

**STAFF REPORT FOR CALENDAR ITEM NO.: 8.5
FOR THE MEETING OF: September 14, 2017**

TRANSBAY JOINT POWERS AUTHORITY

BRIEF DESCRIPTION:

Authorize the Executive Director to issue a purchase order to KBM-Hogue (formerly Hogue and Associates) in the amount of approximately \$370,000 for design, manufacture, delivery, and installation of furniture, as well as project management, for the TJPA's security operations center for the Salesforce Transit Center, building maintenance areas, and some outdoor areas, under the terms detailed in an agreement between the Bay Area Headquarters Authority (BAHA) and Hogue and Associates attached hereto (BAHA Agreement).

REPORT:

In preparation for the opening of the Salesforce Transit Center, staff has identified furnishings, fixtures, and equipment (FF&E) necessary to ensure that the security operations center, building maintenance areas, and some outdoor areas are fully fit-out and functional for security, operations, and maintenance staff.

Staff has been working with KBM-Hogue and furniture manufacturer Knoll on furniture layout for these areas and, as a partner public agency to BAHA, arranged with BAHA to purchase FF&E under the terms of the BAHA Agreement, which will provide about a 30% to 40% discount on furniture costs to the TJPA. Hogue & Associates (now KBM-Hogue) was selected by BAHA following a competitive procurement process for furniture procurement services for its new offices in San Francisco as well as those of its partner agencies, the Association of Bay Area Governments, Air District, and Metropolitan Transportation Commission. Proposals were received from four dealer/manufacturer teams: KBM-Hogue/Knoll, One Workplace/Steelcase, Pivot/Herman Miller, and Sidemark/Technion. Additional details on the procurement are included in BAHA's memo to its Board, attached.

The terms of the BAHA Agreement provide for design, specification, ordering, manufacturing, and installation services for workstations, offices, and public spaces, and other ancillary furniture procurement services. KBM-Hogue has provided preliminary pricing to the TJPA that includes design, furniture manufacture, delivery, and installation, as well as project management. Staff subsequently selected specific finishes to ensure additional durability in certain areas, and changed quantities of certain items. The current cost estimate is approximately \$370,000. The final cost will be refined to reflect actual quantities and finishes; however, it is not expected to differ more than 5% from the current estimate. The amount being carried in the Phase 1 budget for FF&E is \$1.75 million. Additional FF&E may be purchased under separate purchase orders to furnish and equip the park, the transit center mail room and loading docks, and the TJPA's offices and asset management facilities at the transit center, once those areas are available for occupancy.

RECOMMENDATION:

Authorize the Executive Director to issue a purchase order to KBM-Hogue in the amount of approximately \$370,000 for design, project management, manufacture, delivery, and installation of furniture for the TJPA's security operations center for the Salesforce Transit Center, building maintenance areas, and some outdoor areas, under the terms detailed in the BAHA Agreement.

ENCLOSURES:

1. Resolution
2. BAHA Agreement with Hogue and Associates, FY 2014/15 – 2024/25
3. BAHA Agenda Item 5, dated June 18, 2014

**TRANSBAY JOINT POWERS AUTHORITY
BOARD OF DIRECTORS**

Resolution No. _____

WHEREAS, The Transbay Joint Powers Authority (TJPA) is a joint powers agency organized and existing under the laws of the State of California; and

WHEREAS, Pursuant to the Joint Powers Agreement creating the TJPA, dated April 4, 2001, the TJPA has the authority to, among other things, make and enter into contracts and exercise all powers necessary and proper to carry out the provisions of the Joint Powers Agreement; and

WHEREAS, The TJPA requires the services of an entity to design, procure, manufacture, and install furniture, fixtures, and equipment (FF&E) in the Salesforce Transit Center; and

WHEREAS, TJPA staff has coordinated the layout of furniture for the TJPA's security operations center, building maintenance areas, and some outdoor areas with KBM-Hogue/Knoll; and

WHEREAS, As a partner public agency to the Bay Area Headquarters Authority (BAHA) BAHA, the TJPA may purchase FF&E under the favorable pricing and terms of BAHA's agreement with Hogue and Associates (now KBM-Hogue) (BAHA Agreement); and

WHEREAS, Staff has received pricing from KBM-Hogue in accordance with the terms and conditions detailed in the BAHA Agreement; now, therefore, be it

RESOLVED, That the TJPA Board of Directors authorizes the Executive Director to issue a purchase order for FF&E to KBM-Hogue under the terms detailed in the BAHA Agreement, in the amount of approximately \$370,000.

I hereby certify that the foregoing resolution was adopted by the Transbay Joint Powers Authority Board of Directors at its meeting of September 14, 2017.

Secretary, Transbay Joint Powers Authority

CONTRACT APPROVAL SHEET

AGENCY:	BAHA	ConTracker #:		Contract No. (Acctg. use only):	
NAME OF CONTRACTOR/CONSULTANT:	Hogue and Associates				
PROJECT TITLE:	375 Beale Street Furniture				
	Amount	Approval by ED or Committee (specify)	Committee Approval Date <i>Attach most recent signed Comm. memo</i>	Grant/Allocation Name	Grant No./ Allocation No./ Funding Source (Acctg.)
Original contract	\$500,000	BAHA	June 25, 2014		903 913014 6900
Amend #1					RJ 9/19/14
Amend #2					
Amend #3					
WORK ITEM #:		Sole Source: Yes <input checked="" type="checkbox"/> No <input checked="" type="checkbox"/> N/A <input checked="" type="checkbox"/> delete 2 check marks. If yes, attach signed sole source justification			
FISCAL YEARS:					
Insurance Code:	MPL	Insurance Exceptions:	Employee dishonesty/crime - \$250k / pollution liability - \$1M		
Contractor Contact/Email:	Olivia Swinehart / oswinehart@hoguesf.com				
Contractor Address:	250 Montgomery Street, Suite 1500, San Francisco, CA 94104				

Document1

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REVIEW LIST

Project Manager:	<u>Teri L. Green</u> Teri L. Green	Date:	<u>8/1/14 to 9/18/14</u> 8/1/14 to 9/18/14
Section Director:	<u>Teri L. Green</u> Teri L. Green	Date:	<u>8/1/14 to 9/18/14</u>
Contract Administration ¹ :	<u>Denise Rodrigues/Alice Truong</u> Denise Rodrigues/Alice Truong	Date:	<u>8/1/14</u>
IT Review:	n/a Nick Roethel	Date:	
Office of the General Counsel:	<u>Cindi Segal</u> Cindi Segal <i>w/edits</i>	Date:	<u>9/18/14</u>
Deputy Executive Director:	<u>Andrew B. Fremier</u> Andrew B. Fremier	Date:	<u>9/18/14</u>
Deputy Executive Director:	n/a Alix Bockelman ³	Date:	<u>9/19/2014</u>
Finance Section:	<u>Brian Mayhew</u> Brian Mayhew	Date:	<u>9/19/2014</u>

Pre Award Audit Required: Yes No

Return to Contract Administration

RECEIVED

AUG 05 2014

MTC LEGAL DEPT

¹ Includes DBE review for all federally-funded contracts.

² Reviews all procurements and contracts from HAO, BOO, and TCI, plus BATA, BAHA, MTC SAFE, and BAIFA,-funded work.

³ Reviews all procurements and contracts from Planning, PAA, LPA and ATS.

