

EXHIBIT 1

AGREEMENT FOR TECHNICAL SERVICES

AGREEMENT

Between

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

And

RIVERROCK REAL ESTATE GROUP

BART HEADQUARTERS' ("BHQ") PROPERTY MANAGEMENT SERVICES

FOR

BART'S PROPERTY AT 2150 WEBSTER ST, OAKLAND, CA

BART AGREEMENT NO. 6M4736

2021

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ATTACHMENTS

- ATTACHMENT A: SCOPE OF SERVICES
ATTACHMENT B: COMPENSATION SCHEDULE
ATTACHMENT C: NON-DISCRIMINATION PROGRAM FOR SUBCONTRACTING

TECHNICAL SERVICES

AGREEMENT NO. 6M4736

Between

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

And

RIVERROCK REAL ESTATE GROUP

THIS AGREEMENT ("Agreement") is made and entered into this 14 day of June, 2021, by and between SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT ("BART" or "District"), a rapid transit district established pursuant to California Public Utilities Code, Section 28500 et seq. and RIVERROCK REAL ESTATE GROUP ("CONTRACTOR"), with offices at 2175 N. California Boulevard, Suite 610, Walnut Creek, CA 94596.

R E C I T A L S

This Agreement is made with reference to the following facts:

1. BART proposes to obtain BART HEADQUARTERS (BHQ) PROPERTY MANAGEMENT SERVICES FOR BART'S PROPERTY AT 2150 WEBSTER ST, OAKLAND, CA ("Project");
2. The services required for the Project cannot be performed satisfactorily by the officers and employees of BART;

* * *

AGREEMENT

In consideration of the mutual promises set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1.0 SCOPE OF SERVICES

CONTRACTOR's services are described in Attachment A, SCOPE OF SERVICES, incorporated herein and by this reference made a part hereof. CONTRACTOR shall be responsible to perform or secure the performance of all requested services in their entirety subject to the prior approval of an Operating Budget by Adrienne M. Anderson, BART Principal Administrative Analyst, or a designated representative (herein called "Project Director"). The Scope of Services are to be performed at 2150 Webster St, Oakland, CA 94612 (the "Project" or the "Property").

This Agreement is not exclusive. BART expressly reserves the right to contract for performance of services such as those described herein through other Contractors.

1.1 FINANCIAL ADMINISTRATION

CONTRACTOR and its subcontractors shall establish and maintain records pertaining to the fiscal activities of the Project. CONTRACTOR's and subcontractors' accounting systems shall conform to generally accepted accounting principles and all records shall provide a breakdown of total costs charged to the Project, including properly executed payrolls, time records, invoices and vouchers. Attention is further drawn to Article 14.0, RECORDS, and Article 15.0, AUDIT.

1.2 OPERATING REPORTS

CONTRACTOR shall submit for review to the Project Director a monthly operating reports concerning the Scope of Services performed during the preceding month as defined by the Scope of Services. Once reviewed, the CONTRACTOR will send to BART's Accounts Payable department using their process for submission. CONTRACTOR will have an Escrow account available to them for building emergencies, subject to approval by the BART Project Manager.

2.0 TIME OF PERFORMANCE

CONTRACTOR's services hereunder shall commence on June 1, 2021 and will continue for a five-year term, with two (2), exercisable by BART at its sole discretion, to extend the term of this Agreement for one (1) year each, subject to termination as provided for in this Agreement.

3.0 COMPENSATION AND METHOD OF PAYMENT

- A. Compensation for these services will be computed pursuant to Attachment B, COMPENSATION SCHEDULE, attached hereto and by this reference made a part of this Agreement.

- B. The compensation specified in Attachment B shall be full compensation for all services performed, including all applicable surcharges such as taxes (including sales taxes), insurance and fringe benefits, as well as indirect costs, overhead and profit allowance, materials and supplies.
- C. Subject only to duly executed change orders, it is expressly understood and agreed that in no event will the total compensation to be paid CONTRACTOR and all Property Contractors under the direction of the CONTRACTOR under this Agreement exceed the sum of the Property's approved Operating Budget (including utilities) not to exceed \$1.8MM, per year, or an aggregate of \$12.6MM for five (5) years, with two (2) one-year extension options.
- D. During the term of this Agreement the District may, at its sole discretion, incorporate additional services into this Agreement on the same terms as set forth in Attachment A, SCOPE OF SERVICES, to this Agreement. Authorization for additional services will be incorporated into this Agreement by written change order(s).

3.1 METHOD OF PAYMENT

A. Monthly Invoices/Subcontractor Payment

Unless approved otherwise by the Project Director services shall be invoiced on a monthly basis and payment will be made within thirty (30) days of receipt of an acceptable invoice with satisfactory backup documentation, approved by the Project Director, provided a completed form W-9 is on file with BART Assistant Controller. As used herein, the term "invoice" shall include the CONTRACTOR's bill or written request for payment under this Agreement for services performed. All invoices shall be made in writing and submitted with two duplicates at a minimum. If applicable, Contractor shall submit to the District Project Director each week, certified payroll records in accordance with the terms of Article 25, State of California Labor Code Requirements. Failure to submit current certified payroll records may cause the suspension of progress payments during the period of non-compliance.

The CONTRACTOR shall promptly pay any and all subcontractors by an instrument that guarantees availability of funds immediately upon deposit of said instrument. The CONTRACTOR shall include in its monthly invoice submission to BART, amounts to pay for all subcontractors' acceptable invoices, no later than thirty (30) days after receipt of such invoices. Unless otherwise approved in writing by the Project Director, CONTRACTOR shall, within seven (7) days after receipt of the payment made by BART, pay to each of its immediate subcontractors (or their respective assignees), for satisfactory performance of its contract, the amounts to which each is entitled, after deducting any prior payments and any amounts due and payable to CONTRACTOR by those subcontractors. Any delay or postponement of payment among the parties may take place only for good cause and with the District's prior written approval. If the CONTRACTOR determines the work of the subcontractor to be unsatisfactory, the CONTRACTOR must immediately notify in writing the Project Director (and the Office of Civil Rights if the subcontractor is a MBE or WBE) and state the reasons therefor. Failure by CONTRACTOR to comply with this requirement will be construed to be a breach of contract and may result in sanctions as specified in this Agreement.

In addition, the CONTRACTOR must promptly return any retentions withheld to a subcontractor within thirty days after the subcontractor's work is satisfactorily completed.

B. Invoice Procedures

1. CONTRACTOR invoices shall segregate current costs from other costs. Current costs are those costs which have been paid within the last sixty calendar days and not previously submitted to BART for reimbursement. Other costs shall include, but not be limited to, the following:
 - a. Costs for which the District has requested additional justification for allowance;
 - b. Costs which have been recorded by CONTRACTOR in the current accounting period and not incurred as an obligation within the last ninety calendar days.
2. In no case shall CONTRACTOR invoice for costs which BART has disallowed or otherwise indicated that it will not recognize

C. Invoice Submittal Address

All Vendors shall submit a completed Form W-9 and all invoices directly to BART's Accounts Payable (AP) Department.

Please submit all invoices to BART's Accounts Payable Department using one (1) of the following three (3) methods:

- (1) **(Preferred)** E-mail a PDF version of the invoice to: ap_supplier@bart.gov. Please save the file name using your Company name – Invoice No.
Example: ABC Company – Invoice #123456
- (2) Fax your invoice to: (510) 380-7635
- (3) Mail your invoice to: San Francisco Bay Area Rapid Transit District
Accounts Payable Department
Subject: Invoice Submission
2150 Webster Street
Oakland, CA 94612

Invoices must include: Your invoice number; Agreement Number, BART's WP Purchase Order Number; and Billed Line Items that correspond with the Line Items on BART's WP Purchase Order.

Please direct questions regarding invoice submission to your BART Agreement representative.

D. Taxpayer Identification Number

CONTRACTOR represents that CONTRACTOR 's taxpayer identification number (TIN) XXXXX, is evidenced by a completed Federal Form W-9 on file with the Assistant Controller on the date of execution of this Agreement. CONTRACTOR agrees to file such tax forms as may be reasonably requested by BART to implement Internal Revenue Code Section 3406 and to accept as a part of any compensation due, any payments made by BART to the Internal Revenue Service pursuant to that Section.

