

**BASIC CONSULTANT AGREEMENT
(NON-ENGINEERING WITH OCIP)**

PROFESSIONAL SERVICES AGREEMENT

Between

PORT OF OAKLAND

And

«ConsultantName»

[«ScopeofWork»]

(Resolution No. «Resolution»)

Dated

«EffectiveDate»

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CONTRACT FOR PROFESSIONAL SERVICES

«ConsultantName»
(«ScopeofWork»)

THIS CONTRACT FOR PROFESSIONAL SERVICES (“Contract”) is entered into on «EffectiveDate» between the City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners (“Port”), and «ConsultantName» (“Consultant”), identified on Appendix C, who agree as follows:

1. Scope of Professional Services.

The Consultant shall perform all services described in Appendix A (“Services”), for the compensation set forth in Appendix B (“Compensation”), which appendixes are attached and made a part of this Contract.

2. Term.

This Contract shall become effective upon its execution by Consultant and by Port (including approval by the Port Attorney). All Services whenever performed shall be deemed performed under this Contract, and all compensation paid to Consultant on account of the Services performed shall be deemed as payments of the Compensation.

3. Standard of Performance.

Consultant represents that it possesses all necessary training, licenses and permits to perform the Services, and that its performance of the Services will conform to the standard of practice of a professional that specializes in performing professional services of like nature and complexity of the Services.

4. Subconsultants.

Consultant shall perform the Services using the persons and subconsultants listed in Appendix A. Consultant shall hire only qualified persons or firms who are experienced in performing work of like nature and complexity to the Services, and who agree to be bound to the terms of the Contract to the extent of this scope of services. Consultant may substitute personnel or subconsultants prior to any such subconsultants commencing work only upon the Project Manager’s written consent, which may be withheld or delayed in Port’s discretion.

5. Indemnification and Liability.

5.1 To the fullest extent permitted by law (including, without limitation, California Civil Code Section 2782), Consultant shall defend (with legal counsel chosen or approved by the Port Attorney), indemnify and hold harmless Port and its officers, agents, departments, officials, representatives and employees (collectively “Indemnitees”) from and against any and all claims, loss, cost, damage, injury (including, without limitation, injury to or death of an employee of Consultant or its Subconsultants), expense and liability of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, attorneys’ fees, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) that arise from

or relate to, directly or indirectly, in whole or in part, from: (1) the Services under this Agreement, or any part thereof, or (2) any negligent act or omission of Consultant, any Subconsultant, anyone directly or indirectly employed by them, or anyone that they control (collectively "Liabilities"). Such obligations to defend, hold harmless and indemnify any Indemnitee shall not apply to the extent that such Liabilities are caused in whole or in part by the sole negligence, active negligence, or willful misconduct of such Indemnitee, but shall apply to all other Liabilities.

5.2 Consultant shall defend (with legal counsel chosen or approved by the Port Attorney), indemnify and hold harmless the Indemnitees from all loss, cost, damage, expense, liability or claims, in law or in equity, including attorneys' fees, court costs, litigation expenses and fees of expert consultants or expert witnesses, that may at any time arise for any infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark or any other proprietary right of any person or persons in consequence of the use by Port, or any of the other Indemnitees, of articles or Services to be supplied in the performance of this Agreement.

6. Notices.

The Port and Consultant shall provide notices to the other in the form of a writing, sent by facsimile and by U.S. Mail. If to the Port, it shall be addressed to the Project Manager (identified on Appendix D) at:

**Port of Oakland
530 Water Street
Oakland, CA 94607**

or to such other place as the Port may such similar notice in writing designate. If to the Consultant, the same shall be addressed to the individual and address noted on Appendix C hereto or to such other place as the Consultant may by such similar notice in writing designate.

7. Insurance.

Consultant shall comply with all requirements of Appendix E, which is attached and made a part of this Contract. As more particularly described in Appendix E, Port has secured project specific insurance or wrap up insurance, or is administering an owner controlled insurance program ("OCIP"), which includes Consultant and its subconsultants as additional insureds. Consultant and its subconsultants shall communicate this fact to their insurance carriers and request that the risk of this Project be excluded from all of their practice policies and other policies provided by the foregoing insurance or OCIP. Consultant's fee under this Contract, and its subconsultants' fees under their subconsultant contracts, shall be adjusted to reflect the amount of the insurance premiums which they thereby avoid. Consultant and its subconsultants shall afford Port access to their books and records and cooperate with Port in verifying the amount of savings realized.

8. Independent Contractor.

Consultant shall at all times be deemed an independent contractor wholly responsible for the manner in which it performs the Services, and fully liable for the acts and omissions of its employees, subconsultants and agents. Under no circumstances shall this Contract be construed as creating an employment, agency, joint venture or partnership relationship between Port and Consultant, and no such relationship shall be implied from performance of this Contract. Terms in this Contract referring to direction from Port shall be construed as providing for direction as to policy and the result of services only, and not as to means and methods by which such a result is obtained. Consultant shall pay all taxes

(including California sales and use taxes) levied upon this Contract, the transaction, or the Services and/or goods delivered pursuant hereto without additional compensation, regardless of which party has liability for such tax under applicable law, and any deficiency, interest or penalty asserted with respect thereto. Consultant represents that it will collect, report, and pay all sales and or use taxes to the State Board of Equalization. Upon full payment, the Consultant will issue the Port a receipt pursuant to California Revenue and Taxation Code Section 6203, relieving the Port of all liability for any tax relating to the scope of this Agreement. The Consultant shall pay all other taxes including but not limited to any applicable City of Oakland business tax, not explicitly assumed in writing by the Port hereunder. The Consultant shall comply with all valid administrative regulations respecting the assumption of liability for the payment of payroll taxes and contributions as above described and to provide any necessary information with respect thereto to proper authorities.

9. Conflict of Interest; Confidentiality.

9.1 Consultant represents that it is familiar with Section 1090 and Section 87100 et seq. of the Government Code of the State of California, and that it does not know of any facts that constitute a violation of said sections.

