

AGREEMENT NO. _____

**BETWEEN THE CITY OF LOS ANGELES
AND
PMWEB, INC.**

THIS AGREEMENT ("Agreement") is made and entered into by and between the CITY OF LOS ANGELES, a municipal corporation ("City") acting by and through its Board of Harbor Commissioners ("Board"), and PMWEB, INC., a Massachusetts corporation, whose address is 1 Pope Street, Wakefield, MA 01880 ("Consultant").

WHEREAS, City requires professional, scientific, expert or technical services of a temporary and occasional character, including the services of a Web-based construction project management system; and

WHEREAS, a Web-based construction project management system will provide cost savings to the Harbor Department by eliminating mailing paper documents, provide a central work space that will allow all members of a project team to communicate and collaborate seamlessly, decrease the time necessary to respond to requests and documents submitted by contractors, delivering projects more quickly and cost-effectively, and will record, track and report the financial status of construction projects and programs; and

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

WHEREAS, Consultant was selected through a competitive bid process; and

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

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

1. Incorporation of Recitals.

1.1 The recitals to this Agreement above are incorporated herein and made a part hereof.

2. Services To Be Performed By Consultant.

2.1 All of the services Consultant shall perform for City are set forth in Exhibit "A" hereto and hereinafter shall be referred to as "Scope of Work." Among other things, Exhibit "A" breaks down the Scope of Work into individual tasks and, in some cases, further breaks down such tasks into subtasks, which hereinafter shall be referred to generically as "Tasks" and "Subtasks." The aggregate of all Tasks and, as applicable, Subtasks, comprises the Scope of Work.

2.2 Consultant's performance of Tasks and, as applicable, Subtasks shall occur as follows:

a. The Chief Harbor Engineer of the Construction Division of City's Harbor Department ("Engineer") shall issue a written document in the form attached hereto as Exhibit "B" that has been signed by the Deputy Executive Director of Development for the City's Harbor Department and that specifies, without limitation: the Task or Subtask to be performed; the specific services required in connection with such Task or Subtask; the deliverables required in the performance of such Task or Subtask; the schedule for the performance of such Task or Subtask; authorized personnel who may perform the Task or Subtask; authorized compensation for such Task or Subtask; and MBE/WBE/SBE/VSBE/DVBE/OBE utilization ("Directive").

b. Consultant, to reflect its agreement with all the terms of such Directive, shall sign, date and return such Directive to Engineer.

c. Following Engineer's receipt of the Directive signed by Consultant, Engineer shall issue a written document in the form attached hereto as Exhibit "C" that has been signed by Engineer and that authorizes Consultant to commence performance of the services contemplated by such Directive ("Notice to Proceed").

2.3 Consultant acknowledges and agrees that it lacks authority to perform and that Engineer lacks authority to request the performance of any services outside the Scope of Work. Consultant further acknowledges and agrees that any services it performs outside the Scope of Work or a Directive, or in the absence of both a Directive and a Notice to Proceed, are performed as a volunteer and shall not be compensable under this Agreement.

2.4 The Scope of Work shall be performed by personnel qualified and competent in the sole reasonable discretion of Engineer, whether performance is undertaken by Consultant or third-parties with whom Consultant has contracted and whom are listed on Exhibit "I" on the effective date of this Agreement, or whom Engineer may subsequently approve in writing ("Subconsultants"). Obligations of this Agreement, whether undertaken by Consultant or Subconsultants, are and shall be the responsibility of Consultant. Consultant acknowledges and agrees that this Agreement creates no rights in Subconsultants with respect to City and that obligations that may be owed to Subconsultants, including, but not limited to, the obligation to pay Subconsultants for services performed, are those of Consultant alone. Upon Engineer's written request, Consultant shall supply City's Harbor Department with all agreements between it and its

Subconsultants.

2.5 Consultant's performance of the Scope of Work shall adhere in all respects to the schedule set forth in Exhibit "E" hereto and to the scheduling requirements, if any, set forth in a Directive.

2.6 Consultant, at its sole cost and expense, shall furnish all services, materials, equipment, subsistence, transportation and all other items necessary to perform the Scope of Work. As between City and Consultant, Consultant is solely responsible for any taxes or fees which may be assessed against it or its employees resulting from performance of the Scope of Work, whether social security, payroll or other, and regardless of whether assessed by the federal government, any state, the City, or any other governmental entity. City shall pay applicable state or local fees necessary to obtain approval, plan checks, permits and variances for the Project.

2.7 Engineer shall resolve in his or her sole reasonable discretion any issues or questions which may arise during the term of this Agreement as to the quality or acceptability of Consultant's performance of the Scope of Work, the manner of performance, the interpretation of direction given to Consultant, the acceptable completion of a Directive, and the amount of compensation due. Upon written notice from Engineer, Consultant shall assign replacement personnel and/or shall remedy any deficient services or work product to Engineer's reasonable satisfaction and at Consultant's sole cost and expense. Compliance with the requirements of this Section 2.7 is a condition to payment by City of compensation to Consultant pursuant to this Agreement.

2.8 Consultant's representative responsible for administering this Agreement, Michael Nosbisch, CCP, PSP, FAACE, shall not be changed without Engineer's written approval. Engineer may, for any reason in his or her sole reasonable discretion, require Consultant to substitute a new Project Manager. If City requests such a substitution, the substitute Project Manager shall expend whatever time and costs necessary to become familiar with the Project and any portions of the Scope of Work already performed at Consultant's sole cost and expense.

2.9 If the law requires Consultant, in performing the Scope of Work, to follow a different standard of care than the ordinary standard of care applied to a reasonable person, Consultant shall perform such services with the degree of diligence, skill, judgment, and care applicable to Consultant's profession ("professional standard"). Consultants not required to follow a professional standard shall exercise the degree of care required of ordinary persons.

2.10 For portions of the Scope of Work to be performed on a time and material basis, Consultant shall assign personnel, whether employees or Subconsultants, with the lowest applicable hourly rate who are fully competent to provide the services required. If Consultant finds it necessary to have any portion of the Scope of Work, which this Section 2.10 would require to be performed by personnel at a lower rate, to be performed by personnel at a higher rate, Consultant shall, nevertheless, invoice City at the lower rate.

2.11 Consultant shall promptly consider and implement, to the reasonable satisfaction of Engineer, any written comments of Engineer.

2.12 Consultant shall review information provided by City's Harbor Department, whether in the form of drawings, documents, and/or written or verbal comments, excluding survey data. Any such information reasonably believed by Consultant to be inaccurate, incomplete or inapplicable shall be brought promptly to the attention of Engineer in writing.

2.13 Consultant shall perform the Scope of Work as expeditiously as possible and at the time or times required by the Engineer. Time is of the essence in the performance of the Scope of Work. Consultant's failure to conform to the schedule set forth in Exhibit "E" shall entitle City to have services completed by others, shall obligate Consultant to pay City City's cost to undertake completion of such services, and shall authorize City to withhold such amounts from any payments otherwise due to Consultant. Consultant's failure to timely perform in accordance with the schedule set forth in Exhibit "E" shall result in economic losses to the City, including, but not limited to, the timely bidding and awarding of contracts, completion of the Project and the use of the Project by City's Harbor Department, its tenants and the public.

3. Services To Be Performed By City.

3.1 City's Harbor Department shall provide Consultant with available and/or necessary horizontal and vertical survey data in the form of field notes or electronic format as maintained by City's Harbor Department, access to public records, prints of existing aerial photos, existing planimetric maps, environmental documents, existing oceanographic studies and existing soil reports in the vicinity, previous specifications and other information which, in the sole reasonable discretion of Engineer, shall assist in completing the Scope of Work.

3.2 City's Harbor Department shall provide all necessary copies and prints of the Final PSEs for bid advertisement and construction.

3.3 City's Harbor Department shall provide survey, construction inspection, construction contract administration and soil compaction-testing services unless the Scope of Work provides otherwise.

3.4 Consultant shall provide Engineer with reasonable advance written notice if it requires access to the Project area or any other premises of City's Harbor Department. Subsequent access rights, if any, shall be granted to Consultant at the sole reasonable discretion of Engineer, specifying conditions Consultant must satisfy in connection with such access. Consultant acknowledges that the Project area may be occupied or used by tenants or contractors of City and that access rights granted by City's Harbor Department to Consultant shall be consistent with any such occupancy or use.

3.5 City shall not be obligated to provide information and/or services except as specified in this Agreement.

4. Effective Date and Term.

4.1 After approval by City in accordance with Section 245 of City's Charter, the effective date of this Agreement shall be the date of its execution by City's Harbor Department Executive Director ("Executive Director"). Consultant acknowledges that Section 245 of City's Charter furnishes to the City Council of City ("Council") the right to review this Agreement and that this Agreement shall not become effective until the sixth Council meeting day after approval of this Agreement by Board or Council's approval of the Agreement.

4.2 The term of this Agreement shall not exceed three (3) years, commencing on the Agreement's effective date. This Agreement shall be in full force and effect until:

a. Engineer determines that Consultant has completed the Scope of Work and provides Consultant written notice thereof; or

b. Board, in its sole discretion, terminates this Agreement, which termination shall become effective five (5) calendar days following Executive Director's transmittal of written notice advising Consultant of such action by Board. Upon receipt of such written notice, Consultant shall cease the performance of the Scope of Work. Consultant shall be entitled to compensation only for services actually performed prior to such termination. Engineer, in his or her sole reasonable discretion, shall determine the amount of services actually performed and shall allocate a portion of the total compensation due Consultant accordingly. If Board so terminates this Agreement, Consultant shall deliver all drawings, specifications, plans, reports, studies, calculations, estimates, documents and other work product produced pursuant to this Agreement to City in an organized, usable form with all items properly labeled to the degree of detail specified by the Engineer. No compensation shall be due Consultant until it complies with the requirements of this paragraph; or

c. Three (3) years have elapsed from the effective date of the Agreement.

4.3. Notwithstanding the foregoing, this Agreement is subject to the provisions of City's Charter which, among other things, precludes City from making any expenditure of funds or incurring any liability, including contractual commitments, in excess of the amount appropriated therefor. Board, in awarding this Agreement, is expected to appropriate sufficient funds to meet the estimated expenditure of funds through June 30 of the current fiscal year and to make further appropriations in each succeeding fiscal year during the life of the Agreement. However, Board is under no legal obligation to do so. City, its boards, officers, and employees are not bound by the terms of this Agreement or obligated to make payment thereunder in any fiscal year in which the Board does not appropriate funds therefor. Consultant is not entitled to any compensation in any fiscal year in which funds have not been appropriated for the Agreement by Board.

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

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

5. Compensation.

5.1 For the full and satisfactory performance of the Scope of Work, City shall pay Consultant and Consultant shall accept a sum not to exceed Five Hundred Eleven Thousand Seven Hundred and Ten Dollars (\$511,710.00) to be paid as specified in Exhibit "F." If Exhibit "F" allocates a specific amount to the performance of a Task or Subtask and if, following the completion of such Task or Subtask, unexpended sums remain in relation to such specific amount, Executive Director may, upon written notice to Consultant, allocate such unexpended sums to the performance of a subsequent Task or Subtask.

5.2 Compensation payable under this Agreement includes payment for all labor, travel, per diem, fringe benefits, general and administrative expenses, overhead, profit, materials, supplies, transportation, and all other direct and indirect costs and expenses incurred by Consultant ("Expenses"). As such, Consultant shall not be entitled to separate reimbursement of Expenses under this Agreement. No markups or premiums shall be applied to services performed by Subconsultants unless Exhibit "F" expressly so allows. Compensation payable under this Agreement shall be on a (1) fixed fee, (2) hourly/unit rate, or (3) combined fixed fee and hourly/unit rate basis in accordance with the terms below, as may be more particularly specified in Exhibit "F" and Exhibit "G."

a. Fixed Fee. Lump sum compensation for satisfactory performance of Tasks identified as "Fixed Fee" in Exhibit "F."

b. Hourly Fee / Unit Rate. An amount equal to the product of the hours expended by Consultant and the applicable hourly/unit rates set forth in Exhibit "G" for time actually spent in the performance of Tasks estimated in Exhibit "F." The hourly/unit rates identified in Exhibit "G" state the maximum rates Consultant shall charge under this Agreement. No premium rates, including, but not limited to, overtime or hazardous duty premiums, shall be charged.

5.3 Each month during the term of this Agreement, as a prerequisite to payment for services, Consultant shall submit a written invoice to City's Harbor Department for services performed during the prior month, accompanied by such records and receipts as may be specifically required in Exhibit "F." Each such invoice shall bear a City Business Tax Registration Number and a Taxpayer Identification Number. Each invoice shall identify all services performed by Subconsultants. If payments are to be based on the performance of established milestones, Consultant shall bill as each milestone is completed, but not more often than once a month.

Consultant shall submit one (1) original and four (4) copies of each such invoice for payment in the format that contains the information specified in Exhibit "H" and that includes the following certification:

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

(signed)

5.4 Consultant shall submit supporting documents with each invoice as may be set forth in a Directive. Such documents may include, but are not limited to, provider invoices, payrolls, and time sheets.

5.5 If Consultant utilizes Subconsultants to perform aspects of the Scope of Work, Consultant shall submit to City, with each monthly invoice, a Monthly Subconsultant Monitoring Report in the form attached hereto as Exhibit "I." Consultant shall provide an explanation for any item that does not meet or exceed the participation levels required by a particular Directive, with specific plans and recommendations for improved subconsultant utilization. Invoices will not be paid without a completed Monthly Subconsultant Monitoring Report form. Consultant is not required to submit support for direct costs items of \$25 or less.

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

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

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

6. Recordkeeping and Audit Rights.

6.1 Consultant shall keep and maintain full, complete and accurate books of accounts and records of the services performed under this Agreement in accordance with generally accepted accounting principles consistently applied, which books and records shall be readily accessible to and open for inspection and copying at the premises by City, its auditors or other authorized representatives. Notwithstanding any other provision of this Agreement, failure to do so shall constitute a conclusive waiver of any right to compensation for such services as are otherwise compensable hereunder. Such books and records shall be maintained by Consultant for a period of three (3) years after completion of services to be performed under this Agreement or until all disputes, appeals, litigation or claims arising from this Agreement have been resolved.

6.2 During the term of this Agreement, City may audit, review and copy any and all writings (as that term is defined in Section 250 of the California Evidence Code) of Consultant and Subconsultants arising from or related to this Agreement or performance of the Scope of Work, whether such writings are (a) in final form or not, (b) prepared by Consultant, Subconsultants or any individual or entity acting for or on behalf of Consultant or a Subconsultant, and (c) without regard to whether such writings have previously been provided to City. Consultant shall be responsible for obtaining access to and providing writings of Subconsultants. Consultant shall provide City at Consultant's sole cost and expense a copy of all such writings within fourteen (14) calendar days of a written request by City. City's right shall also include inspection at reasonable times of the Consultant's office or facilities which are engaged in the performance of the Scope of Work. Consultant shall, at no cost to City, furnish reasonable facilities and assistance for such review and audit. Consultant's failure to comply with this Section 6.2 shall constitute a material breach of this Agreement and shall entitle City to withhold any payment due under this Agreement until such breach is cured.

7. Consultant Is An Independent Contractor.

Consultant, in the performance of the Scope of Work, is an independent contractor and not an agent or employee of City. Consultant shall not represent itself as an agent or employee of the City and shall have no power to bind the City in contract or otherwise.

8. Business Tax Registration Certificate.

City's Office of Finance requires the implementation and enforcement of Los Angeles Municipal Code Section 21.09 et seq. This section provides that every person, other than a municipal employee, who engages in any business within City, is required to obtain the necessary Business Tax Registration Certificate and pay business taxes. The City Controller has determined that this Code Section applies to consulting firms that are doing work for City's Harbor Department. See Exhibit "J."

9. Indemnification.

9.1 Indemnification

Except for the sole negligence or willful misconduct of the City, or any of its Boards, Officers, Agents, Employees, Assigns and Successors in Interest, Consultant undertakes and agrees to defend, indemnify and hold harmless the City and any of its Boards, Officers, Agents, Employees, Assigns, and Successors in Interest from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by the City, including but not limited to, costs of experts and consultants), damages or liability of any nature whatsoever, for death or injury to any person, including Consultant's employees and agents, or damage or destruction of any property of either party hereto or of third parties, arising in any manner by reason of the negligent acts, errors, omissions or willful misconduct incident to the performance of this Agreement by Consultant or its subcontractors of any tier. Rights and remedies available to the City under this provision are cumulative of those provided for elsewhere in this Agreement and those allowed under the laws of the United States, the State of California, and the City.

10. Insurance.

10.1 Insurance procured by Consultant on Behalf of Consultant

In addition to and not as a substitute for, or limitation of, any of the indemnity obligations imposed by Section 9, Consultant shall procure and maintain at its sole cost and expense and keep in force at all times during the term of this Agreement the following insurance:

(a) Commercial General Liability Insurance

Commercial general liability insurance covering personal and advertising injury, bodily injury, and property damage providing contractual liability, independent contractors, products and completed operations, and premises/operations coverage written by an insurance company authorized to do business in the State of California rated VII, A- or better in Best's Insurance Guide (or an alternate guide acceptable to City if Best's is not available) within Consultant's normal limits of liability but not less than One Million Dollars (\$1,000,000) combined single limit for injury or claim. Said limits shall provide first dollar coverage except that Executive Director may permit a self-insured retention or self-insurance in those cases where, in his or her judgment, such retention or self-insurance is justified by the net worth of Consultant. The retention or self-insurance provided shall provide that any other insurance maintained by the Harbor Department shall be excess of Consultant's insurance and shall not contribute to it. In all cases, regardless of any deductible or retention, said insurance shall contain a defense of suits provision and a severability of interest clause. Each policy shall name the City of Los Angeles

Harbor Department, its officers, agents and employees as Primary additional insureds.

(b) Automobile Liability Insurance

Automobile liability insurance written by an insurance company authorized to do business in the State of California rated VII, A- or better in Best's Insurance Guide (or an alternate guide acceptable to City if Best's is not available) within Consultant's normal limits of liability but not less than Five Hundred Thousand Dollars (\$500,000) covering damages, injuries or death resulting from each accident or claim arising out of any one claim or accident. Said insurance shall protect against claims arising from actions or operations of the insured, or by its employees. Coverage shall contain a defense of suits provision and a severability of interest clause. Each policy shall name the City of Los Angeles Harbor Department, its officers, agents and employees as Primary additional insureds.

(c) Workers' Compensation and Employer's Liability

Consultant shall certify that it is aware of the provisions of Section 3700 of the California Labor code which requires every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and that Consultant shall comply with such provisions before commencing the performance of the tasks under this Agreement. Coverage for claims under U.S. Longshore and Harbor Workers' Compensation Act, if required under applicable law, shall be included. Consultant shall submit Workers' Compensation policies whether underwritten by the state insurance fund or private carrier, which provide that the public or private carrier waives its right of subrogation against the City in any circumstance in which it is alleged that actions or omissions of the City contributed to the accident. Such Worker's Compensation and occupational disease requirements shall include coverage for all employees of Consultant, and for all employees of any subcontractor or other vendor retained by Consultant.

