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Deputy Executive Director, Policy

ANDREW B. FREMIER
Deputy Executive Director, Operations

July 25, 2014

**REQUEST FOR PROPOSAL (RFP)
MOVE COORDINATION SERVICES**

NOTICE IS HEREBY GIVEN that the Bay Area Headquarters Authority (BAHA) invites your firm to submit a proposal for Move Coordinator services.

The Request for Proposals (RFP) documents for this project are available for download on the MTC website at <http://procurements.mtc.ca.gov/>. Proposers are responsible for checking the website for any Addenda that may be issued relative to this RFP. Responses should be submitted in accordance with the instructions set forth in the RFP.

Interested firms must submit an original and eight (8) copies, as well as one electronic PDF version, of their Proposals by **4:00 p.m., Friday, August 22, 2014**, in accordance with the instructions contained in the RFP. Other key RFP Dates are listed in Section V, Consultant Selection Timetable of the RFP.

BAHA Point of Contact
Robert Hoffman, Project Manager
Metropolitan Transportation Commission
Joseph P. Bort MetroCenter
101 Eighth Street
Oakland, CA 94607-4700
Tel: 510/ 817-5723
E-mail: rhoffman@mtc.ca.gov

Thank you for your interest.

Sincerely,


Andrew B. Fremier
Deputy Executive Director

SH: rh

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I. BAHA AND PROJECT DESCRIPTION

A. Description of BAHA

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 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 three separate regional agencies encourages further integration of regional planning efforts currently under the umbrella of One Bay Area.

B. Facility Descriptions

The 375 Beale Street, San Francisco project team includes BAHA architects, a workplace programming and interior designer and construction contractors who are transforming the existing 500,000 square foot eight-story building into a multi-agency, multi-functional regional facility with public amenities.

The regional agencies expect to commence relocation to 375 Beale Street starting in December 2015 and will occupy approximately 200,000 square feet on 4 different floors.

The MetroCenter at 101 8th Street, Oakland is a 106,000 square foot, three stories above ground and one below ground office building owned in a condominium arrangement by MTC, BART and ABAG. MTC occupies the 3rd floor, 2nd floor, and a small portion of the ground floor. ABAG occupies the majority of the 1st floor and both MTC and ABAG own the joint technical library also on the 1st floor. Only the MTC & ABAG occupied spaces and the library will be relocating, BART plans to remain in the spaces on the ground floor. The disposition of the MetroCenter building following the relocation is unknown at this time.

The Air District currently occupies the building at 939 Ellis St., San Francisco. It was recently sold but the Air District remains until the relocation to 375 Beale Street. It is a 7-story, 116,000 sq. ft. office building and no staff will remain following the move. The Air District also has an operating laboratory on site that will need to be relocated when they move to 375 Beale.

Please Attachment F, for [375 Beale Street Floor Plans](#).

C. Project Description

BAHA is responsible for providing move coordination and physical relocation services for the partner agencies. BAHA requires the services of a professional move coordinator to develop a scope of work that will cover all aspects of the move, including but not limited to preparing a relocation timeline which includes critical tasks, developing a strategy for communicating relocation information to the staff of the partner agencies and third party contractors, procuring a qualified moving firm and specialty movers for areas such as information technology infrastructure and equipment, and the Air District's laboratory; and supervising, coordinating and implementing the multi-agency, multi-location move.

Approximately 250 staff from MTC, 70 staff from ABAG at 101 8th Street, Oakland, and 270 staff from 939 Ellis Street, San Francisco, or almost 600 total staff will be moved.

BAHA has contracted with a furniture dealer/manufacturer team to provide new workstations, offices and other ancillary furniture for the agency floors. It is expected that the agencies will not be required to relocate existing office furniture, with the exception of lateral files/shelving that will be placed in centralized file storage areas, task seating and other items to be identified. The new space will also have shared spaces for copy/print/mail/supplies and kitchen/break room and other collaboration spaces.

The initial primary tasks of the move coordinator will be to develop a detailed scope of work, including deliverables and a project schedule.

The move coordinator will also assist with developing "reduction strategies" and schedules for a variety of areas including, but not limited to paper reduction (personal, section and agency files), office supply and copier paper reduction to (avoid the need to relocate these items), library book reduction (technical library and law library) and also

to identify what, if any, furniture/items require relocation and to determine where these items will be placed within the new building.

The move coordinator will also be responsible for securing a broker(s) to handle the final disposition of surplus furniture and equipment for MTC offices (only) in the most environmentally responsible way. ABAG and the Air District may contract with firm(s) directly to provide these services.

II. PROPOSER MINIMUM QUALIFICATIONS

Proposals must demonstrate that the firm or team submitting the Proposal (“Proposer”) meets the following Minimum Qualifications to be eligible for consideration for this project.

- Demonstrated experience as a move coordinator for complex multi-location and/or multi-agency moves with over four hundred (400) employees. *Provide a minimum of two (2) prior projects in the San Francisco Bay Area or California, within the last ten (10) years.*
- Demonstrated experience procuring and overseeing general and specialty movers, such as server rooms, computer equipment, laboratory and/or libraries. *Provide a minimum of two (2) prior projects in the San Francisco Bay Area or California, within the last ten (10) years.*

(Note: The same two projects can be used for both minimum qualifications requirements.)

The following Proposer qualification is desirable, but not required, in order for a Proposer to be evaluated:

- Demonstrated experience providing and executing move and change management strategies, including leading meetings with multiple interested parties and contractors, messaging both verbally and in writing, and a demonstrated ability to lead participants (at all levels) through a challenging move process. *Please provide a minimum of two (2) prior projects in the San Francisco Bay Area or California, within the last ten (10) years.*
- Demonstrated experience as a move coordinator for complex **public sector** entities, showing ability to successfully manage the nuances involved with communicating in an environment where there are competing priorities. *Provide one (1) prior project example.*

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

A. Scope of Work

The preliminary scope of work for the project is provided in *Appendix A, Preliminary Scope of Work*. The firm selected to enter into a contract (“Consultant”) will be expected to perform all work and analysis necessary to complete the preliminary scope of work.

B. Period of Performance

BAHA expects the work to commence on or about the week of September 29, 2014, and to be completed no later than December 31, 2015 (subject to change). The server room construction is planned to be completed 6 months prior to the staff relocation. The IT infrastructure move and implementation will begin once the room is completed. After the initial contract period, at BAHA’s sole option, the contract may be extended for additional move coordination and restacking work at 375 Beale Street, San Francisco, for three (3) additional one-year periods.

C. Budget

BAHA has budgeted approximately five hundred thousand dollars (\$500,000) for this initial relocation effort. Additional funding may be available in future Fiscal Years (FY) subject to approval of future BAHA budgets.

IV. MANDATORY PROPOSERS’ CONFERENCE/WALK THROUGH, REQUESTS FOR CLARIFICATION OR EXCEPTIONS

A Mandatory Proposers’ Conference and walk-through will be held at **Thursday, 9:00 a.m. on Thursday, July 31, 2014** at the Joseph P. Bort MetroCenter Building, 101 8th Street, Oakland, CA in Fishbowl Conference Room. Proposers must also attend the mandatory walk-through held at **1:30 p.m. on the same day --Thursday, July 31, 2014 --** at the Air District offices at 939 Ellis St., San Francisco, CA, in the 4th Floor Conference Room. (Note: It is highly recommended that Proposers utilize public transportation as there is limited on-street parking at both locations.)

At least one individual who will be part of the proposed team’s Key Personnel must attend the Mandatory Proposers’ Conference. Firms not in attendance at the Mandatory Proposer’ Conference and walk-throughs at all sites will be ineligible to submit a Proposal.

Any addenda will be posted on BAHA’s website. All Proposers are responsible for checking the website for any addenda to the bid documents.

