

**City and County of San Francisco
Office of Contract Administration
Purchasing Division
City Hall, Room 430
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102-4685**

**Agreement between the City and County of San Francisco and
COWI and OLMM Joint Venture**

This Agreement is made this third day of January, 2017, in the City and County of San Francisco, State of California, by and between COWI and OLMM Joint Venture, whose principal place of business is located at 1300 Clay Street #700, Oakland, CA 94612, hereinafter referred to as “Contractor” and the City and County of San Francisco, a municipal corporation, hereinafter referred to as “City.”

Recitals

WHEREAS, the Port of San Francisco (“Department”) wishes to retain Contractor to provide architectural and engineering services for a public ferry boat berth landing in San Francisco’s Mission Bay neighborhood; and,

WHEREAS, a Request for Proposal (“RFP”) was issued on August 5, 2016, and City selected Contractor as the highest qualified scorer pursuant to the RFP; and

WHEREAS, the Local Business Entity (“LBE”) subcontracting participation requirement for this Agreement is 20%

WHEREAS, Contractor represents that it is qualified to perform the Services required by City as set forth under this Agreement; and

WHEREAS, approval for this Agreement was obtained when the Civil Service Commission approved Contract number 44753 15/16 on June 20, 2016;

Now, THEREFORE, the parties agree as follows:

Article 1 Definitions

The following definitions apply to this Agreement:

1.1 "Agreement" means this contract document, including all attached appendices, and all applicable City Ordinances and Mandatory City Requirements which are specifically incorporated into this Agreement by reference as provided herein.

1.2 "City" or "the City" means the City and County of San Francisco, a municipal corporation, acting by and through both its Director of the Office of Contract Administration or the Director's designated agent, hereinafter referred to as "Purchasing" and "Port of San Francisco."

1.3 "CMD" means the Contract Monitoring Division of the City.

1.4 "Contractor" or "Consultant" means COWI and OLMM Joint Venture whose principal place of business is located at 1300 Clay Street #700, Oakland, CA 94612.

1.5 "Deliverables" means Contractor's work product resulting from the Services that are provided by Contractor to City during the course of Contractor's performance of the Agreement, including without limitation, the work product described in the "Scope of Services" attached as Appendix A.

1.6 "Effective Date" means the date upon which the City's Controller certifies the availability of funds for this Agreement as provided in Section 3.1.

1.7 "Mandatory City Requirements" means those City laws set forth in the San Francisco Municipal Code, including the duly authorized rules, regulations, and guidelines implementing such laws, that impose specific duties and obligations upon Contractor.

1.8 "Party" and "Parties" mean the City and Contractor either collectively or individually.

1.9 "Services" means the work performed by Contractor under this Agreement as specifically described in the "Scope of Services" attached as Appendix A, including all services, labor, supervision, materials, equipment, actions and other requirements to be performed and furnished by Contractor under this Agreement.

Article 2 Term of the Agreement

2.1 The term of this Agreement shall commence on the latter of: (i) January 3, 2017; or (ii) the Effective Date and expire on January 2, 2022, unless earlier terminated as otherwise provided herein.

2.2 The City has two options to renew the Agreement for a period of one year each. The City may extend this Agreement beyond the expiration date by exercising an option at the City's sole and absolute discretion and by modifying this Agreement as provided in Section 11.5, "Modification of this Agreement."

Article 3 Financial Matters

3.1 Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation. This Agreement is subject to the budget and fiscal provisions of the City's Charter. Charges will accrue only after prior written authorization certified by the Controller, and the amount of City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated. City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

THIS SECTION CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT.

3.2 Guaranteed Maximum Costs. The City's payment obligation to Contractor cannot at any time exceed the amount certified by City's Controller for the purpose and period stated in such certification. Absent an authorized Emergency per the City Charter or applicable Code, no City representative is authorized to offer or promise, nor is the City required to honor, any offered or promised payments to Contractor under this Agreement in excess of the certified maximum amount without the Controller having first certified the additional promised amount and the Parties having modified this Agreement as provided in Section 11.5, "Modification of this Agreement."

3.3 Compensation.

3.3.1 Payment. Contractor shall provide an invoice to the City on a monthly basis for Services completed in the immediate preceding month, unless a different schedule is set out in Appendix B, "Calculation of Charges." Compensation shall be made for Services identified in the invoice that the Executive Director of the Port of San Francisco, in his or her sole discretion, concludes has been satisfactorily performed. Payment shall be made within 30 calendar days of receipt of the invoice, unless the City notifies the Contractor that a dispute as to the invoice exists. In no event shall the amount of this Agreement exceed three million nine hundred eighty one thousand three hundred sixty nine dollars (\$3,981,369). The breakdown of charges associated with this Agreement appears in Appendix B, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein. In no event shall City be liable for interest or late charges for any late payments.

3.3.2 Payment Limited to Satisfactory Services. Contractor is not entitled to any payments from City until Port of San Francisco approves Services, including any furnished Deliverables, as satisfying all of the requirements of this Agreement. Payments to Contractor by City shall not excuse Contractor from its obligation to replace unsatisfactory Deliverables,

including equipment, components, materials, or Services even if the unsatisfactory character of such Deliverables, equipment, components, materials, or Services may not have been apparent or detected at the time such payment was made. Deliverables, equipment, components, materials and Services that do not conform to the requirements of this Agreement may be rejected by City.

3.3.3 Withhold Payments. If Contractor fails to provide Services in accordance with Contractor's obligations under this Agreement, the City may withhold any and all payments due Contractor until such failure to perform is cured, and Contractor shall not stop work as a result of City's withholding of payments as provided herein.

3.3.4 Invoice Format. Invoices furnished by Contractor under this Agreement must be in a form acceptable to the Controller and City, and must include a unique invoice number. Payment shall be made by City to Contractor at the address specified in Section 11.1, "Notices to the Parties," or in such alternate manner as the Parties have mutually agreed upon in writing.

3.3.5 LBE Payment and Utilization Tracking System. Contractor must submit all required payment information using the online LBE Utilization Tracking System (LBEUTS) as required by CMD to enable the City to monitor Contractor's compliance with the LBE subcontracting commitments in this Agreement. Contractor shall pay its LBE subcontractors within three working days after receiving payment from the City, except as otherwise authorized by the LBE Ordinance. The Controller is not authorized to pay invoices submitted by Contractor prior to Contractor's submission of all required CMD payment information. Failure to submit all required payment information to the LBEUTS with each payment request may result in the Controller withholding 20% of the payment due pursuant to that invoice until the required payment information is provided. Following City's payment of an invoice, Contractor has ten calendar days to acknowledge using the online LBEUTS that all subcontractors have been paid. Contractor shall attend a LBEUTS training session. LBEUTS training session schedules are available at www.sfgov.org/lbeuts.

3.3.6 Getting paid for services from the City.

(a) All City vendors receiving new contracts, contract renewals, or contract extensions must sign up to receive electronic payments through Paymode-X, the City's third party service that provides Automated Clearing House (ACH) payments. Electronic payments are processed every business day and are safe and secure. To sign up for electronic payments, visit www.sfgov.org/ach.

(b) The following information is required to sign up: (i) The enroller must be their company's authorized financial representative, (ii) the company's legal name, main telephone number and all physical and remittance addresses used by the company, (iii) the company's U.S. federal employer identification number (EIN) or Social Security number (if they are a sole proprietor), and (iv) the company's bank account information, including routing and account numbers.

3.4 Audit and Inspection of Records. Contractor agrees to maintain and make available to the City, during regular business hours, accurate books and accounting records relating to its Services. Contractor will permit City to audit, examine and make excerpts and transcripts from such books and records, 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. Contractor shall maintain such data and records in an accessible location and condition for a period of not fewer than five years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any Federal agency having an interest in the subject matter of this Agreement shall have the same rights as conferred upon City by this Section. Contractor shall include the same audit and inspection rights and record retention requirements in all subcontracts.

3.5 Submitting False Claims. The full text of San Francisco Administrative Code Chapter 21, Section 21.35, including the enforcement and penalty provisions, is incorporated into this Agreement. Pursuant to San Francisco Administrative Code §21.35, any contractor or subcontractor who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. A contractor or subcontractor will be deemed to have submitted a false claim to the City if the contractor or subcontractor: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

Article 4 Services and Resources

4.1 Services Contractor Agrees to Perform. Contractor agrees to perform the Services provided for in Appendix A, "Scope of Services." Officers and employees of the City are not authorized to request, and the City is not required to reimburse the Contractor for, Services beyond the Scope of Services listed in Appendix A, unless Appendix A is modified as provided in Section 11.5, "Modification of this Agreement."

4.2 Qualified Personnel. Contractor shall utilize only competent personnel under the supervision of, and in the employment of, Contractor (or Contractor's authorized subcontractors) to perform the Services. Contractor will comply with City's reasonable requests regarding assignment and/or removal of personnel, but all personnel, including those assigned at City's request, must be supervised by Contractor. Contractor shall commit adequate resources to allow timely completion within the project schedule specified in this Agreement.

