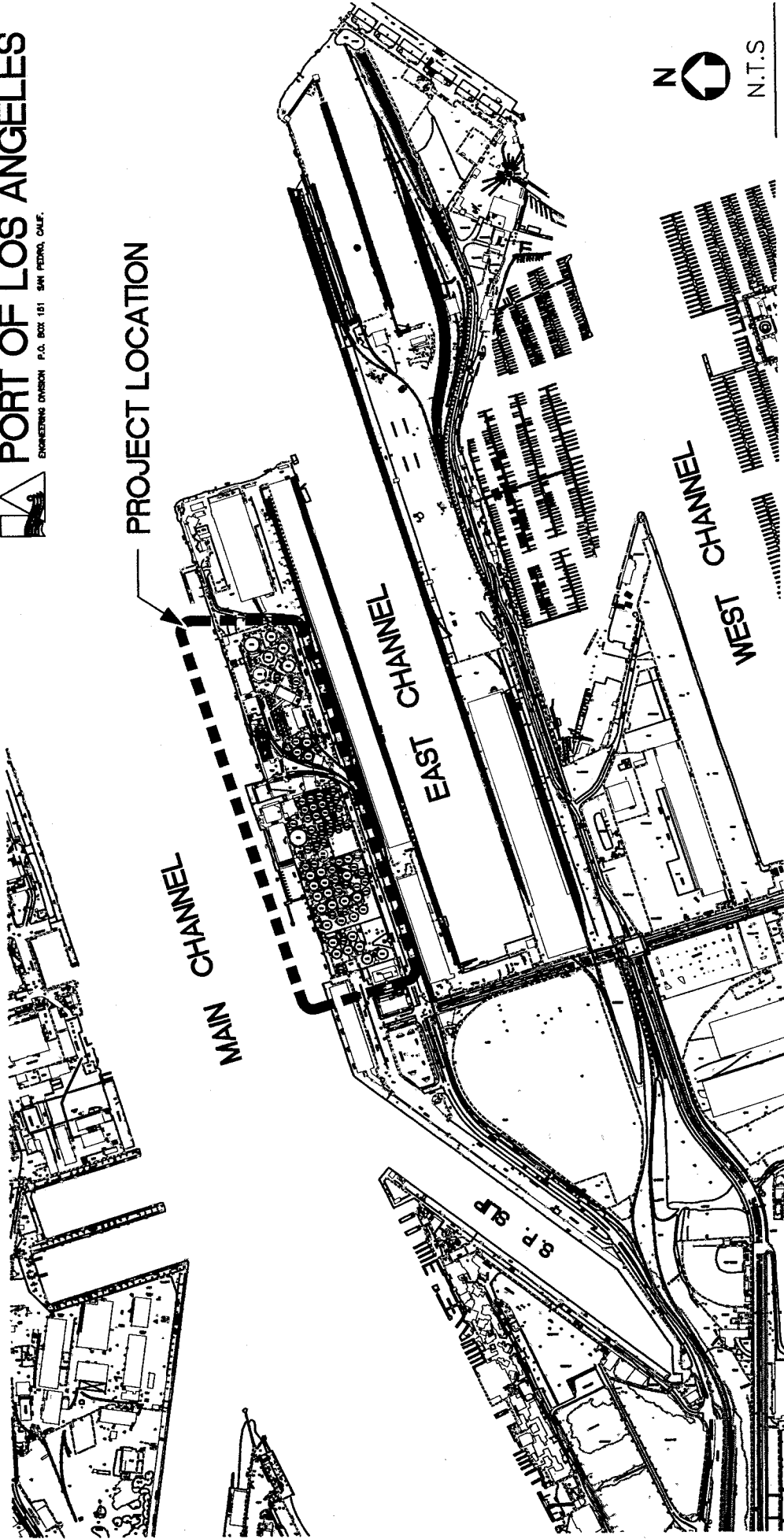




**PORT OF LOS ANGELES**  
ENGINEERING DIVISION P.O. BOX 181 SAN PEDRO, CALIF.



**DECOMMISSIONING AND DEMOLITION OF BERTHS 70 - 72 LIQUID BULK TERMINAL ( WESTWAYS TERMINAL CO. )**

**CONSULTANT EVALUATION CRITERIA**

MOTEMS			
EVALUATION CATEGORIES	SCORE (1-5)	Weighing Factor	Adjusted Score
<b>1. Technical Approach</b>			
a. Understanding of Project Scope	___	5	___
b. Understanding of Technical Issues	___	2	___
c. Understanding of Regulatory Requirements	___	2	___
d. Innovative Approaches	___	1	___
e. Understanding of Deliverables required	___	2	___
<b>2. Project Management</b>			
a. Quality Control	___	3	___
b. Cost Control	___	2	___
c. Progress Report System	___	1	___
e. Overall Management Plan	___	2	___
f. Design Schedule & Control	___	2	___
<b>3. Project Organization/Personnel</b>			
a. Project Manager Qualifications	___	5	___
b. Technical Team Qualifications/ Org. Chart of key members	___	3	___
c. Team Availability	___	2	___
d. Subconsultants Qualifications	___	2	___
e. Team work location relative to Port headquarters	___	1	___
f. Experience on similar projects as a team	___	2	___
<b>4. Cost/Project: \$</b>			
a. Cost Allocations/Task	___	5	___
b. Billing Rate Schedule	___	5	___
c. Percentage mark-ups for subconsultants	___	5	___
d. Total Cost	___	5	___
			_____ (SUBTOTAL)
<b>5. Qualification/Experience</b>			
a. Regulatory Experience with California State Lands Commission and other regulatory agency	___	2	___
b. Experience with Marine Oil and Liquid Bulk Terminals	___	3	___
c. Inspection of Wharves, Piers, Bridges and Retaining Wall Structures	___	3	___
d. Design of Wharves, Piers, Bridges and Retaining Wall Structures	___	3	___
e. Previous work of similar nature	___	2	___
f. CAD Capability	___	2	___
			_____ (SUBTOTAL)
<b>6. Other Considerations</b>			
a. Adherence to RFP Requirements	___	5	___
b. Clarity of Proposal	___	1	___
c. Client References	___	1	___
d. Acknowledge receipt of standard agreement	___	1	___
			_____ (SUBTOTAL)
<b>7. Contract/Administrative Requirements</b>			
	None	None	Yes/No
<b>(Verification of Compliance or Intent)</b>			
a. Affirmative Action Form			
b. Professional Liability Insurance			
c. General Liability Insurance			
d. Auto Liability Insurance.			
e. Conflict of Interest Form			
f. Indemnification Form			
g. Worker's Compensation Form			
h. Business Tax Registration			
i. Service Contractor Worker Retention and Living Wage Ordinance			
j. Small Business(SBE) Development Program			
k. Equal Benefits Policy			
			_____ TOTAL SCORE:

**SCORING GUIDELINES:**

- 0 - Not Included
- 1 - Marginal Abilities - Serious Deficiencies
- 2 - Adequate with Minor Deficiencies

- 3 - Adequate - Standard - Acceptable
- 4 - Well Qualified
- 5 - Exceptionally Well Qualified

## Consultant Selection and Cost Summary

	AL	AL RANK	KA	KA RANK	RA	RA RANK	CT	CT RANK	BC	BC RANK	TOTAL SCORE	TOTAL RANK
PBS&J	371	1	312	1	395	1	370	3	372	1	1820	1
Halcrow	351	2	297	2	392	2	374	1	369	2	1783	2
DMJM	350	3	289	3	390	3	372	2	367	3	1768	3
URS	322	4	280	5	347	4	372	2	361	4	1682	4
KPFF	311	5	282	4	341	5	353	4	351	5	1638	5

Cost Summary for URS  
 Original Cost Submittal: \$1,853,462  
 (MOTEMS work only)\*

\* The original submittal did not include the cost for decommissioning and demolition of the facility, support of environment document, nor planning and design for reuse of existing buildings and structures. The revise work is a result of the negotiated settlement with Westways to vacate the facility.

