-going support services for the initial purchase and for future orders and upgrades. The selected Dealer shall also coordinate delivery and installation with the BAHA project team and other service providers such as telecom and electrical services. Section IX, General Conditions, Article G, Cooperative Use of this procurement allows partner agencies residing at 375 Beale Street (i.e., MTC, Air District and ABAG) to purchase additional furniture and ancillary items using the agreed discount structure for additional purchases at 375 Beale Street under their own separate purchase orders.

B. Goals of Request for Qualifications (RFQ) and Request for Proposal (RFP):

The goal of the RFQ and the RFP process is to provide BAHA, as the “Owner”, an opportunity to thoroughly evaluate interested furniture manufacturer / dealer teams; eventually leading to the selection a single furniture Dealer to furnish the agency’s office spaces in the new facility. The initial scope includes approximately 550 office/workstations with 20-25% closed and 75-80% open offices and 50 conference rooms.

It is the intent of the BAHA to enter into an agreement with the Dealer that will establish a discounting structure and professional services cost agreement that can be applied to products drawn from the “manufacturers major lines” and “partnership” companies; as well as establishing a fixed gross profit mark-up and professional services cost agreement for public space and ancillary furniture drawn from “open line” products provided by other manufacturers.

Additional information regarding the preliminary scope of services and the desired Owner/ Dealer relationship; as well as schematic plans indicating the scope of office furniture needed for new facility are included in Section VIII.B, and Appendix A of this RFQ.

II. PROPOSER MINIMUM QUALIFICATIONS AND REQUIREMENTS

1. Minimum Qualifications

SOQs must demonstrate that the Dealer meets the following minimum qualifications to be eligible for consideration and inclusion in Part 2: RFP:

Primary Team Members - Similar Experience - Minimum Qualification 1a:

Proposed Manufacturer/Dealer Team Primary Members (*Dealer: Project Principal and Account Manager; Manufacturer: Architecture and Design (A&D) Representative*)

Each primary team member (listed above) must have successfully completed a minimum of one (1) precedent installation within the last ten (10) years that exhibit similarities to this project in scope, size, character and budget.

A similar installation is defined as an installation that includes a mix of enclosed offices, open workstations, conference rooms and other ancillary furniture with a total project budget (including installation) of \$3 million or more.

Primary Team Members - Other Experience - Minimum Qualification 1b:

Proposed Manufacturer/Dealer Team Primary Members (*Dealer: Project Principal and Account Manager; Manufacturer: A&D representative*)

Each primary team member (listed above) must have completed a minimum of two (2) other installation within the last ten (10) years that exhibit similarities to this project; but may vary in scope, size, character and budget.

Project Coordination Experience - Minimum Qualification 1c:

Proposed Manufacturer/Dealer Project Members (*Dealer: Project Coordinator and the Field Project Manager*)

Each team member (listed above) must have completed a minimum of three (3) installations in the last ten (10) years that demonstrate specific experience coordinating with General Contractor and construction trades; particularly electrical and data-wiring subcontractors.

Pricing Experience - Minimum Qualification 1d:

Proposed Manufacturer and Dealer firms (as specified below) must have prior experience involving each of the following elements in one or more projects:

- a. A “best value” or other evaluation process that involved technical and price factors that was not low bid (*Both Manufacturer and Dealer*)
- b. Disclosure of discounting structures offered to at least two “Group Purchasing Organizations” or government agency (*Manufacturer only*);
- c. Negotiation phase leading to “best and final” offer (*Both Manufacturer and Dealer*); and
- d. “Open Book” policy toward gross profit mark-up and professional service costs relating to specification and procurement of open-line ancillary product (*Dealer only*).

Principal Office - Minimum Qualification 1e:

Both the Manufacturer and Dealer must have a principal office or showroom located in the nine-county San Francisco Bay Area.

III. SCOPE OF WORK, PERIOD OF PERFORMANCE, AND BUDGET

A. Scope of Work

The purpose of this RFQ is to identify Dealers interested in and qualified to respond to a future Request for Proposal (RFP) to provide and install office furniture (i.e., including systems/workstations, conference furniture, chairs, and storage units), public space and other ancillary furniture for the Regional Agency Headquarters Facility at 375 Beale Street, San Francisco (formerly known as 390 Main Street).

More information on the preliminary scope of work for the project is provided in Section VIII, Statement of Qualification Evaluation.

B. Period of Performance

BAHA expects to award a ten (10) year Agreement with the selected Dealer team with the work to commence on or about April 2014 with the furniture procurement process, including installation, completed on or before March 2015. At BAHA’s sole option, the contract may be extended for up to two (2) additional five year periods. See *Appendix A, Preliminary Scope of Work*.

C. Budget

BAHA has budgeted approximately \$5.0 million for the procurement of new furniture for the initial move-in. The anticipated installed cost of desking, conference, filing and seating drawn from the manufacturer’s primary lines is approximately \$3.8 million and installed cost for open-line public space and ancillary furniture will be approximately \$1.2 million. Additional funding for subsequent purchases will be allocated within the annual budget, subject to annual approval by BAHA’s governing body.

IV. REQUESTS FOR CLARIFICATION OR EXCEPTIONS, AND ADDENDA

Any requests for clarification, or questions regarding RFQ requirements, or requests for exceptions to or modifications of RFQ provisions must be received by BAHA no later than 4:00 p.m. on Monday, December 30, 2013 to guarantee consideration.

Any addenda to this RFQ that may be issued by BAHA will be posted at <http://procurements.mtc.ca.gov/>. It is the proposers responsibility to check for addenda and questions and answers related to this RFQ and comply with new or revised requirements that may be stated therein.

V. DEALER SELECTION TIMETABLE

4:00 p.m., Monday, December 30, 2013	Closing date/time for receipt of requests for clarification/exceptions
No later than 4:00 p.m. three (3) working days prior to the date SOQs are due	Deadline for protesting RFQ provisions
4:00 p.m., on Tuesday, January 7, 2014	Closing date/time for receipt of Statement of Qualification
Friday, January 10, 2014*	Firms meeting minimum qualifications notified
Friday, January 10, 2014*	RFP distributed to firms meeting minimum qualifications
January - March 2014*	Proposal Submission process

April 2014*	BAHA approval of selection of Team
May 2014*	Agreement executed
March-April 2015*	Installation Completion

**Dates are approximates and are subject to change.*

VI. SUBMITTAL OF SOQ

SOQ content and completeness are most important. Clarity is essential and will be considered in assessing the proposer's capabilities. Proposers are asked to print on both sides of each page and encouraged to use recycled paper.

1. Interested firms must submit an original (labeled "Original") and ten (10) copies (labeled "Copy") of their SOQ by **4:00 p.m., Tuesday, January 7, 2014.**

2. SOQs are to be addressed as follows:

BAHA Facility Workstation, Office, Public Space and Ancillary Furniture SOQ
Attention: Teri L. Green
BAHA
101 8th Street
Oakland, CA 94607

3. Proposer's name and return address must also appear on the envelope.

4. SOQs will be received only at the address shown above, and **not later than the time indicated.** Any proposals received after said time and date or at a place other than the stated address cannot be considered and will be returned to the Proposer unopened.

5. No telephone, email, or facsimile SOQs will be considered.

6. All SOQs, whether delivered by an employee of the Proposer, U.S. Postal Service, courier or package delivery service, must be received and time stamped at the stated address **not later than the time designated.** The receptionist desk's timestamp located on the 3rd floor shall be considered the official timepiece for the purpose of establishing the actual receipt of SOQs.

7. Proposer agrees and acknowledges all RFQ specifications, terms and conditions and indicates ability to perform by submission of an SOQ.

8. A signed SOQ submitted to BAHA in response to this RFQ shall constitute a binding offer from Proposer to contract with BAHA according to the terms of the SOQ for a period of one hundred twenty (120) days after the SOQs are due to BAHA.

9. Neither this Part 1: RFQ nor the coming Part 2: RFP commit BAHA to award a contract or to pay any costs incurred in the preparation of an SOQ or proposal in response to either this Part 1: RFQ or Part 2: RFP, respectively.
10. Only one SOQ will be accepted from any one person, partnership, corporation, or other entity.
11. BAHA reserves the right to accept or reject all SOQs and subsequent proposals submitted, waive minor irregularities, request additional information, or revisions to offers, and negotiate with any or all proposers.
12. BAHA reserves the right in its sole discretion not to enter into any contract as a result of this RFQ.

VII. FORM OF SOQ

1. SOQ responses are to be straightforward, clear, concise and specific to the information requested.
2. In order for SOQs to be considered complete, Proposer must provide all information requested. Sections that should be included in SOQ are listed herein.
3. Recommended page limits, where specified, are for each side of print. Proposers are encouraged to print double-sided copies to save paper.
4. Provide the following information in your SOQ.

Section	Reviewed as an MQ?
<p>A. Transmittal: letter signed by an official authorized to solicit business and enter into contracts for the Dealer and the name and telephone number of a contact person, if different from the signature. Authorized official shall certify that all information in the SOQ is true and correct by including the statement:</p> <p style="padding-left: 40px;">“I, the undersigned, certify and declare that I have read all the foregoing responses to the questions of each Section of this Statement of Qualifications and know their contents. The matters stated in the responses to each Section are true and correct to the best of my information, knowledge, and belief.”</p>	Required but not reviewed as MQ.
<p>B. Title Page: that includes the RFQ subject, the full legal name of the Dealer’s firm, local address, telephone and fax numbers, website, name of contact person, contact person’s telephone number and email address, and the date.</p>	Required but not reviewed as MQ.

<p>C. Table of Contents: that includes a clear identification of the material by section and page number.</p>	<p>Required but not reviewed as MQ.</p>
<p>D. Prior Contracts: Provide a summary of all contracts the Dealer (including subconsultants, if any) has held with MTC, BATA, the Air District or ABAG in the past three years, including a brief description of the scope of work, the contract amount, and date of execution.</p>	<p>Required but not reviewed as MQ.</p>
<p>E. Signed California Levine Act Statement: Dealer is required to provide a signed California Levine Act statement.</p>	<p>Required but not reviewed as an MQ.</p>
<p>F. Signed Iran Contracting Act: Per AB 1650, Iran Contracting Act of 2010, which adds Sections 2200 et seq. to the California Public Contract Code, requires Proposers for contracts equal to or in excess of one million dollars (\$1,000,000) to certify, at the time of proposal submission that proposer is not identified on a list created pursuant to subdivision (b) of Section 2203 as a person engaging in investment activities in Iran described in subdivision (a) of Section 2202.5, or as a person described in subdivision (b) of Section 2202.5, as applicable. Submit a signed <u>Iran Contracting Act Document</u>, (<i>Appendix D</i>).</p>	<p>Required but not reviewed as an MQ.</p>
<p>G. Principal Office Location: Provide a completed <i>Appendix A-1, Principal Office Location</i> form, including the the address, city, state and zip code forboth the Manufacturer and the Dealer’s principal office or showroom located in the nine-county Bay Area region, along with the number of years operating in the nine-county Bay area region.</p>	<p>Reviewed in relation to MQ 1e.</p>
<p>H. Key Personnel: This section identifies the required key personnel who will work on this project.</p> <ol style="list-style-type: none"> (1) Complete and submit <i>Appendix A-2, Key Personnel Matrix</i>, identifying the required Key Personnel and list the project(s) that demonstrate their specific experience meeting the Minimum Qualifications (1a, 1b and 1c). (2) Include an organizational chart that includes the reporting relationship between the proposed Key Personnel and other team members. (3) Provide the professional resumes of key personnel. The resumes are to include the following information: <ul style="list-style-type: none"> • Name and proposed assignment for the Manufacturer/Dealer team; • Total years of furniture experience and total years with present 	<p>Reviewed in relation to MQs 1a, 1b, and 1c.</p>

<p>employer;</p> <ul style="list-style-type: none"> • Education - degrees, schools and years obtained; • Professional registration; • At least two client references, including contact names, addresses, telephone numbers, and email addresses; and • Description of projects worked on in the past five years. Identify their specific role on each project. <p><i>Note: Suggested page limit of 2 page maximum per resume.</i></p>	
<p>I. Primary Team Members - Similar Projects: Provide descriptions, narratives and photographs of projects completed by the primary team members assigned as the Project Principal, Account Manager and the Architecture and Design Representative within the last ten (10) years that exhibit similarities to this project. In the absence of photographs of the completed projects, proposers may substitute photos of the actual mock-up(s) and/or rendered images(s) generated during the specification/design process.</p> <p>Must identify a minimum of one (1) project for each team member (listed above). For each project, provide a table that includes:</p> <ol style="list-style-type: none"> (1) Project name (2) Owner legal business name and telephone number (3) Owner’s project manager’s name, telephone number, and email address (4) Date of substantial completion of installation (5) Total project budget (6) Identify Primary Team Member(s) involved and their specific role (7) Provide a brief description of how the project is similar to the focus of this RFQ and identify the characteristics of the project that make it noteworthy <p><i>Note: Suggested page limit of 12 pages maximum.</i></p>	<p>Reviewed in relation to MQs 1a.</p>
<p>J. Primary Team Members - Other Projects: Provide descriptions, narratives and photographs of other projects completed by the primary team members assigned as the Project Principal, Account Manager and Architecture and Design Representative within the last ten (10) years that exhibit similarities to this project, but may vary in scope, size, character and budget. In the absence of photographs of the completed projects, proposers may substitute photos of the actual mock-up(s) and/or rendered image(s) generated during the specification/design process.</p>	<p>Reviewed in relation to MQs 1b.</p>

<p>Must identify a minimum of two (2) other projects for each team member (listed above). For each project, provide a table that includes:</p> <ol style="list-style-type: none"> (1) Project name (2) Owner legal business name and telephone number (3) Owner’s project manager’s name, telephone number, and email address (4) Date of substantial completion of installation (5) Total project budget (6) Identify Primary Team Member(s) involved and their specific role (7) Provide a brief description of how the project is similar to the focus of this RFQ and identify the characteristics of the project that make it noteworthy <p><i>Note: Suggested page limit of 12 pages maximum.</i></p>	
<p>K. Project Coordination: Provide descriptions, narratives and photographs of projects completed by the key personnel assigned as the Project Coordinator and the Field Project Manager within the last ten (10) years that demonstrate specific experience coordinating with General Contractor and construction trades, particularly electrical and data-wiring sub-contractors. In the absence of photographs of the completed projects, proposers may substitute photos of the actual mock-up(s) and/or rendered image(s) generated during the specification/design process.</p> <p>Must identify a minimum of three (3) projects for each team member (listed above). For each project, provide a table that includes:</p> <ol style="list-style-type: none"> (1) Project name (2) Owner legal business name and telephone number (3) Owner’s project manager’s name, telephone number, and email address (4) Date of substantial completion of installation (5) Total project budget (6) Identify Project Coordinator and/or Field Project Manager involved and their role (7) Provide a brief description of the project and identify the characteristics of the project that make it noteworthy <p><i>Note: Suggest page limit of 12 pages maximum.</i></p>	<p>Reviewed in relation to MQ 1c.</p>
<p>L. Pricing Experience: Provide a descriptive narrative detailing the Manufacturer and the Dealer (firm’s) prior experience participating in projects that involved the following:</p> <ol style="list-style-type: none"> 1) An evaluation process that was a “best value” or other process that 	<p>Reviewed in relation to MQ 1d.</p>

<p>involved the technical and price factors that was not low bid.</p> <ol style="list-style-type: none">2) Disclosure of discounting structures offered to at least two “Group Purchasing Organizations” or government agency. (Manufacturer only)3) Negotiation phase leading to “best and final” offer.4) “Open Book” policy toward gross profit mark-up and professional service costs relating to specification and procurement of open-ancillary product. (Dealer only) <p><i>Note: Suggest page limit of 4 pages maximum.</i></p>	
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VIII. STATEMENT OF QUALIFICATION EVALUATION

A. Verification of Minimum Qualifications

The Project Manager will review SOQs to ensure that each SOQ meets the Minimum Qualifications set out in Section II, Proposer Minimum Qualifications and Requirements of this RFQ. Proposers failing to meet the Minimum Qualifications and Requirements will not be invited to be submit a proposal in response to Part 2: RFP.

BAHA reserves the right to request additional information from proposers prior to prequalification for inclusion in Part 2: RFP. The verification of SOQs for compliance with the Minimum Qualifications and Requirements shall be within the sole judgment and discretion of the BAHA Project Manager.

B. Prequalified Firms/Part 2: Request for Proposal (RFP) Process

Only the firms pre-qualified as meeting the Proposer Minimum Qualifications and Requirements, listed in Section II under Part 1: RFQ will receive the Part 2: RFP, the second step of this procurement process.

The Part 2: RFP evaluation will involve a “best value” approach specifically intended to allow a balanced assessment of product quality, character, sustainability and cost. Consideration will also be given to the experience and suitability of the Manufacturer/Dealer teams, their proven ability to contribute as a “partner” to the specification and procurement process and their reputation for service and professional support post-installation.

The Part 2: RFP evaluation process will look to confirm that the proposing Manufacturer/Dealer teams clearly understand the responsibilities they are expected to undertake if awarded the project. These are expected to include, but are not limited to, the following:

General:

- Provide and install all products required to furnish the new facility at 375 Beale Street.

- Provide project administration, supervision and ongoing support services needed for initial purchase and any future orders or upgrades.
- Maintain current project schedules to track all processes involved in design, manufacturing and installation of furniture.
- Coordinate with General Contractor, their subcontractors and BAHA service providers as required.
- Maintain complete documentation of purchased orders, purchased inventory and current installation plans for use when future orders or upgrades are undertaken.

