

INVITATION FOR BID

CommVault Backup Solution

14-15/19



PORT OF OAKLAND

PURCHASING DEPARTMENT
530 WATER STREET
OAKLAND, CA 94607



PORT OF OAKLAND

INVITATION FOR BID

Bid No.: 14-15/19, CommVault Backup Solution

The Port of Oakland ("Port"), Oakland, California, through the Purchasing Department, is hereby soliciting competitive bids for the above mentioned project. The successful bidder ("Bidder") will be required to furnish all labor, material, equipment, supplies, applicable taxes, insurance, bonding (if applicable), permits, and licenses to complete this project.

General Bid Information

Bid Title	CommVault Backup Solution
Bid Type	Goods and Services
Bid Number	14-15/19
Bid Issued	December 19, 2014
Issuing Department	Information Technology
Pre-bid Meeting	None
Scheduled Publication Date	December 29, 2014
Bid Due Date	January 20, 2015 until 2:00 p.m. Bids received after the time and date stated shall be returned unopened to the Bidder. All timely submitted Bids are opened at the Submittal Address 15 minutes after they are due.

Instructions for Submitting Bids

Submittal Address	Port of Oakland—(Sixth Floor, Office 629) Attn: John Betterton, Secretary of the Board 530 Water Street Oakland, CA 94607
Submittal Copies	One (1) Original
Submittal Envelope Requirements	Bids must be <u>sealed</u> and have the following information <u>clearly marked</u> and visible on the outside of the envelope: <ul style="list-style-type: none">• Bid Number and Title• Name of Your Company• Address• Phone Number
Late Submittals	Bids received after the time and date stated in the Bid Due Date section shall be returned unopened to the Bidder.

How to Obtain Bid Documents

Bid documents may be obtained from the location(s) indicated in the table below:

Location	Address
Physical Location	Port of Oakland Purchasing Department 530 Water Street Oakland, CA 94607 Monday through Friday 9:00 AM to 4:00 PM (510) 627-1104
Website	http://www.portoakland.com/opportunities/bidsrfpsrfqs.aspx Or navigate to the Port of Oakland's main website at: http://www.portoakland.com/ , then click on "Business" then on "Opportunities" and then on "Bids/RFPs/RFQs" to download the Bid.

Questions about the Bid or Request for Information

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

Primary Contact	Rebecca Gibson Fax: (510) 893-2812 Email: rgibson@portoakland.com
Question/RFI Due Date	January, 8 2015 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	January 12, 2015 All pertinent questions will be responded to via addendum faxed (or emailed) to all prospective Bidders and placed on the Port's website. Bidders who did not receive a copy of the addendum should download it from the Port's website. See the "How to Obtain Bid Documents" section for our web address. All addenda must be acknowledged on the Bid Form.

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 Bidder shall comply with the Port's Non-Discrimination and Small Local Business Utilization Policy.

The Port reserves the right to reject any or all Bids, to waive any irregularities or informalities not affected by law, to evaluate the Bids submitted and to award the Contract (or Purchase Order) according to the Bid which best serves the interests of the Port.

John Banisadr, Purchasing Manager

Attachments:

Title		Must Be Returned with Your Bid
1	Instruction to Bidders	No
2	Bid Form	Yes
3	Standard Purchase Order Terms and Conditions	No
4	Supplier Insurance Requirements	No
5	Non-Collusion Declaration	Yes
6	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 (Required after award.)
7	Statement of Living Wage Requirements	Yes
8	Statement of Equal Employment Opportunity	Yes

Enclosures

Title		Must Be Returned with Your Bid
A	Product Specification	No
B	Procurement Contract	No



Bid Submission:

The submission of a Bid shall be considered conclusive evidence that the Bidder has fully investigated and understands all conditions related to the Bid. The Bidder has read and become familiar with all of the Bid Documents, Attachments, Enclosures, and any Contract or Agreements. No claim for adjustment of the provisions of the Agreement shall be honored on the grounds that the Bidder was not fully informed as to its terms or any of these conditions. No verbal interpretation provided to any Bidder as to the meaning or consequence of any portion of the Bid, the Bid Documents or the Contract or Agreement shall be considered binding on the Port. No Bids shall receive consideration by the Port unless made in accordance with the following instructions:

1. **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.
2. **Definition of Bidder:** The terms "Bidder", "Consultant", "Contractor", "Respondent", "Seller", "Supplier", and "Vendor" whenever appearing in this Invitation for Bid or any attachments, are used interchangeably to refer to the company or firm submitting a Bid in response to this Invitation for Bid.
3. **Deadline for Receipt of Bids and Multiple Bids:** Bids must be sealed and delivered to the location listed in the Invitation to Bid no later than the time specified in the invitation. The Port will place a clock ("Clock") in a conspicuous location at the place designated for submittal of Bids. For purposes of determining the time that a Bid is submitted, the Clock shall be controlling. The Port suggests that Bids be hand delivered in order to ensure their timely receipt. Any Bids received after the time stated shall not be opened and shall be returned, sealed, to the Bidder. No person, Bidder, firm, or corporation shall be allowed to make or file or be interested in more than one Bid unless alternate Bids are specifically called for. A person, firm, or corporation that has submitted a sub-proposal to a Bidder, or that has quoted prices of materials to a Bidder, is not thereby disqualified from submitting a sub-proposal or quoting prices to other Bidders or make a Prime Bid.
4. **Bidder's Conference:** If applicable, a mandatory bidder's conference (Pre-bid Meeting) will be held on the date specified in the Invitation for Bid, for the purpose of acquainting all prospective Bidders with the bid documents. It is imperative that all prospective Bidders attend this conference. The Pre-bid Meeting is mandatory (when indicated) for any party submitting a Bid. If a Bidder fails to attend the Pre-bid Meeting, any Bid submitted by that Bidder will be rejected and returned unopened by the Port. Following this meeting, a site review may be conducted to acquaint Bidders with the site.
5. **Requests for Information:** Any questions relative to the Bid should be in writing and directed to the designee specified in the Invitation for Bid and by the deadline for receipt of questions.
6. **Bid Information:** The information contained in this Bid is provided for the convenience of the Bidders. The Port does not represent or warrant the accuracy of any financial or statistical information contained in this Bid. In addition, any information contained in any other documents issued by the Port, about the Port, may only be relied upon by a Bidder at its sole risk. It is the responsibility of the Bidder and other interested parties to assure

themselves that the information in this Bid packet is accurate and complete. The Port and the Board of Port Commissioners, and its employees and advisors, will have no liability arising out of the inaccuracy of any such information.

7. Bid Forms: Bids must be made on forms provided by the Port, unless otherwise specified. All items on the form should be filled out. Numbers should be stated in figures and written, and the signatures of all individuals must be in long hand. The completed form should be without interlineations, alterations, or erasures. Discrepancies between multiplication of units of work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of numerals and the correct sum thereof will be resolved in favor of the correct sum. In case of conflict between words and numerals, the words shall govern.
8. Execution of Forms: Each Bid must give the full business address of the Bidder and must be signed by the Bidder with his or her usual signature. Bids by partnerships must furnish the full names of all partners and must be signed in the partnership name by a general partner with authority to bind the partnership in such matters. Bids by corporations must be signed with the legal name of the corporation, followed by the signature and designation of the president, secretary, or other person authorized to bind the corporation in this matter. The name of each person signing shall also be typed or printed below the signature. When requested by the Port, satisfactory evidence of the authority of the officer signing on behalf of the corporation or partnership shall be furnished. A Bidder's failure to properly sign required forms may result in rejection of the Bid. When applicable, Bids must include the Bidder's California State Contractor's license number and expiration date.
9. Joint Venture Agreements: Any Bidder that is a Joint Venture shall include, as part of its Bid, a copy of the Bidder's Joint Venture Agreement, executed and in force, and the Joint Venture agreement may not be modified after the submission to the Port, prior to selection of the Bidder by the Port or thereafter without the written consent of the Port. Any Joint Venture acknowledges that each of the partners of the joint venture is jointly and severally liable under this Agreement, and has provided the Port with a true and accurate copy of the Bidder's Joint Venture Agreement.
10. Bid Bond/Bid Security: If this box is checked, a Bid Security (or Bid Bond) is required with your Bid. The Bid should be accompanied by a Cashier's Check or Bidder's Bond for an amount not less than ten percent (10%) of the Total Bid Price. The cashier's check shall be made payable to the Port of Oakland or Bid Bond shall be made payable to the City of Oakland, a municipal corporation acting by and through its Board of Port Commissioners ("Port"). The Bid Bond accompanying the Bid shall be secured by an admitted surety company, licensed in the State of California, satisfactory to the Port. The Cashier's Check or Bond shall be given as a guarantee that the Bidder will enter into the Contract (or Purchase Order) if awarded the work, and in the case of refusal or failure to enter into the Contract (or Purchase Order) within twenty (20) calendar days after notification of the award of the Contract (or Purchase Order), the Port shall have the right to award to another Bidder. If the Bidder fails or refuses to timely enter into the Contract (or Purchase Order), the Port reserves the right to declare the Bid Bond forfeited and to pursue all other remedies in law or equity relating to such breach including, but not limited to, seeking recovery of damages for Breach of Contract. Failure to provide Bid Security, or Bid Security in the proper amount, will result in rejection of the Bid.
11. Withdrawal of Bid: Bids may be withdrawn by the Bidders prior to the time fixed for the opening of Bids, but may not be withdrawn after the opening of Bids.
12. Responsible Bidder: A Responsible Bidder is defined as a Bidder who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity, and experience to satisfactorily perform the work or provide the goods. The Port may conduct such investigation as the Port deems necessary to assist in the evaluation of any Bid and to establish the responsibility, qualifications, and financial ability of Bidders. The Port shall have the right to communicate directly with Bidder's surety regarding Bidder's guaranty.