9.2 Consultant represents that it has completely disclosed to Port all facts bearing upon any possible interests, direct or indirect, which Consultant believes any member of Port, or other officer, agent or employee of Port or any department presently has, or will have, in this Agreement, or in the performance thereof, or in any portion of the profits thereunder. Willful failure to make such disclosure, if any, shall constitute ground for termination of this Agreement by Port for cause. Consultant agrees to comply with all conflict of interest codes adopted by the City of Oakland and Port of Oakland and their reporting requirements.

9.3 Consultant covenants that it presently has no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of Services required under this Agreement. Without limitation, Consultant represents to and agrees with the Port that Consultant has no present, and will have no future, conflict of interest between providing the Port the Services hereunder and any interest Consultant may presently have, or will have in the future, with respect to any other person or entity (including but not limited to any federal or state wildlife, environmental or regulatory agency) which has any interest adverse or potentially adverse to the Port, as determined in the reasonable judgment of the Port. The provisions of this Section 9 shall remain fully effective indefinitely after termination of Services to the Port hereunder.

9.4 Consultant acknowledges and agrees that, in the performance of the Services under this Agreement or in the contemplation thereof, Consultant may have access to private or confidential information which may be owned or controlled by Port and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to Port. Consultant agrees that all information disclosed by Port to or discovered by Consultant shall be held in strict confidence and used only in performance of the Agreement. Consultant shall exercise the same standard of care to protect such information as a reasonably prudent Consultant would use to protect its own proprietary data, and shall not accept employment adverse to the Port's interests where such confidential information could be used adversely to the Port's interests. Consultant agrees to notify the Port immediately in writing if it is requested to disclose any information made known to or discovered by Consultant during the performance of or in connection with this Agreement.

9.5 Any publicity or press releases with respect to the Project or Services shall be under the Port's sole discretion and control. Consultant shall not discuss the Services or Project, or matters pertaining thereto, with the public press, representatives of the public media, public bodies or

representatives of public bodies, without Port's prior written consent. Consultant shall have the right, however, without Port's further consent, to include representations of Services among Consultant's promotional and professional material, and to communicate with persons or public bodies where necessary to perform under this Agreement.

9.6 The provisions of this Section 9 shall remain fully effective indefinitely after termination of Services to the Port hereunder.

10. Suspension and Termination of Services.

(i) Port may direct Consultant to suspend, delay or interrupt Services, in whole or in part, for such periods of time as Port may determine in its sole discretion. Port may issue such directives without cause. Port will issue such directives in writing. Suspension of Services shall be treated as an excusable delay. (ii) Port may terminate performance of the Services under this Contract in whole, or from time to time in part, for default, should Consultant commit a material breach of this Contract, or part thereof, and not cure such breach within ten (10) calendar days of the date of Port's written notice to Consultant demanding such cure. In the event Port terminates this Contract for default, Consultant shall be liable to Port for all loss, cost, expense, damage and liability resulting from such breach and termination. (iii) Port may terminate performance of the Services under this Contract in whole, or from time to time in part, for convenience, whenever Port determines that such termination is in Port's best interests. In the event Port terminates this Contract for convenience, Consultant shall be entitled to recover its costs expended up to the termination plus reasonable profit thereon to the termination date, but may recover no other cost, damage or expense.

11. Ownership of Work Product.

Any interest (including copyright interests) of Consultant or its subcontractors or subconsultants, in studies, reports, memoranda, computational sheets, drawings, plans or any other documents (including electronic media) prepared by Consultant or its subcontractors or subconsultants in connection with the Services, shall become the property of the Port. To the extent permitted by Title 17 of the United States Code, work product produced under this Contract shall be deemed works for hire and all copyrights in such works shall be the property of the Port. With Port's prior written approval, Consultant may retain and use copies of such works for reference and as documentation of experience and capabilities.

12. Audit/Inspection of Records.

12.1 Consultant shall maintain all documents and records prepared by or furnished to Consultant during the course of performing the Services for at least three (3) years following completion of the Services, except that all such items pertaining to hazardous materials shall be maintained for at least thirty (30) years. Such records include, but are not limited to, correspondence, internal memoranda, calculations, books and accounts, accounting records documenting its work under its Contract, and invoices, payrolls, records and all other data related to matters covered by this Contract. Consultant shall permit Port to audit, examine and make copies, excerpts and transcripts from such records. The State of California or any federal agency having an interest in the subject of Contract shall have the same rights conferred to Port by this section. Such rights shall be specifically enforceable.

12.2 The Consultant shall maintain full and adequate records in accordance with Port requirements to show the actual costs incurred by the Consultant in the performance of this Agreement. If such books and records are not kept and maintained by Consultant within a radius of fifty (50) miles from the offices of the Port at 530 Water Street, Oakland, California, Consultant shall, upon request of the Port, make such books and records available to the Port for inspection at a location within said fifty (50) mile

radius or Consultant shall pay to the Port the reasonable, and necessary costs incurred by the Port in inspecting Consultant's books and records, including, but not limited to, travel, lodging and subsistence costs. Consultant shall provide such assistance as may be reasonably required in the course of such inspection. The Port further reserves the right to examine and reexamine said books, records and data during the three (3) year period following termination of this Agreement or completion of all work hereunder, as evidenced in writing by the Port, and the Consultant shall in no event dispose of, destroy, alter, or mutilate said books, records, accounts, and data in any matter whatsoever for three (3) years after the Port makes the final or last payment or within three (3) years after any pending issues between the Port and Consultant with respect to this Agreement are closed, whichever is later.

13. Non-discrimination.

Consultant acknowledges that it has received and reviewed a copy of the most current version of the Port of Oakland's Unlawful Harassment Policy and Procedures. The purpose of these procedures is to provide an effective and expedited system of resolving allegations of employment discrimination and prevention of unlawful harassment in the workplace. The Consultant shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, ancestry age (over 40), physical or mental disability, cancer-related medical condition, a known genetic predisposition to a disease or disorder, veteran status, marital status, or sexual orientation. Consultant shall take affirmative action to ensure that applicants and employees are treated fairly. Such action shall include, but not be limited to the following: hiring, upgrading, recruitment, advertising, selection for training, including apprenticeship, demotion, transfer, compensation, lay-off or termination, or any other term or conditions of employment.

14. Disputes.

Consultant shall continue its work throughout the course of any dispute, and Consultant's failure to continue work during a dispute shall be a material breach of this Contract.