10.2 Insurance Procured by Consultant on Behalf of City

In addition to and not as a substitute for, or limitation of, any of the indemnity obligations imposed by Section 9, and where Consultant is required to name the City of Los Angeles Harbor Department, its officers, agents and employees as Primary additional insureds on any insurance policy required by this Agreement, Consultant shall cause City to be named as an additional insured on all policies it procures in connection with this Section 10. Consultant shall cause such additional insured status to be reflected in the original policy or by additional insured endorsement (CG 2010 or equivalent) substantially as follows:

"Notwithstanding any inconsistent statement in the policy to which this endorsement is attached, or any endorsement or certificate now or hereafter attached hereto, it is agreed that City, Board, their officers, agents and employees, are additional

insureds hereunder, and that coverage is provided for all contractual obligations, operations, uses, occupations, acts and activities of the insured under Agreement No. _____, and under any amendments, modifications, extensions or renewals of said Agreement regardless of where such contractual obligations, operations, uses, occupations, acts and activities occur.

"The policy to which this endorsement is attached shall provide a 10-days notice of cancellation for nonpayment of premium, and a 30-days notice of cancellation for any other reasons to the Risk Manager.

"The coverage provided by the policy to which this endorsement is attached is primary coverage and any other insurance carried by City is excess coverage;

"In the event of one of the named insured's incurring liability to any other of the named insureds, this policy shall provide protection for each named insured against whom claim is or may be made, including claims by other named insureds, in the same manner as if separate policies had been issued to each named insured. Nothing contained herein shall operate to increase the company's limit of liability; and

"Notice of occurrences or claims under the policy shall be made to the Risk Manager of City's Harbor Department with copies to the City Attorney's Office."

10.3 Required Features of Coverages

Insurance procured by Consultant in connection with this Section 10 shall include the following features:

(a) Acceptable Evidence and Approval of Insurance

Electronic submission is the required method of submitting Consultant's insurance documents. Consultant's insurance broker or agent shall register with the City's online insurance compliance system **Track4LA**™ at <http://track4la.lacity.org/> and submit the appropriate proof of insurance on Consultant's behalf.

Upon request by City, Consultant shall furnish full copies of certified policies of any insurance policy required herein. This obligation is intended to, and shall, survive the expiration or earlier termination of this Agreement.

(b) Carrier Requirements

All insurance which Consultant is required to provide pursuant to this Agreement shall be placed with insurance carriers authorized to do business in the State of California and which are rated A-, VII or better in Best's Insurance Guide. Carriers without a Best's rating shall meet comparable standards in another rating service acceptable to City.

(c) Notice of Cancellation

Each insurance policy described above shall provide that it shall not be canceled or reduced in coverage until after the Board of Harbor Commissioners, Attention: Risk Manager and the City Attorney of City have each been given a 10-days notice of cancellation for nonpayment of premium and a 30-days notice of cancellation for any other reason by written notice by registered mail addressed to 425 S. Palos Verdes Street, San Pedro, California 90731.

(d) Modification of Coverage

Executive Director, at his or her sole reasonable discretion, based upon recommendation of independent insurance consultants to City, may increase or decrease amounts and types of insurance coverage required hereunder at any time during the term hereof by giving ninety (90) days' prior written notice to Consultant.

(e) Renewal of Policies

At least thirty (30) days prior to the expiration of any policy required by this Agreement, Consultant shall renew or extend such policy in accordance with the requirements of this Agreement and direct their insurance broker or agent to submit to the City's online insurance compliance system **Track4LA**™ at <http://track4la.lacity.org/> a renewal endorsement or renewal certificate or, if new insurance has been obtained, evidence of insurance as specified above. If Consultant neglects or fails to secure or maintain the insurance required above, Executive Director may, at his or her own option but without any obligation, obtain such insurance to protect City's interests. The cost of such insurance shall be deducted from the next payment due Consultant.

10.4 Right to Self-Insure

Upon written approval by the Executive Director, Consultant may self-insure if the following conditions are met:

1. Consultant has a formal self-insurance program in place prior to execution of this Agreement. If a corporation, Consultant must have a formal resolution of its board of directors authorizing self-insurance.
2. Consultant agrees to protect the City, its boards, officers, agents and employees at the same level as would be provided by full insurance with respect to types of coverage and minimum limits of liability required by this Agreement.
3. Consultant agrees to defend the City, its boards, officers, agents and employees in any lawsuit that would otherwise be defended by an insurance carrier.

4. Consultant agrees that any insurance carried by Department is excess of Consultant's self-insurance and will not contribute to it.
5. Consultant provides the name and address of its claims administrator.
6. Consultant submits its most recently filed 10-Q and its 10-K or audited annual financial statements for the three most recent fiscal years prior to Executive Director's consideration of approval of self-insurance and annually thereafter.
7. Consultant agrees to inform Department in writing immediately of any change in its status or policy which would materially affect the protection afforded Department by this self-insurance.
8. Consultant has complied with all laws pertaining to self-insurance.

10.5 Accident Reports

Consultant shall report in writing to Executive Director within fifteen (15) calendar days after it, its officers or managing agents have knowledge of any accident or occurrence involving death of or injury to any person or persons, or damage in excess of Five Hundred Dollars (\$500.00) to property, occurring upon the premises, or elsewhere within the Port of Los Angeles if Consultant's officers, agents or employees are involved in such an accident or occurrence. Such report shall contain to the extent available (1) the name and address of the persons involved, (2) a general statement as to the nature and extent of injury or damage, (3) the date and hour of occurrence, (4) the names and addresses of known witnesses, and (5) such other information as may be known to Consultant, its officers or managing agents.

11. Limitations of Liability.

PMWeb disclaims warranties of merchantability or fitness for particular purposes. PMWeb's policy of limited inspection and right of return or credit, if any, are spelled out in separate writings and do not exist except as set forth in any such writing specifically applicable to this Agreement. In any event, either party's liability, if any, shall not exceed the maximum payable amount pursuant to this Agreement. Neither party nor its officers, directors, agents or employees shall be liable to the other for any type of incidental, punitive, indirect or consequential damages, including but not limited to, lost revenue, lost profits, business interruption, replacement goods, loss of technology, rights or services, loss of data or interruption or loss of use of services or equipment, even if advised of the possibility of such damages, whether arising under theory of contract, tort, strict liability or otherwise.

12. Personal Services Agreement.

12.1 During the term of this Agreement, Consultant agrees that it will not enter into other contracts or perform any work without the written permission of the Executive Director where the work may conflict with the interests of City's Harbor Department.

12.2 Consultant acknowledges that it has been selected to perform the Scope of Work because of its experience, qualifications and expertise. Any assignment or other transfer of this Agreement or any part hereof shall be void provided, however, that Consultant may permit Subconsultant(s) to perform portions of the Scope of Work in accordance with Section 2.4. All Subconsultants whom Consultant utilizes, however, shall be deemed to be its agents. Subconsultants' performance of the Scope of Work shall not be deemed to release Consultant from its obligations under this Agreement or to impose any obligation on the City to such Subconsultant(s) or give the Subconsultant(s) any rights against the City.

13. Confidentiality.

Consultant shall not disclose any proprietary or confidential information of City to any third party or parties during or after the term of this Agreement without the prior written consent of City. The data, documents, reports, or other materials which contain information relating to the review, documentation, analysis and evaluation of the Scope of Work and any recommendations made by Consultant relative thereto shall be considered confidential and shall not be reproduced, altered, used or disseminated by Consultant or its employees or agents in any manner except and only to the extent necessary in the performance of the work under this Agreement. In addition, Consultant is required to safeguard such information from access by unauthorized personnel.

14. Affirmative Action.

Consultant shall not discriminate in its employment practices against any employee or applicant for employment because of employee's or applicant's race, religion, national origin, ancestry, sex, age, sexual orientation, disability, marital status, domestic partner status, or medical condition. The provisions of Section 10.8.4 of the Los Angeles Administrative Code are incorporated herein by this reference and made a part of this Agreement. All subcontracts awarded shall contain a like nondiscrimination provision. See Exhibit "K."

15. Small/Very Small Business Enterprise Program and Local Business Preference Program.

It is the policy of City's Harbor Department to provide Small Business Enterprises (SBE), Very Small Business Enterprises (VSBE) and Minority-Owned, Women-Owned, Disabled Veteran Business Enterprises (DVBE) and all Other Business Enterprises (MBE/WBE/DVBE/OBE) an equal opportunity to participate in the performance of all City contracts in all areas where such contracts afford such participation opportunities. Consultant shall assist City's Harbor Department in implementing this policy and shall use its best efforts to afford the opportunity for SBEs, VSBES, MBEs, WBEs, DVBEs, and OBEs to achieve participation in subcontracts where such participation opportunities present themselves and attempt to ensure that all available business enterprises, including SBEs, VSBES, MBEs, WBEs, DVBEs, and OBEs, have equal participation opportunities which might be presented under this Agreement. See Exhibit "L."

It is also the policy of the Department to support an increase in local and regional

jobs. The Department's Local Business Preference Program aims to benefit the Southern California region by increasing jobs and expenditures within the local and regional private sector. Consultant shall assist the City in implementing this policy and shall use its best efforts to afford the opportunity for Local Business Enterprises to achieve participation in subcontracts where such participation opportunities present themselves.

NOTE: Prior to being awarded a contract with the City, Consultant and all Subconsultants must be registered on the City's Contracts Management and Opportunities Database, Los Angeles Business Assistance Virtual Network (LABAVN), at <http://www.labavn.org>.

16. Conflict of Interest.

Consultant has reviewed and understands the provisions of Section 1090 et seq. and Section 87100 et seq. of the California Government Code relating to conflict of interest of public officers and employees, as well as the Los Angeles Municipal Code ("LAMC") Municipal Ethics and Conflict of Interest provisions of Section 49.5.1 et seq. and the Conflict of Interest Codes of the City and City's Harbor Department. All parties hereto agree that they are unaware of any financial or economic interest of any public officer or employee of City relating to this Agreement. Notwithstanding any other provision of this Agreement, it is further understood and agreed that if such financial interest does exist at the inception of this Agreement, City may immediately terminate this Agreement by giving written notice thereof. Consultant's signature of this Agreement constitutes its affirmation that any former employees of City or City's Harbor Department that are employed by Consultant and that assist in performing the Scope of Work shall be free of any conflicts of interest with respect to City and City's Harbor Department.

17. Compliance with Applicable Laws.

Consultant's activities under this Agreement, including its performance of the Scope of Work, shall comply with all federal, state, municipal, local and departmental laws, ordinances, rules, regulations, and orders. If in any instance a City standard is more stringent than a state, federal or other requirement, the City standard shall be followed unless the Engineer notifies the Consultant otherwise in writing, in which case the requirements of said notification shall apply.

18. Trademarks, Copyrights and Patents.

Consultant shall promptly and fully inform Engineer in writing of any patents, trademarks or copyrights related to services provided under this Agreement or patent trademark or copyright disputes, existing or potential, which Consultant has knowledge of, relating to any idea, design, method, material, equipment or other matter connected to this Agreement. Consultant agrees to save, keep, hold harmless, protect and indemnify City and any of its officers or agents from any damages, cost, or expenses in law or equity from infringement of any patent, trademark, service mark or copyright of any person or persons, or corporations in consequence of the use by City of any materials supplied by Consultant in the performance of this Agreement.

19. Proprietary Information.

Writings, as that term is defined in Section 250 of the California Evidence Code (including, without limitation, drawings, specifications, estimates, reports, records, reference material, data, charts, documents, renderings, computations, computer tapes or disks, submittals and other items of any type whatsoever, whether in the form of writing, figures or delineations), which are obtained, generated, compiled or derived in connection with this Agreement (collectively hereafter referred to as "property"), are owned by City as soon as they are developed, whether in draft or final form. City has the right to use or permit the use of property and any ideas or methods represented by such property for any purpose and at any time without compensation other than that provided in this Agreement. Consultant hereby warrants and represents that City at all times owns rights provided for in this section free and clear of all third-party claims whether presently existing or arising in the future, whether or not presently known. Consultant need not obtain for City the right to use any idea, design, method, material, equipment or other matter which is the subject of a valid patent, unless such patent is owned by Consultant or one of its employees, or its Subconsultant or the Subconsultant's employees, in which case such right shall be obtained without additional compensation. Whether or not Consultant's initial proposal or proposals made during this Agreement are accepted by City, it is agreed that all information of any nature whatsoever connected with the Scope of Work, regardless of the form of communication, which has been or may be given by Consultant, its Subconsultants or on either's behalf, whether prior or subsequent to this Agreement becoming effective, to the City, its boards, officers, agents or employees, is not given in confidence. Accordingly, City or its designees may use or disclose such information without liability of any kind, except as may arise under valid patents.

20. Royalty-Free License.

If research or development is furnished in connection with this Agreement and if, in the course of such research or development, patentable work product is produced by Consultant, its officers, agents, employees, or Subconsultants, the City shall have, without cost or expense to it, an irrevocable, non-exclusive royalty-free license to make and use, itself or by anyone on its behalf, such work product in connection with any activity now or hereafter engaged in or permitted by City. Upon City's request, Consultant, at its sole cost and expense, shall promptly furnish or obtain from the appropriate person a form of license satisfactory to the City. It is expressly understood and agreed that, as between City and Consultant, the referenced license shall arise for City's benefit immediately upon the production of the work product, and is not dependent on the written license specified above. City may transfer such license to its successors in the operation or ownership of any real or personal property now or hereafter owned or operated by City.

21. City's Disclosure Obligations.

Consultant acknowledges that City is subject to laws, rules and/or regulations generally requiring it to disclose records upon request, which laws, rules and/or

regulations include, but are not limited to, the California Public Records Act (California Government Code Sections 6250 et seq.) ("Disclosure Laws").

22. Notices.

In all cases where written notice is to be given under this Agreement, service shall be deemed sufficient if said notice is deposited in the United States mail, postage prepaid. When so given, such notice shall be effective from the date of mailing of the same. For the purpose hereof, unless otherwise provided by notice in writing from the respective parties, notice to City's Harbor Department shall be addressed to Director of Development, Los Angeles Harbor Department, P.O. Box 151, San Pedro, California 90733-0151, and notice to Consultant shall be addressed to it at the address set forth above. Nothing herein contained shall preclude or render inoperative service of such notice in the manner provided by law.

23. Taxpayer Identification Number ("TIN").

The Internal Revenue Service (IRS) requires that all consultants and suppliers of materials and supplies provide a TIN to the party that pays them. Consultant declares that it has an authorized TIN which shall be provided to the Department prior to payment under this Agreement. No payments will be made under this Agreement without a valid TIN.

24. Service Contractor Worker Retention Policy and Living Wage Requirements.

Board adopted Resolution No. 5771 on January 13, 1999, agreeing to adopt the provisions of Los Angeles City Ordinance No. 171004 relating to Service Contractor Worker Retention ("SCWR"), Section 10.36 et seq. of the Los Angeles Administrative Code, as the policy of City's Harbor Department. Further, Charter Section 378 requires compliance with the City's Living Wage requirements as set forth by ordinance, Section 10.37 et seq. of the Los Angeles Administrative Code. Consultant shall comply with the policy wherever applicable. Violation of this provision, where applicable, shall entitle City to terminate this Agreement and otherwise pursue legal remedies that may be available.

25. Wage and Earnings Assignment Orders/Notices of Assignments.

Consultant and Subconsultants shall comply with all applicable state and federal employment reporting requirements for employees.

Consultant and Subconsultants shall certify that the principal owner(s) are in compliance with any Wage and Earnings Assignment Orders and Notices of Assignments applicable to them personally. Consultant and Subconsultants shall fully comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignments in accordance with Section 5230 et seq. of the California Family Code.

26. Equal Benefits Policy.

Board adopted Resolution No. 6328 on January 12, 2005, agreeing to adopt the

provisions of Los Angeles City Ordinance No. 172,908, as amended, relating to Equal Benefits, Section 10.8.2.1 et seq. of the Los Angeles Administrative Code, as a policy of City's Harbor Department. Consultant shall comply with the policy wherever applicable. Violation of this policy shall entitle the City to terminate any agreement with Consultant and pursue any and all other legal remedies that may be available. See Exhibit "M."

27. Compliance With Los Angeles City Charter Section 470(c)(12).

The Consultant, Subconsultants, and their Principals are obligated to fully comply with City of Los Angeles Charter Section 470(c)(12) and related ordinances, regarding limitations on campaign contributions and fundraising for certain elected City officials or candidates for elected City office if the agreement is valued at \$100,000 or more and requires approval of a City elected official. Additionally, Consultant is required to provide and update certain information to the City as specified by law. Any Consultant subject to Charter Section 470(c)(12), shall include the following notice in any contract with a subconsultant expected to receive at least \$100,000 for performance under this Agreement:

Notice Regarding Los Angeles Campaign Contribution and Fundraising Restrictions

As provided in Charter Section 470(c)(12) and related ordinances, you are a subconsultant on Harbor Department Agreement No. _____. Pursuant to City Charter Section 470(c)(12), subconsultant and its principals are prohibited from making campaign contributions and fundraising for certain elected City officials or candidates for elected City office for 12 months after the Agreement is signed. Subconsultant is required to provide to Consultant names and addresses of the subconsultant's principals and contact information and shall update that information if it changes during the 12 month time period. Subconsultant's information must be provided to Consultant within 10 business days. Failure to comply may result in termination of the Agreement or any other available legal remedies including fines. Information about the restrictions may be found at the City Ethics Commission's website at <http://ethics.lacity.org/> or by calling 213-978-1960.

Consultant, Subconsultants, and their Principals shall comply with these requirements and limitations. Violation of this provision shall entitle the City to terminate this Agreement and pursue any and all legal remedies that may be available.

28. State Tidelands Grants.

This Agreement is entered into in furtherance of and as a benefit to the State Tidelands Grant and the trust created thereby. Therefore, this Agreement is at all times subject to the limitations, conditions, restrictions and reservations contained in and prescribed by the Act of the Legislature of the State of California entitled "An Act Granting to the City of Los Angeles the Tidelands and Submerged Lands of the State Within the Boundaries of Said City," approved June 3, 1929 (Stats. 1929, Ch. 651), as

amended, and provisions of Article VI of the Charter of the City of Los Angeles relating to such lands. Consultant agrees that any interpretation of this Agreement and the terms contained herein must be consistent with such limitations, conditions, restrictions and reservations.

29. Construction of Agreement.

This Agreement shall not be construed against the party preparing the same, shall be construed without regard to the identity of the person who drafted such and shall be construed as if all parties had jointly prepared this Agreement and it shall be deemed their joint work product; each and every provision of this Agreement shall be construed as though all of the parties hereto participated equally in the drafting hereof; and any uncertainty or ambiguity shall not be interpreted against any one party. As a result of the foregoing, any rule of construction that a document is to be construed against the drafting party shall not be applicable.

30. Titles and Captions.

The parties have inserted the section titles in this Agreement only as a matter of convenience and for reference, and the section titles in no way define, limit, extend or describe the scope of this Agreement or the intent of the parties in including any particular provision in this Agreement.

31. Modification in Writing.

This Agreement may be modified only by written agreement of all parties. Any such modifications are subject to all applicable approval processes required by, without limitation, City's Charter and City's Administrative Code.

32. Waiver.

A failure of any party to this Agreement to enforce the Agreement upon a breach or default shall not waive the breach or default or any other breach or default. All waivers shall be in writing.

33. Governing Law.

This Agreement is made and entered into in the State of California and shall in all respects be construed, interpreted, enforced and governed under and by the laws of the State of California, without reference to choice of law rules.

