

# **REQUEST FOR PROPOSAL**

For

**Payment Card Industry (PCI) Service  
Provider**

**RFP No. 21-22/42**



**PORT OF OAKLAND**

PURCHASING DEPARTMENT  
530 WATER STREET  
OAKLAND, CA 94607



## PORT OF OAKLAND

### REQUEST FOR PROPOSAL

#### RFP No.: 21-22/42 - Payment Card Industry (PCI) Service Provider

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

#### Proposal Information

<b>Proposal Title</b>	<b>Payment Card Industry (PCI) Service Provider</b>
<b>Proposal Type</b>	<b>Consulting Services</b>
<b>Proposal Number</b>	<b>21-22/42</b>
<b>Proposal Issued</b>	<b>April 27, 2022</b>
<b>Department Requesting Services</b>	<b>Information Technology</b>
<b>Pre-Proposal Meeting</b>	<b>N/A</b>
<b>Scheduled Publication Date</b>	<b>April 29, 2022</b>
<b>Proposal Due Date</b>	<b>June 3, 2022 until 11:00 a.m.</b>

#### Instructions for Submitting Proposals

<b>Submittal Address</b>	Port of Oakland Purchasing Department Attn: <b>Rebecca Gibson</b> 530 Water Street Oakland, CA 94607
<b>Submittal Copies</b>	One (1) Original copy clearly marked "Original" and four (4) Copies marked "Copy".
<b>Submittal Envelope Requirements</b>	Proposal 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"><li>• Proposal Number</li><li>• Name of Your Company</li><li>• Address</li><li>• Phone Number</li></ul>
<b>Late Submittals</b>	Proposals received after the time and date stated above shall be returned unopened to the Respondent.

## How to Obtain Proposal Documents

Copies of the Proposal documents may be obtained at:

Location	Address
<b>Purchasing Department</b>	Please call Rebecca Gibson at (510) 627-1104 or email <a href="mailto:rgibson@portoakland.com">rgibson@portoakland.com</a> for any issues downloading RFP document from Port website or to request an email copy.
<b>Website</b>	<a href="http://www.portoakland.com/business/bids-rfps/">http://www.portoakland.com/business/bids-rfps/</a>  Or navigate to the Port of Oakland's main website at: <a href="http://www.portoakland.com/">http://www.portoakland.com/</a> , then click on "Bids/RFPs" from the banner on the top of the page, and then scroll down to download the RFP.

## Questions about the Proposal

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

<b>Primary Contact</b>	Rebecca Gibson Email: <a href="mailto:rgibson@portoakland.com">rgibson@portoakland.com</a>
<b>Question/RFI Due Date</b>	<b>May 13, 2022 until 4:00 p.m.</b> 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.
<b>Response Date</b>	<b>May 20, 2022</b> All pertinent questions will be responded to <b>via addendum</b> emailed to all prospective proposers and placed on the Port's website. Proposers who did not receive a copy of the addendum should download it from the Port's website. See the "How to Obtain Proposal Documents" section for our web address. All addenda must be acknowledged on the RFP Acknowledgement and Signature form.

Once the RFP is issued, and until a recommendation for award is made to the Board of Port Commissioners at a public Board of Port Commissioners meeting (or in cases where a recommendation for award does not require a public Board meeting, when Proposers are notified by Port staff of the recommendation for award), each Proposer and its representatives, agents, and affiliates, shall not contact members of the Evaluation Committee, Port staff or the Board of Port Commissioners to discuss or ask questions about the contents of this RFP or the selection process. All questions shall be submitted in writing as described in this RFP. Any inappropriate contact by a Proposer, its representatives, agents, and/or affiliates may result in the Proposers' proposal being disqualified.

## Full Opportunity

The Port's policy prohibits discrimination or preferential treatment because of race, color, religion, sex, national origin, ancestry, age (over 40), physical or mental disability, cancer-related medical condition, a known genetic pre-disposition to a disease or disorder, veteran status, marital status, or sexual orientation. It is the policy of the Port of Oakland to encourage and facilitate full and equitable opportunities for small local businesses to participate in its contracts for the provision of goods and services. It is further the Port's

policy that no discrimination shall be permitted in small local business participation in Port contracts or in the subcontracting of Port contracts. The successful Respondent shall comply with the Port's non-discrimination policy.

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

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

John Banisadr,  
Port Purchasing Manager

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### **Attachments:**

Title		Must Be Returned with Proposal
1	Non-Collusion Declaration	Yes
2	Statement of Equal Employment Opportunity	Yes
3	RFP Acknowledgement and Signature Form	Yes
4	Proposal Worksheet	Yes
5	Port of Oakland Non-Discrimination and Small Local Business Utilization Policy A. Chart for Submitting Data for Calculation of Preference Points B. Local Participation Questionnaire C. Monthly Utilization of Local and Small Business Enterprises D. Final Utilization of Local and Small Business Enterprises	Yes Attachment 5-A and 5-B are required with the Proposal. (Note: If you are submitting a new Certification Application for preference points, then your completed application is due 7 business days prior to the proposal due date.)  Attachments 5-C and –D are required after contract award final completion of the project.
6	Non-Discrimination and Small Local Business Utilization Policy Program Affidavit	Yes
7	City of Oakland City Charter §728 Living Wage Information A. Employer Self-Evaluation for Port of Oakland Living Wage B. Certificate of Compliance—Living Wage	No (Attachment 7-A and 7-B are required prior to entering into contract with the Port of Oakland)
8	Statement of Living Wage Requirements	Yes

Title		Must Be Returned with Proposal
9	Supplier Insurance Requirements	No
10	Insurance Acknowledgement Statement	Yes
11	Standard Professional Services Agreement	No  (Note: If awarded the contract, the successful Respondent will execute a revised version of the Port's standard Professional Services Agreement, which will be consistent with the provisions of this RFP.)

## **I. Project Overview**

This RFP seeks to identify the most qualified Payment Card Industry ("PCI") service provider/vendor that offers the greatest value and quality of service. Proposals should take great care to fully explain services for the quoted costs and differentiate themselves from their competitors.

At a minimum, vendors submitting a proposal ("Proposer") in response to this RFP must have experience with PCI Assessments for a minimum of five (5) years, with substantive experience assessing PCI compliance in medium to large U.S. airport environments, including payments made through common use airport systems.

### **About the Port of Oakland**

The Port of Oakland was established in 1927 and oversees the Oakland seaport, Oakland International Airport, Commercial Real Estate, and 20 miles of waterfront. The Oakland seaport is one of the top ten busiest container ports in the U.S.; Oakland International Airport is the second largest San Francisco Bay Area airport offering over 300 daily passenger and cargo flights; and the Port's real estate includes commercial developments such as Jack London Square and hundreds of acres of public parks and conservation areas. Together, through Port operations and those of its tenants and users, the Port generates approximately 84,100 jobs in the region and over 1,000,000 jobs are related to the Port across the United States. The Port is an independent department of the City of Oakland.

## **II. Scope of Services**

### **A: PCI QUALIFIED SECURITY ASSESSOR – SERVICE PROVIDER ENVIRONMENTS**

The Port of Oakland ("Port") is seeking fixed-fee proposals from authorized PCI Qualified Security Assessor ("QSA") data security firms to conduct annual assessments and related vulnerability scans to evaluate payment / credit card security processes and controls consistent with current PCI Data Security Standard ("DSS") (currently version 3.2.1) requirements and testing procedures. The project team must have at least one QSA.

1. The Port is seeking a qualified assessor to assess and scan the following environments ("SP Environments") where the Port acts as a Service Provider according to current PCI-DSS Service Provider Level 1 Compliance Requirements:
  - a. Airport Common Use and Tenant Networks – the Port-owned networks that transmit airline payment transaction data at Oakland International Airport ("OAK"). These include, but are not limited to, the networks, kiosks, and terminal equipment that support: Port-owned airport common-use kiosks, Port-owned common-use ticket counter terminals, Port-owned common-use gate terminals, as well as the Port-owned networks that provide connectivity to airline tenant systems for airline-supplied kiosks, airline-supplied ticket counter terminals, and airline-supplied gate terminals at OAK. The Port's merchant accounts are not used in any of these cases.
  - b. Airport Parking Network – the Port-owned network and revenue collection equipment that processes airport parking transactions. The Port provides parking revenue collection equipment and network connectivity for its provider to collect parking revenue at OAK using the provider's merchant account.
2. The engagement only includes Port-owned or Port-managed infrastructure and excludes any tenant infrastructure. Networks not owned by the Port are out of scope for this engagement. The only in-scope locations for PCI-DSS Service Provider Level 1 Compliance are the SP Environments as noted above.
3. The Proposer shall conduct and complete the Port's PCI-DSS Assessments, scans, and related reports for the duration of the term according to current PCI-DSS Service Provider

Level 1 Compliance Requirements. Currently this includes, but is not limited to, an annual Attestation of Compliance ("AOC"), an annual Report on Compliance ("ROC"), and quarterly vulnerability scans performed by an Approved Scanning Vendor ("ASV"). Additionally, the Proposer shall furnish a Summary Report to be prepared in both Word and PDF annually upon conclusion of the annual requirements.