Final Negotiated Agreement \$3,537,000





Executive Director's  
Report to the  
Board of Harbor Commissioners

**DATE:** February 6, 2008

**FROM:** ENGINEERING

**SUBJECT: PERSONAL SERVICES AGREEMENT BETWEEN THE CITY OF LOS ANGELES AND PBS&J, HALCROW INC., AND DMJM + HARRIS FOR THE MARINE OIL TERMINAL ENGINEERING AND MAINTENANCE STANDARDS (MOTEMS) AUDIT AND DESIGN SUPPORT SERVICES**

**SUMMARY**

The agreements with PBS& J - Orange, California; Halcrow Inc., - Long Beach, California; and DMJM + Harris - Orange, California; provide the Port of Los Angeles with Marine Oil Terminal Engineering and Maintenance Standards (MOTEMS) audit and design support services for seven liquid bulk facilities located at the Port of Los Angeles. This action will authorize the following professional services agreements:

<u>Consultant</u>	<u>Term</u>	<u>Amounts</u>
PBS&J	3 years	\$5,100,000
Halcrow Inc.	3 years	\$5,200,400
DMJM + Harris	3 years	\$5,100,000

**RECOMMENDATION**

It is recommended that the Board of Harbor Commissioners:

1. Find that in accordance with the City Charter Section 1022, work under the subject agreement(s) is temporary in nature and can be performed more feasible by an independent consultant(s) rather than by City employees.
2. Approve the subject agreement(s) with PBS&J, Halcrow Inc., and DMJM + Harris as follows:

PBS&J	\$5,100,000
Halcrow, Inc.	\$5,200,400
DMJM + Harris	\$5,100,000
3. Authorize the Executive Director and the Board Secretary to execute and attest to said agreement(s) for and on behalf of the Board.

DATE: February 6, 2008

PAGE 2 OF 6

SUBJECT: PERSONAL SERVICES AGREEMENT BETWEEN THE CITY OF LOS ANGELES AND PBS&J, HALCROW INC, AND DMJM + HARRIS FOR THE MARINE OIL TERMINAL ENGINEERING AND MAINTENANCE STANDARDS (MOTEMS) AUDIT AND DESIGN SUPPORT SERVICES

## DISCUSSION

### 1. Project Background

The Port has eight liquid bulk facilities comprising a total of 114 acres to handle various types of commodities for both import and export. Handling facilities include tankers, barges, bulk carriers and storage tanks with rail access. The Marine Oil Terminal Engineering Standards (MOTEMS) Chapter 31F (Marine Oil Terminals), Title 24, California Code of Regulations, Part 2, California Building Code apply to existing and new marine oil terminals in California, and include criteria for inspection, structural analysis and design, mooring and berthing, geotechnical considerations, fire, piping, mechanical and electrical systems.

MOTEMS requires that all liquid bulk facilities undergo an initial audit to determine fitness for purpose of the facilities. MOTEMS further requires that all deficiencies discovered during the audit process be corrected to the requirements of the new Code of Regulations. The Port is responsible for maintenance of the marine structures and embankments of each liquid bulk facility and therefore responsible for all necessary modifications to bring the marine structures and embankments into MOTEMS compliance.

Each tenant is responsible for the remaining land based structures, tanks, piping, and fire suppression and would be responsible for the corresponding MOTEMS compliance modification to these items.

### 2. Contract Scope of Work

The scope of work for these proposed contracts includes assisting the Department with MOTEMS audit and design services for seven of the eight liquid bulk facilities located within the Port of Los Angeles. The eighth facility, the Westways Terminal, is scheduled to cease operations in February 2009. Staff is negotiating a separate agreement for decommissioning and demolition of this facility and will request the Board's approval of the agreement at a future meeting.

The Consultant will assist with preparation of the Initial Audit (above water and underwater inspection and engineering analysis) report of each facility. The Initial Audit report will be submitted to the California State Lands Commission (CSLC). Depending on the findings of the initial audit, additional services may include the preparation of Plans, Specifications, and Estimates (PS&E's) to bring identified liquid bulk facilities into compliance with MOTEMS standards.

**DATE: February 6, 2008**

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**SUBJECT: PERSONAL SERVICES AGREEMENT BETWEEN THE CITY OF LOS ANGELES AND PBS&J, HALCROW INC, AND DMJM + HARRIS FOR THE MARINE OIL TERMINAL ENGINEERING AND MAINTENANCE STANDARDS (MOTEMS) AUDIT AND DESIGN SUPPORT SERVICES**

The project locations, risk rating, and initial audit deadline as determined by State Lands are as follows:

<u>Berths</u>	<u>Operator</u>	<u>Risk Rating</u>	<u>Initial Audit Deadline</u>
118-120	Kinder Morgan	Medium	February, 2010
148-151	Conoco-Phillips	Medium	February, 2010
163	NuStar Terminals	Medium	February, 2010
164	Valero LP	High	August, 2008
167-169	Shell Oil	High	August, 2008
187-191	Vopak	High	August, 2008
238-240C	Exxon-Mobil	High	August, 2008

3. Consultant Selection

On August 20, 2007 the Request for Proposal (RFP) was posted on Diversity Exchange and also on the POLA website. Five firms submitted the following proposals:

<u>Firm</u>	<u>Amount(All MOTEMS Terminats)</u>
• PBS&J	\$14,798,863
• Halcrow Inc.	\$15,158,852
• DMJM+Harris	\$19,333,106
• URS	\$24,036,731
• KPFF Consulting Engineers	\$32,160,474

Staff reviewed all proposals and determined that it was in the best interest of the Port to interview all consultants. The interview panel consisted of Port staff from Planning, Real Estate, Environmental, and Engineering Divisions. Interviews were held on October 24, 2007.

During the interview, each firm responded to a set of questions formulated by the selection committee. The presentations and proposals were then ranked independently by each committee member. Evaluation Criteria, Consultant Selection Summary, and Consultant/Subconsultant listing is transmitted for information.

PBS&J, Halcrow Inc., and DMJM + Harris, demonstrated superior knowledge and experience in the following areas:

- Familiarity with the California State lands Commission MOTEMS (Marine Oil Terminal Engineering and Maintenance Standards)

DATE: February 6, 2008

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SUBJECT: PERSONAL SERVICES AGREEMENT BETWEEN THE CITY OF LOS ANGELES AND PBS&J, HALCROW INC, AND DMJM + HARRIS FOR THE MARINE OIL TERMINAL ENGINEERING AND MAINTENANCE STANDARDS (MOTEMS) AUDIT AND DESIGN SUPPORT SERVICES

- Innovative Design Experience
- Understanding of the scope of work, as evidenced in part by the budgetary estimates provided and the firm's role in recent similar projects
- Ability of the proposed team(s) to manage the complete planning and design of improvements while tenant is under operations
- Project management approach demonstrating ability to control costs and schedule
- Quality assurance and quality control measures proposed with respect to the project
- SBE requirements

Staff recommends final agreement amount and assignments as follows:

Berths	Recommended Consultant	Cost
118-120	DMJM+Harris	\$2,189,751
148-151	PBS&J	\$2,525,000
163	Halcrow	\$1,550,050
164	Halcrow	\$1,552,950
167-169	DMJM+Harris	\$2,910,249
187-191	PBS&J	\$2,575,000
238-240C	Halcrow	\$2,097,400
	Total:	\$15,400,400

Further break down of the contract costs are provided in Transmittal No. 2. The above costs per terminal includes both audit and design services. Costs for design may not be incurred if it is concluded that the facility will be decommissioned due to economic or land use changes.

#### 5. Contract Requirements

Throughout the term of the agreement, each consultant will maintain compliance with the City's contract requirements. Each consultant's Small Business Enterprise(SBE) participation is as follows.

<u>FIRM</u>	<u>SBE%</u>	<u>SBES</u>
PBS&J	25.80%	\$1,275,000
Halcrow Inc.	27.80%	\$1,445,600
DMJM + Harris	25.10%	\$1,280,000

DATE: February 6, 2008

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SUBJECT: PERSONAL SERVICES AGREEMENT BETWEEN THE CITY OF LOS ANGELES AND PBS&J, HALCROW INC, AND DMJM + HARRIS FOR THE MARINE OIL TERMINAL ENGINEERING AND MAINTENANCE STANDARDS (MOTEMS) AUDIT AND DESIGN SUPPORT SERVICES

This agreement is in conformance with both the City of Los Angeles Service Contract Worker Retention and Living Wage Ordinances.

**ECONOMIC IMPACT**

Peak spending under this agreement in FY08/09 will support up to 131 jobs in the region.

**ENVIRONMENTAL ASSESSMENT**

The proposed action is the approval of agreements between the City of Los Angeles and three engineering firms to provide audit and design services to assist the Port in complying with MOTEMS regulations. Any physical work identified through the audit will be assessed separately. As such, the Director of Environmental Management has determined that the proposed action is exempt from the requirements of the California Environmental Quality Act (CEQA) in accordance with Article II, Section 2(f) of the Los Angeles City CEQA Guidelines.

