

**REQUEST FOR QUALIFICATIONS FOR
ON-CALL AVIATION ENVIRONMENTAL CONSULTING SERVICES
AT THE PORT OF OAKLAND**

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I. INTRODUCTION

The Port of Oakland (Port) is soliciting statements of qualifications to provide “on-call” aviation environmental consulting services for Oakland International Airport (OAK). It is the intent of the Port to enter into three separate on-call aviation environmental consultant contracts.

The Port strictly prohibits all unlawful discrimination and preferential treatment in contracting, subcontracting and purchasing, including the services requested pursuant to this RFQ. Additionally, the Port is subject to the requirements of the U.S. Department of Transportation’s regulation, 49 Code of Federal Regulations Part 26 (the “DOT Regulations”). Under the DOT Regulations, any Port contractor must agree that it will not discriminate against any business owner because of the owner’s race, color, national origin or sex in connection with the award or performance of any contract or subcontract, purchase or lease agreement or other agreements covered by the DOT Regulations.

All firms interested in submitting a SOQ for this work are asked to attend a meeting on May 20, 2009 at 8:30 AM in the Board Room, second floor of the Port building at 530 Water Street, Oakland (next to the building entrance). The Port will provide information related to the Port’s insurance requirements, Mandatory Contractual Agreement requirements. Disadvantaged Business Enterprise program and will answer questions.

Questions regarding this RFQ should be addressed to the appropriate contact person listed in Section VIII of this RFQ. Any addenda issued by the Port in response to Proposers’ questions will be posted on the Port’s website. Upon issuance of an Addendum, notification will be sent to all parties who downloaded the RFQ from the hosting website. Said notification will be sent to the e-mail addresses provided during the process of downloading the RFQ. Only questions answered by formal written Addenda will be binding. Oral and other interpretations and clarifications will be without legal effect.

Clarifications that do not necessitate a formal Addendum may, at the Port’s discretion, be issued in written form in a ‘Log of Responses to Proposer Questions’. Any such Log of Responses to Proposer Questions will be posted to the Port’s website, and e-mail notification will be sent to all parties who downloaded the RFQ. The Log of Responses to Proposer Questions is provided solely for proposers’ convenience, and any interpretations or clarifications contained therein are without legal effect. Proposers are advised that any questions submitted to the Port may, at the Port’s discretion, be incorporated into the posted Log of Responses to Proposer Questions.

Proposers are advised that questions received less than seven (7) calendar days prior to the Proposal due date may not be answered.

II. BACKGROUND

The Port is an “independent department” of the City of Oakland established under the City’s Charter. The Port is a municipal corporation, acting by and through its Board of Port Commissioners. The Port owns and operates OAK. OAK comprises approximately 2,445 acres and is located in the southwestern portion of the City of Oakland in Alameda County. OAK is subdivided into the North Airport and South Airport. The South Airport contains commercial air passenger facilities, its principal runway (Runway 11/29), and air cargo facilities. The North Airport contains three runways (Runways 9L/27R, 9R/27L, and 11/33), general aviation, aviation maintenance, air cargo activity, and an aviation school. To the north of the OAK are the City of Alameda, San Leandro Bay, and Airport Channel; to the east are the Cities of San Leandro and Oakland; and to the south and west is San Francisco Bay. In 2008, the passenger activity level was 11.4 million annual passengers and cargo activity level was 0.69 million annual tons. For further information about OAK, please visit www.oaklandairport.com.

The Environmental Programs and Planning Division (EP&P) manages environmental planning, permitting and compliance. In order for EP&P to provide timely project turn-around to its clients, including regulatory agencies, and to supplement the Port’s expertise and existing resources, the Port uses consulting firms.

The projects may be federally funded through the Federal Aviation Administration Airport Grant Program. Professional services contracts that are awarded with federal funds shall be subject to all applicable federal contracting provisions for Professional Services Contracts.

III. SCOPE OF SERVICES¹

The consultant or team chosen to provide the Port with aviation environmental consulting services must demonstrate knowledge and/or experience in, but not limited to, the majority of the following, in approximate order of importance:

- The aviation industry including passenger, cargo and general aviation,
- Federal, state and local air quality regulations such as the State Implementation Plans, California Air Resources Board rules and Bay Area Air Quality Management District thresholds,
- Federal Aviation Administration regulations, funding, and oversight,

¹. Noise impacts are not managed by the EPP Division.

- National Environmental Policy Act,
- California Environmental Quality Act,
- Climate change impacts and sustainability practices in the aviation industry, and
- Human health risk and environmental impacts of aviation operations

The contract maximum for each consultant is anticipated to be \$500,000, subject to approval by the Board of Port Commissioners. However, the actual volume of work could be substantially less and execution of an Agreement will not constitute any guarantee of business. The duration of each Agreement will be based on when the contract maximum is reached.

Prime consultants entering into an Agreement with the Port shall submit a draft and a final report on all deliverables conducted under the Agreement, unless the Port's Project Manager makes an exception.

IV. MANAGEMENT OF AS-NEEDED CONTRACTS

The contract will state the general contract terms under which work tasks will be performed including the duration and maximum amount of the contract, billing rates, overhead factors, reimbursable costs and other miscellaneous items mutually agreed to.

For each task requested, the Port and the Consultant shall reach an agreement on the schedule, scope of work and fees prior to the Consultant commencing work on the task. These agreed to items will be included in a Technical Service Order (TSO) that will become part of the general agreement between the Port and Consultant. A sample TSO is included in Exhibit 1 of Attachment I for review.

V. PORT POLICY REQUIREMENTS

If requested to enter into an agreement with the Port to provide on-call aviation environmental consulting services, the selected consultant(s) will be required to comply with the following Port policy requirements:

A. Nondiscrimination and Disadvantaged Business Enterprise (DBE) Participation

Projects may be funded by the Federal Aviation Administration (FAA) through the Department of Transportation (DOT), and therefore the selection process must comply with DOT's Disadvantaged Business Enterprise (DBE) Program regulations (see 49 Code of Federal Regulations, Part 26). DBEs, as defined in 49 CFR Part 26, shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this agreement.

The Port strictly prohibits all unlawful discrimination and preferential treatment in contracting and purchasing, including the award and administration of this project. The successful Proposer shall comply with the Port's non-discrimination policy and the DBE Rules and shall not discriminate against any business owner because of the owners' race, color, sex, or national origin in the award or performance of the Agreement.

In furtherance of the Port's nondiscrimination policy and in order to comply with Federal Aviation Administration ("FAA") regulations, the Port has implemented, and the successful Proposer shall cooperate with a program of recruitment, training, technical assistance and workshops to ensure that contracting and purchasing opportunities including the opportunities offered through this RFQ, are accessible and available to all qualified businesses, including DBEs.

The Port has not established a contract-specific DBE goal for this project. The Port expects to meet its DBE participation goals entirely through race-neutral means. The Port is required to report DBE accomplishments to the FAA (Appendix A, Part 26 – Uniform Report of DBE Participation) annually. The successful proposer will be required to report DBE participation quarterly to the Port as part of this effort.

Additionally, the successful proposer shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Specifically, and not by way of limitation, the successful proposer will sign and return to the Port's Project Technical Manager the certification of compliance with DOT DBE requirements referenced and incorporated into the binding contract by reference. Failure by the Proposer to carry out these requirements will be a material breach of contract, which may result in the termination of the contract or such other remedy as the Port deems appropriate.

The Port of Oakland's Non-Discrimination and Small/Local Business Utilization Policy including preference points allocation for local business, does not apply to this project.

B. Insurance Requirements

Professional liability for the as-needed aviation environmental consulting contracts will be covered under the Owner Controlled Insurance Program. The selected consultant shall comply with the Port's insurance requirements, as specified in Appendix E to Attachment I, Sample Professional Services Agreement. A completed Insurance Requirement form is also attached at the end of Attachment I for your reference.

C. Living Wage Policy

On March 5, 2002, the voters in the City of Oakland passed Measure I, adding to the City Charter Section 728 ("§728") entitled "Living Wage and Labor Standards at Port-assisted Businesses." §728 requires Port Aviation and Maritime businesses that meet specified minimum threshold requirements to pay all nonexempt employees a Living Wage rate established by City Ordinance and adjusted annually based on the

Consumer Price Index for the San Francisco, Oakland, and San Jose area. The current Living Wage rate as of July 1, 2008 is at least \$10.83 per hour with credit given to the employer for the provision to covered employees of health benefits, and \$12.45 per hour without credit for the provision of health benefits. Specifically, §728 applies to Port contractors/consultants and financial assistance recipients with the Aviation or Maritime Divisions that have contracts worth more than \$50,000 and that employ more than 20 employees who spend more than 25% of their time on Port-related work. §728 also provides covered employers with incentives to provide health benefits to employees, establishes a worker retention policy, requires covered employers to submit quarterly payroll reports, and requires covered employers to allow Port representatives access to payroll records in order to monitor compliance and labor organization representatives access to workforces during non-work time and on non-work sites. Covered employers are responsible for complying with the provisions of §728 from the date the covered contract is entered into.

When a contract is awarded, the contractor/consultants will be required to fill out the attached Employer Self Evaluation Form and Certificate of Compliance (see Attachment II) and return them to the Social Responsibility Division (SRD). (i.e., do not include these forms in your statement of qualification/proposal). For more information, please call Connie Ng Wong in the Port's SRD at (510) 627-1390.

D. Web-Accessed Monitoring System (WAMS)

Consultants are notified that the Port has adopted an electronic monitoring system to satisfy certain reporting requirements for prevailing wages, DBE business utilization and workforce. The successful Consultant will be required to utilize WAMS to satisfy said requirements. The Port has designated Elation Systems as its vendor for the electronic submission system and the successful Consultant will be required to utilize the Elation Systems' service for any awarded contract. There will be no cost to Consultant for accessing WAMS for services deemed "professional" as those costs will be absorbed by the Port. Upon award of contract and prior to commencement of work, it will be the responsibility of the successful Consultant to contact Elation Systems, Inc., 155 Filbert St, Suite 249, Oakland, CA 94607, 510-764-1870, support@elationsystems.com for access to WAMS.

E. Maritime and Aviation Project Labor Agreement (MAPLA):

The provisions of MAPLA do not apply to this RFQ.

F. Prevailing Wages

The Port directs the attention of consultants to the requirements to pay prevailing wages for certain types of work, pursuant to California Labor Code, Section 1720, et seq. Section 1720, subd. (a)(1) provides that the term "public works" means:

Construction, alteration, demolition, installation, or repair work done under contract and paid for in whole or in part out of public funds, except work done

directly by any public utility company pursuant to order of the Public Utilities Commission or other public authority. For purposes of this paragraph, “construction” includes work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work.

To the extent that the scope of services delivered under the contract includes work falling within the Labor Code definition of “public works”, the Proposer will be required to comply with all Port requirements with respect to workers who perform such work. If the subconsultant fails to submit complete or timely payroll records for the work performed, then the consultant may submit a statement with his payroll report form that he has been unable to secure the payroll data from that subconsultant, and shall indicate the delinquent subconsultant. If the subconsultant has not submitted the missing payroll records by the time the Port Project Manager prepares the next partial or monthly estimate of work done, the Port Project Manager will deduct from that estimate and withhold payment to the consultant of twice the value of all work done by the delinquent subconsultant since the last preceding estimate was prepared. Such value shall be determined by the Port Project Manager. Payments will be made to the consultant for the full amount of any payments withheld as soon as practicable after the subconsultant submits the missing payroll records for the work and periods involved.

VI. ADDITIONAL PROVISIONS

The following provisions apply to this RFQ:

A. Ownership of Proposal

All rights to information developed, disclosed, or provided in the consultant’s Statement of Qualification (SOQ)/Proposal and its attendant submissions are the property of Port, unless a Respondent makes specific reference to data that is considered proprietary. To the extent that a Respondent claims any copyright, patent, or other intellectual property right in any portion of its SOQ/Proposal, submission of an SOQ/Proposal constitutes the Respondent’s express (a) grant and assignment of a perpetual, transferable (in whole or in part), non-exclusive royalty-free license to the Port for all such portions, and (b) agreement that the Port may use any such intellectual property without charge for any lawful purpose in connection with other Port development projects, including without limitation the creation of derivative works and issuance of sublicenses.

B. Public Records Act

1. Per the Public Records Act (Gov. Code 6250 et seq.), the Port will make available to the public the submitted SOQ/Proposal and all correspondence and written questions submitted during the RFQ process. However, such disclosure shall not be made prior to the date on which the Port publishes a final Board agenda report recommending award of the contract. Except as otherwise required by law, the Port will not disclose

trade secrets or proprietary financial information submitted in response to the RFQ. Any such trade secrets or proprietary financial information, which a Proposer believes should be exempted from disclosure, shall be specifically identified and marked as such. Blanket-type identification by designating whole pages or sections shall not be permitted and shall be invalid. The specific information must be clearly identified as such.

2. Upon a request for records regarding a submitted proposal, the Port will notify the Proposer involved of a specific time for when the records will be made available for inspection. If the Proposer, in a timely manner, identifies any "proprietary, trade secret, or confidential commercial or financial" information which the Proposer determines is not subject to public disclosure, the Proposer will be required fully to intervene, justify such exemption, and secure appropriate injunctive orders in all fora exempting such records from disclosure. The Port reserves the right to independently determine whether any document is subject to disclosure and to make such information available to the extent required by applicable law, without any restriction.

C. Indemnification

If Consultant is selected to receive a contract, it will be required to agree to the following indemnity clause:

To the fullest extent permitted by law (including, without limitation, California Civil Code Section 2782 and 2782.6), Consultant shall defend (with legal counsel reasonably acceptable to the Port), indemnify and hold harmless Port and its officers, agents, departments, officials, representatives and employees (collectively "Indemnitees") from and against any and all claims, loss, cost, damage, injury (including, without limitation, injury to or death of an employee of Consultant or its Subconsultants), expense and liability of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, attorneys' fees, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) that arise out of, pertain to, or relate to, the negligence, recklessness, or willful misconduct of Consultant, any Subconsultant directly or indirectly employed by them, or anyone that they control (collectively "Liabilities"). Such obligations to defend, hold harmless and indemnify any Indemnitee shall not apply to the extent that such Liabilities are caused in part by the sole negligence, active negligence, or willful misconduct of such Indemnitee.

If there is an obligation to indemnify under this Section, Consultant shall be responsible for incidental and consequential damages resulting directly or indirectly, in whole or in part, from Consultant's acts or omissions.

D. Port's Right to Modify

Proposers are advised that the Port has not incurred any obligations or duties in soliciting this RFQ. The Port reserves the right to reject any or all Statements of Qualifications/Proposals submitted in response to this RFQ; to request additional information or clarification of information submitted; to cancel or modify, in part or in its entirety, this RFQ; to request new RFQs or pursue any other means for obtaining the desired services; to waive any informalities or minor irregularities in the SOQ/Proposals, and other inconsequential deviations from the RFQ's requirements. The Board of Port Commissioners retains the right to award a project in part or in total to the Consultant(s) of its choice, and to decide to undertake the project or to terminate the project at any time prior to approval of a formal contract.

E. Conflicts of Interest

By submitting a proposal, the Respondent represents that it is familiar with Section 1090 and Section 87100 et seq. of the Government Code of the State of California, and that it does not know of any facts that constitute a violation of said sections in connection with its proposal. Respondent represents that its Proposal has completely disclosed to Port all facts bearing upon any possible interests, direct or indirect, which Respondent believes any member of Port, or other officer, agent or employee of Port or any department presently has, or will have, in this Agreement, or in the performance thereof, or in any portion of the profits thereunder. Willful failure to make such disclosure, if any, shall constitute ground for rejection of the proposals or termination of any Agreement by Port for cause. Respondent agrees that if it enters into a contract with the Port, it will comply with all applicable conflict of interest codes adopted by the City of Oakland and Port and their reporting requirements.

Consultants should note that if selected, it will be required to execute a contract containing the following provision:

- 15.5 Consultant represents that no person or agency has been employed or retained to solicit or obtain this Agreement upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this representation, the Port, at its option, may annul this Agreement or deduct from the Agreement price or otherwise recover from Consultant the full amount of the contingent fee.

- 15.5.1 As used in this Section, "bona fide agency" means an established commercial or selling agency, maintained by Consultant for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or to obtain Port contracts nor holds itself out as being able to obtain any Port contract or contracts through improper influence.

15.5.2 As used in this Section, “bona fide employee” means a person, employed by Consultant and subject to Respondent’s supervision and control as to time, place and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or to obtain Port contracts nor holds itself out as being able to obtain any Port contract or contracts through improper influence.

15.5.3 As used in this Section, “contingent fee” means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Port contract.

15.5.4 As used in this Section, “improper influence” means any influence that induces or tends to induce a Port Commissioner, employee or officer to give consideration or to act regarding a Port contract on any basis other than the merits of the matter.

F. Non-Collusion Affidavit

Submit a signed and properly executed copy of the Non-Collusion Affidavit (Attachment III) for this RFQ.

VII. PROPOSAL FORMAT AND REQUIRED CONTENTS

All proposals shall follow the format outlined below and contain at least the information requested. All proposals shall be double-sided and shall not exceed 25 pages (not including Sections E through G, below, with each side counting as one page).

A. Introduction/Summary

1. Summary of the proposed scope of work, as perceived by the consultant team’s review of this request for proposals. This section should include a brief description of project issues and objectives as viewed by the consultant.
2. Tabular listing of all firms and/or individual consulting entities who would take part in the project, where the contact offices of each firm are located, the number of employees at that location, and targeted percentage of work for each separate firm.
3. Description of any proposed substantive changes or deviations from the contents and format outlined in this RFQ.

B. Management/Key Personnel/General Qualifications and Experience

1. A list containing the names of the prime consultant and all sub-consultants, with DBE certification numbers (if applicable), their addresses, phone numbers, and principal(s); their expected functions; and the firm's professions expertise as it relates to this RFQ.
2. Name of the prime consultant's Project Manager and a brief summary of his/her professional experience. A Project manager is the person with ultimate control of the contract, staff assignments, client satisfaction, etc. This person is primarily the lead technical staff to whom individual projects are assigned. They would typically oversee the work of the support staff. Port staff would interact primarily with the Project Manager during the project.
3. Names of three key consultant personnel assigned to the project, a brief summary of their experience, and their assignments for this project. Extent of experience working in the aviation industry and with environmental regulatory agencies, particularly in the San Francisco Bay Area and/or California in general, should be specifically described.
4. Description of the role each team member (company) will play and how work will be allocated. Include an organization chart.
5. Descriptions of up to four relevant environmental projects in the aviation industry. Include project status or outcome and added value of your services.

C. Airport Environmental Questions

1. OAK contains jurisdictional wetlands, provides habitat to western burrowing owls, and includes an historic district in the North Field Airport. Describe your involvement in an airport expansion project (terminal gates, aircraft hangar, parking structure, etc.) in an environmentally sensitive area similar to OAK. Describe environmental documents, regulatory permits, mitigation measures, coordination with stakeholders, challenges encountered, and the approaches you took to minimize or resolve issues. (10 points)
2. What are the existing and emerging priority environmental issues at OAK? What services will you provide to assist OAK prepare and/or comply with these key environmental issues? (10 points)

D. Fees

Include copies of your proposed billing rates and rental schedules or mark-up. Billing rates should include all administrative and routine costs. For example, if the consultant normally has a routine five percent mark-up per billing hour for administrative costs, this

should be wrapped into the hourly rate. The Port does not expect to pay extra for the consultant's use of routine business equipment, such as conventional desktop or laptop computers, cellular phones, conventional vehicles (cars and pick-ups without special equipment) and common expendable supplies. NOTE: If the consultant proposes to use a labor multiplier, then the current hourly cost of labor to the Port should also be listed. Travel time to and from the Local Impact Area (Alameda, Oakland, Emeryville and San Leandro) will not be reimbursed.

Reimbursable expenses will be limited to specific expenses identified as follows: parking, postage, and delivery; graphics supplies, reproduction; specialized equipment rental; and other items approved by the Port. All other expenses are not reimbursable and are deemed included in the hourly rate unless approved by the Port.

Indicate subcontractor billing rates/schedules and price markup for subcontractors, if not otherwise clearly incorporated. Mark-up of subcontractor and rental equipment costs can not exceed 5%.

E. Resumes of Assigned Staff

Provide resumes of key professional staff that may be assigned to the Port's projects.