4. The Proposer shall include in the Summary Report an overview of the Port's PCI-DSS compliance, as well as any areas of noncompliance with the PCI-DSS. The scope does not include any remediation work or gap analysis. The Summary Report should include guidance on how to address a finding from the assessment. The Port will remediate any findings, utilizing said guidance as appropriate.
5. Delivery of the first Summary Report, AOC, ROC, vulnerability scan results, and relevant data, shall be furnished within 90 days after the contract start date. The Proposer shall deliver all future reports and deliverables according to the current PCI-DSS schedules in effect.
6. The Proposer will coordinate the schedule of the project with the Port's Information Technology Department. The Port will provide any necessary information on infrastructure, networks, configurations, and specific vendors to the winning firm upon award of the contract. Due to the sensitive nature of this information, this information cannot be provided in advance.
7. The Port does not process any credit card transactions in the SP Environments. The Port is a service provider only to these environments to allow tenants and contractors to process credit card transactions using the SP Environments.
8. Only card-present transactions for parking and on-airport transactions are accepted. The Port does not store any cardholder data. The Port anticipates accepting card not present transactions for parking service in the future via a PCI-compliant e-commerce platform. The future card not present transactions and PCI-compliant e-commerce platform are not in the scope of this engagement.
9. The Port has segmented the systems processing credit card data from the rest of the Port's networks. The Port back-office network is out of scope for the assessments.

**B: AS NEEDED PCI-DSS CONSULTING SERVICES**

1. The Port has approximately ten (10) merchant accounts ("Merchant Accounts") and maintains PCI-DSS compliance on them internally. These Merchant Accounts are used only for card present transactions for services that include, but are not limited to, items such as airport badging, rent, and street parking. The Port does not store any cardholder data.
2. The Port is seeking as-needed consulting services, billed as incurred, for additional PCI-related services, including but not limited to: advice, questions, assessments, assistance with self-assessments, or remediation recommendations for Port Merchant Accounts or other payment-related services, as requested by the Port for the duration of the term.
3. The Proposer shall furnish rates for both remote and on-site work regarding these Merchant Accounts or other PCI-related work. The Port may, at its sole discretion, elect to utilize these services at these agreed-upon rates for the duration of the agreement.

**C. Projected Timeline and Length of Contract**

It is anticipated that the term of this agreement will be for seven (7) years, the initial award will be five (5) years, with two (2) one (1) year renewal options. The renewal options may be exercised exclusively by the Port.



### **III. Port Policy and Other Requirements**

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

1. **Non-Discrimination and Small Local Business Utilization Policy (NDSLBP):**

The Port desires to maximize the participation of small local business and has instituted a Non-Discrimination and Small Local Business Utilization Policy (NDSLBP). The NDSLBP consists of two parts:

- Non-Discrimination policy which all Suppliers (Respondents) must adhere to, by providing the enclosed "Non-Discrimination and Small Local Business Utilization Policy Program Affidavit" (**Attachment 6**) with their proposals
- Preference points are awarded to small local businesses who qualify under the Port's definition of a small local business. In order to qualify for preference points, Suppliers (Respondents) must be either certified by the proposal due date or may apply online at: <http://srd.portofoakland.com/>. The application and any supporting documentation must be submitted to the Port's Social Responsibility Division seven (7) business days prior to the proposal due date. To apply, please click on the above link and then on the link titled "Register New Company?" and follow the instructions.

A summary of the Port's Non-Discrimination and Small Local Business Utilization Policy is included herein as **Attachment 5**. The entire policy is available at:

[http://www.portofoakland.com/files/PDF/responsibility/NDSLBP\\_00810.pdf](http://www.portofoakland.com/files/PDF/responsibility/NDSLBP_00810.pdf)

Suppliers already certified with the Port do not need to submit proof of certification, but still need to check the Port's certification database at: <http://srd.portofoakland.com/> to ensure their certification has not expired and must fill out the Chart for Submitting Data for Calculation of Preference Points (**Attachment 5-A**), and the Local Participation Questionnaire (**Attachment 5-B**), and submit them with your proposal. All Suppliers (Respondents) must still provide proof of adhering to the Port's Non-Discrimination policy by submitting the NDSLBP Program Affidavit.

A copy of the Port-certified Small Local Business Enterprises can also be downloaded at: <http://srd.portofoakland.com/>

For questions or assistance regarding NDSLBP, contact Ms. Kimberly Wilson, Contract Compliance Officer, (510) 627-1390, at the Port's Social Responsibility Division.

2. **Insurance Requirements:**

All Respondents who plan on submitting a proposal in response to this RFP must meet the Port's Insurance requirements listed in **Attachment 9** and must provide proof of insurance at the time of project award. Respondents must include a statement (**Attachment 10**) with their proposal agreeing to the Port's insurance requirements and indicate they will be able to obtain the proper insurances at the time of project award.

3. **Non-Disclosure Agreement:**

The Proposer may be required, at the sole discretion of the Port, to enter into a separate Non-Disclosure Agreement with the Port in a form and substance as approved by the Port, in advance of Proposer being provided with information deemed by the Port as sensitive and/or otherwise protected information.

4. **Living Wage Policy:**

On March 5, 2002, the voters in the City of Oakland passed Measure I, adding to the City Charter Section 728 ("§728") entitled "Living Wage and Labor Standards at Port-assisted Businesses." §728 requires Port Aviation and Maritime businesses that meet specified minimum threshold requirements to pay all nonexempt employees a Living Wage rate established by City Ordinance and adjusted annually based on the Consumer Price Index for the San Francisco, Oakland, and San Jose area. The current Living Wage rate as of July 1,

2021 is at least \$15.30 with credit given to the employer for the provision to covered employees of health benefits, and \$17.56 without credit for the provision of health benefits. Specifically, §728 applies to Port contractors and financial assistance recipients with the Aviation or Maritime divisions that have contracts worth more than \$50,000 and that employ more than 20 employees who spend more than 25% of their time on Port-related work. §728 also provides covered employers with incentives to provide health benefits to employees, establishes a worker retention policy, requires covered employers to submit quarterly payroll reports and requires covered employers to allow Port representatives access to payroll records in order to monitor compliance and labor organization representatives access to workforces during non-work time and on non-work sites. Covered employers are responsible for complying with the provisions of §728 from the date the covered contract is entered into. When a contract is awarded, the Respondent will be required to fill out the attached Employer Self-Evaluation for Port of Oakland Living Wage Form (**see Attachment 7-A**) and Certificate of Compliance—Living Wage (**see Attachment 7-B**) and return them to the Social Responsibility Division. (i.e., do not include these forms in with your proposal). For more information, please call Connie Ng-Wong in the Port of Oakland's Social Responsibility Division at (510) 627-1390.

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

5. Port's Standard Professional Services Agreement:

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

#### **IV. Submission Requirements**

Please respond to the following 8 submission requirements in a straightforward, concise delineation of your capabilities proposed to satisfy the requirements of the RFP. The Port will use your responses to objectively determine your capabilities and experience. Please label your responses 1 through 8, in the order presented below. Please limit your total response to the number of pages indicated below (excludes the required attachment forms provided with this RFP).

**Submittal Format:**

Responses may not be longer than 30 pages (one sided or 15 pages double sided), printed on 8 ½" x 11" paper and formatted in no smaller than 10 point font. Each section shall be labeled according to the sections below. All submitted material must be bound with only **one staple or binder clip** in the upper left corner. Please no binders or any other type of binding. Submittals must be able to fit into a 9 x 11.5 inch folder.

1. **Company Information:** Provide the name of your company (including the name of any parent company), business address, email address, Federal Tax ID number, telephone and fax numbers, and names and titles of key management personnel, and a brief history of your company. Provide a brief statement of who is authorized to submit the proposal on the behalf of your company. Please make sure that person signs and dates the statement. If your company is making any exceptions to the Port's Standard Professional Services Agreement (**Attachment 11**) and/or this RFP, they must be clearly set forth in your proposal and noted in this section. Exceptions are discouraged and may result in lower evaluation points during the Port's evaluation of your proposal.
2. **Knowledge and Experience:** Provide relevant information about your company's knowledge and experience, including a list of three or more projects (in similar size and scope to that in this RFP), with brief descriptions that demonstrate your experience. Also, provide the names of

key personnel who will be assigned to do the work under this project and provide their relevant experience.

