LOS ANGELES BOARD OF HARBOR COMMISSIONERS
Harbor Administration Building
425 S. Palos Verdes Street
San Pedro, California 90731

REGULAR MEETING AGENDA
THURSDAY, JUNE 22, 2023 AT 9:00 AM

Board of Harbor Commissioners
Edward R. Renwick, Vice President
Diane L. Middleton
Michael Muñoz
Lucille Roybal-Allard
I. Lee Williams

BOARD MEETINGS - The Board's Regular Meetings are held at 9:00 A.M. at the Harbor Administration Building Boardroom as scheduled on the Port's website at www.portoflosangeles.org. A quorum of three of five Commissioners is required to transact business and three Aye votes are required to carry a motion.

OPPORTUNITIES FOR THE PUBLIC TO ATTEND THE MEETING AND PROVIDE PUBLIC COMMENTS

- Members of the public may attend the Board meeting in person at the Harbor Administration Building located at 425 S. Palos Verdes St., San Pedro, CA 90731.
- The Board meeting will also be broadcast live at https://www.portoflosangeles.org/commission/agenda-archive-and-videos. Live Board meetings can also be heard at: (213) 621-CITY (Metro), (818) 904-9450 (Valley), (310) 471-CITY (Westside) and (310) 547-CITY (San Pedro Area).
- In-Person Comments: Live, oral public comments will be taken in person, only, and not via teleconference. Members of the public will be given an opportunity to address the Board on (1) any item on the agendas prior to the Board's consideration of that item, including the consent and closed session agenda; and (2) subjects within the subject matter jurisdiction of the Board (general public comment). Members of the public who wish to speak should complete a speaker card indicating the agenda item number on which they will comment, or designate "general public comment." Each speaker is allowed to speak up to 3 minutes per agenda item. The Presiding Officer shall, however, exercise discretion to determine if such period of time should be reduced or extended based upon, but not limited to, such factors as the length of the agenda or substance of the agenda items, the quantity of public comment speaker cards submitted, the need for the Board to conclude its business as expeditiously as is practicable and/or the Board is at risk of losing a quorum, among other factors. Upon request, non-English speakers will be granted additional speaking time for translation assistance.

- Written comments or materials may be submitted by emailing commissioners@portla.org or brought to the meeting. If you request to distribute documents to the full Commission, please present the Board Secretary with twelve (12) copies. Otherwise, your materials will simply be added to the official meeting record. All written comments or materials submitted for this meeting will be provided to the Commissioners and entered into the official meeting minutes. Please submit your written comments prior to 3:00 pm on the day before the scheduled meeting. Requests to distribute literature to the general public attendees of the meeting shall be placed on a literature table outside the Boardroom during and until 30 minutes after the Board meeting.
- ***Para sumetir su comentario en español, se puede enviar a nuestro correo electrónico: commissioners@portla.org, un día antes de la junta, o puede llamar a nuestra Oficina de Comisionados al (310) 732-3444 para grabar su mensaje. Alguien de nuestra oficina estará disponible para traducir su comentario en inglés y entregarlo a los Comisionados del Puerto.***

ADDITIONAL INFORMATION

- Commission actions are not final until the expiration of the next five meeting days of the City Council except actions subject to appeal or review by the Council pursuant to the Charter, ordinance or other applicable law. If the Council asserts jurisdiction during this five meeting-day period, the Council has 21 calendar days thereafter in which to act on the matter.
- Please note that this agenda is subject to revision in accordance with the Brown Act. In the event the agenda is revised prior to the meeting, Port staff will post the revised agenda on the Port's web site (www.portoflosangeles.org/). Updated agendas will also be available at the meeting.
- Notice to Paid Representatives: If you are compensated to monitor, attend, or speak at this meeting, City law may require you to register as a lobbyist and report your activity. See Los Angeles Municipal Code 48.01 et seq. More information is available at ethics.lacity.org/lobbying. For assistance, please contact the Ethics Commission at (213) 978-1960 or ethics.commission@lacity.org.
- As a covered entity under Title II of the Americans with Disabilities Act, the City of Los Angeles does not discriminate on the basis of disability and, upon request, will provide reasonable accommodation to ensure equal access to its programs, services, and activities. Sign language interpreters, assistive listening devices, and translation services may be provided. To ensure availability, 72-hour advance notice is required.
- If you have any questions regarding meeting procedures, please contact the Harbor Commission Office prior to the meeting at (310) 732-3444.

REGULAR MEETING AGENDA
THURSDAY, JUNE 22, 2023 AT 9:00 AM

ORDER OF BUSINESS

Convene in Memory, Larry Freeman Sr.

OPEN SESSION

A. Roll Call

B. Executive Director Remarks

C. Comment from the Public on Non-Agenda Items

D. Report from the Neighborhood Council Representatives – An opportunity for Neighborhood Council representatives to provide remarks on Neighborhood Council Resolutions or Community Impact Statements filed with the City Clerk which relate to any agenda item listed or being considered on this agenda for the Board of Harbor Commissioners.

E. Reports of the Commissioners

F. Board Committee Reports

None

G. Approval of the Minutes

- Special Meeting of June 7, 2023

H. Presentation

- Coastal Development Permit Overview – Michael Keenan

I. Level I Coastal Development Permit

None

J. Board Reports of the Executive Director

Consent Items (1 – 4)

Contracts & Purchasing

1. RESOLUTION NO. _____ - AWARD OF CONTRACT NO. 39999 TO STAPLES CONTRACT & COMMERCIAL LLC FOR THE PURCHASE OF GENERAL OFFICE SUPPLIES

Transmittal 1
Transmittal 2

Summary: Staff requests approval to award Contract No. 39999 to Staples Contract & Commercial LLC (Staples), headquartered in Framingham, MA, for the purchase of general office supplies. Contract No. 39999 is a one-year contract, with two, one-year renewal options at an annual amount not-to-exceed $250,000. Through this contract, the City of Los Angeles Harbor Department (Harbor Department) will purchase general office supplies required for daily business operations. The Harbor Department will be financially responsible for the payment of expenses incurred under Contract No. 39999.

Recommendation: Board resolve to (1) find that the Director of Environmental Management has determined that the proposed action is administratively exempt from the requirements of the California Environmental Quality Act (CEQA) under Article II Section 2(f) of the Los Angeles City CEQA Guidelines; (2) approve Contract No. 39999 with Staples Contract & Commercial LLC for a term of one-year at an amount not-to-exceed $250,000, with two, one-year renewal options at an annual amount not-to-exceed $250,000; (3) authorize the Executive Director to execute the proposed contract; (4) authorize the Executive Director or designee, in his/her discretion, to exercise two, one-year renewal options at an amount not-to-exceed $250,000 annually, subject to budget authorization in each year; and (5) adopt Resolution No._____.

Office of the City Attorney

2. RESOLUTION NO. _____ - PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF LOS ANGELES HARBOR DEPARTMENT AND FINANCIAL EVIDENCE GROUP FOR FORENSIC ACCOUNTING MATTERS

Transmittal 1

Summary: The Office of the City Attorney (Office) requests approval of an Agreement between the City of Los Angeles Harbor Department (Harbor Department) and Financial Evidence Group (FEG) for professional forensic accounting services. The proposed Agreement is for a term of three years and maximum compensation of $150,000. The Harbor Department is financially responsible for payment of expenses incurred under the proposed Agreement.

Recommendation: Board resolve to (1) find that the Director of Environmental Management has determined that the proposed action is administratively exempt from the requirements of the California Environmental Quality Act (CEQA) under Article II Section 2(f) of the Los Angeles City CEQA Guidelines; (2) find in accordance to Charter Section 1022 that the scope of work of the proposed Agreement can be more economically and feasibly provided by an independent contractor than by City employees; (3) approve a Professional Services Agreement with Financial Evidence Group in the amount of $150,000 for a three-year term; (4) authorize the Executive Director and Board Secretary to execute and attest to the Agreement; and (5) adopt Resolution No._____.

Cargo Marketing

3. RESOLUTION NO. _____ - APPROVAL OF FOREIGN-TRADE ZONE (FTZ) GENERAL PURPOSE OPERATING AGREEMENT BETWEEN THE CITY OF LOS ANGELES HARBOR DEPARTMENT AND KUEHNE AND NAGEL INC., FTZ 202, SITE 63

Transmittal 1
Transmittal 2
Transmittal 3

Summary: Staff requests approval of a Foreign-Trade Zone (FTZ) Operating Agreement (Agreement) between the City of Los Angeles Harbor Department (Harbor Department) and Kuehne and Nagel Inc. (K&N) to operate its facility within FTZ 202, Site 63, located at 20000 S. Western Avenue, Torrance, CA 90501. This is a 2.6-acre property including a warehouse and office space located approximately 10 miles north of the Port of Los Angeles. K&N would operate its warehouse under FTZ procedures as a multi-usage site. The Harbor Department, as the FTZ grantee, establishes General Purpose Operating Agreements with FTZ operators to oversee their FTZ operations. The proposed Agreement is for a term of five years with three, five-year renewal options. If the proposed Agreement is approved, the Harbor Department will receive $7,750 annually from K&N (per FTZ Tariff No. 2).

Recommendation: Board resolve to (1) find that the Director of Environmental Management has determined that the proposed action is administratively exempt from the requirements of the California Environmental Quality Act (CEQA) under Article II Section 2(f) of the Los Angeles City CEQA Guidelines; (2) approve the proposed Foreign-Trade Zone Operating Agreement between the Harbor Department and Kuehne and Nagel Inc.; (3) direct the Board Secretary to transmit the proposed Foreign-Trade Zone Operating Agreement to the Los Angeles City Council for approval pursuant to Section 373 of the Charter of the City of Los Angeles and Section 10.5 of the Los Angeles Administrative Code; (4) authorize the Executive Director to execute and the Board Secretary to attest to the proposed Foreign-Trade Zone Operating Agreement; and (5) adopt Resolution No._____.

Waterfront & Commercial Real Estate

4. RESOLUTION NO. _____ - ORDER RESETTING COMPENSATION UNDER PERMIT NO. 624 WITH TWENTY SECOND STREET LANDING, LLC

Transmittal 1
Transmittal 2

Summary: Staff requests approval of the Order resetting compensation for Permit No. 624 (P624) between Twenty Second Street Landing, LLC (Twenty Second Street) and the City of Los Angeles Harbor Department (Harbor Department). P624 has a 39-year term, which commenced November 27, 1987, and expires on November 26, 2026. Twenty Second Street operates and maintains a building and dock space used for sport fishing and a restaurant located at 141 W. 22nd Street in San Pedro. The proposed Order resetting compensation is for the four-year period effective retroactively November 27, 2022, through November 26, 2026. Proposed compensation under this compensation reset is the greater of the minimum annual rental amount of $279,000, or percentage of gross receipts. The proposed minimum annual rental amount of $279,000 represents an increase of $105,038.93, or 60.4%, relative to the current minimum annual rent of $173,961.07. The proposed compensation reset also includes a flexible monthly minimum rent and percentage rent payment schedule to account for significant variations in seasonal gross receipts associated with sport fishing, which is the primary economic driver for Twenty Second Street. The minimum annual rental amount which is paid on a monthly schedule will be adjusted annually thereafter by the Consumer Price Index (CPI) for the remainder of the compensation period.

Recommendation: Board resolve to (1) find that the Director of Environmental Management has determined that the proposed action is administratively exempt from the requirements of the California Environmental Quality Act (CEQA) under Article II Section 2(f) of the Los Angeles City CEQA Guidelines; (2) approve the Order resetting compensation under Permit No. 624 for the four-year period effective November 27, 2022, through November 26, 2026; (3) authorize the Board Secretary to attest to the Order resetting compensation under Permit No. 624; and (4) adopt Resolution No._____ and Order No._____.

Regular Items (5 – 7)

Risk Management

5. RESOLUTION NO. _____ - AGREEMENT BETWEEN THE CITY OF LOS ANGELES HARBOR DEPARTMENT AND ALLIANT INSURANCE SERVICES, INC. FOR INTERIM INSURANCE BROKERAGE AND RISK MANAGEMENT SERVICES

Transmittal 1

Summary: Staff requests approval of an interim Agreement with Alliant Insurance Services, Inc. (Alliant) for interim insurance brokerage and risk management services, including pass-through payment services for the City of Los Angeles Harbor Department (Department) insurance premiums, while City Council considers approval of a pending five-year contract approved by the Board of Harbor Commissioners on February 23, 2023 for the same services (Pending Contract). The proposed agreement is for a term of one year and a not-to-exceed compensation amount of $6,100,000. The Department utilizes a Broker of Record to assist in procuring commercial property and casualty insurance to support operational needs and assist risk management staff in administering the Department's insurance and risk management program. The current agreement for brokerage and risk management services with Alliant (Agreement 3568) expired on May 25, 2023, and will be replaced by the Pending Contract if it is approved by City Council. The Harbor Department will be financially responsible for the payment of expenditures incurred under the proposed Agreement.

Recommendation: Board resolve to (1) find that the Director of Environmental Management has determined that the proposed action is administratively exempt from the requirements of the California Environmental Quality Act (CEQA) under Article II Section 2(f) of the Los Angeles City CEQA Guidelines; (2) find that in accordance with the Los Angeles City Charter Section 1022, it is more feasible for outside consultants to perform this work than City employees; (3) approve the Agreement with Alliant for a one-year term and not-to-exceed amount of $6,100,000; (4) authorize the Chief Financial Officer to submit the above premiums discussed herein to the Primary Underwriter and/or the contracted Broker of Record (Alliant) who has the authority to receive and disburse payments to the various participating insurance underwriters on behalf of the Harbor Department; (5) authorize the Executive Director to execute and the Board Secretary to attest the Agreement; and (6) adopt Resolution No._____.

Construction

6. RESOLUTION NO. _____ - APPROVAL OF CHANGE ORDER NO. 18 FOR ADDITIONAL UNFORESEEN WATERSIDE WORK; CONTRACTOR: SULLY-MILLER CONTRACTING COMPANY; WILMINGTON WATERFRONT PROMENADE AND BUILDING DEMOLITION; SPECIFICATION NO. 2780 – CONTRACT NO. 2315

Transmittal 1
Transmittal 2
Presentation

Summary: Staff requests approval of Change Order No. 18 to Contract No. 2315 (Contract) for the Wilmington Waterfront Promenade and Building Demolition project (Project) with Sully-Miller Contracting Company (Contractor) for the not-to-exceed amount of $1,750,000. Change Order No. 18 authorizes the Contractor to place 2,550 cubic yards of rip rap rock below the tidal step area to protect and stabilize the exposed slope, resolve the additional obstructions encountered during steel pile driving when constructing the sheet pile wall, procure Arizona Onyx stone in lieu of Mexican Onyx tidal steps stone material, and place the remaining tidal step stones utilizing floating marine equipment. The City of Los Angeles Harbor Department (Harbor Department) will be financially responsible for the payment of expenses incurred under the Contract and proposed Change Order.

Recommendation: Board resolve to (1) find that the Director of Environmental Management has determined that the proposed action has been previously evaluated pursuant to the requirements of the California Environmental Quality Act (CEQA) under Article II Section 2(i) of the Los Angeles City CEQA Guidelines; (2) find that in accordance with City Charter Section 1022, work covered under the Change Order can be performed more feasibly by an independent contractor rather than by City employees; (3) approve and authorize the Executive Director to execute Change Order No. 18 for a not-to-exceed amount of $1,750,000; and (4) adopt Resolution No._____.

Environmental Management

7. RESOLUTION NO. _____ - PROPOSED REIMBURSEMENT AGREEMENT BETWEEN THE CITY OF LOS ANGELES HARBOR DEPARTMENT AND HOWARD INDUSTRIAL PARTNERS, LLC.

Transmittal 1
Transmittal 2
Presentation

Summary: Staff requests approval of a proposed Reimbursement Agreement (Agreement) with Howard Industrial Partners, LLC (Howard) to reimburse the City of Los Angeles Harbor Department (Harbor Department) one hundred percent of staff and consultant costs associated with the review and oversight of an environmental document for the construction of a proposed short-term trailer parking facility (Project) located at 1599 West John S. Gibson Boulevard. The Project is not located on Port of Los Angeles property, but a portion of the property is located within the Port Master Plan area, requiring the Harbor Department to issue a Coastal Development Permit (CDP) for site development. The Harbor Department has agreed to serve as Lead Agency for the purposes of the California Environmental Quality Act (CEQA) and as such must review the environmental document prepared by Howard's selected consultants for consistency and accuracy. The proposed Agreement is for a term of three years with an estimated amount of $150,000. Howard is financially responsible for reimbursement of expenditures.

Recommendation: Board resolve to (1) find that the Director of Environmental Management has determined that the proposed action is administratively exempt from CEQA in accordance with Article II Section 2(f) of the Los Angeles City CEQA Guidelines; (2) approve the proposed Reimbursement Agreement with Howard Industrial Partners, LLC to reimburse the City of Los Angeles Harbor Department for review and oversight costs of the environmental assessment for the construction of a proposed acre short-term trailer parking facility located at 1599 West John S. Gibson Boulevard for a contract term of three years and for an estimated base amount of $150,000; (3) authorize the Executive Director to execute and the Board Secretary to attest to, said Agreement for and on behalf of the Board; and (4) adopt Resolution No._____.

K. Closed Session

1. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION
(Subdivision (d)(1) of Government Code Section 54956.9)

Harbor Performance Enhancement Center, LLC v. City of Los Angeles Harbor Department, et al., United States District Court Case No. 2:20-cv-03251

2. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION
(Subdivision (d)(1) of Government Code Section 54956.9)

Natural Resources Defense Council, et al. v. City of Los Angeles, et al.
Los Angeles Superior Court Case No. BS070017

3. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION
(Subdivision (d)(1) of Government Code Section 54956.9)

Natural Resources Defense Council, et al. v. City of Los Angeles, et al.
San Diego Superior Court Case No. 37-2021-00023385-CU-TT-CTL

4. CONFERENCE WITH REAL PROPERTY NEGOTIATORS
(Government Code Section 54956.8)

Provide instructions to its real estate negotiators with respect to Permit 999 with China Shipping Holding Company, Ltd.:

Property:	Berths 100-103, San Pedro
City Negotiator:	Michael DiBernardo
Tenant Negotiator:	Paul Nazzaro
Negotiating Parties:	City and China Shipping Holding Company, Ltd.
Under Negotiation:	Price and Terms

5. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION
(Subdivision (d)(2) of Government Code Section 54956.9)

Significant exposure to litigation pursuant to subdivision (d)(2) of Section 54956.9:
(two cases)

6. CONFERENCE WITH LEGAL COUNSEL – INITIATE LITIGATION `
(Subdivision (d)(4) of Government Code Section 54956.9)

Initiation of litigation pursuant to subdivision (d)(4) of Section 54956.9: (one case)

7. CONFERENCE WITH REAL PROPERTY NEGOTIATORS
(Government Code Section 54956.8)

Provide instructions to its real estate negotiators with respect to Permit No. 896 with Crafted at the Port of Los Angeles:

Property:	112 E. 22nd Street, San Pedro, CA 90731
City Negotiator:	Michael Galvin
Tenant Negotiator:	Wayne Blank
Negotiating Parties:	City and Crafted at the Port of Los Angeles
Under Negotiation:	Price and Terms

8. CONFERENCE WITH REAL PROPERTY NEGOTIATORS
(Government Code Section 54956.8)

Provide instructions to its real estate negotiators with respect to Permit 953 with Everglades Company Terminal, Inc.:

Property:	Berths 121-126, San Pedro
City Negotiator:	Mike DiBernardo
Tenant Negotiator:	Tom VanEynde
Negotiating Parties:	City and Everglades Company Terminal, Inc.
Under Negotiation:	Price and Terms

L. Adjournment

Coastal Development Permit Overview – Michael Keenan

Coastal Development Permits and the Port Master Plan

THE PORT OF LOS ANGELES

Mike Keenan, Director of Planning & Strategy | June 22, 2023



The Port Master Plan is a Land Use Document for Issuing Coastal Development Permits

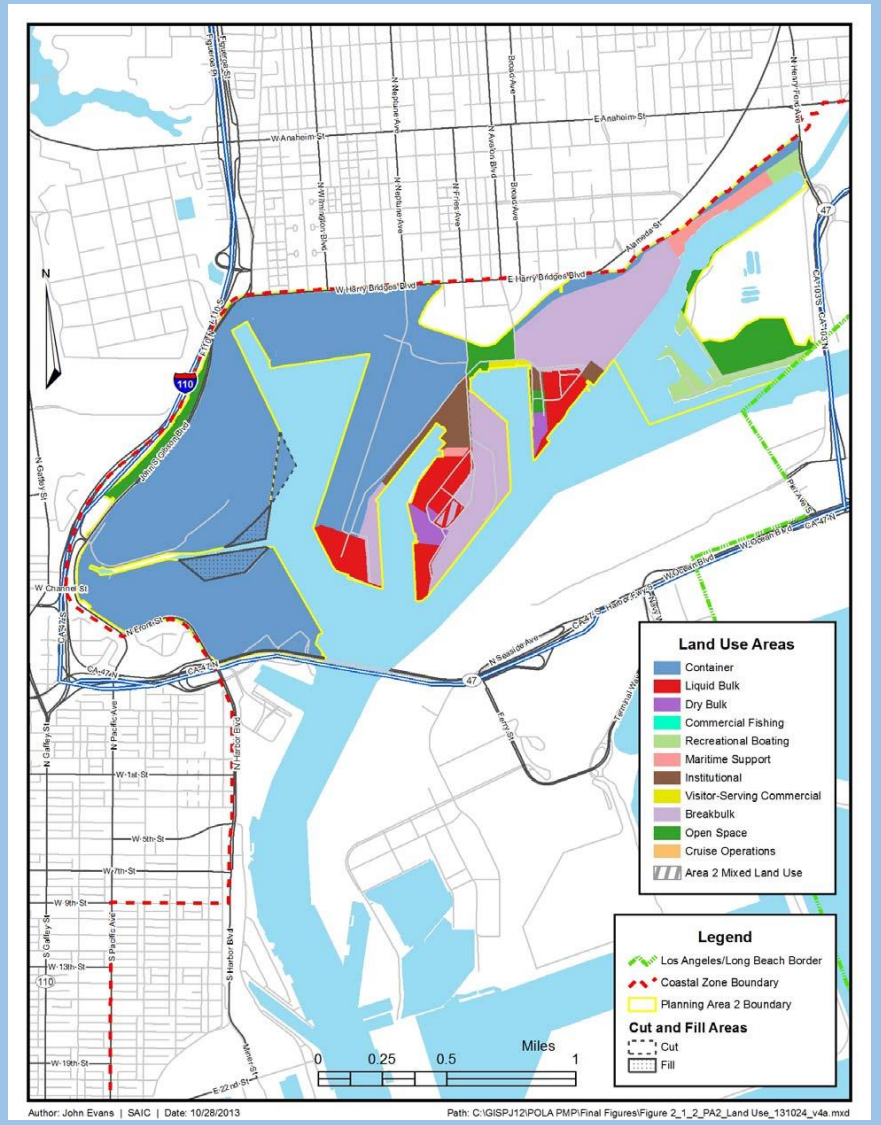
It is a document required by the Coastal Act and the Coastal Commission.

It is not a strategic plan, and it does not contain every Board policy governing the Port



Development must be consistent with the Port Master Plan land uses

To pursue development opportunities not envisioned in the 2014 Port Master Plan, the Plan needs to be amended to allow different land uses



THANK YOU



THE PORT
OF LOS ANGELES

1. RESOLUTION NO. _____ - AWARD OF CONTRACT NO. 39999 TO STAPLES CONTRACT & COMMERCIAL LLC FOR THE PURCHASE OF GENERAL OFFICE SUPPLIES

THE PORT
OF LOS ANGELES

Executive Director's
Report to the
Board of Harbor Commissioners

DATE: **JUNE 13, 2023**

FROM: **CONTRACTS AND PURCHASING**

SUBJECT: **RESOLUTION NO. _____ - AWARD OF CONTRACT NO. 39999 TO STAPLES CONTRACT & COMMERCIAL LLC FOR THE PURCHASE OF GENERAL OFFICE SUPPLIES**

SUMMARY:

Staff requests approval to award Contract No. 39999 to Staples Contract & Commercial LLC (Staples), headquartered in Framingham, MA, for the purchase of general office supplies. Contract No. 39999 is a one-year contract, with two, one-year renewal options at an annual amount not-to-exceed $250,000. Through this contract, the City of Los Angeles Harbor Department (Harbor Department) will purchase general office supplies required for daily business operations.

The Harbor Department will be financially responsible for the payment of expenses incurred under Contract No. 39999.

RECOMMENDATION:

It is recommended that the Board of Harbor Commissioners (Board):

1. Find that the Director of Environmental Management has determined that the proposed action is administratively exempt from the requirements of the California Environmental Quality Act (CEQA) under Article II Section 2(f) of the Los Angeles City CEQA Guidelines;

2. Approve Contract No. 39999 with Staples Contract & Commercial LLC for a term of one-year at an amount not-to-exceed $250,000, with two, one-year renewal options at an annual amount not-to-exceed $250,000;

3. Authorize the Executive Director to execute the proposed contract;

4. Authorize the Executive Director or designee, in his/her discretion, to exercise two, one-year renewal options at an amount not-to-exceed $250,000 annually, subject to budget authorization in each year; and

5. Adopt Resolution No. _____.

DISCUSSION:

Background/Context - The Harbor Department has an on-going need for general office supplies to maintain an efficient office environment. General office supplies are considered to be small office items used for business purposes such as pencils, pens, paperclips, notebooks, binders, and small electrical appliances, including but not limited to fans, electric pencil sharpeners, electric staplers, and lamps. Each Division budgets for its office supply needs as part of the annual budget process. The amounts are aggregated to determine the contract amount required each year. The Contracts and Purchasing Division (CPD) is responsible for translating the needs of each Division into a Harbor Department-wide contract for the purchase of office supplies.

CPD conducted a cost analysis of major office suppliers capable of meeting the needs of the Harbor Department. CPD compared the pricing of the top fifty most commonly used office supply items by the Harbor Department. The cost analysis indicated that the overall pricing from Staples was 13% lower than a similar company providing office supplies.

In addition to the cost savings, it was determined that purchasing office supplies from Staples would have a positive impact on the workload of the Accounts Payable Division. Staples ships 98% of their items from a warehouse in La Mirada, CA. Other major office suppliers ship from various warehouses throughout the region which resulted in multiple invoices per single order. For example, a single order of 10 items may have been shipped in 10 different packages resulting in 10 different invoices from one order. This invoicing was significantly impacting the workload of the Accounts Payable Division, and staff had difficulty processing the excessive number of invoices. As a result of the cost analysis and invoicing issue, the Harbor Department contracted with Staples in July 2014 for office supplies. Staples invoicing practices have significantly reduced the workload of the Accounts Payable Division and they have realigned staff resources to more efficiently process invoices and handle other pertinent tasks.

The Harbor Department's current contract with Staples is a one-year contract, with two, one-year renewal options at an amount not-to-exceed $250,000 per year. All of the renewal options have been exercised and the contract will expire on June 30, 2023.

Selection Process – Pursuant to Sections 371 (e) (8) of the City Charter and 10.15 (a) (8) of the Los Angeles Administrative Code, it is recommended that the Harbor Department piggyback on a Contract issued to Staples by the National Purchasing Partners Alliance (NPP) for general office supplies. The NPP is a national public purchasing agency that establishes nationally leveraged and competitively solicited contracts for use by NPP members which include government agencies, school districts, higher education institutions, tribal organizations, non-profits, and all other public agencies. On March 1, 2019, the NPP, through the State of Michigan, awarded Contract #190000000268 to Staples after issuing a Request for Proposals (RFP) for general office supplies and services (Transmittal 1). The Harbor Department will benefit from piggybacking on Contract #190000000268 in that significant cost savings will be realized due to the

nationally leveraged purchasing power of the NPP and the high-volume government discounts on the contract.

CPD requests approval to award Contract No. 39999 to Staples for the purchase of general office supplies (Transmittal 2). Contract No. 39999 is a one-year contract, with two, one-year renewal options at an annual amount not-to-exceed $250,000. The annual contract amount of $250,000 provides a maximum spending authority. Actual contract expenditures will likely be less than the contract amount and will be limited to the budget allocation approved by the Board in each FY.

ENVIRONMENTAL ASSESSMENT:

The proposed action is the award of Contract No. 39999 to Staples Contract & Commercial LLC for the purchase of general office supplies, which is an administrative activity. Therefore, the Director of Environmental Management has determined that the proposed action is administratively exempt from the requirements of CEQA in accordance with Article II Section 2(f) of the Los Angeles City CEQA Guidelines.

FINANCIAL IMPACT:

The proposed one-year contract, with two, one-year renewal options, is for a not-to-exceed amount of $250,000 annually. Fiscal Year 2024 funding has been budgeted at the divisional level throughout the Harbor Department. Should the Harbor Department exercise the renewal options in future years, funds will be requested to be budgeted as part of the annual budget adoption process. If all renewal options are exercised, the maximum authorized expenditures for the entire term of the contract are for an amount not-to-exceed $750,000. Actual contract expenditures may be less than the contract amount. In addition to the renewal options being at the Harbor Department's discretion, a funding out clause is also included in the contract.

CITY ATTORNEY:

The Office of the City Attorney has reviewed and approved Contract No. 39999 as to form and legality.

SUBJECT: **AWARD OF CONTRACT TO STAPLES FOR THE PURCHASE OF GENERAL OFFICE SUPPLIES**

TRANSMITTALS:

1. National Purchasing Partners Contract #190000000268
2. Contract No. 39999 with Staples

FIS Approval: MB **(initials)**
CA Approval: SO **(initials)**

Tricia Carey
cn=Tricia Carey, o=Harbor Department, ou=Contracts and Purchasing, email=tcarey@portla.org, c=US
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2023.001.20174

TRICIA CAREY
Director of Contracts & Purchasing

MARLA BLEAVINS
Deputy Executive Director and
Chief Financial Officer

APPROVED:

Marla Bleavins For

EUGENE D. SEROKA
Executive Director

EDS/MB/TC
Author: TCarey

Transmittal 1

STATE OF MICHIGAN
ENTERPRISE PROCUREMENT

DTMB Central Procurement Services
525 W. Allegan St, 1st Floor, NE
PO Box 30026, Lansing, MI 48913

NOTICE OF CONTRACT

NOTICE OF CONTRACT NO. **190000000268**
between
THE STATE OF MICHIGAN
and

CONTRACTOR	
	Staples Contract and Commercial dba Staples Business Advantage
	500 Staples Drive
	Framingham, MA, 01702
	Cathy Peterson-Jennings
	586-945-5789
	cathy.peterson-jennings@staples.com
	CV0000932

STATE			
	Program Manager	Varies per Agency	SW
	Contract Administrator	Valerie Hiltz	DTMB
		517-249-0459	
		hiltzv@michigan.gov	

CONTRACT SUMMARY			
DESCRIPTION: Office Supplies and Office Related Products- Statewide			
INITIAL EFFECTIVE DATE	**INITIAL EXPIRATION DATE**	**INITIAL AVAILABLE OPTIONS**	**EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW**
March 1, 2019	May 31, 2022	2 one-year	May 31, 2022
PAYMENT TERMS		**DELIVERY TIMEFRAME**	
Net 45		1 day Lower Peninsula, 2 day Upper Peninsula	
ALTERNATE PAYMENT OPTIONS			**EXTENDED PURCHASING**
☒ P-card	☐ Payment Request (PRC)	☐ Other	☒ Yes ☐ No
MINIMUM DELIVERY REQUIREMENTS			
$35.00 for delivery			
MISCELLANEOUS INFORMATION			
THIS IS NOT AN ORDER: Orders will be placed directly by the State Agency via the authorized document, established in Schedule A, Section 6.4. Authorizing documents, and per terms, conditions and specification of this contract.			
ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION			**$15,116,780.00**

MA# 190000000268

FOR THE CONTRACTOR:

Staples Inc/Staples Business Advantage
Company Name



Joanne E Harris
Authorized Agent Signature

Joanne E Harris
Authorized Agent (Print or Type)

Feb 7, 2019
Date

FOR THE STATE:

Pamela Platte
Signature

Pamela Platte, Division Director, Commodites and Services Division
Name & Title

DTMB Central Procurement Services
Agency

2-12-2019
Date

STATE OF MICHIGAN

STANDARD CONTRACT TERMS

Office Supplies and Office Related Products

This STANDARD CONTRACT ("**Contract**") is agreed to between the State of Michigan (the "**State**") and Staples Contract & Commercial LLC ("**Contractor**"), a Delaware Limited Liability Company. This Contract is effective on March 1, 2019 ("**Effective Date**"), and unless terminated, expires on May 31, 2022.

This Contract may be renewed for up two (2) additional one (1) year periods. Renewal is at the sole discretion of the State and will automatically extend the Term of this Contract. The State will document its exercise of renewal options via Contract Change Notice.

The parties agree as follows:

1. **Duties of Contractor.** Contractor must perform the services and provide the deliverables described in **Schedule A – Statement of Work** (the "**Contract Activities**"). An obligation to provide delivery of any commodity is considered a service and is a Contract Activity.

   Contractor must furnish all labor, equipment, materials, and supplies necessary for the performance of the Contract Activities, and meet operational standards, unless otherwise specified in Schedule A.

   Contractor must: (a) perform the Contract Activities in a timely, professional, safe, and workmanlike manner consistent with standards in the trade, profession, or industry; (b) meet or exceed the performance and operational standards, and specifications of the Contract; (c) provide all Contract Activities in good quality, with no material defects; (d) not interfere with the State's operations; (e) obtain and maintain all necessary licenses, permits or other authorizations necessary for the performance of the Contract; (f) cooperate with the State, including the State's quality assurance personnel, and any third party to achieve the objectives of the Contract; (g) return to the State any State-furnished equipment or other resources in the same condition as when provided when no longer required for the Contract; (h) not make any media releases without prior written authorization from the State; (i) assign to the State any claims resulting from state or federal antitrust violations to the extent that those violations concern materials or services supplied by third parties toward fulfillment of the Contract; (j) comply with all State physical and IT security policies and standards which will be made available upon request; and (k) provide the State priority in performance of the Contract except as mandated by federal disaster response requirements. Any breach under this paragraph is considered a material breach.

   Contractor must also be clearly identifiable while on State property by wearing identification issued by the State, and clearly identify themselves whenever making contact with the State.

2. **Notices.** All notices and other communications required or permitted under this Contract must be in writing and will be considered given and received: (a) when verified by written receipt if sent by courier; (b) when actually received if sent by mail without verification of receipt; or (c) when verified by automated receipt or electronic logs if sent by facsimile or email.

If to State:	If to Contractor (as relates to the State of Michigan):
Valerie Hiltz 525 W. Allegan St, 1st Flr, NE PO Box 30026 Lansing, MI 48913 hiltzv@michigan.gov 517-249-0459	Cathy Peterson-Jennings 17187 N. Laurel Park Drive Livonia, MI 48152 cathy.peterson-jennings@staples.com 586-945-5789
	If to Contractor

	(as relates to the NPP National Cooperative Contract): Don Hasch 16501 Trojan Way La Mirada, CA 90638 don.hasch@staples.com 714-868-4274

3. **Contract Administrator.** The Contract Administrator for each party is the only person authorized to modify any terms of this Contract, and approve and execute any change under this Contract (each a "**Contract Administrator**"):

State:	Contractor:
Valerie Hiltz 525 W. Allegan St, 1st Flr, NE PO Box 30026 Lansing, MI 48913 hiltzv@michigan.gov 517-249-0459	Don Hasch 16501 Trojan Way La Mirada, CA 90638 don.hasch@staples.com 714-868-4274

4. **Program Manager.** The Program Manager for each party will monitor and coordinate the day-to-day activities of the Contract (each a "**Program Manager**"):

State:	Contractor:
Varies by Agency To Be Provided to Contractor	Cathy Peterson-Jennings 17187 N. Laurel Park Drive Livonia, MI 48152 cathy.peterson-jennings@staples.com 586-945-5789

5. **Performance Guarantee.** Contractor must at all times have financial resources sufficient, in the opinion of the State, to ensure performance of the Contract and must provide proof upon request. The State may require a performance bond (as specified in Schedule A) if, in the opinion of the State, it will ensure performance of the Contract.

6. **Insurance Requirements.** Contractor must maintain the insurances identified below and is responsible for all deductibles. All required insurance must: (a) protect the State from claims that may arise out of, are alleged to arise out of, or result from Contractor's performance; (b) be primary and non-contributing to any comparable liability insurance (including self-insurance) carried by the State; and (c) be provided by a company with an A.M. Best rating of "A" or better, and a financial size of VII or better. Subcontractors will maintain their own insurance and abide by these requirements.

Required Limits	Additional Requirements
Commercial General Liability Insurance	
Minimal Limits: $1,000,000 Each Occurrence Limit $1,000,000 Personal & Advertising Injury Limit $2,000,000 General Aggregate Limit $2,000,000 Products/Completed Operations	Contractor must have their policy endorsed to add "the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional insureds.
Umbrella or Excess Liability Insurance	
Minimal Limits: $5,000,000 General Aggregate	Contractor must have their policy endorsed to add "the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional insureds.

Automobile Liability Insurance	
Minimal Limits: $1,000,000 Per Occurrence	Contractor must have their policy: (1) endorsed to add "the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional insureds; and (2) include Hired and Non-Owned Automobile coverage.
Workers' Compensation Insurance	
Minimal Limits: Coverage according to applicable laws governing work activities.	Waiver of subrogation, except where waiver is prohibited by law.
Employers Liability Insurance	
Minimal Limits: $500,000 Each Accident $500,000 Each Employee by Disease $500,000 Aggregate Disease.	
Privacy and Security Liability (Cyber Liability) Insurance	
Minimal Limits: $1,000,000	Contractor must have their policy cover information security and privacy liability, privacy notification costs, regulatory defense and penalties, and website media content liability.

If any of the required policies provide **claims-made** coverage, the Contractor must: (a) provide coverage with a retroactive date before the effective date of the contract or the beginning of Contract Activities; (b) maintain coverage and provide evidence of coverage for at least three (3) years after completion of the Contract Activities; and (c) if coverage is canceled or not renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective date, Contractor must purchase extended reporting coverage for a minimum of three (3) years after completion of work.

Contractor must: (a) provide insurance certificates to the Contract Administrator, containing the agreement or purchase order number, at Contract formation and within 20 calendar days of the expiration date of the applicable policies; (b) require that subcontractors maintain the required insurances contained in this Section substantially consistent with the risks of the products or services provided by such subcontractor; (c) notify the Contract Administrator within 5 business days if any insurance is cancelled and a gap in coverage would be reasonably expected to occur; and (d) waive all rights against the State for damages covered by insurance, except with respect to Privacy and Security Liability (Cyber Liability) Insurance. Failure to maintain the required insurance does not limit this waiver.

This Section is not intended to and is not be construed in any manner as waiving, restricting or limiting the liability of either party for any obligations under this Contract (including any provisions hereof requiring Contractor to indemnify, defend and hold harmless the State).

7. **Administrative Fee and Reporting.** In addition to the fees imposed by National Purchasing Partners Government Division ("NPPGov") in a separate Vendor Administration Agreement entered into between NPPGov and Contractor, the Contractor must pay an administrative fee on all Net Sales made to the State and MiDEAL members under this Contract. As used herein, "Net Sales" means the gross sales price of the products sold under this Contract, less any rebates actually paid, discounts and allowances actually taken, rejections and returns to the extent credit is given or paid, and also excluding sales made via (i) Contractor's retail website, or (ii) any Contractor retail channel if the sale is completed without a convenience and/or registered procurement card.

The administrative fee and reporting is as follows:

a. To the State:

i. For sales made to the State, the administrative fee equals one percent (1%) of the total Net Sales.
ii. For sales made to MiDeal Members pursuant to **Section 8**, the administrative fee is divided equally between the State and the MiDeal Member. The administrative fee to the State equals a half percent (.5%) of the total MiDeal Members Net Sales.
iii. The Contractor must remit all applicable administrative fee payments owed to the State by check payable to the State of Michigan and mailed to:

Department of Technology, Management and Budget
Financial Services – Cashier Unit
Lewis Cass Building
320 South Walnut St.
P.O. Box 30681
Lansing, MI 48909

Contractor must submit an itemized purchasing activity report of all State and MiDeal Member purchases, which includes at a minimum, the name of the purchasing entity and the total dollar volume in sales. Reports should be mailed to DTMB-Procurement.

The administrative fee and purchasing activity report are due within 45 calendar days from the last day of each calendar quarter.

b. To the MiDEAL Members:

i. For sales made to MiDeal Members, the administrative fee remitted to the MiDEAL members equals a half percent (.5%) of the total Net Sales made to MiDeal Members.
ii. The Contractor must remit the applicable administrative fee payments owed to the MiDeal Member by check payable directly to the MiDeal Member and mailed to their provided address.

Contractor must submit an itemized purchasing activity report of the MiDeal Member purchases, which includes at a minimum, the name of the purchasing entity and the total dollar volume in sales. Reports should be mailed to the MiDeal Member.

The administrative fee and purchasing activity report are due within 45 calendar days from the last day of each calendar quarter.

8. Extended Purchasing Program.

a. This contract is extended to:

1) Members of NPPGov across the nation, as well as government units in all other states (collectively, "Participating Agencies"),

2) MiDEAL members. MiDEAL members include local units of government, school districts, universities, community colleges, and nonprofit hospitals within the State of Michigan. A current list of MiDEAL members is available at www.michigan.gov/mideal.

b. Contractor must supply all Contract Activities at the established Contract prices and terms.

c. Contractor must submit invoices to, and receive payment from, Participating Agencies or MiDeal Members on a direct and individual basis. The Contractor agrees that the State will have no liability, obligation or responsibility for any sales, purchases, or payments involving any Participating Agencies or MiDeal Members.

d. State Employee Purchases
State employees, in their personal capacity, will be able to purchase deliverables from this Contract at the same pricing available to the State. The Contractor will supply deliverable(s) to State employees on a direct and individual basis. No administrative fees will be imposed on State employee purchases made in their personal capacity. The Contractor agrees that the State will have no liability, obligation or responsibility for any sales, purchases, or payments involving any State employee(s) who purchases any deliverables in their personal capacity under this section.

9. **Independent Contractor.** Contractor is an independent contractor and assumes all rights, obligations and liabilities set forth in this Contract. Contractor, its employees, and agents will not be considered employees of the State. No partnership or joint venture relationship is created by virtue of this Contract. Contractor, and not the State, is responsible for the payment of wages, benefits and taxes of Contractor's employees and any subcontractors. Prior performance does not modify Contractor's status as an independent contractor. Contractor hereby acknowledges that the State is and will be the sole and exclusive owner of all right, title, and interest in the Contract Activities and all associated intellectual property rights, if any, to the extent first reduced to practice in performance of the Contract Activities by Contractor. Such Contract Activities are works made for hire as defined in Section 101 of the Copyright Act of 1976. To the extent any Contract Activities and related intellectual property do not qualify as works made for hire under the Copyright Act, Contractor will, and hereby does, immediately on its creation, assign, transfer and otherwise convey to the State, irrevocably and in perpetuity, throughout the United States, all right, title and interest in and to the Contract Activities, including all intellectual property rights therein.

10. **State License Grant**. The State hereby grants to Contractor a limited, non-exclusive, non-transferable license to use, display, reproduce, distribute and transmit in digital form the State's (or individual agencies, department's or division's) name, trademarks, service marks or logos, for the sole and exclusive purpose of providing the Contract Activities and solely in accordance with the State's written specifications communicated to Contractor. Use of the State's (or individual agencies, department's or division's) name, trademarks, service marks or logos will be specified in the applicable Statement of Work.

11. **Software License**. Contractor hereby grants to the State and its authorized users the right and license to use the online purchasing portal in accordance with the terms and conditions of this Contract.

12. **Subcontracting.** Except for national couriers including UPS, Fed-Ex and the US Postal service, Contractor may not delegate any of its obligations under the Contract without the prior written approval of the State. Contractor must notify the State at least 90 calendar days before the proposed delegation and provide the State any information it requests to determine whether the delegation is in its best interest. If approved, Contractor must: (a) be the sole point of contact regarding all contractual matters, including payment and charges for all Contract Activities; (b) make all payments to the subcontractor; and (c) incorporate the terms and conditions contained in this Contract in any subcontract with a subcontractor. Contractor remains responsible for the completion of the Contract Activities, compliance with the terms of this Contract, and the acts and omissions of the subcontractor. The State, in its sole discretion, may require the replacement of any subcontractor. For the avoidance of doubt, Contractor's notice requirements outlined in this Section 12 are applicable to the State only, or as mutually agreed upon.

13. **Staffing.** The State's Contract Administrator may require Contractor to remove or reassign personnel by providing a notice to Contractor

14. **Background Checks.** Upon request, Contractor must perform background checks on all employees and subcontractors and its employees prior to their assignment. The scope is at the discretion of the State and documentation must be provided as requested. Contractor is responsible for all costs associated with the requested background checks. The State, in its sole discretion, cost and expense, may also perform background checks.

15. **Assignment.** Contractor may not assign this Contract to any other party without the prior approval of the State. Upon notice to Contractor, the State, in its sole discretion, may assign in whole or in part, its rights or responsibilities under this Contract to any other party. If the State determines that a novation of the

Contract to a third party is necessary, Contractor will agree to the novation and provide all necessary documentation and signatures.

16. **Change of Control.** Contractor will notify, at least 90 calendar days before the effective date, the State of a change in Contractor's organizational structure or ownership. For purposes of this Contract, a change in control means any of the following: (a) a sale of more than 50% of Contractor's stock; (b) a sale of substantially all of Contractor's assets; (c) a change in a majority of Contractor's board members; (d) consummation of a merger or consolidation of Contractor with any other entity; (e) a change in ownership through a transaction or series of transactions; (f) or the board (or the stockholders) approves a plan of complete liquidation. A change of control does not include any consolidation or merger effected exclusively to change the domicile of Contractor, or any transaction or series of transactions principally for bona fide equity financing purposes.

    In the event of a change of control, Contractor must require the successor to assume this Contract and all of its obligations under this Contract.

17. **Ordering.** Contractor is not authorized to begin performance until receipt of authorization as identified in Schedule A.

18. **Acceptance.** Contract Activities are subject to inspection and testing by the State within 30 calendar days of the State's receipt of them ("**State Review Period**"), unless otherwise provided in Schedule A. If the Contract Activities are not fully accepted by the State, the State will notify Contractor by the end of the State Review Period that either: (a) the Contract Activities are accepted but noted deficiencies must be corrected; or (b) the Contract Activities are rejected. If the State finds material deficiencies, it may: (i) reject the Contract Activities without performing any further inspections; (ii) demand performance at no additional cost; or (iii) terminate this Contract in accordance with Section 25, Termination for Cause.

    Within 15 business days from the date of Contractor's receipt of notification of acceptance with deficiencies or rejection of any Contract Activities, Contractor must cure, at no additional cost, the deficiency and deliver unequivocally acceptable Contract Activities to the State. If acceptance with deficiencies or rejection of the Contract Activities impacts the content or delivery of other non-completed Contract Activities, the parties' respective Program Managers must determine an agreed to number of days for re-submission that minimizes the overall impact to the Contract. However, nothing herein affects, alters, or relieves Contractor of its obligations to correct deficiencies in accordance with the time response standards set forth in this Contract.

    If Contractor is unable or refuses to correct the deficiency within the time response standards set forth in this Contract, the State may cancel the order in whole or in part. The State, or a third party identified by the State, may perform the deficient Contract Activities and recover the difference between the cost to cure and the Contract price plus an additional 10% administrative fee.

19. **Delivery.** Contractor must deliver all Contract Activities F.O.B. destination, within the State premises with transportation and handling charges paid by Contractor, unless otherwise specified in Schedule A. All containers and packaging become the State's exclusive property upon acceptance.

20. **Risk of Loss and Title.** Title and risk of loss or damage to the products remains with Contractor until conforming products are delivered to and accepted by the State. Contractor is responsible for filing, processing, and collecting all damage claims incurred prior to delivery and in transit. The State will record and report to Contractor any evidence of visible damage within 3 business days. If the State rejects the products, Contractor must remove them from the premises within 20 calendar days after notification of rejection and accept the rejected goods as is. Rejected products not removed by Contractor within 20 calendar days will be deemed abandoned by Contractor, and the State will have the right to dispose of it with no further obligation to Contractor. Contractor must reimburse the State for costs and expenses incurred in storing or effecting removal or disposition of rejected products.

21. **Warranty Period.** The warranty period, if applicable, for Contract Activities is a fixed period commencing on the date specified in Schedule A. If the Contract Activities do not function as warranted during the warranty period, the State may return such non-conforming Contract Activities to the Contractor for a full refund.

22. **Terms of Payment.** Invoices must conform to the requirements communicated from time-to-time by the State. All undisputed amounts are payable within 45 days of the State's receipt, except as otherwise agreed. Contractor may only charge for Contract Activities performed as specified in Schedule A. Invoices must include an itemized statement of all charges. The State is exempt from State sales tax for direct purchases and may be exempt from federal excise tax, if Services purchased under this Agreement are for the State's exclusive use. Notwithstanding the foregoing, all prices are inclusive of taxes, and Contractor is responsible for all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state, or local governmental entity on any amounts payable by the State under this Contract.

The State has the right to withhold payment of any disputed amounts until the parties agree as to the validity of the disputed amount. The State will notify Contractor of any dispute within a reasonable time. Payment by the State will not constitute a waiver of any rights as to Contractor's continuing obligations, including claims for deficiencies or substandard Contract Activities. Contractor's acceptance of final payment by the State constitutes a waiver of all claims by Contractor against the State for payment under this Contract, other than those claims previously filed in writing on a timely basis and still disputed.