During the Design Phase:

- Perform the work at all times with a sufficient staff to carry out the obligations in an efficient and timely manner, and in accordance with the agreed upon Project Schedule.
- The Manufacturer/Dealer team shall meet with BAHA, and BAHA's representatives weekly to review plans, specifications and all other tasks required to develop furniture orders.
- Ongoing development of detailed project budgets and product pricing that track with the development of the furniture specifications.
- Prepare furniture plans for all floors based on backgrounds provided by Architect.
- Provide drafts of all pending Purchase Orders to BAHA and Architect review and approval.
- Test-fit and verify critical dimensions of walls, power/data outlets and other related items at 375 Beale Street and coordinate with the General Contractor and other contractors/dealers.

During the Manufacturing Phase:

- Track and coordinate all furniture orders/deposits and provide a bi-monthly schedule update.
- Coordinate all submittals and other required approvals with Architect.
- Attend weekly construction meetings on an on-call basis.
- Secure all necessary permits required by the Local Code Jurisdiction.

During the Installation Phase:

- Provide an on-site project manager during the installation to supervise installation activities, including any subcontracted work.
- Perform as needed punch lists and provide a schedule for the completion of the punch list items to the satisfaction of BAHA.
- Be responsible for all materials and equipment prior to installation, and until acceptance is given in writing by BAHA. The Team shall assume responsibility for any loss or expense associated with storing materials and equipment prior to the date of acceptance.
- Provide floor protection as necessary for delivery, and be responsible for removing all debris associated with the furniture delivery and set up.
- Coordinate with any BAHA directly hired vendors (e.g. data cabling or security) in the installation process.
- Prepare and update installation schedules or sequences as changes required.

- Receive and pass all applicable inspections from the Local Code Jurisdiction and obtain sign off of installation permits.
- Coordinate all product deliveries with the General Contractor and BAHA's Representative.

During the Post-Installation Phase:

- Lead a furniture punch-list review with BAHA and BAHA's representative and resolve all items within two weeks or as soon as practical for long-lead replacement items.
- Prepare as-built drawings and provide them in both electronic and hard-copy formats.
- Provide orientation + training for staff assigned to maintain new furniture.
- Provide a post-occupancy review within one (1) month of installation finish to address any outstanding issues.

Ongoing Support:

- Manufacturer/Dealer team will be expected to provide services and product when future orders or upgrades are undertaken.
- Extension of discounting schedule, mark-up, service costs and open-line agreements will be requested for a period of no less than 18 months from completion of initial project install.

Minimum Qualifications

Respondents to the RFP will be asked to provide documentation that establishes their minimum qualifications related to product offerings and the project requirements listed below:

- Stability and duration of product offerings: indicate extent to which manufacturer's primary lines meet or exceed the consistency goals for the project – 10 years of successful past installations and an anticipated 5 years beyond the BAHA installation date.
- Warranty of product offerings: indicate extent to which the manufacturer's primarily lines can support the warrantee goals for this project --- 10 years (or better) for fixed components of desking, conference, storage and seating drawn for manufacturer's primarily lines; 7 years (or better) for operational parts / mechanisms, controls, electrical components.
- Green Products: indicate extent to which the manufacturer's primarily lines can support the environmental goals for this project --- third-party certification of products and manufacturing facilities, recyclability and recycled content of products, reduction and reuse of packaging and shipping materials; pursuit of sustainability improvements with supply chain partners.
- Prevailing Wage: certify that Manufacturer/Dealer will meet prevailing wage requirements for all subcontractors or in-house staff responsible for the receipt, warehousing, delivery or installation of all systems and ancillary furniture.

Other Requirements

- Insurance Provisions: Dealer must submit a signed Insurance Provisions Document (attached as *Appendix C-2*). Subconsultants (if any) are not required to provide a signed

Insurance Provisions Document with the Form of Proposal; however, the selected Dealer will be required to ensure subcontractor whose subcontracts exceed \$25,000 provide the required levels of insurance.

- Bonding Assurance: Dealer must provide written assurance from a surety that it will issue performance and payment bonds with Respondent as principal and BAHA as sole obligee, in the format provided below. Such surety must be authorized to do business in California and have an A.M. Best Rating of not less than A-VII.

Respondents shall provide a letter from their surety company, not their surety broker, confirming the surety relationship and with the following text:

We provide surety credit to (insert name) and have reviewed the contract documents for 375 Beale Street with an estimated engineers estimate of \$5,000,000.

The surety program in place for (insert name) is adequate for the project at 375 Beale Street.

Evaluation Criteria

The anticipated RFP evaluation technical and cost factors will concentrate on four areas that are considered critical for the evaluation team to arrive at a “best value” determination.

Progress Submittal #1, Progress Submittal #2, Work Station Mock-Up, and Best and Final Offer (BAFO) if issued, shall include the following:

a. Progress Submittal #1:

RFP materials will include prototype(s) of a typical workstation cluster comprised of 8’x10” stations and typical 100 sq. ft. private office. Teams will be asked to provide pricing and solutions for these prototypes, focusing on the following process milestones: cost, program response and aesthetics.

BAHA responses returned to proposers will then initiate Progress Submittal #2 detailed below.

b. Progress Submittal #2:

Proposals will be required to include the following:

- Discounting schedule for Manufacturer’s Primary Lines and proposed dealer mark-up.

RFP materials will request that the respondents provide a discounting schedule for all products to be made available from the manufacturer’s primary lines and those of their partnership companies. Duration of discounts offered, minimum orders, incentives or discounting indexed to size of orders and any similar details will need to be clearly stated. In addition, the RFP documents will request that the dealer clearly state their proposed percentage of mark-up (profit) to be added to the manufacturer’s unit price. *It is currently anticipated that the scope of product*

drawn from the manufacturer's primary lines will comprise approximately 80% of the unit cost of the furniture budget.

- Procurement of Open-line Ancillary Product.

RFP materials will request that the respondents detail their gross profit mark-up and confirm their willingness to participate in an “open book” process regarding the specification, ordering and installation of “open-line” ancillary product. *It is currently anticipated that the scope of product drawn from the “open-line” manufacturers will comprise approximately 20% of the unit cost of the furniture budget.*

- Distinguishing between Unit Costs and Professional Service Costs.

RFP materials should clearly distinguish between unit pricing and costs directly related to dealer staffing costs needed to successfully complete design, manufacturing, installation and post-installation phases. If awarded the project, the team will be required to generate professional service fee proposals that are distinct from each purchase order throughout the course of the project.

Following Progress Submittal #2, the evaluation panel will develop a “short list” of proposers, consisting of those proposers reasonably likely, in the opinion of the panel, to be awarded the contract issued resultant of Part 2: RFP.

c. Work Station Mock-Ups:

Shortlisted Dealers will present a two seat workstation mock-up and a single private office mock-up built at the job site.

d. Request for Best and Final Offer (BAFO):

Following the Work Station Mock-Ups, the evaluation panel may elect to recommend award to a particular Dealer (with or without interviews), or to enter into discussions with the “short listed” proposers.

The purpose of discussions with a Proposer on the “short list” will be to identify to Proposer that the specific deficiencies and weaknesses in its proposal and to provide the Proposer with the opportunity to consider possible approaches to alleviating or eliminating them. These deficiencies or weaknesses may include such things as technical issues, management approach, cost, or team composition. Discussions may take place through written correspondence and/or during face-to-face interviews. The Proposer's project manager, as well as other key personnel identified by the evaluation panel, will be expected to participate in any discussions. A proposer on the “short list” invited to participate in discussions will be expected to provide a presentation limited to 20 minutes consisting of an overview of its approach to the Project.

Following discussions, if held, proposers on the “short list” will be given the opportunity to revise their submittals and Work Station Mock-Up to address the concerns raised during discussions through issuance of Request for Best and Final Offer (BAFO).

Following receipt of the BAFOs, the evaluation panel will evaluate the BAFOs against the evaluation criteria.

BAHA reserves the right not to convene oral interviews or discussions, and to make an award on the basis of initial proposals. Accordingly, each initial proposal should be submitted on the most favorable terms from a price and a technical viewpoint. References may be contacted at any point in the evaluation process.

At the end of the Part 2: RFP evaluation process, the Dealer whose proposal is the most advantageous to BAHA based on the evaluation criteria specified in Part 2: RFP will be recommended by the evaluation panel to the BAHA Executive Director. The BAHA Executive Director will review the recommendation and, if he agrees, will forward it to the BAHA for approval.

IX. GENERAL CONDITIONS FOR PROFESSIONAL SERVICES

A. Contract Arrangements

The Dealer selected resultant of the Part 1: RFQ and Part 2: RFP will be required to enter into *Appendix C, BAHA Professional Services Contract* for the initial term/installation portion of the Agreement. All orders placed by BAHA after the initial term of the Agreement will be made via *Appendix C-1, BAHA Purchase Order*.

The boilerplate BAHA Professional Services Contract and BAHA Purchase Order are enclosed for your reference as *Appendix C and Appendix C-1 respectively*. If a proposer wishes to propose a change to any standard BAHA contract provision, the provision and the proposed alternative language must be submitted prior to the closing date for receipt of requests for clarifications/exceptions listed above. If no such change is requested, the Manufacturer/Dealer will be deemed to accept BAHA's standard contract provisions. If BAHA elects to revise the agreement, such revision(s) will be issued to all proposers.

The selected Manufacturer/Dealer will be required to maintain the required insurance and bonds, during the term of the contract, at the levels described in *Appendix C, BAHA Professional Services Contract* and *Appendix C-2, Insurance Provisions Document*. Manufacturer/Dealer agrees to provide the required certificates of insurance providing verification of the minimum insurance requirements in *Appendix D*, within ten (10) days of BAHA's notice that it is the successful proposer. Requests to change BAHA's insurance or bonding requirements should be submitted on or prior to the closing date for receipt of requests for clarifications/exceptions listed above. BAHA will review the requests and issue an addendum if material changes requested by a prospective proposer are acceptable. Objections to BAHA determinations on requests to change insurance requirements must be brought to BAHA's attention no later than the date for protesting RFQ provisions listed above. If such objections are not brought to BAHA's attention consistent with the protest provisions of this RFQ, compliance with all material insurance requirements will be assumed.

The Contract will include a provision permitting BAHA to terminate the Contract with the selected Dealer within ninety (90) days of contract execution, at its sole discretion: (a) if Dealer has not satisfactorily complied with the requirements of the contract's scope of work, as set forth in this RFQ and (b) if the areas of noncompliance are such that by their nature are unlikely to be capable of cure. In such event, BAHA will provide no less than forty-five (45) days advance notice to Dealer of the intent to terminate, and BAHA will have the right to negotiate with the next highest ranked proposer under the terms of the RFP. BAHA also reserves the right to cancel this procurement and re-procure the Dealer for this project if it is determined to be in its best interest to do so.

B. Bonds

Performance and Payment

The successful Dealer must provide bonds or other security adequate to protect BAHA. Ten (10) days prior to performing any work under this Contract, the Dealer shall file with BAHA on the forms provided in *Appendix C* herein two surety bonds in the amounts and for the purposes noted below, duly executed by a reputable surety company satisfactory to BAHA. Dealer shall pay all premiums and costs relating to the required bonds.

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

Payment Bond in the amount of 100% of the initial contract amount 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 the contract 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 acceptable to BAHA with a Best Guide Rating of A- VII 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 to the Dealer to that effect, and Dealer 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 Dealer.

After the contract resultant of this Part 1: RFQ, and Part 2: RFP is 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 alterations, time extensions, extra work, additional work or any other changes are authorized and incorporated into the contract, Dealer 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 C-2, Appendix C-3 and Appendix C-4*, for complete insurance and bonding requirements, including the Consent of Surety Form.

C. Selection Disputes

A Dealer may object to a provision of the RFQ on the grounds that it is arbitrary, biased, or unduly restrictive, or that it should have been found to have met the Minimum Qualifications by submitting to the Project Manager a written explanation of the basis for the protest:

- 1) No later than 4:00 p.m. three (3) working days prior to the date SOQs are due, for objections to RFQ provisions; or
- 2) No later than 4:00 p.m. three (3) working days after the date the firm is notified that it did not meet the Minimum Qualifications and Requirements.

Except with regard to initial determinations of non-responsiveness or failure to meet the minimum requirements, the evaluation record shall remain confidential until BAHA authorizes award.

Protests must clearly and specifically describe the basis for the protest in sufficient detail for the BAHA Review Officer to recommend a resolution to the Executive Director.

The Executive Director will respond to the protest in writing, based on the recommendation of a staff Review Officer.

Should the Proposer wish to appeal the decision of the BAHA Executive Director, it may file a written appeal with BAHA, no later than three (3) working days after receipt of the written response from the BAHA Executive Director. BAHA’s decision will be the final agency decision.

D. Public Records

This RFQ and any material submitted in response to this RFQ are subject to public inspection under the California Public Records Act (Government Code § 6250 et seq.), unless exempt by law. Other than proprietary information or other information exempt from disclosure by law, the content of SOQs submitted to BATA will be made available for inspection consistent with its policy regarding Public Records Act requests.

Each proposer must clearly mark each page of the SOQ that the proposer considers to contain trade secrets or other confidential commercial or financial information that the proposer believes would cause substantial injury to the proposer’s competitive position, if disclosed, and include the following notice at the front of its SOQ:

“The data on the following pages of this SOQ, marked along the right margin with a vertical line, contain technical or financial information which are trade secrets and/or which, if disclosed, would cause substantial injury to the proposer’s competitive position. The proposer requests that such data be used for review by BAHA only, but understands that exemption from disclosure will be limited by BAHA’s obligations under the California Public Records Act. [List pages].”

Failure to include this notice with relevant page numbers shall render any “confidential/proprietary” markings inadequate. Individual pages shall accordingly not be treated confidentially. **Any language purporting to render the entire SOQ confidential or proprietary will be regarded as ineffective and will be disregarded. In addition, the proposer may not designate any required SOQ forms or the cost proposal as confidential. Consequently, any language purporting to render any SOQ forms or the cost proposal as confidential or proprietary will be regarded as ineffective and will be disregarded.**

In the event properly marked data is requested pursuant to the California Public Records Act, the proposer will be advised of the request. If the SOQ requests that BAHA withhold such data from disclosure and BAHA complies with the proposer’s request, the proposer shall assume all responsibility for any challenges resulting from the non-disclosure; indemnify and defend BAHA and hold it harmless from and against all claims, legal proceedings, and resulting damages and costs (including but not limited to attorneys’ fees that may be awarded to the party requesting such proposer information); and pay any and all costs and expenses relating to the withholding of the proposer information.

If the proposer does not mark each page containing proprietary information as confidential, does not include the statement described above at the front of its SOQ, and does not request BAHA withhold information marked as confidential and requested under the California Public Records Act, BAHA shall have no obligation to withhold the information from disclosure, and the proposer shall not have a right to make a claim or maintain any legal action against BAHA or its commissioners, officers, employees or agents in connection with such disclosure.

E. Key Personnel

Key Personnel assigned to the project are expected to remain on the project. Any change in key staff persons of the proposed project team is subject to prior written approval of BAHA. Removal of any Key Personnel identified in the SOQ without written consent of the Project Manager may be considered a material breach of contract.

F. Organizational Conflicts Of Interest

Proposer shall take all reasonable measures to preclude the existence or development of an organizational conflict of interest in connection with work performed under the agreement resulting from this and other BAHA solicitations. 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 Project. Whenever BAHA is awarding a contract that involves

the rendering of advice, it will consider whether there exists the potential for bias, because of other activities, relationships or contracts of the Dealer, and if so, whether any potential bias can be mitigated acceptably by BAHA and the Dealer.

Proposer shall not engage the services of any subcontractor or independent contractor on any work related to this Agreement if the subcontractor or independent contractor, or any employee of the subcontractor or independent contractor, has an actual or apparent organizational conflict of interest related to work or services contemplated under this Agreement.

G. Cooperative Use

The Metropolitan Transportation Commission (MTC), Bay Area Air Quality Management District (BAAQMD), and the Association of Bay Area Governments (ABAG) may utilize the RFQ/RFP to obtain Workstation, Office, Public Space and Ancillary Furniture and Installation Services at the same terms and conditions included in this RFQ/RFP and firms' SOQ, and proposal, during the period of time that contracts resulting from the RFQ/RFP are in effect.