The Port will be the sole determinate of whether a Bidder is considered a Responsible Bidder.

13. Evidence of Responsibility: Upon the request of the Port, a Bidder shall submit promptly to the Port satisfactory evidence showing the Bidder's financial resources, the Bidder's experience in the type of work being required (or goods needed) by the Port, the Bidder's organization and workforce available for the performance of the work and any other required evidence of the Bidder's qualifications to perform the proposed work or supply of goods. The Port may consider such evidence before making its decision awarding a Contract (or Purchase Order). Failure to submit evidence of a Bidder's responsibility to perform the proposed work (or goods needed) may result in rejection of the Bid. The Port may check any client reference provided by the Bidder to determine if the Bidder has the experience necessary to provide the goods or perform the services, and to determine the lowest responsive, responsible Bidder.
14. Addenda: Any addenda issued during the time of bidding shall become a part of the drawings and specifications issued to Bidders for the preparation of their Bids, and shall constitute a part of the Contract Documents. All addenda shall be numbered and dated and shall be acknowledged by the Bidder on the Bid Form. No addendum will be issued on such requests received later than five (5) calendar days before the scheduled opening of the Bids.
15. Minor Informalities, Rejection of Bids and Award of Contract: The Port reserves the right to waive any non-substantial or immaterial irregularities in the Bid and the right to accept or reject any and all Bids, or to accept or reject any portion or combination thereof, or award on the basis Bid Elements or Total Bid Price, when to do so is in its own best interest. If an award is made, the Port will recommend a Contract (or Purchase Order) be awarded within sixty (60) calendar days after opening of Bids to the lowest responsive, responsible Bidder complying with the requirements of the Contract Documents, subject to the Board of Port Commissioner's approval (if required). The time for awarding the Contract (or Purchase Order) may be extended by the Port with the consent of the lowest responsible Bidder. If the Port does not recommend a Contract (or a Purchase Order) to be awarded to the lowest responsive, responsible Bidder, then the Bid will be cancelled.
16. Action by the Board of Port Commissioners: If action by the Board of Port Commissioners is required, the Board of Port Commissioners may approve or reject the Port's recommendation for award with the lowest responsive responsible Bidder, or may reject all Bids. If all Bids are rejected, the Board of Port Commissioners may direct staff to negotiate with any Bidder or call for new Bids.
17. Performance Bond: If this box is checked and your Bid exceeds \$25,000, a Performance Bond is required prior to issuance of a Contract (or Purchase Order). The successful Bidder shall be required to submit the Performance Bond as specified in the Contract Documents. The required Bond shall be calculated on the maximum Total Bid Price. A Bidder's failure to submit the Bond requested shall result in rejection of their Bid and forfeit of their Bid Security.
18. Execution of Contract: The successful Bidder shall, within twenty (20) calendar days of Notice of Award of the contract, shall sign and deliver to the Port, without exception, the executed Port Contract (or Purchase Order) along with the Bonds and any evidence of insurance required by the Contract Documents. In the event the Bidder to whom an award is made fails or refuses to execute the Contract (or Purchase Order) within twenty (20) calendar days from the date of receiving notification that the Contract (or Purchase Order) has been awarded to the Bidder, or fails to provide the required bond and evidence of insurance, the Port may declare the Bidder's Bid Security or bond forfeited as damages caused by the failure of the Bidder to enter into the Contract (or Purchase Order), and may award the work to the next lowest responsive, responsible Bidder, or may reject all Bids and, at its sole discretion, call for new Bids.
19. Form of Contract: If this box is checked, the Bidder selected by the Port will be required to execute, without exception, a Contract in form and substance substantially

similar to that was included in the Bidding package. The Contract and other documents are subject to the approval of the Port and its legal counsel.

20. Standard Purchase Order Terms and Conditions: The Port's Standard Purchase Order Terms and Conditions apply to all purchases (unless specifically noted in the Bid package). A copy of the Port's Standard Purchase Order Terms and Conditions is included in this Bid package. By submitting a Bid, Bidder agrees to the Port's Standard Purchase Order Terms and Conditions.
21. Drawings and Specifications: If this box is checked, each Bidder shall be required to return to the Port all drawings and specifications in an un-mutilated condition and without any marks or annotations. All drawings, specifications and other documents used or prepared during the project shall be the exclusive property of Port.
22. Taxes: Taxes shall be included in the Total Bid Price at the current Alameda County uniform local sales and use tax rate.
23. Bid Exceptions: All exceptions to the plans and specifications which are taken in response to this Bid must be stated clearly. The taking of Bid exceptions or providing false, incomplete or unresponsive statements may result in the disqualification of the Bid.
24. Discounts: Any discounts which the Bidder desires to provide the Port must be stated clearly on the Bid Form itself so that the Port can calculate properly the net cost of the Bid. Offers of discounts or additional services not delineated on the Bid Form will not be considered by the Port in the determination of the lowest responsive, responsible Bidder.
25. Quantities: The quantities shown are approximate. The Port reserves the right to increase or decrease quantities as desired.
26. Prices: Bidders must quote prices Free on Board (F.O.B). Destination; the Port, unless otherwise noted. Prices should be stated in the units specified and Bidders should quote each item separately.
27. Samples: On request, samples of the products being supplied shall be furnished to the Port at no cost to the Port.
28. Special Brand Names: In describing any item, the use of a manufacturer or special brand, except in those instances where the product is designated to match others in use on a particular public improvement either completed or in the course of completion, does not restrict bidding to that manufacturer or special brand (unless specifically noted), but is intended only to indicate quality and type of item desired. Bidders may furnish any material, product, thing or service of comparable quality or utility. If a Bidder is requesting substitution of "or equal" item, the make and grade of the article on which the Bid is submitted must be stated in the Bid Form and illustrations and catalogue information submitted. The Port has the sole right to make all decisions on products and supplier selection of "or equal" substitutes.
29. Container Costs and Delivery: All costs for containers shall be borne by the Bidder. All products shall conform to the provisions set forth in the Federal, County, State, and City laws for their production, handling, processing and labeling. Packages shall be so constructed to ensure safe transportation to point of delivery.
30. Bid Negotiations: A Bid response to any specific item of this Bid Document with terms such as "negotiable", "will negotiate" or similar, will be considered as non-compliance with that specific term.
31. Purchases by Other Public Agencies, the Port, and Additional Quantities: Bidder agrees to extend identical prices and services under the same terms and conditions to other public agencies and the Port (known as "Piggybacking"). Other public agencies may piggyback on this contract for the goods/services and purchase directly from Bidder without additional competitive processes. Each participating agency will execute its own Contract with the Bidder for its requirement and payment will be made directly by the participating agency.

Following any initial purchase(s) by the Port, additional quantities of the goods/services listed herein, may be purchased to replace or supplement existing purchases.

