

REQUEST FOR QUALIFICATIONS

for

**CONSULTING SERVICES FOR AIRPORT
PAVEMENT MANAGEMENT SYSTEM (APMS)
UPDATE**

**AT OAKLAND INTERNATIONAL AIRPORT
OAKLAND, CA**

(FEDERALLY FUNDED PROJECT)

19-20/15



PURCHASING DEPARTMENT
530 WATER STREET
OAKLAND, CA 94607



PORT OF OAKLAND

REQUEST FOR QUALIFICATIONS

RFQ No.: 19-20/15, Consulting Services for Airport Pavement Management System (APMS) Update at Oakland International Airport, Oakland, CA

The Port of Oakland (the "Port"), through its Purchasing Department, is hereby soliciting competitive statements of qualification for the above-mentioned project. The successful Respondent will be required to furnish all labor, material, equipment, supplies, applicable taxes, insurance, bonding, and licenses to complete this project.

Qualification Information

Qualification Title	Consulting Services for Airport Pavement Management System (APMS) Update at Oakland International Airport, Oakland, CA
Qualification Type	Professional Services
Qualification Number	19-20/15
Qualification Issued	February 14, 2020
Requesting Departments	Engineering Department Aviation Planning and Development Department
Optional Pre-Qualification Meeting (Attendance is strongly recommended)	March 3, 2020 at 10:00 a.m. Oakland International Airport Terminal 1 – Airport Administrative Offices 1 Airport Drive, Oakland, CA 94621 Conference Room: Lake Merritt
Scheduled Publication Date	February 14, 2020
Qualification Due Date	March 17, 2020 until 11:00 a.m.
Interview (If Necessary)	March 31, 2020
Final Selection Complete & Contract Negotiations Start	April 1, 2020
Final Grant Applications Due	May 15, 2020

Instructions for Submitting Qualifications

Submittal Address	Port of Oakland Purchasing Department Attn: Nickulaus Sioson 530 Water Street, Oakland, CA 94607
Submittal Copies	One (1) Original copy clearly marked "Original" and six (6) Copies marked "Copy".
Submittal Envelope Requirements	<ul style="list-style-type: none">Qualifications must be <u>sealed</u> and have the following information <u>clearly marked</u> and visible on the outside of the envelope:

Submittal Envelope Requirements	<ul style="list-style-type: none"> • Qualification Number • Name of Your Company • Address • Phone Number
Late Submittals	Qualifications received after the time and date stated above shall be returned unopened to the Respondent.

How to Obtain Qualification Documents

Copies of the Qualification documents may be obtained at:

Location	Address
Physical	Port of Oakland--Purchasing Department 530 Water Street, Oakland, CA 94607 Monday through Friday 9:00 AM to 4:00 PM (510) 627-1140
Website	http://www.portofoakland.com/business/bids-rfps/ Or navigate to the Port of Oakland's main website at: http://www.portofoakland.com/ , then click on "Bids/RFPs" from the banner on the top of the page, and then scroll down to download the RFQ.

Questions about the Qualification

Questions and/or Requests for Information (RFI) must be submitted in writing and can be submitted by fax or email as follows:

Primary Contact	Nickulaus Sioson Fax: (510) 893-2812 Email: nsioson@portoakland.com
Question/RFI Due Date	March 5, 2020 until 4:00 p.m. Please submit questions as soon as possible. No questions regarding the specifications will be responded to after the above date. All pertinent questions will be responded to and answered in writing no later than the Response Date listed below.
Response Date	March 10, 2020 All pertinent questions will be responded to via addendum faxed (or emailed) to all prospective respondents and placed on the Port's website. Respondents who did not receive a copy of the addendum should download it from the Port's website. See the "How to Obtain Qualification Documents" section for our web address. All addenda must be acknowledged on the RFQ Acknowledgement and Signature form.

Once the RFQ is issued, and until a recommendation for award is made to the Board of Port Commissioners at a public Board of Port Commissioners meeting (or in cases where a recommendation for award does not require a public Board meeting, when Proposers are notified by Port staff of the recommendation for award),

each Proposer and its representatives, agents, and affiliates, shall not contact members of the Evaluation Committee, Port staff or the Board of Port Commissioners to discuss or ask questions about the contents of this RFQ or the selection process. All questions shall be submitted in writing as described in this RFQ. Any inappropriate contact by a Proposer, its representatives, agents, and/or affiliates may result in the Proposers' qualification being disqualified.

Full Opportunity

The Port's policy prohibits discrimination or preferential treatment because of race, color, religion, sex, national origin, ancestry, age (over 40), physical or mental disability, cancer-related medical condition, a known genetic pre-disposition to a disease or disorder, veteran status, marital status, or sexual orientation. It is the policy of the Port of Oakland to encourage and facilitate full and equitable opportunities for small local businesses to participate in its contracts for the provision of goods and services. It is further the Port's policy that no discrimination shall be permitted in small local business participation in Port contracts or in the subcontracting of Port contracts. The successful Respondent shall comply with the Port's non-discrimination policy.

Title VI Solicitation Notice: The Port of Oakland, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

The Port reserves the right to reject any or all qualifications, to waive any irregularities or informalities not affected by law, to evaluate the qualifications submitted, and to award the contract according to the qualification which best serves the interests of the Port.

John Banisadr,
Port Purchasing Manager

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Attachments:

Title		Must Be Returned with Qualification
1	Non-Collusion Declaration	Yes
2	Statement of Equal Employment Opportunity	Yes
3	RFQ Acknowledgement and Signature Form	Yes
4	Minimum Qualification Requirements	Proof must be included in your cover letter
5	Port of Oakland Disadvantaged Business Enterprise (DBE) Program A. Quarterly Report—Utilization of Disadvantaged Business Enterprise B. Final Report—Utilization of Disadvantaged Business Enterprise	No (Note: Quarterly and Final reports are required after contract award.)
6	Disadvantaged Business Enterprise Program Affidavit	Yes
7	City of Oakland City Charter §728 Living Wage Information A. Employer Self-Evaluation for Port of Oakland Living Wage B. Certificate of Compliance—Living Wage	No (Attachment 7-A and 7-B are required after contract award.)
8	Statement of Living Wage Requirements	Yes
9	Supplier Insurance Requirements	No
10	Insurance Acknowledgement Statement	Yes

Title		Must Be Returned with Qualification
11	Standard Professional Services Agreement (Note: If awarded the contract, the successful Respondent will execute a revised version of the Port's standard Professional Services Agreement, which will be consistent with the provisions of this RFQ.)	No

I. Project Overview

The Port of Oakland (Port), which owns and operates the Oakland International Airport (OAK), is seeking qualified firms to submit qualifications to provide Consulting Services for an Airport Pavement Management System (APMS) Update at Oakland International Airport. The Port of Oakland is an independent department of the City of Oakland, acting by and through its Board of Port Commissioners. The Port manages three revenue divisions who are responsible for Maritime/Seaport, Aviation/Oakland International Airport (the Airport), and Commercial Real Estate. The scope of work described by this Request for Qualifications (RFQ) is limited to the Airport.

The Oakland International Airport is a medium hub commercial service airport serving the greater San Francisco Bay Area Region. The airport consists of approximately 2,600 acres and operations are generally divided into two areas, South Field and North Field. The airport's South Field has one main commercial air carrier runway (Runway 12-30), a system of taxiways, aprons, passenger gate ramps, cargo ramps, and miscellaneous paved areas. The South Field is primarily utilized by air carrier, business jet, and air cargo operations. The airport's North Field consists of three runways (Runways 10R-28L, 10L-28R, and 15-33), a system of taxiways, aprons, and miscellaneous paved areas. The North Field is primarily utilized by general aviation and occasional business jet traffic.

The Project further described below is anticipated to be partially funded with Federal Aviation Administration (FAA) Airport Improvement Program (AIP) grant funds and all contract provisions applicable to FAA AIP funded projects will apply.

Airport Pavement Management System (APMS) Update

The Airport has implemented an APMS to inventory, inspect, analyze, and record the Pavement Condition Index (PCI) for airport pavements, which allows the Airport to maintain compliance with FAA requirements, as well as provide necessary background information to support project justification for FAA AIP funded projects. Airside pavements at OAK represent a significant investment for the Port. The Port is responsible for the safe and efficient operation and maintenance of the Airport in a cost-effective manner. The Port ensures airside pavement infrastructure is maintained to provide adequate load-carrying capacity, good ride quality, and safe operation of aircraft.

The Port utilizes an APMS to provide an integrated framework to perform an objective, comprehensive evaluation of existing pavement conditions and to support decision making for managing airfield pavements. The APMS is used in the identification of short-term and long-range rehabilitation, strengthening, and maintenance requirements, as well as costs to provide such maintenance or rehabilitation. APMS updates allows the airport to establish priorities for capital improvement and maintenance projects. The Port's updates to the APMS assists the Airport in finding optimum strategies for maintaining pavements in a safe serviceable condition.

In the early 2000's, the Port initiated an APMS. It included pavement condition surveys and implementation of the PAVER (formerly known as MicroPaver) pavement management system. The APMS was then updated in approximately 2008 with additional pavement condition surveys. The next APMS update occurred in 2013/2014, and included a comprehensive pavement visual survey and field inspection effort, including PCI determinations and structural evaluation through non-destructive testing (NDT) techniques to determine PCN values. A comprehensive review of work history and map updates were also performed as part of the APMS update. The APMS update results were integrated into a web-based GIS system, ensuring the data could be viewable graphically and could be shared with various stakeholders as needed. The last APMS update was completed in 2017 (with the final report issued in May 2018), and included an overall update to existing PCI values, as well as re-assessment of known and new airside pavement deficiencies to update the Airport's CIP. This current version of the APMS has a well-established pavement network, database, and the capabilities to upload APMS data findings into a GIS enterprise solution. Since the 2017 APMS Update was completed, the Airport has found that several airfield pavement sections are deteriorating faster than the last APMS forecasted, resulting in

elevated maintenance, emergency rehabilitation projects, and difficulty providing justification for FAA AIP funding for some projects without conducting a project-level PCI. A timely APMS Update will provide a re-examination of currently reported PCIs, forecasted PCIs, and pavement structural evaluations through NDT techniques to determine remaining pavement life, as well as updated traffic analyses, which should help the Airport remain in compliance with FAA requirements and provide funding justification for FAA AIP projects. (See Exhibit 1 for the 2017 APMS Update Final Section Boundaries and Pavement Use.)

The primary objectives of the 2020 APMS Update include: 1) Update OAK's existing airfield PAVER pavement management system database consistent with FAA requirements; 2) Perform a detailed field survey through visual and NDT techniques to determine the Pavement Condition Index (PCI) values and remaining structural life and structural capacity for airfield pavements (PCN); 3) Develop a near-term, 5-year, and 10-year network level maintenance and rehabilitation plan for OAK's airfield pavements; and 4) Prepare Capital Improvement Plan (CIP) strategies for asset preservation and funding justification for FAA AIP Pavement projects. Ultimately, this report and deliverables of this project should assist OAK in assessing, prioritizing, and justifying pavement maintenance and repair needs.

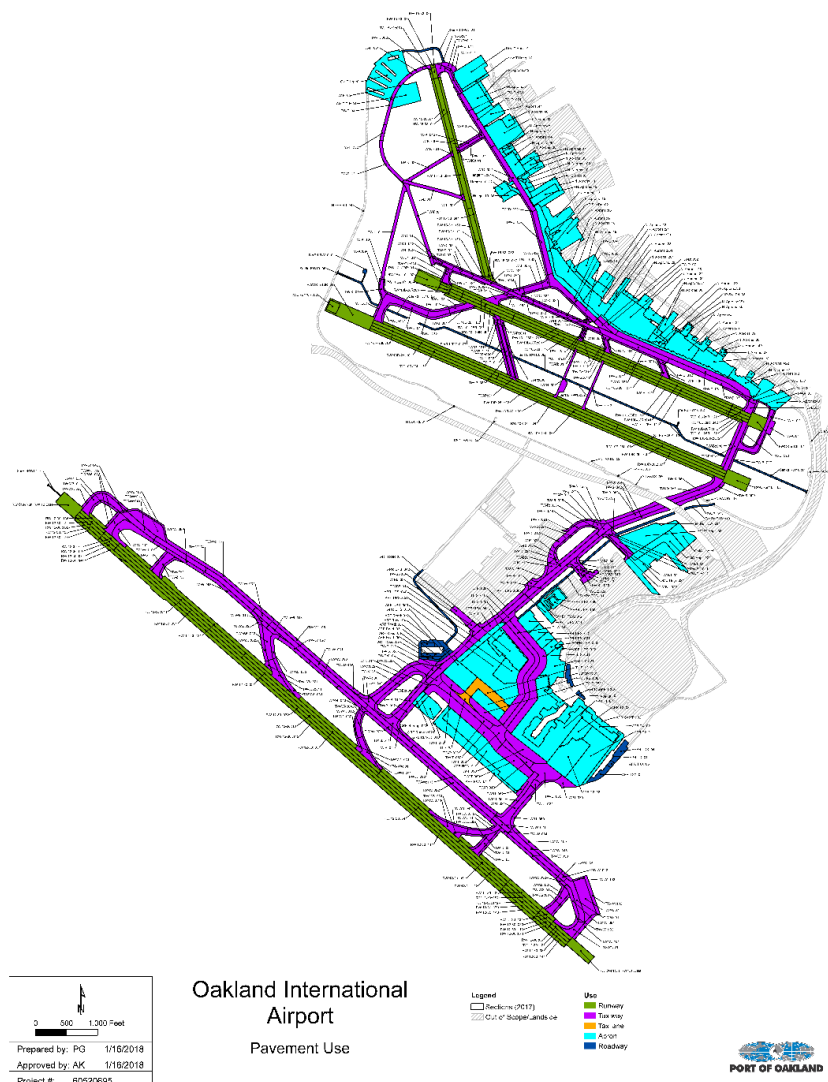


EXHIBIT 1 – 2017 APMS UPDATE FINAL SECTION BOUNDARIES AND PAVEMENT USE

II. Scope of Services

A. General Services

The Airport anticipates that the best qualified firm will update OAK's APMS by performing the tasks described in this section. However, the scope of services has not been fully established, and the selected firm will be required to prepare a detailed scope of services that meets the Port's objectives. The Airport will provide the selected firm with all previous electronic data and written reports from the 2017 APMS Update.

The APMS update must be performed in compliance with FAA Advisory Circulars, the FAA AIP Handbook, and applicable industry methodologies related to pavement inspection and assessment on Airport airside environments. The anticipated services for the project would include those typically performed in an APMS update, and will follow the most current FAA guidelines contained in, but not limited to, the following:

- 1) FAA AC 150/5380-7 (Airport Pavement Management Program)
- 2) FAA AC 150/5320-6 (Design and Evaluation of Airport Pavements)
- 3) FAA AC 150/5370-11 (Use of Nondestructive Testing in the Evaluation of Airport Pavements)
- 4) FAA AC 150/5335-5 (Standardized Methods of Reporting Airport Pavement Strength)
- 5) ASTM D5340, Standard Test Method for Airport Pavement Condition Index Surveys
- 6) FAA AC 150/5300-13 (Airport Design)
- 7) Other Applicable FAA ACs, Engineering Briefs, Orders, and Regulatory Requirements

The selected firm is expected to demonstrate knowledge and proficiency of all applicable FAA standards, as well as industry and jurisdictional standards, regardless of the fact they are not listed exhaustively in this RFQ.