H. Project Stabilization Agreement

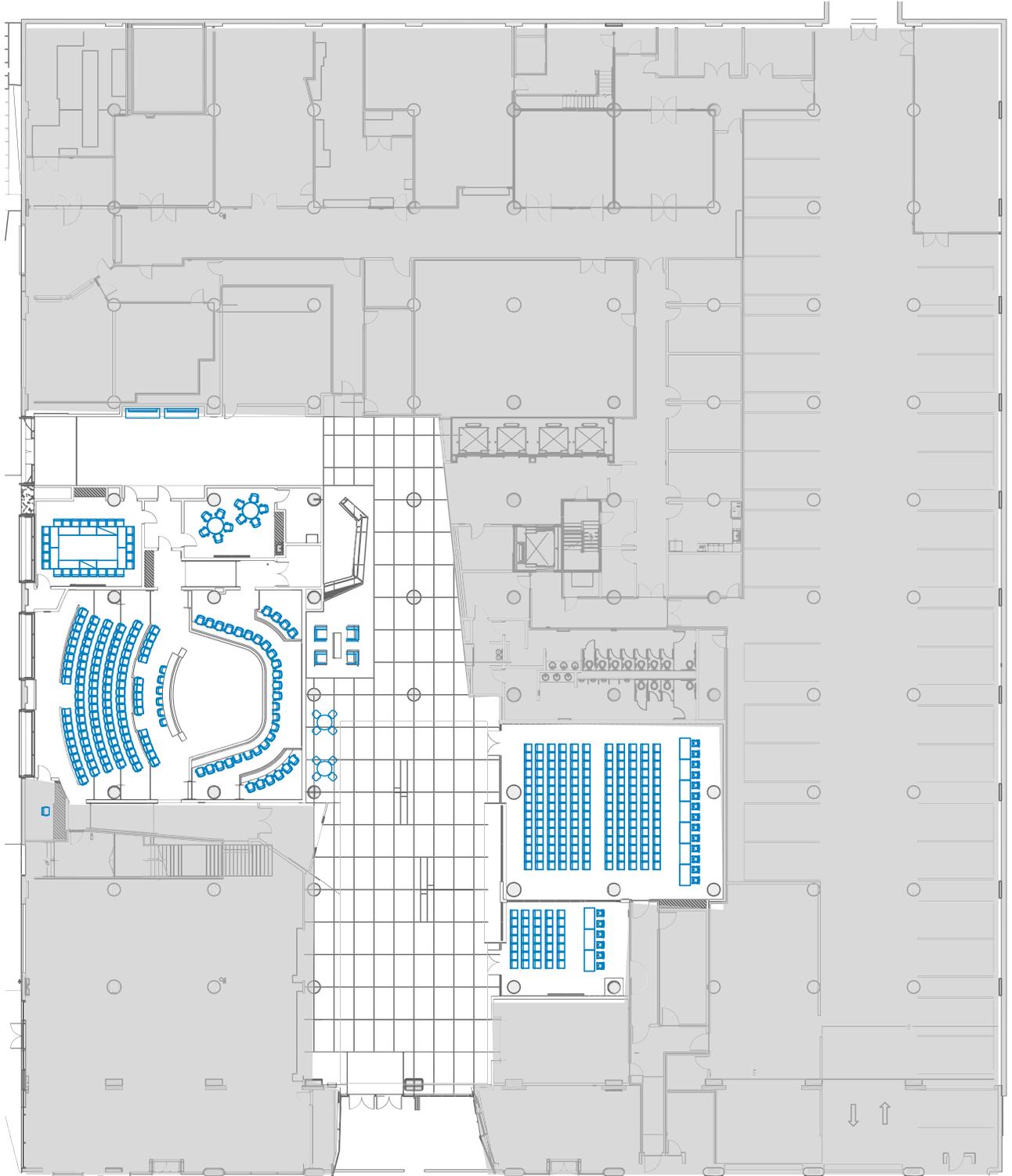
The manufacturer/dealer selected will be required to adhere to the Project Stabilization Agreement attached as Appendix E.

I. Prevailing Wage

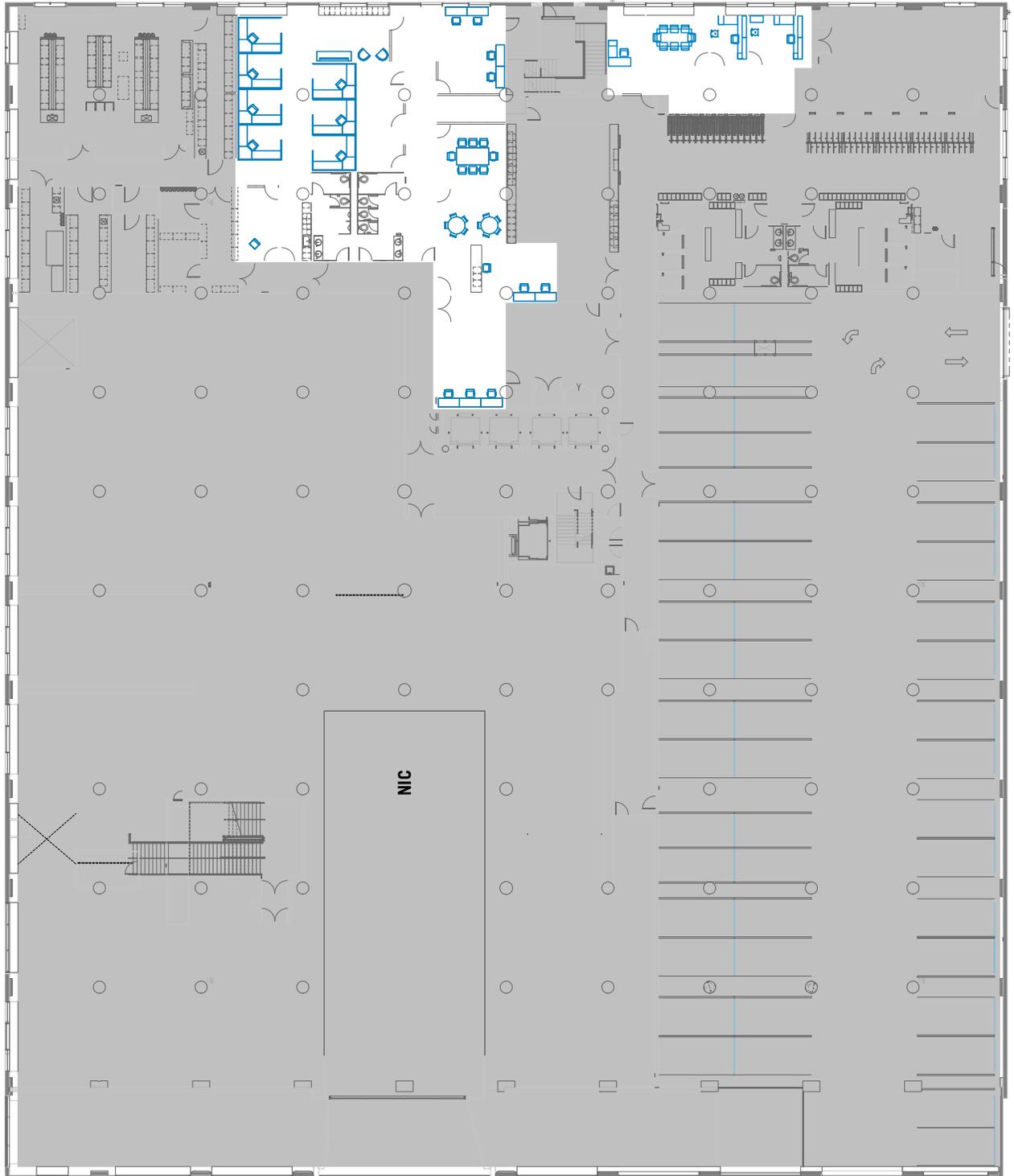
Manufacturer/Dealer will be required to meet prevailing wage requirements for all subcontractors or in-house staff responsible for the receipt, warehousing, delivery or installation of all systems and ancillary furniture, as applicable.

APPENDIX A, SCHEMATIC FLOOR PLANS

APPENDIX A



APPENDIX A



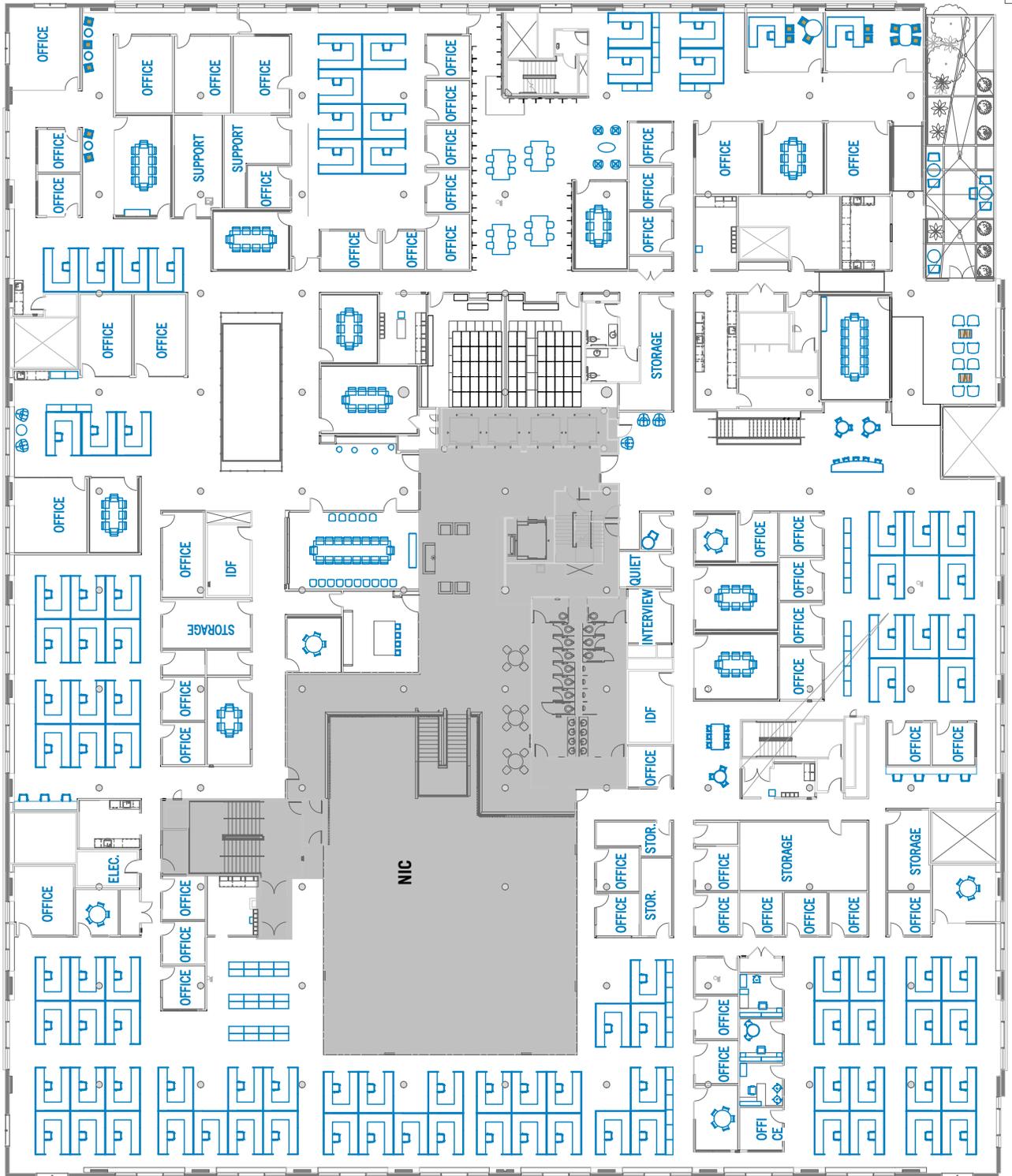
APPENDIX A



APPENDIX A



APPENDIX A



APPENDIX A-1, PRINCIPAL OFFICE LOCATION

	Address of Principal Office (include address, city, state and zip code)	Number of years operated in the nine-county Bay Area
Dealer Name:		_____years
Manufacturer Name:		_____years

APPENDIX A-2, KEY PERSONNEL MATRIX

Identify the required Key Personnel team member's name and the name of the project(s) that demonstrates specific experience meeting the Proposer Minimum Qualifications and Requirements, listed in Section II under this Part 1: RFQ referenced below:

Required Key Personnel	Assigned Team Member Name	Min. Qualification 1a. Similar Projects (*Min. 1 project)	Min. Qualification 1b. Other Project (*Min. 2 projects)	Min. Qualification 1c. Project Coordination (*Min. 3 projects)
Project Principal	Required Name: _____	Required* Project Name: #1 _____	Required* Project Name: #1 _____ #2 _____	Optional Project Name: _____
Account Manager	Required Name: _____	Required* Project Name: #1 _____	Required* Project Name: #1 _____ #2 _____	Optional Project Name: _____
Architecture and Design Representative	Required Name: _____	Required* Project Name: #1 _____	Required* Project Name: #1 _____ #2 _____	Optional Project Name: _____
Project Coordinator	Required Name: _____	Optional Project Name: _____	Optional Project Name: _____	Required* Project Name: #1 _____ #2 _____ #3 _____
Field Project Manager	Required Name: _____	Optional Project Name: _____	Optional Project Name: _____	Required* Project Name: #1 _____ #2 _____ #3 _____

APPENDIX B, CALIFORNIA LEVINE ACT STATEMENT

California Government Code § 84308, commonly referred to as the “Levine Act,” precludes an officer of a local government agency from participating in the award of a contract if he or she receives any political contributions totaling more than \$250 in the 12 months preceding the pendency of the contract award, and for three months following the final decision, from the person or company awarded the contract. This prohibition applies to contributions to the officer, or received by the officer on behalf of any other officer, or on behalf of any candidate for office or on behalf of any committee.

BAHA’s commissioners include:

Tom Bates
David Cortese
Bill Dodd
Adrienne Tissier
Scott Weiner
Amy Rein Worth

1. Have you or your company, or any agent on behalf of you or your company, made any political contributions of more than \$250 to any BAHA commissioner in the 12 months preceding the date of the issuance of this request for qualifications?

YES NO

If yes, please identify the commissioner: _____

2. Do you or your company, or any agency on behalf of you or your company, anticipate or plan to make any political contributions of more than \$250 to any BAHA commissioners in the three months following the award of the contract?

YES NO

If yes, please identify the commissioner: _____

Answering yes to either of the two questions above does not preclude BAHA from awarding a contract to your firm. It does, however, preclude the identified commissioner(s) from participating in the contract award process for this contract.

DATE

(SIGNATURE OF AUTHORIZED OFFICIAL)

(TYPE OR WRITE APPROPRIATE NAME, TITLE)

(TYPE OR WRITE NAME OF COMPANY)

APPENDIX C, BAHA PROFESSIONAL SERVICES CONTRACT

PROFESSIONAL SERVICES AGREEMENT

Between BAY AREA HEADQUARTERS AUTHORITY

And INSERT NAME OF DEALER

For PROVIDE AND INSTALL OFFICE, PUBLIC SPACE, AND OTHER ANCILLARY
FURNITURE AT 375 BEALE STREET, SAN FRANCISCO, CA

THIS AGREEMENT is made and entered into as of the **xx** day of **Month**, 201__, by and between the Bay Area Headquarters Authority (herein called BAHA), a joint powers authority established pursuant to a joint exercise of powers agreement between BAHA and BATA entered into pursuant to Government Code Sections 6500 *et. seq.* and **INSERT NAME OF DEALER**, (herein called "DEALER"), a **PICK ONE OF THE FOLLOWING:** partnership, _____[state of incorporation] corporation/ nonprofit corporation/joint venture organized under the laws of the State of _____.

RECITALS

WHEREAS, BAHA intends to provide and install office furniture and other ancillary furniture at 375 Beale Street, San Francisco, California (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 DEALER will render professional services in connection with the Project as hereinafter provided.

NOW, THEREFORE, the parties hereto agree as follows:

1. SCOPE OF SERVICES

DEALER's services are described in Attachment A, Scope of Work, attached hereto and incorporated herein by this reference. DEALER 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 Teri Green, (herein called "BAHA Project Manager"). As BAHA Project Manager, Teri Green is responsible for communication with DEALER and the administration of this Agreement. BAHA'S Executive Director or designated representative may substitute a new BAHA Project Manager by written notice to DEALER.

DEALER's point of contact and the individual authorized to communicate to BAHA on behalf of DEALER is **INSERT NAME OF DEALER's PM** ("DEALER Project Manager"). A change in the DEALER Project Manager requires BAHA written approval.

1.1 PROGRESS REPORTS

DEALER shall provide BAHA with progress reports according to the schedule and form approved by the BAHA Project Manager.

2. PERIOD OF PERFORMANCE

DEALER's services hereunder shall commence on or after _____, 2014, and shall be completed no later than _____, 201____, unless extended by duly executed amendment or earlier terminated, as hereinafter provided. DEALER's services shall be performed in accordance with the schedule included in Attachment B, Project Schedule, attached hereto and incorporated herein by this reference.

3. COMPENSATION AND METHOD OF PAYMENT

Subject to duly executed amendments, BAHA will pay DEALER 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, **SPELL OUT AMOUNT IN WHOLE DOLLARS (\$_____)** ("Maximum Payment"). BAHA shall make payments to DEALER 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 DEALER 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. DEALER shall maintain records documenting compliance with this Article, which shall be subject to the audit requirements of Article 15. DEALER 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 DEALER. 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 DEALER 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 for convenience, in whole or in part, at any time by written notice to DEALER. Upon receipt of notice of termination, DEALER 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. DEALER 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. DEALER 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. If DEALER has any property in its possession belonging to BAHA, DEALER 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 DEALER's actual or projected lost profits had DEALER completed the services required by this Agreement.

B. Termination for Default. If DEALER 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 DEALER 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 DEALER, setting forth the manner in which DEALER is in default. If DEALER 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, DEALER will be entitled to be reimbursed only for work performed in full compliance with the contract requirements as follows: DEALER shall be reimbursed for costs incurred for incomplete deliverables up to the time of termination, not to exceed the amount payable for such deliverables. DEALER shall be paid for hours worked and reimbursed for authorized expenses, not to exceed the maximum amount payable for the terminated work. 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 DEALER for any costs incurred for work causing or contributing to the default. If DEALER has any property in its possession belonging to BAHA, DEALER will account for the same, and dispose of it in the manner BAHA directs. BAHA shall not in any manner be liable for the DEALER's actual or projected lost profits had the DEALER completed the services required by this Agreement.

