

**Joint Properties RFP  
Evaluation Results**

Proposer	Rater 1	Rater 2	Rater 3	Rater 4	Total	Rank
Cal Pacific Land Services, Inc	76	72	89	95	<b>332</b>	1
Consultant A	63	73	84	77	<b>297</b>	3
Consultant B	56	59	80	75	<b>270</b>	5
Consultant C	71	68	81	88	<b>308</b>	2
Consultant D	52	67	76	79	<b>274</b>	4

TRANSMITTAL 1



AGREEMENT NO.

AGREEMENT BETWEEN  
THE CITY OF LOS ANGELES, THE CITY OF LONG BEACH AND  
CAL PACIFIC LAND SERVICES, INC.

THIS AGREEMENT ("Agreement") is made and entered into by and among the CITY OF LOS ANGELES, a municipal corporation ("City"), acting by and through its Board of Harbor Commissioners ("POLA"). The CITY OF LONG BEACH, a municipal corporation, acting by and through its Board of Harbor Commissioners ("POLB" and together with POLA, "Cities" or "Owners") and CAL PACIFIC LAND SERVICES, INC., a California corporation, 7222 Edinger Avenue, Suite 200, Huntington Beach, California 92647 ("Manager").

RECITALS

WHEREAS, the Cities acquired interests in certain real property in the County of Los Angeles known as the Alameda Corridor Right of Way and the former Union Pacific Railroad San Pedro Branch Right of Way, which is generally shown on the map attached hereto as Exhibit A and by this reference incorporated herein (the "Property" or "Properties"); and

WHEREAS, Owners desire that property management and maintenance of those portions of the Property which are not the responsibility of third parties (excluding the Long Beach lead between the Dominguez Channel and Anaheim Street) be handled by Manager. Such properties are generally shown on the maps attached hereto as Exhibits "A-1" (Landscape Maintenance") and Exhibit "A-2" ("Maintenance Area") and by this reference are incorporated herein; and

WHEREAS, pursuant to that certain Use Permit between Owners and the Alameda Corridor Transportation Authority, a joint powers authority created by the Cities of Los Angeles and Long Beach ("ACTA"), dated as of October 12, 1998 ("Use Permit"), Owners granted to ACTA the right to use and occupy certain real property in connection with the Project, upon the terms and conditions set forth therein. Unless otherwise expressly provided for herein, all capitalized terms not otherwise defined herein shall have the meaning given to them in the Use Permit. Manager acknowledges receipt of a copy of the Use Permit; and

WHEREAS, Owners and ACTA, together with the Burlington Northern and Santa Fe Railway Company ("BNSF") and the Union Pacific Railroad Company ("UP", and collectively the "Railroads"), are parties to that certain Alameda Corridor Use and Operating Agreement dated as of October 12, 1998 ("Operating Agreement") governing various matters relating to the construction and operation of the Project. Manager acknowledges receipt of a copy of the Operating Agreement; and

WHEREAS, Owners have determined that management of current and future licenses, leases, franchises, easements, permits and other agreements encumbering or relating to the Property or portions therefor in effect from time to time (collectively, "Property Contracts"), listed in Exhibit B-1 and incorporated herein, and maintenance of those portions of the Property not maintained by others can be performed more efficiently through one or more professional property management companies, rather than separately by POLA and POLB. The parties granted rights under a Property Contract by POLA, POLB (separately or jointly) or by either or both of their predecessors in interest shall be known collectively as "Permittees". Notwithstanding anything to the contrary above, the term "Property Contracts" shall not include: (i) the Use Permit, (ii) the Operating Agreement, (iii) the Amended and Restated Construction and Maintenance Agreement by and among Owners, ACTA and UP dated as of October 12, 1998, (iv) the Interim Operating Agreement by and between Owners and SPT dated December 22, 1994, (v) the Right of Entry and Construction Agreement by and among BNSF, ACTA and Owners dated October 12, 1998, (vi) the UP San Pedro Branch Operating Agreement by and between Owners and Old UP dated as of December 22, 1994 and any amendments to the above-mentioned agreements, (vii) the Long Beach Rail Operating Agreement by and between the City of Long Beach and Pacific Harbor Line, Inc. ("PHL") dated as of June 1, 1998 and (viii) the San Pedro Bay Rail Operating Permit by and between the City of Los Angeles and PHL dated as of December 1, 1997 and those agreements listed in Exhibit B-2 attached hereto and by this reference incorporated herein (collectively, the "Rail Agreements"); and