E. Subcontractor Payment Tracking System Reporting Requirements.

Prior to the submittal of the first monthly invoice for work performed on this Agreement, the CONTRACTOR shall comply with the District's Subcontractor Payment Tracking System requirements by registering this Agreement on the District's website which can be accessed at <https://suppliers.bart.gov>. The CONTRACTOR shall provide all specified information at such website about itself and all first-tier Subcontractors whose Subcontracts exceed \$5,000 as well as all first-tier M/WBEs and first-tier and second-tier SBs regardless of Subcontract dollar value.

Information required to be provided includes, but is not limited to, specified contact person, Subcontractor invoices received, Subcontractor Taxpayer Identification Number (TIN), payment information for both the CONTRACTOR and its Subcontractors, as well as the total dollar amount of each first-tier Subcontract that exceeds \$5,000 and first-tier M/WBEs and first and second-tier SB Subcontract regardless of dollar value, the total dollar amount actually paid the first-tier Subcontractor and second-tier SB Subcontractor, the date of payment, and such other information as specified in the District's website.

CONTRACTOR shall update the above information monthly, including similar information about all applicable Subcontractors added to the Agreement during the period of the Contract. The monthly update shall be prepared by the CONTRACTOR as specified in the District's website, and submitted electronically at <https://suppliers.bart.gov>. Such report shall be certified to be correct by the CONTRACTOR.

Failure to comply with these reporting requirements may be grounds for withholding payments due the CONTRACTOR during the period of noncompliance.

4.0 CHANGES AND EXTRA SERVICES

BART reserves the right to order changes in the services to be performed by CONTRACTOR. All such changes shall be incorporated in written change orders executed by BART and CONTRACTOR, which shall specify the changes ordered and the adjustment of compensation and completion time required therefor.

Any services added to the scope of this Agreement by a change order shall be executed under all applicable conditions of this Agreement. No claim for additional compensation or extension of time shall be recognized unless contained in a duly executed change order.

5.0 TERMINATION

5.1 TERMINATION FOR CONVENIENCE

The performance of work or delivery of products under this Agreement may be terminated in whole or part by BART upon written notice to CONTRACTOR in accordance with this clause whenever BART determines that such termination is in its best interest. After receipt of said notice CONTRACTOR shall stop work on this Agreement on the date and to the extent specified in said notice, terminate all applicable orders and subcontracts, and complete performance of all work as shall not have been terminated by said notice. After receipt of said notice CONTRACTOR shall submit to BART its termination claim setting forth CONTRACTOR's actual and direct damages incurred as a result of said termination together with such information as may be required by BART to evaluate the claim. The determination of BART on the claim shall be final.

5.2 TERMINATION FOR CAUSE

If CONTRACTOR should be in default and fails to remedy this default within five days from receipt from BART of notice of such default, BART may in its discretion terminate this Agreement or such portion thereof as BART determines is most directly affected by the default.

The term "default" for purposes of this provision includes, but is not limited to, the performance of work in violation of the terms of this Agreement; abandonment, assignment or subletting of this Agreement without approval of BART; bankruptcy or appointment of a receiver for CONTRACTOR's property; failure of CONTRACTOR to perform the services or other required acts within the time specified for this Agreement or any extension thereof; refusal or failure to provide proper workmanship; failure to take effective steps to end a prolonged labor dispute; and the performance of this Agreement in bad faith.

Upon BART's termination of this Agreement for default by CONTRACTOR or any portion thereof, BART reserves the right to complete the work by whatever means it deems expedient and the expense of completing such work as well as any and all damages proximately caused by the default shall be charged to CONTRACTOR.

5.3 FORCE MAJEURE

The performance of work under this Agreement may be terminated by BART, in its discretion, upon application therefor by CONTRACTOR for unforeseen causes beyond the control and without the fault or negligence of CONTRACTOR, including acts of God, acts of the public enemy, governmental acts, fires and epidemics if such causes irrecoverably disrupt or render impossible CONTRACTOR's performance hereunder. An "act of God" shall mean an earthquake, flood, cyclone, or other cataclysmic phenomenon of nature beyond the power of CONTRACTOR to foresee or make preparation in defense against.

6.0 INSURANCE

At all times during the life of this Agreement to acceptance of the work covered by this Agreement, or as may be further required by this Agreement, CONTRACTOR at its own cost and expense shall provide the insurance specified by this Article.

A. Evidence Required

At or before execution of this Agreement and at such other times as the District may request, CONTRACTOR shall provide the District with a Certificate of Insurance executed by an authorized representative of the insurer(s) evidencing that CONTRACTOR'S insurance complies with this Article. The certificate shall reference the District Agreement Number and Title to which the certificate relates. In addition, a copy of all required endorsements shall be attached to and form a part of CONTRACTOR's Certificate of Insurance.

B. Notice of Cancellation, Reduction or Material Change in Coverage

All policies shall be endorsed to provide the District with thirty (30) days prior written notice of any cancellation, reduction, or material change in coverage. Notices shall be sent to the Department Manager, Risk and Insurance, San Francisco Bay Area Rapid Transit District, P.O. Box 12688, Oakland, California, 94604-2688. The CONTRACTOR shall annually submit to the District's Department Manager, Risk and Insurance, certifications confirming that the insurance required has been renewed and continues in place.

C. Qualifying Insurers

Policies shall be issued by California admitted companies which hold a current policyholders alphabetic and financial size category rating of not less than A:VIII according to Best's Insurance Reports.

D. Insurance Required

1. Commercial General Liability Insurance for bodily injury (including death) and property damage which provides limits of not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) annual aggregate as respects products/completed operations if applicable.

a. Coverages included shall be:

- (1) Premises and Operations;
- (2) Broad Form Property Damage;
- (3) Blanket Contractual Liability;
- (4) Products/Completed Operations;
- (5) Personal Injury Liability;
- (6) Cross-liability and Severability of Interest; and
- (7) Independent Contractors Liability.

b. Coverage shall be endorsed to include the following, copies of which shall be provided to the District:

- (1) Inclusion of the District, its directors, officers, representatives, agents and employees as additional insureds as respects services or operations in connection with this Agreement; and

- (2) As to claims or losses arising out of the acts of the CONTRACTOR or Contractor's employees only, such coverage shall include a stipulation that the insurance is primary insurance and that no insurance or self-insurance of the District will be called upon to contribute to a loss. The District's insurance will be primary as to all other claims, losses and liabilities relating to the property.

Notwithstanding the foregoing, except as expressly provided in the immediately preceding sentence, the District's liability insurance policies (including any self-insurance of the District) shall at all times be primary and non-contributory with any liability insurance carried by CONTRACTOR with respect to any claims arising out of the performance or non-performance of CONTRACTOR'S duties and activities within the scope of this agreement arising from any action or activity on, or condition of, the property.

2. Automobile Liability Insurance for bodily injury (including death) and property damage which provides coverage limits of not less than One Million Dollars (\$1,000,000) combined single limit per occurrence applicable to all owned, non-owned and hired vehicles.
 - a. Coverage shall be endorsed to include the following, copies of which shall be provided to the District:
 - (1) Inclusion of the District, its directors, officers, representatives, agents and employees as additional insureds as respects services or operations in connection with this Agreement
3. Excess/Umbrella Coverage: Excess/Umbrella insurance to cover all forms insurance that is in excess of specified other policies and also potentially primary insurance for losses not covered by other policies in the amount of Five Million Dollars (\$5,000,000).
4. Statutory Workers' Compensation and Employers' Liability Insurance for not less than One Million Dollars (\$1,000,000) per occurrence applicable to Employers' Liability coverage for all employees engaged in services or operations under this Agreement. The policy shall include broad form all-states/other states coverage. Coverage shall be specifically endorsed to include the insurer's waiver of subrogation in favor of the District, its directors, officers, representatives, agents and employees, a copy of which shall be provided to the District. Should any such work be subcontracted, CONTRACTOR shall require each subcontractor of any tier similarly to comply with this Article, all in strict compliance with federal and state laws.
5. Property Damage Insurance Property Damage Insurance to cover all forms of physical loss or damage to District property while in transit from or to District facilities, or otherwise in the care, custody and control of Supplier. The form of coverage shall be replacement cost.