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

7. INSURANCE AND FINANCIAL SECURITY REQUIREMENTS

DEALER 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

DEALER 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. DEALER has, and hereby retains, full control over the employment, direction, compensation and discharge of all persons employed by DEALER who are assisting in the performance of services under this

Agreement. DEALER 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. DEALER shall be responsible for its own acts and those of its agents and employees during the term of this Agreement.

9. INDEMNIFICATION

To the maximum extent permitted by law, DEALER shall indemnify, keep 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 (“BAHA Indemnified Parties”) against any and all demands, claims, suits or actions arising out of any of the following:

Any injury or death to persons or property or pecuniary, financial or economic losses that may occur, or that may be alleged to have occurred, arising from the performance of this Agreement by DEALER caused by any breach of the Agreement or negligent act or omission or willful misconduct of the DEALER or its officers, employees, subconsultants or agents; or

Any allegation that materials or services provided by DEALER under this Agreement infringe or violate any copyright, trademark, patent, trade secret, or any other intellectual-property or proprietary right of any third party.

DEALER further agrees to defend any and all such claims, actions, suits or other legal proceedings and pay all charges of attorneys and all other costs and expenses of defenses as they are incurred. If any judgment is rendered against any of the BAHA Indemnified Parties, DEALER shall, at its expense, satisfy and discharge the same. The provisions set forth in this Article 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 DEALER by BAHA for use by DEALER 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 DEALER’s use or possession of such BAHA Data. Any updates, revisions, additions or enhancements to such BAHA Data made by DEALER in the context of the Project shall be the property of BAHA and subject to the provisions of Article 11.

10.1 NOT USED

10.2 NOT USED

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 DEALER 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 DEALER or in the hands of any subconsultant upon completion or termination of the work shall be immediately delivered to BAHA. DEALER 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. DEALER 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 DEALER’S pre-existing intellectual property secured, developed, written, or produced by DEALER prior to the execution of this Agreement or developed concurrently with this Agreement but not specifically for this Agreement; DEALER shall retain all right, title and interest in any such pre-existing intellectual property.

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

DEALER 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 G, Subconsultant List, attached hereto and incorporated herein by this reference. Any subconsultants must be engaged under written contract with the DEALER with provisions allowing the DEALER 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 DEALER.

B. Nothing contained in this Agreement or otherwise, shall create any contractual relation between BAHA and any subcontractors, and no subcontract shall relieve DEALER of his/her responsibilities and obligations hereunder. DEALER 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 DEALER. DEALER's obligation to pay its subcontractors is an independent obligation from BAHA's obligation to make payments to DEALER.

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

D. Applicable provisions of this Agreement shall be included in any subcontract or subconsultant agreement in excess of \$25,000 entered into under of this Agreement.

13. ASSIGNMENT OF AGREEMENT

DEALER 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

DEALER 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. DEALER 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. Any conflicting language regarding retention of records contained in Attachment H, Federally-Required Clauses, shall supersede this Article.

15. AUDITS

DEALER shall permit BAHA, and its authorized representatives to have access to DEALER's books, records, accounts, and any and all work products, materials, and other data relevant to this Agreement, for the purpose of making an audit, examination, excerpt and transcription during the term of this Agreement and for the period specified in Article 14. DEALER shall in no event dispose of, destroy, alter, or mutilate said books, records, accounts, work products, materials and data for that period of time.

assistance or advice to BAHA. DEALER 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, DEALER 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

DEALER 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.

DEALER 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 DEALER becomes aware of an organizational conflict of interest in connection with the work performed hereunder, DEALER shall immediately provide BAHA with written notice of the facts and circumstances giving rise to this organizational conflict of interest. DEALER'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 DEALER's performance of the work hereunder, BAHA shall similarly notify DEALER. In the event a conflict is presented, whether disclosed by DEALER or discovered by BAHA, BAHA will consider the conflict presented and any

alternatives proposed and meet with DEALER 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 DEALER to damages incurred by the BAHA in addressing organizational conflicts that arise out of work performed by DEALER, or to termination of this Agreement for breach.

19. LAWS AND REGULATIONS

DEALER 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 DEALER.

20. CLAIMS OR DISPUTES

DEALER 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 DEALER claims before DEALER has performed any disputed work. Therefore, DEALER's failure to provide timely notice shall constitute a waiver of DEALER's claims for additional compensation and/or time.

DEALER 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 DEALER 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 DEALER has started performance of the work giving rise to the potential claim for additional compensation.

If there is a dispute over any claim, DEALER 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. DEALER shall maintain cost records of all work that is the basis of any dispute.

If an agreement can be reached which resolves DEALER'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 DEALER claim, they may choose to pursue dispute resolution pursuant to Article 24, DISPUTE RESOLUTION, or BAHA may terminate the Agreement.

21. REMEDIES FOR BREACH

In the event DEALER 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 DEALER 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 DEALER to carry out orders given or to perform any provision of the Agreement or to factors that are not the responsibility of DEALER. The DEALER shall comply immediately with the written order of BAHA to suspend the work wholly or in part. The suspended work shall be resumed when DEALER is provided with written direction from BAHA to resume the work.

If the suspension is due to DEALER'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 DEALER, all costs shall be at DEALER's expense and no schedule extensions will be provided by BAHA.

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

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

23. WARRANTY OF SERVICES

A. In the performance of its services, DEALER 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, DEALER 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 DEALER hereunder are deficient because of DEALER'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 DEALER within a reasonable time. BAHA thereafter shall have:

The right to have DEALER re-perform such services at the DEALER's expense; or

The right to have such services done by others and the costs thereof charged to and collected from the DEALER if within 30 days after written notice to DEALER requiring such re-performance, DEALER fails to give satisfactory evidence to the BAHA that it has undertaken said re-performance; or

The right to terminate the Agreement for default. DEALER 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. DEALER 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 DEALER'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 DEALER, 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, as set forth below.

B. Controversies Subject to Alternative Dispute Resolution. Any claim or controversy concerning the interpretation, application, or implementation of this Agreement between BAHA and DEALER 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. DEALER must file a government claim pursuant to Government Code section 910 *et seq.* in order to initiate a civil action.

D. Pending Resolution. DEALER 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. DEALER 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 DEALER 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 DEALER

Steve Heminger, Executive Director

Insert Appropriate Name, Title

ATTACHMENT A
Scope Of Work

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

- 1.
 - 2.
- ETC.

Project Stabilization Agreement

The DEALER shall be required to adhere to the Project Stabilization Agreement attached as Attachment I.

Prevailing Wage

DEALER shall be required to meet prevailing wage requirements for all subcontractors or in-house staff responsible for the receipt, warehousing, delivery or installation of all systems and ancillary furniture, as applicable.

ATTACHMENT B
Project Schedule

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

ATTACHMENT C
Compensation and Method of Payment

FIRM FIXED PRICE

A. Compensation. DEALER 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 DEALER under the Agreement exceed the Maximum Payment specified in Article 3 of the Agreement.

B. Progress Payments. Payment for DEALER'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	<u>Deliverables (#)</u>	<u>Amount Due</u>
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

Method of Payment. DEALER 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. If applicable, DEALER's final invoice must include the certification that all Personally Identifiable Information (PII) has been destroyed in accordance with Attachment 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 DEALER, 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, if any, which are required to be furnished under this Agreement, and after any post audit of contract costs which may be conducted by BAHA. DEALER acknowledges that certain costs may be disallowed as a result of such a post audit.

LABOR – HOUR

A. Compensation. DEALER 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 DEALER 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 DEALER for all expenses deemed reasonable and necessary by BAHA incurred by DEALER in the performance of this Agreement. Such reimbursement shall include travel and personal expenses incurred by employees or agents of all DEALERS 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. DEALER 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. If applicable, DEALER's final invoice must include the certification that all Personally Identifiable Information (PII) has been destroyed in accordance with Attachment F.

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 DEALER, 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. DEALER acknowledges that certain costs may be disallowed as a result of such a post audit.

ATTACHMENT D
Key Personnel Assignments

	<u>Name</u>	<u>Rate/hour</u>	<u>Est. hours</u>	<u>Task Description</u>
		\$xx		

FOR CONTRACTS WITH DELIVERABLES-BASED PAYMENT, INCLUDE NOTE ON RATE/HOUR AS FOLLOWS:

* Applicable to development of payment provisions in amendments only.

COMPLETE AS NECESSARY; IF NO KEY PERSONNEL OR HOURLY RATES, LABEL AS “Not Applicable”

ATTACHMENT E
Insurance and Financial Security (Bond) Provisions

1. INSURANCE

A. Minimum Coverages. The insurance requirements specified in this section shall cover DEALER'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 DEALER authorizes to work under this Agreement (hereinafter referred to as "Agents.") DEALER 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.

DEALER 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. To the extent that an Agent does not procure and maintain such insurance coverage, DEALER 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 DEALER's indemnity obligation as to itself or any of its Agents in the absence of coverage.

In the event DEALER 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 DEALER's insurance be primary without right of contribution from BAHA. Prior to beginning work under this contract, DEALER shall provide BAHA with satisfactory evidence of compliance with the insurance requirements of this section.

1. Workers' Compensation Insurance with Statutory limits, and Employer's Liability insurance with a limit of not less than \$1,000,000 per employee and \$1,000,000 per accident, and any and all other coverage of DEALER's employees as may be required by applicable law. Such policy shall contain a Waiver of Subrogation in favor of BAHA. Such Workers Compensation & Employers Liability may be waived, if and only for as long as DEALER is a sole proprietor or a corporation with stock 100% owned by officers with no employees.

2. Commercial General Liability Insurance for Bodily Injury and Property Damage liability, covering the operations of DEALER and DEALER's officers, agents, and employees and with limits of liability which shall not be less than \$1,000,000 combined single limit per occurrence with a general aggregate liability of not less than \$2,000,000, and Personal &

Advertising Injury liability with a limit of not less than \$1,000,000. Such policy shall contain a Waiver of Subrogation in favor of BAHA.

BAHA and those entities listed 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. Such insurance shall be primary and contain a Separation of Insureds Clause as respects any claims, losses or liability arising directly or indirectly from DEALER's operations.

3. Business Automobile Insurance for all automobiles owned (if any), used or maintained by DEALER and DEALER's officers, agents and employees, including but not limited to owned (if any), leased (if any), non-owned and hired automobiles, with limits of liability which shall not be less than \$1,000,000 combined single limit per accident.

4. Umbrella Insurance in the amount of \$1,000,000 providing excess limits over Employer's Liability, Automobile Liability, and Commercial General Liability Insurance. Such umbrella coverage shall be following form to underlying coverage including all endorsements and additional insured requirements.

5. 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 \$1,000,000 per claim.

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

6. Property Insurance. Property Insurance covering DEALER'S own business personal property and equipment to be used in performance of this Agreement, materials or property to be purchased and/or installed on behalf of BAHA (if any), and builders risk for property in the course of construction (if applicable). Coverage shall be written on a "Special Form" policy 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.

7. Employee Dishonesty/Crime Insurance. An Employee Dishonesty insurance policy covering DEALER'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. DEALER shall reimburse BAHA for any and all losses within the deductible, for insured losses, the cost to prove the loss, accountants' fees, defense costs including attorneys' fees 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.

8. 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 \$1,000,000 per occurrence or claim and a general aggregate limit of at least \$1,000,000. 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 DEALER disposes of Hazardous Materials under this Agreement, DEALER shall designate the disposal site and provide a certificate of insurance from the disposal facility to BAHA.

DEALER'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.

Such policy shall contain a Waiver of Subrogation in favor of BAHA.

BAHA and those entities listed in Article 3 below, and their commissioners, directors, officers, representatives, agents and employees are to be named as additional insureds. Such insurance shall be primary and contain a Separation of Insureds Clause as respects any claims, losses or liability arising directly or indirectly from DEALER's operations.

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. DEALER'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. DEALER shall be responsible for payment of any deductible or retention on DEALER'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 DEALER insurance policy that contains a deductible or self-insured retention, DEALER 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 DEALER, subconsultant, subcontractor, or any of their employees, officers or directors, even if DEALER 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, DEALER shall:

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;

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

If insurance is cancelled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the Agreement effective date, DEALER shall purchase “extended reporting” coverage for a minimum of three (3) years after completion of the 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 DEALER’s personnel, subcontractors, and equipment have been removed from BAHA’s property, and the work or services have been formally accepted. DEALER must notify BAHA if any of the above required coverages are non-renewed or cancelled. 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, DEALER 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 DEALER are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by DEALER pursuant hereto, including, but not limited to, liability assumed pursuant to Article 9 of this Agreement.

2. FINANCIAL SECURITY (BONDS)

Performance and Payment Bond

The DEALER must provide bonds or other security adequate to protect BAHA. Ten (10) days prior to performing any work under this Agreement, the DEALER shall file with BAHA on the forms provided in Attachment E-1 and Attachment E-2, herein two surety bonds in the amounts and for the purposes noted below, duly executed by a reputable surety company satisfactory to BAHA. DEALER shall pay all premiums and costs relating to the required bonds.

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

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 the contract 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-, VII 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 to the DEALER to that effect, and DEALER 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 DEALER.

All alterations, time extensions, extra work, additional work or any other changes authorized in this Agreement, may be made without notice to, or securing the prior consent of, the surety or sureties on the Performance or Payment Bonds.

As alterations, time extensions, extra work, additional work or any other changes are authorized and incorporated into this Agreement, DEALER will within ten days secure a "Consent of Surety" to increase the performance and payment bond amount to reflect the revised contract amount.

3. ADDITIONAL INSUREDS

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.

- Bay Area Headquarters Authority (BAHA)
- Metropolitan Transportation Commission (MTC)
- Bay Area Toll Authority (BATA)
- Bay Area Air Quality Management District (BAAQMD)
- Association for Bay Area Governments (ABAG)

**ATTACHMENT E-1,
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/375 Beale Street, San Francisco:
Workstation, Office, Public Space and Ancillary Furniture and Installation.

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

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 _____, 201__.

(Principal)

By:_____

(Surety)

By:_____

Attorney-in-fact

ATTACHMENT E-2

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 "DEALER," a contract for the work described as follows:

Workstation, Office, Public Space and Ancillary Furniture and Installation.

AND WHEREAS, DEALER 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 DEALER 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 DEALER, 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 DEALER 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., 201__.

DEALER
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 “DEALER,” a contract for the work described as follows:

Workstation, Office, Public Space and Ancillary Furniture and Installation.

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

NOW, THEREFORE, We, the undersigned DEALER 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 DEALER, 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., 201__.

DEALER

Surety

Attorney in Fact

ATTACHMENT F
NOT USED

ATTACHMENT G
Subconsultant List

	<u>Name/Address of Subconsultant</u>	<u>Amount of Subcontract</u>	<u>Description of Work</u>

LIST "None" ABOVE IF NO SUBCONTRACTORS ARE BEING USED.

ATTACHMENT H
NOT USED

ATTACHMENT I
PROJECT STABILIZATION AGREEMENT

APPENDIX C-1, BAHA PURCHASE ORDER

1. DEFINITIONS

- a. Bay Area Headquarters Authority (BAHA). The Bay Area Headquarters Authority (BAHA) was created as a Joint Powers Authority (JPA) between Bay Area Toll Authority (BATA) and Metropolitan Transportation Commission (MTC) to purchase and develop 390 Main Street, San Francisco for the Regional Agency Headquarters Facility.
- b. Supplier. The individual, firm, partnership, corporation or combination thereof to whom a Purchase Order is mailed or otherwise furnished by BAHA.
- c. Contract. The legal agreement between BAHA and the Supplier, which includes the terms of any written solicitation of Bids or Proposals and any deviation from the written specifications expressly accepted by BAHA; the Supplier's bid, proposal, or offer; and all terms and conditions set forth in this Purchase Order. In the event of a conflict between one or more provisions of the Contract, the more specific or stringent provision with respect to Supplier's performance of the work shall apply.

2. ACCEPTANCE OF OFFER

This purchase order constitutes BAHA's acceptance of Supplier's offer and becomes a binding contract, as defined above, when it is signed by BAHA and mailed to Supplier. No revisions to or assignments of this order shall be valid unless in writing and signed by an authorized representative of BAHA.

3. PERFORMANCE OF WORK

Supplier shall accomplish all the work and furnish all materials necessary for the completion of the work in a good, workmanlike and thorough manner and to the satisfaction of BAHA, in accordance with the Contract.

4. CONTRACT PRICE

The firm fixed price(s) set out in this purchase order include full compensation to Supplier for performing all work required by the Contract, including all applicable federal, state and local taxes.

5. VARIATION IN QUANTITY, QUALITY OR PERFORMANCE

Any variation in the quantity, quality or performance of any item or service called for by this order shall be grounds for termination by default by BAHA, as provided in 8a., unless approved by BAHA in writing.

6. PACKAGING AND CRATING

All items shall be packed by Supplier in suitable containers for protection in shipment and storage. Prices set forth in this order include all charges for Supplier's packing, crating and marking for transportation to f.o.b. point.

7. INSPECTION AND ACCEPTANCE

Inspection and acceptance will be at destination, unless otherwise provided. Until delivery and acceptance, and after any rejections, risk of loss will be on the Supplier.

8. TERMINATION

a. If Supplier fails to comply with any of the Contract, or in the event Supplier becomes the subject of a proceeding under state or federal law for relief of creditors, or if Supplier makes an assignment for the benefit of creditors, BAHA shall have the right to hold Supplier in default and cancel this order in whole or in part. In each event, BAHA may obtain the items covered by the cancelled order from another Supplier and, if Supplier was selected as a result of a competitive procurement process, Supplier shall reimburse BAHA for the excess cost to BAHA, if any.

b. Without affecting its right to cancel this order under paragraph (a) above, BAHA may terminate this order in whole or in part prior to shipment of goods or provision of services at no cost by providing written notice to the Supplier. In such event, BAHA shall reimburse Supplier for non-recoverable costs incurred to date, not to exceed the Contract Price.