3. **Client References:** Provide names, addresses and contact information for three (3) current clients. Provide the size and scope of each project and a brief description of the projects. Please make sure all contact information is current. By providing such information, you authorize us to contact such clients.
4. **Plan and Approach:** Provide an overview describing the general approach, scope of services, and methodology of your company's ability to fulfill the general functions required in this RFP. Please use this section to describe the services you propose to provide to the Port. Your services can be above and beyond the requirements listed in the "Scope of Service" section.
5. **Proposed Costs:** Provide your cost for the proposal on the Proposal Worksheet and attach any proposed fee schedule. It is important that you provide your fee schedule so that the Port can evaluate your proposal.
6. **Debarment Statement:** Provide a written statement that your company has not been debarred from providing services to any State or Federal Agency within the last five (5) years. Sign and date your statement. If your company has been debarred, you will need to provide background information and the reason(s) for the debarment. Provide the name and contact information for the agency that debarred your company. The Port must review the reason(s) and duration for the debarment before it can determine if your company can be considered for this project.
7. **Litigation and Other Information:** Provide information describing any litigation, arbitration, investigations, or any other similar actions that your company, its principals, directors, and/or employees have been involved in during the last five (5) years relating to your company's services. Please list (a) name and court case or other identification number of each matter, (b) jurisdiction in which it was filed, and (c) outcome of matter (e.g. whether the case is pending, a judgment was entered, a settlement was reached or the case was dismissed). The Port will review the reason and timing of the action before it can determine if your company can be considered for this project. Failure to provide the litigation information may disqualify your proposal.
8. **Required Forms and Adherence to Port Policy and Other Requirements:** The Respondent must fill out all of the forms included in this RFP (listed under the "Attachments" section and marked with a "Yes" in the column titled "Must Be Returned with Proposal"), and return them with your proposal. By returning the listed forms, your company is supporting and agreeing to the Port Policy and Other Requirements (listed in Section III, "Port Policy and Other Requirements" of this RFP). Failure of the Respondent to provide any of the required forms may result in your proposal being rejected for non-responsiveness. These required forms will not count against the maximum page count (indicated above) for your response.

## **V. Evaluation Criteria**

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

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

**A. Evaluation Weights**

Item	Criteria	Weights
	<u>Adherence to Port Policy and Other Requirements and Debarment Statement</u> Proposals from companies who have not or will not adhere to the Port Policy and Other Requirements or who have been debarred and have not provided sufficient reasons/justification for the Port to review the circumstances surrounding the debarment will not be forwarded to the evaluation committee for review. (Items 6 and 8 of the Submission Requirements section.)	Pass/Fail
1	<u>Company Information, Client References, Litigation and Other Information, and Required Forms</u> Respondent's capacity to provide professional service as evidenced by past performance, company information, reference checks, litigation and other information, and required forms. (Items 1, 3, 7, and 8 of the Submission Requirements section.)	20%
2	<u>Knowledge and Experience</u> Respondent's knowledge and experience in assessing PCI Compliance in medium to large airport environments, as evidenced from your response to item 2 of Submission Requirements section.	20%
3	<u>Plan and Approach</u> As evidenced from your response to item 4 of the Submission Requirements section.	20%
4	<u>Proposed Costs</u> As evidenced from your response to item 5 of the Submission Requirements section, and as provided on the Proposal Worksheet.	25%
5	<u>Non-Discrimination and Small Local Business Utilization Policy (NDSLBU)</u> Does your company meet the Port's definition of Small Local Business and/or make a commitment to the Port's values and programs {e.g., mentoring small and/or very small local businesses and providing meaningful work for small and/or very small local sub-consultants; utilization of college and high school interns from the Local Impact Area (LIA); participation in job fairs and trade fairs targeted to LIA residents and businesses; and other work showing the consultant's efforts to contribute to the economic development of the LIA}? The Port will evaluate companies that have provided substantiating documentation to prove they meet the Port's NDSLBU program and award points accordingly to qualifying companies.	15%
	Total	100%

**B. Selection Procedure:**

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

## **VI. Additional Provisions**

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

### **A. Port's Legal Name and Jurisdiction**

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

### **B. Ownership of Proposal**

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

### **C. Deadline for Receipt of Proposal**

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

### **D. Public Records Act**

Under the California Public Records Act (Gov. Code § 6250 et seq.), the Port may be obligated to make available to the public the submitted proposal and all correspondence and written questions submitted during the Request for Proposal process. However, such disclosure shall not be made prior to the date on which the Port publishes the identity of the apparent successful proposer or issues a Notice of Intent to Award, if such notice is issued.

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

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

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

**E. Reimbursable Expenses**

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

**F. Port's Right to Modify**

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

**G. Conflicts of Interest**

By submitting a proposal, the Respondent represents that it is familiar with Section 1090 and Section 87100 et seq. of the California Government Code, and that it does not know of any facts that constitute a violation of said sections in connection with its proposal. Respondent also represents that its proposal has completely disclosed to the Port all facts bearing upon any possible interests, direct or indirect, which Respondent believes any member of the Port, or other officer, agent or employee of the Port or any department presently has, or will have, in any agreement arising from this RFP, 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 proposals or termination of any agreement by the Port for cause. Respondent agrees that if it enters into a contract with the Port, it will comply with all applicable conflict of interest codes adopted by the City of Oakland and Port of Oakland and their reporting requirements.

**H. Cost of Preparing a Response**

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

**I. Compliance with Law**

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

**J. Respondent's Relationship**

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

**K. Proposal Considerations and Legal Proceeding Waiver**

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

**L. False Statements**

False statements in a proposal will disqualify the proposal.

**M. Taxes**

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

**N. Grade of Service**

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

**O. The Respondent's Liability**

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

**P. Amendments**

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

**Q. Withdrawal or Modification of Offers**

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

**R. Acceptance**

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

**S. Representations**

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

**T. Award Consideration and Length of Contract**

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

It is anticipated that the term of this agreement will be for seven (7) years, the initial award will be five (5) years, with two (2) one (1) year renewal options. The renewal options may be exercised exclusively by the Port.

**U. Contract Termination**

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

**V. Protest Procedures**

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

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

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





**RFP No.: 21-22/42 - Payment Card Industry (PCI) Service Provider**

(To Be Executed By Proposer and Submitted With Proposal)

I, \_\_\_\_\_, declare as follows:

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

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

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

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_, at

\_\_\_\_\_/\_\_\_\_\_

\_\_\_\_\_  
Signature

Authority: Public Contract Code 7106  
CCP 2015.5



**PORT OF OAKLAND**

**Statement of Equal Employment Opportunity**

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**RFP No.: 21-22/42 - Payment Card Industry (PCI) Service Provider**

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

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date



**RFP No.: 21-22/42 - Payment Card Industry (PCI) Service Provider**

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

**Addendum Acknowledgement:**

The following addendum (addenda) is (are) acknowledged in this RFP: \_\_\_\_\_

**Acknowledgement and Signature:**

1. No Proposal is valid unless signed in ink by the person authorized to make the proposal.
2. I have carefully read, understand and agree to the terms and conditions on all pages of this RFP. The undersigned agrees to furnish the services stipulated in this RFP.
3. Respondent agrees to the form of Professional Services Agreement (**Attachment 11**) and agrees not to propose any contractual terms that conflict with such form, unless it specifies any exceptions in its Proposal.
4. Respondent is registered to do business in the State of California, or if not, will obtain such registration prior to entering into an agreement with the Port for this RFP.
5. I understand my Proposal and all related documents may be released in their entirety in response to a request under the California Public Records Act, subject to any separate copy I submit in accordance with Section VI.D of this RFP.
6. I represent that I am familiar with Section 1090 and Section 87100 et seq. of the California Government Code, and that I do not know of any facts that constitute a violation of said Sections in connection with the proposal.

Respondent's Name and Title:

Company Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

Email: \_\_\_\_\_ Cell Number: \_\_\_\_\_

Contractor License # (if applicable): \_\_\_\_\_ Expiration Date: \_\_\_\_\_

Federal Tax Identification Number: \_\_\_\_\_

Authorized Signature: \_\_\_\_\_ Date: \_\_\_\_\_



**RFP No.: 21-22/42 - Payment Card Industry (PCI) Service Provider**

Please provide your firms fixed-fee cost structure for the following professional consulting services. Please feel free to add any additional pages to detail your costs.

Annual Assessments and Related Vulnerability Scans, consistent with current PCI Data Security Standard ("DSS") requirements and testing procedures.