PROFESSIONAL SERVICES AGREEMENT FOR THE DESIGN, SPECIFICATION,
ACQUISITION AND INSTALLATION OF NEW FURNITURE

between

BAY AREA HEADQUARTERS AUTHORITY

and

HOGUE AND ASSOCIATES

for

WORKSTATION, OFFICE, PUBLIC SPACE AND ANCILLARY FURNITURE AND
INSTALLATION LABOR

for the

REGIONAL AGENCY HEADQUARTERS FACILITY
AT 375 BEALE STREET, SAN FRANCISCO

FISCAL YEARS 2014-2015 to 2024-2025

TABLE OF CONTENTS

<u>ARTICLE</u>	<u>PAGE</u>
1. SCOPE OF SERVICES.....	1
1.1 PROJECT STATUS REPORTS.....	2
2. PERIOD OF PERFORMANCE.....	2
3. COMPENSATION AND METHOD OF PAYMENT.....	2
4. KEY PERSONNEL.....	3
5. AMENDMENTS.....	3
6. TERMINATION.....	3
7. INSURANCE AND FINANCIAL SECURITY REQUIREMENTS.....	5
8. INDEPENDENT CONTRACTOR.....	5
9. INDEMNIFICATION.....	5
10. DATA TO BE FURNISHED BY BAHA.....	6
10.1 NOT USED.....	6
10.2 NOT USED.....	6
11. OWNERSHIP OF WORK PRODUCTS.....	6
12. SUBCONTRACTS AND SUPPLIERS.....	7
13. ASSIGNMENT OF AGREEMENT.....	7
13.1 COOPERATIVE USE.....	8
14. RECORDS.....	8
15. AUDITS.....	8
16. NOTICES.....	8
17. SOLICITATION OF CONTRACT.....	9
18. PROHIBITED INTERESTS.....	9
18.1 ORGANIZATIONAL CONFLICTS OF INTEREST.....	10
19. LAWS AND REGULATIONS.....	11
19.1 PROJECT STABILIZATION AGREEMENT.....	11
20. CLAIMS OR DISPUTES.....	11
21. REMEDIES FOR BREACH.....	12
22. TEMPORARY SUSPENSION OF WORK.....	12
23. WARRANTY OF SERVICES.....	13
24. DISPUTE RESOLUTION.....	13
25. CHOICE OF LAW.....	14
26. ATTORNEYS' FEES.....	14
27. PARTIAL INVALIDITY.....	15
28. BENEFIT OF AGREEMENT.....	15
29. NO THIRD PARTY BENEFICIARIES.....	15
30. ENTIRE AGREEMENT; MODIFICATION.....	15
ATTACHMENT A, SCOPE OF WORK.....	16
ATTACHMENT A-1, FURNITURE PURCHASES.....	20
ATTACHMENT A-2, TASK ORDER PROCESS.....	22
ATTACHMENT A-3, TASK ORDER FORM.....	24
ATTACHMENT B, PROJECT SCHEDULE.....	27
ATTACHMENT C, COMPENSATION AND METHOD OF PAYMENT.....	28
ATTACHMENT C-1, TASK ORDER PAYMENT.....	29
ATTACHMENT D, KEY PERSONNEL ASSIGNMENTS.....	31
ATTACHMENT E, INSURANCE AND FINANCIAL SECURITY (BOND) PROVISIONS.....	32
ATTACHMENT E-1, PAYMENT BOND TO ACCOMPANY CONTRACT.....	38
ATTACHMENT E-2, PERFORMANCE BOND TO ACCOMPANY CONTRACT.....	39
ATTACHMENT E-3, CONSENT OF SURETY.....	40
ATTACHMENT F, NOT USED.....	41
ATTACHMENT G, SUBCONTRACTOR AND SUPPLIER LIST.....	42
ATTACHMENT H, NOT USED.....	43
ATTACHMENT I, PROJECT STABILIZATION AGREEMENT.....	44
ATTACHMENT J, NOT USED.....	45
ATTACHMENT K, KNOLL DISCOUNTING STRUCTURE.....	46

PROFESSIONAL SERVICES AGREEMENT
Between BAY AREA HEADQUARTERS AUTHORITY
And HOGUE AND ASSOCIATES

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

THIS AGREEMENT is made and entered into as of the 22nd day of September, 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 BAHA and BATA entered into pursuant to Government Code Sections 6500 *et. seq.* and Hogue and Associates, (herein called "DEALER"), a California corporation organized under the laws of the State of California.

RECITALS

WHEREAS, BAHA intends secure a DEALER to provide design, specification, ordering, manufacturing and installation services for workstations, office, public space, and other ancillary furniture at 375 Beale Street, San Francisco, California (herein called "the Project"); and

WHEREAS, Hogue and Associates is a preferred Knoll Dealer and Knoll will provide manufacturing for the office, public space, and other ancillary furniture; and

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

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

NOW, THEREFORE, the parties hereto agree as follows:

1. SCOPE OF SERVICES

DEALER's services are described in Attachment A, Scope of Work, attached hereto and incorporated herein by this reference. DEALER agrees to perform or secure the performance of all specified services within the maximum payment specified in Article 3, subject to the prior written approval of a work plan by Teri Green, (herein called "BAHA Project Manager"). All required furniture purchases shall be authorized by Task Order. All services described in a duly executed Task Order are hereby incorporated into the Agreement upon their execution. All Task Orders shall be developed according to the process established in Attachment A-2, Task Order

Process, attached hereto and incorporated herein, and should include, at a minimum, a completed form as shown in Attachment A-3, Task Order Form. DEALER agrees to perform or secure the performance of all furniture purchases in their entirety with respect to fully executed Task Orders within the Maximum Payment specified in Article 3. As BAHA Project Manager, Teri Green is responsible for communication with DEALER and the administration of this Agreement. BAHA's Executive Director or designated representative may substitute a new BAHA Project Manager by written notice to DEALER.

DEALER's point of contact and the individual authorized to communicate to BAHA on behalf of DEALER is Olivia Swinehart ("DEALER Project Manager"). Paul Razo will be the DEALER point of contact while Olivia Swinehart is on maternity leave until January 2015. A change in the DEALER Project Manager requires BAHA written approval.

1.1 PROJECT STATUS REPORTS

DEALER shall provide BAHA with project status reports (PSR's) on a regular timeframe to be determined by BAHA and DEALER (bi-weekly, monthly, etc.).

2. PERIOD OF PERFORMANCE

DEALER's services hereunder shall commence on or after September 22, 2014, and shall be completed no later than September 21, 2024, unless extended by duly executed amendment or earlier terminated, as hereinafter provided. BAHA shall have the option to extend this Agreement for two (2) additional five-year periods, subject to agreement on terms by BAHA and DEALER, and future funding approvals by BAHA. DEALER's services shall be performed in accordance with the schedule included in Attachment B, Project Schedule, attached hereto and incorporated herein by this reference.

3. COMPENSATION AND METHOD OF PAYMENT

Subject to duly executed amendments, BAHA will pay DEALER for its services as described in Attachment A, a total amount, including (as applicable) labor, supervision, applicable surcharges such as taxes, insurance, and fringe benefits, indirect costs, overhead, profit, subcontractors' and suppliers' costs (including mark-up), travel, equipment, materials and supplies, expenses and any fixed fee, five hundred thousand dollars (\$500,000) ("Maximum Payment"). BAHA shall make payments to DEALER in accordance with the provisions described in Attachment C, Compensation and Method of Payment, attached hereto and incorporated herein by this reference.

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

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

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

4. KEY PERSONNEL

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

5. AMENDMENTS

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

6. TERMINATION

A. Termination for Convenience. BAHA may terminate this Agreement for convenience, in whole or in part, at any time by written notice to DEALER. Upon receipt of notice of termination, DEALER shall stop work under this Agreement immediately, to the extent provided in the notice of termination, and shall promptly submit its termination claim to BAHA. DEALER shall be paid for hours worked and reimbursed for authorized expenses, plus reasonable termination costs, not to exceed the maximum amount payable for the terminated work. For terminated deliverables-based

Task Orders, DEALER shall be reimbursed in accordance with the change and cancellation fee policy provided with each applicable quote. For terminated time-and-materials Task Orders, DEALER shall be paid for hours worked, plus authorized expenses and reasonable termination costs, not to exceed the maximum amount payable under the terminated Task Order. If DEALER has any property in its possession belonging to BAHA, DEALER will account for the same, and dispose of it in the manner BAHA directs. Except as provided above, BAHA shall not in any manner be liable for DEALER's actual or projected lost profits had DEALER completed the services required by this Agreement.