4.3 **Subcontracting.** Contractor may subcontract portions of the Services only upon prior written approval of City. Contractor is responsible for its subcontractors throughout the course of the work required to perform the Services. All Subcontracts must incorporate the terms of Article 10 “Additional Requirements Incorporated by Reference” of this Agreement, unless inapplicable. Neither Party shall, on the basis of this Agreement, contract on behalf of, or in the name of, the other Party. Any agreement made in violation of this provision shall be null and void. City’s execution of this Agreement constitutes its approval of the subcontractors listed below.

Robin Chiang & Company	M Lee Corportation
Geotechnical Consultants, Inc	Jacobs Engineering Group
Boudreau Associates LLC	ESA Inc.
Orion Environmental Associates	Adavant Consulting
HRA Consulting Engineers	LCW Consulting
MHC Engineers, Inc.	Pacific EcoRisk
RES Engineers, Inc.	

4.3.1 **Prevailing Wages.** Should Contractor utilize any subcontractor(s) to provide services for this Agreement, Contractor and its subcontractors shall comply with the following:

(a) On July 1, 2014, the registration program under section 1725.5 of the California Labor Code went into effect. All subcontractors who propose or work under this Agreement must register and pay an annual fee to the California Department of Industrial Relations (DIR).

(b) Effective March 1, 2015, Contractor shall not seek proposals from nor utilize any subcontractor that is not registered with the DIR. The City shall not accept a proposal that includes subcontractors without proof that all subcontractors are registered to perform public works pursuant to California Labor Code section 1725.5.

(c) Effective April 1, 2015, Contractor agrees to ensure that any subcontractor it intends to utilize for work under this Agreement shall be first registered with the DIR. No subcontractor may perform services under this Agreement unless registered with the DIR.

(d) Contractor shall not employ any subcontractor for services under this Agreement unless the subcontractor maintains a current registration with the DIR.

4.4 Independent Contractor; Payment of Employment Taxes and Other Expenses.

4.4.1 Independent Contractor. For the purposes of this Article 4, "Contractor" shall be deemed to include not only Contractor, but also any agent or employee of Contractor. Contractor acknowledges and agrees that at all times, Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is responsible for the manner in which it performs the services and work requested by City under this Agreement. Contractor, its agents, and employees will not represent or hold themselves out to be employees of the City at any time. Contractor or any agent or employee of Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor's performing services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor or any agent or employee of Contractor. Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Contractor performs work under this Agreement. Contractor agrees to maintain and make available to City, upon request and during regular business hours, accurate books and accounting records demonstrating Contractor's compliance with this section. Should City determine that Contractor, or any agent or employee of Contractor, is not performing in accordance with the requirements of this Agreement, City shall provide Contractor with written notice of such failure. Within five (5) business days of Contractor's receipt of such notice, and in accordance with Contractor policy and procedure, Contractor shall remedy the deficiency. Notwithstanding, if City believes that an action of Contractor, or any agent or employee of Contractor, warrants immediate remedial action by Contractor, City shall contact Contractor and provide Contractor in writing with the reason for requesting such immediate action.

4.4.2 Payment of Employment Taxes and Other Expenses. Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this

liability). City shall then forward those amounts to the relevant taxing authority. Should a relevant taxing authority determine a liability for past services performed by Contractor for City, upon notification of such fact by City, Contractor shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability). A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of City. Notwithstanding the foregoing, Contractor agrees to indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all claims, losses, costs, damages, and expenses, including attorneys' fees, arising from this section.

4.5 Assignment. The Services to be performed by Contractor are personal in character and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by Contractor unless first approved by City by written instrument executed and approved in the same manner as this Agreement. Any purported assignment made in violation of this provision shall be null and void.

4.6 Warranty. Contractor will perform the Services with the degree of skill and care that is required by current, good and sound professional procedures and practices, and in conformance with generally accepted professional standards prevailing at the time the Services are performed.

Article 5 Insurance and Indemnity

5.1 Insurance.

5.1.1 Required Coverages. Without in any way limiting Contractor's liability pursuant to the "Indemnification" section of this Agreement, Contractor must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

(a) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness; and

(b) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence and \$2,000,000 general aggregate for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and

(c) Commercial Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence, "Combined Single Limit" for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

(d) Professional liability insurance, applicable to Contractor's profession, with limits not less than \$1,000,000 each claim with respect to negligent acts, errors or omissions in connection with the Services.

5.1.2 Commercial General Liability and Commercial Automobile Liability Insurance policies must be endorsed to provide:

(a) Name as Additional Insured the City and County of San Francisco, the Port of San Francisco, its Officers, Agents, and Employees, using an endorsement in the form of ISO 2010 (or its equivalent).

(b) That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.

5.1.3 All policies shall be endorsed to provide thirty (30) days' advance written notice to the City of cancellation for any reason, intended non-renewal, or reduction in coverages. Notices shall be sent to the City address set forth in Section 11.1, entitled "Notices to the Parties."

5.1.4 Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

5.1.5 Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the City may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

5.1.6 Before commencing any Services, Contractor shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Approval of the insurance by City shall not relieve or decrease Contractor's liability hereunder.

5.1.7 The Workers' Compensation policy(ies) shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agents and subcontractors.

5.1.8 If Contractor will use any subcontractor(s) to provide Services, Contractor shall require the subcontractor(s) to provide all necessary insurance and to name the City and County of San Francisco, its officers, agents and employees and the Contractor as additional insureds.

5.2 Indemnification For Design Professionals. To the fullest extent permitted by law, Contractor shall assume the defense of (with legal counsel subject to approval of the City), indemnify and save harmless the City, its boards, commissions, officers, 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 the Contractor 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, fees of expert consultants or witnesses in litigation, and costs of investigation), that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, the negligence, recklessness, or willful misconduct of the Contractor, any subconsultant, anyone directly or indirectly employed by them, or anyone that they control (collectively, "Liabilities").

5.2.1 Limitations. No insurance policy covering the Contractor's performance under this Agreement shall operate to limit the Contractor's Liabilities under this provision. Nor shall the amount of insurance coverage operate to limit the extent of such Liabilities. The Contractor assumes no liability whatsoever for the sole negligence, active negligence, or willful misconduct of any Indemnitee or the contractors of any Indemnitee.

5.2.2 Copyright Infringement. Contractor shall also indemnify, defend and hold harmless all Indemnitees from all suits or claims for 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 the City, or any of its boards, commissions, officers, or employees of articles, work or deliverables supplied in the performance of Services. Infringement of patent rights, copyrights, or other proprietary rights in the performance of this Agreement, if not the basis for indemnification under the law, shall nevertheless be considered a material breach of contract.

Article 6 Liability of the Parties

6.1 Liability of City. CITY'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 3.3.1, "PAYMENT," OF THIS AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL CITY 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, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT

6.2 Liability for Use of Equipment. City shall not be liable for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Contractor, or any of its subcontractors, or by any of their employees, even though such equipment is furnished, rented or loaned by City.

6.3 **Liability for Incidental and Consequential Damages.** Contractor shall be responsible for incidental and consequential damages resulting in whole or in part from Contractor's acts or omissions.

Article 7 Payment of Taxes

7.1 Except for any applicable California sales and use taxes charged by Contractor to City, Contractor shall pay all taxes, including possessory interest taxes levied upon or as a result of this Agreement, or the Services delivered pursuant hereto. Contractor shall remit to the State of California any sales or use taxes paid by City to Contractor under this Agreement. Contractor agrees to promptly provide information requested by the City to verify Contractor's compliance with any State requirements for reporting sales and use tax paid by City under this Agreement.

7.2 Contractor acknowledges that this Agreement may create a "possessory interest" for property tax purposes. Generally, such a possessory interest is not created unless the Agreement entitles the Contractor to possession, occupancy, or use of City property for private gain. If such a possessory interest is created, then the following shall apply:

7.2.1 Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that Contractor, and any permitted successors and assigns, may be subject to real property tax assessments on the possessory interest.

7.2.2 Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that the creation, extension, renewal, or assignment of this Agreement may result in a "change in ownership" for purposes of real property taxes, and therefore may result in a revaluation of any possessory interest created by this Agreement. Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report on behalf of the City to the County Assessor the information required by Revenue and Taxation Code section 480.5, as amended from time to time, and any successor provision.

7.2.3 Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that other events also may cause a change of ownership of the possessory interest and result in the revaluation of the possessory interest. (see, e.g., Rev. & Tax. Code section 64, as amended from time to time). Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report any change in ownership to the County Assessor, the State Board of Equalization or other public agency as required by law.

7.2.4 Contractor further agrees to provide such other information as may be requested by the City to enable the City to comply with any reporting requirements for possessory interests that are imposed by applicable law.

Article 8 Termination and Default

8.1 Termination for Convenience

8.1.1 City shall have the option, in its sole discretion, to terminate this Agreement, at any time during the term hereof, for convenience and without cause. City shall

exercise this option by giving Contractor written notice of termination. The notice shall specify the date on which termination shall become effective.

8.1.2 Upon receipt of the notice of termination, Contractor shall commence and perform, with diligence, all actions necessary on the part of Contractor to effect the termination of this Agreement on the date specified by City and to minimize the liability of Contractor and City to third parties as a result of termination. All such actions shall be subject to the prior approval of City. Such actions shall include, without limitation:

(a) Halting the performance of all Services under this Agreement on the date(s) and in the manner specified by City.

