

REQUEST FOR PROPOSALS

FOR

Design Services for Electric Infrastructure for Bus Charging Stations

April 2022



PORT OF OAKLAND

BOARD OF PORT COMMISSIONERS
530 WATER STREET
OAKLAND, CA 94607

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Request for Proposals (RFP) for Design Services for Electric Infrastructure for Bus Charging Stations (SBE)

I. Invitation to Submit Proposal

The Port of Oakland ("Port") is soliciting proposals from qualified, certified Small Business Enterprise (SBE) consultants for the Design Services for Electric Infrastructure for Bus Charging Stations Project. The Electric Infrastructure for Bus Charging Stations Project is the extension of 12 kV power to the future shuttle bus parking depot and the installation of necessary electrical equipment to deliver 480 V to Electric Vehicle Charging Stations (EVCS) to be provided by others.

This contract is set aside for Port-certified Small Business Enterprises (SBEs). Only Proposals from Port-certified SBEs will be accepted. If a prospective respondent is not already certified as an SBE by the Port, the Port's Database Questionnaire and necessary support documents must be submitted to the Port's Social Responsibility Division at least 7 business days before the Proposal due date in order to qualify for SBE status. Only small businesses in Oakland, Alameda, Emeryville, and San Leandro qualify for Port certification as SBEs. In order to qualify as an SBE, the respondent must not exceed an average annual gross revenue of \$36,000,000 over the past three (3) consecutive years.

The Port intends to execute an agreement with a Port certified SBE firm, subject to the Port's Non-Discrimination and Small/Local Business Utilization Policy.

The Port has posted this Request for Proposals (RFP) in digital format on a hosting website that can be accessed via the 'Current RFP's/RFQ's: Engineering Consulting Services' link at the following URL: <http://www.portofoakland.com/business/bids-rfps/rfq-engineering/>. Proposing consultants should carefully review the requirements of this RFP to ensure that they meet all of the stated requirements.

Proposals will be received at the location, and until the time/date, specified under "RFP Schedule" and "Instructions for Submitting Proposals", below:

Consultants interested in submitting proposals for this work are strongly urged to attend a Pre-Proposal Meeting to be held at the time/date/location specified under the "RFP Schedule", below. At the Pre-Proposal Meeting, the Port will provide information related to the Port's insurance requirements and Non-Discrimination and Small/Local Business Utilization Policy, and will answer questions regarding the proposed project, submittal requirements, and the selection process.

A site visit will follow the Pre-Proposal Meeting. All consultants interested in viewing the proposed project site must contact the primary contact person listed under "RFP Contacts", below, on or before 4/15/2022 at 12:00 noon to register for the site visit.

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. 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.

To the extent that the scope of services includes work that falls under the Labor Code definition of "public works" (Cal. Labor Code Section 1720 et seq), this project will be subject to compliance monitoring and enforcement by the Department of Industrial Relations (DIR). Consultants submitting a Proposal, and subcontractors or subconsultants performing any portion of the work that falls under the "public works" definition, must be registered with the DIR pursuant to DIR requirements prior to submission of the Proposal, and the Prime Consultant must include in its Proposal its own DIR

registration number and the DIR registration numbers of all listed subcontractors and subconsultants that will participate in the “public works” portion of the scope of services.

Qualified firms submitting Proposals will receive credit for utilizing businesses that satisfy the requirements of the Port’s Non-Discrimination and Small/Local Business Utilization Policy (NDSLBP), a summary of which is included herein as Attachment II (b). Prime consultants who wish to partner with small/local subconsultants can obtain information regarding Port-Certified SBE Professional and Engineering Firms from the Port’s website, by performing a search of the Social Responsibility Division’s on-line database at: <https://srd.portoakland.com>.

Questions regarding this RFP must be addressed in writing to the appropriate contact person listed under “RFP Contacts”, below. All questions not directed specifically to the primary contact person must be copied to said primary contact person. Proposers are advised that questions received less than seven (7) calendar days prior to the Proposal due date may not be answered. Where appropriate, the Port will respond in writing to proposer questions submitted in a timely fashion via an addendum or a ‘Log of Responses to Proposer Questions’; see “Port Responses to Proposer Questions”, below.

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.

RFP Schedule

RFP Issued	April 11, 2022
Pre-Proposal Meeting (Non-Mandatory)	April 21, 2022 @ 10:00 AM via videoconference https://portoakland.zoom.us/j/99725820057?pwd=enRnOUhBMTFUSTR5YlBKaXMzbE5Qdz09 After joining the meeting, please email your contact information to kyan@portoakland.com to confirm attendance
Site Visit Registration Deadline	April 18, 2022 @ 12:00 noon To register, email “Primary Contact” under “RFP Contacts” where will site visit attendees meet?
Site Visit	April 21, 2022 @ 11:30 AM at Project Site (Figure 1)
Deadline for Submission of Proposer Questions	Seven (7) calendar days prior to Proposal Due Date (listed below)
Proposal Due Date	May 12, 2022 @ 12:00 noon
Short List of Qualified Consultants *	May 24, 2022
Consultant Interviews/Presentations *	June 1, 2022
Final Selection Completed *	June 10, 2022
Board Approval of Consultant *	June 23, 2022
Contract Negotiations *	July 5, 2022
Execution of Agreement *	July 31, 2022
* Note that all dates subsequent to the proposal due date are subject to change.	

Instructions for Submitting Proposals

Electronic Submission of Proposals	The Port will receive proposals for this work in electronic format only. No hard copy or faxed proposals will be accepted.
Proposal Format	<p>Each Proposal must be submitted in a single PDF file containing all of the items listed in Section II.D, Proposal Format and Contents, in the order specified therein.</p> <p>Note that, as per Section II.D, properly executed copies of all forms contained in Attachment 3 must be included in the Proposal.</p> <p>Submitted PDF must be unencrypted, universally viewable, printable, transferable, and enable copy.</p>
Submittal Email Requirements	<p>Send email with attached proposal or proposal download link to: Kor Yan, kyan@portoakland.com</p> <p>Subject line must contain:</p> <ul style="list-style-type: none"> • "RFP for Design Services for Electric Infrastructure for Bus Charging Stations" • Company name • Sent date <p>Email body must contain:</p> <ul style="list-style-type: none"> • Complete RFP Title • Company Name • Address • Primary contact: Name, Title, Email, Phone Number <p>Instructions for download link</p>
Late Submittals	Proposals received after the time and date stated above will be disqualified.

RFP Contacts

	Name	Phone Number	E-mail Address
Primary Contact	Kor Yan	510.627.1524	kyan@portoakland.com
NDSLBP*	Kimberly Wilson	510.627.1390	kwilson@portoakland.com
Living Wage Policy*	Kimberly Wilson	510.627.1390	kwilson@portoakland.com
Insurance Requirements	Josh Schultz	510.627.1535	jschulz@portoakland.com

* Questions submitted to NDSLBP, Living Wage Policy, and Insurance contact persons should be copied to Primary Contact.

Port Responses to Proposer Questions

<p>Addenda</p>	<p>In response to proposers’ questions, the Port may issue Addenda modifying the provisions of the RFP.</p> <p>Any such Addenda will be posted on the hosting website on which the RFP itself was posted. Upon issuance of an Addendum, notification will be sent to all parties who have registered as document holders on the hosting website. Said notification will be sent to the fax number or e-mail address provided during the process of registering/downloading.</p> <p>Only questions answered by formal written Addenda will be binding. Oral and other interpretations and clarifications will be without legal effect.</p>
<p>Acknowledgment of Receipt of Addenda</p>	<p>Each Proposer shall be responsible for ascertaining, prior to submitting a Proposal, that it has received all issued Addenda. Receipt of said addenda must be acknowledged by Proposer on the RFP Acknowledgement and Certifications form.</p>
<p>Log of Responses to Proposer Questions</p>	<p>Clarifications that do not necessitate a formal Addendum may, at the Port’s discretion, be issued in written form in a ‘Log of Responses to Proposer Questions’.</p> <p>Any such Log of Responses to Proposer Questions will be posted to the hosting website, and fax/e-mail notification will be sent to all registered document holders.</p> <p>The Log of Responses to Proposer Questions is provided solely for proposers’ convenience, and any interpretations or clarifications contained therein are without legal effect.</p> <p>Proposers are advised that any questions submitted to the Port may, at the Port’s discretion, be incorporated into the posted Log of Responses to Proposer Questions.</p>

II. Request for Proposals

The Port of Oakland (“Port”) is seeking qualified consultants (“Consultant”) to design a new 15 kV rated Substation (SS-EV1), 1500/2000 kVA (OA/FA), 12.47 kV delta-480 V wye grounded power transformer, and downstream 600V rated distribution load center to support electric charging stations to be provided by others, located in the North Field area of the Airport shown in Figure 1 as well as Attachment 5. The consultant’s design documents will be integrated into an overall bid package produced by Port Engineering.