The intent of this scope is to meet the FAA requirements for an APMS, as well as updating the prioritization of pavement projects, both for maintenance and capital projects. The selected firm shall assist the Port in the development of consistent, objective, and systematic procedures for determining priorities, schedules, and allocation of resources to effectively management and maintain OAK's airfield pavements. The selected firm will be responsible for providing services consisting of, but not limited to, pavement studies, pavement condition surveys, assessment and data collection, integration of data into OAK's PAVER database, and the capabilities to upload APMS data findings into a GIS enterprise solution. The selected firm will develop short- and long-range pavement asset renewal planning, maintenance planning, and pavement management. Along with developing cost-effective pavement repair and rehabilitation solutions, the firm will recommend refinements and improvements to the pavement management software and hardware applications, establishment of pavement replacement and rehabilitation project sequencing, scheduling, cost estimating, field surveys, testing, and training.

The scope of work may include, but not limited to, the following tasks typically performed during an APMS Update:

Task 1 – Project Management & Stakeholder Coordination

- a) Project controls, project reporting, project coordination (Management and Ops/NOTAMs coordination efforts), and project meetings
- b) Coordination with Airport Facilities, Operations, Engineering, and Planning & Development stakeholders throughout the duration of the project.

Task 2 – Pavement Inspection & Assessment

- a) Review of existing APMS information, including both management and technical aspects
- b) Records research updates, base map development updates, and PAVER software updates
- c) Update Network Definition maps

- d) Review and update aircraft traffic analysis
- e) Airfield escort training to self-perform pavement surveys
- f) Pavement Surveys – the pavement survey approach and methodologies must address all pavement deterioration conditions, including weathering and rutting from aircraft loads. It is envisioned this may require visual and automated collection methods to complete distress mapping. The firm should have experience in performing visual and automated pavement surveys in Part 139 airport environments.
 - I. PCI Manual Surveys
 - II. PCI Automated Survey Methods, such as LiDAR, LCMS, and high-resolution digital imagery
 - III. Field verification of pavement distresses with Airport post PCI reconnaissance
- g) Non-Destructive Testing to support structural evaluation, capability, deficiency identification, and remaining useful life determination
- h) Geotechnical investigation of subsurface conditions, as needed

Task 3 – Development of Maintenance, Rehabilitation, and Reconstruction Program

- a) Pavement remaining life calculations
- b) Updated PCI calculations, maps, and PAVER database
- c) Updated ACN and PCN calculations
- d) Updated repair strategies
- e) Determine repair and CIP strategies

Task 4 – APMS Update Final Report

- a) Summary of base map updates
- b) Summary of construction / work history updates
- c) Pavement surface distress data collection approach(s) and summary of results
- d) PCI maps
- e) Tabular summary of each pavement section and associated pavement layer thicknesses, last construction date, and deterioration rate.
- f) PCI deterioration models
- g) Forecast PCI maps
- h) Repair strategies and approach to development of maintenance and major project recommendations.
- i) Near term (1-2 year) maintenance plan for localized maintenance activities
- j) 5-year and 10-year CIP for major projects with costs and associated maps.
- k) Updated pavement preservation best practices manual specific to OAK, developed in consultation with the Port.

Task 5 – Provide APMS Data Findings in format(s) to integrate with a GIS Enterprise Solution, and Provide APMS Training and Support

- a) Integration of APMS & PAVER data with GIS Enterprise Solution
- b) On-site training, including PAVER Training

Summary:

The anticipated final deliverables which will be produced as a result of this project include:

- 1) Updated PCI values and maps for all airside pavements at OAK
- 2) Near term, 5-year, and 10-year CIP for projects with costs and associated maps
- 3) APMS Update Report – 50%, 90%, and final reports, including CIP review meetings with FAA Airport District Office (ADO) staff
- 4) Updated PAVER database populated with pavement distresses, PCI values, performance models, projects, policies, and costs.
- 5) APMS Update integration with GIS Enterprise Solution
- 6) On-Site Training with Staff

The scope of services and anticipated final deliverables described above is not all encompassing or finite; the selected firm should recommend refinements and improvements to the APMS scope described above to ensure the Port is utilizing the most current industry standards in APMS Updates.

B. Respondent's Minimum Qualifications

The Port intends to negotiate an agreement with the firm selected by the Port through this RFQ process to provide the consultant services described above. Respondents to this RFQ may form a team with other firms to perform the required tasks. The best qualified firm will introduce the Consultant Project Manager (PM), as well as key technical leads, best able to serve the Port in a consistent and efficient manner, along with a project understanding and approach that demonstrates the ability to meet the Port's specific needs for this project and experience with coordinating with key stakeholders, such as FAA Airport Districts Office (ADO), FAA ATC and Operations.

Required qualifications for the Consultant Project Manager (PM):

- a) Five (5) or more years of experience in airport pavement evaluation, design, planning, and construction.
- b) Five (5) or more years of experience on projects with a similar degree of complexity to the scope of the projects described in this RFQ. The proposer must demonstrate the Project Manager's ability to manage scope, schedule, and budget for the projects described in this RFQ.
- c) Ability to meet OAK security access badge requirements.

Additional technical leads for any task should be able to meet Airport security access badge requirements and have one or more of the following minimum qualifications:

- a) Five (5) or more years of experience in airport pavement evaluation, design, planning and construction.
- b) Five (5) or more years of experience in performing tasks related to the collection of airport airside pavement data, preparation of reports, and assessment of pavement condition for airside pavements
- c) Five (5) or more years of experience in airport project estimating, budgeting, and capital improvement plan strategy for airside pavements to meet FAA funding justification requirements.

C. Projected Time Line and Length of Contract

The scheduled completion date for this project is estimated to be twelve (12) months from the Port's Notice to proceed.

III. Port Policy and Other Requirements

The selected Respondent will be required to comply with the following Port Policy and Other Requirements:

1. Disadvantaged Business Enterprise Program (DBE) Program:

The Services described in this RFQ are subject to the requirements of the U.S. Department of Transportation's regulation 49 Code of Federal Regulations (CFR) Part 26 (the "DBE" Rules). The successful Proposer shall comply with all of the nondiscrimination requirements contained in the Agreement, and with the DBE Rules, and shall not discriminate against any business owner because of the owners' race, color, sex, or national origin in the award or performance of the Agreement.

The Port is currently administering a race neutral Disadvantaged Business Enterprise (DBE) program and as such is not establishing a contract-specific goal for the Services. The overall goal is **8.01%** for federal fiscal years 2017-2020, and the Port expects to meet its DBE participation goals entirely through race-neutral means. The Port encourages all Proposers to take active race/gender neutral steps to include DBEs, including but not limited to local DBE's, in this contract. Race/gender neutral steps include: unbundling large contracts, subcontract work the Proposer may self-perform, providing capital and bonding assistance, business development programs and providing technical assistance. To facilitate Port's compliance, each Proposer must in its Qualification identify those subcontractors or suppliers that are certified disadvantaged business enterprises under the DBE Rules, the percentage of each DBE's participation and each DBE's certification number.

The Port is required to report DBE accomplishments to the FAA, Part 26 - Uniform Report of DBE Participation) annually.

The successful Operator will be required to submit quarterly and final DBE attainment reports (herein attached as **Attachments 5-A and 5-B**). The successful Operator shall carry out applicable requirements of the DBE Rules. Failure by the successful Proposer to carry out these requirements will be a material breach of contract, which may result in the termination of the Agreement or such other remedy as the Port deems appropriate.

The successful Proposer shall cooperate with the Port in meeting its commitments and objectives with regard to ensuring nondiscrimination in the award and administration of the Agreement and shall use its best efforts to ensure that barriers to participation of DBEs do not exist. In order for the participation to count toward DBE attainment, Proposers and/or its subcontractors must be certified as of the date of qualification opening by an authorized agency of the California Unified Certification Program or <https://dot.ca.gov/programs/civil-rights/dbe-certification-information>

2. Insurance Requirements:

All Respondents who plan on submitting a qualification in response to this RFQ must meet the Port's Insurance requirements listed in **Attachment 11 (See "Appendix C Insurance" in the Port's Professional Service Agreement)** and must provide proof of insurance at the time of project award. Respondents must include a statement (**Attachment 10**) with their qualification agreeing to the Port's insurance requirements and indicate they will be able to obtain the proper insurances at the time of project award.

3. Security Sensitive Information:

By submitting a qualification, Respondent acknowledges that in the course of performing services under the Agreement, the selected Consultant/Contractor will come into possession of sensitive information subject to Port of Oakland regulation. The selected Consultant/Contractor will be required to comply strictly with the Port of Oakland's policies and practices for sensitive information.

4. Living Wage Policy:

On March 5, 2002, the voters in the City of Oakland passed Measure I, adding to the City Charter Section 728 ("§728") entitled "Living Wage and Labor Standards at Port-assisted Businesses." §728 requires Port Aviation and Maritime businesses that meet specified minimum threshold requirements to pay all nonexempt employees a Living Wage rate established by City Ordinance and adjusted annually based on the Consumer Price Index for the San Francisco, Oakland, and San Jose area. The current Living Wage rate as of July 1, 2019 is at least \$14.35 with credit given to the employer for the provision to covered employees of health benefits, and \$16.47 without credit for the provision of health benefits. Specifically, §728 applies to Port contractors and financial assistance recipients with the Aviation or Maritime divisions that have contracts worth more than \$50,000 and that employ more than 20 employees who spend more than 25%

of their time on Port-related work. §728 also provides covered employers with incentives to provide health benefits to employees, establishes a worker retention policy, requires covered employers to submit quarterly payroll reports and requires covered employers to allow Port representatives access to payroll records in order to monitor compliance and labor organization representatives access to workforces during non-work time and on non-work sites. Covered employers are responsible for complying with the provisions of §728 from the date the covered contract is entered into. When a contract is awarded, the Respondent will be required to fill out the attached Employer Self-Evaluation for Port of Oakland Living Wage Form (**see Attachment 7-A**) and Certificate of Compliance—Living Wage (**see Attachment 7-B**) and return them to the Social Responsibility Division. (i.e., do not include these forms in with your qualification). For more information, please call Connie Ng-Wong in the Port of Oakland's Social Responsibility Division at (510) 627-1390.

Respondent shall acknowledge reviewing the Port's Living Wage program and compliance, by submitting the Statement of Living Wage Requirement (**Attachment 8**) with their qualification.

5. Port's Standard Professional Services Agreement:

Submission of a qualification will confirm that the Respondent fully understands the provisions of the Port's Standard Professional Services Agreement (**Attachment 11**) which will be revised as necessary to be consistent with the provisions of this RFQ, and will execute such revised agreement if awarded the contract. Any objections to any provisions in the Port's Standard Professional Services Agreement and/or this RFQ must clearly be identified in your qualification. Changes are discouraged.

IV. Submission Requirements

The Port has scheduled an optional pre-qualification meeting on the date indicated in the table labeled "Qualification Information" (on the first page of the invitation for this RFQ), to review the scope of services and the submission requirements. Attendance is strongly recommended.

Please respond to the following submission requirements in a straightforward, concise delineation of your capabilities proposed to satisfy the requirements of this RFQ. The Port will use your responses to objectively determine your capabilities and experience. Please label your responses in the order presented below. Please limit your total response to the number of pages indicated below (excludes the required attachment forms provided with this RFQ).

Submittal Format:

Responses may not be longer than 22 pages (one sided or 11 pages double sided), printed on 8 ½" x 11" paper and formatted in no smaller than 11- point font. Each section shall be labeled according to the sections below. All submitted material must be bound with only **one staple or binder clip** in the upper left corner. Please no binders or any other type of binding. Submittals must be able to fit into a 9 x 11.5 inch folder.

QUALIFICATIONS: The Statement of Qualifications shall include the following items to document the Respondent's qualifications:

1. A cover letter highlighting the prime consulting firm's qualifications and indicating:
 - (a) the primary locations (office) from where the work will be performed,
 - (b) provide documentation that your firm meets the minimum qualifications listed in this RFQ (and in Attachment 4).

*(2 page
maximum)*

- (c) whether the prime consultant is a single entity, partnership, corporation, or other legal entity recognized in the State of California and provide documentation that any partnership or technical leads meet the minimum qualifications listed in this RFQ (and in Attachment 4).

The cover letter shall be signed in ink by an officer or employee having the authority to bind the company by his/her signature. Signatures by anyone other than the president, vice president or general partner should have accompanying documentation that the individual is empowered to bind the company or partnership. Indicate if the proposing firm will take any exceptions to the Professional Services Agreement in Attachment 11 or this RFQ and enumerate these exceptions in this section exceptions to the Professional Services Agreement in Attachment 11 or this RFQ and enumerate these exceptions in this section.

- 2. A brief introduction of all participating firms, including the following required information:

(3 pages maximum)

- (a) general background, capabilities, and available resources,
- (b) years in business,
- (c) total number of staff and number of staff in the location where work will be performed, and
- (d) the firms' experience working together as a team.

- 3. A summary of each of the key personnel's professional expertise and experience, including but not limited to Consultant Project Manager and designated Technical Leads. Identify and describe the Project Manager's direct experience leading the technical and managerial disciplines associated with previous APMS projects.

(4 pages maximum)

Each respondent shall explain why its team should be selected for this project. This section should include an organizational chart identifying the prime consultant's and any subconsultants' proposed key personnel that will be working on the project. Describe the team structure and each key member's roles and responsibilities, including how the Respondent anticipates each of its key members will interact with Port personnel.

Detailed resumes for the proposed staff shall be submitted under "Additional Supplemental Information and Forms", below, and not as part of this section or page count.

- 4. Descriptions of relevant, recent experience (up to five projects) of the prime consultant involving projects that are similar in scope, size, and complexity to this project with emphasis on those projects that involved the same proposed key members from the prime and subconsultants. Include the following information for each referenced project:

(5 pages maximum)

- (a) The client/owners' names, address and phone number for the owner/client's project manager. The person identified as a reference should have detailed knowledge about the consultant's performance on the project. By providing such information, you authorize us to contact such clients.
- (b) The project's name, location, a brief description of the project, the duration, and its current status.
- (c) Your firm's role in the project

- (d) Names and roles of the personnel assigned to the project.
- (e) A description of the “value added” by the consultant team. What particularly noteworthy challenges were encountered and how did the consultant address them?

Please note that our ability to validate the information submitted as “relevant projects” is critical to the determination of whether the proposing firm’s and their proposed staff’s qualifications meet the needs of the project. It is therefore extremely important that the information submitted be as accurate as possible.

PROJECT APPROACH: Provide an overview describing the general approach, scope of services, and methodology of your company’s ability to fulfill the general functions required in this RFQ. Please use this section to describe the services you propose to provide to the Port. Your services can be above and beyond the requirements listed in the “Scope of Service” section.

1. Identify the approach to the APMS Update. Discuss the methods for completing the work, coordination of the team, and issues and challenges to consider during the planning, scheduling, and pavement inspection process. The approach should focus primarily on the inspection process and the development of recommendations, CIP development, and schedule.

*(8 pages
combined
maximum for
Items 1 and 2)*

In addition, prepare a project schedule illustrating the firm’s approach, anticipated outcomes, and expected review times based on experience (ranges are acceptable).