6. Employee Dishonesty/Crime Insurance An Employee Dishonesty insurance policy covering CONTRACTOR'S employees for loss of or damage to the District's money, securities or other property resulting from theft. The following limits of liability should apply: (a) Employee Dishonesty - \$1,000,000; and (b) Client Property Blanket Bond - \$1,000,000. CONTRACTOR shall reimburse the District 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 the District as a loss payee.
7. Professional Liability Insurance for damages arising out of CONTRACTOR's acts, errors or omissions. The policy shall provide a coverage limit of not less than Two Million Dollars (\$2,000,000) per claim/aggregate as respects CONTRACTOR's services under this Agreement. Such insurance shall be maintained for a period of not less than two (2) years following completion of services.
8. Network Security and Privacy Liability Insurance with a minimum limit of One Million dollars (\$1,000,000) per claim, including coverage for data breach response costs, including, third party notification, credit monitoring, fraud protection, fines and penalties, and defense coverage.

E. Special Provisions

1. The foregoing requirements as to the types and limits of insurance coverage to be maintained by CONTRACTOR, and any approval of said insurance by the District or its insurance consultant(s) are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by CONTRACTOR pursuant to this Agreement, including but not limited to the provisions concerning indemnification.
2. The District acknowledges that some insurance requirements contained in this Article may be fulfilled by a funded self-insurance program of CONTRACTOR. However, this shall not in any way limit liabilities assumed by CONTRACTOR under this Agreement. Any self-insurance program must be approved in writing by the District.
3. Should any of the work under this Agreement be subcontracted, CONTRACTOR may impose these requirements upon each of its subcontractors of any tier at its own discretion. CONTRACTOR is encouraged to work with its subcontractors on a case-by-case basis to assure appropriate insurance coverage based on the scope of services to be provided.
4. The District reserves the right to withhold payments to CONTRACTOR in the event of material noncompliance with the insurance requirements of this Article 6.0.
5. The District reserves the right to terminate this Agreement in the event of material noncompliance with the insurance requirements of this Article 6.0.

7.0 INDEPENDENT CONTRACTOR

CONTRACTOR is, and will at all times remain, a wholly independent contractor and not an officer or employee of BART. CONTRACTOR has no authority to bind BART in any manner, or to incur any obligation, debt or liability of any kind of behalf of or against BART, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by BART.

The personnel performing the services under this Agreement on behalf of CONTRACTOR will at all times be under CONTRACTOR's exclusive direction and control. Neither BART, nor any elected or appointed boards, officers, officials, employees or agents of BART will have control over the conduct of CONTRACTOR or any of CONTRACTOR's officers, employees or agents, except as provided in this Agreement. CONTRACTOR agrees that it will not at any time or in any manner represent that CONTRACTOR or any of CONTRACTOR's officers, employees or agents are in any manner officials, officers, or employees of BART. CONTRACTOR shall be responsible for its own acts and those of its employees during the term of this Agreement.

For all purposes, including but not limited to the Federal Insurance Contributions Act ("FICA"), the Social Security Act, the Federal Unemployment Tax Act ("UTA"), income tax withholding requirements, California Personal Income tax Withholding ("PIT"), California Unemployment Insurance taxes ("UI"), California Disability Insurance ("SDI"), the Workers' Compensation Act ("WCA"), California Public Employees' Retirement Law ("PERL"), and all other applicable federal, state and local laws, rules and regulations, CONTRACTOR, and CONTRACTOR's respective employees, if any, shall be treated as independent contractors and not as employees of BART. CONTRACTOR and its personnel shall assist the District in evaluating and documenting the correct classification of CONTRACTOR's personnel as independent contractors, which assistance may include, but is not limited to, reviewing and signing Work Status Evaluation form for each individual proposed to perform work under the Agreement of a Work Plan Proposal.

Neither CONTRACTOR, nor any of CONTRACTOR's officers, employees or agents, will obtain any rights to retirement, health care or any other benefits which may otherwise accrue to BART employees. CONTRACTOR expressly waives any claim to any such rights or benefits.

In its capacity as independent contractor, CONTRACTOR shall comply with any and all BART operations rules and procedures which relate to the performance of its services on BART property. Prior to commencing services, the Agreement Manager may loan CONTRACTOR a copy of BART's Operations Rules and Procedures which shall be returned upon the completion or termination of Consultant's services hereunder.

7.1 CONFLICT OF INTEREST

CONTRACTOR, its subcontractors and suppliers shall perform all work under this Agreement in conformance with all applicable statutes and regulations pertaining to conflicts of interest, including but not limited to, the financial reporting requirements and the conflict prohibitions of federal law (see, e.g., Federal Transit Administration Circular 4220.1F, Third Party Contracting Guidance and California law (see, e.g., Government Code Section 1090 et seq. Government Code Section 87100 et seq. and Title 2, Division 6 of the California Code of Regulations).

When, in the judgement of BART, it is necessary in order to avoid any potential conflicts of interest, CONTRACTOR, its subcontractors and suppliers may be precluded from subsequently participating as a vendor or contractor on projects for which they are providing services under this Agreement.

7.2 DISTRICT CONTRACTOR CODE OF CONDUCT

The CONTRACTOR shall comply with the requirements of the District Contractor Code of Conduct which has been adopted by The Board of Directors of the San Francisco Bay Area Rapid Transit District. This Code of Conduct is posted at the District's website: <http://www.bart.gov/about/business/procurement/>. The purpose of the District Contractor Code of Conduct is to protect the integrity of the procurement process, and to provide a comprehensive statement of pertinent regulations and obligations governing the conduct of CONTRACTORS doing business with the District so they will be able to compete fairly and perform their work and services in an ethical manner. Failure to comply with the applicable requirements of the District Contractor Code of Conduct, could lead to, among other things, direction to remove an offending subcontractor, rescinding, voiding, or terminating the Contract, or other reasonable and appropriate actions. CONTRACTOR shall include in its subagreements, and require its subcontractors of every tier to include in their respective subagreements provisions incorporating the requirements of the District Contractor Code of Conduct.

8.0 INDEMNIFICATION

CONTRACTOR, to the extent permitted by law, shall defend (with counsel reasonably acceptable to BART), indemnify and hold harmless BART, its directors, officers, employees, and agents from any and all claims, demands, suits, losses, damages, injuries and liabilities, direct or indirect (including reasonable attorney's fees and any and all costs and expenses in connection therewith) (collectively, "Claims"), to the extent incurred by reason of (i) the gross negligence and/or willful and reckless misconduct of CONTRACTOR, its officers, employees, and agents, (ii) CONTRACTOR'S breach of this Agreement and/or (iii) any act of CONTRACTOR or its officers, employees, and agents taken outside the scope of CONTRACTOR'S authority under this Agreement. Such indemnification includes Claims arising out of any breach of this Agreement involving the violation of proprietary rights, copyrights, and rights of privacy, or Claims arising out of the publication, translation, reproduction, delivery, use or disposition of any data furnished under this Agreement in violation of the express terms and conditions of this Agreement. Notwithstanding the foregoing, the foregoing indemnification shall not extend to any Claims to the extent arising out of, or by reason of (1) any gross negligence and/or willful and reckless misconduct of BART or its officers, employees and agents, (2) the performance by CONTRACTOR of any of its obligations under this Agreement including any damage or injury to any employees or other persons or property arising out of the use, administration, or control of the Property during the term of this Agreement, (3) any condition of the Property, and/or (4) BART's breach of its obligations under this Agreement.

CONTRACTOR is not an employee of BART and shall at all times be considered an independent contractor as provided in Section 7, above. CONTRACTOR will defend, indemnify and hold BART harmless from any Claims suffered by CONTRACTOR and/or its officers, employees, and agents that would otherwise be subject to the Workers' Compensation Act except to the extent such Claims arise out of the gross negligence and/or willful and reckless misconduct of BART or its officers, employees and agents. Further, CONTRACTOR will defend, indemnify and hold BART harmless for tax, wages, employees benefits, pension benefits, or other liability to the extent CONTRACTOR or its employees are found to be common law employees of BART by the IRS, CalPERS, another government agency or a court or administrative law judge.