The State will only disburse payments under this Contract through Electronic Funds Transfer (EFT) or as otherwise provided in the Statement of Work. Contractor must register with the State at http://www.michigan.gov/SIGMAVSS to receive electronic fund transfer payments. If Contractor does not register, the State is not liable for failure to provide payment. Without prejudice to any other right or remedy it may have, the State reserves the right to set off at any time any amount then due and owing to it by Contractor against any amount payable by the State to Contractor under this Contract provided that Contractor has not issued credit for such amounts. If, under the terms of this Contract, the parties have agreed that a credit is owed the State, Contractor's invoice will reflect the credit within one of its next two invoices to the State immediately following the date that the parties have agreed a credit is owed. If the Contractor has not included the credit in one of those next two invoices, the State may then set off the agreed upon credit amount in paying the amount then due and owing in the third invoice following the date the parties agreed a credit is owed the State. In all other cases, other than credits, the State shall provide ten (10) days' prior written notice to Contractor prior to affecting its set-off rights described herein.

23. **Liquidated Damages.** Liquidated damages, if applicable, will be assessed as described in Schedule A.

24. **Stop Work Order.** The State may suspend any or all activities under the Contract at any time. The State will provide Contractor a written stop work order detailing the suspension. Contractor must comply with the stop work order upon receipt. Within 90 calendar days, or any longer period agreed to by Contractor, the State will either: (a) issue a notice authorizing Contractor to resume work, or (b) terminate the Contract or purchase order. The State will not pay for Contract Activities, Contractor's lost profits, or any additional compensation during a stop work period.

25. **Termination for Cause.** The State may terminate this Contract for cause, in whole or in part, if Contractor, as determined by the State: (a) endangers the value, integrity, or security of any location, data, or personnel; (b) becomes insolvent, petitions for bankruptcy court proceedings, or has an involuntary bankruptcy proceeding filed against it by any creditor; (c) engages in any conduct that may expose the State to liability; (d) breaches any of its material duties or obligations; or (e) fails to cure a breach within the time stated in a notice of breach. Any reference to specific breaches being material breaches within this Contract will not be construed to mean that other breaches are not material.

If the State terminates this Contract under this Section, the State will issue a termination notice specifying whether Contractor must: (a) cease performance immediately, or (b) continue to perform for a specified period. If it is later determined that Contractor was not in breach of the Contract, the termination will be deemed to have been a Termination for Convenience, effective as of the same date, and the rights and obligations of the parties will be limited to those provided in Section 26, Termination for Convenience.

The State will only pay for amounts due to Contractor for Contract Activities accepted by the State on or before the effective date of termination, subject to the State's right to set off any amounts owed by the Contractor for the State's reasonable costs in terminating this Contract. The Contractor must pay all reasonable costs incurred by the State in terminating this Contract for cause, including administrative

costs, attorneys' fees, court costs, transition costs, and up to 50 % of costs the State incurs to procure the Contract Activities from other sources.

Termination by Contractor. If the State breaches a material provision of this Contract, then the Contractor will provide the State with written notice of the breach and a time period (not less than thirty (30) calendar days) to cure the breach. The Contractor may terminate this Contract if the State (i) materially breaches its obligation to pay the Contractor undisputed amounts due and owing under this Contract, or (iii) does not cure the material breach within the time period specified in a written notice of breach, or as otherwise provided by law.

26. **Termination for Convenience.** The State may immediately terminate this Contract in whole or in part without penalty due to appropriation or budget shortfalls. The State may terminate this Contract in whole or in part without penalty for any other reason, after first providing Contractor at least thirty (30) days' notice of the State's intent to terminate. The notice in either case will specify whether Contractor must: (a) cease performance of the Contract Activities immediately, or (b) continue to perform the Contract Activities in accordance with Section 27, Transition Responsibilities. If the State terminates this Contract for convenience, the State will pay all reasonable costs, as determined by the State, for State approved Transition Responsibilities.

27. **Transition Responsibilities.** Upon termination or expiration of this Contract for any reason, Contractor must, for a period of time specified by the State (not to exceed 180 calendar days), provide all reasonable transition assistance requested by the State, to allow for the expired or terminated portion of the Contract Activities to continue without interruption or adverse effect, and to facilitate the orderly transfer of such Contract Activities to the State or its designees. Such transition assistance may include, but is not limited to: (a) continuing to perform the Contract Activities at the established Contract rates; (b) taking all reasonable and necessary measures to transition performance of the work, including all applicable Contract Activities, training, equipment, software, leases, reports and other documentation, to the State or the State's designee; (c) taking all necessary and appropriate steps, or such other action as the State may direct, to preserve, maintain, protect, or return to the State all materials, data, property, and confidential information provided directly or indirectly to Contractor by any entity, agent, vendor, or employee of the State; (d) transferring title in and delivering to the State, at the State's discretion, all completed or partially completed deliverables prepared under this Contract as of the Contract termination date; and (e) preparing an accurate accounting from which the State and Contractor may reconcile all outstanding accounts (collectively, "**Transition Responsibilities**"). This Contract will automatically be extended through the end of the transition period.

28. **General Indemnification.** Contractor must defend, indemnify and hold the State, its departments, divisions, agencies, offices, commissions, officers, and employees harmless, without limitation, from and against any and all third party actions, claims, losses, liabilities, damages, costs, attorney fees, and expenses (including those required to establish the right to indemnification), arising out of or relating to: (a) any breach by Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable) of any of the promises, agreements, representations, warranties, or insurance requirements contained in this Contract; (b) any infringement, misappropriation, or other violation of any intellectual property right or other right of any third party; (c) any bodily injury, death, or damage to real or tangible personal property occurring wholly or in part due to action or inaction by Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable); and (d) any acts or omissions of Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable).

The State will notify Contractor in writing if indemnification is sought; however, failure to do so will not relieve Contractor, except to the extent that Contractor is materially prejudiced. Contractor must, to the satisfaction of the State, demonstrate its financial ability to carry out these obligations.

The State is entitled to: (i) regular updates on proceeding status; (ii) participate in the defense of the proceeding; (iii) employ its own counsel; and to (iv) retain control of the defense if the State deems necessary. Contractor will not, without the State's written consent (not to be unreasonably withheld), settle, compromise, or consent to the entry of any judgment in or otherwise seek to terminate any claim,

action, or proceeding. To the extent that any State employee, official, or law may be involved or challenged, the State may, at its own expense, control the defense of that portion of the claim.

Any litigation activity on behalf of the State, or any of its subdivisions under this Section, must be coordinated with the Department of Attorney General. An attorney designated to represent the State may not do so until approved by the Michigan Attorney General and appointed as a Special Assistant Attorney General.

29. **Infringement Remedies.** If, in either party's opinion, any piece of equipment, software, commodity, or service supplied by Contractor or its subcontractors, or its operation, use or reproduction, is likely to become the subject of a copyright, patent, trademark, or trade secret infringement claim, Contractor must, at its expense: (a) procure for the State the right to continue using the equipment, software, commodity, or service, or if this option is not reasonably available to Contractor, (b) replace or modify the same so that it becomes non-infringing; or (c) accept its return by the State with appropriate credits to the State against Contractor's charges and reimburse the State for any losses or costs incurred as a consequence of the State ceasing its use and returning it.

30. **Disclaimer of Damages and Limitation of Liability.** Neither the Contractor nor the State is liable for consequential, incidental, indirect, or special damages, regardless of the nature of the action. IN NO EVENT WILL EITHER PARTY'S AGGREGATE LIABILITY TO THE OTHER UNDER THIS CONTRACT, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR BY STATUTE OR OTHERWISE, FOR ANY CLAIM RELATED TO OR ARISING UNDER THIS CONTRACT, EXCEED TWICE THE AGGREGATE CONTRACT PRICE. As used in this clause "Aggregate Contract Price" means the total price for the Initial Term and all Renewal Terms of this Contract. This limitation of liability does not apply to claims for infringement of United States patent, copyright, trademark or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the Contractor; or to court costs or attorneys' fees awarded by a court in addition to damages after litigation based on this Contract.

31. **Disclosure of Litigation, or Other Proceeding.** Contractor must notify the State within 14 calendar days of receiving notice of any litigation, investigation, arbitration, or other proceeding (collectively, "**Proceeding**") involving Contractor, a subcontractor, or an officer or director of Contractor or subcontractor, that arises during the term of the Contract that materially impacts Contractor's ability to perform the Contracting Activities, including: (a) a criminal Proceeding; (b) a parole or probation Proceeding; (c) a Proceeding under the Sarbanes-Oxley Act; (d) a civil Proceeding involving: (1) a claim that might reasonably be expected to adversely affect Contractor's viability or financial stability; or (2) a governmental or public entity's claim or written allegation of fraud; or (e) a Proceeding involving any license that Contractor is required to possess in order to perform under this Contract. In all other cases not described above, the State acknowledges and agrees that information made available directly to the State from the Contractor's, or its parent company's, publicly filed documents will satisfy the requirements of this Section.

32. **Reserved.**

33. **State Data.**

a. Ownership. The State's data ("**State Data**," which will be treated by Contractor as Confidential Information) includes: (a) the State's data collected, used, processed, stored, or generated as the result of the Contract Activities and (b) personally identifiable information ("**PII**") collected, used, processed, stored, or generated as the result of the Contract Activities, including, without limitation, any information that identifies an individual, such as an individual's social security number or other government-issued identification number, date of birth, address, telephone number, biometric data, mother's maiden name, email address, credit card information, or an individual's name in combination with any other of the elements here listed. State Data is and will remain the sole and exclusive property of the State and all right, title, and interest in the same is reserved by the State. All State Data shall be located, at all times, in the continental United States. This Section survives the termination of this Contract.

b. Contractor Use of State Data. Contractor is provided a limited license to State Data for the sole and exclusive purpose of providing the Contract Activities, including a license to collect, process, store, generate, and display State Data only to the extent necessary in the provision of the Contract Activities. Contractor must: (a) keep and maintain State Data in strict confidence, using such degree of care as is appropriate and consistent with its obligations as further described in this Contract and applicable law to avoid unauthorized access, use, disclosure, or loss; (b) use and disclose State Data solely and exclusively for the purpose of providing the Contract Activities, such use and disclosure being in accordance with this Contract, any applicable Statement of Work, and applicable law; and (c) not use, sell, rent, transfer, distribute, or otherwise disclose or make available State Data for Contractor's own purposes or for the benefit of anyone other than the State without the State's prior written consent. This Section survives the termination of this Contract.

c. Extraction of State Data. Contractor must, within ten (10) business days of the State's request, provide the State, without charge and without any conditions or contingencies whatsoever (including but not limited to the payment of any fees due to Contractor), an extract of the State Data in the format mutually agreed upon by the parties.

d. Backup and Recovery of State Data. Unless otherwise specified in Schedule A, Contractor is responsible for maintaining a backup of State Data and for an orderly and timely recovery of such data. Unless otherwise described in Schedule A, Contractor must maintain a contemporaneous backup of State Data that can be recovered within four (4) hours at any point in time or in a timeframe mutually agreed upon by the parties.

e. Loss or Compromise of Data. In the event of any act, error or omission, negligence, misconduct, or breach on the part of Contractor that compromises or is suspected to compromise the security, confidentiality, or integrity of State Data or the physical, technical, administrative, or organizational safeguards put in place by Contractor that relate to the protection of the security, confidentiality, or integrity of State Data, Contractor must, as applicable: (a) notify the State as soon as practicable but no later than forty eight (48) hours of becoming aware of such occurrence; (b) cooperate with the State in investigating the occurrence, including making available all relevant records, logs, files, data reporting, and other materials required to comply with applicable law or as reasonably required by the State; (c) in the case of PII, at the State's sole election, (i) with approval and assistance from the State, notify the affected individuals who comprise the PII as soon as practicable but no later than is required to comply with applicable law, or, in the absence of any legally required notification period, within five (5) calendar days of becoming aware of such occurrence; or (ii) reimburse the State for any reasonable costs in notifying the affected individuals; (d) in the case of PII, provide third-party credit and identity monitoring services to each of the affected individuals who comprise the PII for the period required to comply with applicable law, or, in the absence of any legally required monitoring services, for no less than twelve (12) months following the date of notification to such individuals; (e) perform or take any other actions required to comply with applicable law as a result of the occurrence; (f) pay for any costs associated with the occurrence, including but not limited to the reasonable costs incurred by the State in investigating and resolving the occurrence, including reasonable attorney's fees associated with such investigation and resolution; (g) without limiting Contractor's obligations of indemnification as further described in this Contract, indemnify, defend, and hold harmless the State for any and all claims, including reasonable attorneys' fees, costs, and incidental expenses, which may be suffered by, accrued against, charged to, or recoverable from the State in connection with the occurrence; (h) be responsible for recreating lost State Data mutually agreed upon without charge to the State; and (i) provide to the State a detailed plan as soon as practicable after the occurrence and after devising a plan describing the measures Contractor will undertake to prevent a future occurrence Notification to affected individuals, as described above, must comply with applicable law, be written in plain language, not be tangentially used for any solicitation purposes, and contain, at a minimum: name and contact information of Contractor's representative; a description of the nature of the loss; a list of the types of data involved; the known or approximate date of the loss; how such loss may affect the affected individual; what steps Contractor has taken to protect the affected individual; what steps the

affected individual can take to protect himself or herself; contact information for major credit card reporting agencies; and, information regarding the credit and identity monitoring services to be provided by Contractor. The State will have the option to review and approve any notification sent to affected individuals prior to its delivery. Notification, of a breach that involves State of Michigan information, to any other party, including but not limited to public media outlets, must be reviewed and approved by the State in writing prior to its dissemination. The parties agree that any damages relating to a breach of this Section 33 are to be considered direct damages and not consequential damages. This section survives termination or expiration of this Contract.

34. Non-Disclosure of Confidential Information. The parties acknowledge that each party may be exposed to or acquire communication or data of the other party that is confidential, privileged communication not intended to be disclosed to third parties. The provisions of this Section survive the termination of this Contract.

a. Meaning of Confidential Information. For the purposes of this Contract, the term "**Confidential Information**" means all information and documentation of a party that: (a) has been marked "confidential" or with words of similar meaning, at the time of disclosure by such party; (b) if disclosed orally or not marked "confidential" or with words of similar meaning, was subsequently summarized in writing by the disclosing party and marked "confidential" or with words of similar meaning; and, (c) should reasonably be recognized as confidential information of the disclosing party. The term "Confidential Information" does not include any information or documentation that was: (a) subject to disclosure under the Michigan Freedom of Information Act (FOIA); (b) already in the possession of the receiving party without an obligation of confidentiality; (c) developed independently by the receiving party, as demonstrated by the receiving party, without violating the disclosing party's proprietary rights; (d) obtained from a source other than the disclosing party without an obligation of confidentiality; or, (e) publicly available when received, or thereafter became publicly available (other than through any unauthorized disclosure by, through, or on behalf of, the receiving party). For purposes of this Contract, in all cases and for all matters, State Data is deemed to be Confidential Information.

b. Obligation of Confidentiality. The parties agree to hold all Confidential Information in strict confidence and not to copy, reproduce, sell, transfer, or otherwise dispose of, give or disclose such Confidential Information to third parties other than employees, agents, or subcontractors of a party who have a need to know in connection with this Contract or to use such Confidential Information for any purposes whatsoever other than the performance of this Contract. The parties agree to advise and require their respective employees, agents, and subcontractors of their obligations to keep all Confidential Information confidential. Disclosure to a subcontractor is permissible where: (a) use of a subcontractor is authorized under this Contract; (b) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the subcontractor's responsibilities; and (c) Contractor obligates the subcontractor in a written contract to maintain the State's Confidential Information in confidence.

c. Cooperation to Prevent Disclosure of Confidential Information. Each party must use its best efforts to assist the other party in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the foregoing, each party must advise the other party promptly, but no later than 48 hours in the event either party learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Contract and each party will cooperate with the other party in seeking injunctive or other equitable relief against any such person.

d. Remedies for Breach of Obligation of Confidentiality. Each party acknowledges that breach of its obligation of confidentiality may give rise to irreparable injury to the other party, which damage may be inadequately compensable in the form of monetary damages. Accordingly, a party may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies which may be available, to include, in the case of the State, at the sole election of the State, the immediate termination,

without liability to the State, of this Contract or any Statement of Work corresponding to the breach or threatened breach.

e. Surrender of Confidential Information upon Termination. Upon termination of this Contract or a Statement of Work, in whole or in part, each party must, within 10 calendar days from the date of termination, return to the other party any and all Confidential Information received from the other party, or created or received by a party on behalf of the other party, which are in such party's possession, custody, or control; provided, however, that Contractor must return State Data to the State following the timeframe and procedure described further in this Contract. Should Contractor or the State determine that the return of any Confidential Information is not feasible, such party must destroy the Confidential Information and must certify the same in writing within 10 business days from the date of termination to the other party. However, both parties' legal ability to destroy data may be restricted by their retention and disposal schedules, in which case Confidential Information will be destroyed after the retention period expires.

35. Data Privacy and Information Security.

a. Undertaking by Contractor. Without limiting Contractor's obligation of confidentiality as further described, Contractor is responsible for establishing and maintaining a data privacy and information security program, including physical, technical, administrative, and organizational safeguards, that is designed to: (a) ensure the security and confidentiality of the State Data; (b) protect against any anticipated threats or hazards to the security or integrity of the State Data; (c) protect against unauthorized disclosure, access to, or use of the State Data; (d) ensure the proper disposal of State Data; (e) ensure that all State Data remains in the continental United States; and (f) ensure that all employees, agents, and subcontractors of Contractor, if any, comply with all of the foregoing..

b. Audit by Contractor. No less than annually, Contractor must conduct a independent third-party audit of its information security program and provide such audit findings to the State.

c. Right of Audit by the State. Upon request by the State, Contractor agrees to complete, within 45 calendar days of receipt, an audit questionnaire provided by the State regarding Contractor's data privacy and information security program.

d. Audit Findings. Contractor must implement any reasonable safeguards as identified by the State or by any audit of Contractor's data privacy and information security program.

e. State's Right to Termination for Deficiencies. The State reserves the right, at its sole election, to immediately terminate this Contract or a Statement of Work without limitation and without liability if the State determines that Contractor fails or has failed to meet its obligations under this Section.

f. Third-Party Statement on Standards. If Contractor engages a third-party auditor to perform a Statement on Standards for Attestation Engagements No. 16 SOC 2 (SSAE 16 SOC 2) audit of Contractor's operations, information security program or disaster recovery/business continuity plan, Contractor will provide a copy of the audit report to the State within thirty (30) days after Contractor's receipt of such report. Any such audit reports will be recognized as Contractor's Confidential Information.

36. Payment Card Industry Data Security Standard.

a. Undertaking by Contractor. Contractors that process, transmit, store or affect the security of credit/debit cardholder data, must adhere to the Payment Card Industry Data Security Standard (PCI DSS). The Contractor is responsible for the security of cardholder data in its possession. The data may only be used to assist the State or for other uses specifically authorized by law.

b. Cooperation to Notify of Breach. The Contractor must notify the State's Contract Administrator, within 48 hours of discovery, of any breaches in security where cardholder

data has been compromised. In that event, the Contractor must provide full cooperation to the card associations (e.g. Visa, MasterCard, and Discover) and state acquirer representative(s), or a PCI approved third party, to conduct a thorough security review. The review must validate compliance with the PCI Data Security Standard for protecting cardholder data. The Contractor must provide, at the request of the State, the results of such third-party security review. At the State's sole discretion and expense, the State may perform its own security review, either by itself or through a PCI approved third party. Such review must not be an excessive burden on Contractor, must not interfere with ongoing breach investigation, and must not risk other customers' confidential information.

c. Responsibilities for Costs Incurred. The Contractor is responsible for all costs incurred as the result of the breach. Costs may include, but are not limited to, fines/fees for non-compliance, card reissuance, credit monitoring, and any costs associated with a card association, PCI approved third party, or State initiated security review. Without limiting Contractor's obligations of indemnification as further described in this Contract, Contractor must indemnify, defend, and hold harmless the State for any and all claims, including reasonable attorneys' fees, costs, and incidental expenses, which may be suffered by, accrued against, charged to, or recoverable from the State in connection with the breach.

d. Disposing of Cardholder Data. The Contractor must dispose of cardholder data when it is no longer needed in compliance with PCI DSS policy. The Contractor must continue to treat cardholder data as confidential upon contract termination.

e. Audit by Contractor. The Contractor must provide the State's Contract Administrator with an annual Attestation of Compliance or a Report on Compliance showing the contractor is in compliance with the PCI Data Security Standard. The Contractor must notify the State's Contract Administrator of all failures to comply with the PCI Data Security Standard.

37. Reserved.

38. Records Maintenance, Inspection, Examination, and Audit. The State or its designee may audit Contractor to verify compliance with this Contract. Contractor must retain and provide to the State or its designee and the auditor general upon request, all financial and accounting records related to the Contract through the term of the Contract and for 4 years after the latter of termination, expiration, or final payment under this Contract or any extension ("**Audit Period**"). If an audit, litigation, or other action involving the records is initiated before the end of the Audit Period, Contractor must retain the records until all issues are resolved.

With no less than 30 calendar days written notice, the State and its authorized representatives or designees have the right to enter and inspect Contractor's premises or any other places where Contract Activities are being performed, and examine, copy, and audit all records related to this Contract. Contractor must cooperate and provide reasonable assistance. If any financial errors are revealed, the amount in error must be reflected as a credit on subsequent invoices until the amount is paid or refunded. Any remaining balance at the end of the Contract must be paid or refunded within 45 calendar days.

This Section applies to Contractor, any parent, affiliate, or subsidiary organization of Contractor, and any subcontractor that performs Contract Activities in connection with this Contract.

39. Warranties and Representations. Contractor represents and warrants: (a) Contractor is the owner or licensee of any Contract Activities that it licenses, sells, or develops and Contractor has the rights necessary to convey title, ownership rights, or licensed use; (b) all Contract Activities are delivered free from any security interest, lien, or encumbrance and will continue in that respect; (c) the Contract Activities will not infringe the patent, trademark, copyright, trade secret, or other proprietary rights of any third party; (d) Contractor must assign or otherwise transfer to the State or its designee any manufacturer's warranty for the Contract Activities; (e) the Contract signatory has the authority to enter into this Contract; (f) all information furnished by Contractor in connection with the Contract fairly and accurately represents Contractor's business, properties, finances, and operations as of the dates covered by the information, and Contractor will inform the State of any material adverse changes;(g) all information furnished and

representations made in connection with the award of this Contract is true, accurate, and complete, and contains no false statements or omits any fact that would make the information misleading; and that (h) Contractor is neither currently engaged in nor will engage in the boycott of a person based in or doing business with a strategic partner as described in 22 USC 8601 to 8606. A breach of this Section is considered a material breach of this Contract, which entitles the State to terminate this Contract under Section 25, Termination for Cause.

40. **Conflicts and Ethics.** Contractor will uphold high ethical standards and is prohibited from: (a) holding or acquiring an interest that would conflict with this Contract; (b) doing anything that creates an appearance of impropriety with respect to the award or performance of the Contract; (c) attempting to influence or appearing to influence any State employee by the direct or indirect offer of anything of value; or (d) paying or agreeing to pay any person, other than employees and consultants working for Contractor, any consideration contingent upon the award of the Contract. Contractor must immediately notify the State of any violation or potential violation of these standards. This Section applies to Contractor, any parent, affiliate, or subsidiary organization of Contractor, and any subcontractor that performs Contract Activities in connection with this Contract.

41. **Compliance with Laws.** Contractor must comply with all federal, state and local laws, rules and regulations.

42. **Reserved.**

43. **Reserved.**

44. **Nondiscrimination.** Under the Elliott-Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, *et seq.*, and the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, *et seq.*, Contractor and its subcontractors agree not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, height, weight, marital status, or mental or physical disability. Breach of this covenant is a material breach of this Contract.

45. **Unfair Labor Practice.** Under MCL 423.324, the State may void any Contract with a Contractor or subcontractor who appears on the Unfair Labor Practice register compiled under MCL 423.322.

46. **Governing Law.** This Contract is governed, construed, and enforced in accordance with Michigan law, excluding choice-of-law principles, and all claims relating to or arising out of this Contract are governed by Michigan law, excluding choice-of-law principles. Any dispute arising from this Contract must be resolved in Michigan Court of Claims. Contractor consents to venue in Ingham County, and waives any objections, such as lack of personal jurisdiction or *forum non conveniens*. Contractor must appoint agents in Michigan to receive service of process.

47. **Non-Exclusivity.** Nothing contained in this Contract is intended nor will be construed as creating any requirements contract with Contractor. This Contract does not restrict the State or its agencies from acquiring similar, equal, or like Contract Activities from other sources.

48. **Force Majeure.** Neither party will be in breach of this Contract because of any failure arising from any disaster or acts of god that are beyond their control and without their fault or negligence. Each party will use commercially reasonable efforts to resume performance. Contractor will not be relieved of a breach or delay caused by its subcontractors. If immediate performance is necessary to ensure public health and safety, the State may immediately contract with a third party.

49. **Dispute Resolution.** The parties will endeavor to resolve any Contract dispute in accordance with this provision. The dispute will be referred to the parties' respective Contract Administrators or Program Managers. Such referral must include a description of the issues and all supporting documentation. The parties must submit the dispute to a senior executive if unable to resolve the dispute within 15 business days. The parties will continue performing while a dispute is being resolved, unless the dispute precludes performance. A dispute involving payment does not preclude performance.

Litigation to resolve the dispute will not be instituted until after the dispute has been elevated to the parties' senior executive and either concludes that resolution is unlikely or fails to respond within 15 business days. The parties are not prohibited from instituting formal proceedings: (a) to avoid the expiration of statute of limitations period; (b) to preserve a superior position with respect to creditors; or (c) where a party makes a determination that a temporary restraining order or other injunctive relief is the only adequate remedy. This Section does not limit the State's right to terminate the Contract.

50. **Media Releases.** News releases (including promotional literature and commercial advertisements) pertaining to the Contract or project to which it relates must not be made without prior written State approval, and then only in accordance with the explicit written instructions of the State.

51. **Website Incorporation.** The State is not bound by any content on Contractor's website unless expressly incorporated directly into this Contract.

52. **Schedules.** All schedules that are referenced herein and attached hereto are hereby incorporated by reference. The following Schedules are attached hereto and incorporated herein:

Schedule A	Statement of Work
Schedule B	Pricing (Inclusive of Worksheets B.1 Core Hot List Products and Pricing, B.2a Core Discount Per Category, B.2b. Discounted Core List, B.3a Manufacturer-Direct Furniture Pricing and B.3b. Manufacturer-Direct Furniture Service Prices)
Schedule C	Direct Furniture Manufacturer List

53. **Entire Agreement and Order of Precedence.** This Contract, which includes Schedule A – Statement of Work, and expressly incorporated schedules and exhibits, is the entire agreement of the parties related to the Contract Activities. This Contract supersedes and replaces all previous understandings and agreements between the parties for the Contract Activities. If there is a conflict between documents, the order of precedence is: (a) first, this Contract, excluding its schedules, exhibits, and Schedule A – Statement of Work; (b) second, Schedule A – Statement of Work as of the Effective Date; and (c) third, schedules expressly incorporated into this Contract as of the Effective Date. NO TERMS ON CONTRACTOR'S INVOICES, ORDERING DOCUMENTS, WEBSITE, BROWSE-WRAP, SHRINK-WRAP, CLICK-WRAP, CLICK-THROUGH OR OTHER NON-NEGOTIATED TERMS AND CONDITIONS PROVIDED WITH ANY OF THE CONTRACT ACTIVITIES WILL CONSTITUTE A PART OR AMENDMENT OF THIS CONTRACT OR IS BINDING ON THE STATE FOR ANY PURPOSE. ALL SUCH OTHER TERMS AND CONDITIONS HAVE NO FORCE AND EFFECT AND ARE DEEMED REJECTED BY THE STATE, EVEN IF ACCESS TO OR USE OF THE CONTRACT ACTIVITIES REQUIRES AFFIRMATIVE ACCEPTANCE OF SUCH TERMS AND CONDITIONS.

54. **Severability.** If any part of this Contract is held invalid or unenforceable, by any court of competent jurisdiction, that part will be deemed deleted from this Contract and the severed part will be replaced by agreed upon language that achieves the same or similar objectives. The remaining Contract will continue in full force and effect.

55. **Waiver.** Failure to enforce any provision of this Contract will not constitute a waiver.

56. **Survival.** The provisions of this Contract that impose continuing obligations, including warranties and representations, termination, transition, insurance coverage, indemnification, and confidentiality, will survive the expiration or termination of this Contract.

57. **Contract Modification.** This Contract may not be amended except by signed agreement between the parties (a "**Contract Change Notice**"). Notwithstanding the foregoing, no subsequent Statement of Work or Contract Change Notice executed after the Effective Date will be construed to amend this Contract unless it specifically states its intent to do so and cites the section or sections amended.

STATE OF MICHIGAN

OFFICE SUPPLIES and OFFICE RELATED PRODUCTS

SCHEDULE A
STATEMENT OF WORK
CONTRACT ACTIVITIES

BACKGROUND

The State of Michigan (hereinafter referred to as the State), operating under a Memorandum of Understanding with National Purchasing Partners, LLC dba NPPGov (hereinafter referred to as "NPPGov") is serving as the Lead Contracting Agency.

NPPGov is owned by two non-profit healthcare organizations and provides group purchasing opportunities and purchasing administrative support for governmental entities and nonprofit institutions within its membership. NPPGov's membership includes participating public and nonprofit entities across North America.

SCOPE

The purpose of this Contract is to provide a vehicle by which the State of Michigan, State of Michigan Employees, its MiDeal Members, and NPPGov Participating Agencies may procure office supplies and office related products (henceforth referred to as "office supplies"), in 28 different categories at the lowest price available. The Contractor is responsible for warehousing, data collection, reporting and distribution of office supplies.

1. GENERAL REQUIREMENTS

A. This Master Agreement is established for use by the State of Michigan, State of Michigan Employees, and its MiDeal members, as well as other NPPGov Participating Agencies across the nation.

1) The State of Michigan will enter into an Intergovernmental Cooperative Purchasing Agreement with other Participating Agencies (not including MiDeal Members), through NPPGov, after this Master Agreement is executed.

2) Intergovernmental cooperative purchasing agreements allow Participating Agencies to make purchases at the State's accepted contract price, terms and conditions, provided that the Participating Agency has satisfied all its local and state cooperative procurement requirements.

3) The Contractor agrees to make the same proposal terms and price, exclusive of any possible rebates, incentives, freight and transportation fees, available to other Participating Agencies.

4) Neither the State of Michigan nor NPPGov will incur any direct liability with respect to specifications, delivery, payment, or any other aspect of purchases by such Participating Agencies or nonprofit institutions.

B. The Contractor will work directly and separately with the Participating Agencies concerning the placement of orders, deliveries, disputes, invoicing and payment.

1) Neither the State of Michigan nor NPPGov will be held liable for any costs or damages incurred by or because of the actions of the Contractor or any Participating Agency.

2) The Contractor will comply with state and local laws, rules and regulations in each state and locality where the product or service is provided.

C. This Master Agreement is extended to MiDeal members and members of NPPGov across the nation as well as well as government units in all other states (collectively, "Participating Agencies"), See **Standard Contract Terms, Section 8 Extended Purchasing Program.**

1) While the terms of the Master Agreement will govern the general pricing terms, each Participating Agency may request modification of the Master Agreement in accordance with each Participating Agency's state and/or local purchasing laws, rules, regulations and procedures, provided any modifications are not material changes.

2) Each Participating Agency may, at its discretion, and upon written agreement by the Participating Agency and the Contractor, request additional legal and procedural provisions not included herein that the Contractor will adhere to if it wishes to conduct business with the Participating Agency using the Master Agreement.

3) Each Participating Agency may negotiate for its own "Hot List" of items, comprising of or independent of the State's "Hot List", that will represent its' most used items. Participating agencies "Hot List" item pricing may be less than, but never more than the prices established in this Master Agreement.

D. The Contractor, in addition to executing a Master Agreement with the State of Michigan will also execute a Vendor Administration Agreement with NPPGov. NPPGov provides Contractor exposure/marketing and contract utilization support for the Contractor's products and service.

E. The Contractor will:

1) Pay a Contract Administration Fee of an agreed upon percentage of actual net sales under the Master Agreement to NPP as established in the NPPGov Vendor Administration Agreement. Administration fees may not be listed or charged as a separate line item to users of the contract. The value of trade-ins or rebates will not affect the amount of the administration fee paid to NPPGov and;

2) In addition to the NPPGov Contract Administration Fee, the Contractor will pay a Contact Administration Fee to the State for sales within the State, including those sales made to MiDeal members, as outlined in **Standard Terms and Conditions Section 7. Administrative Fee and Reporting.** This fee may not be listed or charged as a separate line item to the State.

F. The Contractor will commit to:

1) low pricing;

2) and accurate and timely reporting to NPPGov pursuant to the reporting requirements identified in the NPPGov Vendor Administration Agreement.

3) In addition, the Contractor must commit to marketing of the Master Agreement nationwide and that the sales force will be trained, engaged and committed to offering NPPGov pricing to member government agencies nationwide, including the opportunity for NPPGov to train the Contractor's sales staff.

G. **Contract Usage**. There is no obligation for any Participating Agencies to purchase anything from the Contractor. It is the intent of this Master Agreement that Participating Agencies may buy directly from the Contractor.

2. Deliverables / Products

2.1. Product Specifications

A. The Contractor will provide their organization's entire catalog of products and services as part of this contract. This will allow the State and Participating Agencies the opportunity to order a broad range of products and services, as appropriate for their needs.

1) The contract Schedule B "Core" items, of which the "Hot List" items are a subsection, will be items for which there are SKU sets established in either the wholesaler Essendant's or the Contractor's catalog, approximately 24,000 items, thereby providing published, established, auditable list prices.

2) The contract's "balance of contract items" will be those items available outside of the established Schedule B Core SKU sets. See Schedule B.

B. All products offered must be new, unused and the most current product lines, unless otherwise clearly identified as remanufactured goods.

C. "Core" Products will be categorized into the following 28 categories.

1) Participating Agencies must be allowed to reasonably restrict purchase of products, in part or in whole, as it deems necessary and as mutually agreed upon with the Contractor.

2) Revisions to this list during the contract term will be mutually agreed upon by the State and Contractor:

CATEGORY #	CATEGORY
1	Binders & Binding Systems
2	Calendars/ Dated Goods
3	Converted paper Product
4	Copy Paper
5	Facilities Breakroom
6	Facilities Chemical
7	Facilities Equipment
10	Facilities Soap
11	Facilities Supplies
12	Filing & Record Storage
13	Inkjet Supplies- OEM
14	Inkjet Supplies- Remanufactured
15	Labels and Mailing Supplies
16	Miscellaneous Office Products
17	Office Accessories
18	Pens, Pencils & Correction
19	School Art Supplies
20	School Paper
21	School Supplies
22	Specialty Paper Products
23	Technology Products
24	Toner- OEM (Hewlett Packard Only)
25	Toner- OEM (Dell)
26	Toner- OEM (Except Hewlett Packard & Dell)
27	Toner- Remanufactured
28	Furniture

D. **Proprietary Items**. The contract will also include proprietary items, which are items purchased and warehoused by the Contractor specifically for use and purchase by the State of Michigan. Those items are as listed herein. This list may be modified per change notice.

1) Items.

a. 15" x 12" x 9.75" 44ECT, C Flute Kraft RSC, Glued, 1 color imprint – SOM Records Management Storage Box. Initial Estimated Annual Usage- 30,000 Each

b. 26" x 12" x 9.75" 44ECT, C Flute Kraft RSC, Glued, 1 color imprint- SOM Records Management Storage Box. Initial Estimated Annual Usage- 1,000 Each

2) Initial Order. Prior to the manufacture of these proprietary items and the purchase and warehousing on the part of the Contractor, the Contractor shall supply to the State proofs and/or samples of each item which shall be approved by the Contract Administrator or designee prior to a full production run.

3) Inventory Levels. The State shall provide to the Contractor an initial estimated annual usage for each Proprietary Item. The estimated annual usage is based on historic data and does not guarantee that this is the quantity that will be purchase on an annual basis. This estimate becomes the basis of the initial run and a forecast of the provision of the item during the first year of the contract or of when the items is added. Subsequently, the Contractor shall monitor usage monthly and adjust ordering of the items to maintain the proper inventory levels.

a. Contractor shall purchase and maintain up to a 90-day supply of Proprietary Products. If the contractor elects to warehouse more than a 120-day supply of any proprietary item, the contractor does so at their own risk.

b. The State acknowledges that the manufacturer of the Proprietary Item may have a minimum production run requirement.

4) Prices. Pricing for Proprietary Items shall conform to the schedule set forth for all negotiated "Hot List" items per Section 5.2. Price Term. There are no separate initial set up fees. Price changes will be per Section 5.3. Price Changes.

5) Changes to Proprietary Items after Initial Introduction. Should the State require changes to a Proprietary Item:

a. The Contractor will provide a quotation to the Contract Administrator for any costs incurred to a change in design or imprinting. The price adjustments, if any, will be made via Change Notice.

b. The State will supply camera-ready artwork and design specifications if required to the Contractor.

c. The Contractor shall supply to the State proofs and/or samples of revised items which shall be approved by the Contract Administrator or designee prior to a full production run.

6) Discontinuation. Should the State deem an inventoried Proprietary Item no longer necessary:

a. The State will give the Contractor a (60) sixty day written notice of its intent to discontinue.

b. Upon receipt of this notice, the Contractor shall cease to purchase additional Proprietary Items from the manufacturer unless a last purchase is requested by the Contract Administrator.

c. The Contractor shall provide to the State a list indicating the quantity of remaining stocked and warehoused Proprietary items.

d. The State shall purchase and take delivery, at a location of the State's choosing within (60) sixty days, of at least the 120-day supply of remaining Proprietary Items ordered and warehoused on behalf of the State, and

e. The State shall make payment for the Items once delivered as per the terms of this contract.

7) Termination. Upon expiration or termination of the contract:

a. The Contractor will provide to the State a list indicating the quantity of remaining stocked and warehoused Proprietary items.

b. The State is not obligated to purchase more than a 120-day supply of proprietary items, as determined by the average monthly usage of the previous fiscal year total usage.

c. The State will provide to the Contractor instructions for disposition of all remaining Proprietary Items ordered and warehoused on behalf of the State if applicable. The State shall make payment for the Items once delivered as per the terms of this contract.

E. **Product Substitution**. Once the product lists are established, **product substitution is not allowable unless written approval is received from the Contract Administrator**.

1) Auto substitution without the State or Participating Agency written approval will be considered Breach of Contract.

2) During the contract, the Contractor may offer alternate products meeting or exceeding original specifications to be approved by the State. A proposed alternate must clearly describe all variances from the specifications and must include descriptive literature that contains complete specifications, if available.

F. **Restricted Items**. The State intends to partially or fully restrict the purchase of some items or categories, as these items must be purchased from mandatory-use State contracts, including but not limited to such categories and items as: chemicals and cleaning supplies, can liners, computer equipment and software.

1) The State reserves the right to restrict purchases of any item in any category or remove restrictions as it deems necessary.

2) Restrictions may be revised over the course of the contract.

3) The Contract Administrator is the only individual with the authority to change item restriction status.

4) The State's restrictions on items or categories shall in no way apply to Participating Agencies or MiDeal members, and pricing established in **Schedule B.2 Discount Off List** will be the basis for establishing prices for these items.

5) Participating Agencies and MiDeal members may establish restrictions, or not, as they deem necessary. **See Section 2.1.C.1)** above.

2.2. Warranties

A. Any warranty with respect to the products under this contract will come from the manufacturer. Contractor will pass through to the State any applicable manufacturer warranties, to the extent transferable and provide documentation at time of delivery as well as making the documents available for viewing on line.

1) The Contractor will pass through to the State of Michigan any applicable manufacturer OEM warranties, to the extent transferable and provide documentation upon request.

2) Should a State of Michigan end-user encounter a warranty/return issue, the product may be returned to the Contractor for full credit or a replacement product, and the Contractor will handle all returns to the manufacturer.

B. The State may report any product or warranty issues by contacting the Contractor's Customer Service or the Contractor Representative assigned to the State. Contractor will work with the OEM to remedy the warranty claim on the State's behalf up to and including return for full credit, replacement of the defective item or repair of the defective item as dictated by the applicable warranty.

C. Furniture Warranties. All manufacturers' warranties and recommended maintenance documentation are provided at the time of purchase.

1) Warranties apply only if products are used in the manner in which they are intended and within manufacturer specifications.

2) Most manufacturers warrant their products to be free from defects in material and workmanship for as long as the original purchaser owns the product.

3) The manufacturer will, free of charge, repair or replace a damaged product with a comparable product (at the manufacturer's discretion). Warranties differ by manufacturer.

4) Most warranties do not apply to:

a. Normal wear and tear over the course of ownership

b. Modifications or attachments to the product not approved by the manufacturer

c. Products not installed, used or maintained in accordance with product instructions and warnings

d. Products used for rental purposes

e. Damage caused by the carrier in transit, which is handled under separate terms

2.3. Recall Requirements and Procedures

The Contractor will advise the State's Contract Administrator via e-mail of any product recalls within 10 calendar days of the Contactor becoming aware of any recall notifications. The Contractor will work with the State to remedy the recalled products in accordance with the OEM's recall procedures.

2.4. Quality Assurance Program

Contractor's quality approach will include the following elements:

A. The Contractor will have a customer satisfaction team responsible for measuring and improving the customer experience. Any customer satisfaction polling or surveys to State agencies or Extended Purchasing Program participants must be reviewed and approved by the Contract Administrator

before they are conducted, the results of which will be made available to the Contract Administrator upon request.

B. Comprehensive data collection and reporting on all customer shipments, which results in visibility of every order from entry through delivery which will be available to the Contract Administrator upon request.

2.5. Incentives

A. The contractor will coordinate with Hewlett Packard in the creation, maintenance and updating of HP Big Deal and "white box" pricing Programs.

B. Contractor may pass through any OEM special pricing, incentives, discounts or rebates.

C. At Contractor's discretion, Contractor may offer additional incentives to individual Participating Agencies

3. Service Levels

3.1. Retail Locations

The State will be able to make purchases at any of the Contractor's retail locations.

3.2. Extending the Contract Pricing and Discount at Retail Locations

A. The State and its staff can make in-store purchases with a registered procurement card to receive the Core contract pricing or the retail pricing, whichever is lower, for those Core items available at the retail store at the time of purchase. The process to ensure that your purchasers receive the proper pricing/discount is as follows:

1) End users can register their procurement card (corporate credit card issued by American Express, Visa, Discover or MasterCard) online.

2) Once registration is complete, all credit card information is sent to a third party and encrypted. By the next day, end users' credit card information will be registered with our retail systems and they will receive their corporate discount pricing at the point-of-sale.

3) Purchases made with a procurement card will appear on the end user's monthly statement from the credit card company.

B. Users can also place orders via StalesAdvantage.com and select the Pick Up in Store option for some or all items in that order. The selected items will be available for pick up in less than one hour at the retail location selected when the order is placed.

3.3. Product Catalog

The Contractor will provide to the State product catalogs in two versions. The Contractor will not be permitted to distribute any printed catalogs to State agencies unless expressly approved by the Contract Administrator.

1) The Contractor will host a searchable, on-line, web-based custom catalog that will include a purchasing platform. This catalog will include all items offered by the Contractor, listed with a full description, photo of the product and the contract pricing, additionally it will include the following features:

a. The State's "Hot List" products will always populate first when users search for similar items. From least expensive to most expensive.

b. The State's "Core" products, of which the Hot List items are part, will be noted by icon or another marking system that is easily identified in any search results.

c. If an item is selected, yet a similar item is available at a lower price, a prompt or "pop-up" will alert the user that there is a lower price alternative available and provide them a reroute to the alternative item.

d. Items that meet or exceed the State's recycled products parameters listed in **Section 12.1. Recycled Content and Recyclability** will be denoted with an icon or other marking system that is easily identified in any search results.

e. The on-line platform will have the capability to "restrict" the purchase of items as determined by the State and those items, although viewable, will be notated to make users aware that these items cannot be selected for purchase.

2) The Contractor will provide an electronic catalog which will be a PDF version of the "Hot List" products. This catalog will meet the following requirements:

a. Have a Table of Contents listing all 28 contract categories and will link to the first page of each category.

b. Products will be grouped and then listed alphabetically within the contract category where the product has been assigned.

c. Each Product will have a photo, description and the contract price listed.

d. Because the PDF Catalog will be published for use by the State of Michigan, it must meet ADA requirements. Requirements can be found at https://www.michigan.gov/som/0,4669,7-192-86761---,00.html

e. The PDF Catalog must be maintained by the Contractor and updated annually.

3.4. Installation

Installation if required, it will be addressed, on a case by case basis, specific to the product and no work will commence without an approved and signed quote, between the contractor and Participating Agency's contract administrator, as applicable.

3.5. Reporting

A. The Contractor must submit the following periodic reports to the State:

1) Usage reports, to the Contract Administrator, including item, quantity and dollars for State and MiDEAL members, as requested.

2) Purchasing metric reporting, as requested and/or available through the on-line website purchasing platform, including but not limited to:

a. Yearly Program Review

b. Order Levels

c. Core vs Non-Core Usage

d. Agency Core Compliance

e. Year to Year Comparisons

f. Product Category Usage

g. Eco Friendly Product Usage

3) The Contractor must submit reports of purchasing activities to the MiDEAL program coordinator, on a quarterly basis. The Contractor will utilize the format specified by the State. Reports will include, at a minimum, an itemized listing of purchasing activities by each State of Michigan agency and MiDEAL member, with the agency name, invoice

number, product description, quantity, total value of purchases for each agency, date of purchases, and a grand total of all purchases.

4) The Contractor must supply electronic files for all account numbers, agency contacts (administrators all levels), ship to addresses, and authorized purchases upon request, but no more often than a quarterly basis.

5) By the second Friday of every December, the Contractor must submit a report of recycled content in commodities sold in that calendar year to the Contract Administrator.

6) Essendant wholesale catalog list prices for time periods as requested by the Contract Administrator, or as requested by the State' Auditors, possibly as often as quarterly.

B. **The Contractor must submit reports of purchasing activities by MiDEAL members**

On a quarterly basis. Refer to Terms and Conditions Section 8, Administrative Fee and Reporting. The Contractor will utilize the format specified by the MiDEAL Administrator. Reports will include, at a minimum, an itemized listing of purchasing activities by the MiDEAL member, invoice number, product description, quantity, total value of purchases for each agency, date of purchases, and a grand total of all purchases.

C. The State reserves the right to request other reports throughout the term of this Contract as deemed necessary.

3.6. Meetings

The Contractor must attend the following meetings:

A. Kick-off meeting, to be attended by the Contractor Representative and other Key Personnel within 30 calendar days of the Effective Date

B. Annual contract review as requested by the Contract Administrator

C. The State and its agencies or its MiDEAL members may request meetings as it deems appropriate

3.7. Transitions

A. Transition-In. At the execution of the contract the Contractor must assist the State in making the transition from the expiring contract and the incumbent Contractor by providing the following:

1) The Contractor must work with the Contract Administrator and the incumbent Contractor to take possession of any Proprietary items held within their inventory, if any, and place it within their inventory for future shipment.

2) Contractor must work with the State and its Agencies in setting up the users in their on-line website purchasing portal. Work will include but not be limited to: establishing multiple agencies with multiple users, a multitude of ship to addresses and bill to accounts, and the necessary approval paths, if any, as specifically required by each Agency. Contractor may need to meet with each agency individually to facilitate this process. There are currently around 3500 State of Michigan users.

3) Contractor must create and work within the approved Transition-In timeline which will include, but is not limited to:

a. Setting up the web-based catalog/ purchasing platform

b. Training users

c. Creating collateral for publication/ information

d. Attend Meetings and showcases as necessary

e. Rolling "Go Live"

B. Transition-Out. At the end of the contract the Contractor must assist the State in making the transition to a new Contractor by providing the following:

1) Proprietary items inventoried for the State by the incumbent Contractor must be held for a period of up to six months. During which time arrangements must be made between the transitioning Contractors and the Contract Administrator, or their designee, for the delivery of the remaining inventory to the new Contractor's facility or to the State.

2) The Contractor must provide all requested user data and other records as requested by the Contract Administrator.

3) Contractor will submit to the State all final billing within 45 calendar-days of the contract expiration date and provide any requested back up documentation as may be necessary to make final payment within that same 45 calendar-day time. No additional invoicing after the 45 calendar-day period will be honored.

3.8. Emergency Preparedness/ Disaster Recovery

A. **Emergency Preparedness**

1) As a first responder, in the event of an emergency or disaster, the State shall be served before other customers and the Contractor will make commercially reasonable efforts to prioritize service to the State.

2) The State reserves the right to purchase from any category which the Contractor can provide during a declared emergency or disaster.

3) In the event of an Emergency, the Contractor's Contract Representative will be the contact and will provide to the Contract Administrator a phone number where they can be reached anytime.

B. **Disaster Recovery.** The Contractor has developed a documented contingency plan to account for natural disasters and other situations that may disrupt the normal flow of business.

1) The emergency contingency as follows:

a. If there is a catastrophe in any location, the Contractor's contingency program will automatically transfer orders to the nearest fulfillment center which has access to our combined product offering.

b. The Contractor operates two main Data Centers, one for production and the other for Disaster Recovery. Our most critical customer applications, such as our StaplesAdvantage.com e-commerce ordering website, are protected by Multi Site High Availability (MSHA) and have a Recovery Time Objective (RTO) of 24 hours and a Recovery Point Objective (RPO) of 15 minutes.

c. In the event of a prolonged total systems outage, the Contractor's contingency plan also provides for emergency order fulfillment to be processed from Staples' more than 1,200 U.S. retail stores.