**FINANCIAL IMPACT**

Funds for the current fiscal year have been budgeted in Account No. 54220, Center No. 1195, Program No. 000, in the amount of \$1,500,000. It is anticipated that funds for this agreement will be expended as follows:

	PBS&J	Halcrow	DMJM
FY 2007/2008	\$500,000	\$600,400	\$400,000
FY2008/2009	\$2,100,000	\$2,100,000	\$2,200,000
FY 2009/2010	\$1,500,000	\$1,500,000	\$1,500,000
FY 2010/2011	\$1,000,000	\$1,000,000	\$1,000,000
Sub-Total:	<u>\$5,100,000</u>	<u>\$5,200,400</u>	<u>\$5,100,000</u>
Total:	\$15,400,400		

Although the consultant is not obligated to perform any work under the agreement in any fiscal year in which no appropriation for the agreement has been made, the consultant agrees to resume performance of the work required by the agreement on the same terms and conditions for a period of 60-days after the end of the fiscal year if an appropriation therefore is approved by the Board within that 60-day period. The consultant is responsible for maintaining all insurance and bonds during this 60-day period. The time for performance shall be extended during this period until the appropriation is made; however, such extension of time is not compensable.

DATE: February 6, 2008

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SUBJECT: PERSONAL SERVICES AGREEMENT BETWEEN THE CITY OF LOS ANGELES AND PBS&J, HALCROW INC, AND DMJM + HARRIS FOR THE MARINE OIL TERMINAL ENGINEERING AND MAINTENANCE STANDARDS (MOTEMS) AUDIT AND DESIGN SUPPORT SERVICES

If in any subsequent fiscal year funds are not appropriated by the Board for the work required by the agreement, the agreement shall be terminated. However, such termination shall not relieve the parties of liability for any obligation previously incurred.

CITY ATTORNEY

The Office of the City Attorney has reviewed and approved as to form the attached agreements.

TRANSMITTALS

1. Site Map of project(s)
2. Consultant Evaluation Criteria
3. Consultant Selection and Cost Summary
4. Consultant/Subconsultant Listing
5. Resolution
6. Agreement between the City of Los Angeles and PBS&J
7. Agreement between the City of Los Angeles and Halcrow Inc.
8. Agreement between the City of Los Angeles and DMJM+Harris



ANTONIO V. GIOIELLO  
Chief Harbor Engineer



MICHAEL R. CHRISTENSEN  
Director of Port Development

AL:lg  
24838b01

APPROVED:



GERALDINE KNATZ, Ph.D  
Executive Director



**DRAFT**

**AGREEMENT NO. \_\_\_\_\_**

**BETWEEN THE CITY OF LOS ANGELES**

**AND**

**URS CORPORATION AMERICAS**

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**AGREEMENT NO.**  
**BETWEEN THE CITY OF LOS ANGELES**  
**AND**  
**URS CORPORATION AMERICAS**

THIS AGREEMENT is made and entered into by and between the CITY OF LOS ANGELES, a municipal corporation acting by and through its Board of Harbor Commissioners ("the City"), and URS Corporation Americas, a Nevada corporation, doing business in California as URS Corporation Americas whose address is 5772 Bolsa Avenue, Suite 100 Huntington Beach, CA 92649-1134 ("Consultant").

**RECITALS:**

**WHEREAS**, the City requires professional, scientific, expert or technical services of a temporary and occasional character, including design services; and

**WHEREAS**, Consultant is an organization that provides design services, including, but not limited to, those services required by the City and, by virtue of training and experience, is well-qualified to provide such services to the City; and

**WHEREAS**, by reason of the nature and length of the services required by the City, it is not economical or feasible for the City to have the Work performed by its own employees.

**NOW, THEREFORE**, in consideration of the covenants, terms and conditions hereinafter contained to be kept and performed by the respective parties hereto, it is mutually agreed as follows:

**I. DEFINITIONS**

- A. **Agreement:** This document and Exhibits A through M attached to it and incorporated by reference herein.
- B. **Board:** Board of Harbor Commissioners of the City of Los Angeles.
- C. **City:** The City of Los Angeles, a municipal corporation.
- D. **Consultant:** The Consultant is URS Corporation Americas. All obligations under this Agreement, whether performed by Consultant or its Subconsultants, are the responsibility of Consultant. Consultant shall ensure that its Subconsultants satisfy all substantive requirements for the Work set forth by this Agreement.
- E. **Contract Documents:** Project design drawings and specifications prepared for advertisement for bids.
- F. **Contractor(s):** The entity awarded the contract(s) to perform the construction of Project.

- G. **Deliverables:** Unless specified otherwise in this Agreement, the original Work product, which Consultant is retained to produce for City and three copies or exact reproductions thereof. Deliverables may include, but are not limited to, drawings, technical specifications, estimates, reports, records, reference material, data, charts, documents, renderings, computations, computer tapes or disks, and other items of any type whatsoever, whether in the form of writing, figures, delineation or electronic data prepared or compiled in connection with this Agreement.
- H. **Department:** Harbor Department, City of Los Angeles.
- I. **Director:** Executive Director, Harbor Department, City of Los Angeles or his or her designee.
- J. **Engineer:** Chief Harbor Engineer, Engineering Division, Harbor Department, City of Los Angeles or his designee.
- K. **Engineering Design Guidelines:** Latest edition of Department's design criteria and procedures to be used by Consultant in the performance of the Work.
- L. **Financial Records:** All records of Consultant or its Subconsultants pertaining to the services provided, hours expended and expenses incurred and charged pursuant to this Agreement.
- M. **Project:** A discrete, defined undertaking generally described in Exhibit "A" and otherwise known as Decommissioning and Demolition of Berths 70-72 Liquid Bulk Terminal (Westway Terminal Co.).
- N. **Subconsultant(s):** Subconsultant(s) are those persons/firms retained by Consultant to assist in the performance of the Work and approved by Engineer in writing as specified in Article II, Section D.
- O. **Work:** All services to be provided by Consultant and Subconsultants pursuant to this Agreement.

## II. **GENERAL PERFORMANCE REQUIREMENTS**

- A. **Consultant to Furnish:** Consultant shall furnish all services, materials, equipment, subsistence, transportation and all other items necessary to perform Work. Consultant understands it is responsible for all taxes and fees which may be assessed against it or employees as a result of performance of the Work, whether social security, payroll or other, and regardless of whether assessed by the federal government, any state, the City, or any other governmental entity. The City will pay applicable state or local fees necessary to obtain approval, plan checks, permits and variances for the Project.

- B. **Consultant's and Subconsultants' Employees:** For the performance of the obligations required herein, Consultant shall assign only personnel, including its own employees, and its Subconsultants, who are qualified to perform the Work. If the quality of Work of personnel assigned by Consultant is unacceptable to City, Consultant agrees to assign replacement personnel upon request of Engineer. Compliance with the requirements of this paragraph shall be a condition to payment by City of compensation to Consultant pursuant to this Agreement.
- C. **Consultant's Project Manager:** It is expressly understood and agreed that Consultant's Project Manager for Work to be performed under this Agreement, R.C. Kannan, shall not be changed without Engineer's written approval. City may, for any reason in its sole discretion, require Consultant to substitute a new Project Manager. If City requests such a substitution, the substitute manager shall not bill for the time it takes to become familiar with the Project and Work already performed.
- D. **Subconsultants:** Whenever it is necessary for Consultant to substitute or employ other Subconsultants in addition to those listed in Exhibit "C," that action shall require the prior written approval of the Engineer provided, however, such written approval is not necessary for wholly owned subsidiaries and/or Subconsultants whose total costs to be borne by Consultant is less than Five Thousand Dollars (\$5,000.00). Upon written request from the Engineer, Consultant shall supply the Department with all Subconsultant agreements. Work performed by Subconsultants shall be so identified.
- E. **Meetings, Permits and Utility Coordination:** Consultant shall attend meetings, conferences, hearings and provide drawings, applications and exhibits necessary to obtain all required approvals, plan checks, permits, variances and utility services/modifications for the Project. Consultant shall determine regulatory agency approvals, plan checks, permits and variances necessary for Project's design and construction unless the Engineer otherwise directs in writing. Consultant shall prepare and deliver to Engineer, for review and comment, minutes of all meetings attended within three (3) Working days after the meeting, whether or not Department is represented at said meetings, if the subject of such meeting is material to design of Project or if Engineer requests such meeting minutes.
- F. **Performance Standards:** If the law requires Consultant, in performing its services under this Agreement, to follow a different standard of care than the ordinary standard of care applied to a reasonable person, Consultant shall perform its services with the degree of diligence, skill, judgment, and care which is consistent with the standard assigned by the law for Consultant's profession (the "professional standard"). Consultants not required to follow a professional standard, either because they are not subject to such a standard or because they perform services outside the scope of professional standard services, shall, in performing their services under this Agreement, exercise the degree of care required of ordinary persons. Consultant shall

be responsible for all services performed by Consultant and Subconsultants under this Agreement and shall assure all services are completely performed in a cost-effective manner. The Consultant shall correct or remedy any errors, omissions or deficiencies, which occur in the performance under this Agreement at its expense. Revising Consultant-prepared documents during design to incorporate comments by the Engineer or agencies having jurisdiction in matters of the particular task assignment is not considered to be a remedy of errors, omissions or deficiencies, but is an integral part of the Work.