B. Termination for Default. If DEALER does not deliver the work products specified in this Agreement in accordance with the delivery schedule or fails to perform in the manner called for in the Agreement, or if DEALER fails to comply with any other material provision of the Agreement, BAHA may terminate this Agreement for default. Termination shall be effected by serving a fifteen (15) day advance written notice of termination on DEALER, setting forth the manner in which DEALER is in default. If DEALER does not cure the breach or describe to BAHA's satisfaction a plan for curing the breach within the fifteen (15) day period, BAHA may terminate the Agreement for default. In the event of such termination for default, DEALER will be entitled to be reimbursed only for work performed in full compliance with the contract requirements as follows: DEALER shall be paid for hours worked and reimbursed for authorized expenses, not to exceed the maximum amount payable for the terminated work.

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

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

7. INSURANCE AND FINANCIAL SECURITY REQUIREMENTS

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

8. INDEPENDENT CONTRACTOR

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

9. INDEMNIFICATION

To the maximum extent permitted by law, DEALER shall indemnify, keep and hold harmless BAHA and those entities (if any) identified as additional insureds in Attachment E, Insurance and Financial Security (Bond) Provisions, and their commissioners, directors, officers, agents, and employees ("BAHA Indemnified Parties") against any and all demands, claims, suits or actions arising out of any of the following:

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

DEALER further agrees to defend any and all such claims, actions, suits or other legal proceedings and pay all charges of attorneys and all other costs and expenses of defenses as they are incurred. If any judgment is rendered against any of the BAHA Indemnified Parties, DEALER shall, at its expense, satisfy and discharge the same.

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

10. DATA TO BE FURNISHED BY BAHA

All data, reports, surveys, studies, drawings, software (object or source code), electronic databases, and any other information, documents or materials ("BAHA Data") made available to DEALER by BAHA for use by DEALER in the performance of its services under this Agreement shall remain the property of BAHA and shall be returned to BAHA at the completion or termination of this Agreement. No license to such BAHA Data, outside of the Scope of Work of the Project, is conferred or implied by DEALER's use or possession of such BAHA Data. Any updates, revisions, additions or enhancements to such BAHA Data made by DEALER in the context of the Project shall be the property of BAHA and subject to the provisions of Article 11.

10.1 NOT USED

10.2 NOT USED

11. OWNERSHIP OF WORK PRODUCTS

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

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

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

12. SUBCONTRACTS AND SUPPLIERS

A. Subcontractors and suppliers approved by BAHA for subcontract work or supplies under this Agreement are listed in Attachment G, Subcontractor and Supplier List, attached hereto and incorporated herein by this reference. Any subcontractors or suppliers must be engaged under written contract with the DEALER with provisions allowing the DEALER to comply with all requirements of this Agreement, including without limitation Article 11, OWNERSHIP OF WORK PRODUCTS. Failure of a subcontractor or supplier to provide insurance in accordance with Article 7, INSURANCE REQUIREMENTS, shall be at the risk of DEALER.

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

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

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

13. ASSIGNMENT OF AGREEMENT

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

13.1 COOPERATIVE USE

The Metropolitan Transportation Commission (MTC), Association of Bay Area Governments (ABAG), and Bay Area Air Quality Management District (Air District), may utilize this Agreement for cooperative use purposes to obtain Workstation, Office, Public Space, and Ancillary Furniture and Installation, at the same terms and conditions included in this Agreement during the period of time that this Agreement is in effect.

14. RECORDS

DEALER agrees to establish and maintain an accounting system conforming to Generally Accepted Accounting Principles (GAAP) that is adequate to accumulate and segregate reasonable, allowable, and allocable project costs. DEALER further agrees to keep all records pertaining to the project being funded for audit purposes for a minimum of four (4) years following the fiscal year of last expenditure under the Agreement; or until completion of any litigation, claim or audit, whichever is longer.

15. AUDITS

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

DEALER 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.

16. NOTICES

Except for invoices submitted by DEALER 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:

member, domestic partner or employer or prospective employer of such member, officer, agent or employee) presently has, or will have in the Agreement, or in the performance thereof, or in any portion of the profits thereunder. Willful failure to make such disclosure, if any, shall constitute grounds for cancellation and termination hereof by BAHA.

18.1 ORGANIZATIONAL CONFLICTS OF INTEREST

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

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

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

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

19. LAWS AND REGULATIONS

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

19.1 PROJECT STABILIZATION AGREEMENT

If applicable, DEALER shall be required to adhere to Attachment I, Project Stabilization Agreement as attached hereto and incorporated herein by this reference. DEALER and all subcontractors or suppliers, if applicable, must comply with applicable sections of the California Labor Code (e.g., Sections 1720 et seq. and Title 8 of the California Code of Regulations Sections 16000 et seq.) governing the payment of prevailing wages, as determined by the Director of the California Department of Industrial Relations, in regards to all work performed under this Agreement.

20. CLAIMS OR DISPUTES

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

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

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

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

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

21. REMEDIES FOR BREACH

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

The duties and obligations imposed by the Agreement and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by BAHA or DEALER shall constitute a waiver of any right or duty afforded any of them under the Agreement, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

22. TEMPORARY SUSPENSION OF WORK

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

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

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

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

23. WARRANTY OF SERVICES

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

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

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

24. DISPUTE RESOLUTION

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

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

negotiations, the parties may mutually agree to try to settle the dispute by means of alternate dispute resolution methodologies, as set forth below.

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

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

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

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

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

25. CHOICE OF LAW

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

26. ATTORNEYS' FEES

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

27. PARTIAL INVALIDITY

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

28. BENEFIT OF AGREEMENT

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

29. NO THIRD PARTY BENEFICIARIES

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

30. ENTIRE AGREEMENT; MODIFICATION

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

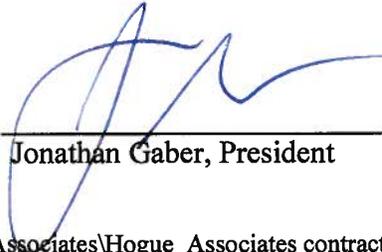
IN WITNESS WHEREOF, the Agreement has been executed by the parties hereto as of the day and year first written above.