2) **Fulfillment Center Outage.**

a. In the event of catastrophic damage or a force majeure event (fire, flood, earthquake, etc.), the Contractor can redirect orders normally filled by the assigned fulfillment center to the next closest fulfillment center. Once the fulfillment center is repaired, the Contractor would reinsert it into the search logic and resume normal operation.

b. To handle brief power interruptions, all our fulfillment centers have uninterruptible power sources on all communications equipment. All facilities also have redundant dial backup data circuits that are tested quarterly, and our larger fulfillment centers have fully redundant data circuits and communications equipment. Back-up fulfillment centers are fully capable of handling customer orders, though it may take longer than normal to process orders given the extra volume demands placed on that fulfillment center's staff.

c. In cases where delivery trucks cannot access a customer location due to a force majeure event, drivers will report the problem. Staples' Customer Service Representatives will contact the customer to notify them of the delay and provide an opportunity to cancel the order or determine a new location for delivery.

4. Staffing

4.1. Contractor Representative and Key Personnel

The Contractor must appoint one Contractor Representative and other Key Personnel, specifically assigned to State of Michigan accounts, who will be knowledgeable on the contractual requirements and directly responsible for the day to day operations of the Contract.

A. The Contractor Representative and Key Personnel must be: available via a statewide toll-free number for customer service calls and must be available during the hours of 8 a.m. to 5 p.m. ET Monday through Friday.

B. The Contractor Representative and Key Personnel must respond to the State within 8 business hours to State inquiries.

C. The Contractor must notify the Contract Administrator at least 14 calendar days before removing or assigning a new Contractor Representative or Key Personnel.

D. The Contractor may not remove or assign a new Contractor Representative or Key Personnel without the prior consent of the State. Prior consent is not required for reassignment for reasons beyond the Contractor's control, including illness, disability, death, leave of absence, personal emergency circumstances, resignation, or termination for cause.

E. The Contractor has identified the following personnel as assigned to the State:

1) **Contractor Representative.** This person will be expected to have intimately knowledge of this contract and its parameter and will have the ability to answer questions about our unique program, handle day to day issues, remove restrictions on items if requested by the Contract Administrator, and assist with projects and quote special order items. The Contract Manager will:

a. Establishing guidelines and timetables for services expansion or new locations implementation

b. Analyzing spend and recommending cost-saving measures and product improvements

c. Setting program goals

d. Providing overall program supervision and project management

e. Conducting regular business reviews

f. Work with the Contract Administrator with regard to required contractual changes, amendments and the like.

Cathy Peterson-Jennings, Strategic Account Leader
17187 N. Laurel Park Drive, Suite 220
Livonia, MI 48152

2) **Customer Service Specialist**. This person will be the back-up or "right hand" for the Contractor Representative both on a daily basis and should the Contractor Representative be unavailable. This person will be expected to have intimately knowledge of this contract and its parameter and will have the ability to answer questions about our unique program, handle day to day issues, remove restrictions on items if requested by the Contract Administrator, and assist with projects and quote special order items.

   Nicole Ray, Customer Success Consultant
   700 Taylor Road, Suite 100
   Columbus, OH 43230

3) **Customer Service.** The State of Michigan requires the Contractor will have a dedicated, U.S. based staff for customer service calls, who are familiar with the contract and its pricing parameters. Customer Service is the first line of contact for:

   a. Placing orders
   b. Verifying pricing
   c. Order status inquiries
   d. Confirming inventory levels
   e. Tracking backorders
   f. Answering product questions
   g. Completing returns
   h. Expediting rush orders
   i. Cross-referencing stock numbers

   Customer Service will available Monday through Friday from 8:00 a.m. to 5:00 p.m. Eastern by email, phone or via live chat on StaplesAdvantage.com.

Customer Service for MiDeal and Participating Agencies may be provided via dedicated U.S and/or Canadian based staff, off shore staff, or as otherwise negotiated.

4.2. Toll-Free Numbers

A. **Customer Service**. The Contractor will provide to the Contract Administrator, and publish on the Staples Advantage platform, the toll-free number dedicated to the State's for its use to contact with customer service staff. MiDeal and Participating Agencies may be assigned other toll-free numbers.

B. **Online Catalog and Technical Support.** The contractor will have dedicated staff available for online web collaboration and technical support via phone, Monday through Friday, during the hours of 8 am to 5 pm ET.

4.4. Disclosure of Subcontractors

Contractors are required to identify any subcontractors servicing the State. For the sake of this contract a subcontractor is defined as an entity to which the Contractor has made arrangement or agreement for performance of any part of this work. Excluded are national delivery companies such as Fed-Ex, UPS or USPS.

A. Any subcontractors will be bound by the terms of this contract. The State will not accept billing from nor make direct payments to any subcontractor.

B. The Contractor will give the State 30 calendar days' notice if it intends to replace any subcontractor and provide the same information as required below.

C. The Contractor has named the following as a subcontractor:

Lasership
701 E South Street.
Lansing, MI48910

4.5. Security

A. The Contractor's staff or subcontractors may be required to make deliveries to or enter State facilities, either at dock or to desktop. The State may require the Contractor's and or subcontractor's personnel to wear State issued identification badges.

B. Delivery drivers and delivery personnel will be required to wear company-issued uniforms.

C. **Background Checks.**

1) The Contractor and all subcontractors are required to conduct background checks on all driver personnel including but not limited to:

a. pre-employment and/or random drug-screening;

b. felony background check and seven-year criminal search;

c. Social Security Number Trace (or SSN Trace)

5. Pricing

5.1. Pricing

Pricing for Core items are as established in the Schedule B Pricing, B.1 Hot List Pricing, B.2 Discount Off List Pricing, and B.3 Manufacturer Direct Furniture Pricing. See Sections 5.1. A, B and C below.

Balance of Catalog items, items not identified as "Core" as defined below nor addressed in the Schedule B , will be considered Non-Core and offered by the Contactor at market pricing. See Section 5.1.D. below.

Products will be offered based on this pricing structure:

A. **Core/Hot List.** Firm, fixed, quoted and negotiated pricing on approximately 1,200 items established for the State and Participating Agencies and are identified in **Schedule B, Worksheet B.1**. Participating Agencies may modify or amend this list per their specific requirements and usage if deemed necessary to create their own "Hot Lists".

1) Subject to change per contract terms

2) Hot List prices will always be accurately reflected on the State of Michigan published pricing web/purchasing platform.

3) The Contractor will never charge more, but may charge less, than the quoted Hot List if special pricing, discounts or offers become available.

B. **Core/Discount Off List**. Products not identified in the Hot List but which have SKU numbers/ list prices as established and published in **Schedule B.2b- Discounted Core Catalog** will be sold in categories and have the discounts applied as identified in in **Schedule B, Worksheet B.2.a- Core Discount per Category** "List Price" is defined as the manufacturer's suggested list price as published by Essendant or by the Contractor.

a. The Contractor will provide the updated published price list files to the State by June 1st for an effective date of July 1st and by December 1st for an effective date of January 1st of each calendar year.

b. List prices will be held firm for the six-month price term.

1) Core prices will always be accurately reflected, with the discount off- list already applied, on the SoM published pricing web/purchasing platform.

2) The Contractor will never charge more, but may charge less, than the quoted Discount Off List price (defined in 2. above) for Core products as identified in the Discount-Off Category section in Schedule B.2. Pricing which reflect the discounts to be established in the resulting contract.

C. **Core/ Manufacturer Direct.** While the core does provide furniture pricing on many items, if volume purchases are required, MiDeal members or Participating Agencies may purchase furniture through Staples who will coordinate and order directly from the manufacturer at the discounts established in **Schedule B, Worksheets B.3a and B.3b**, resulting in an even greater savings.

1) Customers will need to contact their Contractor Representative or the Customer Service Specialist in order to obtain a quote for these products.

2) This option is currently restricted for the State of Michigan.

D. **Non-Core Balance of Catalog.** Non-Core Balance of Catalog Items are those items that are not on the Schedule B but are available on Staplesadvantage.com.

1) For those Non-Core Items that also appear on Staples.com, prices will be based on the current national Staples.com pricing exclusive of tier pricing, closeouts, promotions and/or specials, or items that are regionally sensitive.

2) The prices for Non-Core Items that are not available for purchase on Staples.com but which appear on Staplesadvantage.com, will be adjusted to reflect changes in stock availability, market conditions, buying expense, and other factors that affect the overall cost of the Non-Contract Items.

E. **Quoted Products: Special Orders, Manufacturer Direct Furniture and Promotional and/or Bulk Purchases**. There may be additional services available which are associated with certain products, including, but not limited to: furniture, facilities or water/coffee dispensers, customized products etc. which at the option of the State or Participating Agency may be allowable for purchase or lease at the time of order/agreement. Customers will need to contact their Contractor Representative or the Customer Service Specialist in order to obtain a quote for these products and the costs for such products and/or services shall be established at the time of purchase.

1) **Special Orders**. The Contractor will be able to quote, as need arises for office supply and office related items which are not available on Staples Business Advantage.com, or other products and services as otherwise mutually agreed. The State will not be required to purchase special order items if the item can be purchased at a lower price or within a better timeframe from elsewhere.

2) Manufacturer Direct (Furniture). The Contractor will be able to quote for large scale furniture needs utilizing discounts off the then current manufacturer's list pricing, Manufacturer's published list prices can be made available upon request. These discounts are established in Schedule B, Worksheet B.3.

3) **Technology Products outside of StaplesAdvantage.com.** Prices for technology items provided to the Participating Agencies under the Staples technology ordering system referred to as Sequoia (or its successor) shall be priced at the then-current List Price and may be subject to discount. State of Michigan users are currently restricted from using this option.

4) **Promotional Purchases.** The Contractor may offer promotional products on a contract margin relative to the order size. Contract margin is defined as meaning Contractors cost plus percentage. These prices are auditable, if necessary, from invoices sent to the Contractor. These Contact Margins for promotional products ordered on our Staples Promotional Product ordering system referred to as Linc (or its successor). State of Michigan users are currently restricted from using this option. Discounts are as identified below:

ORDER/ TRANSACTION SIZE	CONTRACT MARGIN
$0 - $999.99	28%
$1,000 - $4,999.99	26%
$5,000- $9,999.99	24%
$10,000 +	22%

F. **Lowest Available Price.**

1) For Core contract items, the Hot List and Core pricing will be based upon fixed price or discount off fixed list price, however, occasionally special pricing through promotion or other means may be passed on as they become available. These special prices are temporary.

2) For Non-Core Balance of Contract items, the Contractor will utilize "best price logic" as identified in Section 5.1.D.

3) The Contractor will utilize "best price logic" for purchases made in its retail stores, which would result in the State receiving the lower of the current retail store price or the current contract price for those Core items available at the retail store at the time of purchase.

5.2. Price Term

A. Hot List Pricing will be firm fixed from contract execution to June 30, 2020 (exclusive of copy paper, toner and ink) and thereafter may be adjusted every 365 days, July 1st to June 30st. (Except as noted in **Section 5.3.B**. below). Adjustments may be requested, in writing, by either party and price increases will take effect no earlier than the date the Contract Change Notice (CCN) is processed incorporating the adjustments and it is executed by DTMB Central Procurement Services. Price decreases may be offered at any time and will be applied immediately and automatically by the Contractor.

B. The Hot List prices for copy paper, toner and ink will be held firm from contract execution through June 30, 2019 and then may be adjusted every 182 days (six months) with sixty days' notice (except as noted in **Section 5.3.B**. below). Adjustments may be requested, in writing, by either party and price increases will take effect no earlier than the Contract Change Notice (CCN) is processed incorporating the adjustments, is issued by DTMB Procurement Services. Price decreases may be offered at any time and will be applied immediately and automatically by the Contractor.

C. Core items which are based on discounts off list prices will be held firm from contract execution through June 30, 2019 and then may be adjusted every 182 days (six months) with sixty days' notice (except as noted in **Section 5.3.b**. below). Adjustments to list pricing may be requested, in writing, by either party and price increases will take effect no earlier than the date the Contract Change Notice (CCN) is processed incorporating the adjustments and it is executed by DTMB Central Procurement Services. Price decreases may be offered at any time and will be applied immediately and automatically by the Contractor. Core items will never be more than the established percentage off list price.

G. Non-Core, Balance of Contract items as defined in Section 5.1.D., will be the market prices that appear on the ordering platform at time of order.

5.3. Price Changes

A. Adjustments to the Hot List prices, will be based on changes in actual Contractor costs, but increases will not exceed 3% on total aggregate of overall the Hot List during any given adjustment period/term. See Section 5.2. A & B. Any request must be supported by written evidence documenting the change in costs. The State may consider sources, such as the Consumer Price Index; Producer Price Index; other pricing indices as needed; economic and industry data; manufacturer or supplier letters noting the increase in pricing; and any other data the State deems relevant.

B. Adjustments to the Core list prices will be based on changes in manufacturer or Contractor List Price that will be amended no more than every six months. Hot list items have their own amendment terms, see Section 5.2. A & B. Any request must be supported by the published Essendant and/or Contractor List prices. The State may consider sources, such as the Consumer Price Index; Producer Price Index; other pricing indices as needed; economic and industry data; manufacturer or supplier letters noting the increase in pricing; and any other data the State deems relevant.

C. In the event of Force Majeure as described in Terms and Conditions Section 47, pricing changes may be considered, with the provision of acceptable substantiation, prior to expiration of the firm dates.

D. In the event of unforeseen tariff changes on products resulting in price increases or decreases, the State and the Contractor may address and negotiate changes in pricing for those items independent of pricing terms defined in Section 5.1 and 5.2.

E. Following the presentation of supporting documentation, both parties will have 30 days to review the information and prepare a written response. If the review reveals no need for modifications, pricing will remain unchanged unless mutually agreed to by the parties. If the review reveals that changes are needed, both parties will negotiate such changes, for no longer than 30 days, unless extended by agreement between the Contract Administrator and the Contractor Representative.

F. The Contractor remains responsible for Contract Activities at the current price for all orders received before the mutual execution of a Change Notice indicating the start date of the new Pricing Period. Any changes to pricing must be implemented through an issuance of a Contract Change Notice by DTMB Central Procurement Services (which will be executed by the Parties as soon as practicable). All Contract Change Notices will include a new item listing (for all categories: paper, toner, general office supplies) which will replace all prior versions of the item listing. The Change Notices will clearly describe which price categories have not changed and which categories have been modified.

G. New pricing shall not apply to products ordered prior to the exercised Change Notice and the mutually accepted execution date even if they had not yet been shipped, received or billed.

5.4. Pricing Audit

A. **List Pricing**. The Contract Administrator may request from the Contractor on a quarterly basis list pricing as published by wholesalers Essendant or by the Contractor for the Contractor's catalog of products, however, the list prices for the Core items will be held initially for six months and thereafter as per **5.2.C. Price Term**. The initial list price data will be expected to be provided at contract execution and then again at contract "go live" on March 1, 2019.

B. **Balance of Contract Pricing**. Those items considered to be Balance of Contract are priced at time of purchase and are not subject to audit other than verification that price presented at time of order

and as confirmed, and/or contained on the packing slip, is the price being charged on the applicable invoice.

C. **Incorrect Pricing/ Correction and Refund.** This Contract may be audited quarterly, at the State's discretion, via electronic invoicing documentation provided to the State by the Contractor. If audit findings show that incorrect prices were invoiced, the State will contact the Contractor to remedy the situation and issue refunds.

1) Pricing will be corrected within 24 hours

2) Refunds will be issued to the State within 30 days.

D. **Retention of Records.** See **Standard Terms and Conditions, Section 37.**

E. The State expects Contractor to conduct internal pricing and contract compliance audits continuously throughout the term of this Contract, or at a minimum on a quarterly basis, during the months of July, October, January, and April to assure accurate pricing.

5.6. Core Review

On an annual basis the Hot List may be reviewed and may be updated. Hot List pricing shall be the best pricing available and will always be less than the Core discount off list percentage pricing.

A. The Contractor will provide a State line item usage report for all items purchased that year which shall include the item number, product description, count of items purchased, price paid. This report shall be used in determining the next year's Hot List. Based on State usage, items may be added or removed from the Hot List, and prices negotiated/confirmed which shall be held firm per **Section 5.2. Price Term.**

B. The Contractor will provide to the State of Michigan a National consolidated line item usage report for all items purchased that year including the item number, product description, count of items purchased, price paid. This report shall be used in determining the next year's Hot and Core List. Based on National usage, items may be added or removed from the hot and core, and prices negotiated/confirmed which shall be held firm per **Section 5.2. Price Term.**

6. Ordering

6.1. Method of Procurement

Products must be made available for procurement through the following methods:

A. **Online Catalog/Ordering System**

1) Contractor's online catalog/ordering system will be available 24 hours a day, 7 days a week, except for scheduled maintenance.

a. Contactor's online catalog/ordering system will include all the Contractors available product items. The items the State has specifically requested to be "restricted" will remain viewable, however, those items shall be noted as being restricted and will be unavailable for selection to purchase.

b. Contractor's online catalog/ordering system will identify State of Michigan "Core" items and will drive usage to these items.

c. The Core items shall be listed first in any search on the purchasing platform and shall appear least expensive to most expensive, effectively placing Hot List items first in viewing order.

d. Online customers can view product availability before placing orders and the online system will automatically notify online customers when less expensive alternate is available and direct them to it.

e. Website will allow for order tracking and order history review. Ideally, the purchasing platform will allow for users to create "frequently ordered" lists that can be used to expedite purchases.

f. Order acknowledgements must be provided electronically to customers.

2) Contractor will work closely with the State and its agencies to initiate usage of their online ordering platform by establishing authorized users, assigning accounting and shipping codes, and establishing approval paths

3) The Contractor will provide training to all authorized online ordering platform users throughout the terms of the contract.

a. Prior to go live date, in a timeline established in the transition in, training materials will be provided by the Contractor to State, for its use, shall include but not be limited to:

1. Recorded webinars and electronic training tutorials which provide orientation to the web-catalog/ purchasing platform and aspects of order, shipping, billing and receiving.

2. Tutorials for "administrators" regarding user and account management and reporting functionality.

3. The Contractor will update these webinars and tutorials throughout the contract period should the on-line purchasing platform and web page change, or as requested by the state.

b. At the time users first obtain access to the ordering system, they will be sent a welcome e-mail which provides links to tutorials and to the State's intranet.

c. The Contractor will provide to the State prior to the go live date and at times as requested by the Contract Administrator in-service training to agency personnel on on-line platform usage, products, installation, and product safety issues. This training will be extended to MiDEAL members.

d. The Contractor will also provide agency training jointly with the State as needed during the period covered by the Contract at no additional charge. This training will be extended to MIDEAL members.

e. The Contractor will provide to the State, prior to the go live date and updated as necessary, a FAQ PDF for use on the State's Intranet as requested.

4) Website will allow designated customer administrators to set up, add, modify, and delete end users, with permissions and restrictions, approval paths, varying levels of authorization of purchases, etc. independently, without having to contact customer service or Contractor's sales representative.

5) The Contractor will be willing and have the capacity to work with third-party providers of Electronic Data Interchange (EDI) services which have been chosen by the State. The Contractor will be willing, at no additional charge to the State or to the EDI provider, to transmit text and image catalog information to the State's provider of EDI services at the State's request.

6) Online Catalog Technical Support. Contractor will have sufficient help desk resources to promptly provide technical assistance to the State and MiDeal members.

a. Contractor will provide online Customer Service support which enables real-time, online interaction with Customer Service through:

1. instant messaging;

2. live log-on assistance;
3. web collaboration; and
4. call-back requests.

B. **Phone, Fax or E-mail Orders.** Phone, fax or e-mail orders can only be places by authorized users.

1) The Contractor will maintain multiple U.S. based contract customer support centers and an additional support center for retail and centralized functions.

a. All the Contractor's contract call centers will overlap support capabilities and have redundant data and power entry.

b. Contractor will reroute calls in the event of a phone outage or other emergency

2) Contractor will offer a toll-free Customer Service/Order number dedicated to State of Michigan and MiDEAL member Accounts.

3) The Contractor's normal business hours for receiving orders and providing customer service will be Monday through Friday, 8:00 a.m. to 5:00 p.m. (ET).

4) The Contractor will assign an order number, if not provided by the State, for invoicing purposes.

5) Orders place via phone, fax or e-mail are limited to $2,500.00 unless written on a SIGMA generated DO.

C. **Retail Network**

Contractor will have a nationwide retail network.

1) Purchases can be made at any of the Contractor's retail locations via a registered procurement card and receive either the contract pricing or the retail pricing, whichever is lowest at the time of purchase.

2) Purchasers may place orders via Staples Business Advantage and elect to pick up all or some of their order at their selected retail location for items that are actually stocked and available for pick-up at that location.

D. **Diversity Program.** The Contractor offers the option for purchases to be made through approved Staples Tier One Diversity partners. Entities looking to meet diversity sourcing requirements for their organizations will want to discuss this with the Contractor.

1) Contractor reserves the right to implement up to a 4% pricing upcharge when establishing a Tier One Diversity program for any Participating Agency.

2) State of Michigan users are currently restricted from using this option.

E. **Employee Purchase Program**

The Contractor shall allow State employees to purchase from this Contract utilizing State pricing. The Contractor will supply Deliverable(s) to State employees on a direct and individual basis. Purchases may be made in the following manner:

1. Employees must register with the Contractor to take advantage of the Employee Purchase Program. The Contractor will offer a Personal Advantage program that extends coupons for employee's personal use on products and services throughout the year in any of their U.S. Staples stores. These coupons will provide discounts on popular retail products and services.

2. State employees may register their personal credit cards and receive contract pricing on personal purchases made via StaplesAdvantage.com. Purchases made through this program will ship direct to the employee's home.

3. State employees may make purchases at any one of the retail locations and using their register personal credit cards receive contract pricing on personal purchases.

6.2 Order Fulfillment

A. **Fill Rate**. The Contractor will strive to maintain a monthly State of Michigan statewide average Fill Rate of 98%. If the fill rate falls below 98% for three consecutive months and the Contractor fails to provide an explanation for the reduction which is satisfactory to the State, the State may cancel the contract with a 30-day written notice to the Contractor.

B. **Backorders**. Customers will be notified at time of order placement of shipment delays, partial shipments and back orders.

1) If the Contractor is temporarily out of stock on an item, the Contractor will first notify the end user in one of the following ways:

a. Contractor's Internet ordering system provides in-stock/backorder status.

b. Customers phoning in orders will be notified of a backorder at the time of order placement.

c. A backordered item will be annotated on a FaxBack or e-mail order confirmation, and

d. Annotated on the packing list that the end-user receives with the order. The packing list will automatically provide a systemically generated due date (this due date is based on average Contractor lead-time).

2) The Contractor will then work to fill the backorder.

a. If the Contractor's system is unable to fill a line, the Contractor's local purchasing group will source the backordered item.

b. The order is then placed to ship from the nearest, quickest source. In the event the back order cannot be satisfied within 10 days, or the time required by the customer, the order may be cancelled by the State.

3) Backordered items will not be billed for until the item has been delivered.

C. **Discontinued/ Unavailable Items**. If an item is discontinued, or has an unusual lead-time, the customer will be notified of this at the time of the order, or if the order is faxed, the Customer will be called the same day and given a choice of canceling the order/item or selecting an alternate.

D. **Product Substitution**. Product substitution is not allowable unless written approval is received from the requesting agency.

E. **Special Orders**. Customers may purchase items that are not normally stocked or are volume purchases. Delivery times for these orders will be as established in the quotation provided by the Contractor.

6.3 Minimum Orders

There shall be a minimum order requirement of $35.00 unless otherwise mutually agreed upon.

6.4. Authorizing Document

The appropriate State of Michigan authorizing document for the Contract will be:

A. An order placed through the on-line purchasing portal which has gone through the State Agency's established approval process, if applicable and requested by the Agency.

B. An order placed via, e-mail, phone, fax or at a retail location which must be placed by an authorized user set up in the system.

C. All orders placed utilizing any of these methods will be bound by the terms and conditions of this contract.

6.5. Order Verification

A. Only authorized individuals may make purchases under this contract. The Contractor will need to verify that all orders placed via phone, fax or e-mail have been placed by user that have been established and registered as a user in the on-line purchasing platform.

B. Orders placed by unauthorized individuals are not to be fulfilled. The Contractor will notify the party making the order request to contact their Primary Office Supply Contact to become an authorized purchaser.

7. Delivery

7.1. Time Frames

All Contract Activities must be delivered as follows:

A. Contractor will use commercially reasonable efforts to ship stocked products, ordered before 4:00 p.m. local time, for delivery the next business day to the Lower Peninsula after acceptance of an order, except for backordered or special-order products.

B. Contractor will use commercially reasonable efforts to ship stocked products, ordered before 4:00 p.m. local time, for delivery within two (2) business days to the Upper Peninsula after acceptance of an order, except for backordered or special-order products.

C. If a product is backordered, or shipment is delayed for any reason:

1) The purchaser will be notified during the ordering process or immediately after the order is place via e-mail of such delay and provided with the anticipated ship date, and Contractor will use commercially reasonable efforts to deliver the delayed product as promptly as commercially practicable.

2) Contractor will treat any such delayed order as active unless the purchaser contacts the Contractor and provides other instructions to cancel the order.

7.2. Delivery

A. All deliveries shall be made to the location indicated in the order and shall be made during the location's standard business hours, typically between 8 am and 5 pm, although the Contractor will be required to verify delivery time requirements per location.

B. All deliveries must be accepted/signed for. No deliveries shall be made or "dropped" outside of any location in the anticipation that an employee may receive it when they arrive or see it.

C. Standard Delivery. Unless specified otherwise below, delivery is governed by Section 18, Delivery, in Standard Terms and Conditions. Prices are F.O.B. Destination, "within Government Premises with transportation charges prepaid by the Contractor on all orders.

1. Building/Loading dock. Delivery to a main loading dock, primarily for palletized and large bulk orders.
2. Desk top. Delivery to specific addresses, floors and locations on those floors.
3. Secured Facilities. Some deliveries will be made to Department of Correction facilities and drivers entering those facilities will have to have LEIN clearance prior to admittance. The clearance applications will be made available upon request.
4. Some State employees work from home offices around the State. Orders from these employees will be delivered to their home office (unless otherwise specified).

D. Additional freight charges may apply for special delivery, non-standard delivery, rush delivery, or special or custom order products which will be disclosed at the time of the quote and/or the placement of the order by the purchaser.

1) Common delivery exceptions that require a surcharge include, but are not limited to:

a. Furniture unpacking or assembly
b. Expedited deliveries
c. Bulky or heavy items such as cases of water, soda, ice melt and chemicals
d. Manufacturer direct or special orders
e. Deliveries outside of the Contractor's standard distribution area, such as Alaska and Hawaii

E. "Non-UPS-able" items are items classified as hazardous material, including ORM-D (other regulated materials for domestic transport only). Staples policy prohibits us from shipping any fully regulated hazardous material items; they must be shipped directly from the vendor.

7.3. Packaging and Palletizing

Packaging must be optimized to permit the lowest freight rate. Shipments must be palletized whenever possible using manufacturer's standard 4-way shipping pallets.

8. Acceptance

8.1. Acceptance, Inspection and Testing

The State will use the following criteria to determine acceptance of Products:

A. **Initial Inspection**

1) If at the time of delivery, damage is visually noted, the delivery will be rejected, and the product returned with the driver.

2) Within 8 business hours of delivery, the State will initially inspect to confirm that product has been delivered as ordered and that there are no signs of damage.

a. If this inspection reveals incorrect product or damage, the State will notify the Contractor of deficiencies within three business days.

3) If the order passes the initial inspection, it will be conditionally accepted dependent on continued inspection as they are consumed by the business areas.

B. **Continued Inspection**. After the order has been conditionally accepted and the products are placed into stock, as each box is opened for use it will be inspected as to usability by the business area.

1) If at any time once in stock, until the products use, it is determined that a deficiency has been discovered the State will notify the Contractor within twenty-four hours to discuss the nature of the deficiency and work with the Contractor to either correct the deficiency by providing replacement stock or credit the State.

8.2. Damaged Goods, Defective Merchandise, Returns

A. **Damaged Freight, Error in Shipment, Defective Items**

1) The Contractor will pay and arrange for all shipping and handling charges for items returned because of freight damage, error in shipment or defective items.

2) Agencies will be credited the full amount of all items returned.

3) All credits will be made to the account codes used to purchase the returned items.

4) If the order had multiple account codes, the agency will instruct the Contractor to which code or codes the credit will be assigned.

5) The Contractor will issue credit within seven (7) calendar days once item has been returned to Contractor's in-state distribution warehouse.

B. **Credit and Return Policy.** Products may, if unused, be returned to Contractor for any reason, other than as stated in **Section 8.2.A.,** in accordance with the following policy:

1) The product must be returned to the Contractor with its complete and original packaging intact (original UPC code, packaging materials, instructions, manuals, etc.).

2) General office supplies must be returned within 30 days of receiving the product.

3) Software, if purchase is allowed, may only be returned if unopened, within 30 days of receiving the product. If software is opened and defective it may be exchanged for the same title and version within 30 calendar days of receiving the software.

4) Facilities Supplies must be returned within 30 days of receiving the product.

5) Furniture must be returned within 14 days after delivery. Furniture in new condition, unassembled and in original packaging are eligible for return. A 35% restocking fee may apply. Special order, customized, manufacturer-direct shipped or assembled furniture is not returnable, unless such products arrive damaged or defective.

6) Custom products are not returnable unless damaged or defective within 30 days

7) Account will be credited when returned merchandise is received back into inventory.

8.3. Return Process.

The Contractor will accept returns of a product in resalable condition with its complete and original manufacturers' packaging intact and undamaged, including Universal Product Code (UPC), manuals and parts and a copy of the packing slip.

1) Users/purchasers can call the Customer Service team to submit a return or use the no-hassle online return process offered through StaplesAdvantage.com.

2) Your delivery driver will pick up the returned item so no shipping expense is required. Typically, returns are picked up within 1 to 5 business days.

3) Credit for returned items is issued once the items are received at the Staples fulfillment center. The credit is released within 24 to 48 hours after receipt of the items.

4) IMPORTANT NOTES ABOUT ALL RETURNS:

a. Non-defective dated goods such as forms, batteries, film, toner and ink cartridges are subject to approval and require a Return Authorization for credit.

b. Calendars cannot be returned after January 31 of the year to which they correspond.

c. For health and safety reasons, food, beverages, first aid and medical products cannot be returned.

d. For similar reasons, janitorial and sanitation products (such as cleaning chemicals) can only be returned in unopened and unaltered original case quantities and packaging.

e. Products purchased in bulk, including those intended to be used during a World Health Organization epidemic or pandemic alert, are subject to review prior to return.

f. Additional charges may be incurred for the shipping and handling of products classified as hazardous or oversized materials. Partial cartons or opened containers of hazardous materials cannot be returned. It is your responsibility to ensure the products are used and disposed of in accordance with all applicable federal, state, county and local laws and regulations, including environmental rules and regulations.

9. Invoice and Payment

9.1. Invoice Requirements

A. All invoices submitted to the State must be submitted with a summary sheet for the invoices included during any given frequency period.

B. At least two Agencies within the State will require consolidated or alternate invoicing. The Contractor must be willing to work with those Agency to meet their needs.

C. Frequency: Invoices may be required to be sent biweekly or monthly depending on the State Agency's requirements.

D. Invoices will include:

1) Date;

2) Master Agreement Number

3) Delivery Order Number (if any- dependent on type of order) or Contractor Assigned Order Number

4) Ship To and Bill To Addresses

5) Name of Authorized Purchaser

6) Quantity;

7) Description of the Contract Activities;

8) Unit price;

9) Shipping cost (only allowable as a line item on Special Order quoted products); and

10) Total price.

9.2. Payment Methods

A. The State prefers to make payment for Contract activities via EFT or P-Card. If electronic payment fails, a paper warrant will be issued.

B. P-Card/credit card may be used at the time of purchase only but may not be used to pay an AR invoice.

9.3 Payment Term

A. For the State of Michigan and all MiDeal members, all undisputed invoice amounts are payable within 45 days of receipt.

B. For Participating Agencies all undisputed invoice amounts are payable within 30 days of receipt or as negotiated

10. Project Plan – Transition In.

A. This contract and contract pricing are effective on the Contract Effective Date.

1) The State intends to "go live" and begin using this new contract as soon as possible, based upon the Contractor meeting its transition responsibilities outlined in 10.B. and as deemed acceptable by the Contract Administrator.

2) Those participating agencies currently utilizing the NPP Office Supply Contract may transition into utilizing this Master Agreement at any time once the Intergovernmental Cooperative Purchasing Agreement has been signed and filed with NPP, as allowed by their laws, statutes or procurement procedures, and as agreed upon with the Contractor.

a. Participating agencies will establish their own transition timelines and tasks.

b. Contractor will provide sufficient management to guarantee implementation is completed quickly and according the Participating Agency's exact requirements.

3) Any new participating agencies may utilize this Master Agreement at any time once the Participating Agency Endorsement and Authorization has been signed and filed with NPP, as allowed by their laws, statutes or procurement procedures, and as agreed upon with the Contractor.

a. Participating agencies will establish their own transition timelines and tasks.

b. Contractor will provide sufficient management to guarantee implementation is completed quickly and according the Participating Agency's exact requirements.

B. The Contractor will work with the State and:

1) Will meet with the Contract Administrator by February 15, 2019 to establish a timeline for a full-scale contract introduction campaign educating the State's users regarding the new contract, how the new contract changes the way things are done, improvements to the Contractors' online purchasing portal. This will include, but is not limited to:

a. Contract introduction meeting to be held with the State's Primary Office Supply Contacts.

b. Production of Lunch and Learns or other applicable training

c. Production of communication collateral

d. Updating or creation of web-based tutorials

2) Conduct account "hygiene" by arranging to meet with all Office Supply Primary contacts by February 15, 2019 to confirm, amend and update user information including but not limited to:

a. User Name,

b. User ID/E-mail address

c. Bill To

d. Ship To

e. Delivery Requirements

f. Frequency of Invoicing

3) Produce the PDF version of the State's "Hot List" Catalog for a publication date of March 1, 2019 if not sooner.

C. The Contractor will internally:

1) Consolidate vendor lines to leverage better cost pricing

2) Shift items from third-party suppliers to items stocked internally.

3) Analyze and explore other opportunities to achieve product cost savings.

11. Liquidated Damages

Unauthorized Removal of Key Personnel will interfere with the timely and proper completion of the Contract, to the loss and damage of the State, and it would be impracticable and extremely difficult to fix the actual damage sustained by the State. Therefore, the State may assess liquidated damages against Contractor as specified below.

A. The State is entitled to collect $1,000 per individual per day for the removal of any Key Personnel without prior approval of the State.

B. The State is entitled to collect $1,000 per individual per day for an unapproved subcontractor replacement.

Notwithstanding the foregoing, reassignment or removal of Key Personnel for reasons beyond the Contractor's control, including but not limited to illness, disability, death, leave of absence, personal emergency circumstances, resignation, or termination for cause will not be deemed "unauthorized Removal of Key Personnel" and will not entitle the State to assess liquidated damages.

12. Additional Requirements

12.1. Recycled Content and Recyclability

A. **Deliverables in General**. Without compromising performance or quality, the State prefers Deliverable(s) containing higher percentages of recycled materials.

B. **Paper**. To the extent available, a portion of the paper products purchased by the State must contain recycled paper if the cost of such paper products does not exceed by 10 percent the cost of non-recycled paper products.

1) The statutory goals are that 50% of the paper purchased must contain 50% recycled fibers. (See MCL 18.1261b).

2) During the contract, the contractor will research and offer recycled paper products as possible replacement options to assist in reaching these goals.

3) DTMB requires that some paper be provided as "virgin" to process through the printers properly.

C. **Packaging**. The State prefers packaging materials that:

1) are made from recycled content that meets or exceeds all federal and state recycled content guidelines (currently 35% post-consumer for all corrugated cardboard);
2) minimize or eliminate the use of polystyrene and other difficult to recycle materials;
3) minimize or eliminate the use of packaging and containers or, in the alternative, minimize or eliminate the use of non-recyclable packaging and containers;
4) provide for a return program where packaging can be returned to a specific location for recycling; and
5) contain materials that are easily recyclable in Michigan.

D. **Recycling Options**. If allowed, the Contractor can offer through this contract a wide range of no- and low-fee recycling services:

1) **Ink & Toner Cartridges** – The Contractor provides free delivery driver pick-up and mail-back service. Simply work with your delivery driver to pick a location for regular pick-up or print a mail-back label from StaplesAdvantage.com.
2) **Technology** – The Contractor can offer low cost options for responsible and secure technology recycling including certificate of recycling and optional serial number tracking services. If approved, users can order prepaid recycling kits, boxes and pallets for larger items through StaplesAdvantage.com. The Contractor's tech recycling partner ERI Direct is e-Stewards and R2 certified at all locations for responsible e-waste management practices.
3) **Furniture** –Talk to the Contractor Representative/ Strategic Account Leader for details on recycling, decommissioning and donating office furniture. The Contractor's customers can trade in their old outdated cubicle systems and furniture to Davies for a credit towards Grade A like new remanufactured furniture by Davies from leading brands like Knoll, Steelcase, Haworth and more. Alternatively, the Contractor can direct customers to other furniture donation and recycling options like IRN. Currently not applicable to the State.
4) **Lamps, Ballasts & Batteries** – The Contractor offers mail-back recycling services on StaplesAdvantage.com. Simply order the right-size container, fill it with your goods and put it in the mail. Pricing is inclusive of packaging, shipping and recycling.
5) **Other Hard-to-Recycle Items** – Divert hard-to-recycle waste from landfills with Staples Zero Waste Boxes. Simply fill, close and ship — StaplesAdvantage.com box prices include all shipping and recycling fees. Use our Zero Waste Boxes to recycle coffee pods, breakroom waste, binders, safety supplies, writing instruments and more.

Schedules B and C, which are part of this total contract, are attached separately.

Transmittal 2

TRANSMITTAL 2

TO: HARBOR DEPARTMENT PURCHASING OFFICE
500 Pier "A" Street
Berth 161
Wilmington, CA 90744

BID NO. F-1157 Page 1
Show this number on envelope

Contract No. 39999

1. COMPLETE CONTRACT
This entire Bid Request shall become the contract upon its execution by the Executive Director on behalf of the Harbor Department of the City of Los Angeles. The complete contract shall consist of the entire Bid (including Specifications), this page, terms and conditions, any addendums, and when required, CONTRACTOR'S BOND. Contractor will be provided with a copy of the executed contract.

2. GOODS AND SERVICES TO BE PROVIDED BY THE CONTRACTOR
The Contractor agrees, upon acceptance of this offer by the City, to furnish the goods and services herein specified according to the terms and conditions as set forth herein.

3. AMOUNT TO BE PAID
The City agrees to pay the Contractor for the goods or services in the manner described in the paragraph entitled "PAYMENTS" on the reverse side of this form. Unless otherwise indicated by the Bidder, remittance by the City for goods or services will be made to the address below.

4 CHOICE OF ALTERNATIVE PROVISIONS; OPTIONS; NOTIFICATION
When alternative provisions are requested, or options are offered, the Contractor will be notified as to which provision, or option, is Being accepted when notification is sent that the Contractor is the successful bidder.

5. DECLARATION OF NON-COLLUSION
The undersigned certifies (or declares) under penalty of perjury that this bid is genuine and not sham or collusive, or made in the interest or on behalf of any person, firm, or corporation not herein named; that the bidder has not directly or indirectly induced or solicited any other bidder to put up a sham bid, or any other person, firm or corporation to refrain from bidding, and that the bidder has not in any manner sought by collusion to secure any advantage over other bidders.

6. LEGAL JUSTIFICATION
This agreement shall be deemed entered into in Los Angeles, California, and shall be governed and construed in accordance with the laws of the State of California.

EXECUTED AT: Orlando, FL (City, State) ON THE 14 (Date) DAY OF February (Month), 2023 (Year)

BIDDER MUST COMPLETE AND SIGN BELOW:

Firm Name Staples Contract & Commercial LLC

Phone Please contact Don Hasch: (714) 868-4274 Fax N/A

Address 500 Staples Drive (Street) Framingham (City) MA (State) 01702 (Zip)

Signature Tammy Kiger (Printed Name) Area Vice President (Printed Title)

Please see attached Secretary's Certificate. (Signature) (Printed Name) (Printed Title)

(Approved Corporate Signature Methods)

a) **Two signatures:** One by Chairman of Board of Directors, President, or a Vice-President **AND** one by Secretary, Assistant Secretary, Chief Financial Officer or an Assistant Treasurer.

(AFFIX CORPORATE SEAL HERE)

b) **One signature:** By corporate designated individual together with properly attested resolution of Board of Directors authorizing person to sign.

NOTARIZATION: Bids executed outside the State of California must be sworn to and notarized below.

County of Orange

State of Florida S.S.

Subscribed and sworn this date 2/14, 2023

ARLEEN SARPPRAICONE
Notary Public-State of Florida
Commission # HH 316138
My Commission Expires
September 25, 2026

Notary Seal Signature

In witness whereof the Board of Harbor Commissioners of the City of Los Angeles has caused this contract to be executed by the Executive Director of the Harbor Department of said City and said Contractor has executed this contract the day and year written below.

By _____
Executive Director Harbor Department

_____
Date

Approved as to form and legality

3/6, 2023

City Attorney

BY _____
Deputy

REQUEST FOR COOPERATIVE AGREEMENT

CITY OF LOS ANGELES
HARBOR DEPARTMENT

BID NO. F-1157

SUBMIT BID TO:	**BID DUE BEFORE**
Los Angeles Harbor Department Purchasing Office, 1st Floor 500 Pier A Street Wilmington, CA 90744 **OFFICE HOURS:** 7:30 a.m. – 4:30 p.m. Monday through Friday (excluding Holidays)	**11:00 A.M.** **February 7, 2023**
Buyer: Juan Benitez, Procurement Supervisor (310) 732-3890 **Email: jbenitez@portla.org**	**BIDS WILL BE PUBLICLY OPENED**

ALL ITEMS REQUESTED MAY BE QUOTED AS "OR EQUAL".
AFFIRMATIVE ACTION – AN APPROVED AA PLAN OR CERTIFICATION, IF NOT ON FILE, WILL BE REQUIRED PRIOR TO AWARD OF CONTRACT.

QUANTITY AND UNIT	ITEMS and DESCRIPTION	UNIT PRICE QUOTED	EXTENSION

OFFICE SUPPLIES AND EQUIPMENT (REBID)

This contract is in accordance with the "National Purchasing Partners (NPP) Contract# 190000000268 for the annual requirements of the Los Angeles Harbor Department: OFFICE SUPPLIES AND EQUIPMENT, to be furnished and delivered as may be required upon the execution of the contract for a period of one-year from the date of contract execution, including two, one-year renewal options, subject to the approval of the Executive Director.

PRICES QUOTED ARE IN ACCORDANCE WITH "National Purchasing Partners (NPP) Contract# 190000000268 PER THE CITY OF LOS ANGELES ADMINISTRATIVE CODE DIVISION 10, CHAPTER 1, ARTICLE 2, SECTION 10.15 (a) (8).

The terms of the attached Exhibit 1 –" National Purchasing Partners (NPP) Contract# 190000000268" are incorporated herein.

This contract is awarded for the following: OFFICE SUPPLIES AND EQUIPMENT:

Contact Term of NPPGov Contract: March 1, 2019 – May 31, 2024

Timeframe

-Staples will honor the new contract with two (2) one-year extensions for the entire products and services offering including office supplies, furniture, school supplies and copy & print services.

REQ. NO.: VAR NOTIFY: T. Carey **PAGE 2**	STATE TIME OF DELIVERY: _____DAYS AFTER RECEIPT OF ORDER TERMS DISCOUNT FOR PAYMENT WITHIN _____ DAYS. BIDDER MUST SIGN THIS BID ON PAGE 1

PRICING

Eligible Customers/Agencies –

- Members of NPPGov across the nation, as well as government units in all other states(collectively, "Participating Agencies"),

Products Included - The Contractor will provide their organization's entire catalog of products and services as part of this contract. This will allow the State and Participating Agencies the opportunity to order a broad range of products and services, as appropriate for their needs.

Pricing Highlights (Excerpts: See Master Agreement for complete pricing details)

A. Core/Hot List. Net pricing on approximately 1,200 items established for the State and Participating Agencies.

- Participating Agencies may modify or amend this list per their specific requirements and usage if deemed necessary to create their own "Hot Lists".

B. Catalog/Discount Off List. Approximately 24,000 will be net priced based on List Less discounts in 28 designated product categories. See Schedule B.2a for categories and discount percentages. Actual products and net pricing will be available online at staplesadvantage.com under the Participating Agency's NPPGov contract login.

C. Core/ Manufacturer Direct Furniture. MiDeal members or Participating Agencies may purchase furniture through Staples who will coordinate and order directly from the manufacturer at the discounts established in Schedule B, Worksheets B.3a and B.3b, resulting in an even greater savings.

D. Non-Core Balance of Catalog. Non-Core Balance of Catalog Items are those items that are not on the Schedule B but are available on Staplesadvantage.com.

1) For those Non-Core Items that also appear on Staples.com, prices will be based on the current national Staples.com pricing exclusive of tier pricing, closeouts, promotions and/or specials, or items that are regionally sensitive.

2) The prices for Non-Core Items that are not available for purchase on Staples.com but which appear on Staplesadvantage.com, will be adjusted to reflect changes in stock availability, market conditions, buying expense, and other factors that affect the overall cost of the Non-Contract Items.

Excerpt from MA Section 1.C.3. Each Participating Agency may negotiate for its own "Hot List" of items, comprising of or independent of the State's "Hot List", that will represent its' most used items. Participating agencies "Hot List" item pricing may be less than, but never more than the prices established in this Master Agreement.

E. Quoted Products: Special Orders, Manufacturer Direct Furniture and Promotional and/or Bulk Purchases. There may be additional services available which are associated with certain products, including, but not limited to: furniture, facilities or water/coffee dispensers, customized products etc. which at the option of the State or Participating Agency may be allowable for purchase or lease at the time of order/agreement. Customers will need to contact their Contractor Representative or the

Customer Service Specialist in order to obtain a quote for these products and the costs for such products and/or services shall be established at the time of purchase.

1) Special Orders. The Contractor will be able to quote, as need arises for office supply and office related items which are not available on Staples Business Advantage.com, or other products and services as otherwise mutually agreed. The State will not be required to purchase special order items if the item can be purchased at a lower price or within a better timeframe from elsewhere.

2) Manufacturer Direct (Furniture). The Contractor will be able to quote for large scale furniture needs utilizing discounts off the then current manufacturer's list pricing, Manufacturer's published list prices can be made available upon request. These discounts are established in Schedule B, Worksheet B.3.

3) Technology Products outside of StaplesAdvantage.com. Prices for technology items provided to the Participating Agencies under the Staples technology ordering system referred to as Sequoia (or its successor) shall be priced at the then-current List Price and may be subject to discount.

4) Promotional Purchases. The Contractor may offer promotional products on contract margin relative to the order size. Contract margin is defined as meaning Contractors cost plus percentage. These prices are auditable, if necessary, from invoices sent to the Contractor. These Contact Margins for promotional products ordered on our Staples Promotional Product ordering system referred to as Linc (or its successor). State of Michigan users are currently restricted from using this option. Discounts are as identified below:

ORDER/ TRANSACTION SIZE	CONTRACT MARGIN
$0 - $999.99	28%
$1,000 - $4,999.99	26%
$5,000- $9,999.99	24%
$10,000 +	22%

Delivery –

- Standard Delivery. Unless specified otherwise below, delivery is governed by Section 18, Delivery, in Standard Terms and Conditions. Prices are F.O.B. Destination, "within Government Premises with transportation charges prepaid by the Contractor on all orders.

o Building/Loading dock. Delivery to a main loading dock, primarily for palletized and large bulk orders.

o Desk top. Delivery to specific addresses, floors and locations on those floors.

- Additional freight charges may apply for special delivery, non-standard delivery, rush delivery, or special or custom order products which will be disclosed at the time of the quote and/or the placement of the order by the purchaser.

o Common delivery exceptions that require a surcharge include, but are not limited to:

a) Furniture unpacking or assembly
b) Expedited deliveries
c) Bulky or heavy items such as cases of water, soda, ice melt and chemicals
d) Manufacturer direct or special orders

Minimum Order Size - Minimum order size of $35.00 per order

Payment Terms –

- For Participating Agencies all undisputed invoice amounts are payable within 30 days of receipt or as negotiated

Refer to NPPGov State of Michigan Master Agreement 190000000268 for complete applicable contract terms.

NPPGov & State of MI Websites
www.nppgov.com www.michigan.gov/dtmb/

Staples Website
www.staplesadvantage.com

The Harbor Department will not pay invoices covering the delivery of any merchandise that is excluded from or not explicitly authorized by this contract.

MONTHLY REPORTS:
The supplier shall provide the Port's Purchasing Agent with monthly reports, to include the following:

1) Expenditure Report that indicates Manufacturer name, description, product/part number, quantity, unit price and extended price of all items sold to the Harbor Department (contract inception to report date).

2) Recycled Material/Product Report that indicates the quantity and description of products sold to the Harbor Department that has recycled material content. This information may be included in the Expenditure Report.

3) Small Business Enterprise Report that indicates the quantity and description of products sold to the City that were manufactured by or obtained from Minority, Women, or Other Business Enterprise sub-suppliers. This information may be included in the Expenditure Report.