F. References

Provide names, addresses, and telephone numbers of two clients familiar with the Consultant Project Manager's work and one for the Consultant Company, for a total of three references. (Note: the referenced projects for the Project Manager should reflect the Project Manager's recent work; that work does not necessarily have to be while under employment to the Consultant submitting the RFQ.)

G. Compliance with Port Policy Requirements

1. DBE Program

"CONSULTANT – DBE INFORMATION" form will be included in the contract documents **to be executed by the successful consultant(s)**. The purpose of the form is to collect data required under the DOT Regulations -49 CFR 26. Even if no DBE participation will be reported, the successful consultant must execute and return the form to the Port with the executed contract.

The successful consultant's "CONSULTANT – DBE INFORMATION" form should include the names, address and phone numbers of DBE firms that will participate, with a complete description of work to be provided by each, and the dollar value of each DBE transaction. When 100 percent of a contract item of work is not to be performed by a DBE, a description of the exact portion of that work to be performed by that DBE should be

included in the DBE information, including the planned location of that work. A consultant certified as a DBE should describe the work it has committed to performing with its own forces as well as any other work that it has committed to be performed by DBE subconsultants.

The consultant is encouraged to provide written confirmation from each DBE that the DBE is participating in the contract. A copy of a DBE's quote will serve as written confirmation that the DBE is participating in the contract. If a DBE is participating as a joint venture partner, the consultant is encouraged to submit a copy of the joint venture agreement.

2. Exceptions to Port's Standard Professional Services Agreement
Submission of a proposal will confirm that the Proposer fully understands the provisions of the Sample Professional Services Agreement included herein as Attachment I to this RFQ. Submit a written statement that demonstrates the consultant firm's commitment to enter into a contract with the Port based upon a review of the sample Port's Professional Services Agreement.

To the extent that the Proposer takes exception to any part of the Professional Services Agreement, all such objections shall be stated in the Proposal, specifically identifying the objectionable section, and including any of the Proposer's proposed amendments to the Professional Services Agreement. The Port will respond to the proposed amendments from the short-listed consultants prior to the interview and the Port's response will be considered final.

3. Conflict of Interest, Pending Litigation or Removal from Position
Describe any arrangements, formal or informal, that the firm has with any party that might interfere with the firm's ability to provide services described in this RFQ. Describe any litigation, administrative proceeding, or investigation (actual or pending) in which the firm is involved or to which it is subject that might have an adverse effect on its ability to fulfill its engagements described in this RFQ. Indicate if your firm has been removed by any organization during the last five years, and explain the reasons for that action.
4. Capacity to Provide the Requested Insurance
Submit a written statement indicating that Proposer can secure the levels of insurance described in Section V, Port Policy Requirements, subsection B., Insurance Requirements, above.
5. Living Wage Requirements
Submit a written statement indicating that Proposer has reviewed the Living Wage Requirements, included herein as Attachment II to this RFQ, and that Proposer will comply with said requirements.

Upon execution of an Agreement, the selected consultant will be required to complete the attached Employer Self Evaluation Form and Certificate of Compliance (Attachment II of this RFQ) and submit them to SRD.

VIII. SUBMITTAL DEADLINE AND REQUIREMENTS

A. Four bound copies of the qualifications should be mailed or delivered to:

Colleen Liang
Division of Environmental Programs & Planning
Port of Oakland
530 Water Street
Oakland, CA 94607-3789

Proposals must be received by June 22, 2009 at 3:00 PM.

B. Consultant Selection Process

1. Proposal Technical Review and Screening

Port staff will evaluate all proposals received. The Port will evaluate proposals for technical excellence and develop a short list. The Port will then notify all the respondents of the short list, confirm interview schedule, and conduct interviews with the key team members from the respondent firms. The final selection will be made on the combined merits of both the respondent's SOQ and the interview.

2. Selection Criteria

SOQs will be evaluated on the following criteria:

- a. Experience in completing similar work
- b. The proposed team
 - The experience, qualifications, and availability of the Project Manager.
 - The experience of the project team
- c. Responses to the Airport Environmental Questions
- d. Organization and presentation of qualifications
- e. Effectiveness in complying with Port policies and requirements as stated in this RFQ as measured by completion of attached forms.

C. Consultant Selection Schedule

The planned schedule (only approximate after Pre-proposal conference) for consultant selection is as follows:

Pre-proposal conference (attendance advised) ²	May 20, 2009, 8:30 AM
Board Room, 2nd Floor	
530 Water Street, Oakland	
RFQ response deadline	June 22, 2009, 3:00 PM
Short list of qualified firms/teams	July 8, 2009
Interviews and staff selections	July 27, 2009
Board approval	October 6, 2009
Contract Preparation and Execution	up to 12 weeks

D. Questions

Technical, DBE/local business area participation, and insurance questions should be submitted in writing to the following individuals:

	<u>Name</u>	<u>Phone/Fax</u>	<u>E-mail Address</u>
<u>Technical</u>	Colleen Liang	(510) 627-1198 (p) (510) 451-3755 (f)	cliang@portoakland.com
<u>FAA DBE</u>	Lila Zinn	(510) 627-1485 (p) (510) 451-1656 (f)	lzinn@portoakland.com
<u>Program</u>			
<u>Living Wage</u>	Connie Ng Wong	(510) 627-1390 (p) (510) 451-1656 (f)	cng-wong@portoakland.com
<u>Policy</u>			
<u>Insurance</u>	Sharon Caplan	(510) 627-1532 (p) (510) 627-1626 (f)	scaplan@portoakland.com
<u>Requirements</u>			

IX. ATTACHMENTS

- I. Sample Professional Services Agreement
Completed Sample Insurance Requirement Form
- II. Port Living Wage Ordinance:
Employer Self Evaluation Form
Certificate of Compliance
- III. Non-Collusion Affidavit

² If you would like to attend the pre-proposal conference remotely, contact Colleen Liang for a call-in number.

REQUEST FOR QUALIFICATIONS

ATTACHMENT I

SAMPLE OF PROFESSIONAL SERVICES AGREEMENT

**MODERATE ON-CALL PROFESSIONAL
SERVICES AGREEMENT
FOR CONTRACTS \$500,000 AND UP**

PROFESSIONAL SERVICES AGREEMENT

Between

PORT OF OAKLAND

And

«ConsultantName»

[«ScopeofWork»]

(Contract No. «Resolution»)

Dated

«EffectiveDate»

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«ConsultantName»

CONTRACT FOR PROFESSIONAL SERVICES

(«ScopeofWork»)

This Agreement is entered into on «EffectiveDate» in the City of Oakland, State of California, by and between «ConsultantName», hereinafter referred to as “Consultant” and the City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners, hereinafter referred to as “Port”.

Recitals

WHEREAS, Port wishes to retain Consultant to provide _____ services for its _____ project, which is a component of the Port’s _____; and,

WHEREAS, Consultant was selected by means of Port’s consultant selection process, and represents that it is qualified to provide the services required by Port as set forth under this Agreement; and,

WHEREAS, the City of Oakland’s Charter and the Port of Oakland’s rules and regulations authorize Port to enter into agreements for expert professional temporary services; and,

WHEREAS, the services proposed in this Agreement are professional and temporary in nature, and Port does not have regular employees who possess the necessary specialized knowledge to provide such services;

Now, THEREFORE, the parties agree as follows:

1. Definitions

Where any word or phrase defined below, or a pronoun used in place thereof, is used in any part of this Agreement, it shall have the meaning herein set forth.

Agreement	This Agreement together with all attachments and appendices and other documents incorporated herein by reference, including, but not limited to, Appendices “A”, “B”, “C”, and “D”, attached hereto.
Consultant	«ConsultantName».
Port	City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners, which has delegated to the Port Chief Engineer the responsibility of administering this Agreement. The Port Chief Engineer, upon written notice to Consultant, may delegate all or portions of its responsibility and authority to a Project Engineer or other person or entity.
Project	The Port’s [DESCRIBE PROJECT] project, which is a component of the Port’s [DESCRIBE PROGRAM].
Services	All work, labor, materials and services required under the terms and conditions of this Agreement, provided pursuant to the terms and conditions of this Agreement, including without limitation architectural, engineering, coordination and administrative services.

Subconsultants Consultant's consultants, subconsultants, contractors and subcontractors, of any tier.

2. Term of Agreement

All work comprising the Services shall be deemed performed under this Agreement. This Agreement shall conclude upon the completion of the Project.

3. Services Consultant Agrees to Perform

3.1 Consultant shall perform all Services described in Appendix "A", "Services to be Provided by Consultant," attached hereto and incorporated by reference as though fully set forth herein.

3.2 Consultant shall complete all Services required by this Agreement within the times specified in the Milestone Schedule in Appendix "A." Consultant agrees that the Milestone Schedule includes reasonable allowances for completion of the Services, including all time required for Port's review and approval of deliverables and for approval of the deliverables by all authorities having jurisdiction over the Project and the Services. Consultant shall achieve its scheduled Milestones (as shown on the Milestone Schedule) unless an excusable event causes delay (excusable delay), and unless Consultant gives written notice of the excusable event and requests a time extension within ten days of the occurrence of the excusable event. (Excusable events shall be limited to acts of neglect by Port or Port's agents or consultants when acting at Port's direction, breaches of this Agreement by Port, Acts of God such as fire, flood, earthquake, or epidemic, or delay by a construction contractor during the construction phase of the Project, or any other circumstances beyond Consultant's control. If the period of excusable delay caused by an excusable event concurs with an Consultant caused or other nonexcusable delay, Port may (but shall not be required to) grant a time extension without compensation.

3.3 Consultant may recover extra costs resulting from excusable delay upon showing that the costs claimed (i) resulted from time and/or expenses actually incurred in performing Services, (ii) were incurred by Consultant as a direct result of the delay and not otherwise within Consultant's scope of Services, and (iii) are documented to the Port's satisfaction. (For example, and not by way of limitation, contract punchlist and final inspection Services, whenever performed, and Services related to correcting deficiencies in Consultant's work, shall be within Basic Services and not entitle Consultant to extra costs or Additional Services.)

3.4 Should the progress of the Services under this Agreement at any time fall behind schedule for any reason other than excusable delays, Consultant shall apply such additional manpower and resources as necessary to bring progress of the Services under this Agreement back on schedule and consistent with the standard of professional skill and care required by this Agreement. Time is of the essence in the performance of this Agreement.

4. Compensation

4.1 Port shall pay Consultant compensation according to the Compensation Schedule established in Appendix "B", Payment to Consultant. Port shall pay Consultant in monthly payments on or before the last day of each month for Services in an amount which the Port, in its sole discretion, concludes is the value of the Services which have been properly performed as of the last day of the immediately preceding month and is due under Appendix "B".

4.2 Port shall retain ten percent (10%) of each invoice until completion of all Services under this Agreement by the Consultant. Retained portions shall be released with the final payment provided Consultant has satisfactorily performed its obligations under this Agreement. Except to the extent provided by California Civil Code §3320 (including successor statutes), in no event shall Port be liable for interest, late charges, penalties or other amounts for any late payments.

- 4.3 Port shall not incur any charges under this Agreement, nor shall any payments become due to Consultant for any payment period on the Project, until Port receives all deliverables required under Appendix F for the payment period (if any) and reasonably accepts such deliverables as meeting the requirements of this Agreement. In cases where Consultant has partially completed one or more deliverables due during a payment period, and if Consultant demonstrates diligent progress thereon, then Port may make a partial progress payment based upon Consultant's percentage completion of the partially completed deliverables and diligent progress but taking into account any adverse impacts upon Port.
- 4.4 Port will not withhold entire payment if a questioned amount is involved, but will issue payment in the amount of the total invoice less any questioned amount(s). Port will make payment for questioned amounts(s) upon Port's receipt of any requested documentation verifying the claimed amount(s) and Port's determination that the amount is due under the terms of this Agreement. Port shall advise Consultant, in writing, within 15 days of receipt of the requested documentation. Final payment will be made when all Services required under this Agreement have been completed to the reasonable satisfaction of Port including, without limitation, Consultant's transmittal of all deliverables to Port required by Appendix F.
- 4.5 Invoices furnished by Consultant under this Agreement must be in a form acceptable to Port. All amounts paid by Port to Consultant shall be subject to audit by Port. Payment shall be made by Port to Consultant at the address stated hereinabove.
- 4.6 Port may set off against payments due Consultant under this Agreement any sums that Port determines that Consultant owes to Port because of Consultant's errors, omissions, breaches of this Agreement, delays or other acts which caused Port monetary damages. Prior to exercising such right, Port must demand and attend mediation pursuant to Section 24.3 of this Agreement, to be attended by Port, Consultant, and OCIP insurance carriers; such mediation to occur within 30 days of demand. If the parties cannot agree upon the time, place, and mediator, within one week of the Port's demand, then the Alameda County Superior Court may upon application by any party make such selection for the parties. If a party other than Port refuses to mediate under this Section, then Port shall have satisfied its obligations under this Section.
- 4.7 If the Consultant's books and records have been generated from computerized data, Consultant agrees to provide the Port or its representative extracts of data files in a computer readable format on data disks, e-mail with attached files or suitable alternative computer data exchange formats. The Consultant should not charge the Port for the reasonable use of the Consultant's photocopying machine while conducting the audit, nor for any cost of retrieving, downloading to diskette, and or printing any records or transactions stored in magnetic, optical, microform or other media.
5. Maximum Costs
- 5.1 Port's obligation hereunder shall not at any time exceed the amount approved by the Board of Port Commissioners and approved by the Port's Executive Director for payment to the Consultant pursuant to the terms of this Agreement.
- 5.2 Except as may be provided by Port ordinances governing emergency conditions, Port has not authorized its employees, officers and agents to request Consultant to perform Services or to provide materials, equipment and supplies that would result in Consultant performing Services or providing materials, equipment and supplies that exceed the scope of the Services, materials, equipment and supplies agreed upon in the Agreement unless the Port amends the Agreement in writing and approves the amendment as required by law to authorize the additional Services, materials, equipment or supplies.

- 5.3 Port shall not reimburse Consultant for Services, materials, equipment or supplies provided by Consultant beyond the scope of the Services, materials, equipment and supplies agreed upon in the Agreement and unless approved by a written amendment to the Agreement having been executed and approved in the same manner as this Agreement.

6. Qualified Personnel

- 6.1 For purposes of this Agreement, except for notices specified under Section 17 below, Port shall direct all communications to Consultant through _____ **[insert name and title]**; and Consultant shall direct all communications to Port through _____ **[insert name and title]**
- 6.2 Services under this Agreement shall be performed only by competent personnel under the supervision of and/or in the employment of Consultant. Consultant shall conform with Port's reasonable requests regarding assignment of personnel, but all personnel, including those assigned at Port's request, shall be supervised by Consultant.
- 6.3 Consultant agrees that all professional personnel assigned to the Project will be listed on Schedule 6.3, attached hereto and by this reference incorporated herein, and that the listed personnel will continue their assignments on the Project during the entire term of this Agreement. It is recognized that the listed personnel are not bound by personal employment contracts to Consultant. Consultant agrees that reassignment of any of the listed personnel during the Agreement period shall only be with other professional personnel who have equivalent experience and shall require the prior written approval of Port. Any costs associated with reassignment of personnel shall be borne exclusively by Consultant.

7. Representations

- 7.1 Consultant represents that it has reviewed Appendix "A", Services to be Provided by Consultant, and that in its professional judgment the Services to be performed under this Agreement can be performed for a fee within the maximum amount set forth in the Compensation Schedule established in Appendix "B", Payments to Consultant, and within the times specified in the Milestone Schedule.
- 7.2 Consultant represents that it is qualified to perform the Services and that it possesses the necessary licenses and/or permits required to perform the Services or will obtain such licenses and/or permits prior to time such licenses and/or permits are required. Consultant also represents that it has extensive knowledge of all applicable building codes, laws, regulations and ordinances.
- 7.3 Consultant represents that it has specialized expertise in designing and observing construction of facilities similar to those intended for the Project. Consultant agrees that the Services shall be performed in a manner that conforms to the high standards of architectural and/or engineering practice observed by a specialist in performing services similar to the Services. Consultant agrees that for a period of one year after the completion of the Services or at the final acceptance of the construction resulting from the Services, whichever is later, it will re-perform or replace any part or all of the Services deemed by Port to be defective and/or not meeting the above standard.
- 7.4 The granting of any progress payment by Port, or the receipt thereof by Consultant, or any inspection, review, approval or oral statement by any representative of Port or any other governmental entity, shall in no way waive or limit the obligations in this Section 7 or lessen the liability of Consultant to re-perform or replace unsatisfactory Services to the extent required by Section 7.3 above, including but not limited to cases where the defective or below standard Services may not have been apparent or detected at the time of such payment, inspection, review or approval.

8. Indemnification and General Liability

- 8.1 To the fullest extent permitted by law (including, without limitation, California Civil Code Section 2782), Consultant shall defend (with legal counsel chosen or approved by the Port Attorney), indemnify and hold harmless Port and its officers, agents, departments, officials, representatives and employees (collectively "Indemnitees") from and against any and all claims, loss, cost, damage, injury (including, without limitation, injury to or death of an employee of Consultant or its Subconsultants), expense and liability of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, attorneys' fees, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) that arise from or relate to, directly or indirectly, in whole or in part, from: (1) the Services under this Agreement, or any part thereof, or (2) any negligent act or omission of Consultant, any Subconsultant, anyone directly or indirectly employed by them, or anyone that they control (collectively "Liabilities"). Such obligations to defend, hold harmless and indemnify any Indemnitee shall not apply to the extent that such Liabilities are caused in whole or in part by the sole negligence, active negligence, or willful misconduct of such Indemnitee, but shall apply to all other Liabilities.
- 8.2 Consultant shall defend (with legal counsel chosen or approved by the Port Attorney), indemnify and hold harmless the Indemnitees from all loss, cost, damage, expense, liability or claims, in law or in equity, including attorneys' fees, court costs, litigation expenses and fees of expert consultants or expert witnesses, that may at any time arise for any infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark or any other proprietary right of any person or persons in consequence of the use by Port, or any of the other Indemnitees, of articles or Services to be supplied in the performance of this Agreement.
- 8.3 Port shall include a provision in the construction contract with the general contractor on the Project requiring the general contractor to indemnify Consultant for damages resulting from the negligence of the general contractor and its subcontractors. Port shall also include a provision in the construction contract with the general contractor on the project requiring the general contractor to name Consultant as an additional insured on its CGL insurance coverage. The risk of an inadvertent omission of such provisions is on Consultant. Therefore, Consultant shall review the construction contract prior to bidding to ensure that such provision has been included in the draft of the bid documents.
- 8.4 Consultant shall place in its subconsulting agreements and cause its Subconsultants to agree to indemnities and insurance obligations in favor of Port and other Indemnitees in the exact form and substance of those contained in this Agreement.
- 8.5 Port acknowledges that the discovery, presence, handling or removal of asbestos products polychlorinated biphenyl (PCB) or other hazardous substances which may presently exist at the Project site is outside of Consultant's expertise and is not included in the scope of Services Consultant is to perform nor included in Consultant's insurance. Port shall hire an expert consultant in this field if the Project involves such materials. Consultant shall not be responsible or be involved in any way with the discovery, presence, handling or removal of such materials. Consultant shall be responsible to coordinate with Port's expert consultant as required by Appendix "A", Services To Be Provided By Consultant.

9. Liability of Port

- 9.1 Except as provided in Appendix "A", Services to be Provided by Consultant, and Appendix E, Insurance, Port's obligations under this Agreement shall be limited to the payment of the compensation provided for in Sections 3, 4 and 5 of this Agreement.
- 9.2 Notwithstanding any other provision of this Agreement, in no event shall Port be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or

incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement or the Services performed in connection with this Agreement.

9.3 Port shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Consultant, or by any of its employees, even though such equipment be furnished, rented or loaned to Consultant by Port. The acceptance or use of such equipment by Consultant or any of its employees shall be construed to mean that Consultant accepts full responsibility for and agrees to exonerate, indemnify, defend and save harmless Port from and against any and all claims for any damage or injury of any type, including attorneys' fees, arising from the use, misuse or failure of such equipment, whether such damage be to the Consultant, its employees, Port employees or third parties, or to property belonging to any of the above.

9.4 Nothing in this Agreement shall constitute a waiver or limitation of any right or remedy, whether in equity or at law, which Port may have under this Agreement or any applicable law. All rights and remedies of Port, whether under this Agreement or other applicable law, shall be cumulative.

10. Independent Contractor; Payment of Taxes and Other Expenses

10.1 Consultant shall be deemed at all times to be an independent contractor and shall be wholly responsible for the manner in which Consultant performs the Services required of Consultant by the terms of this Agreement. Consultant shall be liable for the acts and omissions of it its Subconsultants, its employees and its agents.