BAY AREA HEADQUARTERS AUTHORITY

HOGUE AND ASSOCIATES



Steve Heminger, Executive Director



Jonathan Gaber, President

ATTACHMENT A, SCOPE OF WORK

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

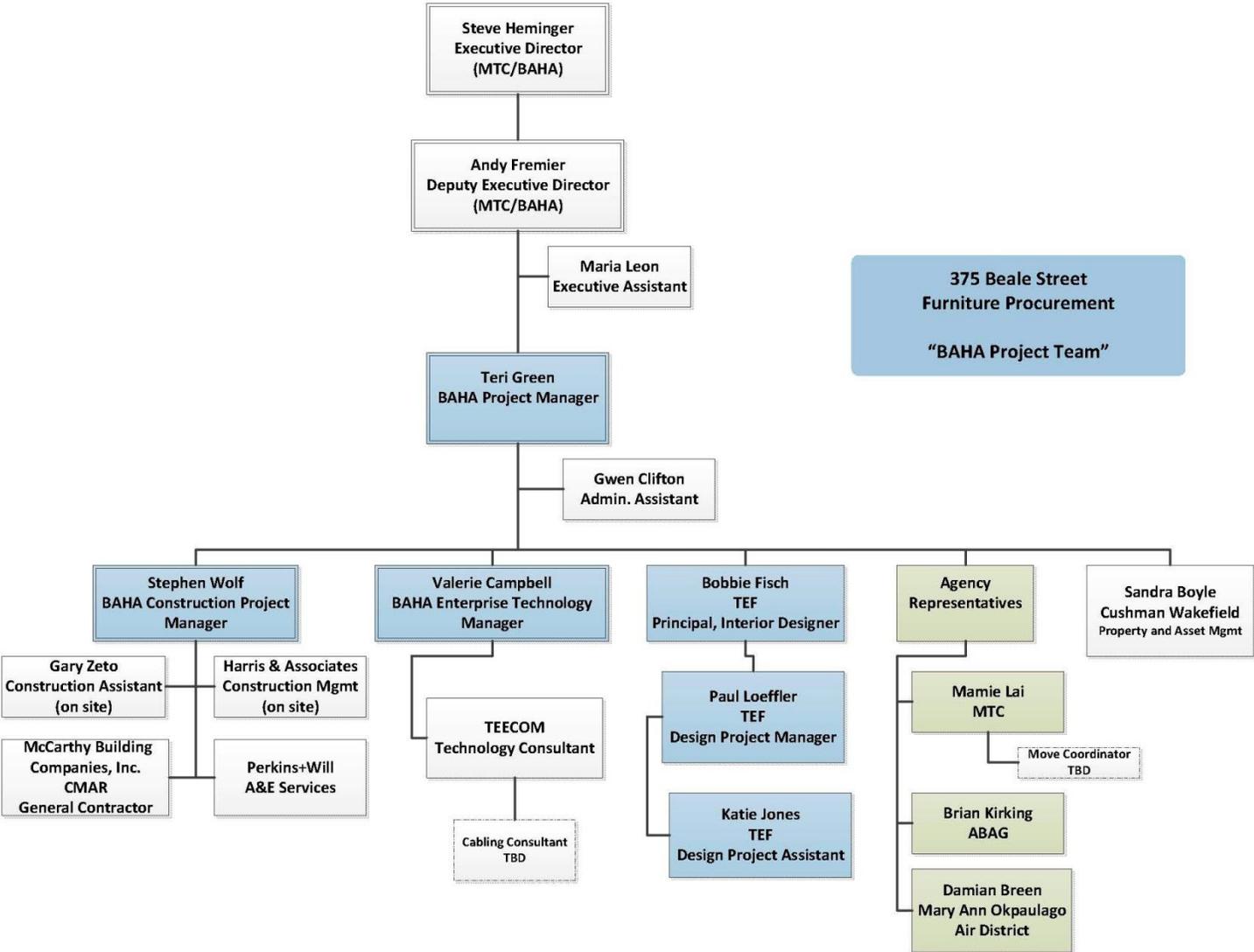
DEALER will receive direction and approvals from the BAHA Project Manager who will work in close coordination with the “BAHA Project Team” and “Agency Representatives”. See attached organization chart.

	Scope of Services
General	<ul style="list-style-type: none"> • Provide project administration, supervision and ongoing support services needed for initial furniture purchase required for move-in and future orders or upgrades at 375 Beale Street. • Develop, maintain and share current project schedules to track all processes involved in design, manufacturing and installation of furniture. • Attend Owner, Architect, Contractor (OAC) meetings to provide updates on the furniture schedule, walk the job site, and be aware of any changes to construction that may affect the furniture. • Coordinate, through the BAHA Construction Manager, for services required of the General Contractor, their subcontractors and other service providers as required. • Coordinate, through the BAHA Enterprise Technology Manager, for services related to the technology infrastructure and cabling that impact furniture installation. • Maintain complete documentation of purchased orders, inventory and installation plans. • Track purchases by Agency (BAHA, MTC, Air District and ABAG) to facilitate fixed asset accounting requirements. • Perform the work at all times with a sufficient staff to carry out the obligations in an efficient and timely manner, and in accordance with the agreed upon Project Schedule.
Design Development and Planning	<ul style="list-style-type: none"> • Coordinate weekly furniture meetings with BAHA Project Team to review project plan, schedule and changes and all other tasks required to develop and finalize furniture packages. • Take minutes, including action items, for each meeting and share with BAHA Project Team. • Review and update proposed typical workstations/private offices and other furniture packages (Shared Agency, Agency Unique, Executive Areas, and Public Spaces) requirements with BAHA Project Team. • Develop updates based on approved direction from BAHA Project Manager. • Develop and maintain updated project plan/schedule with milestone dates to track important decisions and actions. • Monitor all deadlines including: drawing sign-off, deposit receipt, order

	<p>entry dates and delivery dates.</p> <ul style="list-style-type: none"> • Confirm that specified quantities, sizes and configurations correspond with the floor plan. Coordinate all submittals and other required approvals with Architect (TEF Architects). • Develop and maintain detailed project budgets and product pricing that track with the development of the furniture specifications. Advise BAHA Project Manager if there are any deviations from the approved project budget. • Test-fit and verify critical dimensions of walls, power/data outlets and other related items at 375 Beale Street • Conduct, in coordination with BAHA Construction Manager and Enterprise Technology Manager, all meetings needed to develop, propose and confirm electrical circuiting and wiring solutions needed to complete ordering of open-plan workstations, along with parallel exercise to confirm data cable routing, capacity and intended termination locations within same workstations.
Ordering	<ul style="list-style-type: none"> • Finalize furniture plans and receive sign-off on layouts from BAHA and TEF Architects. • Submit purchase orders to Knoll and open line manufacturers on behalf of BAHA. • Check order acknowledgements for accuracy.
Pre-Installation	<ul style="list-style-type: none"> • Meet regularly at the job-site with BAHA Construction Manager (or designee) and the general contractor, electrical, cabling and audio visual (AV) vendors to address any issues in the field and to answer questions about the electrical/data capacity of the panels, conference room tables, etc. • Solicit, manage bids and select Installer (subcontractor) to receive, deliver and install furniture. • Work with BAHA to develop a mutually agreed upon Site Conditions Plan which establishes the conditions to be expected at the Site to enable delivery and installation of the furniture. • Arrange kick-off meeting with the lead installer to review the project scope, installation schedule and BAHA and DEALER's expectations. • Finalize labor requirements and coordinate with installers, electricians and other trades. Confirm critical dimensions of enclosures pertaining to products supplied by DEALER. • Review the installation schedule with the BAHA Project Team prior to delivery of furniture to ensure that any areas that may need priority are attended to in that order. • Keep the BAHA Project Team informed of delivery/ installation schedule relative to construction. • Evaluate job site prior to delivery and notify team of conditions that may affect delivery including confirmation that loading dock conditions, entryways and elevators are adequate to receive the product. (Determine whether a direct-to-site delivery is possible.) • Coordinate furniture delivery/installation through the BAHA Construction

	<p>Manager (or designee).</p> <ul style="list-style-type: none"> • Submit Installation Certificate of Insurance documentation.
<p>Delivery and Installation</p>	<ul style="list-style-type: none"> • Direct and coordinate phasing of installation with BAHA Construction Manager (or designee). Update installation schedules or sequences as changes required. • Determine and coordinate special trailer loading and delivery requirements. • Provide complete protection of floor and wall finishes as necessary for delivery and installation, including entire path of travel from loading dock or garage to final install site, including elevator interior. • Be responsible for removing all debris associated with the furniture delivery and set up. • Pre-punch furniture to resolve issues prior to formal punch walk with BAHA Project Team. • Walk the site with lead installer to check for cleanliness and furniture wipe-down. • Perform as needed punch lists and provide a schedule for the completion of the punch list items to the satisfaction of BAHA. • Be responsible for all materials and equipment prior to installation, and until acceptance is given in writing by BAHA. DEALER to assume responsibility for any loss or expense associated with storing materials and equipment prior to the date of acceptance. • In coordination with McCarthy Building Companies, Inc. and its subcontractors, receive and pass all applicable inspections from the Local Code Jurisdiction and obtain sign off of installation permits.
<p>Post-Installation</p>	<ul style="list-style-type: none"> • Conduct final punch walk-through with BAHA Project Team and Agency Representatives. Resolve all items within two weeks or as soon as practical for long-lead replacement items. • Maintain ultimate responsibility for the coordination of all work and adjustments. • Submit Installation Completion Certificate. • Create and provide a “Standards Binder” which includes images and descriptions of all furniture ordered. Warranty and cleaning information is also included. • Address any warranty claims, reconfigurations or questions. • Conduct a project close-out meeting with the client to answer questions and receive feedback on the product applications and customer service. • Provide orientation and training for staff assigned to maintain new furniture. • Provide a post-occupancy review within one (1) month of installation finish to address any outstanding issues.
<p>On-going Support</p>	<ul style="list-style-type: none"> • Provide on-going services and product for future orders and upgrades.