Reports shall be created in a MS/Excel spreadsheet format as provided by the Director of Contracts and Purchasing of the Harbor Department, and delivered by the 10th of the following month to Port of Los Angeles, Contracts and Purchasing Division, 500 Pier "A" St. Berth 161, Wilmington, CA 90744. The supplier shall reference the Port's contract number on all reports

Staples Website
www.staplesadvantage.com

Since you are eligible to participate in the NPPGov Contract, Staples is offering the NPPGov program in response to this RFP. Accordingly, Staples' proposal is based on the understanding that the terms and conditions of the national NPPGov-Staples Contract would govern in lieu of the terms and conditions included in this RFP. Any terms, conditions, or covenants beyond those set forth in the national NPPGov-Staples Contract are subject to further discussion and good faith negotiations between the parties if Staples is awarded this RFP. For the avoidance of doubt, in no event will Staples be deemed to have accepted the terms and conditions included in this RFP by submitting this response.

REQUEST FOR COOPERATIVE AGREEMENT

CITY OF LOS ANGELES
HARBOR DEPARTMENT

... BID NO. F-1157
(SHOW THIS NUMBER ON ENVELOPE)

BIDDER'S INSTRUCTIONS

REQUEST FOR QUOTATION BIDDER RESPONSIVENESS. In order to be responsive, bidders shall complete and return all Quotation documents requested by the Port, including addenda, specifications, drawings and all forms.

It shall be the bidder's responsibility to **provide one (1) original and one (1) copy** of the completed Quotation documents. The original and all copies shall include all quotation documents requested by the Port, including addenda, specifications, drawings and all forms.

The Purchasing Agent may deem a bidder non-responsive if the bidder fails to provide all Quotation documents requested by the Port at the Quotation closing date and time.

ADDENDUMS. From time to time, the Harbor Department may deem it necessary to issue an addendum(s) to modify or cancel a Bid Request. Such addendum(s) will be available on the Port of Los Angeles internet website – www.portoflosangeles.org and the Los Angeles Business Assistance Virtual Network website – www.labavn.org. It is the responsibility of the bidder to be aware of and respond to any such addendum(s) before the deadline of the applicable bid request. Failure to do so may deem the bid non-responsive.

BID SUBMITTAL TIMELINESS
Bidders solely are responsible for the timeliness of their submittals. As such, bidders are cautioned to budget adequate time to ensure that their bids are delivered at the location designated at or before the deadline set forth above. Bidders are cautioned that matters including, but not limited to, traffic congestion, security measures and/or events in or around the Harbor Department, may lengthen the amount of time necessary to deliver the bid, whether the bid is submitted in person or by mail.

AWARD. The Harbor Department reserves the right to reject any or all Bids, award Bid as a whole, split award or delete line items, as it may deem necessary, unless otherwise stated herein.

SUPPLIER CONTACT INFORMATION:

Contact Person: Zachary Allard

Title: Inside Sales Manager

Telephone No.: (888) 224-3784

Fax No.: N/A

E-Mail Address: Zachary.Allard@Staples.com

24 Hour Contact No.: N/A

CONTRACTUAL TERMS SECTION

SURVIVABILITY. Contracts awarded using the authority provided by NPPGov Contract will survive the STAPLES Contract itself. As a Customer purchasing, renting or leasing the equipment, the Harbor Department will continue to receive ongoing service from the Successful Vendor at the agreed upon STAPLES Contract rate through the term of the Harbor Department Contract. The Harbor Department Contract terms and conditions will survive the authorizing NPPGov Contract through that final term and any subsequent renewals and extensions.

Upon the Contract termination, Customers and Successful Vendors may agree to further extend a placement. Such further extensions shall not be for more than twelve month terms, and the Customer will reserve the right to terminate these placements with 30 days written notice and without termination penalties.

PRICE AGREEMENT CONDITIONS. Prices charged the Harbor Department are based on a percentage discount from the manufacturer's published price list. Percentage discount is to remain firm for the duration of the contract, but said Manufacturer's Price Lists are subject to fluctuation in accordance with changes as issued by the Manufacturer. Price Lists which are submitted with BID must be current in effect at time of BID opening and shall not be subject to change for a period of sixty (60) days after bid opening.

If the prices on the Price List are raised, the Harbor Department reserves the right to accept such raises or to cancel such items from the contract. The Harbor Department is to be given benefit of any decline in prices immediately upon the manufacturer's effective date of such decline. Changes in Price List shall be effective on the date designated on the Price List or upon receipt by the Harbor Department Purchasing Office, whichever is later. Increases in Price Lists shall not be retroactive.

Specifications and conditions in the BID shall supersede any conflicting conditions in PRICE LISTS. Three (3) additional copies of the Price List(s) will be required to be submitted by the successful bidder prior to award of a contract. In addition, four (4) copies of any new or revised Price List(s) must be sent immediately to the Harbor Department Purchasing Officer, 500 Pier A Street, Wilmington, CA 90744. Price List shall show vendor's name along with the City Contract or Purchase Order Number.

- WHEN QUOTING INTERNET / ON-LINE CATALOGS AND PRICE LISTS:
The bidder shall provide, in its quotation, access to a secured (https) website for the City of Los Angeles Purchasing Agent to identify and confirm product prices online. The online price list must have a cross reference or search function to identify items and prices by Product/Part Number and/or Product Description.

The successful bidder shall provide website access to all City customers placing orders. The website must allow for printing any page on the customer's computer screen so as to create a "hard copy" record of the items and prices. City staff is required to print the price page for each item ordered and attach it to their Purchase Order for City auditing purposes.

- WHEN NO CATALOG OR PRICE LIST EXISTS:
When manufacturer's price lists do not exist or are not otherwise available for Cost Plus Mark-Up contracts, the following shall apply:

Prices charged the City are based on a Cost Plus Percentage Mark Up to the supplier's net/cost price, as indicated on invoices from the manufacturer, distributor, sub-supplier, or other supply chain source. Percentage mark-up is to remain firm for the duration of the contract, including renewal option periods.

A copy of each manufacturer's, distributor's, sub-supplier's, or other supply chain source's invoice pertaining to the specific City Sub-Purchase Order shall be submitted with the contractor's invoice. Failure to submit invoice copies may be considered a Breach of Contract, and will result in payment delays, or non-payment of the contractor's invoice.

- For price verification purposes, the vendor may be asked to provide any of the following to the Port: page # where price is located, print out of web page pricing, excel row # for submitted excel price lists and/or copy of manufacturer's, distributor's, sub-supplier's, or other supply chain source's quotation.

AUTHORIZED DISTRIBUTOR/DEALER:
Bidder must indicate if it is an authorized factory distributor/dealer for the manufacturer being quoted (please initial).

Yes: ___X_____ No: _____

If bidder is not an authorized distributor/dealer, the bidder shall submit with its Quotation a formal Letter of Certification from the manufacturer, stating that the manufacturer will honor any warranty claims by the City for equipment, parts, and/or materials provided by the bidder.

The manufacturer will be responsible for any default of the supplier that is not corrected by the supplier in a timely and efficient manner. This responsibility includes replacing incorrect or defective parts, trouble shooting, and correcting problems that are traceable to the manufacturer.

ESTIMATED EXPENDITURE: Total expenditures under this contract are estimated to be **$ 250,000.00** annually. No guarantee can be given that this total will be reached or that it will not be exceeded. Vendor agrees to furnish more or less at the unit prices quoted in accordance with actual requirements throughout the contract period, however, this amount may not be exceeded without prior written approval from the Board of Harbor Commissioners in the event the amount exceeds $150,000.

PRICE GUARANTEE. Prices are maximum for the period of the contract. In the event of a price decline, or should you sell the same materials under similar quantity and delivery conditions to the State of California, or any County, Municipality or Legal District of the State of California at prices below those specified herein, such lower prices are to be immediately extended to the Harbor Department.

RENEWAL OPTION. (RE: Discount/Mark-up Lines) State if you will grant the Harbor Department the option to extend any contract awarded hereunder for a period of one or two years, from the date of expiration, under the same terms and conditions, and at the same percentage discount off the applicable manufacturer's price list as stated herein. Option(s) granted will not be considered as a factor in awarding contracts.

X (YES or NO) Option granted for one additional year.

X (YES or NO) Option granted for second additional year.

If any renewal option granted herein is exercised the Harbor Department will so notify the Contractor, in writing, prior to the expiration date.

RENEWAL OPTION. (RE: Fixed Price Lines) State if you will grant the Harbor Department the option to extend any contract awarded hereunder for a period of one or two additional years from the date of expiration, under the same terms and conditions, subject only to price changes which can be justified by in-creases in vendors costs but not to exceed the percentage stated below. Option(s) granted will not be considered in awarding contracts.

X (YES or NO) Option granted for one additional year at a price increase not to exceed _____%. Will follow the terms of the NPPGov contract.

X (YES or NO) Option granted for second additional year at a price increase not to exceed _____% over first option year prices. Will follow the terms of the NPPGov contract.

It is agreed that if any renewal option granted herein is exercised, the City will notify the contractor prior to the expiration date. Escalating factors in options will not be automatically granted. Any request for an increase in price must be substantiated by corresponding increases in vendor's costs, and submitted, in writing, to the Director of Contracts & Purchasing. No increase will be granted without prior approval of the Director of Contracts & Purchasing.

SHIPPING CHARGES. Please prepay and add shipping or delivery charges to your invoices. Ship cheapest way, unless otherwise specified herein, for goods to arrive within the time specified above. Please include copy of your freight bill with your invoice. AIR SHIPMENT MUST BE SPECIFICALLY AUTHORIZED BY STATEMENT ON THIS ORDER.

NEW AND UNUSED. The equipment furnished shall be new and unused, current model.

VEHICLE CODE. All vehicles shall conform to the California Vehicle Code and all other governing requirements.

MATERIAL, EQUIPMENT, SERVICE

DEVIATION FROM SPECIFICATIONS. Specifications contained herein are to describe the construction, design, size, and quality of the desired product and are not intended to be restrictive to any particular product. If bidder proposes to furnish another product equal in quality and purpose, such bids will be considered as long as they materially comply with the specifications. Each deviation from the specifications must be stated in a letter, attached to bidder's submittal. Failure to do so may void bid

ILLUSTRATIVE AND TECHNICAL DATA. When quoting other than the specified brand or when no brand is indicated, Bidder must submit with bid, complete illustrative and technical data on materials or equipment proposed to be furnished. Failure to furnish such data may void bid.

SAFETY AND HEALTH REQUIREMENTS. All equipment, materials, procedures and services furnished and/or used by the Contractor shall comply with applicable current requirements of OSHA and CAL-OSHA. Contractor agrees to indemnify and hold harmless Los Angeles City, The Harbor Department, and agents, officers and employees thereof, for all damages assessed against them as a result of Contractor's failure to comply with said safety and health requirements.

SAFETY APPROVAL. Electrical items listed herein shall have UNDERWRITER'S LABORATORY OR LOS ANGELES CITY ELECTRICAL TESTING LABORATORY approval and meet all current OSHA and CAL-OSHA requirements, where applicable.

INSURANCE CLAUSE / LIMITS

INDEMNIFICATION AND INSURANCE:

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, Vendor 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 Vendor'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 Purchase Order by Vendor 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 Purchase Order and those allowed under the laws of the United States, the State of California, and the City.

Acceptable Evidence and Approval of Insurance

Electronic submission is the required method of submitting Vendor's insurance documents. Track4LA® is the City's online insurance compliance system, designed to be used primarily by insurance brokers and agents as they submit client insurance certificates directly to the City. It uses the standard insurance industry form known as the ACORD 25 Certificate of Liability Insurance in electronic format. The advantages of Track4LA® include standardized, universally accepted forms, paperless approval transactions (24 hours, 7 days per week), and security checks and balances. Vendor's insurance broker or agent shall obtain access to Track4LA® at http://track4la.lacity.org/ and follow the instructions to register and submit the appropriate proof of insurance on Vendor's behalf.

Policy Copies

Upon request by City, Vendor must furnish copy of full certified policy of any insurance policy required herein. Such request may occur outside of termination and/or expiration date of this contract.

PRIMARY COVERAGE
The coverages submitted must be primary with respect to any insurance or self insurance of the City of Los Angeles Harbor Department. The City of Los Angeles Harbor Department's program shall be excess of this insurance and non-contributing.

If the Vendor maintains higher limits than the minimums shown below, the City requires and shall be entitled to coverage for the higher limits maintained by the Vendor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

ADDITIONAL INSURED
The City of Los Angeles Harbor Department, its officers, agents, and employees must be included as additional insureds in applicable liability policies to cover the City of Los Angeles Harbor Department's vicarious liability for the acts or omissions of the named insured. Such coverage is not expected to respond to the active negligence of the City of Los Angeles Harbor Department.

NOTICE OF CANCELLATION
By terms of the contract, the contracting company agrees to maintain all required insurance in full force for the duration of the contractor's business with the City of Los Angeles Harbor Department. Each contractually required insurance policy shall provide that it will not be canceled or reduced in coverage until after the Board of Harbor Commissioners, Attention: Risk Manager and the City Attorney of the City of Los Angeles Harbor Department have been given thirty (30) days' prior notice (or 10 days notice of non payment of premium) by registered mail addressed to 425 S. Palos Verdes Street, San Pedro, California 90731.

RENEWAL
When an existing policy is timely renewed, you are encouraged to submit your renewal policy as soon as it is available to Track4LA®. All renewals must continue to meet the policy conditions listed above. As a courtesy, Risk Management sends notifications of expiring or expired insurance. However, it is the responsibility of the contracting company to ensure evidence of insurance remains effective for the duration of the contract.

For further clarification on Insurance procedures, coverage information and documentation please go to http://www.portoflosangeles.org/business/risk.asp.

Vendor will be required to furnish, at its own expense and within TEN (10) days of notification of pending award, proof of insurance, in accordance with the types and in the minimum limits shown below:

NOTE
FAILURE TO SUBMIT PROOF OF INSURANCE WITHIN (10) DAYS UPON RECEIPT OF NOTICE OF INTENT TO AWARD WILL DEEM THE BIDDER NON- RESPONSIVE AND THE PROSPECTIVE AWARD MAY BE CANCELLED.

General Liability Insurance

Vendor shall procure and maintain in effect throughout the term of this Purchase Order, without requiring additional compensation from the City, 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 Vendor'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 Vendor. The retention or self-insurance provided shall provide that any other insurance maintained by the Harbor Department shall be excess of Vendor'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. Additionally, each policy shall include an additional insured endorsement (CG 2010 or equivalent) naming the City of Los Angeles Harbor Department, its officers, agents and employees as Primary additional insureds, a 10-days notice of cancellation for nonpayment of premium, and a 30-days notice of cancellation for any other reasons.

Auto Liability Insurance

Vendor shall procure and maintain at its expense and keep in force at all times during the term of this Purchase Order, 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 ONE MILLION Dollars ($1,000,000) 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. Additionally, each policy shall include an additional insured endorsement (CG 2010 or equivalent) naming the City of Los Angeles Harbor Department, its officers, agents and employees as Primary additional insureds, a 10-days notice of cancellation for nonpayment of premium, and a 30-days notice of cancellation for any other reasons.

Workers' Compensation and Employer's Liability

Vendor 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 Vendor shall comply with such provisions before commencing the performance of the tasks under this Purchase Order. Coverage for claims under U.S. Longshore and Harbor Workers' Compensation Act, if required under applicable law, shall be included. Vendor 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 Vendor, and for all employees of any subcontractor or other vendor retained by Vendor.

INITIAL HERE ACKNOWLEDGING INSURANCE REQUIREMENTS:

_____ (initial)

Upon approval of insurance, contractor will receive written authorization to proceed.

NO WORK MAY BE PERFORMED WITHOUT SUCH WRITTEN AUTHORIZATION TO PROCEED

DELIVERY CLAUSES

DELIVERY POINT. Prices to include all delivery charges, F.O.B. the Harbor Department, Jobsite Location.

DELIVERY. Delivery is desired within five **(5) days** after vendor receives order. If this time cannot be met, show in the space provided on the Bid Sheet the best delivery time you can guarantee. The Harbor Department reserves the right to make award based on delivery time quoted.

NOTIFICATION. The vendor shall notify Ana Peredia, C & P Division of the Port of Los Angeles at (310) 732- 3167 not less than three (3) days in advance that the equipment is ready for delivery.

FINANCIAL CLAUSES

BILLING DISCOUNT TERMS. Billing Discount terms offering 20 days or more will be considered in making evaluation for award.

SALES TAXES. Do not include Sales Taxes in your Bid. Sales Taxes will be added at time of order.

SALES TAX PERMIT. Vendor's California State Board of Equalization Permit No. required to collect California State Sales Tax. Permit Number: **097162235**

FEDERAL EXCISE TAX. The City of Los Angeles Harbor Department is exempt from payment of Federal Excise Taxes, and will furnish vendor with a Tax Exemption Certificate. PRICING NOT TO INCLUDE ANY FEDERAL EXCISE TAX.

TAX CODE 4. (Out of State Vendors)
Plus applicable sales and/or use tax to be paid directly to the State of California unless vendor has a California Tax Permit Number which must appear on the invoice.

VENDOR PAYMENT. Please note. Vendor name and address must be submitted exactly as it will appear on the invoice. If invoice remit to (remittance) name and address are different from the bid name and address, please indicate:

REMIT TO: NAME: Staples Contract & Commercial LLC

ADDRESS: Post Office Box 660409

Dallas, TX 75266-0409

Invoices submitted for payment where the invoice name and address does not match the name as it appears on the purchase order or as indicated in the space above, will not be processed and will be returned to the vendor.

GENERAL CLAUSES – LAW, CHARTER, ADMINISTRATIVE CODE

COMPLIANCE WITH LAWS. Vendor shall comply with all applicable Ordinances, laws, Rules and Regulations of the City and of any County, State or Federal Government, or subdivision thereof.

DEFAULT BY SUPPLIER. In case of default by Vendor, the City reserves the right to procure the articles or services from other sources and to hold the vendor responsible for any excess costs occasioned to the City thereby.

ETHICS CLAUSE

Persons who submit a response to this solicitation (bidders) are subject to Charter section 470(c)(12) and related ordinances. As a result, bidders may not make campaign contributions to and or engage in fundraising for certain elected City officials or candidates for elected City office from the time they submit the response until either the contract is approved or, for successful bidders, 12 months after the contract is signed. The bidder's principals and subcontractors performing $100,000 or more in work on the contract, as well as the principals of those subcontractors, are also subject to the same limitations on campaign contributions and fundraising.

Bidders must submit CEC Form 55 (provided in Attachment) to the awarding authority at the same time the response is submitted. The form requires bidders to identify their principals, their subcontractors performing $100,000 or more in work on the contract, and the principals of those subcontractors. Bidders must also notify their principals and subcontractors in writing of the restrictions and include the notice in contracts with subcontractors. Responses submitted without a completed CEC Form 55 shall be deemed nonresponsive. Bidders who fail to comply with City law may be subject to penalties, termination of contract, and debarment. Additional information regarding these restrictions and requirements may be obtained from the City Ethics Commission at (213) 978-1960 or ethics.lacity.org.

EQUAL BENEFITS POLICY. The Board of Harbor Commissioner of the City of Los Angeles adopted Resolution No. 6328 on January 12, 2005, agreeing to adopt the provisions of Los Angeles City Ordinance 172,908, as amended, relating to Equal Benefits (Section 10.8.2 et seq. of the Los Angeles Administrative Code) as a policy of the Harbor Department. Bidder shall comply with the policy whenever applicable. Violation of the policy shall entitle the City to terminate any agreement with Bidder and pursue any or all other legal remedies that may be available.

REGIONAL ALLIANCE MARKETPLACE FOR PROCUREMENT (RAMP)

Respondents are advised, pursuant to Executive Directive 35, if a bidder is selected and awarded a contract, and if the vendor is a for-profit company or corporation, the vendor shall, within 30 days of the effective date of the contract and on an annual basis thereafter (i.e., within 30 days of the anniversary of the effective date of the contract), report the following information to City via the Regional Alliance Marketplace for Procurement ("RAMP") or via another method specified by City: vendor's and any subcontractor's annual revenue, number of employees, location, industry, race/ethnicity and gender of majority owner ("contractor/subcontractor Information"). On an annual basis, the vendor shall further request that any subcontractor input or update its business profile, including the vendor/subcontractor information, on RAMP or via another method prescribed by City.

BUSINESS TAX REGISTRATION CERTIFICATE (BTRC). In accordance with the City of Los Angeles Municipal Code, a Business Tax Registration Certificate may be required of persons engaged in business activity within the City. The Office of Finance, Tax and Permit Division, (213) 473-5901, has sole authority in determining a firm's tax requirements and in issuing Business Tax Registration Certificates or Business Tax Exemption Numbers. Accordingly, firm's current Business Tax Registration Certificate or Business Tax Exemption Number must be clearly shown on all invoices submitted for payment. Bidder, in submitting this bid, acknowledges and accepts the above requirements and recognizes that no invoice will be processed for payment without inclusion of the Business Tax Registration Certificate or Business Tax Exemption Number.

TAXPAYER IDENTIFICATION NUMBER. Contractor declares that it has an authorized Taxpayer Identification Number (TIN), which must be indicated on all invoices. No payments will be made under this agreement without a valid TIN number.

REQUEST FOR COOPERATIVE AGREEMENT

CITY OF LOS ANGELES
HARBOR DEPARTMENT

... BID NO. F-1157
(SHOW THIS NUMBER ON ENVELOPE)

GENERAL CONDITIONS
READ CAREFULLY

1. **FORM OF BID AND SIGNATURE.** The Bid must be made on this form only, and is limited to the Terms and Conditions contained herein, unless expressly agreed otherwise in writing by the City. No telephonic, facsimile, or electronic bid is acceptable, unless otherwise indicated. Bid should be enclosed in a sealed envelope, showing the Bid No. in the lower left corner, and addressed to the Port of Los Angeles Contracts and Purchasing Division, 500 Pier "A" Street, Wilmington, CA 90744. Bids must be signed with the firm's corporate name or DBA and by a responsible officer or authorized employee. In case of error in extension of prices, unit price will govern. All prices must be firm unless the specification provides for adjustment.

2. **TAXES**: Do not include any Sales or Federal Excise Tax in prices unless the specifications specifically require that they be included. Sales tax will be added by the City at time of award. The City will furnish Federal Excise Tax Exemption Certificate to Supplier. Any other taxes must be included in bid prices.

3. **SPECIFICATION CHANGES.** Contractor may request in writing that specifications be modified if its provisions restrict Contractor from bidding. Such request must be received by the Director of Purchasing at least five (5) working days before bid opening date. All Contractors will be notified by Addendum of any approved changes in the specifications.

4. **BRAND NAMES AND SPECIFICATIONS.** The detailed specifications and/or brand name references are descriptive and indicate quality, design, and construction of items required. Offers will be considered to supply articles substantially the same as those described therein but with minor variations. Contractor must describe variations in their Bid.

5. **AWARD OF CONTRACT.** Bid shall be subject to acceptance by the City for a period of three (3) months unless a lesser period is prescribed in the quotation by the Contractor. The City may make combined award of all items complete to one Contractor or may award separate items to various Contractors. Contractors may submit alternate prices, a lump sum or a discount conditional on receiving an award for two or more items. The right is reserved to reject any, or all, bids and to waive informality in bids.

6. **PURCHASE AGREEMENT.** A copy of the Bid, Specifications and General Conditions will remain on file in the Purchasing Office. All material or services supplied by the Contractor shall conform to the applicable requirements of the City Charter, City Ordinances, and all applicable State and Federal Laws, as well as conforming to the Specifications, Terms and Conditions contained herein.

7. **PRICE GUARANTEE.** If during the term of any agreement awarded pursuant to this Bid, the supplier sells the same materials or services under similar quantity and delivery conditions, at prices below those stated herein, such lower prices are to immediately be extended to the City.

8. **DEFAULT BY SUPPLIER.** In case of default by supplier, the City reserves the right to procure the articles or services from other sources and to hold the supplier responsible for any excess costs incurred by the City.

9. **DELIVERY:** If delivery of the commodity or service cannot be made exactly as specified and at the price shown, notify the Director of Contracts and Purchasing immediately. Do not make delivery without his approval. Any correspondence, other than invoices, relating to this order must be sent to the Director of Contracts and Purchasing.

10. **INSPECTION:** All materials furnished on this order will be subject to test and inspection and, if rejected, will be held subject to order of shipper and subject to accrued charges.

11. **INVOICING:** The point of free delivery, terms, contract number, name and address of department must appear on all invoices.

    All materials must be marked and tagged with the Contract number and be accompanied by packing list in detail. Material must be packed and shipped in conformity with tariff or classification requirements.

    Prices on the contract include delivery to the division within building unless otherwise specified on the contract.

    Prepaid charges for transportation must be accompanied by original expense bill marked paid and is not subject to transportation tax, due to the exemption permitted municipalities as indicated.

    Materials shall be listed separately on invoices covering repairs or installation service.

    The Harbor Department will not be responsible for services, materials, or supplies furnished without prior authorization from the Director of Contracts and Purchasing.

    This contract must not be assigned or transferred to anyone without the written approval of the Director of Contracts and Purchasing.

    Discount period to be computed from date of receipt of invoice, or complete acceptance of goods or services, whichever is the later date.

    In case of delay of payment beyond 30 days after acceptance of goods or services or date of invoice, whichever is later, please write the Harbor Department Accounting Section giving the contract number, stating to which division and on what date delivery was made.

    Harbor Department may pay on partial deliveries, but right is reserved by the Director of Contracts and Purchasing to require complete delivery before payment.

12. **TIME AND MATERIALS WITH NO FIXED FEES:** ALL INVOICES WITH PAYMENTS FOR TIME AND MATERIALS MUST BE SUPPORTED / BACKED UP BY TIME SHEETS.

    NOTE: THOSE INVOICES WITH FIXED FEE RATES DO NOT REQUIRE TIME SHEETS.

13. **CITY OF LOS ANGELES MUNICIPLE CODE:** All items must meet the requirements of the City of Los Angeles Municipal Code.

14. **PAYMENTS.** Payment terms are NET 30 days unless Contractor quotes otherwise. Cash discounts allowing less than 20 days or 20th Proxima will not be considered by the City when evaluating Bids. All Cash Discounts are computed from the date of delivery in full or completion and acceptance of the work or material, or from date of receipt of invoice, whichever is latest. Partial payments may be made by the City on delivery and acceptance of goods and on receipt of Contractor's invoice. Invoices must be submitted as specified on the Purchase Order or Notice to Proceed.

15. **ASSIGNMENT.** The supplier shall not assign or transfer by operation of law any obligation without the prior written consent of the Director of Contracts and Purchasing.

16. **NONDISCRIMINATION.** During the performance of this con-tract, the Contractor shall not discriminate in employment practices against any employee or applicant for employment because of the employee's race, religion, national origin, ancestry, sex, sexual orientation, age, disability, marital status, domestic partner status or medical condition, in accordance with L.A. Admin. Code Sections 10.8 to 10.13, whose provisions are incorporated herein. All subcontracts awarded under any such contract shall contain a like nondiscrimination provision.

17. **SAFETY APPROVAL.** Articles supplied under this contract will not be accepted unless they comply with current safety regulations of the City Department of Building and Safety, U.L., the Safety Orders of the California Division of Occupation Safety and Health (CalOSHA) and OSHA requirements.

18. **PREVAILING WAGES.** Where labor is required for public work as a part of this contract, pursuant to the provisions of the Labor Code of the State of California, Contractor shall pay no less than the general prevailing wages for the area as determined by the Director of the Department of Industrial Relations, State of

California. Copy of wage schedule is obtainable from the Office of the Board of Public Works, City Hall, Los Angeles.

19. **CONTRACTOR'S LIABILITY.** The Contractor agrees to, at all times, relieve, protect, save harmless, and fully indemnify the City of Los Angeles, its officers, agents and employees from any and all liability whatsoever that may arise or be claimed by reason of any acts of said Contractor, Contractor's employees and agents, in connection with the work to be performed under the contract.

20. **PATENT RIGHTS.** The person, firm, or corporation, upon whom this order is drawn, does, in case the materials or supplies to be furnished are covered wholly or in part by U.S. Letters Patent, by the acceptance of this order agrees to indemnify and hold the City of Los Angeles harmless from any and all injuries or damage which the City may sustain by reason of the sale to or use by it of such materials or supplies and arising out of the alleged or actual infringement of said letters patent.

21. **LEGAL JUSTIFICATION.** This agreement shall be deemed entered into in Los Angeles, California, and shall be governed and construed in accordance with the laws of the State of California.

22. **TERMINATION FOR NON-APPROPRIATION.** The Harbor Department of the City of Los Angeles' (City's) obligation to pay any amount hereunder, for any City fiscal year purpose. The City's fiscal year ends on June 30th of each calendar year. Accordingly, anything to the contrary notwithstanding, the City may terminate this contract and future monetary obligations hereunder as of the end of any fiscal year.

23. **CANCELLATION.** The contract may be terminated in whole or in part by the Harbor Department of the City of Los Angeles (City) for its convenience, without penalty, provided that the Contractor is given not less than 30 days written notice (delivered by certified mail, return receipt requested) of the intent to terminate. The City will pay for that portion of the orders fulfilled or work performed. The City has the right to cancel the contract for cause at any time.

THE END

No. 285 Rev. 07/15-116

FORM 50

Bidder Certification

Los Angeles City ETHICS COMMISSION

This form must be submitted with your bid or proposal to the City department that is awarding the contract noted below. If you have questions about this form, please contact the Ethics Commission at (213) 978-1960.

☒ **Original Filing** ☐ **Amendment:** Date of Signed Original _____. Date of Last Amendment _____.

Reference Number (Bid, Contract, or BAVN)	Awarding Authority (Department awarding the contract)
F-1157	Harbor Department Purchasing Office
Bidder Name	
Staples Contract & Commercial LLC	
Address	
500 Staples Drive, Framingham MA 01702	
Email Address	**Phone Number**
Zachary.Allard@Staples.com	(888) 224-3784

Certification

I certify the following on my own behalf or on behalf of the entity named above, which I am authorized to represent:

A. I am applying for one of the following types of contracts with the City of Los Angeles:

1. A goods or services contract with a value of more than $25,000 and a term of at least three months;
2. A construction contract with any value and duration;
3. A financial assistance contract, as defined in Los Angeles Administrative Code § 10.40.1(h), with a value of at least $100,000 and a term of any duration; or
4. A public lease or license, as defined in Los Angeles Administrative Code § 10.40.1(i), with any value and duration.

B. I acknowledge and agree to comply with the disclosure requirements and prohibitions established in the Los Angeles Municipal Lobbying Ordinance if I qualify as a lobbying entity under Los Angeles Municipal Code § 48.02.

I certify under penalty of perjury under the laws of the City of Los Angeles and the state of California that the information in this form is true and complete.

Tammy Kiger
Name

Signature

Area Vice President
Title

2/14/23
Date

FORM 55

Prohibited Contributors
(Bidders)

Los Angeles City ETHICS COMMISSION

This form must be completed in its entirety and submitted with your bid or proposal to the City department that is awarding the contract. Failure to submit a completed form may affect your bid or proposal. If you have questions about this form, please contact the Ethics Commission at (213) 978-1960.

☒ **Original Filing** ☐ **Amendment:** Date of Signed Original _____. Date of Last Amendment _____.

Reference Number (Bid, Contract, or BAVN): Bid No. F-1157, Contract No. 39999 Date Bid Submitted: _____

Contract Description (Title of the RFP or City contract solicitation and description of the services to be provided):

Office Supplies and Equipment (Rebid)

Awarding Authority (Department awarding the contract): City of Los Angeles Harbor Department

Bidder Name: Staples Contract & Commercial LLC

Bidder Address: 500 Staples Drive, Framingham MA 01702

Bidder Email Address: Zachary.Allard@Staples.com Bidder Phone Number: (714) 868-4274

Schedule Summary

Please complete all three of the following:

	Yes	No
1. **SCHEDULE A — Bidder's Principals** *(check one)* The bidder has one or more **PRINCIPALS,** as defined in LAMC § 49.7.35(A)(6). At least one principal is required for entities. *(If you check "Yes", Schedule A is required.)*	☑	☐
2. **SCHEDULE B — Subcontractors and Their Principals** *(check one)* The bidder has one or more **SUBCONTRACTORS** on this bid or proposal with subcontracts worth $100,000 or more. *(If you check "Yes", Schedule B is required.)*	☐	☑

3. **TOTAL NUMBER OF PAGES SUBMITTED** (including this cover page): 4

Certification

I certify the following under penalty of perjury under the laws of the City of Los Angeles and the state of California: A) I understand, will comply with, and have notified my principals and subcontractors of the requirements and restrictions in Los Angeles City Charter § 470(c)(12) and any related ordinances; B) I understand that I must amend this form within ten business days if any information changes; C) I am the bidder named above or I am authorized to represent the bidder named above, and my name appears below; and D) The information provided in this form is true and complete to the best of my knowledge and belief.

Tammy Kiger
Name

Area Vice President
Title

Signature

2/14/23
Date

FORM 55

Prohibited Contributors (Bidders)

Los Angeles City ETHICS COMMISSION

Schedule A - Bidder's Principals

Please identify the names and titles of all the bidder's principals (attach additional sheets if necessary). Principals include a bidder's board chair, president, chief executive officer, chief operating officer, and individuals who serve in the functional equivalent of one or more of those positions. Principals also include individuals who hold an ownership interest in the bidder of at least 20 percent and employees of the bidder who are authorized by the bid or proposal to represent the bidder before the City.

Name: John Lederer Title: Executive Chairman and Chief Executive Officer
Address: 500 Staples Drive, Framingham MA 01702

Name: Jeffrey Hall Title: Chief Financial Officer
Address: 500 Staples Drive, Framingham MA 01702

Name: Amit Kalra Title: Chief Supply Chain Officer
Address: 500 Staples Drive, Framingham MA 01702

Name: Amy Vanden-Eykel Title: Chief Marketing Officer
Address: 500 Staples Drive, Framingham MA 01702

Name: Cristina Gonzalez Title: Chief Legal Officer
Address: 500 Staples Drive, Framingham MA 01702

Name: David Spooner Title: Chief Technology Officer
Address: 500 Staples Drive, Framingham MA 01702

Name: Jeff Moore Title: Chief Information Officer
Address: 500 Staples Drive, Framingham MA 01702

Name: Janice Deskus Title: Chief Human Resources Officer
Address: 500 Staples Drive, Framingham MA 01702

Name: Matthew Clark Title: Chief Digital Sales Officer
Address: 500 Staples Drive, Framingham MA 01702

☐ **Check this box if additional Schedule A pages are attached.**

FORM 55

Prohibited Contributors
(Bidders)

Los Angeles City ETHICS COMMISSION

Schedule A - Bidder's Principals

Please identify the names and titles of all the bidder's principals (attach additional sheets if necessary). Principals include a bidder's board chair, president, chief executive officer, chief operating officer, and individuals who serve in the functional equivalent of one or more of those positions. Principals also include individuals who hold an ownership interest in the bidder of at least 20 percent and employees of the bidder who are authorized by the bid or proposal to represent the bidder before the City.

Name: Michele Parzianello Title: Chief Sales Officer
Address: 500 Staples Drive, Framingham MA 01702

Name: Peter Scala Title: Chief Merchandising Officer
Address: 500 Staples Drive, Framingham MA 01702

Name: Title:
Address:

Name: Title:
Address:

Name: Title:
Address:

Name: Title:
Address:

Name: Title:
Address:

Name: Title:
Address:

Name: Title:
Address:

☐ **Check this box if additional Schedule A pages are attached.**

FORM 55

Prohibited Contributors
(Bidders)

Los Angeles City ETHICS COMMISSION

Schedule B - Subcontractors and Their Principals

Please identify all subcontractors whose subcontracts are worth $100,000 or more. Separate Schedule B pages are required for each subcontractor who meets the threshold.

Subcontractor's Name
N/A
Subcontractor's Address
N/A

Please check one of the following options:

This subcontractor has one or more principals. ☐ **Yes*** ■ **No**

* *Each principal's name and title must be identified below. Attach additional sheets if necessary. Principals include a subcontractor's board chair, president, chief executive officer, chief operating officer, and individuals who serve in the functional equivalent of one or more of those positions. Principals also include individuals who hold an ownership interest in the subcontractor of at least 20 percent and employees of the subcontractor who are authorized by the bid or proposal to represent the subcontractor before the City.*

Name: _____ Title: _____
Address: _____

Name: _____ Title: _____
Address: _____

Name: _____ Title: _____
Address: _____

Name: _____ Title: _____
Address: _____

Name: _____ Title: _____
Address: _____

Name: _____ Title: _____
Address: _____

☐ **Check this box if additional Schedule B pages are attached.**

STAPLES CONTRACT & COMMERCIAL LLC

SECRETARY'S CERTIFICATE – TAMMY KIGER

I, Cristina Gonzalez, hereby certify that I am the duly elected Secretary of Staples Contract & Commercial LLC, a Delaware limited liability company (the "Company"), and I do hereby certify that Tammy Kiger, as AVP Inside Sales, is duly authorized to execute and deliver bids and contracts in the name of and on behalf of the Company.

IN WITNESS WHEREOF, I have signed this certificate on behalf of the Company on this 13h day of April 2022.

Cristina Gonzalez
Secretary

2. RESOLUTION NO. _____ - PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF LOS ANGELES HARBOR DEPARTMENT AND FINANCIAL EVIDENCE GROUP FOR FORENSIC ACCOUNTING MATTERS

HARBOR DIVISION
425 S. PALOS VERDES ST.
P.O. BOX 151
SAN PEDRO, CA 90733-0151
FACSIMILE
(310) 831-9778
(310) 732-3750

OFFICE OF THE CITY ATTORNEY
HYDEE FELDSTEIN SOTO
CITY ATTORNEY

STEVEN Y. OTERA
GENERAL COUNSEL

JOY M. CROSE
ASSISTANT GENERAL COUNSEL

ESTELLE M. BRAAF
CARL CHEA
BRIAN DALUISO
DEBORAH DORNY
JOHN T. DRISCOLL
JUSTIN HOUTERMAN
JANET KARKANEN
KENNETH F. MATTFELD
HEATHER M. McCLOSKEY
MINAH PARK
HELEN J. SOK
NEILL T. TSENG

DATE: **MAY 16, 2023**

FROM: **OFFICE OF THE CITY ATTORNEY**

SUBJECT: **RESOLUTION NO. _____ - PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF LOS ANGELES HARBOR DEPARTMENT AND FINANCIAL EVIDENCE GROUP FOR FORENSIC ACCOUNTING MATTERS**

SUMMARY:

The Office of the City Attorney (Office) requests approval of an Agreement between the City of Los Angeles Harbor Department (Harbor Department) and Financial Evidence Group (FEG) for professional forensic accounting services. The proposed Agreement is for a term of three years and maximum compensation of $150,000. The Harbor Department is financially responsible for payment of expenses incurred under the proposed Agreement.

RECOMMENDATION:

It is recommended that the Board of Harbor Commissioners (Board):

1. Find that the Director of Environmental Management has determined that the proposed action is administratively exempt from the requirements of the California Environmental Quality Act (CEQA) under Article II Section 2(f) of the Los Angeles City CEQA Guidelines;

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2. Find in accordance to Charter Section 1022 that the scope of work of the proposed Agreement can be more economically and feasibly provided by an independent contractor than by City employees;

3. Approve a Professional Services Agreement with Financial Evidence Group in the amount of $150,000 for a three-year term;

4. Authorize the Executive Director and Board Secretary to execute and attest to the Agreement; and

5. Adopt Resolution No._____.

DISCUSSION:

Background – In accordance with Charter Section 275, the Office has determined that it requires forensic accounting services to assist in the discharge of its duties to perform legal services in connection with claims disputing hourly wages and related benefits. These matters require specialized expertise and resources that exceed staff resources in this specialized area of accounting.

Need for Services and Scope of Work – Previously, the Office contracted with Bates for employment matters (AG19-3724). The three-year agreement for such services expired on March 23, 2023, and a replacement agreement is needed to meet the Harbor Department's forensic accounting needs. Professional forensic accounting is necessary because the Harbor Department routinely receives employment claims, which routinely involve disputes concerning hourly wages and related benefits. Investigation of these matters and the preparation of legal defenses requires detailed accounting analysis of timekeeping records, applicable employment memoranda of understanding and other materials concerning wages and benefits. The specialized need exceeds the capacity of Harbor Department resources.

Competitive Selection Process – On February 1, 2023, the Office published a Request For Proposals (RFP) for Forensic Accounting Services on the City of Los Angeles Regional Alliance Marketplace for Procurement (RAMP). The Office sought qualified forensic accounting firms with special expertise related to claims disputing hourly wages and related benefits. RAMP reported notifications were sent to 583 registered firms, 112 firms viewed the RFP and 34 firms downloaded the opportunity. The due date for proposal submissions was March 10, 2023 and five (5) firms submitted an application.

Based upon the review of written proposals, the Office determined FEG was the most knowledgeable, experienced, and responsive firm in the area of forensic accounting for

claims and employment matters. FEG is a Certified Public Accounting firm licensed in California and focused on litigation support and forensic accounting services.

The other four proposal submissions were from smaller in-state and out-of-state firms and a larger firm with 35 offices operating across 178 countries. These firms provided information about service approaches, procedures for confidentiality, specialized data analytic processes and general information about project work and similar services. However, based on the information provided it was difficult to assess whether the firms' experience matched the Harbor Department's specific needs. All four applications did not include in depth descriptions of relevant experience. Additionally, these firms offered higher rates or rates equivalent to FEG.

FEG offered a team of accountants with experience more in line with the Department's needs in handling individual claims of disputing hourly wages and related benefits. FEG has extensive experience working with public agencies in California, the Fair Labor Standards Act and wage and hour issues for various employee groups, including but not limited to sworn and civilian employees. FEG also demonstrated in-depth familiarity with memorandum of understanding agreements and payroll reporting and timekeeping system issues.

FEG's proposal submission substantially supported the firm's expertise and relevant experience with case descriptions detailing alleged issues, applicable law and communicated results. Additionally, FEG offered a team of accountants with competitive hourly rates. FEG was the most qualified firm, and the review team determined it was in the best interests of the Harbor Department to select the firm to provide forensic accounting services for employment matters.

An additional benefit FEG possesses is its founder and shareholder's prior history and working understanding of the City and the Harbor Department. The fact that FEG, as a result of this background knowledge, will not have to undergo a learning curve that the other proposers under this RFP would, further distinguished their proposal in terms of cost-effectiveness and the ability to efficiently provide services for Harbor Department matters.

PROPOSED AGREEMENT TERMS:

- **Term**: Three years from date of signature (approximately 2023-2026)
- **Contract Authority**: Maximum amount not to exceed $150,000
- **Scope of Work**: Forensic accounting services in connection with claims disputing hourly wages and related benefits
- **Standard City and City Attorney Agreement provisions**

ENVIRONMENTAL ASSESSMENT:

The proposed action is the approval of an Agreement with FEG for professional forensic accounting services, which is an administrative activity. Therefore, the Director of Environmental Management has determined that the proposed action is administratively exempt from the requirements of CEQA in accordance with Article II Section 2(f) of the Los Angeles City CEQA Guidelines.

FINANCIAL IMPACT:

The proposed action is for the approval of an Agreement for professional services with FEG for a three-year term and total maximum compensation of $150,000. The Harbor Department is financially responsible for payment of expenses incurred under the proposed Agreement.

Fiscal Year 2023-24 funding in the amount of $25,000 for forensic accounting services has been requested to be budgeted in the Operating Budget within the Harbor Department City Attorney's Office Account No. 54410 (Legal Fees & Services), Center No. 0120 and Program No. 000. Funding for future fiscal years, if necessary, will be requested to be budgeted as part of the annual budget adoption process, upon Board approval. A funding out clause is included in the Agreement. Spending under the proposed Agreement is detailed below:

Firm	FY 23/24	FY24/25	FY 25/26	TOTAL
Financial Evidence Group	$25,000	$50,000	$75,000	$150,000

SUBJECT: **PROFESSIONAL SERVICES AGREEMENT WITH FINANCIAL EVIDENCE GROUP FOR FORENSIC ACCOUNTING**

CITY ATTORNEY:

The Office of the City Attorney has prepared and approved the proposed Agreement as to form and legality.

TRANSMITTALS:

1. Professional Services Agreement with Financial Evidence Group

FIS Approval: MB

CA Approval:

HELEN SOK
Deputy City Attorney

APPROVED:

By _____
STEVEN OTERA
General Counsel, Harbor Department

APPROVED:

By Marla Bleavins
EUGENE D. SEROKA
Executive Director

Board Meeting: June 22, 2023

Transmittal 1

AGREEMENT NO.

AGREEMENT BETWEEN
THE CITY OF LOS ANGELES AND
FINANCIAL EVIDENCE GROUP

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 FINANCIAL EVIDENCE GROUP, a California Corporation, P.O Box 191176, San Francisco, CA 94119 ("Consultant").

WHEREAS, City requires litigation support and forensic accounting services to assist with claims disputing hourly wages and related benefits; and

WHEREAS, City requires the professional, expert and technical services of Consultant on a temporary or occasional basis; and

WHEREAS, Consultant possesses extensive experience in dealing with disputes involving hourly wages and related benefits; and

WHEREAS, Consultant, by virtue of training and experience, is well qualified to provide such services to City; and

WHEREAS, City does not employ personnel with the required expertise nor is it feasible to do so on a temporary or occasional basis;

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

1. SERVICES TO BE PERFORMED BY CONSULTANT

A. Consultant hereby agrees to render to City, as an independent contractor, certain professional, technical and expert services of a temporary and occasional character. Consultant is retained for professional litigation support and forensic accounting services to assess accounting systems and the presentation of accounts. Scope of Work includes data collection, data preparation, data analysis and reporting as set forth in Exhibit A ("Scope of Work").

B. 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.

C. Consultant acknowledges and agrees that it lacks authority to perform any services outside the Scope of Work. Consultant further acknowledges and agrees that

any services it performs outside the Scope of Work are performed as a volunteer and shall not be compensable under this Agreement.

D. The Scope of Work shall be performed by personnel qualified and competent in the sole reasonable discretion of the Executive Director or his or her designee ("Executive Director"), whether performance is undertaken by Consultant or third-parties with whom Consultant has contracted ("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 Executive Director's written request, Consultant shall supply City's Harbor Department ("Department") with all agreements between it and its Subconsultants.

2. SERVICES TO BE PERFORMED BY CITY

A. City shall furnish Consultant, upon its request, all documents and papers in possession of City which may lawfully be supplied to Consultant and which are necessary for it to perform its obligations.

B. The Executive Director or his or her designee is designated as the contract administrator for City and shall also decide any and all questions which may arise as to the quality or acceptability of the services performed and the manner of performance, the interpretation of instructions to Consultant and the acceptable completion of this Agreement and the amount of compensation due. Notwithstanding the preceding, the termination of this Agreement shall be governed by the provisions of Article 11 (Termination) hereof.

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

3. EFFECTIVE DATE AND TERM OF AGREEMENT

A. Subject to the provisions of Charter Section 245, the effective date of this Agreement shall be the date of its execution by Executive Director upon authorization of the Board. Consultant is aware that the City Council, pursuant to Charter Section 245 of the City of Los Angeles, has the right to review this Agreement. Accordingly, in no event shall this Agreement become effective until after the expiration of the fifth Council meeting day after Board action, or the date of City Council's approval of the Agreement.

B. This Agreement shall be in full force and effect commencing from the date of execution and shall continue until the earlier of the following occurs:

1. Three (3) years have lapsed from the effective date of this Agreement;

or

2. The Board of Harbor Commissioners, in its sole discretion, terminates and cancels all or part of this Agreement for any reason upon giving to Consultant ten (10) days' notice in writing of its election to cancel and terminate this Agreement.

4. TERMINATION DUE TO NON-APPROPRIATION OF FUNDS

This Agreement is subject to the provisions of the Los Angeles City Charter which, among other things, precludes the City from making any expenditure of funds or incurring any liability, including contractual commitments, in excess of the amount appropriated thereof.

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

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

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

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

5. COMPENSATION AND PAYMENT

A. As compensation for the satisfactory performance of the services required by this Agreement, City shall pay and reimburse Consultant at the rates set forth in **Exhibit B.**

B. The maximum payable under this Agreement, including reimbursable expenses, shall be One Hundred and Fifty Thousand Dollars ($150,000.00).

C. Consultant shall submit invoices in quadruplicate to City monthly following the effective date of this Agreement for services performed during the preceding month. Each such invoice shall be signed by the Consultant and shall include 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.
>
> _____"
> (Consultant's Signature)

D. Consultant must include on the face of each itemized invoice submitted for payment its Business Tax Registration Certificate number, as required at Article 8 of this Agreement. No invoice will be processed for payment by City without this number shown thereon. All invoices shall be approved by the Executive Director or his or her designee prior to payment. All invoices due and payable and found to be in order shall be paid as soon as, in the ordinary course of City business, the same may be approved, audited and paid.

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

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

E. For payment and processing, all invoices should be emailed to Kimberly Hee at Khee@portla.org and 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

A. 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.

B. 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 Article 6 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. INDEPENDENT CONTRACTOR

Consultant, in the performance of the work required by this Agreement, 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

The City of Los Angeles Office of Finance requires the implementation and enforcement of Los Angeles Municipal Code Section 21.09 et seq. This Code Section provides that every person, other than a municipal employee, who engages in any

business within the City of Los Angeles, 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 the Department. See https://finance.lacity.org/how-register-btrc.