9. SCHEDULE

Unless otherwise agreed, material commitments and production arrangements should not be made by Supplier in excess of the amount or in advance of the time necessary to meet the specified delivery schedule. Time is of the essence in filling this order, and it is Supplier's responsibility to comply with BAHA's delivery directions and/or schedule. Failure to deliver any item or provide any service called for by the contract within the time called for shall be grounds for termination for default as provided in 8.a.

10. INDEMNIFICATION

Supplier shall indemnify, defend and hold harmless BAHA, MTC, BATA, and the Bay Area Air Quality Management District (BAAQMD) and their commissioners, directors, officers, agents, and employees from and against all claims, demands, suits, loss, damage, injury and liability (including any and all costs and expenses incurred in connection therewith) incurred by reason of any negligent or otherwise wrongful act or omission of Supplier in connection with Supplier's performance of the Contract, including delivery of materials or equipment to BAHA at the time and point of delivery indicated when delivery is an obligation of Supplier under the Contract.

ADDITIONAL REQUIREMENTS FOR BAHA SUPPLIERS, CONTRACTORS

11. INSURANCE REQUIREMENT

Supplier agrees to obtain and maintain at its own expense for the duration of the Agreement the following types of insurance against claims, damages or losses arising in connection with the performance of the Agreement, placed with insurers with a Best's rating of A-VIII or better:

(1) Worker's Compensation Insurance, with Statutory limits, and Employer's Liability Insurance in an amount no less than \$1,000,000, each with a waiver of subrogation in favor of BAHA;

(2) Commercial General Liability Insurance for bodily injury and property damage liability with a combined single limit of not less than \$1,000,000 per occurrence, a combined single limit of not less than \$1,000,000 for personal injury and advertising injury for any one occurrence, and a \$2,000,000 general aggregate. BAHA, MTC, BATA, and BAAQMD and their Commissioners, directors, officers, representatives, agents and employees are to be named as Additional Insureds. Such insurance shall have a Separation of Insureds Clause and be primary so that no BAHA, MTC, BATA, and BAAQMD insurance will be called on to contribute to a loss;

(3) Business Automobile Liability Insurance for all automobiles Owned, Non-Owned and Hired in an amount no less than \$1,000,000 per accident;

(4) Umbrella insurance in the amount of \$1,000,000 providing excess limits over Employers Liability, Automobile Liability, and Commercial General Liability Insurance. Such umbrella coverage shall be following form to underlying coverage including all endorsements and additional insured requirements; and

(5) Property Insurance covering Supplier's own business personal property and equipment to be used in performance of this Agreement, materials or property to be purchased and/or installed on behalf of BAHA (if any), and builders risk for property in the course of construction (if applicable). Coverage shall be written on a "Special Form" policy 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.

(6) Employee Dishonesty/Crime Insurance. An Employee Theft insurance policy covering Manufacture/Dealer'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.

Manufacture/Dealer 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.

(7) Contractors' Pollution Liability Insurance. Manufacture/Dealer' Pollution Liability insurance for bodily injury and property damage coverage with a combined single limit for bodily injury and property damage of at least \$1,000,000 per occurrence or claim and a general aggregate limit of at least \$1,000,000. 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 Manufacture/Dealer disposes of Hazardous Materials under this Agreement, Manufacturer/Dealer shall designate the disposal site and provide a certificate of insurance from the disposal facility to BAHA. The Additional Insureds identified above are to be named as additional insureds. Such insurance shall be primary as respects any claims, losses or liability arising directly or indirectly from Manufacture/Dealer's operations.

Manufacture/Dealer'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.

On any policy with a deductible or self-insured retention, payment is the sole responsibility of the Dealer.

Certificates of insurance verifying the coverages and the required endorsements and signed by an authorized representative of the insurer must be delivered to BAHA prior to issuance of any payment under the Agreement by BAHA.

WORKERS COMPENSATION INSURANCE MAY BE WAIVED, IF AND ONLY FOR AS LONG AS SUPPLIER IS A SOLE PROPRIETOR OR A CORPORATION WITH 100% OF STOCK OWNED BY OFFICERS WITH NO EMPLOYEES.

12. INJURY PROTECTION

As part of the BAHA's Injury Prevention Program (IPP) established pursuant to California Labor Code Section 6401.7, you may be required to provide the contracting agency with a description of your IPP and, specifically, of your methods and procedures for identifying and using safe conditions and work practices at the worksite while performing specified work.

13. RESPONSIBILITY OF SUPPLIERS AND CONTRACTORS

You shall be solely responsible for any and all of the work done by your subcontractors or employees, and all orders or instruction from BAHA shall be through you to them. You shall ensure that subcontractor and employees commence their work promptly at the agreed-upon time and carry it on with due diligence; and that any and all damage caused by them is promptly repaired or corrected by them or you at no cost to BAHA. You are solely responsible for payment of subcontracts. In no event shall BAHA have any responsibility or obligation to such subcontractors.

14. PAYMENT.

You shall submit an invoice to BAHA within thirty (30) days after completion of work. BAHA will pay invoices no later than thirty (30) days after their receipt conditioned upon approval of the work done and the amount billed. All invoices shall be made in writing and delivered or mailed to BAHA as follow:

Attention: Purchasing
Bay Area Headquarters Authority
Joseph P. Bort MetroCenter
101 Eight Street
Oakland, CA 94607-4700

APPENDIX C-2, INSURANCE PROVISIONS DOCUMENT

Yes (√)	Please certify by checking the boxes at left that required coverages will be provided within ten (10) days of BAHA’s notice to firm that it is the successful proposer.
—	<u>Workers' Compensation Insurance</u> in the amount required by the applicable laws, and Employer’s Liability insurance with a limit of not less than \$1,000,000 per employee and \$1,000,000 per accident, and any and all other coverage of Manufacture/Dealer’s employees as may be required by applicable law. Such policy shall contain a Waiver of Subrogation in favor of BAHA.
—	<u>Commercial General Liability Insurance</u> for Bodily Injury and Property Damage liability, covering the operations of Manufacture/Dealer and Manufacture/Dealer’s officers, agents, and employees and with limits of liability which shall not be less than \$1,000,000 combined single limit per occurrence with a general aggregate liability of not less than \$2,000,000, and Personal & Advertising Injury liability with a limit of not less than \$1,000,000. BAHA, the Metropolitan Transportation Commission (MTC), the Bay Area Toll Authority (BATA), the Bay Area Air Quality Management District (BAAQMD), and the Association for Bay Area Governments (ABAG), 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 Manufacture/Dealer’s operations. Such policy shall contain a Waiver of Subrogation in favor of the Additional Insureds.
—	<u>Business Automobile Insurance</u> for all automobiles owned, used or maintained by Manufacture/Dealer and Manufacture/Dealer’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 \$1,000,000 combined single limit per accident.
—	<u>Umbrella Insurance</u> in the amount of \$1,000,000 providing excess limits over Employer’s Liability, Automobile Liability, and Commercial General Liability Insurance. Such umbrella coverage shall be following form to underlying coverage including all endorsements and additional insured requirements.
—	<u>Property Insurance.</u> Property Insurance covering Manufacture/Dealer '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.
—	<u>Employee Dishonesty/Crime Insurance.</u> An Employee Theft insurance policy

	<p>covering Manufacture/Dealer’s employees for loss of or damage to money, securities or other property resulting from theft. The following limits of liability should apply:</p> <p>(a) Employee Dishonesty - \$250,000; and (b) Client Property Blanket Bond - \$250,000.</p> <p>Manufacture/Dealer 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.</p>
<p>—</p>	<p><u>Contractors’ Pollution Liability Insurance.</u> Manufacture/Dealer’ Pollution Liability insurance for bodily injury and property damage coverage with a combined single limit for bodily injury and property damage of at least \$1,000,000 per occurrence or claim and a general aggregate limit of at least \$1,000,000. 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 Manufacture/Dealer disposes of Hazardous Materials under this Agreement, Manufacturer/Dealer shall designate the disposal site and provide a certificate of insurance from the disposal facility to BAHA. The Additional Insureds identified above are to be named as additional insureds. Such insurance shall be primary as respects any claims, losses or liability arising directly or indirectly from Manufacture/Dealer’s operations.</p> <p>Manufacture/Dealer’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.</p>
<p><u>Acceptable Insurers.</u> All policies will be issued by insurers acceptable to BAHA, generally with a Best’s Rating of A-VIII or better.</p> <p><u>Self-Insurance.</u> Manufacture/Dealer’s obligation hereunder may be satisfied in whole or in part by adequately funded self-insurance, upon evidence of financial capacity satisfactory to BAHA.</p> <p><u>Deductibles and Retentions.</u> Manufacture/Dealer shall be responsible for payment of any deductible or retention on Manufacture/Dealer’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.</p>	

In the event that BAHA seeks coverage as an additional insured under any Manufacture/Dealer insurance policy that contains a deductible or self-insured retention, Manufacture/Dealer 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 Manufacture/Dealer, subconsultant, subcontractor, or any of their employees, officers or directors, even if Manufacture/Dealer or subconsultant is not a named defendant in the lawsuit.

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 Manufacture/Dealer 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, Manufacture/Dealer shall purchase “extended reporting” coverage for a minimum of three (3) years after completion of work.

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 Manufacture/Dealer’s personnel, subcontractors, and equipment have been removed from BAHA’s property, and the work or services have been formally accepted. Manufacture/Dealer 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.

Certificates of Insurance. Prior to commencement of any work hereunder, Manufacture/Dealer 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.

Disclaimer. The foregoing requirements as to the types and limits of insurance coverage to be maintained by Manufacture/Dealer are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by Manufacture/Dealer pursuant hereto, including, but not limited to, liability assumed pursuant to the indemnification requirements of BAHA’s Standard Consultant Agreement.

By signing below, you acknowledge and agree to provide the required certificate of insurance providing verification of the minimum insurance requirements listed above within ten (10) days of BAHA’s notice to firm that it is the successful proposer in response to the RFP issued as a result of this RFQ.

Representative Name	
---------------------	--

and Title	
Name of Authorizing Official	
Authorized Signature	
Date	

NOTE: If you were unable to check “Yes” for any of the required minimum insurance coverages listed above, a request for exception to the appropriate insurance requirement(s) must be brought to BAHA’s attention no later than the date for protesting RFQ provisions. If such objections are not brought to BAHA’s attention consistent with the protest provisions of this RFQ, compliance with the insurance requirements will be assumed.

APPENDIX C-3, 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/375 Beale Street, San Francisco:

Workstation, Office, Public Space and Ancillary Furniture and Installation.

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

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 _____, 2013.

(Principal)

By:_____

(Surety)

By:_____

Attorney-in-fact

APPENDIX C-4: 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 "Manufacture/Dealer," a contract for the work described as follows:

Workstation, Office, Public Space and Ancillary Furniture and Installation.

AND WHEREAS, Manufacture/Dealer 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 Manufacture/Dealer 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 Manufacture/Dealer, 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 Manufacture/Dealer 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., 2013.

Manufacture/Dealer
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 “Manufacture/Dealer,” a contract for the work described as follows:

Workstation, Office, Public Space and Ancillary Furniture and Installation.

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

NOW, THEREFORE, We, the undersigned Manufacture/Dealer 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 Manufacture/Dealer, 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., 2013.

Manufacture/Dealer
Surety
Attorney in Fact

APPENDIX D, IRAN CONTRACTING ACT
(Public Contract Code sections 2202-2208)

Prior to bidding on, submitting a proposal or executing a contract or renewal for a BAHA contract for goods or services of \$1,000,000 or more, a Proposer must either: a) certify it is not on the current list of persons engaged in investment activities in Iran created by the California Department of General Services (“DGS”) pursuant to Public Contract Code section 2203(b) and is not a financial institution extending twenty million dollars (\$20,000,000) or more in credit to another person, for 45 days or more, if that other person will use the credit to provide goods or services in the energy sector in Iran and is identified on the current list of persons engaged in investment activities in Iran created by DGS; or b) demonstrate it has been exempted from the certification requirement for that solicitation or contract pursuant to Public Contract Code section 2203(c) or (d).

To comply with this requirement, please insert your Proposer or financial institution name and Federal ID Number (if available) and complete one of the options below. Please note: California law establishes penalties for providing false certifications, including civil penalties equal to the greater of \$250,000 or twice the amount of the contract for which the false certification was made; contract termination; and three-year ineligibility to bid on contracts. (Public Contract Code section 2205.)

OPTION #1 - CERTIFICATION

I, the official named below, certify I am duly authorized to execute this certification on behalf of the Dealer/financial institution identified below, and the Dealer/financial institution identified below is not on the current list of persons engaged in investment activities in Iran created by DGS and is not a financial institution extending twenty million dollars (\$20,000,000) or more in credit to another person/Dealer, for 45 days or more, if that other person/Dealer will use the credit to provide goods or services in the energy sector in Iran and is identified on the current list of persons engaged in investment activities in Iran created by DGS.

<i>Proposer Name/Financial Institution (Printed)</i>		<i>Federal ID Number (or n/a)</i>
<i>By (Authorized Signature)</i>		
<i>Printed Name and Title of Person Signing</i>		
<i>Date Executed</i>	<i>Executed in</i>	

OPTION #2 – EXEMPTION

Pursuant to Public Contract Code sections 2203(c) and (d), a public entity may permit a Proposer/financial institution engaged in investment activities in Iran, on a case-by-case basis, to be eligible for, or to bid on, submit a proposal for, or enters into or renews, a contract for goods and services.

If you have obtained an exemption from the certification requirement under the Iran Contracting Act, please fill out the information below, and attach documentation demonstrating the exemption approval.

<i>Proposer Name/Financial Institution (Printed)</i>	<i>Federal ID Number (or N/A)</i>
<i>By (Authorized Signature)</i>	
<i>Printed Name and Title of Person Signing</i>	<i>Date Executed</i>

APPENDIX E, PROJECT STABILAZTION AGREEMENT

PROJECT STABILIZATION AGREEMENT

for the

BAY AREA HEADQUARTERS PROJECT

Between the

BAY AREA HEADQUARTERS AUTHORITY

And the

SAN FRANCISCO BUILDING & CONSTRUCTION TRADES COUNCIL AND ITS AFFILIATED LOCAL UNIONS

PREAMBLE

 This Project Stabilization Agreement (“Agreement”) is made and entered into the 14th day of March, 2012, by and between the Bay Area Headquarters Authority (“BAHA” or “Owner”), together with any prime contractor (individually referred to as “Prime Contractor”) and subcontractors at all tiers (all of whom, including Prime Contractor, are collectively referred to as “Contractors”), who shall become signatory to this Agreement by signing the “Agreement To Be Bound” attached hereto as Exhibit A, and the San Francisco Building & Construction Trades Council (“Council”) and its affiliated local unions who have executed this Agreement (referred to individually as “Union” and collectively as “Unions”). The parties further agree that the provisions of this Agreement shall apply to the construction work for the Bay Area Headquarters Authority building as described and defined in Section 2.1 of this Agreement (“Project”).

Recitals

WHEREAS, the Contractors will be engaged in construction of the Project; and

WHEREAS, a skilled labor pool represented by Building Trades Unions will be required to complete the work involved; and

WHEREAS, the Building Trades Unions agree to cooperate in every way possible with employees of the Contractors; and

WHEREAS, the parties desire to provide employment opportunities on the Project to military veterans returning from overseas conflicts; and

WHEREAS, the parties to this Agreement mutually agree that safety, quality, productivity and labor harmony are primary goals; and

WHEREAS, the parties recognize the need for safe, efficient and quality construction in order to reduce unnecessary delays and to shorten construction schedules, thereby further reducing costs, resulting in timely completion of the Project; and

WHEREAS, the parties desire to mutually establish and stabilize wages, hours and working conditions for the employees employed on the Project by the Contractors, and further to encourage close cooperation to achieve a satisfactory, continuous and harmonious relationship between the parties to this Agreement.

NOW THEREFORE, the parties, in consideration of the mutual promises and covenants herein contained, mutually agree as follows:

ARTICLE 1

PURPOSE

- 1.1 It is critical to BAHA and to the taxpayers and transit users in its service territory that this Project be completed in as timely and economical manner as possible. The parties to this Agreement acknowledge that large numbers of skilled and trained workers of various construction trades will be required in the performance of the Project, and that on a project of this size, with multiple contractors and crafts on the job site at the same time, the potential for work disruption is substantial. It is the purpose and intent of the parties to this Agreement to make every cooperative effort to achieve the timely, safe, and economical construction of the Project and to assure access of BAHA and the Contractors to the skilled and trained workers represented by the Council and Unions. The parties further recognize and agree that the Project must be undertaken in a spirit of labor harmony, peace and stability, with the utilization of skilled labor under fair and safe working conditions without disruption or disputes. The purposes of this Agreement are to promote efficient construction operations on the Project, to insure an adequate supply of skilled craftspeople and, in so doing, the parties to this Agreement establish the foundation to promote the public

interest, to provide a safe work place, to assure high quality construction and to secure optimum productivity, on-schedule performance and BAHA's satisfaction.

- 1.2 It is the intent of the parties to set out uniform and fair working conditions for the efficient completion of the Project, to provide for peaceful, efficient and binding procedure for settling labor disputes, to maintain harmonious labor/management relations and eliminate strikes, lockouts and other delays.