ORGANIZATION CHART



ATTACHMENT A-1, FURNITURE PURCHASES

Furniture Purchases

BAHA may request furniture purchases on an as-needed basis. All such furniture purchases shall be authorized by Task Order, initiated and developed according to the detailed task order process described in Attachment A-2, Task Order Process, attached hereto and incorporated herein by this reference. Task Orders shall include, at a minimum, a detailed description of the work to be performed, a completion date for performance, a maximum payment amount, payment terms (deliverables-based or time and materials) and subcontractor/supplier participation (if any), in a completed form as shown in Attachment A-3, Task Order Form, attached hereto and incorporated herein by this reference.

Labor, Installation and Delivery

Labor/installation prices will be quoted at the time the order is placed based on this mutually agreed upon condition of the facilities as established in the Site Conditions Plan. In the event that it is necessary to stage the furnishings in areas other than those of the originally intended destination, additional handling charges may apply. Should it be necessary to deliver and/or install during evening or weekend hours, or should working conditions be materially different from the Site Conditions Plan or should additional structural support be necessary, additional charges may apply.

DEALER shall be financially responsible for damage it or a supplier or subcontractor causes during delivery and installation of furniture. If other trades are present on the job site during this time, DEALER shall not be financially responsible for damage if BAHA is unable to determine that DEALER, or one of its subcontractors or suppliers, caused the damage.

Bolting

DEALER is not responsible for the construction of the walls whereon certain items of furniture may be secured or installed. BAHA will provide DEALER with construction drawings showing the presence of wiring, plumbing, hidden gas lines, or other materials that are commonly housed within construction walls. DEALER will provide BAHA with any recommendations related to additional work that may be necessary to secure furniture to these walls. Recommendations may include the addition of wall-backing to the private offices to reinforce the wall and to adequately secure the wall-mounted panels on which the overheads and surfaces are hung. Should DEALER, including its subcontractors or suppliers, cause physical damage to the walls as a result of bolting furniture, DEALER will not be held responsible for such damage if damage directly results from conditions being materially different than shown on the drawings.

Cancellation Policy

All product quoted is “made to order” and will be ordered on behalf of BAHA. This purchase is for commercial use and not for personal, family or household purposes. Change and cancellation fee policies for all furniture will be provided by DEALER in writing with each quote and prior to any order placement. Should cancellation be required, BAHA agrees to be responsible for charges and fees as specified in the applicable change and cancellation fee policy.

ATTACHMENT A-2, TASK ORDER PROCESS

Detailed Task Order Process:

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

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

Step 2* – DEALER prepares a proposal in response to the draft Task Order. A draft Task Order, as included in this Agreement as Attachment A-3, Task Order Form, attached hereto and incorporated herein by this reference, shall be provided to DEALER for review and comment.

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

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

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

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

Step 7 – Any services added to the Agreement by a Task Order shall be subject to all applicable conditions of the Agreement. Revisions to Task Orders shall require written approval by both the BAHA Section Director and DEALER. Revisions to Task Orders shall require written approval by both the BAHA Section Director and DEALER.

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

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

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

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

ATTACHMENT A-3, TASK ORDER FORM

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

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

A. Deliverables-based.

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

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

B. Time and Materials

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

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

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

BAY AREA HEADQUARTERS
 AUTHORITY

HOGUE AND ASSOCIATES

 Teri Green, Director
 Date: _____

 Jonathan Gaber, President
 Date: _____

Task Order Schedule

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

Detailed Description of Work

Task Order #: Title

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

ATTACHMENT B, PROJECT SCHEDULE

Task #	Work to be Performed/Deliverables (#)	Completion Date
1	Project Plan and Timeline	Within 30 days from start date and updated monthly (minimum)
2	Project Status Report (Monthly) and other reports (TBD)	Within 30 days from start date and updated monthly; other reports TBD
3	Site Conditions Plan	60 days prior to initial furniture orders
4	Design/Specification/Ordering	TBD
5	Pre-Installation Walkthrough	TBD
6	Installation	TBD
7	Post-Installation Walkthrough	TBD

ATTACHMENT C, COMPENSATION AND METHOD OF PAYMENT

LABOR – HOUR

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

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

C. 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 to DEALER, including any amounts withheld, will be made promptly after satisfactory completion of the work under this Agreement, and after receipt and written acceptance by BAHA of the reports and working papers which are required to be furnished under this Agreement and after punch list is closed out to BAHA's satisfaction, whichever is later.

ATTACHMENT C-1, TASK ORDER PAYMENT

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

B. Payment for Task Orders. Payment for furniture purchases provided under Task Orders shall be authorized in Task Orders executed by the BAHA Project Manager and DEALER. Task Orders shall include, at a minimum, a detailed description of work to be performed, a schedule for performance, a specific method of payment (deliverables or time and materials) and a maximum payment.

BAHA will make an initial deposit payment of fifty percent (50%) of the furniture purchase costs, upon furniture ordering by DEALER to be approved by the BAHA Project Manager. Payment for the remaining fifty percent (50%) will be made upon installation of furniture. BAHA shall withhold, as a retainage, 5% of the value of each payment due, until punch list is closed out to BAHA's satisfaction, and after receipt and acceptance by BAHA of the reports and working papers which are required to be furnished under this Agreement, whichever is later. The furniture purchase costs include product and sales tax.

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

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

For Task Orders authorizing time and materials payment, DEALER shall specifying the work performed, hours worked, and amount due (by personnel), the total amount claimed under the invoice and the amount paid to date under the Task Order.

In the event that the project is delayed for reasons beyond DEALER's control and it is not possible for the facility to receive the specified product at the mutually agreed upon delivery schedule, BAHA will be required to pay DEALER the remainder of the total product invoice amount thirty (30) days from the intended installation date that could not be met. BAHA shall withhold 5% of the value of the payment per Attachment C, Section C. Withheld Amounts and Final Payment of this Agreement.

ATTACHMENT D, KEY PERSONNEL ASSIGNMENTS

	<u>Name</u>	<u>Rate/hour*</u>	<u>Position/Description</u>
1.	Jonathan Gaber	N/A	Project Principal and President of Hogue
2.	Olivia Swinehart	\$80/hr	Account Manager/Senior Account Executive
3.	Paul Razo	\$80/hr	Account Manager/Senior Project Manager
4.	Amanda Ghourdjian	\$80/hr	Project Coordinator/Project Manager
5.	Chiara Wine	\$80/hr	Project Designer/Senior Designer
6.	Cristina Figone	N/A	Consultant/VP, Business Development
7.	Kelly McVay	\$80/hr	Field Project Manager
8.	Neda Thiele	N/A	Architecture and Design Representative
9.	Gary Zowada	N/A	Senior Sales Associate
10.	Hogue Designer	\$80/hr	Assisting Chiara Wine

*Charges for key personnel are normally included in the Dealer Mark-up with exception of the following people whose service rate is \$80/hr: Olivia Swinehart, Paul Razo, Amanda Ghourdjian, Chiara Wine, Kelly McVay and others in the Hogue Design Department for a total estimated 500 hours or \$40,000. The estimated hours may be revised as Task Orders are developed.

ATTACHMENT E, INSURANCE AND FINANCIAL SECURITY (BOND) PROVISIONS

1. INSURANCE

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

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

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

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

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

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

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

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

5. Errors and Omissions Professional Liability Insurance for errors and omissions and the resulting damages, including, but not limited to, economic loss to BAHA and having minimum limits of \$1,000,000 per claim.

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

6. Property Insurance. Property Insurance covering DEALER'S own business personal property and equipment to be used in performance of this Agreement, materials or property to be purchased and/or installed on behalf of BAHA (if any), and builders risk for property in the course of construction (if applicable). Coverage shall be written on a "Special Form" policy that includes theft, but excludes earthquake, with limits at least equal to the replacement cost of the property. Such policy shall contain a Waiver of Subrogation in favor of BAHA.

7. Employee Dishonesty/Crime Insurance. An Employee Dishonesty insurance policy covering DEALER's employees for loss of or damage to money, securities or other property resulting from theft. The following limits of liability should apply: (a) Employee Dishonesty - \$250,000; and (b) Client Property Blanket Bond - \$250,000. DEALER shall reimburse BAHA for any and all losses within the deductible, for insured losses, the cost to prove the loss, accountants' fees, defense costs including attorneys' fees and any other fees associated with a claim. In lieu of a Client Property Blanket Bond, the policy shall contain a Joint Loss Payee endorsement or other Third Party coverage naming BAHA.