(b) Terminating all existing orders and subcontracts, and not placing any further orders or subcontracts for materials, Services, equipment or other items.

(c) At City's direction, assigning to City any or all of Contractor's right, title, and interest under the orders and subcontracts terminated. Upon such assignment, City shall settle or pay any or all claims arising out of the termination of such orders and subcontracts.

(d) Subject to City's approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subcontracts.

(e) Completing performance of any Services that City designates to be completed prior to the date of termination specified by City.

(f) Taking such action as may be necessary, or as the City may direct, for the protection and preservation of any property related to this Agreement which is in the possession of Contractor and in which City has or may acquire an interest.

8.1.3 Within 30 days after the specified termination date, Contractor shall submit to City an invoice, which shall set forth each of the following as a separate line item:

(a) The reasonable cost to Contractor, without profit, for all Services prior to the specified termination date, for which Services City has not already tendered payment. Reasonable costs may include a reasonable allowance for actual overhead, not to exceed a total of 10% of Contractor's direct costs for Services. Any overhead allowance shall be separately itemized. Contractor may also recover the reasonable cost of preparing the invoice.

(b) A reasonable allowance for profit on the cost of the Services described in the immediately preceding subsection (a), provided that Contractor can establish, to the satisfaction of City, that Contractor would have made a profit had all Services under this Agreement been completed, and provided further, that the profit allowed shall in no event exceed 5% of such cost.

(c) The reasonable cost to Contractor of handling material or equipment returned to the vendor, delivered to the City or otherwise disposed of as directed by the City.

(d) A deduction for the cost of materials to be retained by Contractor, amounts realized from the sale of materials and not otherwise recovered by or credited to City, and any other appropriate credits to City against the cost of the Services or other work.

8.1.4 In no event shall City be liable for costs incurred by Contractor or any of its subcontractors after the termination date specified by City, except for those costs specifically enumerated and described in Section 8.1.3. Such non-recoverable costs include, but are not limited to, anticipated profits on the Services under this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under Section 8.1.3.

8.1.5 In arriving at the amount due to Contractor under this Section, City may deduct: (i) all payments previously made by City for Services covered by Contractor's final invoice; (ii) any claim which City may have against Contractor in connection with this Agreement; (iii) any invoiced costs or expenses excluded pursuant to the immediately preceding subsection 8.1.4; and (iv) in instances in which, in the opinion of the City, the cost of any Service performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected Services, the difference between the invoiced amount and City's estimate of the reasonable cost of performing the invoiced Services in compliance with the requirements of this Agreement.

8.1.6 City's payment obligation under this Section shall survive termination of this Agreement.

8.2 Termination for Default; Remedies.

8.2.1 Each of the following shall constitute an immediate event of default ("Event of Default") under this Agreement:

(a) Contractor fails or refuses to perform or observe any term, covenant or condition contained in any of the following Sections of this Agreement:

3.5	Submitting False Claims.	10.4	Nondisclosure of Private, Proprietary or Confidential Information
4.5	Assignment	10.10	Alcohol and Drug-Free Workplace
Article 5	Insurance and Indemnity	10.13	Working with Minors
Article 7	Payment of Taxes	11.10	Compliance with Laws

(b) Contractor fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, including any obligation imposed by ordinance or statute and incorporated by reference herein, and such default continues for a period of ten days after written notice thereof from City to Contractor.

(c) Contractor (i) is generally not paying its debts as they become due; (ii) files, or consents by answer or otherwise to the filing against it of a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction; (iii) makes an assignment for the benefit of its creditors; (iv) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Contractor or of any substantial part of Contractor's property; or (v) takes action for the purpose of any of the foregoing.

(d) A court or government authority enters an order (i) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Contractor or with respect to any substantial part of Contractor's property, (ii) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction or (iii) ordering the dissolution, winding-up or liquidation of Contractor.

8.2.2 On and after any Event of Default, City shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. In addition, where applicable, City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Contractor any Event of Default; Contractor shall pay to City on demand all costs and expenses incurred by City in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. City shall have the right to offset from any amounts due to Contractor under this Agreement or any other agreement between City and Contractor: (i) all damages, losses, costs or expenses incurred by City as a result of an Event of Default; and (ii) any liquidated damages levied upon Contractor pursuant to the terms of this Agreement; and (iii), any damages imposed by any ordinance or statute that is incorporated into this Agreement by reference, or into any other agreement with the City.

8.2.3 All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy. Nothing in this Agreement shall constitute a waiver or limitation of any rights that either party may have under applicable law.

8.2.4 Any notice of default must be sent by registered mail to the address set forth in Article 11.

8.3 Non-Waiver of Rights. The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.

8.4 Rights and Duties upon Termination or Expiration.

8.4.1 This Section and the following Sections of this Agreement listed below, shall survive termination or expiration of this Agreement:

3.3.2	Payment Limited to Satisfactory Services	9.1	Ownership of Results
3.3.7(a)	Grant Funded Contracts - Disallowance	9.2	Works for Hire
3.4	Audit and Inspection of Records	10.4	Nondisclosure of Private, Proprietary or Confidential Information
3.5	Submitting False Claims	11.6	Dispute Resolution Procedure
Article 5	Insurance and Indemnity	11.7	Agreement Made in California; Venue
6.1	Liability of City	11.8	Construction
6.3	Liability for Incidental and Consequential Damages	11.9	Entire Agreement
Article 7	Payment of Taxes	11.10	Compliance with Laws
8.1.6	Payment Obligation	11.11	Severability

8.4.2 Subject to the survival of the Sections identified in Section 8.4.1, above, if this Agreement is terminated prior to expiration of the term specified in Article 2, this Agreement shall be of no further force or effect. Contractor shall after final payment transfer title to City, and deliver in the manner, at the times, and to the extent, if any, directed by City, any work in progress, completed work, supplies, equipment, and other materials produced as a part of, or acquired in connection with the performance of this Agreement, and any completed or partially completed work which, if this Agreement had been completed, would have been required to be furnished to City.

Article 9 Rights In Deliverables

9.1 Ownership of Results. Any interest of Contractor or its subcontractors, in the Deliverables, including any drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media or other documents prepared by Contractor or its subcontractors, shall become the property of and will be transmitted to City. However, unless expressly prohibited elsewhere in this Agreement, Contractor may retain and use copies for reference and as documentation of its experience and capabilities.

9.2 Works for Hire. If, in connection with Services, Contractor or its subcontractors creates Deliverables including, without limitation, artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys,

blueprints, source codes, or any other original works of authorship, whether in digital or any other format, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works shall be the property of the City. If any Deliverables created by Contractor or its subcontractor(s) under this Agreement are ever determined not to be works for hire under U.S. law, Contractor hereby assigns all Contractor's copyrights to such Deliverables to the City, agrees to provide any material and execute any documents necessary to effectuate such assignment, and agrees to include a clause in every subcontract imposing the same duties upon subcontractor(s). With City's prior written approval, Contractor and its subcontractor(s) may retain and use copies of such works for reference and as documentation of their respective experience and capabilities.

Article 10 Additional Requirements Incorporated by Reference

10.1 Laws Incorporated by Reference. The full text of the laws listed in this Article 10, including enforcement and penalty provisions, are incorporated by reference into this Agreement. The full text of the San Francisco Municipal Code provisions incorporated by reference in this Article and elsewhere in the Agreement ("Mandatory City Requirements") are available at www.sfgov.org under "Government."

10.2 Conflict of Interest. By executing this Agreement, Contractor certifies that it does not know of any fact which constitutes a violation of Section 15.103 of the City's Charter; Article III, Chapter 2 of City's Campaign and Governmental Conduct Code; Title 9, Chapter 7 of the California Government Code (Section 87100 *et seq.*), or Title 1, Division 4, Chapter 1, Article 4 of the California Government Code (Section 1090 *et seq.*), and further agrees promptly to notify the City if it becomes aware of any such fact during the term of this Agreement.

10.3 Prohibition on Use of Public Funds for Political Activity. In performing the Services, Contractor shall comply with San Francisco Administrative Code Chapter 12G, which prohibits funds appropriated by the City for this Agreement from being expended to participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure. Contractor is subject to the enforcement and penalty provisions in Chapter 12G.

10.4 Nondisclosure of Private, Proprietary or Confidential Information.

10.4.1 If this Agreement requires City to disclose "Private Information" to Contractor within the meaning of San Francisco Administrative Code Chapter 12M, Contractor and subcontractor shall use such information only in accordance with the restrictions stated in Chapter 12M and in this Agreement and only as necessary in performing the Services. Contractor is subject to the enforcement and penalty provisions in Chapter 12M.

10.4.2 In the performance of Services, Contractor may have access to City's proprietary or confidential information, the disclosure of which to third parties may damage City. If City discloses proprietary or confidential information to Contractor, such information must be held by Contractor in confidence and used only in performing the Agreement. Contractor shall

exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary or confidential information.