A. BACKGROUND

The Port, acting by and through its Board of Port Commissioners, is an independent department of the City of Oakland established under the City’s Charter and is a municipal corporation. The Port has four revenue-generating divisions: Aviation, Commercial Real Estate, Maritime, and Utilities. The Port owns and operates the Oakland International Airport (OAK), including a fleet of shuttle buses used to convey airline passengers from remote parking areas to the terminals.

The Port is in the process of procuring five (5) new fully-equipped forty-foot electric shuttle buses & Electric Vehicle Charging Stations (EVCS) and expects to take delivery by the end of 2023. To supply power to electric shuttle buses’ EVCS, the Port will need to design and build the electric infrastructure to the north field location as shown in Figure 1 Project Site (- the site shown is the current preferred site, but it is subject to change).

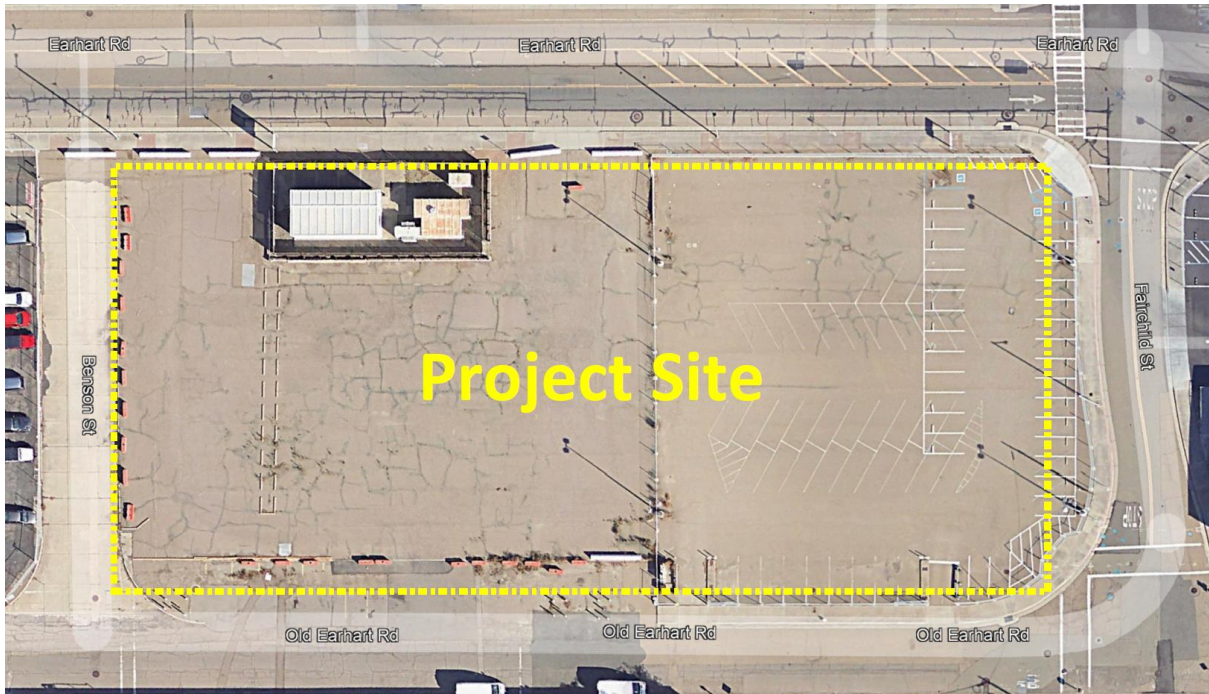


Figure 1 – Project Site

The new SS-EV1 Substation will be fed from Port SS-1A Substation as shown in Attachment 5. SS-EV1 will be located on the Project Site as shown in Figure 1. The new SS-EV1 Substation must be designed to meet PG&E rules and regulations as well as all requirements of the Port of Oakland.

B. SCOPE OF SERVICES

The selected Consultant will provide engineering services to develop a Plans, Specifications, and Estimates ("PS&E") package for the project per Port CAD Standards and formatting for advertisement and construction purposes.

The scope of services for the Electric Infrastructure for Bus Charging Stations Project includes the conceptual and detailed design of a new medium voltage substation (fed from one of the Port's primary 12 kV substations), step-down transformer, and low voltage distribution substation to serve Electrical Vehicle Charging Stations (EVCS) for electric buses.

The selected consultant will review the Port's initial conceptual design and make any appropriate recommendations on alternatives to provide power to the bus EVCS. The conceptual design will address finalizing the breaker count and substation location and layout & orientation for the new SS-EV1 Substation and Distribution Substation load center. The conceptual design will also include advising and working with the Port to finalize the breaker ratings and circuit protection systems for the new SS-EV1 Substation and Distribution Substation load center and advising the Port on design opportunities to improve the power distribution system reliability for the new SS-EV1 Substation, Distribution Substation load center and their feeders.

Following completion of the conceptual design, the selected Consultant will design a new SS-EV1 Substation, Distribution Substation load center, distribution power transformer, 12.47 kV feeders, and 480 V feeders. The design will also include the electrical equipment enclosure design, equipment foundation pads, grounding systems, communications, and security features. The design will result in a bid package developed to Port standards, that will be used to solicit bids and construct the project. Additionally, develop schedules to complete deliverables for a Plans, Specifications, and Estimates ("PS&E") package and to accomplish tasks listed below, for the project in accordance with Port CAD Standards and formatting for bid advertisement and construction purposes.

1. 30% PS&E Design Submittal
2. 60% PS&E Design Submittal
3. 90% PS&E Design Submittal
4. Final PS&E Design Submittal for construction bid package
5. Attend all design review meetings
6. Answers to all bidders' questions and all necessary design addendum documents during Port's public works bidding process

Other civil site improvements are not included in the scope of this work and will be performed by others.

C. PROPOSER QUALIFICATIONS

Consultant minimum qualification shall include:

1. Delivery of at least ten (10) Medium Voltage distribution substation projects.
2. Delivery of at least ten (10) Low Voltage distribution system projects
3. Experience with electric vehicle charging stations (EVCS) infrastructure
4. Experience with system capacity studies
5. Experience with short circuit, coordination, and arc flash studies.

D. PROPOSAL FORMAT AND CONTENTS

To be considered responsive to the Port's Request for Proposals, all interested firms must submit the following information, in the format described below. Incomplete proposals or proposals that do not follow the instructions may be considered non-responsive and rated accordingly.

D.1. FORMAT

Proposals should be prepared as follows:

- Viewable, printable and downloadable PDF
- Page size 8.5" x 11", or 11" x 17" as necessary for plans, charts and tables.
- Font size Arial 11 point.
- Margins no less than one inch, excluding headers and footers.
- Table of contents, with pages and exhibits numbered in an organized manner.

Please note that glossy and company promotional material is not necessary and is discouraged.

In order to facilitate the review process, statements should be arranged in the order listed below, with the maximum number of pages indicated. One double-sided sheet of paper equals two pages.

D.2. CONTENTS

D.2.a. PROPOSER QUALIFICATIONS AND PROJECT APPROACH

I. Qualifications: The PROPOSAL shall include the following items to document the Respondent's qualifications:

1. A cover letter highlighting the prime consulting firm's qualifications and indicating: *(1 page maximum)*
 - (a) the primary locations (office) from where the work will be performed,
 - (b) whether the prime consultant is a single entity, partnership, or corporation, and
 - (c) whether the proposing team is a joint venture or other legal entity recognized in the State of California.

The cover letter shall be signed in ink by an officer or employee having the authority to bind the company by his/her signature. Signatures by anyone other than the president, vice president or general partner should have accompanying documentation that the individual is empowered to bind the company or partnership.
2. A brief introduction of all participating firms, including the following required information: *(5 pages maximum)*
 - (a) general background, capabilities, and available resources,
 - (b) years in business,
 - (c) total number of staff and number of staff in the location where work will be performed, and
 - (d) the firms' experience working together as a team, including partnering with each other and/or contractors.
3. A summary of each of the key personnel's professional expertise and experience, including but not limited to Project Manager and designated Technical Leads. *(5 pages maximum)*

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

Detailed resumes for the proposed staff shall be submitted under “Appendices”, below, and not as part of this section.