WHEREAS, Manager is a real estate broker holding a valid and unexpired license duly issued by the Department of Real Estate of the State of California, possesses extensive specialized experience in the management of all aspects of real property and improvements (including contract administration and maintenance) owned and operated by government entities located in the State of California and is familiar with the Property Contracts as of the date of execution of this Agreement; and

WHEREAS, Owners desire that management and administration of the Property Contracts be handled by Manager pursuant to the terms and conditions set forth herein and as consented to and approved by Owners, subject to Owners' reserved right to engage such other professional property managers to perform similar management services pursuant to separate written agreements or to perform such services in whole or part by Owners; and

WHEREAS, the Cities do not employ personnel with the required expertise to provide the needed services nor is it feasible to do so on a temporary or occasional basis;

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

I. SERVICES TO BE PERFORMED BY MANAGER

A. Manager hereby agrees to render to Owners, as an independent contractor, certain professional, technical and expert services of a temporary and occasional character as set forth in Exhibit C ("Scope of Work").

B. Manager, 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 Owners and Manager, Manager 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 Cities, or any other governmental entity.

C. Manager acknowledges and agrees that it lacks authority to perform any services outside the Scope of Work. Manager 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 Directors of the Los Angeles Harbor Department and the Long Beach Harbor Department or their designees ("Executive Directors"), whether performance is undertaken by Manager or third-parties with whom Manager has contracted ("Subconsultants"). Obligations of this Agreement, whether undertaken by Manager or Subconsultants, are and shall be the responsibility of Manager. Manager acknowledges and agrees that this Agreement creates no rights in Subconsultants with respect to the Cities 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 Manager alone. Upon written request of both Executive Directors, Manager shall supply the Cities with all agreements between it and its Subconsultants.

II. SERVICES TO BE PERFORMED BY CITY

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

B. The Executive Directors or their designee(s) are designated as the contract administrators for each City and they 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 Manager 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 X (Termination) hereof.

### III. EFFECTIVE DATE AND TERM OF AGREEMENT

A. Subject to the provisions of Los Angeles Charter Section 373, the effective date of this Agreement shall be the date last signed by an Executive Director of Owners upon authorization of both Owners' Boards. Consultant is aware that pursuant to Los Angeles City Charter Section 373 and Administrative Code Section 10.5, this Agreement requires approval by the City of Los Angeles City Council prior to becoming effective.

B. This Agreement shall be in full force and effect commencing from the date of execution as provided for in Section III(A) and shall be for an initial period of five (5) years, subject to the following:

1. Owners have the option to renew the term of the Agreement for two (2) consecutive renewal periods of five (5) years, for a total Agreement term not to exceed fifteen (15) years from the effective date. Exercise of the option to renew shall require the concurrence of both Executive Directors of Owners and the approval of both Boards of Harbor Commissioners of Owners. Upon such concurrence and approval, written notice to Manager executed by both Executive Directors shall be sufficient to exercise such option to renew. In addition to Owners' rights in Sections IV and X below, Owners may terminate or reduce Manager's duties as to all or any portion of the Property or the Property Contracts, at any time for Owners' convenience without cause, upon ninety (90) days prior written notice to Manager and by preparing a revised Scope of Work, Exhibit C, pursuant to the authority provided by Section XXXIII of this Agreement.