9. 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. TERMINATION PROVISION

The Board of Harbor Commissioners, in its sole discretion, shall have the right to terminate and cancel all or any part of this Agreement for any reason upon giving the Consultant ten (10) days' advance, written notice of the Board's election to cancel and terminate this Agreement. It is agreed that any Agreement entered into shall not limit the right of the City to hire additional consultants or perform the services described in this Agreement either during or after the term of this Agreement.

11. PERSONAL SERVICE AGREEMENT

A. During the term hereof, 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 the Department.

B. 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 Article 1. 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.

12. AFFIRMATIVE ACTION

The Consultant, during the performance of this Agreement, 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 shall be incorporated and made a part of this Agreement. All subcontracts awarded shall contain a like nondiscrimination provision. See **Exhibit C**.

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

It is the policy of the Department to provide Small Business Enterprises (SBE), Very Small Business Enterprises (VSBE) and Minority-Owned, Women-Owned, Disabled Veteran Business Enterprises 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 the City 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 opportunity which might be presented under this Agreement. See **Exhibit D**.

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, Regional Alliance Marketplace for Procurement (RAMP), at http://www.RAMPLA.org.

14. CONFLICT OF INTEREST

It is hereby understood and agreed that the parties to this Agreement have read and are aware of 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 the 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.

During the term of this Agreement, Consultant shall inform the Department in writing when Consultant, or any of its Subconsultants, employs or hires in any capacity, and for any length of time, a person who has worked for the Department as a Commissioner, officer or employee. Said notice shall include the individual's name and current position and their prior position and years of employment with the Department. Written notice shall be provided by Consultant to the Department within thirty (30) days of the employment or hiring of the individual.

15. COMPLIANCE WITH APPLICABLE LAWS

Consultant shall at all times in the performance of its obligations comply with all applicable laws, statutes, ordinances, rules and regulations, and with the reasonable requests and directions of Executive Director.

16. GOVERNING LAW / VENUE

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

17. TRADEMARKS, COPYRIGHTS, AND PATENTS

Consultant agrees to save, keep, hold harmless, protect and indemnify the 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.

18. PROPRIETARY INFORMATION

A. 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.

B. 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.

19. CONFIDENTIALITY

The data, documents, reports, or other materials which contain information relating to the review, documentation, analysis and evaluation of the work described in this Agreement 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.

20. 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 purposes hereof, unless otherwise provided by notice in writing from the respective parties, notice to the Department shall be addressed to General Counsel, Office of the City Attorney,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.

21. 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.

22. SERVICE CONTRACTOR WORKER RETENTION POLICY AND LIVING WAGE POLICY REQUIREMENTS

The Board of Harbor Commissioners of the City of Los Angeles adopted Resolution Nos. 19-8419 and 19-8420 on January 24, 2019, adopting the provisions of Los Angeles City Ordinance No. 185356 relating to Service Contractor Worker Retention (SCWR), Section 10.36 et seq. of the Los Angeles Administrative Code, as the policy of the 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 the City to terminate this Agreement and otherwise pursue legal remedies that may be available.

23. WAGE AND EARNINGS ASSIGNMENT ORDERS / NOTICES OF ASSIGNMENTS

The Consultant and/or any Subconsultant are obligated to fully comply with all applicable state and federal employment reporting requirements for the Consultant and/or Subconsultant's employees.

The Consultant and/or Subconsultant 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. The Consultant and/or Subconsultant will fully comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignments in accordance with Cal. Family Code Sections 5230 et seq. The Consultant or Subconsultant will maintain such compliance throughout the term of this Agreement.

24. EQUAL BENEFITS POLICY

The Board of Harbor Commissioners of the City of Los Angeles 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 the 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 E**.

25. 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.

26. 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.

27. INTEGRATION

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.**

28. 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.

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 Article titles in this Agreement only as a matter of convenience and for reference, and the Article 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. EXHIBITS; ARTICLES

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 Articles are to Articles of this Agreement unless stated otherwise.

34. 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.

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//// (Signature page follows)

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

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

Dated: _____, 20__

By: _____
EUGENE D. SEROKA
Executive Director

Attest: _____
AMBER M. KLESGES
Board Secretary

FINANCIAL EVIDENCE GROUP

Dated: _____, 20__
4/17/2023

By: DocuSigned by: A. Christine Davis CPA/CFF CVA CGMA
CHRISTINE DAVIS
Founder & President

4/17/2023

Attest: DocuSigned by: Leonore Ralston
LEONORE RALSTON
Forensic Consultant and FEG Project Manager

APPROVED AS TO FORM AND LEGALITY

_____, 20__
HYDEE FELDSTEIN SOTO, City Attorney
STEVEN Y. OTERA, General Counsel

By: _____
Helen Sok, Deputy/Assistant

[Initials]
Attachments

Account #	54410	W.O. #	
Ctr/Div #	0120	Job Fac. #	
Proj/Prog #	000		

Budget FY:	Amount:
2023-24	$25,000
2024-25	$50,000
2025-26	$75,000
TOTAL	$150,000

For Acct/Budget Div. Use Only:

Verified by: Melody M Ugalde Melody M. Ugalde 2023.05.03 12:33:08 -07'00'

Verified Funds Available: Digitally signed by Frank Liu Date: 2023.05.03 18:28:35 -07'00'

Date Approved: 5/3/23

Rev. 12/21/22



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A CPA Firm•

EXHIBIT A



III. Project Approach, Work Plan, Management and Timeline

23. Based on our past experience working on similar projects, we anticipate performing the following general steps or their equivalent (not all-inclusive):
    i. Meet or speak with counsel and Department personnel most knowledgeable about time keeping and payroll procedures and systems in order to gain an understanding of the Harbor Department's processes,
    ii. Meet or speak with counsel and Department personnel most knowledgeable about the Department's current methodology and calculation of FLSA and contractual overtime wages,
    iii. Review and test data and documents received for completeness, and to confirm our overall understanding of the Department's processes,
    iv. Review and analyze payroll and time keeping data, MOUs, and other relevant documents to gain an understanding of how special/incentive pays are compensated and how overtime is calculated,
    v. Analyze payroll and time keeping data, as well as other information (if necessary), to calculate overtime wages and total compensation earned pursuant to the FLSA and/or MOU,
    vi. Compare results of Step v. to wages actually paid and quantify unpaid FLSA and/or MOU overtime, if any, for each employee,
    vii. Prepare, produce, and review with counsel and Department the results of the detailed analyses for each employee,
    viii. If requested: prepare, produce, and review with counsel and Department a written summary of procedures performed and findings.
24. We will aim to meet, if not exceed, counsel's expectations with respect to relevant due dates and deliverables. We are highly experienced in managing similar projects, overcoming unexpected hurdles, and meeting internal and external deadlines.

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EXHIBIT B

Hourly Rates for
The Los Angeles City Attorney's Office, Harbor Division
Opportunity Number/RAMP: 205933

A. Christine Davis:
Consulting - $400
Expert Testimony - $500

Leonore Ralston:
Consulting - $300

Support Staff:
Consulting - $200

A. Christine Davis, CPA/CFF, CVA, CGMA
Founder & Shareholder
(415) 842-1023
davis@financialevidence.com

EXHIBIT C - AFFIRMATIVE ACTION PROGRAM PROVISIONS

Sec. 10.8.4 Affirmative Action Program Provisions.

Every non-construction and construction Contract with, or on behalf of, the City of Los Angeles for which the consideration is $25,000 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 a 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, color, religion, national origin, ancestry, sex, sexual orientation, age, disability, marital status, domestic partner status or medical condition.

1. This section 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 shall, 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, color, religion, national origin, ancestry, sex, sexual orientation, age, disability, marital status, domestic partner status or medical condition.

C. At the request of the Awarding Authority or the DAA, 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, color, religion, national origin, ancestry, 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 DAA for the purpose of investigation to ascertain compliance with the Affirmative Action Program provisions of City Contracts and, upon 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 a City Contract. The 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 DAA. No 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, the breach may be the basis for a determination by the Awarding Authority or the Board of Public Works that the Contractor is a non-responsible bidder or

proposer pursuant to the provisions of Section 10.40 of this Code. In the event of such determination, the 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 for each person for each calendar day on which the 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 DAA 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. By affixing its signature to a Contract that is subject to this article, the Contractor shall agree to adhere to the provisions in this article for the duration 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 Program.

1. The Contractor certifies and agrees to immediately implement good faith effort measures to recruit and employ minority, women and other potential employees in a non-discriminatory manner including, but not limited to, the following actions as appropriate and available to the Contractor's field of work. The Contractor shall:

(a) Recruit and make efforts to obtain employees through:

(i) Advertising employment opportunities in minority and other community news media or other publications.

(ii) Notifying minority, women and other community organizations of employment opportunities.

(iii) Maintaining contact with schools with diverse populations of students to notify them of employment opportunities.

(iv) Encouraging existing employees, including minorities and women, to refer their friends and relatives.

(v) Promoting after school and vacation employment opportunities for minority, women and other youth.

(vi) Validating all job specifications, selection requirements, tests, etc.

(vii) Maintaining a file of the names and addresses of each worker referred to the Contractor and what action was taken concerning the worker.

(viii) Notifying the appropriate Awarding Authority and the DAA in writing when a union, with whom the Contractor has a collective bargaining agreement, has failed to refer a minority, woman or other worker.

(b) Continually evaluate personnel practices to assure that hiring, upgrading, promotions, transfers, demotions and layoffs are made in a non-discriminatory manner so as to achieve and maintain a diverse work force.

(c) Utilize training programs and assist minority, women and other employees in locating, qualifying for and engaging in the training programs to enhance their skills and advancement.

(d) Secure cooperation or compliance from the labor referral agency to the Contractor's contractual Affirmative Action Program obligations.

(e) Establish a person at the management level of the Contractor to be the Equal Employment Practices officer. Such individual shall have the authority to disseminate and enforce the Contractor's Equal Employment and Affirmative Action Program policies.

(f) Maintain records as are necessary to determine compliance with Equal Employment Practices and Affirmative Action Program obligations and make the records available to City, State and Federal authorities upon request.

(g) Establish written company policies, rules and procedures which shall be encompassed in a company-wide Affirmative Action Program for all its operations and Contracts. The policies shall be provided to all employees, Subcontractors, vendors, unions and all others with whom the Contractor may become involved in fulfilling any of its Contracts.

(h) Document its good faith efforts to correct any deficiencies when problems are experienced by the Contractor in complying with its obligations pursuant to this article. The Contractor shall state:

(i) What steps were taken, how and on what date.

(ii) To whom those efforts were directed.

(iii) The responses received, from whom and when.

(iv) What other steps were taken or will be taken to comply and when.

(v) Why the Contractor has been or will be unable to comply.

2. Every contract of $25,000 or more which may provide construction, demolition, renovation, conservation or major maintenance of any kind shall also comply with the requirements of Section 10.13 of the Los Angeles Administrative Code.

L. The Affirmative Action Program required to be submitted hereunder and the pre-registration, pre-bid, pre-proposal or pre-award conference which may be required by 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.

M. Any adjustments which may be made in the Contractor's work force to achieve the requirements of the City's Affirmative Action Program in purchasing and construction shall be accomplished by either an increase in the size of the work force or replacement of those employees who leave the work force by reason of resignation, retirement or death and not by termination, layoff, demotion or change in grade.

N. 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 engaged in the performance of City Contracts.

O. All Contractors subject to the provisions of this article shall include a similar 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.

(1) SMALL/VERY SMALL BUSINESS ENTERPRISE PROGRAM
(2) LOCAL BUSINESS PREFERENCE PROGRAM

(1) SMALL/VERY SMALL BUSINESS ENTERPRISE PROGRAM:

The 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 subconsultants.**

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.

Consultant shall complete, sign, and submit as part of the executed agreement the attached Affidavit and Consultant Description Form. The Affidavit and Consultant Description Form, when signed, will signify the Consultant's intent to comply with the SBE requirement. All SBE/VSBE firms must be certified by the time proposals are due to receive credit. In addition all consultants and subconsultants must be registered on the LABAVN by the time proposals are due.

(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.

Consultants who qualify as a Local Business Enterprise (LBE) will receive an 8% preference on any proposal for services valued in excess of $150,000. The preference will be applied by adding 8% of the total possible evaluation points to the Consultant's score. Consultants who do not qualify as a LBE may receive a maximum 5% preference for identifying and utilizing LBE subconsultants. Consultants may receive 1% preference, up to a maximum of 5%, for every 10% of or portion thereof, of work that is subcontracted to a LBE. LBE subconsultant preferences will be determined by the percentage of the total amount of compensation proposed under the Agreement.

The Harbor Department defines a LBE as:

(a) A business headquartered within 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; 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 Consultant Description Form. The Affidavit and Consultant Description Form will signify the LBE status of the Consultant and subconsultants.

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

Financial Evidence Group

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, and all of its domestic and foreign affiliates, any proposed changes of the ownership and to permit the audit and examination of firm ownership documents, and the ownership documents of all of its domestic and foreign affiliates, 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 $5,000,000 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: A. Christine Davis
Printed Name: A. Christine Davis

Title: Founder and President
Date Signed: 3/8/2023

Consultant Description Form

PRIME CONSULTANT:

Contract Title: Forensic Accounting Services for Employment Matters

Business Name: Financial Evidence Group LABAVN ID#: _____

Award Total: $ _____

Owner's Ethnicity: Asian Gender Femail Group: SBE VSBE MBE WBE DVBE OBE (Circle all that apply) Local Business Enterprise: YES_____ NO___✓___ (Check only one)

Primary NAICS Code: 541211 Average Three Year Gross Revenue: $338,447

Address: P.O. Box 191176, San Francisco

City/State/Zip: San Francisco, CA 94119

County: San Francisco

Telephone: (415) 842 1023 FAX: ( ) _____

Contact Person/Title: A. Christine Davis

Email Address: davis@financialevidence.com

SUBCONSULTANT:

Business Name: _____ LABAVN ID#: _____

Award Total: (% or $): _____

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: _____

SUBCONSULTANT:

Business Name: _____ LABAVN ID#: _____

Award Total: (% or $): _____

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 E- Equal Benefits Ordinance

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.

3. RESOLUTION NO. _____ - APPROVAL OF FOREIGN-TRADE ZONE (FTZ) GENERAL PURPOSE OPERATING AGREEMENT BETWEEN THE CITY OF LOS ANGELES HARBOR DEPARTMENT AND KUEHNE AND NAGEL INC., FTZ 202, SITE 63

THE PORT OF LOS ANGELES
Executive Director's Report to the Board of Harbor Commissioners

DATE: **JUNE 14, 2023**

FROM: **CARGO MARKETING**

SUBJECT: **RESOLUTION NO. _____ - APPROVAL OF FOREIGN-TRADE ZONE (FTZ) GENERAL PURPOSE OPERATING AGREEMENT BETWEEN THE CITY OF LOS ANGELES HARBOR DEPARTMENT AND KUEHNE AND NAGEL INC., FTZ 202, SITE 63**

SUMMARY:

Staff requests approval of a Foreign-Trade Zone (FTZ) Operating Agreement (Agreement) between the City of Los Angeles Harbor Department (Harbor Department) and Kuehne and Nagel Inc. (K&N) to operate its facility within FTZ 202, Site 63, located at 20000 S. Western Avenue, Torrance, CA 90501. This is a 2.6-acre property including a warehouse and office space located approximately 10 miles north of the Port of Los Angeles. K&N would operate its warehouse under FTZ procedures as a multi-usage site. The Harbor Department, as the FTZ grantee, establishes General Purpose Operating Agreements with FTZ operators to oversee their FTZ operations.

The proposed Agreement is for a term of five years with three, five-year renewal options. If the proposed Agreement is approved, the Harbor Department will receive $7,750 annually from K&N (per FTZ Tariff No. 2).

RECOMMENDATION:

It is recommended that the Board of Harbor Commissioners (Board):

1. Find that the Director of Environmental Management has determined that the proposed action is administratively exempt from the requirements of the California Environmental Quality Act (CEQA) under Article II Section 2(f) of the Los Angeles City CEQA Guidelines;

2. Approve the proposed Foreign-Trade Zone Operating Agreement between the Harbor Department and Kuehne and Nagel Inc.;

3. Direct the Board Secretary to transmit the proposed Foreign-Trade Zone Operating Agreement to the Los Angeles City Council for approval pursuant to Section 373 of the Charter of the City of Los Angeles and Section 10.5 of the Los Angeles Administrative Code;

4. Authorize the Executive Director to execute and the Board Secretary to attest to the proposed Foreign-Trade Zone Operating Agreement; and

5. Adopt Resolution No._____.

DISCUSSION:

Background and Context – The FTZ Act of 1934, as amended (19 U.S.C. 81a-81u), was established to support U.S. commerce and create jobs by reducing import duties or excise taxes by deferring payment of duties, thereby making it attractive for companies to perform some work on their products in the U.S. rather than offshore. The definition of an FTZ is a restricted access site located in the U.S. Customs and Border Protection territories. The importer may defer payment of duties and other fees until the merchandise is brought into the U.S. for consumption.

Need for Agreement – The Harbor Department, as the grantee, is required by the FTZ Board to have an Operating Agreement with FTZ site operators. The term of this proposed FTZ Operating Agreement is five years with three, five-year extensions (Transmittal 1). K&N is an international transport and logistics company with its regional office located in Jersey City, New Jersey, employing approximately five full-time and part-time employees working within the proposed FTZ warehouse area. K&N would operate FTZ Site 63 located at 20000 S. Western Avenue, Torrance, CA. The facility consists of a warehouse and office space on 2.6 acres (Transmittal 2). The property is within the FTZ 202 service area (Transmittal 3).

K&N shall follow the rules and procedures as outlined in the Department of Homeland Security's FTZ manual, such as providing a secured area within the FTZ. K&N shall notify truck drivers, truck brokers, and trucking companies that the trucks serving the Port of Los Angeles confine their routes to the designated Wilmington Truck Route.

Need for Approval – K&N is requesting approval from the Harbor Department to execute the proposed FTZ Operating Agreement to operate Site 63 as a multi-usage FTZ facility. K&N handles the logistics, handling, storage, inventory and quality control of general merchandise, as well as the occasional re-exportation of products.

If K&N does not obtain approval as an operator with FTZ status from the Harbor Department, they potentially have the choice of going to another FTZ in California such as Long Beach. Since FTZ facilities exist in every state, a company can potentially shift its employees to work elsewhere as a result of seeking FTZ status in another location.

SUBJECT: FOREIGN-TRADE ZONE OPERATING AGREEMENT WITH KUEHNE AND NAGEL INC., FTZ 202, SITE 63

ENVIRONMENTAL ASSESSMENT:

The proposed action is the approval for the FTZ Agreement with K&N, which is an administrative activity. Therefore, the Director of Environmental Management has determined that the proposed action is administratively exempt from the requirements of CEQA in accordance with Article II Section 2(f) of the Los Angeles City CEQA Guidelines.

FINANCIAL IMPACT:

If the proposed Agreement is approved, the Harbor Department will receive $7,750 annually from K&N (per FTZ Tariff No. 2).

Approval of the FTZ Operating Agreement is not anticipated to result in additional, incremental FTZ-related consulting service expenses being incurred by the Harbor Department. During Fiscal Year (FY) 2022, revenues of $289,336 were collected from Harbor Department FTZ operators relative to FY 2022 expenses of $30,594 incurred by the Harbor Department for consulting services.

CITY ATTORNEY:

The Office of the City Attorney has prepared and approved the proposed Operating Agreement as to form and legality.

TRANSMITTALS:

1. Proposed FTZ Operating Agreement with Kuehne and Nagel Inc. FTZ 202, Site 63
2. FTZ 202, Site 63 Map
3. FTZ 202, Service Area Map

FIS Approval: MB
CA Approval: SO

ERIC CARIS
Director of Cargo Marketing

for MICHAEL DiBERNARDO
Deputy Executive Director

APPROVED:

Marla Bleavins For

EUGENE D. SEROKA
Executive Director

EC:MVD:aa
Author: M. van Dijk

Transmittal 1

LOS ANGELES FOREIGN-TRADE ZONE

OPERATING AGREEMENT

by and between

THE CITY OF LOS ANGELES

And

KUEHNE + NAGEL INC.

Transmittal 1

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AGREEMENT NO. _____
FTZ OPERATING AGREEMENT
BETWEEN THE CITY OF LOS ANGELES AND
KUEHNE + NAGEL INC.

THIS AGREEMENT is made this ____ day of _____, by and between the CITY OF LOS ANGELES, a municipal corporation ("City") acting by and through its Board of Harbor Commissioners ("Grantee") and Kuehne + Nagel Inc., 20000 South Western Ave., Torrance, CA 90501 ("Operator").

RECITALS:

WHEREAS, the Grantee has received permission from the United States Foreign-Trade Zones Board to establish a foreign-trade zone, designated as Foreign-Trade Zone No. 202, at various locations in or adjacent to the Los Angeles Customs port of entry; and

WHEREAS, the Operator desires to make use of foreign-trade zone status and wishes to activate Site 63 located at 20000 South Western Ave. Torrance, CA 90501 as depicted and more fully described in Exhibit "A", attached hereto and made a part hereof Foreign-Trade Zone No. 202 Site 63 ("Zone Site"); and

WHEREAS, the Grantee deems it practicable to limit its participation in the everyday operations of the Zone Site and to place the operation of the Zone Site under the supervision of Operator; and

WHEREAS, upon the terms and conditions herein set forth, Operator desires to undertake the development and operational management of a foreign-trade zone at the Zone Site accordance with standards of construction and operation approved by the Grantee and the Foreign-Trade Zones Board, including those related to occupancy and use.

NOW, THEREFORE, the parties hereto, in consideration of the mutual agreements herein contained and covenants herein expressed, and for other good consideration acknowledged by each of them to be satisfactory and adequate, do hereby agree as follows:

ARTICLE I. - DEFINITIONS

In this Agreement and in any amendment or supplement hereto (except as otherwise expressly provided or unless context otherwise requires), terms used as defined terms in the recitals hereto shall have the same meanings throughout this Agreement and, in addition, the following terms shall have the meanings specified below:

A. "Act" shall mean the Foreign-Trade Zones Act of 1934, as amended, (19 U.S.C., 81a et. seq.).

B. "Activation" shall mean initiation within Foreign-Trade Zone No. 202 of any activity authorized by the United States Foreign-Trade Zones Board and by the United States Customs Service to be conducted at the Zone Site.

C. "Agreement" shall mean this Los Angeles Foreign-Trade Zone Operating Agreement by and between the City of Los Angeles and Kuehne + Nagel Inc.

D. "Bond" shall mean a bond or bonds paid for by the Operator and issued by a surety company authorized to conduct business in the State of California and approved by Customs, to insure against any loss of duty, taxes or other sums from operations within the Zone Site and in an amount satisfactory to Customs and the Grantee.

E. "City" shall mean the City of Los Angeles, a municipal corporation.

F. "Contract Documents" shall mean this Agreement, and all other documents executed on behalf of the Operator in conjunction with this Agreement.

G. "Customs" shall mean the U.S. Customs and Border Protection or any successor body or agency of the United States.

H. "Executive Director" shall mean the General Manager of the Los Angeles Harbor Department.

I. "Grantee" shall mean the City of Los Angeles Board of Harbor Commissioners, to which the privilege of establishing, operating and maintaining Foreign-Trade Zone No. 202 has been granted by the Foreign-Trade Zones Board.

J. "Operator" shall mean Kuehne + Nagel Inc., the entity designated by the Grantee to conduct foreign-trade zone activities at the Zone Site.

K. "Operator of a Multi-User Zone Site" shall mean that the Zone Site is available for use by companies other than the Operator.

L. "Operator of a Single-User Zone Site" shall mean that the Operator is the sole user of the Zone Site, including Operators of subzone sites.

M. "Port Director" shall mean the Port Director of the U.S. Customs and Border Protection Agency of Los Angeles.

N. "Regulations" shall mean all applicable federal, state and local statutes, ordinances and regulations including the rules, statutes, regulations, orders, decisions, ordinances or decrees of any governmental body, including judicial bodies, having jurisdiction over the Los Angeles Foreign-Trade Zone No. 202, the Operator, or the operations conducted therein.

O. "Zone" shall mean those areas in or adjacent to the Los Angeles Customs Port of Entry designated by the Foreign-Trade Zones Board as Foreign Trade Zone No. 202.

P. "Zone Site" shall mean those areas within the Zone that Operator may operate and maintain as a foreign-trade zone.

ARTICLE II. - AUTHORITY GRANTED/ACCEPTED, TERM AND AGREEMENT

2.01 Authority Granted

The Grantee gives and grants to Operator for the term hereof and for any extensions as hereinafter provided, the non-exclusive authority to conduct foreign-trade zone activities at the Zone Site as an Operator of a Multi-User Zone Site, subject to the terms, conditions, agreements and restrictions herein set forth.

2.02 Authority Accepted

Operator agrees during the term of this Agreement to exercise its rights and powers in accordance with the terms and conditions of this Agreement and hereby assumes responsibility for the operation and management of said Zone Site.

2.03 Term of Agreement

A. Term and Renewal. Unless terminated as herein provided, this Agreement shall remain in effect for five (5) years, provided that Operator has performed to the satisfaction of Grantee as required herein, commencing on the first day of the month subsequent to City approval of this Agreement ("Commencement Date") and shall, after such five-year period, be renewed for three periods of five years each upon terms and conditions to be negotiated prior to the end of the then current five-year term. Any such renewal must be approved in advance or subsequently ratified by the Board of Harbor Commissioners. If the parties cannot agree on the terms and conditions prior to the end of the then current five-year period, the Agreement shall terminate at the end of such term.

B. Initiation of Operations. Operator hereby agrees to initiate operations at the Zone Site, as soon as practicable following approval by the Foreign-Trade Zones Board and Customs or such other time as may be mutually

agreed upon in writing by the Grantee and Operator. Operator shall not initiate operations at the Zone Site without first receiving, pursuant to 19 C.F.R. 146.6(b)(5), a written letter from the Grantee concurring in the initiation of operations.

ARTICLE III. - CONSTRUCTION, REPAIR AND MAINTENANCE

3.01 Construction

A. Operator agrees that it will construct at its expense the improvements and facilities at the Zone Site required by the Foreign-Trade Zones Board and Customs.

B. Operator further agrees that it will not construct any additional Zone Site facility or make any substantial alterations to the improvements referred to in Section 3.01.A, which materially affect operation of the Zone Site, unless plans for such alterations or additional improvements are first submitted to Grantee, for the concurrence of the Grantee, Foreign-Trade Zones Board and Customs, and appropriate federal, state and local agencies, as required by law.

3.02 Repair and Maintenance of Facilities

A. Operator, at its own expense, shall at all times repair and maintain the structures and other facilities that Operator leases or owns within the Zone Site in a condition satisfactory to the Grantee and consistent with the nature of the operations in the particular foreign-trade zone so as not to endanger the life and health of employees of the United States and others who may enter the Zone Site for any reason whatsoever. Accepted sanitary practices shall be followed in the construction, equipment, and operation of such buildings and other structures. Operator, in a timely manner, shall make such repairs or alterations as may be ordered by the Foreign-Trade Zones Board or the Grantee.

B. Operator agrees to provide at the Zone Site its own expense proper containers for trash to keep the Zone Site free and clear of rubbish, debris and litter at all times, and to keep and maintain the Zone Site in a safe, clean, wholesome and sanitary condition under Regulations. No offensive refuse matter or any substance constituting any unnecessary, unreasonable or unlawful fire hazard, nor material detrimental to the public health shall be permitted to be or remain on the Zone Site, and Operator shall exercise reasonable care to prevent such material or matter from being or accumulating upon the Zone Site.

C. All fire protection sprinkler systems, fire hydrant systems, standpipe systems, fire alarm systems, portable fire extinguishers and other fire protective or extinguishing systems or appliances which have been or may be installed at the Zone Site shall be maintained by Operator at its own expense in an operative condition at all times.

D. Operator shall be liable and shall make immediate payment of any fine, penalty, liquidated damage or other charge or assessment imposed by the Foreign-Trade Zones Board, Customs, Grantee or City for failure to make repairs or alterations as ordered, pursuant to procedures herein provided.

ARTICLE IV. - USE OF NAME AND ADVERTISING

4.01 Advertising

So long and only so long as this Agreement shall remain in force and effect, Operator, in operational management of the Zone Site, may advertise its operations as being within "Los Angeles Foreign-Trade Zone No. 202"; however, no designs, advertising, signs or forms of publicity (including form, color, number, location and size) shall be used upon or with respect to the Zone Site or other place of related business unless the same shall have been first approved in writing by the Grantee as meeting its standards. The Grantee, or its authorized agents, may at any time after five days' notice to Operator, enter the Zone Site and remove any unapproved signs or advertising media, and may keep or destroy such signs or other media without paying therefor, and without being deemed guilty of trespass or other tort.

ARTICLE V. - ESTABLISHMENT OF TARIFFS

5.01 Foreign-Trade Zone Regulations and Rate Schedules

This Agreement shall be subject to the rates, terms and conditions of the Foreign-Trade Zone No. 202 Tariff No. 2 as it now exists or may be amended or superseded. Operator acknowledges it has received, read and understands the rates, terms and conditions of Tariff and agrees to be contractually bound by these rates, terms and conditions as if these terms were set forth in full herein except as may be modified by this Agreement. Operator understands it is responsible for maintaining a complete copy of the current Tariff and assumes responsibility for doing so.

ARTICLE VI. - ADMINISTRATION AND OPERATION OF ZONE

6.01 Federal, State and Local Laws and Regulations

In the performance of activities required and permitted by this Agreement, Operator agrees to comply with Regulations, the Tariff and the terms of this Agreement.

6.02 Availability of Zone Site

If applicable as an operator of a Multi-User Zone Site, Operator confirms that the Zone Site will be used only for the conduct of the business of the Operator and its affiliates. For purposes of this paragraph, the term "affiliates" means wholly-owned

subsidiaries of the Operator and subsidiaries and partnerships in which the Operator has a greater than 50% interest.

6.03 PierPASS

Operator acknowledges that truck traffic congestion is a serious problem on roads and freeways leading into and out of the Port of Los Angeles. Therefore, the Operator shall, whenever it is reasonably feasible in light of its overall operations, utilize the PierPASS Program or other programs to reduce daytime truck operations. Operator shall use its best efforts to encourage its zone users to consider using the PierPASS and/or other programs to reduce daytime operations. Further, the Operator shall make available to its zone users PierPASS informational material provided to it by the City. Operator shall provide to City, at least annually, a report concerning its nighttime operations and PierPASS utilization.

6.04 Wilmington Truck Route

It is recognized by both parties that the Operator does not directly control the trucks serving the Port. However, the Operator shall notify truck drivers, truck brokers and trucking companies that trucks serving FTZ warehouses and originating in the Port of Los Angeles must confine their route to the designated Wilmington Truck Route of Alameda Street and "B" Street; Figueroa Street from "B" Street to "C" Street; and Anaheim Street east of Alameda Street. A copy of the Wilmington Truck Route is attached as Exhibit B, which may be modified from time to time at the sole discretion of the Executive Director with written notice to Operator.

ARTICLE VII. - CHARGES AND FEES

7.01 Processing/Application Fees

Upon execution of this Agreement, the Operator shall pay to Grantee a one-time non-refundable Operator's processing fee (in anticipation of activation) in the amount specified in the Foreign-Trade Zone No. 202 Tariff No 2 in effect at the time of the execution of this Agreement. The parties agree that this amount is fair and reasonable compensation for the services to be rendered by Grantee in assisting Operator with the processing of this Agreement and anticipated activation of the Zone Site. In addition, Operator shall pay to Grantee an application fee when the Grantee must return to the Foreign-Trade Zones Board on Operator's behalf for approval of (a) an expansion to include a new Zone space or Zone site, (b) a boundary modification to accommodate expanded operations, or (c) manufacturing authority or scope requests, which fees shall be those specified in the Foreign-Trade Zone No. 202 Tariff No. 2 in effect at the time of the application. Such fees shall be paid to Grantee at such time that Grantee is required to return to the Foreign-Trade Zones Board for (a), (b) or (c). In each of the three above referenced situations, Operator will be responsible for the total expense of preparing the application or request to be filed with the Foreign-Trade Zones Board.

7.02 Annual Administrative Charges

A. Annual Administrative Charges. In consideration of the granting of this authorization to operate the Zone Site, Operator agrees to pay to the Grantee an annual fee as specified in the Foreign-Trade Zone No. 202 Tariff No. 2 in effect at the time the execution of this Agreement. The parties agree that this amount is fair and reasonable compensation for the services to be rendered by Grantee in assisting Operator with its operation of the Zone Site and in providing its oversight responsibilities of the Zone. This annual fee is payable upon the Commencement Date of this Agreement and on every October 1 thereafter, so long as the Agreement remains in effect. The initial annual fee is to be prorated from the Commencement Date of this Agreement to the following October 1.

B. Operator's Expenses. Operator further agrees to pay, or cause to be paid, all costs, expenses, and taxes (if any) of the Zone Site operation, including, but not limited to, construction, installation, improvements, security, maintenance and personnel, and as otherwise provided herein.

ARTICLE VIII. - CUSTOMS EXPENSES

8.01 U.S. Customs and Border Protection Personnel

It is understood that from time to time it may become necessary for Customs personnel to be located at the Zone Site. In such event, the Operator shall be responsible for all charges for personnel billed by Customs. Grantee shall request that Customs bill Operator directly for any Customs personnel expense attributable to such foreign-trade zone operations at the Zone Site. In the event that such direct billing to Operator is not acceptable to Customs upon receipt of any billing for personnel expense by Grantee, Grantee shall promptly present the bill to Operator for payment. Operator agrees to make such payments promptly.

8.02 U.S. Customs and Border Protection Bond

Operator shall pay the full cost of any Bond required by Customs for all operations of the foreign-trade zone at the Zone Site.

8.03 Customs Charges

Operator shall be responsible for the payment of all Customs charges or exactions including but not limited to duties, taxes, charges, fines, penalties, interest, attorney, user and other fees, costs, liquidated damages, or expenses assessed due to the operation of the Zone Site.

ARTICLE IX. - ACCESS TO SITE

9.01 Right of Entry and Inspection

Representatives of Customs, the Foreign-Trade Zones Board, Grantee and any other authorized federal, state or local officials shall have the right to enter upon the Zone Site at any time for the authorized and lawful purpose of examining such Zone Site and merchandise contained therein and conferring with Operator, its agents, invitees, and employees on such Zone Site, inspecting and checking operations, supplies, equipment and merchandise, conducting financial and compliance audits and determining whether the business is being conducted in accordance with Regulations. All such entries shall be in accordance with usual security procedures.

ARTICLE X. - RESPONSIBILITY FOR AND ACCESS TO BOOKS AND RECORDS

10.01 Reports to Foreign-Trade Zones Board, Customs and Grantee

Operator shall submit to the Foreign Trade Zones Board at it's website via http://ita-web.ita.doc.gov/FTZ/OFISLogin.nsf, and at its own expense data sufficient to complete annual reporting requirement of the Operator to the Foreign-Trade Zones Board. Such information shall be provided not later than February 1 of each year (for the preceding period of 1/1-12/31). The submittal of all such data shall be entered by an appropriate official of Operator, certifying to the accuracy of the records for the specified accounting period. Apart from, and in addition to, reimbursing Grantee for any fine imposed upon Grantee as a result of an act or omission of Operator under this Agreement, Grantee may demand and Operator, upon such demand, shall pay Grantee $100 per day for each and every day after February 15 that the annual report data is not entered into the FTZ OFIS system, unless Grantee has provided Operator with a written extension of time in which to submit such data. All records maintained for preparation of all data and those required under the accounting system shall be retained in the Operator's place of business for at least five years after the merchandise covered by such records has been forwarded from the Zone Site except as required by Regulations.

All written communications with the Foreign-Trade Zones Board concerning operations within Foreign Trade Zone No. 202 are to be made through the Grantee.

10.02 Confidential Information

Details of business operations of individual firms operating and using the foreign-trade zone at the Zone Site shall be kept confidential except for such information as shall be determined to be public information under federal, state, or local laws. Any procedures manual, computer programs, computer report format, and any other related systems developed by Operator for said foreign-trade zone operation shall be the sole property of Operator and will not be disclosed to any other entity without the express written permission of Operator except as required under federal, state or local laws.

ARTICLE XI. - NONDISCRIMINATION

11.01 Nondiscrimination and Equal Opportunity

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

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

11.02 Small Business Development Program

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

ARTICLE XII. - TERMINATION AND DEFAULT

12.01 Termination for Cause

A. The breach of any provision of this Agreement or the failure to perform any obligations, duty or to accept liability established herein by act of commission or omission for whatsoever cause by a party hereto shall be a default. The non-defaulting party shall give written notice of intent to terminate this Agreement by registered or certified mail to the defaulting party stating the specific default or breach committed.

B. The non-defaulting party shall have the option to terminate the Agreement after expiration of the time periods as follows:

1. If the default can be cured by payment or posting of money, bond or other security for money due to the other party, the defaulting party shall have seven (7) days after receipt of the notice to terminate in order to pay over such money or, if the payment be contested, to post such amount with the other party pending final determination of liability, in cash or security in such form as approved by the non-defaulting party.

2. If the default cannot be cured by payment or posting of money or security to the other party as provided in subsection (1) above, the defaulting party shall have twenty-one (21) days after receipt of written notice to terminate in which to cure the default.

3. If the default is one, which by its nature cannot be reasonably cured within twenty-one (21) days, then the defaulting party shall have a reasonable time period in which to cure the default. Such time period shall include, but shall not exceed the time period provided by statutes, laws, ordinances, rules and regulations, or order of the Foreign-Trade Zones Board and shall include the time required for the completion of all administrative and all judicial procedures, including appellate procedures, as provided for by law. Upon the request of the non-defaulting party, the defaulting party shall submit to the non-defaulting party a written schedule of performance and supporting documentation indicating the shortest period in which such default can be cured by defaulting party.

12.02 Performance

In addition to any default arising under the provisions of Section 12.01, Operator hereby acknowledges that Operator's failure to perform any of the following duties and obligations to the reasonable satisfaction of the Grantee shall constitute a default which shall permit the Grantee to initiate termination proceedings pursuant to Section 12.01.

A. Maintenance of a uniform system of accurate books, records and accounts prepared in accordance with Generally Accepted Accounting Principals and capable of producing the following results, to the extent such results are required under the customs laws of the United States:

1. Accounting for all merchandise, including merchandise that is of domestic status, temporarily deposited, admitted, granted a zone status and/or status change, stored, exhibited, manipulated, manufactured, destroyed, transferred, and/or removed from a Zone Site;

2. Producing accurate and timely reports and documents;

3. Identifying shortages and overages of merchandise in the Zone Site in sufficient detail to determine the quantity, description, tariff classification, Zone Site status, and value of the missing or excess merchandise;

4. Providing all information necessary to make entry for merchandise being transferred to the Customs territory; and

5. Providing an audit trail to Customs forms from admission through manipulation, manufacture, destruction or transfer of merchandise from the Zone Site by a Customs authorized inventory method.

B. Proper operation of the Zone Site in accordance with applicable federal, state and local laws, regulations, rules, and operational management procedures approved by the Grantee, Customs and the Foreign-Trade Zones Board.

C. Preparation and timely submission of all reports to the Grantee.

12.03 Total or Partial Destruction of Zone Site

In the event that the Zone Site or the accommodation of foreign-trade zone business at the Zone Site is totally destroyed or partially destroyed and thereby terminates 33 and 1/3 percent or more of the activities within the Zone Site, based on a comparison of income derived, exclusive of insurance recovery, upon written demand from Grantee by registered or certified mail, Operator shall provide Grantee with general building and financial plans for the restoration of the Zone Site or the accommodation of foreign-trade zone business within thirty (30) days from receipt of such demand. If Operator does not provide any plans for restoration or accommodation of foreign-trade zone business at the Zone Site, Grantee shall have the option to immediately notify Operator of its intent to terminate, which shall be effective twenty (21) days after receipt of such notice by registered or certified mail. This section shall not apply if the destruction is due to natural causes.

12.04 Termination For No Cause

In the event either party for any reason wishes to terminate its participation in foreign-trade zone activities and terminate its rights and obligations under this Agreement, at least one hundred eighty (180) days prior written notice must be delivered to the other party. If the Grantee wishes to terminate, the Operator shall have the right, directly or through another entity, to assume the rights and obligations of the Grantee subject only to the approval of the Foreign-Trade Zones Board. If the Operator wishes to terminate, Operator is obligated to deactivate the Zone Site prior to the date of termination and must ensure that all foreign status merchandise has either been subject to the payment of customs duties and fees or been transferred, in bond, to another foreign trade zone facility.

Operator acknowledges that this Agreement has no bearing on any lease or other agreement it has with the City of Los Angeles. This Agreement cannot be construed as granting any right under or expectation in connection with any other agreement, including any leases or permits, held by the Operator. In the event that Operator's agreement, lease or permit concerning the facilities where the foreign trade zone operates expires or is terminated, the Grantee may assist Operator in obtaining necessary approvals from the Foreign-Trade Zone Board and/or Customs to establish its foreign trade zone at a different location.

12.05 Waiver

No waiver by either party at any time of any of the terms, conditions or covenants of this Agreement shall be deemed or taken as a waiver at any time thereafter of the same or any other term, conditions, covenant or agreement herein contained nor of the strict and prompt performance thereof by the party obligated to perform. No delay, failure or omission of either party to exercise any right, power, privilege or option arising from any default nor subsequent acceptance of compensation then or thereafter accrued shall impair any such right, power, privilege or option or be construed to be a waiver of any such default or relinquishment thereof or acquiescence therein. No option, right, power, remedy or privilege of either party hereto shall be construed as being exhausted or discharged by the exercise thereof in one or more instances. It is agreed that each and all the rights, powers, options or remedies given to the parties herein by this Agreement are cumulative, and no one of them shall be exclusive of the other or exclusive of any remedies provided by law and that the exercise of one right, power, option or remedy by a party shall not impair its rights to any other right, power, option or remedy.

12.06 Discontinuance of Trade Name

Upon the termination of this Agreement for any cause, the Operator shall, deactivate the Zone Site as of the date of expiration of the term of the Agreement and immediately discontinue all use of trade names, trademarks, signs and forms of advertising and other indicia of operation within the foreign-trade zone at the Zone Site, specifically referring to the Los Angeles Foreign Trade- Zone, and if the Operator shall fail or omit to make, or cause to be made, such changes, within ten (10) days after written notice, then the Grantee shall have the right to enter upon the Zone Site without being deemed guilty of or liable for trespass or any other tort or offense, and to make or cause to be made such changes at the expense of the Operator, which expense the Operator agrees to pay on demand.

12.07 Breach of Contract

Failure of any party to perform the obligations required by this Agreement or incorporated herein by reference shall constitute a material breach of this Agreement and the other party shall be entitled to pursue any and all remedies available at law or equity in addition to other rights and remedies specifically provided herein.

ARTICLE XIII. - DEACTIVATION OF ZONE SITE

13.01 Deactivation of Zone Site

Upon the expiration of the term of this Agreement, if no new agreement is entered into, Operator is obligated to deactivate the Zone Site as of the date of expiration of the term of the Agreement. Prior to deactivating the Zone Site, Operator must ensure that all foreign status merchandise has either been subject to the payment

of customs duties and fees or been transferred, in bond, to another foreign trade zone facility.

ARTICLE XIV. - INDEMNIFICATION AND INSURANCE

14.01 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, Operator 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 Operator'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 Operator 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.

14.02 Acceptable Evidence and Approval of Insurance

Electronic submission is the required method of submitting Operator's insurance documents. Operator's insurance broker or agent shall register with the City's online insurance compliance system **KwikComply** at https://kwikcomply.org/ and submit the appropriate proof of insurance on Operator's behalf.

14.03 General Liability Insurance

Operator shall procure and maintain in effect throughout the term of this Agreement, without requiring additional compensation from the City, 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 Operator's normal limits of liability but not less than One Million Dollars ($1,000,000.00) 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 Operator. The retention or self-insurance provided shall provide that any other insurance maintained by the Harbor Department shall be excess of Operator'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. Additionally, each policy shall include an additional insured endorsement (CG 2010 or equivalent) naming the City of Los Angeles Harbor Department, its officers, agents and employees as Primary additional insureds, a 10 days notice of cancellation for nonpayment of premium, and a 30 days notice of cancellation for any other reasons.

14.04 Automobile Liability Insurance

Operator shall procure and maintain at its expense and keep in force at all times during the term of this Agreement, 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 Operator's normal limits of liability but not less than One Million Dollars ($1,000,000.00) 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. Additionally, each policy shall include an additional insured endorsement (CG 2010 or equivalent) naming the City of Los Angeles Harbor Department, its officers, agents and employees as Primary additional insureds, a 10-days notice of cancellation for nonpayment of premium, and a 30-days notice of cancellation for any other reasons.

14.05 Workers' Compensation and Employer's Liability

Operator 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 Operator 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. Operator 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 Operator, and for all employees of any subcontractor or other vendor retained by Operator.

14.06 Back-to-Back Bond

Operator shall, if requested to do so by the Grantee, furnish and pay the premium for a bond in a sum equal to the amount of the Customs Form 301 Foreign-Trade Zone Operator's bond required by Customs pursuant to the Regulations, conditioned upon the full, faithful and prompt performance of and compliance with, on the part of the Operator, all the covenants, terms and conditions of this Agreement on its part to be fulfilled, kept,

performed and observed. The bond so furnished shall be in a form acceptable to the Grantee, and shall be effective throughout the term of this Agreement and shall be made either by a surety company or companies qualified to carry on a surety business in the State of California and satisfactory to the Grantee.

14.07 Carrier Requirements

All insurance which Operator 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.

14.08 Notice of Cancellation

Each insurance policy described above shall provide that it will 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 thirty (30) days' prior written notice by registered mail addressed to 425 S. Palos Verdes Street, San Pedro, California 90731.

14.09 Modification of Coverage

Executive Director, at his or her 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 Operator.

14.10 Renewal of Policies

At least thirty (30) days prior to the expiration of each policy, Operator shall direct their insurance broker or agent to submit to the City's online insurance compliance system **KwikComply** at https://kwikcomply.org/ a renewal endorsement or renewal certificate showing that the policy has been renewed or extended or, if new insurance has been obtained, evidence of insurance as specified above. If Operator 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 will be charged to Operator in the next invoice.

14.11 Right to Self-Insure

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

1. Operator has a formal self-insurance program in place prior to execution of this Agreement. If a corporation, Operator must have

a formal resolution of its board of directors authorizing self-insurance.

2. Operator 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. Operator agrees to defend the City, its boards, officers, agents and employees in any lawsuit that would otherwise be defended by an insurance carrier.

4. Operator agrees that any insurance carried by Department is excess of Operator's self-insurance and will not contribute to it.

5. Operator provides the name and address of its claims administrator.

6. Operator 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. Operator 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. Operator has complied with all laws pertaining to self-insurance.

14.12 Accident Reports

Operator 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 Operator'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 Operator, its officers or managing agents.

ARTICLE XV. - INTEREST OF PARTIES

15.01 Independent Contractor Status

Operator is an independent contractor in the performance of all activities and functions pursuant to this Agreement. Operator and Grantee are not and shall not be considered as joint venturers, partners or agents of each other and neither shall have the power to bind or obligate the other. Operator's officers, employees, agents and subcontractors shall not be considered as officers, employees or agents of the Grantee. Grantee and Operator hereby agree not to represent to anyone that they are agents of one another or have any authority to act on behalf of one another.

15.02 Sublease and Assignment

A. Assignments/Subleases Prohibited. Except as provided in subsections (D) and (E), no assignment, sublease, transfer, gift, hypothecation or grant of control, or other encumbrance of this Agreement, or any interest therein or any right or privilege thereunder, regardless of whether accomplished by a separate agreement, sale of stock or assets, merger or consolidation or reorganization by or of Operator, or accomplished in any other manner, whether voluntary or by operation of law (hereafter collectively referred to as "transfer"), shall be valid for any purpose. For purposes of this subsection, the term "by operation of law" includes but is not limited to: (1) the placement of all or substantially all of Operator's assets in the hands of a receiver or trustee; or (2) a transfer by Operator for the benefit of creditors; or (3) transfers resulting from the death or incapacity of any individual who is a Operator or of a general partner of a Operator (except as provided in subsection (E) below).

B. Right to Terminate. Notwithstanding any other provision of this Agreement, any transfer or attempted transfer by Operator of this Agreement or interest granted by the Agreement in violation of any subsection of this Section shall entitle the Executive Director to terminate this Agreement after first providing Operator seven (7) calendar days' notice of termination.

C. Transfers of Stock.

1. If Operator is either a privately held corporation or a corporation whose stock is not listed on the New York, American, NASDAQ, or Pacific Stock Exchange and more than twenty-five percent (25%) of the outstanding shares of voting stock of Operator is traded (whether in one transaction or a series of transactions) during any twelve (12) month period, Operator shall notify Executive Director in writing within ten (10) days after the transfer date. If a transfer of more than twenty-five percent (25%) of the outstanding shares of voting stock of Operator occurs, Grantee, at its option, may terminate this Agreement.

If Operator is a corporation whose stock is listed on the New York, American, NASDAQ, or Pacific Stock Exchange, Operator shall notify Grantee in writing if more than fifty percent (50%) of the outstanding shares of voting stock of Operator are transferred pursuant to a merger or stock

purchase agreement. Operator shall provide such notice no later than ten (10) days after the transfer date. If a transfer of more than fifty percent (50%) of the outstanding shares of voting stock of Operator occurs, Grantee, at its option, may terminate this Agreement.