32. Prevailing Law: In the event of any conflict or ambiguity between these instructions and State or Federal law or regulations, the latter shall prevail. Additionally, all equipment to be supplied or services to be performed under the Bid shall conform to all applicable requirements of Local, State and Federal laws, including, but not limited to, California Labor Code.
33. Governing Law and Venue: In the event of litigation, the Bid Documents, Specifications and related matters shall be governed by and construed in accordance with the laws of the State of California. Venue shall be with the appropriate State or Federal court located in Alameda County, California.
34. 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. (See the enclosed §728 for the current living wage rates.) 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 (or Purchase Order) is awarded, the Bidder will be required to fill out the following forms included in the Bid packet:
 - Employer Self-Evaluation for Port of Oakland Living Wage Form
 - Certificate of Compliance—Living Wage

Do not include these forms in with your Bid. Only after a Contract (or Purchase Order) is issued does the successful Bidder need to return these forms to the Social Responsibility Division. Bidders shall acknowledge Port's Living Wage Policy and compliance by submitting the "Statement Living Wage Requirements" (included in the Bid packet) with their Bid.

For more information on the Living Wage Policy, see the enclosed forms or call Connie Ng-Wong in the Port of Oakland's Social Responsibility Division at (510) 627-1390.

35. Non-Discrimination Policy: The Port of Oakland 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 predisposition to a disease or disorder, veteran status, marital status, or sexual orientation. Each Bidder must adhere to the Port's Non-Discrimination Policy by providing the enclosed "Statement of Equal Employment Opportunity" with their Bid.

In addition, the Port has a Non-Discrimination and Small Local Business Utilization Policy to encourage the use of small and local business. The entire Non-Discrimination and Small Local Business Utilization Policy is available at:

http://www.portofoakland.com/pdf/responsibility/ndslbu_policy.pdf. Also a copy of the Port-certified Small and Local Business Enterprises can also be downloaded at: <http://www.portofoakland.com/srd/>.

36. Examination of Work Site: If applicable, before submitting a Bid, Bidders shall visit the site of the proposed work and shall fully inform themselves of all conditions in and about the

work site, the building or buildings, if any, and any work that may have been done thereon. However, no Bidder shall visit the site without prior authorization by the Port.

37. Licenses: Each Bidder, and their subcontractors, if any, must possess all appropriate and required licenses (including a California Contractor's License, if applicable) or other permits to perform the work or provide the goods as identified in this Bid packet. Upon request, each Bidder shall furnish the Port with evidence demonstrating possession of the required licenses or permits. Failure to submit such evidence to the Port's satisfaction may result in rejection of the Bid.
38. Public Records Act: Per the Public Records Act (Gov. Code 6250 et seq.), the Port may be obligated to make available to the public the submitted Bids and all correspondence and written questions submitted during the Bid process. Any trade secrets or proprietary financial information, which a Bidder believes should be exempted from disclosure, shall be specifically identified and marked as such. Blanket-type identification by designating whole pages or sections shall not be permitted and shall be invalid. The specific information must be clearly identified as such. 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.
39. Protest Procedures: Any Bidder that has timely submitted a responsive Bid may file a protest with the provisions set forth below:
 1. Any protest must be submitted in writing to John Betterton, Secretary of the Board, and received by the Port no later than 4:00 p.m. by the fifth (5th) business day following the date of Bid opening.
 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 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 creditable evidence.

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

40. Conflicts of Interest: By submitting a Bid, the Bidder represents that it is familiar with Section 1090 and Section 87100 et seq. of the Government Code of the State of California, and that it does not know of any facts that constitute a violation of said sections in connection with its Bid. Bidder also represents that its Bid has completely disclosed to the Port all facts bearing upon any possible interests, direct or indirect, which Bidder believes any member of Port, or other officer, agent or employee of Port or any department presently has, or will have, in any agreement arising from this Bid, 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 Bid or termination of any agreement by Port for cause. Bidder agrees that if it enters into a Contract (or Purchase Order) 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.
41. Bidder's Relationship: The Bidder's relationship to the Port shall be that of independent contractor and not deemed to be agent of the Port.

End of Section



Bid No.: 14-15/19, CommVault Backup Solution

The undersigned having carefully examined the location of the proposed work, the local conditions of the place where the work or services is to be done, the Invitation for Bid, the Instructions to Bidders, the Standard Purchase Order Terms and Conditions, the Supplier Insurance Requirements, all Bid Documents, including the Specifications and all of the contract documents for this project, and any Attachments, Addenda, Enclosures, and the Port of Oakland’s sample Contract (if applicable), proposes to perform the work or provide the goods, including all of its component parts, and to furnish any and all required labor, materials, equipment, insurance, permit, bonding, transportation and services required for this project or deliver of goods and services in strict conformity with the Plans and Specifications prepared, including any Addenda, within the time specified for the lump sum price (including all taxes) of:

Total Bid Price (Including all Taxes)

Total Bid Price of:	\$ _____	(Numeric amount)
		_____ (Written amount)
Written amount prevails if any discrepancy exists.		

Bid Elements (This Total Bid Price is composed of the following elements)

A. Product Specification

I. CommVault Perpetual Software					
Item	Part Number	Description	Qty	Unit Price	Extended Price
1	SB-C-ADM-CELL	Simpana Data Management starter bundle for new CLA DPA oriented customers.	1		
2	SB-C-DPA-1T-B	Data Protection Advanced (DPA) capacity bundle used in a dedicated CommCell for TB-based CLA customers. <ul style="list-style-type: none"> • Provides 1TB (FET) of the DPA Protection-Enterprise capacity for a CommCell offering unlimited MediaAgent • File System • NAS client • Virtual Machine (VSA) • ApplicationClass1/2/3 clients matched with Enterprise class infrastructure features (Deduplication, Intellisnap and Encryption) 	47 TB		

Bidder’s Name: _____ Initials: _____

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II. Maintenance on Perpetual Software					
Item	Part Number	Description	Qty	Unit Price	Extended Price
3	S-Premium-18	Notification of software updates, product fixes and related enhancements. 24 hour access to the CommVault Technical Assistance Center (including holidays). Includes Quarterly reports.	12 month		
III. CommVault Travel Expenses/Documentation					
4	FXTRVL-CONS	Fixed Price Travel Expenses - fixed price per day per consultant	10 days		
IV. CommVault Consulting Services					
5	IC-CONS-AR	Remote Deployment of Simpana Database Agents or offsite oversight of Consulting Services engagements.	1 day		
6	IC-CONS-BB	Remote consulting on and configuration of Simpana architecture and agents. Price is Per-Day	7 days		
7	IC-CONSDEP	Consulting on and configuration of Simpana architecture and agents. Price is Per-Day	10 days		
8	IC-CONSPM	Project Management Services - Price per hour	26 hours		
V. CommVault Training					
9	ED-TR-UNIT-RS	Unit of Training toward any Instructor-Led Training (ILT)	40 units		
				Sales Tax (Items 1-4 if applicable - Alameda County Sales Tax @ 9%)	
Total (Write the figure in the Total Bid Price box on the Bid Form, Attachment 2)					

B. Optional CommVault Items (DO NOT include price for the Optional Items in the Total Bid Price box on the Bid Form, Attachment 2)

Optional Items					
Item	Part Number	Description	Qty	Unit Price	Extended Price
A	SP-C-OPM-12M-A-T1	Term License: Premium Operations Management Reporting services, 12 month term basis.	200		
B	BC-RSE-20	Resident Support Engineer - 1 Month Allocations	1		
C	FXTRVL-CONS	Fixed Price Travel Expenses - fixed price per day per consultant	20 days		

Bidder's Name: _____ Initials: _____

BID FORM (Page 3 of 5)

Bid No.: 14-15/19, CommVault Backup Solution

Agreement Terms

1. If awarded the Contract (or Purchase Order), the undersigned hereby agrees to sign said Contract (or Purchase Order), and furnish the necessary Performance Bond (if applicable), and Insurance within twenty (20) calendar days after the Notice of the Award of this Contract (or Purchase Order) and agrees to commence work within ten (10) calendar days after any verbal or written Notice to Proceed is issued by the Port.
2. The undersigned has checked carefully all the above figures and understands that the Port will not be responsible for any errors or omissions on the part of the undersigned in making up this Bid.
3. The Port of Oakland reserves the right to reject any or all Bids, to waive any irregularities or informalities not affected by law, to evaluate the Bids submitted and to award the Contract (or Purchase Order) according to the Bid which best serves the interests of the Port.
4. All pages of this Bid Form must be completed and signed in ink. The Bid will be awarded to the lowest responsive, responsible Bidder(s).