- G. **Engineer Comments:** Consultant shall promptly consider any written comments of Engineer. If Consultant disagrees with such comments, it shall promptly notify Engineer in writing. Failure to so respond and/or incorporation of Engineer's comments into the Work signifies agreement with such comments. If Engineer instructs Consultant to incorporate Engineer's comments in the Work in spite of Consultant's disagreement therewith, Consultant will be relieved of liability for any loss proximately caused by the change required by Engineer, provided such loss would not have occurred had such change not been made. Consultant may continue the Work through scheduled review periods, provided that resolutions to all review comments, as approved by the Department's Project Manager, shall be incorporated in the Work prior to Consultant making the next milestone submittal.
- H. **Engineering Design Guidelines:** Consultant acknowledges receipt of the Department's "Engineering Design Guidelines," and "CADD Manual" (Guidelines), has read them and shall perform Work in accordance with the Guidelines. Upon review of these Guidelines, Consultant shall, as soon as reasonably possible, but in any event within ten (10) weeks of the effective date of this Agreement, notify Engineer in writing of any terms, criteria, or procedures contained therein which Consultant does not intend to use. Consultant shall thereafter notify Engineer of any further Guideline provisions it later determines not to follow. If Engineer does not agree with Consultant's decision regarding the Engineering Design Guidelines, Engineer will instruct Consultant to comply with the provisions, in writing.
- I. **Department-Provided Information:** Consultant shall review information provided by Department, whether in the form of drawings, documents, and/or written or verbal comments, excluding survey data. Any such information suspected by Consultant to be inaccurate, incomplete or not applicable shall be brought promptly to the attention of Engineer in writing.
- J. **City's Review:** Consultant understands and agrees that City, at all times under this Agreement, has the right to review Project documents and Work in progress and to audit Financial Records, whether or not final, which Consultant or anyone else associated with the Work has prepared or which relate to the Work which Consultant is performing for City pursuant to this Agreement regardless of whether such records have previously been provided to City. Consultant shall provide City at Consultant's expense a

copy of all such records within five (5) Working days of a written request by City. City's right shall also include inspection at reasonable times of the Consultant's office or facilities which are engaged in the performance of the Agreement. Consultant shall, at no cost to the Department, furnish reasonable facilities and assistance for such review and audit. Consultant's failure to provide the records within the time requested shall preclude Consultant from receiving any payments due under this Agreement until such documents are provided.

- K. **Site Coordination:** Consultant shall coordinate with tenant(s) and Contractor(s) to access the Project area and shall minimize disruption of tenant and contractor operations.
  
- L. **Compliance With Laws:** The designs and the concepts included in the Deliverables, such as contract drawings and specifications and all changes therein formulated by the Consultant and all Work performed under this Agreement, shall comply with all federal, state, municipal, local and departmental laws, ordinances, rules, regulations, and orders which would affect or control said designs and concepts if the construction were being performed for a private corporation. If, however, the City standard is more stringent, the City standard shall be followed unless the Engineer notifies the Consultant otherwise in writing, in which case the requirements of said notification shall apply.
  
- M. **Assignment of Personnel:** For Work performed on a time and material basis, Consultant agrees to assign the person with the lowest hourly charge who is fully competent to provide the services required. If Consultant finds it necessary to have Work, which would usually be performed by personnel at a lower rate, performed by personnel paid at a higher hourly rate, Consultant shall, nevertheless, bill at the lower rate.
  
- N. **Progress Reports:** Consultant shall provide Engineer progress reports in a format and on a schedule as Engineer directs. Progress reports shall include a description of Work completed, cumulative dollar costs incurred, as well as costs since the last progress report, anticipated Work for the next reporting period, percentage of Work complete, and the expected completion date for remaining Work. The report shall identify problem areas and important issues that may affect Project cost and/or schedule. The report shall present actual percentage completion and cash flow versus planned percentage completion and cash flow both numerically and graphically.
  
- O. **Additional Work:** Consultant and Subconsultants shall perform no Work beyond the scope of this Agreement, unless duly authorized by written change order or amendment. Consultant acknowledges that it and its Subconsultants shall receive no compensation for Work beyond the scope of this Agreement, unless duly authorized by written change order or amendment.

- P. **Suitability of Work and Consultant Cooperation:** Consultant shall furnish, in accordance with the agreed upon schedule, a complete, practical, economical design, contract drawings and specifications (if such drawings and specifications are within the scope of Consultant's Work), and related corrections and changes which are best suited for the contemplated construction, and ensure all Work is completed in accordance with Article II, Section H and with sound engineering principles and is signed and sealed by a licensed Professional Engineer and/or Architect, as appropriate. Consultant shall, upon request of the Engineer, provide all calculations, data, charts, and other information of any type whatsoever which support its designs or other Work performed pursuant to this Agreement. Consultant may not assert as a basis for refusing to provide such information that it is proprietary. Consultant shall satisfy Engineer that design decisions are based on objective evaluation of the requirements of the facility owner and user, meet site-specific conditions, comply with Project construction cost budget, and minimize long-term operation and maintenance costs. Consultant is aware and agrees that the City has the right to submit the Consultant's Work product to independent design reviewers. Consultant agrees to fully cooperate with such reviewers if City determines review is appropriate. Consultant's obligation to cooperate shall include the obligation to respond in an objective professional manner to requests for information, and, if expressly requested by Engineer, to enter into a dialogue with the reviewer regarding the comments of the reviewer on the Work.
- Q. **Time of Essence:** Work shall be performed as expeditiously as possible and at the time or times required by the Engineer. Time is of the essence in the performance of all of Consultant's services under this Agreement. Consultant's failure to conform to the schedule shall entitle the City to have the services completed by others and Consultant, under this Agreement, agrees to pay City the City's cost of completing such services and authorizes City to withhold such amounts from any progress payments otherwise due to Consultant. Consultant understands that Consultant's failure to timely perform will result in economic losses to the City, including, but not limited to, the timely bidding and awarding of contracts, completion of projects and the use of such projects by the Department, tenants or the public.
- R. **Quality Assurance:** The scope of services for this requirement is further defined in Exhibit "B." Consultant shall independently implement a Quality Assurance program to ensure all services performed and Deliverables submitted pursuant to this Agreement conform to recognized professional standards and the requirements of this Agreement. Consultant shall, if directed by the Engineer, submit the following: (i) Consultant's Project Management and Project Control Plan, (ii) Consultant's specific Quality Control measures to correct any performance deficiencies in the professional services as determined by the Engineer. As part of the Consultant's Quality Control, Consultant Senior Staff shall perform independent review of all

documents for completeness, technical accuracy, and coordination and code compliance at the end of each Work phase prior to submittal of Deliverables to Engineer.

- S. **Project Schedule:** The Department utilizes Microsoft Project to develop and manage schedules for the Capital Improvement Program (CIP). Consultant shall utilize the same or compatible application as approved by Engineer to develop and regularly update the Project schedule, initially focusing on design phase activities, including significant milestones, permits, property acquisition and related Work, to allow effective planning, monitoring and reporting of the progress of the Project. As construction phase activities are determined, that phase of the Project schedule shall be enhanced. The schedule shall be designed to integrate with the milestones referenced in the Department's Model Schedule. Department will incorporate this Project schedule into the master CIP schedule. The initial schedule shall be submitted within 15 days after Notice to Proceed. The final schedule shall be in conjunction with the signature submittal. All schedule submittals shall be in the form of two hard copies and one electronic copy unless noted otherwise herein.

### III. **SERVICES TO BE PERFORMED BY CONSULTANT**

The Work to be performed by Consultant shall be in accordance with this Agreement. Consultant shall perform and will provide to City the services described herein, and the specific services set forth in Exhibit "B." Consultant shall provide project management further defined in Exhibit "B," including planning, controlling, staffing and coordinating the services provided as an integral part of the Work.