2. If Operator is a partnership, any transfer or attempted transfer by any general partner of Operator of more than twenty-five percent (25%) of its partnership interest in Operator, shall be a prohibited assignment of Operator's interest in this Agreement within the meaning of the preceding subsections. Notwithstanding the foregoing, any such transfer of a general partner's interest consequent upon the death of a general partner to the immediate members of his or her family who will be immediately and personally involved in the operation of the partnership shall not be deemed a transfer within the meaning of this Section.

3. Grantee shall have the authority - but no obligation - to modify the foregoing conditions based on the facts of a particular case.

D. Subleases. Operator's right to sublease the Zone Site is conditioned upon the prior written approval of the Grantee.

E. Miscellaneous Conditions. Any consent given by City to Operator to transfer this Agreement or any interest therein or right or privilege thereunder shall not be construed as consent to any other such transfer. Moreover, the City's consent to such a transfer shall not alter Operator's obligation to be at all times primarily responsible for compliance with all covenants, conditions and provisions of this Agreement.

15.03 Disclosure of Interest

Prior to execution of this Agreement, Operator shall furnish Grantee with copies of its Articles of Incorporation, its by-laws, its most recent annual report, and its most recent Form 10(k). At the time of its annual reporting of information to Grantee as required by paragraph 10.01, Operator shall provide to Grantee copies of changes to its Articles of Incorporation or by-laws, if any such changes have occurred since the initial or most recent filing of documents under this paragraph, and also shall provide Grantee, at that time, with a copy of its most recent annual report and Form 10(k), if not previously provided.

ARTICLE XVI. - MISCELLANEOUS PROVISIONS

16.01 Mandatory Operator Training

The Operator's FTZ designee shall attend at least eight (8) hours per year of professional training that is related to foreign-trade zone operation. Training will be offered from time to time at the Zone, and other Grantee-approved programs may be used to

meet this requirement. The Grantee and Operator agree that educational sessions on foreign-trade zone operations conducted at seminars and conferences of the National Association of Foreign-Trade Zones may be used to meet this requirement.

16.02 Past Due Obligations

Any and all amounts required hereunder to be paid by Operator to Grantee, or which are to be paid "with interest" or which Grantee advances on behalf of Operator, which are not paid when due shall bear interest at the following rate: the legal rate provided by law for judgments in California plus three percent (3%), or the posted announced prime rate of the Bank of America, Los Angeles, California on the date payment is due, plus one percent (1%), whichever is greater. The interest rate shall be per annum from the due date until paid, unless otherwise specifically provided herein but the rate shall be modified from time to time as the legal rate or prime rate change.

16.03 Time of Essence

Time is of the essence of this Agreement and of every term, covenant and conditions hereof.

16.04 Construction of Terms and Conditions

This Agreement shall be governed by and construed in accordance with the Act, regulations promulgated thereunder and all amendments thereto and the applicable laws of the State of California.

16.05 Counterparts

This Agreement may be executed in any number of counterparts each of which when so executed and delivered shall be deemed an original, but such counterparts together shall constitute but one and the same agreement.

16.06 Further Instruments and Actions

Each party shall deliver such further instruments and take such further action as may be reasonable requested by the other in order to carry out the provisions and purposes of this Agreement.

16.07 Headings

Headings and captions in this Agreement are solely for the convenience of reference and shall not affect the interpretation of this Agreement.

16.08 Conflict of Interest

It is hereby understood and agreed that the parties to this Agreement have read and are aware of 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 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.

16.09 Integration

This Agreement contains the complete statement of all the arrangements between the parties with respect to its subject matter and cannot be changed or terminated orally. No waiver of the provisions of this Agreement shall be valid unless in writing signed by the party against whom such waiver is sought to be enforced.

16.10 Separability

If any provision of this Agreement is declared void or defective, that declaration will not effect the validity of any other provision of this Agreement.

16.11 Notices to the Parties

All notices, demands or other writings in this Agreement provided to be given, made or sent by either party hereto to the other shall be deemed to have been fully given, made or sent when made in writing and deposited in the United States mail postpaid registered or certified and addressed as follows:

For the Grantee To:
City of Los Angeles
Harbor Department
425 S. Palos Verdes Street
San Pedro, California 90733
ATTN: Marcel van Dijk, Marketing Division

For the Operator To:
Kuehne + Nagel Inc.,
4540 Kendrick Plaza Dr.
Houston, TX 77032
ATTN: Jordan Schrock,
Director of Foreign Trade Zone

The address to which any notice, demand or other writing may be given, made or sent to either party may be changed by written notice given by such party as above provided.

16.12 Legal Action

Attorneys' Fees. If either party brings any action or proceeding to enforce, protect, or establish any right or remedy arising out of or based upon this Agreement, including but not limited to the recovery of damages for its breach, the prevailing party in said action or proceeding shall be entitled to recovery of its costs and reasonable attorneys' fees, including the reasonable value of the services of the Office of City Attorney or house counsel of Operator. Said fees shall be limited to $1,000,000.

16.13 Governing Law/Venue

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

16.14 Waiver of Claims

Operator hereby waives any claim against City and Grantee and its officers, agents or employees for damages or loss caused by any suit or proceedings directly or indirectly challenging the validity of this Agreement, or any part thereof, or by any judgment or award in any suit or proceeding declaring this Agreement null, void or voidable or delaying the same or any part thereof from being carried out.

16.15 Wage and Earning Assignment Orders/Notices of Assignments

The Operator or any subs is obligated to fully comply with all applicable state and federal employment reporting requirements for the Operator and/or sub's employees.

The Operator and/or subs shall certify that the principal owner(s) are in compliance with any Wage and Earnings Assignment Orders and Notices of Assignment applicable to them personally. The Operator or subs will fully comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignments in accordance with Cal. Family Code § § 5230 et. seq. The Operator or subs will maintain such compliance throughout the term of the Agreement.

16.16 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. Operator agrees that any interpretation of this Agreement and the terms contained herein must be consistent with such limitations, conditions, restrictions and reservations.

16.17 City's Business Tax Ordinance - BTRC Number

If the Operator is operating a site within the City of Los Angeles, then the Operator represents that is has obtained and presently holds the Business Tax Registration Certificate(s) required by the City's Business Tax Ordinance (Article 1, Chapter 2, Sections 21.00 et seq., of the Los Angeles Municipal Code). If applicable, the Operator will, upon request, provide evidence that said certificate has been obtained. If required, the Operator shall maintain, or obtain as necessary, all such certificates required by it under the ordinance and shall not allow such certificate to be suspended or revoked.

16.18 Equal Benefits Policy

The Board of Harbor Commissioners of the City of Los Angeles 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 the Department. Operator shall comply with the policy wherever applicable. Violation of this policy shall entitle the City to terminate any Agreement with Operator and pursue any and all other legal remedies that may be available.

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(Signature page to follow)

IN WITNESS WHEREOF, the parties have executed this Agreement on the dated first hereinabove written.

THE CITY OF LOS ANGELES
HARBOR DEPARTMENT

Date _____, 20_

By _____
EUGENE D. SEROKA
Executive Director

Attest _____
AMBER M. KLESGES
Board Secretary

KUEHNE + NAGEL INC.

Date May 3, 2023

By _____

Greg Martin - SVP Air Logistics
(Print/Type Name and Title)

By _____

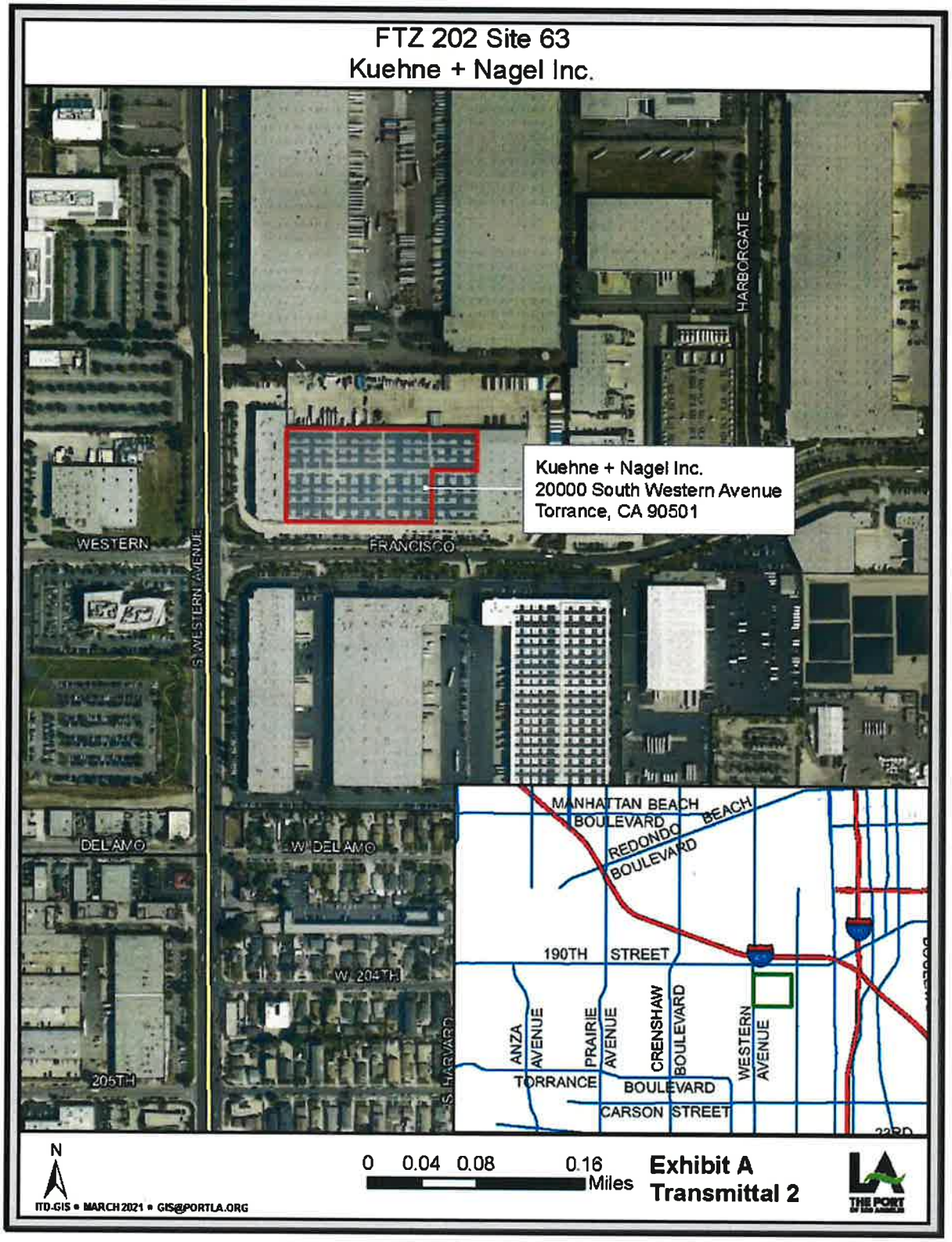
Dan Osterberg - CFO N.A.
(Print/Type Name and Title)

APPROVED AS TO FORM AND LEGALITY
May 8, 2023
HYDEE FELDSTEIN SOTO, City Attorney
STEVEN Y. OTERA, General Counsel
By: _____
HELEN J. SOK, Deputy

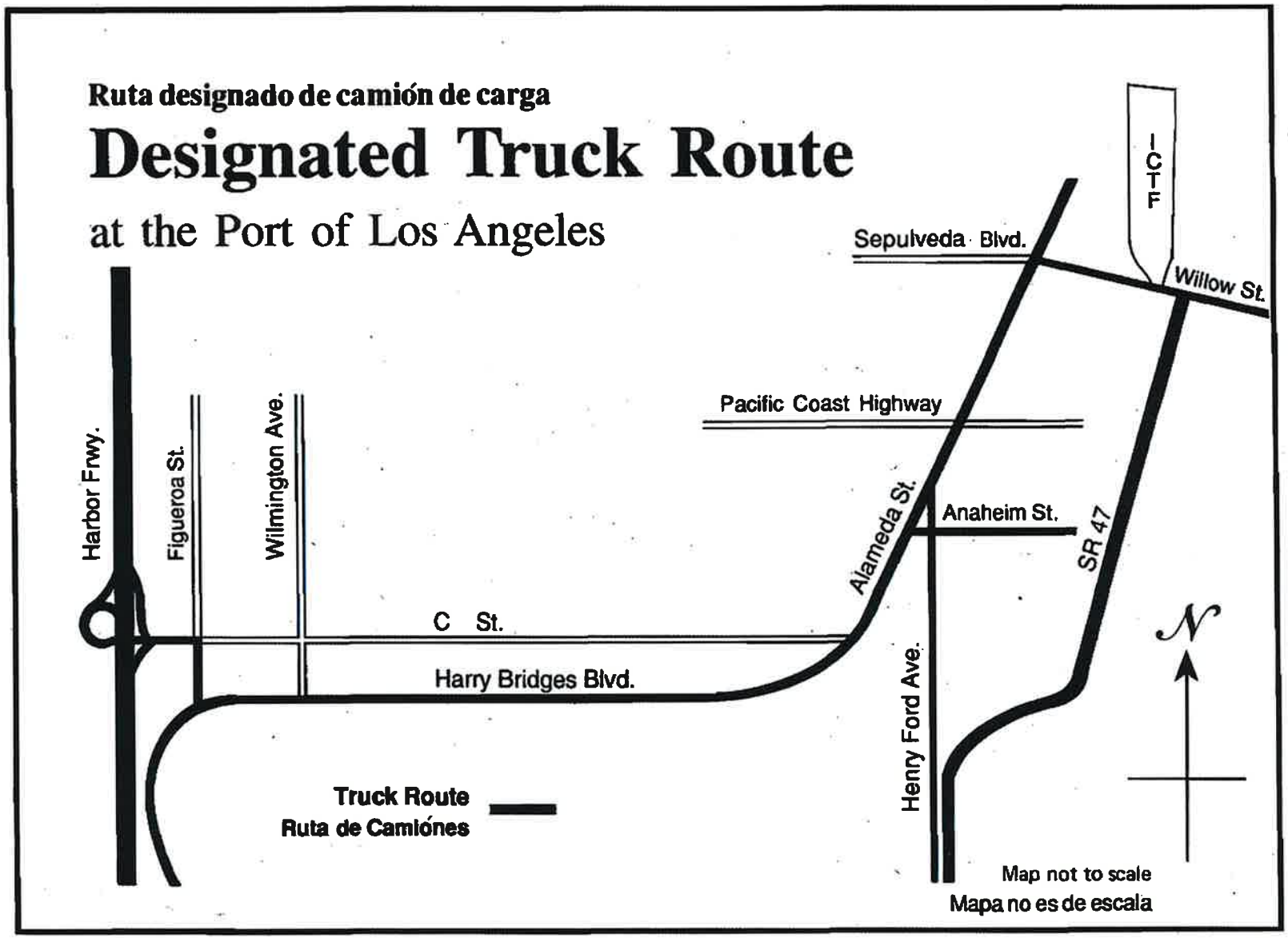
HJS:lts
(02/21/2023)

JZ

EXHIBIT A – SITE MAP



TRUCKS ENTERING AND LEAVING THE PORT MUST USE THE ROUTE SHOWN BELOW.
CAMIÓNES ENTRANDO Y SALIENDO EL PORTO DEVEN DE USAR LA RUTA INDICADO ABAJO.



EXHIBT B

EXHIBIT C - AFFIRMATIVE ACTION PROGRAM PROVISIONS

Sec. 10.8.4 Affirmative Action Program Provisions.

Every non-construction and construction Contract with, or on behalf of, the City of Los Angeles for which the consideration is $25,000 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 a 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, color, religion, national origin, ancestry, sex, sexual orientation, age, disability, marital status, domestic partner status or medical condition.

1. This section 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 shall, 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, color, religion, national origin, ancestry, sex, sexual orientation, age, disability, marital status, domestic partner status or medical condition.

C. At the request of the Awarding Authority or the DAA, 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, color, religion, national origin, ancestry, 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 DAA for the purpose of investigation to ascertain compliance with the Affirmative Action Program provisions of City Contracts and, upon 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 a City Contract. The 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 DAA. No 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, the breach may be the basis for a determination by the Awarding Authority or the Board of Public Works that the Contractor is a non-responsible bidder or proposer pursuant to the provisions of Section 10.40 of this Code. In the event of such determination, the 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 for each person for each calendar day on which the 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 DAA 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. By affixing its signature to a Contract that is subject to this article, the Contractor shall agree to adhere to the provisions in this article for the duration 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 Program.

1. The Contractor certifies and agrees to immediately implement good faith effort measures to recruit and employ minority, women and other potential employees in

a non-discriminatory manner including, but not limited to, the following actions as appropriate and available to the Contractor's field of work. The Contractor shall:

(a) Recruit and make efforts to obtain employees through:

(i) Advertising employment opportunities in minority and other community news media or other publications.

(ii) Notifying minority, women and other community organizations of employment opportunities.

(iii) Maintaining contact with schools with diverse populations of students to notify them of employment opportunities.

(iv) Encouraging existing employees, including minorities and women, to refer their friends and relatives.

(v) Promoting after school and vacation employment opportunities for minority, women and other youth.

(vi) Validating all job specifications, selection requirements, tests, etc.

(vii) Maintaining a file of the names and addresses of each worker referred to the Contractor and what action was taken concerning the worker.

(viii) Notifying the appropriate Awarding Authority and the DAA in writing when a union, with whom the Contractor has a collective bargaining agreement, has failed to refer a minority, woman or other worker.

(b) Continually evaluate personnel practices to assure that hiring, upgrading, promotions, transfers, demotions and layoffs are made in a non-discriminatory manner so as to achieve and maintain a diverse work force.

(c) Utilize training programs and assist minority, women and other employees in locating, qualifying for and engaging in the training programs to enhance their skills and advancement.

(d) Secure cooperation or compliance from the labor referral agency to the Contractor's contractual Affirmative Action Program obligations.

(e) Establish a person at the management level of the Contractor to be the Equal Employment Practices officer. Such individual shall have the authority to disseminate and enforce the Contractor's Equal Employment and Affirmative Action Program policies.

(f) Maintain records as are necessary to determine compliance with Equal Employment Practices and Affirmative Action Program obligations and make the records available to City, State and Federal authorities upon request.

(g) Establish written company policies, rules and procedures which shall be encompassed in a company-wide Affirmative Action Program for all its operations and Contracts. The policies shall be provided to all employees, Subcontractors, vendors, unions and all others with whom the Contractor may become involved in fulfilling any of its Contracts.

(h) Document its good faith efforts to correct any deficiencies when problems are experienced by the Contractor in complying with its obligations pursuant to this article. The Contractor shall state:

(i) What steps were taken, how and on what date.

(ii) To whom those efforts were directed.

(iii) The responses received, from whom and when.

(iv) What other steps were taken or will be taken to comply and when.

(v) Why the Contractor has been or will be unable to comply.

2. Every contract of $25,000 or more which may provide construction, demolition, renovation, conservation or major maintenance of any kind shall also comply with the requirements of Section 10.13 of the Los Angeles Administrative Code.

L. The Affirmative Action Program required to be submitted hereunder and the pre-registration, pre-bid, pre-proposal or pre-award conference which may be required by 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.

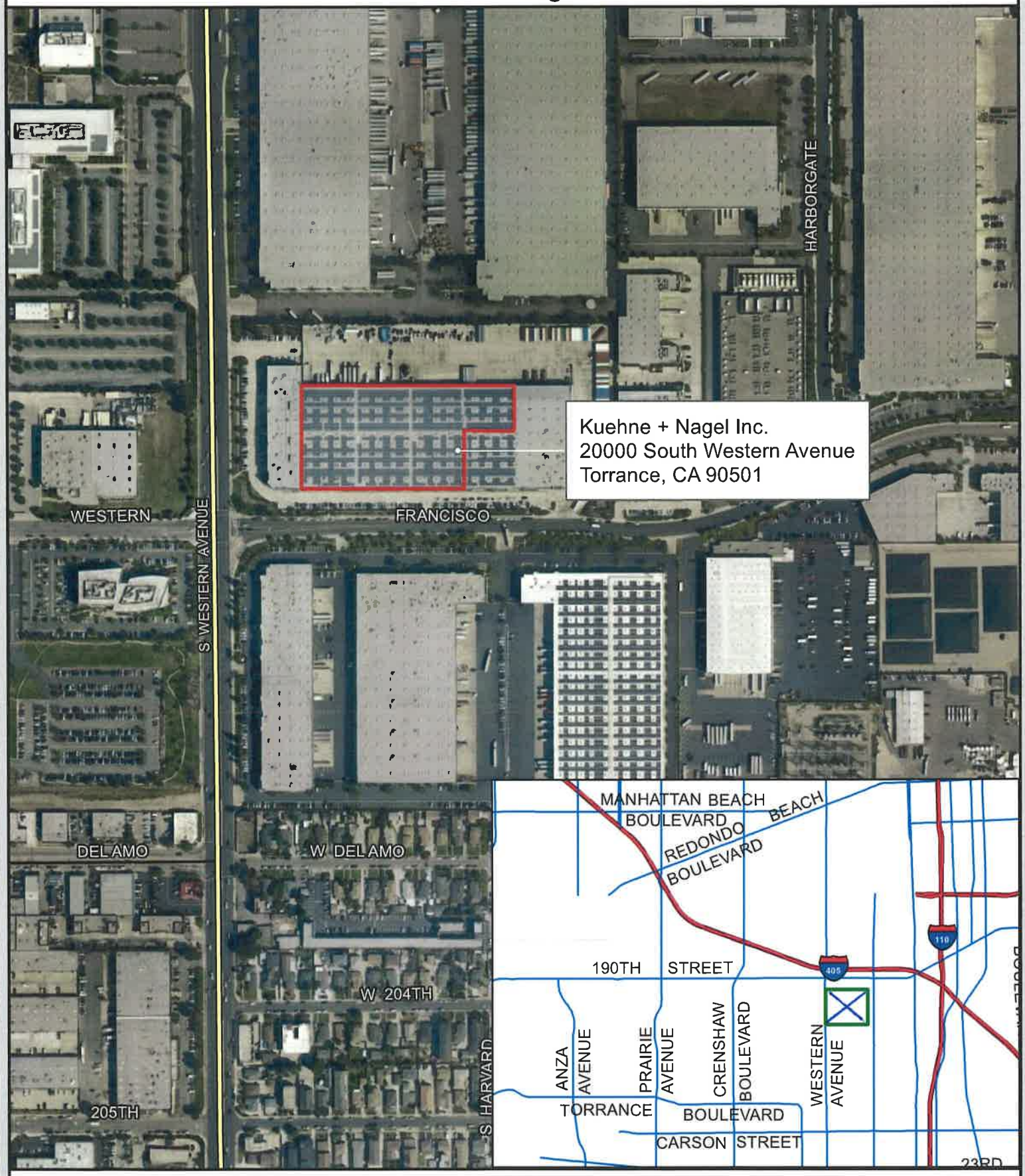
M. Any adjustments which may be made in the Contractor's work force to achieve the requirements of the City's Affirmative Action Program in purchasing and construction shall be accomplished by either an increase in the size of the work force or replacement of those employees who leave the work force by reason of resignation, retirement or death and not by termination, layoff, demotion or change in grade.

N. 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 engaged in the performance of City Contracts.

O. All Contractors subject to the provisions of this article shall include a similar 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.

Transmittal 2

FTZ 202 Site 63
Kuehne + Nagel Inc.



N

0 0.04 0.08 0.16 Miles

Exhibit A
Transmittal 2

ITD-GIS • MARCH 2021 • GIS@PORTLA.ORG

THE PORT OF LOS ANGELES

Transmittal 3

FTZ 202 Service Area



Copyright © 1988-2004 Microsoft Corp. and/or its suppliers. All rights reserved. http://www.microsoft.com/streets/
© Copyright 2003 by Geographic Data Technology, Inc. All rights reserved. © 2004 NAVTEQ. All rights reserved. This data includes information taken with permission from Canadian authorities © Her Majesty the Queen in Right of Canada.

Kuehne and Nagel Inc. FTZ Site 63

TRANSMITTAL 3

4. RESOLUTION NO. _____ - ORDER RESETTING COMPENSATION UNDER PERMIT NO. 624 WITH TWENTY SECOND STREET LANDING, LLC

THE PORT OF LOS ANGELES

Executive Director's Report to the Board of Harbor Commissioners

DATE: JUNE 8, 2023

FROM: WATERFRONT & COMMERCIAL REAL ESTATE

SUBJECT: RESOLUTION NO. _____ - ORDER RESETTING COMPENSATION UNDER PERMIT NO. 624 WITH TWENTY SECOND STREET LANDING, LLC

SUMMARY:

Staff requests approval of the Order resetting compensation for Permit No. 624 (P624) between Twenty Second Street Landing, LLC (Twenty Second Street) and the City of Los Angeles Harbor Department (Harbor Department). P624 has a 39-year term, which commenced November 27, 1987, and expires on November 26, 2026. Twenty Second Street operates and maintains a building and dock space used for sport fishing and a restaurant located at 141 W. 22nd Street in San Pedro.

The proposed Order resetting compensation is for the four-year period effective retroactively November 27, 2022, through November 26, 2026. Proposed compensation under this compensation reset is the greater of the minimum annual rental amount of $279,000, or percentage of gross receipts. The proposed minimum annual rental amount of $279,000 represents an increase of $105,038.93, or 60.4%, relative to the current minimum annual rent of $173,961.07.

The proposed compensation reset also includes a flexible monthly minimum rent and percentage rent payment schedule to account for significant variations in seasonal gross receipts associated with sport fishing, which is the primary economic driver for Twenty Second Street. The minimum annual rental amount which is paid on a monthly schedule will be adjusted annually thereafter by the Consumer Price Index (CPI) for the remainder of the compensation period.

RECOMMENDATION:

It is recommended that the Board of Harbor Commissioners (Board):

1. Find that the Director of Environmental Management has determined that the proposed action is administratively exempt from the requirements of the California Environmental Quality Act (CEQA) under Article II Section 2(f) of the Los Angeles City CEQA Guidelines;

2. Approve the Order resetting compensation under Permit No. 624 for the four-year period effective November 27, 2022, through November 26, 2026;

3. Authorize the Board Secretary to attest to the Order resetting compensation under Permit No. 624; and

4. Adopt Resolution No. _____ and Order No. _____.

DISCUSSION:

Background – P624 grants Twenty Second Street the use of Harbor Department land consisting of approximately 60,287 square feet (sq. ft.) of land and 78,035 sq. ft. of water in San Pedro (Transmittal 1). The permitted uses include the construction, operation and maintenance of structures and facilities for berthing of sport fishing and charter vessels, small boat rentals, restaurant and lounge, seafood market and snack bar, fishing vessel brokerage and insurance sales, and for purposes incidental thereto. All improvements are owned and maintained by Twenty Second Street.

As required by the terms and conditions of P624, it is necessary for staff to review and reset compensation for each five-year period. The last compensation reset was completed in May 2018 for the compensation period covering November 27, 2017, through November 26, 2022.

Current Compensation – For the period from November 27, 2017, through and including November 26, 2022, Twenty Second Street paid the greater of monthly minimum rent or percentage rent, with annual CPI increases. Monthly minimum rent was set at $14,496.76 ($173,961.07/year). Percentage rent was as follows:

Gross %	Description
5%	Food & Beverages at Snack Bar
3%	Food in Restaurant
5%	Beverages in Restaurant
1%	Boat Sales
10%	Insurance Brokerage Commission
5%	Boat Rentals
5%	Boat Chartering & Rentals 24hr+
5%	Ship Chandlery & Bait Sales
5%	General Retail Sales
25%	Compensation for 3rd Party Vending Machines
5%	Tenant Owned Vending Machines
5%	All Other Activities

Proposed Compensation Reset – The proposed compensation reset for the period of November 27, 2022, through November 26, 2026, shall be reset to the greater of a minimum annual rent of $279,000 or percentage of gross receipts. The newly proposed minimum annual rent of $279,000, represents an approximate 60 percent increase from the current rate, and was established through the Economic Performance Method (EPM). The EPM utilizes the economic performance of the leasehold determined by percentage rent performance to calculate future annual minimum rent. EPM calculates annual minimum rent by taking the last three year's average total rent payment and multiplies that average annual rent by 75 percent to determine a new minimum annual rent. The result of the EPM review is a new proposed minimum annual rent of $277,130.22 per year.

The proposed reset further includes a flexible minimum monthly and quarterly percentage rent schedule in support of the seasonal nature of the Twenty Second Street's annual revenue streams. Historically on an annual basis, Twenty Second Street pays a total rental amount significantly above the annual minimum rent but has been required to pay monthly minimum rent in excess of percentage rent generated in the low performance months of October through March. As exists with other seasonally affected leases, it is proposed to provide a variable monthly minimum rent that is lower during quarters of low performance and much higher in the higher performing spring and summer months.

Twenty Second Street has accepted a significant overall increase in annual minimum rent at $279,000 in exchange for a flexible monthly and quarterly percentage rent schedule. Staff endorses Twenty Second Street's proposal, which results in a greater annual minimum rent and promotes Twenty Second Street's economic sustainability. The chart below reflects the adjusted monthly minimum payment and quarterly percentage rent payment schedule.

Month	Monthly Minimum Rent	Notes:
JAN	$11,000	
FEB	$11,000	
MAR	$11,000	+Q1 Percentage Rent (JAN-MAR)
APR	$33,000	
MAY	$33,000	
JUNE	$33,000	+Q2 Percentage Rent (APR-MAY)
JULY	$36,000	
AUG	$36,000	
SEP	$36,000	+Q3 Percentage Rent (JUN-AUG)
OCT	$13,000	
NOV	$13,000	
DEC	$13,000	Q4 Percentage Rent (OCT-DEC)
Total	**$279,000**	

ENVIRONMENTAL ASSESSMENT:

The proposed action is the approval of compensation reset to the Permit with Twenty Second Street and the Harbor Department, which is an administrative activity. Therefore, the Director of Environmental Management has determined that the proposed action is administratively exempt from the requirements of CEQA in accordance with Article II Section 2(f) of the Los Angeles City CEQA Guidelines.

FINANCIAL IMPACT:

Approval of the proposed Order resetting compensation will increase minimum annual rent by $105,038.93, or 60.4 percent, from $173,961.07 currently to $279,000 as proposed. Beginning November 27, 2023, annual rent will increase by the annual change in CPI.

CITY ATTORNEY:

The Order resetting compensation under Permit No. 624 has been reviewed and approved as to form and legality by the Office of the City Attorney.

TRANSMITTALS:

1. Site Map
2. Order

FIS Approval: MB
CA Approval: SO

Michael J. Galvin
MICHAEL J. GALVIN
Director of Waterfront & Commercial Real Estate

Michael DiBernardo
MICHAEL DiBERNARDO
Deputy Executive Director

APPROVED:

Marla Bleavins For
EUGENE D. SEROKA
Executive Director

ES:MD:MG:HP:MS:db
Author: Meagan Sestich
BL993db Twenty Second St. Landing Comp Reset

Transmittal 1



NOTE:
1) No substructures are shown on this drawing. Accurate substructure information must be obtained from lessees and L.A.H.D. engineering records.

2) Horizontal Datum is based on the North American Datum of 1983 (NAD 83), California Coordinate System, Zone 5, Feet.

3) All distances shown on this drawing are grid distances. To obtain a reasonable representation of the ground distance, divide the distance herein by the average scale factor of 1.000076.

NO.	DATE	DRAWN	REVISIONS –	CH'KD	APP'D
1	11–07	DRR	REVISED PARCEL NO. G4	DRR	
2	02–08	DRR	REVISED PARCEL NO. G4	DRR	
3	12–08	DRR	REVISED PARCEL NO. G4	DRR	
4	09–20	PH	ADDED PARCEL NO. G6	PH	
5	11–20	PH	ADDED PARCEL NO. G7	PH	

SCALE: 1"=50'
DRAWN: PSOMAS 05/03
CHECKED: PSOMAS 05/03
DESIGNED: PSOMAS 05/03
ENGR/ARCH
Daryl R. Raasch
John J. Brahms

CHIEF OF DESIGN
ASSISTANT CHIEF HARBOR ENGINEER for
CHIEF HARBOR ENGINEER 9/4/03 DATE

PERMIT MAP - AUTHORITY NO. P624

TWENTY SECOND STREET PARTNERS, L.L.C.

THE PORT OF LOS ANGELES
ENGINEERING DIVISION P.O. BOX 151 SAN PEDRO, CA. 90733-0151

DRAWING NUMBER
2-2450

POLAPROD_VER 1.12/96
2-2450 REV 2

TRANSMITTAL 1

Transmittal 2

ORDER NO. _____

An Order of the Board of Harbor Commissioners of the City of Los Angeles ("Board") resetting the rent to be paid by the 22nd Street Landing, LLC ("Tenant") under Permit No. 624 ("Permit 624" or "Permit") by and between the City of Los Angeles ("City") by the Board and Tenant, for the period of November 27, 2022 to November 26, 2026.

WHEREAS, the Permit grants Tenant the right to use certain premises for a sports fishing and charter vessels, small boat rentals, passenger and cargo transportation and water taxi, restaurant and lounge, seafood market and snack bar, and fishing vessel brokerage and insurance sales;

WHEREAS, Section 4(k) of the Permit requires, among other things, readjustment of rent to be paid by Tenant to City for each five (5) year period following the first five years of the term of the Permit;

WHEREAS, City and Tenant have agreed on a rate of rent to be paid by Tenant during the period of November 27, 2022 to November 26, 2026;

NOW, THEREFORE, IT IS HEREBY ORDERED by the Board of Harbor Commissioners of the City of Los Angeles, as follows:

Section 1. For the period of November 27, 2022 to November 26, 2026, the annual rent shall be reset at Two Hundred Seventy-Nine Thousand Dollars ($279,000) with each month's rent paid in accordance with the following payment schedule below:

Month	Monthly Minimum Rent	Notes:
JAN	$11,000	
FEB	$11,000	
MAR	$11,000	+Q1 Percentage Rent (JAN-MAR)
APR	$33,000	
MAY	$33,000	
JUNE	$33,000	+Q2 Percentage Rent (APR-MAY)
JULY	$36,000	
AUG	$36,000	
SEP	$36,000	+Q3 Percentage Rent (JUN-AUG)
OCT	$13,000	
NOV	$13,000	
DEC	$13,000	Q4 Percentage Rent (OCT-DEC)
Total	**$279,000**	

The annual rent is subject to annual adjustment by the Consumer Price Index as provided in the Permit.

Section 2. Beginning November 27, 2022 and at the end of each calendar quarter thereafter, Tenant shall pay to the City for each and every quarter of the rental period, the following percentage rents equivalent to the amount, if any,

by which the cumulative total of the gross receipts exceeds the fixed minimum quarterly rent payable.

Gross %	Description
5%	Food & Beverages at Snack Bar
3%	Food in Restaurant
5%	Beverages in Restaurant
1%	Boat Sales
10%	Insurance Brokerage Commission
5%	Boat Rentals
5%	Boat Chartering & Rentals 24hr+
5%	Ship Chandlery & Bait Sales
5%	General Retail Sales
25%	Compensation for 3rd Party Vending Machines
5%	Tenant Owned Vending Machines
5%	All Other Activities

Section 3. The Board Secretary shall certify to the adoption of this Order by the Board of Harbor Commissioners of the City of Los Angeles.

I HEREBY CERTIFY that the foregoing Order was adopted by the Board of Harbor Commissioners of the City of Los Angeles at its meeting held _____.

_____
Amber Klesges, Board Secretary

[signatures continued on next page]

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22nd Street Landing, LLC, hereby consents to the foregoing adjustment of rent as described above and agrees to pay to the Board of Harbor Commissioners of the City of Los Angeles the annual rent as set forth above for the period of November 27, 2022 to November 26, 2026.

22nd Street Landing, LLC

By: Anita Mannila

Anita Mannila, CEO, JARRM, INC.
(Print Name and Title of Officer)

By: Mark Pisano

Mark Pisano Partner
(Print Name and Title of Officer)

APPROVED AS TO FORM AND LEGALITY

June 14, 2023

HYDEE FELDSTEIN SOTO, City Attorney
STEVEN Y. OTERA, General Counsel

By: _____
HELEN J. SOK, Deputy City Attorney

5. RESOLUTION NO. _____ - AGREEMENT BETWEEN THE CITY OF LOS ANGELES HARBOR DEPARTMENT AND ALLIANT INSURANCE SERVICES, INC. FOR INTERIM INSURANCE BROKERAGE AND RISK MANAGEMENT SERVICES

DATE: **JUNE 13, 2023**

FROM: **RISK MANAGEMENT**

SUBJECT: **RESOLUTION NO. _____ - AGREEMENT BETWEEN THE CITY OF LOS ANGELES HARBOR DEPARTMENT AND ALLIANT INSURANCE SERVICES, INC. FOR INTERIM INSURANCE BROKERAGE AND RISK MANAGEMENT SERVICES**

SUMMARY:

Staff requests approval of an interim Agreement with Alliant Insurance Services, Inc. (Alliant) for interim insurance brokerage and risk management services, including pass-through payment services for the City of Los Angeles Harbor Department (Department) insurance premiums, while City Council considers approval of a pending five-year contract approved by the Board of Harbor Commissioners on February 23, 2023 for the same services (Pending Contract). The proposed agreement is for a term of one year and a not-to-exceed compensation amount of $6,100,000.

The Department utilizes a Broker of Record to assist in procuring commercial property and casualty insurance to support operational needs and assist risk management staff in administering the Department's insurance and risk management program. The current agreement for brokerage and risk management services with Alliant (Agreement 3568) expired on May 25, 2023, and will be replaced by the Pending Contract if it is approved by City Council.

The Harbor Department will be financially responsible for the payment of expenditures incurred under the proposed Agreement.

RECOMMENDATION:

It is recommended that the Board of Harbor Commissioners (Board):

1. Find that the Director of Environmental Management has determined that the proposed action is administratively exempt from the requirements of the California Environmental Quality Act (CEQA) under Article II Section 2(f) of the Los Angeles City CEQA Guidelines;

2. Find that in accordance with the Los Angeles City Charter Section 1022, it is more feasible for outside consultants to perform this work than City employees;

3. Approve the Agreement with Alliant for a one-year term and not-to-exceed amount of $6,100,000;

4. Authorize the Chief Financial Officer to submit the above premiums discussed herein to the Primary Underwriter and/or the contracted Broker of Record (Alliant) who has the authority to receive and disburse payments to the various participating insurance underwriters on behalf of the Harbor Department;

5. Authorize the Executive Director to execute and the Board Secretary to attest the Agreement; and,

6. Adopt Resolution No. _____

DISCUSSION:

Purpose – Approval of the Agreement with Alliant will secure a Broker of Record for the Department while the Mayor's Office and City Council consider approving of the Pending Contract.

As the Department's Broker of Record, Alliant will provide a full range of insurance brokerage and risk management services including assistance with the procurement of the Department's insurance policies such as General Liability, Property Insurance and Cyber Liability. Services also include, but are not limited to, property and liability insurance marketing, placement and servicing, risk exposure assessment, claims services, general advice on insurance and risk management related services, and assisting in the overall management of risk for the Department.

Background – The Department's insurance and risk management program is traditionally managed by the Risk Management Division with assistance from a licensed professional insurance broker. The program utilizes widely practiced risk management techniques, which includes the purchase of commercial property and casualty insurance policies, transfer of risk to third parties, use of self-insured retentions, and use of loss control programs to protect the Department from operational risk perils.

Licensed insurance brokers are commonly utilized by public and private entities as insurance brokers are equipped with special training, expertise, access and familiarity with the worldwide insurance market and products, risk management resources to assist with claims management and loss control, and licenses required by the California Department of Insurance to procure insurance. Insurance brokers play a vital role in

procuring the necessary types of coverage at appropriate levels of insurance and competitive prices to offset the potential financial impact of losses resulting from the Department's operational activities.

Commercial property and casualty insurance is beneficial as it protects Department assets and operations from minor accidents to major losses and from injury or damage claims made by other parties. Insurance can provide the financial means to repair, rebuild, or purchase damaged or destroyed assets; cover incidental costs incurred in resuming business operations; and if necessary, pay any amount the Department is obligated to pay, up to the terms of the insurance policy. Holding such insurance is essential to mitigating the operational risk perils and maintaining the financial stability of the Department.

The Department's Risk Management staff are not licensed to procure insurance and because of the type, capacity, and complexity of coverages needed to protect the Department against its maritime and public entity exposures, insurance brokerage firms such as Alliant are traditionally utilized.

Selection Process – Based upon Alliant's history as a satisfactory Broker of Record for the Department since 2012, and because Alliant was selected using a competitive process for the Pending Contract, Alliant is well qualified to provide the necessary services to the Department under this proposed interim Agreement.

Proposed Agreement – Approval of the Agreement (Transmittal 1) will authorize the Harbor Department to expend up to $6,100,000 to cover the broker's annual fee ($87,736 prorated monthly) and insurance premium expenses ($6,000,000), along with nominal funding for as-needed on-call services, billed hourly. This proposed Agreement has a one-year term; however, the Pending Contract, if approved by City Council, will replace it upon the effective date of the Pending Contract.

ENVIRONMENTAL ASSESSMENT:

The proposed action is the approval of an emergency Agreement with Alliant for interim insurance brokerage and risk management services, which is an administrative activity. Therefore, the Director of Environmental Management has determined that the proposed action is administratively exempt from the requirements of CEQA in accordance with Article II Section 2(f) of the Los Angeles City CEQA Guidelines.

SUBJECT: AGREEMENT FOR INTERIM INSURANCE BROKERAGE AND RISK MANAGEMENT SERVICES WITH ALLIANT INSURANCE SERVICES, INC.

FINANCIAL IMPACT:

Approval of the proposed Agreement would authorize spending of up to $6,100,000 in the one-year term for insurance brokerage and risk management services. Staff anticipates spending under this Agreement to occur as follows:

Fiscal Year (FY)	$ Amount
2024	$5,241,000
2025	$859,000
TOTAL	**$6,100,000**

FY 2024 funding in the amount of $5,241,000 has been requested to be budgeted in Center 0550, Program 000 within the following accounts:

Account	Account Name	$ Amount
54490	Financial Services	$ 85,000
59310	General Liability Ins.	$ 1,504,000
59330	Pilotage Liab. & Trip Ins.	$ 46,000
59340	All Risk Property Ins.	$ 2,930,000
59350	Marine Liability – Fleet	$ 300,000
59390	Miscellaneous Insurance	$ 376,000
TOTAL		**$ 5,241,000**

If the proposed Agreement is not approved, the Department would be required to fully self-insure all of its property and casualty risk exposures. This would expose the Department to potentially catastrophic risk and significant loss affecting its financial viability, ratings and operational stability as well as require additional staff to manage the claims and defense process which is typically handled by insurance firms.

CITY ATTORNEY:

The Office of the City Attorney has reviewed and approved the Agreement as to form and legality.

SUBJECT: AGREEMENT FOR INTERIM INSURANCE BROKERAGE AND RISK MANAGEMENT SERVICES WITH ALLIANT INSURANCE SERVICES, INC.

TRANSMITTALS:

1. Agreement with Alliant Insurance Services, Inc.

FIS Approval: MB

CA Approval: SO

Jennifer M. Bersales
Digitally signed by Jennifer M. Bersales
Date: 2023.06.14 09:50:01 -07'00'

JENNIFER BERSALES
Director of Risk Management

Marla Bleavins
dc=pola, dc=lahd, ou=HQ, ou=EXECOFFICE, ou=Users, ou=Emp, cn=Marla Bleavins, email=MBleavins@portla.org
2023.06.15 10:34:05 -07'00'

MARLA BLEAVINS
Deputy Executive Director

APPROVED:

Marla Bleavins For

EUGENE D SEROKA
Executive Director

JB:cm
Author: C. Makaena

Transmittal 1

AGREEMENT NO.

AGREEMENT BETWEEN
THE CITY OF LOS ANGELES AND
ALLIANT INSURANCE SERVICES, 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 ALLIANT INSURANCE SERVICES, INC., a Delaware corporation 1420 5th Avenue, 15th Floor, Seattle, Washington, 98101 ("Consultant").

WHEREAS, City requires insurance brokerage and risk management services; and

WHEREAS, City requires the professional, expert and technical services of Consultant on a temporary or occasional basis to assist the City in procuring commercial insurance, accessing the insurance market, negotiating with underwriters, identifying risk exposures, and other such insurance brokerage and risk management services; and

WHEREAS, Consultant possesses extensive experience in dealing with port and public entity insurance brokerage and risk management needs; and

WHEREAS, Consultant, by virtue of training and experience, is well qualified to provide such services to City; and

WHEREAS, City does not employ personnel with the required expertise nor is it feasible to do so on a temporary or occasional basis; and

WHEREAS, although the Board approved an agreement with Consultant at a Board of Harbor Commissioners meeting held on February 23, 2023 ("February 23, 2023 Agreement"), it has not yet been approved by the City of Los Angeles City Council which approval is required pursuant to Section 373 of the City Charter and Section 10.5 of the Los Angeles Administrative Code;

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

1. SERVICES TO BE PERFORMED BY CONSULTANT

A. Consultant hereby agrees to render to City, as an independent contractor, certain professional, technical and expert services of a temporary and occasional character as set forth in Exhibit A ("Scope of Work").

B. 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.

C. Consultant acknowledges and agrees that it lacks authority to perform any services outside the Scope of Work. Consultant further acknowledges and agrees that any services it performs outside the Scope of Work are performed as a volunteer and shall not be compensable under this Agreement.

D. The Scope of Work shall be performed by personnel qualified and competent in the sole reasonable discretion of the Executive Director or his or her designee ("Executive Director"), whether performance is undertaken by Consultant or third-parties with whom Consultant has contracted ("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 Executive Director's written request, Consultant shall supply City's Harbor Department ("Department") with all agreements between it and its Subconsultants.

2. SERVICES TO BE PERFORMED BY CITY

A. City shall furnish Consultant, upon its request, all documents and papers in possession of City which may lawfully be supplied to Consultant and which are necessary for it to perform its obligations.

B. The Executive Director or his or her designee is designated as the contract administrator for City and shall also decide any and all questions which may arise as to the quality or acceptability of the services performed and the manner of performance, the interpretation of instructions to Consultant and the acceptable completion of this Agreement and the amount of compensation due. Notwithstanding the preceding, the termination of this Agreement shall be governed by the provisions of Article 11 (Termination) hereof.

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

3. EFFECTIVE DATE AND TERM OF AGREEMENT

A. Subject to the provisions of Charter Section 245, the effective date of this Agreement shall be the date of its execution by Executive Director upon authorization of the Board. Consultant is aware that the City Council, pursuant to Charter Section 245 of

the City of Los Angeles, has the right to review this Agreement. Accordingly, in no event shall this Agreement become effective until after the expiration of the fifth Council meeting day after Board action, or the date of City Council's approval of the Agreement.

B. This Agreement shall be in full force and effect commencing from the date of execution and shall continue until the earlier of the following occurs:

1. One (1) year has lapsed from the effective date of this Agreement;

2. The date on which the February 23, 2023 Agreement becomes effective; or

3. The Board of Harbor Commissioners, in its sole discretion, terminates and cancels all or part of this Agreement for any reason upon giving to Consultant ten (10) days' notice in writing of its election to cancel and terminate this Agreement.

4. TERMINATION DUE TO NON-APPROPRIATION OF FUNDS

This Agreement is subject to the provisions of the Los Angeles City Charter which, among other things, precludes the City from making any expenditure of funds or incurring any liability, including contractual commitments, in excess of the amount appropriated thereof.

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

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

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

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

5. COMPENSATION AND PAYMENT

A. As compensation for the satisfactory performance of the services required by this Agreement, City shall pay and reimburse Consultant at the rates set forth in Exhibit B. In the event of termination of this Agreement pursuant to Section 3.B.2, City shall pay Consultant for services provided up to the date of termination, after which time, services and compensation shall be provided as set forth in the February 23, 2023 Agreement.

B. The maximum payable under this Agreement, including reimbursable expenses (see Exhibit B), shall be Six Million One Hundred Thousand Dollars ($6,100,000).

C. Consultant shall submit invoices in quadruplicate to City monthly following the effective date of this Agreement for services performed during the preceding month. Each such invoice shall be signed by the Consultant and shall include 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.
>
> _____"
> (Consultant's Signature)

D. Consultant must include on the face of each itemized invoice submitted for payment its Business Tax Registration Certificate number, as required at Article 8 of this Agreement. No invoice will be processed for payment by City without this number shown thereon. All invoices shall be approved by the Executive Director or his or her designee prior to payment. All invoices due and payable and found to be in order shall be paid as soon as, in the ordinary course of City business, the same may be approved, audited and paid.

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

Further, where the Consultant employs Subconsultants under this Agreement, the Consultant shall submit to City, with each monthly invoice, a Monthly Subconsultant Monitoring Report Form (Exhibit C) listing SBE/VSBE/MBE/WBE/DVBE/OBE amounts. Consultant shall provide an explanation for any item that does not meet or exceed the

anticipated participation levels for this Agreement, with specific plans and recommendations for improved Subconsultant utilization. Invoices will not be paid without a completed Monthly Subconsultant Monitoring Report Form. All invoices are subject to audit. Consultant is not required to submit support for direct costs items of $25 or less.

E. For payment and processing, all invoices should 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

A. 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.

B. 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 Article 6 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. INDEPENDENT CONTRACTOR

Consultant, in the performance of the work required by this Agreement, 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

The City of Los Angeles Office of Finance requires the implementation and enforcement of Los Angeles Municipal Code Section 21.09 et seq. This Code Section provides that every person, other than a municipal employee, who engages in any business within the City of Los Angeles, 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 the Department. See https://finance.lacity.org/how-register-btrc.