10.2 Nothing contained herein shall be construed as creating an employment, agency or joint venture relationship between Port and Consultant. Consultant acknowledges that neither it nor any of its employees or agents shall, for any purpose whatsoever, be deemed to be Port employees, and shall not be entitled to receive any benefits conferred on Port employees, including without limitation workers' compensation, pension, health, insurance or other benefits.

10.3 Consultant shall be solely responsible for payment of any requires taxes, including California sales and use taxes, City of Oakland business taxes and United States income tax withholding and social security taxes, levied upon this Agreement, the transaction, or the Services delivered pursuant hereto.

10.4 Consultant shall be available as much as reasonably possible to Port staff during the Port's normal working hours or as otherwise requested by Port. Terms in this Agreement referring to direction from Port shall be construed as providing for direction as to policy and the result of Consultant's Services only and not as to the means by which such a result is obtained.

10.5 Nothing in this Agreement shall operate to confer rights or benefits on persons or entities who are not parties to this Agreement.

11. Insurance

- 11.1 Consultant shall comply with all requirements of Appendix E, which is attached and made a part of this Contract. As more particularly described in Appendix E, Port has secured project specific insurance or wrap up insurance, or is administering an owner controlled insurance program ("OCIP"), which includes Consultant and its subconsultants as additional insureds. Consultant and its subconsultants shall communicate this fact to their insurance carriers and request that the risk of this Project be excluded from all of their practice policies and other policies provided by the foregoing insurance or OCIP. Consultant's fee under this Contract, and its subconsultants' fees under their subconsultant contracts, shall be adjusted to reflect the amount of the insurance premiums which they thereby avoid. Consultant and its subconsultants shall afford Port access to their books and records and cooperate with Port in verifying the amount of savings realized.

12. Suspension of Services

- 12.1 Port may, without cause, order Consultant to suspend, delay or interrupt ("suspend") Services pursuant to this Agreement, in whole or in part, for such periods of time as Port may determine in its sole discretion. Port shall deliver to Consultant written notice of the extent of the suspension at least seven (7) calendar days before the commencement thereof. Suspension shall be treated as an excusable delay and Consultant shall be compensated for such delay to the extent provided under this Agreement.
- 12.2 Notwithstanding anything to the contrary contained in this Section, no compensation shall be made to the extent that performance is, was or would have been so suspended, delayed or interrupted by a cause for which Consultant is responsible.

13. Termination of Agreement for Cause

- 13.1 If at any time Port believes Consultant may not be adequately performing its obligations under this Agreement, that Consultant may fail to complete the Services as required by this Agreement, or has provided written notice of observed deficiencies in Consultant's performance, Port may request from Consultant prompt written assurances of performance and a written plan to correct the observed deficiencies in Consultant's performance. Consultant shall provide such written assurances and written plan within ten calendar days of receipt of written request. Consultant acknowledges and agrees that any failure to provide written assurances and a written plan to correct observed deficiencies, in the required time, is a material breach under this Agreement.
- 13.2 Consultant shall be in default of this Agreement and Port may, in addition to any other legal or equitable remedies available to Port, terminate Consultant's right to proceed under the Agreement, for cause:
- 13.2.1 Should Consultant make an assignment for the benefit of creditors, admit in writing its inability to pay its debts as they become due, file a voluntary petition in bankruptcy, be adjudged a bankrupt or insolvent, file a petition or answer seeking for itself any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any present or future statute, law, or regulation, file any answer admitting or not contesting the material allegations of a petition filed against Consultant in any such proceeding, or seek, consent to, or acquiesce in, the appointment of any trustee, receiver, custodian or liquidator of Consultant or of all or any substantial part of the properties of Consultant, or if Consultant, its directors or shareholders, take action to dissolve or liquidate Consultant; or
- 13.2.2 Should Consultant commit a material breach of this Agreement and not cure such breach within ten (10) calendar days of the date of notice from Port to Consultant demanding such cure; or, if such failure is curable but not curable within such ten (10) day period, within such period of time as is reasonably necessary to accomplish such cure. (In order

for Consultant to avail itself of this time period in excess of 10 calendar days, Consultant must provide Port within the 10 day period a written plan acceptable to Port to cure said breach, and then diligently commence and continue such cure according to the written plan); or

- 13.2.3 Should Consultant violate or allow a violation of any valid law, statute, regulation, rule, ordinance, permit, license or order of any governmental agency in effect at the time of performance of the Services and applicable to the Project or Services and does not cure such violation within ten (10) days of the date of the notice from Port to Consultant demanding such cure; or, if such failure is curable but not curable within such ten (10) day period, within such period of time as is reasonably necessary to accomplish such cure. (In order for Consultant to avail itself of this time period in excess of 10 calendar days, Consultant must provide Port within the 10 day period a written plan to cure said violation acceptable to Port, and then diligently commence and continue performance of such cure according to the written plan.)

13.3 In the event of termination by Port as provided herein for cause:

- 13.3.1 Port shall compensate Consultant for the value of the Services delivered to Port upon termination as determined in accordance with the Agreement, subject to all rights of offset and backcharges, but Port shall not compensate Consultant for its costs in terminating the Services or any cancellation charges owed to third parties;
- 13.3.2 Consultant shall deliver to Port possession of all tangible aspects of the Services in their then condition, including but not limited to, all copies (electronic and hard copy) of designs, engineering, Project records, cost data of all types, drawings and specifications and contracts with vendors and Subconsultants, and all other documentation associated with the Project, and all supplies and aids dedicated solely to performing Services which, in the normal course of the Services, would be consumed or only have salvage value at the end of the Services period.
- 13.3.3 Consultant shall remain fully liable for the failure of any Services completed and drawings and specifications provided through the date of such termination to comply with the provisions of the Agreement. The provisions of this Section shall not be interpreted to diminish any right which Port may have to claim and recover damages for any breach of this Agreement, but rather, Consultant shall compensate Port for all loss, cost, damage, expense, and/or liability suffered by Port as a result of such termination and failure to comply with the Agreement.

- 13.4 In the event a termination for cause is determined to have been made wrongfully or without cause, then the termination shall be treated as a termination for convenience, and Consultant shall have no greater rights than it would have had if a termination for convenience had been effected in the first instance. No other loss, cost, damage, expense or liability may be claimed, requested or recovered by Consultant.

14. Termination of Agreement for Convenience

- 14.1 Port may terminate performance of the Services under the Agreement in accordance with this Section in whole, or from time to time in part, whenever Port shall determine that termination is in the Port's best interests. Termination shall be effected by Port delivering to Consultant, at least seven (7) calendar days prior to the effective date of the termination, a Notice of Termination specifying the extent to which performance of the Services under the Agreement is terminated.
- 14.2 After receipt of a Notice of Termination, and except as otherwise directed by Port, Consultant shall:

- 14.2.1 Stop Services under the Agreement on the date and to the extent specified in the Notice of Termination;
 - 14.2.2 Place no further orders or subcontracts (including agreements with Subconsultants) for materials, Services, or facilities except as necessary to complete the portion of the Services under the Agreement which is not terminated;
 - 14.2.3 Terminate all orders and subcontracts to the extent that they relate to performance of Services terminated by the Notice of Termination;
 - 14.2.4 Assign to Port in the manner, at times, and to the extent directed by Port, all right, title, and interest of Consultant under orders and subcontracts so terminated. Port shall have the right, in its discretion, to settle or pay any or all claims arising out of termination of orders and subcontracts;
 - 14.2.5 Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with approval or ratification of Port to the extent Port may require. Port's approval or ratification shall be final for purposes of this clause;
 - 14.2.6 Transfer title and possession to Port, and execute all required documents and take all required actions to deliver in the manner, at times, and to the extent, if any, directed by Port, completed and uncompleted designs and specifications, Services in process, completed Services, supplies, and other material produced or fabricated as part of, or acquired in connection with performance of, Services terminated by the Notice of Termination (including mockups and model(s)), completed or partially completed plans, drawings, information, in whatever form (i.e., hard-copy and electronic), all intellectual property rights (including without limitation, to the extent applicable, all licenses and copyright, trademark and patent rights) and all other property and property rights which, if the Agreement had been completed, would have been required to be furnished to Port;
 - 14.2.7 Use its best efforts to assist Port in selling, in the manner, at times, to the extent, and at a price or prices that Port directs or authorizes, any property of the types referred to in Section 14.2.6, but Consultant shall not be required to extend credit to any purchaser, and may acquire any such property under conditions prescribed and at a price or prices approved by Port. All proceeds from the foregoing shall be applied to reduce payments to be made by Port to Consultant under this Agreement, shall otherwise be credited to the price or cost of Services covered by this Agreement or be paid in such other manner as Port may direct;
 - 14.2.8 Complete performance of any part of the Services which were not terminated by the Notice of Termination; and
 - 14.2.9 Take such action as may be necessary, or as Port may direct, for the protection and preservation of property related to this Agreement which is in Consultant's possession and in which Port has or may acquire an interest.
- 14.3 After receiving a Notice of Termination, Consultant shall submit to Port a termination claim, in the form and with the certification Port prescribes. The claim shall be submitted promptly but in no event later than 3 months from the effective date of the termination, unless one or more extensions in writing are granted by Port upon Consultant's written request made within such 3-month period or authorized extension. However, if Port determines that facts justify such action, it may receive and act upon any such termination claim at any time after such 3-month period or extension. If Consultant fails to submit the termination claim within the time allowed, Port may determine, on basis of information available to it, the amount, if any, due to Consultant because of the termination. Port shall then pay to Consultant the amount so determined.

- 14.4 Subject to provisions of Section 14.3, Consultant and Port may agree upon the whole or part of the amount or amounts to be paid to Consultant because of any termination of Services under this Section. The amount or amounts may include a reasonable allowance for profit on Services done. However, such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total Agreement price as reduced by the amount of payments otherwise made and as further reduced by the Agreement price of Services terminated. The Agreement may be amended accordingly, and Consultant shall be paid the agreed amount.
- 14.5 If Consultant and Port fail, under Section 14.4, to agree on the whole amount to be paid to Consultant because of termination of Services under this Section, then Consultant's entitlement to compensation for Services specified in the Agreement which are performed before the effective date of Notice of Termination, shall be the total (without duplication of any items) of –
- 14.5.1 Reasonable value of Consultant's Services performed prior to Notice of Termination, based on Consultant's entitlement to compensation under Appendix "B", "Payments to Consultant". Such amount or amounts shall not exceed the total Agreement price as reduced by the amount of payments otherwise made and as further reduced by the Agreement value of Services terminated. Deductions against such amount or amounts shall be made for deficiently performed Services, rework caused by deficiently performed Services, cost of materials to be retained by Consultant, amounts realized by sale of materials, and for other appropriate credits against cost of Services. Such amount or amounts may include profit, but not in excess of 10 percent of Consultant's total costs of performing the Services.
- 14.5.2 When, in opinion of Port, the cost of any item of Services is excessively high due to costs incurred to remedy or replace defective or rejected Services (including having to re-perform Services), reasonable cost to be allowed will be the estimated reasonable cost of performing Services in compliance with the requirements of Agreement and excessive actual cost shall be disallowed.
- 14.5.3 Reasonable cost to Consultant of handling material returned to vendors, delivered to Port or otherwise disposed of as directed by Port.
- 14.6 Except as provided in this Agreement, in no event shall Port be liable for costs incurred by Consultant (or Subconsultants) after receipt of a Notice of Termination. Such non-recoverable costs include, but are not limited to, anticipated profits on the Agreement or subcontracts, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, costs of preparing and submitting claims or proposals, attorney's fees or other costs relating to prosecution of the claim or a lawsuit, pre-judgement interest, or any other expense which is not reasonable or authorized under Section 14.5.
- 14.7 This section shall not prohibit Consultant from recovering costs necessary to discontinue further Services under the Agreement as provided for in Section 14.2 or costs authorized by Port to settle claims from Subconsultants.
- 14.8 In arriving at amount due Consultant under this Section there shall be deducted:
- 14.8.1 All unliquidated advance or other payments on account theretofore made to Consultant, applicable to the terminated portion of Agreement,
- 14.8.2 Any substantiated claim which Port may have against Consultant in connection with this Agreement, and
- 14.8.3 The agreed price for, or proceeds of sale of, any materials, supplies, or other things kept by Consultant or sold under the provisions of this Section, and not otherwise recovered by or credited to Port.

- 14.9 If the termination for convenience hereunder is partial, before settlement of the terminated portion of this Agreement, Consultant may file with Port a request in writing for equitable adjustment of price or prices specified in the Agreement relating to the portion of this Agreement which is not terminated. Port may, but shall not be required to, agree on any such equitable adjustment. Nothing contained herein shall limit the right of Port and Consultant to agree upon amount or amounts to be paid to Consultant for completing the continued portion of the Agreement when the Agreement does not contain an established price for the continued portion. Nothing contained herein shall limit Port's rights and remedies at law.
15. Conflicts of Interest/Other Agreements/Prohibition Against Contingent Fees
- 15.1 Consultant represents that it is familiar with Section 1090 and Section 87100 et seq. of the Government Code of the State of California, and that it does not know of any facts that constitute a violation of said sections.
- 15.2 Consultant represents that it has completely disclosed to Port all facts bearing upon any possible interests, direct or indirect, which Consultant believes any member of Port, or other officer, agent or employee of Port or any department presently has, or will have, in this Agreement, or in the performance thereof, or in any portion of the profits thereunder. Willful failure to make such disclosure, if any, shall constitute ground for termination of this Agreement by Port for cause. Consultant agrees to comply with all conflict of interest codes adopted by the City of Oakland and Port of Oakland and their reporting requirements.
- 15.3 Consultant covenants that it presently has no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of Services required under this Agreement. Without limitation, Consultant represents to and agrees with the Port that Consultant has no present, and will have no future, conflict of interest between providing the Port the Services hereunder and any interest Consultant may presently have, or will have in the future, with respect to any other person or entity (including but not limited to any federal or state wildlife, environmental or regulatory agency) which has any interest adverse or potentially adverse to the Port, as determined in the reasonable judgment of the Port. The provisions of this Section 16 shall remain fully effective indefinitely after termination of Services to the Port hereunder.
- 15.4 Consultant represents that neither it nor any of Consultant's employees, officers or agents has any interest, however remote, in any other agreement with Port, whether or not such agreement is with Consultant's firm, affiliate firms, or through separate employment, except as expressly itemized below. Failure to disclose such information will result in termination of this Agreement pursuant to Section 13 herein. These other agreements are:
[to be provided by Consultant here, or in a Schedule 15.4, annexed to the Agreement; otherwise insert "None"]
- 15.5 Consultant represents that no person or agency has been employed or retained to solicit or obtain this Agreement upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this representation, the Port, at its option, may annul this Agreement or deduct from the Agreement price or otherwise recover from Consultant the full amount of the contingent fee.
- 15.5.1 As used in this Section, "bona fide agency" means an established commercial or selling agency, maintained by Consultant for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or to obtain Port contracts nor holds itself out as being able to obtain any Port contract or contracts through improper influence.

- 15.5.2 As used in this Section, “bona fide employee” means a person, employed by Consultant and subject to Consultant’s supervision and control as to time, place and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or to obtain Port contracts nor holds itself out as being able to obtain any Port contract or contracts through improper influence.
- 15.5.3 As used in this Section, “contingent fee” means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Port contract.
- 15.5.4 As used in this Section, “improper influence” means any influence that induces or tends to induce a Port Commissioner, employee or officer to give consideration or to act regarding a Port contract on any basis other than the merits of the matter.

16. Proprietary or Confidential Information of Port; Publicity

- 16.1 Consultant acknowledges and agrees that, in the performance of the Services under this Agreement or in the contemplation thereof, Consultant may have access to private or confidential information which may be owned or controlled by Port and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to Port. Consultant agrees that all information disclosed by Port to or discovered by Consultant shall be held in strict confidence and used only in performance of the Agreement. Consultant shall exercise the same standard of care to protect such information as a reasonably prudent Consultant would use to protect its own proprietary data, and shall not accept employment adverse to the Port’s interests where such confidential information could be used adversely to the Port’s interests. Consultant agrees to notify the Port immediately in writing if it is requested to disclose any information made known to or discovered by Consultant during the performance of or in connection with this Agreement.
- 16.2 Any publicity or press releases with respect to the Project or Services shall be under the Port’s sole discretion and control. Consultant shall not discuss the Services or Project, or matters pertaining thereto, with the public press, representatives of the public media, public bodies or representatives of public bodies, without Port’s prior written consent. Consultant shall have the right, however, without Port’s further consent, to include representations of Services among Consultant’s promotional and professional material, and to communicate with persons or public bodies where necessary to perform under this Agreement.
- 16.3 The provisions of this Section 16 shall remain fully effective indefinitely after termination of Services to the Port hereunder.

17. Notice to the Parties

Notice by the parties shall be subject to Appendix D hereto.

18. Ownership of Results/Work for Hire

- 18.1 Any interest (including, but not limited to, property interests and copyright interests) of Consultant or its Subconsultants, in drawings, plans, specifications, studies, reports, memoranda, computational sheets or other documents (including but not limited to, electronic media) prepared by Consultant or its Subconsultants in connection with Services to be performed under this Agreement shall become the property of and will be transmitted to Port at the conclusion of this Agreement. Consultant may, however, retain one copy for its files. Notwithstanding the foregoing, in the normal course of the Consultant’s activities, Consultant shall have an unrestricted right to reuse its standard construction drawings, details, specifications and other related documents, including the right to retain electronic data or other reproducible copies thereof, and

the right to reuse portions or the information contained in them which is incidental to the overall design of the Project.

- 18.2 Any and all artworks, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, source codes or any original works of authorship created by Consultant or its Subconsultants in connection with Services performed under this Agreement shall be Works for Hire as defined under Title 17 of the United States Code, and all copyrights in such works are the property of Port. In the event that it is ever determined that any works created by Consultant or its Subconsultants under this Agreement are not Works for Hire under U.S. law, Consultant hereby assigns all copyrights to such works to Port. With the prior written approval of the Port, Consultant may retain and use copies of such works for reference and as documentation of its experience and capabilities.

19. Audit and Inspection Records

- 19.1 Consultant shall maintain all drawings, specifications, calculations, cost estimates, quantity takeoffs, statements of construction costs and completion dates, schedules and all correspondence, internal memoranda, papers, writings, electronic media and documents of any sort prepared by or furnished to Consultant during the course of performing the Services and providing services with respect to the Project, for a period of at least five years following final completion and acceptance of the Project. All such records (except for materials subject to the attorney client privilege, if any) shall be available to Port, and Port's authorized agents, officers, and employees, upon request at reasonable times and places. Monthly records of Consultant's personnel costs, Consultant costs, and reimbursable expenses pertaining to both Basic Services, or Additional Services shall be kept on a generally recognized accounting basis, and shall be available to Port, and Port's authorized agents, officers, and employees, upon request at reasonable times and places. Consultant shall not destroy any Project records until after advising Port and allowing Port to accept and store the records.
- 19.2 Consultant agrees to maintain full and adequate records in accordance with Port requirements to show actual costs incurred by Consultant in its performance of this Agreement, and to make available to Port during business hours accurate ledgers, books of accounts, invoices, vouchers, cancelled checks, and accounting and other books, records and documents evidencing or relating to all expenditures and disbursements charged to Port or relative to Consultant's activities under this Agreement. Consultant will furnish to Port, its authorized agents, officers and employees such other evidence or information as Port may request with regard to any such expenditure or disbursement charged by Consultant. Consultant will permit Port, and Port's authorized agents, officers, and employees, to audit, examine and make copies, excerpts and transcripts from such items, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement
- 19.3 Consultant shall maintain all items described in Sections 19.1 and 19.2 above in an accessible location and condition for a period of not less than five years after final completion and acceptance of the Project or until after final audit has been resolved, whichever is later. If such items are not kept and maintained by Consultant within a radius of fifty (50) miles from Port's offices at 530 Water Street, Oakland, California, Consultant shall, upon Port's request and at Consultant's sole cost and expense, make such items available to Port, and Port's authorized agents, officers, and employees, for inspection at a location within said fifty (50) mile radius, or Consultant shall pay Port its reasonable and necessary costs incurred in inspecting Consultant's books and records, including, but not limited to, travel, lodging and subsistence costs. The State of California or any federal agency having an interest in the subject of this Agreement shall have the same rights conferred upon Port by this Section.
- 19.4 If the Consultant's books and records have been generated from computerized data, Consultant agrees to provide the Port or its representative extracts of data files in a computer readable format

on data disks, e-mail with attached files or suitable alternative computer data exchange formats. The Consultant should not charge the Port for the reasonable use of the Consultant's photocopying machine while conducting the audit, nor for any cost of retrieving, downloading to diskette, and or printing any records or transactions stored in magnetic, optical, microform or other media. Failure to provide the Port with accounts, books, records and data as the Port determines in its reasonable discretion to be necessary and convenient in connection with its audit hereof shall constitute a default of this agreement.