34. Severability.

Should any part, term, condition or provision of this Agreement be declared or determined by any court of competent jurisdiction to be invalid, illegal or incapable of being enforced by any rule of law, public policy, or city charter, the validity of the remaining parts, terms, conditions or provisions of this Agreement shall not be affected thereby, and such invalid, illegal or unenforceable part, term, condition or provision shall be treated as follows: (a) if such part, term, condition or provision is immaterial to this

Agreement, then such part, term, condition or provision shall be deemed not to be a part of this Agreement; or (b) if such part, term, condition or provision is material to this Agreement, then the parties shall revise the part, term, condition or provision so as to comply with the applicable law or public policy and to effect the original intent of the parties as closely as possible.

35. Jurisdiction.

The parties hereto consent to the jurisdiction of the State of California for the enforcement of this Agreement.

36. Integrated Agreement.

This Agreement contains the entire understanding and agreement between the parties hereto with respect to the matters referred to herein. No other representations, covenants, undertakings, or prior or contemporaneous agreements, oral or written, regarding such matters which are not specifically contained, referenced, and/or incorporated into this Agreement by reference shall be deemed in any way to exist or bind any of the parties. Each party acknowledges that it has not been induced to enter into the Agreement and has not executed the Agreement in reliance upon any promises, representations, warranties or statements not contained, referenced, and/or incorporated into the Agreement. **THE PARTIES ACKNOWLEDGE THAT THIS AGREEMENT IS INTENDED TO BE, AND IS, AN INTEGRATED AGREEMENT.**

37. Exhibits; Sections.

All exhibits to which reference is made in this Agreement are deemed incorporated in this Agreement, whether or not actually attached. To the extent the terms of an exhibit conflict with or appear to conflict with the terms of the body of the Agreement, the terms of the body of the Agreement shall control. References to sections are to sections of this Agreement unless stated otherwise.

38. PMWeb Software Subscription Agreement.

PMWeb's "Software Subscription Agreement," Exhibit N is incorporated into the Agreement to the extent it does not conflict or modify the terms set forth in the body of this Agreement. In case of conflicts, the terms of this Agreement shall take priority.

39. Counterparts.

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute together one and the same instrument.

(Signature page follows)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date next to their signatures.

Date: _____, 2017

THE CITY OF LOS ANGELES, by its
Board of Harbor Commissioners

By: _____
EUGENE D. SEROKA
Executive Director

Attest: _____
AMBER M. KLESGES
Board Secretary

Date: May 26, 2017

PMWEB, INC.

By: [Signature]
Name: Michael P. Vernon

Title: General Counsel, Dir. of Operations

Attest: [Signature]
Name: Patrick Gaffney
Title: controller

APPROVED AS TO FORM AND LEGALITY

6/2, 2017

MICHAEL N. FEUER, City Attorney
JANNA B. SIDLEY, General Counsel

By: [Signature]
MINAH PARK, Deputy City Attorney

MP:jpr
02/07/17
Attachments

Account #	See p.22	W.O. #	See p.22
Ctr/Div #	See p.22	Job Fac. #	See p.22
Proj/Prog #	See p.22		
Budget FY:		Amount:	
-		-	
-		-	
-		-	
TOTAL:			
For Acct/Budget Div. Use Only:			
Verified by: _____			
Verified Funds Available: _____			
Date Approved: _____			

FUNDS AVAILABLE

Account #	55130	W.O. #	2532900
Ctr/Div #	1206	Job Fac. #	63-0000
Proj/Prog #	000		
Budget FY: Amount:			
	17/18	\$	285,190
	18/19	\$	37,600
	TOTAL:	\$	322,790

For Acct/Budget Div. Use Only:

Verified by: *[Signature]*

Verified Funds Available: *[Signature]*

Date Approved: 6/1/17

Account #	54110	W.O. #	N/A
Ctr/Div #	0320	Job Fac. #	N/A
Proj/Prog #	000		
Budget FY: Amount:			
	17/18	\$	68,920
	18/19	\$	72,000
	19/20	\$	48,000
	TOTAL:	\$	188,920

For Acct/Budget Div. Use Only:

Verified by: *[Signature]*

Verified Funds Available: *[Signature]*

Date Approved: 6/1/17

Exhibit A

Scope of Services

I. Task 1 – System Activation

- A. Consultant shall install, activate and setup the Web-Based Construction Project Management System ("System"), as described in Exhibit D and as described below.
- B. The System shall provide the following PMWeb Modules:
 - 1. Planning
 - 2. Project Management (Cost Management and Engineering Forms)
 - 3. Scheduling
 - 4. Workflow
 - 5. Portfolio
 - 6. Asset Explorer
- C. The System shall provide the following PMWeb Toolboxes:
 - 1. Document Manager
 - 2. Custom Form Builder
 - 3. Timesheets
 - 4. Vendor Prequalification
 - 5. Integration Manager
- D. Consultant shall setup preliminary users, user groups, and companies as is necessary to complete work in Sections II and III of this Exhibit.
- E. The System, and all data generated by the Department's use of the System, shall be stored on facilities located within the United States of America.
- F. Consultant shall provide continuous security monitoring, log management, and incident response.
- G. Consultant shall perform a vulnerability audit annually.
- H. Consultant shall provide vulnerability assessment reports and or audit reports at the request the Department.
- I. Consultant shall patch servers for the latest software, OS, database engine and antivirus/antispysware definitions quarterly.
- J. Consultant shall report any security and or operational issues to the Department.

- K. Consultant shall provide documentation of the system and network design, dataflow, and safeguards to protect data owned by the Department.
- L. Consultant shall provide secure and encrypted logon for users and administrators.
- M. The System shall provide a strong password policy.

II. Task 2 – System Implementation – Kickoff and Discovery

- A. Consultant shall provide a preview of the implementation process and provide a demonstration of the System.
- B. Consultant shall review existing processes and documentation, including, but not limited to, the Construction Division Procedures Manual.
- C. Consultant shall review the cost code structure and funding sources used by the Department.
- D. With input from the Department, Consultant shall prepare, and provide for Department approval, a Project Charter Document describing the process necessary to implement and configure the System. Configuration shall include, but not be limited to, the following:
 - 1. Change terminology, where applicable, to match the Department terminology. The Department shall identify specific terminology that requires modification, and these terms shall be modified throughout the System.
 - 2. Setup programs and projects, as directed by the Department.
 - 3. Configure, and develop forms, workflows and reports necessary to execute and log Department processes and procedures, as discussed in Exhibit D. The Department processes shall include, but not be limited to, the following:
 - i. Constructability Review
 - ii. Permit Tracking and Status
 - iii. As-Builts
 - iv. Request for Information (RFI)
 - v. Submittal
 - vi. Progress Payment

- vii. Contract Change Requests (CCR)
- viii. Issue Resolution
- ix. Change Order (CO)
- x. Authority for Adjustment (AFA)
- xi. Authority to Use Allowance Bid Item (AIA)
- xii. Request for Quote (RFQ)
- xiii. Time and Material (T&M)
- xiv. Equipment Compliance Tracking (ECT)
- xv. Solid Waste Diversion and Disposal (SWD&D)
- xvi. Storm Water Pollution Prevention Plan Best Management Practices (BMP) Report
- xvii. Storm Water Pollution Prevention Plan Remedial Action Plan (REAP)
- xviii. Inspection Daily Report
- xix. Meeting Minutes

4. Configure or create custom reports, as discussed in Exhibit D. The reports shall include, but not be limited to, the following:

- i. Construction Equipment Usage
- ii. Contract Change Worksheet
- iii. AFA/CO Worksheet
- iv. Contract Projection Worksheet
- v. Contract Status
- vi. Constructability Review
- vii. Permit Log
- viii. Request for Information Log
- ix. Submittal Log
- x. Monthly Construction Progress Payment Checklist
- xi. Inspector's Monthly Progress Report
- xii. Unit Price Bid Item Usage
- xiii. Payment Form
- xiv. Monthly Subcontractor Monitoring Report
- xv. Contract Change Request Log
- xvi. Issue Resolution Log
- xvii. AFA/CO Log
- xviii. Independent Cost Estimate
- xix. Allowance Item Authority Log
- xx. RFQ Log
- xxi. Time and Material Form
- xxii. Equipment Compliance Tracking

- xxiii. Solid Waste Diversion and Disposal Report
- xxiv. BMP Inspection Report
- xxv. Rain Event Action Plan Report
- xxvi. Effluent Sampling Field Log
- xxvii. Inspection Daily Report
- xxviii. Meeting Minutes, including Sign-In Sheet
- xxix. Special Meeting Minutes, including Sign-In Sheet

- 5. As part of the process for creating AFAs, COs and AIAs, create a Word document for the AFA, CO and AIA, the accompanying Memorandum to File and Record of Negotiations, and the Notice to Proceed.
- 6. Configure an Executive Dashboard.
- 7. Configure a Project Level Dashboard.
- 8. Integrate the System with existing Department database systems.

The Project Charter shall include milestone dates for implementation and configuration efforts, as described in Sections II, III and V of this Exhibit.

- E. Consultant shall provide to the Department a data dictionary for review and consideration in development of the Project Charter Document.

III. Task 3 – System Implementation

- A. Consultant shall configure the System described in Section I of this Exhibit, according to the Project Charter Document developed in Section II of this Exhibit, and as directed by the Department.
- B. Consultant shall perform in-house testing prior to evaluation and testing by the Department.
- C. Acceptance Testing – Consultant shall make the System available to the Department for acceptance testing, and respond to any comments provided by the Department.
- D. The Department shall own code developed for any new features developed specifically for the Department under this Agreement. Customization and configuration that is performed to achieve the functional requirements specified by the Department shall remain the sole property of Consultant. Any standalone software code, such as applications that may run independently,

and be installed on the Department systems (such as integrations with other systems), shall become the property of the Department.

- E. All configurations shall be retained throughout updates and upgrades to the System.

IV. Task 4 – System Subscription

- A. Consultant shall provide ongoing services for hosting, maintenance, and support of the System resulting from the efforts in Section III of this Exhibit, as described in Exhibit D, and as described below.
 - 1. Hosting of the System on dedicated, private and secure servers managed in a secure data center to ensure 24/7 availability of the System.
 - 2. Nightly backup of the Department data to the primary data center and to a geographically separate secondary data center.
 - 3. Maintenance of the System, including releases of new software features and bug fixes.
 - 4. Unlimited technical support shall be made available to the Department users and vendors for 24 hours a day, five days a week, by telephone, or through the System website. Consultant shall monitor the data center 24/7, with staff capable of addressing operational issues.
- B. The System shall be accessible to users designated by the Department through the administrative functions within the System. The number of users shall be determined by the Department. The types of users shall be as follows:
 - 1. Full User (named) licenses have the ability to perform all functions in PMWeb, based on their security profile.
 - 2. Collaboration User (named) licenses allow a user to have full access to the following items: Engineering Forms (RFIs, Meeting Minutes, Daily Logs, Action Items, etc.), all Custom Forms/Processes, all record/document types sent to them via Workflow, Online Invoices, Online Change Requests, Online Bidding, Online Work Request, and all Dashboards and Reports.
 - 3. Collaboration User (concurrent) has the same access as a named Collaboration User. Concurrent allows for unlimited users to be assigned to this type of license. The amount of licenses determines the number of these users who can be logged in at the same time.

C. Upon any expiration or termination of this Agreement, and unless otherwise expressly provided in an exhibit to this Agreement:

1. City's right to access or use the System, including Consultant Software, terminates and Consultant has no further obligation to provide any services.
2. City shall remain responsible for any payments that have become due and owing, up to the effective date of termination.
3. Consultant shall allow City limited access to City's Content, including, but not limited to, all video recordings, timestamps, indices, and cross-referenced documentation. City shall also have the option to order hard copies of the Content in the form of compact discs or other equivalent format.
4. In case of termination by City or expiration of the Agreement, Consultant and City shall work together to provide City with a copy of any and all data, associated files, and other content owned by the Department ("Content").
5. Consultant acknowledges that the City owns the data in the System.
6. City shall have the option to choose one (1) of the following methods to obtain a copy of its Content:
 - a. Option 1: Provide the Content via download from a special site created by Consultant.
 - b. Option 2: Provide the data, and associated files, on an external hard drive, or flash drive.
7. City and Consultant shall work together and make their best efforts to transfer the Content within sixty (60) days of the expiration or termination of this Agreement. Consultant has the right to delete City's Content from its services after sixty (60) days.

D. The cost for the system subscription, indicated in Exhibit G shall be valid for the duration of this agreement.

V. Task 5 – Training

- A. Consultant shall provide targeted, separate training sessions for two types of users: System administrators and Department staff who will subsequently instruct other users ("train the trainer").
- B. Training for trainers shall include instructions on how to create, maintain, approve, and review all related aspects of the construction project using the

System. Training for System administrators will include, but not be limited to, instructions on how to administer the system, manage users, assign permissions, generate reports, customize all aspects of the system, and troubleshoot issues with the System.

- C. Trainers must have an in-depth knowledge of capital construction project management, and must have successfully trained users in the use of the System.
- D. The Department staff shall have access to online PDF help guides, online HTML help, and online video tutorials. Consultant shall conduct training sessions, as needed by the Department, and respond to questions, as needed.

VI. Task 6 – Additional As-Needed Services

Upon request from the Chief Harbor Engineer, the Consultant shall provide additional as-needed services to support the System.

VII. Travel

Consultant shall conduct four in-person visits (total of four visits over the duration of the agreement) to complete portions of the work under Task 2, portions of the work under Task 3, and portions of the work under Task 5, concurrently. During three visits, two people shall travel from the Consultant's home office in Sacramento, California, to report to the Harbor Administrative Building for four working days. During one visit, two people shall travel from the Consultant's home office in Sacramento, California, to report to the Harbor Administrative Building over three working days. As stated in Exhibit G – Rates, all expenses for travel shall be included in the hourly rates listed in Exhibit G.

EXHIBIT B

Form of Directive

Date _____

(Consultant)
(Consultant Address)
(City, State, Zip Code)

Attn: (Project Manager)

SUBJECT: DIRECTIVE NO. _____
PROJECT TITLE _____
AGREEMENT NO. _____

Pursuant to Section 2.2(a) of the subject Agreement No. _____, after receipt of a written Notice to Proceed signed by the Chief Harbor Engineer of the Construction Division, Consultant shall proceed with the following:

Task	Services	Authorized Amount
1	_____	\$ _____ (Lump Sum)
2	_____	\$ _____ (Not to Exceed)

Consultant shall provide all required tasks, services, and deliverables in accordance with Exhibit "A" to Agreement No. _____.

Consultant shall complete the work within _____ calendar days from the transmittal of a written Notice to Proceed.

When invoicing for the services covered by this Directive, please identify fees for this Directive as follows:

LAHD EWO No. _____
LAHD Center No. _____
LAHD Account No. _____

LAHD Job No. _____
LAHD Program No. _____

Consultant shall undertake the following MBE/WBE/SBE/DVBE/OBE utilization in connection with its performance of this Directive:

MBE XX%, WBE XX%, SBE XX%, DVBE XX%, OBE XX%, VSBE XX%

EXHIBIT B
Form of Directive

Date _____

(Consultant)
(Consultant Address)
(City, State, Zip Code)

Attn: (Project Manager)

SUBJECT: DIRECTIVE NO. _____
PROJECT TITLE _____
AGREEMENT NO. _____

Pursuant to Section 2.2(a) of the subject Agreement No. _____, after receipt of a written Notice to Proceed signed by the Chief Harbor Engineer of the Construction Division, Consultant shall proceed with the following:

Task	Services	Authorized Amount
1	_____	\$ _____ (Lump Sum)
2	_____	\$ _____ (Not to Exceed)

Consultant shall provide all required tasks, services, and deliverables in accordance with Exhibit "A" to Agreement No. _____.

Consultant shall complete the work within ____ calendar days from the transmittal of a written Notice to Proceed.

When invoicing for the services covered by this Directive, please identify fees for this Directive as follows:

LAHD EWO No. _____	LAHD Job No. _____
LAHD Center No. _____	LAHD Program No. _____
LAHD Account No. _____	

Consultant shall undertake the following MBE/WBE/SBE/DVBE/OBE utilization in connection with its performance of this Directive:

MBE XX%, WBE XX%, SBE XX%, DVBE XX%, OBE XX%, VSBE XX%

Consultant Name

Page 2 of 2

Consultant acknowledges that the terms and conditions of Agreement No. _____ govern this Directive and that its signature below reflects its agreement with the terms and conditions of this Directive.

Please sign both original copies of this Directive. Retain one original for your files and return the other executed copy to this office immediately.

If you have any questions, please contact _____ at (310) 732-_____.

Sincerely,

Shaun Shahrestani
Chief Harbor Engineer
Construction Division

ACCEPTED:

APPROVED:

(Consultant Name)
Consultant

ANTONIO V. GIOIELLO
Deputy Executive Director

Date: _____

Date: _____

Exhibit C

Form of Notice to Proceed

(Date)

(Consultant)

(Consultant Address)

(City, State, Zip)

Attention: (Project Manager)

Subject: Notice to Proceed – Directive No. _____
Agreement No. _____
(Project Name)

This is to notify and direct you to commence performance of the subject Directive.
Enclosed is your set of the executed Directive documents.

If you have any questions, please contact _____ at (310) 732-_____.

Very truly yours,

Shaun Shahrestani
Chief Harbor Engineer
Construction Division

Enclosure: Directive No. _____

Proposal Content

Firm Qualifications, Experience and References

Qualifications and Experience of Consultant

PMWeb Inc. (PMWeb) appreciates the opportunity to submit our proposal to the Port of Los Angeles (POLA) for a Web-Based Construction Project Management System. We are proposing the PMWeb solution, a comprehensive, web-based portfolio, program and project management solution that combines multiple business processes into a single, easy-to-use interface. PMWeb is designed to capture information, track progress, monitor status and provide powerful dashboards and reports. The solution is 100% web based, is built with modern technologies from the ground up, works with multiple browsers, tablets, smartphones (iOS, Windows, Android, etc.) and is designed for the best end user experience.

PMWeb is comprised of seven main modules and additional functions within the PMWeb Toolbox. Each of the modules and features in the system can provide distinct benefits and assist in producing successful projects that are well documented, reported and monitored. Mitigation of risk on projects requires a system that can capture as much information as possible. The many features and modules in PMWeb can capture information in a simple and user friendly way and provide a complete project record in one location. There are over 100 combined features contained in these seven main modules. PMWeb is uniquely designed for organizations that want an out of the box solution that is both comprehensive, intuitive and provides tools to configure the solution to meet specific business requirements.

Service Partner

Introducing and deploying new software to an organization comes with many challenges. PMWeb recognizes that using successful partners that have hands on industry experience. Nearly all of the major software corporations have recognized this for decades and use a "partner" model to deploy their respective software applications. PMWeb also uses this model and is pleased to partner with Hill International, Inc. (Hill), the No. 7 ranked Construction Management firm by Engineering News Record (ENR).

Hill was founded in 1976 and has over 4,900 professionals and 100 offices worldwide. Hill-PCI Group, LLC (Hill-PCI) is a division of Hill that is dedicated to implementing PMWeb and has worked with over 100 organizations in training and configuring PMWeb. Hill-PCI has been providing construction management software implementations and services since 1996 and has consultants all over the world to bring your project an array of seasoned professional with fresh and unique perspectives on current best practices.

A few notable clients that Hill-PCI has implemented or is in the process of implementing PMWeb include: City of Santa Monica, County of Sacramento (\$1 billion plus waste water treatment plant), Safeway, American University, Johns Hopkins University and the Grand Egyptian Museum.