10.5 Nondiscrimination Requirements

10.5.1 Non Discrimination in Contracts. Contractor shall comply with the provisions of Chapters 12B and 12C of the San Francisco Administrative Code. Contractor shall incorporate by reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all subcontractors to comply with such provisions. Contractor is subject to the enforcement and penalty provisions in Chapters 12B and 12C.

10.5.2 Nondiscrimination in the Provision of Employee Benefits. San Francisco Administrative Code 12B.2. Contractor does not as of the date of this Agreement, and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of employee benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in San Francisco Administrative Code Section 12B.2.

10.6 Local Business Enterprise and Non-Discrimination in Contracting Ordinance. Contractor shall comply with all applicable provisions of Chapter 14B ("LBE Ordinance"). Contractor is subject to the enforcement and penalty provisions in Chapter 14B. Contractor shall utilize LBE Subcontractors for at least 20% of the Services except as otherwise authorized in writing by the Director of CMD. Contractor shall incorporate the requirements of the LBE Ordinance in each subcontract made in the fulfillment of Contractor's LBE subcontracting commitments.

10.7 Minimum Compensation Ordinance. Contractor shall pay covered employees no less than the minimum compensation required by San Francisco Administrative Code Chapter 12P. Contractor is subject to the enforcement and penalty provisions in Chapter 12P. By signing and executing this Agreement, Contractor certifies that it is in compliance with Chapter 12P.

10.8 Health Care Accountability Ordinance. Contractor shall comply with San Francisco Administrative Code Chapter 12Q. Contractor shall choose and perform one of the Health Care Accountability options set forth in San Francisco Administrative Code Chapter 12Q.3. Contractor is subject to the enforcement and penalty provisions in Chapter 12Q.

10.9 First Source Hiring Program. Contractor must comply with all of the provisions of the First Source Hiring Program, Chapter 83 of the San Francisco Administrative Code, that apply to this Agreement, and Contractor is subject to the enforcement and penalty provisions in Chapter 83.

10.10 Alcohol and Drug-Free Workplace. City reserves the right to deny access to, or require Contractor to remove from, City facilities personnel of any Contractor or subcontractor who City has reasonable grounds to believe has engaged in alcohol abuse or illegal drug activity which in any way impairs City's ability to maintain safe work facilities or to protect the health and well-being of City employees and the general public. City shall have the right of final approval for the entry or re-entry of any such person previously denied access to, or removed from, City facilities. Illegal drug activity means possessing, furnishing, selling, offering, purchasing, using or being under the influence of illegal drugs or other controlled substances for which the individual lacks a valid prescription. Alcohol abuse means possessing, furnishing, selling, offering, or using alcoholic beverages, or being under the influence of alcohol.

10.11 Limitations on Contributions. By executing this Agreement, Contractor acknowledges that it is familiar with section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or the board of a state agency on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. The prohibition on contributions applies to each prospective party to the contract; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Contractor must inform each such person of the limitation on contributions imposed by Section 1.126 and provide the names of the persons required to be informed to City.

10.12 Reserved. (Slavery Era Disclosure)

10.13 Reserved. (Working with Minors)

10.14 Consideration of Criminal History in Hiring and Employment Decisions

10.14.1 Contractor agrees to comply fully with and be bound by all of the provisions of Chapter 12T, "City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions," of the San Francisco Administrative Code ("Chapter 12T"), including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Chapter 12T are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the Chapter 12T is available on the web at <http://sfgov.org/olse/fco>. A partial listing of some of Contractor's obligations under Chapter 12T is set forth in this Section. Contractor is required to comply with all of the applicable

provisions of 12T, irrespective of the listing of obligations in this Section. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12T.

10.14.2 The requirements of Chapter 12T shall only apply to a Contractor's or Subcontractor's operations to the extent those operations are in furtherance of the performance of this Agreement, shall apply only to applicants and employees who would be or are performing work in furtherance of this Agreement, and shall apply when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City of San Francisco. Chapter 12T shall not apply when the application in a particular context would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

10.15 Reserved. (Public Access to Nonprofit Records and Meetings)

10.16 Food Service Waste Reduction Requirements. Contractor shall comply with the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including but not limited to the remedies for noncompliance provided therein.

10.17 Reserved. "Sugar-Sweetened Beverage Prohibition"

10.18 Tropical Hardwood and Virgin Redwood Ban. Pursuant to San Francisco Environment Code Section 804(b), the City urges Contractor not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

10.18.1 Contractor shall comply with San Francisco Environment Code Chapter 8, which provides that except as expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code, Contractor shall not provide any items to the City in performance of this contract which are tropical hardwoods, tropical hardwood wood products, virgin redwood or virgin redwood wood products. Contractor is subject to the penalty and enforcement provisions of Chapter 8.

10.19 Reserved. (Preservative Treated Wood Products)

10.20 Labor Standards – Prevailing Wages. Contractor agrees to comply with all of the provisions set forth in Appendix C, regarding State of California and City labor standards and payment of prevailing wages.

10.20.1 On July 1, 2014, California Labor Code Section 1725.5 took effect, requiring a registration program for all contractors and subcontractors who bid or work on a public works project. All such contractors and subcontractors must register and pay an annual fee to the California Department of Industrial Relations ("DIR"). This Agreement may require contract services that involve the performance of work for a public works, as defined by the provisions of Section 6.22(E) of the San Francisco Administrative Code and Section 1720 of the California Labor Code regarding payment of prevailing wages ("Covered Services"). Section 1720 of the California

Labor Code defines a “public works” to include, among things, work performed during the design and preconstruction phases of construction. Accordingly, as a condition to award of this Agreement, or issuance of a Contract Service Order for any Covered Services, Contractor must comply with Sections 1725 and 1771.1 of the California Labor Code, including registration with the California Department of Industrial Relations.

10.20.2 Effective April 1, 2015, no contractor or subcontractor may be awarded a contract for public work on a public work project unless registered with the DIR per Labor Code section 1725.5.

Article 11 General Provisions

11.1 **Notices to the Parties.** Unless otherwise indicated in this Agreement, all written communications sent by the Parties may be by U.S. mail or e-mail, and shall be addressed as follows:

To City: Joe Roger
Senior Structural Engineer
Pier 1, The Embarcadero
San Francisco, CA 94111
Joe. Roger@sfport.com

To Contractor: Winston Stewart
Senior Vice President
1300 Clay St #700
Oakland, CA 94612
hmdf@cowi.com

Any notice of default must be sent by registered mail. Either Party may change the address to which notice is to be sent by giving written notice thereof to the other Party. If email notification is used, the sender must specify a receipt notice.

11.2 **Compliance with Americans with Disabilities Act.** Contractor shall provide the Services in a manner that complies with the Americans with Disabilities Act (ADA), including but not limited to Title II's program access requirements, and all other applicable federal, state and local disability rights legislation.

11.3 **Reserved. (Payment Card Industry (“PCI”) Requirements)**

11.4 **Sunshine Ordinance.** Contractor acknowledges that this Agreement and all records related to its formation, Contractor's performance of Services, and City's payment are subject to the California Public Records Act, (California Government Code §6250 et. seq.), and the San Francisco Sunshine Ordinance, (San Francisco Administrative Code Chapter 67). Such

records are subject to public inspection and copying unless exempt from disclosure under federal, state or local law.

11.5 Modification of this Agreement. This Agreement may not be modified, nor may compliance with any of its terms be waived, except as noted in Section 11.1, "Notices to Parties," regarding change in personnel or place, and except by written instrument executed and approved in the same manner as this Agreement. Contractor shall cooperate with Department to submit to the Director of CMD any amendment, modification, supplement or change order that would result in a cumulative increase of the original amount of this Agreement by more than 20% (CMD Contract Modification Form).

11.6 Dispute Resolution Procedure.

11.6.1 Negotiation; Alternative Dispute Resolution. The Parties will attempt in good faith to resolve any dispute or controversy arising out of or relating to the performance of services under this Agreement. If the Parties are unable to resolve the dispute, then, pursuant to San Francisco Administrative Code Section 21.35, Contractor may submit to the Contracting Officer a written request for administrative review and documentation of the Contractor's claim(s). Upon such request, the Contracting Officer shall promptly issue an administrative decision in writing, stating the reasons for the action taken and informing the Contractor of its right to judicial review. If agreed by both Parties in writing, disputes may be resolved by a mutually agreed-upon alternative dispute resolution process. If the parties do not mutually agree to an alternative dispute resolution process or such efforts do not resolve the dispute, then either Party may pursue any remedy available under California law. The status of any dispute or controversy notwithstanding, Contractor shall proceed diligently with the performance of its obligations under this Agreement in accordance with the Agreement and the written directions of the City. Neither Party will be entitled to legal fees or costs for matters resolved under this section.

11.6.2 Government Code Claim Requirement. No suit for money or damages may be brought against the City until a written claim therefor has been presented to and rejected by the City in conformity with the provisions of San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq. Nothing set forth in this Agreement shall operate to toll, waive or excuse Contractor's compliance with the California Government Code Claim requirements set forth in San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq.

11.7 Agreement Made in California; Venue. The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

11.8 Construction. All paragraph captions are for reference only and shall not be considered in construing this Agreement.