2. Describe the firm’s ability and approach to provide the Airport comprehensive and innovative methods in completing the APMS Update with the most current industry standards, ensuring the Airport’s APMS Update can provide sufficient justification for FAA AIP funding for pavement rehabilitation and reconstruction projects.

Additional Supplemental Information and Forms

1. **Debarment Statement:** Provide a written statement that your company has not been debarred from providing services to any State or Federal Agency within the last five (5) years. Sign and date your statement. If your company has been debarred, you will need to provide background information and the reason(s) for the debarment. Provide the name and contact information for the agency that debarred your company. The Port must review the reason(s) and duration for the debarment before it can determine if your company can be considered for this project.
2. **Litigation and Other Information:** Provide information describing any litigation, arbitration, investigations, or any other similar actions that your company, its principals, directors, and/or employees have been involved in during the last five (5) years relating to your company’s services. Please list (a) name and court case or other identification number of each matter, (b) jurisdiction in which it was filed, and (c) outcome of matter (e.g. whether the case is pending, a judgment was entered, a settlement was reached or the case was dismissed). The Port will review the reason and timing of the action before it can determine if your company can be considered for this project. Failure to provide the litigation information may disqualify your qualification.
3. **Required Forms and Adherence to Port Policy and Other Requirements:** The Respondent must fill out all of the forms included in this RFQ (listed under the “Attachments” section and marked with a “Yes” in the column titled “Must Be Returned with Qualification”), and

return them with your qualification. By returning the listed forms, your company is supporting and agreeing to the Port Policy and Other Requirements (listed in Section III, "Port Policy and Other Requirements" of this RFQ). Failure of the Respondent to provide any of the required forms may result in your qualification being rejected for non-responsiveness. These required forms will not count against the maximum page count (indicated above) for your response.

4. **Staff Resumes:** The Respondent should provide detailed resumes of the proposed staff for this project. These resumes will not count against the maximum page count (indicated above) for your response.

V. Evaluation Criteria

Prior to contract award, the Port must be assured that the Respondent selected has all of the resources required to successfully perform under the contract. This includes, but is not limited to, personnel with skills required, equipment/materials and financial resources sufficient to provide services called for under this contract. If during the evaluation process, the Port is unable to assure itself of the Respondent's ability to perform under the contract, if awarded, the Port has the option of requesting from the Respondent any information that the Port deems necessary to determine the Respondent's capabilities. If such information is required, the Respondent will be notified and will be permitted five (5) working days to submit the requested information.

In awarding the contract, the Port will evaluate a number of factors in combination. Please make sure you have submitted responses to all items listed in the Submission Requirements section, as your responses will be evaluated based on the weights listed below.

A. Evaluation Weights

Item	Criteria	Weights
1	<u>Adherence to Port Policy and Other Requirements, Debarment Statement, and Minimum Qualifications</u> Qualifications from companies who have not or will not adhere to the Port Policy and Other Requirements or who have been debarred and have not provided sufficient reasons/justification for the Port to review the circumstances surrounding the debarment will not be forwarded to the evaluation committee for review. (Submission Requirements Sections: Items 1 and 3 of the Additional Supplemental Information and Forms section, and Item 1 of the Qualifications Section .)	Pass/Fail
2	<u>Overall Experience and Expertise of the Consultant and Subconsultants.</u> This includes demonstrated experience providing services similar in the scope outlined herein and directly related to providing the services specified in this RFQ and demonstrated ability to work together as a team and perform all aspects of the proposed work. The Port will also consider any potential (disclosed or undisclosed) litigation against the firms and part of its evaluation.	30%
3	<u>Personnel and Team Organization.</u> This includes experience, education, knowledge, professional affiliations and degrees, professionalism, communication skills, and demonstrated leadership capabilities of key personnel, particularly of the individuals who will be in contact with the Port during the term of the contract.	20%
4	<u>Referenced Projects.</u> This includes listing of projects performed by the prime consultant under the direct leadership of the proposed Project Manager that are similar in scope, size, and complexity, to OAK's APMS update. The referenced projects must include Airport contact information for verification.	20%
5	<u>Project Approach.</u> Respondents will be awarded points based on their demonstrated understanding of the requirements, scope of services, methodology, and approach to complete an APMS Update at OAK, ensuring the APMS Update will provide sufficient justification for FAA AIP funding for pavement rehabilitation and reconstruction projects.	30%
	Total	100%

B. Selection Procedure:

All qualifications received by the deadline which meet the RFQ's requirements will be presented to the evaluation committee comprised of Port of Oakland staff and possibly external members. The evaluation committee will evaluate the qualifications and score all submissions according to the evaluation criteria above. The selection process may include interviews (at the discretion of the evaluation committee) for the top-scoring submissions. If interviews are to take place, the Port will notify the top scoring Respondents. Interview details and scoring requirements will be provided to selected Respondents prior to the interviews.

C. Compensation and Fees:

Following the qualification-based selection process, the Port will begin contract negotiation with the highest ranked, most qualified firm, on compensation and fees for the services listed in this RFQ. Subsequently, if an agreement on compensation and fees cannot be reached in a timely manner with the highest qualified firm, the Port will seek to reach an agreement with the next best qualified firm, and so on, until compensation and fees for the services can be reached with one the subsequent highest ranked firms.

Should the Port not be able to reach an agreement with any of the top-scoring submissions, the Port shall select additional firms for interviews in order of their competence and qualifications and continue negotiations with the next highest ranked firm.

Federal Aviation Administration (FAA) Requirements: Consultant(s) will be selected and engaged in accordance with FAA Advisory Circular (AC) 150/5100-14E, Change 1, dated 9/25/2015, "Architectural, Engineering, and Planning Consultant Services for Airport Grant Projects". All work will be required to comply with FAA grant assurances, requirements and regulations.

VI. Additional Provisions

The terms "Company", "Consultant", "Contractor", "Proposer", "Respondent", "Seller", "Supplier", and "Vendor" whenever appearing in this RFQ or any attachments, are used interchangeably to refer to the company or firm submitting a qualification in response to this RFQ.

A. Port's Legal Name and Jurisdiction

The Port of Oakland (the "Port") is legally known as the City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners. The Port is an independent department of the City of Oakland. The Port has exclusive control and management of all Port facilities and properties. Port facilities and properties consist of marine terminals, a railway intermodal terminal and container storage areas (collectively, the "Seaport"); the Oakland International Airport (the "Airport"); and commercial and industrial land and properties (collectively, "Commercial Real Estate"); and other recreational land, other land, undeveloped land, and water areas, all located in Oakland, CA. The Port issues Purchase Orders under the name "Port of Oakland".

B. Ownership of Qualification

All rights to information developed, disclosed, or provided in a Qualification and its attendant submissions are the property of Port, unless a Respondent makes specific reference to data that is considered proprietary. To the extent that a Respondent does not make specific reference to data that is considered "confidential" and proprietary, submission of an RFQ constitutes the Respondent's express (a) grant and assignment of a perpetual, transferable (in whole or in part), non-exclusive, royalty-free license to the Port for copyright, patent, or other intellectual property right (collectively referred to as "intellectual property"), and (b) agreement that the Port may use any such intellectual property without charge for any lawful purpose in connection with other Port development projects, including without limitation the creation of derivative works and issuance of sublicenses.

C. Deadline for Receipt of Qualification

Qualifications must be sealed and delivered to the Submittal Address listed in the Request for Qualifications (RFQ) no later than the time specified in the RFQ. The Port will place a clock ("Clock") in a conspicuous location at the place designated for submittal of Qualifications. For purposes of determining the time that a Qualification is submitted, the Clock shall be controlling (unless at the time of the receipt the Clock malfunctions, then the Port's clock on its network phone system shall be controlling). The Port suggests that Qualifications be hand delivered to the Submittal Address in order to ensure their timely receipt. Any Qualifications mailed via an express mail service, US Postal Service, or other courier service shall not be considered timely received until date and time stamped by the controlling Clock. Any Qualifications received after

the time stated (regardless of the cause of the delay, including whether caused by the express mail service, US Postal Services, other courier service, or the Port's mail handling personnel) shall not be opened and shall be returned, sealed, to the Proposer

D. Public Records Act

Under the Public Records Act (Gov. Code § 6250 et seq.), the Port may be obligated to make available to the public the submitted qualification and all correspondence and written questions submitted during the Request for Qualification process. However, such disclosure shall not be made prior to the date on which the Port publishes a final Board agenda report recommending award of the contract.

If Respondent believes portions of its qualification contain trade secrets or proprietary financial information that should be exempt from disclosure under the Public Records Act, **Respondent shall submit a separate copy of its entire qualification with the protected material redacted with black boxes, which each redaction specifically marked as "CONFIDENTIAL".** Such separate copy shall not constitute the qualification, but shall be used, if needed and appropriate, in response to an applicable Public Records Act request. If Respondent does not submit such a separate redacted qualification, Respondent shall be deemed as not claiming that any portion of its qualification contains trade secrets or proprietary financial information.

The Port reserves the right to independently determine whether any document is subject to disclosure and to make such information available to the extent required by applicable law, without any restriction or notice to Respondent.

E. Indemnification

If Respondent is selected to receive a contract, it will be required to agree to the indemnification clause contained in the Port's Standard Professional Services Agreement. **See Section 5** of the Port's Standard Professional Services Agreement (**Attachment 11**).

F. Reimbursable Expenses

All expenses incidental to performing Consultant's Basic Services including, but not limited to, overtime, reproduction of documents and other materials associated with Respondent's deliverables and presentation materials; reproduction of construction contractor's submittals; reproduction of Design Completion Consultants' submittals; transportation and subsistence; telephone, computer, facsimile, or other similar costs; and the like, shall be included within the Contract Price.

G. Port's Right to Modify

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

H. Conflicts of Interest

By submitting a qualification, the Respondent represents that it is familiar with Section 1090 and Section 87100 et seq. of the California Government Code, and that it does not know of any facts that constitute a violation of said sections in connection with its qualification. Respondent also represents that its qualification has completely disclosed to the Port all facts bearing upon any possible interests, direct or indirect, which Respondent believes any member of the Port, or other officer, agent or employee of the Port or any department presently has, or will have,

in any agreement arising from this RFQ, or in the performance thereof, or in any portion of the profits there under. Willful failure to make such disclosure, if any, shall constitute ground for rejection of the qualifications or termination of any agreement by the Port for cause. Respondent agrees that if it enters into a contract with the Port, it will comply with all applicable conflict of interest codes adopted by the City of Oakland and Port of Oakland and their reporting requirements.

I. Cost of Preparing a Response

All costs for developing a response to this RFQ and attending any qualification meetings or selection meetings are entirely the responsibility of the Respondent and shall not be chargeable to the Port.

J. Compliance with Law

The Respondent must comply with all laws, ordinances, regulations and codes of the Federal, State, and Local Governments, which may in any way affect the preparation of qualifications or the performance of the contract.

K. Respondent's Relationship

The Respondent's (and Respondent's employees' and contractors') relationship to the Port shall be that of independent contractor and not deemed to be an employee or agent of the Port.

L. Qualification Considerations and Legal Proceeding Waiver

The Port has absolute discretion with regard to acceptance and rejection of qualifications. In order to be considered the party submitting a qualification waives the right to bring legal proceedings challenging the Board of Port Commissioners choice of the award.

M. False Statements

False statements in a qualification will disqualify the qualification.

N. Taxes

The Respondent will be responsible for all Federal, State, and Local taxes.

O. Grade of Service

The Respondent must provide professional service and maintain appropriate personnel to provide expedient and courteous service.

P. The Respondent's Liability

The Respondent shall be responsible for any and all damages to the Port's premises resulting from the negligent acts or willful misconduct of the Respondent's agents or employees.

Q. Amendments

The Port may, at its sole discretion, issue amendments to this RFQ at any time before the time set for receipt of qualifications. The Respondents are required to acknowledge receipt of any amendments (addenda) issued to this RFQ by acknowledging the Addendum in the space provided on the RFQ Acknowledgement and Signature Form. The Port shall not be bound by any representations, whether oral or written, made at a pre-qualification, pre-contract, or site meeting, unless such representations are incorporated in writing as an amendment to the RFQ or as part of the final contract. All questions or requests for clarification concerning material terms of the contract should be submitted in writing for consideration as an amendment.

R. Withdrawal or Modification of Offers

The Respondent may modify or withdraw an offer in writing at any time before the deadline for submission of an offer.

S. Acceptance

Any offer received shall be considered an offer which may be accepted or rejected, in whole or in part, by the Port based on initial submission with or without discussions or negotiations.

T. Representations

No representations or guarantees of any kind, either made orally, or expressed or implied, are made with regard to the matters contained in this document, including any attachments, letters of transmittal, or any other related documents. The Respondent must rely solely on its own independent assessment as the basis for the submission of any offer made.

U. Award Consideration and Length of Contract

The Port shall not be bound to accept the lowest-quote fee and will award the contract (if any) to the company/firm selected through the competitive process (and any subsequent interviews) outlined in this RFQ.

The Port will award a three-year contract (if any) and will have the option to issue two (2) one-year extensions not to exceed a total period of 5 years (at the costs quoted in this qualification).

V. Contract Termination

The Port may terminate the agreement (and or contract) with the Respondent on thirty days notice for the failure of the Respondent to comply with any term(s) of the agreement/contract between the Port and the Respondent.

W. Protest Procedures

Any party that has timely submitted a responsive qualification that contends or claims that the Port's proposed award of the subject contract fails to comply with the Port's rules and regulations or with law must file a protest in accordance with the provisions set forth below:

1. Any protest must be submitted in writing to Daria Edgerly, Secretary of the Board, and received by the Port no later than 5:00 p.m. by the third (3rd) business day following publication of the identity of the apparent successful proposer (or of Notice of Intent to Award, if such notice is issued).
2. The protest must include the name, address and telephone number of the person representing the protesting party.
3. The initial protest document must contain a complete statement of the basis for the protest, including in detail, all grounds for protest including referencing the specific portion of the solicitation document that forms the basis for the protest, and including without limitation all facts, supporting documentation, legal authorities and argument in support of the grounds for the protest. Any matters not set forth in the written protest shall be deemed waived. All factual contentions must be supported by competent, admissible and credible evidence.

Any protest not conforming to the foregoing shall be rejected by the Port without recourse.



PORT OF OAKLAND

Non-Collusion Declaration

**RFQ No.: 19-20/15, Consulting Services for Airport Pavement Management System
(APMS) Update at Oakland International Airport**

(To Be Executed By Proposer and Submitted With Qualification)

I, _____, declare as follows:

That I am the _____ of _____, the party making the attached qualification; that the attached qualification is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the qualification is genuine and not collusive or sham; that the proposer has not directly or indirectly induced or solicited any other proposer to put in a false or sham qualification, or that anyone shall refrain from proposing; that the proposer has not in any manner, directly or indirectly, sought by agreement, communication, or to fix any overhead, profit, or cost element of the qualification price, or that of any other proposer, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the qualification are true; and further, that the proposer has not, directly or indirectly, submitted his or her qualification price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company, association, organization, qualification depository, or to any member or agent thereof to effectuate a collusive or sham qualification.