4. Descriptions of relevant, recent experience (a minimum of one and maximum of three projects) of the prime consultant involving projects that are similar in scope, size, and complexity to this project with emphasis on those projects that involved the same proposed key members from the prime and subconsultants. Include the following information for each referenced project: *(3 pages maximum)*
 - (a) The client/owners’ names, addresses, and phone numbers for the owner/client’s project manager. The person identified as a reference should have detailed knowledge about the consultant’s performance on the project.
 - (b) The project’s name, location, a brief description of the project, duration, and its current status.
 - (c) Your firm’s role in the project
 - (d) Names and roles of the personnel assigned to the project.
 - (e) A description of the “value-added” by the consultant team. What particularly noteworthy challenges were encountered and how did the consultant address them?

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

II. Project Approach: The PROPOSAL shall include the following items to document the Respondent’s project approach:

1. A brief description of the project reflecting the respondent's understanding of the project. *(10 pages combined maximum for Items 1 to 6)*
2. A detailed scope of work to complete the project. This must reflect all the work necessary to accomplish the objectives of the project and describe in detail all necessary studies and analyses as well as Project Management and Quality Control efforts.
3. A detailed schedule to complete the project which will include at a minimum all activities identified in the scope of work, schedule sequence logic reflecting predecessor and successor dependencies, and approximate task durations.
4. Proposed staffing and anticipated resource needs; consistent with the scope and schedule. The staffing should indicate the level of effort required to complete the project, including forecast manhours for each assigned staff.
5. Fee proposal – consistent with the level of effort described above. The fee proposal should reflect the respondent's billing rates, their estimate of manhours to perform the work, their schedule, and all direct and indirect costs.
6. The approach to managing this project, both from (a) a contractual perspective with the Port and (b) a project/technical delivery perspective. This should include, but not necessarily be limited to, the following:

- A. Approach to working with the Port and aviation stakeholders.
- B. Description of project management, quality control, and document control methods/procedures.
- C. Conflict resolution hierarchy and procedures.
- D. Respondent’s familiarity and understanding of this project including preparing design plans, and technical specifications; and working within an active airport environment.
- E. What value does the Respondent bring to the client?
- F. A discussion of anticipated challenges that may arise and a proposed strategy for overcoming the challenges.
- G. What difficulties and/or challenges do the Respondent foresee with its subconsultants in establishing and maintaining an integrated team, including technical and administrative items?
- H. Design Approach. Provide a description of how your team would address the analysis and design of the project. Clearly describe all assumptions made about the scope of the project. Assume that the design team will identify and present to Port staff design alternatives, prepare conceptual plans, 30% 60%, 90%, and 100%, and Final design plans, technical specifications, cost estimates, and project schedules. The breakdown shall include a listing of the percentage of the proposed total contract work to be performed by the prime consultant and its subconsultants.
- I. Quality Assurance and Quality Control. Submit a quality control plan describing how the firm will assure that the work it performs will comply with accepted professional standards and Port requirements, as described in this RFP.

D.2.b. COMPLIANCE WITH PORT POLICY REQUIREMENTS AND CONTRACT TERMS:

1. Proposer shall confirm its understanding of, and intent to comply with, the requirements set forth in Section III.A, Port Policy Requirements for Non-Federally Funded RFPs/RFQs, by submitting properly executed copies of the forms included in Attachment 3.

Proposer must submit with its Proposal all forms included in Attachment 3. Failure to submit the required forms may result in rejection for non-responsiveness.

2. Exceptions to Port’s Standard Professional Services Agreement: Submission of a proposal will confirm that the Proposer fully understands the provisions of the Sample Professional Services Agreement (PSA) included herein as Attachment 1 to this RFP. To the extent that the Proposer takes exception to any part of the Professional Services Agreement, all such objections shall be stated in the Proposal/SOQ, specifically identifying the objectionable section, and including any of the Proposer’s proposed amendments to the Professional Services Agreement.
3. Conflict of Interest, Pending Litigation or Removal from Position: Proposer shall describe any arrangements, formal or informal, that the firm has with any party that might interfere with the firm’s ability to provide services under this RFP. Describe any litigation, administrative proceeding, or investigation (actual or pending) in which the firm is involved or to which it is subject that might have an adverse effect on its ability to fulfill its engagements under this RFP. Indicate if your firm has been removed by any organization during the last five years, and explain the reasons for that action. If none of these conditions obtain, Proposer shall so indicate by checking the appropriate box on the RFP/Addendum Acknowledgment and Proposer Certifications submitted with its Proposal [Attachment 3(a)].

D.2.c. FINANCIAL INFORMATION:

Proposer shall submit the following financial information:

- Direct hourly rates for the staff identified in Part II.D.2.a above;
- Audited or Official Financial statements for the last two years to support the consultant's indirect rate cost. Clearly show itemized costs that make up the annual direct and indirect costs per FAR guidelines;
- Balance sheets and income statements including cash flow; and
- Proposed profit percentage to be applied to the direct rate costs and indirect rate costs only (Excludes application against subconsultants costs, other direct costs, and reimbursables).

The estimated staff hours identified in Part II.D.2.a above, the direct and indirect rate costs, and the proposed profit percentages will be used to assess if scope of services will be performed at a fair and reasonable price.

D.2.d. APPENDICES:

1. Resumes for the proposed personnel.
2. Any other information that will assist the Port in making its selection.

E. PROPOSAL EVALUATION CRITERIA AND CONSULTANT SELECTION PROCESS

All Proposals received will be evaluated and ranked by an evaluation committee consisting of Port staff. The Proposals will be rated on the following criteria, weighted as indicated below:

1. **Responsiveness (Pass/Fail).** The PROPOSAL's responsiveness to the RFP's format and content is set forth in Section II.D of this document. PROPOSALS will be screened to confirm that they meet all of the requirements, including specified content and page count, and confirm that all required forms and information are provided. **If RESPONDENT fails to follow the directions in preparing their PROPOSAL, their submittal may be rejected.**
2. **Quality of Proposal (10 points).** The PROPOSAL will be evaluated for overall quality and clarity. Proposals should be clear, concise, and free from errors.
3. **Overall Experience and Expertise of the Consultant and Subconsultants (15 points).** This includes electrical substation and associated distribution equipment design experience similar in the scope outlined herein and directly related to providing the services specified in this RFP and demonstrated ability to work together as a team and to perform all aspects of the proposed work.
4. **Personnel and Team Organization (15 points).** This includes experience, education, knowledge, professional affiliations and degrees, professionalism, communication skills, and demonstrated leadership capabilities of key personnel, particularly of the individuals who will be in contact with the Port during the term of the contract.
5. **Referenced Projects (10 points).** This includes a listing of a minimum of one and a maximum of three projects performed by the prime consultant under the direct leadership of the proposed Project Manager that is similar in scope (similar nature of work), size, and complexity, to the electrical infrastructure design project.
6. **Project Approach (35 points).** Respondents will be ranked based on the quality of the Project Approach section of their proposal. The Respondent's description of the

project, detailed scope of work, schedule and anticipated resource needs. Respondent must demonstrate a complete understanding of the project and present a clear and concise plan for implementing the project. Proposals will also be judged on innovative project delivery approaches, their approach to deliver the project on an aggressive schedule, their plan and demonstrated experience for Port internal stakeholder coordination and their approach to phasing and implementation. As described above the Respondent's approach to Project Management and Quality Control will also be assessed and judged.

7. **Non-Discrimination and Small/Local Business Utilization Policy (NDSLBU) (15 points).** Points will be based on the small local participation of the Prime Consultant and listed subconsultants, as demonstrated in the Chart for Submitting Data for Calculation of Preference Points included herein as Attachment 3(e).

The highest-rated respondents will be included on a shortlist and will be invited to participate in an oral interview to be held within three weeks of the Proposal due date. Participation in the interview is mandatory. The interview will be used to confirm or otherwise adjust the proposal rating points for a final score; the maximum final number of points or score assigned will not exceed 100 points.

Respondents are encouraged to plan their schedules accordingly to ensure that key staff will be available for the interview. Short-listed teams will present their experience and approach to the project, followed by a question and answer session by the evaluation committee. The interview will consist of standard questions asked to all short-listed consultants invited to the oral interviews.