9. 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

A. In addition to and not as a substitute for, or limitation of, any of the indemnity obligations imposed by Article 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:

(1) 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. Where Consultant provides or dispenses alcoholic beverages, Host Liquor Liability coverage shall be provided as above. Where Consultant provides pyrotechnics, Pyrotechnics Liability shall be provided as above. 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 additional insureds.

Where Consultant's operations involve work within 50 feet of railroad track, Consultant's Commercial General Liability coverage shall have the railroad exclusion deleted.

(2) 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 One Million Dollars ($1,000,000) 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 additional insureds.

(3) 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.

(4) Professional Liability Insurance

Consultant is required to provide Professional Liability insurance with respect to negligent or wrongful acts, errors or omissions, or failure to render services in connection with the professional services to be provided under this Agreement. This insurance shall protect against claims arising from professional services of the insured, or by its employees or agents, and include coverage (or no exclusion) for contractual liability.

Consultant certifies that it now has professional liability insurance in the amount of One Million Dollars ($1,000,000), which covers work to be performed pursuant to this Agreement and that it will keep such insurance or its equivalent in effect at all times during performance of said Agreement and until two (2) years following the completed term of this Agreement.

Notice of occurrences of claims arising out of this Agreement shall be made to the Risk Manager of City's Harbor Department with copies to the City Attorney's office.

B. 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 Article 9, and where Consultant is required to name the City of Los Angeles Harbor Department, its officers, agents and employees as 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 Article 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."

Where Consultant retains subcontractors, independent contractors or other vendors under this Agreement, Consultant shall require and verify that all such entities maintain insurance coverage as set forth herein and shall ensure that City is named an additional insured on such insurance coverage.

C. Required Features of Coverages

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

(1) 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 **KwikComply** at https://kwikcomply.org/ and submit the appropriate proof of insurance on Consultant's behalf.

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

(2) 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.

(3) Notice of Cancellation

For each insurance policy described above, Consultant shall give a 10-day prior notice of cancellation or reduction in coverage for nonpayment of premium, and a 30-day prior notice of cancellation or reduction in coverage for any other

reason, by written notice via registered mail and addressed to the City of Los Angeles Harbor Department, Attn: Risk Manager and the City Attorney's Office, 425 S. Palos Verdes Street, San Pedro, California 90731.

(4) 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.

(5) Renewal of Policies

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. Upon renewal or extension of any such policy, Consultant shall direct their insurance broker or agent to submit to the City's online insurance compliance system **KwikComply** at https://kwikcomply.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.

(6) Limits of Coverage

If Consultant maintains higher limits than the minimums required by this Agreement, City requires and shall be entitled to coverage for the higher limits maintained by Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City.

D. 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.

E. 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. TERMINATION PROVISION

The Board of Harbor Commissioners, in its sole discretion, shall have the right to terminate and cancel all or any part of this Agreement for any reason upon giving the Consultant ten (10) days' advance, written notice of the Board's election to cancel and terminate this Agreement. It is agreed that any Agreement entered into shall not limit the right of the City to hire additional consultants or perform the services described in this Agreement either during or after the term of this Agreement.

12. PERSONAL SERVICE AGREEMENT

A. During the term hereof, 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 the Department.

B. 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 Article 1. 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. AFFIRMATIVE ACTION

The Consultant, during the performance of this Agreement, 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 shall be incorporated and made a part of this Agreement. All subcontracts awarded shall contain a like nondiscrimination provision. See Exhibit D.

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

It is the policy of the Department to provide Small Business Enterprises (SBE), Very Small Business Enterprises (VSBE) and Minority-Owned, Women-Owned, Disabled Veteran Business Enterprises 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 the City 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 opportunity which might be presented under this Agreement. See Exhibit E.

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, Regional Alliance Marketplace for Procurement (RAMP), at http://www.RAMPLA.org.

15. CONFLICT OF INTEREST

It is hereby understood and agreed that the parties to this Agreement have read and are aware of 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 the 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.

During the term of this Agreement, Consultant shall inform the Department in writing when Consultant, or any of its Subconsultants, employs or hires in any capacity, and for any length of time, a person who has worked for the Department as a Commissioner, officer or employee. Said notice shall include the individual's name and current position and their prior position and years of employment with the Department. Written notice shall be provided by Consultant to the Department within thirty (30) days of the employment or hiring of the individual.

16. COMPLIANCE WITH APPLICABLE LAWS

Consultant shall at all times in the performance of its obligations comply with all applicable laws, statutes, ordinances, rules and regulations, and with the reasonable requests and directions of Executive Director.

17. GOVERNING LAW / VENUE

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

18. TRADEMARKS, COPYRIGHTS, AND PATENTS

Consultant agrees to save, keep, hold harmless, protect and indemnify the 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

A. 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.

B. 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.

20. CONFIDENTIALITY

The data, documents, reports, or other materials which contain information relating to the review, documentation, analysis and evaluation of the work described in this Agreement 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.

21. 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 purposes hereof, unless otherwise provided by notice in writing from the respective parties, notice to the Department shall be addressed to Director of Risk Management, 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.

22. 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.

23. SERVICE CONTRACTOR WORKER RETENTION POLICY AND LIVING WAGE POLICY REQUIREMENTS

The Board of Harbor Commissioners of the City of Los Angeles adopted Resolution Nos. 19-8419 and 19-8420 on January 24, 2019, adopting the provisions of Los Angeles City Ordinance No. 185356 relating to Service Contractor Worker Retention (SCWR), Section 10.36 et seq. of the Los Angeles Administrative Code, as the policy of the 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 the City to terminate this Agreement and otherwise pursue legal remedies that may be available.

24. WAGE AND EARNINGS ASSIGNMENT ORDERS / NOTICES OF ASSIGNMENTS

The Consultant and/or any Subconsultant are obligated to fully comply with all applicable state and federal employment reporting requirements for the Consultant and/or Subconsultant's employees.

The Consultant and/or Subconsultant 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. The Consultant and/or Subconsultant will fully comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignments in accordance with Cal. Family Code Sections 5230 et seq. The Consultant or Subconsultant will maintain such compliance throughout the term of this Agreement.

25. EQUAL BENEFITS POLICY

The Board of Harbor Commissioners of the City of Los Angeles 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 the 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 F.

26. 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.

27. 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.

28. INTEGRATION

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.**

29. 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.

30. 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.

31. TITLES AND CAPTIONS

The parties have inserted the Article titles in this Agreement only as a matter of convenience and for reference, and the Article 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.

32. 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.

33. 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.

34. EXHIBITS; ARTICLES

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 Articles are to Articles of this Agreement unless stated otherwise.

35. 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.

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////

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(Signature page follows)

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

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

Dated: _____, 2023

By: _____
EUGENE D. SEROKA
Executive Director

Attest: _____
AMBER M. KLESGES
Board Secretary

ALLIANT INSURANCE SERVICES, INC.

Dated: 6/1/2023, 2023

By: DocuSigned by: Daniel Howell 7FADCF83CB584A3...

Daniel Howell Sr. Executive Vice President
(Print/type name and title)

Attest: Erin A. Sata

(Print/type name and title)

APPROVED AS TO FORM AND LEGALITY

June 8, 2023
HYDEE FELDSTEIN SOTO, City Attorney
STEVEN Y. OTERA, General Counsel

By: Heather M. McCloskey
Heather M. McCloskey, Deputy

Attachments

Rev. 4/05/22

AGREEMENT BETWEEN
THE CITY OF LOS ANGELES AND
ALLIANT INSURANCE SERVICES, INC.

BUDGET STAMP VERIFICATION

Account # 54490 and 593xx
Ctr/Div.# 0550
Proj/Prog # 000

W.O. #
Job Fac. #

Budget FY:	Compensation	Insurance Premiums				
Account	54490	59310	59330	59340	59350	59390
23-24	$85,000	$1,504,000	$46,000	$2,930,000	$300,000	$376,000
24-25	$15,000	$0	$0	$695,000	$0	$149,000
TOTAL	**$100,000**	**$1,504,000**	**$46,000**	**$3,625,000**	**$300,000**	**$525,000**

Agreement Total: **$6,100,000**

For Acct/Budget Div. Use Only:

Verified by: Flora Khaw Digitally signed by Flora Khaw Date: 2023.06.07 14:30:49 -07'00'

Verified Funds Available: Digitally signed by Frank Liu Date: 2023.06.08 09:11:13 -07'00'

Date Approved: 6/8/23

EXHIBIT A

Consultant shall possess and maintain all licenses and permits required to perform the services listed below:

1. Assist in monitoring the Harbor Department's operations and identifying exposures. Provide analysis and recommendations as to the most cost-effective means for addressing the Harbor Department's exposures.

2. Continually evaluate the insurance program for adequacy of coverage. Provide recommendations on program changes or restructuring to address exposures, reduce cost, and/or enhance coverage.

3. Explore and recommend alternative financing products, risk transfer options, loss control programs, and techniques for handling risk.

4. Provide technical expertise and consultation on the types of insurance that may be purchased by the Harbor Department.

5. Perform administrative services relative to account management, including, but not limited to, issuing certificates of insurance, notifying insurers of change in policy schedules or exposures, and verifying invoices for accuracy.

6. Monitor and keep the Risk Manager informed of developments in the insurance market including rate trends and changes in insurer rating status. Make recommendations to mitigate potential impacts to the Harbor Department.

7. Assist the Risk Manager with budget planning. Provide an annual report with detailed insight and a description of renewal rates the Harbor Department may expect for its insurance program on its upcoming fiscal year based upon anticipated market trends, losses, pending claims, and other pertinent factors. The report is due each November. The Harbor Department fiscal year runs from July through June.

8. Prepare and submit, as needed, a stewardship report which includes, at minimum:

    a. A summary of activities performed and future plans;
    b. Cumulative premium record;
    c. Incurred losses by line of coverage;
    d. Market outlook and anticipated renewal terms and conditions for the upcoming year;
    e. Identified problem areas such as claim handling, safety hazards, uninsured risks, etc.;
    f. Recommendations for loss control, insurance program enhancement, etc.; and
    g. Accounting of all remuneration received in connection with the Harbor Department's insurance program.

9. Assign an Account Manager who will be responsible for overseeing the Harbor Department's account and for communicating with Harbor Department staff. The Account Manager, along with any other team member assigned, must be readily available to provide Harbor Department staff with expertise and advice. Commonly requested assistance include:

    a. Reviewing contracts, leases, and agreements for insurance and liability issues.
    b. Devising insurance language and requirements to ensure minimal liability.
    c. Interpreting policy and coverage usage and applicability.

10. Meet with the Risk Manager and Harbor Department management to discuss insurance questions, concerns, market conditions, insurance renewals, and any other matters as needed.

11. Maintain confidential information and documentation, unless permitted by written consent from the Harbor Department and in accordance with state and federal law.

12. Assist in administering all Harbor Department insurance policies, including policies that may have been placed by another consultant and/or under another agreement.

CLAIMS ADMINISTRATION AND LOSS CONTROL

1. Advise on coverage application for specific loss situations.

2. Issue notices of loss and/or claims to the appropriate insurers. Maintain records of all related documents. Prepare, as needed, an open claims report.

3. In the event of a loss, assist with the designation of appropriate experts, as may be needed and desired by the insurers upon their receipt of loss notice.

4. Participate in and advise on claims and litigation management. Assist in the adjustment and resolution of claims and losses. Review appropriate claim reporting procedures with Harbor Department staff.

5. Obtain loss runs, loss settlements, and related documents from insurers. Loss runs shall be provided annually for all lines of coverage. The Harbor Department may request additional loss runs as needed.

6. Review claim and loss trends. Assist in the improvement of the Harbor Department's loss control program.

MARKETING AND PLACEMENT

1. Coordinate the insurance renewal/placement process. Assist the Harbor Department in gathering and preparing applications, schedules, and other documents or information necessary for proper marketing of the Harbor Department's insurance program to the insurance markets.

2. Design and recommend marketing approaches and alternatives for the insurance program including, but not limited to, retention levels, coverage, limits, terms and conditions, self-insurance, and separate policies for high-risk exposures. Recommendations shall be consistent with exposures to provide the highest level of coverage at the least possible cost to the Harbor Department.

3. Review and discuss insurance specifications and marketing approaches with Risk Manager.

4. Market the Harbor Department's insurance program and any other additional insurance needs to the appropriate insurance markets. Negotiate with the underwriters on terms and conditions to obtain the most beneficial and cost effective coverage available to the Harbor Department.

5. Ensure that all insurance coverages are placed with reputable and financially responsible insurers who are authorized to do business in the State of California and rated VII A- or better with A.M. Best (or an alternate guide acceptable to the Harbor Department, if A.M. Best is not available).

6. Provide timely delivery of the renewal proposals to the Harbor Department prior to policy expiration, allowing sufficient time for review, questions, and any required follow up. If needed, Consultant may be asked to provide renewal proposals well in advance of the policy expiration date to allow for management and/or Board of Harbor Commissioners review and approval.

7. Review quotes and proposals and verify that rates, premiums, and coverages are correct. Provide a marketing summary report which shall include a comparative analysis of all quotes and proposals submitted by the insurers and copies of each quote and proposal. Evaluate insurer proposals and recommend the most beneficial and cost effective solution.

8. Upon direction from the Risk Manager, administer the insurance placement with the selected insurers and provide original binders, policies, and endorsements.

9. Review policies, invoices, binders, certificates, endorsements, or other documents for accuracy and conformity to specifications. Verify that all negotiated coverage enhancements are provided. Request any endorsements or revisions that may be required.

10. Disclose commission or any other remuneration arrangement between the Consultant and insurers.

11. Remit insurance payments to insurers and other relevant parties on a timely basis, following receipt thereof from the Harbor Department.

OTHER SERVICES

1. The Consultant may be asked to provide other related services as needed. Such services shall include, but are not limited to, procuring additional lines of coverage, assisting with workers' compensation loss control, property appraisal services, consultation regarding utilization of an Owner Controlled Insurance Program, and providing any services offered within the Consultant's conceptual proposal. Any such service that may involve additional fees shall be negotiated and agreed to in writing prior to the start of such services.

2. The Consultant shall set aside a percentage of its base fees (as set forth in the Harbor Department's Exhibit - Small/Very Small Business Enterprise Program) to perform insurance brokerage and/or risk management services or projects through an independent consultant/specialist (Sub-Consultants).

3. Cooperate in any transition to another consultant, if required, at the expiration of the contract.

SCHEDULE OF INSURANCE

INSURANCE COVERAGE	POLICY PERIOD	LIMITS	DEDUCTIBLE/SIR
SPECIAL EVENT	1/1/2022 - 1/1/2023	$1,000,000	$0
VESSEL POLLUTION	1/18/2022 – 1/18/2023	$1,000,000	
TRAVEL	2/13/2020 – 2/13/2023	$500,000	$0
DRONE/AIRCRAFT	6/30/2022 – 6/30/2023	$5,000,000	$0
PILOT LICENSE	7/1/2022 – 7/1/2023	$1,000,000	$0
CRIME	7/1/2022 – 7/1/2023	$1,000,000	$250,000
ALL RISK PROPERTY	7/1/2022 – 7/1/2023	$1,200,000,000	$500,000
CYBER LIABILITY	7/1/2022 – 7/1/2023	$2,000,000	$250,000
EXCESS CYBER LIABLITY	7/1/2022 – 7/1/2023	$2,000,000	
ACTIVE ASSAILANT	10/01/2022 – 10/01/2023	$10,000,000	$10,000
GENERAL LIABILITY	10/01/2022 – 10/01/2023	$1,000,000	$500,000
PUBLIC OFFICIALS & EMPLOYEMENT PRACTICES LIABILITY	10/01/2022 – 10/01/2023	$10,000,000	$150,000
LAW ENFORCEMENT LIABILITY	10/01/2022 – 10/01/2023	$10,000,000	$250,000
EXCESS LAW ENFORCEMENT LIABILITY	10/01/2022 – 10/01/2023	$5,000,000	
EXCESS LIABILITY	10/01/2022 – 10/01/2023	$149,000,000	

PROECTION & INDEMNITY	10/01/2022 – 10/01/2023	$1,000,000	$2,500
HULL & MACHINERY	10/01/2022 – 10/01/2023	As Scheduled	5% of Vessel Value
PILOTAGE LEGAL LIABILITY	11/01/2023 – 11/01/2023	$1,000,000	$10,000
PILOTAGE TRIP	11/01/2023 – 11/01/2023	$1,000,000	$10,000
EXECUTIVE PROTECTION	5/20/2021 – 5/20/2024	$10,000,000	$0

As of Nov. 2022

EXHIBIT B

COMPENSATION

I. BROKER FEES

The City will pay Consultant a prorated annual fee of $87,736, billed monthly to the City for services provided pursuant to this Agreement. The monthly fee shall be full compensation for work performed, services rendered, and for all labor materials, supplies, equipment, incidentals, and travel expenses necessary to perform work referenced in Exhibit A.

II. ADDITIONAL SERVICES

Consultant may be asked to provide additional services beyond the scope of services as generally described in Exhibit A which may require additional compensation. The compensation for these additional services will be set at $175 per hour. All additional services will be confirmed in writing by the Risk Manager prior to the start of such services.

III. REIMBURSABLE EXPENSES

Consultant is hereby authorized to purchase coverage and advance payment of premiums and related insurance costs, therefore, upon receipt of the approvals by the Risk Manager, as required herein for the following types of coverage:

a) Active Assailant
b) Aircraft/Unmanned Aircraft Systems Liability
c) All-Risk Property Insurance
d) Business Auto Liability
e) Cyber Liability
f) Earthquake & Flood
g) Excess Liability
h) Excess Cyber Liability
i) Excess Railroad Liability
j) Excess Workers' Compensation
k) Executive Protection
l) Fidelity/Crime
m) General Liability
n) Hull & Machinery
o) Pilot License
p) Pilotage Legal Liability including Pilotage Trip
q) Police Professional Liability
r) Pollution Liability
s) Protection & Indemnity
t) Public Officials including Employment Practices Liability
u) Railroad Liability and
v) Special Events
w) Terrorism

Placement for other lines of coverage may be requested of Consultant as needed.

If Consultant is requested to market and place additional lines of coverage on behalf of the City above and beyond the existing commercial insurance portfolio described in Exhibit A, Consultant would be compensated through commission(s) not to exceed 10% per line of coverage annually. Alternatively, Consultant and City may opt to negotiate a change to the commission arrangement for the new lines of coverage, such change requiring amendment to this Agreement.

The aggregate premium cost for all coverage and related costs may not exceed Six Million dollars ($6,000,000) for the term of this Agreement.

While the Consultant is not required to advance payment on behalf of City, to the extent Consultant advances payments, Consultant shall be entitled to reimbursement from City for actual amount of payment may by Consultant on behalf of City for insurance premiums or claims expenses upon receipt by City of proof of payment and proof of coverages, where applicable. The City has the option of paying premiums and related costs directly to the insurance carrier.

City reserves the right to obtain any insurance coverage itself even while Consultant is the broker of record for City. If City obtains such coverage, Consultant shall not be entitled to any compensation from City for the coverage City obtains. Similarly, if City terminates this Agreement, Consultant shall not be entitled to any compensation it anticipated receiving under this Agreement provided, however, Consultant shall be entitled to receive a commission on insurance it has secured to the extent such insurance remains in force for the original term of the insurance policy.

When Consultant invoices City for any insurance premiums due, Consultant shall separately set forth the amount of any federal, state, or local tax on such insurance which may be due on policies purchased. Consultant shall verify that the tax has been correctly calculated and show the manner of calculation. City agrees it shall be responsible for payment of such tax. This provision does not obligate City to pay taxes which may be due by Consultant as a result of performing services and receiving income pursuant to this Agreement.

IV. USE OF INTERMEDIARIES AND PROPRIETARY PROGRAMS

If necessary, Consultant may access the London, other wholesale markets, and/or proprietary programs which may require the use of intermediaries, managing general agent/management general underwriter, reinsurance, wholesales, or London consultants in order to market and place lines of insurance if it is of benefit to the City and upon approval from the Risk Manager. On some of Consultant's proprietary programs, fees are earned from insurers for underwriting and loss control servicers performed by Consultant for the insurance markets.

Commission or fees for these intermediaries and proprietary programs and any affiliation shall be disclosed to the Risk Manager. Compensation for these intermediaries and proprietary programs shall be authorized within the premium payment.

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.

Contract No. Division Contractor Administrator

Contractor *Group Contract Title/Project

Contract Amount Start Date End Date

Total Amount Invoiced to Date

SBE Mandated Participation Percentage SBE VSBE

Proposed Subcontractor Percentage MBE WBE OBE DVBE

				PROPOSED		ACTUALS		
	Name of Subcontractor	Type of Work Performed	Group SBE/VSBE/MBE/WBE/OBEDVBE	Original Proposed Amount	Original Proposed Percentage	Amount Paid to Date	Amount Paid to Date Percentage	Contract Amount Percentage
1								
2								
3								
4								
5								
6								
7								
8								
9								
10								

Directions:

Original Proposed Percentage: Original Proposed Percentage of Total Contract Amount

Amount Paid to Date Percentage: Percentage of Total Amount Invoiced to Date

Contract Amount Percentage: Percentage Paid to Date of Total Contract Amount

* Group = (SBE/VSBE/MBE/WBE/OBE/DVBE/DBE)

EXHIBIT C

EXHIBIT D - AFFIRMATIVE ACTION PROGRAM PROVISIONS

Sec. 10.8.4 Affirmative Action Program Provisions.

Every non-construction and construction Contract with, or on behalf of, the City of Los Angeles for which the consideration is $25,000 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 a 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, color, religion, national origin, ancestry, sex, sexual orientation, age, disability, marital status, domestic partner status or medical condition.

1. This section 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 shall, 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, color, religion, national origin, ancestry, sex, sexual orientation, age, disability, marital status, domestic partner status or medical condition.

C. At the request of the Awarding Authority or the DAA, 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, color, religion, national origin, ancestry, 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 DAA for the purpose of investigation to ascertain compliance with the Affirmative Action Program provisions of City Contracts and, upon 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 a City Contract. The 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 DAA. No 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, the breach may be the basis for a determination by the Awarding Authority or the Board of Public Works that the Contractor is a non-responsible bidder or proposer pursuant to the provisions of Section 10.40 of this Code. In the event of such determination, the 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 for each person for each calendar day on which the 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 DAA 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. By affixing its signature to a Contract that is subject to this article, the Contractor shall agree to adhere to the provisions in this article for the duration 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 Program.

1. The Contractor certifies and agrees to immediately implement good faith effort measures to recruit and employ minority, women and other potential employees in

a non-discriminatory manner including, but not limited to, the following actions as appropriate and available to the Contractor's field of work. The Contractor shall:

(a) Recruit and make efforts to obtain employees through:

(i) Advertising employment opportunities in minority and other community news media or other publications.

(ii) Notifying minority, women and other community organizations of employment opportunities.

(iii) Maintaining contact with schools with diverse populations of students to notify them of employment opportunities.

(iv) Encouraging existing employees, including minorities and women, to refer their friends and relatives.

(v) Promoting after school and vacation employment opportunities for minority, women and other youth.

(vi) Validating all job specifications, selection requirements, tests, etc.

(vii) Maintaining a file of the names and addresses of each worker referred to the Contractor and what action was taken concerning the worker.

(viii) Notifying the appropriate Awarding Authority and the DAA in writing when a union, with whom the Contractor has a collective bargaining agreement, has failed to refer a minority, woman or other worker.

(b) Continually evaluate personnel practices to assure that hiring, upgrading, promotions, transfers, demotions and layoffs are made in a non-discriminatory manner so as to achieve and maintain a diverse work force.

(c) Utilize training programs and assist minority, women and other employees in locating, qualifying for and engaging in the training programs to enhance their skills and advancement.

(d) Secure cooperation or compliance from the labor referral agency to the Contractor's contractual Affirmative Action Program obligations.

(e) Establish a person at the management level of the Contractor to be the Equal Employment Practices officer. Such individual shall have the authority to disseminate and enforce the Contractor's Equal Employment and Affirmative Action Program policies.

(f) Maintain records as are necessary to determine compliance with Equal Employment Practices and Affirmative Action Program obligations and make the records available to City, State and Federal authorities upon request.

(g) Establish written company policies, rules and procedures which shall be encompassed in a company-wide Affirmative Action Program for all its operations and Contracts. The policies shall be provided to all employees, Subcontractors, vendors, unions and all others with whom the Contractor may become involved in fulfilling any of its Contracts.

(h) Document its good faith efforts to correct any deficiencies when problems are experienced by the Contractor in complying with its obligations pursuant to this article. The Contractor shall state:

(i) What steps were taken, how and on what date.

(ii) To whom those efforts were directed.

(iii) The responses received, from whom and when.

(iv) What other steps were taken or will be taken to comply and when.

(v) Why the Contractor has been or will be unable to comply.

2. Every contract of $25,000 or more which may provide construction, demolition, renovation, conservation or major maintenance of any kind shall also comply with the requirements of Section 10.13 of the Los Angeles Administrative Code.

L. The Affirmative Action Program required to be submitted hereunder and the pre-registration, pre-bid, pre-proposal or pre-award conference which may be required by 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.

M. Any adjustments which may be made in the Contractor's work force to achieve the requirements of the City's Affirmative Action Program in purchasing and construction shall be accomplished by either an increase in the size of the work force or replacement of those employees who leave the work force by reason of resignation, retirement or death and not by termination, layoff, demotion or change in grade.

N. 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 engaged in the performance of City Contracts.

O. All Contractors subject to the provisions of this article shall include a similar 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 E

SMALL/VERY SMALL BUSINESS ENTERPRISE PROGRAM
LOCAL BUSINESS PREFERENCE PROGRAM

(1) SMALL/VERY SMALL BUSINESS ENTERPRISE PROGRAM:

The 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 Regional Alliance Marketplace for Procurement (RAMP), at http://www.RAMPLA.org, to outreach to potential subconsultants.**

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 $5,000,000 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 10%**. The North American Industry Classification System (NAICS) Code for the scope of services is 524210. 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 $13 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.

Consultant shall complete, sign, and submit as part of the executed agreement the attached Affidavit and Consultant Description Form. The Affidavit and Consultant Description Form, when signed, will signify the Consultant's intent to comply with the SBE requirement. All SBE/VSBE firms must be certified by the time proposals are due to receive credit. In addition all consultants and subconsultants must be registered on the RAMP by the time proposals are due.

(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.

Consultants who qualify as a Local Business Enterprise (LBE) will receive an 8% preference on any proposal for services valued in excess of $150,000. The preference will be applied by adding 8% of the total possible evaluation points to the Consultant's score. Consultants who do not qualify as a LBE may receive a maximum 5% preference for identifying and utilizing LBE subconsultants. Consultants may receive 1% preference, up to a maximum of 5%, for every 10% of or portion thereof, of work that is subcontracted to a LBE. LBE subconsultant preferences will be determined by the percentage of the total amount of compensation proposed under the Agreement.

The Harbor Department defines a LBE as:

(a) A business headquartered within 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; 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 Consultant Description Form. The Affidavit and Consultant Description Form will signify the LBE status of the Consultant and subconsultants.

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

Alliant Insurance Services, 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, and all of its domestic and foreign affiliates, any proposed changes of the ownership and to permit the audit and examination of firm ownership documents, and the ownership documents of all of its domestic and foreign affiliates, 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 $5,000,000 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:

[X] 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: DocuSigned by: Daniel Howell 7FADCF83CB584A3...

Title: Sr. Executive Vice President

Printed Name: Daniel Howell

Date Signed: 6/1/2023

Consultant Description Form

PRIME CONSULTANT:

Contract Title: Risk Management Insurance Brokerage Services

Business Name: Alliant Insurance Services, Inc. LABAVN ID#: _____

Award Total: $ _____

Owner's Ethnicity: N/A Gender N/A Group: SBE VSBE MBE WBE DVBE OBE (Circle all that apply)

Local Business Enterprise: YES X NO _____ (Check only one)

Primary NAICS Code: N/A Average Three Year Gross Revenue: $ N/A

Address: 401 Union Street, 31st Floor

City/State/Zip: Seattle, WA 98101

County: King

Telephone: (206) 204-9140 FAX: (206) 204-9205

Contact Person/Title: Brian White / Senior Vice President

Email Address: bwhite@alliant.com

SUBCONSULTANT:

Business Name: Barragan Corp International LABAVN ID#: 33518

Award Total: (% or $): _____

Services to be provided: Safety & Risk Management Services/Training

Owner's Ethnicity: Hisp Gender M Group: SBE VSBE MBE WBE DVBE OBE (Circle all that apply)

Local Business Enterprise: YES X NO _____ (Check only one)

Primary NAICS Code: 541690 Average Three Year Gross Revenue: $_____

Address: 41707 Winchester Rd, Suite 304

City/State/Zip: Temecula, CA 92590

County: Riverside

Telephone: (951) 248-5512 FAX: (951) 296-1567

Contact Person/Title: David Barragan

Email Address: david@bcsrm.com

SUBCONSULTANT:

Business Name: _____ LABAVN ID#: _____

Award Total: (% or $): _____

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: _____

Consultant Description Form

SUBCONSULTANT:

Business Name: _____ LABAVN ID#: _____

Award Total: (% or $): _____

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: _____

SUBCONSULTANT:

Business Name: _____ LABAVN ID#: _____

Award Total: (% or $): _____

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: _____

SUBCONSULTANT:

Business Name: _____ LABAVN ID#: _____

Award Total: (% or $): _____

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 F

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.

6. RESOLUTION NO. _____ - APPROVAL OF CHANGE ORDER NO. 18 FOR ADDITIONAL UNFORESEEN WATERSIDE WORK; CONTRACTOR: SULLY-MILLER CONTRACTING COMPANY; WILMINGTON WATERFRONT PROMENADE AND BUILDING DEMOLITION; SPECIFICATION NO. 2780 – CONTRACT NO. 2315

DATE: **JUNE 13, 2023**

FROM: **CONSTRUCTION**

SUBJECT: **RESOLUTION NO. _____-**
APPROVAL OF CHANGE ORDER NO. 18
FOR ADDITIONAL UNFORESEEN WATERSIDE WORK
CONTRACTOR: SULLY-MILLER CONTRACTING COMPANY
WILMINGTON WATERFRONT PROMENADE
AND BUILDING DEMOLITION
SPECIFICATION NO. 2780 – CONTRACT NO. 2315

SUMMARY:

Staff requests approval of Change Order No. 18 to Contract No. 2315 (Contract) for the Wilmington Waterfront Promenade and Building Demolition project (Project) with Sully-Miller Contracting Company (Contractor) for the not-to-exceed amount of $1,750,000. Change Order No. 18 authorizes the Contractor to place 2,550 cubic yards of rip rap rock below the tidal step area to protect and stabilize the exposed slope, resolve the additional obstructions encountered during steel pile driving when constructing the sheet pile wall, procure Arizona Onyx stone in lieu of Mexican Onyx tidal steps stone material, and place the remaining tidal step stones utilizing floating marine equipment. The City of Los Angeles Harbor Department (Harbor Department) will be financially responsible for the payment of expenses incurred under the Contract and proposed Change Order.

RECOMMENDATION:

It is recommended that the Board of Harbor Commissioners (Board):

1. Find that the Director of Environmental Management has determined that the proposed action has been previously evaluated pursuant to the requirements of the California Environmental Quality Act (CEQA) under Article II Section 2(i) of the Los Angeles City CEQA Guidelines;

2. Find that in accordance with City Charter Section 1022, work covered under the Change Order can be performed more feasibly by an independent contractor rather than by City employees;

**SUBJECT: APPROVAL OF CHANGE ORDER NO. 18
FOR ADDITIONAL UNFORESEEN WATERSIDE WORK
SPECIFICATION NO. 2780 – CONTRACT NO. 2315**

3. Approve and authorize the Executive Director to execute Change Order No. 18 for a not-to-exceed amount of $1,750,000; and

4. Adopt Resolution No. _____.

DISCUSSION:

Background/Context – On August 20, 2020, the Board approved Resolution No. 20-9690 for the award of the Contract with a total authorization in the amount of $57,090,022, inclusive of the $5,190,002 in contingency (Transmittal 1). The scope of the Wilmington Waterfront Promenade and Building Demolition Project includes construction of a realigned Water Street, waterfront promenade, public pier, public dock, public restroom with green roof, playground, and parking lots. Work also includes utilities, street work, grading, paving, striping, lighting, landscaping, and other improvements. The Notice to Proceed for the Contract was issued on November 30, 2020, for a duration of 840 calendar days.

Change Order No. 18 (Transmittal 2) will authorize the Contractor to place 2,550 cubic yards of rip rap rock on the slope below the waterline at the tidal step area to protect and stabilize the exposed slope, compensate the Contractor for the additional work in resolving the obstructions encountered during steel pile driving, procure Arizona Onyx in lieu of Mexican Onyx for tidal stone material change, and place tidal steps utilizing marine floating equipment.

The largest change is related to the unforeseen deteriorated condition of the slope in front of the tidal stones at Berths 184-185. The original contract work includes constructing rock protection on the slope above elevation -4 feet. Prior to starting the tidal steps installation, staff performed a hydrographic survey and found the western half of the water's edge slope had eroded. The slope in this area is extremely steep and is unprotected from further tidal erosion.

Under the existing Army Corps of Engineers permit, a limited amount of rip rap rock could be placed to stabilize the rock slope. Staff utilized the on-call 2020-2022 Marine Improvements contract to place approximately 1,300 cubic yards of rip rap rock on the slope to provide erosion protection. Unfortunately, the existing steep condition of the slope caused the new rocks that were placed to slide down to the toe of the slope. After further investigation by hydrographic survey, additional rip rap rock would need to be installed to maintain the integrity of the slope and support the new tidal steps. It was determined that the poor condition of the slope would not be able to support the new large tidal stone feature and additional rock placement would be required. Staff determined

that increasing the rip rap rock quantity to extend the rock revetment to the toe of the slope at elevation -35 will stabilize the slope and provide the support necessary for the tidal steps stone feature. Staff applied for a modification to the Army Corps of Engineers permit for an additional rip rap rock placement, which was approved on May 31, 2023 for an amount of 2,550 cubic yards.

The next change condition is regarding underground obstructions encountered when the Contractor attempted to drive the king pile-sheet pile combination wall, which retains the land behind the tidal stone feature. Per contract, the Contractor removed the large armor stone as shown in the contract drawings in preparation to drive the piles. However, there were additional obstructions at a deeper elevation than anticipated. After multiple failed attempts of spudding to break up the obstructions, staff engaged a method with larger equipment, which was not initially required per contract, to resolve the problem. This solution included installing temporary shoring sheet piles adjacent to the work zone to support the larger and heavier equipment to provide direct access to remove the buried obstructions and to successfully install the steel piles. Staff issued a $120,000 authorization letter for the Contractor to perform the obstruction removal work, however, due to the extensive amount of unforeseen obstructions, the initial amount authorized was exceeded and this change order will pay for the additional work in excess of the previously authorized amount.

Another change item is regarding the material of the tidal stone. The contract specifies utilizing Mexican Onyx stone from Southwest Boulders. The Contractor contracted this company but then learned that, due to the rigidity of the product, the material could not be cut to create the required finish and was only available with natural finishes. This would have created an issue in placing stones adjacent to each other with a uniform gap.

The Contractor notified the Port in a letter dated April 20, 2022, that the procurement lead time for the specified stone, Mexican Onyx, would require 60 weeks, which would significantly impact the project completion schedule. After researching various alternative materials, Arizona Onyx was found to be comparable to the Mexican Onyx, durable in a marine environment, and could be cut into the required rectangular shapes to meet the uniform aesthetic required for the stone feature. The procurement lead time for Arizona Onyx stone is 27 weeks and would minimize the delay in completing the work.

Due to the time needed for permit approval from the Army Corps of Engineers, the tidal step installation has been on hold. This work suspension is having a cascading effect on the subsequent work items and is causing a projected 3-month delay. A portion of the tidal steps have been installed from the landside at locations where the existing slope can support the work. In addition to the changes described above, COVID-related delays as

well as rain delays affected the critical path of the project schedule and resulted in delaying the project completion date. A time extension was previously issued to extend the contract time from March 19, 2023 to May 31, 2023. The additional time extension being authorized through Change Order No. 18 will result in a time extension of 3 months and a contract completion date of August 31, 2023.

The total cost to perform the work under Change Order No. 18 will not exceed $1,750,000. The not-to-exceed amount for the Change Order includes contingency in anticipation of encountering unforeseen scope of work, such as additional slope stabilization and rock placement.

When the Contract was initially approved by the Board in August 2020, the total authorization of $57,090,022 included a contingency of $5,190,002. Subsequently, at the December 16, 2021 Board meeting, the Board authorized increasing the contingency by $2,595,001 to $7,785,003. Change Orders in excess of $150,000 require Board approval. If the proposed Change Order is approved, then $1,750,000 of the Board-approved contingency amount will be utilized to fund Change Order No. 18. The remaining contingency balance would then be $1,396,923.70 after accounting for funding Change Order No. 18 as well as prior change orders and adjustments authorized to date. This change will not exceed the contingency amount previously authorized by the Board.

ENVIRONMENTAL ASSESSMENT:

The proposed action is approval of a change order to Contract No. 2315 with Sully-Miller Contracting Company, which is an activity for which the underlying project has been previously assessed in the Wilmington Waterfront Development Project Final Environmental Impact Report (SCH# 2008031065), which was certified by the Board on June 18, 2009. Therefore, the Director of Environmental Management has determined that the proposed action has been previously evaluated pursuant to the requirements of CEQA under Article II Section 2(i) of the Los Angeles City CEQA Guidelines.

**SUBJECT: APPROVAL OF CHANGE ORDER NO. 18
FOR ADDITIONAL UNFORESEEN WATERSIDE WORK
SPECIFICATION NO. 2780 – CONTRACT NO. 2315**

FINANCIAL IMPACT:

Approval of the proposed Change Order No. 18 would authorize the utilization of $1,750,000 in contingency to fund proposed changes to construction of the Wilmington Waterfront Promenade. Contract No. 2315 included a total contingency in the amount of $7,785,003. To date, $4,638,079.30 in contingency funds have been utilized in order to fund Change Orders Nos. 1-17 and Authority for Adjustment Nos. 1-31. If the proposed Change Order No. 18 is approved, then $1,396,923.70 in contingency funds will be available for future use.

Fiscal Year (FY) 2023-24 funds for Change Order No. 18 in the amount of $1,750,000 are available in Account No. 54510 (Capital Construction Services), Center No. 1040, and Program No. 624. Spending under this Contract has occurred and is expected to occur as follows:

FY 2020-2021	$	6,797,656.80
FY 2021-2022	$	20,189,152.94
FY 2022-2023	$	15,000,000.00
FY 2023-2024	$	17,698,213.26
Total	**$**	**59,685,023.00**

Funding for future years will be requested as part of the annual budget adoption process, upon Board Approval. If, in any subsequent fiscal year, funds are not appropriated by the Contract, then the Contract shall be terminated. However, such termination shall not relieve the parties of liability for any obligations previously incurred.

**SUBJECT: APPROVAL OF CHANGE ORDER NO. 18
FOR ADDITIONAL UNFORESEEN WATERSIDE WORK
SPECIFICATION NO. 2780 – CONTRACT NO. 2315**

CITY ATTORNEY:

The Office of the City Attorney reviewed and approved Specification No. 2780 as to form and legality on January 30, 2020.

TRANSMITTALS:

1. Aerial Site Plan
2. Change Order No. 18

FIS Approval: MB

CA Approval: SO

Shaun Shahrestani
2023.06.13 14:45:45
-07'00'

SHAUN SHAHRESTANI
Chief Harbor Engineer

ANTONIO V. GIOIELLO, P.E.
Deputy Executive Director

APPROVED:

Marla Bleavins For

EUGENE D. SEROKA
Executive Director

CT:lh
2780B03CO18
APP NO. 160720-109
File No. 8.4

Transmittal 1



SCALE	RECOMMENDED FOR APPROVAL	Wilmington Waterfront Promenade and Building Demolition		
DRAWN:	CHIEF OF DESIGN	AERIAL SITE PLAN		
CHECKED:				
DESIGNED:				
ENGR/ARCH	ASSISTANT HARBOR CHIEF ENGINEER	APPROVED CHIEF HARBOR ENGINEER	PORT OF LOS ANGELES CONSTRUCTION DIVISION P.O. BOX 151 SAN PEDRO, CA 90733-0151	Spec No. 2780

Transmittal 2

THE PORT OF LOS ANGELES
425 S. Palos Verdes Street Post Office Box 151 San Pedro, CA 90733-0151 TEL/TDD 310 SEA-PORT www.portoflosangeles.org

Karen Bass *Mayor, City of Los Angeles*
Board of Harbor Commissioners: Edward R. Renwick *Vice President*; Diane L. Middleton *Commissioner*; Michael Muñoz *Commissioner*; Lucille Roybal-Allard *Commissioner*; Lee Williams *Commissioner*
Eugene D. Seroka *Executive Director*

May 30, 2023

Sully-Miller Contracting Company
135 South State College Boulevard, Suite #400
Brea, CA 92821

Attention: Garret Cheeseman

SUBJECT: CHANGE ORDER NO. 18
ADDITIONAL WATERSIDE WORK
WILMINGTON WATERFRONT PROMENADE AND BUILDING DEMOLITION
SPECIFICATION NO. 2780 – CONTRACT NO. 2315

In accordance with Sections 01000.37, 01000.38, 01000.39, and 01000.57 of the subject specification, which authorizes the City to make changes in the work and contract time and provides provisions for such changes after approval and execution by all parties, this Change Order (CO) will be your authority to make changes and perform extra work, the full extent of which will only be assessable after completion. The contract will be adjusted later by Authority(ies) for Adjustment on the basis set forth herein.

DESCRIPTION

The Contractor shall provide transportation, labor, equipment, materials, tools, and incidentals necessary to perform the work identified below:

- Place 2,550 cubic yards of rip rap rock slope protection in front of the tidal step area to protect and stabilize the exposed slope, per the Modification of Army Corps of Engineers Permit No. SPL-2017-00690-TS and install the remaining tidal step stone from waterside access;

- Provide additional funding to supplement Authority to Use Allowance Bid Item No. 83.08 to remove unforeseen obstruction encountered during the sheet-pile installation, in accordance with the response to Request for Information No. 420.1; and

- Revise tidal stone material from Mexican Onyx to Arizona Onyx, in accordance with the response to Request for Information No. 358.

TRANSMITTAL 2

PAYMENT

Payment for the work described above shall be in accordance with contract Specification Sections 01000.38 and 01000.39. Partial payment for the work identified above and authorized under this CO will be paid based on the Engineer's estimate of the amount of work completed at the end of the progress payments period in accordance with Specification Section 01000.60c (Partial Payments) of the contract Specification.

LIMIT OF AUTHORITY

The work authorized under this CO shall be completed for a not-to-exceed amount (including all markups, fees, impact costs, and any costs attributable to delays) of $1,750,000.00.

TIME EXTENSION

A non-compensable time extension of 92 calendar days is granted to the contract completion date of May 31, 2023. The new contract completion date is August 31, 2023.

Please notify the field inspector before the start of the work. All work shall be subject to inspection and performed in conformance with the requirements of the contract documents.

Please sign the original and accompanying copy signifying your agreement with the changes described above. Return both executed copies to this office immediately.

Sincerely,

SHAUN SHAHRESTANI
Chief Harbor Engineer

Accepted: _____
Sully-Miller Contracting Company

GARRET CHEESEMAN, PROJECT MANAGER
Name and Title (please print)

Total increase in this CO is $1,750,000.00
Board authorization is required.

Resolution No. _____

Approved by BHC on _____
Date

CT:msr
29423.doc
Form 12/17
File No.: Spec No. 2780 – 12.3

Account#	**54510**	W.O. #	**2533000**
Ctr/Div#	**1040**	Job Fac.#	**228-2600**
Proj/Prog#	**624**		

Budget FY:	Amount:
2023-2024	$1,750,000.00
TOTAL	$1,750,000.00

For Acct/Budget Div. Use Only

Verified by: Digitally signed by Joanna Ames Date: 2023.06.01 15:52:23 -07'00'

Verified Funds Available: Digitally signed by Frank Liu Date: 2023.06.01 17:08:29 -07'00'

Date Approved: 6/1/23

Presentation

Board Report Presentation

By:

Mark Rose, Assistant Chief Harbor Engineer



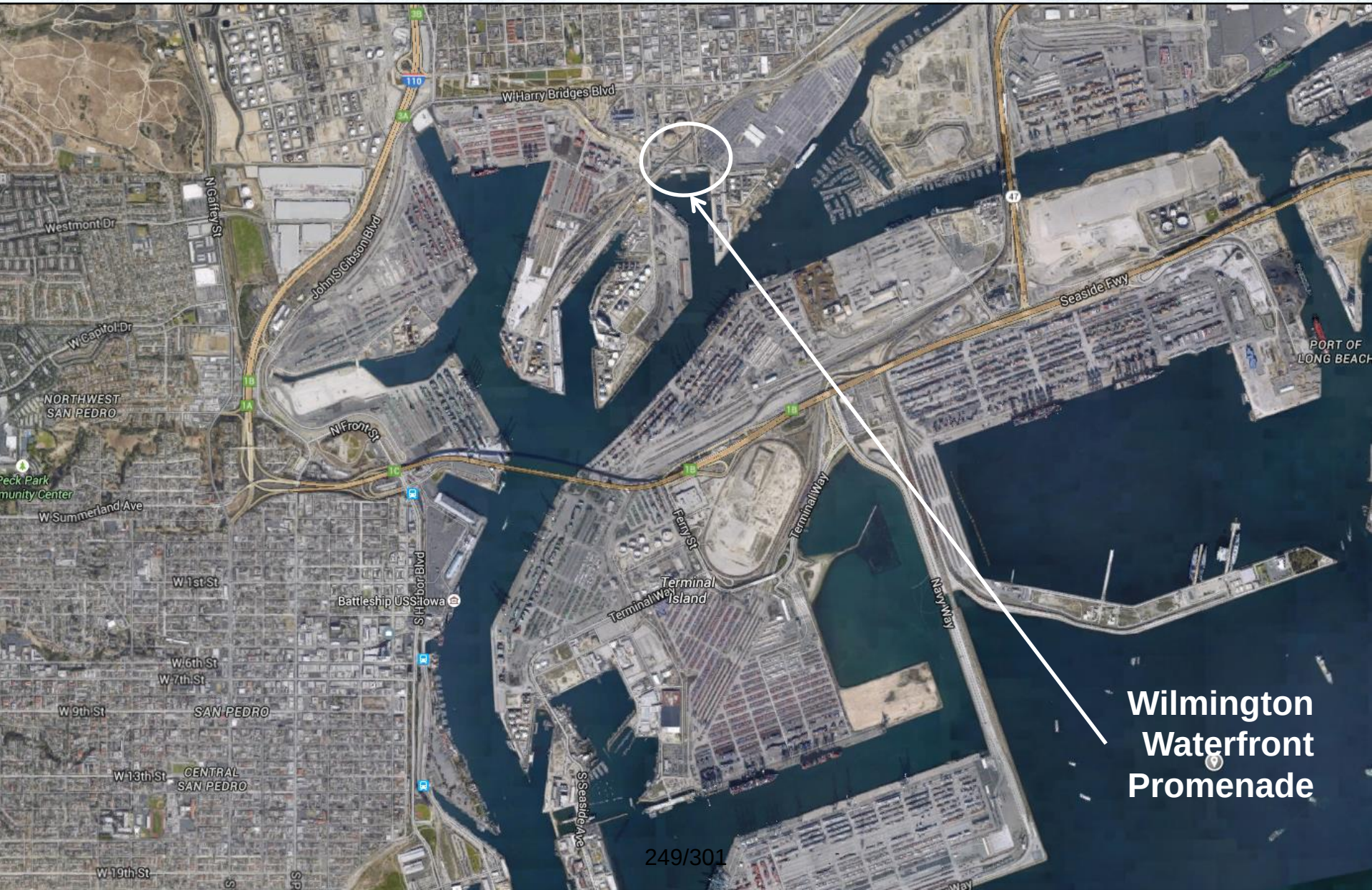
Wilmington Waterfront Promenade and Building Demolition

THE PORT OF LOS ANGELES

June 22, 2023

Change Order No. 18
Additional Unforeseen Waterside Work

Project Location



Change Order No. 18

Changes includes the following:

- Rip rap rock slope protection (Approx. $500,000)
- Install the remaining tidal steps stone from waterside (Approx. $250,000)
- Additional funding to remove unforeseen obstructions (Approx. $500,000)
- Revise tidal stone material from Mexican Onyx to Arizona Onyx (Approx. $500,000)
- Total Not-to-Exceed Authorization $1,750,000.
- Time Extension to August 31, 2023

THE PORT OF LOS ANGELES

Project Status

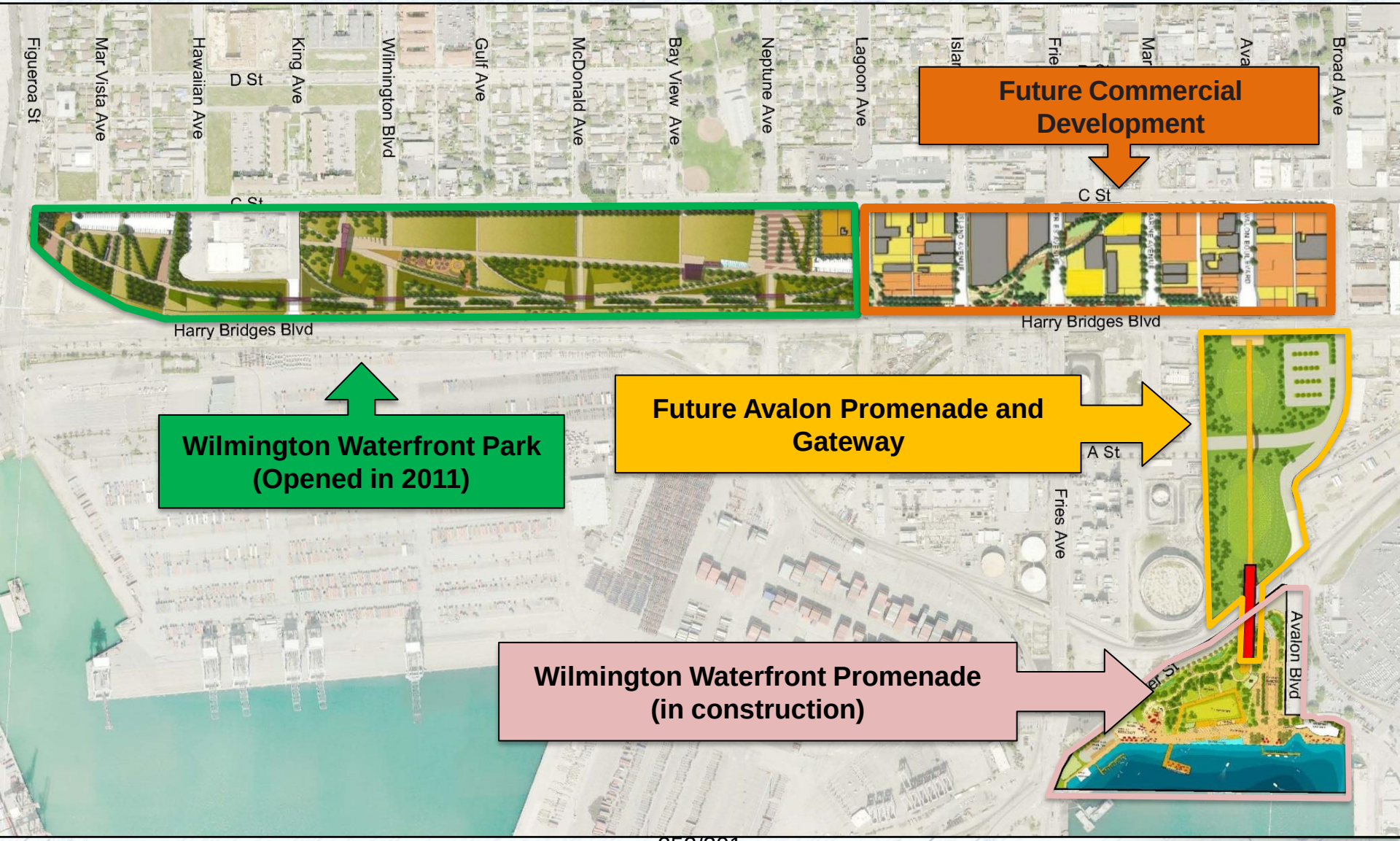
- Project awarded to Sully-Miller Contracting Company in the amount of $51,900,020 plus a 15% contingency for a total authorized amount of $59,685,023.