15. California Law.

This Contract shall be deemed to have been executed in the City of Oakland, Alameda County, California. Enforcement of this Contract shall be governed by the laws of the State of California, excluding its conflict of laws rules. The exclusive venue for all litigation arising from or relating to this Contract shall be in Alameda County, California. Should any clause, provision or aspect of this Contract be determined at any time to be unenforceable or in contravention of law, then the remaining clauses and provisions of this Contract shall be enforceable to the fullest extent permitted by law and construed to give effect to fullest extent possible the intent of this Contract.

16. No Third Party Beneficiaries.

Except as expressly provided in this Contract, nothing in this Contract shall operate to confer rights or benefits on persons or entities not party to this Contract. Time is of the essence in the performance of this Contract.

17. Entire Contract.

This Contract and any written modification shall represent the entire and integrated agreement between the parties hereto regarding the subject matter of this Contract, shall constitute the exclusive statement of the terms of the parties' agreement, and shall supersede any and all prior negotiations, representations or agreements, written or oral, express or implied, that relate in any way to the subject

matter of this Contract or written modification. All prior negotiations are merged into this Contract and shall be inadmissible in any enforcement of this Contract.

18. No Waiver.

The granting of any progress payment, and any inspections, reviews, approvals or oral statements by any Port representative, or certification by any governmental entity, shall in no way limit Consultant's obligations under this Contract. Either party's waiver of any breach, or the omission or failure of either party, at any time, to enforce any right reserved to it, or to require strict performance of any provision of this Contract, shall not be a waiver of any other right to which any party is entitled, and shall not in any way affect, limit, modify or waive that party's right thereafter to enforce or compel strict compliance with every provision hereof. This Contract may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved by fully authorized representatives of Port and Consultant.

19. Statutes of Limitation.

As between the parties to this Contract, any applicable statute of limitations for any act or failure to act shall commence to run on the date of Port's issuance of the final Certificate for Payment, or termination of this Contract, whichever is earlier, except for latent defects, for which the statute of limitation shall begin running upon discovery of the defect and its cause.

20. Covenant Against Contingent Fees:

20.1 Consultant warrants that no person or agency has been employed or retained to solicit or obtain the Agreement upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Port, at its option, may annul the Agreement or deduct from the contract price or otherwise recover from Consultant the full amount of the contingent fee.

20.2 As used in this Section, "bona fide agency" means an established commercial or selling agency, maintained by Consultant for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Port contracts nor holds itself out as being able to obtain any Port contract or contracts through improper influence.

20.3 As used in this Section, "bona fide employee" means a person, employed by Consultant and subject to Consultant's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Port contracts nor holds itself out as being able to obtain any Port contract or contracts through improper influence.

20.4 As used in this Section, "contingent fee" means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Port contract.

20.5 As used in this Section, "improper influence" means any influence that induces or tends to induce a Port Commissioner, employee or officer to give consideration or to act regarding a Port contract on any basis other than the merits of the matter.

21. Severability.

Any provision or portion thereof of this Contract prohibited by, or made unlawful or unenforceable under any applicable law of any jurisdiction, shall as to such jurisdiction be ineffective without affecting other provisions or portions thereof of this Contract. If the provisions of such

applicable law may be waived, they are hereby waived to the end that this Contract may be deemed to be a valid and binding agreement enforceable in accordance with its terms to the greatest extent permitted by applicable law.

22. Compliance with Laws.

22.1 Consultant represents that it will comply with all applicable laws, ordinances, general rules or regulations, permits, or land use restrictions or limitations at any time applicable thereto of any public or governmental authority, including the City and the Port, including but not limited to The Charter of the City (including without limitation Section 728 entitled “Living Wage and Labor Standards at Port-Assisted Businesses” and Port Ordinance No. 3666 entitled “An Ordinance Establishing a Living Wage Requirement”) in the performance of the Services, regardless of whether such laws are specifically stated in this Agreement and regardless of whether such laws are in effect on the date hereof. Consultant shall comply with all security requirements imposed by authorities with jurisdiction over the Project (including, but not limited to, Federal Aviation Administration, U.S. Department of Transportation, and other government agencies), and will provide all information, work histories and/or verifications as requested by such authorities for security clearances or compliance.

22.2 Consultant further represents that all plans, drawings, specifications, designs and any other product of the Services will comply with all applicable laws, codes and regulations, consistent with the standard of care in this Agreement.

22.3 Consultant, as a condition of execution of this Contract certifies under penalty of perjury and as a condition of payment of its invoice(s) for service provided under this Contract as follows:

- a. All Employees, as defined respectively under Port Ordinance No. 3666, and Section 728 of the Charter of the City of Oakland (Hereinafter “Living Wage laws”), as amended from time to time, engaged in Covered Activities (as defined in the respective Living Wage laws) shall be compensated in compliance with the requirements of the respective and applicable Living Wage laws;
- b. Claims, records and statements relating to Consultant’s compliance with the Living Wage laws are true and accurate, and are made with the knowledge that the Port will rely on same, and that they are submitted to the Port for the express benefit of Consultant’s employees engaged in Covered Activities;
- c. Should the Living Wage laws not apply to Consultant at the time this Contract is entered into, but thereafter become applicable, Consultant will comply with all of its obligations under the respective Living Wage laws, when applicable; and
- d. All terms used in this Section 22.3 and not defined shall have the meaning ascribed to such terms in the respective applicable Living Wage laws.

23. Agent for Service of Process.

Pursuant to California Code of Civil Procedure, Section 416.10, Consultant hereby designates an agent for service of process as set forth in Appendix C hereto.

Consultant may at any time designate a new agent for service in the State of California by providing written notice, duly executed in the same manner as this Agreement, of the full name and address of its new agent. Unless otherwise agreed in writing by the Port of Oakland, no attempt to revoke

the agent's authority to receive service shall be valid unless Port of Oakland has first received a duly executed designation of a new agent meeting the requirements of California law.

IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the day first mentioned above.