- 19.5 The rights and obligations established pursuant to this Section shall be specifically enforceable and survive termination of this Agreement.

20. Subcontracting/Assignment/Port Employees

- 20.1 Consultant and Port agree that Consultant's unique talents, knowledge and experience form a basis for this Agreement and that the services to be performed by Consultant under this Agreement are personal in character. Therefore, Consultant shall not subcontract, assign or delegate any portion of this Agreement or any duties or obligations hereunder unless approved by Port in a written instrument executed and approved by the Port in writing. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. Any agreement that violates this Section shall confer no rights on any party and shall be null and void.
- 20.2 Consultant shall use the subconsultants for the scopes of work listed below and shall not substitute Subconsultants unless approved by written instrument executed and approved by the Port in writing.

Subconsultant Name

Scope of Work

- 20.3 To the extent Consultant is permitted by Port in writing to subcontract, assign or subcontract any portion of this Agreement or any duties or obligations hereunder, Subcontractor shall comply with all applicable prompt payment laws and regulations (including, without limitation, California Civil Code Section California Civil Code §3321 and the Port of Oakland's Non-Discrimination and Small Business Utilization Policy). Consultant shall remain fully liable and responsible for all acts and omissions of its Subconsultants in connection with the Services or the Project, as if it engaged it the acts and omissions directly.

21. Non-Discrimination, Equal Employment Opportunity and Business Practices

- 21.1 The Consultant shall not discriminate against any employee or applicant for employment nor against any Subconsultant or applicant for a subcontract because of race, color, religion, sex, national origin, ancestry age (over 40), physical or mental disability, cancer- related medical condition, a known genetic pre-disposition to a disease or disorder, veteran status, marital status, or sexual orientation. Consultant shall take affirmative action to ensure that applicants and employees are treated fairly. Such action shall include, but not be limited to the following: hiring, upgrading, recruitment, advertising, selection for training, including apprenticeship, demotion, transfer, compensation, lay-off or termination, or any other term or conditions of employment. To the extent applicable, Consultant shall comply with all federal, state and local laws (including, without limitation, Port ordinances, rules and regulations) regarding non-discrimination, equal employment opportunity, affirmative action and occupational-safety-health concerns, shall comply with all applicable rules and regulations thereunder, and shall comply with same as each may be amended from time to time.
- 21.2 **Non-discrimination.** Consultant acknowledges that it has received and reviewed a copy of the most current version of the Port of Oakland's Unlawful Harassment Policy and Procedures. The

purpose of these procedures is to provide an effective and expedited system of resolving allegations of employment discrimination and prevention of unlawful harassment in the workplace.

22. Drug-Free Workplace Policy

Consultant acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on Port premises. Consultant agrees that any violation of this prohibition by Consultant, its employees, agents or assigns shall be deemed a material breach of this Agreement.

23. Compliance With Americans with Disabilities Act

Consultant acknowledges that, pursuant to the Americans with Disabilities Act ("ADA"), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Consultant shall provide the Services specified in this Agreement in a manner that complies with the standard of care established under this Agreement regarding the ADA and any and all other applicable federal, state and local disability rights legislation. Consultant agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of Consultant, its employees, agents or assigns shall constitute a material breach of this Agreement.

24. Disputes

24.1 Should any question arise as to the meaning and intent of this Agreement, the question shall, prior to any other action or resort to any other legal remedy, be referred to the Port Chief Engineer and a principal of the Consultant who shall attempt, in good faith, to resolve the dispute. Such referral may be initiated by written request from either party and a meeting between the Port Chief Engineer and principal of the Consultant shall then take place within five days of the request.

24.2 Provided that Port continues to compensate Consultant in accordance with this Agreement, Consultant shall continue its Services throughout the course of any and all disputes. Nothing in this Agreement shall allow Consultant to discontinue Services during the course of any dispute and Consultant's failure to continue Services during any and all disputes shall be considered a material breach of this Agreement. Consultant agrees that the existence or continued existence of a dispute does not excuse performance under any provision of this Agreement, including but not limited to, the time to complete the Services. Consultant also agrees that should Consultant discontinue Services due to a dispute or disputes, Port may terminate this Agreement for cause as provided herein.

24.3 In the event of claims exceeding \$50,000, as a precondition to litigation, the parties shall first participate in non-binding mediation pursuant to the construction mediation procedures of the American Arbitration Association ("AAA"), in Oakland, before a mediator mutually agreeable to the parties, and in the event the parties are unable to agree, selected by a judge of the Alameda County Superior Court from an approved list of AAA qualified construction mediators. The parties may agree to engage in discovery prior to mediation, but if they do, they shall follow the procedures prescribed in the California Code of Civil Procedure, Section 2019, et. seq. and discovery so conducted shall apply in any subsequent litigation as if conducted in that litigation.

25. Agreement Made in California; Venue

25.1 This Agreement shall be deemed to have been executed in the City of Oakland. The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California, excluding its conflict of laws rules. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in Oakland, California.

25.2 The parties shall execute one original and two copies of this Agreement.

26. Compliance with Laws

26.1 Consultant represents that it will comply with all applicable laws, ordinances, general rules or regulations, permits, or land use restrictions or limitations at any time applicable thereto of any public or governmental authority, including the City and the Port, including but not limited to The Charter of the City (including without limitation Section 728 entitled “Living Wage and Labor Standards at Port-Assisted Businesses” and Port Ordinance No. 3666 entitled “An Ordinance Establishing a Living Wage Requirement”) in the performance of the Services, regardless of whether such laws are specifically stated in this Agreement and regardless of whether such laws are in effect on the date hereof. Consultant shall comply with all security requirements imposed by authorities with jurisdiction over the Project (including, but not limited to, Federal Aviation Administration, U.S. Department of Transportation, and other government agencies), and will provide all information, work histories and/or verifications as requested by such authorities for security clearances or compliance.

26.2 Consultant further represents that all plans, drawings, specifications, designs and any other product of the Services will comply with all applicable laws, codes and regulations, consistent with the standard of care in this Agreement.

26.3 Consultant, as a condition of execution of this Contract certifies under penalty of perjury and as a condition of payment of its invoice(s) for service provided under this Contract as follows:

a. All Employees, as defined respectively under Port Ordinance No. 3666, and Section 728 of the Charter of the City of Oakland (Hereinafter “Living Wage laws”), as amended from time to time, engaged in Covered Activities (as defined in the respective Living Wage laws) shall be compensated in compliance with the requirements of the respective and applicable Living Wage laws;

b. Claims, records and statements relating to Consultant’s compliance with the Living Wage laws are true and accurate, and are made with the knowledge that the Port will rely on same, and that they are submitted to the Port for the express benefit of Consultant’s employees engaged in Covered Activities;

c. Should the Living Wage laws not apply to Consultant at the time this Contract is entered into, but thereafter become applicable, Consultant will comply with all of its obligations under the respective Living Wage laws, when applicable; and

d. All terms used in this Section 26.3 and not defined shall have the meaning ascribed to such terms in the respective applicable Living Wage laws.

27. Construction

All section and paragraph captions are for reference only and shall not be considered in construing this Agreement. Each signatory to this Agreement for Consultant shall have joint and several responsibility and liability to perform the terms of this Agreement.

28. Miscellaneous

28.1 As between the parties to this Agreement: as to all acts or failures to act by either party to this Agreement, any applicable statute of limitations shall commence to run on the date of issuance by Port of the final Certificate for Payment, or termination of this Agreement, whichever is earlier. This section shall not apply to latent defects as defined by California law or negligence claims, as to which the statute of limitations shall commence upon Port’s discovery of the defective work

and its cause. However, the applicable statutes of repose, California Code of Civil Procedure Sections §§ 337.1 and 337.15, shall continue to apply.

28.2 Any provisions or portion thereof of this Agreement, which is prohibited by, unlawful or unenforceable under any applicable law of any jurisdiction, shall as to such jurisdiction be ineffective without affecting other provisions of this Agreement. If the provisions of such applicable law may be waived, they are hereby waived to the end that this Agreement may be deemed to be a valid and binding agreement enforceable in accordance with its terms. If any provisions or portion thereof of this Agreement are prohibited by, unlawful, or unenforceable under any applicable law and are therefore stricken or deemed waived, the remainder of such provisions and this Agreement shall be interpreted to achieve the goals or intent of the stricken or waived provisions or portions thereof to the extent such interpretation is consistent with applicable law.

28.3 Either party's waiver of any breach, or the omission or failure of either party, at any time, to enforce any right reserved to it, or to require performance of any of the terms, covenants, conditions or other provisions of this Agreement, including the timing of any such performance, shall not be a waiver of any other right to which any party is entitled, and shall not in any way affect, limit, modify or waive that party's right thereafter to enforce or compel strict compliance with every term, covenant, condition or other provision hereof, any course of dealing or custom of the trade or oral representations notwithstanding.

29. Entire Agreement; Modifications of Agreement

29.1 The Agreement, and any written modification to the Agreement, shall represent the entire and integrated Agreement between the parties hereto regarding the subject matter of this Agreement and shall constitute the exclusive statement of the terms of the parties' Agreement. The Agreement, and any written modification to the Agreement, shall supersede any and all prior negotiations, representations or agreements, either written or oral, express or implied, that relate in any way to the subject matter of this Agreement or written modification, and the parties represent and agree that they are entering into this Agreement and any subsequent written modification in sole reliance upon the information set forth in the Agreement or written modification and the parties are not and will not rely on any other information. All prior negotiations, representations or agreements, either written or oral, express or implied, that relate in any way to the subject matter of this Agreement, shall not be admissible or referred to hereafter in the interpretation or enforcement of this Agreement.

29.2 Consultant, in any price proposals for changes in the Services that increase the Agreement amount, or for any additional Services, shall break out and list its costs and use percentage markups. Consultant shall require its Subconsultants (if any) to do the same, and the Subconsultants' price proposals shall accompany Consultant's price proposals.

29.3 Consultant and its Subconsultants shall, upon request by Port, permit inspection of all original unaltered Agreement bid estimates, subcontract Agreements, purchase orders relating to any change, and documents substantiating all costs associated with all cost proposals.

29.4 Changes in the Services made pursuant to this Section and extensions of the Agreement time necessary by reason thereof shall not in any way release Consultant's representations and agreements pursuant to this Agreement.

29.5 This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved by a fully authorized representative of Port expressing such an intention.

29.6 Whenever the words "as directed", "as required", "as permitted", or words of like effect are used, it shall be understood as the direction, requirement, or permission of Port. The words "approval",

“acceptable”, “satisfactory”, or words of like import, shall mean approved by, or acceptable to, or satisfactory to Port, unless otherwise indicated by the context.

29.7 Consultant shall comply with any requirements of any Port funding sources, as requested by Port from time to time. To the extent such cooperation is not already required by this Agreement, Port shall compensate Consultant for its costs of compliance as Additional Services.

30. Agent for Service of Process

Pursuant to California Code of Civil Procedure, Section 416.10, Consultant hereby designates the following person as its agent for service of process:

Consultant may at any time designate a new agent for service in the State of California by providing written notice, duly executed in the same manner as this Agreement, of the full name and address of its new agent. Unless otherwise agreed in writing by the Port of Oakland, no attempt to revoke the agent's authority to receive service shall be valid unless Port of Oakland has first received a duly executed designation of a new agent meeting the requirements of California law.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day first mentioned above.

CITY OF OAKLAND, a municipal corporation, acting by and through its Board of Port Commissioners,

By: _____
Jerry A. Bridges
Executive Director

«ConsultantName»,
a _____ corporation,

By: _____

Print Name and Title
(If Corporate: Chairman, President or Vice President)

Attest: _____

Print Name and Title
(If Corporate: Secretary, Assistant Secretary,
Chief Financial Officer, or Assistant Treasurer)

Approved as to form and
legality this _____ day
of _____ 2004.

DAVID L. ALEXANDER
Port Attorney

Port Resolution No. «Resolution»

P.A.#: _____

**THIS AGREEMENT SHALL NOT BE VALID OR
EFFECTIVE FOR ANY PURPOSE UNLESS AND
UNTIL SIGNED BY THE PORT ATTORNEY.**

SCHEDULE 6.3

PROFESSIONAL PERSONNEL ASSIGNED TO PROJECT:

[HERE LIST PERSONNEL]

SCHEDULE 15.4

OTHER AGREEMENTS WITH PORT:

[HERE LIST OTHER AGREEMENTS WITH PORT]

END OF DOCUMENT

APPENDIX A – SCOPE OF SERVICES

This is an appendix attached to, and made a part of, the Contract dated «EffectiveDate» between the City of Oakland acting through its Board of Port Commissioners (“Port”) and «ConsultantName» (“Consultant”) for the provision of professional services.

1. Project Description.

1.1 Conceptual Program.

Here state the requirements for Consultant’s Services. This should be a description of the Project with explanations of what the Consultant has to do with or does not have to do with each part of the Project. Discuss coordination of schedule with the schedules of other Consultants and Contractors, if applicable. Include reference to Port approved budget. Also include construction budget, base bid budget, bidding contingency (or contingency to use for additive alternates.).

The work to be performed under this Agreement consists, in general, of _____. The work also consists of providing other related services when requested. The work will be on an “on-call” basis. Each work task assigned by the Port will have agreed upon scope, responsibilities of Consultant, costs, subconsultants, and time schedules. Each task shall be in writing and signed by both the Port and Consultant in the form of a Technical Service Order as set forth on Appendix “A-2” hereto. The types of services required are more specifically set forth on Exhibit 1 (Technical Service Order Form) hereto.

The Port reserves the right to contract with other firms at any time for services if it is deemed to be in the best interest of the Port.

1.2 Commencement Date/Term

- A. Subject to the provisions of this Agreement, the contract will be in effect commencing on _____.
_____.
- B. The Port has the option of extending the Agreement for an additional [no. of years] in [no. of years] increments as authorized by the Executive Director, provided, however, that there shall be no increase in the maximum compensation payable hereunder.

1.3 Milestone Schedule

Consultant’s timetable for the Services shall be as follows:

1.3 Personnel and Subconsultants

Consultant shall use only the personnel listed in Schedule 6.3 to the Agreement and the following subconsultants in performing the Services:

1.4 Budget/Bid Day Budget.

The estimated total costs of the total work, if annual extensions are approved by the Executive Director for the second and third years of the Agreement is «**Compensation**» however, the actual volume of work could be substantially less (or none at all) and execution of this Agreement does not constitute any guarantee of business or that any work or tasks will be assigned to Consultant.

For the Project, the Port's Bid Day Budget is \$_____. (The Port's "Bid Day Budget" means the anticipated value of the construction contract for the Project when initially awarded to the low, responsive, responsible bidder for the base contract work, exclusive of alternates.) Consultant's design hereunder must conform to Port's Bid Day Budget.

1.5 Criteria Governing Consultant's Service.

1.5.1 The Project shall be developed and designed to meet all applicable and the most current codes, laws, regulations, and professional standards.

1.5.2 Unless otherwise permitted in writing by Port, Consultant shall not propose or recommend any design that has the effect of shifting design responsibilities from Consultant to a Contractor through performance specifications or any other means. Performance specifications will be allowed only when necessary to preclude single vendor sources or when specifically requested by the Port.

1.5.3 Unless otherwise permitted in writing by Port, Consultant shall not specify unique, innovative, proprietary or sole source equipment, systems or materials. In the event Consultant requests a proprietary or sole source design or equipment, Consultant shall provide Port with a written evaluation of whether all periodic maintenance and replacement of parts, equipment or systems, can be performed normally and without excessive cost or time. Port will consider such evaluation in making its decision.

1.5.4 *Consultant's design shall provide that all surfaces, fixtures and equipment are readily accessible for maintenance, repair or replacement by ladders, power lifts, cat walks, and the like without exceeding the design loads of the floors, roofs, ceilings, and that such access is in conformance with Cal OSHA.*

1.6 Coordination with Port.

For each phase of the Services under this Contract, Consultant shall prepare and submit for Port's acceptance a task list. The purpose of this task list shall be promoting coordination between the Port and the Consultant. The task list for each phase of the Services under this Contract shall be submitted with the deliverables at the conclusion of the previous phase of the Services under this Contract. The task list shall list all points of Port and Consultant/third party interface, for example, approvals, reviews, design input and supplying information. The task list shall include a listing of Consultant's anticipated specific requirements for information, decisions or documents from Port necessary for Consultant's performance of its Services, and required third party approvals and preliminary meetings required to obtain agreement in principle with agencies and third parties involved in the Project.

1.7 Performance Schedule.

Consultant shall prepare and maintain a Performance Schedule detailing the Consultant's scheduled performance of the Services. *The schedule shall include appropriate Port and third party design review durations (in minimum durations of one week for Preliminary Design Phase, Design Development Phase, and 50% Construction Document phase, and two weeks for 100% Construction Documents phase.)*

1.8 Coordination With Other Consultants/Subconsultants.

Consultant shall fully coordinate all architectural and engineering disciplines and subconsultants involved in completing its Services. Consultant shall participate in design coordination meetings with its subconsultants and, in addition, with any Port prime consultants on other projects contiguous or related to the Project, for coordination of design. Port shall have the right, but not the obligation, to set the dates of such meetings, to attend and participate in such meetings, and to remain fully advised and informed of the coordination of design work and the performance of each consultant and subconsultant of their design responsibilities. Such meetings shall occur at least monthly, or more frequently as necessary.

1.9 Monthly Progress Report.

Consultant shall provide Port with a Monthly Progress Report, in writing, reporting on Consultant's progress and any problems in performing the Services of which Consultant becomes aware. The Monthly Progress Report may be submitted with the monthly payment application and shall include, but not be limited to: (i) a narrative of the work performed (including a list of any contract deliverables) and identification of areas of concern, actions and approvals needed, (ii) a schedule assessment and proposed ways to work around any problems that arise, (iii) monthly schedule status reports clearly identifying actual performance with respect to the current approved version of the schedule.

1.10 Scope of Services.

Unless specifically excluded in this Contract, Consultant shall provide to Port all professional *architectural and engineering* services necessary to perform the Services and to complete the Project. Services will include, but are not limited to, providing all necessary professional *architectural and engineering services, including but not limited to, all architectural services and all civil, electrical, fire protection, mechanical, geotechnical and structural engineering, landscape, and cost estimating* services required to perform the Services.

1.11 Sustainability Opportunities

Sustainability is commonly defined as meeting current economic, social and cultural needs without compromising the ability of future generations to meet their needs. The Port uses the term "Sustainability Opportunity" to describe a feature of a project, agreement or policy that promotes one or more of the "3E's" – environmental sustainability, economic sustainability and social equity.

With this in mind, it is the Port's intention to perform work in-house and through its consultants that apply sustainable development principles and practices. Practices that can be considered sustainable are those that respect the limits of the earth's capacity to provide resources and absorb waste. To make the Port a sustainable enterprise, it is important to find cost effective ways of developing Port facilities and performing day-to-day business which:

- a) Conserves water, energy and other natural resources;
- b) Eliminates or reduce waste;
- c) Avoids or reduces environmental pollution;
- d) Restores and protects natural habitats; and
- e) Fosters social equity and strong communities

Consultant shall endeavor to incorporate sustainability opportunities in its design. Consultant shall review the Port's Sustainability package (*to be supplied*) and complete the Sustainability Checklist therein as well as adhere to previously adopted policies included in the package.

1.12 Deliverables Required Under This Agreement.

Required Deliverables are listed in Appendix "D." Each deliverable shall be reviewed with representatives of Port. Consultant shall promptly correct deficiencies in deliverables and shall promptly make modifications to conform with Project requirements and modifications to achieve acceptability of deliverables to Port, and the cost thereof included in the fee for Basic Services.

1.13 *[Optional. Consultant has prepared and supplied Port with a proposed scope of work, which is attached to this Appendix as its Exhibit 1, and represents Consultant's initial proposed scope of services necessary to achieve the results described herein, as well as additional negotiated scope of work items. This Appendix "A" and its Exhibit 1 are deemed complimentary; what is called for by one is as binding as if called for in both and shall be performed by Consultant. In the case of direct conflict, then the requirement providing the Port with the broader scope of services shall have precedence.]*

2. **Preliminary Design Phase.** After receipt of an executed contract from the Port, Consultant shall prepare and deliver preliminary design documents to the Port.

