

AGREEMENT

Between

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

And

CROWN ENERGY SERVICES, INC. DBA ABLE SERVICES

To

TO PROVIDE BART HEADQUARTERS BUILDING ENGINEERING SERVICES

BART AGREEMENT NO. 6M4771

2021

TABLE OF CONTENTS

<u>ARTICLE</u>	<u>PAGE</u>
1.0 SCOPE OF SERVICES	5
1.1 FINANCIAL ADMINISTRATION	5
1.2 PROGRESS REPORTS	5
2.0 TIME OF PERFORMANCE.....	5
3.0 COMPENSATION AND METHOD OF PAYMENT	5
4.0 CHANGES AND EXTRA SERVICES	8
5.0 TERMINATION	8
5.1 TERMINATION FOR CONVENIENCE	8
5.2 TERMINATION FOR CAUSE	9
5.3 FORCE MAJEURE	9
6.0 INSURANCE.....	9
7.0 INDEPENDENT CONTRACTOR.....	11
7.1 CONFLICT OF INTEREST	12
7.2 DISTRICT CONTRACTOR CODE OF CONDUCT.....	12
8.0 INDEMNIFICATION	13
9.0 DATA TO BE FURNISHED BY BART	13
10.0 OWNERSHIP OF WORK PRODUCTS	13
10.1 DOCUMENTS.....	13
10.2 ASSIGNMENT OF RIGHTS.....	13
10.3 WARRANTY OF WORK PRODUCT	14
11.0 MATTERS CONFIDENTIAL AND PRIVILEGED	14
12.0 SUBCONTRACTS	14
13.0 ASSIGNMENT OF AGREEMENT	14
14.0 RECORDS	15
15.0 AUDIT.....	15
16.0 NOTICES	16
17.0 NON-DISCRIMINATION	16
18.0 NON-DISCRIMINATION PROGRAM FOR SUBCONTRACTING.....	16
19.0 SITE SECURITY AND ACCESS	18
20.0 LAWS AND REGULATIONS	18
21.0 CHOICE OF LAW	19
22.0 SEVERABILITY.....	19
23.0 CAPTIONS.....	19
24.0 BENEFIT OF AGREEMENT.....	19
25.0 STATE OF CALIFORNIA LABOR CODE REQUIREMENTS	19
26.0 ENTIRE AGREEMENT	20

ATTACHMENTS

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

TECHNICAL SERVICES

AGREEMENT NO. 6M4771

Between

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

And

CROWN ENERGY SERVICES, INC. DBA ABLE SERVICES

THIS AGREEMENT ("Agreement") is made and entered into this 4th day of January 2022, 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 CROWN ENERGY SERVICES, INC. DBA ABLE SERVICES ("CONTRACTOR"), with offices at 868 Folsom Street, San Francisco, CA 94107.

RECITALS

This Agreement is made with reference to the following facts:

1. BART proposes to obtain Building Engineering Services for the District's Headquarters located at 2150 Webster Street, Oakland, CA 94612.
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 a Adrienne Anderson, or a designated representative (herein called "Project Director").

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 PROGRESS REPORTS

CONTRACTOR shall submit to the Project Director a monthly progress report concerning the Scope of Services performed during the preceding month. The form of the progress report shall be subject to approval by the Project Director.

2.0 TIME OF PERFORMANCE

CONTRACTOR's services hereunder shall commence upon execution of the Agreement and will continue for five (5) years from that date, unless earlier terminated as hereinafter provided, or if the limit on maximum compensation set forth in Article 3.0 below is exceeded.

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 under this Agreement exceed the sum of \$2,900,000.00 (\$2.9 Million dollars).

- 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).
- E. BART's allocation of funds for this Agreement is on a fiscal year basis with the fiscal year commencing July 1 and ending the following June 30. BART reserves the right to terminate this Agreement if no funds are allocated for this Agreement during the following fiscal year.

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 – LKS-22
Subject: Invoice Submission
300 Lakeside Drive, 22nd Floor
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 or email your request to PurchaseOrders@bart.gov. Invoice submission samples can be viewed at www.bart.gov/bap.

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.

CONTRACTOR maintains the right to terminate services if BART fails to pay any of its invoices within ninety (90) days of submission.

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 Director of 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 Director of 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 Two Million Dollars \$2,000,000 per occurrence and Three Million Dollars \$3,000,000 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) 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.