- Assessment services of Service Providers (SP) Environments:
  - Port owned Airport Common Use and Tenant Networks
  - Port owned Airport Parking Networks
- Conduct and complete Port's PCI-DSS Assessments, scans, and related reports
- Compliance Requirements
- Furnish Summary Report(s)

**PART A: PCI QUALIFIED SECURITY ASSESSOR – SERVICE PROVIDER ENVIRONMENTS**

<b>Item</b>	<b>Description – Annual Costs</b>	<b>Cost</b>
1	Year One (1)	\$
2	Year Two (2)	\$
3	Year Three (3)	\$
4	Year Four (4)	\$
5	Year Five (5)	\$
6	Year Six (6), if exercised	\$
7	Year Seven (7), if exercised	\$
8	<b>Sub-Total (Lines 1-5)</b>	<b>\$</b>
9	<b>Sub-Total (Lines 6-7)</b>	
<b>Grand Total Fix-Fee Proposed Cos(Lines 1-7)t</b>		<b>\$</b>

Company Name: \_\_\_\_\_ Date: \_\_\_\_\_

**PART B: AS NEEDED PCI-DSS CONSULTING SERVICES**

Please provide your rate sheet for as-needed PCI-DSS Consulting Services, to be used at the discretion of the Port.

Example Rete Sheet:

	<b>Description of Services</b>	<b>Rate Per (hour, unit, task, etc)</b>
1		\$
2		\$
3		\$
4		\$
5		\$

Respondent Name: \_\_\_\_\_ Title: \_\_\_\_\_

Company Name: \_\_\_\_\_

Authorized Signature: \_\_\_\_\_ Date: \_\_\_\_\_



**Non-Discrimination:** Port of Oakland (Port) 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.

**Local Business Utilization:** On October 7, 1997, the Board of Port Commissioners initiated a formal policy to encourage full participation of firms from its Local Business Area ("LBA"), the counties of Alameda and Contra Costa, particularly those in its Local Impact Area ("LIA"), in its work. The LIA includes the cities of Oakland, Alameda, Emeryville and San Leandro. The LBA includes all cities within the counties of Alameda and Contra Costa. The Port will also take into consideration efforts the prime and sub-consultants make to assist in the community, e.g., assigning meaningful work to small and/or very small local sub-consultants, mentor protégé relationships, participation in job/trade fairs, hiring interns, pro bono work, and working with local schools, etc.

**Consultant Preference Points:** The Port allots preference points for the percentage of work being performed by consultants/sub-consultants located in either the LBA or the LIA and for community involvement (i.e. mentoring, intern programs, job fairs, community rehabilitation groups and re-entry programs) for a maximum total of up to 15 points. These points are added to a maximum of 85 technical points for a composite maximum of 100 points in evaluating consultant proposals as follows:

- Up to 5 points will be credited proportionately (counting the whole team, prime consultant and sub-consultant(s)) for LIA certified firms, and 2.5 for LBA certified firms.  
Note: LIA/LBA credit is given only for certified firms which have had established active offices in the respective area for at least a year at the time of proposal due date, and NOT for outside firms which plan to do the project work at a LIA/LBA office;
- An additional 3 points will be credited for an LIA certified prime consultant (proportionate to the share of prime consultant work in the case of a joint venture) and 1.5 points for an LBA certified prime consultant;
- Up to 4 points will be credited proportionately (counting the whole team, prime consultant and sub-consultant(s)) for Very Small Business Enterprise (VSBE) certified firms, and 2 points for Small Business Enterprise (SBE certified firms); and
- Up to 3 points for commitment to the Port's values and programs, e.g., mentoring small and/or very small local businesses and providing meaningful work for small and/or very small local sub-consultants; utilization of college and high school interns from the LIA; participation in job fairs and trade fairs targeted to LIA residents and businesses; and other work showing the consultant's efforts to contribute to the economic development of the LIA.

In summary, please submit the following attachments in each copy of your proposal:

1. Attachment 5-A, Chart for Submitting Data for Calculation of Preference Points. List the team members' (prime and subs) names, roles, location and LIA/LBA/SBE/VSBE status in the format shown in Attachment 5-A. Be specific as to the nature and estimated percentage of the work to be performed by the prime, any joint venture partners and/or sub-consultants.
2. Attachment 5-B, Local Participation Questionnaire. Complete for each sub-consulting firm or individual, as well as for the prime consultant.

3. Attachment 5-C and 5-D, Monthly and Final Utilization of Local and Small Business Enterprises are required after contract award. Attachment 5-C is required after contract award and a final report attachment 5-D, is required after completion of the project.

Any proposal that fails to complete and submit the above two items (Prime *and* sub-consultants) will not be considered. For firms headquartered outside the LIA/LBA wishing to obtain credit for their local office, for the purpose of this project shall utilize personnel from this local office. Additionally, mail, correspondence and telephone calls will be made to this local office.

To obtain credit for these factors and for any preference points on this RFP, consultants or any team member must be certified by the proposal due date or submit an application:

- Consultants or any team members wishing to be certified by the Port must submit a Certification Application, with all supporting documentation seven (7) business days prior to the proposal due date. The questionnaire and checklist of necessary supporting documents for certification may be obtained at: <http://www.portoakland.com/srd/>. For questions regarding certification, you may contact Social Responsibility Division (SRD) at (510) 627-1627 or email [SRDAdmin@portoakland.com](mailto:SRDAdmin@portoakland.com). Firms certified by the Port of Oakland do not need to submit proof of certification.

(Please note Port certification must be current and not expired to count for preference points. Certification is valid for a two-year period.)

For questions or assistance regarding this section, contact Ms. Kimberly Wilson at (510) 627-1390, or [kwilson@portoakland.com](mailto:kwilson@portoakland.com) in the Port's Social Responsibility Division.



**PORT OF OAKLAND**

**Chart for Submitting Data  
for Calculation of Preference Points**

Company	Nature of Work to be Performed	Prime or Sub?	Location of Firm	*LIA/LBA SBE/VSBE Certification Status	Percent of Total Contract	Percent of Sub-consulting Work
(Name of Prime)		<b>Prime</b>				
(Name of Subs)		<b>Sub</b>				
(Name of Subs)		<b>Sub</b>				
(Name of Subs)		<b>Sub</b>				
(Name of Subs)		<b>Sub</b>				
(Name of Subs)		<b>Sub</b>				
(Name of Subs)		<b>Sub</b>				
(Name of Subs)		<b>Sub</b>				
(Name of Subs)		<b>Sub</b>				
(Name of Subs)		<b>Sub</b>				
(Name of Subs)		<b>Sub</b>				
(Name of Subs)		<b>Sub</b>				
<b>Total</b> (must add up to 100%)					100%	100%

**\* In order to qualify for preference points, the firm must be certified by the Port of Oakland.** Local Impact Area (LIA), Local Business Area (LBA), Small Business Enterprise (SBE), Very Small Business Enterprise (VSBE)

Notes:

- Please make sure the column labeled "Percent of Total Contract" adds up to 100%
- Please make sure the column labeled "Percent of Sub-consulting Work" adds up to 100% of the Sub-consulting work.





(Use additional paper if necessary)

1. Is the consultant or large sub-consultant mentoring or providing a professionally meaningful share of the project to small and/or very small LIA firms on this project? Yes\_\_\_ No\_\_\_

If the response is "yes", please provide specific details on how the mentoring or sharing will be performed. In addition, be specific as to the nature of the relationship and the persons responsible for implementing it.

2. (A) Do any team members regularly use local students as interns in their work? Yes\_\_\_ No \_\_\_  
(B) Do any team members currently use local students as interns in their work? Yes\_\_\_ No \_\_\_  
(C) Have any team members used local students as interns in past work? Yes \_\_\_ No\_\_\_  
(D) If planning to use interns on this project, how will you utilize them?

If you answered "yes" to any of these questions, please state from what schools or programs the interns were obtained, what type of work was performed by them, and any other details that might be relevant, i.e. paid internship, length of service, number of interns.