8. Contractors' Pollution Liability Insurance. Contractors' Pollution Liability insurance for bodily injury and property damage coverage with a combined single limit for bodily injury and property damage of at least \$1,000,000 per occurrence or claim and a general aggregate limit of at least \$1,000,000. This insurance shall include coverage for, but not be limited to sudden and accidental discharges; gradual discharges, clean-up of pollutants and disposal thereof; and, mold, asbestos or lead, if an abatement contract. If DEALER disposes of Hazardous Materials under this Agreement, DEALER shall designate the disposal site and provide a certificate of insurance from the disposal facility to BAHA.

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

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

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

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

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

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

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

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

Ensure that the Retroactive Date is shown on the policy, and such date must be before the date of this Agreement or the beginning of any work under this Agreement;

Maintain and provide evidence of similar insurance for at least three (3) years following project completion, including the requirement of adding all additional insureds; and

If insurance is cancelled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the Agreement effective date, DEALER shall purchase “extended reporting” coverage for a minimum of three (3) years after completion of the work.

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

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

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

2. FINANCIAL SECURITY (BONDS)

Performance and Payment Bonds

Within thirty (30) days of contract execution, DEALER shall file with BAHA on the forms provided in Attachment E-1 and Attachment E-2, herein, two surety bonds in the amounts and for the purposes noted below. DEALER shall pay all premiums and costs relating to the required bonds.

Performance Bond is in the amount of \$5,000,000, which is 100% of the initial contract amount for furniture purchases to guarantee faithful performance of the Agreement, including the replacing of or making acceptable, any defective materials or faulty workmanship. The Performance Bond shall be released after installation and after all Contractor obligations have been met, including addressing punch list items to BAHA’s satisfaction.

Payment Bond is in the amount of \$5,000,000, which is 100% of the initial contract amount for furniture purchases to inure to the benefit of persons performing labor or furnishing materials in connection with the work of this Agreement. This bond shall be maintained in full force and effect until all work under the contract is completed and accepted by BAHA, and until all claims for materials and labor have been paid.

For any subsequent furniture orders beyond the initial contract amount that exceed \$50,000, DEALER shall secure individual surety bonds, subject to the same terms and conditions contained in this Agreement.

The Performance and Payment Bonds shall in no event be construed to cap, liquidate, or otherwise modify or limit the amount of damages payable by DEALER for breach of this Agreement.

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

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

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

As alterations, time extensions, extra work, additional work or any other changes are authorized and incorporated into this Agreement, DEALER will within ten days secure a "Consent of Surety" on the form provided under Attachment E-3 to increase the performance and payment bond amount to reflect the revised contract amount.

3. ADDITIONAL INSUREDS

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

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

ATTACHMENT E-1, PAYMENT BOND TO ACCOMPANY CONTRACT

KNOW ALL MEN BY THESE PRESENTS

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

Regional Agency Headquarters Facility at 390 Main Street/375 Beale Street, San Francisco:
Workstation, Office, Public Space and Ancillary Furniture and Installation.

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

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

THE CONDITION OF THIS OBLIGATION IS SUCH,

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

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

IN WITNESS WHEREOF, we have hereunto set our hands and seals on this _____ day of _____ A.D., 201__.

DEALER
Surety
[SEAL]
Attorney in Fact

ATTACHMENT E-2, PERFORMANCE BOND TO ACCOMPANY CONTRACT

KNOW ALL MEN BY THESE PRESENTS

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

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

Regional Agency Headquarters Facility at 390 Main Street/375 Beale Street, San Francisco:
Workstation, Office, Public Space and Ancillary Furniture and Installation.

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

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

THE CONDITION OF THIS OBLIGATION IS SUCH,

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

IN WITNESS WHEREOF, we have hereunto set our hands and seals on this _____ day of _____ A.D., 201__.

DEALER

Surety

Attorney in Fact

ATTACHMENT E-3, CONSENT OF SURETY

Bond Number: _____

CONSENT OF SURETY

To be attached to and form a part of Performance and Payment Bond No. _
in the amount of \$_____ on behalf of _____ as principal and executed by _____, as Surety,
in favor of The Bay Area Headquarters Authority (BAHA), hereinafter called "Owner", for the
Regional Agency Headquarters Facility at 390 Main Street/375 Beale Street, San Francisco:
Workstation, Office, Public Space and Ancillary Furniture and Installation.

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

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

Signed, Sealed and Dated this _____ day of _____, 201__.

(Principal)

By: _____

(Surety)

By: _____

Attorney-in-fact

ATTACHMENT F, NOT USED

ATTACHMENT G, SUBCONTRACTOR AND SUPPLIER LIST

	<u>Name/Address of Subcontractor or Supplier</u>	<u>Amount of Subcontract</u>	<u>Description of Work</u>
1.	Knoll	TBD	Manufacturer of office furniture
2.	Furniture Installers	TBD	Commercial furniture delivery and installation
3.	Other furniture vendors	TBD	Open line/ancillary furniture manufacturers and dealers

ATTACHMENT H, NOT USED

ATTACHMENT I, 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

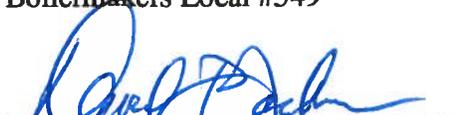
Signatory Unions:


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



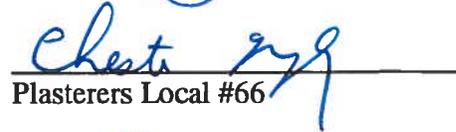
Operating Engineers Local #3



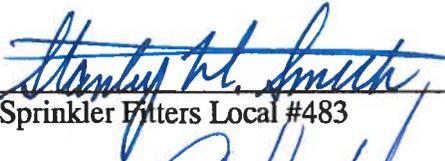
Electrical Workers Local #6



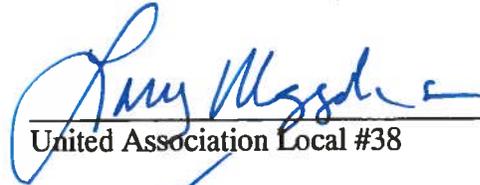
Painters District Council #16



Plasterers Local #66



Sprinkler Fitters Local #483



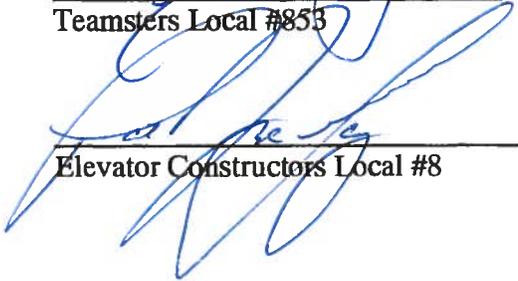
United Association Local #38



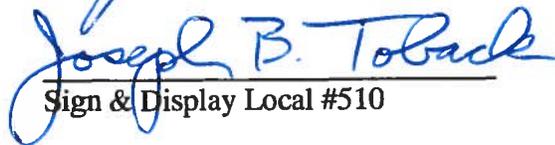
Teamsters Local #853



Laborers Local #67



Elevator Constructors Local #8



Sign & Display Local #510

ARTICLE 28

DURATION OF AGREEMENT

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

**BAY AREA HEADQUARTERS
AUTHORITY**

**SAN FRANCISCO BUILDING &
CONSTRUCTION TRADES COUNCIL**

By: _____
Steve Heminger,
Executive Director

By: _____
Michael Theriault,
Secretary-Treasurer

Signatory Unions:

Insulators Local #16

Hod Carriers Local #166

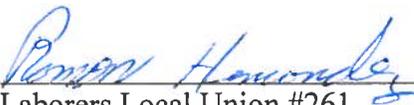
Boilermakers Local #549

Roofers Local #40

Bricklayers Local #3

Iron Workers Local #377

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



Laborers Local Union #261

EXHIBIT A

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

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

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

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

Date: _____

(Name of Contractor)