2. Automobile Liability Insurance for bodily injury (including death) and property damage which provides coverage limits of not less than (Two Million) Dollars \$2,000,000 combined single limit per occurrence applicable to all owned, non-owned and hired vehicles.

3. 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.

4. 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 Three Million Dollars \$3,000,000 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.

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 shall require each of its subcontractors of any tier to provide the aforementioned coverages, or CONTRACTOR may insure subcontractor(s) under its own policy(ies).
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, indemnify and hold harmless BART, its directors, officers, agents and employees from all claims, demands, suits, loss, damages, injury and liability, direct or indirect (including reasonable attorney's fees and any and all costs and expenses in connection therewith), incurred by reason of any act, or failure to act, of CONTRACTOR, its officers, agents, employees and subcontractors or any of them, under or in connection with this Agreement; and CONTRACTOR agrees at its own cost, expense and risk to defend any and all claims, actions, suits, or other legal proceedings brought or instituted against BART, its directors, officers, agents and employees, or any of them, arising out of CONTRACTOR's services, and to pay and satisfy any resulting judgments. Such indemnification includes without limitation any violation of proprietary rights, copyrights, rights of privacy, arising out of the publication, translation, reproduction, delivery, use or disposition of any data furnished under this Agreement.

CONTRACTOR is not an employee and will defend, indemnify and hold BART harmless for any injuries or claims suffered by CONTRACTOR and/or its officers, agents, employees and subcontractors that would otherwise be subject to the Workers' Compensation Act. Further, CONTRACTOR will defend, indemnify BART and hold it harmless for tax, wages, employees benefits, pension benefits, or other liability if CONTRACTOR or its employee, agent, subcontractors or other person providing services pursuant to this Agreement is found to be a common law employee of BART by the IRS, CalPERS, another government agency or a court or administrative law judge

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

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: Crown Energy Services, Inc. dba Able Services
868 Folsom Street
San Francisco, CA 94107

Attention: Jim Johnson, Senior Vice President

Email Transmission:

To BART:

aander5@bart.gov

To CONTRACTOR:

jjohnson@ableservice.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.

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

In the event work performed under this Agreement is subject to the payment of prevailing wages, 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. CONSULTANT and each subconsultant 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 (DIR). 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, 2150 Webster, 4th Floor, Oakland, CA 94612. The prevailing rates of wages are also available at the following website: <https://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. For crafts or classifications not shown on the prevailing wage determinations, CONSULTANT may be required to pay the wage rate of the most closely related craft or classification shown in such determinations for Contract work. The CONSULTANT 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. The CONSULTANT shall comply with the provisions of State Labor Code Section 1776 and Section 1812, and shall be responsible for compliance by its Subconsultants. Furthermore, the CONSULTANT shall post

to assigned responsibilities such as safety, disaster, fire, pollution control and civil defense.

5. Formulates, recommends and implements site specific policies and procedures to improve the facility physical plant and operations. Develops a plan and/or procedure in SF BART platform, Maximo, for controlling, labeling, recording estimated life expectancy, maintenance and inspecting all capital and non-capital equipment within the facility. This plan includes a long-term engineering capital plan.
6. Recommends equipment purchases to replace obsolete equipment items and provide assistance in formulating long-range equipment replacement requirements and coordinates actions with contractors.
7. Assists in the development and implementation of operating and extraordinary expense budgets as required.
8. Plans and schedules services of department. Establishes standards and work methods; takes steps to assure quality and quantity of performance, and evaluates results. Establishes plans for improving departmental work emphasizing efficiency and economy.
9. Communicates policies and procedures, discusses job problems, and employee concerns with supervisors and employees. Encourages development of habits and attitudes for improved performance and good employee attitudes. Direct, train, evaluate, and counsel all engineering personnel.
10. Ensures that general safety, fire prevention regulations are enforced, and safe working habits are promoted throughout the facility. Ensures that all shop equipment is properly maintained and conforms to safety standards. Promotes good housekeeping principles and supervises housekeeping details.
11. Responsible for ensuring that the building systems are operated in the most efficient and effective manner especially as it relates to utility consumption and environmental responsibility. Implement a systematic program to promote energy awareness and conservation within the facility. Champion energy conservation programs to achieve maximum results from tenants and staff.
12. Maintains an on-going self-improvement program to keep abreast of new equipment, standards, codes, and maintenance procedures.
13. Responsible for the implementation and promotion of the following:
 - a) Supports and follows Firm's operational policies and standards.
 - b) Supports and follows Firm's safety program.
 - c) Perform related duties as required – a "can do, will do" attitude.
 - d) Reports to and collaborates with management of the facility related issues.
 - e) Works with management on plant related and tenant related issues.
 - f) Sets and maintains a professional work environment with staff.
 - g) Assures good communication.
 - h) Ensure standards of service and commitment.
 - i) Ensure compliance with safe practices and standards.
 - j) Develops goals for department, staff and self.
 - k) Builds morale and a team approach.