11.9 **Entire Agreement.** This contract sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions. This Agreement may be modified only as provided in Section 11.5, "Modification of this Agreement."

11.10 **Compliance with Laws.** Contractor shall keep itself fully informed of the City's Charter, codes, ordinances and duly adopted rules and regulations of the City and of all state, and federal laws in any manner affecting the performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.

11.11 **Severability.** Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.

11.12 **Cooperative Drafting.** This Agreement has been drafted through a cooperative effort of City and Contractor, and both Parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No Party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the Party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

11.13 **Order of Precedence.** Contractor agrees to perform the services described below in accordance with the terms and conditions of this Agreement, implementing task orders, the RFP, and Contractor's proposal dated May 10, 2016. The RFP and Contractor's proposal are incorporated by reference as though fully set forth herein. Should there be a conflict of terms or conditions, this Agreement and any implementing task orders shall control over the RFP and the Contractor's proposal.

Article 12 MacBride And Signature

12.1 **MacBride Principles -Northern Ireland.** The provisions of San Francisco Administrative Code §12F are incorporated herein by this reference and made part of this Agreement. By signing this Agreement, Contractor confirms that Contractor has read and understood that the City urges companies doing business in Northern Ireland to resolve employment inequities and to abide by the MacBride Principles, and urges San Francisco companies to do business with corporations that abide by the MacBride Principles.


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

CITY


CONTRACTOR

Recommended by:


COWI and OLMM Joint Venture

fw



Eunejune Kim
Chief Harbor Engineer
Port of San Francisco



Winston Stewart
COWI Marine North America
Senior Vice President
1300 Clay St #700
Oakland, CA 94612



Elaine Forbes
Executive Director
Port of San Francisco

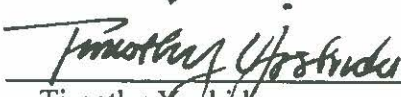


Sunil Gupta
Principal
OLMM Consulting Engineers
701 Sutter Street, 4th Floor
San Francisco, CA 94109

Approved as to Form:

Dennis J. Herrera
City Attorney

City vendor number: 98166

By: 

Timothy Yoshida
Deputy City Attorney

Appendices

- A: Scope of Services
- B: Calculation of Charges
- C: Labor Standards - Prevailing Wages

Appendix A

Services to be provided by Contractor

1. General Description of Services

COWI/OLMM Joint Venture, hereinafter referred to as “Contractor”, agrees to provide the Port and City with professional architectural, engineering, and planning services for the planning, design and construction of a public ferry vessel landing and terminal to be located in the San Francisco Mission Bay neighborhood (referred to as the Ferry Landing project). Contractor agrees to provide services that include, but are not limited to, the preparation of permitted design drawings, including those necessary for project review and approval under the California Environmental Quality Act (CEQA), for the Ferry Landing project. The Contractor’s scope of services will include: geotechnical analysis, topographic and hydrographic surveys, dredging plans, and design and construction of ferry float, fixed ramps, gangways, covered ferry landing walkway, fixed platform, gate structures, corrosion protection system for all structures, and utility plans.

2. Scope of Services & Deliverables

A. Phase 1: Conceptual Architectural and Engineering Design and Alternatives Analysis

Task 1.1: Review Existing Documentation

Contractor will review information provided by the Port relevant to the project scope and will identify any missing and needed documentation. Contractor will review archives for existing drawings and other technical documents for information previously prepared by the Port and consultants working on behalf of the Port. All information will be cataloged and distributed to the project team and the Port project manager in a bookmarked PDF, file organized by location and date.

Contractor will review the Port’s architectural design requirements identifying Port architectural interfaces. Contractor will gather, review, and catalog existing technical information and architectural design drawings related to construction of the Port’s Downtown Ferry Landing constructed in 2001.

Task 1.2: Stakeholder Interviews and Meetings

Contractor’s project manager will lead all stakeholder interviews. Contractor will prepare a PowerPoint presentation outlining the scope and goals of the project along with a list of specific

questions for each stakeholder meeting. Contractor will work with Port staff to identify and contact appropriate stakeholders in addition to those listed below. Contractor will schedule individual meetings with the following stakeholders:

- BAE Systems (or successor), the Pier 70 tenant and operator of the Pier 70 drydock facility, and San Francisco Bar Pilots, to identify any navigation issues associated with the 16th Street alternative, in particular large ship access to the Pier 70 drydock. Determine if the alternative Pier 64 location mitigates these navigation issues. Based on these interviews identify and evaluate the specific Pier 64 alternative location for the Ferry Landing.
- Ferry Boat and Water Taxi operators regarding boat sizes, boat passenger capacities, boat berthing frequencies, respective boat passenger loading criteria / methodology, and passenger queuing criteria.
- The San Francisco Bay Conservation and Development Commission (“BCDC”), Water Emergency Transportation Authority (“WETA”), and the Mission Bay Development Group to establish additional ferry landing design criteria.
- Regulatory and resource conservation agencies and Dredged Materials Management Office agencies (e.g. U. S. Army Corps of Engineers (“USACE”), BCDC, San Francisco Bay Regional Water Quality Control Board, National Marine Fisheries Service, U.S. Environmental Protection Agency) to determine key permitting considerations, potential impacts of greatest concern, and potential need for mitigation.
- Other regulatory agencies as required by Port staff.

In addition to the above stakeholders, the Port may direct Contractor to meet with the groups listed below. Although these groups are not direct stakeholders in the project, their input may help define how the ferry landing integrates into the area.

- Mission Bay Transportation Management Association (“Mission Bay TMA”)
- San Francisco Municipal Transportation Authority
- San Francisco Bicycle Coalition
- Bay Area Bike Share
- Golden State Warriors Arena LLC
- South Beach/Mission Bay Business Association
- University of California San Francisco, Mission Bay

Contractor will document all interviews, meeting content, and recommendations. Information collected will be reviewed by Port staff and incorporated by Contractor in the project planning and design as appropriate.

Task 1.3: Reconnaissance Survey Sampling and Testing

Contractor will perform sediment sampling and analysis to determine sediment characteristics at the two ferry landing locations under consideration. The sampling will be sufficient to determine dredged material disposal options and associated costs for the two locations. This task will include:

- Preparation of a detailed sampling and analysis plan memorandum for Port review and approval.
- Collection of up to 16 sediment cores to the proposed project depth plus over-dredge depth. The number of samples assumed that the volume of material to be dredged would be approximately 136,000 cubic yards at each location.
- Each sediment core will be analyzed for chemical constituents in accordance with USACE Public Notice 01-01.
- Collection and archiving of Z-layer (post-dredge mud surface) samples from each sediment core. If preliminary analysis indicates that the material to be dredged exceeds SF Bay Bioaccumulation Trigger Levels or SF Bay Total Maximum Daily Load thresholds, then the archived samples may be analyzed in a subsequent phase.
- Analytical results will be compared with disposal site screening criteria and provided to Port in a Sampling and Analysis Results memo.

Task 1.4: Agency Outreach and Meetings

Contractor will arrange and conduct a pre-application Inter-Agency meeting with USACE, RWQCB, NMFS, BCDC, and other attending agencies. Contractor will prepare presentation materials and handouts as appropriate to guide discussions at this meeting. The Inter-Agency meeting will cover the preliminary design and environmental findings for the each alternative site. Contractor will prepare a PowerPoint presentation with drawings in sufficient detail to allow agency representatives to understand both the proposed facility and the anticipated construction phases. Contractor will address questions and comments that are received from the Inter-Agency meeting. Contractor will prepare and submit meeting minutes to Port staff for review and approval. Contractor will conduct follow-up calls or correspondence with individual agency representatives as-needed, and prepare and conduct a second Inter-Agency meeting during Phase I of this Agreement.

Contractor will prepare and present presentation materials for two public meetings. Presentation materials will include architectural renderings of the concept designs. Architectural renderings will be a visual aid to help the public understand the size, materials, and usage of the Ferry Landing project.

Task 1.5: Conceptual Design

Contractor will prepare conceptual level (30% complete) architectural and engineering design for 16th Street and Pier 64 ferry landing locations and Pier 64 Fishing Pier water taxi locations. Contractor will implement the following approach for the conceptual level design:

Task 1.5.1 Preliminary Architectural Plans: Contractor will prepare preliminary architectural plans for the concept designs. Contractor will prepare study drawings that illustrate the concepts of the design and include spatial relationships, scale, and form of key architectural features including the covered ferry pavilion, gate structure, canopies, railings, and water taxi landing locations for Port review. Contractor will prepare the primary site plan drawings that will include all structures with the proposed dredging overlaid site plan will also include proposed future landside public open space amenities and public transportation information. Contractor shall prepare a secondary site plan that includes the navigation path of travel of ships that enter and exit the Pier 70 drydock in proximity to the ferry landing project sites.

Task 1.5.2 Topographic and Hydrographic Survey: Contractor will use existing topographic survey information or perform a topographic survey if existing topographic survey is insufficient. The topographic survey will extend from the waterline to across Terry Francois BLVD and 150-feet north and south of each alternative location. The survey will document elevations in MLLW datum and locate all key features. The survey data will be sufficient to prepare dredge designs and select the ferry landing preferred location. Contractor will use the hydrographic survey performed by Etrac in 2015 to prepare the dredge design and select the preferred location.