BART, to the extent permitted by law, shall indemnify, defend (with counsel reasonably acceptable to CONTRACTOR), and hold CONTRACTOR and its employees and officers harmless from and against any and all Claims to the extent arising out of (i) the gross negligence and/or willful and reckless misconduct of BART, its officers, employees, and agents, (ii) the performance by CONTRACTOR of any of its obligations under this Agreement including any damage or injury to any employees or other persons or property arising out of the use, administration, or control of the Property during the term of this Agreement, (iii) any condition of the Property, and/or (iv) BART's breach of its obligations under this Agreement; provided, however, that such indemnity shall not extend to any Claims to the extent arising out of (1) any gross negligence and/or willful and reckless misconduct of CONTRACTOR or its employees and officers, (2) CONTRACTOR's breach of its obligations under this Agreement, and/or (3) any act taken by CONTRACTOR or its employees and officers outside the scope of CONTRACTOR's authority hereunder.

9.0 DATA TO BE FURNISHED BY BART

All data, reports, surveys, studies, drawings, and any other documents and materials made available to CONTRACTOR by BART for use by CONTRACTOR in the performance of its services under this Agreement shall be made available for information only and shall be returned to BART at the completion or termination of this Agreement.

10.0 OWNERSHIP OF WORK PRODUCTS

10.1 DOCUMENTS

All drawings, designs, specifications, manuals, reports, studies, surveys, models, software (including source code), and any other documents, materials, data and products ("Work Products") prepared or assembled by CONTRACTOR or obtained from others ("Subcontractors") by CONTRACTOR in connection with the services under this Agreement shall be the property of BART; and copies shall be delivered to BART promptly upon the completion of the work or upon an earlier termination of this Agreement. CONTRACTOR shall be responsible for the preservation of any and all Work Products prior to transmittal to BART; and CONTRACTOR shall replace any such Work Products as are lost, destroyed or damaged while in its possession without additional cost to BART.

10.2 ASSIGNMENT OF RIGHTS

CONTRACTOR hereby assigns to BART all rights, title and interest including, but not limited to, copyright, patent, trademark and trade dress rights, in and to the Work Products. CONTRACTOR acknowledges BART's exclusive rights to reproduce, publish, display, create derivative works from, sell, transfer or otherwise exploit ("Use"), and permit others to Use all or any part of the Work Products, and to obtain and hold in its own name patents, copyright and/or trademark registrations for the Work Products. CONTRACTOR shall provide all documentation, information and assistance reasonably required by BART to obtain such registrations or patents, or with respect to claims that third parties have infringed the Work Products.

10.3 WARRANTY OF WORK PRODUCT

CONTRACTOR warrants and represents that the Work Products are original to CONTRACTOR or its Subcontractors and shall not infringe the copyright, trademark, trade secret, privacy, publicity, patent or other intellectual property or proprietary rights of any third party; CONTRACTOR will not attempt to license or transfer to any person or entity any interest in the Work Products; and CONTRACTOR shall obtain from all Subcontractors written assignment of all rights, title and interest, including copyright and other intellectual property rights, in their contributions to the Work Products.

11.0 MATTERS CONFIDENTIAL AND PRIVILEGED

All of the drawings, designs, specifications, manuals, reports, studies, surveys, models, or other data and products prepared or assembled by CONTRACTOR, obtained from others by CONTRACTOR or made available to CONTRACTOR by BART in connection with the services under this Agreement, shall be treated as confidential by CONTRACTOR. At no time shall CONTRACTOR use or disclose or make available, other than in the performance of CONTRACTOR's services for BART, confidential information gained in the course of or by reason of CONTRACTOR's retention by BART and/or performance of services for BART, nor shall CONTRACTOR permit such use or disclosure, without prior written approval by BART. It is the intention of BART to preserve and make use of all applicable legal privileges, and CONTRACTOR shall make all reasonable efforts to cooperate with BART in this regard.

12.0 SUBCONTRACTS

CONTRACTOR shall not subcontract all or any portion of its services under this Agreement without the prior written approval of the Project Director, and any attempt to do so shall be void and unenforceable. In the event that CONTRACTOR enters into one or more subcontracts pursuant to this Article, it is understood and agreed that the participating subcontractors shall be solely and directly responsible to CONTRACTOR, and BART shall have no obligation to them.

CONTRACTOR agrees that the requirements in Articles 4.0 through 25.0, inclusive, of this Agreement will be included in every subcontract entered into relating to services under this Agreement. Within seven (7) calendar days of a written request, CONTRACTOR shall provide BART with copies of all such subcontracts and with any changes and amendments thereto.

13.0 ASSIGNMENT OF AGREEMENT

CONTRACTOR shall not assign this Agreement, or any part thereof without prior express written consent of the Project Director, and any attempt to do so shall be void and unenforceable.

14.0 RECORDS

CONTRACTOR shall maintain full and adequate records to show the actual time devoted and the cost incurred by CONTRACTOR with respect to the performance of services under this Agreement.

15.0 AUDIT

CONTRACTOR and its subcontractors shall permit BART and its authorized representatives to inspect, examine, make excerpts from, transcribe, and copy CONTRACTOR's and subcontractor's books, work, documents, papers, materials, payrolls, records, accounts, and any and all data relevant to this Agreement at any reasonable time for the purpose of auditing and verifying statements, invoices or bills submitted by CONTRACTOR pursuant to this Agreement, and shall provide such assistance as may be reasonably required in the course of such inspection including, but not limited to, the following:

A. Audit Interviews

CONTRACTOR shall arrange audit entrance and exit interviews in which CONTRACTOR and/or its subcontractors and BART and/or its authorized representatives will participate.

B. Accessing Documents

CONTRACTOR's and its subcontractors' accounting divisions shall provide instruction to BART on accessing documents.

C. Letter of Representation

CONTRACTOR's management, or the management of a subcontractor, as well as the management of their appropriate units, will provide at BART's request a letter of representation concerning such matters as BART determines appropriate.

BART further reserves the right, for itself and its authorized representatives, to examine and re-examine said books, work, documents, papers, materials, payrolls, records, accounts and data during the three-year period following the final payment under this Agreement and until all pending matters are closed; and CONTRACTOR and its subcontractors shall in no event dispose of, destroy, alter or mutilate said books, work, documents, papers, materials, payrolls, records, accounts and any and all data in any manner whatsoever for three years after the final payment under this Agreement, or until all pending matters are closed, whichever is later.

Pursuant to California Government Code Section 8546.7, the parties to this Agreement shall be subject to the examination and audit of the State Auditor, at the request of BART or as part of any audit of BART by the State Auditor, for a period of three years after final payment under this Agreement. The examination and audit shall be confined to those matters connected with the performance of this Agreement, including, but not limited to, the cost of administering this Agreement.

16.0 NOTICES

Except for invoices submitted by CONTRACTOR pursuant to Article 3.0, COMPENSATION AND PAYMENT, above and insurance notices submitted pursuant to Article 6.0 B., Notice of Cancellation, Reduction or Material Change in Coverage, above, all notices required hereunder or other communications to either party by the other may be given by personal delivery, U.S. Mail, courier service (such as Federal Express) or facsimile transmission. Notices shall be effective upon receipt at the following addresses:

To BART by US Mail:

San Francisco Bay Area Rapid Transit District
P.O. Box 12688

Oakland, California 94604-2688

Attention: Adrienne Anderson, Project Director

To BART by Personal
Delivery or Courier
Service:

San Francisco Bay Area Rapid Transit District
2150 Webster Street
Oakland, CA 94612

Attention: Adrienne Anderson, Project Director

To CONTRACTOR:

RiverRock Real Estate Group
2175 N. California Blvd. Suite 610
Walnut Creek, CA 94596
Attention: Mike Meyer, Regional Vice President

Email Transmission:

To BART:

aander5@bart.gov

To CONTRACTOR:

mmeyer@riverrockreg.com

Either party may change its address for notices by giving written notice of the new address as provided above.

17.0 **NON-DISCRIMINATION**

In connection with the performance of services under this Agreement, CONTRACTOR shall not, on the grounds of race, religious creed, color, national origin, ancestry, handicap, medical condition, marital status, sex, sexual orientation or age, discriminate or permit discrimination against any person or group of persons in any manner prohibited by Federal, State or local laws.