Bid Bond/Bid Security

If applicable (see the Instructions to Bidders), each Bid shall be accompanied by a cashier's check payable to the Port of Oakland, or a Bidder's bond executed by an admitted surety insurer, licensed to do business in the State of California as a surety, made payable to the City of Oakland, a municipal corporation acting by and through its Board of Port Commissioners ("Port") in an amount not less than ten percent (10%) of the maximum amount of the Total Bid Price. The check or Bid Bond shall be given as a guarantee that the Bidder to whom the Contract (or Purchase Order) is awarded shall execute the contract documents and shall provide the required Performance Bond as specified therein within twenty (20) calendar days after the Notification of the Award of the Contract (or Purchase Order).

Amount – Bidders must enclose an amount of not less than ten (10) percent of the entire Bid as either:

_____ Cashier's Check Number: _____

Issuing Bank: _____

Amount: \$ _____

_____ Bidder's Bond Surety Company: _____

Bidder's Name: _____ Initials: _____

BID FORM (Page 4 of 5)

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Addenda Acknowledgement

The following addenda are acknowledged in this Bid: _____

Client References

In order for the Port to determine if your firm is a Responsible Bidder (see the Instructions to Bidders), Bidder is to provide the names, addresses, and contact information for three (3) current client references. Please make sure all contact information is current. By providing such information you authorize the Port to contact such clients.

Line	Company Name and Contact	Address	Phone and Email
1	_____	_____	_____
	_____	_____	_____
2	_____	_____	_____
	_____	_____	_____
3	_____	_____	_____
	_____	_____	_____

Bidder's Name: _____ Initials: _____

BID FORM (Page 5 of 5)

Bid No.: 14-15/19, CommVault Backup Solution

Bidder Information and Signatures

Bidder's Company Name: _____

Contact Person (print name and title): _____

Address: _____

Telephone: _____ Fax: _____

Cell: _____ Email: _____

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

Signature (*): _____
(If Corporation by Chairman, President or VP. If Partnership by Partner.)

Printed Name: _____ Date: _____

Attested By (*): _____
(If Corporation, by Chairman, President, Vice President, Secretary, or Treasurer. If Partnership, by Partner.)

Printed Name: _____ Date: _____

* NOTE: If the Bidder is a corporation, set forth the legal name of the corporation together with the signature of the officer or officers authorized to sign Contracts on behalf of the corporation. If the Bidder is a partnership, set forth the name of the firm together with the signature of the partner or partners authorized to sign Contracts on behalf of the partnership.



PORT OF OAKLAND

Standard Purchase Order Terms and Conditions

The Port of Oakland uses Purchase Orders for all purchases. Phone orders are not valid and may be subject to non-payment. In these *Terms and Conditions*, "the Purchase Order" refers to each Purchase Order subject to these *Terms and Conditions*.

A courtesy copy of these *Terms and Conditions* may be provided to Supplier at the same time as a Purchase Order, but if ever there is a conflict between the courtesy copy and the then current *Terms and Conditions* posted on the Port's website, THE WEBSITE VERSION SHALL CONTROL, however, any writing issued or signed by the Port clearly marked as "additional" or "supplemental" *Terms and Conditions* or *Insurance Requirements* shall control over any conflicting terms of the website version of those documents.

1. **THE PORT.** 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 and issues Purchase Orders under the name "Port of Oakland." The Port has exclusive control and management of all Port facilities and properties located in Oakland, CA (including but not limited to marine terminals, a railway intermodal terminal, container storage areas, the Oakland International Airport; office, retail and other developed property and undeveloped land), and no other agency or department of the City of Oakland may issue Purchase Orders with respect to these facilities and properties.

2. **SUPPLIER.** Supplier (sometimes referred to on the Port's website or in other materials related to the Purchase Order as "seller", "lessor", "vendor", "contractor", "respondent", "consultant", "service provider" or by similar terms) is an independent contractor and not an officer, employee or agent of the Port. Supplier shall provide the goods or services described on the Purchase Order (the "**Work**" using its own qualified employees or using only qualified subcontractors approved in writing by the Port. Supplier, and not the Port, shall be solely responsible for paying all compensation (including benefits), making all withholdings, paying all taxes and ensuring compliance with all laws regarding the employment of such employees or engagement of such subcontractors. Supplier may not change its subcontractors or assign, delegate or transfer, voluntarily, involuntarily or by operation of law, any of its rights or obligations under the Purchase Order (other than its interest in receivables as part of a bona fide third-party financing arrangement), without the prior written consent of the Port.

3. **PERFORMANCE AND QUALITY.** Supplier shall supply or perform the Work and represents and warrants that the Work performed or supplied is (i) as specified in the Purchase Order, (ii) in a good and workmanlike manner, (iii) in conformity to all applicable specifications, and (iv) in compliance with all Applicable Law (as defined below). Supplier further represents and warrants that all goods sold under the Purchase Order are new (unless otherwise specifically stated in the Purchase Order), merchantable and fit for the particular purpose specified by the Port, and all services provided under the Purchase Order conform to the standard of practice of persons specializing in performing services of similar nature and complexity. Nothing in the Purchase Order shall be construed to limit or exclude any warranties implied by law. Supplier hereby assigns to the Port all of the Supplier's rights under manufacturers', subcontractors' or other warranties or indemnities with respect to the Work.

4. **INVOICING AND PAYMENT.** All payments require a written invoice from Supplier in a form acceptable to the Port. Supplier must issue all invoices directly to the "Bill To" address set forth in the Purchase Order. Each invoice must indicate thereon whether it constitutes a "Partial Billing" or "Final Billing". Each invoice is subject to review and verification by the Port. The time for payment of invoices (and for calculating any net discounts) shall run from the date on which proper, correct and complete invoices are received by the Port. Payment for all Work shall be made by the Port within thirty (30) days of receipt of satisfactory Work by the Port, and an itemized, proper, correct and complete invoice from Supplier. Any amounts due to the Port from

Supplier may be set off against any amounts due to Supplier from the Port, whether or not under the Purchase Order.

5. DELIVERY. Supplier shall package and ship all Work consisting of goods to the Purchase Order "Ship To" address at Supplier's sole cost and expense. Packing slips must specify the quantity and description of goods shipped, the related Purchase Order number and must accompany each shipment. Supplier shall be responsible for delivery and shall prepay all related shipping costs and add them to invoice. All goods are to be shipped F.O.B. destination: Port of Oakland, and risk of loss and title to goods shall remain with Supplier until the Port takes physical possession of the goods. The Port may change the address for shipment prior to shipment by Supplier. Goods must be suitably packed to assure against damage from weather or transportation, and in accordance with instructions of the Port.

6. REMEDIES. If Supplier breaches the Purchase Order, the Port may exercise any right or remedy available under the California Commercial Code or any other Applicable Law. Without limiting those rights and remedies, the Port may also do any of the following, in the Port's sole discretion: (i) require Supplier to repair or replace any Work, and if Supplier fails or refuses to do so, repair or replace the same at Supplier's expense; (ii) reject any delivery of non-conforming or defective Work and return the same for credit or replacement at Supplier's sole cost and risk; or (iii) cancel any outstanding deliveries and treat such breach by Supplier as Supplier's repudiation of the Purchase Order. Supplier's becoming the subject of bankruptcy or insolvency proceedings shall constitute a breach of the Purchase Order by Supplier. If the Port breaches the Purchase Order, Supplier's exclusive remedy shall be recovery of any goods shipped and the payment of the price payable for Work delivered prior to the breach. No limitation or exclusion by Supplier of any right or remedy available to the Port shall be effective unless expressly and specifically agreed to by the Port in writing. Under no circumstances shall the Port be responsible for consequential, punitive or incidental damages.

7. LAWS, REGULATIONS, PERMITS. Supplier shall comply with all applicable laws, ordinances, rules, regulations, codes, professional standards, permits, or land use restrictions or limitations of any governmental authority at any time applicable to Supplier, the Work or the Purchase Order ("**Applicable Law**"). Supplier shall obtain and maintain in full force and effect all professional, contracting and other permits and licenses required to undertake or supply the Work.