- A. **Initiation of Work:** All Work pursuant to this Agreement will be initiated by a written single Notice to Proceed or multiple Notices to Proceed from Engineer, as applicable. If this Agreement requires Consultant to perform multiple Work tasks, which are dependent on the satisfactory performance of a previous task, Consultant shall obtain individual Notices to Proceed from the Engineer to proceed with such successive tasks.
- B. **Deliverables:** Consultant shall submit all Deliverables to the Engineer as follows:
1. Drawings produced by the Consultant shall conform to the best standards of the profession in which the generator of the drawings practices. Information shall be organized in a logical, systematic manner, using the necessary number of drawings required to maintain clarity and completeness. Drawings and specifications shall fully delineate the Work to be done and materials required. Dimensions, diagrams, descriptions, cross sections, and details shall demonstrate adequacy of design for review, permitting, bidding, and construction.

2. Reports and specifications shall be prepared on a word processor and hard copy submittals shall be on 8-1/2" X 11" size white paper unless otherwise approved by Engineer. Submittals shall be bound, except any final submittal intended solely for reproduction by Department shall be unbound. Pages shall be numbered in the lower margin. Reports shall include a title page and table of contents with lists of exhibits, plates and appendices. Information shall be presented in a clear, logical, and organized manner which will facilitate review by the reader. Reports and studies shall be submitted in draft or preliminary form for review prior to the final submittal. Specifications shall be prepared in conformance with the format of the Construction Specifications Institute, unless Engineer otherwise directs.
3. Unless otherwise directed in writing, Consultant shall submit all Deliverables, such as reports, drawings, specifications, designs, calculations, schedules and all Work necessary to produce its Deliverables, in an electronic format (AutoCad and/or PDF) acceptable to Engineer in addition to the hard copies. Consultant shall assure at the start of Project that its proposed method of electronic submittal to City is consistent with City's computer hardware, networking and software systems, including layering of information and the attachment of data files to the drawings. Pertinent data gathered during the course of the Work will be entered into an electronic database (if required) acceptable to Engineer. In conjunction with the submittal of computer-generated calculations, Consultant shall document the appropriateness of the selected software to the task and clearly describe the input/output and default elements of the software and their relation to the Project.
4. Unless the Engineer otherwise directs in writing, the Project drawings are to be electronically generated on a CAD (Computer Aided Drafting) system equal to or compatible by translation with the Department's AutoCAD system. To enable drawing elements to be manipulated and translations to be efficient, all CAD-generated drawings shall be developed as dimensionally and geometrically precise models (to three decimal places) of the Work depicted. For a CAD system other than AutoCAD, a translated representative sample (one sheet minimum of each discipline) must be included with each submittal. The Consultant shall conform to the drafting standards, layering and symbology of the Department. The Consultant will be apprised by the Department of its layering and symbology requirements prior to the start of Work.
5. Signature and Record Drawing submittals shall be in electronic format as approved by the Engineer as well as the original

reproducible vellum. Each original drawing sheet shall be stamped and signed by an engineer or architect appropriately licensed to practice in the State of California.

**C. Conceptual Study and Report Phase:** The scope of services for this phase is further defined in Exhibit "B."

After Notice to Proceed is issued for this phase, and as required in conjunction with the environmental review of any project under the California Environmental Quality Act, Consultant shall review Project scope and develop and perform technical and economic evaluations of feasible alternative concepts, including:

1. Consult with City to clarify and define Project goals and requirements and to review available data.
2. Advise City as to the necessity of City providing existing Project-related data.
3. Identify, consult with, and analyze requirements of governmental authorities having jurisdiction to approve the design of the Project.
4. Provide analyses of City's needs, design criteria, critical issues, constraints, project sites and potential solutions.
5. Prepare a conceptual study report that would include the following: schematic layouts, sketches and exhibits to indicate clearly the recommended concept and the alternative elements considered setting forth Consultant's findings, evaluations and recommendations. This report will be accompanied by a Project schedule and an itemized estimate of Project costs, including construction cost, design costs and contingencies for each alternative element considered.
6. Furnish ten (10) copies of the study and report documents and review them in person with City.

**D. Preliminary Design Phase:** The scope of services for this phase is further defined in Exhibit "B."

After Notice to Proceed is issued for this phase, and as is required for compliance with the California Environmental Quality Act for any project, Consultant shall perform preliminary (40%) designs including:

1. In consultation with City and on the basis of the accepted study and report documents, refine the scope, extent and character of the

Project.

2. Prepare Contract Documents in sufficient detail to provide the necessary information for review, permitting and competitive construction bidding of the Project.
3. Advise City at the earliest time possible if additional data or services are necessary and assist City in obtaining such data and services.
4. Based on the information contained in the preliminary design documents, submit a revised Project schedule and estimate of Project costs.
5. Furnish ten (10) copies of the above preliminary design documents and review them in person with City.

**E. 80% Design, Final Design (100%), and Signature Design Phases** The scope of services for this phase is further defined in Exhibit "B."

After Notice to Proceed is issued for this phase, and as is required or permitted under the California Environmental Quality Act, Consultant shall:

1. On the basis of the accepted 40% design documents and comments of Engineer, prepare 80% drawings and specifications to show the scope, extent and character of the Work.
2. Prepare Contract Documents for Project in sufficient detail to provide the necessary information for review, permitting and competitive construction bidding of the Project.
3. Calculate and submit to Engineer all construction quantities as well as structural, civil, electrical, mechanical and other calculations used in the Project design.
4. Provide the technical criteria, written descriptions, exhibits and other data for filing permit applications with or obtaining approvals of the governmental authorities having jurisdiction to approve the Project, and obtain the necessary permits. Obtain plan check approvals of Contract Documents by City Department of Building and Safety and other agency approvals as directed by Engineer. Prepare applications, with all necessary documentation, for all plan checks, permits, variances and approvals for Project other than those that are required to be obtained by Contractor(s). These applications shall be completed and submitted to Engineer for review and filing with appropriate agencies. Changes in the Contract Documents, including any change required by a change in rules, regulations or

laws required to obtain final approval from said agencies, shall be made by Consultant and shall not constitute a change in Work unless such changes meet the test set forth in Article V, Section D.2 of this Agreement.

5. Advise City at the earliest time possible of any adjustments to the estimate of Project costs caused by changes in scope, extent or character or design requirements of the Project. Furnish revised estimate of Project construction costs based on the 80%, 100% and Signature drawings and specifications.
6. Assure Project-specific technical specifications are consistent with the general conditions of the specifications.
7. Prepare proposed construction schedule(s) for Project's construction contract(s) in sufficient detail for use by Engineer in evaluating the adequacy of Contractor's scheduling submittals.
8. In performing the 80% Design, Final Design (100%), and Signature Design Phases of Project under the terms of this Agreement, Consultant shall submit to Engineer for review and comment the following in accordance with the Engineering Design Guidelines.

a. 80% Design Review

Consultant shall submit approximately 80% complete Contract Documents and supporting information necessary for plan check. A reproducible set and ten (10) sets of design drawings, ten (10) copies of the specifications, calculations, cost estimates, schedule and all other design documents shall be submitted.

b. Final Design (100% Review)

Consultant shall submit 100% complete Contract Documents and supporting information stamped and signed by an engineer or architect appropriately licensed to practice in the State of California. A reproducible set and ten (10) sets of the design drawings and ten (10) copies of the specifications, calculations, cost estimates, schedules and any revised design documents shall be submitted.

c. Signature

Following review and incorporation of comments of Engineer, original Contract Documents, stamped and signed by an engineer or architect appropriately licensed to practice in the State of California, shall be submitted for signature by Engineer. Engineer's signature acknowledges that Contract Documents are accepted for advertisement for bids but is not intended to approve the sufficiency of said drawings or to relieve Consultant of Consultant's professional responsibilities and/or liabilities. The original drawings and sets of the design drawing, drawing electronic CAD files, unbound original specification and two copies of final cost estimate and schedule shall be submitted.

F. Bidding:

In the event that City decides to bid the Project following any appropriate or necessary review under the California Environmental Quality Act, Consultant shall, if requested by City:

1. Assist City in advertising for and obtaining bids for each contract for construction, materials, equipment and services.
2. Prepare addenda, as appropriate, to interpret, clarify or expand the bidding documents.
3. Prepare information for and participate in pre-bid conference.
4. Assist City in evaluating bids or proposals and in assembling and awarding contracts for construction, material, equipment and services.
5. Consult with and advise City as to the acceptability of subcontractors, suppliers and other persons and organizations proposed by the prime contractor(s).

G. Construction:

The scope of services for this phase is further defined in Exhibit "B."