Any requests for clarification of or exceptions to RFP requirements must be received by BAHA no later than **4:00 p.m., on Monday, August 4, 2014**, to guarantee response or consideration. BAHA reserves the right to reject any Proposal that contains unauthorized conditions or exceptions.

V. CONSULTANT SELECTION TIMETABLE

9:00 a.m. on Thursday, July 31, 2014	Mandatory Proposers' Conference and Walk-Through at 101 8 th Street, Oakland, CA 94607 in the Fishbowl Conference Room
1:30 p.m. on Thursday, July 31, 2014	Mandatory Proposers' Conference and Walk-Through at the Air District offices at 939 Ellis St., San Francisco, CA, in the 4 th Floor Conference Room
4:00 p.m., on Monday, August 4, 2014	Closing date/time for receipt of requests for modifications/exceptions
No later than three (3) working days prior to the date Proposals are due.	Deadline for protesting RFP provisions
4:00 p.m., Friday, August 22, 2014*	Closing date/time for receipt of Proposals
Week of September 1, 2014*	Interviews/Discussions (if held)
Week of September 8, 2014*	Date for receipt of Best and Final Offers (if required)
September 24, 2014*	BAHA Committee Approval
Week of September 29, 2014*	Contract award

**Interview, award and approval dates are approximates and are subject to change before or after the closing date of the RFP.*

VI. SUBMITTAL OF PROPOSALS

- Interested firms must submit an original and eight (8) copies, as well as one electronic PDF version, of their Proposal by **4:00 p.m., Friday, August 22, 2014. Submission of an electronic copy of the Proposal without hard copies will not satisfy the submission requirement.**
- Proposals are to be addressed as follows:
Move Coordination RFP
Attention: Robert Hoffman
101 8th Street, 3rd Floor Receptionist
Oakland, CA 94607
- Proposer's name and return address must also appear on the envelope.
- Proposals will be received only at the address shown above and **no later than the date and time indicated.** BAHA is not responsible for deliveries delayed for any reason. Any Proposals received after said date and time or at a place other than the stated address cannot be considered and will be returned to the Proposer unopened.
- No Proposals submitted solely by email and no faxed Proposals will be considered.

6. All Proposals, 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 **prior to or no later than the time designated**. The timestamp located on the 3rd floor at the receptionist desk shall be considered the official timepiece for the purpose of establishing the time of receipt of Proposals.
7. Consultant agrees and acknowledges all RFP specifications, and terms and conditions and indicates ability to perform by submission of a Proposal.
8. A signed Proposal submitted to BAHA in response to this RFP shall constitute a binding offer from Consultant to contract with BAHA according to the terms of the Proposal for a period of ninety (90) days after the Proposals are due to BAHA.
9. A Proposal may be withdrawn at any time before the date and time when Proposals are due by submitting a written request for its withdrawal to the BAHA Project Manager.
10. This RFP does not commit BAHA to award a contract or to pay any costs incurred in the preparation of a Proposal in response to this RFP.
11. Only one Proposal will be accepted from any one person, partnership, corporation, or other entity; however, several alternatives may be included in one response.
12. BAHA reserves the right to accept or reject all Proposals submitted, waive minor irregularities, request additional information, or revisions to offers, and negotiate with any or all proposers.
13. BAHA reserves the right in its sole discretion not to enter into any contract as a result of this RFP.
14. If the selected proposer fails to enter into a contract with BAHA in a timely manner as determined by BAHA, in accordance with the terms and conditions of this RFP, BAHA reserves the right to reject the PROPOSAL and enter into a contract with the next highest scoring firm.

VII. FORM OF PROPOSAL

Proposals must be signed in ink and include a statement that the person or persons signing the Proposal is/are authorized to authorize and submit the Proposal on behalf of the Proposer. Page limits, where specified, are for single-sided print. Proposers are encouraged to print double-sided copies to save paper.

Proposal content and completeness are most important. Clarity is essential and will be considered in assessing the Proposer's capabilities.

Proposers must provide the information listed below. Any material deviation from these requirements may be cause for rejection of the Proposal, as determined in BAHA's sole discretion.

Each Proposal must include the following:

A. Transmittal Letter

Proposals must include a transmittal letter signed by an official authorized to solicit business and enter into contracts for the firm and the name and telephone number of a contact person, if different from the signature. Indicate whether there are any conflicts of interest, actual or apparent, that would limit the Proposer's ability to provide the requested services and describe the plan for mitigating such conflicts. Acknowledge the receipt of any addendum to the RFP. Indicate that the Proposal is a firm offer to enter into a contract to perform work related to this RFP for a period of ninety (90) days from the due date for Proposals.

B. Title Page

Proposals must include a title page that includes the RFP subject, the name of the proposer's firm, local address, telephone number, name of contact person, contact person's email address, and the date.

C. Table of Contents

Proposals must include a table of contents that includes a clear identification of the material by section and page number.

D. Overview and Summary

This section should clearly convey the Consultant's understanding of the nature of the work and the general approach to be taken, and identify any specific considerations. It should include, but not be limited to, the following:

1. A discussion of the project's purpose;
2. A summary of proposed approach; and
3. The assumptions made in selecting the approach.

E. Work Plan

This section should present a work plan for the tasks described in *Appendix A, Preliminary Scope of Work*. The proposed work plan should:

1. Discuss how the Consultant will conduct the identified task, identify deliverables, and propose a schedule. The Proposal should discuss the tasks in sufficient detail to demonstrate a clear understanding of the project and component tasks. The Proposal may include additional tasks or sub-tasks the Consultant believes necessary to accomplish the project goals. The schedule should show the expected sequence of tasks, subtasks and milestones.

2. Provide a staffing plan for each task. Provide an organizational chart that shows roles and responsibilities of key personnel and reporting structure, including reporting and communication relationships between BAHA, Consultant staff, and subcontractors, if any.
3. Describe approach to managing and completing the Project as efficiently as possible. Include a description of the role of any subcontractors, their specific responsibilities, and how their work will be supervised to maintain quality results.
4. Identify and explain any problem areas and/or potential obstacles (such as maintaining schedule, budget overruns, feasibility, etc.) to successful completion of the Preliminary Scope of Work, attached as *Appendix A*. Discuss methods, formal and informal, that you will use to track and resolve these problems/obstacles during the project.

F. Qualifications and References

1. Describe proposed team's qualifications specific to the requirements set forth in Section II, Proposer Minimum Qualifications. Identify the personnel, including subcontractors' personnel, whose expertise or experience addresses each of the specified needs. Proposers are welcome to identify and provide examples of any other qualifications they feel are critical to the successful completion of the Preliminary Scope of Work attached as *Appendix A*.
2. Identify key personnel (including subcontractor personnel) and briefly discuss individual qualifications to perform each task. Each key personnel resume should not exceed two pages.
3. Provide a succinct description (one page maximum) of any previous projects similar to the services requested, indicating the project title, duration, budget, sponsoring agency and sponsor project manager, and roles played by individuals proposed for this study. Include the name of the agency for whom the work was performed, year performed, name of the contact person and their telephone number.
4. Provide at least one sample of a written technical report or memo and two samples of material developed for similar moves. The samples must have been prepared by key members of the Consultant team and should identify the authors. Only one copy of each sample is required, and the samples will be returned after Proposal evaluation, upon request. The samples will be considered in evaluating firm and staff expertise and experience, and written presentation effectiveness.
5. Provide a list of references (including references for subcontractors) and their contact (including email) information, at a minimum for those projects specific to the requirements set forth in Section II, Proposer Minimum Qualifications.
6. Provide a summary of all contracts your firm (including subcontractors) has held with MTC, MTC SAFE, BATA, BAHA, the Air District, or ABAG in the past three (3) years, including a brief description of the scope of work, the contract amount, and date of execution.

G. Cost Proposal

Based on the tasks and staffing plan described in response to E.1 and E.2, listed above, provide a breakdown of the expected expenditures of funds for each task in each phase contained in *Appendix A, Preliminary Scope of Work*. The budget should include, but is not limited to, a task budget and a line item budget with billing rates for each phase.