3. Have firms in the team participated in other community projects, e.g., job fairs targeted to local neighborhoods, youth or school programs, community rehabilitation groups, etc.? Yes\_\_\_ No\_\_\_  
If so, please give details:



**PORT OF OAKLAND**

**Monthly Utilization of Local and Small Business Enterprises**

PRIME CONTRACTOR		BUSINESS ADDRESS				CONTRACT BID AMOUNT		DATE OF THIS REPORT	
PORT PROJECT NAME				PORT PROJECT NUMBER	WORK AUTHORIZATION #	TOTAL CONTRACT AMOUNT INCLUDING CHANGE ORDERS		PROJECT COMPLETION DATE	
(1) Name and Address of Small/Local Firm [Prime, Subcontractor, Supplier or Trucking Broker]	(2) Description of Work Performed and or Materials Supplied	(3) Prime and Sub(s) Original Bid Amount	(4) Port Certification Number	CONTRACT PAYMENTS					
				(5a) * LIABE Dollars	(5b) * LBABE Dollars	(5c) * SBE Dollars	(5d) * VSBE Dollars	(6) Date Work Completed	(7) Date of Final Payment
<b>TOTAL</b>				\$	\$	\$	\$		

List all certified local/small prime and subs regardless of tiers through out the life of the project, whether or not firms were listed on the original bid. Xerox this page if additional sheets are needed.

If actual sub dollars were different than the approval amount at time of award, provide comments on back of form. List actual amount paid to each sub at the above chart.

\* LIABE (Local Impact Area Business Enterprise), LBABE (Local Business Area Business Enterprise), SBE (Small Business Enterprise), and VSBE (Very Small Business Enterprise).

I CERTIFY THAT THE ABOVE INFORMATION IS COMPLETE, TRUE AND CORRECT		
AUTHORIZED CONTRACTOR REPRESENTATIVE SIGNATURE and TITLE	BUSINESS PHONE NUMBER	DATE

**Distribution:**

**Original – SRD**

**Copy To – Engineering Construction / Resident Engineer**

**Instructions--Monthly Utilization of Local and Small Business Enterprises**

- (I) Enter the project information requested on the first two rows on page 00816-1 (Prime Contractor, Business Address, Contract Bid Amount, etc.)
- (II) Provide the following information **for each portion of the contract work performed by (and for each amount of materials supplied by) a Port-certified small and/or local business**, including the prime contractor if the prime is a Port-certified small/local business:

- Column 1: Name and address of the firm performing work and/or supplying materials.
- Column 2: Description of the work performed and/or materials supplied by said firm.
- Column 3: For subcontractor, supplier or trucker: dollar amount of the bid submitted by the firm to prime bidder, as listed in the Subcontractor and Supplier List Form submitted by prime bidder with its bid. If the subcontractor, supplier or trucker was not listed in the Subcontractor and Supplier List Form, enter "0". For small/local prime bidder: dollar amount of the prime bidder's bid excluding all subcontractor/supplier/trucking broker bid amounts, as listed in the Subcontractor and Supplier List Form.
- Column 4: Port Certification Number of firm. (Port-certified small/local subcontractors, suppliers and truckers should provide their certification number to the Prime Bidder and notify Prime Bidder in writing with the date of the decertification if their status changes during the course of the project.)
- Columns 5a-5d Enter the dollar amount of the work performed and/or materials supplied by the firm in either Column 5a, 5b, 5c or 5d, depending on the firm's certification status. Firm certification status must be certified and determined at the time of bid by Port of Oakland. The certified firm is issued a letter by the Port of Oakland that states their certification status as well as the expiration date of the certification. Firms' certification status may be obtained by accessing the Port of Oakland website (<http://srd.portofoakland.com/>) or by calling (510) 627-1627. Refer to the following table for a description of the certification status:

Certification Status	Description
LIABE (Local Impact Area Business Enterprise)	firm located in Oakland, Alameda, Emeryville, or San Leandro
LBABE (Local Business Area Business Enterprise)	firm located in Alameda County or Contra Costa County
SBE (Small Business Enterprise)	business with 3 year average annual gross revenue not to exceed \$36,000,000
VSBE (Very Small Business Enterprise)	business with 3 year average annual gross revenue not to exceed \$5,000,000

If the firm was decertified before completing its portion of the work of this contract, enter the dollar amount of ALL work performed/ materials supplied by the firm, INCLUDING WORK PERFORMED/MATERIALS SUPPLIED AFTER THE DATE OF DECERTIFICATION. **If the amount listed in Column 5 differs from the amount listed in Column 3, provide an explanation in the 'COMMENTS' section as provided.**

- Column 6: Date on which the firm listed in Column 1 completed the work described in Column 2.
- Column 7: Date on which prime contractor made the 'final payment' for the work described in Column 2 to subcontractor/supplier/trucking broker.

- (III) In the 'TOTAL' row, enter the column sums of the dollar amounts listed in Columns 5a through 5d.
- (IV) The authorized contractor representative shall certify the information supplied by signing in the space provided. **Per Port of Oakland provisions, Final Payment WILL NOT be made until this form is properly filled out and submitted to the Port of Oakland.**

<b>COMMENTS:</b>



**PORT OF OAKLAND**

**Final Utilization of Local and Small Business Enterprises**

PRIME CONTRACTOR		BUSINESS ADDRESS				CONTRACT BID AMOUNT		DATE OF THIS REPORT	
PORT PROJECT NAME				PORT PROJECT NUMBER	WORK AUTHORIZATION #	TOTAL CONTRACT AMOUNT INCLUDING CHANGE ORDERS		PROJECT COMPLETION DATE	
(1) Name and Address of Small/Local Firm [Prime, Subcontractor, Supplier or Trucking Broker]	(2) Description of Work Performed and or Materials Supplied	(3) Prime and Sub(s) Original Bid Amount	(4) Port Certification Number	CONTRACT PAYMENTS					
				(5a) * LIABE Dollars	(5b) * LBABE Dollars	(5c) * SBE Dollars	(5d) * VSBE Dollars	(6) Date Work Completed	(7) Date of Final Payment
<b>TOTAL</b>				\$	\$	\$	\$		

List all certified local/small prime and subs regardless of tiers through out the life of the project, whether or not firms were listed on the original bid. Xerox this page if additional sheets are needed.

If actual sub dollars were different than the approval amount at time of award, provide comments on back of form. List actual amount paid to each sub at the above chart.

\* LIABE (Local Impact Area Business Enterprise), LBABE (Local Business Area Business Enterprise), SBE (Small Business Enterprise), and VSBE (Very Small Business Enterprise).

<b>I CERTIFY THAT THE ABOVE INFORMATION IS COMPLETE, TRUE AND CORRECT</b>		
<b>AUTHORIZED CONTRACTOR REPRESENTATIVE SIGNATURE and TITLE</b>	<b>BUSINESS PHONE NUMBER</b>	<b>DATE</b>

**Distribution:**

**Original – SRD**

**Copy To – Engineering Construction / Resident Engineer**

**Instructions--Final Utilization of Local and Small Business Enterprises**

- (I) Enter the project information requested on the first two rows on page 00816-1 (Prime Contractor, Business Address, Contract Bid Amount, etc.)
- (II) Provide the following information **for each portion of the contract work performed by (and for each amount of materials supplied by) a Port-certified small and/or local business**, including the prime contractor if the prime is a Port-certified small/local business:

- Column 1: Name and address of the firm performing work and/or supplying materials.
- Column 2: Description of the work performed and/or materials supplied by said firm.
- Column 3: For subcontractor, supplier or trucker: dollar amount of the bid submitted by the firm to prime bidder, as listed in the Subcontractor and Supplier List Form submitted by prime bidder with its bid. If the subcontractor, supplier or trucker was not listed in the Subcontractor and Supplier List Form, enter "0". For small/local prime bidder: dollar amount of the prime bidder's bid excluding all subcontractor/supplier/trucking broker bid amounts, as listed in the Subcontractor and Supplier List Form.
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- Columns 5a-5d Enter the dollar amount of the work performed and/or materials supplied by the firm in either Column 5a, 5b, 5c or 5d, depending on the firm's certification status. Firm certification status must be certified and determined at the time of bid by Port of Oakland. The certified firm is issued a letter by the Port of Oakland that states their certification status as well as the expiration date of the certification. Firms' certification status may be obtained by accessing the Port of Oakland website (<http://srd.portofoakland.com/>) or by calling (510) 627-1627. Refer to the following table for a description of the certification status:

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SBE (Small Business Enterprise)	business with 3 year average annual gross revenue not to exceed \$36,000,000
VSBE (Very Small Business Enterprise)	business with 3 year average annual gross revenue not to exceed \$5,000,000

If the firm was decertified before completing its portion of the work of this contract, enter the dollar amount of ALL work performed/ materials supplied by the firm, INCLUDING WORK PERFORMED/MATERIALS SUPPLIED AFTER THE DATE OF DECERTIFICATION. **If the amount listed in Column 5 differs from the amount listed in Column 3, provide an explanation in the 'COMMENTS' section as provided.**

- Column 6: Date on which the firm listed in Column 1 completed the work described in Column 2.
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- (III) In the 'TOTAL' row, enter the column sums of the dollar amounts listed in Columns 5a through 5d.
- (IV) The authorized contractor representative shall certify the information supplied by signing in the space provided. **Per Port of Oakland provisions, Final Payment WILL NOT be made until this form is properly filled out and submitted to the Port of Oakland.**

<b>COMMENTS:</b>



**PORT OF OAKLAND**

**Non-Discrimination and Small Local  
Business Utilization Policy Program Affidavit**

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**RFP No.: 21-22/42 - Payment Card Industry (PCI) Service Provider**

I hereby certify that I \_\_\_\_\_ (Legal Name of Respondent/Supplier/Consultant/Contractor), shall carry out applicable requirements in the award and administration of this contract and cooperate with the Port of Oakland in meeting its commitments and objectives with regard to ensuring nondiscrimination, and shall use best efforts to ensure that barriers to participation of Small Local Businesses do not exist.