Hill-PCI's experience is quite unique in that their team has knowledge of and exposure to many other products in the market including Oracle Primavera, Skire, Meridian (Proliance/Prolog), e-Builder and others. Even though Hill-PCI has options with whom to partner with, Hill-PCI chooses PMWeb. Upon a thorough review, they've decided that PMWeb is the best solution for their clients and provides the most robust features combined in a single solution.

References

We have selected the following four references to submit within this proposal:

City of Santa Monica PM Web Software Support & Professional Services

Santa Monica, CA

REFERENCE:

David Yeskel
System Analyst
T: (310)-458-8411
David.Yeskel@smgov.net

The City of Santa Monica annually develops a five-year Capital Improvement Program (CIP). Capital projects for the City can be large in scale and scope and take multiple years to complete. Santa Monica purchased PMWeb to manage the City's capital improvement program and provide tools for planning and managing all aspects of their 5 year capital improvement program, including but not limited to tracking all aspects of the capital plan, capital budgets and funding plans, actual project expenditures, and project schedules.

Hill led the implementation of PMWeb for the Public Works Department of the City of Santa Monica, as a subconsultant to PMWeb. The implementation provided tools for planning and managing all aspects of its five-year capital improvement program, including tracking all aspects of the capital plan, capital budgets and funding plans, actual project expenditures and project schedules. Services that Hill provided included portfolio, planning, cost management, engineering and integration. The Hill team also scoped and implemented multiple custom SQL reports.

San Joaquin Regional Rail Commission

Oakland, CA

REFERENCE:

Paul Baffico *
Construction Project Manager
T: (510) 891-4726 C: (510) 612-5381
pbaffico@actransit.org

The San Joaquin Regional Rail Commission (SJRRRC) owns and operates, and is the policy-making body for the Altamont Commuter Express (ACE) service. SJRRRC is governed by a Board of Directors, who is appointed by the San Joaquin Council of Governments (SJCOC) based on nominations by the local elected government. SJRRRC has built an \$85.6 million maintenance facility (64 acre property, 121,000 SF building) using the advanced technology of PMWeb. The maintenance facility project began in August 2011 and was completed at the beginning of 2014. In addition SJRRRC is using PMWeb on smaller projects under the commission's jurisdiction.

Hatch Mott MacDonald was the construction manager on the job and was instrumental in the execution of the project and use of PMWeb. Hill International provided PMWeb implementation services of setup, configuration and training. SJRRRC is using PMWeb Budget, Costs, Invoicing, Change Management, Drawing Logs, and Daily Work Journals. SJRRRC also has custom dashboard setup to view project cost status instantly upon logging in. SJRRRC has also begun logging all equipment in the PMWeb Asset Management to track these assets post construction. The Maintenance building contains the maintenance operations, stores, employee common areas, and administrative offices. The site also includes a 26,500 SF service and inspection canopy, 2,600 SF oil/water separator building, 1,660 SF train washer, 20,000 gallon diesel storage tank, bulk sand silo, 30-ton bridge crane with a 10-ton auxiliary hook, two-track drop table and an underfloor wheel profiler. The site geometry allows for storage of the existing four trains sets with expansion capacity up to 12 train sets.

*Mr. Baffico led the SJRRRC project and started the use of Asset Management from the project beginning. He has since changed positions but continues to serve as a reference for us on his experience using PMWeb Asset Management features.

All Aboard Florida with Florida East Coast Industries

Coral Gables, FL

REFERENCE:

Alex Velazquez
Vice President, Controller
T: (305)-520-2439 C: (305)-986-4782
Alex.Velazquez@allaboardflorida.com

All Aboard Florida is a passenger rail project connecting Miami to Fort Lauderdale, West Palm Beach and Orlando. Developed by Florida East Coast Industries, this rail service will give residents and visitors an alternative to congested highways and airport terminals. Aboard Florida (AAF) located in Coral Gables Florida Purchased PMWeb to help with procurement, budget/cost management, forecasting, document management, workflow, collaboration and integration.

The implementation includes the following modules: Planning, Portfolio, Cost Management and Engineering Forms. Hill-PCI consultants have been involved with the integration and implementation by gathering business requirements, providing best practice recommendations, configuring PMWeb to conform with client's processes, and scoping/testing custom client reports and dashboards. AAF is using Planning, Portfolio, Cost Management and Engineering Forms.

Mubarak Al-Kabeer Seaport Program

Bubiyah Island, Kuwait

REFERENCE:

Eng. Eur Ing Ozgur Balaban
Technical Director, Kuwait
T: 965 6006 1261
ozgur.balaban@aecom.com

Kuwait's Ministry of Public Works (MPW) started the Mubarak Al-Kabeer Seaport program on Boubyan Island in the first quarter of 2011. The Seaport will be built in four phases and is expected to be completed in 2020. The Seaport will cover an area of 14 million sq. m, and it is expected to have 60 berths with a depth of 20 meters each in order to accommodate large vessels. It has an estimated cost value of \$1.1 billion (US). The first phase includes establishing expressways, railways connecting all parts of the island, and building bridges for cars and trains.

PMWeb was purchased for phase one of this program and used on each project for the last four years until it was complete. All parties of the program were connected through PMWeb. The PMWeb modules that were used were Project Management: Cost Module/Engineering Forms/Cash flow, PMWeb Visual Workflow, PMWeb Business Intelligence, Custom Form Builder, Document Manager and PMWeb was integrated with time lapse cameras to oversee each project. This program was completed, and now MPW is starting a new phase of the Project.

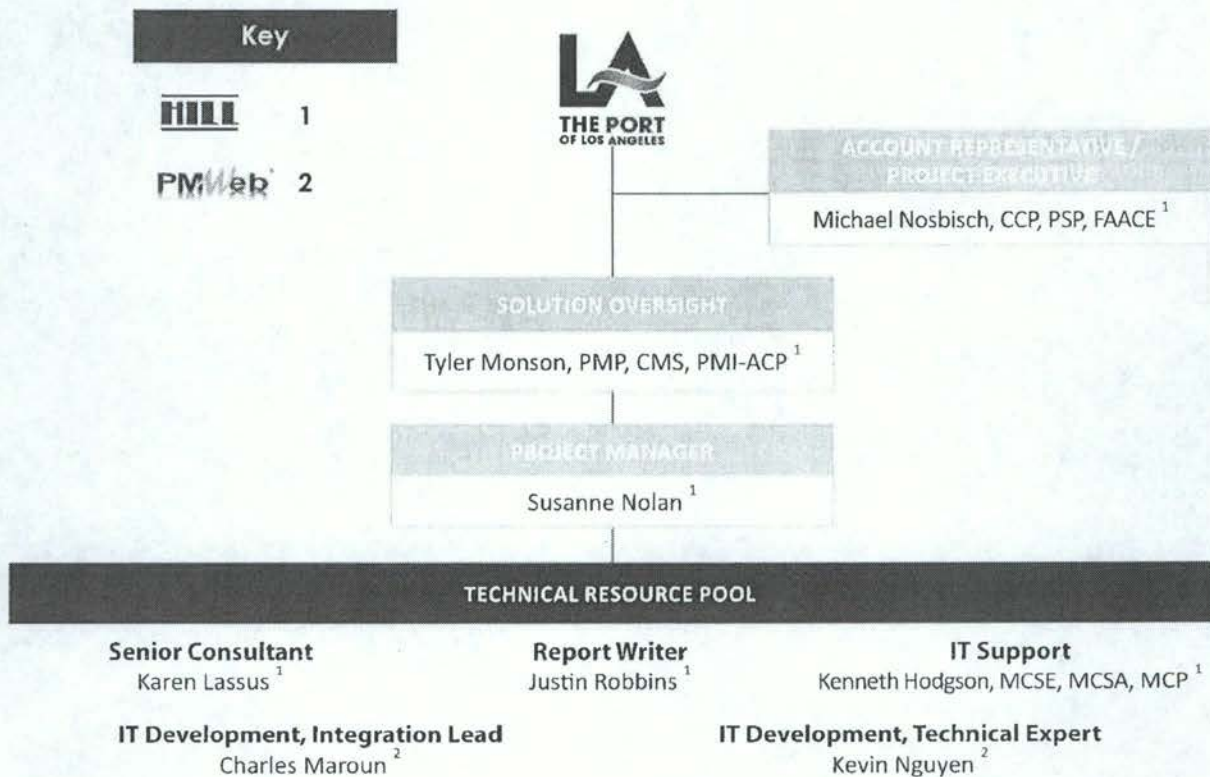
Key Personnel and Staff

The organizational chart below lists personnel that are assigned and available for the implementation on of the Web-Based Construction Project Management System project—their detailed resumes are included in the Appendix of this proposal. In accordance with the RFP, Michael Nosbisch, based in Hill's Irvine office, has been assigned as Account Representative for the Harbor Department, to address billing, technical support and other issues pertaining to the web-based service. Not only does the Harbor Department already have a relationship with Michael based on his prior work in and around POLA, but the fact that he is currently a vice president with Hill will allow him to double as Project Executive in support of this effort, with additional operational authority beyond the more administrative responsibilities of the Account Representative role.

Tyler Monson is the Director of PMWeb Services for Hill and is tasked with project oversight directly related to the implementation of the PMWeb solution. His depth of experience in product rollouts began at PricewaterhouseCoopers and has expanded greatly at Hill; he has lead over 100 project/program controls implementations, over 50 of which were for the PMWeb solution. Tyler Monson's greatest value to POLA will be in the realm of QA/QC as our team configures the PMWeb solution to the custom processes of the Port

Resumes

Resumes with brief descriptions for all team members can be found in the Appendix as requested in the RFP.



System Features

a. Briefly summarize how your software-as-a-service works, and how it is used during each phase of a typical capital construction project.

PMWeb is a 100% web-based Portfolio, Program and Project Management solution. PMWeb only requires a browser and an internet connection to access. The solution has robust security and allows both internal users and external users (Consultants, GCs, Architects, etc.) to collaborate.

The interface is intuitive and modern looking and end users enjoy the ease of use it offers them to do their job. PMWeb has very powerful dashboards and reports that are graphics-rich and allows users to view all vital program and project information in a single place.

PMWeb has multiple modules that fulfill the Plan » Build » Operate lifecycle of capital construction projects. PMWeb Modules include Planning, Cost, Document Controls, Scheduling, Visual Workflow and Asset Management. Each of the modules can be used independently or they can be used together to take users and organizations through each step of capital construction projects.

The Planning module is a place where future capital projects can be grouped together, planned, budgeted, scored and reviewed. Planning can be done "top-down" (high level) or "bottom-up" (detailed level). Once potential projects are approved, they become active projects and roll into the other modules. Projects can be combined into programs and tracked together.

The Cost module allows users to easily create budgets, funding records, contracts, change orders, cash flows, forecasts, invoices, and track overall program and project status. The document control features allows users to track design documents, RFIs, submittals, daily work and more out of the box. Each of the data entry forms are ready to use out of the box and can be easily tailored to POLA needs for dropdown lists, security, and workflow routing. Scheduling can be integrated with P6 and MS Project or used directly in PMWeb.

The Visual Workflow module allows any of the out of the box features to be set up with templates to be routed for review and approval. Records and documents can be routed in simple workflows or be triggered off of data in the record (e.g. limits of authority would route contracts or invoices over a certain dollar amount to specific approvers, or RFIs categorized as mechanical would be routed to designated engineers). PMWeb can then be used to closeout a project by making sure all items are completed and documentation is captured.

b. Describe how users access the service and how it will function (inside and outside of the Harbor Department's network).

PMWeb is accessed through a browser and an internet connection whether inside or outside the Harbor Department's network. PMWeb runs on desktops, laptops, tablets and smartphones running all the noted mobile operating systems (Android, Windows and iOS).

c. Describe the technical aspects of the system, including the Operating System and web browser requirements.

PMWeb is 100% web-based, built with modern technologies from the ground up. It has a zero footprint, with no installation or downloads needed for the end user. PMWeb works with multiple browsers (Internet Explorer, Chrome, Firefox, Safari), tablets (iOS, Android, Windows),

Collaboration on almost any device or platform

PMWeb's true zero footprint technology guarantees that collaborative users will have access regardless of what platform or computing device including PC's, Apple, iPhones, iPads or any device with a browser



smartphones (iOS, Android, Windows, etc.) and is designed for the best end user experience.

d. Describe the data management; including security protocols, encryption of data in motion and at rest, data backup process, disaster recovery plan, existing service level agreements of recovery and services, data retention time periods, and ownership during and after a service contract.

Data is encrypted in transit (SSL) and at-rest (backups/etc (AES/SHA)). Files/documents are stored securely inside the SQL database for additional security. Backup of your data is performed at multiple levels:

- Daily transfer of log transactions/differential database backups to secondary recovery site
- Weekly transfer of full-database backups to secondary recovery site
- Monthly transfer of full copy of VMware® backup to secondary recovery site
- Server snapshot every 3 hours - held for 5 days for hosting data
- Server snapshot every 24 hours (in addition to the 3 hour snapshot) - held for 5 weeks
- Entire server farm backed up nightly to disk - held for 2 weeks
- Nightly disk backups produced the last week of the month backed up to tape and/or external hard drive and stored off site in a fire proof vault - held for a year
- Monthly backups compiled into a yearly tape backup at the end of the year and stored off site in a fire proof vault - held for 3 years
- Monthly tests of recovery plan including restoring VMware® backups, database and code backups and verification of functionality of application
- POLA has ownership of data, during and after a service contract

PMWeb support and development has policies and procedures in place to address performance issues at multiple levels: application, technical environment and end user support. First, the application has a client admin option to notify PMWeb of any performance issues. If this option is selected, PMWeb technicians are notified via email of any errors or issues experienced by the application error logs. Second, the technical environment (i.e. the application, network and database servers) is completely virtualized so workload monitoring is done with standard tools for the VMware infrastructure. Thresholds and alerts are set and when reached, additional hardware resources are added promptly. Third, end users have access to our technical support team via phone or email to report any critical issues they are experiencing. Based on the criticality of the issue, we have procedures in place to respond as noted in the table below.

Priority	Targeted Initial Response Time	Priority Description
1. System Failure	1 Hour	Entire system is offline
2. Critical	2 Hours	The system works but is severely limited
3. Material	4 Hours	Most of the system works but there are minor limitations
4. Cosmetic	1 Day	The issue does not affect system operations

e. Explain the extent of customization possibilities.

There are over 100 combined features contained in these seven main modules. POLA will also have the ability to create custom business processes, thus making the features and expansion capabilities unlimited. PMWeb is uniquely designed for organizations that want an out of the box solution that is both comprehensive, intuitive and provides tools to configure the solution to meet specific business requirements.

If there is a custom business process that one of the existing 100 out of the box features don't address, the PMWeb Custom Form Builder can create a custom process. The Custom Form Builder doesn't require programming and it only takes minutes to design and create a new process that is integrated into the PMWeb's security, workflow, file manager, notifications engine, reports and existing or custom dropdown lists.

f. Provide details on the level of technical support and/or user support, and troubleshooting provided by your firm.

The PMWeb team will provide on-site training, technical support, designated consultants and a dedicated customer service representative (in Southern California) that are part of the client's implementation team available for phone, email and online meetings. There are various ongoing training activities that take place throughout the project lifecycle not just during releases. If technical PMWeb support services for the application is needed, administrators are available 24/5 Monday – Friday with future plans to be 24/7/365. The PMWeb's Hosting Center provides 24/7/365 support.

g. Describe how your system addresses cost management issues during a construction project, such as budgets, expenditures, spending projections, and other project cost related factors.

PMWeb has a comprehensive cost management toolset capable of managing capital programs, as well as small and large projects dealing with Budgets, Funding, Forecasts, Costs, Invoices, Payments, Change Orders, and Cost Worksheets.

PMWeb is designed to handle both simple and complex cost and accounting structures. PMWeb allows for an unlimited amount of levels in an accounting structure and also gives the option of multiple accounting structures to be used for different projects or programs. Each level can have from 1-10 characters and be alpha, numeric or alphanumeric. If certain projects require a different structure, PMWeb can accommodate it. Cost transactions can also be linked to the tasks from a project to tie both the schedule and cost information together for PV/EV/AC reporting. PMWeb is designed with a universal Cost Ledger (similar to an Accounting system ledger) in which all Cost Transactions are captured. Budget and Cost Management is one of PMWeb's key strengths.

PMWeb Cost Management module has a simple yet comprehensive method of tracking budgets. PMWeb allows for multiple revisions of budgets keeping a history of the evolution of a budget from planning, design, and through construction stages.

PMWeb's Cost Management module has a dedicated Forecasting feature that allows for easy creation and copying of forecasts. Forecasts can be combined and viewed in groupings providing a graphical cash flow chart for one or many cash flows.

Project Approach and Work Plan

The PMWeb Implementation Methodology provides our clients with a proven process of successfully deploying software. Our approach provides a standardized method for managing the entire planning, testing and implementation process while building a solid foundation to help ensure a successful deployment and adoption for our clients. We realize there are often several versions of standard practices used within large organizations. Our tools and engagement methodology provide the flexibility and standardization to bring success to an entire organization, at all levels.

Our implementation methodology incorporates years of hands-on experience with industry-accepted processes and procedures. Our experience has shown that a successful implementation requires two key elements:

1. **End User Involvement** – We strongly believe in involving end users of the system immediately and often. By doing this they quickly begin to understand how the system works and provide intelligent feedback as to how it can be adjusted to better meet their needs. This requirement is met in a couple of ways:
 - a. The implementation team is largely made up of client staff and not consultants, because they understand their own needs better than anyone. This also helps ensure that once the implementation is complete and the consultants leave, the client will have a solid team in place to be able to mold and modify the system as their needs change. (Please see the next section on the make-up of the implementation team.)
 - b. Piloting - Super Users will begin using the system on one of their jobs as soon as possible to test and pilot the configuration and help ensure that it will be appropriate for the eventual end users.
2. **Agility** – We have found that it is extremely important for user adoption and satisfaction that the implementation team be able to receive feedback and quickly incorporate that feedback into the system. The best feedback cannot be given until a person is able to actually use an aspect of the system. We achieve this through the "agile" implementation approach outlined in the next section, Implementation Stages.

Project Manager

A dedicated team led by an experienced Project Manager is critical to the success of an enterprise implementation. The enforcement of control and monitoring mechanisms that are used to monitor and manage the overall project and sub-projects is important. The Project Manager will also recognize and address potential problems before they negatively impact the project.