1. The task budget should present a breakdown of hours and expenses by task and deliverable in each phase of the project. It should identify or refer to key personnel or job descriptions in relation to each task to provide a full explanation of the resources committed to the project.
2. A line item budget should be submitted for each phase of the project. The line item budget should present a breakdown of costs by cost categories, including billing rates for key personnel and job classifications. A line item budget should also be submitted for proposed sub-consultants with contracts estimated to exceed \$25,000. The line item budget is requested for evaluation purposes only; payment shall be based on receipt of deliverables satisfactory to BAHA.

H. California Levine Act Statement

Submit a signed Levine Act statement (*Appendix C*).

I. Insurance Provisions

Submit a signed acknowledgement that your firm agrees to provide the required certificates of insurance providing verification of the minimum insurance requirements listed in *Appendix D-1, Insurance Requirements*, within ten (10) days of BAHA's notice to firm that it is the successful proposer.

(See Section IX.B of the RFP for how to request exceptions to the minimum insurance requirements.)

J. Not Used

K. Iran Contracting Act

Pursuant to California Public Contracts Code Sections 2200 *et seq.*, (AB 1650, Iran Contracting Act of 2010) Proposers for contracts equal to or in excess of one million dollars (\$1,000,000) must 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 Iran Contracting Act Document (*Appendix E*).

VIII. PROPOSAL EVALUATION

A. Verification of Minimum Qualifications

The Project Manager will review Proposals to ensure that each Proposal meets the Minimum Qualifications set out in Section II, Proposer Minimum Qualifications of this RFP. Proposers failing to meet the Minimum Qualifications will not be considered.

B. Review for General Responsiveness

The Project Manager, in consultation with the BAHA's Office of General Counsel, will conduct an initial review of the Proposals for general responsiveness and inclusion of the items requested in *Appendix C*. Proposers failing to meet the Minimum Qualifications and Requirements listed herein this RFP or satisfy the federal Disadvantaged Business Enterprise (DBE) requirements (if applicable), will not be considered responsive. Also, any Proposal that does not include enough information to permit the evaluators to rate the Proposal in any one of the evaluation factors listed below will be considered non-responsive and will not be evaluated. A Proposal that fails to include one or more items requested in the Form of Proposal may be considered responsive, if evaluation in every criterion is possible. BAHA reserves the right to request additional information from responsive proposers prior to evaluation.

C. Evaluation Panel and Evaluation Criteria

Responsive Proposals will then be evaluated by an evaluation panel of BAHA and partner agency staff. The evaluation of the Proposals shall be within the sole judgment and discretion of the evaluation panel.

All contact during the evaluation phase shall be through the BAHA Project Manager only. Proposers shall neither contact nor lobby any evaluation panel members during the evaluation process. Attempts by proposer to contact and/or influence members of the evaluation panel may result in disqualification of proposer.

Responsive Proposals shall be evaluated on the basis of the following evaluation factors, with their relative importance indicated by percentages:

1. Experience and qualifications of the firm(s) and of proposed staff in relation to the tasks described in Appendix A as well as the expertise sought by BAHA, as listed Section II, Proposer Minimum Qualifications; this may include information gathered through references. (30%)
2. Approach to completing the Project. (30%)
3. Cost (20%)
4. Written and oral communication, as evidenced in the submitted Proposal, including sample material provided in section VII F.4 above and interviews, if held. (10%)

5. References. (10%)

D. Proposer Discussions

Following the initial evaluation, the evaluation panel may elect to recommend award to a particular proposer (with or without interviews), or to enter into discussions with a “short list” of proposers, consisting of those proposers reasonably likely, in the opinion of the panel, to be awarded the contract.

The purpose of discussions with a Proposer on the “short list” will be to identify to that Proposer 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.

E. Request for Best and Final Offer

Following discussions, if held, proposers on the “short list” will be given the opportunity to revise their written Proposals to address the concerns raised during discussions through issuance of a 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.

The panel will recommend a Consultant to the BAHA Executive Director, based on their evaluation of the written Proposals or BAFOs and oral interviews or discussions (if held). The Executive Director will review the recommendation and, if he agrees, he will approve the award or forward the recommendation to BAHA for approval.

IX. GENERAL CONDITIONS

A. Award

Any award made will be to the Consultant whose Proposal is most advantageous to BAHA based on the evaluation criteria defined in Section VIII. If the selected firm fails to enter into a contract with BAHA in a timely manner as determined by BAHA, in accordance with the terms and conditions of this RFP, BAHA reserves the right to reject the Proposal of the selected firm and enter into a contract with the next highest scoring firm.

B. Contract Arrangements

BAHA Standard Consultant Contract is attached as *Appendix D*. 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. If no such change is requested, the Proposer will be deemed to accept BAHA's standard contract provisions, unless such language is protested in accordance with Section C below.

The selected Consultant will be required to maintain insurance coverage, during the term of the contract, at the levels described in *Appendix D-1, Insurance Requirements*. Proposer agrees to provide the required certificates of insurance providing verification of the minimum insurance requirements in *Appendix D-1*, within ten (10) days of BAHA's notice that it is the successful proposer. Requests to change BAHA's insurance requirements should be submitted on or prior to the closing date for receipt of requests for clarifications/exceptions. 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 pursuant to the protest provisions of this RFP must be brought to BAHA's attention no later than the deadline for protesting RFP provisions or compliance with all material insurance requirements will be assumed.

The contract resulting from this RFP will be firm fixed price, with payment based on BAHA's receiving of satisfactory deliverables.

C. Selection Disputes

A Proposer may object to a provision of the RFP on the grounds that it is arbitrary, biased, or unduly restrictive, or to the selection of a particular Consultant on the grounds that BAHA procedures, the provisions of the RFP or applicable provisions of federal, state or local law have been violated or inaccurately or inappropriately applied by submitting to the Project Manager a written explanation of the basis for the protest:

1. No later than 4:00 p.m. on the third business day prior to the date Proposals are due, for objections to RFP provisions; or
2. No later than 4:00 p.m. on the third business day after the date the firm is notified that it did not meet the minimum qualifications or was found to be non-responsive; or
3. No later than 4:00 p.m. on the third business day after the date on which the firm is notified that it was not selected, or if applicable the date the appropriate committee authorizes award, whichever is later, for objections to consultant selection.

Except with regard to initial determinations of non-responsiveness, 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 BAHA Executive Director.

The BAHA Executive Director will respond to the protest in writing, based on the recommendation of a staff review officer. Should a Proposer wish to appeal the decision of the

BAHA Executive Director, it may file an appeal with BAHA, no later than 4:00 p.m. on the third business day after receipt of the written response from the BAHA Executive Director. BAHA's decision will be the final agency decision.

Authorization to award an agreement to a particular consultant by BAHA shall be deemed conditional until the expiration of the protest period or, if a protest is filed, the issuance of a written response to the protest by the BAHA Executive Director or, if the decision of the BAHA Executive Director is appealed, the issuance of BAHA's decision.

D. Public Records

This RFP and any material submitted in response to this RFP 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 Proposals submitted to BAHA will be made available for inspection consistent with its policy regarding Public Records Act requests.

If the proposer believes any Proposal content contains trade secrets or other proprietary information that the proposer believes would cause substantial injury to the proposer's competitive position if disclosed, the proposer may request that BAHA withhold from disclosure such proprietary materials by marking each page containing proprietary information as confidential and shall include the following notice at the front of its Proposal:

“The data on the following pages of this Proposal, including financial information submitted under Section ___ of this RFP 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. If an agreement is awarded to the proposer submitting this Proposal, BAHA shall have the right to use or disclose the data, unless otherwise provided by law. [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 Proposal confidential or proprietary will be regarded as ineffective and will be disregarded. In addition, the proposer may not designate any required Proposal forms or the cost Proposal as confidential. Consequently, any language purporting to render any Proposal 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 Proposal 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 Proposal, and does not request that 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 staff persons 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 staff persons identified in the Proposal without written consent of the Project Manager may be considered a material breach of contract.