Task 1.5.3 Preliminary Dredging Plans: Contractor will prepare dredging plans for each alternate terminal location based on operational requirements and input from the sediment investigation as described in Task 1.3, above. The dredge depths and overall limits will be established by determining the required water depths needed for ferry and water taxi operations, anticipated rate of siltation, the Port's maintenance dredging expectations, and required access channel needed for ferry vessels to safely approach the landing. The input from the sediment investigation as it relates to overall dredging costs and likely acceptance by the Dredged Material Management Office (DMMO) will be a key factor in establishing the limits of dredging. Contractor will use established soil parameters to calculate the side slopes for the dredge area. Contractor shall prepare drawings and cross sections and calculate dredge volumes. Contractor's drawings will identify any areas of contaminated soils within the dredging footprints of both locations.

Task 1.5.4 Preliminary Geotechnical Analysis: Contractor's personnel will lead the preliminary geotechnical analysis utilizing information to support the conceptual design and perform a geotechnical subsurface evaluation for services required under Phase II, engineering

design development. After the Port's selection of the preferred ferry landing site, Contractor will perform a subsurface exploration program by drilling up to two borings on land to depths of up to 100 feet and two boring over-water to depths of up to approximately 140 feet. The purposes of these borings are to: 1) develop a geologic cross section along the alignment of the proposed ferry terminal, 2) obtain soil samples for laboratory testing, 3) evaluate pile capacities, and 4) evaluate potential lateral spreading of the shoreline. Contractor will perform geotechnical laboratory tests consisting of moisture and density determination, sieve analysis, Atterberg limits, strength tests, and consolidation tests.

Contractor will perform the geotechnical analysis based on the results of the boring and laboratory data. Analysis will include 1) assessment of geologic hazards including strong ground shaking, liquefaction, dynamic settlement, and lateral spread, 2) development of code-based acceleration response spectra, 3) analysis of geotechnical capacities of piles for lateral and vertical loading, 4) evaluation of permanent ground deformations that may affect the proposed improvements, and 5) estimation of kinematic loading on near-shore piles. Contractor will prepare a geotechnical design report summarizing the findings of the investigation.

Task 1.5.5 Ferry Landing and Water Taxi Preliminary Structural Plans: Contractor will prepare the preliminary structural design for all structures. A Basis of Design document will be created that establishes the loading, load combinations and governing codes to be used for design. Contractor will determine the seismic performance of the terminal and the total water elevation for sea level rise. The ferry landing facility shall be designed as an essential facility. Contractor will meet with BCDC's Engineering Criteria Review Board to respond to questions as required.

Task 1.5.6 Preliminary Corrosion Protection Systems: Contractor will review the service life of each structural component and prepare and design preliminary corrosion protection systems for all structures. All structures shall have a design criteria and a useful life of at least 50 years. Contractor will study and consider the use of other protective measures to increase corrosion protection such as HDPE sleeves placed over the guide piles.

Task 1.5.7 Preliminary Utility Plans: Contractor will confirm the project's electrical and mechanical system requirements listed in the feasibility report based upon input from Port staff and project stakeholders. Contractor will review Port and other public records to determine the overhead/underground electrical distribution system and utility systems in the proximity of each location. Contractor will perform an onsite investigation to field verify information in the records, which may require further investigation including infrared scans and potholing. Contractor will also perform short circuit and load flow analysis with significant emphasis given to insufficient equipment capacities, antiquated equipment, inadequate accessibility, non-

operating systems, and code violations. Contractor will report any deficiencies and recommend corrections.

Task 1.5.8 Coastal and Wave Engineering: Contractor will perform coastal and wave analysis, including review and verification of the coastal and wave engineering assumptions and input used in the Mission Bay Ferry Landing Planning Study. Contractor will also reconsider and evaluate the final conclusions about the need of a breakwater. In order to determine the wave magnitude, period, and direction at each alternative ferry landing location, a detailed MIKE21 wave model will be developed using the met-ocean parameters and the final configuration of the bay based on the dredge design. Results consisting of the number of hours the waves exceed threshold defined by the operator in order to compute possible downtime, along with the maximum expected waves in the area will be summarized in a Coastal Report.

Task 1.5.9 Circulation Analysis: Contractor will work with the Port, SFMTA, and the San Francisco Planning Department (“Transportation Team”) to develop a conceptual plan for pedestrian, bicycle, transit, and vehicular access to both of the alternative ferry landing sites. Contractor will work with the SFMTA and the Mission Bay TMA to determine the potential for existing or new routes to both of the alternatives. The Contractor will collaborate with this Transportation Team to prepare a memorandum documenting the Transportation Conceptual Plan, including an alternatives assessment matrix related to transportation elements of the Ferry Landing Project.

Task 1.5.10 Cost Estimates & Construction Schedule: Contractor will prepare Cost Estimates that correspond to the conceptual designs. Estimates will be prepared using MS Excel program and presented in PDF format. Contractor will use recent pricing data from Port and WETA projects including the Downtown San Francisco Ferry Terminal Expansion project. Contractor will prepare a preliminary construction schedule. The schedule will be based on Contractor’s experience with construction of similar ferry berthing facilities. The schedule will be submitted to the Port and be used as input for the environmental review and project planning.

Task 1.5.11 Preliminary CEQA Development: Contractor will prepare a preliminary draft environmental specifications report that will include best management practices, avoidance, and minimization measures and estimated costs.

Phase I Deliverables will include six (6) hard copies and electronic PDF files for the following:

- Preliminary design drawings, calculations, specifications (including Preliminary draft environmental specifications)
- Cost estimates for both alternative ferry landing and water taxi sites

- Detailed Project Program (DPP) Report: The DPP shall consist of a comprehensive document that provides the Project Goals and Objectives, Environmental Goals, and includes all the key findings gathered during Phase I. Separate sections will be included for Reference Documents, Topographic and Hydrographic surveys, Geotechnical report, Coastal Engineering report, Basis of Design, Utilities Needs survey, Transportation Conceptual Plan, Interview, Meeting and Public Outreach documentation, Construction Schedule, and Comparative Analysis summarizing the pros and cons for each alternative site. Sediment characterization report of results from analyses completed to date, evaluation of reuse/disposal options and costs, and recommendation for permitting through the DMMO, including additional sample collection if needed.
- Presentation of submittal to the Port.

B. Phase II –Engineering Design Development, 30% Complete to 100% Complete

Tasks 2.1, 2.2, & 2.3: Engineering Design Development – 60%/95%/100% Submittals

For Tasks 1, 2, and 3, Contractor will prepare and advance 60%/95%/100%, respectively, complete submittal analysis, calculations, design drawings specifications, cost estimates, and estimated construction schedules for the selected ferry landing site and water taxi site. Port and stakeholder comments on the previous submittals will be incorporated into each design stage. Contractor will arrange additional stakeholder meetings and will prepare presentation materials at the Port’s requests. Contractor will also continue to assist the Port’s public outreach efforts.

Task 2.4, 2.5, & 2.6 Environmental Review for CEQA, Permitting, and Public Meetings

Task 2.4 Sediment Suitability Study and DMMO approval

Upon selection of the preferred ferry landing location, dredging boundary and volumes, Contractor will complete additional sediment characterization and other tasks needed to secure DMMO approval of dredging at the selected location. This will include:

- Preparation of a Sampling and Analysis Plan for submittal and presentation to the DMMO at a regularly-scheduled DMMO meeting
- Collection of up to 20 sediment cores and Z-layer samples, which will be composited to represent up to five Dredge Units.
- Laboratory analysis of five composite samples for chemical and biological testing as needed to obtain approval to re-use or dispose of dredged material.

- Soil characterization will enable determination of potential for beneficial reuse, and Contractor will provide technical and/or logistical recommendations to potential for beneficial reuse to the greatest extent feasible. If beneficial reuse is not feasible, Contractor will pursue the most cost-effective disposal option for which the material is suitable.
- Preparation of a DMMO-compliant Sampling and Analysis Report and presentation to DMMO at a regularly-scheduled DMMO meeting.

Task 2.5 Focused EIR

Contractor will prepare a Focused EIR for CEQA compliance. Contractor will recommend options to help facilitate timely completion of the environmental document and project permitting. Contractor will prepare technical reports, including a Transportation Impact Study, Biological Assessments (combined aquatic and terrestrial), Historic Resource Evaluation (HRE), Archaeological Technical Study, Air Quality Technical Report (including health risks), Greenhouse Gas emission calculations, Property Analysis Report (for State Lands Commission permitting), and Energy Conservation Analysis, and Stormwater Control Plan in support of the CEQA. Port will arrange and make appropriate public notice and outreach for, and Contractor will prepare materials and present the project at public meetings and hearings related to the CEQA process.

As an optional task, Contractor will assist with NEPA documentation to support federal regulatory agencies in decision-making process relative to permits and approvals.