ARTICLE 2

SCOPE OF AGREEMENT

- 2.1 This Agreement shall apply only to that demolition, hazardous material remediation, surveying, site preparation and new construction work awarded by and under the control of BAHA and performed by the signatory Contractors at 390 Main Street, San Francisco, California, during the term of this Agreement. Construction of any phase, portion, section or segment of the Project shall be deemed complete when such phase, portion, section or segment has been turned over to BAHA by the Contractor and BAHA has accepted such phase, portion, section or segment. Once accepted by BAHA, this Agreement shall have no force or effect on such portion of the Project accepted by BAHA. This Agreement shall cover and apply to all initial tenant improvement work on leased space, whether or not awarded by, or under the control of, BAHA performed at the Project site commenced within eighteen (18) months after issuance of the certificate of completion, or similar form of government acceptance, issued to BAHA. If agreed separately in writing by the parties, this Agreement may be extended to certain future work.
- 2.2 This Agreement shall not apply to work covered by the NTL Articles of Agreement, the National Stack/Chimney Agreement, the National Cooling Tower Agreement, the National Agreement of Elevator Constructors, and that any instrument calibration work and loop checking shall be performed under the terms of the UA/IBEW Joint National Agreement for Instrument and Control Technicians *except* that Articles 5 (No Strike-No Lockout), 6 (Work Assignments and Jurisdictional Disputes) and 11 (Grievance Dispute Resolution Procedure) of this Agreement shall apply to such work performed under these agreements.
- 2.3 This Agreement shall apply only to construction craft employees working on this Project represented by the Unions signatory hereto, and shall not apply to a Contractor's supervisors, technical or non-manual employees including, but not limited to, executives, engineers, office and clerical employees, drafters, supervisors,

timekeepers, messengers, guards, or any other employees above the classification of general foreman, or inspectors, material testers, and/or x-ray technicians, except to the extent that such inspectors, material testers, and/or x-ray technicians are customarily covered by the local master collective bargaining agreement negotiated between a Union and its historically recognized bargaining party (“Schedule A agreement”) and as to which classification a prevailing wage determination has been published.

- 2.4 All off-site manufacture and handling of materials, equipment or machinery shall not be covered by this Agreement; *provided*, however, that all off-site work, including fabrication, that is traditionally performed by any of the Unions that is directly or indirectly part of the Project, if such work is covered by a provision of a Schedule A agreement or local addendum to a national agreement of the applicable Union(s), shall be covered by the terms and conditions of this Agreement; *provided further*, that lay-down or storage areas or equipment or material manufacturing (pre-fabrication) sites dedicated solely to the Project or Project work, and the movement of materials or goods between the Project site and a dedicated site(s) as well as between locations on the Project site and the delivery and removal of construction equipment, apparatus, machinery, materials and supplies, including, but not limited to, ready-mix concrete, asphalt, aggregate, sand or earth that are directly incorporated into a work process or debris, earth or other waste construction materials removed from the Project site shall be covered by the terms and conditions of this Agreement.
- 2.5 After installation by the Contractors and upon notice of completion, it is understood BAHA and tenants reserve the right to perform the operation, repair, maintenance or revision of equipment or systems with persons of their choice. If required, the service representative may make a final check to protect the terms of a manufacturer’s guarantee or warranty prior to start-up of a piece of equipment.
- 2.6 It is expressly agreed and understood by the parties hereto that BAHA shall retain the right at all times to perform and/or subcontract all portions of the construction and related work on the Project site not covered by this Agreement.
- 2.7 It is expressly agreed and understood by the parties hereto that BAHA shall have the right to purchase material and equipment from any source and the craftspeople will handle and install such material and equipment.
- 2.8 Without limiting the foregoing, the parties recognize and agree that the items specifically excluded from the scope of this Agreement include the following:

- (a) Furniture, equipment and machinery owned or controlled by BAHA; however, the installation of office modular furniture shall be covered by this Agreement;
- (b) All employees of BAHA, any Contractor, design team or any other consultant of BAHA not performing construction craft labor within the scope of this Agreement;
- (c) Any work performed on or near, or leading to or into the Project site by state, county, city or other governmental bodies, or their contractor(s); or by utilities or their contractor(s);
- (d) Off-site maintenance of leased equipment and on-site supervision of such work; and
- (e) The testing and calibration of specialty equipment, including, but not limited to: communications dishes/antennae; audio/visual equipment; security access controls; surveillance cameras; and intrusion alarms; however the installation of the equipment and termination of electrical connections of such equipment shall be covered by this Agreement.

2.9 The parties agree that BAHA, at its sole option, may terminate, delay, and/or suspend any and all portions of the work covered by this Agreement at any time. Further, BAHA may prohibit some or all work on certain days or during certain hours of the day to mitigate the effect of the ongoing Project work on the businesses and residents in the vicinity of the Project site; and/or require such operational or schedule changes that may be deemed necessary, in its sole judgment. Any operational or schedule changes shall be subject to any applicable wage provisions included in a Schedule A agreement.

ARTICLE 3

SUBCONTRACTS

3.1 Each of the Contractors agrees that neither it nor any of its subcontractors will subcontract any work to be done on the Project except to a person, firm, or corporation who is or becomes party to this Agreement by executing the Agreement to be Bound attached hereto as Exhibit A and incorporated herein. Any Contractor working on the Project shall, as a condition to working on the Project, become signatory to and perform all work under the terms of this Agreement. Subject to the

provisions of Section 2.4, above, the furnishing of materials, supplies or equipment and the delivery thereof shall in no case be considered subcontracting, if not otherwise covered in the scope of work of this Agreement.

- 3.2 A subcontractor is defined as any person, firm or corporation who agrees under contract with a Contractor to perform on the Project any part or portion of the construction work covered by the prime contract, including the operation of construction equipment, performance of labor and/or installation of materials. The furnishing of supplies, equipment, or materials that are stockpiled for later use shall in no case be considered subcontracting. Construction trucking work, including the removal of debris and/or excess construction materials as well as delivery of materials directly incorporated into a work process, as described in Section 2.4 of this Agreement, shall be covered within the scope of this Agreement and, specifically, this Article 3, to the fullest extent provided by law and by prevailing wage determinations of the California Department of Industrial Relations.
- 3.3 The Contractors have the primary obligation for performance of all conditions of this Agreement. This obligation cannot be relieved, evaded or diminished by subcontracting. Should a Contractor elect to subcontract, such Contractor shall continue to have such primary obligation.
- 3.4 Any Contractor who provides in the subcontract that the subcontractor will pay the wages and benefits and will observe the hours and all other terms and conditions of this Agreement, shall not be liable for any delinquency by such subcontractor in the payment of any wages or fringe benefits provided herein, including payments to Health & Welfare, Pension, Vacation/Holiday Dues Supplement and Training & Retraining Funds, except as provided in the Labor Code.
- 3.4.1 All Contractors will give written notice to the Union(s) of any subcontract involving the performance of work covered by this Agreement within either five (5) days of entering such subcontract or before the subcontractor commences work on the Project, whichever occurs first, and shall specify the name and address of the lower tier Contractor. Written notice at a Pre-Job/Mark-up meeting (as described in Section 8.2 of this Agreement) shall be deemed written notice under this provision for those lower tier Contractors listed at the Pre-Job/Mark-up meeting only.
- 3.4.2 Thereafter, if such lower tier Contractor should become delinquent in the payment of any wages or benefits as above specified, the applicable fringe benefit trust fund shall immediately give written notice thereof to the Prime Contractor and to the affected Contractor specifying the nature and amount of such delinquency.

- 3.4.3 In the event any Contractor fails to give written notice of a subcontract as required herein, such Contractor shall be liable for all delinquencies of the subcontractor on this Project only without limitation.
- 3.4.4 The provisions of this Section 3.4 shall be applied only to the extent permitted by law and, notwithstanding any other provision of this Agreement, no aspect of the subcontractors' clause, including its enforcement, may be enforced by or subject to strike action.
- 3.4.5 Nothing in this Agreement is meant to interfere with the normal enforcement or collection rights of the fringe benefit trust funds.

ARTICLE 4

RELATIONSHIP BETWEEN PARTIES

- 4.1 This Agreement shall only be binding on the signatory parties hereto, and shall not apply to parents, affiliates, subsidiaries, or other divisions of the Coordinator (as described in Article 7 of this Agreement) and any Contractor unless signed by such parent, affiliate, subsidiary, or other division of such entity.
- 4.2 Each Contractor shall alone be liable and responsible for its own individual acts and conduct and for any breach or alleged breach of this Agreement. Any alleged breach of this Agreement by a Contractor or any dispute between the signatory Union(s) and the Contractor respecting compliance with the terms of this Agreement, shall not affect the rights, liabilities, obligations and duties between the signatory Union(s) and each other Contractor party to this Agreement.
- 4.3 It is mutually agreed by the parties that any liability by a signatory Union(s) to this Agreement shall be several and not joint. Any alleged breach of this Agreement by a signatory Union(s) shall not affect the rights, liabilities, obligations and duties between the Contractors and the other Unions party to this Agreement.
- 4.4 It is recognized by the parties to this Agreement that the Contractors and Coordinator are acting only on behalf of said Contractors and Coordinator, and said Contractors and Coordinator have no authority, either expressed, implied, actual, apparent or ostensible, to speak for or bind BAHA.

ARTICLE 5

NO STRIKES - NO LOCKOUTS

- 5.1 There shall be no strikes, picketing, work stoppages, slowdowns, or other disruptive activity for any reason including, but not limited to, disputes relating to the negotiation or renegotiation of the local collective bargaining agreements that serve as the basis for the Schedule A agreements, economic strikes, unfair labor practices strikes, safety strikes, sympathy strikes, and jurisdictional strikes by the Union or employees working under this Agreement against any Contractor covered under this Agreement on the Project. There shall be no lockout by any Contractor. Failure of any Union, or employee employed under this Agreement, to cross any picket line established by any Union, signatory or non-signatory to this Agreement, or by any other organization or individual, where such picket line is directed at the Project, or a Contractor or employer working on the Project, resulting in the failure of one or more employees employed under this Agreement to engage in Project work as directed by his/her Contractor or other disruption of Project work, is a violation of this Article. The Prime Contractor and the Union shall take all steps necessary to obtain compliance with this Article and neither shall be held liable for conduct for which it is not responsible.
- 5.2 If a Contractor contends that any Union has violated this Article or Section 6.3, below, it will notify in writing the Secretary-Treasurer of the Council, the Coordinator, the business manager/senior executive of the involved Union(s), and the Prime Contractor. The Secretary-Treasurer and the leadership of the involved Union(s) will immediately instruct, order, and use their best efforts to cause the cessation of any violation of this Article.
- 5.3 If the Union contends that any Contractor has violated this Article, it will notify the Contractor, the Prime Contractor and the Coordinator setting forth the facts that the Union contends violate the Agreement, at least twenty-four (24) hours prior to invoking the procedures of Section 5.4. The Prime Contractor shall promptly order the involved Contractor(s) to cease any violation of this Article.
- 5.4 Any party to this Agreement may institute the following procedure, in lieu of or in addition to any other action at law or equity, when a breach of Section 5.1, above, or Section 6.3, below, is alleged:
- 5.4.1 The party invoking this procedure shall notify John Kagel, whom the parties agree shall be the permanent arbitrator under this procedure. In the event that the permanent arbitrator is unavailable at any time, Robert Hirsch shall be appointed the

alternate, or, if he is unavailable, he shall appoint an alternate. Notice to the arbitrator shall be by the most expeditious means available, with notices to the party(ies) alleged to be in violation and to the Council if it is a Union alleged to be in violation. For purposes of this Article, written notice may be given by electronic mail, facsimile, hand delivery, or overnight mail and will be deemed effective upon receipt.

- 5.4.2 Upon receipt of said notice, the arbitrator named above or his alternate shall sit and hold a hearing within twenty-four (24) hours if it is contended that the violation still exists, but not sooner than twenty-four (24) hours after notice has been dispatched to the Council's Secretary-Treasurer and the Business Manager/senior executive(s) as required by Section 5.2, above.
- 5.4.3 The arbitrator shall notify the parties of the place and time chosen for this hearing. Said hearing shall be completed in one session, which, with appropriate recesses at the arbitrator's discretion, shall not exceed twenty-four (24) hours unless otherwise agreed upon by all parties. A failure of any party or parties to attend said hearings shall not delay the hearing of evidence or the issuance of any award by the arbitrator.
- 5.4.4 The sole issue at the hearing shall be whether or not a violation of Section 5.1, above, or of Section 6.3, below, has in fact occurred. The arbitrator shall have no authority to consider any matter in justification, explanation, or mitigation of such violation or to award damages (except as set forth in Section 5.7, below) which issue is reserved for court proceedings, if any. The award shall be issued in writing within three (3) hours after the close of the hearing, and may be issued without an opinion. If any party desires a written opinion, one shall be issued within fifteen (15) calendar days, but its issuance shall not delay compliance with, or enforcement of, the award. The arbitrator may order cessation of the violation of this Article and other appropriate relief, and such award shall be served on all parties by hand or registered mail upon issuance.
- 5.4.5 Such award shall be final and binding on all parties and may be enforced by any court of competent jurisdiction upon the filing of this Agreement and all other relevant documents referred to herein above in the following manner. Written notice of the filing of such enforcement proceedings shall be given to the other party. In any judicial proceeding to obtain a temporary order enforcing the arbitrator's award as issued under Section 5.4.4 of this Article, all parties waive the right to a hearing and agree that such proceedings may be *ex parte*. Such agreement does not waive any party's right to participate in a hearing for a final order of enforcement. The court's order or orders enforcing the arbitrator's award shall be served on all parties by hand or by delivery to their address as shown on this Agreement or in the applicable

Schedule A agreement (for a Union), as shown on their business contract for work under this Agreement (for a contractor), and to the representing Union (for an employee), by certified mail by the party(ies) first alleging the violation.

- 5.4.6 Any rights created by statute or law governing arbitration proceedings inconsistent with the above procedure or which interfere with compliance hereto are hereby waived by the parties to whom they accrue.
- 5.4.7 The fees and expenses of the arbitrator shall be paid by the losing party.
- 5.5 BAHA is a party in interest in all proceedings arising under this Article and Articles 6 and 11 and its designated representative and the Coordinator shall be sent contemporaneous copies of all notifications required by these Articles.
- 5.6 If the arbitrator determines in accordance with 5.4.4 above that a work stoppage has occurred, the respondent Union shall, within eight (8) hours of receipt of the award, direct all the employees it represents on the Project to return immediately to work. If the craft involved does not return to work by the beginning of the next regularly scheduled shift following such eight (8) hour period after receipt of the arbitrator's award, and the respondent Union has not complied with its obligation immediately to instruct, order, and use its best efforts to cause a cessation of the violation and a return to work of the employees it represents, then the respondent Union shall pay a sum as liquidated damages to the Contractor, and shall pay an additional sum per shift for each shift thereafter on which the craft has not returned to work. Similarly, if the arbitrator determines in accordance with Section 5.4.4 above that a lockout has occurred, the respondent Contractor shall, within eight (8) hours of receipt of the award, return all of the affected employees to work on the Project, or otherwise correct the violation as found by the arbitrator. If the respondent Contractor does not take such action by the beginning of the next regularly scheduled shift following the eight (8) hour period, the respondent Contractor shall pay a sum as liquidated damages to the affected Union(s) (to be apportioned among the affected employees and the benefit funds to which contributions are made on their behalf, as appropriate and designated by the arbitrator) and shall pay an additional sum per shift thereafter in which compliance by the respondent Contractor has not been completed. The arbitrator shall retain jurisdiction to determine compliance with this Section and to establish the appropriate sum of liquidated damages, which shall not be less than ten thousand dollars (\$10,000.00) nor more than twenty-five thousand dollars (\$25,000.00) for each shift.

- 5.7 Withholding employees, but not picketing, for failure of a Contractor to tender trust fund contributions as required in Article 16 and/or for failure to meet its weekly payroll is not a violation of this Article.
- 5.8 The procedures contained in Section 5.4 shall be applicable only to alleged violations of this Article. Discharge or discipline of employees for violation of this Article or Section 6.3 shall be subject to the grievance and arbitration procedures of Article 11 of this Agreement.

ARTICLE 6

WORK ASSIGNMENTS AND JURISDICTIONAL DISPUTES—NORTHERN CALIFORNIA PLAN

- 6.1 The assignment of work will be solely the responsibility of the Contractor performing the work involved and such work assignments will be in accordance with the Plan for the Settlement of Jurisdictional Disputes in the Construction Industry (the “Plan”) or any successor Plan.
- 6.2 All jurisdictional disputes between or among Building and Construction Trades Unions, parties to this Agreement, shall be settled and adjusted according to the present Plan established by the Building and Construction Trades Department or any other plan or method of procedure that may be adopted in the future by the Building and Construction Trades Department. Decisions rendered shall be final, binding, and conclusive on the Contractors and Unions parties to this Agreement.
- 6.2.1 For the convenience of the parties, and in recognition of the expense of travel between Northern California and Washington, DC, at the request of any party to a jurisdictional dispute under this Agreement an Arbitrator shall be chosen by the procedures specified in Article V, Section 5 of the Plan from a list composed of John Kagel, Thomas Angelo, Robert Hirsch, and Thomas Pagan, and the Arbitrator’s hearing on the dispute shall be held at the offices of the San Francisco Building and Construction Trades Council. All other procedures shall be as specified in the Plan.
- 6.3 All jurisdictional disputes shall be resolved without the occurrence of any strike, work stoppage, or slowdown of any nature, and the Contractor’s assignment shall be adhered to until the dispute is resolved. Individuals violating this section shall be subject to immediate discharge.