F. Conflicts Of Interest

By submitting a Proposal, the Proposer represents and warrants that no commissioner, officer or employee of BAHA is in any manner interested directly or indirectly in the Proposal or in the contract that may be made under it or in any profits expected to arise therefrom, as set forth in California Government Code Section 1090.

The Proposer further warrants and represents that it presently has no interest and agrees that it will not acquire any interest that would present a conflict of interest under California Government Code Sections 1090 *et seq.* or 87100 *et seq.* during the performance of services under any contract resulting from this RFP and that it will not knowingly employ any person having such an interest. Violation of this provision may result in the contract being deemed void and unenforceable.

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 Proposer, and if so, whether any potential bias can be mitigated acceptably by BAHA and the Proposer. After award, the Consultant 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.

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 RFP to obtain move coordination services with the same terms and conditions included in this RFP and selected firm's Proposal during the period of time that contracts resulting from the RFP are in effect.

H. Project Stabilization Agreement

The selected Consultant should reference the Project Stabilization Agreement attached as *Appendix G*.

APPENDIX A, PRELIMINARY SCOPE OF WORK

As stated in Sections I, BAHA and Project Description, Subarticle A and Subarticle C of this document:

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 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 three separate regional agencies encourages further integration of regional planning efforts currently under the umbrella of One Bay Area.

BAHA is responsible for providing move coordination and physical relocation services for the partner agencies. BAHA requires the services of a professional move coordinator to develop a scope of work that will cover all aspects of the move, including but not limited to preparing a relocation timeline which includes critical tasks, developing a strategy for communicating relocation information to the staff of the partner agencies and third party contractors, procuring a qualified moving firm and specialty movers for areas such as information technology infrastructure and equipment, and the Air District's laboratory; and supervising, coordinating and implementing the multi-agency, multi-location move.

Approximately 250 staff from MTC, 70 staff from ABAG at 101 8th Street, Oakland, and 270 staff from 939 Ellis Street, San Francisco, or almost 600 total staff will be moved.

BAHA has contracted with a furniture dealer/manufacturer team to provide new workstations, offices and other ancillary furniture for the agency floors. It is expected that the agencies will not be required to relocate existing office furniture, with the exception of lateral files/shelving that will be placed in centralized file storage areas and other items to be identified). The new space will also have shared spaces for copy/print/mail/supplies and kitchen/break room and other collaboration spaces.

The initial primary tasks of the move coordinator will be to develop a detailed scope of work, including deliverables and a project schedule.

The move coordinator will also assist with developing “asset reduction strategies” and schedules for a variety of areas including, but not limited to furniture, fixtures and equipment; paper reduction (personal, section and agency files), office supply and copier paper reduction to avoid the need to relocate these items, library book reduction (technical library and law library) and also to identify what, if any, furniture/items require relocation and to determine where these items will be placed within the new building.

The move coordinator will also be responsible for securing a broker(s) to handle the final disposition of surplus furniture and equipment for MTC offices (only) in the most environmentally responsible way.

The preliminary scope of work that the selected firm will need to complete includes, but is not limited to, the following services.

General Scope of Work - The selected Consultant will provide move coordination, assessment, planning, and management services for BAHA’s relocation to 375 Beale Street. The scope of services necessary for this relocation are for initial assessment, inventory, planning, scheduling, budgeting, coordinating and management. Services for the physical move(s) will be procured and funded through other contracts.

The selected firm will be required to have MS ProjectMgmt Software to permit schedule integration with other BAHA project contractors.

1. Work Product - The work product resulting from this service will provide BAHA with an overall management plan for relocation of the partner agencies to 375 Beale Street including, but not limited to the following:

- Assessment, Inventory and Definition of Project Scope (including moves, and installation.)
- Relocation Plan and Project Schedule including Risks and Contingencies.
- Communications / Implementation Strategy and Plan.
- Relocation Budget for Entire Project
- Development of scope of work for moving contractor and all other relevant third party contractors.
- Disposition Strategy (MTC only))

The selected Consultant will be required to gather information as necessary from the Project Team to develop the final Scope of Work, and Master Schedule for this project as the first task under the contract resultant of this RFP.

- 2. Meetings** - Schedule regular planning meetings with BAHA and/or Project Team staff at locations that may be located in Oakland and/or San Francisco. Firm must take minutes and produce the minutes within an agreed upon time from that will include specific action items and deadlines and maintain a written staff roster.
- 3. Communication** – Assist BAHA with effective and timely messaging that supports the complex goal of integrating the three agencies in a positive productive atmosphere amidst known anxiety and fear. This messaging will be based upon the selected firms best practices and experience.
- 4. Inventory and Disposition Plan** – Identify and inventory each agency’s physical assets including furniture, equipment, etc., items in storage (on and off-site) and vehicles. For any agency that has conducted their own inventory, verify and revise as needed. All furnishings at 375 Beale Street are intended to be new -- little or no furnishings will be moved from original agency locations with the exception of lateral files for enclosed storage areas. For items not scheduled to be moved, develop an efficient, cost-effective and to the extent possible, environmentally responsible disposition plan.
- 5. Capacity Planning** – Coordinate with BAHA design team to identify capacity of space at 375 Beale allocated for various purposes – workstations, offices, meeting and storage areas, pantries, office supplies, filing, libraries, laboratory, miscellaneous items (artwork, FSP inventory, marketing materials, etc.). Develop a plan to ensure that only items that can be accommodated at 375 Beale will be moved.
- 6. Asset Reduction** - The move coordinator will also assist with planning and executing “asset reduction strategies” and schedules for a variety of areas including, but not limited to furniture, fixtures and equipment; paper reduction (personal, section and agency files), office supply and copier paper reduction to avoid the need to relocate these items, library book reduction (technical library and law library).
- 7. Selection of Moving Contractor(s)** – Work with BAHA to select a qualified moving firm(s) to conduct the physical move. The move will be primarily a typical office contents move with primarily employee files and office supplies. The move will also include the following:
 - a. No redundancy or completely mirrored computer systems are planned.
 - b. An active 24/7 call center, which must remain active during transition (Air District.)
 - c. One critical air quality testing laboratory (Air District.)
 - d. Two libraries (one at MTC and one at Air District.)
 - e. All Information Technology (IT) assets and infrastructure, including computers and associated peripherals.
 - f. Artwork and framed photographs.
 - g. File room records.

- h.** Audio/Video systems including wall mounted flat panel displays, conferencing systems.

- 8. Project Schedule** – Prepare, update, and maintain a detailed project schedule in coordination with other project contractors to insure that the physical move fits precisely into the other construction, finishes, furnishings, data, and electrical aspects of the project completion. Prepare and maintain a packing and move phasing schedule for each agency.

- 9. Move Day(s)** – Verify that all building protection is installed and adequate. Using previously developed equipment setup forms & PC disconnect/reconnect forms, work with movers to install/adjust workspaces to match the forms. Maintain strong presence and mobile communication at all sites on move days. Supervise moving company and primary point of contact for all move-related contractors and agency staff.

- 10. Post Move** – Maintain on-site presence (with several movers) on multiple floors for up a period TBD to assist resolving move in-adjustments, earthquake bracing, trash, box/cart removal and scheduling necessary follow-up actions.

APPENDIX B, NOT USED

APPENDIX C, 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 D, STANDARD CONSULTANT CONTRACT

PROFESSIONAL SERVICES AGREEMENT
Between BAY AREA HEADQUARTERS AUTHORITY
And INSERT NAME OF CONSULTANT
For MOVE COORDINATION SERVICES

THIS AGREEMENT is made and entered into as of the **xx** day of October, 2014, 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 MTC and BATA entered into pursuant to Government Code Sections 6500 *et. seq.* and **INSERT NAME OF CONSULTANT**, (herein called "CONSULTANT") **partnership, _____** [state of incorporation] corporation/ nonprofit corporation/joint venture organized under the laws of the State of _____.