Task 2.6 Environmental Permitting

In addition, contractor will prepare required permit application forms and supporting documents, with Port review and approval. Permit and other regulatory approvals are anticipated to include a Section 10/404/103 permit from the U.S. Army Corps of Engineers; a 401 Water Quality Certification (including approval of Stormwater Control Plan) from the RWQCB; a Major Permit from BCDC; Biological Opinions from the NMFS and U.S. Fish and Wildlife Services; Incidental Take Permit from the California Department of Fish and Wildlife; an Incidental Harassment Authorization from the NMFS; and a consistency determination from SLC.

Task 2.7 Public Meetings

Contractor will lead and support further discussions with regulatory and resource conservation agencies, including attending up to five permitting meetings with such agencies, including one USACE Interagency Meeting, for which Contractor will prepare presentation materials and serve as a primary presenter,. Contractor will attend and support meetings before the BCDC and Port Design Review Boards, and the BCDC Engineering Criteria Review Board. Contractor is responsible for obtaining project approval from BCDC's ECRB. Contractor will attend and assist in presentation at public meetings and hearing related to the CEQA process.

Phase II Deliverables will include six (6) hard copies and electronic PDF files for the 60%, 95%, and 100% submittals:

Design drawings, calculations, specifications (including complete environmental specifications)

- At the 100% submittal two (2) sets of signed and stamped design drawings and calculations.
- Cost estimates
- Report summarizing additional interview, meeting and public outreach documentation.
- Written responses to Port comments on the previous submittal.
- Presentation of submittal to the Port.
- Completed CEQA Document
- Permit Applications and other regulatory documents

Phase III – Bid and Construction Stage Architectural & Engineering Services

During the project construction bid phase, Contractor will assist the Port in answering technical questions relating to bid documents and provide modifications or additional drawings and/or specifications as required to issue bid addenda. Contractor's Project Manager will attend pre-bid conference/s and assist the Port in evaluating the bid proposals, if needed.

During the construction phase, Contractor will work closely with the Port to ensure construction is executed in accordance with the project plans, specifications, and regulatory requirements. Contractor's Project Manager will attend the pre-construction meeting on behalf of the design team. Contractor's Project Manager will also attend weekly construction meetings, assisted by other members of the Contractor's team as-necessary. Contractor's site personnel will routinely visit the site to verify that the project is being constructed in accordance with the bid plans and specifications. A site visit report will be submitted to Port staff after each site visit. Contractor will review the construction contractor's proposed construction schedule and compare it to the schedule developed during design and provide comment to Port staff.

Contractor will review all Submittals and RFIs throughout construction of the Mission Bay Ferry Landing. As the Submittals and RFIs are submitted by the construction team, Contractor will log and distribute items to the appropriate team members. Contractor's Project Manager will review the responses to assure completeness and notify Port staff if there are any concerns identified. Contractor has a goal to review and respond to all Submittals and RFI's within 3 business days as long as there is a reasonable schedule of submittal delivery.

Contractor will review construction phase submittals related to geotechnical aspects of the project. Contractor will review pile driving blow counts, or alternatively provide geotechnical support to City inspectors, prepare daily field reports, and prepare pile driving summary reports. Contractor will provide testing and special inspections both on site and remotely at the manufacturer's location of the steel barge, including steel barge preparation for coating applications, concrete float, and piles. Contractor shall also be responsible for on-site inspection, including rebar placement, concrete pours, and welding. Contractor's certified inspectors will report their findings and notify the Port and construction contractor immediately if there are any deficiencies identified. Offsite inspection will include precast construction of the piles and floats, construction of the steel barge, and steel pipe piles. Contractor is assuming that the Port will be bringing on board an outside Construction Management service to manage the process during construction.

Phase III Deliverables will include the following;

- All required Testing and Special Inspection documentation at end of project
 - One (1) hardcopy set and PDF of the as-built design drawings prepared at project completion.
3. **Services Provided by Attorneys.** Any services to be provided by a law firm or attorney must be reviewed and approved in writing in advance by the City Attorney. No invoices for services provided by law firms or attorneys, including, without limitation, as subcontractors of Contractor, will be paid unless the provider received advance written approval from the City Attorney.
 4. **Reports.** Contractor shall submit written reports as requested by the Port of San Francisco. Format for the content of such reports shall be determined by the Port of San Francisco. The timely submission of all reports is a necessary and material term and condition of this Agreement. The reports, including any copies, shall be submitted on recycled paper and printed on double-sided pages to the maximum extent possible.
 5. **Department Liaison.** In performing the Services provided for in this Agreement, Contractor's liaison with the Port of San Francisco will be Joe Roger

Appendix B Calculation of Charges

Appendix B - Calculation of Charges

In accordance with Section 3.3.1 of this Agreement, the total compensation payable under this Agreement to COWI and OLMM Joint Venture (referred to also as "Contractor") is detailed below, inclusive of all costs and meetings required to complete work specified in Appendix A. In no event shall the total costs under this Agreement exceed the amount provided in Section 3 of this Agreement.

Payment Requests and Insurance Documentation should be sent to:
Port of San Francisco - Contracts
Pier 1
San Francisco, CA 94111

Payments for Deliverables or Tasks

Total compensation for the Contractor's scope of services under this Agreement will not exceed \$ 3,981,369, on a lump sum basis for the Scope of Services set forth in Appendix A of this Agreement, inclusive of all labor, materials, equipment, and Contractor's incidental expenses, subject to the assumptions, limitations and exclusions described. This not-to-exceed fee shall not be increased without written authorization by the Port of San Francisco.

Contractor will not be entitled to reimbursement for reimbursement of travel expenses or other costs incurred in performing the services set forth in Appendix A such as mileage, costs for Contractor's meals, accommodations, long distance and cellular phone charges, postage, vehicle rental, etc., without prior written approval of the Port.

Payments will be made by the Port to Contractor within 30 days after the Port has received Contractor's payment request in accordance with Article 3 of this Agreement, provided that:

- 1) The Port has accepted as satisfactory, in the Port's sole and absolute discretion, the services rendered by the Contractor to the Port in accordance with this Agreement;
- 2) A written status report has been provided to the Port by Contractor as part of the Contractor's payment request documenting, to the extent practicable, the Contractor's completion of tasks (stated as a percentage) identified in **schedule Appendix B-1 (attached hereto)**; and
- 3) Insurance documentation is current in accordance with Article 5 of the Agreement.

Prior to the City's issuance of payment, each status report shall be signed by the Port's Project Manager indicating his/her agreement with the Contractor's description of completion of tasks identified in the status report. To the extent practicable, the Contractor shall submit monthly invoices reflecting the percentage of completion of those tasks identified in attached schedule Appendix B-1.

Appendix B-1
Schedule of Payments and Deliverables

Description of Deliverable	Total Available to Invoice	Completion Date
Phase I: Conceptual Architectural and Engineering Design and Alternatives Analysis		
Task 1: Review Existing Documentation	\$26,270	February 2017
Task 2 : Stakeholder Interviews and Meetings	\$31,770	July 2017
Task 3: Sediment Investigation	\$74,763	July 2017
Task 4: Agency Outreach and Meetings	\$33,027	July 2017
Task 5: Conceptual Design	\$449,995	July 2017
	Phase I Total	\$615,825
Phase II: Engineering Design Development		
Task 1: 60% Design Submittal	\$647,066	April 2018
Task 2: 95% Design Submittal	\$539,753	January 2019
Task 3: 100% Design Submittal	\$453,470	April 2019
Task 4: Environmental Review for CEQA	\$913,580	March 2019
Task 5: Permitting	\$230,648	March 2019
Task 6: Agency and Public Meeting Support	\$55,351	March 2019
	Phase II Total	\$2,839,868
Phase III: Bid and Construction Stage Architectural & Engineering Services		
Task 1: Bid and Construction Support	\$525,676	December 2021
	Phase III Total	\$525,676
10 % Contract Contingency		
	Total	\$ 3,981,369.00

Appendix C

Labor Standards – Prevailing Wages

1. **Prevailing Wages.** Contractor understands and agrees that all provisions of Section 1770, et seq., of the California Labor Code are hereby incorporated into this Agreement with respect to any services for any public work or improvement as defined by the California Prevailing Wage Law (California Labor Code Sections 1720 – 1861).
2. Services to be performed by Contractor under this Agreement may involve the performance of services or trade work covered by the provisions of Sections 6.22(e) and 6.22(f) of the San Francisco Administrative Code. All provisions of Sections 6.22(e) and 6.22(f) of the San Francisco Administrative Code are incorporated herein, including, but not limited to, the following:
 - a. Contractor shall pay to all persons performing services not less than the highest general prevailing rate of wages determined as set forth herein for the respective crafts and employment, including such wages for holiday and overtime work.
 - b. Contractor shall insert in every subcontract or other arrangement, for the performance of any services for this Agreement, a provision that said subcontractor shall pay to all persons performing labor or rendering service under said subcontract or other arrangement the highest general prevailing rate of wages determined as set forth herein for the respective crafts and employments, including such wages for holiday and overtime work.
 - c. Contractor shall keep or cause to be kept complete and accurate payroll records for all persons performing services for this Agreement. Such records shall include the name, address and social security number of each worker who provided services, including apprentices, his or her classification, a general description of the services each worker performed each day, the rate of pay (including rates of contributions for, or costs assumed to provide fringe benefits), daily and weekly number of hours worked, deductions made and actual wages paid. Every subcontractor who shall undertake the performance of any part of the services for this Agreement shall keep a like record of each person engaged in the execution of the subcontract. These records shall at all times be available for inspection and examination by the City and its authorized representatives and the California Department of Industrial Relations.
 - d. Should Contractor or any subcontractor which performs any of the services herein required, fail or neglect to pay to the persons who shall perform labor under this Agreement, subcontract or other arrangement for the services, the highest general prevailing rate of wages as herein specified, Contractor shall forfeit, and in the case of any subcontractor so failing or neglecting to pay said wage, Contractor and the subcontractor shall jointly and severally forfeit, back wages due plus the penalties set forth in Labor Code Section 1775 but not less than \$50 per worker per day. The City, when certifying any payment which may become due under the terms of the Agreement, shall deduct from the amount that would otherwise be due for such payment the amount of said forfeiture or forfeitures as so certified.
 - e. No person performing labor or rendering service in the performance of the Agreement or a subcontract for the services herein required shall perform labor for a longer