Proactive Communication

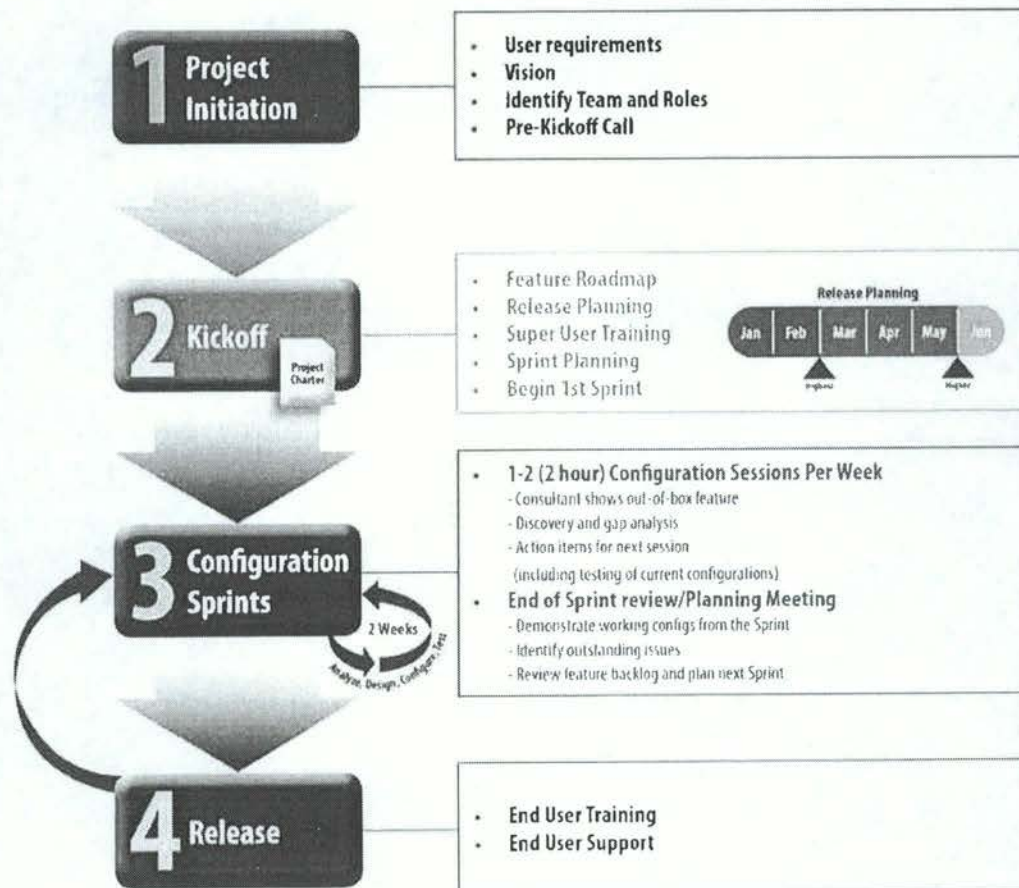
Throughout the implementation, our project team will be proactive in communicating with your staff. We will provide status updates to address operational needs and to help ensure effective communication between all team members.

The Project Manager will report progress since the previous reporting period (typically weekly). The status reports will contain the following information: accomplishments, activities in progress, outstanding problems, outstanding issues and overall project status.

Change Control

The PMWeb Project Manager is responsible for making certain that the project is developed and executed according to the agreed-upon scope, schedule and budget over the entire life of this project. This responsibility includes preparing status reports that identify decisions that need to be made regarding changes to the scope, schedule and budget. A Change Control process will be used to request enhancements or to report problems for all project development activities.

Implementation Stages



Training

PMWeb recognizes that end-user acceptance is one of the most important factors for the success of rolling out a new application. We strive to provide the best and quickest support possible for the end users. This begins with the proper training and support of the client's team that will be in charge of the management of the application. Our goal is to train your staff so that they can be as self-sufficient as possible. In addition to on-site training and the standard technical support, the PMWeb team will also have designated consultants and a dedicated customer service representative (in Southern California) that are part of the client's implementation team available for phone, email and online meetings. There are various ongoing training activities that take place throughout the project lifecycle not just during releases.

TRAINING	DESCRIPTION
PILOT TEAM / SUPER USER TRAINING	The initial Pilot Team or Super User training begins with an overview and general training during the Kickoff Meeting and then continues throughout all of the configuration sessions. This hands-on training prepares the Core Team for performing their own functional test of the configurations, through piloting them on their own projects, and allows them to provide immediate feedback.
PMWEB ADMINISTRATORS TRAINING	Advanced administrators training prepares the PMWeb Administrator to take ownership of the system configurations and maintenance. It should be set up shortly after the kickoff meeting so he can immediately begin configuring the system with the Lead Consultant during configuration sprints.
END USER TRAINING	End User training begins with an overview and general training during the Release Stage and then continues to the specific set of features that a particular group needs to be trained on for that particular Release.
E-TRAINING	PMWeb can also create custom e-training courses to reduce initial and long-term training costs. This tool can be used as an introductory course for all users to get a basic understanding of how the system is used by the company. Additional one-on-one and small-group training will still be required, especially for advanced users, but the e-training allows for more productive and streamlined advanced training sessions for all users.

We will be providing dedicated training for the identified implementation team members that will become the administrators. It is best to choose someone who has a good understanding of technology.

Included in our proposal are the following training items. Note that a generic e-training course is included at no additional cost that provides an introduction to the overall system, i.e. navigation, running reports, adding/saving records, user layout setup, etc. Custom e-Training courses can also be created if desired and would be quoted during the implementation stage if needed. PMWeb also has several sets of documentation that are all included with the package at no additional cost:

- Online Help guide available throughout the system, context sensitive.
- User Training Manual (PDF), used for training sessions, group or self-guided.
- User and Admin Guide (PDF or HTML based), these are base guides that can be used as is or used as a starting point to create guides customized to POLA's specific business processes and nomenclature.

Exhibit F: Scope of Services Form

Attachment 7
EXHIBIT F
Scope of Work

System's Name:
Firm's Name:

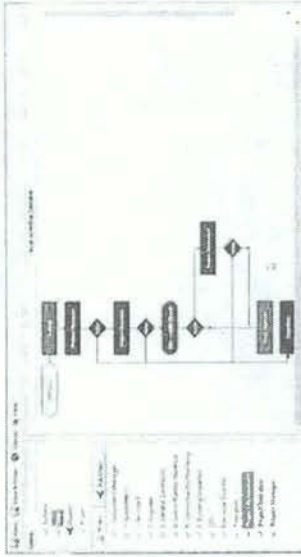
Type in one of the 4 acronyms shown below for each "Feature Provided" cell.

OTB - Provided without customization ("out of the box")

NA - Not available

CNC - Available with customization at no cost to the Harbor Dept.

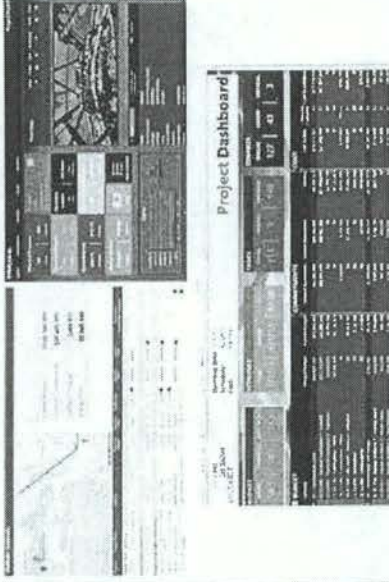
CPP - Available after customization that must be paid for by the Harbor Dept.

Line Item	Feature	Feature Provided	Notes (Optional)
Web-Based Construction Project Management			
A. Programs and Projects			
10	Allows the creation of multiple programs, each capable of encompassing multiple construction projects	OTB	PMWeb was designed from the ground up to include Programs with linked Projects.
11	Creates a new construction project by cloning an existing project	OTB	PMWeb has a "Copy Project" feature that lets users "clone" or copy various parts of each project.
12	Allows an administrator to control user access, and type of access (read, write, etc.) to individual programs and projects	OTB	PMWeb has a comprehensive Security Manager from the Program, Project, Feature and down to the field level.
B. Construction Forms			
13	Creates typical construction forms, including, but not limited to, Requests for Information (RFIs), Submittals, Daily Inspection Reports, or Issues	OTB	PMWeb has over 100 pre-built features and forms including all noted in this requirement.
14	Allows for files to be attached to construction forms	OTB	PMWeb features allow for files to be uploaded and attached to any record.
15	Allows a "draft" response that can be viewed only by select users, and must be approved before the response is issued and can be seen by all	OTB	PMWeb Workflow allows for custom and automated routing to one or more users controlling who sees the information at each step.
16	Provides for internal dialogue between select parties (not visible by others on the project) on a construction form that is tracked and saved	OTB	Internal dialogues are easily tracked using PMWeb Notes tab on any feature. Security allows control of who has access to Notes tabs for each feature.
17	Tracks issues on a project and allows for links or associations to be formed between various construction forms and change authorizations that may be related to a common issue	OTB	PMWeb allows for links between one or more PMWeb records to associate issues or other desired cross references.
18	Provides for the creation of custom forms, in addition to "out-of-the-box" forms provided	OTB	PMWeb Custom Form Builder allows custom business processes to be created by Admin end users. Custom Forms can also have associated Custom Reports.
19	Allows for an administrator to designate fields that are required to be completed	OTB	
C. Automated Workflows			
20	Routes and tracks the progress of construction forms through a review, comment and approval (at multiple levels) workflow process	OTB	PMWeb Visual Workflow provides review, comment and approval functionality in an easy to configure tool. Automated alerts and emails notify users of required actions.
			
21	Provides standard workflows that can be modified	OTB	PMWeb Visual Workflow provides drag and drop functionality that allows Admin end users to easily modify and update workflows. Workflows can be set at Portfolio, Program, and Project levels.
22	Provides status, notifications and deadlines	OTB	
23	Notifies users by e-mail, text message or other means when an action is required on their part, or of assignment of an issue	OTB	

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EXHIBIT F
Scope of Work

29	Notifies users by e-mail, text message or other means of status changes, "ball-in-court" status, and pending deadlines		PMWeb Visual Workflow shows "ball-in-court" status visually in the workflow and by notifications via email and within the workflow dashboard.	
30	Provides real-time message tracking and time/date stamps on all communication transactions			
31	Tracks file activity and provides notice of activity in a specified area or topic			
32	Provides real-time updates on ownership of an issue and the resolution of the issue			
33	E. Document Management			
34	Provides a project-specific repository for all project related documents			
35	Stores, distributes, and manages a large volume of files of any size and type, with any number of project participants			
36	Provides an organizational structure in which a user can easily search and find project documents and other vital project information			
37	Provides robust search functionality that searches all existing documents, forms, attachments and correspondence using tagged metadata			
38	Provides a viewer for documents in various formats, including but not limited to, PDF, Microsoft Office applications, and dwg			
39	Allows users to control access to documents within their respective projects			
40	Allows users to print documents related to their respective projects			
41	Provides an integrated viewer that includes redline and markup capabilities			
42	Automatically synchronizes documents between the system and a local storage source			
43	Features automatic reference level file detection			
44	Automatically compresses multiple files into zip files for easy download			
45	Allows agreements to digitally sign and encrypt documents			
46	Allows for project images and videos to be uploaded, marked-up, photos, categorized, and selected by query search			
47	F. Dashboards			

Attachment 7
EXHIBIT F
Scope of Work

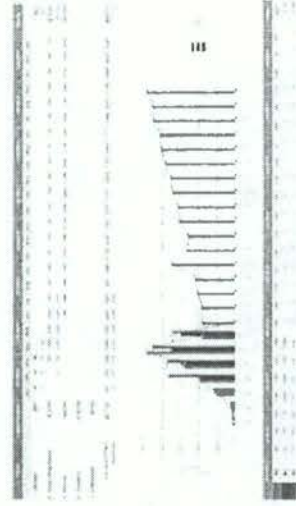
48	Provides "Executive" dashboards of relevant program and project data, at both a summary level, a program level breakdown, and a detailed individual project level	OTB	PMWeb uses Microsoft SQL Server Reporting Services (SSRS) as its default reporting engine. SSRS is integrated tightly to PMWeb and honors user security. Reports and Dashboards can be tailored to meet any design and provide information displays at a Portfolio, Program, or Project level. Key performance indicators, formats, grouping, filtering, drill-down, drill through (to actual transactions), export to PDFs, Word, Excel, XML, CSV, TIF, HTML. Some examples of dashboards: 
49	Allows project team members to easily view outstanding items and "ball-in-court" status	OTB	PMWeb Visual Workflow shows "ball-in-court" status visually in the workflow and by notifications via email and within the workflow dashboard.
50	Features role-based dashboards with key performance indicators and customizable reports	OTB	Information in PMWeb can be displayed and accessed several ways. Custom dashboards or built-in portfolio views provide an interactive experience where users can view high level program/project information and then drill down to greater detail such as original budget, change orders, contracts and project schedule.
51	Graphs popular project metrics such as the Cost Performance Index, Schedule Performance Index, and earned value	CPP	 PMWeb Forecasting tracks each of the metrics. Existing reports available that graph earned value. Custom reports is tailored to client needs is a common task during the implementation process and is included in our proposed cost.

Attachment 7
EXHIBIT F
Scope of Work

52	Captures and calculates equipment emissions information		CNC	PMWeb's Custom Form Builder can create forms and processes the Port would like to track not already created within PMWeb. This is taught and configured using the professional services hours submitted with this RFP submission. PMWeb gives the Port a lot of flexibility in configuring the system to meet the RFP requirements.
53	Provides a mechanism for tracking Leadership in Energy and Environmental Design (LEED) certification points		CNC	LEED tracking of points is recommended to be captured at the Submittal level. PMWeb has ability to add custom fields to track and PMWeb reporting can provide the needed reporting to help support logging and submission of LEED data. This is included in our services proposal.
54	Provides the ability to import data from an Excel spreadsheet or CSV file		OTB	Submitters, estimates, company/contacts and drawings have import utilities for direct import from an excel file. PMWeb also supports direct copy/paste from an MS Excel spreadsheet directly into a PMWeb grid in some features (estimates, budgets, commitments, cost codes).
55				
56	G. Reports Provides out-of-the-box and customizable reports for construction forms		OTB	PMWeb comes with over 100 reports and offers several options for the creation of new reports and dashboards. Business Intelligence level reporting is accomplished with the Microsoft SQL Server Reporting Services (SSRS) which does not require any additional cost. SSRS reports allow for the creation of practically any report or dashboard you can conceive. These reports include: easily changed parameters for quick filtering, grouping, show/hide, integrated maps, key performance indicators, drill-down, drill-through, graphics, grids, hyperlinks, charts and one click exporting into PDF, Excel, Word, CSV, Tiff, XML, and iHTML. For end user developed reports, PMWeb Reports provide a simple to use tool that allows users to design queries using simple drag and drop functionality. Other areas of PMWeb allow for quick exports by simply clicking on an Excel icon at the top of the menu.
57	Exports reports in PDF, HTML, CSV, DOC, TXT or Excel formats		OTB	3) Reports (SQL) allows users to run reports, then export them in multiple formats including PDF, Excel, Word, CSV, XML, etc. while retaining the report formatting. Many reports can also be emailed directly from individual records as PDF attachments.
58	Provides administrator reports, including details regarding user accounts, permissions, activity log, statistics, etc		OTB	Comprehensive settings are available for your administrators to manage and control your solution.
59	Provides the ability to schedule batch imports and exports of data at regularly scheduled intervals		OTB	PMWeb has the ability to schedule (e.g., daily, weekly, monthly) batch import/export of data via PMWeb SSRS Reports (included in proposed solution) or PMWeb Integration Manager (additional module that may be added if needed).
60				
61	H. Change Authorizations Creates Potential Change Order and Change Order/Authority for Adjustments (APA) log for a specific project or program that includes, but may not be limited to, the following: - Subject of the change authorization - Authorized amount or a not-to-exceed amount - Change in contract time - The total cost of changes to date - The percentage change to date - Custom numeric or text fields		OTB	
62	Associates issues, RFIs, or other construction forms, with a change authorization in their respective log		OTB	
63	Allows contractors to enter, and for specified users (such as Inspectors) to mark for approval for payment of, Time and Material compensation requests for an individual change authorization		OTB	PMWeb Visual Workflow provides review, comment, and approval functionality which would allow contractors or specified users to collaborate in change management and approvals process.
64	Monitors the cost of each change authorization based on cost information entered by the contractor, and notifies the construction manager by e-mail when the costs submitted by the contractor approaches the not-to-exceed amount		OTB	See line 63 above.
65	I. Cost Management			

Attachment 7
EXHIBIT F
Scope of Work

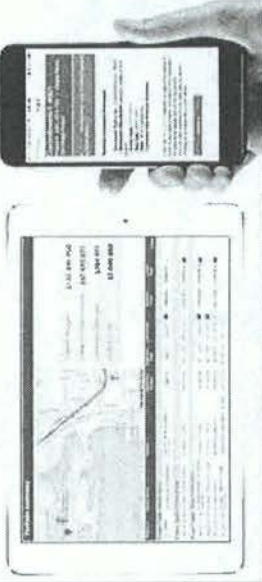
66	Tracks and reports the status of project and program budgets, expenditures, and projections				PMWeb is designed to handle both simple and complex cost and accounting structures. PMWeb allows for an unlimited amount of levels in an accounting structure and also gives the option of multiple accounting structures to be used for different projects or programs. Each level can have from 1-10 characters and be alpha, numeric or alphanumeric. If certain projects require a different structure, PMWeb can accommodate it. PMWeb also allows for a concurrent coding structure to be layered on top of the default cost coding structure in a Work Breakdown Structure (WBS) format. Cost transactions can also be linked to the tasks from a project to tie both the schedule and cost information together for P/EV/AC reporting. PMWeb is designed with a universal Cost Ledger (similar to an Accounting system ledger) in which all Cost Transactions are captured. Budget and Cost Management is one of PMWeb's key strengths. Screenshots below shows an example cash flow projections and analysis vs. actuals.
67	1. Daily Inspection Reports				
68	Stores information in the Daily Inspection Reports in a database, with the capability to export and import data from the system to an outside database	OTB			PMWeb has capability to import and export information. For automated integration to external systems, see Line 84 notes below.
69	Tracks labor and equipment time, and associates labor and equipment time to a Potential Change Order, Change Order, JSA, or other issue	OTB			
70	Converts handwritten notes using a stylus on a mobile device to text	NA			
71	Links Daily Inspection Reports to schedule activities for reference	OTB			
72	Allows inspectors to enter Inspector Daily Report on a mobile device, whether online or offline				
		CPC			PMWeb is designed to work quickly and efficiently over the internet by using modern web interface technologies (e.g. load on demand, server side processing). In the event of no internet connectivity (i.e. offline), PMWeb has several options to address these situations. First, any daily field record or other information within PMWeb can be emailed (including attachments, pictures, etc.) so that the field staff can have all the relevant information regarding their tasks). Second, users that find themselves without connectivity can simply reply to the email (in offline mode) and make any notes or add any attachments to that email. Once connected and the email is sent to a designated email address, PMWeb can monitor that email address and actually attach that email to the specific originating record automatically, e.g. a Daily Report, Submittal, RFI, etc. Thus the user without being connected to the internet or PMWeb can use an extremely familiar method to continue his work in an offline mode.