For purposes of this Article "sexual orientation" shall mean a preference for heterosexuality, homosexuality or bisexuality; or having a history of, or being identified with, any such preference.

18.0 **NON-DISCRIMINATION PROGRAM FOR SUBCONTRACTING**

The District's Non-Discrimination Program for Subcontracting for the Agreement is as set forth below, and as supplemented by Attachment C, NON-DISCRIMINATION PROGRAM FOR SUBCONTRACTING, attached hereto and incorporated herein by this reference. CONTRACTOR assumes responsibility to be fully informed of the Non-Discrimination Program Requirements.

A. Policy

It is the policy of the San Francisco Bay Area Rapid Transit District to ensure that CONTRACTORS who enter into agreements with the District do not discriminate or give a preference in the award of subagreements, or subcontracts, on the basis of race, national origin, color, ethnicity, or gender.

B. Applicability of Non-Discrimination Program for Subcontracting

CONTRACTOR is not required to subcontract any portion of the Services to be performed under this Agreement. If the CONTRACTOR does not subcontract any portion of the services, this Non-Discrimination Program for Subcontracting shall not apply. If the CONTRACTOR does subcontract a portion of the services to be performed under this Agreement and if the dollar amount of the subagreements listed for Minority Business Enterprises ("MBEs") and Women Business Enterprises ("WBEs") reflects the Availability Percentage of MBEs and the Availability Percentages of WBEs as stated in Article 18.0 C. below, it shall be presumed that the CONTRACTOR has not discriminated on the basis of race, national origin, color, ethnicity, or gender.

C. MBE and WBE Participation

The Availability Percentages for this Agreement for MBEs is 5.5% and WBEs is 2.8%. The Availability Percentages shall apply to the subcontracted portion of services to be performed under this Agreement. Such Availability Percentages for MBEs and WBEs is the level of MBE and the level of WBE Subcontractor participation that is expected for this Agreement in the absence of discrimination on the basis of race, national origin, color, ethnicity, or gender.

D. Substitution of MBE/WBE Subcontractor

CONTRACTOR is required to show that it has not discriminated or has not given a preference in substituting a MBE or WBE with a non-MBE or non-WBE. Should substitution of any subcontractor listed on the Designation of Subcontractors and MBE/WBE Participation Form (as set forth in CONTRACTOR's proposal) become necessary, CONTRACTOR shall first obtain the District's consent. As used in this Article, CONTRACTOR must document non-discrimination in the substitution of MBEs and/or WBEs as required in Article 18.0 C., as relevant.

E. MBE/WBE Records

To ensure that CONTRACTOR does not discriminate or give a preference in the performance of this Agreement, CONTRACTOR shall maintain records to verify MBE or WBE participation as set forth in CONTRACTOR's proposal and as modified in any way during the course of the Agreement. Such records shall show the name, business address and Taxpayer Identification Number of each MBE and/or WBE participating in the Agreement and the total dollar amount actually paid each MBE and/or WBE and the date of payment. A monthly report based on these records and certified to be correct by CONTRACTOR shall be submitted with the monthly invoice. No invoice will be approved for payment unless the current report and all required attachments have been furnished.

F. Change Orders

CONTRACTOR shall not discriminate or give a preference in the performance or administration of change orders that may be issued under this Agreement.

G. Noncompliance

Failure to comply with the above requirements shall be grounds for termination of this Agreement in whole or in part, or, at the discretion of BART, for withholding payments due CONTRACTOR during the period of noncompliance.

19.0 SITE SECURITY AND ACCESS

Prior to commencement of services, CONTRACTOR shall comply with BART's site security requirements which include, but are not limited to, requiring photographic identification badges and submitting names and dates of birth of all personnel, including subcontractors and suppliers of any tier, working on BART property or facilities. All badges shall be returned to BART at the completion of services hereunder. In the event CONTRACTOR fails to comply with BART's site security requirements, CONTRACTOR's personnel, including subcontractors and suppliers, may not be allowed on BART property or facilities. No extension of time for completion of services or additional compensation for delay claims shall be granted in the event such personnel are excluded from BART property or facilities.

20.0 LAWS AND REGULATIONS

CONTRACTOR shall comply with any and all laws, statutes, ordinances, rules, regulations, and procedural requirements of any national, state or local government, and of any agency of such government, including BART, which relate to or in any manner affect the performance of this Agreement. This Agreement and any documents supplied hereunder are subject to public inspection of the California Public Records Act, California Government Code Section 6250 et seq., unless exempted by law.

A. State Requirements

This Agreement may be funded in part from a grant from the State of California through its Business, Transportation and Housing Agency, Department of Transportation (State). State requirements are set forth in Attachment D, STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION REQUIREMENTS, incorporated herein and by this reference made a part hereof.

B. District's Environmental Policy

The CONSULTANT and its Subconsultants shall comply with the District's Environmental Policy adopted on February 10, 2005 by the Board of Directors of the San Francisco Bay Area Rapid Transit District. The District's Environmental Policy is posted at the District's website: <http://www.bart.gov/about/planning/strategic>. The purpose of the District's Environmental policy is to preserve the environment by adopting feasible practices that, among other things, prevent pollution and preserve natural resources in its operating practices. BART will monitor and implement the Environmental Policy through its Environmental Management System. CONSULTANT shall comply with all the applicable requirements and failure to do so may be regarded as a breach of the Agreement potentially leading to rescinding, voiding, or terminating the Agreement, or other reasonable and appropriate actions. Failure of a Subconsultant to comply with the applicable requirements may lead to, among other things, direction to remove an offending Subconsultant. Any such replacement shall be undertaken in accordance with among other things, California Public Contract Code Section 4100 et seq., as applicable. CONTRACTOR shall include in its subagreements, and require its subconsultants of every tier to include in their respective subagreements, provisions incorporating the requirements of the District's Environmental Policy.

21.0 CHOICE OF LAW

All questions pertaining to the validity and interpretation of this Agreement shall be determined in accordance with the laws of the State of California applicable to agreements made and to be performed within the State, without reference to conflicts of law principles.

22.0 SEVERABILITY

If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

23.0 CAPTIONS

The captions of the Articles and paragraphs in this Agreement are for purposes of reference only, and shall not be construed to affect the meaning of any provision hereof.

24.0 BENEFIT OF AGREEMENT

This Agreement shall bind and benefit the parties hereto and their assignees, successors and permitted assigns.

25.0 STATE OF CALIFORNIA LABOR CODE REQUIREMENTS

Special attention is directed to Division 2, Part 7, Chapter 1, Article 2 of the California State Labor Code, including Section 1774 and Section 1775, concerning the payment of prevailing wages. CONTRACTOR and any third-party contractor, vendor, and/or licensed firm shall pay not less than the appropriate prevailing wages to all workers performing work that is subject to the prevailing rate of wages as determined by the Director of the State Department of Industrial Relations. Pursuant to Section 1773 of the State Labor Code, the District has obtained from the Director of the State Department of Industrial Relations the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality(ies) in which the Work is to be performed and has copies available upon request from the Procurement Department, 300 Lakeside Drive, 17th Floor, Oakland, CA 94612. The prevailing rates of wages are also available at the following website: www.dir.ca.gov/dlsr/pwd. For crafts or classifications not shown on the prevailing wage determinations, CONTRACTOR may be required to pay the wage rate of the most closely related craft or classification shown in such determinations for Contract work. The CONTRACTOR may contact the Division of Labor Statistics and Research, Prevailing Wage Unit, P.O. Box 420603, San Francisco, CA 94142, (415) 703-4774, for questions concerning job classifications not found in the general prevailing wage determinations. Proposer's attention is directed to Article 31, Exhibit 1, which describes the State Labor Code Section 1725.5 and Section 1771.1 that, among other things, require all Contractors and third party contractors, vendors, and/or licensed firms expected to perform work subject to the payment of prevailing wages to be registered with the DIR in order to be qualified to propose on this Agreement or to be listed as a Subcontractor or third party contractor, vendor and/or licensed firm on any proposal submitted, or engaged in the performance of such work in this Agreement. Proposers are informed that pursuant to Section 1771.4 of the State Labor Code, this Agreement is subject to compliance monitoring and enforcement by the DIR.