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

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date



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

- 1) Pay all non-exempt employees the living wage rates (As of July 1, 2021, \$17.56 without health benefits or \$15.30 with health benefits). Port Ordinance No. 3666, as amended also requires that covered businesses provide employees at least twelve compensated days off per year, including holidays.
- 2) Pay at least \$2.26 per hour worked toward the provision of health care benefits for employees and/or their dependents, if the employer claims credit for health benefits.
- 3) **Provide written notification to each current and new employee, at time of hire, of his or her rights to receive the benefits under the provisions of these regulations.** The notification shall be provided in English, Spanish and other languages spoken by a significant number of the employees, and shall be posted prominently in communal areas at the work site. A copy of said notification is available from the Port Division of Social Responsibility.
- 4) Provide all employees earning less than \$12/hour notification in English, Spanish, and any other language spoken by a significant number of employees of their right to advance Earned Income Credit payments.
- 5) **Submit name, address, date of hire, occupation classification, rate of pay, benefits paid for each of its employees, and compensated time off in a web accessed monitoring system at <https://www.elationsys.com/app/Registration/> by March 31st, June 30th, September 30th, and December 31st of each year.** If a covered employer has obtained a waiver from the Port Board of Directors, then the employer must still submit an annual payroll report covering each of its employees by December 31st of each year. Failure to provide the list within five days of the due date will result in a penalty of \$500 per day. Covered employers shall maintain payrolls and basic records for all employees and shall preserve them for a period of at least three years after the close of the compliance period.
- 6) Require subcontractors, tenants and subtenants, or licensees who are covered by these requirements to comply with the provisions of these regulations. **Covered employers shall be responsible for including language committing the subcontractor's, tenant's or licensee's agreement to comply, in the contract with the subcontractor.** Covered employers shall submit a copy of such subcontracts or other such agreements to the Port Division of Social Responsibility.
- 7) Permit authorized Port representatives access to work sites and, with employee consent, relevant payroll records for the purpose of monitoring compliance with these regulations, investigating employee complaints of non-compliance and evaluating the operation and effects of these regulations, including the production for inspection and copying of its payroll records for any or all of its employees for the applicable compliance period. Permit a representative of the labor organizations in its industry to have access to its workforce at the Port during non-working time and in non-work areas to ensure compliance.

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



**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](mailto:cng-wong@portoakland.com)



**PORT OF OAKLAND**

**Certificate of Compliance –  
Living Wage**

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

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

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

*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](mailto:cng-wong@portoakland.com)



**RFP No.: 21-22/42 - Payment Card Industry (PCI) Service Provider**

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

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date



**PORT OF OAKLAND**

**Supplier Insurance Requirements**

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**RFP No.: 21-22/42 Payment Card Industry  
(PCI) Service Provider**

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



**PORT OF OAKLAND**

**Insurance Acknowledgement Statement**

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**RFP No.: 21-22/42 - Payment Card Industry (PCI) Service Provider**

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

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**PROFESSIONAL SERVICES AGREEMENT  
(“Agreement”)**

**Between**

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

**And**

---

**(“Consultant”)**

**[Payment Card Industry (PCI) Service Provider]**

**Reference Date**

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

## 1. Parties

- 1.1 Consultant.** Consultant is identified in **Appendix D (Parties)** (“Consultant”).
- 1.2 Port.** This Agreement is entered into by the City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners (“Port of Oakland” or “Port”). The Port’s Project Manager (“Project Manager”) is identified in **Appendix D (Parties)**.
- 1.3 No Employment Relationship.** Consultant and its employees, subconsultants, and agents shall at all times be deemed an independent contractor wholly responsible for the manner in which it performs the Services, and fully liable for the acts and omissions of such employees, subconsultants, and agents. Under no circumstances shall this Agreement be construed as creating an employment, agency, joint venture, or partnership relationship between the Port and Consultant or its employees, subconsultants, and agents, and no such relationship shall be implied from performance of this Agreement. References in this Agreement to direction from the Port shall be construed as providing for direction as to policy and the result of services only, and not as to means and methods by which such a result is obtained.
- 1.4 No Port Equipment or Accounts.** Unless otherwise authorized by the Project Manager in writing, Consultant shall not be entitled to use any Port equipment or accounts, including, without limitation, email addresses, phone numbers, login credentials, dedicated workspaces, and vehicles.
- 1.5 Compliance with Retirement Laws; CalPERS Notice of Exclusion.** Consultant acknowledges that the Port participates in the California Public Employees’ Retirement System (“CalPERS”) and complies with all laws governing work by retirees from CalPERS, including the California Public Employees’ Retirement Law (Gov. Code § 20000 *et seq.*) and the California Public Employees’ Pension Reform Act (collectively, the “Retirement Laws”). Consultant acknowledges that the Retirement Laws restrict the Port’s use of CalPERS members and retirees. Upon the Port’s request, Consultant shall submit a completed CalPERS Notice of Exclusion for certain or all persons providing Services.

## 2. Term

- 2.1 Term.** The term of this Agreement (“Term”) is described in **Appendix A (Services)**. Unless otherwise provided in this Agreement, this Agreement shall be effective during the Term, provided it has been signed by the Parties and approved as to form and legality by the Port Attorney.
- 2.2 Suspension and Early Termination.**
- 2.2.1 Suspension.** The Port may (in writing and without cause) direct Consultant to suspend, delay, or interrupt the Services, in whole or in part, for such periods of time as the Port may determine in its sole discretion. Such suspension of Services shall be treated as an excusable delay.
- 2.2.2 Port Termination for Cause.** The Port may (in writing) terminate this Agreement in whole, or from time to time in part, for cause, should Consultant



commit a material breach of all or part of this Agreement and not cure such breach within ten (10) calendar days of the date of the Port's written notice to Consultant demanding such cure. Upon such Port termination for cause, Consultant shall be liable to the Port for all loss, cost, expense, damage, and liability resulting from such breach and termination.

**2.2.3 Port Termination for Convenience.** The Port may (in writing) terminate this Agreement in whole, or from time to time in part, for convenience as the Port may determine in its sole and reasonable discretion. Upon such Port termination for convenience, Consultant shall be entitled to recover its costs expended up to the termination plus reasonable profit thereon to the termination date, but may recover no other cost, damage, or expense.

### 3. Services

**3.1 Scope of Services.** Consultant shall perform all services ("Services") described in **Appendix A (Services)**. All Services whenever performed shall be deemed performed under this Agreement.

**3.2 Standard of Performance.** Consultant represents that it possesses all necessary training, licenses, permits, and approvals to perform the Services, and that its performance of the Services will conform to the standard of practice of a person (or persons) specializing in performing professional services of a like nature and complexity to the Services.

**3.3 Subconsultants.** Consultant shall perform the Services using any persons and subconsultants listed in **Appendix A (Services)**. Consultant shall hire only qualified persons or firms who are experienced in performing work of a like nature and complexity as the Services, and who agree to be bound to the terms of the Agreement to the extent of the scope of Services. Consultant may substitute personnel or subconsultants prior to any such personnel or subconsultants commencing work only upon the Project Manager's written consent, which may be withheld or delayed in the Port's sole discretion. When using any person who has retired from a CalPERS agency, Consultant and any subconsultants shall comply with all laws and regulations applicable to CalPERS.

**3.4 Ownership of Non-Software Work Product.** This section only applies to NON-SOFTWARE work product. Any interest (including copyright interests) of Consultant or its subcontractors or subconsultants, in studies, reports, memoranda, computational sheets, drawings, plans, or any other documents (including electronic media) prepared by Consultant or its subcontractors or subconsultants in connection with the Services (but not including any Software, unless otherwise provided in this Agreement), shall become the property of the Port. To the fullest extent permitted by Title 17 of the United States Code, work product produced under this Agreement shall be deemed works for hire and all copyrights in such works shall be the Port's property. With the Port's prior written approval, Consultant may retain and use copies of such works for reference and as documentation of experience and capabilities.