CITY OF OAKLAND, a municipal corporation, acting by and through its Board of Port Commissioners,

By _____
Jerry A. Bridges
Executive Director

«ConsultantName»,
a _____ corporation,

By _____

Print Name and Title
(If Corporate: Chairman, President or Vice President)

Attest _____

Print Name and Title
(If Corporate: Secretary, Assistant Secretary,
Chief Financial Officer, or Assistant Treasurer)

Approved as to form and
legality this _____ day
of _____.

**THIS AGREEMENT SHALL NOT BE
VALID OR EFFECTIVE FOR ANY
PURPOSE UNLESS AND UNTIL SIGNED
BY THE PORT ATTORNEY.**

DAVID L. ALEXANDER
Port Attorney

Port Resolution No. «Resolution»

P.A.#: _____

APPENDIX A – SCOPE OF SERVICES

This is an appendix attached to, and made a part of, the Contract dated «EffectiveDate» between the City of Oakland acting through its Board of Port Commissioners (“Port”) and «ConsultantName» (“Consultant”) for the provision of professional services.

SCOPE OF WORK

APPROVED SUBCONSULTANTS: Consultant shall use only the following personnel and subconsultants in performing Services.

END OF APPENDIX A

APPENDIX B – PAYMENT

This is an appendix attached to, and made a part of, the Contract dated «EffectiveDate» between the City of Oakland acting through its Board of Port Commissioners (“Port”) and «ConsultantName» (“Consultant”) for the provision of professional services.

1. Basic Services. The Port will pay Consultant for Basic Services, a maximum compensation of «Compensation» (Contract Price”), which sum includes costs for reimbursable expenses as identified below. Such payment shall be full compensation for all Basic Services required, performed or accepted under this Contract. If Port and Consultant previously executed a purchase order for services within the scope of the Services of this Contract, then the services performed and the compensation paid under that purchase order shall be subject to the terms of this Contract and the previous payments deemed payments against the Contract Price established in this Appendix. Such maximum compensation may only be increased as follows:

- With the prior written approval of the Executive Director for an additional amount not to exceed the limit authorized by the Board in Resolution No. «Resolution». Increase in maximum compensation with additional changes in scope of work shall be documented by a supplemental agreement to this contract.
- With the adoption of authorizing resolution by the Board of Port Commissioners.

2. Payment Schedule. Progress payments for Basic Services for each phase of the work shall be made as follows:

- upon completion of the work as invoiced
- monthly as set forth in the attached schedule.

3. Reimbursable Expenses. Reasonable expenses to be reimbursed upon approval of Project Manager.

- Yes (IDENTIFY)
- No
- Limits:**

4. Invoices. All payments shall require a written invoice from Consultant in a form acceptable to Port. Port shall make payment on approved amounts within each invoice within 30 days of receipt. **Original invoices shall be sent directly to the Technical Manager.**

END OF APPENDIX B

APPENDIX C

CONSULTANT AND CONSULTANT'S NOTICE ADDRESS

Full Legal Name of Consultant: «ConsultantName»

Address:

**Status (as Corporation, partnership, etc.
and state of organization):**

**Agent for Service of Process (Name and
Address)**

Contact Individual for Notice:

Position:

Telephone No.:

Facsimile No.:

E-Mail Address (if any):

APPENDIX D
PROJECT MANAGER

Division Director

Technical Manager

APPENDIX E - INSURANCE

This is an appendix attached to, and made a part of, the Contract dated «**EffectiveDate**» between the City of Oakland acting through its Board of Port Commissioners (“Port”) and «**ConsultantName**» (“Consultant”) for the provision of professional services as defined and required by the Agreement (hereinafter “Services”). This Appendix describes the Owner Controlled Insurance Program (“OCIP”) and Consultant’s obligations under the OCIP.

1.0 Owner-Controlled Insurance Program (“OCIP”)

The Port has arranged with Aon Risk Services, Inc. of Northern California (the “OCIP Administrator”) to provide insurance under an OCIP, which will provide Project-Specific Professional Liability insurance covering Consultant, and its approved subcontractors and subconsultants, for liability for acts, errors or omissions arising out of services performed under the Agreement, whether or not such Services are performed on the Port’s Construction Project Sites (“Project Sites”). The Port will also provide such insurance to other persons or interests as the Port in its sole discretion may designate.

The insurance policy described in this section 1.0 shall be collectively referred to as the “OCIP Insurance Policy.”

Consultant, and other professional consultants engaged by the Port, and their respective subconsultants or subcontractors, which do not perform actual labor at the Project Sites may be covered under the Project-Specific Professional Liability Insurance Policy for professional services performed in connection with the Port’s construction projects which are performed away from the Project Sites, if such parties are properly enrolled in the OCIP and upon receipt of acknowledgment of such coverage by the OCIP Administrator. The Port reserves the right, in its sole discretion, to include or exclude any party from the OCIP, or any portion thereof, notwithstanding such party’s apparent eligibility for inclusion in the OCIP.

2.0 Insured Party Responsibilities

The responsibilities of each party insured under the OCIP are more fully set forth in the Professional Liability Insurance Manual for the Port of Oakland’s Owner Controlled Insurance Program (the “Professional Liability Insurance Manual”), which is hereby incorporated by reference. It is the obligation of the Consultant and each of its eligible subcontractors and subconsultants to enroll in the OCIP and to comply with all of the administrative, insurance and other requirements outlined in this Appendix E, and in the Professional Liability Insurance Manual. The failure of the Consultant to provide each of its eligible subcontractors or subconsultants with copies of same shall not relieve the Consultant or any of its subcontractors or subconsultants from any of the obligations contained therein. Consultant shall be responsible for providing each of its subcontractors and subconsultants with copies of the Professional Liability Insurance Manual and for requiring in writing that each subcontractor and subconsultant will comply with, among other things, the provisions of the OCIP Insurance Policy and the provisions contained in the Professional Liability Insurance Manual and the applicable provisions in the Agreement, including this Appendix E.

3.0 Payment of OCIP Premiums; Insurance Credits; Responsibility for OCIP Policy Deductibles, Charges, and Retentions

- (a) The cost of premiums for the coverage provided by the OCIP shall be paid by the Port. The Port will receive or pay, as the case may be, all adjustments to such costs, whether by

way of dividends, retro adjustments, return premiums, audits or otherwise. The Consultant and each of its subcontractors and subconsultants shall execute any instrument of assignment as may be necessary to permit the Port to receive or pay such adjustments.