Furthermore, the CONTRACTOR shall post Jobsite notices, as prescribed by regulation. Pursuant to Section 1775 of the State Labor Code, Contractors, Subcontractors, and third-party contractors, vendors and/or licensed firms who perform work subject to the payment of prevailing wages are subject to being assessed a penalty of up to two hundred dollars (\$200) by DIR for each calendar day for each worker who is paid less than the prevailing wage rate for the work or craft in which the worker is employed.

CONTRACTOR shall comply with the provisions of State Labor Code Section 1776 and Section 1812, and shall be responsible for compliance by its Subcontractors and third-party contractors, vendors, and/or licensed firms. The penalties specified in subdivision (f) of State Labor Code Section 1776 for noncompliance by the Contractor or any of its Subcontractors or third-party contractors, vendors, and/or licensed firms of every tier may be deducted from any monies due or which may become due to the Contractor. Among other things CONTRACTOR shall comply with the requirements of State Labor Code Section 1777.5 applicable to Apprentices. A certified copy of payroll records shall be provided by CONTRACTOR in accordance with State Labor Code Section 1776 and shall be furnished to BART each week and shall be provided within seven (7) Days after the regular payment date of the payroll period.

Submission of Certified Payroll Records. Within seven (7) Days of Agreement execution, CONTRACTOR shall register at BART's designated website for electronic submittal of Certified Payroll Records (CPRs). BART will only notify CONTRACTOR and provide all necessary information related to BART's designated website for electronic submittal of CPRs. For every week in which activities subject to the payment of prevailing wages is performed, CONTRACTOR and/or its subcontractors or third-party contractors, vendors and/or licensed firms shall submit CPRs electronically to BART's designated website in accordance with the requirements of the website. CONTRACTOR shall include provisions incorporating the requirement for electronic submittal of CPRs in its agreements with all subcontractors and/or third-party Contractors, vendors and licensed firms.

If BART deems that CPRs are required for activities performed under this Agreement, BART will request the Contractor to submit CPRs within ten (10) business days. Failure to timely submit CPRs, may result in suspension of progress payments and/or BART referring the matter to the Division of Labor Standards Enforcement, Department of Industrial Relations, and possibly withholding payment for potential wage and penalty assessments.

26.0 SMALL BUSINESS PROGRAM

Small Business Solicitation: To the extent that the CONTRACTOR solicits bids and/or proposals from third parties to perform any of the Scope of Services (Third-Party Bids), at least one-third (1/3) of the solicitations shall be to SBs and if there is no availability of SBs in the requisite service category to attain the required one-third (1/3), then CONTRACTOR shall send the solicitation to all SBs in such requisite service category. Notwithstanding the foregoing, this section shall not apply to Emergencies, as such term is defined herein. A "SB" is a business that is listed in the DGS database for SBs including Disabled Veteran Business Enterprises (DVBEs), as indicated by the DGS, or Lesbian, Gay, Bisexual, or Transgender Business Enterprises (LGBTBEs), certified by the National Lesbian and Gay Chamber of Commerce or the California Public Utilities Commission and certified as a SB by the DGS.

1. Small Business Preference: SBs who submit Third-Party Bids will be considered for eligibility for a Small Business preference during evaluation for determining award of such third-party agreement. Such SBs will be granted reduction in their Third-Party Bid, for

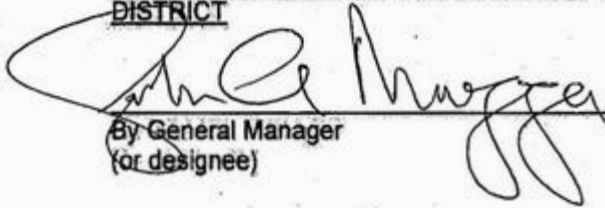
evaluation purposes only, of 5% of the proposal price of the lowest responsible Third-Party Bid up to a maximum of \$150,000.

27.0 ENTIRE AGREEMENT


This Agreement is the entire agreement of the parties, and supersedes and replaces all prior communications, written and oral, regarding the subject matter hereof. CONTRACTOR represents that in entering into this Agreement, it has not relied on any previous representations, inducements, or understandings, written or oral, of any kind or nature.

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

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT


By General Manager
(or designee)

RIVERROCK REAL ESTATE GROUP


By (Signature)

Name and Title STEVE CORE
PRESIDENT
Print or Type

ATTACHMENT A

SCOPE OF SERVICES

ATTACHMENT A

SCOPE OF SERVICES

The services sought at this time are for those of a Property Management Company hereinafter referred to as Contractor. Following award, the Contractor would be hereby authorized to perform the following services in respect to the Property:

A. Management Generally.

1. Subject to the limitations provided in the Agreement or otherwise directed by BART, CONTRACTOR shall: Assume agent responsibilities for the Property's preexisting service contracts and use best efforts to replace all such preexisting service contracts within three (3) months of the commencement of the Agreement, per the conditions set forth hereinafter; Cause the Property common areas to be kept in a safe, clean, and presentable condition; Make or cause to be made all repairs, cleanings, alterations, and decorating; Purchase all supplies, materials, tools and equipment necessary for the proper operation of the Property; Making available to BART the benefit of all discounts and rebates available from third-party vendors; and Comply with the requirements of the Agreement. CONTRACTOR will be reimbursed for the costs of furnishing any such supplies, materials, tools or equipment that are within the approved budget. Contractor shall from time to time as it deems appropriate submit to BART recommendations as to required repairs, replacements, cleanings, and alterations to the Property.

2. CONTRACTOR shall be responsible for the management and operation of the Property which services shall include: (1) maintaining all mechanical, electrical, HVAC, building maintenance system and control monitoring, emergency power, base building fire alarm, elevators, plumbing and other major and minor systems in the Property; (2) causing to be performed exterior and interior cleaning, painting, decorating, carpentry, landscaping, roofing, maintenance of heating, ventilating and air-conditioning systems and such other normal maintenance, repair work, and minor construction as may be necessary or required by BART; (3) investigating all necessary preventative maintenance programs, submitting to BART recommendations and proposals for such programs and performing such necessary or desirable preventative maintenance as shall be approved by BART; (4) purchasing any needed supplies, materials, and services; (5) immediately addressing all building maintenance alerts, failures, and immediate or emergency response needs; and (6) regularly inspecting and testing, in accordance with existing inspection and testing programs at the Property, the physical condition of the Property, including periodic testing of the systems to ensure their reliability, with such tests to be scheduled and coordinated with occupants of the Property to minimize risk to the business operations, and any additional inspections that will improve the appearance, operation, and life-safety aspects of the Property, as determined by BART or CONTRACTOR in accordance with applicable local law. CONTRACTOR may use BART's pre-existing procurement vendor catalog for supplies, materials, or non-labor services for emergency repairs up to a BART approved total dollar amount. If the tools or vendors are unavailable or timely response to the emergency takes precedence, CONTRACTOR may solicit three (3) bids using the process outlined in Scope of Services ("I. Management Generally, Section 4." below) or lowest bid quote from available qualified vendors.

3. CONTRACTOR will draft scopes of services, that include any applicable licensing and payment bond requirements for the following services, and will insert the scopes of services into BART's Technical Services Agreements, and then locate and solicit bids from third-party vendors and/or licensed firms to perform: 1) janitorial services of restrooms and interior and exterior common areas (i.e., corridors, kitchens/kitchenettes, lobbies, meeting rooms, egress areas, and stairwells/steps); 2) Trash/garbage/recycling/compost removal and maintenance; 3) interior and exterior landscape maintenance; 4) vermin/pest abatement, and extermination; 5) building engineering; 6) window washing; 7) elevator maintenance and repair; 8) fire sprinkler and alarm maintenance and inspection; 9) HVAC/boiler maintenance and repair; 10) HVAC water treatment; 11) roof inspections and repairs; 12) furniture, fixtures, and equipment moving, relocation, installation, repair, and decommissioning; 13) electrical safety tests and electrical installation condition report testing; 14) Building Management System programming; 15) wayfinding and general signage; 16) security camera repair and programming; 17) backflow testing and certification; 18) steam cleaning; 19) generator and fire pump maintenance and repair; and such other services as are required in CONTRACTOR's and/or BART's reasonable judgment and in accordance with the requirements for the operation of the Property and which are included in the Operating Budget. Once such third-parties that meet the requirements set forth in CONTRACTOR's scopes and BART's Technical Services Agreement are located and bids solicited, BART will decide which third-party to award the Agreement to based on acceptable technical requirements and lowest bid proposal. BART's Standard Technical Services Agreement, attached as Exhibit 1, will be the Agreement model used for all third-party agreements. Insurance requirements and other terms of the Standard Technical Services Agreement may be modified as appropriate for the various services, (1)-(19) above.