Attachment 7
EXHIBIT F
Scope of Work

73	K. Collaboration/Ac-Bulls			
74	Includes the ability to markup, write, draw or sketch comments, revisions, etc. on a drawing in PDF format			Drawing documents can be opened via the PMWeb Viewer. Users can redline make comments, and then through workflow the record can be returned or sent to others for collaboration or further changes.
			OTB	
75	Creates links in the PDF to issues, files, and other documents or forms in the system		OTB	Links to any record can be tied to the PDF.
76	Customizes comments or markups by changing the color, fill, line type and text properties		OTB	See line 74 above
77	Provides markup tools for a PDF, including text, notes, highlighter, clouds, and callouts		OTB	See line 74 above
78	Allows embedding of images and video		OTB	
79	Tracks the author, date, time and comments associated with each comment or markup		OTB	Tracks the author and date with each comment or markup.
80	L. Compatibility and Accessibility			
81	Accessible and fully functional from Windows or Safari web browser, tablet, or mobile device with no reliance on third party software			PMWeb is a 100% SaaS solution and at a minimum only requires an internet browser and internet connection. PMWeb works with laptops, PCs, tablets, and smart phones running any of the standard operating systems: Windows, MacOS, Android, and iOS. PMWeb is 100% zero footprint and no software downloads are needed to use the software. The goal of PMWeb is to remain a zero footprint in all areas to prevent known security risks that other systems have that require downloads.
82	System is compatible with Microsoft Office products		OTB	See Line 84 below.
83	Provides an Application Programming Interface (API) that allows the system to exchange information with other systems		CPP	PMWeb has import tools that facilitate integrations and data migrations via web services, flat file integration and/or API based integrations to meet the Port's needs.
84	Shares data with the Harbor Department's Enterprise Resource Planning System (ERP) by Oracle		CPP	Included in our cost submission is an estimated budget for the integration portion of our implementation plan. The provided integration services in the cost portion of this submission is an estimate, and a more detailed scope will be needed to provide a more specific cost estimate.
85	Provides compatibility to integrate with SharePoint			All PMWeb data entry forms have an attachment tab that allows the storage of hyperlinks from any system such as SharePoint or other hyperlinks. More advanced customizations can be done as well for an additional cost—e.g. files could be uploaded to PMWeb and automatically stored in SharePoint and replaced with a hyperlink.
86	Provides the ability to share financial data with other database systems		OTB	See line 84 above
87	System is compatible with other desktop software (Adobe Acrobat, Primavera, AutoCAD)			PMWeb has multiple ways to integrate with other systems and the method used is typically determined by the type of function needed. Automated Financial integrations can be accomplished with PMWeb's Integration Manager which allows for User setup to configure inbound and outbound flat file exchanges using web services. The PMWeb API is another option that allows other platforms to communicate with and execute operations within the PMWeb application. Import utilities also exist for one time import of information via an excel or text file for certain types of information such as companies and contacts, submittal info, WBS structure or drawing info. Importing of MS Project or Primavera P6 schedules can be accomplished via a built-in utility as well. The easiest manual integrations can be accomplished by a simple copy/paste from MS Excel cells directly into a PMWeb grid. This copy/paste directly from excel is used in Cost Codes setup, Budgets, Estimates and Contracts.
88	Views and analyzes information from Primavera schedules, including cost loaded and resources loaded information		OTB	

Attachment 7
EXHIBIT F
Scope of Work

89	Synchronizes alerts, messages, etc., with Microsoft Outlook		NA	PMWeb has an email feature that allows emailing out and into the system. Emails not in the system using this feature can be uploaded by dragging and dropping the email file into PMWeb. PMWeb Workflow provides the collaboration, alerts, and "pull in court" information needed. See line 29 above. This is an BFI email sent out of PMWeb. These email templates are customizable in aesthetics and data contained in the email. These emails can be sent using workflow, a distribution list, or an individual email. An approval and/or a reject button can be added or removed. These emails can include a link right into the system to bring the user to the record the email was sent from so notes or other content can be added (based upon security rights).
90	Mobile App for Mobile Devices			PMWeb doesn't restrict the user with needing to download an application. The full system is able to be used with an internet browser and recognizes when a tablet or smartphone is being used and allows the device to take pictures, access the device's storage, and upload pictures, documents, drawings, etc. while working a jobsite. PMWeb also has the ability to create simplified custom forms to be used by field personnel if limited fields are desired while on the jobsite.
91	Provides an app for Android, iOS and Windows mobile devices that allows for creation, edit and approval of construction forms, and access to the project repository		OTB	
92	IT System			
93	Web-based, pre-configured software-as-a-service (SaaS) with no hardware to acquire		OTB	To access PMWeb with the SaaS deployment option, the only hardware needed to access PMWeb is a computer, tablet, or smartphone that has a browser and an internet connection. Offline access options are mentioned in line 72 above.
94	Product updates, included at no additional cost		OTB	PMWeb's SaaS option includes unlimited support and unlimited upgrades at no additional cost.
95	If applicable, automatic push of system updates (prompts user to update their computer's version)		NA	There is no need to update individual computers. Because PMWeb is a web-based system, the one SaaS update on the PMWeb server updates it for all users. The updates are provided and scheduled by PMWeb.
96	Secure system structure with independent permissions and multiple levels of security and user authorization		OTB	PMWeb has multiple levels of security: • Application Security - PMWeb's "out of the box" functionality includes an extensive security module which limits what actions each user or user group can perform. Security levels can be set for individuals or for various user groups by combinations of: • System - Program - Project • Feature (view or no view) • Record (add, view, delete, update) • Field (view, update) • The security is also tied to the Document Manager Folder, where users can be limited on whether they can Upload, View, Redline, etc. individual folders. • System Security - Data is entered into the application over the internet and encrypted at all times using SSL encryption. The application is completely web-based and uses SSL throughout. Users are forced via redirection to use only HTTPS connections. Web services used for integration can also be required to use SSL. • PMWeb Hosting Security - We have dual layer antivirus, anti-spamware and intrusion detection software installed both on the firewall and the server/OS level. We only open ports 80/443 for access. Passwords can be set to have complexity and length requirements, expiration and password history. • Access can be restricted via IP address, URL or IPsec or SSL VPN. • Username and Password can have strong password setup, expire on a set frequency, and also be tied to LDAP/SAML.

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EXHIBIT F
Scope of Work

97	User-friendly, intuitive system interface	OTB	PMWeb's user interface is designed with the latest web technologies and contains many features that make it intuitive, easy to use, and reconfigurable. Examples of these features include: consistent layouts, drag and drop, Google like searching, interactive dashboards/reports with visual indicators, photos and graphics, online help and 1 button approvals via email.
98	Users log in with a unique username and password	OTB	
99	Provides 24/7 support desk via phone or e-mail for users or administrators	OTB	Hosting Center Support: 24/7/365 Support services for application administrators available 24/7 Monday – Friday with future plans to be 24/7/365.
100	Provides online user support (FAQs, emails, tutorials, user community forums, etc.)	OTB	PMWeb provides its clients with a complete implementation methodology that includes all needed training and ongoing services/support of the software. A direct relationship between the Port and PMWeb also provides standard technical support services which are included as part of the \$4.5 technical support services. The training materials provided with our methodology include the PMWeb Standard training guides (PDF format), PMWeb online help (included in application), and HTML-PC additional training guides (HTML and/or PDF), and base template includes. (Customizations are extra)
101	Allows users to create and maintain their own passwords without administrator assistance	OTB	
102	Allows multifactor authentication protocol for system administrators and system owners	OTB	See line 96 above.
103	Provides a complete audit trail of all system activity, with time and date stamping, which cannot be deleted by the user or the administrator	OTB	Archives do not require customization and are available for free or for fee. Fee depends on size of data volume, frequency of request and whether download option is viable option. Quarterly, bi-annual or annual backup of all projects and programs is typical request of our clients.
104	Archives a project, including all information, forms, documents, attachments and other data, and the historic activity of each to a location off of the system (for security) in a format that does not rely on the system to access or organize the archive	OTB	See line 66 above.
105	Allows import/export of user data	OTB	
106	D. Data Security, Backup and Technical Difficulties		
107	Firm ensures that the data is secured and backed up in case of emergency	OTB	Our infrastructure is fully redundant. In the primary datacenter, all switches, firewalls, servers, storage are redundant. Extreme care has been taken to make sure there is no single point of failure. The Datacenter is SSAE-16 Type II compliant and has redundant power connections, internet connections, battery and generator backups. In addition, we have a DR datacenter that is geographically diverse (East-Coast, West-Coast).
108	Website is secured and protected against unauthorized users trying to read/request data	OTB	Data is encrypted in transit (SSL) and at rest (backups .etc (AES/256-A)). Files/documents are stored securely inside the SQL database for additional security.
109	Firm provides response and resolution times for restoration of the system during an outage, technical difficulty (both urgent and regular) and all other inquiries/requests	OTB	If a system incident has occurred, the designated main contact(s) of your organization will be contacted immediately and the situation explained. If a resolution has been applied already, information will be shared on what steps were taken to resolve. If the situation is still occurring, a plan will be shared to remedy the situation. Standard technical support incidents recommend a 5 step cycle: 1. Client gathers as much detailed information regarding the incident 2. Client contacts PMWeb Technical Support to explain the incidents 3. Support Request will be documented and prioritized by technical support 4. Technical support will seek immediate solution using knowledge base or standard troubleshooting techniques. PMWeb development may be contacted if warranted by technical support 5. Close out and completion of the issue is notified to the end user. For more details, please refer to the following documents that can be provided upon request. • PMWeb IT Security Guideline Document • PMWeb Hosting Fact Sheet • PMWEB Network Disaster Recovery Plan
110	P. Account Representative		
111	Firm assigns an account representative for the Harbor Department to address billing, technical support, and other issues pertaining to the web-based service	OTB	In accordance with the RFP, Michael Nobisich, based in Hill's Irvine office, has been assigned as Account Representative for the Harbor Department, to address billing, technical support, and other issues pertaining to the web-based service. Not only does the Harbor Department already have a relationship with Michael Nobisich on his prior work in and around PQIA, but the fact that he is currently a vice president with Hill will allow him to double as Project Executive in support of this effort, with additional operational authority beyond the more administrative responsibilities of the Account Representative role.
112	Web-Based Bid Management (Optional)		
113	Q. General		
114	Records all potential parties who have downloaded or accessed documents, creating a viewable list	OTB	Vendor Prequalification has an external users that can create their own user accounts, so there's no need for a PMWeb administrator to set them up.
115	Registers potential vendors online without the need for assistance	OTB	Further clarification is needed. PMWeb does offer an online bidding module that allows solicited bidders to obtain bid documents.
116	Allows new registrants to add themselves to existing company accounts (preventing duplicate registration entries)	OTB	
117	Allows Prime and/or Subcontractors/Suppliers to obtain contact information for other interested parties	OTB	
118	Allows creation of customizable checklists or templates	OTB	
119	R. Bid Document Management		

Attachment 7
EXHIBIT F
Scope of Work

120	Allows interested bidders to access and download documents (Plans, Specifications, RFQs, RFPs, etc.) for review, printing and submission to the Department	OTB	
121	Allows submittal of a bid and/or proposal online through the system in accordance with the Public Contracting Code and other applicable codes and regulations	OTB	
122	Issues and manages addenda to documents	OTB	
123	Contains a contract document repository	OTB	
124	Self publishing documents to a private plan room	OTB	
125	Provides electronic document tracking capabilities	OTB	
126	Allows vendors/contractors to upload multiple documents	OTB	
127	Automatically compresses multiple files into zip files for easy download	OTB	
128	Allows user to digitally sign and encrypt bids and attachments	OTB	
129	S. Messaging System		
130	Receives inquiries from potential bidders/proposers	CNC	
131	Communicates responses to inquiries to all parties on the document holder's list	OTB	
132	Attaches documents to messages sent to potential bidders/proposers	OTB	
133	Tracks the delivery of messages	OTB	Out bound email notifications get logged in the notifications sub
134	T. Automated Notification System		
135	Identities contractors or consultants who express an interest in working on a specific type of work, and sends them notices	CNC	Communications could be sent from PMWeb, but it wouldn't be automated
136	Procs bid results for review	OTB	Communications could be sent from PMWeb, but it wouldn't be automated
137	Automatically sends notifications and updates of contracting opportunities, by work interest, to contractors and consultants	OTB	
138	Automatically notifies plan holders of upcoming deadlines, posting of questions and answers, posting of addendums, or any other notices that are posted on the system	OTB	
139	Allows access to a list of parties who have downloaded documents for an advertisement	NA	
140	Monitors license expiration dates and sends notification prior to expiration	OTB	
141	Sends news and event notifications to contractors and vendors who are registered in the system	OTB	Communications could be sent from PMWeb, but it wouldn't be automated
142	Allows for multiple contacts per company	OTB	
143	U. Forms		
144	Creates multiple line item bid forms	OTB	
145	Allows self-service online vendor registration	OTB	
146	Provides pre-qualification applications forms	OTB	
147	Tracks modification of bid history	OTB	

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Line Item	Description	OTB	PMWeb
148	V. Internal Reports		
149	Provides an archive of bids submitted by a particular contractor, which rolls up into an archive of bid history	OTB	
150	Provides customizable reports		
151	Maintains and downloads a database of unit prices for bid items from previously bid results	OTB	
152	Compares bids to historical values	OTB	
153	Provides modification history	OTB	
154	Tracks Small Business and other categories participation in bids	OTB	
155	W. Automated Work Process		
156	Evaluates, analyzes and ranks bids received	OTB	
157	Determines Small Business, and Very Small Business status upon registration	OTB	
158	Verifies contractor license information upon registration	CPC	
159	X. Display Information		
160	Maintains vendor performance rating	OTB	
161	Saves bidders lists	OTB	
162	Provides Small Business and subcontractor references	OTB	
163	Allows record of advertisement and bid processes to be downloaded by an administrator	OTB	
164	Provides customizable bid templates	OTB	
165	Allows viewing of plans and other documents online	OTB	
166	Y. Data Customization		
167	Provides customizable data entry fields/database fields	OTB	
168	Restricts access to data	OTB	
169	Allows import/export of contractor/vendor data/bid history of prices	OTB	
170	Allows the Harbor Department to enter data	OTB	
171	Specifies fields that are required to be completed	OTB	
172	Creates a web service to create and/or display the data in the system	OTB	
173	Allows queries of the database and extraction of data	OTB	
174	Downloads data into a format that can be imported into another database	OTB	
175	Creates an Emergency Operations Module, which manage vendors willing and able to provide services on an emergency basis	OTB	

PMWeb uses Microsoft SQL Server Reporting Services (SSRS) as its default reporting engine. SSRS is integrated tightly to PMWeb and honors user security. Reports and Dashboards can be tailored to meet any design and provide information displays at a Portfolio, Program, or Project level. Key performance indicators, formats, sorting, grouping, filtering, drill-down, drill through (to actual transactions), export to PDF, Word, Excel, XML, CSV, TIFF, MHTMML. An example of a Company Insurance report:

Company Insurance

Company Name	Policy Number	Policy Type	Effective Date	Expiration Date	Carrier	Amount	Limit
1	123456789	General Liability	1/1/2014	12/31/2014	ABC Insurance	\$1,000,000	\$1,000,000
2	987654321	Auto Liability	1/1/2014	12/31/2014	DEF Insurance	\$500,000	\$500,000
3	456789012	Workers Compensation	1/1/2014	12/31/2014	GHI Insurance	\$1,000,000	\$1,000,000
4	321098765	Professional Liability	1/1/2014	12/31/2014	JKL Insurance	\$250,000	\$250,000
5	654321098	Directors and Officers	1/1/2014	12/31/2014	MNO Insurance	\$1,000,000	\$1,000,000
6	098765432	Commercial Property	1/1/2014	12/31/2014	PQR Insurance	\$500,000	\$500,000
7	210987654	Marine Insurance	1/1/2014	12/31/2014	STU Insurance	\$1,000,000	\$1,000,000
8	876543210	Aviation Insurance	1/1/2014	12/31/2014	VWX Insurance	\$1,000,000	\$1,000,000
9	543210987	Energy Insurance	1/1/2014	12/31/2014	YZA Insurance	\$1,000,000	\$1,000,000
10	109876543	Technology Insurance	1/1/2014	12/31/2014	BCD Insurance	\$500,000	\$500,000

EXHIBIT E

Schedule

Unless otherwise established in a Directive, the Consultant shall complete the Scope of Work as described in Section 2.2 according to the following schedule:

Complete within 14 Calendar Days from NTP	Task 1 – System Activation
Complete within one month of NTP	Task 2 – System Implementation Kickoff and Discovery
Complete within three years of NTP	Task 3 – System Implementation
Complete within three years of NTP	Task 4 – System Subscription
Complete within three years of NTP	Task 5 – Training
Complete within three years of NTP	Task 6 – Additional As-Needed Services

EXHIBIT F

COMPENSATION

For those items of the work for which compensation is payable in Fixed Fee amounts, Payment to the Consultant shall be made in monthly installments of the Fixed Fee amount set forth below, according to the percentage of completion of each phase of work, as determined and approved by the Chief Harbor Engineer, based upon monthly progress reports submitted by Consultant. Monthly progress payments shall be equal to the percentage of completion for each phase multiplied by the Fixed Fee payable for completion of each phase, less amounts previously billed.

For those items of the work for which compensation is payable up to Estimated amounts, Consultant shall be paid an hourly fee, or unit price, at the rates set forth in the Hourly Rates & Unit Prices, Exhibit "G." Consultant's monthly invoice shall itemize all hours or units actually performed in performing such services, identifying the personnel and sub-consultant classifications of individuals performing such work and the applicable rates. A 5% (five percent) mark-up payable to the prime Consultant shall be allowed for work performed by listed Subconsultants for items of the work for which compensation is payable up to Estimated amounts.

Compensable amounts set forth on an hourly or unit basis, or fixed fee basis, are estimated only. In the event that all necessary services required in any category described herein, in the judgment of the Chief Harbor Engineer, are fully performed by Consultant at a cost to City which is less than the amounts estimated and authorized hereunder, Chief Harbor Engineer may apply the unexpended balance to compensate Consultant for services in any other category for which compensation was underestimated on either of these bases.

Project Management and Coordination are services that are provided as an integral part of the Work. Consultant shall include the cost of Project Management and Coordination in the effort necessary to complete each subsequent task(s).

Maximum Agreement compensation shall not exceed \$511,710.00.

EXHIBIT F

Task 1 – System Activation as described in Section I of Exhibit "A" of this Agreement Fixed Fee.....	\$60,150.00
Task 2 – System Implementation - Kickoff and Discovery as described in Section II of Exhibit "A" of this Agreement Fixed Fee.....	\$20,240.00
Task 3 – System Implementation as described in Section III of Exhibit "A" of this Agreement. Estimated.....	\$204,160.00
Task 4 – System Subscription shall be determined by the number and type of users, as described in Section II.B of Exhibit "A" of this Agreement. The number of users shall be determined by the Department, and will vary during the duration of this Agreement. The cost for each type of users shall not exceed the Unit Rates in Exhibit "G." Estimated.....	\$159,000.00
Task 5 – Training as described in Section IV of Exhibit "A" of this agreement. Estimated.....	\$28,160.00
Task 6 – Additional As-Needed Services as described in Section V of Exhibit "A" of this Agreement. Estimated.....	\$40,000.00
Subtotal for above Services.....	\$511,710.00

EXPENSES

Expenses for the Fixed Fee items are included in the Fixed Fee amounts. Expenses for the work performed on an hourly basis shall be billed at 0% of the total labor charges and shall not exceed.....	\$0.00
Maximum Agreement compensation shall not exceed the total of.....	\$511,710.00

EXHIBIT G

Hourly and Unit Rates

<i>Classification</i>	<i>Hourly Rate</i>
Executive Sponsor	\$200.00
Project Manager/Configuration/Solution Oversight	\$180.00
Configuration/Solution Oversight	\$180.00
Lead Implementation Consultant/PM/Configuration Lead	\$180.00
Business Analyst/Integration Specialist	\$150.00
Lead Report Developer/PMWeb Technician	\$135.00
Report Developer/PMWeb Technician	\$120.00

<i>Subscription</i>	<i>Unit Rate for One Year</i>
Full User (named)	\$1,500.00 per user
Collaboration User (named)	\$600.00 per user
Collaboration User (concurrent)	\$1,200.00 per user
Dedicated PMWeb Server Platform	\$6,000.00

Hourly rates include all vehicles, computers, cellular telephones, and other direct and indirect costs.