- (b) Compensation payable for performance of the Services shall exclude all of Consultant's and its subcontractors' or subconsultants' costs of insurance for coverages provided under the OCIP. Such parties shall execute any enrollment and disclosure form in the Professional Liability Insurance Manual, if such parties are eligible for coverage under the Project-Specific Professional Liability Insurance Policy. Consultant, and each of its subcontractors and subconsultants, warrant that no costs for insurance for which such parties are provided coverage by the OCIP Insurance Policy are included in any lump sum, fee for service, or cost plus contract costs.
- (c) All "Deductibles," "Retentions," and "Charges" (as defined in the Professional Liability Insurance Manuals and in this Appendix E) shall be paid by Consultant for losses attributable to its acts or omissions, or the acts or omissions of its subcontractors or subconsultants, or any other entity or person for whom it may be responsible.

3.1 Estimated Payrolls/Manhours Disclosure; Enrollment Forms

Consultant shall provide the OCIP Administrator completed originals of the enrollment form(s) contained in the Professional Liability Insurance Manual, within 20 calendar days after such forms are made available to Consultant after execution of the Agreement.

3.2 Port's Insurance Obligations; Consultant's Obligations

The Port assumes no obligation to provide insurance other than that contemplated in this Appendix E. The Consultant and each of its subcontractors and subconsultants shall review the OCIP coverages, limits of liability and the OCIP Insurance Policy (when available) to satisfy themselves that the coverages offered thereby meet their needs. Nothing contained herein shall be deemed to place any responsibility on the Port for ensuring that the insurance provided by the OCIP is sufficient for the conduct of Consultant's or its subcontractors' or subconsultants' business or performance of the Services as required or defined in the Agreement. The Port reserves the right at its option, but without obligation to do so, to furnish other insurance coverage of various types and limits, provided that such coverage is not less than that specified in this Appendix E. The furnishing of insurance by the Port through the OCIP shall in no way relieve or limit, or be construed to relieve or limit, Consultant or any of its subcontractors or subconsultants of any responsibility, liability, or obligation imposed by the Agreement or by law, including without limitation any indemnification obligations which Consultant or any of its subcontractors or subconsultants has to the Port or other parties thereunder. Consultant acknowledges by enrolling in the OCIP and by executing Aon Form-3A, and shall require all of its subcontractors to acknowledge by enrolling in the OCIP and by executing Aon Form-3A, that the Port is not an agent, partner or guarantor of the insurance companies providing coverage under the OCIP (each such insurer, an "OCIP Insurer") and that the Port is not responsible for any claims or disputes between or among Consultant, its subcontractors, subconsultants and any OCIP Insurer(s). The Port shall not be liable to any party for any failure or delay by any insurer to honor any policy obligation, including extra-contractual obligations, for any reason, including, but not limited to, coverage disputes, coverage defenses, claims handling practices, insurer insolvency, the defense of or the failure to defend any claim, and Consultant and its subcontractors and subconsultants release the Port of any such claim.

Any type of insurance coverage or limits of liability not provided by the OCIP which the Consultant or any subcontractor or subconsultant desires for its or their own protection, or which is

required by applicable laws or regulations, shall be its or their sole responsibility and at its or their sole expense and shall not be billed to the Port. Any reference in this Appendix E, the Agreement, or the Professional Liability Insurance Manual as to amount, nature, type or extent of coverage provided under the OCIP and/or potential applicability to any potential claim or loss is for reference only. The Consultant and its subcontractors and subconsultants represent and warrant that they have not relied upon said reference, and have relied solely upon their own independent review and analysis of the OCIP coverage, limits of liability and OCIP Insurance Policy, when available, in formulating any understanding and/or belief as to amount, nature, type or extent of any coverage provided by the OCIP Insurance Policy and/or the Policy's potential applicability to any potential claim or loss.

3.3 Port's Election to Discontinue OCIP Coverages

If the Port, for any reason, elects to discontinue all or portions of the OCIP, modifies the insurance limits provided in the OCIP, or requests that Consultant or any of its subcontractors or subconsultants withdraw from the OCIP, then, upon thirty (30) days written notice from the Port, Consultant and/or one or more of its subcontractors or subconsultants, as specified by the Port in such notice, shall obtain at the Port's expense and thereafter maintain during the performance of the Services (or a portion thereof as specified by the Port), the insurance provided or contemplated under the OCIP Insurance Policy, and the Port shall thereafter no longer be obligated to furnish all or a part of such insurance through the OCIP. The Consultant and its subcontractors and subconsultants shall provide the Port's OCIP Administrator and the Port's Risk Manager with certified copies of such insurance policies not later than 30 days following the issuance of such notice. The form, content, limits and cost of such insurance and the insurer issuing such insurance secured by Consultant or its subcontractors or subconsultants pursuant to the provisions of this section 3.3, shall be subject to the Port's approval.

3.4 OCIP Policies Establish OCIP Coverage

The insurance coverages, agreements, conditions and exclusions contemplated in this Appendix E and in the Professional Liability Insurance Manual are set forth in full in their respective insurance policy forms. The descriptions of such policies in this Appendix E and in the Professional Liability Insurance Manual is not intended to be complete or to alter or amend any provision of the actual insurance policy and in matters, if any, in which the description herein conflicts with such insurance policy, the provisions of the actual insurance policy shall govern.

4.0 OCIP Insurance Coverage Supplied

4.1 Scope of OCIP Insurance

Unless otherwise modified by the Port, the OCIP shall provide the following insurance to Consultant and its subcontractors and subconsultants if such parties are eligible for such coverages and approved for such coverage(s) by the Port.

4.1.1 Project-Specific Professional Liability Insurance

The Project-Specific Professional Liability Insurance coverage shall be provided on a claims-made form with limits of \$75,000,000 per claim/\$75,000,000 policy aggregate, a term of seven (7) years, an extended reporting period of ten (10) years, with full "prior acts" coverage for Services described in the Agreement (the "OCIP Professional Liability Policy"). The insurance shall be non-cancelable by the applicable OCIP Insurer, except for non-payment of premiums.