8. ADA. Without limiting Supplier's obligations to comply with Applicable Laws generally, Supplier hereby warrants that all Work complies with the accessibility requirements of the American with Disabilities Act of 1990, other similar state and federal laws and their implementing regulations, as applicable. Supplier agrees to promptly respond to and resolve any complaint regarding accessibility of the Work which is brought to its attention. Supplier further agrees to indemnify, defend and hold harmless the Port and all of its officers, commissioners, agents, departments, officials, representatives and employees using the Work from any loss, liability or claim arising out of its failure to comply with these accessibility requirements.

9. NON-DISCRIMINATION. Without limiting Supplier's obligation to comply with Applicable Laws generally, Supplier shall not discriminate against any employee or applicant for employment, nor against any subcontractor or applicant for a subcontractor contract, because of race, color, religion, sex, national origin, ancestry, age (over forty (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.

10. WORK PRODUCT, ROYALTIES, PATENTS. Any interest (including copyright or other interests in intellectual property) of Supplier in studies, reports, memoranda, computational sheets, designs, drawings, specifications or any other documents (including electronic media) or work product prepared by or on behalf of Supplier in connection with the Work (collectively, the "**Work Product**"), whether or not embodied therein, constitutes a work for hire and is the property of the Port. Supplier shall pay all royalties and license fees necessary for or relating to the Work and shall defend all suits of claims for infringement of any patents or other intellectual property rights and shall indemnify the Port and hold it harmless from liability or loss on account thereof.

11. INSURANCE. Supplier shall maintain all insurance required under Applicable Law or commonly maintained by similarly situated, responsible businesses and in all events will maintain insurance of the types

and in the amounts applicable to Supplier and the Work as required by the Port's *Supplier Insurance Requirements* (posted from time to time on the Port's website under the Business→ Opportunities→ Purchasing and Accounts Payable→ Port Purchasing Forms section at:

http://www.portofOakland.com/pdf/opportunities/supplier_insurance.pdf. A courtesy copy of which may be delivered to Supplier at the same time as the Purchase Order. In the event of any conflict between any courtesy copy of the *Insurance Requirements*, and the version of the *Insurance Requirements* posted to the Port's website, the website version shall control). The type, scope and amounts of the required insurance may be increased should the scope of Work, in the opinion of the Port, warrant such increase, and Supplier shall obtain such insurance when so directed by the Port. If any portion of the Work is to be performed outside the United States, Supplier must contact the Port Risk Management Department regarding appropriate insurance. At the Port's request, Supplier will file with the Port certificates evidencing the insurance maintained by Supplier and failure to do so will be a material breach of the Purchase Order.

12. **TAXES.** Unless otherwise provided for in the Purchase Order, Supplier shall pay all taxes levied upon the Purchase Order or the Work performed or supplied pursuant hereto without additional compensation, regardless of which party has liability for such tax under Applicable Law, and any deficiency, interest or penalty asserted with respect thereto. The Port shall pay only California sales and use tax and Alameda County uniform local sales and use tax. Supplier must separately itemize all sales and use taxes on its invoices.

13. **BOOKS AND RECORDS.** Supplier shall maintain all documents and records prepared by or furnished to Supplier in connection with the Purchase Order and backup for all costs for which the Port was directly or indirectly invoiced during the course of supplying or performing the Work for at least three (3) years following delivery of final payment by the Port, provided that all records relating to environmental consulting services and hazardous materials in, on or adjacent to the Port's property shall be maintained indefinitely. Supplier agrees that its books and records and facilities, or so much thereof as may be engaged in the performance of the Purchase Order, are subject to inspection and audit at all reasonable times by any authorized representative of the Port. Supplier agrees to waive, to the greatest extent permitted by Applicable Law, the defense of laches, statute of limitations, or any other defense based upon the Port's failure to timely file an action with regard to any matter arising out of the Purchase Order.

14. **WAIVER AND HOLD HARMLESS.** Supplier waives any and all claims, causes of action and rights to recovery, in law or in equity, against the Port for losses, liabilities, damages or injuries of any nature or kind, including injuries to Supplier's employees or subcontractors, regardless of whether such losses, damages, liabilities or injuries are covered by insurance. This provision is intended to waive fully, for the benefit of the Port, any rights or claims that might provide a right of subrogation in favor of any insurer providing insurance with respect to the Purchase Order. To the fullest extent permitted by Applicable Law (including, without limitation, California Civil Code Section 2782), Supplier shall defend (with legal counsel chosen or approved by the Port), indemnify and hold the Port and all of its officers, Commissioners, agents, departments, officials, representatives and employees harmless from and against any and all claims, loss, or liability of every kind, nature and description that arise from or relate to, directly or indirectly, in whole or in part: (i) the Work under the Purchase Order, or any part thereof; or (ii) any act or omission of Supplier, its employees, subcontractors or representatives.

15. **CHANGES.** The Purchase Order may not be modified, supplemented, or terminated without the Port's prior written approval. The Port may make changes to the Purchase Order at any time, and Supplier agrees to accept such changes. If such changes result in additional costs, the Port shall make an equitable adjustment to the purchase price at Supplier's request, provided that Supplier itemizes and justifies to the Port's satisfaction in writing the adjustment requested within five (5) days of delivery of the change notification.

16. **SUSPENSION OR TERMINATION.** Supplier must continue to perform the Work under the Purchase Order throughout the course of any dispute and Supplier's failure to continue Work during a dispute shall itself constitute a material breach of the Purchase Order. The Port may, with or without cause, direct Supplier to suspend, delay or interrupt the execution of any Work, in whole or in part, for such periods of time as the Port may determine in its discretion; any such directives must be in writing. The Port may, at any time, terminate the Purchase Order for its own convenience with the Port's liability limited to the services or goods received by the Port prior to delivery of the Port's termination notice. Upon any termination, Supplier shall assign to the

Port in the manner, at times and to the extent directed by the Port, all right, title, and interest of Supplier under procurement orders and subcontracts relating to Work so terminated and shall transfer title and possession to the Port of Work Product, completed and uncompleted designs and specifications, Work in process, completed Work, supplies, and other material produced or fabricated as part of, or acquired in connection with performance of the Work terminated by the notice of termination.

17. CONFIDENTIALITY AND PUBLICITY. All data, information, reports, plans, designs and other documents (collectively, the "**Confidential Information**") received from the Port or its employees, agents or representatives or generated by Supplier in connection with the Work are privileged and confidential and shall remain the sole and exclusive property of the Port. Supplier shall not disclose the identity of the Port, nor distribute or disclose Confidential Information to any third party, without express written authorization from the Port. All Confidential Information shall be deemed confidential and Supplier shall take all reasonable precautions to prevent its disclosure to unauthorized persons. Any publicity or press releases with respect to the Work or the Purchase Order shall be under the Port's sole discretion and control.

18. GOVERNING LAW AND VENUE. The Purchase Order shall be governed by California law. Legal actions relating to the Purchase Order shall only be brought in the federal or state courts of Alameda County, California, to which jurisdiction Supplier irrevocably submits.

19. GENERAL. All correspondence and notices directed to the Port, other than invoices (which are to be delivered to the "Bill To" address set forth in the Purchase Order) must be in writing and delivered to Port of Oakland, Board of Port Commissioners, P.O. Box 2064, Oakland, CA 94604. The Purchase Order is for the sole benefit of the Port and Supplier, and their respective permitted successors and assigns, and nothing in the Purchase Order, express or implied, is intended to confer upon any other person any right, benefit or remedy of any nature whatsoever under or by reason of the Purchase Order. Time is of the essence in Supplier's performance of Supplier's obligations under the Purchase Order. The making or approval of any payment and any inspections, reviews, approvals or oral statements by or on behalf of the Port, or of certification by any governmental entity, in no way limits Supplier's obligations under the Purchase Order.



During any period Supplier performs the Work, and for such additional time as described below, Supplier shall maintain the following insurance with the following provisions:

1. Commercial General Liability Insurance

- **When Required:** All Suppliers performing Work.
- **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 Work involves construction activities, completed operations coverage must remain in force until at least 5 years after completion and acceptance of the Work.
- If the Work involves the sale of liquor, liquor legal liability insurance.
- If the Work involves construction or demolition work within 50 feet of railroad property, Railroad Protective Liability insurance in the name of the applicable railroad company with limits of at least \$2,000,000 per occurrence or as required by the applicable railroad company.

2. Business Automobile Liability Insurance

- **When Required:** All Suppliers performing Work.
- **Coverage:** Standard ISO Business Automobile Liability form for all owned (if any), 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.
- If the Work involves the parking or storage of vehicles, Garagekeeper's Liability insurance.
- If the Work involves valet parking, Valet Liability insurance.