RECITALS

WHEREAS, BAHA requires the services of a professional move coordinator to coordinate and implement the multi-agency, multi-location move of the Metropolitan Transportation Commission (MTC), the Bay Area Air Quality Management District (Air District), the Association of Bay Area Governments (ABAG) into the Regional Agency Headquarters located at 375 Beale Street, San Francisco, CA, (herein called "the Project"); and

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

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

NOW, THEREFORE, the parties hereto agree as follows:

1. SCOPE OF SERVICES

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

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

In the performance of its services, CONSULTANT represents 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 CONSULTANT represents that it carries and will maintain all applicable licenses, certificates, and registrations needed for the work in current and good standing.

In the performance of its services, CONSULTANT represents 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 CONSULTANT represents that it carries and will maintain all applicable licenses, certificates, and registrations needed for the work in current and good standing.

1.1 PROGRESS REPORTS

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

2. PERIOD OF PERFORMANCE

CONSULTANT's services hereunder shall commence on or after October 1, 2014, and shall be completed no later than _____, 201__, unless extended by duly executed amendment or earlier terminated, as hereinafter provided. CONSULTANT's services shall be performed in accordance with the schedule included in Attachment B, Project Schedule, attached hereto and incorporated herein by this reference.

3. COMPENSATION AND METHOD OF PAYMENT

Subject to duly executed amendments, BAHA will pay CONSULTANT for its services as described in Attachment A a total amount, including (as applicable) labor, supervision, applicable surcharges such as taxes, insurance, and fringe benefits, indirect costs, overhead, profit, subcontractors costs (including mark-up), travel, equipment, materials and supplies, expenses and any fixed fee, [**SPELL OUT AMOUNT IN WHOLE DOLLARS (\$_____)**] ("Maximum Payment"). BAHA shall make payments to CONSULTANT in accordance with the provisions described in Attachment C, Compensation and Method of Payment, attached hereto and incorporated herein by this reference.

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

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

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

4. KEY PERSONNEL

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

5. AMENDMENTS

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

6. TERMINATION

A. Termination for Convenience. BAHA may terminate this Agreement for convenience, in whole or in part, at any time by written notice to CONSULTANT. Upon receipt of notice of termination, CONSULTANT shall stop work under this Agreement immediately, to the extent provided in the notice of termination, and shall promptly submit its termination claim to BAHA. CONSULTANT shall be reimbursed for costs incurred for incomplete deliverables up to the time of termination and a reasonable profit not to exceed __%, plus reasonable termination costs, not to exceed the amount payable for such deliverables. If CONSULTANT has any property in its possession belonging to BAHA, CONSULTANT will account for the same, and dispose of it in

the manner BAHA directs. Except as provided above, BAHA shall not in any manner be liable for CONSULTANT's actual or projected lost profits had CONSULTANT completed the services required by this Agreement.

B. Termination for Default. If CONSULTANT does not deliver the work products specified in this Agreement in accordance with the delivery schedule or fails to perform in the manner called for in the Agreement, or if CONSULTANT fails to comply with any other material provision of the Agreement, BAHA may terminate this Agreement for default. Termination shall be effected by serving a fifteen (15) day advance written notice of termination on CONSULTANT, setting forth the manner in which CONSULTANT is in default. If CONSULTANT does not cure the breach or describe to BAHA's satisfaction a plan for curing the breach within the fifteen (15) day period, BAHA may terminate the Agreement for default. In the event of such termination for default, CONSULTANT will be entitled to be reimbursed only for work performed in full compliance with the contract requirements as follows: CONSULTANT shall be reimbursed for costs incurred for incomplete deliverables up to the time of termination, not to exceed the amount payable for such deliverables. Such reimbursement will be offset by any costs incurred by BAHA to complete work required under the Agreement. In no event shall BAHA be required to reimburse CONSULTANT for any costs incurred for work causing or contributing to the default. If CONSULTANT has any property in its possession belonging to BAHA, CONSULTANT will account for the same, and dispose of it in the manner BAHA directs. BAHA shall not in any manner be liable for the CONSULTANT's actual or projected lost profits had the CONSULTANT completed the services required by this Agreement.

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

7. INSURANCE AND FINANCIAL SECURITY REQUIREMENTS

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

8. INDEPENDENT CONTRACTOR

CONSULTANT is an independent contractor and not an employee or agent of BAHA and has no authority to contract or enter into any agreement in the name of BAHA. CONSULTANT

has, and hereby retains, full control over the employment, direction, compensation and discharge of all persons employed by CONSULTANT who are assisting in the performance of services under this Agreement. CONSULTANT shall be fully responsible for all matters relating to the payment of its employees, including compliance with social security, withholding tax and all other laws and regulations governing such matters. CONSULTANT shall be responsible for its own acts and those of its agents and employees during the term of this Agreement.

9. INDEMNIFICATION

To the maximum extent permitted by law, CONSULTANT 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:

- A. 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 CONSULTANT caused by any breach of the Agreement or negligent act or omission or willful misconduct of the CONSULTANT or its officers, employees, subconsultants or agents; or
- B. Any allegation that materials or services provided by CONSULTANT under this Agreement infringe or violate any copyright, trademark, patent, trade secret, or any other intellectual-property or proprietary right of any third party.

CONSULTANT 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, CONSULTANT 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 CONSULTANT by BAHA for use by CONSULTANT in the performance of its services under this Agreement shall remain the property of BAHA and shall be returned to BAHA at the completion or termination of this Agreement. No license to such BAHA Data, outside of the Scope of Work of the Project, is conferred or implied by CONSULTANT’s use or possession of

such BAHA Data. Any updates, revisions, additions or enhancements to such BAHA Data made by CONSULTANT in the context of the Project shall be the property of BAHA and subject to the provisions of Article 11.

10.1 NOT USED

10.2 NONDISCLOSURE OF CONFIDENTIAL INFORMATION

BAHA may be required to make available to CONSULTANT certain confidential, non-public or proprietary information (“Confidential Information”) for purposes of carrying out the Project. Confidential Information may be tangible, intangible, visual, oral, written, and/or electronic information, present or future, and includes: (i) proprietary information learned through inspection of drawings, specifications or equipment; (ii) descriptions of proprietary processes, designs, functionality or know-how; (iii) proprietary software, programming data, code or information; and (iv) other information disclosed in writing and marked as “Confidential” or with a similar notice. As between BAHA and CONSULTANT, Confidential Information shall remain the sole and exclusive property of BAHA, and no license or other rights to Confidential Information or any works deriving from Confidential Information is granted or implied hereby. Confidential Information does not include information that: a) is now or subsequently becomes generally available to the public through no fault of CONSULTANT; b) CONSULTANT can demonstrate to have had rightfully in its possession prior to disclosure by BAHA or its contractors, vendors or licensors; c) CONSULTANT rightfully obtains from a third party who has the right to transfer or disclose it; or (d) is required to be disclosed by law or applicable legal process.

CONSULTANT agrees to take all necessary and reasonable precautions to maintain the confidentiality of Confidential Information and agrees not to use, copy, distribute or disclose such Confidential Information except for the business purpose underlying this Agreement, except as authorized in writing by BAHA. CONSULTANT further agrees to disclose Confidential Information only to its directors, officers, employees and consultants who need to know such information, and who have agreed to be bound by the terms and conditions of this Agreement. Promptly upon the request of BAHA, at any time and for any reason, CONSULTANT shall destroy or return to BAHA, at BAHA’s option, all documents, computer files and other tangible materials that contain Confidential Information. These obligations survive the termination of this Agreement, unless otherwise agreed in writing by BAHA.