Based on the interviews, the evaluation committee will finalize the scoring of each Proposal, as follows:

- For each criterion, the points assigned in the preliminary evaluation may be increased or decreased, but in no case will the points assigned for a particular criterion be greater than the maximum listed above for said criterion.
- The points assigned in this final stage will be added together to produce the Final Score.
- The maximum Final Score is 100 points.
- The final ranking of the Proposals/SOQs will be determined by the Final Scores.

III. Port Policy Requirements and Additional Provisions

A. PORT POLICY REQUIREMENTS FOR NON-FEDERALLY FUNDED RFPs/RFQs

The selected consultant will be required to comply with the following Port Policy Requirements:

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

The successful Proposer (the selected consultant) must comply with the Port's NDSLBU, a summary of which is included herein as Attachment 2(b). Proposers shall submit with their Proposal the *Chart for Submitting Data for Calculation of Preference Points*, included herein as Attachment 3(e), and a *Local Participation Questionnaire*, included herein as Attachment 3(f). The successful consultant will be required to submit the *Monthly Utilization of Local and Small Business Enterprises* [Attachment 4(c)] and the *Final Utilization of Local and Small Business Enterprises* [Attachment 4(d)] as per the instructions contained therein.

2. Insurance Requirements:

The selected consultant shall comply with the Port's insurance requirements, as specified in Attachment 1, *Sample of Professional Services Agreement*, Appendix C.

3. 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 contractor will be required to fill out the *Employer Self Evaluation Form* [Attachment 4(a)] and *Certificate of Compliance* [Attachment 4(b)] and return them to the Social Responsibility Division. (i.e., do not include these forms in your Proposal). For more information, please call Connie Ng-Wong in the Port of Oakland's Social Responsibility Division at (510) 627-1390.

4. Prevailing Wages:

The Port directs the attention of Proposers to the requirements to pay prevailing wages for certain types of work, pursuant to California Labor Code, Section 1720, et seq. Section 1720, subd. (a)(1) provides that the term "public works" means:

Construction, alteration, demolition, installation, or repair work done under contract and paid for in whole or in part out of public funds, except work done directly by any public utility company pursuant to order of the Public Utilities Commission or other public authority. For purposes of this paragraph, "construction" includes work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work.

To the extent that the scope of services delivered under the contract includes work falling within the Labor Code definition of "public works" the Proposer will be required to comply with all Port requirements with respect to workers who perform such work. See Attachment 2(b), Non-Discrimination and Small/Local Business Utilization Policy.

5. Maritime and Aviation Project Labor Agreement (MAPLA):

The Port has entered into a Maritime and Aviation Project Labor Agreement (MAPLA) with the Building and Construction Trades Council of Alameda County, AFL-CIO that covers all capital construction in the Port area, whether funded by the Port or by tenants. MAPLA is included as Document 00823R1 in the Port's project manuals for public works projects. MAPLA has resulted in a Substance Abuse Prevention Policy on drug testing (Document 00824R2), a Social Justice Labor Management Cooperation Trust Fund (Document 00825R1), and requirements for Utilization of Off-Site Apprentice Work Force (Document 00826R2), local hiring (Document 00827R1) and utilization of disadvantaged and new hire apprentices (Document 00828R1). Copies of the MAPLA documents in pdf format will be posted on line to the same location as this RFP/RFQ.

To the extent that the services provided under a Professional Services Agreement fall within the craft jurisdiction of the unions signatory to the MAPLA (such as field surveying, on-site soils and material testing, and inspection) the MAPLA provisions will apply to any Instance of Work whose dollar value exceeds \$150,000.

6. Web-Accessed Monitoring System (WAMS):

The Port has adopted an electronic monitoring system to satisfy certain certified payroll reporting requirements for work that falls under the provisions of MAPLA. To the extent that the scope of services delivered under the contract includes such work, the

successful proposer(s) will be required to utilize the Port of Oakland’s Web Accessed Monitoring System (WAMS) to satisfy said requirements.

If submission of weekly payroll reports via WAMS is required, said reports must be inputted into the WAMS within one (1) week after a subject payroll date. All firms are required to register with Elation Systems to submit certified payroll reports. Instructions for using Elation Systems will be given to the selected proposer.

7. Port Policy Regarding Sensitive Security Information (SSI):

Insofar as the Work of this contract entails that the selected consultant may come into possession of Sensitive Security Information subject to Port of Oakland regulation, said consultant, and any proposing firms which are included on the short list for final consideration, will be required to sign a Document Control Affidavit [see Attachment 4(f)], and will be required to comply strictly with the Port of Oakland's SSI policies and practices, including but not limited to all of the provisions incorporated in the Document Control Affidavit.

8. Port’s Standard Professional Services Agreement:

Submission of a proposal will confirm that the proposer fully understands the provisions of the Port’s Professional Services Agreement (Attachment 1 to this RFP/RFQ) and will execute such agreement if awarded the contract. Any objections to any provisions in such contract must clearly be identified in your proposal.

9. CAD-GIS Waiver Form:

Any CAD and GIS files distributed to the contract awardee by the Port during the performance of services under this contract will be subject to the provisions of the CAD-GIS Waiver Form [included as Attachment 1(f) to this RFQ].

B. ADDITIONAL PROVISIONS FOR PORT OF OAKLAND RFPs/RFQs

The following provisions apply to this RFP/RFQ:

1. **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 claims any copyright, patent, or other intellectual property right in any portion of its Proposal, submission of a Proposal 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 all such portions, 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.

2. **Public Records Act**

Per the Public Records Act (Gov. Code 6250 *et seq.*), the Port will make available to the public the submitted proposals and all 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 a final Board agenda report recommending award of the contract. Except as required by law, the Port will not disclose trade secrets or proprietary financial information submitted in response to the Request for Proposal. Any such trade secrets or proprietary financial information, which a Proposer believes should be exempted from disclosure, shall be specifically identified and marked as such. Blanket-type identification by designating whole pages or sections shall not be permitted and shall be invalid. The specific information must be clearly identified as such.

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

3. Indemnification

If Respondent is selected to receive a contract, it will be required to agree to the provisions pertaining to indemnification contained in Attachment 1, Sample Professional Services Agreement, Appendix F, Indemnification.

4. Reimbursable Expenses

All expenses incidental to performing Consultant's Basic Services including, but not limited to, reproduction of documents and other materials associated with Consultant'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.

5. Port's Right to Modify

Proposers are advised that the Port has not incurred any obligations or duties in soliciting this Request for Proposals. The Port 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 RFP's or pursue any other means for obtaining the desired services; to waive any informalities or minor irregularities in the Proposals, 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 consultant(s) of its choice, and to decide to undertake the project or to terminate the project at any time.

6. Conflicts of Interest

By submitting a proposal, the Respondent represents that it is familiar with Section 1090 and Section 87100 et seq. of the Government Code of the State of California, and that it does not know of any facts that constitute a violation of said sections in connection with its proposal. Respondent represents that its Proposal has completely disclosed to Port all facts bearing upon any possible interests, direct or indirect, which Respondent believes any member of Port, or other officer, agent or employee of Port or any department presently has, or will have, in this Agreement, or in the performance thereof, or in any portion of the profits thereunder. Willful failure to make such disclosure, if any, shall constitute ground for rejection of the proposals or termination of any Agreement by 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.

Respondent should note that if selected, it will be required to execute a contract containing additional provisions pertaining to conflicts of interest. See Attachment 1, Sample Professional Services Agreement, "Compliance with Laws".

7. Term of Proposal

Submission of a proposal signifies that the proposed services and quoted prices (if any) are valid for ninety (90) calendar dates from the proposal due date, and that any quoted prices are genuine and not the result of collusion or any other anti-competitive activity.

8. Revision of Proposal

A firm that has submitted a proposal prior to the proposal submittal deadline may revise its proposal on the firm's own initiative at any time prior to said deadline. The revised proposal must be submitted in the same manner as the original, and must be received on or before the

proposal submittal deadline.

9. Errors and Omissions in Proposal

Failure by the Port to object to an error, omission, or deviation in the proposal will in no way modify the RFP or excuse the firm from full compliance with the specifications of the RFP or any contract awarded pursuant to the RFP.

10. 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 the Secretary of the Board of Port Commissioners, 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.

ATTACHMENT 1

SAMPLE PROFESSIONAL SERVICES AGREEMENT

Proposer shall review the attached sample Professional Services Agreement and shall submit with its Proposal/SOQ any objections to the terms and conditions contained therein.

**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”)

**[Design Services for Electric Infrastructure
for Bus Charging Stations]**

Contract No. _____

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.