2. Owners, in their sole discretion, may terminate and cancel all or part of this Agreement for any reason upon giving to Manager ten (10) days-notice in writing of their election to cancel and terminate this Agreement.

### IV. 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 Los Angeles Harbor Department 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, said Board is under no legal obligation to do so.

The City of Los Angeles, 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 Los Angeles Harbor Department Board does not appropriate funds

therefore. The Manager is not entitled to any compensation from the City of Los Angeles in any fiscal year in which funds have not been appropriated for the Agreement by said Board.

Although the Manager is not obligated to perform any work under the Agreement in any fiscal year in which no appropriation for the Agreement has been made by the City of Los Angeles Harbor Department, the Manager 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 Los Angeles Harbor Department Board within that 60-day period. The Manager 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 Los Angeles Harbor Department 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.

#### V. COMPENSATION AND PAYMENT

A. As compensation for the satisfactory performance of the services required by this Agreement, Owners shall pay and reimburse Manager at the amounts and rates set forth in Exhibit D.

B. The maximum payable under this Agreement for the first five (5) years, including reimbursable expenses (see Exhibit D), shall be One Million Nine Hundred Eighteen Thousand (\$1,918,000). The maximum payable under this Agreement for each City for the first five (5) years shall be Nine Hundred Fifty Nine Thousand Dollars (\$959,000). The maximum payable amounts on an annual basis for all services including Manager Services and Subcontractor Services for the first five (5) years are shown in Exhibit D. All reimbursable expenses and direct costs shall be billed in accordance with Exhibit D and City of Los Angeles, City of Long Beach, state and federal policies, where applicable, including but not limited to the City of Los Angeles Travel Policy.

C. If Owners exercise one or both of the 5-year renewal options available under Section III(B)(1) of this Agreement, then for each such renewal period the rates set forth in Exhibit D for Manager Services and Subcontractor Services shall be adjusted starting on the effective date of each such renewal period at an amount equal to reflect the percentage increase (but not any decrease), if any, in the Consumer Price Index, All Urban Consumers of the Los Angeles-Riverside-Orange County, California area, 1982-84 = 100, as published by the U.S. Department of Labor, Bureau of Labor Statistics ("CPI"), or successor index selected by Owners in their sole reasonable discretion. Such adjusted Manager Services rates shall be equal to the product obtained by multiplying the Manager Services rates in effect during the previous 5-year period by a fraction, the numerator of which is the July CPI Index for the calendar year

in which the new 5-year period begins and the denominator of which is the July CPI index on the effective date of the previous 5-year period.

The formula illustrating the adjustment computation is as follows:

$$\text{Adjusted Rates} = \text{Rates of Previous 5-year period} \times \frac{\text{July CPI Index, Current 5-year period}}{\text{July CPI Index, Previous 5-year period}}$$

Notice of the updated rates shall be provided in writing by means of an updated Exhibit D and shall be provided to Manager concurrently with the notice regarding the renewal option provided pursuant to Section III(B)(1) of this Agreement. The revised Exhibit D shall not require an amendment to the Agreement to become effective, and the revised rates shall start on the then-current 5-year period Effective Date.

The maximum payable under this Agreement for the first five (5) years set forth in paragraph V.B (as well as the maximum payable amounts on an annual basis for the first five (5) years set forth in Exhibit D) shall be adjusted for each renewal period by the same percentage as the rates are adjusted. For example, if the rates are increased by 10% for the first renewal period, then the maximum payable of \$1,918,000 under this Agreement for the first five (5) years (as well as the "total not to exceed amounts by year" set forth in Exhibit D) shall be increased by 10% for the first renewal period.

D. Manager shall submit invoices in quadruplicate to each City monthly following the effective date of this Agreement for services performed during the preceding month. Amounts payable for each invoice shall reflect the total amount payable along with a final calculation for the amount payable by each City which shall be an equal 50-50 split of the total invoice amount.