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

#### 4. Payment

4.1 **Payment Terms.** Consultant shall perform the Services for compensation only set forth in **Appendix B (Payment)** (“**Payment**”). All compensation paid to Consultant on account of the Services performed shall be deemed payments under this Agreement.

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

#### 5. Insurance; Indemnification

5.1 **Insurance.** Consultant shall, at its own expense and during the Term, maintain in force the insurance in the types and amounts required by **Appendix C (Insurance)**.

5.2 **Indemnification.** Consultant shall comply with all provisions set forth in **Appendix F (Indemnification)**.

#### 6. Compliance With Laws

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

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

6.1.1 Oakland Living Wage provisions, including Section 728 of the Oakland City Charter and Port Ordinance Nos. 3666 and 3719.

6.1.2 Security requirements imposed by authorities with jurisdiction over the Services (such as the Federal Aviation Administration and U.S. Department of Transportation), which may include providing information, work histories, and/or verifications requested by such authorities for security clearances or compliance.

6.1.3 If the Services are part of a “public works” or “maintenance” project, California Department of Industrial Relations (“**DIR**”) requirements, which include compliance with California Labor Code Sections 1725.5 and 1771.1, Consultant and subconsultant registration with DIR and licensing by the California

Contractors State License Board, and compliance with all laws, regulations, and other requirements for public works of improvement.

**6.2 Non-Discrimination.** Consultant shall not discriminate against or harass any employee or applicant for employment because of race, color, religion, sex, national origin, ancestry, age (over 40), physical or mental disability, cancer-related medical condition, known genetic pre-disposition to a disease or disorder, veteran status, marital status, or sexual orientation. Consultant shall take affirmative action to ensure that applicants and employees are treated fairly with respect to all terms and conditions of employment, which include (without limitation): hiring, upgrading, recruitment, advertising, selection for training or apprenticeship, demotion, transfer, compensation, layoff, or termination. Consultant acknowledges it has reviewed, or had a full opportunity to review, the current version of the Port's Discrimination Complaint Procedures/Unlawful Harassment Policy and Complaint Procedures, which provide an effective and expedited method of resolving employment discrimination allegations and prevent unlawful workplace harassment.

**6.3 Conflicts of Interest.** Consultant shall comply with all applicable laws and regulations relating to conflicts of interest, including any requirements adopted by the City of Oakland or the Port. Consultant represents that it is familiar with California Government Code Sections 1090 and 87100 et seq., and that it does not know of any facts that may constitute a violation of said sections.

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

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

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

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

## **7. Confidentiality; Publicity**

**7.1 Confidentiality.** Consultant acknowledges that, in the performance of the Services or in the contemplation thereof, Consultant may have access to private or confidential information that may be owned or controlled by the Port, the disclosure of which to third parties may be damaging to the Port. Consultant agrees that all information disclosed by the Port to or discovered by Consultant shall be held in strict confidence and used only in performance of the Agreement. Consultant shall exercise the same standard of care to protect such information as a reasonably prudent consultant would use to protect its own proprietary data, and shall not accept employment adverse to the Port's interests where such confidential information could be used adversely to the Port's interests. Consultant

shall notify the Port immediately in writing if Consultant is requested to disclose any information made known to or discovered by Consultant during the performance of the Services. The provisions of this Section shall survive the termination of this Agreement.

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

## **8. Audit and Inspection**

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

**8.1.1** "Retention Period" means the Term and an additional three (3) years following the later of: (a) termination of this Agreement, (b) the Port's final payment under this Agreement, or (c) resolution of pending issues between the Parties under this Agreement.

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

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

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

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

**8.3.1** "Produce" means to, at no cost to the Port and within ten (10) business days of the Port's written request, provide the Port (or the Port's representatives): (a) copies of Records requested by the Port; (b) the ability for the Port to inspect the Records

at a location within a fifty (50) mile radius from the Port offices at 530 Water Street, Oakland, California, or if the Records are not located within said fifty mile radius, the ability for the Port to inspect the Records at another location after Consultant pays the Port all reasonable and necessary costs incurred (including, without limitation, travel, lodging, and subsistence costs); and (c) copies of Records in electronic format through extracts of data files in a computer readable format, such as email attachments, data storage devices, or another adequate electronic format.

## 9. Notices; Agent for Service of Process

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

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

## 10. Disputes; Statutes of Limitation; Governing Law

**10.1 Dispute Resolution.** In the event of any dispute between the Parties under this Agreement, the Parties shall make their best efforts to meet and confer in good faith to resolve the dispute amicably. Consultant shall continue its work throughout the course of any dispute, and Consultant's failure to continue work during a dispute shall be a material breach of this Agreement.

**10.2 Attorneys' Fees.** If either Party commences an action against the other in connection with this Agreement, the prevailing party shall be entitled to recover from the losing party reasonable attorneys' fees and costs of suit.

**10.3 Statutes of Limitation.** As between the Parties, any applicable statute of limitations for any act or failure to act shall commence to run on (a) the date of the Port's issuance of the final Certificate for Payment or termination of this Agreement, or (b) termination of this Agreement, whichever is earlier, except for latent defects, for which the statute of limitation shall begin running upon discovery of the defect and its cause.

**10.4 Governing Law.** This Agreement shall be construed and interpreted in accordance with the laws of the State of California, without regard to principles of conflict of law. Consultant hereby consents to the exclusive jurisdiction of the state and federal courts in Alameda County, California and/or the United States District Court for the Northern

District of California, and any actions arising out of or filed in connection with this Agreement shall be filed solely in such courts.

## 11. Miscellaneous

- 11.1 No Third Party Beneficiaries.** Except as expressly provided in this Agreement, nothing in this Agreement shall confer rights or benefits on persons or entities not party to this Agreement.
- 11.2 Time of the Essence.** Time is of the essence in the performance of this Agreement.
- 11.3 No Waiver.** Any progress payments, approvals, inspections, reviews, oral statements, or certifications by any Port representative or by any governmental entity with respect to this Agreement shall in no way limit Consultant's obligations under this Agreement. Either Party's waiver of any breach, or the omission or failure of either Party, at any time, to enforce any right reserved to it, or to require strict performance of any provision of this Agreement, shall not be a waiver of any other right to which any Party is entitled, and shall not in any way affect, limit, modify, or waive that Party's right thereafter to enforce or compel strict compliance with every provision hereof.
- 11.4 Covenant Against Contingent Fees.** As required by the Port's Purchasing Ordinance No. 4321 (as it may be amended from time to time), Consultant warrants that no person or agency has been employed or retained to solicit or obtain the Agreement upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Port, at its option, may annul the Agreement or deduct from the contract price or otherwise recover from Consultant the full amount of the contingent fee. The following definitions apply to this Section:
- 11.4.1** "bona fide agency" means an established commercial or selling agency, maintained by Consultant for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain the Port contracts nor holds itself out as being able to obtain any Port contract or contracts through improper influence.
- 11.4.2** "bona fide employee" means a person, employed by Consultant and subject to Consultant's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain the Port contracts nor holds itself out as being able to obtain any Port contract or contracts through improper influence.
- 11.4.3** "contingent fee" means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Port contract.
- 11.4.4** "improper influence" means any influence that induces or tends to induce a Port Commissioner, employee or officer to give consideration or to act regarding a Port contract on any basis other than the merits of the matter.
- 11.5 Warranty of Signatories.** Every person signing this Agreement on behalf of Consultant represents and warrants that such person has sufficient authority to sign this Agreement and create a valid and binding obligation on Consultant.

**11.6 Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original instrument and all such counterparts, taken together, shall constitute one and the same instrument. Signatures delivered by facsimile or electronic mail shall be deemed effective as originals.

**11.7 Severability.** If any provision (or portion thereof) of this Agreement is found to be invalid by a court, arbitrator, or government agency of competent jurisdiction, the remainder of this Agreement shall remain in full force and effect. If any provision (or portion thereof) of this Agreement is prohibited by, or made unlawful or unenforceable under any applicable law of any jurisdiction, such provision shall, as to such jurisdiction, be ineffective without affecting the remainder of this Agreement, which shall be enforceable to the fullest extent permitted by law. To the greatest extent permitted by law, the provisions of such applicable law are hereby waived so that this Agreement may be deemed to be a valid and binding agreement.

**11.8 Entire Agreement.** This Agreement contains the entire, exclusive, and integrated agreement between the Parties regarding the subject matter of this Agreement and shall supersede any and all prior negotiations, representations, understandings, or agreements, written or oral, express or implied, that relate in any way to the subject matter of this Agreement. All prior negotiations are merged into this Agreement and shall be inadmissible in any enforcement of this Agreement. This Agreement may not be modified, nor may compliance with any of its terms be waived, except by mutual written agreement by the Parties.