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

Consultant will provide engineering services to develop a Plans, Specifications, and Estimates (“PS&E”) package for the project per Port CAD Standards (to be provided by the Port to the Consultant) and formatting for advertisement and construction purposes.

Consultant will provide the following services: a conceptual and detailed design of a new medium voltage substation that will be fed from one of the Port's primary 12 kV substations, step-down transformer, and low voltage distribution substation to serve Electrical Vehicle Charging Stations (EVCS) for electric buses.

Consultant will review the Port’s initial conceptual design and make any appropriate recommendations on alternatives to provide power to the EVCS for electric buses. Conceptual design will address finalizing the breaker count and substation location and layout and orientation for the new SS-EV1 Substation and Distribution Substation load center. Conceptual design will also include advising and working with the Port to finalize the breaker ratings and circuit protection systems for the new SS-EV1 Substation and Distribution Substation load center and advising the Port on design opportunities to improve the power distribution system reliability for the new SS-EV1 Substation, Distribution Substation load center, and their feeders.

Following completion of the conceptual design, Consultant will design a new SS-EV1 Substation, Distribution Substation load center, distribution power transformer, 12.47 kV feeders, and 480 V feeders. The design will include the electrical equipment enclosure design, equipment foundation pads, grounding systems, communications, and security features. The design will result in a bid package developed to Port standards, that will be used to solicit bids and construct the project. Additionally, Consultant will develop schedules to complete deliverables for a PS&E package and to accomplish tasks listed below, for the project in accordance with Port CAD Standards and formatting for bid advertisement and construction purposes. Consultant will also attend all design review meetings.

DELIVERABLES

1. 30% PS&E Design Submittal
2. 60% PS&E Design Submittal
3. 90% PS&E Design Submittal
4. Final PS&E Design Submittal for construction bid package
5. Answers to all bidders' questions and all necessary design addendum documents during Port’s public works bidding process

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 B

PAYMENT

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

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

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

APPENDIX C

INSURANCE

1. Commercial General Liability Insurance

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

2. Business Automobile Liability Insurance

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

3. Contractor’s Pollution Legal Liability Insurance

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

4. Workers’ Compensation and Employer’s Liability Insurance

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

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

5. Professional Liability Insurance

- **Coverage:** For errors and omissions arising out of the Services.
- **Limits:** \$2,000,000 per claim and annual aggregate.
- **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

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

Division Director	
Project Manager	
Port's Notice Address	[Project Manager Name] 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.

ATTACHMENT 2

LIVING WAGE AND SMALL/LOCAL BUSINESS POLICIES

Attachment 2(a), City of Oakland City Charter § 728 Living Wage Information
Attachment 2(b), Non-Discrimination and Small Local Business Utilization Policy



City of Oakland City Charter § 728 Living Wage Information

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

- 1) Pay all non-exempt employees the living wage rates (As of July 1, 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.



Non-Discrimination and Small Local Business Utilization Policy

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 3(d), 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 3(d). 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 3(e), Local Participation Questionnaire. Complete for each sub-consulting firm or individual, as well as for the prime consultant.

3. Attachment 4(c) and 4(d), Monthly and Final Utilization of Local and Small Business Enterprises are required after contract award. Attachment 4(c) is required after contract award and a final report attachment 4(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: <https://srd.portoakland.com>. For questions regarding certification, you may contact Social Responsibility Division (SRD) at (510) 627-1627 or by email at 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, please contact the person listed as the Non-Discrimination and Small/Local Business Utilization Policy (NDSLBP) Contact in Section I of this RFP/RFQ.

ATTACHMENT 3

FORMS TO BE SUBMITTED WITH PROPOSAL/SOQ

Attachment 3(a), RFP/RFQ Acknowledgment and Certifications Form

Attachment 3(b), Non-Collusion Declaration

Attachment 3(c), Regulatory Compliance Statement

Attachment 3(d), Chart for Submitting Data for Calculation of Preference Points

Attachment 3(e), Local Participation Questionnaire



RFP/Addendum Acknowledgment and Proposer Certifications Form

REQUEST FOR PROPOSALS (RFP) FOR DESIGN SERVICES FOR ELECTRIC INFRASTRUCTURE FOR BUS CHARGING STATIONS

Statement of Equal Employment Opportunity:

The undersigned certifies that Proposer will not discriminate against any employee or applicant for employment because of because of race, color, religion, sex, national origin, ancestry, age (over 40), physical or mental disability, cancer-related medical condition, a known genetic pre-disposition to a disease or disorder, veteran status, marital status, or sexual orientation.

Capacity to Provide the Requested Insurance:

The undersigned certifies that Proposer has reviewed the insurance requirements specified in the sample Professional Services Agreement included as an attachment to this RFP/RFQ, and is capable of securing the levels of insurance specified. I further certify that, if awarded the Contract, Proposer will provide proof of insurance at the time of award, and will meet the insurance requirements specified in the attached sample Professional Services Agreement.

Compliance with Living Wage Requirements:

The undersigned certifies that Proposer has reviewed the Living Wage Requirements included as an attachment to this RFP/RFQ, and will comply with said requirements. I understand and agree that upon execution of an Agreement, the contract awardee will be required to complete the attached Employer Self-Evaluation Form and Certificate of Compliance – Living Wage Form of this RFP/RFQ, and submit them to the Social Responsibility Division.

Compliance with Non-Discrimination and Small/Local Business Utilization Policy:

The undersigned certifies that Proposer has reviewed the provisions of the Port's Non-Discrimination and Small/Local Business Utilization Policy summarized in the pertinent attachment to this RFP/RFQ, will 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 will use best efforts to ensure that barriers to participation of Small Local Businesses do not exist.

I understand and agree that upon execution of an Agreement, the contract awardee 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.

Compliance with Maritime and Aviation Project Labor Agreement:

The undersigned certifies that Proposer has reviewed the Port's Maritime and Aviation Project Labor Agreement [MAPLA] and, insofar as the provisions of MAPLA apply to the Work of this Contract, will comply with said provisions.

Debarment (check one):

- The undersigned certifies that Proposer is not excluded from receiving Federal contracts or subcontracts pursuant to the provisions of 31 U.S.C. 6101, note, E.O. 12549, E.O. 12689, 48 CFR 9.404.
- Proposer is currently excluded from receiving Federal contracts or subcontracts pursuant to the provisions of 31 U.S.C. 6101, note, E.O. 12549, E.O. 12689, 48 CFR 9.404. Attached is a written explanation, signed and dated by the signatory of this RFP Acknowledgment and Certifications Form, of the reasons for the debarment, including the name and contact information for the agency that debarred the firm. Proposer understands and agrees that the Port will review the attached debarment information before determining whether the firm can be considered for this project.

Conflict of Interest, Pending Litigation, or Removal from Position (check one):

- The undersigned certifies that Proposer (a) is not a participant in any arrangements, formal or informal, with a third party that might interfere with the firm’s ability to provide services under this RFP/RFQ; (b) is not involved in our subject to any litigation, administrative proceeding, or investigation (actual or pending) that might have an adverse effect on its ability to fulfill its engagements under this RFP/RFQ; and (c) has not been removed by any organization during the last five years.
- Proposer has attached a description of all third-party arrangements or litigation/administrative proceedings/investigations that might affect the firm’s ability to provide services under this RFP/RFQ, and has attached an explanation of any removal from position by any organization within the last five years.

Acknowledgment of Receipt of Addenda:

The undersigned acknowledges that prior to submitting this Proposal, Proposer has reviewed all Addenda modifying this RFP, as posted on <http://www.ebidboard.com>.

Addendum No.:	Date Issued:
_____	_____
_____	_____
_____	_____

RFP Acknowledgement and Signature:

The undersigned certifies that he/she has carefully read, understands and agrees to the terms and conditions on all pages of this RFP/RFQ, including all addenda issued during the proposal period. The undersigned agrees to furnish the services stipulated in this RFP/RFQ. pursuant to said terms and conditions.

1. No Proposal is valid unless signed in ink by the person authorized to make the proposal. The undersigned certifies that he or she has full power to execute, and does execute, this RFP/RFQ Acknowledgment and Certification.
2. I have carefully read, understand and agree to the terms and conditions on all pages of this RFP/RFQ, including, but not limited to, the acknowledgments and declarations listed above. The undersigned agrees to furnish the services stipulated in this RFP, under the aforementioned terms and conditions.

3. 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.