3. Workers' Compensation and Employer's Liability Insurance

- **When Required:** All Suppliers performing Work.
- **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.
- If Work is performed in or around water (whether in the Port maritime area or elsewhere), U.S. Longshoremen and Harbor Workers Act coverage and, if applicable, Jones Act and Marine Employer's 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.

4. Professional “Errors and Omissions” Liability Insurance

- **When Required:** If the Work involves consulting, temporary staffing, design or technology services.
- **Coverage:** For errors and omissions arising out of the Work.
- **Limits:** \$1,000,000 per claim and annual aggregate.
- **Deductible/Self-Insured Retention:** Not more than \$25,000 per claim unless otherwise approved by Port Risk Management.
- **Additional Term:** 2 years after completion and acceptance of the Work.
- If Work involves software or technology services, Technology Liability coverage, including coverage for privacy liability.
- If the Work involves outsourced internet services, Network and Media Liability coverage.

5. Contractor’s Pollution Legal Liability Insurance

- **When Required:** If the Work involves 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 Work.
- **Definition of “Covered Operations”:** All Work performed by Supplier or its contractors or subcontractors.

6. Aviation Insurance

- **When Required:** If Supplier or its subcontractors utilize aircraft in the Work.
- **Coverage:** Aviation Public Liability and Passenger Liability forms.
- **Limits:** \$1,000,000 combined single limit per accident for use of aircraft with up to 4 seats; such limit shall be \$5,000,000 for use of aircraft with 5 or more seats. However, use of jet aircraft of any size will need to be referred to Risk Management to determine amount of insurance required.
- **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.

7. Protection and Indemnity Insurance

- **When Required:** If Supplier or its subcontractors utilize watercraft/vessels in the Work.
- **Coverage:** Liability for bodily injury and property damage including wreck removal and liability to crew, and SP-23 clause or equivalent, including collision liability.
- **Limits:** \$1,000,000 per person on board the watercraft for bodily injury and property damage, but no less than \$5,000,000 for watercraft of a length of 30 feet to 39 feet and no less than \$10,000,000 for watercraft 40 feet and over; any passenger services watercraft will need to be referred to Risk Management to determine amount of insurance required.

- **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.
- Waiver of subrogation in favor of additional insured.
- Deletion of any language that limits coverage to additional insured in the event the Limitation of Liability Statute applies.

8. Builder's Risk/Equipment Installation Insurance.

- **When Required:** If Work involves new construction of buildings or facilities, or the renovation of existing buildings or facilities..
- **Coverage:** "All risk" or "special form" perils, earthquake and terrorism, including risks from testing of equipment, and delayed completion coverage for soft costs.
- **Limits:** Full replacement cost value of the construction, covering the entire Work, including all materials and equipment that are or will be incorporated into the construction, or stored at the construction site or offsite, and including materials or equipment in the course of transportation.
- **Deductible/Self-Insured Retention:** Not more than \$25,000 per occurrence unless otherwise approved by Port Risk Management.
- **Term:** Until final completion and acceptance of the Work and for 2 years for delayed completion coverage.
- **Additional Insured and Loss Payee:** The City of Oakland, a municipal corporation, acting by the through its Board of Port Commissioners.
- Waiver of subrogation in favor of additional insured and its commissioners, officers, agents and employees.
- Primary and non-contributory with any insurance, retention or self-insurance of the Port.

Other Insurance Requirements:

- **Notice of Cancellation.** Supplier or Supplier'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.** Supplier must deliver to the Port Risk Management Department, prior to the commencement of the Work, 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. Please send certificates and other required information to:

Port of Oakland
 Attn: Risk Management Dept.
 530 Water Street
 Oakland, Ca 94607
 Fax: (510) 627-1626
 Email: risktransfer@portoakland.com

Conversion to OCIP. The Port reserves the right to include the Purchase Order in an Owner Controlled Insurance Program ("OCIP") and/or a Professional Liability Insurance Program ("PLIP"), upon written notice to Supplier. In that event, Supplier agrees to comply with all requirements of the OCIP and/or PLIP.



Non Collusion Declaration

Bid No.: 14-15/19, CommVault Backup Solution

(To Be Executed by Bidder and Submitted with the Bid)

I, _____, declare as follows:

That I am the _____ of _____, the party making the attached Bid; that the attached Bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the Bid is genuine and not collusive or sham; that the Bidder has not directly or indirectly induced or solicited any other Bidder to put in a false or sham Bid, or that anyone shall refrain from Bidding; that the Bidder has not in any manner, directly or indirectly, sought by agreement, communication, or to fix any overhead, profit, or cost element of the Bid price, or of that of any other Bidder, or to secure any advantage against the public body awarding the Contract (or Purchase Order) of anyone interested in the proposed contract; that all statements contained in the Bid are true; and further, that the Bidder has not, directly or indirectly, submitted his or her Bid 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, Bid depository, or to any member or agent thereof to effectuate a collusive or sham Bid.

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 _____, 201__, at
_____, California

Signature



PORT OF OAKLAND

City of Oakland City Charter § 728 Living Wage Information

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, 2014, \$14.10 without health benefits or \$12.27 with health benefits). Port Ordinance No. 3666, as amended also requires that covered businesses provide employees at least twelve compensated days off per year, including holidays.
- 2) Pay at least \$1.83 per hour worked toward the provision of health care benefits for employees and/or their dependents, if the employer claims credit for health benefits.
- 3) **Provide written notification to each current and new employee, at time of hire, of his or her rights to receive the benefits under the provisions of these regulations.** The notification shall be provided in English, Spanish and other languages spoken by a significant number of the employees, and shall be posted prominently in communal areas at the work site. A copy of said notification is available from the Port Division of Social Responsibility.
- 4) Provide all employees earning less than \$12/hour notification in English, Spanish, and any other language spoken by a significant number of employees of their right to advance Earned Income Credit payments.
- 5) **Maintain a list of the name, address, date of hire, occupation classification, rate of pay, benefits paid for each of its employees, and compensated time off - and submit this list to the Port's Social Responsibility Division, Attention: Connie Ng-Wong, Living Wage Compliance Officer, by March 31st, June 30th, September 30th, and December 31st of each year.** If a covered employer has obtained a waiver from the Port Board of Directors, then the employer must still submit an annual payroll report covering each of its employees by December 31st of each year. Failure to provide the list within five days of the due date will result in a penalty of \$500 per day. Covered employers shall maintain payrolls and basic records for all employees and shall preserve them for a period of at least three years after the close of the compliance period.
- 6) Require subcontractors, tenants and subtenants, or licensees who are covered by these requirements to comply with the provisions of these regulations. **Covered employers shall be responsible for including language committing the subcontractor's, tenant's or licensee's agreement to comply, in the contract with the subcontractor.** Covered employers shall submit a copy of such subcontracts or other such agreements to the Port Division of Social Responsibility.
- 7) Permit authorized Port representatives access to work sites and, with employee consent, relevant payroll records for the purpose of monitoring compliance with these regulations, investigating employee complaints of non-compliance and evaluating the operation and effects of these regulations, including the production for inspection and copying of its payroll records for any or all of its employees for the applicable compliance period. Permit a representative of the labor organizations in its industry to have access to its workforce at the Port during non-working time and in non-work areas to ensure compliance.

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



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



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.

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



Bid No.: 14-15/19, CommVault Backup Solution

I hereby certify that I _____(Legal Name of Bidder/Respondent/Supplier/Consultant/Contractor), has reviewed the Living Wage Requirements, included herein this Bid packet and will comply with said requirement. Upon execution of an Agreement, the selected Bidder will be required to complete the attached Employer Self-Evaluation for Port of Oakland Form and Certificate of Compliance – Living Wage Form included in this Bid packet, 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.

Print Name

Title

Signature

Date



PORT OF OAKLAND

Statement of Equal Employment Opportunity

Bid No.: 14-15/19, CommVault Backup Solution

I hereby certify that I _____ (Legal Name of Bidder/Supplier/Consultant/Contractor), will not discriminate against any employee or applicant for employment because of 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.

BY: _____
Date

Print Name



Bid No.: 14-15/19, CommVault Backup Solution

The Port of Oakland is soliciting competitive bids to supply CommVault Backup Solution software. The Port’s Information Technology has standardized on the CommVault software, suppliers must only bid CommVault software. The Port will not accept any “or equal” brand.