Consultant shall be responsible, at its own expense, for payment of a self-insured retention, including defense costs and other claim expenses, for losses payable under the OCIP Professional Liability Policy that are attributable to Consultant's acts, errors, or omissions, or the acts, errors, or omissions of any of its subcontractors or subconsultants or any other entity or person for whom Consultant may be responsible. The amount of the self-insured retention shall be based on the amount of fees approved by the Port to be payable to Consultant under the Agreement or any other contracts or agreements awarded to Consultant by the Port in connection with the Port's construction projects covered by the OCIP, all determined at the time a claim is made, as follows:

- \$5,000 per claim for contracts with fees under \$15,000
- \$10,000 per claim for contracts with fees from \$15,000 to \$499,999
- \$25,000 per claim for contracts with fees from \$500,000 to \$999,999
- \$50,000 per claim for contracts with fees from \$1,000,000 to \$4,999,999
- \$75,000 per claim for contracts with fees from \$5,000,000 to \$9,999,999
- \$150,000 per claim for contracts with fees from \$10,000,000 or greater

After the applicable OCIP Insurer acknowledges that self-insured retentions of \$500,000 in the aggregate have been paid pursuant to claims under the OCIP Professional Liability Policy, the maximum self-insured retention shall thereafter be \$50,000 per claim, and each insured under such policy shall be responsible for a self-insured retention determined at the time a claim is made, as follows:

- \$2,000 per claim for contracts with fees under \$15,000
- \$3,500 per claim for contracts with fees from \$15,000 to \$499,999
- \$8,500 per claim for contracts with fees from \$500,000 to \$999,999
- \$16,500 per claim for contracts with fees from \$1,000,000 to \$4,999,999
- \$25,000 per claim for contracts with fees from \$5,000,000 to \$9,999,999
- \$50,000 per claim for contracts with fees from \$10,000,000 or greater

The OCIP Professional Liability Insurance policy shall contain, among other agreements, terms, conditions, and exclusions, the following requirements:

- (a) Joint Defense; Panel Defense Counsel. As a condition to obtaining coverage under the OCIP Professional Liability Policy, Consultant and its subcontractors and subconsultants must accept and consent to the joint defense provisions described therein, including that insureds thereunder must waive any cross-claims or third-party claims for negligence, contribution, indemnification or otherwise, arising out of any incident, circumstance, event or claim under the OCIP Professional Liability Policy, against any other insured. Consultant must agree to waive, release and relinquish any such claims to the extent of coverage under the OCIP Professional Liability Policy. The OCIP Professional Liability Policy also requires that legal defense counsel must be chosen from a panel of defense counsel listed in an endorsement to the Policy.
- (b) Program Manager. The OCIP Professional Liability Policy requires that insureds thereunder acknowledge and cooperate with a designated Program Manager. The Program Manager will have among his duties the coordination of claims procedures, coordination of the selection of defense counsel, and the allocation of self-insured retentions among insureds involved in any claim under the OCIP Professional Liability Policy. All insureds under such Policy shall have the right to seek binding arbitration regarding the Program Manager's decisions as to the allocation of any self-insured retentions.

- (c) Settlement. The OCIP Professional Liability Policy provides that if the applicable OCIP Insurer and any insured are unable to reach consensus on settling a claim under the Policy, including a claim within the applicable self-insured retention, the applicable OCIP Insurer shall have final authority to settle any such claim.

5.0 OCIP Insurance Certificates

Consultant and its subcontractors and subconsultants shall be insureds on the policies of insurance described above for which such parties are eligible pursuant to the terms of the Agreement, this Appendix E, the Professional Liability Insurance Manual, and as approved by the Port. If insured under such policies, prior to the time that Services are performed, certificates of insurance for the Project-Specific Professional Liability policies will be issued to the Consultant and its subcontractors and subconsultants, reflecting that such parties are insureds.

6.0 Additional Insurance Required from Certain OCIP Insured Parties

In addition to insurance coverages provided under the OCIP, the Consultant shall obtain and maintain, and shall require each of its subcontractors and subconsultants to obtain and maintain, the insurance coverage specified in subsections 6.0(a) through 6.0(c) below. Such insurance shall be in a form and from insurance companies reasonably acceptable to the Port. The insurance limits may be provided through a combination of primary and excess policies, including the umbrella form of policy.

6.0(a) Commercial Automobile Liability Insurance in a form providing coverage not less than the standard Commercial Automobile Liability ISO form CA 00031293, covering all owned, non-owned and hired automobiles with a combined single limit of not less than \$1,000,000 combined single limit each accident for bodily injury and property damage and not less than \$5,000,000 per accident for any operations performed at the South Field, the "Aviation Operating Area" of the Oakland International Airport property. As used herein, the term "automobile" means any vehicle licensed or required to be licensed under the California or any other applicable state vehicle code. Such insurance shall be endorsed to affirm that it is primary. In the event that Consultant's or its subcontractors' or subconsultants' insurance excludes any drivers from coverage, such drivers will not be permitted to drive in connection with the Port's construction projects.

If the Services involve transporting of hazardous or regulated substances, hazardous or regulated wastes and/or hazardous or regulated materials, Consultant and/or its subcontractors or subconsultants shall provide coverage with a combined single limit of \$10,000,000 per accident covering transportation of such materials by amending the pollution exclusion of ISO Form CA 00 01 06 92 (or its equivalent) in the following manner:

- (1) DELETE SECTION a. (1) a.: (POLLUTION) "BEING TRANSPORTED OR TOWED AWAY BY, OR HANDLED FOR MOVEMENT INTO, ONTO OR FROM THE COVERED AUTO."
- (2) DELETE SECTION a.(1) b.: "OTHERWISE IN THE COURSE OF TRANSIT BY THE INSURED."

Such policy shall include the MCS-90 Endorsement. If the Port is scheduled as an additional insured, the policy shall be endorsed to specifically limit the reimbursement provisions of the MCS-90 to the Named Insured.

6.0(b) Statutory Workers' Compensation insurance and Employer's Liability insurance for all operations at and away from the Project Sites and which are not otherwise insured under the OCIP, with statutory limits as required in the state(s) where Consultant or its subcontractors or subconsultants are performing such operations, including U.S. Longshoremen and Harbor Workers Act, Maritime/Jones Act, and/or Federal Employer's Liability Act coverage, if appropriate, and Employer's Liability limits of \$1,000,000 for bodily injury each accident, \$1,000,000 for bodily injury by disease each employee, and \$1,000,000 policy limit for bodily injury by disease.