Any person executing this declaration on behalf of a proposer that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the bidder.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this _____ day of _____, 202__, at

_____, _____

Signature

Authority: Public Contract Code 7106

CCP 2015.5



PORT OF OAKLAND

Statement of Equal Employment Opportunity

RFQ No.: 19-20/15, Consulting Services for Airport Pavement Management System (APMS) Update at Oakland International Airport

I hereby certify that I _____ (Legal Name of Respondent/Supplier/Consultant/Contractor), will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, ancestry, age (over 40), physical or mental disability, cancer-related medical condition, a known genetic pre-disposition to a disease or disorder, veteran status, marital status, or sexual orientation.

I declare under penalty of perjury under the laws of the State of California that the information I have provided herein is true and correct and is of my own personal knowledge.

Signature

Print Name

Title

Date



PORT OF OAKLAND

RFQ Acknowledgement and Signature Form

RFQ No.: 19-20/15, Consulting Services for Airport Pavement Management System (APMS) Update at Oakland International Airport

The undersigned having carefully examined the location of the proposed work, the local conditions of the place where the work is to be done, the Invitation, the General Conditions, the Specifications and all of the documents for this project, proposes to enter into a contract with the Port of Oakland to perform the work listed in this RFQ, including all of its component parts, and to furnish any and all required labor, materials, equipment, insurance, bonding, taxes, transportation and services required for this project in strict conformity with the plans and specifications prepared, including any Addenda, within the time specified.

Addendum Acknowledgement:

The following addendum (addenda) is (are) acknowledged in this RFQ: _____

Acknowledgement and Signature:

1. No Qualification is valid unless signed in ink by the person authorized to make the qualification.
2. I have carefully read, understand and agree to the terms and conditions on all pages of this RFQ. The undersigned agrees to furnish the services stipulated in this RFQ.
3. I represent that I am familiar with Section 1090 and Section 87100 et seq. of the California Government Code, and that I do not know of any facts that constitute a violation of said Sections in connection with the qualification.

Respondent's Name and Title: _____

Company Name: _____

Address: _____

Telephone: _____ Fax: _____

Email: _____ Cell Number: _____

Contractor License # (if applicable): _____ Expiration Date: _____

Federal Tax Identification Number: _____

Authorized Signature: _____ Date: _____



PORT OF OAKLAND

Quarterly Report – Utilization of Disadvantaged Business Enterprises (DBE)

(Federally Funded Projects)

DATE OF THIS REPORT: ____ / ____ / ____

PORT PROJECT NAME & NUMBER				FEDERAL PROJECT NUMBER		Type of Project <input type="checkbox"/> FAA <input type="checkbox"/> FHWA <input type="checkbox"/> TSA <input type="checkbox"/> DHS		REPORTING PERIOD: Year: _____ Quarter*: _____ * I = Jan-Mar; II = Apr-Jun; III = Jul-Sep; IV = Oct-Dec	
PRIME CONTRACTOR		BUSINESS ADDRESS		TOTAL CONTRACT AMOUNT INCLUDING CHANGE ORDERS		CONTRACT BID AMOUNT		PROJECT COMPLETION DATE	

(1) Item No.	(2) Name and Address of CUCP-Certified DBE Firm including: Prime, Subcontractor(s), Supplier(s), and Trucking Broker(s)	(3) Description of Work Performed and or Materials Supplied	(4) DBE Certification Number	DBE CONTRACT PAYMENTS FOR REPORTING PERIOD				
				(5a) DBE Dollars	(5b) DBE Minority Dollars	(5c) DBE (Non-Minority Women) Dollars	(5d) DBE (Minority Women) Dollars	(6) Date of Most Recent Payment
BREAKDOWN OF DBE UTILIZATION LISTED IN <u>DOCUMENT 00431</u> (if applicable): <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> \$ _____ DBE \$ _____ DBE (Non-Minority Women) </div> <div style="width: 45%;"> \$ _____ DBE Minority \$ _____ DBE (Minority Women) </div> </div>				\$	\$	\$	\$	←TOTALS (DBE)
NON-DBE CONTRACT PAYMENTS FOR REPORTING PERIOD: <div style="text-align: right;"> Prime Contractor [if non-DBE]: \$ _____ + All Non-DBE Subcontractors/Suppliers/Truckers: \$ _____ = NON-DBE TOTAL: \$ _____ </div>								

- **DBE Contract Payments:** List all Disadvantaged Business Enterprises (DBE's), including all First Tier Subcontractors, Suppliers, Truckers and Sub Tiers, whether or not these firms were listed on original bid. (Xerox this page if additional sheets are needed.) **For all contract payment details, list actual amount paid to each DBE.** See Instructions, Parts (III) and (IV) for further details.
- **Breakdown of DBE Utilization Listed in Document 00431:** Provide breakdown per Instructions, Part (V).
- **Non-DBE Contract Payments:** Provide total dollar amount, as per Instructions, Part (VI).
- **Contract payments to Prime should be listed either as a line item in the "DBE CONTRACT PAYMENTS" block or in the space provided in the "NON-DBE CONTRACT PAYMENTS" block, depending on whether Prime contractor is a CUCP-certified DBE.**

I CERTIFY THAT THE ABOVE INFORMATION IS COMPLETE, TRUE AND CORRECT

AUTHORIZED CONTRACTOR REPRESENTATIVE SIGNATURE and TITLE	BUSINESS PHONE NUMBER	DATE
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COMMENTS:

<p><u>This form shall be submitted to:</u> Port of Oakland Social Responsibility Division 530 Water Street Oakland, CA 94607 Attention: Public Works Unit</p> <p>cc to Engineering Construction</p>

Port of Oakland

QUARTERLY REPORT – UTILIZATION OF DISADVANTAGED BUSINESS ENTERPRISES (DBE) - INSTRUCTIONS

(Federally Funded Projects)

(I) For each quarter of the contract period, a copy of this Document 00817Q shall be filed **no later than 30 calendar days after the end of the quarter.**

(II) Enter the project information requested on the first two rows on page 00817Q-1 (Port Project Name, Federal Project Name, Type of Project, etc.)

(III) Provide the following information **for each portion of contract work performed and/or amount of materials supplied under this contract by a DBE subcontractor/supplier/trucking broker (include Prime Bidder, if Prime is a CUCP-certified DBE):**

- Column 1: Contract Item Number(s) (as listed on the Bid Form submitted by prime bidder) of the work performed, or materials supplied, by the firm listed in Column 2. If the work performed/materials supplied was/were not listed on the Bid Form, enter the Change Order Number.
- Column 2: Name and address of the firm performing work and/or supplying materials.
- Column 3: Description of the work performed and/or materials supplied by said firm.
- Column 4: Enter the California Unified Certification Program [CUCP] DBE Certification Number of the firm listed in Column 2. (CUCP-certified DBE subcontractors, suppliers and truckers should provide their certification number to the Prime Bidder and notify Prime Bidder in writing with the date of the decertification if their status should change during the course of the project.)
- Column 5a – Enter the dollar amount of the work performed and/or materials supplied by the firm listed in Column 2 during the reporting period (quarter) covered by this report. The dollar amount should be entered in either Column 5a, 5b, 5c or 5d, depending on the firm's DBE program status. The DBE program status is determined by the CUCP based on ethnicity, gender, ownership and control issues at time of certification. The certified firm is issued a certificate by CUCP that states their program status as well as the expiration date of the certification. DBE Program status may be obtained by accessing the CUCP website: (<http://www.dot.ca.gov/hq/bep/index.htm>) or by calling (916) 324-1700 or (866) 810-6346. Based on this DBE Program status, the following table depicts which column to be used for the dollar amount of work:

DBE Program Status	Column to be used
If program status shows DBE only with no other program listed	(5a) DBE Dollars
If program status shows DBE and SDBE (but not SWBE)	(5b) DBE Minority Dollars
If program status shows DBE and SWBE (but not SDBE)	(5c) DBE (Non-Minority Women)
If program status shows DBE, SDBE and SWBE	(5d) DBE (Minority Women)

- If the firm was certified as a DBE at the time it started work on this contract, but was decertified before competing its portion of the work, enter the dollar amount of ALL work performed/materials supplied by the firm, INCLUDING WORK PERFORMED/MATERIALS SUPPLIED AFTER THE DATE OF DECERTIFICATION.
- If the firm was not certified as a DBE at the time it started work on the contract, but became certified before completing its portion of the work. ENTER THE DOLLAR AMOUNT OF ALL WORK PERFORMED/MATERIALS SUPPLIED AFTER THE CERTIFICATION DATE, and provide details in the 'COMMENTS' section of this form.

For an explanation of the CUCP's DBE program categories, see Table 1, below.

Column 6: Enter the date of the most recent payment which prime contractor made to subcontractor/supplier/trucking broker for the work described in Column 3.

(IV) In the 'TOTALS (DBE)' row, enter the column sums of the dollar amounts listed in Columns 5a through 5d.

(V) In the block labeled 'BREAKDOWN OF DBE UTILIZATION LISTED IN DOCUMENT 00431', enter the dollar amounts listed on Document 00431, Bidder – DBE – Information Form (as submitted by prime bidder after receipt of the Notice of Award), summed up by DBE Program Status. E.g., if two or more firms listed in Document

00431 fall into the category of DBE/SMBE, add the dollar amounts of their work listed in Document 00431 and enter the sum under “DBE Minority” in the ‘BREAKDOWN OF DBE UTILIZATION...’ block.

(VI) In the block labeled ‘TOTAL NON-DBE CONTRACT PAYMENTS FOR REPORTING PERIOD’, enter the sum of all contract payments made to non-DBE subcontractors/ suppliers/trucking brokers during the reporting period covered by this report. If Prime Bidder is not a CUCP-certified DBE, include contract payments for work performed by Prime on the line provided.

(VII) The authorized contractor representative shall certify the information supplied by signing in the space provided. **Per the provisions of Document 01200, Measurement and Payment, Final Payment WILL NOT be made until Document 00817F and all required copies of Documents 00817Q have been properly filled out and submitted to the Port of Oakland.**

TABLE 1: CUCP DISADVANTAGED BUSINESS ENTERPRISE CRITERIA

DBE: Only small business concerns (as defined by the United States Small Business Administration) which are owned and controlled by one or more socially and economically disadvantaged individuals (as described below), can be certified as a DBE. Owned and controlled means: At least 51 percent of the small business concern is owned by one or more socially and economically disadvantaged individuals; and whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

MBE: A small business owned and controlled by one or more minorities. Owned and controlled means: At least 51 percent of the small business concern is owned by one or more minorities or, in the case of a publicly owned business, at least 51 percent of all issued stock is owned by one or more minorities; and whose management and daily business operations are controlled by one or more such individuals.

WBE: A small business owned and controlled by one or more women. Owned and controlled means: At least 51 percent of the small business concern is owned by one or more women; and whose management and daily business operations are controlled by one or more women who own it.

Socially and Economically Disadvantaged Individual means: Any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is:

1. Any individual determined by a recipient to be a socially and economically disadvantaged individual on a case-by-case basis.
2. Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
 - (i) “Black Americans,” which includes persons having origins in any of the Black racial groups of Africa;
 - (ii) “Hispanic Americans,” which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
 - (iii) “Native Americans,” which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
 - (iv) “Asian-Pacific Americans,” which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;
 - (v) “Subcontinent Asian Americans,” which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
 - (vi) Women;
 - (vii) Any additional groups whose members are designated as socially and economically disadvantaged by the U.S. Small Business Administration (SBA), at such time as the SBA designation becomes effective (<http://www.sba.gov/aboutsba/sbaprograms/sdb/index.html>).



PORT OF OAKLAND

Final Report – Utilization Of Disadvantaged Business Enterprises (DBE)

(Federally Funded Projects)

PORT PROJECT NAME & NUMBER				FEDERAL PROJECT NUMBER		Type of Project <input type="checkbox"/> FAA <input type="checkbox"/> FHWA <input type="checkbox"/> TSA <input type="checkbox"/> DHS		DATE OF THIS REPORT ____/____/____	
PRIME CONTRACTOR		BUSINESS ADDRESS		TOTAL CONTRACT AMOUNT INCLUDING CHANGE ORDERS		CONTRACT BID AMOUNT		PROJECT COMPLETION DATE	

(1) Item No.	(2) Name and Address of CUCP-Certified DBE Firm including: Prime, Subcontractor(s), Supplier(s), and Trucking Broker(s)	(3) Description of Work Performed and or Materials Supplied	(4) DBE Certification Number	TOTAL DBE CONTRACT PAYMENTS				
				(5a) DBE Dollars	(5b) DBE Minority Dollars	(5c) DBE (Non-Minority Women) Dollars	(5d) DBE (Minority Women) Dollars	(6) Date of Final Payment
BREAKDOWN OF DBE UTILIZATION LISTED IN <u>DOCUMENT 00431</u> (if applicable):				\$	\$	\$	\$	←TOTALS (DBE)
<div style="display: flex; justify-content: space-between;"> <div> \$ _____ DBE </div> <div> \$ _____ DBE Minority </div> </div> <div style="display: flex; justify-content: space-between; margin-top: 10px;"> <div> \$ _____ DBE (Non-Minority Women) </div> <div> \$ _____ DBE (Minority Women) </div> </div>				TOTAL NON-DBE CONTRACT PAYMENTS: <div style="text-align: right;"> Prime Contractor [if non-DBE]: \$ _____ + All Non-DBE Subcontractors/Suppliers/Truckers: \$ _____ = NON-DBE TOTAL: \$ _____ </div>				

- DBE Contract Payments: List all Disadvantaged Business Enterprises (DBE's), including all First Tier Subcontractors, Suppliers, Truckers and Sub Tiers, whether or not these firms were listed on original bid. (Xerox this page if additional sheets are needed.) **If final DBE utilization is different than that provided at time of bid or award, provide comments on back of form. For all contract payment details, list actual amount paid to each DBE.** See Instructions, Parts (III) and (IV) for further details.
- Breakdown of DBE Utilization Listed in Document 00431: Provide breakdown per Instructions, Part (V).
- Non-DBE Contract Payments: Provide total dollar amount, as per Instructions, Part (VI).
- Contract payments to Prime should be listed either as a line item in the "DBE CONTRACT PAYMENTS" block or in the space provided in the "NON-DBE CONTRACT PAYMENTS" block, depending on whether Prime contractor is a CUCP-certified DBE.

I CERTIFY THAT THE ABOVE INFORMATION IS COMPLETE, TRUE AND CORRECT

AUTHORIZED CONTRACTOR REPRESENTATIVE SIGNATURE and TITLE	BUSINESS PHONE NUMBER	DATE
--	-----------------------	------

COMMENTS:

This form shall be submitted to:
Port of Oakland
Social Responsibility Division
530 Water Street
Oakland, CA 94607
Attention: Public Works Unit

cc to Engineering Construction

Port of Oakland

FINAL REPORT – UTILIZATION OF DISADVANTAGED BUSINESS ENTERPRISES (DBE) - INSTRUCTIONS

(Federally Funded Projects)

(I) Use this form to submit a comprehensive list of all contract payments. Note that the payments listed herein should coincide with the payments listed on the quarterly DBE utilization reports provided on Document 00817Q. Any discrepancies shall be noted and explained in the “Comments” section provided on page 00817F-2.

(II) Enter the project information requested on the first two rows on page 00817F-1 (Port Project Name, Federal Project Name, Type of Project, etc.)