- Total authorized to date including Change Order No. 18 equals $58,288,099, leaving $1,396,923 of authorized contingency remaining.

- The contract originally had an 840-day contract duration with a completion date of March 19, 2023.

- Revised completion date with Change Order No. 18 time extension is August 31, 2023.

Wilmington Waterfront Program Phasing



Project Location Rendering

Project Elements

- Waterfront Promenade
- Restroom
- Public Pier
- Play Area
- Realigning Water Street
- Landscaping & Site Furnishings
- Public Plaza
- Public Dock
- Parking Courts
- Reconstructing Seawall



THE PORT OF LOS ANGELES

Project Rendering: Restroom & Parking



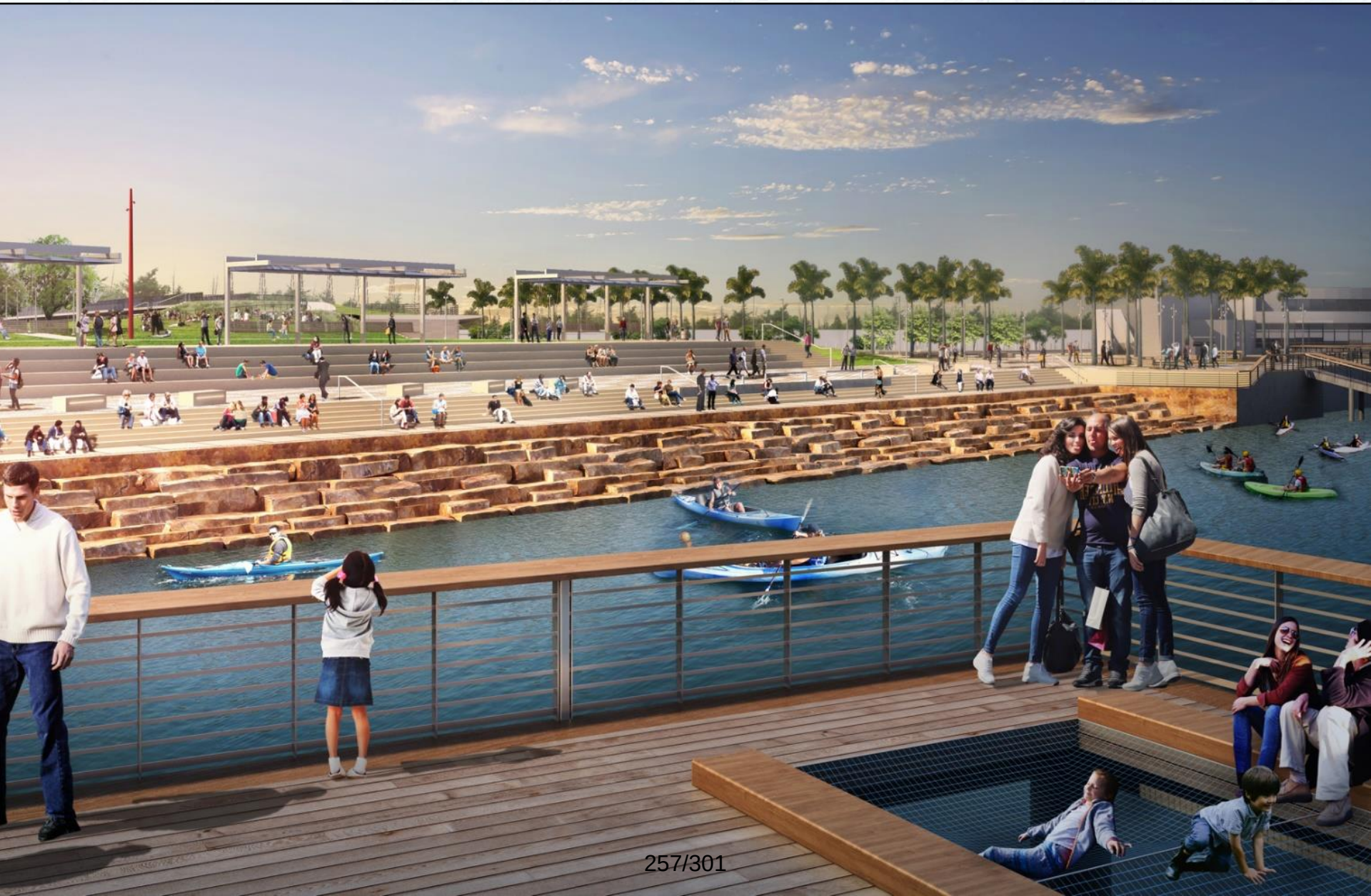
Construction: Public Restroom



Construction: Public Restroom & Parking



Project Rendering: Tidal Step Feature



Construction: Tidal Step Feature



Construction: Tidal Step Feature



Project Rendering: Public Playground



Construction: Public Playground



Construction: Public Restroom & Landscaping



Construction: Landscaping



Construction: Realigned Water Street



Construction: Outlook Pier & Planter Wall



Construction: Outlook Pier



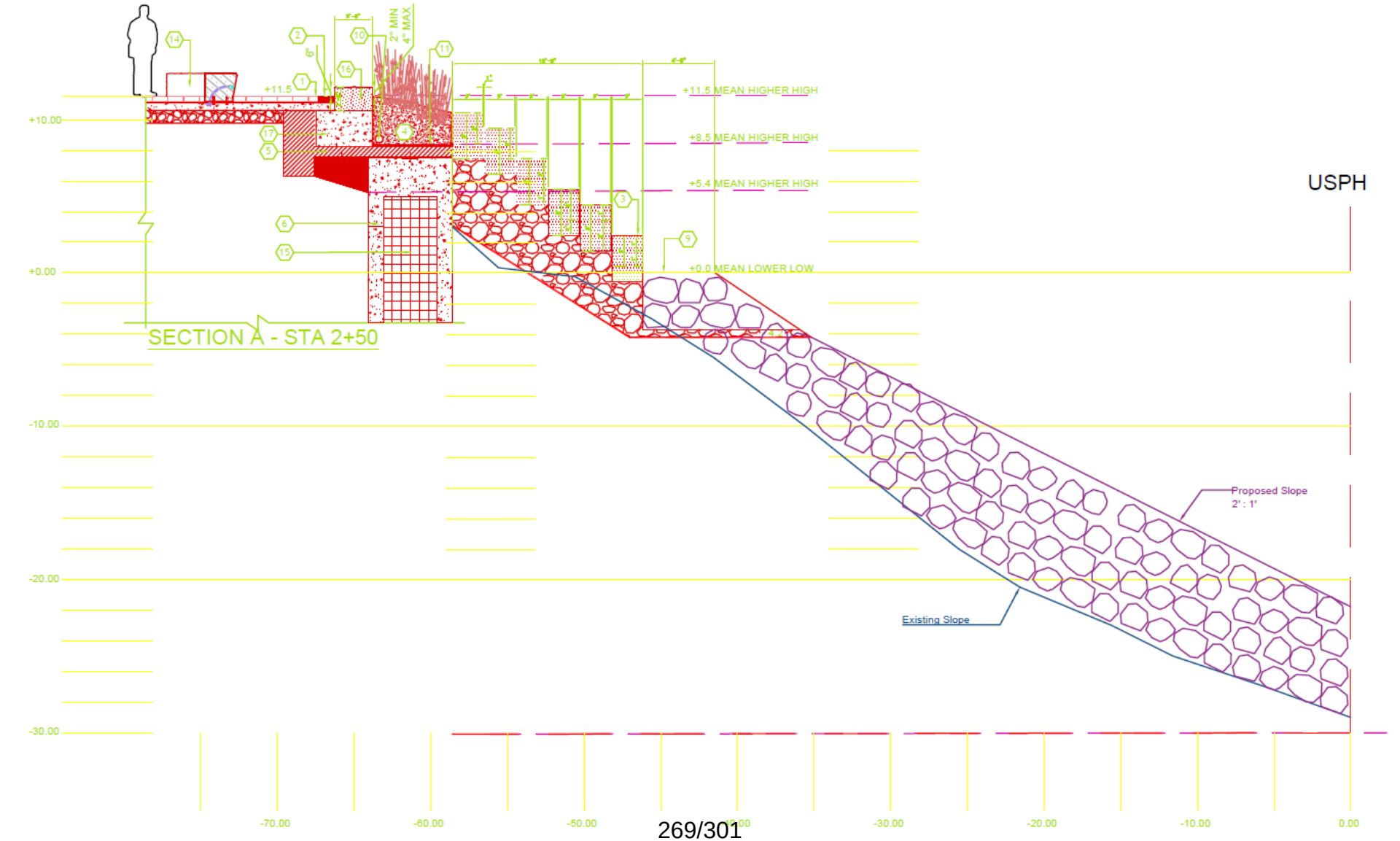
Construction: Outlook Pier



Construction: Banning's Landing Promenade & Floating Dock



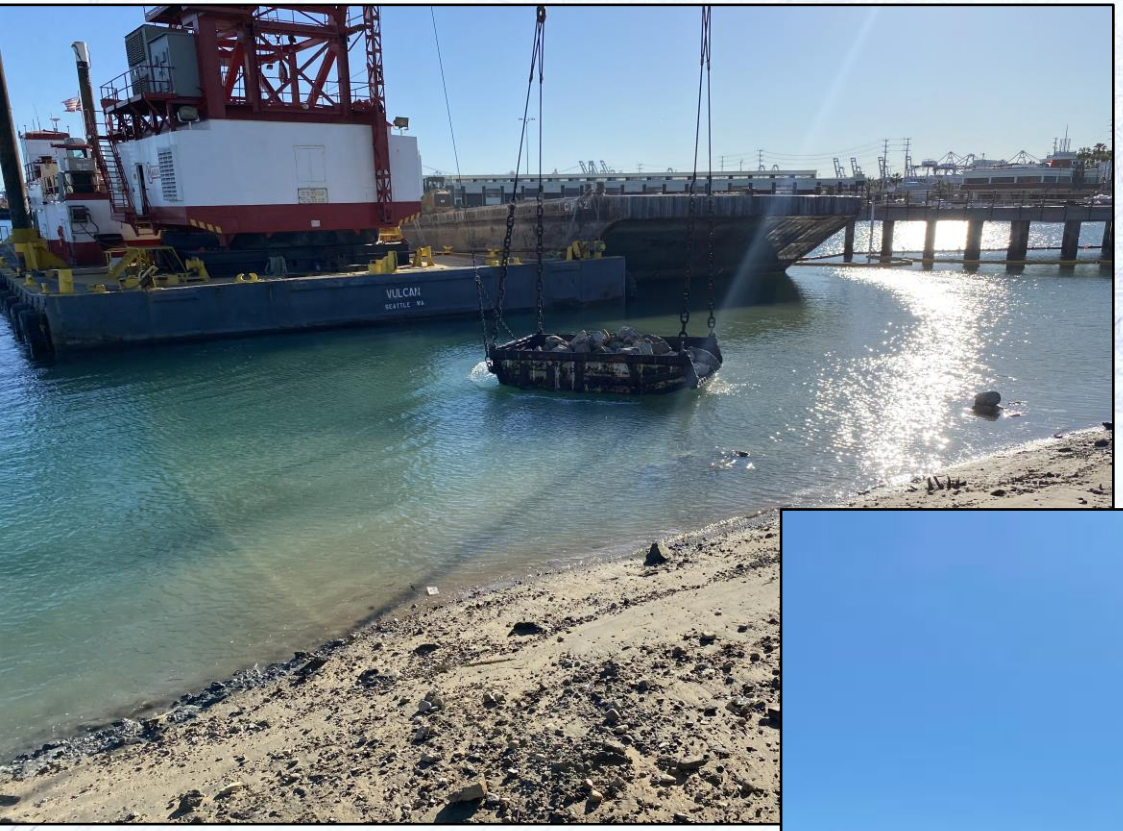
Change Order No. 18: Ex. Slope Condition Cross-Section



CO #18: On-Call Rock Installation

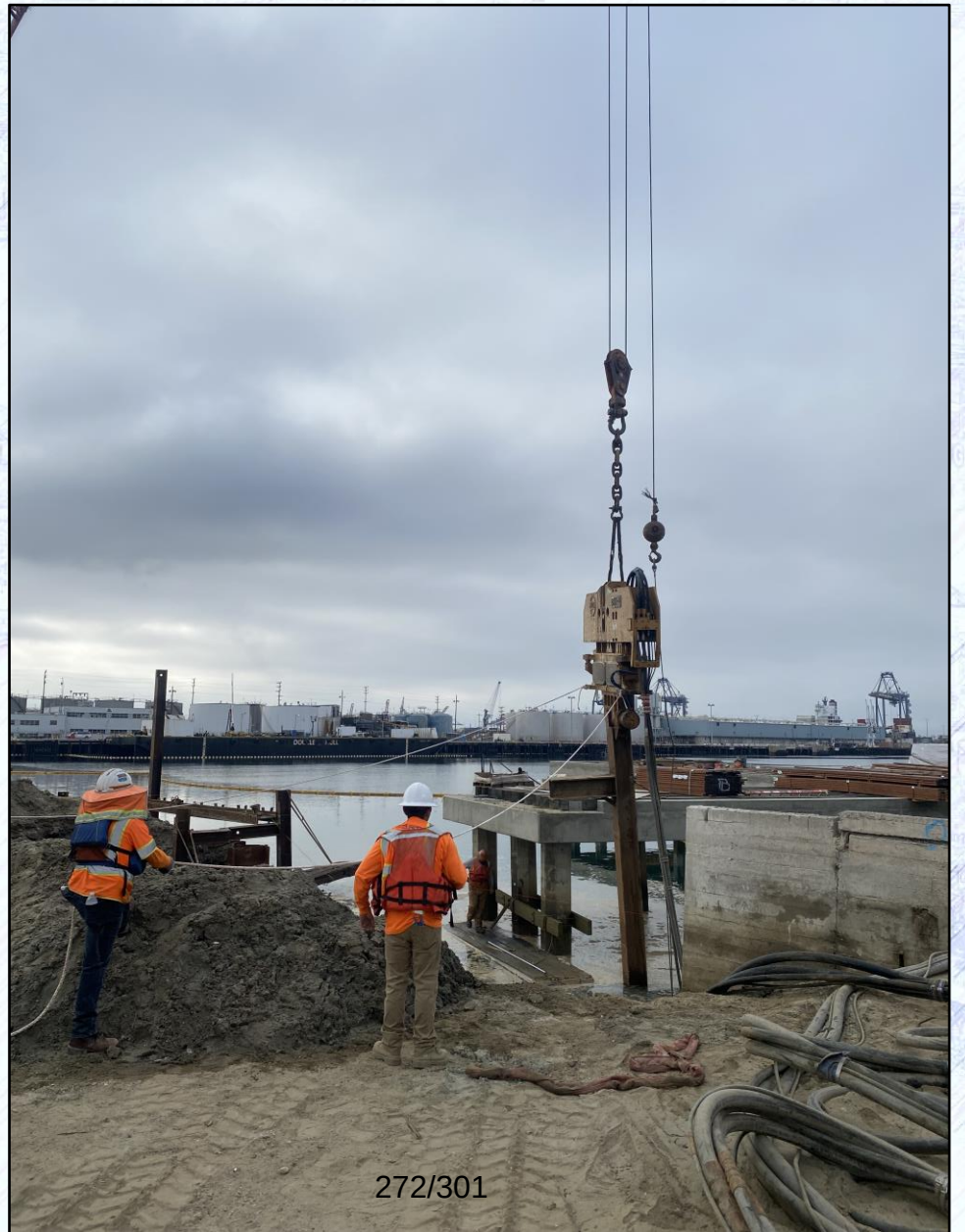


CO #18: On-Call Rock Installation





CO #18: Sheet Pile Wall Driving



THE PORT OF LOS ANGELES

CO #18: Sheet Pile Wall Obstructions Removal





CO #18: Spudding





CO #18: Sheet Pile Wall Installation/Pre-Drilling





CO #18: Mexican Onyx



THE PORT OF LOS ANGELES

CO #18: Arizona Onyx



Change Order No. 18

Lessons Learned:

- Use up to date Lead Line and Hydrographic Surveys
- Proper contingencies in place for buried and unforeseen conditions
- Prior to listing suppliers, coordinate to verify supplier can meet production schedule and contract requirements

Thank you



Project Rendering

7. RESOLUTION NO. _____ - PROPOSED REIMBURSEMENT AGREEMENT BETWEEN THE CITY OF LOS ANGELES HARBOR DEPARTMENT AND HOWARD INDUSTRIAL PARTNERS, LLC.

THE PORT OF LOS ANGELES
Executive Director's Report to the Board of Harbor Commissioners

DATE: **JUNE 14, 2023**

FROM: **ENVIRONMENTAL MANAGEMENT**

SUBJECT: **RESOLUTION NO._____- PROPOSED REIMBURSEMENT AGREEMENT BETWEEN THE CITY OF LOS ANGELES HARBOR DEPARTMENT AND HOWARD INDUSTRIAL PARTNERS, LLC.**

SUMMARY:

Staff requests approval of a proposed Reimbursement Agreement (Agreement) with Howard Industrial Partners, LLC (Howard) to reimburse the City of Los Angeles Harbor Department (Harbor Department) one hundred percent of staff and consultant costs associated with the review and oversight of an environmental document for the construction of a proposed short-term trailer parking facility (Project) located at 1599 West John S. Gibson Boulevard. The Project is not located on Port of Los Angeles property, but a portion of the property is located within the Port Master Plan area, requiring the Harbor Department to issue a Coastal Development Permit (CDP) for site development. The Harbor Department has agreed to serve as Lead Agency for the purposes of the California Environmental Quality Act (CEQA) and as such must review the environmental document prepared by Howard's selected consultants for consistency and accuracy. The proposed Agreement is for a term of three years with an estimated amount of $150,000. Howard is financially responsible for reimbursement of expenditures.

RECOMMENDATION:

It is recommended that the Board of Harbor Commissioners (Board):

1. Find that the Director of Environmental Management has determined that the proposed action is administratively exempt from CEQA in accordance with Article II Section 2(f) of the Los Angeles City CEQA Guidelines;

2. Approve the proposed Reimbursement Agreement with Howard Industrial Partners, LLC to reimburse the City of Los Angeles Harbor Department for review and oversight costsof the environmental assessment for the construction of a proposed acre short-term trailer parking facility located at 1599 West John S. Gibson Boulevard for a contract term of three years and for an estimated base amount of $150,000;

3. Authorize the Executive Director to execute and the Board Secretary to attest to, saidAgreement for and on behalf of the Board; and

4. Adopt Resolution No._____.

DISCUSSION:

Background/Context – Howard Industrial Partners, LLC is a real estate development and investment company focused primarily on industrial developments. Howard currently does not have any outstanding agreements or contracts with the Port of Los Angeles. Howard proposes to construct a short-term trailer parking facility and to grade and install a concrete paved parking lot on approximately 405,600 square feet within an approximately 18.7-acre site (Transmittal 1). Howard would also install a prefabricated guard booth and restroom for use by truck drivers and employees. A portion of the Project site is on land that was formerly owned by the Harbor Department. On October 24, 2016, the Board of Harbor Commissioners approved the authorization of the sale of 13.75-acres of surplus property located between John S. Gibson Boulevard and the CA-110 Freeway. While the Project site is not owned by the Harbor Department, a portion of this property still lies within the Port Master Plan area. As such, the Harbor Department only retains Coastal Development Permit jurisdiction authority for this portion of the project. The remaining portion of the project lies within the City of Los Angeles Planning Department Coastal Zone jurisdictional authority. Previously, the Harbor Department entered into Agreement No. E7131-RC with Howard for the reimbursement of funds incurred to prepare the environmental documentation required for compliance with CEQA for the proposed development of the 18.7-acre site into a container parking lot. The previous agreement was for one-year and up to $150,000. The Harbor Department's Environmental Management Division (EMD) had previously prepared a Negative Declaration to analyze impacts associated with the previously proposed project but did not bring this item forward for Board consideration due to issues raised by comment letters and questions about jurisdiction.

Proposed Project and Schedule – Now, Howard plans to prepare an environmental document themselves that must be completed before construction of the Project can occur. The Harbor Department as lead agency will oversee the work performed for consistency and accuracy. The oversight work by the Harbor Department will be required whether or not the proposed Agreement is approved by the Board. Howard has agreed to pay all staff and consultant costs for the reviewand oversight of the environmental document for the Project, as well as any outside legal defense costs (if necessary) associated with the preparation of the environmental document. The Harbor Department, the City of Los Angeles Planning Department, and any other Responsible Agencies will rely on this environmental document to issue a Port Master Plan Amendment that pending the approval by the Board of Harbor Commissioners and certification by the California Coastal Commission. Furthermore, the Project would require the issuance of a Coastal Development Permit from the Harbor Department, a Coastal Development Permit from the City of Los Angeles and/or California Coastal Commission, and other City of Los Angeles Department of Building and Safety permits.

ENVIRONMENTAL ASSESSMENT:

CEQA Documentation and Schedule – The Harbor Department, as the CEQA lead agency, would review and provide oversight of the necessary environmental assessment activities and special studies to satisfy the requirements of CEQA. The length of time to complete the environmental assessment is subject to several conditions but is estimated to take approximately 12-18 months to complete.

Environmental Assessment Cost and Consultant Selection – The Harbor Department's standard practice is to require applicants to pay for the cost of preparation and/or review of their environmental documents whenever possible. The total estimated cost to review and provide oversight of the environmental assessment for the Project, including staff charges and consultant services, is approximately $150,000. Actual costs may be higher or lower than these estimates. EMD has consulting agreements in place for as-needed CEQA environmental services and will select the lead consultant to perform quality control and quality assurance of the preparation of the environmental document. Staff review and oversight for the environmental assessment will begin following Board approval of this proposed Agreement. Should the Board decide not to approve the proposed Agreement, the Harbor Department will need to cover the costs associated with the oversight work through the Harbor Department's existing operational budget.

Proposed Reimbursement Agreement – The proposed action is approval of a proposed Agreement for a term of three years, with a one hundred percent reimbursement of costs associated with the review and oversight of the environmental document for the construction and operation of short-term trailer parking facility at 1599 West John S. Gibson Boulevard (Transmittal 2), which is an administrative activity. Therefore, the Director of Environmental Management has determined that the proposed action is administratively exempt from the requirements of CEQA in accordance with Article II Section 2(f) of the Los Angeles City CEQA Guidelines.

FINANCIAL IMPACT:

Approval of the proposed Agreement will require Howard to reimburse the Harbor Department for one hundred percent of all staff and consultant costs and project fees for the oversight and review of the environmental document being prepared to assess the construction of a proposed short-term trailer parking facility at 1599 West John S. Gibson Boulevard.

Initial payments from the Harbor Department for consultant costs and project fees will be recognized as receivables to Account No. 11225 (Reimbursable Costs-Env Projects) Center No. 7000 (Balance Sheet), Program No. 000 (Base Budget) for work as follows:

FY 2023/24	$	75,000
FY 2024/25	$	75,000
FY 2025/26	$	0
TOTAL	**$**	**150,000**

The Harbor Department will bill Howard on an up to monthly basis upon agreement execution. As the Harbor Department receives reimbursement payments from Howard for the consultant costs and project fees, the reimbursement payments will clear the associated receivable transactions. If payment is not received, the Harbor Department has the right to stop all work contemplated by this Agreement until such time that Applicant has submitted all monies due.

CITY ATTORNEY:

The Office of the City Attorney has prepared and approved this agreement as to form and legality.

SUBJECT: HOWARD REIMBURSEMENT AGREEMENT

TRANSMITTAL:

1. Site Map
2. Reimbursement Agreement with Howard Industrial Partners, LLC.

FIS Approval: MB

CA Approval: SO

CHRISTOPHER CANNON
Director of Environmental Management

Michael DiBernardo

MICHAEL DiBERNARDO.
Deputy Executive Director

APPROVED:

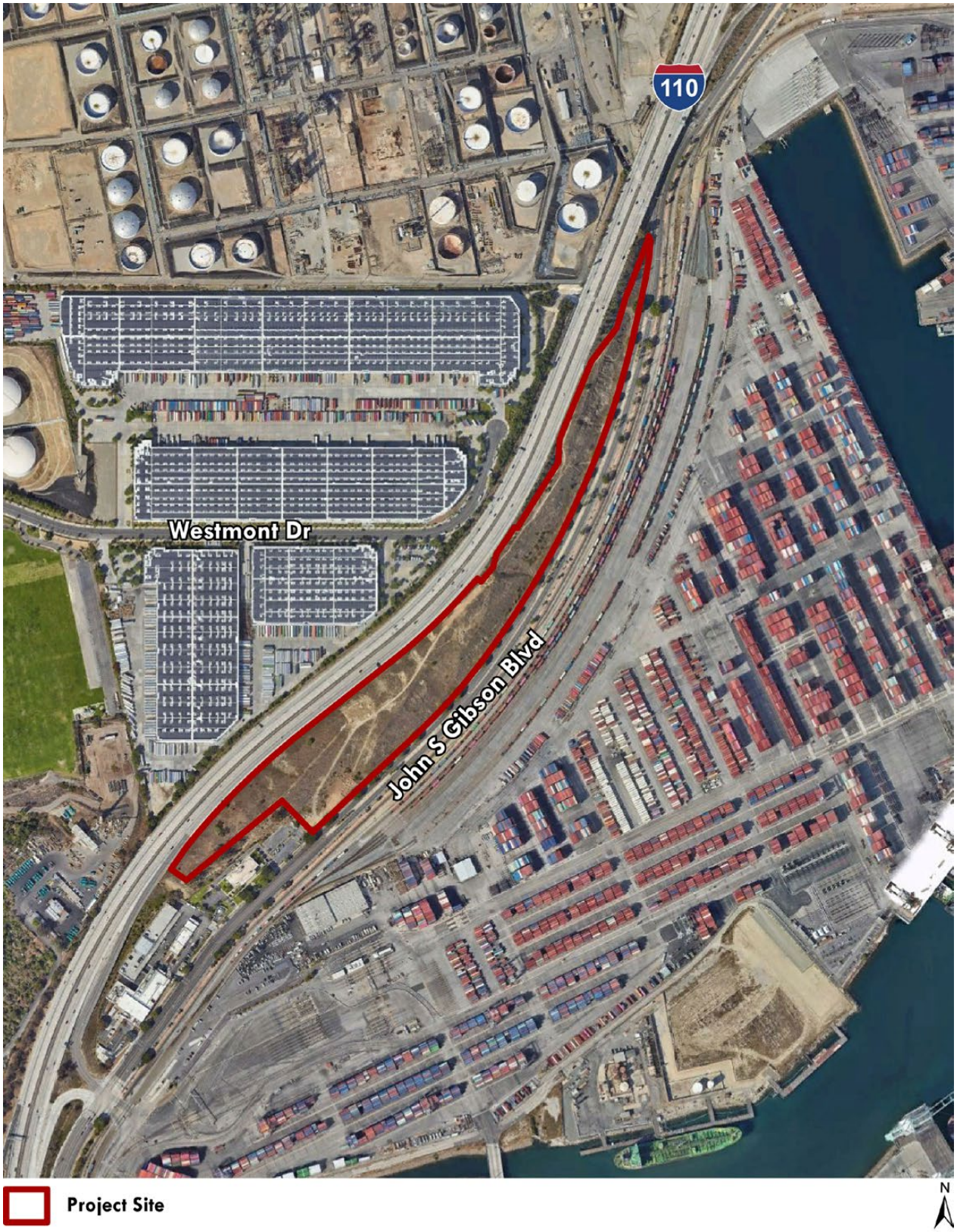
Marla Bleavins For

EUGENE D. SEROKA
Executive Director

CC/MRX
AUTHOR: N. ENCISO

FILE: Y:_ADMIN_BOARD REPORTS_CEQA\HOWARD INDUSTRIAL\Environmental_Howard Reimbursement Agreement_Board Report - FINAL.docx
UPDATED: 6/14/2023 12:33 PM - MRX

Transmittal 1


110
Westmont Dr
John S Gibson Blvd
Project Site
N

Transmittal 2

AGREEMENT BETWEEN
THE CITY OF LOS ANGELES' HARBOR DEPARTMENT AND
HOWARD INDUSTRIAL PARTNERS LLC

This AGREEMENT ("Agreement") is made and entered into by and between the CITY OF LOS ANGELES, a municipal corporation ("City" or "Harbor Department"), acting by and through its Board of Harbor Commissioners ("Board") and HOWARD INDUSTRIAL PARTNERS LLC, a California Limited Liability Company, 2244 North Pacific Street, Orange, CA 92865 ("Applicant").

RECITALS

WHEREAS, Applicant is entering into a Reimbursement Agreement with the Harbor Department for the development of an approximately 18.7 acre site with an short-term trailer parking facility at 1599 John S. Gibson Boulevard San Pedro, CA 90731. ("Project"); (Application for Port Permit (APP) Number: 230315-056); and

WHEREAS, Harbor Department, as the lead agency for purposes of the California Environmental Quality Act (Public Resources Code, Section 21000, et seq. ("CEQA")), has determined that environmental review of the Project must be conducted in accordance with applicable environmental laws including but not limited to CEQA prior to consideration of Project approval(s); and

WHEREAS, Applicant will be preparing any and all CEQA documents ("Project Documents") and the Harbor Department, as lead agency, will review and advise Applicant as to the CEQA document's adequacy; and

WHEREAS, Applicant has agreed to reimburse Harbor Department for all costs for review of the documentation required for compliance with CEQA and making discretionary decisions related to the Project and/or costs incurred for legal defense (if necessary) of the Project, including but not limited to all costs for engaging the services of a consultant(s) to review such documentation and reimbursement of all related Harbor Department staff, outside counsel and Harbor Department consultant(s) costs;

NOW, THEREFORE, in reliance on the foregoing recitals and in consideration of the mutual covenants set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Applicant hereby agree as follows:

1. ENVIRONMENTAL REVIEW AND ENTITLEMENTS.

A. Harbor Department, as the CEQA lead agency, is providing review of any Environmental Documents to be prepared for Applicant's proposed Project as required by law in order for the City to consider making discretionary decisions to grant entitlements for and approve the proposed Project. It is understood by Applicant that

Harbor Department, as the CEQA lead agency, has the principal responsibility for carrying out or approving any project which may have an impact on the environment; is responsible for the adequacy of any document required by CEQA and environmental laws related to the Project, and must ensure that any such document reflects the independent judgment of the lead agency in terms of adequacy and objectivity.

B. Applicant is responsible for obtaining all necessary permits, including federal permits that would be subject to federal lead agency review under the National Environmental Policy Act (NEPA), if applicable.

2. NO APPROVAL; NO WAIVER OF CITY'S DISCRETIONARY AUTHORITY. Applicant and City expressly acknowledge and agree that this Agreement does not grant Applicant or City any right or obligation to enter into any other binding agreement or amendment of agreement relative to the design, engineering, construction, development, operation, or lease related to the proposed Project, nor obligate City to take any action to adopt or approve the CEQA document or to approve the proposed Project, or any lease, permit or entitlement related to the proposed Project. The proposed Project shall be subject to the discretionary review and approval of all underlying entitlements and approvals to the extent required by the law and by City's Charter, Administrative Code, policies, rules and regulations. City retains its sole and unfettered discretion to make decisions regarding the proposed Project, including by not limited to: determination of any Project Documents' compliance with CEQA and environmental laws related to the Project; whether or not to approve the proposed Project; and whether or not to require modification of or select alternatives to the proposed Project, including the "no project" alternative in order to comply with CEQA. Furthermore, Harbor Department retains its sole and unfettered discretion to undertake any studies, peer review or inquiries it deems necessary and/or appropriate to ensure a legally adequate CEQA document.

3. TERM AND TERMINATION.

A. Subject to the provisions of Charter Section 245, the effective date of this Agreement ("Effective Date") shall be the date of its execution by the Executive Director following authorization of the Board. The term of this Agreement shall commence upon the Effective Date and, unless terminated earlier as provided herein, shall continue until three (3) years has lapsed from the Effective Date of this Agreement or upon the expiration of all periods of legal challenge, litigation and appeal under applicable law of the Project Documents approved or certified by the Board pursuant to Section 3C ("Termination Date"), below, whichever is later.

B. Prior to the Termination Date, either party may withdraw, in writing, from the preparation and processing of the Project Documents as contemplated by this Agreement and cancel this Agreement upon giving the other party ten (10) days-written notice of its election to cancel and terminate this Agreement. Should either party so withdraw, this Agreement will terminate and the Applicant shall be responsible for the expenses incurred under this Agreement up to and including the effective date of termination. Should the decision be made by either party to terminate this Agreement,

Harbor Department shall immediately cease work and direct its consultant(s) to cease work reviewing Project Documents contemplated by this Agreement. Upon termination of the Agreement, City shall determine the services actually performed by Harbor Department staff and consultant(s) up to the date of termination of this Agreement and the amount owed to Harbor Department and consultant(s). City shall allocate the portion of expenses due from Applicant and shall invoice Applicant according to the terms of the Agreement.

C. Following completion of the preparation and certification of the final Environmental Documents (i.e. EIR) by the Board, any early termination of the Agreement shall not constitute termination of Applicant's indemnity and defense obligations described in Section 7, below.

4. REIMBURSEMENT. Applicant agrees to reimburse City for One Hundred Percent (100%) of all staff, consultant(s), and in house and/or outside counsel costs for the review and legal defense (if necessary) of the Project Documents, as follows:

A. Consultant Selection: Harbor Department, as the lead agency for purposes of CEQA, has consulting agreements in place for as-needed CEQA environmental services. In support of reviewing the Project Documents, Harbor Department may, in its sole discretion, select a consultant to perform project management oversight and quality assurance/quality control services, the cost for which shall also be the responsibility of Applicant.

B. Scope of Work and Cost Estimate: An estimated scope of work and budget to review the Environmental Document and the associated oversight review are set forth in the attached Exhibit "A". Consultants were selected from the Harbor Department's existing pool of as-needed consultants. The Scope of Work and Cost Estimate does not impact Applicant's financial obligations under Section 7, below, which does not contemplate an estimated or a not to exceed amount.

C. Process for Cost Reimbursement: After selection of consultant(s), Harbor Department shall submit invoices on an up to monthly basis to Applicant (the "Monthly Invoice"), listing the monthly charges generated for the ongoing oversight review of the Environmental Document. The Monthly Invoice shall include a progress report describing the activities performed during the subject month, along with the charges associated with such activities. The invoice shall be due for payment to Harbor Department within thirty (30) days of its receipt by Applicant. If payment is not received the Harbor Department has the right to stop all work contemplated by this Agreement until such time that Applicant has submitted all monies due.

5. STANDARD OF CARE. Harbor Department hereby represents and warrants that the work performed to review the Environmental Document shall be undertaken with the same standard of care and diligence as has been applied to its most recent environmental assessment work. As Harbor Department is the lead agency and its independent judgment must apply, as provided for in Section 6 below, Harbor Department will determine whether the standard of care is the same as has been applied to its most recent environmental assessment work.

6. LEAD AGENCY'S INDEPENDENT JUDGMENT. The preparation and certification of the Environmental Document shall reflect the lead agency's independent judgment (CEQA Section 21082.1(c) and 14 C.C.R. Section 15084). Accordingly, the final responsibility and final authority on all questions concerning the content and quality of the Environmental Document and related tasks lies in the sole discretion of Harbor Department. Applicant understands and agrees that any consultant(s) employed by Harbor Department to perform services hereunder only owes a duty to Harbor Department and said consultant(s) will be accountable to Harbor Department alone and not to Applicant or to any other third-person or entity.

7. DEFENSE AND INDEMNIFICATION.

7.1 Obligation to Defend, Indemnify, and Hold Harmless. Applicant undertakes and hereby agrees to defend, indemnify, and hold harmless City, and/or any of its Boards, officers, agents, employees, assigns and successors in interest ("Indemnitees") from and against any claim, action, or proceeding ("Proceeding") brought against the Indemnitees to attack, challenge, revise, amend, set aside, void or annul: (i) the approval of the proposed Project, including but not limited to any and all entitlements necessary for development of land, conditions of approval; or (ii) the validity or legality of the Project and it's Project Documents which action is brought within the applicable time periods of the State Government Code and Public Resources Code, California Coastal Act and applicable rules or codes ("Claims"). City shall promptly notify the Applicant in writing of any Claim and City shall not act unreasonably towards cooperating in the defense of such Claim. If City fails to promptly notify Applicant of any such Claim, or if City acts unreasonably towards its obligation to cooperate in the defense, Applicant shall not thereafter be responsible to defend, indemnify, or hold harmless City. However, if Applicant has actual written notice of the Proceeding, it shall not be relieved of the obligations imposed hereunder, notwithstanding the failure of City to provide prompt written notice of the Proceeding. City shall be considered to have failed to give prompt written notification of a Proceeding if City, after being served with a lawsuit or other legal process challenging the approvals, unreasonably delays in providing written notice thereof to Applicant. As used herein, "unreasonably delays" shall mean any delay that materially adversely impacts Applicant's ability to defend the Proceeding. The obligations imposed in this Section 7 shall apply notwithstanding any allegation or determination in the Proceedings that City acted contrary to applicable laws. Notwithstanding the foregoing, any failure to provide such written notice to Applicant in writing within thirty (30) days of being served will be deemed an unreasonable delay. Upon demand, Applicant shall, within thirty (30) days, reimburse City for any court and attorney's fees which City may be required to pay, including counsel, as a result of any Claim, subject to Applicant's right to challenge the reasonableness of any Legal Fees and Costs. City shall make all decisions with respect to its representation in any legal proceeding regarding the Claims, including, but not limited to, the selection of attorneys and the content and procedure of the defense of the Claims. Although Applicant may be a defendant or the real party in interest in the Claim, City may, at its sole discretion, participate at its own expense in the defense of the Claim, but such participation shall not relieve Applicant of any other

obligation. City acknowledges Applicant may seek its own representation in any legal proceeding regarding the Claims, and the City's counsel and Applicant's counsel will consult in good faith regarding the defense of the Claims. Nothing in this Section shall be construed to mean that Applicant shall hold City harmless and/or defend it from any Claims arising from the City's intentional misconduct or sole negligence in the performance of this Agreement by City or Indemnitees. City shall have the right to approve any settlement or compromise of any Claim against the City. Rights and remedies available to 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 City.

7.2 Defending the Project Documents and Project Approvals. Applicant shall have the obligation to timely retain legal counsel to defend against any Proceeding to set aside, void or annul, all or any part of any Project Documents and/or approval of the Project Documents ("Project Approval"). City shall have the right, if it so chooses, to defend the Proceeding against it utilizing outside counsel or in-house legal staff, in which case Applicant shall be liable for all legal costs and fees reasonably incurred by City, including charges for staff time. Provided that Applicant is not in breach of the terms of this Section, City shall not enter into any settlement of the Proceeding which involves modification to any Project Approval or otherwise results in Applicant incurring any liabilities or other obligations, without the prior consent of Applicant.

7.3 Breach of Obligations. Actions constituting a breach of the obligations imposed in this Section 7 shall include, but not be limited to (i) the failure to timely retain qualified legal counsel to defend against the Proceedings; (ii) the failure to pay City, within thirty (30) days, for any attorney's fees or other legal costs for which City is liable, subject to Applicant's challenge to the reasonableness of such fees or costs, pursuant to a judgment or settlement agreement in the Proceeding seeking to set aside, void or annul all or part of any Project Approval; or (iii) the breach of any other obligation imposed in this Section 7. In each case, it shall be deemed a breach of the obligations imposed in this Section 7 after written notice from City and a reasonable period of time in which to cure the failure, not to exceed thirty (30) days. For purposes of this Section 7, Applicant shall be considered to have failed to timely retain qualified legal counsel if such counsel is not retained within thirty (30) days following City's provision of the notice of Proceedings to Applicant required hereunder. In the event that Applicant breaches the obligations imposed in this Section 7, City shall have no obligation to defend against the Proceedings, and by not defending against the Proceedings, City shall not be considered to have waived any rights in this Section 7. Further, in the event of breach, City shall have the option to hire outside counsel to defend itself in the Proceedings at Applicant's reasonable expense.

7.4 Cooperation. City shall cooperate with Applicant in the defense of the Proceeding, provided, however, that such obligation of City to cooperate in its defense shall not require City to (i) assert a position in its defense of the Proceeding which it has determined, in its sole discretion, has no substantial merit; (ii) advocate in its defense of the Proceeding legal theories which it has determined, in its sole discretion, lack

substantial merit; or (iii) advocate in its defense of the Proceeding legal theories which it has determined, in its sole discretion, are contrary to its best interests or to public policy. Nothing contained in this Section 7 shall require Applicant to refrain from asserting in its defense of the Proceeding any positions or legal theories.

7.5 Waiver of Right to Challenge. Applicant hereby waives the right to challenge the validity of the obligations imposed in this Section 7; provided that such waiver shall not include a waiver by Applicant of the right to contest whether any particular claim for indemnification by City falls within the scope of Applicant's obligations under this Section 7.

7.6 Survival. The obligations imposed in this Section 7 shall survive any decision invalidating the Project Approvals, including, but not limited to, decisions by any governmental agency or judicial decision.

7.7 Preparation of Administrative Record. Applicant and City acknowledge that, upon the commencement of legal Proceedings, the administrative record of proceedings relating to the Project Documents and Project Approvals must be prepared. Those documents must also be certified as complete and accurate by City. Applicant, as part of its defense obligation imposed in this Section 7, shall prepare at its sole cost and expense the record of Proceedings in a manner which complies with all applicable laws; in accordance with reasonable procedures established by City and subject to the City's cooperation in providing access to the applicable records; and subject to City's obligation to certify the administrative record of Proceedings and City's right to reasonably oversee the preparation of such administrative record. Applicant agrees that its failure to prepare the administrative record as set forth herein, and in compliance with all time deadlines imposed by law, shall constitute a breach of its obligation to defend City. In the event that Applicant fails to prepare the administrative record, City may do so. If City prepares the administrative record, City shall be entitled to be reimbursed by Applicant for all reasonable costs associated with preparation of the administrative record, including reasonable charges for consultant, counsel (in house and/or outside counsel), and staff time. Applicant shall have the right to seek reimbursement of the costs incurred to prepare the administrative record from the petitioner(s) in the legal Proceedings in the event the court upholds the City's decision.

8. NO CONFIDENTIALITY. The parties may reveal all or part of this Agreement to others as required by law.

9. ASSIGNMENTS. Applicant may not assign its rights or obligations under this Agreement to any third party but may assign the entire Agreement to any subsidiary or affiliate of Applicant approved by City. Any assignment by Applicant shall not relieve Applicant from its duties hereunder. Any prohibited assignment or purported assignment shall be null and void, and Applicant shall bear sole responsibility for any consequences resulting from such prohibited or purported assignment. Harbor Department may not assign its rights or obligations under this Agreement.

10. APPLICABLE LAW. This Agreement shall be governed by and constructed under the laws of the State of California without regard to conflicts of laws principles. Any action or proceeding arising out of or related to this Agreement shall be filed and litigated in the state or federal courts located in the County of Los Angeles, State of California, in the judicial district mandated by applicable court rules.

11. COUNTERPARTS. This Agreement may be executed in two or more counterparts, each of which will be deemed to be an original copy and all of which, when taken together, will be deemed to constitute one and the same document, which shall be binding and effective as to each of the parties hereto. A facsimile shall be deemed to be an original.

12. LEGAL CAPACITY. Each individual executing this Agreement hereby represents and warrants that he has the capacity set forth on the signature pages hereof with the full power and authority to bind the party on whose behalf he is executing this Agreement to the terms hereof.

13. NOTICES. Any notice or correspondence to be provided by either party shall be in writing and dispatched by first class mail, registered or certified mail, postage prepaid, return receipt requested, or by electronic facsimile transmission followed by delivery of a "hard" copy, or by personal delivery (including by means of professional messenger service or courier service or by U.S. Postal Service). A notice shall be deemed to have been given, (i) in the case of first class, registered or certified mail, when delivered or the first attempted delivery on a business day, or (ii) in the case of expedited prepaid delivery and facsimile, upon the first attempted delivery on a business day. The following addresses shall serve as the locations to which notices and other correspondences relating to this Agreement between Applicant and Harbor Department shall be sent:

To Applicant:	HOWARD INDUSTRIAL PARTNERS LLC 2244 North Pacific Street Orange, CA 92865 Attn: Timothy J. Howard, Manager
With a copy to:	City of Los Angeles Harbor Department 425 S. Palos Verdes Street San Pedro, CA 90731-0151 Attn: Director, Environmental Management
With a copy to:	Office of the City Attorney 425 S. Palos Verdes Street San Pedro, CA 90731-0151 Attn: General Counsel

14. MODIFICATION. This Agreement may be modified only by a 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.

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(Signature page to follow)

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

THE CITY OF LOS ANGELES HARBOR DEPARTMENT

Dated: _____, 2023

By: _____
EUGENE D. SEROKA
Executive Director

HOWARD INDUSTRIAL PARTNERS, LLC

Dated: May 30th, 2023

By: Timothy J. Howard
Manager, Sole Member
(Print/type name and title)

Attest: N. Le
Rae Gleason - HIP
(Print/type name and title)

APPROVED AS TO FORM AND LEGALITY

June 2, 2023
HYDEE FELDSTEIN SOTO, City Attorney
STEVEN Y. OTERA, General Counsel

By: _____
JUSTIN HOUTERMAN, Deputy

JH/lts
(05/30/2023)

EXHIBIT A

SCOPE OF WORK AND ESTIMATED BUDGET

Consultant Scope and Cost

Port Consultant(s) to oversee an environmental document, in compliance with the California Environmental Quality Act (CEQA) associated with the John S. Gibson Blvd. Parking Lot Project. Tasks include, but are not limited to, oversight of report writing; technical research and analysis, including transportation, air quality, greenhouse gas, and energy; scheduling; meetings; responses to public comments; and Board of Harbor Commission materials.

Estimated amount: **$100,000**

Port Staff Scope and Cost

Port Staff to review and provide oversight of the John S. Gibson Blvd. Parking Lot environmental document.

Estimated amount: **$41,000**

Project Fees

County Clerk Filing Fees

Estimated fee is $4,000.

Metropolitan News Advertising Fees

Estimated fee is $5,000.
Estimated amount: **$9,000**

Total Estimated Cost: $150,000

Note: The amount and/or allocation of costs between the Consultant and Port Staff and other estimated fees are subject to change. This estimate also does not include legal defense costs given the uncertainty of their nature and/or necessity as of the Effective Date. Should legal defense costs and fees become necessary, an estimate will be made available upon request.

Presentation

Howard Industrial Partners, LLC
Reimbursement Agreement

Chris Cannon
Director Environmental Management
and Chief Sustainability Officer
June 22, 2023

Site Location