Respondent's Name and Title: _____

Company Name: _____

Address: _____

Telephone: _____ Fax: _____

Email: _____ Cell Number: _____

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

DIR Registration #: _____ Expiration Date: _____

Authorized Signature: _____ Date: _____

PORT OF OAKLAND

NON COLLUSION DECLARATION

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

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

Executed this _____ day of _____, 201__, at _____, California

Signature

Authority: Public Contract Code 7106
CCP 2015.5

REGULATORY COMPLIANCE STATEMENT

Proposer shall submit a complete and fully executed copy of this Regulatory Compliance Statement for the Port's review with its Proposal. The failure to submit this document as specified may be grounds for rejecting the Proposal as non-responsive. If the Proposer is a corporation, provide the following information for each person who is either (a) an officer of the corporation (president, vice president, secretary, treasurer), or (b) the owner of at least ten percent of the corporation's stock. If the Proposer is a partnership, provide the following information for each partner who owns 10 percent or more of the firm. If the Proposer is a joint venture, provide the following information for each firm that is a member of the joint venture.

1. Has CAL OSHA cited and assessed penalties against your firm for any "serious," "willful" or "repeat" violations of its safety or health regulations in the past five years?

NOTE: If you have filed an appeal of a citation, and the Occupational Safety and Health Appeals Board has not yet ruled on your appeal, you need not include information about it.

Yes No

If "yes," attached a separate signed page describing the citations, including information about the dates of the citations, the nature of the violation, the project on which the citation(s) was or were issued, the amount of penalty paid, if any. If the citation was appealed to the Occupational Safety and Health Appeals Board and a decision has been issued, state the case number and the date of the decision.

2. Has the federal Occupational Safety and Health Administration cited and assessed penalties against your firm in the past five years?

NOTE: If you have filed an appeal of a citation and the Appeals Board has not yet ruled on your appeal, or if there is a court appeal pending, you need not include information about the citation.

Yes No

If "yes," attach a separate signed page describing each citation.

3. Has the EPA or any Air Quality Management District or any Regional Water Quality Control Board cited and assessed penalties against either your firm or the owner of a project on which your firm was the contractor, in the past five years?

NOTE: If you have filed an appeal of a citation and the Appeals Board has not yet ruled on your appeal, or if there is a court appeal pending, you need not include information about the citation.

Yes No

If "yes," attach a separate signed page describing each citation.

4. Within the last five years has there ever been a period when your firm had employees but was without workers' compensation insurance or state-approved self-insurance?

Yes No

If "yes," please explain the reason for the absence of workers' compensation insurance on a separate signed page. If "No," please provide a statement by your current workers' compensation insurance carrier that verifies periods of workers' compensation insurance coverage for the last five years. (If your firm has been in the construction business for less than five years, provide a

statement by your workers' compensation insurance carrier verifying continuous workers' compensation insurance coverage for the period that your firm has been in the construction business.)

Prevailing Wage and Apprenticeship Compliance Record

5. Has there been more than one occasion during the last five years in which your firm was required to pay either back wages or penalties for your own firm's failure to comply with the **state's** prevailing wage laws?

NOTE: This question refers only to your own firm's violation of prevailing wage laws, not to violations of the prevailing wage laws by a subcontractor.

Yes No

If "yes," attach a separate signed page or pages, describing the nature of each violation, identifying the name of the project, the date of its completion, the public agency for which it was constructed; the number of employees who were initially underpaid and the amount of back wages and penalties that you were required to pay.

6. During the last five years, has there been more than one occasion in which your own firm has been penalized or required to pay back wages for failure to comply with the **federal** Davis-Bacon prevailing wage requirements?

Yes No

If "yes," attach a separate signed page or pages describing the nature of the violation, identifying the name of the project, the date of its completion, the public agency for which it was constructed; the number of employees who were initially underpaid, the amount of back wages you were required to pay along with the amount of any penalty paid.

7. At any time during the last five years, has your firm been found to have violated any provision of California apprenticeship laws or regulations, or the laws pertaining to use of apprentices on public works?

NOTE: You may omit reference to any incident that occurred prior to January 1, 1998, if the violation was by a subcontractor and your firm, as general contractor on a project, had no knowledge of the subcontractor's violation at the time they occurred.

Yes No

If "yes," provide the date(s) of such findings, and attach copies of the Department's final decision(s).

Criminal Matters and Related Civil Suits

8. Has your firm or any of its owners, officers or partners ever been found liable in a civil suit or found guilty in a criminal action for making any false claim or material misrepresentation to any public agency or entity?

Yes No

If "yes," explain on a separate signed page, including identifying who was involved, the name of the public agency, the date of the investigation and the grounds for the finding.

9. Has your firm or any of its owners, officers or partners ever been convicted of a crime involving any federal, state, or local law related to construction?

Yes No

If “yes,” explain on a separate signed page, including identifying who was involved, the name of the public agency, the date of the conviction and the grounds for the conviction.

10. Has your firm or any of its owners, officers or partners ever been convicted of a federal or state crime of fraud, theft, or any other act of dishonesty?

Yes No

If “yes,” identify on a separate signed page the person or persons convicted, the court (the county if a state court, the district or location of the federal court), the year and the criminal conduct.

11. Did your firm earn average gross revenues equal to or greater than \$50 million in the last three years?

Yes No

* * * * *

I, the undersigned, certify and declare that I have read all the foregoing answers to this Regulatory Compliance Statement and know their contents. The matters stated in the questionnaire answers are true of my own knowledge and belief, except as to those matters stated on information and belief, and as to those matters I believe them to be true. I declare under penalty of perjury under the laws of the State of California, that the foregoing is correct.

Dated:

(Name)

PORT OF OAKLAND
Regulatory Compliance Statement

Rating Guidelines

This document establishes the guidelines for evaluating a Proposer's responses to the Port's Regulatory Compliance Statement ("RCS"). The Port will review the Proposer's RCS upon receipt to determine whether it contains any responses that would render the Proposer non-responsible. A satisfactory rating, in accordance with these guidelines, is a necessary prerequisite for a Proposer to be found responsible. A satisfactory rating, however, is not in itself sufficient for a Proposer to be found responsible. The RCS addresses only a portion of the issues which may be indicative of non-responsibility. Many other issues, such as experience, technical capacity, and financial capacity, may also reflect on a Proposer's responsibility. The Port may find a Proposer non-responsible for any reason that is supported by substantial evidence.

Scoring the Responses

The Port will apply the following scores to each Proposer's RCS:

Question 1:

Has CAL OSHA cited and assessed penalties against your firm for any "serious," "willful" or "repeat" violations of its safety or health regulations in the past five years?

If the firm's average gross revenues for the last three years was less than \$50 million, scoring is as follows:

5 points for either "No" or "Yes" indicating 1 such instance.

3 points for "Yes" indicating 2 such instances.

0 points for "Yes" if more than 2 such instances.

If the firm's average gross revenues for the last three years was more than \$50 million, scoring is as follows:

5 points for either "No" or "Yes" indicating 1, 2, or 3 such instances.

3 points for "Yes" indicating either 4 or 5 such instances.

0 points for "Yes" if more than 5 such instances.

Question 2:

Has the federal Occupational Safety and Health Administration cited and assessed penalties against your firm in the past five years?

If the firm's average gross revenues for the last three years was less than \$50 million, scoring is as follows:

5 points for either "No" or "Yes" indicating 1 such instance.

3 points for "Yes" indicating 2 such instances.

0 points for "Yes" or if more than 2 such instances.

If the firm's average gross revenues for the last three years was more than \$50 million, scoring is as follows:

***5 points for either "No" or "Yes" indicating 1, 2, or 3 such instances.
3 points for "Yes" indicating either 4 or 5 such instances.
0 points for "Yes" if more than 5 such instances.***

Question 3:

Has the EPA or any Air Quality Management District or any Regional Water Quality Control Board cited and assessed penalties against either your firm or the owner of a project on which your firm was the contractor, in the past five years?

If the firm's average gross revenues for the last three years was less than \$50 million, scoring is as follows:

***5 points for either "No" or "Yes" indicating 1 such instance.
3 points for "Yes" indicating 2 such instances.
0 points for "Yes" or if more than 2 such instances.***

If the firm's average gross revenues for the last three years was more than \$50 million, scoring is as follows:

***5 points for either "No" or "Yes" indicating 1, 2, or 3 such instances.
3 points for "Yes" indicating either 4 or 5 such instances.
0 points for "Yes" if more than 5 such instances.***

Question 4:

Within the last five years, has there ever been a period when your firm had employees but was without workers' compensation insurance or state-approved self-insurance?