(III) Provide the following information for each portion of contract work performed and/or amount of materials supplied under this contract by a DBE subcontractor/supplier/trucking broker (include Prime Bidder, if Prime is a CUCP-certified DBE):

Column 1: Contract Item Number(s) (as listed on the Bid Form submitted by prime bidder) of the work performed, or materials supplied, by the firm listed in Column 2. If the work performed/materials supplied was/were not listed on the Bid Form, enter the Change Order Number.

Column 2: Name and address of the firm performing work and/or supplying materials.

Column 3: Description of the work performed and/or materials supplied by said firm.

Column 4: Enter the California Unified Certification Program [CUCP] DBE Certification Number of the firm listed in Column 2. (CUCP-certified DBE subcontractors, suppliers and truckers should provide their certification number to the Prime Bidder and notify Prime Bidder in writing with the date of the decertification if their status should change during the course of the project.)

Column 5a – Enter the dollar amount of the work performed and/or materials supplied by the firm listed in Column 2 during the contract period. The dollar amount should be entered in either Column 5a, 5b, 5c or 5d, depending on the firm’s DBE program status. The DBE program status is determined by the CUCP based on ethnicity, gender, ownership and control issues at time of certification. The certified firm is issued a certificate by CUCP that states their program status as well as the expiration date of the certification. DBE Program status may be obtained by accessing the CUCP website: (<http://www.dot.ca.gov/hq/bep/index.htm>) or by calling (916) 324-1700 or (866) 810-6346. Based on this DBE Program status, the following table depicts which column to be used for the dollar amount of work:

DBE Program Status	Column to be used
If program status shows DBE only with no other program listed	(5a) DBE Dollars
If program status shows DBE and SDBE (but not SWBE)	(5b) DBE Minority Dollars
If program status shows DBE and SWBE (but not SDBE)	(5c) DBE (Non-Minority Women)
If program status shows DBE, SDBE and SWBE	(5d) DBE (Minority Women)

- If the firm was certified as a DBE at the time it started work on this contract, but was decertified before completing its portion of the work, enter the dollar amount of ALL work performed/materials supplied by the firm, INCLUDING WORK PERFORMED/MATERIALS SUPPLIED AFTER THE DATE OF DECERTIFICATION.
- If the firm was not certified as a DBE at the time it started work on the contract, but became certified before completing its portion of the work. ENTER THE DOLLAR AMOUNT OF ALL WORK PERFORMED/MATERIALS SUPPLIED AFTER THE CERTIFICATION DATE, and provide details in the ‘COMMENTS’ section of this form.

For an explanation of the CUCP’s DBE program categories, see Table 1, below.

Column 6: Enter the date on which prime contractor made the ‘final payment’ for the work described in Column 3 to subcontractor/ supplier/trucking broker.

(IV) In the ‘TOTALS (DBE)’ row, enter the column sums of the dollar amounts listed in Columns 5a through 5d.

- (V) In the block labeled ‘BREAKDOWN OF DBE UTILIZATION LISTED IN DOCUMENT 00431’, enter the dollar amounts listed on Document 00431, Bidder – DBE – Information Form (as submitted by prime bidder after receipt of the Notice of Award), summed up by DBE Program Status. E.g., if two or more firms listed in Document 00431 fall into the category of DBE/SMBE, add the dollar amounts of their work listed in Document 00431 and enter the sum under “DBE Minority” in the ‘BREAKDOWN OF DBE UTILIZATION...’ block.
- (VI) In the block labeled ‘TOTAL NON-DBE CONTRACT PAYMENTS’, enter the sum of all contract payments made to non-DBE subcontractors/ suppliers/trucking brokers during the course of the contract. If Prime Bidder is not a CUCP-certified DBE, include contract payments for work performed by Prime on the line provided.
- (VII) The authorized contractor representative shall certify the information supplied by signing in the space provided. **Per the provisions of Document 01200, Measurement and Payment, Final Payment WILL NOT be made until Document 00817F and all required copies of Documents 00817Q have been properly filled out and submitted to the Port of Oakland.**

TABLE 1: CUCP DISADVANTAGED BUSINESS ENTERPRISE CRITERIA

DBE: Only small business concerns (as defined by the United States Small Business Administration) which are owned and controlled by one or more socially and economically disadvantaged individuals (as described below), can be certified as a DBE. Owned and controlled means: At least 51 percent of the small business concern is owned by one or more socially and economically disadvantaged individuals; and whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

MBE: A small business owned and controlled by one or more minorities. Owned and controlled means: At least 51 percent of the small business concern is owned by one or more minorities or, in the case of a publicly owned business, at least 51 percent of all issued stock is owned by one or more minorities; and whose management and daily business operations are controlled by one or more such individuals.

WBE: A small business owned and controlled by one or more women. Owned and controlled means: At least 51 percent of the small business concern is owned by one or more women; and whose management and daily business operations are controlled by one or more women who own it.

Socially and Economically Disadvantaged Individual means: Any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is:

3. Any individual determined by a recipient to be a socially and economically disadvantaged individual on a case-by-case basis.
4. Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
 - (i) “Black Americans,” which includes persons having origins in any of the Black racial groups of Africa;
 - (ii) “Hispanic Americans,” which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
 - (iii) “Native Americans,” which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
 - (iv) “Asian-Pacific Americans,” which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;
 - (v) “Subcontinent Asian Americans,” which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
 - (vi) Women;
 - (vii) Any additional groups whose members are designated as socially and economically disadvantaged by the U.S. Small Business Administration (SBA), at such time as the SBA designation becomes effective (<http://www.sba.gov/aboutsba/sbaprograms/sdb/index.html>).



PORT OF OAKLAND

**Disadvantaged Business Enterprise
Program Affidavit**

**RFP No.: 19-20/15, Consulting Services for Airport Pavement Management
System (APMS) Update at Oakland International Airport**

I hereby certify that I _____ (Legal Name of Respondent/Supplier/Consultant/Contractor), shall carry out applicable requirements of 49 Code of Federal Regulations (CFR) Part 26 in the award and administration of this contract and cooperate with the Port of Oakland in meeting its commitments and objectives with regard to ensuring nondiscrimination, and shall use best efforts to ensure that barriers to participation of Disadvantaged Businesses do not exist.

Upon execution of an Agreement, the selected consultant will be required to complete quarterly DBE attainment reports and a final report at contract completion, and submit them to the Social Responsibility Division.

I declare under penalty of perjury under the laws of the State of California that the information I have provided herein is true and correct.

Signature

Print Name

Title

Date



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

- 1) Pay all non-exempt employees the living wage rates (As of July 1, 2019, \$16.47 without health benefits or \$14.35 with health benefits). Port Ordinance No. 3666, as amended also requires that covered businesses provide employees at least twelve compensated days off per year, including holidays.
- 2) Pay at least \$2.12 per hour worked toward the provision of health care benefits for employees and/or their dependents, if the employer claims credit for health benefits.
- 3) **Provide written notification to each current and new employee, at time of hire, of his or her rights to receive the benefits under the provisions of these regulations.** The notification shall be provided in English, Spanish and other languages spoken by a significant number of the employees, and shall be posted prominently in communal areas at the work site. A copy of said notification is available from the Port Division of Social Responsibility.
- 4) Provide all employees earning less than \$12/hour notification in English, Spanish, and any other language spoken by a significant number of employees of their right to advance Earned Income Credit payments.
- 5) **Submit name, address, date of hire, occupation classification, rate of pay, benefits paid for each of its employees, and compensated time off in a web accessed monitoring system at <https://www.elationsys.com/app/Registration/> by March 31st, June 30th, September 30th, and December 31st of each year.** If a covered employer has obtained a waiver from the Port Board of Directors, then the employer must still submit an annual payroll report covering each of its employees by December 31st of each year. Failure to provide the list within five days of the due date will result in a penalty of \$500 per day. Covered employers shall maintain payrolls and basic records for all employees and shall preserve them for a period of at least three years after the close of the compliance period.
- 6) Require subcontractors, tenants and subtenants, or licensees who are covered by these requirements to comply with the provisions of these regulations. **Covered employers shall be responsible for including language committing the subcontractor's, tenant's or licensee's agreement to comply, in the contract with the subcontractor.** Covered employers shall submit a copy of such subcontracts or other such agreements to the Port Division of Social Responsibility.
- 7) Permit authorized Port representatives access to work sites and, with employee consent, relevant payroll records for the purpose of monitoring compliance with these regulations, investigating employee complaints of non-compliance and evaluating the operation and effects of these regulations, including the production for inspection and copying of its payroll records for any or all of its employees for the applicable compliance period. Permit a representative of the labor organizations in its industry to have access to its workforce at the Port during non-working time and in non-work areas to ensure compliance.

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



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

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

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

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

knowledge, abilities or skills in a recognized trade? If yes, stop here; the specified employee is exempt. If no, go to question 10.

10. ☐ *Is the employee a volunteer who is not compensated other than for incidental expenses or stipends? If yes, stop here; the specified employee is exempt. If no, go to question 11.*
11. ☐ *Is the employee working for the Business less than 20 hours per week for a period of 6 months or less? If yes, stop here the specified employee is exempt. If no, go to question 12.*
12. ☐ *Of the remaining employees (employees for which no exemption applies as indicated by your answers to questions 6 through 11), are there 20 or fewer non-exempt employees working for the employer under the Port Contract? If yes, stop here; each of the remaining specified employee(s) is/are exempt. If no, each of the remaining specified employee(s) is covered by §728.*

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

_____ Company Name	_____ Signature of Authorized Representative
_____ Address	_____ Type or Print Name & Title
_____ Area Code and Phone	_____ Email Address
_____ Name of Primary Contact	_____ Date
_____ Project Name (Be Specific)	

Submit Completed Checklist To:

Connie Ng-Wong

Port of Oakland

Social Responsibility Division

530 Water Street

Oakland, CA 94607

Phone: (510) 627-1390 Fax: (510) 451-1656

Email: cng-wong@portoakland.com



PORT OF OAKLAND

Certificate of Compliance – Living Wage

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

The undersigned ("Contractor") submits this certificate under penalty of perjury and as a condition of payment of its invoice(s) for service provided under the _____ agreement between the Port and Contractor.

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

(1) Please check the appropriate box and sign below

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

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

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

_____ Company Name	_____ Signature of Authorized Representative
_____ Address	_____ Type or Print Name & Title
_____ Phone and Email	_____ Date
_____ Project Name (Be Specific)	

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



PORT OF OAKLAND

Statement of Living Wage Requirements

RFQ No.: 19-20/15, Consulting Services for Airport Pavement Management System (APMS) Update at Oakland International Airport

I hereby certify that I _____ (Legal Name of Respondent/Supplier/Consultant/Contractor), has reviewed the Living Wage Requirements, included herein as Attachment 7 to this Request for Qualification and will comply with said Requirements. Upon execution of an Agreement, the selected consultant will be required to complete the Employer Self-Evaluation Form and Certificate of Compliance – Living Wage Form of this Request for Qualification, and submit them to the Social Responsibility Division.

I declare under penalty of perjury under the laws of the State of California that the information I have provided herein is true and correct.

Signature

Print Name

Title

Date



PORT OF OAKLAND

Supplier Insurance Requirements

RFQ No.: 19-20/15, Consulting Services for Airport Pavement Management System (APMS) Update at Oakland International Airport

All the Port's Insurance requirements are incorporated into the Professional Services Agreement attached to this Request for Qualifications (**Attachment 11**).



PORT OF OAKLAND

Insurance Acknowledgement Statement

RFQ No.: 19-20/15, Consulting Services for Airport Pavement Management System (APMS) Update at Oakland International Airport

I hereby certify that _____ (Legal Name of Respondent) agrees to meet all of the Port's Insurance requirements included in this Request for Qualification or included in the Professional Services Agreement attached to this Request for Qualification and Respondent will be able to evidence such insurance when and if awarded the contract and will provide proof of insurance at the time of project award if awarded the contract.

I declare under penalty of perjury under the laws of the State of California that the information I have provided herein is true and correct and is of my own personal knowledge.

Signature

Print Name

Title

Date

RFQ No.: 19-20/15, Consulting Services for Airport Pavement
Management System (APMS) Update at Oakland International Airport

Attachment 11

PROFESSIONAL SERVICES AGREEMENT
("Agreement")

Between

CITY OF OAKLAND, A MUNICIPAL CORPORATION,
ACTING BY AND THROUGH ITS BOARD OF PORT COMMISSIONERS
("Port of Oakland")

And

("Consultant")

[brief description of Services; Contract No., if any]

Reference Date

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Appendices

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THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is entered into between the Port and Consultant (as defined below, and collectively referred to as the "Parties"), who agree as follows. All Appendices described herein are attached and made part of this Agreement.

1. Parties

- 1.1 Consultant.** Consultant is identified in **Appendix D (Parties)** ("Consultant"). Consultant shall at all times be deemed an independent contractor wholly responsible for the manner in which it performs the Services, and fully liable for the acts and omissions of its employees, subconsultants, and agents. Under no circumstances shall this Agreement be construed as creating an employment, agency, joint venture, or partnership relationship between the Port and Consultant, and no such relationship shall be implied from performance of this Agreement. References in this Agreement to direction from the Port shall be construed as providing for direction as to policy and the result of services only, and not as to means and methods by which such a result is obtained.
- 1.2 Port.** This Agreement is entered into by the City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners ("Port of Oakland" or "Port"). The Port's Project Manager ("Project Manager") is identified in **Appendix D (Parties)**.

2. Term

- 2.1 Term.** The term of this Agreement ("Term") is described in **Appendix A (Services)**. Unless otherwise provided in this Agreement, this Agreement shall be effective during the Term, provided it has been signed by the Parties and approved as to form and legality by the Port Attorney.
- 2.2 Suspension and Early Termination.**
- 2.2.1 Suspension.** The Port may (in writing and without cause) direct Consultant to suspend, delay, or interrupt the Services, in whole or in part, for such periods of time as the Port may determine in its sole discretion. Such suspension of Services shall be treated as an excusable delay.
- 2.2.2 Port Termination for Cause.** The Port may (in writing) terminate this Agreement in whole, or from time to time in part, for cause, should Consultant commit a material breach of all or part of this Agreement and not cure such breach within ten (10) calendar days of the date of the Port's written notice to Consultant demanding such cure. Upon such Port termination for cause, Consultant shall be liable to the Port for all loss, cost, expense, damage, and liability resulting from such breach and termination.
- 2.2.3 Port Termination for Convenience.** The Port may (in writing) terminate this Agreement in whole, or from time to time in part, for convenience as the Port may determine in its sole and reasonable discretion. Upon such Port termination for convenience, Consultant shall be entitled to recover its costs expended up to the termination plus reasonable profit thereon to the termination date, but may recover no other cost, damage, or expense.