period than five days (Monday-Friday) per calendar week of eight hours each (with two 10-minute breaks per eight-hour day), except in those crafts in which a different work day or week now prevails by agreement in private employment. Any person working hours in addition to the above shall be compensated in accordance with the prevailing overtime standard and rates. Contractor or any subcontractor who violates this provision shall forfeit back wages due plus the penalties set forth in Labor Code Section 1775 but not less than \$50 per worker per day.

3. Highest Prevailing Wage Rates. The most current highest prevailing wage rate determinations made at the time of the Effective Date of this Agreement are hereby incorporated as part of the Agreement. No adjustments in the compensation due for services performed will be allowed for increases or decreases in prevailing wage rates that may occur during the Contract Time.

a. Copies of the prevailing wage rates are available from the contracting department, and are also available on the Internet at <http://www.dir.ca.gov/DLSR/PWD>.

b. Payments to a craft or classification not shown on the prevailing rate determinations shall comply with the rate of the craft or classification most closely related to it. Contact the California Division of Labor Statistics and Research, Prevailing Wage Unit at telephone (415) 703-4774 for job classifications not listed in the General Prevailing Wage Determinations of the Director of Industrial Relations.

c. All Services performed are subject to compliance monitoring and enforcement of prevailing wage requirements by the California Department of Industrial Relations and the San Francisco Office of Labor Standards Enforcement.

4. Jobsite Notices. Contractor shall post job site notices prescribed by the California Department of Industrial Relations at all job sites where services are to be performed.

5. Certification of Payroll Records. Contractor shall comply with the requirements of Section 1776 of the California Labor Code, or as amended from time to time, regarding the preparation, keeping, filing and furnishing of certified copies of payroll records of wages paid to its employees and to the employees of its subcontractors of all tiers.

a. No monthly payments for Services completed will be processed until Contractor has submitted weekly certified payrolls to the City for the applicable time period. Certified payrolls shall be prepared pursuant to Section 1770 et seq. of the California Labor Code for the period involved for all employees and owner-operators, including those of all subcontractors for all services performed.

b. For contracts awarded on or after April 1, 2015, no monthly payments will be processed until Contractor has also submitted weekly certified payrolls to the California Department of Industrial Relations (in addition to the City) for the applicable time period.

c. **Electronic Submittal of Records:** Effective January 1, 2016, no monthly payments will be processed until Contractor has also submitted weekly certified payrolls to the California Department of Industrial Relations (in addition to the City) for the applicable time period, regardless of the date of award of the contract.

(1) Contractor shall submit certified payrolls to the City electronically via the Project Reporting System ("PRS") selected by the City, an Internet-based system accessible on

the World Wide Web through a web browser. The Contractor and each subcontractor will be assigned a log-on identification and password to access the PRS.

(2) Contractor and its subcontractors shall submit certified payrolls to the California Department of Industrial Relations in the manner specified by the DIR.

(3) Use of the PRS may require Contractor and subcontractors to enter additional data relating to weekly payroll information including, but not limited to, employee identification, labor classification, total hours worked and hours worked on this project, and wage and benefit rates paid. Contractor's payroll and accounting software may be capable of generating a "comma delimited file" that will interface with the PRS software.

(4) The City will provide basic training in the use of the PRS at a scheduled training session. Contractor and all subcontractors and/or their designated representatives must attend the PRS training session.

(5) Contractor shall comply with the requirements of subparagraphs 5.c.(1), c.(2) and c.(3), above, **Error! Reference source not found.** at no additional cost to the City

(6) The City will not be liable for interest, charges or costs arising out of or relating to any delay in making progress payments due to Contractor's failure to make a timely and accurate submittal of certified payrolls.

(7) Contractor shall be solely responsible for compliance with California Labor Code Section 1776. The City shall not be liable for Contractor's failure to make timely or accurate submittals of certified payrolls.

d. **Contractor Prompt Payment.** Except as otherwise required by Chapter 14B of the Administrative Code, and consistent with the provisions of Section 6.22(q) of the Administrative Code, Contractor shall pay its subcontractors within seven calendar days after receipt of each progress payment from the City, unless otherwise agreed to in writing by both Contractor and the subcontractor. In the event that there is a good faith dispute over all or any portion of the amount due on a progress payment from Contractor to a subcontractor, the Contractor may withhold the disputed amount but shall pay the undisputed amount. If Contractor violates the provisions of Section 6.22(q), then Contractor shall pay to the subcontractor directly the penalty specified in Section 6.22(q).

6. Availability of Records for Audit and Inspection: Contractor shall certify the payroll records under penalty of perjury and submit the records electronically to the City and, where required, to the California Department of Industrial Relations, In addition, Contractor shall make the payroll records available for inspection at all reasonable hours at the job site office of Contractor, or, if it has no job site office, at its office closest to the job site, on the following basis:

a. A certified copy of an employee's payroll record shall be made available for inspection or furnished to such employee or his or her authorized representative upon request.

b. A certified copy of all payroll records shall be made available for inspection or furnished to a representative of the City upon request.

c. A certified copy of all payroll records shall be made available upon request to the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through either the City, the Division of Apprenticeship Standards, or the Division of Labor Standard Enforcement. The public shall not be provided access to such records at the job site office of Contractor.

d. Contractor shall file a certified copy of the payroll records with the entity that requested such records within 10 days after receipt of a written request.

e. In providing copies of payroll records to any requestor, the City shall redact or obliterate such information as may be required under California Labor Code Section 1776(e), as that section may be amended from time to time.

f. Contractor shall inform the City of the location of the payroll records, including the street address, city and county, and shall, within 5 working days, provide a notice of a change of location and address.

7. In the event that Contractor receives a written notification of noncompliance with Labor Code Section 1776, Contractor shall have 10 days from receipt of such written notice to comply. Should noncompliance still be evident after such 10-day period, Contractor shall forfeit the penalties set forth in Labor Code Section 1776. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, such penalties shall be withheld from payments otherwise due under this Agreement.

8. Labor Standards Enforcement: All services performed are subject to compliance monitoring and enforcement of prevailing wage requirements by the California Department of Industrial Relations (“DIR”) and the San Francisco Office of Labor Standards Enforcement.

a. In accordance with Administrative Code section 6.22(e)(7) and section 6.24 and the applicable sections of the California Labor Code, Contractor further acknowledges and agrees as follows:

1) Contractor will cooperate fully with the DIR and the Labor Standards Enforcement Officer and other City employees and agents authorized to assist in the administration and enforcement of the prevailing wage requirements and other labor standards imposed on public works contractors by the San Francisco Charter, Chapter 6 of the San Francisco Administrative Code, and the applicable sections of the California Labor Code.

2) Contractor agrees that the DIR and the Labor Standards Enforcement Officer and his or her designees, in the performance of their duties, shall have the right to engage in random inspections of job sites and to have access to the employees of the contractor, employee time sheets, inspection logs, payroll records and employee paychecks.

3) Contractor shall maintain a sign-in and sign-out sheet showing which employees are present on the job site.

4) Contractor shall post job site notices prescribed by the California Department of Industrial Relations at all job sites where Work is to be performed..

5) The DIR and the Labor Standards Enforcement Officer may audit such records of Contractor as is deemed reasonably necessary to determine compliance with the prevailing wage and other labor standards imposed by the San Francisco Charter, Chapter 6 of the San Francisco Administrative Code, and the applicable sections of the California Labor Code.

9. Ineligible Contractors or Subcontractors: Under California Public Contract Code section 6109, Contractor or subcontractors who are ineligible to bid or work on, or be awarded, a public works project under California Labor Code sections 1777.1 or 1777.7 are prohibited from performing services under this Agreement.

a. Any contract to perform any of the services for in this Agreement entered into between Contractor and a debarred subcontractor is void as a matter of law.

b. A debarred subcontractor may not receive any public money for performing work as a subcontractor on a public works project. Contractor shall return to the City any public money that may have been paid to a debarred subcontractor by Contractor.

c. Contractor shall be responsible for the payment of wages to workers of a debarred subcontractor that has been allowed to perform Services under this Agreement.