Yes No

***5 points for either "No" or "Yes" indicating 1 such instance.
0 points for any other answer.***

Question 5:

Has there been more than one occasion during the last five years on which your firm was required to pay either back wages or penalties for your own firm's failure to comply with the state's prevailing wage laws?

Yes No

NOTE: This question refers only to your own firm's violation of prevailing wage laws, not to violations of the prevailing wage laws by a subcontractor.

If your firm's average gross revenues for the last three years was less than \$50 million, scoring is as follows:

***5 points for either "No," or "Yes" indicating either 1 or 2 such instance.
3 points for "Yes" indicating 3 such instances.
0 points for "Yes" and more than 3 such instances.***

If your firm's average gross revenues for the last three years was more than \$50 million, scoring is as follows:

***5 points for either "No" or "Yes" indicating no more than 4 such instances.
3 points for "Yes" indicating either 5 or 6 such instances.
0 points for "Yes" and more than 6 such instances.***

Question 6:

During the last five years, has there been more than one occasion on which your own firm has been penalized or required to pay back wages for failure to comply with the **federal** Davis-Bacon prevailing wage requirements?

If your firm's average gross revenues for the last three years was less than \$50 million, scoring is as follows:

***5 points for either "No," or "Yes" indicating either 1 or 2 such instance.
3 points for "Yes" indicating 3 such instances.
0 points for "Yes" and more than 3 such instances.***

If your firm's average gross revenues for the last three years was more than \$50 million, scoring is as follows:

***5 points for either "No" or "Yes" indicating no more than 4 such instances.
3 points for "Yes" indicating either 5 or 6 such instances.
0 points for "Yes" and more than 6 such instances.***

Question 7:

At any time during the last five years, has your firm been found to have violated any provision of California apprenticeship laws or regulations, or the laws pertaining to use of apprentices on public works?

If your firm's average gross revenues for the last three years was less than \$50 million, scoring is as follows:

***5 points for either "No," or "Yes" indicating either 1 or 2 such instance.
3 points for "Yes" indicating 3 such instances.
0 points for "Yes" and more than 3 such instances.***

If your firm's average gross revenues for the last three years was more than \$50 million, scoring is as follows:

***5 points for either "No" or "Yes" indicating no more than 4 such instances.
3 points for "Yes" indicating either 5 or 6 such instances.
0 points for "Yes" and more than 6 such instances.***

Question 8:

Has your firm, or any of its owners, officers, or partners ever been found liable in a civil suit, or found guilty in a criminal action, for making any false claim or material misrepresentation to any public agency or entity?

Yes No
No = 5 points Yes = subtract 5 points

Question 9:

Has your firm, or any of its owners, officers or partners ever been convicted of a crime involving any federal, state, or local law related to construction?
 Yes No
No = 5 points Yes = subtract 5 points

Question 10:

Has your firm or any of its owners, officers or partners ever been convicted of a federal or state crime of fraud, theft, or any other act of dishonesty?
 Yes No
No = 5 points Yes = subtract 5 points

Question 11:

No score.

Determination of Non-Responsibility

After tabulating the contractor's score in accordance with these guidelines, the Port staff will make a recommendation to the Board or other decision-maker as to whether the contractor should be determined to be non-responsible based on its responses to the RCS. A contractor whose RCS yields a score equal to or less than 65% of the maximum available points should be deemed non-responsible. However, the RCS form does not address each and every issue that bears on the question of contractor responsibility. Therefore, the Port reserves the right to determine that any contractor is non-responsible on other grounds. The Port will provide a contractor notice and an opportunity to respond to the extent required by law prior to making a final determination that a contractor is non-responsible.



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)		Prime				
(Name of Subs)		Sub				
(Name of Subs)		Sub				
(Name of Subs)		Sub				
(Name of Subs)		Sub				
(Name of Subs)		Sub				
(Name of Subs)		Sub				
(Name of Subs)		Sub				
(Name of Subs)		Sub				
(Name of Subs)		Sub				
(Name of Subs)		Sub				
(Name of Subs)		Sub				
Total (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.



PORT OF OAKLAND

Local Participation Questionnaire

(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:

ATTACHMENT 4

FORMS TO BE SUBMITTED BY CONTRACT AWARDEE

Port of Oakland Living Wage Requirements:

Attachment 4(a), Employer Self-Evaluation for Port of Oakland Living Wage

Attachment 4(b), Certificate of Compliance – Living Wage

Upon execution of an Agreement, the contract awardee will be required to complete Attachment 4(a) and Attachment 4(b) and submit them to the Port's Social Responsibility Division [SRD].

Non-Discrimination and Small/Local Business Utilization Policy:

Attachment 4(c), Monthly Utilization of Local and Small Business Enterprises

Attachment 4(d), Final Utilization of Local and Small Business Enterprises

The contract awardee will be required to submit Attachment 4(c) to SRD on a monthly basis, and will be required to submit Attachment 4(d) to SRD upon contract completion.

Distribution of Sensitive Security Information (SSI) and CAD-GIS Files:

Attachment 4(e), Sample Document Control Affidavit

Any firm which, during the consultant selection process or during performance of services under this contract, comes into possession of Sensitive Security Information (SSI) will be required to comply strictly with the Port's policies for handling SSI, and will be required to sign a Document Control Affidavit.

Attachment 4(f), Sample CAD-GIS Waiver Form

All CAD or GIS files distributed by the Port during performance of services under this contract will be subject to the terms of the CAD-GIS Waiver Form. Consultant will be required to sign said form upon receipt of any such files.



Employer Self-Evaluation for Port of Oakland Living Wage

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:

Kimberly Wilson

Port of Oakland

Social Responsibility Division

530 Water Street

Oakland, CA 94607

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

Email: kwilson@portoakland.com



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: Kimberly Wilson, Port of Oakland, Social Responsibility Division, 530 Water Street, Oakland, CA 94607. Email: kwilson@portoakland.com



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
TOTAL				\$	\$	\$	\$		

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://www.portofoakland.com/srd/>) or by calling (510) 627-1419. 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.**

COMMENTS:



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
TOTAL				\$	\$	\$	\$		

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--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.
- 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://www.portofoakland.com/srd/>) or by calling (510) 627-1419. 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.**

COMMENTS:

DOCUMENT 00110

**DOCUMENT CONTROL AFFIDAVIT
(CONSULTANT UNDER CONTRACT TO PORT)**

The undersigned (“Consultant”) hereby certifies and agrees as follows:

1. The Consultant understands that the following documents, distributed for the purposes described in Paragraph 2, below, relate to the preservation of public safety and security:

description of Restricted Documents

The Consultant hereby accepts said documents (hereafter referred to as “Restricted Documents.”) subject to the limitations stated in this Document Control Affidavit.

2. The Consultant is a Port consultant performing the following work on behalf of the Port:

description of work

The Consultant accepts the Restricted Documents solely for the purpose of performing said work.

3. The Consultant is not acting as an agent for any other person or principal. The undersigned is the Chairman, President or Vice President of the Consultant referenced in Paragraph 2, above.
4. The Consultant understands and agrees that by receiving the Restricted Documents it will become a “covered person” under 49 CFR Pt. 15 or 49 CFR Pt. 1520, and subject to the handling and disclosure limitations therein. Unauthorized disclosure may subject Consultant to civil penalty or other enforcement or corrective measure.
5. Upon completion of the work referenced in Paragraph 2, above, the Consultant will promptly return to the Port all Restricted Documents distributed in hard-copy format, and will destroy any digital copies of the Restricted Documents.
6. The Consultant understands and agrees that it shall be responsible for compliance with 49 CFR Pt. 15 or 49 CFR Pt. 1520 in the course of its performing the work referenced in Paragraph 2, above.
7. The Consultant understands and agrees that in the course of performing the work, it is authorized to disclose Restricted Documents to subconsultants to the limited extent reasonably necessary to perform the work. However, in any communications with subconsultants, Consultant will disclose Restricted Documents subject to the same restrictions stated herein, and will obtain commercially reasonable assurances that the information contained in any Restricted Documents will be treated as security sensitive information in compliance with 49 CFR Pt. 15 or 49 CFR Pt.1520.
8. The Consultant understands and agrees that retention and Final Payment for the work referenced in Paragraph 2, above, will not be made until the Restricted Documents have been returned to the Port in their original shape and quantity.