3. Services

- 3.1 Scope of Services.** Consultant shall perform all services ("Services") described in **Appendix A (Services)**. All Services whenever performed shall be deemed performed under this Agreement.
- 3.2 Standard of Performance.** Consultant represents that it possesses all necessary training, licenses, permits, and approvals to perform the Services, and that its performance of the Services will conform to the standard of practice of a person (or persons) specializing in performing professional services of a like nature and complexity to the Services.
- 3.3 Subconsultants.** Consultant shall perform the Services using any persons and subconsultants listed in **Appendix A (Services)**. Consultant shall hire only qualified persons or firms who are experienced in performing work of a like nature and complexity as the Services, and who agree to be bound to the terms of the Agreement to the extent of the scope of Services. Consultant may substitute personnel or subconsultants prior to any such personnel or subconsultants commencing work only upon the Project Manager's written consent, which may be withheld or delayed in the Port's sole discretion. When using any person who has retired from a California Public Employees' Retirement System ("CalPERS") agency, Consultant and any subconsultants shall comply with all laws and regulations applicable to CalPERS.
- 3.4 Ownership of Non-Software Work Product.** Any interest (including copyright interests) of Consultant or its subcontractors or subconsultants, in studies, reports, memoranda, computational sheets, drawings, plans, or any other documents (including electronic media) prepared by Consultant or its subcontractors or subconsultants in connection with the Services (but not including any Software, unless otherwise provided in this Agreement), shall become the property of the Port. To the fullest extent permitted by Title 17 of the United States Code, work product produced under this Agreement shall be deemed works for hire and all copyrights in such works shall be the Port's property. With the Port's prior written approval, Consultant may retain and use copies of such works for reference and as documentation of experience and capabilities.

If the Services include any Software, any licensing or ownership matters shall be addressed in **Appendix A-1 (Software)**.

4. Payment

- 4.1 Payment Terms.** Consultant shall perform the Services for compensation only set forth in **Appendix B (Payment)** ("Payment"). All compensation paid to Consultant on account of the Services performed shall be deemed payments under this Agreement.
- 4.2 Taxes.** Consultant shall, without additional compensation, pay all applicable taxes (including California sales and use taxes and the City of Oakland business tax), deficiency, interest, or penalty levied upon or asserted with respect to this Agreement, the Services performed thereunder, or the goods delivered hereunder, regardless of which Party has liability for such payment under applicable law. Consultant shall collect, report, and pay all applicable California sales and use taxes and shall, in accordance with California Revenue and Taxation Code Section 6203, issue the Port a receipt relieving the Port of all liability for any tax relating to this Agreement. Consultant shall comply with all applicable administrative regulations relating to the assumption of liability for the payment of payroll taxes and contributions under this Section and shall provide all necessary information with respect thereto to the proper authorities.

5. Insurance; Indemnification

- 5.1 Insurance.** Consultant shall, at its own expense and during the Term, maintain in force the insurance in the types and amounts required by **Appendix C (Insurance)**.
- 5.2 Indemnification.** Consultant shall comply with all provisions set forth in **Appendix F (Indemnification)**.

6. Compliance With Laws

- 6.1 Compliance With All Laws.** Consultant shall comply with all laws, regulations, ordinances, rules, permits, or land use restrictions or limitations at any time applicable to the Services ("All Laws"), including those applicable to any public or governmental authority (including the City of Oakland and the Port, such as the City Charter), regardless of whether All Laws are specifically stated in this Agreement or are in effect at the beginning of the Term. Consultant further represents that all plans, drawings, specifications, designs and any other product of the Services will comply with All Laws, consistent with the standard of care in this Agreement.

Consultant's compliance with All Laws shall include, but not be limited to, compliance with the following, to the fullest extent applicable:

- 6.1.1** Oakland Living Wage provisions, including Section 728 of the Oakland City Charter and Port Ordinance Nos. 3666 and 3719.
- 6.1.2** Security requirements imposed by authorities with jurisdiction over the Services (such as the Federal Aviation Administration and U.S. Department of Transportation), which may include providing information, work histories, and/or verifications requested by such authorities for security clearances or compliance.
- 6.1.3** If the Services are part of a "public works" or "maintenance" project, California Department of Industrial Relations ("DIR") requirements, which include compliance with California Labor Code Sections 1725.5 and 1771.1, Consultant and subconsultant registration with DIR and licensing by the California Contractors State License Board, and compliance with all laws, regulations, and other requirements for public works of improvement.
- 6.2 Non-Discrimination.** Consultant shall not discriminate against or harass any employee or applicant for employment because of race, color, religion, sex, national origin, ancestry, age (over 40), physical or mental disability, cancer-related medical condition, known genetic pre-disposition to a disease or disorder, veteran status, marital status, or sexual orientation. Consultant shall take affirmative action to ensure that applicants and employees are treated fairly with respect to all terms and conditions of employment, which include (without limitation): hiring, upgrading, recruitment, advertising, selection for training or apprenticeship, demotion, transfer, compensation, layoff, or termination. Consultant acknowledges it has reviewed, or had a full opportunity to review, the current version of the Port's Discrimination Complaint Procedures/Unlawful Harassment Policy and Complaint Procedures, which provide an effective and expedited method of resolving employment discrimination allegations and prevent unlawful workplace harassment.
- 6.3 Conflicts of Interest.** Consultant shall comply with all applicable laws and regulations relating to conflicts of interest, including any requirements adopted by the City of Oakland or the Port. Consultant represents that it is familiar with California Government Code

Sections 1090 and 87100 et seq., and that it does not know of any facts that may constitute a violation of said sections.

Consultant represents that, to the best of its knowledge, it has disclosed to the Port all facts bearing upon any possible interests, direct or indirect, Consultant believes that any employee, officer, or agent of the Port presently has, or will have, in this Agreement, in the Services, or in any portion of the profits hereunder. Willful failure to make such disclosure, if any, shall constitute grounds for termination of this Agreement by the Port for cause.

Consultant covenants that it shall never have any interest (direct or indirect) that would conflict in any manner with the performance of the Services under this specific Agreement, including an interest Consultant has (or may have in the future) with a person or entity that has an interest adverse or potentially adverse to the Port with respect to this specific Agreement, as determined in the reasonable judgment of the Port.

Provided that this Agreement or the performance thereof does not violate any applicable conflict of interest laws, nothing in this Section shall serve to prevent Consultant from providing services similar to the Services to other entities. The provisions of this Section shall survive the termination of this Agreement.

6.4 FAA AIP Grant-Required Provisions. Consultant shall comply with all provisions in **Appendix E (FAA AIP Grant-Required Provisions)**.

7. Confidentiality; Publicity

7.1 Confidentiality. Consultant acknowledges that, in the performance of the Services or in the contemplation thereof, Consultant may have access to private or confidential information that may be owned or controlled by the Port, the disclosure of which to third parties may be damaging to the Port. Consultant agrees that all information disclosed by the Port to or discovered by Consultant shall be held in strict confidence and used only in performance of the Agreement. Consultant shall exercise the same standard of care to protect such information as a reasonably prudent consultant would use to protect its own proprietary data, and shall not accept employment adverse to the Port's interests where such confidential information could be used adversely to the Port's interests. Consultant shall notify the Port immediately in writing if Consultant is requested to disclose any information made known to or discovered by Consultant during the performance of the Services. The provisions of this Section shall survive the termination of this Agreement.

7.2 Publicity. Any publicity or press releases with respect to the Project or Services shall be under the Port's sole discretion and control. Consultant shall not, without the Port's prior written consent, discuss the Services or Project, or matters pertaining thereto, with the public press, representatives of the media, or public bodies or representatives of public bodies. Consultant shall have the right, however, to include representations of Services among Consultant's promotional and professional material, and to communicate with persons or public bodies where necessary to perform the Services. The provisions of this Section shall survive the termination of this Agreement.

8. Audit and Inspection

8.1 Retention. Consultant shall maintain unaltered all Records during the Retention Period.

8.1.1 "Retention Period" means the Term and an additional three (3) years following the later of: (a) termination of this Agreement, (b) the Port's final payment under this

Agreement, or (c) resolution of pending issues between the Parties under this Agreement.

8.1.2 “Records” means full and adequate records, in electronic and other mediums, related to this Agreement or prepared by or furnished to Consultant during the course of performing the Services or which show the actual costs incurred by Consultant in the performance of this Agreement, including (without limitation) documents, correspondence, internal memoranda, calculations, books and accounts, accounting records documenting work under this Agreement, invoices, payrolls, and data.

8.2 Audit and Tolling. During the Retention Period, the Port may Audit the Records. Consultant agrees to toll all applicable periods of any statutes of limitations: (a) commencing on the first day of an Audit and ending four (4) years after the Port delivers to Consultant the final Audit findings; (b) commencing on the first day of an Audit and ending four (4) years after the Port’s completion of the Audit, if no final Audit findings are produced; and (c) commencing on the day the Port’s claim or right or cause of action arises with regard to any matter under this Agreement and ending four (4) years thereafter.

8.2.1 “Audit” means to audit, inspect, make copies of, and obtain excerpts and transcripts from the Records.

8.3 Production. During an Audit or as otherwise requested by the Port, Consultant shall Produce Records to the Port or the Port’s designated representatives. If Consultant fails to Produce Records to the Port within ten (10) business days of the Port’s written request, Consultant shall pay the Port a delinquency charge of \$25 for each day it does not Produce Records. The Parties agree that such delinquency charges are liquidated damages that represent a reasonable estimate of expenses the Port will incur because of Consultant’s failure to Produce Records, and that such charges shall be deducted from the Port’s next payment to Consultant.

8.3.1 “Produce” means to, at no cost to the Port and within ten (10) business days of the Port’s written request, provide the Port (or the Port’s representatives): (a) copies of Records requested by the Port; (b) the ability for the Port to inspect the Records at a location within a fifty (50) mile radius from the Port offices at 530 Water Street, Oakland, California, or if the Records are not located within said fifty mile radius, the ability for the Port to inspect the Records at another location after Consultant pays the Port all reasonable and necessary costs incurred (including, without limitation, travel, lodging, and subsistence costs); and (c) copies of Records in electronic format through extracts of data files in a computer readable format, such as email attachments, data storage devices, or another adequate electronic format.

9. Notices; Agent for Service of Process

9.1 Notices. The Port’s and Consultant’s Notice Addresses are set forth in **Appendix D (Parties)**, unless otherwise amended in writing with notice to the other Party. All notices or other communications given or required to be given under this Agreement shall be effective only if given in writing to the Party’s Notice Address and: (a) sent by certified mail with return receipt requested, (b) sent by overnight delivery service, or (c) delivered personally. Any such notice shall be deemed to have been given: (x) five calendar days after the date it was sent by certified mail; (y) one business day after the date it was sent by overnight delivery service; or (z) on the date personal delivery was made. The Parties

shall also endeavor to send courtesy copies of all notices and communications electronically.

- 9.2 Agent for Service of Process.** Pursuant to California Code of Civil Procedure, Section 416.10, Consultant hereby designates an agent for service of process as identified in **Appendix D (Parties)**. Consultant may at any time designate a new agent for service in the State of California by providing written notice in compliance with this Agreement of the full name and address of its new agent. No attempt to revoke the agent's authority to receive service shall be valid unless the Port has first received a duly executed designation of a new agent meeting the requirements of California law.

10. Disputes; Statutes of Limitation; Governing Law

- 10.1 Dispute Resolution.** In the event of any dispute between the Parties under this Agreement, the Parties shall make their best efforts to meet and confer in good faith to resolve the dispute amicably. Consultant shall continue its work throughout the course of any dispute, and Consultant's failure to continue work during a dispute shall be a material breach of this Agreement.
- 10.2 Attorneys' Fees.** If either Party commences an action against the other in connection with this Agreement, the prevailing party shall be entitled to recover from the losing party reasonable attorneys' fees and costs of suit.
- 10.3 Statutes of Limitation.** As between the Parties, any applicable statute of limitations for any act or failure to act shall commence to run on (a) the date of the Port's issuance of the final Certificate for Payment or termination of this Agreement, or (b) termination of this Agreement, whichever is earlier, except for latent defects, for which the statute of limitation shall begin running upon discovery of the defect and its cause.
- 10.4 Governing Law.** This Agreement shall be construed and interpreted in accordance with the laws of the State of California, without regard to principles of conflict of law. Consultant hereby consents to the exclusive jurisdiction of the state and federal courts in Alameda County, California and/or the United States District Court for the Northern District of California, and any actions arising out of or filed in connection with this Agreement shall be filed solely in such courts.

11. Miscellaneous

- 11.1 No Third Party Beneficiaries.** Except as expressly provided in this Agreement, nothing in this Agreement shall confer rights or benefits on persons or entities not party to this Agreement.
- 11.2 Time of the Essence.** Time is of the essence in the performance of this Agreement.
- 11.3 No Waiver.** Any progress payments, approvals, inspections, reviews, oral statements, or certifications by any Port representative or by any governmental entity with respect to this Agreement shall in no way limit Consultant's obligations under this Agreement. Either Party's waiver of any breach, or the omission or failure of either Party, at any time, to enforce any right reserved to it, or to require strict performance of any provision of this Agreement, shall not be a waiver of any other right to which any Party is entitled, and shall not in any way affect, limit, modify, or waive that Party's right thereafter to enforce or compel strict compliance with every provision hereof.

- 11.4 Covenant Against Contingent Fees.** As required by the Port's Purchasing Ordinance No. 4321 (as it may be amended from time to time), Consultant warrants that no person or agency has been employed or retained to solicit or obtain the Agreement upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Port, at its option, may annul the Agreement or deduct from the contract price or otherwise recover from Consultant the full amount of the contingent fee. The following definitions apply to this Section:
- 11.4.1** "bona fide agency" means an established commercial or selling agency, maintained by Consultant for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain the Port contracts nor holds itself out as being able to obtain any Port contract or contracts through improper influence.
- 11.4.2** "bona fide employee" means a person, employed by Consultant and subject to Consultant's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain the Port contracts nor holds itself out as being able to obtain any Port contract or contracts through improper influence.
- 11.4.3** "contingent fee" means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Port contract.
- 11.4.4** "improper influence" means any influence that induces or tends to induce a Port Commissioner, employee or officer to give consideration or to act regarding a Port contract on any basis other than the merits of the matter.
- 11.5 Warranty of Signatories.** Every person signing this Agreement on behalf of Consultant represents and warrants that such person has sufficient authority to sign this Agreement and create a valid and binding obligation on Consultant.
- 11.6 Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original instrument and all such counterparts, taken together, shall constitute one and the same instrument. Signatures delivered by facsimile or electronic mail shall be deemed effective as originals.
- 11.7 Severability.** If any provision (or portion thereof) of this Agreement is found to be invalid by a court, arbitrator, or government agency of competent jurisdiction, the remainder of this Agreement shall remain in full force and effect. If any provision (or portion thereof) of this Agreement is prohibited by, or made unlawful or unenforceable under any applicable law of any jurisdiction, such provision shall, as to such jurisdiction, be ineffective without affecting the remainder of this Agreement, which shall be enforceable to the fullest extent permitted by law. To the greatest extent permitted by law, the provisions of such applicable law are hereby waived so that this Agreement may be deemed to be a valid and binding agreement.
- 11.8 Entire Agreement.** This Agreement contains the entire, exclusive, and integrated agreement between the Parties regarding the subject matter of this Agreement and shall supersede any and all prior negotiations, representations, understandings, or agreements, written or oral, express or implied, that relate in any way to the subject matter of this Agreement. All prior negotiations are merged into this Agreement and shall be inadmissible in any enforcement of this Agreement. This Agreement may not be modified,

nor may compliance with any of its terms be waived, except by mutual written agreement by the Parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

<p>PORT OF OAKLAND</p> <p>CITY OF OAKLAND, a municipal corporation, acting by and through its Board of Port Commissioners,</p> <p>By: _____</p> <p style="text-align: center;">DANNY WAN Executive Director</p> <p>Date: _____</p>	<p>CONSULTANT</p> <p>_____, a _____,</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: <input type="checkbox"/> CEO / President <input type="checkbox"/> Vice President <input type="checkbox"/> Principal / Owner <input type="checkbox"/> Managing Member <input type="checkbox"/> Other: _____</p> <p>Date: _____</p> <p>ATTEST (if California corporation)</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: <input type="checkbox"/> Secretary <input type="checkbox"/> CFO / Treasurer <input type="checkbox"/> Other: _____</p> <p>Date: _____</p>
<p>THIS AGREEMENT SHALL NOT BE VALID OR EFFECTIVE FOR ANY PURPOSE UNLESS AND UNTIL SIGNED BY THE PORT ATTORNEY .</p> <p>Approved as to form and legality this _____ day of _____, 20____.</p> <p>_____ MICHELE HEFFES Interim Port Attorney</p> <p>Port Resolution No. _____</p> <p>P.A. #: _____</p>	

APPENDIX A
SERVICES

Consultant and Port agree that the terms and conditions set forth in the body of this Agreement or in the other Appendices supersede any term, condition, or other language in this Appendix A (or any other document attached to this Appendix A, other than Appendix A-1) that conflicts with or is inconsistent with those terms and conditions.