6.0(c) Commercial General Liability Insurance for all operations at and away from the Project Sites and which are not otherwise insured under the OCIP, in a form providing coverage not less than the standard Commercial General Liability insurance policy ISO form CG 00010196 ("Occurrence Form"). The limits shall be:

Each Occurrence	\$1,000,000
Annual General Aggregate	\$2,000,000
Products/Completed Operations Aggregate	\$2,000,000
Personal/Advertising Injury Limit	\$1,000,000

The Commercial Automobile Liability, Commercial General Liability, and any Protection and Indemnity Liability insurance policies specified in Subsections 6.0(a) and 6.0(c), above, shall be endorsed to contain the following terms:

(1) The City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners, and their officers, agents, employees, consultants, and representatives, while acting in the scope of their authority, shall be named as additional insureds.

(2) Written notice of cancellation or of any limits reduction in such policies shall be mailed to the Port's OCIP Administrator and to the Risk Manager of the Port thirty (30) days in advance of the effective date thereof, except notice of cancellation for nonpayment of premium, ten (10) days in advance of the effective date thereof.

(3) The insurance shall be primary insurance and no other insurance or self insured retention carried or held by the Port shall be called upon to contribute to a loss covered by insurance for any insured.

7.0 Insurance Requirements for Excluded Parties

If Consultant, or any of its subcontractors or subconsultants, are not eligible for coverage under the OCIP pursuant to Section 1.0, Consultant shall obtain and maintain, and shall require each of its ineligible subcontractors or subconsultants to obtain and maintain, the insurance coverage specified in subsections 7.0(a) through 7.0(h) below. Such insurance shall be primary and non-contributing with any other insurance and be in a form and from insurance companies reasonably acceptable to the Port. The insurance limits may be provided through a combination of primary and excess policies, including the umbrella form of policy.

7.0(a) Commercial Automobile Liability insurance covering all owned, non-owned and hired automobiles, trucks and trailers. Such insurance shall provide coverage not less than the Standard Comprehensive Automobile Liability policy provided on ISO form number CA 00031293 with limits not

less than \$1,000,000 combined single limit each accident for bodily injury and property damage and not less than \$5,000,000 per accident for any operations performed at the South Field, the "Aviation Operating Area" of the Oakland International Airport property.

If the Services involve transporting of hazardous or regulated substances, hazardous or regulated wastes and/or hazardous or regulated materials, Consultant and/or its subcontractors and subconsultants shall provide coverage with a combined single limit of \$10,000,000 per accident covering transportation of such materials by amending the pollution exclusion of ISO Form CA 00 01 06 92 (or its equivalent) in the following manner:

- (1) DELETE SECTION a. (1) a.: (POLLUTION) "BEING TRANSPORTED OR TOWED AWAY BY, OR HANDLED FOR MOVEMENT INTO, ONTO OR FROM THE COVERED AUTO."
- (2) DELETE SECTION a.(1) b.: "OTHERWISE IN THE COURSE OF TRANSIT BY THE INSURED."

Such policy shall include the MCS-90 Endorsement. If the Port is scheduled as an additional insured, the policy shall be endorsed to specifically limit the reimbursement provisions of the MCS-90 to the Named Insured.

7.0(b) Workers' Compensation insurance with statutory limits as required in the state(s) where any operations are being performed, including, if applicable, U.S. Longshoremen and Harbor Workers Act, Maritime/Jones Act, and/or Federal Employer's Liability Act coverages, and Employer's Liability limits of not less than \$1,000,000 for bodily injury each accident, \$1,000,000 for bodily injury each employee by disease, and \$1,000,000 policy limit for bodily injury by disease.

7.0(c) Commercial General Liability Insurance on a form at least as broad as the standard ISO Commercial General Liability Insurance policy (Occurrence Form, number CG 00010196), covering liability for bodily injury and property damage. Such insurance shall provide coverage for all operations and include independent contractors, products and completed operations, extending such coverage for five (5) years after final completion and acceptance of the final payment for the Services, blanket contractual liability coverage including, to the maximum extent possible, coverage for the liability assumed by the indemnity provisions of this agreement, broad form property damage coverage, coverage for explosion, collapse, and underground hazards, personal and advertising injury liability coverage. The limits of such insurance shall not be less than \$1,000,000 per occurrence, \$1,000,000 annual General Aggregate and \$1,000,000 products and completed operations aggregate.

7.0(d) If required by the Port, Railroad Protective Liability insurance, in a form, with limits, and from an insuring entity reasonably satisfactory to the Port.

7.0(e) If required by the Port, Errors and Omissions/Professional Liability Insurance, in a form, with limits, and from an insuring entity reasonably satisfactory to the Port.

7.0(f) If required by the Port, Environmental Professional Liability Insurance and/or Consultant's Pollution Legal Liability Insurance in a form, with limits, and from an insuring entity reasonably satisfactory to the Port.

7.0(g) If the Services involve the disposal of hazardous or regulated substances, hazardous or regulated wastes, and/or hazardous or regulated materials, Consultant or its subcontractor and subconsultants shall furnish an insurance certificate from the designated disposal facility establishing that

the facility operator maintains current Environmental Liability Insurance, in a form reasonably satisfactory to the Port and with limits in the amount of not less than \$5,000,000 per loss and \$5,000,000 Annual Aggregate.

7.0(h) If required by the Port, Aviation and/or Protection and Indemnity Liability Insurance, in a form, with limits, and from an insuring entity reasonably satisfactory to the Port.

The Commercial Automobile Liability, Commercial General Liability, Consultant's Pollution Legal Liability and Aviation and/or Protection and Indemnity Liability coverage specified in Subsections 7.0(a), 7.0(c), 7.0(f), and 7.0(h) above shall be endorsed to contain the following terms:

(1) The City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners, and their officers, agents, employees, consultants, and representatives, while acting in the scope of their authority, shall be named as additional insureds.