2.1 Design Verification Review.

Consultant shall review existing Port data, reports, plans, and other information regarding the site, and perform field investigations as necessary to become familiar with the site. Consultant shall make an independent assessment of the accuracy of the information provided by the Port concerning existing conditions (including but not limited to existing utilities and structures) and the adequacy of available design information/technical reports. Consultant shall rely on the results of its own independent investigations and not on information provided by Port. Consultant shall conduct such further investigations of existing conditions as are necessary for Consultant to perform the Services and shall advise Port of any further design or other services necessary to complete the Project.

2.2 Preliminary Design Phase Documents.

Preliminary Design Phase Documents shall consist of reports containing conceptual layouts, sketches and preliminary design criteria with appropriate exhibits, sufficient to present the complete concept of the Project, including *all major elements of the building(s), system(s), machinery, equipment, structure(s), and site design(s), proposed for construction which complies with the current program and cost limitations.* By way of example, documents in this phase shall include, but are not limited to, the following (where applicable):

- *Plan list*
- *Site plan(s)*
- *Schedule of building types, equipment, machinery, systems, [Port to complete]*
- *Wall sections and elevations*
- *Outline specifications including architectural, structural, mechanical, electrical, and instrumentation systems and materials proposed*
- *Preliminary construction cost estimates, reflecting the anticipated value of the low, responsive, responsible bid for construction of the Project*
- *Projects specific analysis of codes, ordinances and regulations*
- *Three-dimensional line drawings or plans*
- *Initial construction phasing recommendations*

Reports, plans and exhibits shall incorporate Port's program requirements and shall include structural concepts, site utilization plans, floor plans, elevations, sections, study perspectives and other plans necessary to describe the Project. Consultant shall develop Preliminary Design Phase reports, plans and exhibits until Port has approved an acceptable design concept. Consultant shall participate in progress meetings with Port representatives at Port's request, up to twice monthly.

Preliminary Design Phase reports and exhibits shall indicate clearly the considerations involved, including but not limited to applicable requirements of governmental authorities having

jurisdiction or private licensing, patent, easements, or other legal restrictions. Reports and exhibits shall indicate any alternative solutions available to Port and set forth Consultant's findings and recommendations.

2.3 Design Basis Report.

Consultant shall provide a narrative report by each design discipline describing its proposed design philosophy with a description of, and the rationale for, *the proposed structural systems, mechanical systems, electrical, electronics and security systems, types of equipment, materials and finishes, and site development and landscaping*. The rationale shall include initial costs, lifecycle costs, and life expectancy and maintenance considerations.

3. **Design Development Phase.** After receipt of Port's written approval of the Preliminary Design Phase documents, Consultant shall proceed as follows.

3.1 Final Design Criteria.

Consultant shall prepare final design criteria. Consultant shall participate in progress meetings with Port representatives and any involved subconsultants, at Port's request, up to twice monthly, to review and secure Port's written acceptance of final design criteria.

3.2 Design Development Documents.

Consultant shall prepare and submit to Port design development documents. Consultant shall revise these documents consistent with the requirements and criteria established by Port. These documents shall include the following:

- 3.2.1 *Plans (architectural, civil, electrical, mechanical and structural) sufficient to fix and illustrate project's scope and character in all essential design elements, including but not limited to, site plans, architectural, structural, mechanical and electrical floor and equipment connection plans, elevations; cross sections and other mutually agreed upon drawings deemed necessary to describe the developed design; single line electrical and mechanical drawings, and structural drawings with preliminary sizing of major structural elements.*
- 3.2.2 Revised Plan list.
- 3.2.3 *A tabulation of both gross and assignable floor, pavement and/or yard areas in a comparison to the approved conceptual program area requirements and to the initial program area requirements.*
- 3.2.4 *As appropriate, Consultant shall provide to Port for its approval a color and materials board, samples of textures and finishes of all materials proposed in the Work.*
- 3.2.5 Updated estimate of the Project's anticipated construction cost (reflecting the anticipated value of the low, responsive, responsible bid of the project), accompanied with analysis and justification for each element of the estimate.
- 3.2.6 Recommendations for scheduling and phasing of construction.
- 3.2.7 Outline specifications for each technical specification section, following Construction Specification Institute conventions, with Part 2 Products of each section completed, describing the size, character and quality of the entire Project in its essentials as to kinds and locations of materials; and types of structural, mechanical and electrical systems. *For major equipment and system specifications, Consultant shall also submit first cost and lifecycle cost analysis, with comparative analysis for the selected equipment/system item and two other alternative equipment/system items considered by Consultant but not*

selected.

- 3.2.8 Preliminary engineering calculations for all disciplines, including realistic loads, and sufficiently complete for work on Construction Documents to proceed. Prepare for approval by Port updated written design criteria for *mechanical and electrical systems (for example, temperature, humidity, lighting levels and floor live load design shall be stated for general and special occupancy areas).*

4. Construction Document Phase. After receipt of Port's written approval of Design Development documents, the Consultant shall prepare Construction Documents.

4.1 Final Plans and Specifications.

On the basis of the accepted Design Development documents and the updated cost estimates, schedule for completion and phasing of the Project, Consultant shall prepare for incorporation in the Contract Documents final plans ("Plans") and Specifications to show in detail all of the labor, materials, equipment and/or work to be furnished and performed by Contractor. Consultant shall modify the final plans and specifications in accord with Port's final review comments, if any. Plans and Specifications shall set forth in detail the requirement for construction of all work to be performed or furnished by Contractor. Consultant shall deliver to Port two (2) complete sets of final 100% Plans and Specifications.

4.2 Format of Technical Specifications.

Consultant shall prepare final technical specifications in conformance with the sixteen-division format of the Construction Specification Institute. Consultant shall cooperate with Port in coordinating the Plans and technical specifications with Port's Divisions 0 and 1 standard specifications. Consultant shall provide work descriptions for inclusion into Port's standard specifications and shall provide whatever Division 1 construction contract specifications are necessary for the Project and not supplied in Port's standard specifications.

4.3 Auto CAD and Other Electronic Data.

Provide AutoCAD files of all Plans including as-bid, as-built, and all record Plans on compact disc format (based on the Port's horizontal and vertical controls) as requested by Port using the Port's latest format. Prepare electronic record sets and sets of reproducible record prints or Plans showing those changes made during the construction process, based on the marked-up prints, marked-up Technical Specifications, Plans and other data furnished by Contractor to Port and then to Consultant. Electronic data shall be generated in AutoCAD and shall conform to Port standards package and adopted file naming convention. Consultant shall meet with Port at the beginning of the project to discuss the Port's standard requirement.

4.4 Compliance with Codes, Regulations and Requirements.

All Plans, Specifications, structural design calculations, site data, and cost estimates required by State or Federal law (including but not limited to applicable FAA requirements) shall comply with State and federal standards. Consultant shall comply with any other requirements of authorities with jurisdiction over the Project or the Plans and Specifications. Consultant shall comply with the applicable standard of care when preparing Plans and Specifications to comply with applicable building codes, ordinances, statutes, laws, standards, governmental regulations and private restrictions, applicable to the Services, including, but not limited to, those listed in this Contract, all environmental, energy conservation, and disabled access requirements, regulations and standards of the Fire Marshal or other authorities having jurisdiction over the Project.

4.5 Supply of Design Calculations.

Consultant shall provide Port with copies of all final *electrical, mechanical and structural design* calculations, organized by specification. Consultant shall provide Port with a final update on the final design criteria utilized.

4.6 Quality Levels and Quality Control Procedures.

The Plans and Specifications must clearly identify and describe all necessary quality levels and quality control procedures such as inspections, tests, submittals or other measures that the Contractor must satisfy, meet or perform. Each specification section must include the requirements for the tests, controls, performances and certifications needed to verify the specified quality level of that section. Each work-related specification section must also dedicate a subsection to identify and list required Contractor submittals along with testing and inspection requirements. Provide Port with a separate listing of tests, inspections and reports required under the construction plans and specifications prepared by Consultant, and responsibility therefore, to occur in connection with the Project.

4.7 Phasing Recommendations.

Consultant shall provide, at 50% completion of this phase, a construction-phasing schedule for the construction work, which will minimize disruption to Port tenants and adjacent construction projects.

4.8 60% Construction Documents Review.

Consultant shall submit to Port for Port's review and comment the Construction Documents (Plans and Specifications) developed in this Phase at 60% completion and again at 100% completion. Consultant shall allow Port one week for review of its construction documents deliverables. Consultant shall respond to Port comments and incorporate those comments as necessary.

4.9 Estimate of Construction Cost.

Based on the information contained in the Plans and Specifications, Consultant shall submit, at 90% completion of this Phase, a revised opinion and detailed estimate of Project construction costs, with phasing and scheduling recommendations, coordinated with the Schedule. The estimate shall reflect the anticipated value of the low, responsible responsive bid on the construction contract for the project. If the cost estimate based on the final Plans and specifications exceeds the project budget as herein defined, the Consultant shall recommend revisions to said Plans and specifications that will reduce costs to the budget amount and upon approval of the Port, shall make such revisions.

5. Bidding and Award Phase.

5.1 After receipt of Port's written authorization to proceed with the Bidding phase, Consultant shall assist the Port in administering the bidding and award of the construction contract. This shall include:

- 5.1.1 Responding to inquiries pertaining to the Plans and Specifications
- 5.1.2 Consult with Port concerning, and determine the acceptability of, substitute materials and equipment proposed by bidders.
- 5.1.3 Prepare written addenda as appropriate to interpret, clarify or expand the bidding documents, including allowable substitutions of materials and equipment, as requested by the Port or to respond to bidder requests.
- 5.1.4 *Attend the bid opening and assist Port in evaluating bids or proposals and in assembling and awarding contracts for construction, materials, equipment and services, as requested by the Port.*

- 5.2 Where Bids Exceed Budget: If the lowest responsible, responsive bid received from a Contractor exceeds the latest accepted estimate of construction costs, Port may, at its discretion:
- 5.2.1 Award the contract to the lowest responsible, responsive bidder, and give written approval of an increase in Port's budget.
 - 5.2.2 Reject all bids and rebid the contract.
 - 5.2.3 If the bid amount is more than 6% greater than the Consultant's latest accepted estimate of construction cost rendered during the Construction Documents Phase, Port may require Consultant to revise the scope of work to be performed by the Contractor or its quality, or both, so as to reduce the Project's estimated construction cost for the work to be performed by the Contractor, while still meeting Port's project objectives. Consultant shall at its expense, if so directed by Port, modify the Construction Documents in order to reduce the Project's estimated construction costs for the work to be performed by the Contractor within the Project budget for that Contractor's work.
 - 5.2.4 Abandon the Project and terminate this Contract.
6. **Construction Phase.** After execution of the construction contract between Port and Contractor, the Consultant shall endeavor to protect the Port against defects and deficiencies in the execution and performance of the work.
- 6.1 The Consultant shall attend the pre-construction conference and any dispute resolution conferences and other meetings when requested by the Port.
 - 6.2 The Consultant shall review and approve Contractor's shop drawings, test reports, substitution requests and other submittals for conformance to the requirements of the Contract Documents.
 - 6.3 The Consultant shall periodically visit the site to monitor the quality and progress of the work and furnish a written field report [] weekly, [] semi-monthly, [] monthly, or [] _____. This service shall be limited to a period amounting to 110% of the construction period as originally established under the construction contract unless construction has been delayed due to Consultant's failure to properly perform its duties and responsibilities. The Port may direct additional work monitoring as additional services. Consultant shall advise Port in writing of any observations of defective work, work not in conformance with drawings and specifications, and lack of progress of work.
 - 6.4 Consultant shall establish and maintain to the satisfaction of Port, a computer database (compatible with the database maintained by Port) that shall contain complete and accurate records regarding defective work, work not in conformance with drawings and specifications, and lack of progress of work, and shall cross reference such work to the drawings and specification sections violated. Consultant shall make such database available to Port at all reasonable times and turn over the database to Port upon completion or termination of this Contract.
 - 6.5 Consultant shall issue necessary interpretations, clarifications and request for information (RFI)-replies regarding the Contract Documents and in connection therewith assist Port's Resident Engineer with supplemental instructions and change orders as required, with reasonable promptness so as to cause no delay to Contractor or the Project. In no event shall Consultant respond to RFI's longer than two working days after their receipt and other submittals any longer than ten days after their receipt.
 - 6.6 Consultant shall maintain to the satisfaction of Port a computer based system compatible with the Port's system to record, control and manage the review of Submittals and RFI's, which shows the interrelationships among and between such documents and requests for changes or claims, and which can be used for coordination of submittal reviews with the Project scheduling requirements, and shall make such system available to Port at all reasonable times.

- 6.7 The Consultant shall require any subconsultant to provide the Services listed in this section where and as applicable and to visit the project during the time that construction is occurring on the portion of the work related to its discipline and report in writing to the Consultant.
- 6.8 The Consultant shall make modifications to the construction Contract Documents to correct errors, clarify intent or to accommodate change orders necessary to correct design errors or clarify design intent.
- 6.9 The Consultant shall promptly notify Port in writing of any defects or deficiencies in the work or of any matter of dispute with the Contractor.
- 6.10 *[Based on Consultant's on-site observations as an experienced and qualified design professional, Consultant shall review contractor's monthly applications for payment and accompanying data and schedules, and shall assist Port's Resident Engineer in its determination of amounts owing to Contractor and recommend, in writing, payments to Contractor in such amounts. Recommendations of payment by Consultant will constitute a representation to Port that: the work has progressed to the point indicated, and that to the best of Consultant's knowledge, information and belief, the quality of the work is in accordance with the Contract Documents (subject to evaluation of such work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents and to any other qualifications stated in the recommendation).]*
- 6.11 Consultant shall receive and review all certificates of inspections, testings and approvals required by laws, rules, regulations, ordinances, codes, orders or the Contract Documents (but only to determine generally that their content complies with the requirements of, and the results certified indicate compliance with, the Contract Documents).
- 6.12 Consultant shall inspect work to determine if work or portions of work are substantially complete, and for development of punchlists, and final completion. Consultant shall document its findings in writing. The Consultant shall prepare a written punchlist, and other necessary construction closeout documents. [Such work, whenever performed, shall constitute Basic Services.]
- 6.13 The Consultant shall prepare a set of reproducible record prints of Plans, showing "as built" conditions, showing significant changes in the work made during construction, including the locations of utilities, based on marked up prints, plans and other data furnished by the Contractor to the Port. Prepare electronic record sets and sets of reproducible record prints or Plans showing those changes made during the construction process, based on the marked-up prints, marked-up Technical Specifications, Plans and other data furnished by Contractor to Port and then to Consultant. Electronic data shall be generated and supplied in the same format (e.g., Auto CAD and Softdesk) as original construction documents.
7. **Additional Services.** All Services identified in the Agreement, including but not limited to the Agreement form, the other appendices, and in the foregoing sections of this Appendix A are "Basic Services". The Port may request Consultant to provide services in addition to Basic Services, referred to hereafter as (Additional Services). Additional Services must be authorized by Port in writing prior to performance. Consultant shall be compensated for Additional Services as provided herein, unless the parties agree on lump sum compensation for particular work activities.
- 7.1 Compensation for Additional Services.
- Consultant shall be compensated for Additional Services as set forth in Appendix "B."
- 7.2 Services.
- The following services shall be considered Additional Services:
- 7.2.1 Making revisions in reports, drawings, or other documents, if:

- 7.2.1.1 Such revisions are not necessary because of a deficiency in Consultant's Services; and
- 7.2.1.2 Such revisions are inconsistent with written approvals or instructions previously given by Port, or are required by the enactment or revision of codes, laws or regulations subsequent to the preparation of such documents, or are due to other causes not solely within the control of Consultant.
- 7.2.2 Changes in scope, such as revisions of approved reports or design documents. Changes in schedule can be a change in scope only if Consultant has fully performed its scheduling and coordination responsibilities herein required and the changes in schedule are in addition to these responsibilities.
- 7.2.3 Required out-of town travel beyond limits specified in Appendix "B."
- 7.2.4 Assistance in connection with bid protests and rebidding when such assistance is required by matters unrelated to Consultant's deficient performance.
- 7.2.5 Property surveys or field surveys for design purposes, engineering surveys, and staking, if and to the extent not required by other provisions of this Agreement.
- 7.2.6 Preparing to serve or serving on behalf of Port as an expert witness (but not as a percipient witness) in connection with any arbitration, administrative or other proceeding or legal proceeding.
- 7.2.7 Preparation of applications and supporting documents for governmental grants and permits. (However, participating in consultations and evaluation of the effect of associated requirements on the design requirements of the project is within Consultant's scope of Basic Services.)
- 7.2.8 Services to verify independently the accuracy of geotechnical information, if and to the extent not required by other provisions of this Agreement.
- 7.2.9 Assisting in actual claims resolution efforts when such claims arise from matters unrelated to Consultant's performance.
- 7.2.10 Providing any other services requested by Port that are not otherwise included in this Agreement and are not customarily furnished in accordance with generally accepted *architectural, engineering and other professional practice*.
- 7.2.11 Providing construction phase Services beyond the contract period, but only to the extent the additional duration increases Consultant's Scope of Services (for example, Punchlist and Close Out Services, whenever performed shall be Basic Services.)
- 7.2.12 Under no circumstances shall Additional Services be deemed to include work or services necessary because of Consultant's errors, omissions or conflicts of any type in Consultants' Plans and Specifications prepared. All such services shall be performed at no cost to Port, including, but not limited to, any required corrections or revisions to reports, drawings or specifications that are a result of any errors or omissions by Consultant. Nor shall Additional Services include work performed prior to written notice and written agreement upon the Additional Services.

END OF APPENDIX A

APPENDIX B – PAYMENT

This is an appendix attached to, and made a part of, the Contract dated «EffectiveDate» between the City of Oakland acting through its Board of Port Commissioners (“Port”) and «ConsultantName» (“Consultant”) for the provision of professional services.

1. Basic Services. The Port will pay Consultant for Basic Services, a maximum compensation of «Compensation» (“Contract Price”), which sum includes costs for reimbursable expenses as identified below. Such payment shall be full compensation for all Basic Services required, performed or accepted under this Contract. If Port and Consultant previously executed a purchase order for services within the scope of the Services of this Contract, then the services performed and the compensation paid under that purchase order shall be subject to the terms of this Contract and the previous payments deemed payments against the Contract Price established in this Appendix. Such maximum compensation may only be increased as follows:

- ☐ With the prior written approval of the Executive Director for an additional amount not to exceed the limit authorized by the Board in Resolution No. «Resolution». Increase in maximum compensation with additional changes in scope of work shall be documented by a supplemental agreement to this contract.
- ☐ With the adoption of authorizing resolution by the Board of Port Commissioners.

2. Technical Service Order Form (“TSO”). To assist Port in determining progress payments, Consultant shall provide Port with an itemization of its fee under this Contract according to a Technical Service Order Form (TSO) that defines all project tasks, along with a project schedule defining the time line for each task, a project budget defining the planned man-hours and costs for each task, and a schedule of deliverables defining each deliverable to be provided to the Port. The TSO shall further define which tasks are to be performed by each sub-consultant. The Port is not obligated to reimburse the Consultant for work unless and until a specific task under this Agreement has been agreed to by the Port and Consultant in writing. *[The TSO is attached to this Appendix as its Exhibit 1.]*

3. Payment Schedule. Progress payments for Basic Services for each phase of the work shall be made as follows:

- ☐ upon completion of the work
- ☐ monthly based upon Consultant’s percentage completion of the Services as determined by Port
- ☐ as set forth in the attached schedule.

4. Costs and Reimbursables.

5.1 Additional Services. The Port will pay Consultant for “Costs and Reimbursable Expenses” in connection with Additional Services as set forth below. All costs not listed will not be allowed in connection with Additional Services.

5.1.1 Travel Costs. The reasonable expense of travel costs incurred by Consultant when requested by Port to travel to a location more than 50 miles from either the project site, the Consultant’s office(s), or the Port’s office, incurred performing Additional Services.

5.1.2 Long Distance Telephone Costs. Long distance telephone calls and long distance telecopier costs incurred performing Additional Services.

5.1.3 Delivery Costs. Courier services and overnight delivery costs incurred performing Additional Services

5.1.4 Reproduction Costs. Reproduction and postage costs of required plans, specifications, bidding and Contract Documents, if any, incurred performing Additional Services.