4. CONTRACTOR will conduct the following process to engage third-party vendors and/or licensed firms to perform the required services for the Property:
 - i. CONTRACTOR shall prepare a draft scope of services for review and approval by BART.

 - ii. Once the scope is approved, CONTRACTOR will utilize BART's Technical Services Agreement form and terms, together with the approved scope of work to solicit bids from licensed firms to perform the services. To the extent feasible, CONTRACTOR's solicitation will include at least 1/3 of small businesses listed in the California Department of General Services (DGS) database of small businesses at: www.dgs.ca.gov (website). If there is no availability of SBs in the requisite service category to attain the required one-third (1/3), then Contractor shall send the solicitation to all SBs in such requisite service category. Award of such Services Agreements will be determined by BART and based on acceptable technical proposals, low price basis. SBs who submit proposals will be considered for eligibility for a Small Business preference during evaluation for determining award of the agreement. Such SBs will be granted reduction in their proposal price, for evaluation purposes only, of 5% of the proposal price of the lowest responsible proposal up to a maximum of \$150,000.

 - iii. CONTRACTOR will review the bids and recommend the firm to be awarded the Technical Services Agreement following BART's Small Business guidelines,

documenting the decision-making process, and using the approved budget for the Agreement. BART will then decide which firm to award to and execute the Services Agreement. CONTRACTOR will then initiate the performance of the Agreements and services needed for the Property.

5. CONTRACTOR shall utilize the BART approved mover to coordinate and supervise the physical relocation of BART employees from other BART properties to 2150 Webster Street (with prior BART approval) and, so far as possible, arrange the times and dates thereof so that there shall be minimal disturbance to the operation of the Property and to BART employees.
6. CONTRACTOR shall receive, respond to, and in cases where CONTRACTOR deems it necessary or advisable, advise BART of complaints and requests from others having contractual relations with BART in connection with the Property. Contractor would keep a log of all complaints and requests including resolutions and responses.
7. CONTRACTOR 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 BART, that relate to or in any manner affect CONTRACTOR's performance of the Agreement.

- B. Property Employees.** CONTRACTOR will use diligent efforts to operate, manage and maintain the Property in accordance with the standards of a consultant with special expertise in providing these services and the provisions of the Agreement. CONTRACTOR carries and will document and archive a copy of all applicable licenses, warranties, certificates, and registrations needed for the services in current and good standing. CONTRACTOR will use reasonable care in the hiring of its employees assigned to manage the Property. BART shall have the right (subject to applicable law, the Requirements as defined below and the terms of collective bargaining agreements) to approve employees assigned by CONTRACTOR, as well as the positions for which such employees are assigned. If BART shall disapprove of any such employee or position, CONTRACTOR will take such corrective action as BART shall require. CONTRACTOR will (1) pay all wages and other benefits payable to such employees; (2) maintain adequate payroll records; (3) remit to the proper authorities all required income and social security withholding taxes, unemployment insurance payments, workers' compensation payments and other amounts with respect to wages and benefits payable to such employees required under applicable labor and business laws, together in each case with all required reports and other filings; and (4) obtain, maintain and administer all medical, disability and other insurance and fringe benefits as may, from time to time, be required under any union or other arrangements pertaining to such personnel. All prevailing wages, salaries, benefits and other compensation paid or payable to such employees, and all items payable in respect to the payroll (including without limitation, unemployment insurance, social security, workers' compensation, disability benefits, severance, paid time off, medical and surgical plans now in existence or hereafter imposed or included in union agreements), shall be considered operating expenses of the Property. CONTRACTOR is, and will at all times remain, a wholly independent contractor and not an officer or employee of BART. CONTRACTOR has no authority to bind BART in any manner, or to incur any obligation, debt or liability of any kind of behalf of or against BART, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by BART. See Exhibit 1, Agreement for Technical Services, Section 7.0.

- C. **Budgets and Authorized Expenditures.** CONTRACTOR will prepare and submit to BART, for its approval, an Operating Budget (as such term is defined below) and a Capital Budget (as such term is defined below), for BART's current fiscal year, not later than ninety (90) days after the date of Award, and for each fiscal year thereafter, on or before April 1st. The Operating Budget and the Capital Budget are hereinafter collectively referred to as the Budgets. When approved in writing by BART, CONTRACTOR would implement the Budgets and would be authorized, without the need for further approval by BART, but subject to the Approved Variance Amount (as such term is defined below), to make the expenditures and incur the obligations provided for in the Budgets. In the event BART does not approve all or any portion of any Operating Budget and/or Capital Budget, Contractor will promptly revise the same in accordance with BART's request and would resubmit the applicable Budget(s) or portions thereof to BART for its approval. Until such time as the Operating Budget and/or the Capital Budget are approved by BART, Contractor would continue to operate under the last approved Operating Budget or Capital Budget, as the case may be.

Contractor may procure non-labor expenses for the maintenance, repair, and servicing of the Property using BART's Procurement "NASPO MRO" agreement up to a certain BART approved dollar amount. This includes Grainger, Fastenal, and MSC, effective January 19th, 2021. Purchases will be made using PeopleSoft via a direct connection to the Vendor's website. This PeopleSoft Module is called "Punchout Catalog", it allows BART end users to "punchout" through PeopleSoft directly to the vendors online catalog. Upon filling the online basket with commodities and clicking submit, the internal PeopleSoft requisition is then automatically routed through workflow to obtain approvals and then automatically sends a Purchase Order directly to the vendor.

1. **Operating Budget.** The "Operating Budget" shall include for each month during the applicable fiscal year, in detail and in form and substance reasonably satisfactory to BART all income reasonably anticipated to be collected in connection with the Property, proposed expenses to be incurred for employees of CONTRACTOR permitted hereunder (including the number and type and their respective salaries), and all operating expenditures proposed to be made, including, without limitation, the estimated cost of utilities, repairs and maintenance, and fees for the services 1) through 19) set forth above in section II. A. 3.
2. **Capital Budget.** The "Capital Budget" shall include for each month during the applicable fiscal year, in detail and in form reasonably satisfactory to BART, the capital expenditures proposed to be made or likely to be needed, including, but not limited to, expenditures for roof, building facade or equipment replacement or alteration, together with studies, reports or inspections as may be reasonably required indicating the need for such capital expenditures, the useful life of such capital item and the proposed project commencement and completion dates and expenditure schedule. The Capital Budget would also state whether such capital expenditure is required as a result of governmental regulation, to decrease operating expenses, or otherwise.
3. **Approved Variance Amount.** The "Approved Variance Amount" is the amount established by BART and CONTRACTOR by which expenditures may exceed the amount set forth in the Budgets. The maximum approved Budget would be the total of all Budget categories plus the Approved Variance Amount. Except in the case of emergencies where response costs are not sufficiently included in the approved

Budget, in no event would CONTRACTOR exceed the maximum Budget, including any Approved Variance Amount authorized by BART, without prior written authorization of BART.

4. **Escrow Account.** An escrow account will be set up to allow the CONTRACTOR to pay for emergency repairs and up to three months of the monthly costs of the current vendors servicing the Property while the Property Manager develops the scopes of work and solicits bids for new third-party vendors. An Emergency is defined as an Act of God or other threats to public safety, well-being, or the condition of the Property when the delay caused by waiting for BART to approve funding for the response would increase the threat or result in extensive damage to the Property.