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

<p><b>PORT OF OAKLAND</b></p> <p><b>CITY OF OAKLAND</b>, a municipal corporation, acting by and through its Board of Port Commissioners,</p> <p>By: _____  <b>DANNY WAN, Executive Director</b></p> <p>_____</p> <p><b>THIS AGREEMENT SHALL NOT BE VALID OR EFFECTIVE FOR ANY PURPOSE UNLESS AND UNTIL SIGNED BY THE PORT ATTORNEY.</b></p> <p>Approved as to form and legality:</p> <p>_____</p>	<p><b>CONSULTANT</b></p> <p>_____,  a [State] [business form/type, i.e. corporation, etc.],</p> <p>By:</p> <p>Name:  Title:  Email:</p> <p>_____</p> <p><b>ATTEST</b> (only if California Corp.)</p> <p>By:</p>
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<p><b>MARY C. RICHARDSON</b>, Port Attorney (Or Assistant Port Attorney or Deputy Port Attorney signing on behalf of)</p> <p><b>Port Resolution No.:</b></p> <p><b>Board Approval Date:</b></p> <p><b>PA#: 2022-</b></p>	<p>Name:</p> <p>Title:</p> <p>Email:</p>
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**APPENDIX A**

**SERVICES**

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

**A. SCOPE OF WORK**

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

“Software” means: \_\_\_\_\_.

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

“Equipment” means: \_\_\_\_\_.

**B. APPROVED SUBCONSULTANTS**

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

\_\_\_\_\_.

**C. TERM OF AGREEMENT**

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

The Port has the option of extending the Agreement for an additional \_\_\_\_\_ in \_\_\_\_\_ increments as authorized by the Executive Director and documented by a supplemental agreement to this Agreement, provided, however, that there shall be no increase in the Maximum Compensation payable hereunder.

**APPENDIX A-1**  
**SOFTWARE**

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

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

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

Port Data shall include (without limitation): \_\_\_\_\_.

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

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

Acceptable data formats shall include (without limitation): \_\_\_\_\_.

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

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

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

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

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

## APPENDIX A-2

### SERVICE LEVEL AGREEMENT

Consultant shall make commercially reasonable efforts to ensure the System is available 24 hours per day, every day of the year, except for scheduled maintenance periods during low activity. As used in this Appendix A-2, "System" means [the System/website described in Appendix A].

1. **Uptime Target.** The targeted System quality is:
  - a. At least 99.9% full System availability by all users during non-maintenance periods.
  - b. No more than 70% average CPU utilization over any 5 minute period of time for any [server].
  - c. No less than 20% free space on any hard disk storage system used by the System.
  - d. Level 1 Errors – Begin professional resolution efforts within 1 hour of receiving error notification. Summary of efforts must be emailed every 2 hours detailing issues and attempts at resolution.
  - e. Level 2 Errors – Begin professional resolution efforts within 4 hours of receiving error notification. Summary of efforts must be emailed every 4 hours detailing issues and attempts at resolution.
  - f. Level 3 Errors – Begin professional resolution efforts within 8 business hours of receiving error notification. Summary of efforts must be emailed every 8 business hours detailing issues and attempts at resolution.
2. **SLA Penalties.**
  - a. Monthly Uptime Percentage:
    - o < 99.9% to ≥ 99.0% uptime during non-maintenance periods – penalty is 10% of monthly fees
    - o < 99.0% to ≥ 95.0% uptime during non-maintenance periods – penalty is 20% of monthly fees
    - o < 95.0% uptime during non-maintenance periods – penalty is 50% of monthly fees
    - o 2 consecutive months of less than 95.0% uptime during non-maintenance periods is "Cause" for contract termination by the Port.
  - b. System Equipment Under Capacity:
    - o If any [server] records more than 70% average CPU utilization over any 5 minute period, that the System must be upgraded or replaced within a 2-week period. If a 2<sup>nd</sup> overcapacity event occurs within 2 months after replacement or the [server] is not replaced, the penalty is 5% of monthly fees.
    - o If any hard disk storage system used by the System has less than 20% free space, either unneeded data must be removed or the storage system must be upgraded or replaced within a 2 week period. If a 2<sup>nd</sup> overcapacity event occurs within 2 months after replacement, the penalty is 5% of monthly fees.
  - c. Error Resolution:
    - o Late response to any Level 1 error – penalty is 5% of monthly fees.
    - o Late response to any Level 2 error – penalty is 2% of monthly fees.
    - o Late response to any Level 3 error – penalty is 1% of monthly fees.
  - d. Error Level Definitions
    - o Level 1 Error – System is unavailable to all users.
    - o Level 2 Error – System is experiencing updating or processing errors, and reporting capabilities not working properly, but the System is substantially usable and available to all users.
    - o Level 3 Error – System is exhibiting minor field or page display errors, but the System is substantially usable and available to all users.

Consultant must furnish a report certifying the measurements above by the 5<sup>th</sup> working day after the end of the preceding month.

**APPENDIX B**

**PAYMENT**

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

<b>Maximum Compensation</b>	<b>\$</b>
-----------------------------	-----------

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

The Maximum Compensation may only be increased if such increase is: (a) consistent with all applicable laws and regulations (including, without limitation, the Port's Purchasing Ordinance); (b) consistent with the applicable action authorized by the Board of Port Commissioners; and (c) documented by a supplemental agreement to this Agreement approved by the Executive Director. Any other increases shall only be allowed with a duly adopted authorizing resolution by the Board of Port Commissioners.

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

- |  |  |
|--|--|
| <input type="checkbox"/> upon completion of the work | <input type="checkbox"/> as invoiced                                       |
| <input type="checkbox"/> monthly                     | <input checked="" type="checkbox"/> as set forth in the attached schedule. |

3. **Reimbursable Expenses Allowed?**

- No.** There are no reimbursable expenses allowed under this Agreement.
- Yes.** The Port will reimburse Consultant for the reasonable costs and expenses set forth below, provided they have been pre-approved in writing by the Project Manager. Any other costs or expenses not listed will not be allowed.

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

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

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

- Limits:**

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

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

**Or emailed to [accountspayable@portoakland.com](mailto:accountspayable@portoakland.com), referencing the purchase order number and/or contract number in the subject line.**

5. **Deductions to Payments.** The Port shall have the right to deduct from the amount payable to Consultant, upon written notice, any unauthorized or disputed expenses, any penalty for violations of the Service Level Agreement (as described in Appendix A-2), if applicable, or for overpayment of expenses by the Port and any other amounts owed by the Consultant to the Port. If the Port is required or elects to pay any sum, or if it incurs any obligations or expenses, because of the failure, inability, neglect or refusal of the Consultant to perform or fulfill any of the terms and conditions of this Agreement that it is obligated to perform or fulfill, then the Port shall have the right to deduct these sum(s) from the any and all amounts payable to Consultant.

## APPENDIX C

### INSURANCE

#### 1. Commercial General Liability Insurance

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

#### 2. Business Automobile Liability Insurance

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

#### 3. Contractor’s Pollution Legal Liability Insurance

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

#### 4. Workers’ Compensation and Employer’s Liability Insurance

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

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

#### 5. **Professional Liability Insurance**

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

#### **Other Insurance Requirements:**

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



**APPENDIX D**

**PARTIES**

**CONSULTANT**

**Full Legal Name of Consultant:**

**Corporate Address:**

**Form of Business Entity (Check one)**

- Sole proprietorship
- Corporation: State of \_\_\_\_\_
- Partnership:  General  Limited
- Limited Liability Company
- Other: \_\_\_\_\_

**If Corporation, LLC, LP, LLP:**

***(Required Information)***

**Agent for Service of Process**

**(Name and Address)**

**Contact Individual / Position:**

**Telephone No.:**

**Facsimile No. (if any):**

**Email Address:**

**Website (if any):**

**Tax Identification No.:**

**PORT**

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

## APPENDIX E

### FAA AIP GRANT-REQUIRED PROVISIONS

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

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

#### **A. General Civil Rights Provisions.**

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

#### **B. Compliance With Nondiscrimination Requirements.**

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

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

Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

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

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

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

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

entities (42 U.S.C. §§ 12131–12189) as implemented by Department of Transportation regulations at 49 CFR Parts 37 and 38;

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

**D. Fair Labor Standards Act.**

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

**E. Occupational Safety and Health Act.**

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

**APPENDIX F**  
**INDEMNIFICATION**

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

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

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

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

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

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

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