5.2 Basic Services. For Basic Services, the Port will not pay Consultant additional compensation for Costs and Reimbursable Expenses, as these costs are deemed included in the Contract Price.

6. **Invoices.** All payments shall require a written invoice from Consultant in a form acceptable to Port. Port shall make payment on approved amounts within each invoice within 30 days of receipt. **Original invoices shall be sent directly to _____.**

END OF APPENDIX B

EXHIBIT 1

TECHNICAL SERVICE ORDER FORM

CONSULTANT / ADDRESS:

DATE OF TSO:

TSO NO.:

IMPORTANT NOTICES:

1. THIS TECHNICAL SERVICE ORDER ("TSO") IS ACCEPTED IN ACCORDANCE WITH ALL PROVISIONS IN THE AGREEMENT BETWEEN THE PORT AND THE CONSULTANT AS SPECIFIED BELOW AND WILL BE A SUPPLEMENT TO APPENDIX A OF SUCH AGREEMENT. ALL TERMS AND PROVISIONS OF SAID AGREEMENT APPLY TO THIS TSO.
 2. THIS TSO IS NOT VALID UNLESS SIGNED BY BOTH THE PORT (THROUGH THE PROJECT DIRECTOR/MANAGER) AND CONSULTANT.
 3. THE PORT RESERVES THE RIGHT TO CANCEL ANY WORK BY THE CONSULTANT WITHOUT CAUSE.
 4. SEND A FULLY EXECUTED COPY OF THIS TSO TO THE PORT ATTORNEY'S OFFICE.
-

I. CONSULTANT AGREEMENT INFORMATION

CONSULTANT:
ORIGINAL AGREEMENT DATE:
AMENDMENTS (if any):
SCOPE OF WORK:
RESOLUTION NO.:
MAXIMUM AUTHORIZED AMOUNT:

II. SCOPE OF WORK

1. **PROJECT:** Describe work and services to be furnished (or attach Appendix A-2).

Check the box below if appropriate:

☐ **Scope of work is subject to attorney-client and attorney work-product privilege.**

III. TIME SCHEDULE

2. **COMMENCE WORK BY:**
 3. **COMPLETE WORK BY:**
-

IV. COST

4. MAXIMUM COMPENSATION FOR THIS TSO:

V. INSURANCE

Each TSO shall be reviewed and approved by Risk Management for insurance requirements. One (1) box must be checked.

- ☐ Subject to Owner Controlled Insurance Program ("OCIP") as set forth in the original Agreement.
- ☐ This TSO is not subject to OCIP. Insurance requirements are attached hereto.

Reviewed by: Risk Management: _____

APPROVALS

Originator: _____

Approved By: _____
Port Project Director / Manager

(Note: If the amount of this TSO is \$500,000 or more, Port Attorney approval is required.)

Approved By: _____
Port Attorney

Accepted By: _____
Consultant

Accounting Coding

Organization Unit:

Account:

Activity:

Facility:

Work Request:

Asset Code

APPENDIX C

CONSULTANT AND CONSULTANT'S NOTICE ADDRESS

Full Legal Name of Consultant: «ConsultantName»

Address:

**Status (as Corporation, partnership, etc. and
state of organization):**

Contact Individual for Notice:

Position:

Telephone No.:

Facsimile No.:

E-Mail Address (if any):

APPENDIX D
PROJECT MANAGER

Division Director

Technical Manager

APPENDIX E - INSURANCE

This is an appendix attached to, and made a part of, the Contract dated «EffectiveDate» between the City of Oakland acting through its Board of Port Commissioners (“Port”) and «ConsultantName» (“Consultant”) for the provision of professional services as defined and required by the Agreement (hereinafter “Services”). This Appendix describes the Owner Controlled Insurance Program (“OCIP”) and Consultant’s obligations under the OCIP.

1.0 Owner-Controlled Insurance Program (“OCIP”)

The Port has arranged with Aon Risk Services, Inc. of Northern California (the “OCIP Administrator”) to provide insurance under an OCIP, which will provide Project-Specific Professional Liability insurance covering Consultant, and its approved subcontractors and subconsultants, for liability for acts, errors or omissions arising out of services performed under the Agreement, whether or not such Services are performed on the Port’s Construction Project Sites (“Project Sites”). The Port will also provide such insurance to other persons or interests as the Port in its sole discretion may designate.

The OCIP shall also provide Workers’ Compensation and Employer’s Liability, Commercial General Liability, Excess Liability, and Contractors Pollution Legal Liability Insurance covering Consultant and its subcontractors and subconsultants if such entities perform actual labor at the Project Sites in connection with the Port’s construction projects, and such other persons or interests as the Port in its sole discretion may designate. All of the insurance policies described in this section 1.0 shall be collectively referred to as the “OCIP Insurance Policies.”

Except as provided in this section, coverage under the OCIP Insurance Policies shall not apply to or be available for (a) vendors, suppliers, fabricators, material dealers, truckers, haulers, drivers, and others who solely transport, pickup, deliver, or carry materials, personnel, waste, parts or equipment or any items or persons to or from the Project Sites, (b) contractors, consultants and each of their respective subcontractors and subconsultants which do not perform any actual labor on the Project Sites, or (c) any parties that fail to enroll in the OCIP. Consultant, and other professional consultants engaged by the Port, and their respective subconsultants or subcontractors, which do not perform actual labor at the Project Sites may be covered under the Project-Specific Professional Liability Insurance Policy for professional services performed in connection with the Port’s construction projects which are performed away from the Project Sites, if such parties are properly enrolled in the OCIP and upon receipt of acknowledgment of such coverage by the OCIP Administrator. The Port reserves the right, in its sole discretion, to include or exclude any party from the OCIP, or any portion thereof, notwithstanding such party’s apparent eligibility for inclusion in the OCIP.

2.0 Insured Party Responsibilities

The responsibilities of each party insured under the OCIP are more fully set forth in the Project Insurance Manual for the Port of Oakland’s Owner Controlled Insurance Program (the “Project Insurance Manual”), and the Professional Liability Insurance Manual for the Port of Oakland’s Owner Controlled Insurance Program (the “Professional Liability Insurance Manual”), which are hereby incorporated by reference. It is the obligation of the Consultant and each of its eligible subcontractors and subconsultants to enroll in the OCIP and to comply with all of the administrative, insurance and other requirements outlined in this Appendix E, and in the Project and Professional Liability Insurance Manuals. The failure of the Consultant to provide each of its eligible subcontractors or subconsultants with copies of same shall not relieve the Consultant or any of its subcontractors or subconsultants from any of the obligations contained therein. Consultant shall be responsible for providing each of its subcontractors and subconsultants with copies of the Project and Professional Liability Insurance Manuals and for requiring in writing that each subcontractor and subconsultant will comply with, among other things, the provisions of the OCIP Insurance Policies and the provisions contained in the Project and Professional Liability Insurance Manuals and the applicable provisions in the Agreement, including this Appendix E.

3.0 Payment of OCIP Premiums; Insurance Credits; Responsibility for OCIP Policy Deductibles, Charges, and Retentions

- (a) The cost of premiums for the coverage provided by the OCIP shall be paid by the Port. The Port will receive or pay, as the case may be, all adjustments to such costs, whether by way of dividends, retro adjustments, return premiums, audits or otherwise. The Consultant and each of its subcontractors and subconsultants shall execute any instrument of assignment as may be necessary to permit the Port to receive or pay such adjustments.
- (b) Compensation payable for performance of the Services shall exclude all of Consultant's and its subcontractors' or subconsultants' costs of insurance for coverages provided under the OCIP. If Consultant is eligible for coverage under the Workers' Compensation and General Liability Insurance policies under the OCIP, Consultant shall execute, and shall require all of its eligible subcontractors and subconsultants to execute, Aon Form-3 (as found in the Project Insurance Manual), to certify that contract prices exclude all costs for any type of insurance coverage that is provided under the OCIP. Such parties shall also execute any enrollment and disclosure form in the Professional Liability Insurance Manual, if such parties are eligible for coverage under the Project-Specific Professional Liability Insurance Policy. Consultant, and each of its subcontractors and subconsultants, warrant that no costs for insurance for which such parties are provided coverage by the OCIP Insurance Policies are included in any lump sum, fee for service, or cost plus contract costs.
- (c) All "Deductibles," "Retentions," and "Charges" (as defined in the Project and Professional Liability Insurance Manuals and in this Appendix E) shall be paid by Consultant for losses attributable to its acts or omissions, or the acts or omissions of its subcontractors or subconsultants, or any other entity or person for whom it may be responsible.

3.1 Estimated Payrolls/Manhours Disclosure; Enrollment Forms

If eligible for coverage under the Workers' Compensation and General Liability coverages under the OCIP, within 20 calendar days of execution of the Agreement, Consultant shall provide to the OCIP Administrator the completed originals of the Estimated Payrolls/Manhours Disclosure Form (Aon Form-1), Insurance Summary (Aon Form-2), and the Enrollment Form (Aon Form-3). If eligible for coverage under the Project-Specific Professional Liability coverage under the OCIP, Consultant shall provide the OCIP Administrator completed originals of the enrollment form(s) contained in the Professional Liability Insurance Manual, within 20 calendar days after such forms are made available to Consultant after execution of the Agreement.

3.2 Port's Insurance Obligations; Consultant's Obligations

The Port assumes no obligation to provide insurance other than that contemplated in this Appendix E. The Consultant and each of its subcontractors and subconsultants shall review the OCIP coverages, limits of liability and the OCIP Insurance Policies (when available) to satisfy themselves that the coverages offered thereby meet their needs. Nothing contained herein shall be deemed to place any responsibility on the Port for ensuring that the insurance provided by the OCIP is sufficient for the conduct of Consultant's or its subcontractors' or subconsultants' business or performance of the Services as required or defined in the Agreement. The Port reserves the right at its option, but without obligation to do so, to furnish other insurance coverage of various types and limits, provided that such coverage is not less than that specified in this Appendix E. The furnishing of insurance by the Port through the OCIP shall in no way relieve or limit, or be construed to relieve or limit, Consultant or any of its subcontractors or subconsultants of any responsibility, liability, or obligation imposed by the Agreement or by law, including without limitation any indemnification obligations which Consultant or any of its subcontractors or subconsultants has to the Port or other parties thereunder. Consultant acknowledges by enrolling in the OCIP and by executing Aon Form-3, and shall require all of its subcontractors to acknowledge by enrolling in the OCIP and by executing Aon Form-3, that the Port is not an agent, partner or guarantor of the insurance companies providing coverage under the OCIP (each such insurer, an "OCIP Insurer") and that the Port is not responsible for any claims or disputes between or among Consultant, its subcontractors, subconsultants and any OCIP Insurer(s). The Port shall not be liable to any

party for any failure or delay by any insurer to honor any policy obligation, including extra-contractual obligations, for any reason, including, but not limited to, coverage disputes, coverage defenses, claims handling practices, insurer insolvency, the defense of or the failure to defend any claim, and Consultant and its subcontractors and subconsultants release the Port of any such claim.

Any type of insurance coverage or limits of liability not provided by the OCIP which the Consultant or any subcontractor or subconsultant desires for its or their own protection, or which is required by applicable laws or regulations, shall be its or their sole responsibility and at its or their sole expense and shall not be billed to the Port. Any reference in this Appendix E, the Agreement, or the Project or Professional Liability Insurance Manuals as to amount, nature, type or extent of coverage provided under the OCIP and/or potential applicability to any potential claim or loss is for reference only. The Consultant and its subcontractors and subconsultants represent and warrant that they have not relied upon said reference, and have relied solely upon their own independent review and analysis of the OCIP coverage, limits of liability and OCIP Insurance Policies, when available, in formulating any understanding and/or belief as to amount, nature, type or extent of any coverage provided by the OCIP Insurance Policies and/or the Policies' potential applicability to any potential claim or loss.

3.3 Port's Election to Discontinue OCIP Coverages

If the Port, for any reason, elects to discontinue all or portions of the OCIP, modifies the insurance limits provided in the OCIP, or requests that Consultant or any of its subcontractors or subconsultants withdraw from the OCIP, then, upon thirty (30) days written notice from the Port, Consultant and/or one or more of its subcontractors or subconsultants, as specified by the Port in such notice, shall obtain at the Port's expense and thereafter maintain during the performance of the Services (or a portion thereof as specified by the Port), the insurance provided or contemplated under the OCIP Insurance Policies, and the Port shall thereafter no longer be obligated to furnish all or a part of such insurance through the OCIP. The Consultant and its subcontractors and subconsultants shall provide the Port's OCIP Administrator and the Port's Risk Manager with certified copies of such insurance policies not later than 30 days following the issuance of such notice. The form, content, limits and cost of such insurance and the insurer issuing such insurance secured by Consultant or its subcontractors or subconsultants pursuant to the provisions of this section 3.3, shall be subject to the Port's approval.

3.4 OCIP Policies Establish OCIP Coverage

The insurance coverages, agreements, conditions and exclusions contemplated in this Appendix E and in the Project and Professional Liability Insurance Manuals are set forth in full in their respective insurance policy forms. The descriptions of such policies in this Appendix E and in the Project and Professional Liability Insurance Manuals are not intended to be complete or to alter or amend any provision of the actual insurance policies and in matters, if any, in which the description herein conflicts with such insurance policies, the provisions of the actual insurance policies shall govern.

4.0 OCIP Insurance Coverages Supplied

4.1 Scope of OCIP Insurance

Unless otherwise modified by the Port, the OCIP shall provide the following insurance to Consultant and its subcontractors and subconsultants if such parties are eligible for such coverages and approved for such coverage(s) by the Port.

4.1.1 Project-Specific Professional Liability Insurance

The Project-Specific Professional Liability Insurance coverage shall be provided on a claims-made form with limits of \$75,000,000 per claim/\$75,000,000 policy aggregate, a term of seven (7) years starting 7/14/99, an extended reporting period of ten (10) years, with full "prior acts" coverage for Services described in the Agreement (the "OCIP Professional Liability Policy"). The insurance shall be non-cancelable by the applicable OCIP Insurer, except for non-payment of premiums.

Consultant shall be responsible, at its own expense, for payment of a self-insured retention, including defense costs and other claim expenses, for losses payable under the OCIP Professional Liability Policy that are attributable to Consultant's acts, errors, or omissions, or the acts, errors, or omissions of any of its subcontractors or subconsultants or any other entity or person for whom Consultant may be responsible. The amount of the self-insured retention shall be based on the amount of fees approved by the Port to be payable to Consultant under the Agreement or any other contracts or agreements awarded to Consultant by the Port in connection with the Port's construction projects covered by the OCIP, all determined at the time a claim is made, as follows:

\$5,000 per claim for contracts with fees under \$14,999
\$10,000 per claim for contracts with fees from \$15,000 to \$499,999
\$25,000 per claim for contracts with fees from \$500,000 to \$999,999
\$50,000 per claim for contracts with fees from \$1,000,000 to \$4,999,999
\$75,000 per claim for contracts with fees from \$5,000,000 to \$9,999,999
\$150,000 per claim for contracts with fees from \$10,000,000 or greater

After the applicable OCIP Insurer acknowledges that self-insured retentions of \$500,000 in the aggregate have been paid pursuant to claims under the OCIP Professional Liability Policy, the maximum self-insured retention shall thereafter be \$50,000 per claim, and each insured under such policy shall be responsible for a self-insured retention determined at the time a claim is made, as follows:

\$2,000 per claim for contracts with fees under \$14,999
\$3,500 per claim for contracts with fees from \$15,000 to \$499,999
\$8,500 per claim for contracts with fees from \$500,000 to \$999,999
\$16,500 per claim for contracts with fees from \$1,000,000 to \$4,999,999
\$25,000 per claim for contracts with fees from \$5,000,000 to \$9,999,999
\$50,000 per claim for contracts with fees from \$10,000,000 or greater

The OCIP Professional Liability Insurance policy shall contain, among other agreements, terms, conditions, and exclusions, the following requirements:

- (a) Joint Defense; Panel Defense Counsel. As a condition to obtaining coverage under the OCIP Professional Liability Policy, Consultant and its subcontractors and subconsultants must accept and consent to the joint defense provisions described therein, including that insureds thereunder must waive any cross-claims or third-party claims for negligence, contribution, indemnification or otherwise, arising out of any incident, circumstance, event or claim under the OCIP Professional Liability Policy, against any other insured. Consultant must agree to waive, release and relinquish any such claims to the extent of coverage under the OCIP Professional Liability Policy. The OCIP Professional Liability Policy also requires that legal defense counsel must be chosen from a panel of defense counsel listed in an endorsement to the Policy.
- (b) Program Manager. The OCIP Professional Liability Policy requires that insureds thereunder acknowledge and cooperate with a designated Program Manager. The Program Manager will have among his duties the coordination of claims procedures, coordination of the selection of defense counsel, and the allocation of self-insured retentions among insureds involved in any claim under the OCIP Professional Liability Policy. All insureds under such Policy shall have the right to seek binding arbitration regarding the Program Manager's decisions as to the allocation of any self-insured retentions.
- (c) Settlement. The OCIP Professional Liability Policy provides that if the applicable OCIP Insurer and any insured are unable to reach consensus on settling a claim under the Policy, including a claim within the applicable self-insured retention, the applicable OCIP Insurer shall have final authority to settle any such claim.

4.2 Workers' Compensation Insurance

The OCIP Workers' Compensation Insurance shall be in compliance with the Workers' Compensation Laws of the state of the Project Sites or other applicable jurisdiction, and include Employer's Liability insurance in the amount of \$2,000,000 each accident, \$2,000,000 bodily injury each employee by disease, and \$2,000,000 policy limit for bodily injury by disease. The Workers' Compensation insurance shall include, as needed, "other states" coverage, U.S. Longshoremen and Harbor Workers Act coverage, Maritime/Jones Act coverage, including crew, with a limit of \$2,000,000 each accident and aggregate, and Federal Employer's Liability Act coverage with a limit of \$1,000,000 each accident and aggregate. This insurance is primary for all covered employee injuries at the Project Sites.

4.3 Commercial General Liability Insurance

The OCIP Commercial General Liability Insurance shall utilize a form providing coverage not less than the standard Commercial General Liability coverage form (equivalent to Insurance Services Office (ISO) Occurrence Form 1996), covering liability for bodily injury, property damage, personal and advertising injury, blanket contractual liability, independent contractors, explosion, collapse and underground hazards, products and completed operations, including broad form property damage, protection and indemnity liability, ocean marine liability (owned, hired and leased vessel damage and related collision (running down) coverage not included) and airport liability extending coverage for ten (10) years after acceptance of final completion of the Port's construction projects. Such coverage shall have limits of liability of \$2,000,000 per occurrence, \$2,000,000 Personal and Advertising Injury, \$1,000,000 Fire Damage Legal Liability, \$4,000,000 Products-Completed Operations Aggregate, and \$4,000,000 Annual General Aggregate for all insureds combined under the OCIP.

The Consultant shall be responsible, at its own expense, for a per occurrence charge, including court costs, attorney fees and costs of defense for bodily injury or property damage, to the extent losses payable under the Commercial General Liability insurance are attributable to the Consultant's acts or omissions, or the acts or omissions of any of its subcontractors or subconsultants or any other entity or person for whom Consultant may be responsible. The amount of the charge will depend on the amount of the initial total fees for Services contemplated under the Agreement, as follows:

- \$10,000 for fees \$1,000,000 and over;
- \$5,000 for fees below \$1,000,000

The portion of the charge applying to Consultant or its subcontractors or subconsultants will be the responsibility of the Consultant, and shall remain uninsured. Consultant shall promptly pay its charge attributable to any loss. The Port, in addition to its other remedies, may deduct the charge from Consultant's next progress payment or final payment.

The Commercial General Liability Insurance policy will be primary insurance for losses at the Project Sites.

4.4 Excess Liability Insurance

The OCIP shall provide Excess Liability Insurance over the Employer's Liability and Commercial General Liability Insurance, and extend coverage for ten (10) years after acceptance of final completion of the Port's construction projects for completed operations. The total combined excess liability limits for all insureds under the OCIP shall be:

Combined Single Limit each occurrence	\$300,000,000
Project Term Aggregate (annually reinstated)	\$300,000,000
Completed Operations Term Aggregate	\$300,000,000

The Products and Completed Operations Aggregate is the total amount available for all insureds for the ten (10) year period after final completion of the Port's construction projects.