For the City of Los Angeles, each such invoice shall be signed by the Manager 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 City of Los Angeles Agreement No. \_\_\_\_\_ and that payment has not been received. I further certify that I have complied with the provisions of the City of Los Angeles Living Wage Ordinance.

\_\_\_\_\_  
(Manager's Signature)

E. For the City of Los Angeles invoice, Manager must include on the face of each itemized invoice submitted for payment its City of Los Angeles Business Tax Registration Certificate number, as required at Article VIII of this Agreement. No invoice will be processed for payment by the City of Los Angeles without this number shown thereon. All invoices shall be approved by each Executive Director or his or her designee(s) 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 each City's business procedures, the same may be approved, audited and paid.

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

Further, where the Manager employs Subconsultants under this Agreement, the Manager shall submit to the City of Los Angeles, with each monthly invoice, a Monthly Subconsultant Monitoring Report Form (Exhibit E) listing SBE/VSBE/MBE/WBE/DVBE/OBE amounts. Manager 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 for the City of Los Angeles will not be paid without a completed Monthly Subconsultant Monitoring Report Form.

For the City of Los Angeles, Manager is not required to submit support for direct costs items of \$25 or less.

All invoices are subject to audit.

F. For payment and processing, all invoices should be mailed to the following addresses:

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

Port of Long Beach  
Finance Division  
P.O. Box 570  
Long Beach, CA 90801-0570

## VI. RECORDKEEPING AND AUDIT RIGHTS

A. Manager 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, including, without limitation, the monies received and disbursed in connection therewith and as specified below. Said books and records shall be readily accessible to and open for inspection and copying at the premises by Owners, their 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.

The files maintained by Manager shall reflect all activities relating to and the current status of all Property Contracts and the Maintenance Area. Such record

keeping system shall provide for the proper filing and maintenance of all information and records related to the Property Contracts and the Maintenance Area. Chronological, cumulative records shall be maintained relating to particular parcels within the Property. Such books and records shall include, but not be limited to: (i) originals of all Property Contracts (or copies of such Property Contracts where the originals have not been provided to Manager); (ii) current and prior insurance certificates of Permittees; (iii) all inspection and testing reports concerning the Property; (iv) as-built plans for any alterations or improvements at the Property relating to Property Contracts or the Maintenance Area; (v) permits relating to the Property; (vi) accident reports and complaints relating to the Property; (vii) notices relating to the Property; (viii) maintenance records relating to the Property; (ix) all correspondence with Permittees and/or third parties relating to the Property; (x) environmental documents relating to the Property; and (xi) written summaries of all telephone calls relating to the Property.

Manager shall keep safe and intact all income and expense related records for a period of ten (10) years after the date of submission to Owners of the income and expense reports to which such records pertain, and all other records shall be maintained by Manager 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.

If any records are maintained electronically, Manager shall maintain appropriate backup of such records in accordance with prudent industry standard practice. Upon Owners' request, Manager shall promptly transmit to Owners any or all records or files in Manager's possession, including but not limited to all drafts, data, correspondence, proposals, reports and estimates compiled or composed by Manager pursuant to this Agreement.

B. During the term of this Agreement, Owners may audit, review and copy any and all writings (as that term is defined in Section 250 of the California Evidence Code) of Manager 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 Manager, Subconsultants or any individual or entity acting for or on behalf of Manager or a Subconsultant, and (c) without regard to whether such writings have previously been provided to Owners. Manager shall be responsible for obtaining access to and providing writings of Subconsultants. Manager shall provide Owners at Manager's sole cost and expense a copy of all such writings within fourteen (14) calendar days of a written request by Owners. Owners' right shall also include inspection at reasonable times of the Manager's office or facilities which are engaged in the performance of the Scope of Work. Manager shall, at no cost to Owners, furnish reasonable facilities and assistance for such review and audit. Manager's failure to comply with this Article VI shall constitute a material breach of this Agreement and shall entitle Owners to withhold any payment due under this Agreement until such breach is cured.