The bidder confirms to have sourced all Manufacturer products submitted in this offer from Manufacturer or through Manufacturer Authorized Channels only, in accordance with all applicable laws and policies at the time of purchase. Bidder shall provide Buyer with a copy of the End User License Agreement (EULA), and shall warrant that all Manufacturer software is licensed originally to Buyer as the original licensee authorized to use the Manufacturer Software. Below are the bid items the Port is requiring:

A. CommVault Product:

I. CommVault Perpetual Software		
Part Number	Description	Qty
SB-C-ADM-CELL	Simpana Data Management starter bundle for new CLA DPA oriented customers.	1
SB-C-DPA-1T-B	Data Protection Advanced (DPA) capacity bundle used in a dedicated CommCell for TB-based CLA customers. <ul style="list-style-type: none"> • Provides 1TB (FET) of the DPA Protection-Enterprise capacity for a CommCell offering unlimited MediaAgent • File System • NAS client • Virtual Machine (VSA) ApplicationClass1/2/3 clients matched with Enterprise class infrastructure features (Deduplication, Intellisnap and Encryption)	47 TB
II. Maintenance on Perpetual Software		
S-Premium-18	Notification of software updates, product fixes and related enhancements. 24 hour access to the CommVault Technical Assistance Center (including holidays). Quarterly reports.	12 months
III. CommVault Travel Expenses/Documentation		
FXTRVL-CONS	Fixed Price Travel Expenses - fixed price per day per consultant	10 days
IV. CommVault Consulting Services		
IC-CONS-AR	Remote Deployment of Simpana Database Agents or offsite oversight of Consulting Services engagements.	1 day
IC-CONS-BB	Remote consulting on and configuration of Simpana architecture and agents. Price is Per-Day	7 days
IC-CONSDEP	Consulting on and configuration of Simpana architecture and agents. Price is Per-Day	10 days
IC-CONSPM	Project Management Services - Price per hour	26 hours

V. CommVault Training		
Part Number	Description	Qty
ED-TR-UNIT-RS	Unit of Training toward any Instructor-Led Training (ILT)	40 units

B. Optional CommVault Items (DO NOT include the price for the Optional items in the Total Bid Price box on the Bid Form, Attachment s)

Optional Items		
Part Number	Description	Qty
SP-C-OPM-12M-A-T1	Term License: Premium Operations Management Reporting services, 12 month term basis.	200
BC-RSE-20	Resident Support Engineer - 1 Month Allocations	1 month
FXTRVL-CONS	Fixed Price Travel Expenses - fixed price per day per consultant	20 days

If the Port decides to increase quantities after the initial purchase, the prices for the increased quantities shall not be higher than the prices for the initial purchases for the next three years.

C. Software Delivery and Installation:

Delivery and installation of software will be mutually coordinated and agreed upon between the Port Project Manager and the awarded Supplier Project Lead after the executed purchase order. Supplier to submit invoices for items successfully delivered and installed.

D. Procurement Continued

Submission of a bid will confirm that the bidder fully understands the provisions of the Port's Procurement Contract and will execute such agreement if awarded the contract. Any objections to any provisions in such contract must clearly be identified in your bid. Changes are discouraged and may lead to your bid being considered non-responsive.

Enclosure B

PROCUREMENT CONTRACT

Between



PORT OF OAKLAND

And

[SUPPLIER]

[DESCRIPTION]

(Contract No. _____)

Dated

PORT OF OAKLAND

PROCUREMENT CONTRACT

This Procurement Contract (the “**Contract**”) is entered into as of _____, 20__ (the “**Contract Date**”) by and between the City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners (the “**Port**”), and [SUPPLIER NAME], a California corporation (the “**Supplier**”). Supplier agrees to produce and deliver the products, goods and services which are more particularly described in Exhibit “A” to this Contract (the “**Goods**”).

2. The terms and conditions which shall govern Supplier’s delivery of the Goods and Port’s payment therefore are set forth in this Contract, which terms and conditions are incorporated herein by this reference.

TERMS AND CONDITIONS

THE PORT. The Port is legally known as the City of Oakland, a Municipal Corporation, acting by and through its Board of Port Commissioners. The Port has exclusive control and management of all Port facilities and properties located in Oakland, CA (including but not limited to marine terminals, a railway intermodal terminal, container storage areas, the Oakland International Airport; office, retail and other developed property and undeveloped land.

SUPPLIER. Supplier (sometimes referred to on the Port’s website or in other materials related to the Agreement as “seller”, “lessor”, “vendor”, “contractor”, “respondent”, “consultant”, “service provider” or by similar terms) is an independent contractor and not an officer, employee or agent of the Port. Supplier shall provide the goods or services described in Exhibit B (the “**Work**”) using its own qualified employees or using only qualified subcontractors approved in writing by the Port. Supplier, and not the Port, shall be solely responsible for paying all compensation (including benefits), making all withholdings, paying all taxes and ensuring compliance with all laws regarding the employment of such employees or engagement of such subcontractors. Supplier may not change its subcontractors or assign, delegate or transfer, voluntarily, involuntarily or by operation of law, any of its rights or obligations under the Agreement (other than its interest in receivables as part of a bona fide third-party financing arrangement), without the prior written consent of the Port.

PERFORMANCE AND QUALITY. Supplier shall supply or perform the Work and represents and warrants that the Work performed or supplied is (i) as specified in the Contract, (ii) in a good and workmanlike manner, (iii) in conformity to all applicable specifications, and (iv) in compliance with all Applicable Law (as defined below). Supplier further represents and warrants that all goods sold under this Contract are new (unless otherwise specifically stated in the Contract), merchantable and fit for the particular purpose specified by the Port, and all services provided under this Contract conform to the standard of practice of persons specializing in performing services of similar nature and complexity. Nothing in this Contract shall be construed to limit or exclude any warranties implied by law. Supplier hereby assigns to the Port all of the Supplier’s rights under manufacturers’, subcontractors’ or other warranties or indemnities with respect to the Work.

INVOICING AND PAYMENT. All payments require a written invoice from Supplier in a form acceptable to the Port. Each invoice must indicate thereon whether it constitutes a “Partial Billing” or “Final Billing”. Each invoice is subject to review and verification by the Port. The time for payment of invoices (and for calculating any net discounts) shall run from the date on which proper, correct and complete invoices are received by the Port. Payment for all Work shall be made by the Port within thirty (30) days of receipt by the Port of an itemized, proper, correct and complete invoice from Supplier. Any amounts due to the Port from Supplier may be set off against any amounts due to Supplier from the Port, whether or not under the Contract.

DELIVERY. Supplier shall package and ship all Work consisting of goods to this Contract “Ship To” address at Supplier’s sole cost and expense. Packing slips must specify the quantity and description of goods shipped, the related Contract number and must accompany each shipment. Supplier shall be responsible for delivery and shall prepay all related shipping costs and add them to invoice. All goods are to be shipped F.O.B. destination: Port of Oakland, and risk of loss and title to goods shall remain with Supplier until the Port takes physical possession of the goods. The Port may change the address for shipment prior to shipment by Supplier. Goods must be suitably packed to assure against damage from weather or transportation, and in accordance with instructions of the Port.

REMEDIES. If Supplier breaches the Contract, the Port may exercise any right or remedy available under the California Commercial Code or any other Applicable Law. Without limiting those rights and remedies, the Port may also do any of the following, in the Port's sole discretion: (i) require Supplier to repair or replace any Work, and if Supplier fails or refuses to do so, repair or replace the same at Supplier's expense; (ii) reject any delivery of non-conforming or defective Work and return the same for credit or replacement at Supplier's sole cost and risk; or (iii) cancel any outstanding deliveries and treat such breach by Supplier as Supplier's repudiation of the Contract. Supplier's becoming the subject of bankruptcy or insolvency proceedings shall constitute a breach of this Contract by Supplier. If the Port breaches the Contract, Supplier's exclusive remedy shall be recovery of any goods shipped and the payment of the price payable for Work delivered prior to the breach. No limitation or exclusion by Supplier of any right or remedy available to the Port shall be effective unless expressly and specifically agreed to by the Port in writing. Under no circumstances shall the Port be responsible for consequential, punitive or incidental damages.