- l) Complies with employment laws and Firm's employment practices.
 - m) Supports growth opportunities and potential
- B. Journeyman - Under the supervision of Chief Engineer, responsible for maintenance and repairs to the buildings and grounds, related fixed and portable equipment and installation, while establishing a safe environment for the facility.
- 1. Supports the implementation and documentation of site safety plans and all operational standards and guidelines as well as site specific standards, policies and procedures relating to the engineering department.
 - 2. Maintains and performs repairs to buildings, utilities, grounds, and equipment.
 - 3. Optimize the repair and maintenance of HVAC, electrical and plumbing equipment and systems. Uses and helps provide best practices to troubleshoot and repair equipment and system problems so that problems are resolved in the most efficient and effective manner.
 - 4. Maintains continuous operations of equipment by troubleshooting and repairing.
 - 5. Provide hands-on training and collaboration to other engineering team members.
 - 6. Fosters a work environment that promotes energy conservation and continuous improvement of engineering functions.
 - 7. Records all pertinent data in building logbooks and makes all appropriate daily entries.
 - 8. Conducts utility and equipment tests.
 - 9. Records pertinent data on all equipment in accordance with federal, state, and local codes and requirements.
 - 10. Process administrative paperwork in accordance to departmental policies and procedures.
 - 11. Stay abreast of the latest technology as related to building systems and equipment and emergency response regarding fire and life safety.
 - 12. Actively functions as a team member.
 - 13. Demonstrates commitment to quality of service.
 - 14. Complies with Firm's and facilities' policies and procedures.
 - 15. Complies and participates with Firm's safety program and in facility specific safety program.
 - 16. Maintains regular attendance in the workplace.
 - 17. Provides highest quality of service to the tenants, staff and visitors at the facility.
 - 18. Participate in regular required communication with Chief Engineer, management, tenants and other staff.

4.0 CONTRACTOR'S RESPONSIBILITIES

A. UNDERSTANDING OF PROPERTY AND RFP

Prior to bidding, the Contractor shall be afforded an opportunity to visit the site of this contract work and shall acquaint and familiarize itself with conditions as they exist, the operations to be carried out under this contract, and make such investigations as it may see fit so that it may fully understand the facilities, difficulties, and restrictions attending the execution of the work under this contract.

The Contractor shall also thoroughly examine and be familiar with all the Documents, Specifications, and Exhibits within this RFP. The failure or omission of the Contractor to receive or examine any form, instruction, or document, or any part of the contract Documents, Specifications, or Exhibits, or to visit the site and acquaint itself with the conditions there existing shall in no way relieve the Contractor of any obligation with respect to its proposal, including that of furnishing the material and labor necessary to complete the performance of all provisions of the proposed contract, and the contemplated work therein, for the consideration set forth in the proposal. By submitting this proposal, the Contractor covenants and agrees that it has examined the RFP and its exhibits, and from its own investigation, it has satisfied itself as to the nature and location of the work, the general and local conditions, and all matters, which may in any way affect its performance and that, as a result of such examination, the Contractor fully understands the intent and purpose thereof and its obligations thereunder and that it will not make any claim for, or have any right to damages for any misunderstanding or misinterpretation of this contract or because of any lack of information. Contractor shall notify the District and/or their Agent of any exclusions, exceptions, or additions to the Definition of Service, or Service Quality Requirements noted during any document review or on-site property visitation.

B. CONTRACTOR'S EMPLOYEES

The Contractor's employees performing services shall at all times remain employees of the Contractor and will not be considered the District's or its designated Agent's employees for federal, state and local tax purposes or any purpose, whatsoever, and are not entitled to the District's or its Agent's benefits. The Contractor shall be solely responsible for the compensation of its employees and contract staff, including, but not limited to payments of worker's compensation, disability, and other similar benefits, unemployment, and other similar insurance and for withholding income and other taxes including social security.