## VII. INDEPENDENT CONTRACTOR

Manager, in the performance of the work required by this Agreement, is an independent contractor and not an agent or employee of either City. Manager shall not represent itself as an agent or employee of either City and shall have no power to bind either City in contract or otherwise.

## VIII. BUSINESS TAX REGISTRATION CERTIFICATES

Manager represents that the appropriate Business Tax Registration Certificates have been obtained and are current as required by the City of Los Angeles Office of Finance and the City of Long Beach, Treasury Management. Manager will provide evidence to each respective City that such Certificates have been obtained. Manager shall maintain all such Certificates required of it by each City and shall not allow any such Certificates to be revoked, suspended or expire without renewal. See Exhibit F.

## IX. INDEMNIFICATION AND INSURANCE

### A. Indemnification

Except for the sole negligence or willful misconduct of either Owners or ACTA, or any of their respective Boards, Officers, Agents, Employees, Assigns and Successors in Interest, Manager undertakes and agrees to defend, indemnify and hold harmless both Owners and ACTA and any of their respective Boards, Officers, Agents, Employees, Assigns, and Successors in Interest ("Indemnified Parties") 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 Indemnified Parties, 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 Manager's employees and agents, or damage or destruction of any property of any 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 Manager or its subcontractors of any tier. Rights and remedies available to the Indemnified Parties 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, the City of Los Angeles and the City of Long Beach.

Except for Owners' gross negligence or willful misconduct, ACTA and Owners shall not be liable for any damage or injury to the person, business (or any loss of income therefrom), goods or other property of Manager, Manager's employees, invitees or any other person in, on, under or about the Property, whether such damage or injury is caused by or results from: (i) earthquake, fire, steam, electricity, water, gas, rain or natural disaster; (ii) the breakage, leakage, obstruction, derailment or other defects of the Project and any railroad-related improvements or any other cause; (iii) conditions arising in, on, under or about the Property, or from other sources or places; (iv) any act or omission of the Railroads, a Permittee or any other occupant of the Property or (v)

any other act or omission of ACTA or Owners. No individual Indemnified Party shall have any personal liability under this Agreement, and Manager hereby expressly waives and releases such personal liability on behalf of itself and all persons claiming by, through or under Manager. Manager shall have no right to proceed against or recover from any Indemnified Party, individually or collectively.

Manager hereby waives any rights or claims to the recovery of any form of damages from any of the Indemnified Parties in the nature of punitive, consequential, incidental, or statutory damages, in excess of compensatory damages in connection with any claims arising out of this Agreement or relating to the Property.

B. Acceptable Evidence and Approval of Insurance

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

C. General Liability Insurance

Manager shall procure and maintain in effect throughout the term of this Agreement, without requiring additional compensation from the Indemnified Parties, 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 Cities if Best's is not available) within Manager's normal limits of liability but not less than Two Million Dollars (\$2,000,000) combined single limit for injury or claim. Said limits shall provide first dollar coverage except that the Executive Directors may permit a self-insured retention or self-insurance in those cases where, in their judgment, such retention or self-insurance is justified by the net worth of Manager. The retention or self-insurance provided shall provide that any other insurance maintained by the Indemnified Parties shall be excess of Manager'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 Indemnified Parties, their 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.

D. Automobile Liability Insurance

Manager 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 Manager'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 Indemnified Parties, their 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.

E. Workers' Compensation and Employer's Liability

Manager 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 Manager 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. Manager 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 Indemnified Parties in any circumstance in which it is alleged that actions or omissions of any of the Indemnified Parties contributed to the accident. Such Worker's Compensation and occupational disease requirements shall include coverage for all employees of Manager, and for all employees of any subcontractor or other vendor retained by Manager.

F. Professional Liability Insurance

Manager 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, agents, or contractors, and include coverage (or no exclusion) for contractual liability.