(Authorized Officer & Title)

(Name of Prime Contractor or
Higher Level Contractor)

(Address)

(Phone #) (Fax #)

Contractor's License Number

Motor Carrier Permit (CA #)

EXHIBIT B
APPLICABLE SCHEDULE "A" AGREEMENTS

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

ATTACHMENT J, NOT USED

ATTACHMENT K, KNOLL DISCOUNTING STRUCTURE

PRODUCT DESCRIPTION	TIER LIST VALUE	CUSTOMER DISCOUNT OFF LIST
Dividends/Series II	1 - 250,000	68.50
	250,001 - 1,000,000	71.00
	1,000,001 - 2,500,000	75.00
	2,500,001+	78.85
Antenna	62,000+	77.00
Reff/Autostrada	36,000+	77.00
Calibre Collection	1 - 250,000	59.50
	250,001 - 1,400,000	62.00
	1,400,001+	67.75
Currents	130,000+	77.00
Anchor	150,000+	71.50
Knoll Extra	136,000+	62.00
Equity	ALL ORDERS	69.50
Upstart	ALL ORDERS	68.50
Template	ALL ORDERS	68.50
Interaction	ALL ORDERS	59.50
Crinion Open Table	ALL ORDERS	59.50
Office Seating including Toboggan (except Moment)	ALL ORDERS	59.50
Moment	ALL ORDERS	52.00
Graham Collection	ALL ORDERS	59.50
Studio	ALL ORDERS	52.50
Renewal Parts	ALL ORDERS	40.00

1. Project pricing is based on the Knoll Price List dated February 15, 2014 with order entry by August 31, 2015 and shipping by November 30, 2015.
2. For orders placed on or after September 1, 2015, the Knoll Price List in effect at time of order entry will apply.
3. For KnollStudio, project pricing is based on the Knoll Price List in effect July 15, 2014.
4. Knoll will allow a blanket purchase order, consisting of up to three (3) orders with list price greater than \$500,000.00 each, to be combined to achieve the product discounting price tiers shown above.
5. Hogue and Knoll will hold the discounting schedule, mark-up (14.10 mark-up for a 12.30% GP for Knoll product) and service costs for any add-on orders to the initial project received prior to June 30, 2017 and with a minimum list value of \$100,000.00 per order. For orders less than \$100,000.00 list value and for orders placed on or after July 1, 2017, pricing is negotiable.
6. Pricing is per product/per tier. Product lines cannot be combined to achieve a higher tier.
7. Total Project pricing includes delivery and installation, sales tax, and systems planning and project management services.

Open Lines

1. Hogue will maintain a 12.5 mark-up (11.11% GP) for open-line agreements for all orders through June 30, 2017. For orders placed on or after July 1, 2017, pricing is negotiable.
2. Total Project pricing includes delivery and installation, sales tax, and systems planning and project management services.



Agenda Item 5

TO: Bay Area Headquarters Authority

DATE: June 18, 2014

FR: Executive Director

W. I. 9130

RE: Contract - Furniture Procurement Services: Hogue and Associates (\$500,000)

This item would authorize the Executive Director or designee to negotiate and enter into a long-term contact with Hogue and Associates to design, procure and install office, public space and other ancillary furniture for the Regional Agency Headquarters Facility at 375 Beale Street, San Francisco. The scope includes approximately 550 office/workstations and 50 conference rooms/collaboration areas at an estimated total furniture cost of \$4.0 Million. The contract for the initial scope is for an amount not to exceed \$500,000 which allows the furniture design process to commence. When completed in the fall, staff will request authorization to issue purchase order(s) for furniture purchases and installation.

Background

As part of an agreement with the partner agencies, BAHA is obligated to provide furniture for agency (ABAG, Air District and MTC) spaces at move-in. BAHA will handle all matters related to this initial procurement and transfer assets to each agency according to its ownership interests.

On January 17, 2014, BAHA issued a Request for Proposals (RFP) and received proposals from four (4) Dealer and Manufacturer Teams (“Dealer Team”). The selected Dealer Team is expected to furnish all services over the next 10+ years, as described in Attachment A. The RFP also requires that the Dealer Team extend pricing for additional purchases that MTC, ABAG or the Air District would make under separate agency purchase orders for any new requirements.

Evaluation Results

More detailed information on the evaluation process is included in Attachment B with the Dealer Team’s overall final scores based on their written proposals, Mock-up solutions and BAFOs summarized as follows:

Proposer	Hogue/ Knoll	One Work Place Steelcase	Pivot/Herma Miller	Sidemark/ Teknion
Pricing (max 215 points)	185	181	159	193
Solution (max 150 points)	137	80	106	128
Key Personnel (max 75 points)	63	64	59	36
Other Factors (max 60 points)	60	60	57	55
Total (max 500 points)	445	385	381	412
Solution Pricing (Estimated Budget \$1.7 Million)*	\$1,526,663	\$1,416,688	\$1,580,838	\$1,426,556

**The pricing excludes professional services fees, delivery, installation, sales tax and bid bonding*

Panel Recommendation

The five member evaluation panel included representatives from BAHA, MTC, ABAG, the Air District and Tom Eliot Fisch (Interior Designers), recommends Hogue and Associates/Knoll Inc. as the Dealer most advantageous to BAHA based on the evaluation criteria stated in the RFP for the following reasons:

- Founded in 1974, Hogue and Associates is a commercial furniture dealership and project management firm and the preferred dealer representing Knoll Inc., both with offices in San Francisco for the past 40 years.
- The proposed furniture line was introduced in 1998 and has an installed base exceeding \$5.0 billion. Based on the review of the on-site mock-ups, the furniture sets a bar for quality in design and materials and exemplifies a professional look and feel.
- The Project Team includes experienced professionals with a portfolio of similar projects over \$1.0 million including Dreamworks (\$3.8 million), Stanford University (\$6.0 million) and Medivation (\$2.8 million).
- While the solution pricing fits within the BAHA budget, staff expects to review and refine the discounting schedules/mark-ups during the contract negotiations to ensure BAHA is indeed getting the best pricing structure for this project.

If contract negotiations are not successful with Hogue and Associates, staff recommends authorization to commence negotiations with Sidemark Corporation Furniture, a preferred dealer representing Teknion LLC; both with offices in San Francisco. Sidemark Corporation Furniture received comparable scores in pricing and the proposed solution, but lower team experience scores as there were major changes to the key personnel assigned to the BAHA project during the evaluation period.

Next Steps

Upon approval of the contract award, staff will enter into negotiations with the recommended Dealer Team to finalize the scope of work, project plan, furniture designs including finishes and pricing. Once completed, staff will seek BAHA approval to fund and issue purchase order(s) for the furniture purchases and installation.

Recommendation

Staff recommends Authority approval authorizing the Executive Director or his designee for the following:

1. To negotiate and enter into a 10 year professional services agreement with Hogue and Associates to provide services related to the design, procurement, coordination and installation of office and other ancillary furniture for the 375 Beale Street building, with an option to extend the contract up to two (2) additional five-year periods, subject to mutually agreeable pricing/discounting schedules and the allocation of funding in the BAHA annual operating budget. The initial contract for Phase I services is not to exceed \$500,000 for such contract.
2. If contract negotiations are not successful, BAHA requests authorization to commence negotiations and enter into an agreement, as stated above, with Sidemark Corporate Furniture which received the second highest evaluation.



Steve Heminger

SH:tg

Attachments

J:\COMMITTEE\BAHA\2014\06_June 2014\5_Furniture Dealer Recommendation.doc

REQUEST FOR AUTHORITY APPROVAL

Summary of Proposed Consultant Contract

Consultant: Hogue and Associates (San Francisco)

Work Project Title: 375 Beale Street Furniture Dealer/Manufacturer Services

Purpose of Project: Provide services to design, procure and install office, public space and other ancillary furniture for 375 Beale Street

Brief Scope of Work: Provide services related to the procurement of new office and other ancillary furniture for the 375 Beale Street building.