11. OWNERSHIP OF WORK PRODUCTS

All drawings, designs, specifications, manuals, reports, studies, surveys, models, software, source code and source code documentation, documentation or system architecture and any other documents, materials, data and products (“Work Products”) prepared or assembled and furnished

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

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

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

12. SUBCONTRACTS

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

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

C. Any substitution of subcontractors listed in Attachment G 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

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

14. RECORDS

CONSULTANT agrees to establish and maintain an accounting system conforming to Generally Accepted Accounting Principles (GAAP) that is adequate to accumulate and segregate reasonable, allowable, and allocable project costs. CONSULTANT further agrees to keep all records pertaining to the project being funded for audit purposes for a minimum of four (4) years following the fiscal year of last expenditure under the Agreement; or until completion of any litigation, claim or audit, whichever is longer. Any conflicting language regarding retention of records contained in Attachment H, Federally-Required Clauses, shall supersede this Article.

15. AUDITS

CONSULTANT shall permit BAHA, and its authorized representatives to have access to CONSULTANT'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. CONSULTANT shall in no event dispose of, destroy, alter, or mutilate said books, records, accounts, work products, materials and data for that period of time.

CONSULTANT further agrees to include in all its subcontracts hereunder exceeding \$25,000 a provision to the effect that the subcontractor agrees that BAHA, or any of its duly authorized representatives shall have access to and the right to examine any directly pertinent books, documents, papers, and records of such subcontractor for the term specified above.

Any conflicting language regarding audits contained in Attachment H, Federally-Required Clauses, shall supersede this Article.

16. NOTICES

Except for invoices submitted by CONSULTANT pursuant to Article 3, all notices or other communications to either party by the other shall be deemed given when made in writing and delivered, mailed, emailed, or faxed to such party at their respective addresses as follows:

To BAHA: Attention: Robert Hoffman
Metropolitan Transportation Commission
101 - 8th Street
Oakland, CA 94607-4700
Email: rhoffman@mtc.ca.gov
Fax: 510.817-5848

To CONSULTANT: Attention: **Insert Name of Appropriate Person**
Consultant's name
Consultant's address
Consultant's address
Email: X
Fax: X

17. SOLICITATION OF CONTRACT

CONSULTANT warrants that it has not employed or retained any company or persons, other than a bona fide employee working solely for CONSULTANT, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person other than bona fide employees working solely for CONSULTANT, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon or resulting from the award or making of the Agreement. For breach or violation of this warranty, BAHA shall have the right to terminate the Agreement without liability or, at its discretion, the right to deduct from CONSULTANT's maximum payment the full amount of such fee, commission, percentage, brokerage fee, gift or contingent consideration.

18. PROHIBITED INTERESTS

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

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

performance thereof, or in any portion of the profits thereunder. Willful failure to make such disclosure, if any, shall constitute grounds for cancellation and termination hereof by BAHA.

18.1 ORGANIZATIONAL CONFLICTS OF INTEREST

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

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

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

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

19. LAWS AND REGULATIONS

CONSULTANT shall comply with any and all applicable laws, statutes, ordinances, rules, regulations, and procedural requirements of any national, state, or local government, and of any agency of such government, including but not limited to BAHA, that relate to or in any manner affect the performance of the Agreement. Those laws, statutes, ordinances, rules, regulations and

procedural requirements which are imposed on BAHA as a recipient of federal or state funds are hereby in turn imposed on CONSULTANT.

20. CLAIMS OR DISPUTES

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

CONSULTANT shall not be entitled to the payment of any additional compensation for any cause, including any act, or failure to act, by BAHA, or the failure or refusal to issue a modification, or the happening of any event, thing, or occurrence, unless it has given BAHA due written notice of a potential claim. The potential claim shall set forth the reasons for which CONSULTANT believes additional compensation may be due, the nature of the costs involved, and the amount of the potential claim.

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

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

If an agreement can be reached which resolves CONSULTANT's claim, the parties will execute an Agreement modification to document the resolution of the claim. If the parties cannot reach an agreement with respect to the CONSULTANT claim, they may choose to pursue dispute resolution pursuant to Article 24, DISPUTE RESOLUTION, or BAHA may terminate the Agreement.

21. REMEDIES FOR BREACH

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

The duties and obligations imposed by the Agreement and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by BAHA or CONSULTANT shall constitute a waiver of any right or duty afforded any of them under the

Agreement, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

22. TEMPORARY SUSPENSION OF WORK

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

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

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

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

23. WARRANTY OF SERVICES

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

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

1. The right to have CONSULTANT re-perform such services at the CONSULTANT's expense; or
2. The right to have such services done by others and the costs thereof charged to and collected from the CONSULTANT if within 30 days after written notice to

CONSULTANT requiring such re-performance, CONSULTANT fails to give satisfactory evidence to the BAHA that it has undertaken said re-performance; or

3. The right to terminate the Agreement for default. CONSULTANT shall be responsible for all errors and omissions and is expected to pay for all deficient work as a result of errors and omissions.

24. DISPUTE RESOLUTION

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

If the Project Manager's determination is not accepted by CONSULTANT, the matter shall promptly be referred to senior executives of the parties having designated authority to settle the dispute. The senior executives will exchange memoranda stating the issues in dispute and their respective positions and then meet for negotiations at a mutually agreed time and place. If the matter has not been resolved within thirty calendar (30) days of commencement of senior management negotiations, the parties may mutually agree to try to settle the dispute by means of alternate dispute resolution methodologies, 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 CONSULTANT which cannot be resolved through the informal efforts described above, may, by specific agreement of the parties, be submitted to alternative dispute resolution (that is, mediation or arbitration) with the parameters for such dispute resolution being agreed to by the parties at the time.

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

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

E. Cost of Alternative Dispute Resolution Proceedings. Each party shall bear the costs and expenses incurred by it in connection with such alternative dispute resolution processes. The cost of any mediator or independent decision maker shall be shared equally between the parties.

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

25. CHOICE OF LAW

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

26. ATTORNEYS' FEES

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

27. PARTIAL INVALIDITY

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

28. BENEFIT OF AGREEMENT

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

29. NO THIRD PARTY BENEFICIARIES

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

30. ENTIRE AGREEMENT; MODIFICATION

This Agreement for Services, including any attachments, constitutes the complete Agreement between the parties and supersedes any prior written or oral communications. CONSULTANT represents that in entering into the Agreement it has not relied on any previous representations, inducements, or understandings of any kind or nature. This Agreement may be modified or amended only by written instrument signed by both the CONSULTANT and BAHA. In the event of a conflict between the terms and conditions of this Agreement and the attachments, the terms of this Agreement will prevail.

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

BAY AREA HEADQUARTERS AUTHORITY

NAME OF CONSULTANT

Steve Heminger, Executive Director

Insert Appropriate Name, Title

ATTACHMENT A
Scope Of Work

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

- 1.
- 2.

ATTACHMENT B
Project Schedule

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

ATTACHMENT C
Compensation and Method of Payment

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

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

Task	<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

C. Method of Payment. CONSULTANT shall submit an invoice identifying the project deliverable or milestone for which payment is sought no later than thirty (30) days after BAHA's acceptance of such deliverable/milestone. If applicable, CONSULTANT's final invoice must include the certification that all Personally Identifiable Information (PII) has been destroyed in accordance with Attachment F.

D. Withheld Amounts and Final Payment. BAHA shall withhold, as a retainage, 5% of the value of each payment due hereunder until all services required under this Agreement have been completed and accepted by BAHA. Final payment of any balance due CONSULTANT, including any amounts withheld, will be made promptly after satisfactory completion of the work under this Agreement, and after receipt and written acceptance by BAHA of the reports and working papers, 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. CONSULTANT 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>
1.		\$xx		
2.				
3.				
4.				
5.				
6.				
7.				
8.				

* Applicable to development of payment provisions in amendments only.