Hourly rates, as indicated, include all expenses for travel.

No annual escalation of the Hourly and/or Unit Rates is allowed.

A 5% (five percent) mark-up payable to the prime Consultant is included in the above rates for work performed on an hourly basis by listed Subconsultants.

EXHIBIT H

Form of Invoice

Company Name and Logo
Address

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

Invoice No.: _____
Invoice Date: _____
Invoice Period: _____
Federal ID No.: _____
City Business Tax No.: _____

Consultant Contact: _____
Telephone: _____

Project Title: Web-Based Construction Project Management System
Agreement No. _____

Directive No.	Task No.	Description	Fee Type	Authorized Amount	Total Earned to Date	Prior Invoices	Current Invoice

Subtotal

Total Compensation \$ _____
Less Prior Invoices \$ _____
Total Amount Due This Invoice \$ _____

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

Name, Project Manager Date

Time and Material Details:

Name	Description	Rate	Hours	Amount	Markup	Total

Attachments:
Consultant Timesheets (for T&M Tasks)
Subconsultant Invoice with Timesheets (for T&M Tasks)
Monthly Subconsultant Monitoring Report

EXHIBIT I

Monthly Subconsultant Monitoring Report

Instructions: Please indicate the SBE/VSBE/MBE/WBE/OBE/DBE participation levels achieved for the month of _____ covered by the referenced contract number.

Agreement No.	Spec. No.	Division	Construction	Contract Administrator
Consultant: PMWeb, Inc.	Group*	Contract Title/Project		
Original Contract Amount	Contract Start Date	Contract End Date		

Total Earned Value to Date \$ _____

Original Proposed Subcontractor Percentages SBE xx% VSBE xx% MBE xx% WBE xx% OBE xx%

Contract-required minimum percentages (in parentheses) (25%) (5%)

The VSBE and Total SBE min-required percentages above, are not additive. The Total SBE percentage includes VSBE participation.

					PROPOSED			ACTUALS		
	Name of Subcontractor	Type of Work Performed	SBE/VSBE	MBE/WBE/OBE	Original Proposed Amount	Original Proposed Percentage	Earned Value to Date	Earned Value to Date Percentage	Total Earned Value Percentage	
1										
2										
3										
VSBE Subtotal:					\$0.00	#DIV/0!	\$0.00	0.00%	0.00%	

1									
2									
3									
SBE Subtotal (Exclusive of VSBE):					\$0.00	#DIV/0!	\$0.00	0.00%	0.00%
Total SBE (Inclusive of VSBE):					\$0.00	#DIV/0!	\$0.00	0.00%	0.00%

1									
2									
3									
4									
5									
Non-SBE Total:					\$0.00	0.00%	\$0.00	0.00%	0.00%

Directions:

Original Proposed Percentage =
 Earned Value to Date / Original Proposed Amount
 Total Earned Value Percentage =
 Earned Value to Date / Total Earned Value to Date

*Group = SBE / VSBE / MBE / WBE / OBE / DBE

EXHIBIT J

BUSINESS TAX REGISTRATION CERTIFICATE (BTRC) NUMBER

The City of Los Angeles Office of Finance requires all firms that engage in any business activity within the City of Los Angeles to pay City business taxes. Each firm or individual (other than a municipal employee) is required to obtain the necessary Business Tax Registration Certification (BTRC) and pay business tax. (Los Angeles Municipal Code Section 21.09 et seq.)

All firms and individuals that do business with the City of Los Angeles will be required to provide a BTRC number or an exemption number as proof of compliance with Los Angeles City business tax requirements in order to receive payment for goods or services. Beginning October 14, 1987, payments for goods or services will be withheld unless proof of tax compliance is provided to the City.

The Tax and Permit Division of Los Angeles Office of Finance has the sole authority to determine whether a firm is covered by business tax requirements. Those firms not required to pay will be given an exemption number.

If you do NOT have a BTRC number contact the Tax and Permit Division at the office listed below, or log on to www.lacity.org/finance to download the business tax registration application.

MAIN OFFICE

LA City Hall

201 N. Main Street, Rm. 101

(844) 663-4411

EXHIBIT K - AFFIRMATIVE ACTION PROGRAM PROVISIONS

Sec. 10.8.4 Affirmative Action Program Provisions.

Every non-construction contract with or on behalf of the City of Los Angeles for which the consideration is \$100,000 or more and every construction contract with or on behalf of the City of Los Angeles for which the consideration is \$5,000 or more shall contain the following provisions which shall be designated as the AFFIRMATIVE ACTION PROGRAM provisions of such contract:

- A. During the performance of City contract, the contractor certifies and represents that the contractor and each subcontractor hereunder will adhere to an affirmative action program to ensure that in its employment practices, persons are employed and employees are treated equally and without regard to or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status, domestic partner status, or medical condition.
 - 1. This provision applies to work or services performed or materials manufactured or assembled in the United States.
 - 2. Nothing in this section shall require or prohibit the establishment of new classifications of employees in any given craft, work or service category.
 - 3. The contractor shall post a copy of Paragraph A hereof in conspicuous places at its place of business available to employees and applicants for employment.
- B. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to their race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status, domestic partner status, or medical condition.
- C. As part of the City's supplier registration process, and/or at the request of the awarding authority or the Office of Contract Compliance, the contractor shall certify on an electronic or hard copy form to be supplied, that the contractor has not discriminated in the performance of City contracts against any employee or applicant for employment on the basis or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status, domestic partner status, or medical condition.
- D. The contractor shall permit access to and may be required to provide certified copies of all of its records pertaining to employment and to its employment practices by the awarding authority or the Office of Contract Compliance, for the purpose of investigation to ascertain compliance with the Affirmative Action Program provisions of City contracts, and on their or either of their request to provide evidence that it has or will comply therewith.

- E. The failure of any contractor to comply with the Affirmative Action Program provisions of City contracts may be deemed to be a material breach of contract. Such failure shall only be established upon a finding to that effect by the awarding authority, on the basis of its own investigation or that of the Board of Public Works, Office of Contract Compliance. No such finding shall be made except upon a full and fair hearing after notice and an opportunity to be heard has been given to the contractor.
- F. Upon a finding duly made that the contractor has breached the Affirmative Action Program provisions of a City contract, the contract may be forthwith cancelled, terminated or suspended, in whole or in part, by the awarding authority, and all monies due or to become due hereunder may be forwarded to and retained by the City of Los Angeles. In addition thereto, such breach may be the basis for a determination by the awarding authority or the Board of Public Works that the said contractor is an irresponsible bidder or proposer pursuant to the provisions of Section 371 of the Los Angeles City Charter. In the event of such determination, such contractor shall be disqualified from being awarded a contract with the City of Los Angeles for a period of two years, or until he or she shall establish and carry out a program in conformance with the provisions hereof.
- G. In the event of a finding by the Fair Employment and Housing Commission of the State of California, or the Board of Public Works of the City of Los Angeles, or any court of competent jurisdiction, that the contractor has been guilty of a willful violation of the California Fair Employment and Housing Act, or the Affirmative Action Program provisions of a City contract, there may be deducted from the amount payable to the contractor by the City of Los Angeles under the contract, a penalty of TEN DOLLARS (\$10.00) for each person for each calendar day on which such person was discriminated against in violation of the provisions of a City contract.
- H. Notwithstanding any other provisions of a City contract, the City of Los Angeles shall have any and all other remedies at law or in equity for any breach hereof.
- I. The Public Works Board of Commissioners shall promulgate rules and regulations through the Office of Contract Compliance and provide to the awarding authorities electronic and hard copy forms for the implementation of the Affirmative Action Program provisions of City contracts, and rules and regulations and forms shall, so far as practicable, be similar to those adopted in applicable Federal Executive Orders. No other rules, regulations or forms may be used by an awarding authority of the City to accomplish this contract compliance program.
- J. Nothing contained in City contracts shall be construed in any manner so as to require or permit any act which is prohibited by law.
- K. The Contractor shall submit an Affirmative Action Plan which shall meet the requirements of this chapter at the time it submits its bid or proposal or at the time it registers to do business with the City. The plan shall be subject to approval by the

Office of Contract Compliance prior to award of the contract. The awarding authority may also require contractors and suppliers to take part in a pre-registration, pre-bid, pre-proposal, or pre-award conference in order to develop, improve or implement a qualifying Affirmative Action Plan. Affirmative Action Programs developed pursuant to this section shall be effective for a period of twelve

months from the date of approval by the Office of Contract Compliance. In case of prior submission of a plan, the contractor may submit documentation that it has an Affirmative Action Plan approved by the Office of Contract Compliance within the previous twelve months. If the approval is 30 days or less from expiration, the contractor must submit a new Plan to the Office of Contract Compliance and that Plan must be approved before the contract is awarded.

1. Every contract of \$5,000 or more which may provide construction, demolition, renovation, conservation or major maintenance of any kind shall in addition comply with the requirements of Section 10.13 of the Los Angeles Administrative Code.
 2. A contractor may establish and adopt as its own Affirmative Action Plan, by affixing his or her signature thereto, an Affirmative Action Plan prepared and furnished by the Office of Contract Compliance, or it may prepare and submit its own Plan for approval.
- L. The Office of Contract Compliance shall annually supply the awarding authorities of the City with a list of contractors and suppliers who have developed Affirmative Action Programs. For each contractor and supplier the Office of Contract Compliance shall state the date the approval expires. The Office of Contract Compliance shall not withdraw its approval for any Affirmative Action Plan or change the Affirmative Action Plan after the date of contract award for the entire contract term without the mutual agreement of the awarding authority and the contractor.
- M. The Affirmative Action Plan required to be submitted hereunder and the pre-registration, pre-bid, pre-proposal or pre-award conference which may be required by the Board of Public Works, Office of Contract Compliance or the awarding authority shall, without limitation as to the subject or nature of employment activity, be concerned with such employment practices as:
1. Apprenticeship where approved programs are functioning, and other on-the-job training for non-apprenticeable occupations;
 2. Classroom preparation for the job when not apprenticeable;
 3. Pre-apprenticeship education and preparation;
 4. Upgrading training and opportunities;

5. Encouraging the use of contractors, subcontractors and suppliers of all racial and ethnic groups, provided, however, that any contract subject to this ordinance shall require the contractor, subcontractor or supplier to provide not less than the prevailing wage, working conditions and practices generally observed in private industries in the contractor's, subcontractor's or supplier's geographical area for such work;
 6. The entry of qualified women, minority and all other journeymen into the industry; and
 7. The provision of needed supplies or job conditions to permit persons with disabilities to be employed, and minimize the impact of any disability.
- N. Any adjustments which may be made in the contractor's or supplier's workforce to achieve the requirements of the City's Affirmative Action Contract Compliance Program in purchasing and construction shall be accomplished by either an increase in the size of the workforce or replacement of those employees who leave the workforce by reason of resignation, retirement or death and not by termination, layoff, demotion or change in grade.
- O. Affirmative Action Agreements resulting from the proposed Affirmative Action Plan or the pre-registration, pre-bid, pre-proposal or pre-award conferences shall not be confidential and may be publicized by the contractor at his or her discretion. Approved Affirmative Action Agreements become the property of the City and may be used at the discretion of the City in its Contract Compliance Affirmative Action Program.
- P. This ordinance shall not confer upon the City of Los Angeles or any Agency, Board or Commission thereof any power not otherwise provided by law to determine the legality of any existing collective bargaining agreement and shall have application only to discriminatory employment practices by contractors or suppliers engaged in the performance of City contracts.
- Q. All contractors subject to the provisions of this section shall include a like provision in all subcontracts awarded for work to be performed under the contract with the City and shall impose the same obligations, including but not limited to filing and reporting obligations, on the subcontractors as are applicable to the contractor. Failure of the contractor to comply with this requirement or to obtain the compliance of its subcontractors with all such obligations shall subject the contractor to the imposition of any and all sanctions allowed by law, including but not limited to termination of the contractor's contract with the City.

EXHIBIT L

SMALL/VERY SMALL BUSINESS ENTERPRISE PROGRAM AND LOCAL BUSINESS PREFERENCE PROGRAM

(1) SMALL/VERY SMALL BUSINESS ENTERPRISE PROGRAM

The City of Los Angeles Harbor Department is committed to creating an environment that provides all individuals and businesses open access to the business opportunities available at the Harbor Department in a manner that reflects the diversity of the City of Los Angeles. The Harbor Department's Small Business Enterprise (SBE) Program was created to provide additional opportunities for small businesses to participate in professional service and construction contracts. An overall Department goal of 25% SBE participation, including 5% Very Small Business Enterprise (VSBE) participation, has been established for the Program. The specific goal or requirement for each contract opportunity may be higher or lower based on the scope of work.

It is the policy of the Harbor Department to solicit participation in the performance of all service contracts by all individuals and businesses, including, but not limited to, SBEs, VSBEs, women-owned business enterprises (WBEs), minority-owned business enterprises (MBEs), and disabled veteran business enterprises (DVBES). The SBE Program allows the Harbor Department to target small business participation, including MBEs, WBEs, and DVBES, more effectively. It is the intent of the Harbor Department to make it easier for small businesses to participate in contracts by providing education and assistance on how to do business with the City, and ensuring that payments to small businesses are processed in a timely manner. **In order to ensure the highest participation of SBE/VSBE/MBE/WBE/DVBES, all proposers shall utilize the City's contracts management and opportunities database, the Los Angeles Business Assistance Virtual Network (LABAVN), at <http://www.labavn.org>, to outreach to potential subcontractors.**

The Harbor Department defines a SBE as an independently owned and operated business that is not dominant in its field and meets criteria set forth by the Small Business Administration in Title 13, Code of Federal Regulations, Part 121. Go to www.sba.gov for more information. The Harbor Department defines a VSBE based on the State of California's Micro-business definition which is 1) a small business that has average annual gross receipts of \$3,500,000 or less within the previous three years, or (2) a small business manufacturer with 25 or fewer employees.

The SBE Program is a results-oriented program, requiring consultants who receive contracts from the Harbor Department to perform outreach and utilize certified small businesses. **Based on the work to be performed, it has been determined that the percentage of small business participation will be __%, including __% VSBE participation.** The North American Industry Classification System (NAICS) Code for the scope of services is _____. This NAICS Code is the industry code that corresponds to at least 51% of the scope of services and will be used to determine the size standard for SBE participation of the Prime Consultant. The maximum SBE size standard for this NAICS Code is \$_____ million.

Consultant shall be responsible for determining the SBE status of its subconsultants for purposes of meeting the small business requirement. Subconsultants must qualify as an SBE based on the type of services that they will be performing under the Agreement. All business participation will be determined by the percentage of the total amount of compensation under the agreement paid to SBEs. The Consultant shall not substitute an SBE firm without obtaining prior approval of the City. A request for substitution must be based upon demonstrated good cause. If substitution is permitted, Consultant shall endeavor to make an in-kind substitution for the substituted SBE.

(2) LOCAL BUSINESS PREFERENCE PROGRAM:

The Harbor Department is committed to maximizing opportunities for local and regional businesses, as well as encouraging local and regional businesses to locate and operate within the Southern California region. It is the policy of the Harbor Department to support an increase in local and regional jobs. The Harbor Department's Local Business Preference Program (LBPP) aims to benefit the Southern California region by increasing jobs and expenditures within the local and regional private sector.

The Harbor Department defines a LBE as:

- (a) A business headquartered within Los Angeles, Orange, Riverside, San Bernardino, or Ventura Counties; or
- (b) A business that has at least 50 full-time employees, or 25 full-time employees for specialty marine contracting firms, working in Los Angeles, Orange, Riverside, San Bernardino, or Ventura Counties.

In order for Harbor Department staff to determine the appropriate LBE preference, Consultant shall complete, sign, notarize (where applicable) and submit the attached Affidavit and Contractor Description Form. The Affidavit and Contractor Description Form will signify the LBE status of the Consultant and subconsultants. Prior to contract award, the Harbor Department will verify the status of all LBEs.

Consultant shall complete, sign, notarize (where applicable) and submit as part of the executed agreement the attached Affidavit and Contractor Description Form. The Contractor Description Form, when signed, will signify the Consultant's intent to comply with the SBE and LBPP requirements. Prior to contract award, the Harbor Department will verify the status of all SBEs. In addition, prior to being awarded a contract with the Harbor Department, all contractors and subcontractors must be registered on LABAVN.

In the event of Consultant's noncompliance during the performance of the Agreement, Consultant shall be considered in material breach of contract. In addition to any other remedy available to City under this Agreement or by operation of law, the City may withhold invoice payments to Consultant until noncompliance is corrected, and assess the costs of City's audit of books and records of Consultant and its subconsultants. In the event the Consultant falsifies or misrepresents information contained in any form or other willful noncompliance as determined by City, City may disqualify the Consultant from participation in City contracts for a period of up to five (5) years.

AFFIDAVIT OF COMPANY STATUS

"The undersigned declares under penalty of perjury pursuant to the laws of the State of California that the following information and information contained on the attached Consultant Description Form is true and correct and includes all material information necessary to identify and explain the operations of

PMWeb, inc.

Name of Firm

as well as the ownership and location thereof. Further, the undersigned agrees to provide complete and accurate information regarding ownership in the named firm, any proposed changes of the ownership and to permit the audit and examination of firm ownership documents in association with this agreement."

(1) **Small/Very Small Business Enterprise Program:** Please indicate the ownership of your company. Please check all that apply. At least one box must be checked:

☒ SBE ☐ VSBE ☐ MBE ☐ WBE ☐ DVBE ☐ OBE

- A Small Business Enterprise (SBE) is an independently owned and operated business that is not dominant in its field and meets criteria set forth by the Small Business Administration in Title 13, Code of Federal Regulations, Part 121.
- A Very Small Business Enterprise (VSBE) is (1) a small business that has average annual gross receipts of \$3,500,000 or less within the previous three years, or (2) a small business manufacturer with 25 or fewer employees.
- A Minority Business Enterprise (MBE) is defined as a business in which a minority owns and controls at least 51% of the business. A Woman Business (WBE) is defined as a business in which a woman owns and controls at least 51% of the business. For the purpose of this project, a minority includes:
 - (1) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
 - (2) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
 - (3) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, The Indian Subcontinent, or the Pacific Islands); and
 - (4) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
- A Disabled Veteran Business Enterprise (DVBE) is defined as a business in which a disabled veteran owns at least 51% of the business, and the daily business operations are managed and controlled by one or more disabled veterans.
- An OBE (Other Business Enterprise) is any enterprise that is neither an SBE, VSBE, MBE, WBE, or DVBE.

(2) Local Business Preference Program: Please indicate the Local Business Enterprise status of your company.

Only one box must be checked:

☐ LBE ☒ Non-LBE

- A Local Business Enterprise (LBE) is: (a) a business headquartered within Los Angeles, Orange, Riverside, San Bernardino, or Ventura Counties; or (b) a business that has at least 50 full-time employees, or 25 full-time employees for specialty marine contracting firms, working in Los Angeles, Orange, Riverside, San Bernardino, or Ventura Counties. "Headquartered" shall mean that the business physically conducts and manages all of its operations from a location in the above-named counties.
- A Non-LBE is any business that does not meet the definition of a LBE.