LAWS, REGULATIONS, PERMITS. Supplier shall comply with all applicable laws, ordinances, rules, regulations, codes, professional standards, permits, or land use restrictions or limitations of any governmental authority at any time applicable to Supplier, the Work or this Contract ("**Applicable Law**"). Supplier shall obtain and maintain in full force and effect all professional, contracting and other permits and licenses required to undertake or supply the Work.

ADA. Without limiting Supplier's obligations to comply with Applicable Laws generally, Supplier hereby warrants that all Work complies with the accessibility requirements of the American with Disabilities Act of 1990, other similar state and federal laws and their implementing regulations, as applicable. Supplier agrees to promptly respond to and resolve any complaint regarding accessibility of the Work which is brought to its attention. Supplier further agrees to indemnify, defend and hold harmless the Port and all of its officers, commissioners, agents, departments, officials, representatives and employees using the Work from any loss, liability or claim arising out of its failure to comply with these accessibility requirements.

NON-DISCRIMINATION. Without limiting Supplier's obligation to comply with Applicable Laws generally, Supplier shall not discriminate against any employee or applicant for employment, nor against any subcontractor or applicant for a subcontractor contract, because of race, color, religion, sex, national origin, ancestry, age (over forty (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.

WORK PRODUCT, ROYALTIES, PATENTS. Any interest (including copyright or other interests in intellectual property) of Supplier in studies, reports, memoranda, computational sheets, designs, drawings, specifications or any other documents (including electronic media) or work product prepared by or on behalf of Supplier in connection with the Work (collectively, the "**Work Product**"), whether or not embodied therein, constitutes a work for hire and is the property of the Port. Supplier shall pay all royalties and license fees necessary for or relating to the Work and shall defend all suits of claims for infringement of any patents or other intellectual property rights and shall indemnify the Port and hold it harmless from liability or loss on account thereof.

INSURANCE. Supplier shall maintain all insurance required under Applicable Law or commonly maintained by similarly situated, responsible businesses and in all events will maintain insurance of the types and in the amounts applicable to Supplier and the Work as required by the Port's *Supplier Insurance Requirements* at http://www.portoakland.com/pdf/opportunities/supplier_insurance.pdf (posted from time to time on the Port's website). A courtesy copy of which may be delivered to Supplier at the same time as the Contract. In the event of any conflict between any courtesy copy of the *Insurance Requirements*, and the version of the *Insurance Requirements* posted to the Port's website, the website version shall control). The type, scope and amounts of the required insurance may be increased should the scope of Work, in the opinion of the Port, warrant such increase, and Supplier shall obtain such insurance when so directed by the Port. If any portion of the Work is to be performed outside the United States, Supplier must contact the Port Risk Management Department regarding appropriate insurance. At the Port's request, Supplier will file with the Port certificates evidencing the insurance maintained by Supplier and failure to do so will be a material breach of the Contract.

TAXES. Unless otherwise provided for in the Contract, Supplier shall pay all taxes levied upon this Contract or the Work performed or supplied pursuant hereto without additional compensation, regardless of which party has liability for such tax under Applicable Law, and any deficiency, interest or penalty asserted with respect thereto. The Port shall pay only California sales and use tax and Alameda County uniform local sales and use tax. Supplier must separately itemize all sales and use taxes on its invoices.

BOOKS AND RECORDS. Supplier shall maintain all documents and records prepared by or furnished to Supplier in connection with this Contract and backup for all costs for which the Port was directly or indirectly invoiced during the course of supplying or performing the Work for at least three (3) years following delivery of final payment by the Port, provided that all records relating to environmental consulting services and hazardous materials in, on or adjacent to the Port's property shall be maintained indefinitely. Supplier agrees that its books and records and facilities, or so much thereof as may be engaged in the performance of the Contract, are subject to inspection and audit at all reasonable times by any authorized representative of the Port. Supplier agrees to waive, to the greatest extent permitted by Applicable Law, the defense of laches, statute of limitations, or any other defense based upon the Port's failure to timely file an action with regard to any matter arising out of the Contract.

WAIVER AND HOLD HARMLESS. Supplier waives any and all claims, causes of action and rights to recovery, in law or in equity, against the Port for losses, liabilities, damages or injuries of any nature or kind, including injuries to Supplier's employees or subcontractors, regardless of whether such losses, damages, liabilities or injuries are covered by insurance. This provision is intended to waive fully, for the benefit of the Port, any rights or claims that might provide a right of subrogation in favor of any insurer providing insurance with respect to the Contract. To the fullest extent permitted by Applicable Law (including, without limitation, California Civil Code Section 2782), Supplier shall defend (with legal counsel chosen or approved by the Port), indemnify and hold the Port and all of its officers, Commissioners, agents, departments, officials, representatives and employees harmless from and against any and all claims, loss, or liability of every kind, nature and description that arise from or relate to, directly or indirectly, in whole or in part: (i) the Work under the Contract, or any part thereof; or (ii) any act or omission of Supplier, its employees, subcontractors or representatives.

CHANGES. This Contract may not be modified, supplemented, or terminated without the Port's prior written approval. The Port may make changes to this Contract at any time, and Supplier agrees to accept such changes.

SUSPENSION OR TERMINATION. Supplier must continue to perform the Work under this Contract throughout the course of any dispute and Supplier's failure to continue Work during a dispute shall itself constitute a material breach of the Contract. The Port may, with or without cause, direct Supplier to suspend, delay or interrupt the execution of any Work, in whole or in part, for such periods of time as the Port may determine in its discretion; any such directives must be in writing. The Port may, at any time, terminate this Contract for its own convenience with the Port's liability limited to the services or goods received by the Port prior to delivery of the Port's termination notice. Upon any termination, Supplier shall assign to the Port in the manner, at times and to the extent directed by the Port, all right, title, and interest of Supplier under procurement orders and subcontracts relating to Work so terminated and shall transfer title and possession to the Port of Work Product, completed and uncompleted designs and specifications, Work in process, completed Work, supplies, and other material produced or fabricated as part of, or acquired in connection with performance of the Work terminated by the notice of termination.

CONFIDENTIALITY AND PUBLICITY. All data, information, reports, plans, designs and other documents (collectively, the "**Confidential Information**") received from the Port or its employees, agents or representatives or generated by Supplier in connection with the Work are privileged and confidential and shall remain the sole and exclusive property of the Port. Supplier shall not disclose the identity of the Port, nor distribute or disclose Confidential Information to any third party, without express written authorization from the Port. All Confidential Information shall be deemed confidential and Supplier shall take all reasonable precautions to prevent its disclosure to unauthorized persons. Any publicity or press releases with respect to the Work or this Contract shall be under the Port's sole discretion and control.

GOVERNING LAW AND VENUE. This Contract shall be governed by California law. Legal actions relating to this Contract shall only be brought in the federal or state courts of Alameda County, California, to which jurisdiction Supplier irrevocably submits.

GENERAL. All correspondence and notices directed to the Port, other than invoices must be in writing and delivered to Port of Oakland, Board of Port Commissioners, P.O. Box 2064, Oakland, CA 94604. This Contract is for the sole benefit of the Port and Supplier, and their respective permitted successors and assigns, and nothing in the Contract, express or implied, is intended to confer upon any other person any right, benefit or remedy of any nature whatsoever under or by reason of the Contract. Time is of the essence in Supplier's performance of Supplier's obligations under the Contract. The making or approval of any payment and any inspections, reviews, approvals or oral statements by or on behalf of the Port, or of certification by any governmental entity, in no way limits Supplier's obligations under the Contract.

IN WITNESS WHEREOF, Port and Vendor have executed this Contract as of the Contract Date.

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

By _____
J. CHRISTOPHER LYTLE
Executive Director

Date: _____

[SUPPLIER]
a California corporation

By _____
Authorized Signature

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

Date: _____

Attest _____
Authorized Signature

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

Date: _____

Approved as to form and
legality this _____ day
of _____ 2014.

DANNY WAN
Port Attorney

Port Resolution No.

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

EXHIBIT "A"

DESCRIPTION OF GOODS AND DELIVERY/PAYMENT TERMS

EXHIBIT B

SUPPLIER INFORMATION

Full Legal Name of Supplier:

Corporate Address:

Form of Business Entity (Check one)

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

**If Corporation: (*Required Information*)
Agent for Service of Process (Name and
Address)**

Contact Individual / Position:

Telephone No.:

Facsimile No.:

E-Mail Address (if any):

Website (if any):