ATTACHMENT E
Insurance and Financial Security (Bond) Provisions

1. INSURANCE

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

CONSULTANT is also required to assess the risks associated with work to be performed by Agents under subcontract and to include in every subcontract the requirement that the Agent maintain adequate insurance coverage with appropriate limits and endorsements to cover such risks. To the extent that an Agent does not procure and maintain such insurance coverage, CONSULTANT shall be responsible for said coverage and assume any and all costs and expenses that may be incurred in securing said coverage or in fulfilling CONSULTANT's indemnity obligation as to itself or any of its Agents in the absence of coverage.

In the event CONSULTANT or its Agents procure excess or umbrella coverage to maintain certain requirements outlined below, these policies shall also satisfy all specified endorsements and stipulations, including provisions that CONSULTANT's insurance be primary without right of contribution from BAHA. Prior to beginning work under this contract, CONSULTANT shall provide BAHA with satisfactory evidence of compliance with the insurance requirements of this section.

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 CONSULTANT'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 CONSULTANT 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 CONSULTANT and CONSULTANT'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 CONSULTANT's operations.

3. Business Automobile Insurance for all automobiles owned (if any), used or maintained by CONSULTANT and CONSULTANT'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 CONSULTANT and any work performed or conducted by any subcontractor/consultant working for or performing services on behalf of the CONSULTANT. No contract or agreement between CONSULTANT and any subcontractor/consultant shall relieve CONSULTANT of the responsibility for providing this Errors & Omissions or Professional Liability coverage for all work performed by CONSULTANT and any subcontractor/consultant working on behalf of CONSULTANT on the project.

6. Property Insurance. Property Insurance covering CONSULTANT'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 CONSULTANT's employees for loss of or damage to money, securities or other property resulting from theft. The following limits of liability should apply: (a) Employee Dishonesty - \$250,000; and (b) Client Property Blanket Bond - \$250,000. CONSULTANT shall reimburse BAHA for any and all losses within the deductible, 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.

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

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

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

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

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

- (1) Ensure that the Retroactive Date is shown on the policy, and such date must be before the date of this Agreement or the beginning of any work under this Agreement;
- (2) Maintain and provide evidence of similar insurance for at least three (3) years following project completion, including the requirement of adding all additional insureds; and
- (3) If 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, CONSULTANT 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 CONSULTANT's personnel, subcontractors, and equipment have been removed from BAHA's property, and the work or services have been formally accepted. CONSULTANT must notify BAHA if any of the

above required coverages are non-renewed or cancelled. The failure to procure or maintain required insurance and/or an adequately funded self-insurance program will constitute a material breach of this Agreement.

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

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

2. NOT USED

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 F
Not Used

ATTACHMENT G
Subconsultant List

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

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

APPENDIX D-1, INSURANCE REQUIREMENTS

Minimum Insurance Coverages. Consultant shall, at its own expense, obtain and maintain in effect at all times 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, placed with insurers with a Best's rating of A-VIII or better.

<p>Yes (√)</p>	<p>Please certify by checking the box below that required coverages will be provided within five (5) days of BAHA's notice to firm that it wishes to contract with the firm.</p>
<p>—</p>	<p><u>Workers' Compensation Insurance</u> 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 CONSULTANT'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 CONSULTANT is a sole proprietor or a corporation with stock 100% owned by officers with no employees.</p>
<p>—</p>	<p><u>Commercial General Liability Insurance</u> for Bodily Injury and Property Damage liability, covering the operations of CONSULTANT and CONSULTANT's officers, agents, and employees and with limits of liability which shall not be less than \$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.</p> <p>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. Such insurance shall be primary and contain a Separation of Insureds Clause as respects any claims, losses or liability arising directly or indirectly from CONSULTANT's operations.</p>
<p>—</p>	<p><u>Business Automobile Insurance</u> for all automobiles owned (if any), used or maintained by CONSULTANT and CONSULTANT'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.</p>
<p>—</p>	<p><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.</p>
<p>—</p>	<p><u>Errors and Omissions Professional Liability Insurance</u> 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 CONSULTANT and any work performed or conducted by any subcontractor/consultant working for or performing services on behalf of the CONSULTANT. No contract or agreement between CONSULTANT and any</p>

	<p>subcontractor/consultant shall relieve CONSULTANT of the responsibility for providing this Errors & Omissions or Professional Liability coverage for all work performed by CONSULTANT and any subcontractor/consultant working on behalf of CONSULTANT on the project.</p>
<p>—</p>	<p><u>Property Insurance.</u> Property Insurance covering CONSULTANT'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.</p>
<p>—</p>	<p><u>Employee Dishonesty/Crime Insurance.</u> An Employee Dishonesty insurance policy covering CONSULTANT's employees for loss of or damage to money, securities or other property resulting from theft. The following limits of liability should apply: (a) Employee Dishonesty - \$250,000; and (b) Client Property Blanket Bond - \$250,000. CONSULTANT shall reimburse BAHA for any and all losses within the deductible, 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.</p>

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

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

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

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

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

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

1. Ensure that the Retroactive Date is shown on the policy, and such date must be before the date of this Agreement or the beginning of any work under this Agreement;
2. Maintain and provide evidence of similar insurance for at least three (3) years following project completion, including the requirement of adding all additional insureds; and
3. If 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, Consultant shall purchase “extended reporting” coverage for a minimum of three (3) years after completion of the work.

All insurance specified above shall remain in force until all work or services to be performed are satisfactorily completed, all of Consultant’s personnel, subcontractors, and equipment have been removed from BAHA’s property, and the work or services have been formally accepted. Consultant must notify BAHA if any of the above required coverages are non-renewed or cancelled. The failure to procure or maintain required insurance and/or an adequately funded self-insurance program will constitute a material breach of this Agreement.

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

The foregoing requirements as to the types and limits of insurance coverage to be maintained by Consultant are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by Consultant pursuant hereto, including, but not limited to, liability assumed pursuant to the Indemnification section of this 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 wishes to contract with the firm.

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 closing date/time for receipt of requests for modifications/exceptions. If such modifications/exceptions are not brought to BAHA’s attention consistent with the provisions of this RFP, compliance with the insurance requirements will be assumed.

APPENDIX E –IRAN CONTRACTING ACT OF 2010

(Public Contract Code Section 2200 *et seq.*)

Prior to bidding on, submitting a proposal or executing a contract or renewal for a Metropolitan Transportation Commission (MTC) 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 vendor/financial institution identified below, and the vendor/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/vendor, for 45 days or more, if that other person/vendor 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>	