A. SCOPE OF WORK

If applicable, the following capitalized terms, as used in this Agreement or in this Appendix or any of the other Appendices, have the following meanings:

☐ “Software” means: _____.

☐ “Software” is provided as “software as a service” and delivered through the following online or mobile-access platform(s): _____.

☐ “Equipment” means: _____.

B. APPROVED SUBCONSULTANTS

Consultant shall use only the following personnel and subconsultants in performing Services:

_____.

C. TERM OF AGREEMENT

The term of this Agreement shall be for ____ year(s) commencing _____ and terminating _____.

☐ The Port has the option of extending the Agreement for an additional _____ in _____ increments as authorized by the Executive Director, provided, however, that there shall be no increase in the Maximum Compensation payable hereunder.

APPENDIX A-1
SOFTWARE

1. **License.** Consultant hereby grants to the Port a fully-paid, non-exclusive, and non-transferable license to access and use the software described in **Appendix A** (the “**Software**”), during the Term, without any limitation as to the number or nature of users, machines, devices, or platforms, subject to any limitations described in **Appendix A**.
 - a. **Back-Up Copies.** The Port may make copies of the Software as reasonably necessary for back-up disaster recovery purposes only.
 - b. **No Other License.** Except as expressly set forth in this Agreement, no license is granted and none shall be deemed granted by implication, estoppel, or otherwise.
 - c. **License Restrictions.** Any use of the Software not expressly permitted by this Agreement is prohibited. Without limiting the generality of the foregoing, the Port shall not commit any of the following:
 - i. Sublicense use or access to any Software.
 - ii. Remove or modify any Software markings or any notice of Consultant’s or its licensors’ proprietary rights.
 - iii. Cause or permit reverse engineering (unless required by law for interoperability), disassembly, or decompilation of the Software.

Except for the licenses granted herein and rights to data as set forth herein, all right, title, and interest in and to the Software, including (without limitation) all tangible or intangible material of any nature produced by Consultant related to the Software shall remain exclusively with Consultant and its licensors, as applicable. The Software is licensed, not sold.

2. **Equipment.** If the Services include any “**Equipment**” (as defined in **Appendix A**), then, unless otherwise agreed in writing by the Port, Consultant will be responsible for installing the Equipment and installing the Software on the Equipment or on the Port’s systems. Consultant will be responsible for ensuring compatibility and that the Software and Equipment are functioning as intended.
3. **Delivery and Installation.** To the extent possible, Consultant will deliver Software to the Port electronically, unless otherwise requested by the Port in writing. Unless otherwise agreed in writing by the Port, and only to the extent applicable, Consultant will be responsible for installing the Software on the Port’s systems and for ensuring compatibility and that the Software is functioning as intended.
4. **Data.** As between the Port and Consultant, the Port owns all right, title, and interest in any data that the Port, or others acting on behalf of the Port, have entered into, have associated with, or have otherwise prepared for use in or with the Software (“**Port Data**”).

☐ Port Data shall include (without limitation): _____.

Within thirty (30) days of the expiration or termination of the Agreement for any reason, Consultant shall, at no charge to the Port and without the Port’s request:

- a. Export and deliver to the Port all data input into the Software, including (without limitation) the Port Data. Consultant shall provide such data to the Port in a format reasonably requested by the Port.
- ☐ Acceptable data formats shall include (without limitation): _____.

- b. Certify to the Port that all Port Data has been destroyed or removed from Consultant's possession and control.

5. Additional Warranties. Cumulative to any representations and warranties in the Agreement:

- a. The Software is compatible for access and use on the Port's systems and devices. The Software (and, if applicable, the Equipment) will operate in all material respects as described in its product descriptions and/or documentation provided or published by Consultant. For all Equipment, Consultant will ensure that any manufacturer warranties are in the name of the Port, or transferred promptly to the Port, such that the Port has all benefits of any such warranties.
- b. The Software (and, if applicable, the Equipment) will not contain or deliver any viruses, Trojan horses, worms, time bombs, trap doors, or other undisclosed code, program routine, device, or other feature or hidden file designed to damage, delete, disable, deactivate, interfere with or otherwise harm the Software or any hardware, software, data, or other programs of the Port.
- c. Consultant will use all commercially reasonable best practices to ensure the security, safety, and integrity of all Port Data.
- d. Consultant has all right, title, and authority necessary to grant any licenses or provide any Software, the Equipment (if applicable), or related services under this Agreement, including (without limitation) the absence of any contractual or other obligations that conflict with this Agreement or limit, restrict, or impair the rights granted under this Agreement.
- e. The Software (and, if applicable, the Equipment) will not infringe or otherwise violate the patent rights, copyright, trade secret, trade name, trademark, service mark, or any other intellectual property or proprietary right of any person or persons.

6. Additional Bankruptcy Provisions. All rights and licenses granted under or pursuant to this Agreement are and shall be deemed to be, for purposes of 11 U.S.C. § 365(n), licenses of rights to "intellectual property," as defined under 11 U.S.C. § 101. The Parties agree that the Port, as a licensee of such rights under this Agreement, will retain and may fully exercise all of its rights and elections under the U.S. Bankruptcy Code; however, nothing in this Agreement may be deemed to constitute a present exercise of such rights and elections.

Consultant hereby agrees and consents that, in the event an order for relief under the U.S. Bankruptcy Code has been entered with respect to the Port, the Port will be permitted to assume this Agreement and all licenses set forth herein pursuant to 11 U.S.C. § 365, notwithstanding any right Consultant may have pursuant to 11 U.S.C. § 365(c)(1) to object to such assumption. This consent will constitute an irrevocable consent pursuant to 11 U.S.C. § 365 (c)(1)(B), but only with respect to the Port's assumption of the License (and not with respect to any assignment of this Agreement and the licenses set forth herein).

APPENDIX B

PAYMENT

1. **Services.** The Port will pay Consultant for Services, a Maximum Compensation defined below, which sum includes costs for reimbursable expenses, if any.

Maximum Compensation	\$
-----------------------------	-----------

The Maximum Compensation shall be full compensation for all Services required, performed or accepted under this Agreement. If the Port and Consultant previously executed a purchase order for services within the scope of the Services of this Agreement, then the services performed and the compensation paid under that purchase order shall be subject to the terms of this Agreement and the previous payments deemed payments against the Agreement Price established in this Appendix.

The Maximum Compensation may only be increased as follows:

- ☐ With the prior written approval of the Executive Director for an additional amount not to exceed the limit authorized by the Board in Resolution No. _____. Increase in maximum compensation with additional changes in scope of work shall be documented by a supplemental agreement to this Agreement.
- ☐ With the prior written approval of the Executive Director for an additional amount not to exceed the limit authorized by the Port's Purchasing Ordinance. Increase in maximum compensation with additional changes in scope of work shall be documented by a supplemental agreement to this Agreement.

Any other increases to the Maximum Compensation shall only be allowed with a duly adopted authorizing resolution by the Board of Port Commissioners.

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

- ☐ upon completion of the work
- ☐ as invoiced
- ☐ monthly
- ☒ as set forth in the attached schedule.

3. **Reimbursable Expenses.** Reasonable expenses to be reimbursed upon approval of the Project Manager.

- ☐ **Yes.** The Port will pay Consultant for "Costs and Reimbursable Expenses" as set forth below. All costs not listed will not be allowed.

3.1 **Travel Costs.** Consultant shall obtain written approval of the Project Manager for all travel costs prior to submitting the invoice for reimbursement of these costs. The Project Manager will review and determine, in the Port's sole discretion, whether the travel costs are reasonable and reimbursable based on the equivalent standards and procedures set forth in the Port's Travel Authorization and Reimbursement Policy/Administrative Policy No. 406. (The Port will provide a copy of AP 406 to Consultant upon request.)

3.2 **Delivery Costs.** Courier services and overnight delivery costs incurred.

3.3 Reproduction Costs. Reproduction and postage costs of required plans, specifications, bidding and Contract Documents, if any, incurred.

☐ **No.**

☐ **Limits:**

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

Port of Oakland, Accounts Payable, P.O. Box 28413, Oakland, CA 94604

Or emailed to accountspayable@portoakland.com, referencing the purchase order number and/or contract number in the subject line.

APPENDIX C

INSURANCE

1. Commercial General Liability Insurance

- **Coverage:** Standard ISO Commercial General Liability form.
- **Limits:** \$1,000,000 per occurrence; \$2,000,000 annual general aggregate; \$2,000,000 products and completed operations aggregate; \$1,000,000 each offense for personal and advertising injury.
- **Deductible/Self-Insured Retention:** Not more than \$25,000 per occurrence unless otherwise approved by Port Risk Management.
- **Additional Insured:** The City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners, Port of Oakland, its commissioners, officers, agents and employees.
- Cross liability/separation of insureds.
- Waiver of subrogation in favor of additional insured.
- If the Services involve construction activities, completed operations coverage must remain in force until at least 5 years after completion and acceptance of the Services.

2. Business Automobile Liability Insurance

- **Coverage:** Standard ISO Business Automobile Liability form for all owned, non-owned and hired automobiles.
- **Limits:** \$1,000,000 each accident, except \$5,000,000 for vehicles operating in the South Field, the Aviation Operating Area (“AOA”), or any active airfields of the Oakland International Airport.
- **Deductible/Self-Insured Retention:** Not more than \$25,000 per accident unless otherwise approved by Port Risk Management.
- **Additional Insured:** The City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners, Port of Oakland, its commissioners, officers, agents and employees.
- Waiver of subrogation in favor of additional insured.

3. Contractor’s Pollution Legal Liability Insurance

- **When Required:** If the Services involve any construction activities, or any grading, excavating, underground utilities, piping, trenching, or any work below the surface of the ground, or involves the hauling or disposal of hazardous or regulated materials.
- **Coverage:** Contractor’s Pollution Legal Liability occurrence or claims made form.
- **Limits:** \$1,000,000 per occurrence and \$2,000,000 annual aggregate.
- **Deductible/Self-Insured Retention:** Not more than \$100,000 per occurrence unless otherwise approved by Port Risk Management.
- **Additional Insured:** The City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners, Port of Oakland, its commissioners, officers, agents and employees.
- Waiver of subrogation in favor of additional insured.
- **Additional Term if Claims Made Form:** 2 years following completion and acceptance of the Services.
- **Definition of “Covered Operations”** shall include All work performed by Consultant or its contractors or subcontractors.

4. Workers’ Compensation and Employer’s Liability Insurance

- **Coverage:** Statutory Workers’ Compensation and Side B Employer’s Liability form.

- **Limits:** Statutory for workers' compensation and \$1,000,000 per accident, \$1,000,000 bodily injury each employee, and \$1,000,000 policy limit for bodily injury by disease, for Employer's Liability.
- **Deductible/Self-Insured Retention:** Not more than \$25,000 per occurrence for Employer's Liability unless otherwise approved by Port Risk Management.
- Waiver of subrogation in favor of the City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners, Port of Oakland, its commissioners, officers, agents and employees.

5. Professional Liability Insurance

- **Coverage:** For errors and omissions arising out of the Services.
- **Limits:** \$1,000,000 per claim and annual aggregate; \$2,000,000 per claim and annual aggregate for prime designers for Capital Improvement Projects (CIP) with greater than \$50,000,000 in construction value.
- **Deductible/Self-Insured Retention:** Not more than \$100,000 per claim unless otherwise approved by the Port Risk Management.
- **Additional Term:** 2 years after completion and acceptance of the Services.
- If the Services involve software or technology services, Technology Liability coverage, including coverage for privacy liability.
- If the Services involve outsourced technology or internet services, Network and Media Liability coverage.
- Waiver of subrogation in favor of the City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners, Port of Oakland, its commissioners, officers, agents, and employees.

Other Insurance Requirements:

- **Notice of Cancellation.** Consultant or Consultant's agent must provide 30-days prior written notice to the Port Risk Management Department of any insurance policy cancellation, except 10-days prior written notice for non-payment of premium.
- **Proof of Insurance/Insurer Rating.** Consultant must deliver to the Port Risk Management Department, prior to the commencement of the Services, certificates of insurance evidencing all required insurance and additional insured status for the Port. All required insurance shall be provided by insurance companies with current A.M. Best ratings of A- VII or better. Upon failure to so file such insurance certificate, the Port may without further notice and at its option either (1) exercise the Port's rights; or (2) procure such insurance coverage at Consultant's expense and Consultant shall promptly reimburse the Port for such expense (Services may be interrupted without proper evidence). In addition to the certificate of insurance, Consultant shall provide copies of the actual insurance policies if requested by the Port.
- Please send certificates and other required insurance information to:
 Port of Oakland
 Attn: Risk Management Dept.
 530 Water Street
 Oakland, CA 94607
 Fax: (510) 627-1626
 Email: risktransfer@portoakland.com

APPENDIX D

PARTIES

CONSULTANT

Full Legal Name of Consultant:

Corporate Address:

Form of Business Entity (Check one)

- ☐ Sole proprietorship
☐ Corporation: State of _____
☐ Partnership: ☐ General ☐ Limited
☐ Limited Liability Company
☐ Other: _____

If Corporation, LLC, LP, LLP:

(Required Information)

**Agent for Service of Process
(Name and Address)**

Contact Individual / Position:

Telephone No.:

Facsimile No. (if any):

E-Mail Address:

Website (if any):

Tax Identification No.:

PORT

Division Director	
Project Manager	
Port's Notice Address	[Project Manager Name] Port of Oakland 530 Water Street Oakland, CA 94607

[CONSULTANT]

Professional Services Agreement

APPENDIX D
LEGAL-393563794-217

APPENDIX E
FAA AIP GRANT-REQUIRED PROVISIONS
(Federally Funded)

The following provisions are required in all Port contracts because of the Port's participation in the FAA Airport Improvement Program (AIP). Consultant shall fully comply with all of the following provisions and shall also include each these provisions in all of its contracts and subcontracts related to this Agreement.

Note: Consultant is sometimes hereinafter referred to as "Contractor" and the Port is sometimes hereinafter referred to as "Sponsor". These provisions, as worded below, are required as a result of the AIP and may not be amended.