- 6.4 As provided in Section 8.2, below, Prime Contractor will conduct pre-job conferences for all Contractors with the Unions prior to commencement of work by the Contractors. At these conferences all jurisdictional assignments will be announced. The Council and representatives of BAHA shall be advised in advance of all such conferences and may participate if they wish.

ARTICLE 7

COORDINATOR

- 7.1 BAHA shall appoint a coordinator (“Coordinator”) who is responsible for the administration and application of this Agreement.
- 7.2 The Coordinator shall endeavor to facilitate harmonious relations between the Contractors and Unions signatory hereto and will conduct the periodic joint Labor/Management meeting referred to in Article 8, below. The Coordinator shall not be responsible for the acts of the Contractors or Unions signatory hereto, and will not be a party to any arbitration or litigation arising out of this Agreement.

ARTICLE 8

JOINT LABOR/MANAGEMENT MEETINGS AND PRE-JOB/MARK-UP MEETINGS

- 8.1 A joint Labor/Management meeting will be held on a periodic basis between the Coordinator, the Contractors and the signatory Unions. The purpose of these meetings is to promote harmonious labor/management relations, ensure adequate communications and advance the proficiency and efficiency of the craft workers and the Contractors on the Project. These periodic meetings will also include discussion of the safety, scheduling, productivity and compliance with applicable laws and regulations for the work performed on the Project.
- 8.2 A Pre-Job/Mark-Up meeting shall be held after a construction contract has been let to a Contractor (which includes a subcontractor at any tier) and prior to the commencement of work. The purpose of the Pre-Job/Mark-Up meeting is: (1) to establish the scope of work in each Contractor’s contract; and (2) to have each Contractor make its work assignments in accordance with Section 6.1 of this Agreement for the work within the scope of its construction contract. The work assignments shall be made in writing. Contractors shall be responsible for providing

complete information on their assignments of work. Any craft objecting to the Contractor's proposed assignment of work shall have seven (7) calendar days from the date of the Pre-Job/Mark-Up meeting to submit written objections to the Contractor, the Coordinator and the Council before the Contractor makes the work assignments final.

- 8.4 The Coordinator will schedule and attend all Pre-Job/Mark-Up meetings and participate in discussions as they pertain to the terms and conditions of this Agreement.

ARTICLE 9

MANAGEMENT RIGHTS

- 9.1 The Contractor(s) retain full and exclusive authority for the management of their work forces for all work performed under this Agreement. This authority includes, but is not limited to the right to:

- (a) Plan, direct and control the operation of all the work;
- (b) Decide the number and types of employees required to perform the work safely and efficiently;
- (c) Hire, promote and lay off employees as deemed appropriate to meet work requirements and/or skills required;
- (d) Require all employees to observe the Contractors' Project Rules, Security and Safety Regulations, consistent with the provisions of this Agreement. These Project Rules and Regulations shall be reviewed and mutually agreed upon at the Pre-Job meeting and supplied to all employees and/or posted on the jobsite;
- (e) Discharge or discipline employees for just cause;
- (f) Assign and schedule work at its sole discretion and determine when overtime will be worked. There shall be no refusal by a craft to perform work assigned, including overtime work; however, individual craftspeople shall not be required to work overtime unless specifically dispatched for overtime work. Any cases of a craft's refusal to work overtime shall be subject to the grievance procedure under this Agreement; and

- (g) Utilize any work methods, procedures or techniques and select and use any type or kind of materials, apparatus or equipment regardless of source, manufacturer or design, subject to the provisions of Section 2.4 and Article 21 of this Agreement.
- (h) The foregoing listing of management rights shall not be deemed to exclude other functions not specifically set forth herein. The Contractors, therefore, retain all legal rights not specifically enumerated in this Agreement.

ARTICLE 10

WORK RULES

- 10.1 The selection of craft foremen and general foremen shall be entirely the responsibility of the Contractor(s). Foremen and general foremen shall take orders from the designated Contractor(s) representatives.
- 10.2 There shall be no limit on production by employees nor restrictions on the full use of tools or equipment. Craft persons using tools shall perform any of the work of the trade and shall work under the supervision of the craft foremen.
- 10.3 Security procedures for control of tools, equipment and materials are solely the responsibility of Contractor(s).
- 10.4 Employees shall be at their place of work (as designated by the Contractor at the Pre-Job/Mark-Up meeting) and ready to work at the starting time and shall remain at their place of work performing their assigned functions until quitting time. A reasonable time will be allowed for employees to put company and personal tools in secured storage and return to the parking lot by quitting time. The parties reaffirm their policy of a fair day's work for a fair day's wage.
- 10.5 Slowdowns, standby crews and featherbedding practices will not be tolerated.
- 10.6 It is understood by the Contractor(s) and agreed to by the Union(s), that the employees of the Contractor(s) will perform the work requested by the Contractor(s) without having any concern or interference with any other work performed by any employees of BAHA, its member organizations, or others who are not covered by this Agreement.

- 10.7 Contractors shall provide rest periods in accordance with the Schedule A agreements and Industrial Welfare Commission Order No. 16-2001. Any dispute regarding rest and meal periods provided in this Section 10.7 shall be resolved exclusively under the provisions of Article 11 of this Agreement.
- 10.8 There shall be no interference with vendor or supplier deliveries of equipment, apparatus, machinery and construction materials to the jobsite since such deliveries shall not fall under this Agreement. Unloading of the above will be performed by the Contractors' employees.
- 10.9 The Contractor(s) and the Unions recognize the necessity for promoting efficiency and agree that no rules, customs or practices shall be permitted that cause over-manning, limit production or increase the time required to do the work, and no limitation shall be placed upon the amount of work which an employee shall perform, nor shall there be any restrictions against the use of any kind of machinery, tools or labor-saving devices. However, the lawful manning provisions of the applicable craft's Schedule A agreement shall be recognized.

ARTICLE 11

GRIEVANCE PROCEDURE

- 11.1 This Agreement is intended to provide close cooperation between management and labor. The Prime Contractor and the Council shall each assign a representative to the Project for the purpose of assisting the local Unions, together with the Contractors, to complete the construction of the Project economically, efficiently, continuously, and without interruption, delays, and work stoppages.
- 11.2 All disputes involving discipline and/or discharge of employees working on the Project shall be resolved through the grievance and arbitration provision contained in the Schedule A agreement of the applicable craft of the affected employee. No employee working on the Project shall be disciplined or dismissed without just cause.
- 11.3 All Project labor disputes involving the application or interpretation of a Schedule A agreement to which a signatory Contractor and a signatory Union are parties shall be resolved pursuant to the dispute resolution procedures contained in such Schedule A agreement. All disputes relating to the interpretation or application of this Agreement shall be resolved through the grievance and arbitration procedure set forth herein, except an alleged violation of Article 5 or Section 6.3 which shall be resolved through the procedures set forth in Section 5.4 et seq.

11.4 The parties understand and agree that in the event any dispute arises out of the meaning, interpretation, or application of the provisions of this Agreement, the same shall be settled by means of the procedures set out herein (“Grievance Procedure”). No grievance shall be recognized unless the grieving party (Local Union or District Council on its own behalf, or on behalf of an employee whom it represents, or a Contractor on its own behalf, or BAHA on its own behalf) provides notice in writing to the signatory party with whom it has a dispute (with a copy to the Coordinator) within five (5) business days after becoming aware of the dispute, but in no event more than thirty (30) calendar days after it reasonably should have become aware of the event giving rise to the dispute. The time limits in this Section 11.4 may be extended by mutual agreement (oral or written) of the parties.

11.5 Grievances arising out of Section 11.4, above, shall be settled according to the following procedures:

Step 1: Within five (5) business days after receipt of the written notice of the grievance, the parties to the grievance shall confer and attempt to resolve the grievance. In the event that the representatives are unable to resolve the dispute within the five (5) business days after its referral to Step 1, either involved party may refer the dispute to Step 2; or, if neither party is a Union, then to Step 3.

Step 2: The applicable Union International representative and the other party shall meet within seven (7) business days of the referral of a dispute to this second step to arrive at a satisfactory settlement thereof. Meeting minutes shall be kept by the other party. If the parties fail to reach an agreement, then the dispute may be appealed in writing in accordance with the provisions of Step 3 within seven (7) business days thereafter.

Step 3: Within five (5) business days after referral of a dispute to Step 3, the parties shall choose a mutually agreed upon arbitrator for final and binding arbitration. The arbitrator shall be selected from a permanent panel of arbitrators consisting of William Engler, William Riker, Thomas Angelo, John Kagel, and Robert Hirsch, who will hear grievances filed pursuant to this Article. Should the parties be unable to agree mutually on the selection of an Arbitrator from among those on the panel, selection for that given arbitration shall be made by alternately striking names from the list of names on the panel until the parties agree on an Arbitrator or until one (1) name remains. The first party to strike a name from the list shall be the party bringing forth the grievance. In the event the last remaining Arbitrator is not available in a reasonable time to hear the grievance and the parties have not mutually agreed to extend time for arbitration, the last stricken Arbitrator will be selected. A reasonable time is defined as fifteen (15) calendar days where the grievance concerns employment discharge and thirty (30) calendar days for all other grievances.

- 11.6 The decision of the arbitrator shall be binding on all parties. The arbitrator shall have no authority to change, amend, add to, or detract from any of the provisions of the Agreement. The expense of the arbitrator shall be borne equally by both parties.
- 11.7 The arbitrator shall arrange for a hearing on the earliest available date from the date of his/her selection. A decision shall be given to the parties within five (5) calendar days after completion of the hearing unless such time is extended by mutual agreement. A written opinion may be requested by a party from the arbitrator.
- 11.8 The time limits specified in any step of the grievance procedure set forth in this Article may be extended by mutual agreement of the parties initiated by the written request of one party to the other at the appropriate step of the grievance procedure. Failure to process a grievance, or failure to respond in writing within the time limits provided above, without a request for an extension of time, shall be deemed a waiver of such grievances with prejudice. In order to encourage the resolution of disputes and grievances at Step 1 of this Grievance Procedure, the parties agree that such settlements shall not be precedent setting.

ARTICLE 12

UNION RECOGNITION AND REPRESENTATION

- 12.1 All employees who are employed by the Contractors shall, as a condition of employment, on or before the eighth (8th) day of consecutive or cumulative employment on a construction contract subject to this Agreement, be responsible for the payment of the applicable monthly working dues and any associated fees uniformly required for union membership in the applicable local union which is signatory to this Agreement. Further, there is nothing in this Agreement that would prevent non-union employees from joining the local union.
- 12.2 The Contractors recognize the Unions signatory hereto as the sole and exclusive collective bargaining representatives for its craft employees on the Project.
- 12.3 Authorized representatives of the Unions shall have access to the Project site during established working hours, provided they do not unduly interfere with the work of the employees, and further provided, that such representatives fully comply with the visitor safety and security rules established for the Project.

- 12.4 A Steward shall be a working journeyman appointed by the authorized union representative of the Local Union(s) who shall, in addition to work as a journeyman, be permitted to perform during working hours such Union(s) duties as cannot be performed at other times which consists of those duties assigned by the business manager or business agent. The Union(s) agrees that such duties shall be performed as expeditiously as possible and the affected Contractor agrees to allow the Steward a reasonable amount of time for the performance of such duties. The Steward shall not leave the work area without notifying the appropriate supervisor.
- 12.5 The Steward will be paid at the journeyman wage for the job classification in which the Steward is employed.
- 12.6 The working Steward will be subject to discharge for just cause to the same extent as other employees provided, however, that the Union shall be notified twenty-four (24) hours prior to the discharge.
- 12.7 The Steward shall remain on the job until its completion, or until no more than three (3) employees are left on the job, provided the Steward is qualified to perform the work remaining to be done, unless the Steward is removed by the business manager/senior executive of the applicable Union.

ARTICLE 13

REFERRAL

- 13.1 To the extent permitted by law, the following shall apply: For signatory unions now having a job referral system contained in a Schedule A agreement, the Contractors agree to comply with such a system and it shall be used exclusively by such Contractors, together with the procedures set forth in Section 13.3 below, as appropriate. Such job referral system shall be operated in a non-discriminatory manner and in full compliance with all federal, state, and local laws and regulations, including those that require equal employment opportunities and non-discrimination.
- 13.2 The Unions will exert their utmost efforts to recruit and refer sufficient numbers of skilled craft workers to fulfill the labor requirements of the Contractors.
- 13.3 The parties also recognize and support BAHA's commitment to provide opportunities for participation on the Project to regular, experienced employees (core employees) of a Contractor awarded work on this Project and who do not traditionally work under a local collective bargaining agreement. In furtherance of this commitment, the parties agree that such Contractor awarded work on the Project may employ their regular

local experienced work force, pursuant to the procedures described below, where the employees so designated as a “regular, experienced employee” meet the following qualifications:

- (a) Possesses any license required by state or Federal law for the Project work to be performed; and
- (b) Has been employed by the Contractor for at least five hundred (500) paid work hours during the twelve (12) months immediately preceding the Contractor’s start of Project work.

As its first employee for work on the Project, the Contractor may directly employ one (1) of its qualified regular, experienced employees. Its second employee shall be referred pursuant to Section 13.1, above. As its third employee, the Contractor may directly employ a second of its qualified regular, experienced employees and so on until the fourth “regular, experienced employee” has been employed by the Contractor on the Project. The maximum number of “regular, experienced employees” employed by a Contractor under this procedure shall be four (4). All additional employees shall be requested and referred pursuant to Section 13.1, above. On layoffs, the Contractor shall reverse the alternating process with respect to the employment of “regular, experienced employees” on the Project. The Contractor shall notify the appropriate Union of the name and Social Security number of each regular, experienced employee to work on the Project and each such employee shall register with the Union’s hiring hall before commencing work on the Project. If there is any question regarding an employee’s eligibility under this Subsection 13.3, the Contractor shall provide satisfactory proof of such at a Union’s request.

- 13.4 In the event that a Union is unable to fill any requisition for one (1) or more employees within forty-eight (48) hours after such requisition is made by a Contractor, or (Saturdays, Sundays, and holidays excepted), the Contractor may employ applicants meeting the qualifications sought from any other available source as per the applicable Schedule A agreement. The Contractor shall promptly notify the Union of any applicants from other sources.
- 13.5 In the event that a signatory local union does not have a job referral system as set forth in Section 13.1 above, the Contractor shall give the Union equal opportunity to refer applicants.
- 13.6 The Union security provisions of the applicable Schedule A agreement shall apply to each employee working within the jurisdiction of that craft under this Agreement; *provided*, however, that should such provision(s) require membership in the labor organization, such may be satisfied by the tendering of periodic dues and fees uniformly and non-discriminatorily required to the extent allowed by law.

ARTICLE 14

NON-DISCRIMINATION

- 14.1 The Contractors and the Union agree that they will not discriminate against any employee or applicant for employment because of race, color, ethnic group identification, national origin, ancestry, religion, gender, age, marital status, disability or AIDS/HIV status, medical conditions, sexual orientation, gender identity, domestic partner status, or status as a Vietnam-era veteran, and shall provide equal employment opportunity for all persons in all job categories of employment based only upon job-related bona fide occupational qualifications. The Unions shall cooperate with the Contractor's obligations to ensure that applicants are employed and that employees are treated during employment without regard to such status. Relevant employment actions shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff, suspension or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Any complaints regarding the application of this provision shall be brought to the immediate attention of the involved Contractor for consideration and resolution.

ARTICLE 15

APPRENTICES

- 15.1 The parties recognize the need to maintain continuing support of effective programs designed to develop adequate numbers of competent workers in the construction industry. To that end, the Contractors and Unions shall exert their best efforts to identify and recruit local residents, including women, the economically disadvantaged, young adults and others participating in community-based programs located within the service area of BAHA and its member organizations in order to assist those individuals in qualifying and becoming eligible for apprenticeship programs.
- 15.2 The Contractors agree to employ, and the Unions agree to cooperate in furnishing, apprentices from state certified jointly administered apprenticeship programs. A properly indentured apprentice must be employed under the regulations of the craft or trade at the work of which he/she is indentured and shall be employed only for work of the craft or trade for which he/she is indentured.
- 15.3 The apprentice ratios will be in compliance with the applicable provisions of the California Labor Code and California prevailing wage rate determination.

ARTICLE 16

WAGE SCALES and FRINGE BENEFITS

- 16.1 All employees covered by this Agreement shall be classified and paid in accordance with the classification and wage and fringe benefit scales contained in the applicable Schedule A agreement and in compliance with the applicable general prevailing wage determination made by the California Director of Industrial Relations pursuant to the California Labor Code.
- 16.2 During the period of construction on this Project, the Contractors agree to recognize and put into effect such increases in wages and recognized fringe benefits as shall be negotiated between the various Unions and the historically recognized local bargaining unit on the effective date as set forth in the applicable Schedule A agreement. The Unions shall notify the Contractors in writing of the specific increases in wages and recognized fringe benefits and the date on which they become effective.
- 16.3 The Contractors hereby adopt and agree to be bound by the written terms of the legally established local trust agreements specifying the detailed basis on which payments are to be made into, and benefits paid out of, such appropriately qualified employee fringe benefit funds established by such appropriate local agreements. The Contractors authorize the parties to such local trust agreements to appoint trustees and successor trustees to administer the trust funds, and hereby ratify and accept the trustees so appointed as if made by the Contractors.
- 16.4 Wages due shall be paid to all employees weekly, not later than on Friday, and not more than three (3) days' wages may be withheld and shall be paid before the end of the work shift. Payment shall be made by check with detachable stub.
- 16.5 Each Contractor shall be required to certify in writing that it has paid all wages and benefit contributions due and owing prior to receipt of its final payment and/or retention. Further, upon timely notification by a Union to the Prime Contractor, the Prime Contractor shall work with any Contractor that is delinquent in payment of benefit contributions or wages to assure that proper benefit and wage payments are made, to the extent of withholding otherwise due payments owed such delinquent Contractor until such payments have been made or otherwise guaranteed.
- 16.6 When an employee is discharged, the employee shall be paid wages due immediately. An employee laid off or terminated shall be given a termination slip immediately upon termination of work. The termination slip shall be completed stating the reason for termination, and the employee's copy shall have, in addition to the firm's name, the

firm's address. If an employee voluntarily terminates, wages due shall be paid in accordance with California State Law.