Project Cost Not to Exceed: \$500,000 for Phase I professional services costs related to the design of new office furniture for the Agency offices

Funding Source: BAHA FY 13-14 Budget

Fiscal Impact: Funding is included in BAHA's FY 2013-14 Budget

Motion by Committee: That the Executive Director, or his designee, is authorized to negotiate and enter into a 10 year professional services agreement with Hogue and Associates to provide services related to the design, procurement, coordination and installation of office and other ancillary furniture for the 375 Beale Street building, with an option to extend the contract up to two (2) additional five year periods, subject to mutually agreeable pricing/discounting schedules and the allocation of funding in the BAHA annual operating budget, as described in the Executive Director's memorandum dated June 11, 2014 and the Treasurer and Auditor is directed to set aside Phase I funding in the amount of \$500,000 for such contract.

If BAHA is unable to enter into a contract with Hogue and Associates, the Executive Director, or his designee, is authorized to negotiate and enter into a 10 year professional services agreement with Sidemark Corporate Furniture, as stated above, and the Treasurer and Auditor is directed to set aside Phase I funding in the amount of \$500,000 for such contract.

BAHA Chair:

Amy Rein Worth

Approved:

Date: June 25, 2014

Agenda Item 5 - Attachment A

PRELIMINARY SCOPE OF WORK

The preliminary project tasks are expected to include, but are not limited to, the following:

General:

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

During the Design Phase:

- Meet with BAHA and BAHA's representatives weekly to review plans, specifications and all other tasks required to develop furniture orders. Prepare furniture plans for all floors based on backgrounds provided by Architect.
- Test-fit and verify critical dimensions of walls, power/data outlets and other related items at 375 Beale Street and coordinate with the General Contractor and other contractors/dealers.

During the Manufacturing Phase:

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

During the Installation Phase:

- Provide an on-site project manager during the installation to supervise installation activities, including any subcontracted work. Perform as needed punch-lists and provide a schedule for the completion of the punch list items to the satisfaction of BAHA.

During the Post-Installation Phase:

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

Ongoing Support:

- Manufacturer/Dealer team will be expected to provide services and product when future orders or upgrades are undertaken.

Agenda Item 5 - Attachment B

PROCUREMENT AND EVALUTION PROCESS

Procurement Process

On January 17, 2014, BAHA issued a Request for Proposal (RFP) with the goal of entering into a professional services agreement with a Dealer, that represents a major furniture manufacturer, based on a pricing/discounting structure that can be applied to products drawn from the manufacturer's major lines, as well as establishing a fixed gross profit mark-up for other ancillary furniture drawn from "open line" products provided by other furniture manufacturers.

The RFP included a prototype detailing BAHA's requirements (e.g. panel height, surfaces, shelving and guest seating) for a pair of 8-foot by 10-foot workstations and one typical 100 square-foot private office.

By the proposal due date of February 5, 2014, BAHA received four proposals from the following Dealer Teams: Hogue and Associates/Knoll Inc., One Work Place L. Ferrari/Steelcase, Pivot Interiors, Inc./Herman Miller and Sidemark Corporate Furniture/Teknion LLC.

Initial Evaluation and Shortlisting

The five member evaluation panel included representatives from BAHA, MTC, ABAG, the Air District and Tom Eliot Fisch (Interior Designers). The evaluation panel provided written comments to the Dealers on a portion of their proposals which included their solutions and pricing submittals. Dealer responses to these comments were evaluated based on the following initial evaluation factors:

- Effectiveness of proposed solution, including aesthetics; and
- Pricing of proposed solution.

All four of the Dealers were shortlisted to proceed to the next phase.

Evaluation Process

The Dealer Teams were then invited to install one office and two workstation mock-ups onsite at 375 Beale Street. The mock-ups provided the evaluation panel an opportunity to further review the effectiveness of the proposed solution (i.e. design, functionality, comfort and other aesthetics).

On April 1st and 2nd, Agency staff attended a Furniture Fair to provide feedback on functionality, comfort, storage, visual privacy and meeting space. The fair was attended by 238 employees, representing 46% of the combined agency staff. Staff feedback included desires for more "visual privacy" by incorporating opaque/patterned (rather than clear) glass on top of the panels separating the workstations. This will be weighed against the need to bring light into the deep floor plate. Staff feedback for the selected furniture line will be analyzed during the design phase and incorporated into the final plans. Attachment C includes pictures of the furniture fair at 375 Beale Street.

Following the mock-up presentations by the Dealer Teams, BAHA issued a Request for Best and Final Offers (BAFOs) on May 1, 2014 to all four proposers, who were given the opportunity to revise their written proposals to address the concerns identified by the evaluation panel about the written proposals and proposed mock-up solutions, or to make any other changes. Following receipt of the BAFOs and clarifications, the evaluation panel completed its final evaluation based on the following criteria, in order of relative importance.

A maximum total of 100 points (per evaluator) or 500 combined points (five evaluators combined) could be assigned:

Category	Max. Points	Evaluation Criteria
Pricing	43	<ul style="list-style-type: none">• Pricing of proposed solution (max. 25 points);• Discounting schedule for primary lines (max. 11 points);• Gross profit markup for open line ancillary products (max. 7 points).
Solution	30	<ul style="list-style-type: none">• Effectiveness of proposed solution, including aesthetics (max. 30 points).
Key Personnel	15	<ul style="list-style-type: none">• Team experience and approach to partnering with BAHA (max. 15 points).
Other Factors	12	<ul style="list-style-type: none">• Product stability (max. 5 points);• Warranty (max. 4 points);• Sustainability (max. 3 points).
Maximum Total Points	100	

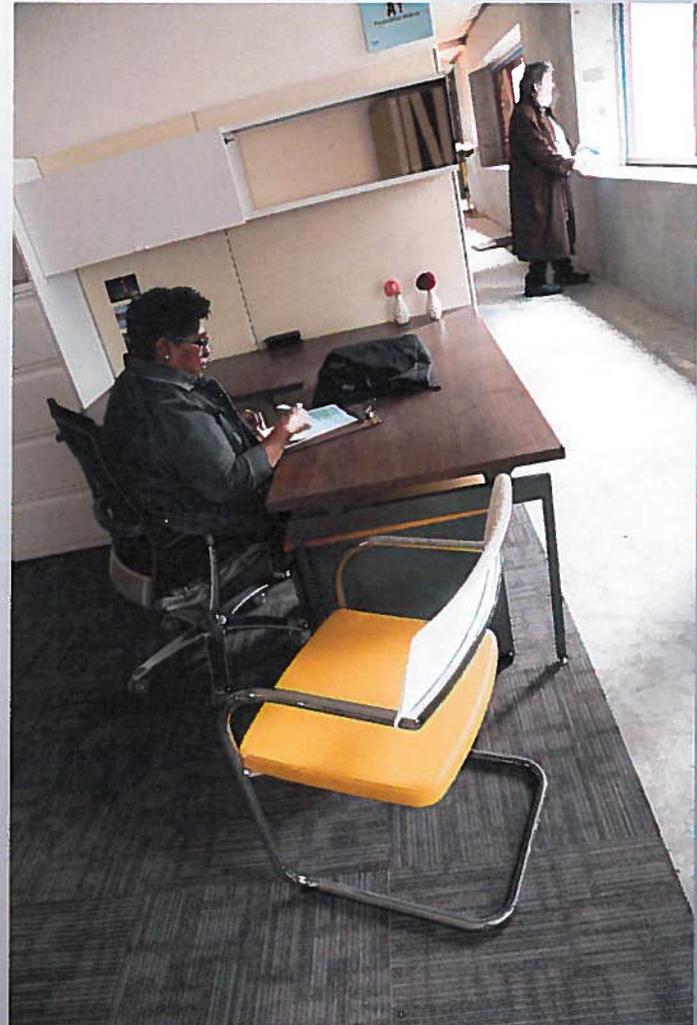
Furniture Fair



Staff Feedback



Attachment B



Office Option



Attachment B

Workstation Options



Filing versus Seating



Clear versus Opaque Glass



Attachment B