A. General Civil Rights Provisions.

The Contractor agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision binds the Contractor and subtier contractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

B. Compliance with Nondiscrimination Requirements.

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

- 1. Compliance with Regulations:** The Contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
- 2. Non-Discrimination:** The Contractor, with regard to the work performed by it during the Agreement, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the Agreement covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
- 3. Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the Contractor's obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
- 4. Information and Reports:** The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts And Authorities and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or

refuses to furnish the information, the Contractor will so certify to the Sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

5. **Sanctions for Noncompliance:** In the event of a Contractor's noncompliance with the Non-discrimination provisions of this Agreement, the Sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
- Withholding payments to the Contractor under the Agreement until the Contractor complies; and/or
 - Cancelling, terminating, or suspending an Agreement, in whole or in part.
6. **Incorporation of Provisions:** The Contractor will include the provisions of paragraphs 1 through 5 above in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the Sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

C. Title VI List of Pertinent Nondiscrimination Acts and Authorities.

During the performance of this Agreement, the Contractor agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR Part 21 (Non-discrimination in Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and

private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131–12189) as implemented by Department of Transportation regulations at 49 CFR Parts 37 and 38;

- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of Limited English Proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. § 1681 et seq).

D. Fair Labor Standards Act.

This Agreement incorporates by reference the provisions of 29 U.S.C. § 201, et seq (the Federal Fair Labor Standards Act or “FLSA”), and its implementing regulations, with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping and child labor standards for full and part time workers. Consultant has full responsibility to monitor compliance to the referenced statute and regulation. Consultant must address any claims or disputes that arise from this requirement directly with the US Department of Labor – Wage and Hour Division.

E. Occupational Safety and Health Act.

This Agreement incorporates by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. Consultant must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. Consultant retains full responsibility to monitor its compliance and their subcontractor’s compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (29 U.S.C. §651, et seq; 29 CFR Part 1910). Consultant must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

F. Access to Records and Reports

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

G. Breach of Contract Terms

Any violation or breach of terms of this contract on the part of the [Contractor | Consultant] or its subcontractors may result in the suspension or termination of this contract or such other action that may be necessary to enforce the rights of the parties of this agreement.

Owner will provide [Contractor | Consultant] written notice that describes the nature of the breach and corrective actions the [Contractor | Consultant] must undertake in order to avoid termination of the contract. Owner reserves the right to withhold payments to Contractor until such time the Contractor corrects the breach or the Owner elects to terminate the contract. The Owner's notice will identify a specific date by which the [Contractor | Consultant] must correct the breach. Owner may proceed with termination of the contract if the [Contractor | Consultant] fails to correct the breach by the deadline indicated in the Owner's notice.

The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder are in addition to, and not a limitation of, any duties, obligations, rights and remedies otherwise imposed or available by law.

H. Clean Air and Water Pollution Control

Contractor agrees to comply with all applicable standards, orders, and regulations issued pursuant to the Clean Air Act (42 USC § 740-7671q) and the Federal Water Pollution Control Act as amended (33 USC § 1251-1387). The Contractor agrees to report any violation to the Owner immediately upon discovery. The Owner assumes responsibility for notifying the Environmental Protection Agency (EPA) and the Federal Aviation Administration.

Contractor must include this requirement in all subcontracts that exceeds \$150,000.

I. Certification Regarding Debarment, Suspension, Ineligibility And Voluntary Exclusion (Title 49 CFR Part 29) Contracts Exceeding \$25,000

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

J. Disadvantaged Business Enterprises

Contract Assurance (§ 26.13) –

The Contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of Department of Transportation-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Owner deems appropriate, which may include, but is not limited to:

- 1) Withholding monthly progress payments;
- 2) Assessing sanctions;
- 3) Liquidated damages; and/or
- 4) Disqualifying the Contractor from future bidding as non-responsible.

Prompt Payment (§26.29) – The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than [specify number] days from the receipt of each payment the prime contractor receives from [Name of recipient]. The prime contractor agrees further to return retainage payments to each subcontractor within [specify the same number as above] days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the [Name of Recipient]. This clause applies to both DBE and non-DBE subcontractors.

K. Texting When Driving

In accordance with Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving", (10/1/2009) and DOT Order 3902.10, "Text Messaging While Driving", (12/30/2009), the Federal Aviation Administration encourages recipients of Federal grant funds to adopt and enforce safety policies that decrease crashes by distracted drivers, including policies to ban text messaging while driving when performing work related to a grant or subgrant.

In support of this initiative, the Owner encourages the Contractor to promote policies and initiatives for its employees and other work personnel that decrease crashes by distracted drivers, including policies that ban text messaging while driving motor vehicles while performing work activities associated with the project. The Contractor must include the substance of this clause in all sub-tier contracts exceeding \$3,500 that involve driving a motor vehicle in performance of work activities associated with the project.

L. Energy Conservation Requirements

Contractor and Subcontractor agree to comply with mandatory standards and policies relating to energy efficiency as contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 USC 6201*et seq*).

M. Federal Fair Labor Standards Act

All contracts and subcontracts that result from this solicitation incorporate by reference the provisions of 29 CFR part 201, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part-time workers.

The [Contractor | Consultant] has full responsibility to monitor compliance to the referenced statute or regulation. The [Contractor | Consultant] must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.

N. Trade Restriction Certification

By submission of an offer, the Offeror certifies that with respect to this solicitation and any resultant contract, the Offeror –

- 1) is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms as published by the Office of the United States Trade Representative (USTR);
- 2) has not knowingly entered into any contract or subcontract for this project with a person that is a citizen or national of a foreign country included on the list of countries that discriminate against U.S. firms as published by the USTR; and
- 3) has not entered into any subcontract for any product to be used on the Federal project that is produced in a foreign country included on the list of countries that discriminate against U.S. firms published by the USTR.

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

The Offeror/Contractor must provide immediate written notice to the Owner if the Offeror/Contractor learns that its certification or that of a subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances. The Contractor must require subcontractors provide immediate written notice to the Contractor if at any time it learns that its certification was erroneous by reason of changed circumstances.

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR 30.17, no contract shall be awarded to an Offeror or subcontractor:

- 1) who is owned or controlled by one or more citizens or nationals of a foreign country included on the list of countries that discriminate against U.S. firms published by the USTR or
- 2) whose subcontractors are owned or controlled by one or more citizens or nationals of a foreign country on such USTR list or
- 3) who incorporates in the public works project any product of a foreign country on such USTR list.

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

The Offeror agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification without modification in all lower tier subcontracts. The Contractor may rely on the certification of a prospective subcontractor that it is not a firm from a foreign country included on the list of countries that discriminate against U.S. firms as published by USTR, unless the Offeror has knowledge that the certification is erroneous.

This certification is a material representation of fact upon which reliance was placed when making an award. If it is later determined that the Contractor or subcontractor knowingly rendered an erroneous certification, the Federal Aviation Administration (FAA) may direct

through the Owner cancellation of the contract or subcontract for default at no cost to the Owner or the FAA.

O. Certification Regarding Lobbying

The Bidder or Offeror certifies by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Bidder or Offeror, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

P. Occupational Safety and Health Act

All contracts and subcontracts that result from this solicitation incorporate by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. The employer must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The employer retains full responsibility to monitor its compliance and their subcontractor's compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (29 CFR Part 1910). The employer must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

Q. Certification of Offerer/Bidder Regarding Tax Delinquency and Felony Convictions

The applicant must complete the following two certification statements. The applicant must indicate its current status as it relates to tax delinquency and felony conviction by inserting a checkmark (✓) in the space following the applicable response. The applicant agrees that, if

awarded a contract resulting from this solicitation, it will incorporate this provision for certification in all lower tier subcontracts.

Certifications

- 1) The applicant represents that it is (☐) is not (☐) a corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.
- 2) The applicant represents that it is (☐) is not (☐) is not a corporation that was convicted of a criminal violation under any Federal law within the preceding 24 months.

Note

If an applicant responds in the affirmative to either of the above representations, the applicant is ineligible to receive an award unless the sponsor has received notification from the agency suspension and debarment official (SDO) that the SDO has considered suspension or debarment and determined that further action is not required to protect the Government's interests. The applicant therefore must provide information to the owner about its tax liability or conviction to the Owner, who will then notify the FAA Airports District Office, which will then notify the agency's SDO to facilitate completion of the required considerations before award decisions are made.

Term Definitions

Felony conviction: Felony conviction means a conviction within the preceding twentyfour (24) months of a felony criminal violation under any Federal law and includes conviction of an offense defined in a section of the U.S. code that specifically classifies the offense as a felony and conviction of an offense that is classified as a felony under 18 U.S.C. § 3559.

Tax Delinquency: A tax delinquency is any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

R. Termination for Convenience (Professional Services)

The Owner may, by written notice to the Consultant, terminate this Agreement for its convenience and without cause or default on the part of Consultant. Upon receipt of the notice of termination, except as explicitly directed by the Owner, the Contractor must immediately discontinue all services affected.

Upon termination of the Agreement, the Consultant must deliver to the Owner all data, surveys, models, drawings, specifications, reports, maps, photographs, estimates, summaries, and other documents and materials prepared by the Engineer under this contract, whether complete or partially complete.

Owner agrees to make just and equitable compensation to the Consultant for satisfactory work completed up through the date the Consultant receives the termination notice. Compensation will not include anticipated profit on non-performed services.

Owner further agrees to hold Consultant harmless for errors or omissions in documents that are incomplete as a result of the termination action under this clause.

S. Termination for Default (Professional Services)

Either party may terminate this Agreement for cause if the other party fails to fulfill its obligations that are essential to the completion of the work per the terms and conditions of the Agreement. The party initiating the termination action must allow the breaching party an opportunity to dispute or cure the breach.

The terminating party must provide the breaching party [7] days advance written notice of its intent to terminate the Agreement. The notice must specify the nature and extent of the breach, the conditions necessary to cure the breach, and the effective date of the termination action. The rights and remedies in this clause are in addition to any other rights and remedies provided by law or under this agreement.

a) **Termination by Owner:** The Owner may terminate this Agreement in whole or in part, for the failure of the Consultant to:

1. Perform the services within the time specified in this contract or by Owner approved extension;
2. Make adequate progress so as to endanger satisfactory performance of the Project; or
3. Fulfill the obligations of the Agreement that are essential to the completion of the Project.

Upon receipt of the notice of termination, the Consultant must immediately discontinue all services affected unless the notice directs otherwise. Upon termination of the Agreement, the Consultant must deliver to the Owner all data, surveys, models, drawings, specifications, reports, maps, photographs, estimates, summaries, and other documents and materials prepared by the Engineer under this contract, whether complete or partially complete.

Owner agrees to make just and equitable compensation to the Consultant for satisfactory work completed up through the date the Consultant receives the termination notice. Compensation will not include anticipated profit on non-performed services.

Owner further agrees to hold Consultant harmless for errors or omissions in documents that are incomplete as a result of the termination action under this clause.

If, after finalization of the termination action, the Owner determines the Consultant was not in default of the Agreement, the rights and obligations of the parties shall be the same as if the Owner issued the termination for the convenience of the Owner.

- b) **Termination by Consultant:** The Consultant may terminate this Agreement in whole or in part, if the Owner:
1. Defaults on its obligations under this Agreement;
 2. Fails to make payment to the Consultant in accordance with the terms of this Agreement;
 3. Suspends the Project for more than [180] days due to reasons beyond the control of the Consultant.

Upon receipt of a notice of termination from the Consultant, Owner agrees to cooperate with Consultant for the purpose of terminating the agreement or portion thereof, by mutual consent. If Owner and Consultant cannot reach mutual agreement on the termination settlement, the Consultant may, without prejudice to any rights and remedies it may have, proceed with terminating all or parts of this Agreement based upon the Owner's breach of the contract.

In the event of termination due to Owner breach, the Engineer is entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all justified reimbursable expenses incurred by the Consultant through the effective date of termination action. Owner agrees to hold Consultant harmless for errors or omissions in documents that are incomplete as a result of the termination action under this clause.

T. Veteran's Preference

In the employment of labor (excluding executive, administrative, and supervisory positions), the Contractor and all sub-tier contractors must give preference to covered veterans as defined within Title 49 United States Code Section 47112. Covered veterans include Vietnam-era veterans, Persian Gulf veterans, Afghanistan-Iraq war veterans, disabled veterans, and small business concerns (as defined by 15 USC 632) owned and controlled by disabled veterans. This preference only applies when there are covered veterans readily available and qualified to perform the work to which the employment relates.

APPENDIX F
INDEMNIFICATION

- A. To the fullest extent permitted by law (including, without limitation, California Civil Code Sections 2782, 2782.6, and 2782.8), Consultant shall defend (with legal counsel chosen or approved by the Port Attorney), indemnify and hold harmless the Port and its officers, agents, departments, officials, representatives, and employees (collectively, “Indemnitees”) from and against the Liabilities.

“Liabilities” means any and all claims, loss, cost, damage, injury (including, without limitation, injury to or death of an employee of Consultant or its Subconsultants), expense and liability of every kind, nature, and description (including, without limitation, incidental and consequential damages, court costs, paralegal and attorneys’ fees (including costs attributable to in-house paralegals and attorneys), Port staff costs, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) that:

- (1) Arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Consultant, any Subconsultant, or anyone directly or indirectly employed or controlled by Consultant or any Subconsultant, who provide design professional services governed by California Civil Code Section 2782.8; and
- (2) For Services not governed by California Civil Code Section 2782.8, arise from or relate to, directly or indirectly, in whole or in part:
 - (a) the Services, or any part thereof,
 - (b) any negligent act or omission of Consultant, any Subconsultant, or anyone directly or indirectly employed or controlled by Consultant or any Subconsultant,
 - (c) any claim of infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark or any other intellectual property or proprietary right of any person or persons in consequence of the use by the Port, or any of the other Indemnitees, of any of the articles or Services to be supplied in the performance of this Agreement (including any Software or Equipment, as defined in the Services), and/or
 - (d) any claim of unauthorized collection, disclosure, use, access, destruction, or modification, or inability to access, or failure to provide data, by any person or persons in consequence of any act or omission by Consultant or any Subconsultant.

Such obligations to defend, hold harmless, and indemnify any Indemnitees shall not apply to the extent that such Liabilities are caused in whole or in part by the sole negligence, active negligence, or willful misconduct of such Indemnitee, but shall apply to all other Liabilities.

Consultant shall cause its Subconsultants to agree to indemnities and insurance obligations in favor of Port and other Indemnitees in the exact form and substance of those contained in this Agreement.

B. *The following provision shall only apply to the extent that Consultant, any Subconsultant, or anyone directly or indirectly employed or controlled by Consultant or any Subconsultant, who provide design professional services governed by California Civil Code Section 2782.8:*

- (1) Port shall include a provision in the construction contract with the general contractor on the Project requiring the general contractor to indemnify Consultant for damages resulting from the negligence of the general contractor and its subcontractors. Port shall also include a provision in the construction contract with the general contractor on the project requiring the general contractor to name Consultant as an additional insured on its CGL insurance coverage. The risk of an inadvertent omission of such provisions is on Consultant. Therefore, Consultant shall review the construction contract prior to bidding to ensure that such provision has been included in the draft of the bid documents.
- (2) If there is an obligation to indemnify under this Agreement, Consultant shall be responsible for incidental and consequential damages resulting directly or indirectly, in whole or in part, from Consultant's negligence, recklessness, or willful misconduct.