The Contractor shall establish appropriate procedures and controls so that services under this contract will not be performed by using any alien who is not legally eligible for such employment under United States Immigration Laws. Failure to comply with this satisfactorily is ground for immediate termination for cause.

C. LICENSE / REGISTRATION

Contractor must be registered and licensed in the state of California, and conform to all applicable Federal, State, and Municipal statutes, rules, regulations, and other requirements imposed by any and all authorities having jurisdiction.

The Contractor shall also comply with all recognized industry standards and guidelines.

D. SAFETY

The Contractor is responsible for the safety of all of its personnel and for assuring the continuing safety of 2150 Webster Street. The Contractor is responsible for assuring that all of its personnel, equipment, and materials are in compliance with the Occupational Safety and Health Act (OSHA) and all other applicable state, local, and federal laws and regulations.

E. SUBCONTRACTING

The Contractor shall not subcontract any portion of the work unless the District and/or their Agent request the Contractor to subcontract specific portions of the work. Upon such occurrence, the Contractor will submit a change, as defined elsewhere in the RFP. Any subcontract request must be approved by SFBART.

F. STAFFING

1. Prior to placing personnel at the property, the Contractor shall be required to present a package to the District, and/or its Agent for its review and approval which would include the proposed engineers resume, fingerprints, and a written background check.
2. All engineers assigned to the Property shall not be moved to another location or client without prior approval of the District, and/or its Agent.
3. The District, and their Agent, reserve the right to request the replacement of any of the Contractor's employees utilized to perform required services for whatever reason deemed necessary.
4. The selected Contractor(s) will be required to provide regional supervisors / account representatives with at least three (3) years' experience as a supervisor in the engineering industry. The supervisor(s) assigned to the account shall be a person acceptable to the District, and or their Agent. Upon acceptance of the supervisor(s), Contractor shall not change said individuals without notification and consent of the District, or their Agent.
5. The supervisory staff shall be available on request by the District and/or its Agent during normal business hours to answer complaints of any nature relating to the Contractor's work performance and/or staff.
6. The selected Contractor(s) will be required to maintain adequate back-up force and supervisory staff to be able to assist immediately in case of flood, fire, riot, natural or manmade disasters, or any other emergency.
7. The Contractor will be required to submit to the District or its Agent(s) a list of at least three emergency phone numbers other than the local branch office phone number or answering service who are authorized to dispatch back-up engineering staff in the event of a request by Agent for such services prior to the start of the contract. The Contractor shall update these telephone numbers as required but not less than every (1) month.
8. In addition to the supervisory staff, the Contractor shall maintain and show evidence of an adequate management level staff who shall make periodic scheduled and unscheduled visits to the site. The purpose of these visits is to ensure that engineering service is kept at an optimal level.

G. TRAINING

1. The Contractor will be responsible for the basic training of all of its personnel. In addition, engineers shall receive continued training to maintain necessary license and certification status, which should include Fire Safety Director and L-License certifications in addition to on going training for OSHA compliance. The training curriculum shall be reviewed and approved by The District, and/or its Agent and the Contractor shall provide written documentation of all training sessions.

H. UNIFORMS

1. The selected Contractor will be required to provide clearly identifiable engineering uniforms with identifying badging subject to approval by Owner, for all employees.
2. New uniforms shall be provided as required at the determination of Owner or its Agent to present a clean and neat appearance but no less than annually.

I. TOOLS & EQUIPMENT

1. The selected Contractor will not be required to provide all tools and equipment necessary to perform specifications set forth in this RFP. All equipment and tools shall be purchased by SF BART and will be maintained by on site engineering staff and remain on site at all times. At NO time should any equipment or tools (ladders etc.) be 'loaned' out or provided to outside contractors for their use.
2. The District will provide engineering staff with radios and other communications devices necessary to perform Basic Services in addition to have the ability to communicate with other teams on site in an emergency situation (security, janitorial, property management, ownership). This equipment will remain the property of 2150 Webster Street and must be returned upon demand.

J. STORAGE

All supplies, materials, and equipment furnished by SF BART will be stored on site, with all attic stock (carpet tiles, ceiling tiles etc.) to be stored at a location TBD **off site**. Sufficient quantities of supplies, materials, and equipment shall be maintained by the Contractor to sustain a first-class quality service.