Signature: 
Printed Name: Bobby Brown

Title: Director of Sales
Date Signed: 11-3-2015

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of ~~California~~ Massachusetts
County of Middlesex

On 11/3/2015 before me, Bobby Brown, Director of Sales
(insert name and title of the officer)

personally appeared _____
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Laura A. Jolly (Seal)

Consultant Description Form

PRIME CONSULTANT:

Contract Title: WebBased Construction Project Management System
Business Name: PMWeb, Inc Award Total: \$ TBD
Owner's Ethnicity: Other Gender M Group (SBE) VSBE MBE WBE DVBE OBE (Circle all that apply)
Local Business Enterprise: YES _____ NO X (Check only one)
Primary NAICS Code: 541511 Average Three Year Gross Revenue: \$ 8,000,000
Address: 1 Pope Street
City/State/Zip: Wakefield, MA 01880
County: USA
Telephone: (617) 207-7080 FAX: () _____
Contact Person/Title: Kyle Cross-Director of Sales
Email Address: kyle.cross@pmweb.com

SUBCONSULTANT:

Business Name: HKA-TECH Award Total: \$ TBD
Services to be provided: Software Implementation Configuration and Training
Owner's Ethnicity: Caucasian Gender M Group: SBE VSBE MBE WBE DVBE (OBE) (Circle all that apply)
Local Business Enterprise: YES _____ NO X (Check only one)
Primary NAICS Code: 541611 Average Three Year Gross Revenue: \$ 641,066,000
Address: 18100 Von Karman Avenue, suite 700
City/State/Zip: Irvine, CA 92612
County: United States
Telephone: (949) 474-2908 FAX: (949) 474-8427
Contact Person/Title: Michael Nosbisch, CCP (AACE), PSP, FAACE
Email Address: MichaelNosbisch@hillintl.com

SUBCONSULTANT:

Business Name: _____ Award Total: \$ _____
Services to be provided: _____
Owner's Ethnicity: _____ Gender _____ Group: SBE VSBE MBE WBE DVBE OBE (Circle all that apply)
Local Business Enterprise: YES _____ NO _____ (Check only one)
Primary NAICS Code: _____ Average Three Year Gross Revenue: \$ _____
Address: _____
City/State/Zip: _____
County: _____
Telephone: () _____ FAX: () _____
Contact Person/Title: _____
Email address: _____

EXHIBIT M

Sec. 10.8.2.1. Equal Benefits Ordinance.

Discrimination in the provision of employee benefits between employees with domestic partners and employees with spouses results in unequal pay for equal work. Los Angeles law prohibits entities doing business with the City from discriminating in employment practices based on marital status and/or sexual orientation. The City's departments and contracting agents are required to place in all City contracts a provision that the company choosing to do business with the City agrees to comply with the City's nondiscrimination laws.

It is the City's intent, through the contracting practices outlined in this Ordinance, to assure that those companies wanting to do business with the City will equalize the total compensation between similarly situated employees with spouses and with domestic partners. The provisions of this Ordinance are designed to ensure that the City's contractors will maintain a competitive advantage in recruiting and retaining capable employees, thereby improving the quality of the goods and services the City and its people receive, and ensuring protection of the City's property.

(c) Equal Benefits Requirements.

(1) No Awarding Authority of the City shall execute or amend any Contract with any Contractor that discriminates in the provision of Benefits between employees with spouses and employees with Domestic Partners, between spouses of employees and Domestic Partners of employees, and between dependents and family members of spouses and dependents and family members of Domestic Partners.

(2) A Contractor must permit access to, and upon request, must provide certified copies of all of its records pertaining to its Benefits policies and its employment policies and practices to the DAA, for the purpose of investigation or to ascertain compliance with the Equal Benefits Ordinance.

(3) A Contractor must post a copy of the following statement in conspicuous places at its place of business available to employees and applicants for employment: "During the performance of a Contract with the City of Los Angeles, the Contractor will provide equal benefits to its employees with spouses and its employees with domestic partners." The posted statement must also include a City contact telephone number which will be provided each Contractor when the Contract is executed.

(4) A Contractor must not set up or use its contracting entity for the purpose of evading the requirements imposed by the Equal Benefits Ordinance.

(d) Other Options for Compliance. Provided that the Contractor does not discriminate in the provision of Benefits, a Contractor may also comply with the Equal Benefits Ordinance in the following ways:

(1) A Contractor may provide an employee with the Cash Equivalent only if the DAA determines that either:

a. The Contractor has made a reasonable, yet unsuccessful effort to provide Equal Benefits; or

b. Under the circumstances, it would be unreasonable to require the Contractor to provide Benefits to the Domestic Partner (or spouse, if applicable).

(2) Allow each employee to designate a legally domiciled member of the employee's household as being eligible for spousal equivalent Benefits.

(3) Provide Benefits neither to employees' spouses nor to employees' Domestic Partners.

(e) Applicability.

(1) Unless otherwise exempt, a Contractor is subject to and shall comply with all applicable provisions of the Equal Benefits Ordinance.

(2) The requirements of the Equal Benefits Ordinance shall apply to a Contractor's operations as follows:

a. A Contractor's operations located within the City limits, regardless of whether there are employees at those locations performing work on the Contract.

b. A Contractor's operations on real property located outside of the City limits if the property is owned by the City or the City has a right to occupy the property, and if the Contractor's presence at or on that property is connected to a Contract with the City.

c. The Contractor's employees located elsewhere in the United States but outside of the City limits if those employees are performing work on the City Contract.

(3) The requirements of the Equal Benefits Ordinance do not apply to collective bargaining agreements ("CBA") in effect prior to January 1, 2000. The Contractor must agree to propose to its union that the requirements of the Equal Benefits Ordinance be incorporated into its CBA upon amendment, extension, or other modification of a CBA occurring after January 1, 2000.

(f) **Mandatory Contract Provisions Pertaining to Equal Benefits.**
Unless otherwise exempted, every Contract shall contain language that obligates the Contractor to comply with the applicable provisions of the Equal Benefits Ordinance. The language shall include provisions for the following:

(1) During the performance of the Contract, the Contractor certifies and represents that the Contractor will comply with the Equal Benefits Ordinance.

(2) The failure of the Contractor to comply with the Equal Benefits Ordinance will be deemed to be a material breach of the Contract by the Awarding Authority.

(3) If the Contractor fails to comply with the Equal Benefits Ordinance the Awarding Authority may cancel, terminate or suspend the Contract, in whole or in part, and all monies due or to become due under the Contract may be retained by the City. The City may also pursue any and all other remedies at law or in equity for any breach.

(4) Failure to comply with the Equal Benefits Ordinance may be used as evidence against the Contractor in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40, et seq., Contractor Responsibility Ordinance.

(5) If the DAA determines that a Contractor has set up or used its Contracting entity for the purpose of evading the intent of the Equal Benefits Ordinance, the Awarding Authority may terminate the Contract on behalf of the City. Violation of this provision may be used as evidence against the Contractor in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40, et seq., Contractor Responsibility Ordinance.

Software Subscription Agreement

Agreement Title: SaaS Contract for _____

Date:

Effective Date: Agreement Signature Date

Client:

Contact:

Email:

Phone:

Accounting Contact: [name, email, phone]

IT Contact: [name, email, phone]

PMWeb Contact: _____

PMWeb Inc.

1 Pope Street

Wakefield, MA 01880 USA

Email:

Phone: (617) 207-7080

Fax: (978) 246-0248

Reseller Partner: (if applicable)

AGREEMENT TERMS & CONDITIONS

1. AGREEMENT AND TERMS

1.1 This Software Subscription Agreement ("Software Subscription") between PMWeb, Inc. ("PMWeb") and the City of Los Angeles, Harbor Department ("Client") is made effective pursuant to Section 4.1 of Agreement No. _____ ("Agreement") with a term of twelve (12) months (the "Term"). PMWeb grants to Client and Client accepts solely for its own internal business purposes, a non-exclusive, non-transferable non-sub licensable license to use the software product(s) subject to the payment of the Licensee fees described in Exhibits A and F of the Agreement in object code form for the Term of this Software Subscription and each renewal term, if any. Additional technical support and subscription update coverage may be obtained by Client for the Software in accordance with Section 3 of this Software Subscription.

1.2 Renewal Term(s). Upon the expiration of the Term or any Renewal Term, this Software Subscription will be up for renewal for additional terms equal to the Term (each a "Renewal Term"), up to a maximum of three (3) years from the effective date of the Agreement, unless Client notifies PMWeb in writing not less than ninety (90) days prior to the end of the Term or any Renewal Term that it has elected to terminate this Software Subscription.

1.3 Payment Terms. Prior to the Commencement Date, PMWeb will invoice Client for the amount due for the setup fee and license/base fee for the right to use the Software as provided in Exhibits A, D, and F of the Agreement for the upcoming Term or Renewal Term (the "Invoiced Amount"). Approximately ninety (90) days before the end of the Term or any Renewal Term, PMWeb will invoice Client the Invoiced Amount for the next term of each licensed image. Client shall pay, upon verification by Client, the Invoiced Amount and any other amounts billed hereunder pursuant to the terms of the invoice. All payments are non-refundable. Client is responsible for all fees associated with the collection by PMWeb of amounts due from Client, including court fees, reasonable attorney's fees and disbursements.

2. REPRESENTATIONS AND WARRANTIES

2.1 General. PMWeb represents and warrants that it has the legal right to enter into this Software Subscription and perform its obligations hereunder.

2.2 Service Level Warranty. In the event that Client experiences any of the service performance issues defined in Section 2.2.4 below as a result of any failure by PMWeb to perform services required of it under this Software Subscription, PMWeb will, upon Client request in accordance with paragraph 2.2.4 below, credit Client's account as described below. The Service Level Warranty shall not apply to performance issues: (i) caused by factors outside of PMWeb's reasonable control; or (ii) that result from any actions or inactions of Client or any third parties' applications or equipment.

2.2.1 Definitions.

2.2.1.1. Business hours: 8 AM – 5 PM EST, Monday – Friday, except for national United States holidays

2.2.1.2. Non-business hours: Hours outside of business hours

2.2.1.3. Internal Network: All technology hardware and software behind and including PMWeb firewall, but not Internet connectivity and technology between Client terminals and PMWeb firewall

2.2.1.4. Uptime: The time during which PMWeb Internal Network is functioning and available for Client

2.2.2 PMWeb guarantees to Client (i) 99.8% uptime during business hours and (ii) 99% uptime during non-business hours on PMWeb Internal Network. Uptime excludes maintenance.

2.2.3 To the extent reasonably practicable, PMWeb will notify Client at least: (i) 48 hours prior to any routine maintenance not critical to system stability and security; and (ii) two hours prior to any maintenance with potential next day impact on uptime. Routine maintenance work will be performed during non-business hours.

2.2.4 If Client notifies PMWeb Client Support immediately upon failure to access the Services and PMWeb determines in its reasonable commercial judgment that the Services are unavailable due to an outage caused solely by PMWeb, the following will apply: If PMWeb determines that the Services were unavailable for two or more (but fewer than four) consecutive hours during a calendar month then, upon Client's request, PMWeb will credit Client's account for that month in an amount equal to the prorated charges for one day's service. If PMWeb determines that the Services were unavailable for four (4) or more consecutive hours during any calendar month, then, upon Client's request, PMWeb will credit the Client for the month in an amount equal to the pro-rated charges for one week's service. Services shall be deemed to be unavailable if the PMWeb system is not responding to HTTP requests issued by PMWeb monitoring software. Scheduled maintenance shall not be deemed to be Services unavailability. This Section shall not apply if unavailability is caused by unavailability outside of the PMWeb Network or events of force majeure. Client's account shall not be credited more than once per calendar month pursuant to this Section.

2.2.5 PMWeb will maintain daily backups of all live data on behalf of the Client. Data that is in a static state or external data will be considered "stale" and will be backed up monthly. Should "stale" data become live, it will be backed up daily until such time as it reverts to a "stale" state.

2.2.6 The Service Level Warranty set forth in this section 2.2 shall only apply to the Services provided by PMWeb and, does not apply to any services other than Services included as a part of the fee stated herein.

2.3 No Other Warranty. Except for the express warranties set forth in this section 2, the Services are provided on an "as is" basis, and Client use of the Services is at its own risk. PMWeb does not make, and hereby disclaims, any and all other express and/or implied warranties, including, but not limited to, warranties of merchantability, fitness for a particular purpose and any warranties arising from a course of dealing, usage, or trade practice. PMWeb does not warrant that the Services will be uninterrupted, error-free, or completely secure.

2.4 Disclaimer of Liability for Actions Caused by and/or Under the Control of Third Parties. PMWeb does not and cannot control the flow of data to or from the PMWeb network and other portions of the Internet. Such flow depends in large part on the performance of Internet services provided or controlled by Third Parties. At times, actions or inactions of such Third Parties can impair or disrupt Client connections to the Internet. Although PMWeb will use commercially reasonable efforts to take all actions it deems appropriate to

remedy and avoid such events, PMWeb cannot guarantee that such events will not occur. Accordingly, PMWeb disclaims any and all liability resulting from or related to such events. This disclaimer also applies to acts of Client or those under its control blocking or slowing service.

3. SUPPORT AND MAINTENANCE

3.1 Designated Contacts. Client will designate individuals who will serve as Designated Contacts. The Designated Contacts will be the only Client representatives authorized to contact the Client Support Center and submit Incidents. Designated Contacts must have completed PMWeb Training and the Client must have a valid software license. Client may designate up to three Designated Contacts.

3.2 Software updates/upgrades. Clients under a valid and paid in full Subscription will receive software updates and upgrades for covered software during the term of the Subscription. Software updates are defined as those minor revisions that are designated as "dot" releases (e.g. version 5.1 updated to version 5.2.) Software Upgrades are defined as major revision releases (e.g. version 5.2 to version 6.0.), new products are not included.

3.3 Software Defects. In the case where PMWeb determines that an Incident is the result of a software defect, the Incident will be presented by the analyst to PMWeb's Development Group for potential revision in a future release or patch. In the event that the Incident is the result of a software defect in OEM code provided to PMWeb by another vendor, PMWeb will document the problem and enter an Incident with the OEM vendor for potential revision in a future release or patch.

3.4 Support Escalation. In the event that an Incident increases in its impact to the Client or that allocated resources are inadequate to provide a solution to Client, PMWeb shall escalate Incidents to an appropriate level of its organization. Purposes of escalation shall be to obtain additional expertise or resources, and/or re-evaluate priority/impact.

3.5 Error investigation. Upon receipt of notification from Client of an apparent error or problem with the software licensed from PMWeb, PMWeb will use commercially reasonable efforts to promptly investigate the issue and to advise the Client as soon as reasonably possible that either an error does not exist, or confirm that one does exist and what, if any, work-around exists. When errors are confirmed, PMWeb will use commercially reasonable efforts to correct such errors and provide Client with an updated version for the licensed software as soon as it is practical in PMWeb's sole discretion.

4. CONFIDENTIALITY

4.1 General. Each party acknowledges that, in the course of the performance of this Software Subscription, it may have access to Client information and communications, including proprietary information claimed to be unique, secret, confidential, and which constitutes the exclusive property and trade secrets of the other party ("Confidential Information").

4.2 Respect of Confidential Information. Each party agrees to maintain the confidentiality of the Confidential Information, to use the Confidential Information only to the extent necessary for legitimate business uses in connection with this Software Subscription.

4.3 California Public Records Act. PMWeb acknowledges that Client is a public agency and therefore bound by the California Public Records Act. In the event that 1) the Client is named as a defendant in an action filed by a third party seeking disclosure of Confidential Information, and 2) PMWeb objects to releasing the Confidential Information to the third party, PMWeb will indemnify and defend the Client and the Client's boards, officers, agents, employees, representatives, affiliates, assigns, and successors from and against any liability, judgments, fines and other costs, including reasonable attorney fees and costs, that are incurred in the defense of or that result directly from the action.

5. INTELLECTUAL PROPERTY OWNERSHIP. The Software and related Documentation is owned by PMWeb and/or its licensors and is protected by United States and foreign patent, copyright laws and trade secret laws. Client acknowledges and agrees that except for the limited right to use the Software and

Related Documentation as granted in Section 1 above, PMWeb and its licensors have and shall retain the entire right, title and interest in and to all intellectual property rights arising from or relating to the Software and Related Documentation whether or not merged into other materials. Client shall not use the trademarks, service marks, logos, brand source distinctions and trade names of PMWeb without PMWeb's prior written consent. No license is granted under covering U.S. or foreign patents, copyrights or trade secrets, if any, of PMWeb or its licensors, except as expressly granted and limited herein.

6. COPY AND OTHER RESTRICTIONS. Client shall not copy the Software except to make one copy of the Software exclusively for inactive backup or archival purposes to be returned to PMWeb upon conclusion of the Term or last Renewed Term or earlier in case of Termination under Section 7 below. Client may copy the Related Documentation for its own internal business purposes. Client shall not modify, reverse engineer, de-compile or disassemble the Software, or create derivative works based upon the Software. Client shall not use the Software and Related Documentation in a timesharing arrangement nor encumber, rent, lease, transmit, distribute or transfer the Software to any third party for any purpose without PMWeb's prior written consent. Transfer of Software or Related Documentation outside the country in which it was originally delivered to Client is not permitted without PMWeb's prior written consent and is subject to your compliance with all applicable export restrictions. Client shall not remove any product identification, copyright notices or other notices or proprietary restrictions from the Software or Related Documentation nor disable, circumvent or misuse any security or access features. Upon reasonable notice to Client, PMWeb shall have the right to inspect Client's use of the Software and audit your relevant records to verify compliance with the terms of this Software Subscription. The Software and Documentation contains valuable trade secrets and proprietary know-how that belongs to PMWeb and its licensors and it is made available to client in strict confidence. ANY use or disclosure of the Software or of its algorithms, protocols or interfaces other than in strict accordance with this Software Subscription is prohibited and may be actionable as a violation of PMWeb's or its licensors' proprietary rights.

7. TERMINATION. PMWeb shall have the right to terminate this Software Subscription and Client's right to use the Software and Related Documentation with 30 days' notice upon Client's failure to correct by email or other written notice to Client provided the following: (1) PMWeb notifies Client, in writing, of alleged breach of this Software Subscription; and (2) provides Client 30 days to correct. Termination shall not limit PMWeb from pursuing any other remedies available to it, including, but not limited to, injunctive relief, and/or damages nor shall termination relieve Client of its obligations to pay PMWeb all License Fees and other sums accrued prior to the effective date of termination or entitle Client to refund of any portion of moneys previously paid to PMWeb.

8. MISCELLANEOUS PROVISIONS

8.1 Force Majeure. Except for the obligation to make payments, neither party will be liable for any failure or delay in its performance under this Software Subscription due to any cause beyond its reasonable control, including acts of war, acts of God, earthquake, flood, embargo, riot, sabotage, labor shortage or dispute, governmental act or failure of the Internet.

8.2 Non-Hire. Client shall not itself or through any other person or company offer direct or indirect employment to any employee of PMWeb or any of its affiliates and/or partners at any time during the Term (or subsequent Renewal Term) or for two (2) years after expiration of the last Renewal Term.

8.3 Governing Law. Notwithstanding the Agreement, this Software Subscription constitutes the complete agreement between the parties with respect to the software and is governed by the laws of the State of California, without giving effect to principles governing conflicts of law. It shall not be governed by the United Nations Convention on the International Sale of Goods, the application of which is expressly excluded.