Manager certifies that it now has professional liability insurance in the amount of Two Million Dollars (\$2,000,000), 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 expiration or earlier termination of the Agreement.

Each policy shall include a 10-days notice of cancellation for nonpayment of premium, and a 30-days notice of cancellation for any other reasons.

Notice of occurrences of claims under the policy shall be made to each Owners' City Attorney's office with copies to their respective Risk Management Divisions.

G. Carrier Requirements

All insurance which Manager 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 Owners.

H. Notice of Cancellation

Each insurance policy described above shall provide that it will not be canceled or reduced in coverage until after each Owners' Risk Manager and City Attorney's Office have each been given thirty (30) days' prior written notice by registered mail addressed to: City of Los Angeles Harbor Department, 425 S. Palos Verdes Street, San Pedro, California 90731 and Port of Long Beach, 4801 Airport Plaza Drive, Long Beach, CA 90815-1263.

I. Modification of Coverage

Owners' Executive Directors, at their discretion, based upon recommendation of independent insurance Managers to each 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 Manager.

J. Renewal of Policies

At least thirty (30) days prior to the expiration of each policy, Manager shall direct their insurance broker or agent to submit to the City of Los Angeles's online insurance compliance system **Track4LA**™ at <http://track4la.lacity.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 Manager neglects or fails to secure or maintain the insurance required above, Owners may, at their own options but without any obligation, obtain such insurance to protect Owners' interests. The cost of such insurance will be deducted from the next payment due Manager.

K. Right to Self-Insure

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

1. Manager has a formal self-insurance program in place prior to execution of this Agreement. If a corporation, Manager must have a formal resolution of its board of directors authorizing self-insurance.
2. Manager agrees to protect the Owners and ACTA, their 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. Manager agrees to defend the Owners and ACTA, their boards, officers, agents and employees in any lawsuit that would otherwise be defended by an insurance carrier.
4. Manager agrees that any insurance carried by Owners and ACTA are excess of Manager's self-insurance and will not contribute to it.
5. Manager provides the name and address of its claims administrator.
6. Manager submits its most recently filed 10-Q and its 10-K or audited annual financial statements for the three most recent fiscal years to Owners for their consideration of approval of self-insurance and annually thereafter.
7. Manager agrees to inform Owners in writing immediately of any change in its status or policy which would materially affect the protection afforded the Owners and ACTA by this self-insurance.
8. Manager has complied with all laws pertaining to self-insurance.

L. Accident Reports

Manager shall report in writing to Owners 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 any property, occurring upon the Property, or elsewhere within the Port of Los Angeles or the Port of Long Beach if Manager'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 Manager, its officers or managing agents.

X. TERMINATION PROVISION

Owners, in their sole discretion, shall have the right to terminate and cancel all or any part of this Agreement for any reason upon giving the Manager ten (10) days' advance, written notice of the Owners' election to cancel and terminate this Agreement. It is agreed that any Agreement entered into shall not limit the right of either Owner to hire additional Managers or perform the services described in this Agreement either during or after the term of this Agreement.

XI. PERSONAL SERVICE AGREEMENT

A. During the term hereof, Manager agrees that it will not enter into other contracts or perform any work without the written permission of the Executive Directors where the work may conflict with the interests of the Owners.

B. Manager 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 Manager may permit Subcontractor(s) to perform portions of the Scope of Work in accordance with Article I. All Subcontractors whom Manager utilizes, however, shall be deemed to be its agents. Subcontractors' performance of the Scope of Work shall not be deemed to release Manager from its obligations under this Agreement or to impose any obligation on the Owners to such Subcontractor(s) or give the Subcontractor(s) any rights against the Owners.

XII. AFFIRMATIVE ACTION

The Manager, 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 G.

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

The City of Los Angeles Harbor Department and the City of Long Beach Harbor Department are committed to creating an environment that provides all individuals and businesses open access to the business opportunities available at each Harbor Department in a manner that reflects the diversity of each City.