The insurance provided under the OCIP does not extend coverage for the liability of the Consultant, or any other insured party, vendor, manufacturer, fabricator, supplier, material dealer or other person or entity for liability arising out of any product manufactured, assembled or otherwise worked upon away from the Project Sites, unless such manufacturing or assembly is expressly approved by the Port and as required by the applicable Agreement or Contract.

4.5 Builder's Risk Insurance

The OCIP shall include Builder's Risk insurance covering "all risk" or "special form" perils on a replacement, completed cost basis, issued on manuscripted ALS 67 or equivalent form, with a sublimit of \$25,000,000 for losses caused by certain perils, including land movement and water damage, and delayed opening. Off-site storage and transit coverages are provided, subject to \$10,000,000 sublimits and subject to certain other limitations (the "Builder's Risk Policy.") The Builder's Risk Policy shall exclude machinery, tools, equipment, and other personal property owned or used by the Consultant or its subcontractors or subconsultants. Such Builder's Risk insurance shall be secured and maintained by the Port in a form and amount as may be from time to time determined by the Port. The Consultant agrees that the terms of the Builder's Risk Policy shall be as set forth in that policy, including any exclusions that may be contained therein. Payments by the applicable OCIP Insurer for all losses covered under the Builder's Risk Policy shall be adjusted by and payable to the Port, for the interest of all insured parties and, if required by the Port's lender(s), shall be subject to the interests of such lender(s), including the right(s) of such lender(s) to apply such payments in accordance with the terms of the applicable loan documents.

Consultant shall be responsible at its own expense for a charge for each loss payable under the Builder's Risk Policy related to or arising out of the Consultant's acts or omissions, or the acts or omissions of any of its subcontractors or subconsultants or any other entity or person for whom Consultant may be responsible. The amount of the charge will depend on the amount of the initial fees contemplated for Services under the Agreement, as follows:

- \$10,000 for fees of \$1,000,000 and over;
- \$5,000 for fees below \$1,000,000

The portion of the charge applying to Consultant or its subcontractors or subconsultants will be the responsibility of the Consultant. The charge shall remain uninsured. Consultant shall promptly pay its charge pertaining to any loss. The Port, in addition to its other remedies, may deduct the charge from Consultant's next progress payment or final payment.

The Consultant and each of its subcontractors or subconsultants shall be solely responsible for any loss or damage to its or their personal property, including, without limitation, property created or provided under the Agreement, its or their tools, equipment, and machinery, mobile construction equipment, vessels, vehicles, scaffolding, and temporary structures, whether owned, used, leased or rented by Consultant or any of its subcontractors or subconsultants. The Consultant or any of its subcontractors or subconsultants may, at its or their option, purchase, maintain and pay for insurance or self-insure such equipment and property, and any deductible in relation thereto shall be its or their sole responsibility. Any insurance, including self-insurance, shall be the Consultant's or any of its subcontractor's or subconsultant's sole source of recovery in the event of a loss. Partial occupancy or use of the Port's construction projects shall not commence until all insurers providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Port and the Consultant shall take reasonable steps to obtain the consent of insurers and shall not, without mutual consent, take any action with respect to partial occupancy or use which would cause cancellation, lapse, or reduction of any insurance.

4.6 Contractors Pollution Legal Liability Insurance

The OCIP shall provide Contractors Pollution Liability insurance on an occurrence basis, with limits of \$20,000,000 per loss and \$20,000,000 Policy Term Aggregate for bodily injury, property damage, clean-up costs and claim expenses, arising at or emanating from the Project Sites arising from all contracted operations performed on behalf of the Port.

Such insurance shall provide coverage for both sudden and gradual occurrences arising from the Services performed under the Agreement. The policy term shall be seven (7) years with completed operations coverage for a period of ten (10) years. Covered operations include all contracted operations performed on behalf of the Port, including asbestos and lead-based paint abatement, and environmental remedial activities.

Consultant shall be responsible at its own expense for a per-occurrence deductible for each loss payable under the Contractors Pollution Legal Liability insurance that is attributable to Consultant's acts or omissions, or the acts or omissions of any of its subcontractors or subconsultants, or any other entity or person for whom Consultant may be responsible. The amount of the deductible shall be based on the amount of fees approved by the Port to be payable to Consultant under the Agreement, or any other contracts or agreements awarded to Consultant by the Port in connection with the Port's construction projects covered by the OCIP, at the time a claim is made as follows:

\$10,000 per claim for fees under \$99,999
\$25,000 per claim for fees from \$100,000 to \$499,999
\$50,000 per claim for fees from \$500,000 to \$4,999,999
\$100,000 per claim for fees of \$4,999,999 or greater

After the applicable OCIP Insurer acknowledges that deductibles of \$500,000 in the aggregate have been paid pursuant to claims under the Contractors Pollution Legal Liability insurance, the maximum deductible shall be \$10,000 per claim.

The deductible applying to the Consultant or its subcontractor or subconsultants shall be the responsibility of the Consultant. This deductible shall remain uninsured by Consultant. Consultant shall promptly pay its deductible pertaining to any loss. The Port, in addition to its other remedies, may deduct the charge from Consultant's next progress payment or final payment.

5.0 OCIP Insurance Certificates and Policies

Consultant and its subcontractors and subconsultants shall be insureds on the policies of insurance described above for which such parties are eligible pursuant to the terms of the Agreement, this Appendix E, the Project and Professional Liability Insurance Manuals, and as approved by the Port. If insured under such policies, prior to the time that Services are performed, certificates of insurance for the Builder's Risk, General Liability, Contractors Pollution Legal Liability, Project-Specific Professional Liability, and Excess Liability policies will be issued to the Consultant and its subcontractors and subconsultants, reflecting that such parties are insureds. The insurer will also issue a Workers' Compensation insurance policy in the name of the Consultant, its subcontractors and subconsultants, if such parties are covered by such insurance.

6.0 Additional Insurance Required from Certain OCIP Insured Parties

In addition to insurance coverages provided under the OCIP, the Consultant shall obtain and maintain, and shall require each of its subcontractors and subconsultants to obtain and maintain, the insurance coverage specified in subsections 6.0(a) through 6.0(c) below. Such insurance shall be in a form and from insurance companies reasonably acceptable to the Port. The insurance limits may be provided through a combination of primary and excess policies, including the umbrella form of policy.

6.0(a) Commercial Automobile Liability Insurance in a form providing coverage not less than the standard Commercial Automobile Liability ISO form CA 00031293, covering all owned, non-owned and hired automobiles with a combined single limit of not less than \$1,000,000 combined single limit each accident for bodily injury and property damage and not less than \$5,000,000 per accident for any operations performed at the South Field, the "Aviation Operating Area" of the Oakland International Airport property. As used herein, the term "automobile" means any vehicle licensed or required to be licensed under the California or any other applicable state vehicle code. Such insurance shall be endorsed to affirm that it is primary. In the event that Consultant's or its subcontractors' or subconsultants' insurance excludes any drivers from coverage, such drivers will not be permitted to drive in connection with the Port's construction projects.

If the Services involve transporting of hazardous or regulated substances, hazardous or regulated wastes and/or hazardous or regulated materials, Consultant and/or its subcontractors or subconsultants shall provide coverage with a combined single limit of \$10,000,000 per accident covering transportation of such materials by amending the pollution exclusion of ISO Form CA 00 01 06 92 (or its equivalent) in the following manner:

- (1) DELETE SECTION a. (1) a.: (POLLUTION) "BEING TRANSPORTED OR TOWED AWAY BY, OR HANDLED FOR MOVEMENT INTO, ONTO OR FROM THE COVERED AUTO."
- (2) DELETE SECTION a.(1) b.: "OTHERWISE IN THE COURSE OF TRANSIT BY THE INSURED."

Such policy shall include the MCS-90 Endorsement. If the Port is scheduled as an additional insured, the policy shall be endorsed to specifically limit the reimbursement provisions of the MCS-90 to the Named Insured.

6.0(b) Statutory Workers' Compensation insurance and Employer's Liability insurance for operations away from the Project Sites and which are not otherwise insured under the OCIP, with statutory limits as required in the state(s) where Consultant or its subcontractors or subconsultants are performing such operations, including U.S. Longshoremen and Harbor Workers Act, Maritime/Jones Act, and/or Federal Employer's Liability Act coverage, if appropriate, and Employer's Liability limits of \$1,000,000 for bodily injury each accident, \$1,000,000 for bodily injury by disease each employee, and \$1,000,000 policy limit for bodily injury by disease.

6.0(c) Commercial General Liability Insurance for operations away from the Project Sites and which are not otherwise insured under the OCIP, in a form providing coverage not less than the standard Commercial General Liability insurance policy ISO form CG 00010196 ("Occurrence Form"). The limits shall be:

Each Occurrence	\$1,000,000
Annual General Aggregate	\$2,000,000
Products/Completed Operations Aggregate	\$2,000,000
Personal/Advertising Injury Limit	\$1,000,000

The Commercial Automobile Liability, Commercial General Liability, and any Protection and Indemnity Liability insurance policies specified in Subsections 6.0(a) and 6.0(c), above, shall be endorsed to contain the following terms:

(1) The City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners, and their officers, agents, employees, consultants, and representatives, while acting in the scope of their authority, shall be named as additional insureds.

(2) Written notice of cancellation or of any limits reduction in such policies shall be mailed to the Port's OCIP Administrator and to the Risk Manager of the Port thirty (30) days in advance of the effective date thereof, except notice of cancellation for nonpayment of premium, ten (10) days in advance of the effective date thereof.

(3) The insurance shall be primary insurance and no other insurance or self insured retention carried or held by the Port shall be called upon to contribute to a loss covered by insurance for any insured.

7.0 Insurance Requirements for Excluded Parties

If Consultant, or any of its subcontractors or subconsultants, are not eligible for coverage under the OCIP pursuant to Section 1.0, Consultant shall obtain and maintain, and shall require each of its ineligible subcontractors or subconsultants to obtain and maintain, the insurance coverage specified in subsections 7.0(a) through 7.0(h) below. Such insurance shall be primary and non-contributing with any other insurance and be in a form and from insurance companies reasonably acceptable to the Port. The insurance limits may be provided through a combination of primary and excess policies, including the umbrella form of policy.

7.0(a) Commercial Automobile Liability insurance covering all owned, non-owned and hired automobiles, trucks and trailers. Such insurance shall provide coverage not less than the Standard Comprehensive Automobile Liability policy provided on ISO form number CA 00031293 with limits not less than \$1,000,000 combined single limit each accident for bodily injury and property damage and not less than \$5,000,000 per accident for any operations performed at the South Field, the "Aviation Operating Area" of the Oakland International Airport property.

If the Services involve transporting of hazardous or regulated substances, hazardous or regulated wastes and/or hazardous or regulated materials, Consultant and/or its subcontractors and subconsultants shall provide coverage with a combined single limit of \$10,000,000 per accident covering transportation of such materials by amending the pollution exclusion of ISO Form CA 00 01 06 92 (or its equivalent) in the following manner:

- (1) DELETE SECTION a. (1) a.: (POLLUTION) "BEING TRANSPORTED OR TOWED AWAY BY, OR HANDLED FOR MOVEMENT INTO, ONTO OR FROM THE COVERED AUTO."
- (2) DELETE SECTION a.(1) b.: "OTHERWISE IN THE COURSE OF TRANSIT BY THE INSURED."

Such policy shall include the MCS-90 Endorsement. If the Port is scheduled as an additional insured, the policy shall be endorsed to specifically limit the reimbursement provisions of the MCS-90 to the Named Insured.

7.0(b) Workers' Compensation insurance with statutory limits as required in the state(s) where any operations are being performed, including, if applicable, U.S. Longshoremen and Harbor Workers Act, Maritime/Jones Act, and/or Federal Employer's Liability Act coverages, and Employer's Liability limits of not less than \$1,000,000 for bodily injury each accident, \$1,000,000 for bodily injury each employee by disease, and \$1,000,000 policy limit for bodily injury by disease.

7.0(c) Commercial General Liability Insurance on a form at least as broad as the standard ISO Commercial General Liability Insurance policy (Occurrence Form, number CG 00010196), covering liability for bodily injury and property damage. Such insurance shall provide coverage for all operations and include independent contractors, products and completed operations, extending such coverage for five (5) years after final completion and acceptance of the final payment for the Services, blanket contractual liability coverage including, to the maximum extent possible, coverage for the liability assumed by the indemnity provisions of this agreement, broad form property damage coverage, coverage for explosion, collapse, and underground hazards, personal and advertising injury liability coverage. The limits of such insurance shall not be less than \$1,000,000 per occurrence, \$1,000,000 annual General Aggregate and \$1,000,000 products and completed operations aggregate.

7.0(d) If required by the Port, Railroad Protective Liability insurance, in a form, with limits, and from an insuring entity reasonably satisfactory to the Port.

7.0(e) If required by the Port, Errors and Omissions/Professional Liability Insurance, in a form, with limits, and from an insuring entity reasonably satisfactory to the Port.

7.0(f) If required by the Port, Environmental Professional Liability Insurance and/or Consultant's Pollution Legal Liability Insurance in a form, with limits, and from and insuring entity reasonably satisfactory to the Port.

7.0(g) If the Services involve the disposal of hazardous or regulated substances, hazardous or regulated wastes, and/or hazardous or regulated materials, Consultant or its subcontractor and subconsultants shall furnish an insurance certificate from the designated disposal facility establishing that the facility operator maintains current Environmental Liability Insurance, in a form reasonably satisfactory to the Port and with limits in the amount of not less than \$5,000,000 per loss and \$5,000,000 Annual Aggregate.

7.0(h) If required by the Port, Aviation and/or Protection and Indemnity Liability Insurance, in a form, with limits, and from an insuring entity reasonably satisfactory to the Port.

The Commercial Automobile Liability, Commercial General Liability, Consultant's Pollution Legal Liability and Aviation and/or Protection and Indemnity Liability coverage specified in Subsections 7.0(a), 7.0(c), 7.0(f), and 7.0(h) above shall be endorsed to contain the following terms:

(1) The City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners, and their officers, agents, employees, consultants, and representatives, while acting in the scope of their authority, shall be named as additional insureds.

(2) Written notice of cancellation or of any limits reduction in such policies shall be mailed to the Port's OCIP Administrator and to the Risk Manager of the Port thirty (30) days in advance of the effective date thereof, except notice of cancellation for nonpayment of premium, ten (10) days in advance of the effective date thereof.

(3) The insurance shall be primary insurance and no other insurance or self insured retention carried or held by the Port shall be called upon to contribute to a loss covered by insurance for any insured.

8.0 General Provisions

8.1 Cooperation; Compliance; Audits

Consultant and each of its subcontractors and subconsultants shall (a) cooperate fully with the OCIP Administrator and the OCIP Insurers, as applicable, in its or their administration of the OCIP, and (b) comply with the terms and conditions of the OCIP Insurance Policies and other provisions of the Agreements, this Appendix E and the Project and Professional Liability Insurance Manuals. Consultant shall provide, within five (5) business days of the OCIP Administrator's request, all requested documentation, including but not limited to, certified copies of insurance policies, all underwriting, certified payroll, rating and prior loss history information. Consultant agrees that the Port, the OCIP Administrator, and/or any OCIP Insurer may audit Consultant's or any of its subcontractor's or subconsultant's records and insurance policies to confirm the accuracy thereof, or of any insurance cost information hereafter provided by Consultant or any of its subcontractors or subconsultants in connection with the Services or changes to the scope of the Services. The obligations assumed in these sections 8.1 through 8.4 shall be specifically enforceable.

8.2 Waiver of Subrogation

Consultant hereby waives all rights of recovery against the Port, the OCIP Administrator, its or their officers, agents, or employees, and any other consultant, contractor, subcontractor or subconsultant performing work or rendering services on behalf of the Port in connection with the planning, development and construction of the Port's construction projects, to the extent any losses, claims or damages are covered by any policy of insurance available to Consultant and further waives all rights of recovery which are not covered by insurance because of deductible clauses, inadequacy of limits of any insurance policy, or failure to maintain insurance as required herein. Consultant shall also require that all insurance policies related to the Services secured by Consultant or its subcontractors or subconsultants include clauses providing that each insurance underwriter waives all of its rights of

recovery by subrogation, or otherwise, against the Port and the OCIP Administrator, together with the same parties referenced immediately above in this Section 8.2. Consultant shall require similar written express waivers and insurance clauses from each of its subcontractors and subconsultants. This provision shall apply to the Consultant, and its subcontractors and subconsultants performing work or rendering services on behalf of the Port in connection with the planning, development and construction of the Port's construction projects, irrespective of whether or not such entities are enrolled in the OCIP. A waiver of subrogation shall be effective as to any individual or entity even if such individual or entity (a) would otherwise have a duty of indemnification, contractual or otherwise, (b) did not pay the insurance premium directly or indirectly, and (c) whether or not such individual or entity has an insurable interest in any property damaged.

8.3 Records Disclosure, Maintenance and Access

Prior to the commencement of the Services, Consultant shall furnish and shall cause each of its subcontractors and subconsultants to furnish to the Port, in a form satisfactory to the Port, an estimate of total direct labor cost (listed by Standard Workers' Compensation Insurance Classification) to be incurred in connection with the Services at the Project Sites, and the total fees of payments due each subcontractor or subconsultant under its contract with Consultant. Consultant shall, and shall cause each of its subcontractors and subconsultants to, keep and maintain an accurate and classified record of its or their payroll data and information in accordance with the requirements of the OCIP Insurer(s) and the OCIP Administrator. Consultant shall complete and provide the Monthly Payroll Report Form (Aon Form-4) with certified payrolls for all on-site labor performed by Consultant and its subcontractors and subconsultants to the Port. Consultant and its subcontractors and subconsultants shall permit their books and records to be examined and audited periodically by the OCIP Insurer(s), the Port, or their respective representatives.

8.4 Proof of Coverage

With respect to non-OCIP insurance coverage required to be provided pursuant to sections 6.0 and 7.0, Consultant and/or each of its subcontractors and subconsultants shall deliver to the Port's OCIP Administrator and the Port's Risk Manager, prior to the commencement of the Services, a certificate of insurance evidencing such insurance coverage on a standard ACORD form 25-S, or other form as required by the Port. The commencement of the Services by the Consultant or any of its subcontractors or subconsultants without compliance with this or any other requirement of this section shall not constitute a waiver of any right of the Port under this section nor a release or waiver of any duty or obligation owed by any Consultant or subcontractors or subconsultants. Upon the Port's request, the Consultant and/or its subcontractors or subconsultants shall submit to the Port copies of the actual insurance policies or renewals or replacements thereof. All policies of insurance are required to be obtained and maintained with A.M. Best-rated A-X (or higher) insurance companies satisfactory to the Port and shall provide thirty (30) days written notice of cancellation, non-renewal or reduction of coverage, except ten (10) days notice of cancellation for non-payment of premium. Consultant shall pay all insurance premiums for such insurance, including any charges for required waivers of subrogation or the endorsement of additional insureds. Consultant's failure to deliver satisfactory evidence of coverage shall not be construed as a waiver of Consultant's obligation to provide the required insurance coverage. Consultant shall be responsible for obtaining satisfactory evidence of insurance coverage from each of its subcontractors and subconsultants and submitting same to the Port prior to commencement of such subcontractor's or subconsultant's performance of services. The Port reserves the right to increase or decrease the required limits of liability or require additional coverages based on the type and scope of work or services performed.

8.5 Failure to Maintain Insurance

Consultant shall indemnify and hold harmless the City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners, and their officers, agents, employees, consultants, and representatives, while acting in the scope of their authority, from all claims and liabilities arising out of the failure of Consultant, any of its subcontractors or subconsultants or any other entity or person for whom the Consultant may be responsible, to maintain the insurance coverages as described and required herein. The Port, in addition to its other remedies, may withhold Consultant's progress payments or final payment for any period in which (a) such insurance coverages are

not in full force and effect or (b) the Consultant has not supplied the Port with required evidence of such insurance coverages.

8.6 Duty of Care

Nothing contained in this Appendix E or the Project or Professional Liability Insurance Manuals shall relieve the Consultant or any of its subcontractors or subconsultants of their respective obligations to exercise due care in the performance of their duties in connection with the Services and to complete the Services in strict compliance with the Agreement.

8.7 Safety Violations

The existence of the OCIP shall not in any manner diminish the Port's rights to suspend part or all of the Services or work if, in its opinion, any conditions or practices in any portion of the Services or work are such that a danger exists which could reasonably be expected to cause serious physical harm or otherwise pose a health hazard to contractors, employees, tenants or others.