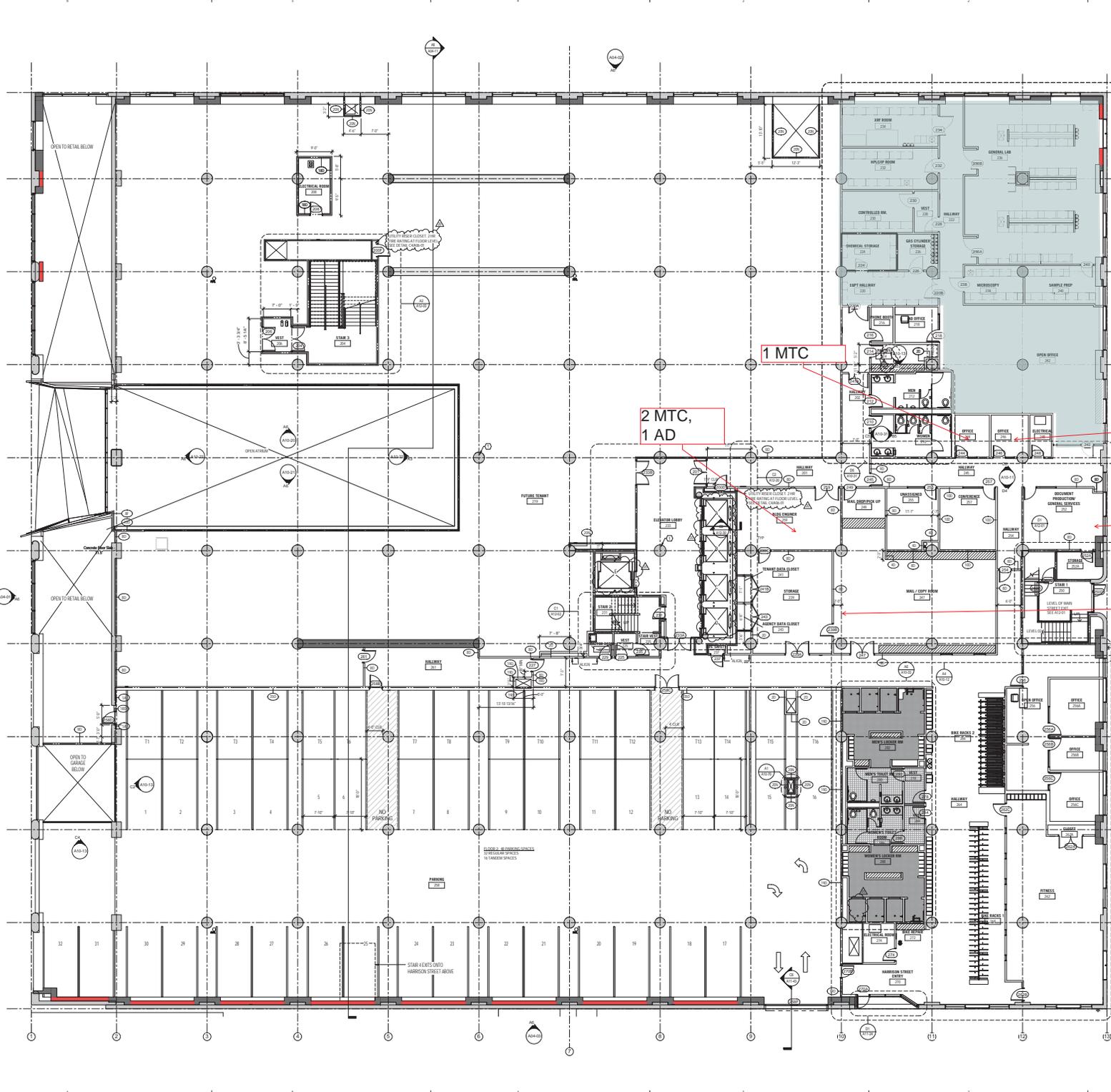
OPTION #2 – EXEMPTION

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 F
375 Beale Street, Floor Plans



SYMBOL LEGEND

- MILWORK
- REFER TO SHEETS 00-01 THROUGH 00-06

KEYNOTE LEGEND

- NEW PARTITION
- EXISTING PARTITION
- 1 HOUR FIRE-RATED BARRIER
- 2 HOUR FIRE-RATED BARRIER
- 1100 - SINGLE LAYER COP
- 1100 - SINGLE LAYER COP - W/ ACOUSTICAL INSULATION
- 1100 - SHM-T WALL
- 2100 - DOUBLE LAYER COP
- 2100 - DOUBLE LAYER COP - W/ ACOUSTICAL INSULATION
- 2100 - SHM-T WALL
- 2100 - DOUBLE STUD - W/ ACOUSTICAL INSULATION
- 2100 - 80 POUNDS CONCRETE ON CHAIRPARTITION
- 2100 - 80 SHM-T WALL PARTITION

FIRE-RATED PARTITION LEGEND

NOTES:
1. SEE COMMENTS FOR ALL RATED PARTITION CONDITIONS. SEE ARCH/01
2. FOR ALL OTHER PARTITIONS, SEE ARCH/02
3. ON FIRE-RATED PARTITIONS, CONTRACTOR TO VERIFY BY THE METHOD SET FORTH FOR INFO.

ROOM NAME LEGEND

BBFF - FLOORING BACKLAP FROM VENTILATOR ROOM
BOP - BOP ELEC. PLUMBING, FITTINGS
SMP - SANITARY POINT OF ENTRY

**PERMIT
BACKCHECK**
Jan 8, 2014
SFM #: 01-38-11-0015
DCA #: 01-11-12408
INCREMENT #2

Air District

ABAG

MTC

**Not in Program
(not furnished)**

White spaces are agency-shared.



REV	DESCRIPTION	DATE
01	ISSUE FOR PERMITS	01/08/2014
02	ISSUE FOR PERMITS	01/08/2014
03	ISSUE FOR PERMITS	01/08/2014
04	ISSUE FOR PERMITS	01/08/2014
05	ISSUE FOR PERMITS	01/08/2014
06	ISSUE FOR PERMITS	01/08/2014
07	ISSUE FOR PERMITS	01/08/2014
08	ISSUE FOR PERMITS	01/08/2014
09	ISSUE FOR PERMITS	01/08/2014
10	ISSUE FOR PERMITS	01/08/2014
11	ISSUE FOR PERMITS	01/08/2014
12	ISSUE FOR PERMITS	01/08/2014
13	ISSUE FOR PERMITS	01/08/2014
14	ISSUE FOR PERMITS	01/08/2014
15	ISSUE FOR PERMITS	01/08/2014
16	ISSUE FOR PERMITS	01/08/2014
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27	ISSUE FOR PERMITS	01/08/2014
28	ISSUE FOR PERMITS	01/08/2014
29	ISSUE FOR PERMITS	01/08/2014
30	ISSUE FOR PERMITS	01/08/2014
31	ISSUE FOR PERMITS	01/08/2014
32	ISSUE FOR PERMITS	01/08/2014

Sheet Information

Date: 01/08/2014
Job Number: 40122.000
Drawn: JET
Checked: JET
Approved: JET
Title:

**Level 02 Overall
Plan**

A03-02

Appendix G
Project Stabilization 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 craftspersons 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

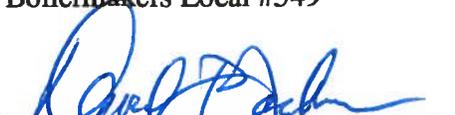
Signatory Unions:


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



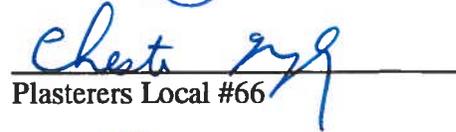
Operating Engineers Local #3



Electrical Workers Local #6



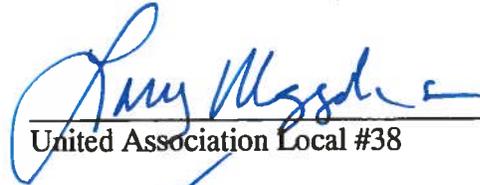
Painters District Council #16



Plasterers Local #66



Sprinkler Fitters Local #483



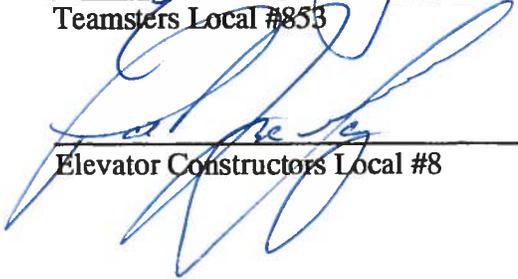
United Association Local #38



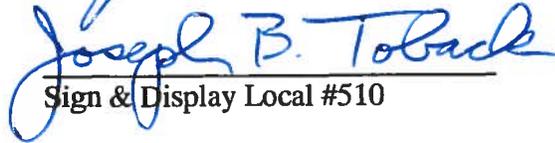
Teamsters Local #853



Laborers Local #67



Elevator Constructors Local #8



Sign & Display Local #510

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**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

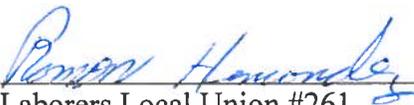
Boilermakers Local #549

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
Untied 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