It is the policy of the City of Los Angeles Harbor 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. Manager shall assist the City of Los Angeles 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 H.

It is also the policy of the Los Angeles Harbor 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. Manager shall assist the City of Los Angeles 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 of Los Angeles, Manager and all Subcontractors must be registered on the City of Los Angeles' Contracts Management and Opportunities Database, Los Angeles Business Assistance Virtual Network (LABAVN), at <http://www.labavn.org>.

#### XIV. 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 of Los Angeles and its Harbor Department. All parties hereto agree that they are unaware of any financial or economic interest of any public officer or employee of either 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, Owners may immediately terminate this Agreement by giving written notice thereof.

#### XV. COMPLIANCE WITH APPLICABLE LAWS

Manager 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 the Executive Directors.

## XVI. 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.

## XVII. TRADEMARKS, COPYRIGHTS, AND PATENTS

Manager agrees to save, keep, hold harmless, protect and indemnify Owners and any of their 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 Owners of any materials supplied by Manager in the performance of this Agreement.

## XVIII. 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 Owners as soon as they are developed, whether in draft or final form. Owners have 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. Manager hereby warrants and represents that Owners at all times own 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. Manager need not obtain for Owners 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 Manager 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 Manager's initial proposal or proposals made during this Agreement are accepted by Owners, 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 Manager, its Subconsultants or on either's behalf, whether prior or subsequent to this Agreement becoming effective, to the Owners, their boards, officers, agents or employees, is not given in confidence. Accordingly, Owners or their 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 Manager, its officers, agents, employees, or Subconsultants, each Owner

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 either Owner. Upon Owners' request, Manager, at its sole cost and expense, shall promptly furnish or obtain from the appropriate person a form of license satisfactory to the each Owner. It is expressly understood and agreed that, as between Owners and Manager, the referenced license shall arise for each Owners' benefit immediately upon the production of the work product, and is not dependent on the written license specified above. Each Owner 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 either Owner.

XIX. 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 Manager relative thereto shall be considered confidential and shall not be reproduced, altered, used or disseminated by Manager 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, Manager is required to safeguard such information from access by unauthorized personnel.

XX. 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, all notices shall be addressed to the Executive Director of the City of Los Angeles Harbor Department, P.O. Box 151, San Pedro, California 90733-0151, the Executive Director of the City of Long Beach Harbor Department, 925 Harbor Plaza, Long Beach, California 90802 and notice to Manager 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.

XXI. TAXPAYER IDENTIFICATION NUMBER (TIN)

The Internal Revenue Service (IRS) requires that all Managers and suppliers of materials and supplies provide a TIN to the party that pays them. Manager declares that its authorized TIN is 90-0402007. No payments will be made under this Agreement without a valid TIN.

XXII. SERVICE CONTRACTOR WORKER RETENTION POLICY AND LIVING WAGE POLICY REQUIREMENTS

The Board of Harbor Commissioners of the City of Los Angeles adopted Resolution No. 5771 on January 13, 1999, agreeing to adopt the provisions of Los Angeles City Ordinance No. 171004 relating to Service Contractor Worker

Retention (SCWR), Section 10.36 et seq. of the Los Angeles Administrative Code, as the policy of the Department. Further, City of Los Angeles 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. Manager shall comply with the policy wherever applicable. Violation of this provision, where applicable, shall entitle the City of Los Angeles to terminate this Agreement and otherwise pursue legal remedies that may be available.

#### XXIII. WAGE AND EARNINGS ASSIGNMENT ORDERS / NOTICES OF ASSIGNMENTS

The Manager and/or any Subconsultant are obligated to fully comply with all applicable state and federal employment reporting requirements for the Manager and/or Subconsultant's employees.

The Manager 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 Manager 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 Manager or Subconsultant will maintain such compliance throughout the term of this Agreement.