END OF APPENDIX E

APPENDIX F

LIST OF REQUIRED DELIVERABLES

This is an Appendix attached to, and made a part of and incorporated by reference with the Agreement dated «EffectiveDate» between the Port of Oakland (the "Port") and «ConsultantName» ("Consultant") providing for professional services.

- 1 Project Deliverables
 - 1.1 Performance Schedule.
 - 1.2 Consultant's task lists for Port's coordination of its activities.
 - 1.3 Monthly Progress Report.
- 2 Preliminary Design Phase. The deliverables required by the Preliminary Design Phase are defined in Section 2 of Appendix "A" and include, but are not limited to, the following deliverables:
 - 3.1 Preliminary layouts, sketches and preliminary design criteria, outline specifications, with supporting reports and exhibits.
 - 3.2 Preliminary estimates of construction costs, times of completion, and alternatives.
 - 3.3 Opinion of probable construction costs.
 - 3.4 Preliminary phasing recommendations, if any
 - 3.5 Design basis report.
4. Design Development Phase. The deliverables required by the Design Development Phase are defined in Section 3 of Appendix "A" and include, but are not limited to, the following:
 - 4.1. Final Design Criteria
 - 4.2. Design Development Phase plans, specifications, engineering calculations, area calculations.
 - 4.3. Updated estimate of construction costs.
 - 4.4. Preliminary engineering calculations.
 - 4.5. Construction phasing recommendations, if any
5. Construction Document Phase. The deliverables required by the Construction Documents Phase are defined in Section 4 of Appendix "A" and include, but are not limited to, the following:
 - 5.1 60% construction documents deliverable.
 - 5.2 Final plans and specifications, including AutoCAD files, and any necessary supplementary conditions to the construction contract.
 - 5.3 Final engineering calculations.
 - 5.4 Revised estimate of construction cost.

- 6 Bidding. The deliverables required by the Bidding Phase are defined in Section 5 of Appendix "A" and include, but are not limited to, the following:
 - 6.1 Written addenda (where necessary).
 - 6.2 Written determinations regarding Proposed substitutes.
- 7 Construction Phase. The deliverables required by the Construction Phase are defined in Section 6 of Appendix "A" and include, but are not limited to, the following:
 - 7.1 Necessary notices, communications, interpretations, clarifications, as required by Section 6, and in the format required by Section 6, including without limitation:
 - 7.2 Certificates of Substantial Completion and Final Completion.
 - 7.3 Punchlists.
 - 7.4 Electronic record sets and sets of reproducible record prints of plans showing changes made during construction.
 - 7.5 Electronic record sets and sets of prints of Technical Specifications showing changes made during construction.

END OF APPENDIX F

APPENDIX G

REQUIRED CONTRACT PROVISIONS FOR FEDERALLY FUNDED PROJECTS

BREACH OF CONTRACT TERMS 49 CFR PART 18

Any violation or breach of the terms of this contract on the part of the contractor or subcontractor may result in the suspension or termination of this contract or such other action, which may be necessary to enforce the rights of the parties of this agreement. The duties and obligations imposed by the Contract Documents and the rights and remedies available hereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed by the available law.

ACCESS TO RECORDS AND REPORTS - 49 CFR PART 18

The contractor shall maintain an acceptable cost accounting system. The contractor agrees to provide the Port, the Transportation Security Administration, and the Comptroller General of the United States or any of their duly authorized representatives access to any books, documents, papers, and records of the contractor which are directly pertinent to the specific contract for the purposes of making an audit, examination, excerpts, and transcriptions. The contractor agrees to maintain all books, records and reports required under this contract for a period of not less than three years after final payment is made and all pending matters are closed.

DISADVANTAGED BUSINESS ENTERPRISES - 49 CFR PART 26

Contract Assurance - The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the recipient deems appropriate.

Prompt Payment - Prompt payment to subcontractors In accordance with the Port's DBE program, the contractor shall pay any subcontractors approved by the Port for work that has been satisfactorily performed no later than 30 days from the date of the contractor's receipt of progress payments by the Port. Within 60 days of satisfactory completion of all work required of the subcontractor, the contractor shall release any retained payments to the subcontractor.

CIVIL RIGHTS ACT OF 1964, TITLE VI - 49 CFR PART 21 CONTRACTUAL REQUIREMENTS

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. **Compliance with Regulations.** The contractor shall comply with the Regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
2. **Nondiscrimination.** The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
3. **Solicitations for Subcontracts, including Procurements of Materials and Equipment.** In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
4. **Information and Reports.** The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Sponsor or the Transportation Security Administration (TSA) to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to the Port or the TSA, as appropriate, and shall set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance.** In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the sponsor shall impose such contract sanctions as it or the TSA may determine to be appropriate, including, but not limited to:
 - a. Withholding of pavements to the contractor under the contract until the contractor complies, and/or;
 - b. Cancellation, termination, or suspension of the contract, in whole or in part.
6. **Incorporation of Provisions.** The contractor shall include the provisions of paragraphs 1 through 5 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurement as the sponsor or the TSA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the Port to enter into such litigation to protect the interests of the Port and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

ENERGY CONSERVATION REQUIREMENTS

The contractor agrees to comply with mandatory standards and policies relating to energy efficiency that are contained in the California energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Public Law 94-163).

RIGHTS TO INVENTIONS - 49 CFR PART 18

All rights to inventions and materials generated under this contract are subject to regulations issued by the TSA and the Port.

TRADE RESTRICTION CLAUSE - 49 CFR PART 30

The contractor or subcontractor, by submission of an offer and/or execution of a contract, certifies that it:

- a. is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms published by the Office of the United States Trade Representative (USTR);
- b. has not knowingly entered into any contract or subcontract for this project with a person that is a citizen or national of a foreign country on said list, or is owned or controlled directly or indirectly by one or more citizens or nationals of a foreign country on said list;
- c. has not procured any product nor subcontracted for the supply of any product for use on the project that is produced in a foreign country on said list.

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR 30.17, no contract shall be awarded to a contractor or subcontractor who is unable to certify to the above. If the contractor knowingly procures or subcontracts for the supply of any product or service of a foreign country on said list for use on the project, the Transportation Security Administration may direct through the Sponsor cancellation of the contract at no cost to the Government.

Further, the contractor agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification without modification in each contract and in all lower tier subcontracts. The contractor may rely on the certification of a prospective subcontractor unless it has knowledge that the certification is erroneous.

The contractor shall provide immediate written notice to the sponsor if the contractor learns that its certification or that of a subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances. The subcontractor agrees to provide written notice to the contractor if at any time it learns that its certification was erroneous by reason of changed circumstances.

This certification is a material representation of fact upon which reliance was placed when making the award. If it is later determined that the contractor or subcontractor knowingly rendered an erroneous certification, the Transportation Security Administration may direct through the Sponsor cancellation of the contract or subcontract for default at no cost to the Government.

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this provision. The knowledge and information of a contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

This certification concerns a matter within the jurisdiction of an agency of the United States of America and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code, Section 1001.

LOBBYING AND INFLUENCING FEDERAL EMPLOYEES

1) No Federal appropriated funds shall be paid, by or on behalf of the contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant and the amendment or modification of any Federal grant.

2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with any Federal grant, the contractor shall complete and submit Standard Form-LLL, "Disclosure of Lobby Activities," in accordance with its instructions.

A certification for Federal-aid contracts regarding payment of funds to lobby Congress or a Federal agency is included in Document 00862 of this Project Manual. Standard Form - LLL, "Disclosure of Lobbying Activities," with instructions for completion of the Standard Form is also included in Document 00862. Signing the Proposal shall constitute signature of the Certification.

The above referenced certification and disclosure of lobbying activities shall be included in each subcontract and any lower-tier for contracts exceeding \$100,000. All disclosure forms, but not certifications, shall be forwarded from tier to tier until received by the Engineer.

The Contractor, subcontractors and any lower-tier contractors shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by the Contractor, subcontractors and any lower-tier contractors. An event that materially affects the accuracy of the information reported includes:

- (1) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or
- (2) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or
- (3) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt

to influence a covered Federal Action.

**TERMINATION OF CONTRACT - 49 CFR PART 18
(All Contracts Exceeding \$10,000)**

1. The Port may, by written notice, terminate this contract in whole or in part at any time, either for the Port's convenience or because of failure to fulfill the contract obligations. Upon receipt of such notice services shall be immediately discontinued (unless the notice directs otherwise) and all materials as may have been accumulated in performing this contract, whether completed or in progress, delivered to the Port.
2. If the termination is for the convenience of the Port, an equitable adjustment in the contract price shall be made, but no amount shall be allowed for anticipated profit on unperformed services.
3. If the termination is due to failure to fulfill the contractor's obligations, the Port may take over the work and prosecute the same to completion by contract or otherwise. In such case, the contractor shall be liable to the Port for any additional cost occasioned to the Port thereby.
4. If, after notice of termination for failure to fulfill contract obligations, it is determined that the contractor had not so failed, the termination shall be deemed to have been effected for the convenience of the Port. In such event, adjustment in the contract price shall be made as provided in paragraph 2 of this clause.
5. The rights and remedies of the Port provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION
INELIGIBILITY, AND VOLUNTARY EXCLUSION - 49 CFR PART 29
(All Contracts Exceeding \$25,000 and all Auditing Contracts regardless of amount)**

The bidder certifies, by submission of this proposal or acceptance of this contract, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. It further agrees by submitting this proposal that it will include this clause without modification in all lower tier transactions, solicitations, proposals, contracts, and subcontracts. Where the bidder contractor or any lower tier participant is unable to certify to this statement, it shall attach an explanation to this solicitation/proposal.

**CLEAN AIR AND WATER POLLUTION CONTROL REQUIREMENTS
(All Contracts Exceeding \$100,000)**

Contractors and subcontractors agree:

- a. That any facility to be used in the performance of the contract or subcontract or to benefit from the contract is not listed on the Environmental Protection Agency (EPA) List of Violating Facilities;

- b. To comply with all the requirements of Section 114 of the Clean Air Act, as amended, 42 U.S.C. 1857 et seq. and Section 308 of the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in Section 114 and Section 308 of the Acts, respectively, and all other regulations and guidelines issued thereunder;
- c. That, as a condition for the award of this contract, the contractor or subcontractor will notify the awarding official of the receipt of any communication from the EPA indicating that a facility to be used for the performance of or benefit from the contract is under consideration to be listed on the EPA List of Violating Facilities;
- d. To include or cause to be included in any construction contract or subcontract which exceeds \$100,000 the aforementioned criteria and requirements.

END OF DOCUMENT

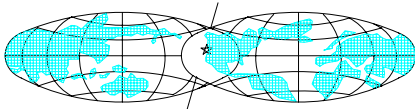
REQUEST FOR QUALIFICATIONS

ATTACHMENT II

PORT OF OAKLAND
LIVING WAGE REQUIREMENTS

Employer Self-Evaluation Form

Certificate of Compliance



PORT OF OAKLAND

Employer Self-Evaluation for Port of Oakland Living Wage

COVERED BUSINESS CHECKLIST WRITE YES/NO ANSWER IN APPROPRIATE BOX:

1. ☐ Is the Business entering into a contract, tenancy agreement or subordinate agreement (such as, subcontract, subtenancy, or sublicense) with the Port? *If no, go on to question 2. If yes, go on to question 3.*
2. ☐ Has the Business amended an existing contract, tenancy agreement or subordinate agreement at any time since April 2002? *If no to 1 and 2, stop here the business is not covered. If yes, go on to question 3.*
3. ☐ Is the contract with Aviation or Maritime divisions for a value of greater than \$50,000 over the life of the contract (over next five years if contract is for less than a year and expected to be renewed or extended)? *If no, stop here, the contract is not covered. If yes, go on to question 4.*
4. ☐ Is the contract for service other than the delivery of products, equipment or commodities? *If no, stop here the business is not covered. If yes, go on to question 5*
5. ☐ Does the Business employ more than 20 employees who spend at least 10 hours per week (4 hours per week if part time employees) working under the contract with the Port or on Port property? Indicate the number of employees that are employed by the Contractor _____. *If no, stop here the business is not covered. If yes, go on to question 6. Exemptions for specified employees of a covered employer*

All employees of a covered employer are required to be provided compensation and other benefits as provided under §728 of the Charter, except for specified employees exempt under the following exemptions. The following questions should be answered for each employee.

6. ☐ Does the employee work less than 25% of his/her time (10 hours per week for full time employee) under the contract with the Port? *If yes, stop here the specified employee is exempt. If no, go to question*
7. ☐ Is the employee under 21 years of age, employed by a government agency or nonprofit for after school or summer employment, or as a trainee for 90 days or less? *If yes, stop here the specified employee is exempt. If no, go to question 8.*
8. ☐ Has the Business obtained a waiver that covers the employee? *If yes, stop here the specified employee is exempt. If no, go to question 9.*

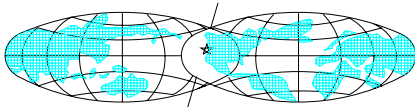
9. ☐ Is the employee participating in a bona-fide temporary job-training program in which a significant part of the compensation consists of acquiring specialized knowledge, abilities or skills in a recognized trade? *If yes, stop here the specified employee is exempt. If no, go to question 10.*
10. ☐ Is the employee a volunteer who is not compensated other than for incidental expenses or stipends? *If yes, stop here the specified employee is exempt. If no, go to question 11.*
11. ☐ Is the employee working for the Business less than 20 hours per week for a period of 6 months or less? *If yes, stop here the specified employee is exempt. If no, go to question 12.*
12. ☐ Of the remaining employees (employees for which no exemption applies as indicated by your answers to questions 6 through 11), are there 20 or fewer non-exempt employees working for the employer under the Port Contract? *If yes, stop here each of the remaining specified employee(s) is/are exempt. If no, each of the remaining specified employee(s) is covered by §728.*

The undersigned authorized representative of Contractor hereby certifies under penalty of perjury that all of the information on this form is true and accurate.

_____		_____
Company Name		Signature of Authorized Representative
_____		_____
Address		Type or Print Name
_____	_____	_____
Area Code / Phone	Date	Type or Print Title
_____		_____
Name of Primary Contact		Email Address

Submit Completed Checklist To:

Connie Ng-Wong
 Port of Oakland
 Social Responsibility Division
 530 Water Street
 Oakland, CA 94607
 Phone: (510) 627-1390
 Fax: (510) 451-1656
 Email: cng-wong@portoakland.com



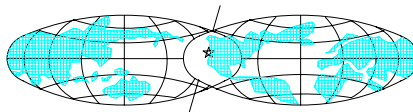
PORT OF OAKLAND

City of Oakland City Charter §728 Living Wage Compliance Checklist for Covered Employers

EMPLOYERS SUBJECT TO §728 OF THE CITY CHARTER MUST COMPLY WITH THE FOLLOWING REQUIREMENTS:

- 1) Pay all non-exempt employees the living wage rates (As of July 1, 2008, \$12.45 without health benefits or \$10.83 with health benefits). Port Ordinance No. 3666, as amended also requires that covered businesses provide employees at least twelve compensated days off per year, including holidays.
- 2) Pay at least \$1.62 per hour worked toward the provision of health care benefits for employees and/or their dependents, if the employer claims credit for health benefits.
- 3) **Provide written notification to each current and new employee, at time of hire, of his or her rights to receive the benefits under the provisions of these regulations.** The notification shall be provided in English, Spanish and other languages spoken by a significant number of the employees, and shall be posted prominently in communal areas at the work site. A copy of said notification is available from the Port Division of Social Responsibility.
- 4) Provide all employees earning less than \$12/hour notification in English, Spanish, and any other language spoken by a significant number of employees of their right to advance Earned Income Credit payments.
- 5) **Maintain a list of the name, address, date of hire, occupation classification, rate of pay, benefits paid for each of its employees, and compensated time off - and submit this list to the Port's Social Responsibility Division, Attention: Connie Ng-Wong, Living Wage Compliance Officer, by March 31st, June 30th, September 30th, and December 31st of each year.** If a covered employer has obtained a waiver from the Port Board of Directors, then the employer must still submit an annual payroll report covering each of its employees by December 31st of each year. Failure to provide the list within five days of the due date will result in a penalty of \$500 per day. Covered employers shall maintain payrolls and basic records for all employees and shall preserve them for a period of at least three years after the close of the compliance period.
- 6) Require subcontractors, tenants and subtenants, or licensees who are covered by these requirements to comply with the provisions of these regulations. **Covered employers shall be responsible for including language committing the subcontractor's, tenant's or licensee's agreement to comply, in the contract with the subcontractor.** Covered employers shall submit a copy of such subcontracts or other such agreements to the Port Division of Social Responsibility.
- 7) Permit authorized Port representatives access to work sites and, with employee consent, relevant payroll records for the purpose of monitoring compliance with these regulations, investigating employee complaints of non-compliance and evaluating the operation and effects of these regulations, including the production for inspection and copying of its payroll records for any or all of its employees for the applicable compliance period. Permit a representative of the labor organizations in its industry to have access to its workforce at the Port during non-working time and in non-work areas to ensure compliance.

Employers who fail to submit documents, declarations or information required to demonstrate compliance with these regulations shall be deemed noncompliant or non-responsive and subject to the remedies as set forth in §728.



PORT OF OAKLAND
CERTIFICATE OF COMPLIANCE – LIVING WAGE

The City of Oakland Living Wage Charter §728 ("§728") and Port Ordinance No. 3666 ("Ordinance 3666") as amended, provide that certain employers that enter into a contract, lease, license (or a subcontract, sublease, sublicense, or other agreement) with the Port for \$50,000 or more over the term of the contract and certain recipients of Port financial assistance for \$50,000 or more shall pay a prescribed minimum level of compensation to their covered employees ("Employees").

- (a) The undersigned ("Contractor") submits this certificate under penalty of perjury and as a condition of payment of its invoice(s) for service provided under the _____ agreement between the Port and Contractor.
- 1) Contractor hereby certifies that it is in compliance with §728 and Ordinance 3666 with respect to all non-exempt Employees of Contractor engaged in Port-related employment or work on Port property.
 - 2) Contractor hereby acknowledges that the Port is relying on Contractor's certification of compliance with §728 and Ordinance 3666 as a condition of payment of Contractor's invoice(s).
 - 3) Contractor understands that it may be subject to fines or penalties for noncompliance with §728 and Ordinance 3666 up to and including potential fines of \$500 per day until Contractor complies.
 - 4) Contractor hereby certifies that claims, records and statements relating to Contractor's compliance with §728 and Ordinance 3666 are true and accurate, that such claims, records and statements are made with the knowledge that the Port will rely on such claims, records and statements, and that such claims, records and statements are submitted to the Port for the express benefit of Contractor's employees engaged in Port-related employment or work on Port property.

Please check the appropriate box and sign below

- ☐ Contractor hereby certifies its compliance with all of its obligations under §728 and Ordinance 3666;
- or**
- ☐ Contractor hereby certifies that all Employees of Contractor working under Contractor's contract with the Port are compensated at wage rate(s) greater than \$12.00 per hour;
- or**
- ☐ Contractor hereby certifies that it is not currently covered by §728 or Ordinance 3666. Contractor further certifies that should §728 or Ordinance 3666 become applicable, Contractor will comply with all of its Living Wage obligations.

All terms used herein and not defined shall have the meaning ascribed to such terms in §728 and Ordinance 3666.

The undersigned authorized representative of Contractor hereby signs this Certificate under penalty of perjury.

Company Name

Signature of Authorized Representative

Address

Type or Print Name

Area Code/Phone

Date

Type or Print Title

Submit to: Connie Ng-Wong
Port of Oakland
Social Responsibility Division
530 Water Street
Oakland, CA 94607
Email: cng-wong@portoakland.com

Revised June 2, 2008

REQUEST FOR QUALIFICATIONS

ATTACHMENT III

NON-COLLUSION AFFIDAVIT

NON COLLUSION AFFIDAVIT

STATE OF CALIFORNIA)
) ss.
COUNTY OF)

Executed under penalty of perjury under the laws of the State of California.

(Signature of Principal)

Notary Public of the State of _____ (Seal)
In and for the County of _____
My Commission expires _____

Non-Collusion Affidavit - 1

(If Proposer [including any partner or venturer of a partnership or joint venture Proposer] is a corporation, this affidavit must be signed by the Chairman, President or Vice President and by the Secretary, Assistant Secretary, Chief Financial Officer or Assistant Treasurer.)

(If Proposer's affidavit on this form is made outside the State of California, the official position of the person taking such affidavit shall be certified according to law.)