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

Date

Signature of Chairman, President, or Vice President

Print name of Chairman, President, or Vice President

Company Name

Business address

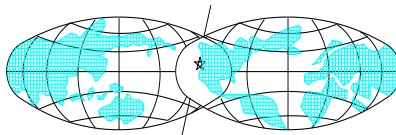
City/State/Zip Code

Phone Number

Fax Number

CAD/GIS Waiver

Recipient



PORT OF OAKLAND

From: Recipient
Address

To: Chief Engineer
Port of Oakland
530 Water Street
Oakland, CA 94607

Re: CAD/GIS Waiver for the following Plans:

Project: Full Project Name
Plan File Number: AA-xxxx
Contract Number: xxxx-xx-xx

released for limited use, restricted to the following work:

- Execution of the above-mentioned contract
- OR
- Consulting services for Port project "Full Name of Project"
- OR
- Tenant improvements, to be performed by or on behalf of the undersigned, consisting of:

The undersigned agrees to the terms of this CAD/GIS Waiver as a condition for receiving information from the Port of Oakland in electronic or paper form.

1. **Recipient**, hereafter referred to as Recipient, acknowledges and agrees that its use of CAD and/or GIS Files will be solely at Recipient’s risk and acknowledges that anomalies and errors can be introduced into CAD and/or GIS Files when they are transferred or used in an incompatible computer environment. Recipient further acknowledges that differences can exist between the data in CAD and/or GIS Files and the information contained in hard copy Plans (which are the drawings, sketches, and other graphic materials contained within the above-mentioned plan set) printed from such CAD and/or GIS Files. Recipient hereby releases the City of Oakland, a municipal Corporation, acting by and through its Board of Port Commissioners (the Port), and the Architect/Engineer as designated in the Contract Documents of the subject Project, from any damages or losses of any kind, including, but not limited to, damages or losses to property or persons (including death), economic losses, delays, contract cost increases, and any consequential, special, indirect or incidental damages, resulting from the transfer or use of the CAD and/or GIS Files, except for damages or losses caused by the Port’s sole negligence or willful misconduct.

CAD/GIS Waiver

Recipient

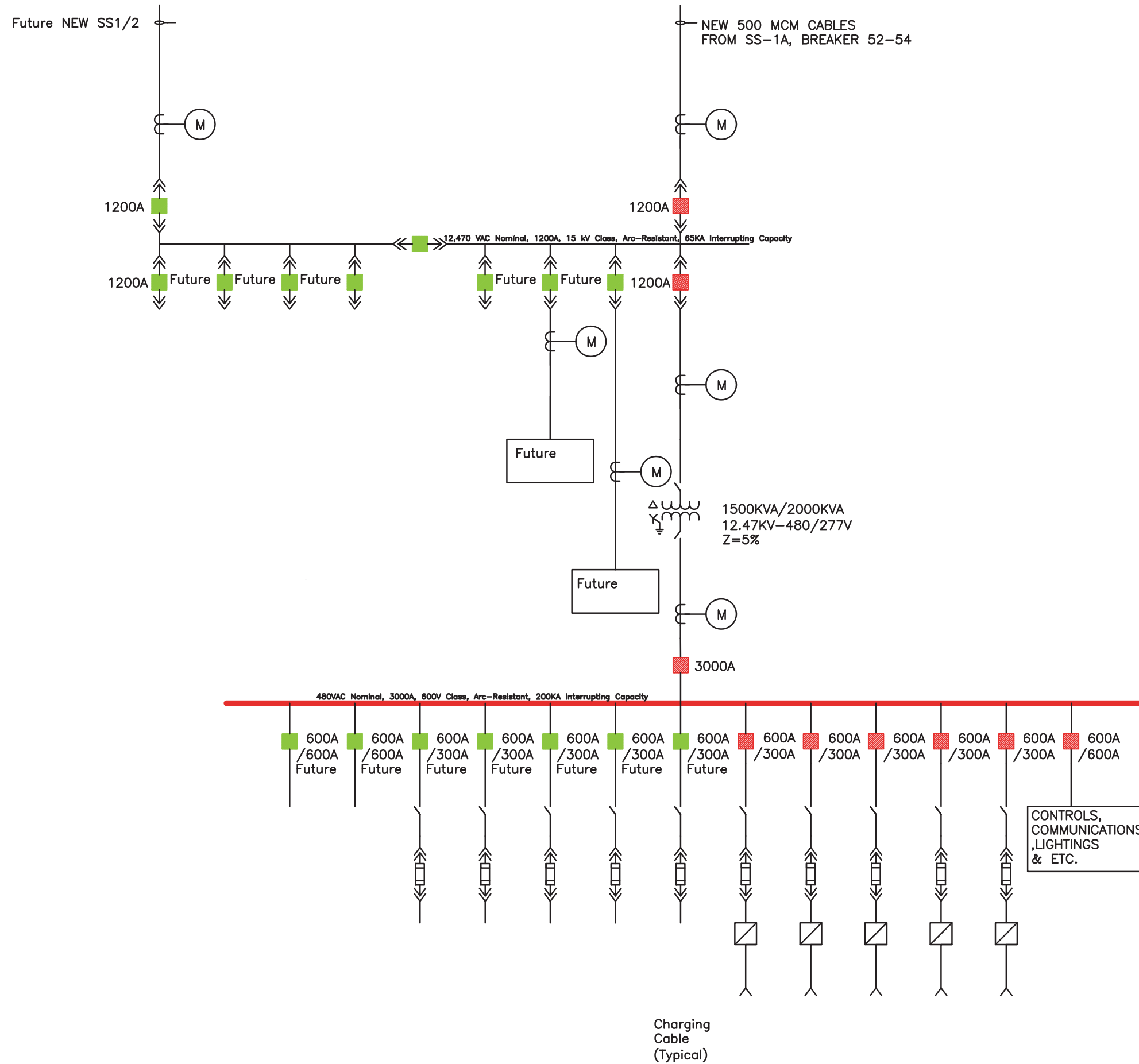
2. Recipient’s use of the CAD and/or GIS Files is limited to the work specified above. Recipient agrees that the CAD and/or GIS Files will not be used for any other purpose. Recipient agrees not to reproduce, distribute, disclose, modify, transfer, or assign the CAD and/or GIS Files, except as specified in Paragraph 7, below.
3. The CAD and/or GIS Files represent instruments of professional service and shall remain the Port’s property. Port shall be deemed the owner of the CAD and/or GIS Files and shall retain all proprietary rights, including copyrights, embodied therein. The Architect/Engineer remains responsible for the design to the extent allowed by the Business and Professions Code. The Port provides the CAD and/or GIS Files “as is” and makes no representations or warranties, express or implied, of merchantability, adequacy, completeness or sufficiency, or any results intended to be achieved as to its use.
4. Any discrepancy between the CAD and/or GIS electronic files and any hard copy Plans provided by the Port shall be determined in favor of the hard copy Plans.
5. Recipient acknowledges that there are prohibitions on practicing engineering and land surveying without applicable professional license and further acknowledges that the Recipient shall not use any data obtained from the Port to act in violation of the Business and Professions Code.
6. Recipient agrees to defend, indemnify, and hold the Port and Architect/Engineer harmless from any claims, suits, or losses (including reasonable attorney’s fees and all legal expenses) arising out of or in any way related to the Recipient’s use of the CAD and/or GIS Files.
7. Recipient shall not transfer the CAD and/or GIS Files, any derivative of the CAD and/or GIS Files, or any copy of the CAD and/or GIS Files in any form to a third party without obtaining prior written consent of the Port. The Recipient acknowledges that, in the event that the Port consents to any such transfer, said transfer shall be subject to the same restrictions as stated herein. If the Recipient fails to perform or observe any of the terms hereunder, the Port may terminate Recipient’s use of the CAD and/or GIS Files, among other remedies.
8. Should any legal proceeding be commenced between the parties to this Agreement seeking to enforce any of its provisions, the prevailing party in such a proceeding shall be entitled, in addition to such other relief as may be granted, to a reasonable sum for attorney’s fees which shall be determined by the court or forum in such a proceeding or in a separate action brought for that purpose.
9. This Agreement shall be governed by the laws of the State of California.
10. The signature below indicates acceptance of the terms stated above. The undersigned represents that he/she has full power to execute, and does execute, this waiver on behalf of Recipient.

By/Date: _____
 Name: _____
 Company: _____
 Title: _____
 Email address: _____

ATTACHMENT 5

PORT'S PRELIMINARY DESIGN CONCEPT

NEW SUBSTATION SS-EV1 DESIGN CONCEPT SINGLE-LINE DIAGRAM



Power Cables & Conduits Routes Design Concept