During the Construction Phase, if requested by City, Consultant shall perform the following Work:

1. Visits to Site and Observation of Construction.

- a. Visit the site at intervals appropriate to the various stages of construction in order to observe as an experienced and qualified design professional the progress and quality of the various aspects of Contractor's (Contractors') Work.
- b. The purpose of Consultant's visits to the site will be to enable Consultant to better carry out the duties and responsibilities assigned to it during the Construction Phase. Consultant shall not, during such visits, supervise, direct or have control over Contractor's (Contractors') Work nor shall Consultant have authority over, or responsibility for, the means, methods, techniques, sequences or procedures of construction selected by Contractor(s), for safety precautions and programs incidental to the Work of Contractor(s) or for any failure of Contractor(s) to comply with laws, rules, regulations, ordinances, codes or orders applicable to Contractor(s) furnishing and performing their Work.
- c. After such visits and on the basis of such observations, Consultant shall immediately advise Engineer if Consultant has any reason to believe the Contractor's (Contractors') Work is unlikely to produce a completed Project that conforms to the Contract Documents or that it will prejudice the integrity of the design concept of the Project as reflected in the Contract Documents.
- d. Consultant shall also attend Department's pre-construction, special, or progress meetings.

2. Interpretations and Clarifications. Provide interpretations and clarifications of the Contract Documents in a timely manner as requested by the Engineer.

3. Shop Drawings. Review shop and erection drawings, production drawings, samples and other data which Contractor(s) submit(s), for conformance with the design concept of the Project and compliance with the information given in the Contract Documents and permits. Such review shall be performed in a timely manner as determined by the Engineer. If Contractor's (Contractors') submittal complies with the drawings, permits and specifications, Consultant shall signify such compliance by its affirmative statement, stamp and signature. If Contractor's (Contractors') submittal does not comply, Consultant shall note the specific deficiency and the action required by Contractor(s) and affix its stamp and signature.

4. Substitutes. Evaluate and determine the acceptability of substitute materials and equipment proposed by Contractor(s).
5. Inspections and Tests. Receive and review all certificates of inspections, mill test reports and non-routine laboratory reports, testings and approvals required by laws, rules, regulations, ordinances, codes, orders or the Contract Documents (but only to determine that their content complies with the requirements of, and the results certified indicate compliance with, the Contract Documents and permits). Consultant shall recommend testing to City if, in Consultant's professional judgment, such testing is advisable. Consultant shall attend inspections as requested to determine if the Work in progress is acceptable and a final inspection to determine if the completed Work is acceptable so that Consultant may recommend, in writing, final payment to Contractor(s) and may give written notice to City and the Contractor(s) that the Work is acceptable (subject to any conditions therein expressed).
6. Disputes Between City and Contractor. Review all claims of City and Contractor(s) relating to the acceptability of the Work or the interpretation of the requirements of the Contract Documents pertaining to the execution and progress of the Work, and advise City of the validity of such claims.
7. Contractor's (Contractors') Submittals. Receive and review maintenance and operating instructions, schedules and certificates of inspection, tests, approvals and building or equipment maintenance manuals which are to be assembled by Contractor(s) in accordance with the Contract Documents (but such review will only be to determine that their content complies with the requirements of, and in the case of certificates of inspection, tests and approvals, the results certified indicate compliance with the Contract Documents and permits), and shall transmit them to City with written comments.
8. Revisions. Prepare revised or supplementary Contract Documents as necessary to correct errors or omissions, resolve unforeseen field conditions, comply with necessary permit conditions or address other occurrences during construction.
9. Permits. Coordinate with permitting agencies and prepare necessary documentation in accordance with certifications, variances, codes, permits and special conditions.
10. Record Drawings. Prepare a set of reproducible record drawings showing those clarifications, interpretations and changes made during the construction process, based on the marked-up prints,

drawings and other data furnished by Contractor(s) and Engineer.

**H. Operational Phase:**

During the Operational Phase, Consultant shall, when requested by City:

1. Provide assistance in connection with the start up and adjusting of any equipment or system.
2. Assist City in training City's staff to operate and maintain the Project.
3. Assist City in developing systems and procedures for control of the operation and maintenance of and record keeping for the Project.
4. In company with City, visit the Project to observe any apparent defects in the completed construction, assist City in consultations and discussions with Contractor(s) concerning correction of such deficiencies, and make recommendations as to replacement or correction of defective Work.

**I. Other Services:**

1. Perform geotechnical services during design, including: reviewing available soils and seismic information; conducting subsurface field investigation program; performing laboratory tests and analyses; developing seismic and geotechnical recommendations in support of project design; and preparing written report(s) of findings and recommendations in accordance with the provisions of Exhibit "B."
2. Perform geotechnical services during construction, including: monitoring of test and indicator piles; certification of subgrade and fill compaction; and analyses and recommendations regarding unforeseen field conditions.

**IV. SERVICES TO BE PERFORMED BY DEPARTMENT**

Department will provide Consultant with available and/or necessary horizontal and vertical survey data in the form of field notes or electronic format as maintained by Department, access to public records, prints of existing aerial photos, existing planimetric maps, environmental documents, existing oceanographic studies and existing soil reports in the vicinity, previous specifications and other information which, in the opinion of Engineer, will assist in completing Work described above.

- A. Department will provide all necessary copies and prints of the Contract Documents for bid advertisement and construction.
- B. Department will provide survey, construction inspection, construction contract

administration and soil compaction-testing services unless Consultant's Scope of Work in Exhibit "B" provides otherwise.

- C. The City will pay applicable federal, state, or local regulatory fees necessary to obtain approvals, plan checks, permits and variances for the Project.
- D. City will allow Consultant, at all times, to access the Project area during normal Working hours subject to satisfying any concerns of Department tenants and contractors and at other times with prior approval of Engineer.
- E. Whenever this Agreement provides for any approval, decision, determination, exercise of judgment or discretion (sole or otherwise), request or the like, by City, the same shall not be unreasonably withheld.
- F. Department shall not be obligated to provide information and/or services except as specified in this Agreement.

V. **TERM AND EFFECTIVE DATE OF AGREEMENT**

A. **Effective Date/Term:**

After approval by City in accordance with the City Charter, including Charter Section 245, the effective date of the Agreement shall be the date of its execution by Director. The Agreement shall terminate as provided in Article V, Section E.

B. **Commencement:**

Consultant agrees, upon receipt of written Notice to Proceed from Engineer following execution of this Agreement, to commence that portion of Work specified in such Notice.

C. **Schedule for Work:**

The times for completion of the Work shall be in accordance with the schedule set forth in Exhibit "E." Consultant shall submit detailed schedule updates with monthly progress reports.

D. **Extensions of Time:**

1. If Consultant is unable to comply with the established time schedule, an extension of time requested by Consultant shall require written approval from Engineer. Consultant shall immediately advise Engineer in writing of any event that will affect the schedule.
2. Extensions to complete Work shall be granted by Engineer if Consultant is necessarily delayed in completing Work by a cause that

meets all of the following conditions:

- a. Such cause is beyond Consultant's control and arises without its fault;
- b. Such cause arises after the execution of this Agreement and neither was nor could have been anticipated before the execution of this Agreement; and
- c. The effect of such cause could not be anticipated and avoided or mitigated by the exercise of all reasonable precautions, efforts and measures by Consultant, including replanning, scheduling and rescheduling.

**E. Duration:**

This Agreement shall be in full force and effect until:

1. Consultant has, in the Engineer's judgment, completed the Work and Engineer has given Consultant written notice thereof; or
2. Consultant, in its judgment, has completed the Work and has given Engineer written notice thereof transmitted by certified mail, postage prepaid, return receipt requested; in such event, within thirty (30) calendar days thereafter, Engineer shall advise Consultant in writing of any deficiencies in Work for which Consultant is responsible under this Agreement or any Work remaining to be completed. As soon as any such deficiencies are corrected or as soon as the thirty (30) calendar day period for such notice has expired, if Engineer does not advise Consultant of any such deficiencies within the period, Engineer shall accept the Work in writing or it shall be deemed accepted. Any such acceptance shall not relieve Consultant from complying with all terms of this Agreement; or
3. Board, in its sole discretion, terminates this Agreement or deletes part of the Work upon giving to Consultant five (5) calendar days' notice in writing of its election to terminate this Agreement or delete such Work. Upon expiration of said five (5) calendar day period, Consultant shall cease the performance of the Work hereunder. Consultant shall be entitled to compensation only for services actually performed prior to such termination and cancellation in accordance with the provisions of Articles VI and VIII. Engineer shall determine the amount of services actually performed and shall allocate a portion of the total compensation due Consultant accordingly; or

4. Three (3) years have elapsed from the effective date of the Agreement; or
5. This Agreement is subject to the provisions of the Los Angeles City Charter which, among other things, precludes the City from making any expenditure of funds or incurring any liability, including contractual commitments, in excess of the amount appropriated therefor.