(2) Written notice of cancellation or of any limits reduction in such policies shall be mailed to the Port's OCIP Administrator and to the Risk Manager of the Port thirty (30) days in advance of the effective date thereof, except notice of cancellation for nonpayment of premium, ten (10) days in advance of the effective date thereof.

(3) The insurance shall be primary insurance and no other insurance or self insured retention carried or held by the Port shall be called upon to contribute to a loss covered by insurance for any insured.

8.0 General Provisions

8.1 Cooperation; Compliance; Audits

Consultant and each of its subcontractors and subconsultants shall (a) cooperate fully with the OCIP Administrator and the OCIP Insurers, as applicable, in its or their administration of the OCIP, and (b) comply with the terms and conditions of the OCIP Insurance Policies and other provisions of the Agreements, this Appendix E and the Project and Professional Liability Insurance Manuals. Consultant shall provide, within five (5) business days of the OCIP Administrator's request, all requested documentation, including but not limited to, certified copies of insurance policies, all underwriting, certified payroll, rating and prior loss history information. Consultant agrees that the Port, the OCIP Administrator, and/or any OCIP Insurer may audit Consultant's or any of its subcontractor's or subconsultant's records and insurance policies to confirm the accuracy thereof, or of any insurance cost information hereafter provided by Consultant or any of its subcontractors or subconsultants in connection with the Services or changes to the scope of the Services. The obligations assumed in these sections 8.1 through 8.4 shall be specifically enforceable.

8.2 Waiver of Subrogation

Consultant hereby waives all rights of recovery against the Port, the OCIP Administrator, its or their officers, agents, or employees, and any other consultant, contractor, subcontractor or subconsultant performing work or rendering services on behalf of the Port in connection with the planning, development and construction of the Port's construction projects, to the extent any losses, claims or damages are covered by any policy of insurance available to Consultant and further waives all rights of recovery which are not covered by insurance because of deductible clauses, inadequacy of limits of any insurance policy, or failure to maintain insurance as required herein. Consultant shall also require that all insurance policies related to the Services secured by Consultant or its subcontractors or subconsultants include

clauses providing that each insurance underwriter waives all of its rights of recovery by subrogation, or otherwise, against the Port and the OCIP Administrator, together with the same parties referenced immediately above in this Section 8.2. Consultant shall require similar written express waivers and insurance clauses from each of its subcontractors and subconsultants. This provision shall apply to the Consultant, and its subcontractors and subconsultants performing work or rendering services on behalf of the Port in connection with the planning, development and construction of the Port's construction projects, irrespective of whether or not such entities are enrolled in the OCIP. A waiver of subrogation shall be effective as to any individual or entity even if such individual or entity (a) would otherwise have a duty of indemnification, contractual or otherwise, (b) did not pay the insurance premium directly or indirectly, and (c) whether or not such individual or entity has an insurable interest in any property damaged.

8.3 Records Disclosure, Maintenance and Access

Consultant shall, and shall cause each of its subcontractors and subconsultants to, keep and maintain an accurate and classified record of its or their payroll/consulting fee data and information in accordance with the requirements of the OCIP Insurer(s) and the OCIP Administrator. Consultant and its subcontractors and subconsultants shall permit their books and records to be examined and audited periodically by the OCIP Insurer(s), the Port, or their respective representatives. The Port, in addition to its other remedies, may withhold Consultant's progress payments or final payment for any period in which Consultant or any of its subcontractors or subconsultants is in non-compliance with this Section 8.3.

8.4 Proof of Coverage

With respect to non-OCIP insurance coverage required to be provided pursuant to sections 6.0 and 7.0, Consultant and/or each of its subcontractors and subconsultants shall deliver to the Port's OCIP Administrator and the Port's Risk Manager, prior to the commencement of the Services, a certificate of insurance evidencing such insurance coverage on a standard ACORD form 25-S, or other form as required by the Port. The commencement of the Services by the Consultant or any of its subcontractors or subconsultants without compliance with this or any other requirement of this section shall not constitute a waiver of any right of the Port under this section nor a release or waiver of any duty or obligation owed by any Consultant or subcontractors or subconsultants. Upon the Port's request, the Consultant and/or its subcontractors or subconsultants shall submit to the Port copies of the actual insurance policies or renewals or replacements thereof. All policies of insurance are required to be obtained and maintained with A.M. Best-rated A-X (or higher) insurance companies satisfactory to the Port and shall provide thirty (30) days written notice of cancellation, non-renewal or reduction of coverage, except ten (10) days notice of cancellation for non-payment of premium. Consultant shall pay all insurance premiums for such insurance, including any charges for required waivers of subrogation or the endorsement of additional insureds. Consultant's failure to deliver satisfactory evidence of coverage shall not be construed as a waiver of Consultant's obligation to provide the required insurance coverage. Consultant shall be responsible for obtaining satisfactory evidence of insurance coverage from each of its subcontractors and subconsultants and submitting same to the Port prior to commencement of such subcontractor's or subconsultant's performance of services. The Port reserves the right to increase or decrease the required limits of liability or require additional coverages based on the type and scope of work or services performed.

8.5 Failure to Maintain Insurance

Consultant shall indemnify and hold harmless the City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners, and their officers, agents, employees, consultants,

and representatives, while acting in the scope of their authority, from all claims and liabilities arising out of the failure of Consultant, any of its subcontractors or subconsultants or any other entity or person for whom the Consultant may be responsible, to maintain the insurance coverages as described and required herein. The Port, in addition to its other remedies, may withhold Consultant's progress payments or final payment for any period in which (a) such insurance coverages are not in full force and effect or (b) the Consultant has not supplied the Port with required evidence of such insurance coverages.

8.6 Duty of Care

Nothing contained in this Appendix E or the Project or Professional Liability Insurance Manuals shall relieve the Consultant or any of its subcontractors or subconsultants of their respective obligations to exercise due care in the performance of their duties in connection with the Services and to complete the Services in strict compliance with the Agreement.

8.7 Safety Violations

The existence of the OCIP shall not in any manner diminish the Port's rights to suspend part or all of the Services or work if, in its opinion, any conditions or practices in any portion of the Services or work are such that a danger exists which could reasonably be expected to cause serious physical harm or otherwise pose a health hazard to contractors, employees, tenants or others.

END OF APPENDIX E