K. REQUIRED SERVICE HOURS

The Contractor must be able to provide engineering services per the schedule listed below and to be on-call 24/7 for emergency situations:

1. Chief Engineer -Monday through Friday: 6:00 AM – 2:00 PM
2. Journeyman Engineer: Monday through Friday: 10:00 AM– 6:00 PM
3. Below is the Building's Holiday schedule:

HOLIDAY

President's Day
Memorial Day
Independence Day
Labor Day

Thanksgiving Day
Christmas Day
New Year's Day

BART Holidays

Martin Luther King, Jr. Day
Veteran's Day

L. DOCUMENTATION

1. A monthly report of all engineering activity shall be submitted to property management by the 5th day of the following month to incorporate into the monthly report package due to SF BART by the 15th.
2. The Contractor will be required to furnish the District, and/or its Agent with time records of hours worked during the time period covered by each invoice. Additionally, all requests for PTO or OT hours to be submitted in writing to Property Management for approval in advance.
3. The Contractor shall be required to maintain complete and accurate records which will be made available to the District, and/or its Agent for inspection and audit. Additionally, all equipment (including FLS systems, elevators etc.), warranty documents and Preventative Maintenance records are to be kept updated on a monthly and/or weekly basis through the District's PM System, Maximo.

ATTACHMENT B

COMPENSATION SCHEDULE

ATTACHMENT B
COMPENSATION SCHEDULE

FIRM NAME: Crown Energy Services d/b/a Able Services

Fully Burdened Labor Costs

Description of Service	Hourly Rate	Estimated Monthly Hours	x	12 months	Total Cost
Year 1					
Chief Engineer	\$ 125.88	174 Hours	x	12	\$ 262,844.26
Journeyman	\$ 105.01	174 Hours	x	12	\$ 219,264.02
Year 2					
Chief Engineer	\$ 130.98	174 Hours	x	12	\$ 273,480.41
Journeyman	\$ 109.23	174 Hours	x	12	\$ 228,065.81
Year 3					
Chief Engineer	\$ 136.26	174 Hours	x	12	\$ 284,504.49
Journeyman	\$ 113.59	174 Hours	x	12	\$ 237,171.51
Year 4					
Chief Engineer	\$ 141.73	174 Hours	x	12	\$ 295,926.03
Journeyman	\$ 118.10	174 Hours	x	12	\$ 246,593.62
Year 5					
Chief Engineer	\$ 147.40	174 Hours	x	12	\$ 307,761.48
Journeyman	\$ 122.77	174 Hours	x	12	\$ 256,345.18
Total Proposal Price (Total of Years 1-5)					\$ 2,611,956.80

Footnotes:

1. Wages and fringe benefits are in accordance with Local 39 Collective Bargaining Agreement. Wages, pension & annuity are subject to change in September each year & health & welfare subject to change in November in accordance with the CBA.
2. Wages for Local 39 are assumed for years 2023, 2024, 2025, and 2026. Benefits for Local 39 are assumed for years 2021, 2022, 2023, 2024, 2025, and 2026. Upon receipt of the actual cost this expense would be passed along to the client.
3. CMMS (PM & work order system) is not included in the above estimated cost but may be provided at an additional cost.
4. Overtime will be billed as incurred subject to prior approval.
5. Estimated hours reflected above represent average number of hours per month over a twelve month period. Actual hours per month will vary.
6. Able Management Fees consist of Safety, Overhead, Profit, and Technology & Cyber Security fees which are associated with processing/storing data on Able server & standard cyber security measures.
7. Uniforms, cell phones, and email accounts are included in the above estimate.
8. If rebill expenses occur, they will be billed at cost plus fifteen percent (15%) or a minimum \$50 fee, whichever is higher.
9. Per the current CBA, all benefit costs are included in the above costing. All hours will be billed as incurred.
10. Rates are subject to change based on seniority and other payroll & benefit(s) factors per the current CBA.
11. The cost is based on an hours paid contract. All regular hours, overtime, vacation, holiday, sick leave, jury duty & bereavement hours will be billed the same month as paid to the employee(s). This includes payouts (e.g. vacation) when an employee leaves AES employment. All applicable personnel & payroll related cost factors will be passed along to the client. This is to include all pay increases to employees, applicable federal, state & local taxes, insurance, employee benefit plans & recruiting.

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 4th Floor, 2150 Webster Street, 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 Percentages.