The Board, in awarding this Agreement, is expected to appropriate sufficient funds to meet the estimated expenditure of funds through June 30 of the current fiscal year and to make further appropriations in each succeeding fiscal year during the life of the Agreement. However, the Board is under no legal obligation to do so.

The City, its boards, officers, and employees are not bound by the terms of this Agreement or obligated to make payment thereunder in any fiscal year in which the Board does not appropriate funds therefor. The Consultant is not entitled to any compensation in any fiscal year in which funds have not been appropriated for the Agreement by the Board.

Although the Consultant is not obligated to perform any work under the Agreement in any fiscal year in which no appropriation for the Agreement has been made, the Consultant agrees to resume performance of the work required by the Agreement on the same terms and conditions for a period of sixty (60) days after the end of the fiscal year if an appropriation therefor is approved by the Board within that 60-day period. The Consultant is responsible for maintaining all insurance and bonds during this 60-day period. The time for performance shall be extended during this period until the appropriation is made; however, such extension of time is not compensable.

If in any subsequent fiscal year funds are not appropriated by the Board for the work required by the Agreement, the Agreement shall be terminated. However, such termination shall not relieve the parties of liability for any obligation previously incurred.

## VI.

### COMPENSATION

#### A. Board to Pay Consultant:

For the satisfactory performance of Work, City agrees to pay Consultant and Consultant agrees to accept in lawful money of the United States a sum not to exceed \$3,537,000 to be paid as specified in Exhibit "D" as full compensation for the Work performed by Consultant and Subconsultants in

accordance with this Agreement. This sum does not include changes in compensation for performance of extra Work pursuant to Section C of Article VI.

**B. Compensation to Include:**

The compensation set forth in this Agreement includes payment for all labor, travel, per diem, fringe benefits, general and administrative expenses, overhead, profit, materials, supplies, transportation, and all other direct and indirect costs and expenses incurred by Consultant. Consultant shall not be entitled to reimbursement for any expenses except as provided in subsection (3) of this Section B. Consultant shall not add any fee onto fees billed for Subconsultants unless Exhibit "C" expressly specifies a rate. As full compensation for all Consultant's services and obligations under this Agreement, the City will pay Consultant the total of the amounts computed under subsections below, provided the parties agree the compensation under this Agreement may not exceed the amount stated in Section A except as authorized by Article VI, Section C. The compensation payable under this Agreement shall be on a (1) fixed fee, (2) hourly, or (3) combined fixed fee and hourly basis in accordance with the terms below, as more particularly specified in Exhibits "C" and "D." Consultant understands it must allocate its effort and complete the Work for the stated compensation. Neither the dollar value nor amount of Work described will be revised except as provided in Article VII.B. or VIII.

1. Fixed Fee. A lump sum compensation for satisfactory performance of the Work or task as set forth in Exhibit "D."
2. Hourly Fee. An amount equal to the product of the hours expended by Consultant and the applicable hourly rates set forth in Exhibit "C" for time actually spent in the performance of the Work, but in each case excluding premium payments for overtime Work or night Work or for performing hazardous duty and not to exceed the sum set forth in Exhibit "D."
3. Reimbursable Expenses. An amount equal to out-of-pocket expenses, approved by the Engineer, necessarily and reasonably incurred and actually paid by Consultant in the performance of the Work subject to the limitations herein and not to exceed the sum set forth in Exhibit "D."

Consultant shall substantiate all billings for out-of-pocket expenses. Out-of-pocket expenses are expenses that:

- a. Are unique to the performance of services under this Agreement and involve the purchase of outside ancillary

services, except that out-of-pocket expenses do not include amounts for reproduction of submittal documents, priority mailing and delivery charges, local or long distance telephone or facsimile calls, travel, equipment rentals and safety supplies unless expressly authorized by the Engineer;

- b. Do not include expenses that are usually and customarily included as part of the Consultant's overhead;
- c. Do not include amounts for use of computer systems, including computer-aided design and drafting (CADD), cameras, recording or measuring devices, flashlights and other small, portable equipment or expendable office supplies unless expressly authorized by the Engineer.

Consultant travel expenses shall conform to City policy, which Consultant shall verify with Engineer.

**C. Compensation for Extra Work:**

1. Changes in Consultant's compensation, if any, which may result from change order as provided in Article VII, Section B, shall be negotiated on the basis of hourly or other unit rates as shown on Exhibit "C" approved in writing by Engineer plus direct expenses and material costs. Subject to approval of Director, if this Agreement extends beyond one (1) year, Consultant may adjust its rates after each twelve (12) months of service subject to approval of Engineer. However, the annual rate increases shall be no greater than those charged to other governmental agencies and in no case shall the increase exceed four percent (4%) of the prior twelve (12) month rate. Total compensation for such extra Work shall be negotiated prior to issuance of the change order and prior to the performance of said extra Work.
2. Each change in compensation of One Hundred Fifty Thousand Dollars (\$150,000) or less shall require approval of the Director. Each change in compensation of more than One Hundred Fifty Thousand Dollars (\$150,000) shall require approval of Board provided, however, that if the cumulative change orders result in increasing the originally authorized compensation by more than twenty-five percent (15%), Board approval shall be required for all such change orders.
3. Engineer shall review statements submitted by Consultant and, upon approval, shall authorize payment for the extra Work.

4. The Engineer shall have the authority, during Consultant's performance of Work, to dispense in writing with any requirements in the Scope of Work and, if compensation is based on a lump sum price, City shall be entitled to reduce the value of the compensation by the cost of the task(s) eliminated.

**D. Statements to be Certified:**

Each month, as a prerequisite to payment for services, Consultant shall bill Department for services performed and for reimbursable out-of-pocket expenses authorized by this Agreement incurred in the prior month, accompanied by such records and receipts as required. Each invoice shall bear a City Business Tax Registration Number and a Taxpayer Identification Number. If payments are based on established milestones, then Consultant shall bill as each milestone is completed, but not more often than once a month.

Consultant shall submit one (1) original and four (4) copies of each statement for payment in the format and containing the information specified in Exhibit "F" including the certification as follows:

"I certify under penalty of perjury that the above bill is just and correct according to the terms of Agreement No. \_\_\_\_\_ and that payment has not been received. I further certify that I have complied with the provisions of the City's Living Wage Ordinance.

\_\_\_\_\_  
(signed)  
Project Manager"

**E. Monthly Subconsultant Monitoring.**

The Consultant shall submit appropriate supporting documents with each invoice. Such documents may include provider invoices, payrolls, and time sheets. The City may require, and Consultant shall provide, all documents reasonably required to determine whether amounts on the invoice are allowable expenses under the Agreement.

Further, where the Consultant employs subconsultants under this Agreement, the Consultant shall submit to City, with each monthly invoice, a Monthly Subconsultant Monitoring Report form Attachment (Exhibit "F") listing SBE/MBE/WBE amounts. Consultant shall provide an explanation for any item that does not meet or exceed the anticipated participation levels for this Agreement, with specific plans and recommendations for improved subconsultant utilization. Invoices will not be paid without a completed Monthly Subconsultant Monitoring Report form. All invoices are subject to audit. Consultant is not required to submit support for direct costs items of \$25 or less.

F. **Manner of Payment:**

All sums due and payable to Consultant shall be paid as soon as, in the ordinary course of City business, the same may be reviewed and approved. City shall use all reasonable effort to pay said sums within sixty (60) days of receipt of each statement.

**For payment and processing, all invoices shall be mailed to the following address:**

**Accounts Payable Section  
Harbor Department, City of Los Angeles  
P.O. Box 191  
San Pedro, CA 90733-0191**

G. **Financial Records:**

Consultant shall keep detailed daily records of the tasks performed under this Agreement, the individual(s) who performed each task and the amount of time spent on the performance of each task, as well as records of the amounts paid for the performance of such services and records and receipts of reimbursable expenditures hereunder. Notwithstanding any other provisions of this Agreement, failure to do so shall be a conclusive waiver of any right to compensation for such services or expenses as are otherwise compensable hereunder. The City shall have the right to audit all such records.