D. Financial Reports. CONTRACTOR shall provide statements to BART relating to the Property as follows:

1. On or before the fifteenth day after the end of each calendar month during the term commencing with the fifteenth day of the second full calendar month following the Award Date, CONTRACTOR shall furnish to BART a report containing the items set forth below, which shall be in form and substance satisfactory to BART:
 - i. An operating statement on an accrual basis for the applicable period and the year-to-date;
 - ii. A schedule of accounts payable and accrued expenses;
 - iii. Accrual reports with preliminary variance explanations;
 - iv. Cash disbursements journal for the period;
 - v. Calculation of management fee, payroll, taxes and benefits and professional fees, if any, and all payments to CONTRACTOR as a result of CONTRACTOR's involvement with the Property for the period, together with supporting documentation;
 - vi. A schedule showing budget to actual for year to date, as well monthly and accrual variances.
 - vii. Schedule of any capital expenditures for the period, and update of the status of all Capital Projects;
 - viii. Summary describing the status of operating and maintenance functions, physical items including results of premises inspections, impending certification/warranty expirations and, and key events;
2. On or before the fifteenth day after the end of each calendar month during the term commencing with the fifteenth day of the second full calendar month following the commencement of the Agreement, CONTRACTOR will furnish to BART a statement of disbursements from the Escrow Account. Copies of all paid invoices shall be maintained on site for the BART's inspection and audit.

3. CONTRACTOR will, on behalf of BART, maintain complete and separate books and records for the Property, which books and records would be kept in accordance with generally accepted accounting principles consistently applied on an accrual basis. Separate books and records will also be maintained for the Escrow Account.

- E. Insurance Matters.** CONTRACTOR shall notify BART within twenty-four (24) hours and submit written reports within three business days to BART's Risk and Insurance Department concerning all accidents and claims for damage relating to the ownership, operation, or maintenance of the Property that it is made aware of, and shall prepare any reports reasonably required by BART's Risk and Insurance Department in connection therewith. A copy of any such reports shall also be submitted to BART's Agreement Administrator. CONTRACTOR shall have no right to settle, compromise, or otherwise dispose of any claims, demands or liabilities, whether or not covered by insurance, without the prior written consent of BART. CONTRACTOR agrees not to knowingly permit the use of the Property for any purpose which might void any policy of insurance held by BART or which might render any loss insured thereunder uncollectible, or which would be in violation of any governmental restriction, statute, ordinance, rule or regulation.
- F. Other Responsibilities and Requirements.** CONTRACTOR shall promptly give notice to BART (accompanied by copies of supporting papers) of any violation or notice of violation of any laws, ordinances, rules, regulations, orders or determinations of governmental authorities having jurisdiction over the Property and of insurers, insurance rating organizations, Boards of Fire Underwriters or similar bodies which relate to the Property (collectively, "Requirements"). At BART's expense, CONTRACTOR shall use all reasonable efforts to cause all such acts and things to be done in and about the Property as BART or CONTRACTOR shall deem necessary or desirable to comply with the Requirements and, in each case, shall use all reasonable efforts to cure or remove any violations thereof.
- G. Consultation Generally.** CONTRACTOR shall generally confer and advise fully and freely with BART and such representatives and designees as BART shall identify, in the performance by CONTRACTOR of its duties herein specified and all matters relating thereto.

ATTACHMENT B

COMPENSATION SCHEDULE

ATTACHMENT B - COMPENSATION SCHEDULE

Description of Service	Monthly Cost	x	12 months	Total Cost
Year 1 – July 1, 2021 through June 30, 2022*				
One-time Setup Costs	XXXX	X	XXXX	XXXX
Property Management Fee	\$8,000	X	12	\$80,000
Staff Costs (Reimbursable on-site and off-site personnel of the Proposer/Contractor)	\$16,975	X	12	\$203,700
Year 2 – July 1, 2022 through June 30, 2023				
Property Management Fee	\$8,400	X	12	\$100,800
Staff Costs (Reimbursable on-site and off-site personnel of the Proposer/Contractor)	\$17,484	X	12	\$209,808
Year 3 – July 1, 2023 through June 30, 2024				
Property Management Fee	\$8,820	X	12	\$105,840
Staff Costs (Reimbursable on-site and off-site personnel of the Proposer/Contractor)	\$18,009	X	12	\$216,108
Year 4 – July 1, 2024 through June 30, 2025				
Property Management Fee	\$9,261	X	12	\$111,132
Staff Costs (Reimbursable on-site and off-site personnel of the Proposer/Contractor)	\$18,549	X	12	\$222,588
Year 5 – July 1, 2025 through June 30, 2026				
Property Management Fee	\$9,724	X	12	\$116,688
Staff Costs (Reimbursable on-site and off-site personnel of the Proposer/Contractor)	\$19,106	X	12	\$229,272
Option Year 1 – July 1, 2026 through June 30, 2027				
Property Management Fee	\$10,210	X	12	\$122,500
Staff Costs (Reimbursable on-site and off-site personnel of the Proposer/Contractor)	\$19,676	X	12	\$236,148
Option Year 2 – July 1, 2027 through June 30, 2028				
Property Management Fee	\$10,721	X	12	\$128,652
Staff Costs (Reimbursable on-site and off-site personnel of the Proposer/Contractor)	\$20,269	X	12	\$243,228
Total Agreement Price (Total of Years 1-5 + Option Year 1 and Option Year 2)				\$2,326,484

ATTACHMENT C

NON-DISCRIMINATION PROGRAM FOR SUBCONTRACTING

ATTACHMENT C

NON-DISCRIMINATION PROGRAM FOR SUBCONTRACTING

It is the policy of the San Francisco Bay Area Rapid Transit District to ensure that CONTRACTORS who contract with the District do not discriminate or give a preference in the award of subagreements on the basis of race, national origin, color, ethnicity, or gender.

A. Definitions For purposes of this Agreement:

1. "Minority Business Enterprise (MBE)" - a business enterprise that is at least 51% owned and controlled by a minority person(s).
2. "Women Business Enterprise (WBE)" - a business enterprise that is at least 51% owned and controlled by a woman or women.
3. "Minority Persons" - African Americans (i.e. persons having origins in any of the Black African racial groups), Hispanic Americans (i.e. Cuban, Mexican, Puerto Rican, Latin American, European Spanish (but not Portuguese), and other Hispanic origins and cultures), Asians and other minorities (i.e. Asian and Pacific Islander, ancestral groups of Asian Indians, Chinese, Japanese, Filipino, Hawaiian, and other Asian or Pacific Islander); and Native American ancestral groups of Eskimos and American Indian.

A list of available certified M/WBE firms can be downloaded from the District's website, www.bart.gov/ocr or may be obtained by contacting the District's Office of Civil Rights at 16th Floor, 300 Lakeside Drive, Oakland, California, telephone (510) 464-6100. In addition, Form A, Application for Certification as a Minority or Woman Owned Business Enterprise (M/WBE) for Non-Discrimination Program for Subcontracting, can be downloaded from www.bart.gov/ocr. All California Unified Certification Program (CUCP) certified minority and women-owned DBE firms, except brokers and manufacturers' representatives, are automatically qualified to be M/WBE firms for this Program and do not need to complete Form A. All other firms must complete the Form A. Brokers and manufacturers' representatives are not eligible for certification under this Program

4. "Availability Percentage" - MBE and WBE availability shall be equal to the percentage of MBEs and the percentage of WBEs in the pool of all Subcontractors within the relevant market area that are available to bid on Subcontractor work in the absence of discrimination or preference.
5. "Broker" - A firm that arranges or expedites transactions and does not maintain a store, warehouse or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.
6. "Manufacturers' Representative" - A firm that arranges or expedites transactions and does not maintain a store, warehouse or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.

- B. MBE and WBE Availability Percentages: The Availability Percentages for this Agreement for MBEs and WBEs are set forth in the Agreement in Article 18.0, NON-DISCRIMINATION PROGRAM FOR SUBCONTRACTING. The Availability Percentages shall apply to the subcontracted portion of the services to be performed under the Agreement.
- C. MBE and WBE Participation
1. MBE and WBE participation includes agreements (other than employee contracts) between MBEs and WBEs and the CONTRACTOR for services specifically required for the completion of the services to be performed under this Agreement except for subagreements with Brokers and Manufacturer's representatives. The CONTRACTOR assumes responsibility for accurately identifying the first-tier status of MBE and WBE firms proposed in the Designation of Subcontractors and MBE/WBE Participation Form.
 2. If a firm is owned and controlled by a Minority Woman or Minority Women, then the firm may be counted towards both the MBE and WBE Availability Percentage.