ARTICLE 17

HOURS OF WORK, OVERTIME and SHIFTS

- 17.1 **Hours or Work:** The work week will start on Monday and conclude on Sunday. Eight (8) hours per day shall constitute a standard work day between the hours of 6:00 a.m. and 5:30 p.m. with one-half (1/2) hour designated for lunch midway through the shift. Forty (40) hours per week, Monday through Friday, shall constitute a regular week's work. The foregoing provisions of this Article are applicable unless otherwise provided in the California general prevailing wage determinations made by the California Director of Industrial Relations pursuant to the California Labor Code. Nothing herein shall be construed as guaranteeing any employee eight (8) hours per day or forty (40) hours per week.
- 17.2 **Overtime:** Overtime will be in compliance with the applicable California general prevailing wage determination made by the Director of Industrial Relations pursuant to the California Labor Code.
- 17.3 **Shifts:** The Contractor(s) shall have the right to establish shifts for any portion of the work in accordance with this Section.
- 17.3.1 If two (2) or three (3) shifts are worked, the first shift shall consist of eight (8) hours of continuous work exclusive of a one-half (1/2) hour non-paid lunch period, the second shift shall consist of seven and one-half (1/2) hours of continuous work exclusive of a one-half (1/2) hour non-paid lunch period and the third shift shall consist of seven (7) hours of continuous work exclusive of a one-half (1/2) non-paid lunch period for eight (8) hours pay.
- 17.3.2 Shift work may be performed at the option of the Contractor(s) but, when performed, it must continue for a period of not less than five (5) consecutive working days. Saturday and Sunday, if worked, can be used for establishing the five (5) day minimum shift work period. The straight time work week shall be considered to start with the day shift on Monday and end with the conclusion of the second or third shift on the fifth day. In the event the second or third shift of any regular work shall extend into a holiday the employees shall be paid at their regular shift rate.
- 17.3.3 To the extent permitted by the applicable provisions of the California Labor Code, the Contractor(s), with one week's notice to the Union(s), may establish a four (4) day per

week, ten (10) hour per day work shift. The regular work week shall be from Monday through Thursday. Pay for each of these four (4) days shall be ten (10) hours at the straight time hourly rate.

- 17.3.3.1 Friday may be worked as a voluntary make-up day in those cases where the work is shut down due to inclement weather or an emergency situation. If a Friday is worked, the pay shall be one and one-half (1-1/2) times the straight time hourly rate for the first ten (10) hours worked. All work in excess of ten (10) hours shall be paid two (2) times the straight time hourly rate. If a sixth or seventh day is worked, the pay shall be two (2) times the straight time hourly rate.

ARTICLE 18

HOLIDAYS

- 18.1 Holidays will be in compliance with the applicable Schedule A agreements.

ARTICLE 19

REPORTING PAY

- 19.1 Any employee reporting for work and for whom no work is provided, except when given notification not to report to work, shall receive two (2) hours pay at the regular straight time hourly rate. Any employee who starts work shall receive four (4) hours pay at the regular straight time hourly rate. Any employee who works beyond four (4) hours shall be paid for actual hours worked.
- 19.1.1 Whenever minimum reporting pay is provided for employees, they will be required to remain at the Project site available for work for such time as they receive pay, unless released sooner by the principal supervisor of the applicable Contractor or its designated representative.
- 19.1.2 The provisions of this Section are not applicable where the employee voluntarily quits or is out by reason of a strike, in which case the employee shall be paid for the actual time worked.
- 19.2 It will not be a violation of this Agreement when BAHA or Contractors consider it necessary to shut down because of an emergency situation that could endanger life or property. In such cases, employees will be compensated only for the actual time worked. In the case of a situation described above whereby BAHA or Contractors

request employees to wait in a designated area available for work, the employees will be compensated for the waiting time.

ARTICLE 20

TRAVEL AND PARKING

- 20.1 BAHA adheres to the City and County of San Francisco Transit-First Policy under Charter Section 8A.115 which promotes travel by public transit as an economically and environmentally-sound alternative to travel by private automobile. Consistent with the Transit-First Policy, no Contractor shall provide employees with parking on or near the Project site, including staging areas. Where an applicable Schedule A agreement provides for parking reimbursement, but not for reimbursement of transit expenses, the Contractor shall make available to employees reimbursement for verifiable commute related transit expenses.
- 20.2 Parking reimbursement procedures established under applicable Schedule A agreements shall apply to this Project. The availability of parking will be discussed by the Prime Contractor at both Pre-bid conference and Pre-job/Mark-up meetings.

ARTICLE 21

HEALTH AND SAFETY

- 21.1 The employees covered by the terms of this Agreement shall at all times, while in the employ of the Contractors, be bound by such safety rules and regulations as may be established by BAHA and Contractors and in accordance with OSHA/Cal-OSHA. These rules and regulations will be published and posted at conspicuous places throughout the Project.
- 21.2 In accordance with the requirements of OSHA/Cal-OSHA, it shall be the exclusive responsibility of each Contractor on the Project to assure safe working conditions for its employees and compliance by them with any safety rules contained herein or established by the Contractors. Nothing in this Agreement will make the Unions(s) liable to any employee or to other persons in the event that injury or accident occurs.
- 21.3 This Project shall be a drug free workplace. Workers shall not possess, use, be under the influence of, provide, dispense, receive, sell, offer to sell alcohol and/or controlled substances as defined by law while on BAHA's property. All employees and applicants for employment shall adhere to the substance testing policy of the applicable Schedule A agreement. Violation of this provision shall subject the employee to discipline up to and including termination.

ARTICLE 22

SECURITY OF MATERIAL, EQUIPMENT and TOOLS

- 22.1 Security procedures for the control of tools, equipment and materials shall be solely the responsibility of the Contractors.
- 22.2 All employees will comply with the security procedures established by the Contractors and BAHA.

ARTICLE 23

CALL-INS

- 23.1 When employees are called in to work at times other than their regularly established shift, they shall be paid not less than four (4) hours at the applicable overtime rate for that day.

ARTICLE 24

HELMETS TO HARDHATS

- 24.1 The Contractors and the Unions recognize a desire to facilitate the entry into the building and construction trades of veterans who are interested in careers in the building and construction industry. The Contractors and Unions agree to utilize the services of the Center for Military Recruitment, Assessment and Veteran's Employment (hereinafter "Center") and the Center's "Helmets to Hardhats" program to serve as a resource for preliminary orientation, assessment of construction aptitude, referral to apprenticeship programs or hiring halls, counseling and mentoring, support network, employment opportunities and other needs as identified by the parties.
- 24.2 The Unions and Contractors agree to coordinate with the Center to create and maintain an integrated database of veterans interested in working on this Project and of apprenticeship and employment opportunities for this Project. To the extent permitted by law, the Unions will give credit to such veterans for bona fide, provable past experience.

ARTICLE 25

ENVIRONMENTAL IMPACTS

- 25.1 The Contractors shall conduct all work performed under this Agreement in a manner that minimizes adverse impacts to the surrounding community.

ARTICLE 26

ENTIRE AGREEMENT

- 26.1 The provisions of this Agreement, including the Schedule A agreements which are the local master collective bargaining agreements of the signatory unions having jurisdiction over this Project and which are listed in Exhibit B to this Agreement and incorporated herein by reference, shall apply to the work covered by this Agreement, notwithstanding the provisions of any other local, area, and/or national agreement that may conflict with or differ from the terms of this Agreement, *except* as specifically provided for in Article 1 of this Agreement. Where a subject covered by this Agreement is also covered by a Schedule A agreement, the provisions of this Agreement shall apply and supersede the Schedule A agreement. Where a subject is covered by the provisions of a Schedule A agreement and is not covered by this Agreement, the provisions of the Schedule A agreement shall prevail.
- 26.2 The parties agree that this Agreement, together with the Schedule A agreements, constitute an integrated, self-contained, stand-alone agreement, and that by virtue of having become bound to this Agreement, the Contractors will not be obligated to sign any other local, area or national collective bargaining agreement as a condition of performing work within the scope of this Agreement. In addition, it is understood and agreed that all grievances and disputes involving the interpretation or application of this Agreement, including the Schedule A agreements, shall be resolved according to the procedures set forth in Article 11 of this Agreement; *provided*, however, that should a dispute involve a single Schedule A agreement and a contractor signatory thereto, and not involve the interpretation or application of this Agreement, such dispute shall be processed and resolved pursuant to the dispute resolution procedure of the applicable Schedule A agreement. Should there be a dispute as to whether the provisions of Article 11 apply or the dispute resolution procedures of the Schedule A agreement apply, then the matter shall be presented in writing initially to an arbitrator selected under Article 11 of this Agreement to resolve such issue.

- 26.3 The Unions agree that this Agreement covers all matters affecting wages, hours and other terms and conditions of employment, and that during the terms of this Agreement, neither the Contractors, nor the Union(s) will be required to negotiate on any further matters affecting these or any other subject not specifically set forth in this Agreement except by mutual agreement of the Unions involved and the Coordinator.
- 26.4 Any other agreement or modification of this Agreement must be reduced to writing and signed by the parties.
- 26.5 This Agreement may be executed in counterparts, such that original signatures may appear on separate pages, and when bound together all necessary signatures shall constitute an original. Facsimile or scanned signature pages transmitted to other parties to this Agreement shall be deemed equivalent to original signatures.
- 26.6 Each of the persons signing this Agreement represents and warrants that such person has been duly authorized to sign this Agreement on behalf of the party indicated and each of the parties by signing this Agreement warrants and represents that such party is legally authorized and entitled to enter into this Agreement.

ARTICLE 27

GENERAL SAVINGS CLAUSE

- 27.1 It is not the intention of either the Contractors or the Union(s) parties to violate any laws governing the subject matter of this Agreement. If any Article or provision of this Agreement shall be declared invalid, inoperative, or unenforceable by any competent authority of the executive, legislative, judicial or administrative branch of the federal, state or local government, the parties shall suspend the operation of each such article or provision during the period of invalidity. Such suspension shall not affect the operation of any provision covered in this Agreement to which the law or regulation is not applicable. Further, the Contractors and Union(s) agree that if and when any or all provisions of this Agreement are finally held or determined to be illegal or void by Court of competent jurisdiction, the parties will promptly enter into negotiations concerning the substance affected by such decision for the purpose of achieving conformity with the requirements of an applicable law and the intent of the parties hereto.

ARTICLE 28

DURATION OF AGREEMENT

28.1 This Agreement shall become effective on the day BAHA awards the first contract covered by the scope of this Agreement and shall continue in full force and effect until completion of the scope of the Project as specifically described in Article 2, Section 2.1, of this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed and effective as of the day and year first written above.

**BAY AREA HEADQUARTERS
AUTHORITY**

By: 
Steve Heminger,
Executive Director

**SAN FRANCISCO BUILDING &
CONSTRUCTION TRADES COUNCIL**

By: 
Michael Theriault,
Secretary-Treasurer

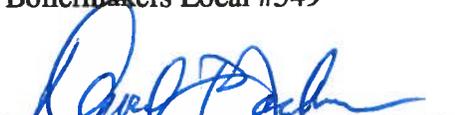
Signatory Unions:


Insulators Local #16


Hod Carriers Local #166


Boilermakers Local #549


Roofers Local #40 *Waterproofers*


Bricklayers Local #3


Iron Workers Local #377


Northern California Regional
Council of Carpenters for and on
behalf of their affiliated crafts

Laborers Local Union #261



Sheet Metal Workers Local #104



Cement Masons Local #300



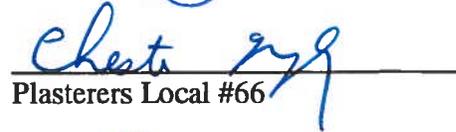
Operating Engineers Local #3



Electrical Workers Local #6



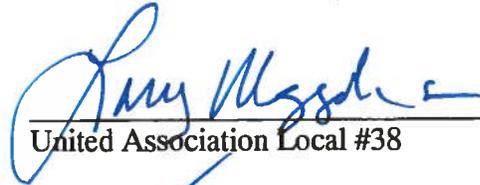
Painters District Council #16



Plasterers Local #66



Sprinkler Fitters Local #483



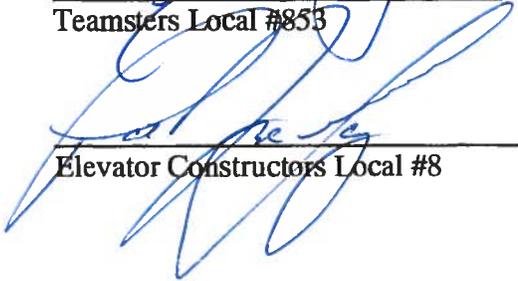
United Association Local #38



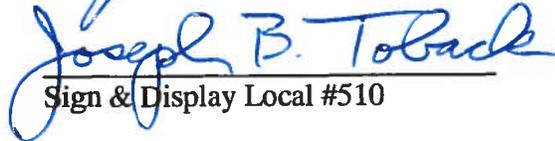
Teamsters Local #853



Laborers Local #67



Elevator Constructors Local #8



Sign & Display Local #510

ARTICLE 28

DURATION OF AGREEMENT

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IN WITNESS WHEREOF, the parties have caused this Agreement to be executed and effective as of the day and year first written above.

**BAY AREA HEADQUARTERS
AUTHORITY**

**SAN FRANCISCO BUILDING &
CONSTRUCTION TRADES COUNCIL**

By: _____
Steve Heminger,
Executive Director

By: _____
Michael Theriault,
Secretary-Treasurer

Signatory Unions:

Insulators Local #16

Hod Carriers Local #166

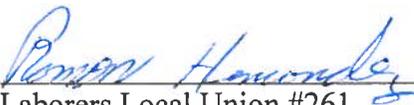
Boilermakers Local #549

Roofers Local #40

Bricklayers Local #3

Iron Workers Local #377

Northern California Regional
Council of Carpenters for and on
behalf of their affiliated crafts



Laborers Local Union #261

EXHIBIT A

**PROJECT STABILIZATION AGREEMENT
FOR THE
BAY AREA HEADQUARTERS PROJECT
BETWEEN THE
BAY AREA HEADQUARTERS AUTHORITY**

**And the
SAN FRANCISCO BUILDING & CONSTRUCTION TRADES COUNCIL
AND SIGNATORY UNIONS
AGREEMENT TO BE BOUND**

The undersigned, as a Contractor or Subcontractor, including construction material trucking company/entity, (CONTRACTOR) on the Bay Area Headquarters Project, (hereinafter PROJECT), for and in consideration of the award to it of a contract to perform work on said PROJECT, and in further consideration of the mutual promises made in this "Project Stabilization Agreement" (hereinafter AGREEMENT), a copy of which was received and is acknowledged, hereby:

- (1) Accepts and agrees to be bound by the terms and conditions of the AGREEMENT for this Project, together with any and all amendments and supplements now existing or which are later made thereto:
- (2) The CONTRACTOR agrees to be bound by the legally established local trust agreements as set forth in Article 16 of this AGREEMENT.
- (3) The CONTRACTOR authorizes the parties to such local trust agreements to appoint trustees and successor trustees to administer the trust funds and hereby ratifies and accepts the trustees so appointed as if made by the CONTRACTOR;
- (4) Certifies that it has no commitments or agreements which would preclude its full and complete compliance with the terms and conditions of said AGREEMENT.
- (5) Agrees to secure from any CONTRACTOR(S) (as defined in said AGREEMENT) which is or becomes a subcontractor (of any tier) to it, a duly executed Agreement to be Bound in form identical to this document.

Date: _____

(Name of Contractor)

(Authorized Officer & Title)

(Name of Prime Contractor or
Higher Level Contractor)

(Address)

(Phone #) (Fax #)

Contractor's License Number

Motor Carrier Permit (CA #)

EXHIBIT B
APPLICABLE SCHEDULE "A" AGREEMENTS

International Association of Heat Frost Insulators and Allied Workers, Local #16
Laborers International Union of North America, Hod Carriers, Local #166
International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Local #549
United Union of Roofers, Waterproofers and Allied Workers, Local #40
International Union of Bricklayers and Allied Craftworkers, Local #3
International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local #377
46 Northern California Counties Carpenters Master Agreement for Northern California
Laborers Master Agreement for Northern California
Sheet Metal Workers' International Association, Local #104
Operative Plasterers and Cement Masons, Local #300
Operating Engineers Local #3 Master Agreement for Northern California
International Brotherhood of Electrical Workers, Local #6
Operative Plasterers and Cement Masons International Association, Local #66
United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry, Sprinkler Fitters, Local #483
United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry, Local #38
International Brotherhood of Teamsters, Local #853
Laborers International Union of North America, Local #67
International Union of Elevator Constructors, Local #8
International Union of Painters and Allied Trades, District Council #16
International Union of Painters and Allied Trades, Sign & Display, Local #510
United Brotherhood of Carpenters, Pile Drivers Local #34