Such records shall be maintained by Consultant for a period of three (3) years after completion of services to be performed under this Agreement or until all disputes, appeals, litigation or claims arising from this Agreement have been resolved. The Director reserves the right to audit Consultant's books, records and accounts relating to its billing of the City in connection with this Agreement, and Consultant agrees to provide access to said books, records and accounts to the Director or his or her representative upon 72 hours' written notice.

- H. **Taxpayer Identification Number (TIN):** Consultant declares that its authorized TIN is 94-1716908. No payment will be made under this Agreement without a valid TIN.

VII.

**AUTHORITY OF ENGINEER**

A. **Acceptability of Work:**

Engineer shall decide any and all questions which may arise as to the quality or acceptability of the Work performed including errors and omissions, and as to compensation due Consultant. The Engineer may disapprove Work if,

in his sole opinion, the Work does not conform to the requirements of this Agreement, sound engineering principles, or is impractical, uneconomical or unsuited in any way for the purpose for which the Consultant is retained. If the Engineer disapproves any Work, the Consultant shall immediately revise the Work until it meets the Engineer's approval, but the Consultant shall not be compensated for performance of such revisions. No approval, disapproval or omission to approve or disapprove the Work shall relieve Consultant of any responsibility under this Agreement. Subject to Section C below, Engineer's decision shall be final, and he shall have authority to enforce and make effective such decisions and orders with respect to the performance of this Agreement.

**B. Changes in Work:**

Engineer shall have the right at any time during the term of this Agreement to make changes, additions and deletions in the Work. Engineer may also make comments and/or decisions on the Work and if Consultant believes such comments or decisions constitute a change in Work, Consultant shall notify Engineer in writing. If Engineer agrees with Consultant, such change shall be made in accordance with this subsection. Any such changes, additions or deletions shall be by written change order and shall include the amount of compensation or credit for said change, if any. The change order shall be signed by Consultant before any Work is done pursuant to said order. Changes in compensation as a result of said change order shall be in accordance with Article VI, Section C. Consultant understands that the Charter of City limits the manner in which contracts must be carried out and extra Work may be authorized. Consultant further understands that no officer, agent or employee of City has the authority to require Work other than is allowed by this Agreement.

**C. Disputes as to Acceptability of Work:**

If Consultant and Engineer cannot agree as to the quality or acceptability of the Work, or whether a change in the Work is required and/or the compensation payable to Consultant under this Agreement, Engineer or Consultant may promptly give to the other a written notice thereof and, within ten (10) days thereafter, Consultant and Engineer shall each prepare a report which supports their position and file the same with Board and the other party. Consultant's report shall include any possible claims against City, including the amount of additional compensation requested. Thereafter, Board shall, with reasonable diligence, determine the quality or acceptability of Work, or whether a change in the Work is required, and/or the compensation payable to Consultant. Submittal of the matter to Board, as required by this Section C, is a prerequisite to the right of Consultant to contest any such matter in a court and Consultant expressly waives any right to so contest any decision(s) of Engineer unless it has first presented the

matter to the Board and within the time limits as provided herein.

**VIII. SUSPENSION OR TERMINATION**

**A. Termination by Department:**

If Board terminates this Agreement as provided for in Article V, Section E.3, Consultant shall deliver all drawings, specifications, plans, reports, studies, calculations, estimates, documents and other items of Work produced pursuant to this Agreement to City in an organized, usable form with all items properly labeled to the degree of detail specified by the Engineer. No compensation shall be due Consultant until it complies with the requirements of this paragraph.

**B. Partial Deletion or Suspension of Work:**

Consultant agrees that Director, on the recommendation of Engineer, may determine whether any or all of the Work described in this Agreement shall be deleted or its performance suspended without electing to terminate the entire Agreement and without any penalty being incurred by City. Any such partial deletion or suspension of the services shall in no way void or invalidate this Agreement nor shall it provide Consultant any basis for seeking payment from City for Work deleted or suspended except to the extent such Work has already been performed and is otherwise billable under this Agreement and City shall have the right to later have any Work suspended or deleted from this Agreement performed by others without any penalty to City. City shall be entitled to have as its property all exhibits, drawings, calculations, reports, text and other data prepared by Consultant and shall pay Consultant therefore in accordance with the provisions of Section C below.

**C. Manner of Payment Upon Termination, Partial Deletion or Suspension of Work:**

Upon any deletion or suspension of Work or termination of this Agreement by Director and upon receipt of a final certified statement with one (1) original and four (4) copies as required in Article VI, City shall pay Consultant the amount, as determined by Engineer, due for the Work performed prior to such deletion or suspension of Work or termination, less amounts previously paid. Director may require Consultant to perform Work later during the Agreement term, which was earlier deleted or suspended. Consultant shall not commence any such Work until Director has issued a written Notice to Proceed or a change order.

**D. Use of Other Consultants.**

City reserves the right, in its sole discretion, to have the Work described in

this Agreement performed by other consultants if City, for any reason, is not satisfied with Consultant's Work product. If City has other consultant(s) perform such Work, Consultant agrees to cooperate fully with other consultant(s) and to explain to them any Work performed to date. In such event, Consultant shall be entitled to be compensated for hours spent at the rates set forth in Exhibit "C" or as City may agree in writing pursuant to Article VI, Section C.

**IX. CONSULTANT SHALL ABIDE BY ALL LAWS**

**A. Governing Law / Venue.**

This Agreement shall be governed by and construed in accordance with the laws of the State of California, without reference to the conflicts of law, rules and principles of such State. The parties agree that all actions or proceedings arising in connection with this Agreement shall be tried and litigated exclusively in the State or Federal courts located in the County of Los Angeles, State of California, in the judicial district required by court rules.

**B. Affirmative Action**

Consultant agrees not to discriminate in its employment practices against any employee or applicant for employment because of the employee's or applicant's race, religion, national origin, ancestry, sex, sexual orientation, age, disability, marital status, domestic partner status or medical condition. All subcontracts, assignments and transfers of interest under or pursuant to this Agreement shall contain this provision.

The provisions of Section 10.8.4 of the Los Angeles Administrative Code, as set forth in the attached Exhibit "G," are incorporated herein and made a part hereof.

**X. INDEMNITY AND INSURANCE REQUIREMENTS**

**A. Indemnity.**

**1. Indemnity for Professional Liability**

Except for the negligence or willful misconduct of City, Consultant shall indemnify, protect, defend and hold harmless City and any and all of its boards, officers, agents or employees from and against any claims, charges, damages, costs, expenses (including counsel fees), judgments, civil fines and penalties, liabilities or losses of any kind or nature whatsoever which may be sustained or suffered by or secured against the City, its boards, officers, agents, and/or employees by reason of any damage to property, injury to persons or any action that may arise out of the performance of such services rendered pursuant

to this Agreement that is caused by any act, omission or negligence of Consultant, its officers, agents, employees or Subconsultants.

2. Indemnity for Other Liability

Except for the sole negligence or willful misconduct of City, Consultant shall indemnify, protect, defend and hold harmless City and any and all of its boards, officers, agents or employees from and against any claims, charges, damages, costs, expenses (including counsel fees), judgments, civil fines and penalties, liabilities or losses of any kind or nature whatsoever which may be sustained or suffered by or secured against the City, its boards, officers, agents and/or employees by reason of any damage to property, injury to persons or any action that may arise out of the performance of this Agreement that is caused by any act, omission or negligence of Consultant, its boards, officers, agents, employees or Subconsultants regardless of whether any act, omission or negligence of City, its officers, agents or employees contributed thereto provided that (1) if the City contributes to a loss, Consultant's indemnification of the City for the City's share of the loss shall be limited to One Million Dollars (\$1,000,000), (2) notwithstanding the limitation in (1), Consultant shall remain responsible for one hundred percent (100%) of any loss attributable to it, and (3) the provisions in (1) and (2) apply on a per-occurrence basis.

B. Workers' Compensation.

By signing this Agreement, Consultant acknowledges that it is aware of the provisions of Section 3700 of the California Labor Code, which requires every employer to be insured against liability for Workers' compensation or to undertake self-insurance in accordance with the provisions of that Code and that Consultant shall comply with such provisions before commencing the performance of the Work under this Agreement. The Consultant shall submit Workers' compensation policies or a certificate evidencing such policies, whether underwritten by the state insurance fund or private carrier, which provide that the public or private carrier waives its right of subrogation against the City in any circumstance in which it is alleged that action or omissions of the City contributed to the accident.

C. Public Liability and Property Damage

Consultant shall procure and maintain throughout the term of this Agreement, at its cost, broad form comprehensive public liability and property damage insurance including contractual liability coverage written by an insurance company authorized to do business in the State of California with Consultant's normal limits of liability but not less than One Million Dollars