#### XXIV. 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. Manager shall comply with the policy wherever applicable. Violation of this policy shall entitle the City of Los Angeles to terminate any Agreement with Manager and pursue any and all other legal remedies that may be available. See Exhibit I.

#### XXV. COMPLIANCE WITH LOS ANGELES CITY CHARTER SECTION 470(c)(12)

The Manager, Subcontractors, 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, Manager is required to provide and update certain information to the City of Los Angeles as specified by law. Any Manager subject to Charter Section 470(c)(12), shall include the following notice in any contract with a subcontractor 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 subcontractor on City of Los Angeles Harbor Department Agreement No. \_\_\_\_\_. Pursuant to City Charter Section 470(c)(12), subcontractor and its principals are prohibited from making campaign contributions and fundraising for certain elected City of Los Angeles officials or candidates for elected City office for 12 months after the Agreement is signed. Subcontractor is required to provide to Manager names and addresses of the subcontractor's principals and contact information and shall update that information if it changes during the 12 month time period. Subcontractor's information must be provided to Manager 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 of Los Angeles Ethics Commission's website at <http://ethics.lacity.org/> or by calling 213-978-1960.

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

## XXVI. 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.

This Agreement and all rights granted under the Agreement are subject to the restrictions, reservations and limitations of record, including those contained in Chapter 676, Statutes of 1911, Chapter 102, Statutes of 1925, Chapter 158, Statutes of 1935, Chapter 29, Statutes of 1956, First Extraordinary Session, Chapter 138, Statutes of 1964, First Extraordinary Session, the Charter of the City of Long Beach and the federal navigational servitude.

Manager agrees that any interpretation of this Agreement and the terms contained herein must be consistent with such limitations, conditions, restrictions and reservations.

## XXVII. 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.**

## XXVIII. 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.

## XXIX. 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.

## XXX. 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.

XXXI. 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, the Charters and Administrative Codes of the City of Los Angeles and the City of Long Beach.

XXXII. 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.

XXXIII. 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.

The Cities may, from time to time, replace any exhibit of this Agreement to make corrections or updates, except for Exhibit D which shall only be replaced pursuant to the authority and procedures set forth in Section V(C) of this Agreement. Replacement versions of exhibits shall be provided to the Office of the City Attorney for each Owner and to Manager. The parties agree that such replacement exhibits, if any, shall be deemed incorporated in this Agreement upon delivery as set forth herein.

XXXIV. 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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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: \_\_\_\_\_

By \_\_\_\_\_  
Gene D. Seroka  
Executive Director

Attest: \_\_\_\_\_  
Secretary

APPROVED AS TO FORM AND LEGALITY

July 28, 2014  
MICHAEL N. FEUER, City Attorney  
Janna B. Sidley, General Counsel

By Heather M. McCloskey  
Heather M. McCloskey, Deputy

THE CITY OF LONG BEACH, by its Board of Harbor Commissioners

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
A.J. Moro, P.E.  
Acting Executive Director

Attest: \_\_\_\_\_  
Secretary

APPROVED AS TO FORM

\_\_\_\_\_, 2014  
CHARLES J. PARKIN, City Attorney

By \_\_\_\_\_  
Charles Gale, Senior Deputy City Attorney

CAL PACIFIC LAND SERVICES, INC.,  
a California corporation

Dated: 7/17/14

By: Charles W. Wadell, Jr.  
Charles W. Wadell, Jr. President  
(Print/type name and title)

Attest: Linda Fenner  
Linda Fenner, Secretary  
(Print/type name and title)

*J*

Account #	<u>54290</u>	W.O. #	_____
Ctr/Div #	<u>0424</u>	Job Fac. #	_____
Proj/Prog #	<u>000</u>		
Budget FY:		Amount:	
	<u>2014/2015</u>	<u>\$205,100</u>	
	TOTAL		

For Acct/Budget Div. Use Only:

Verified by: Julie Yano

Verified Funds Available: John A. Haj

Date Approved: 7/20/2014