

# ***San Mateo County Harbor District***

## **REQUEST FOR PROPOSALS**

### **STRATEGIC PLAN DEVELOPMENT**



**Response Due:**

**No later than 3:00 P.M., Wednesday, June 28, 2017**

**Submit Responses and Direct Questions to:**

**Steve McGrath  
General Manager  
San Mateo County Harbor District  
PO Box 1449  
504 Avenue Alhambra, Suite 200  
El Granada, CA 94018**

**(650) 583-4400**

**[smcgrath@smharbor.com](mailto:smcgrath@smharbor.com)**

# **REQUEST FOR PROPOSALS**

## **Strategic Plan Development**

### **1. INTRODUCTION**

The San Mateo County Harbor District (District) requests proposals from qualified individuals, firms, joint ventures, partnerships or other teams to prepare a Strategic Plan for the District and its two harbor facilities: Pillar Point Harbor and Oyster Point Marina/Park.

### **2. BACKGROUND**

The San Mateo County Harbor District is an independent special district created by San Mateo County in 1933. The District is governed by a five-member Board of Harbor Commissioners (Board) and its jurisdiction is coterminous with that of San Mateo County.

The District presently operates two harbors. Pillar Point Harbor, located in the unincorporated community of Princeton on Half Moon Bay approximately twenty-five miles south of the City of San Francisco, is a 369-berth commercial fishing harbor that also supports sport fishing and recreational boating. Oyster Point Marina/Park consists of a 455-berth recreational marina, public beach and bayside park located in the City of South San Francisco. The District operates Oyster Point Marina/Park under a Joint Powers Agreement with South San Francisco, which owns the facility.

#### **HISTORIC OVERVIEW:**

In 1948, the District created a harbor of refuge for the fishing fleet at Pillar Point. A federal breakwater was built by the Army Corps of Engineers in 1959-61, with an extension in 1967. The District constructed the harbor's docks and berths in the 1980s, along with a second, inner breakwater to provide further protection.

In 1977, the District assumed operational control over the City of South San Francisco's Oyster Point Marina/Park. A Joint Powers Agreement (JPA) was executed, giving the District the authority to improve and complete construction of a 600-berth recreational marina. Full build-out was accomplished during the 1980s.

Substantial changes have occurred in recent years. At Pillar Point Harbor the uncertainties and changes in the fishing industry have adversely impacted the commercial fishing fleet. This, coupled with increased tourism, and a demand for additional recreational opportunities and facilities must be carefully weighed against climate change impacts, specifically sea-level rise. At Oyster Point Marina/Park a proposed research and development project, resulting in a large-scale office

development will likely decrease the District's landside responsibilities and necessitate a review of the JPA.

Other background information on the Harbor District may be found on the District's website: [www.smharbor.com](http://www.smharbor.com)

### **3. SCOPE OF WORK**

#### **OBJECTIVE:**

The District's objective is the development of a Strategic Plan (Plan) that will serve as a critical and important guide for future actions, anticipating a ten year horizon. The Plan is expected to be user-friendly, and written in a manner easily understood by the public.

At its core, the Plan will adhere to the District's mission statement, which may be updated during the process: "To assure the public is provided with clean, safe, well-managed, financially sound and environmentally pleasant marinas".

The Plan will reflect the District's commitment to the best achievable balance of resource protection, coastal access, sustainable development, coastal dependent business, and active and passive recreation.

#### **SCOPE OF WORK:**

Consultants scope of work shall include the items set forth below. The Plan will address these objectives for the District as a whole, and separately for Pillar Point Harbor and Oyster Point Marina/Park as appropriate.

The Scope includes:

- A. A planning workshop with the Board, to include review and/or development of the following elements:
  - i. Board derived Mission, Vision and Values Statements;
  - ii. Comprehensive strategic elements that assure proper coverage of all District functions;
  - iii. Preliminary strategies that will plan for the successful achievement of the District vision.
  
- B. A robust and well-managed public outreach element to include: staff, harbor and marina tenants, businesses, other facility users as direct stakeholders in the District and its future, as well as the harbors' respective surrounding communities (South San Francisco and Coastside), and other relevant agencies and organizations.

- C. The role of the District at Oyster Point Marina/Park, now and forward looking. The role should include an assessment of marine related facilities on San Francisco Bay, and the role the District should play in providing those essential services.
  
- D. Identification of opportunities for new District activities within its San Mateo County jurisdiction, and a proposed a timeline for future detailed review and analysis. These should include but not be limited to:
  - i. Water-related or waterborne emergency preparedness and response;
  - ii. Potential operational or managerial roles regarding other harbors and marinas within the County. This discussion should identify criteria for the District's possible use in evaluating desirability and feasibility of involvement with other harbors and marinas;
  - iii. Identification of opportunities for joint marine-related educational activities with federal, state, county and other local agencies, as well as non-profit and educational institutions.
  
- E. Identification of operational and planning issues, and a proposed timeline for future detailed review and analysis. These should include but not be limited to:
  - i. Climate change-related sea level rise concerns at District facilities;
  - ii. The role of and need for a Land Use Master Plan for Pillar Point Harbor;
  - iii. The role of and need for a Land Use Master Plan for Oyster Point Marina/Park;
  - iv. Identify potential strategies for enhancing public access, recreation and coastal dependent or coastal related commercial uses at both Pillar Point Harbor and Oyster Point Marina/Park;
  - v. Evaluation of establishing a United States Coast Guard presence at Pillar Point Harbor to complement the District's current ocean search and rescue activities, and to facilitate interagency cooperation on matters of mutual interest and concern.

#### **4. SUBMITTAL REQUIREMENTS**

Interested firms must submit a response to the District's Request for Proposals for Strategic Plan Development as a prime consultant. Sub-consultant work should be shown within the same context of the prime consultant (Consultant) project team. The Proposal shall include:

A. General

- i. Qualified firms desiring to provide these services should submit seven (7) paper and one (1) electronic copies of "Request for Proposals – Strategic Plan Development" to the District at the address on the cover page of this document;
- ii. To be considered, Proposals must be received by 3:00 p.m. on June 28, 2017 (postmarks will not be accepted);
- iii. **NOTE: The United States Postal Service does not deliver mail to the District office. The District shall not be responsible for timely receipt of submittals addressed to the District's PO Box address.**

B. Contents of the Proposal

Concise and focused submittals are strongly encouraged. By submitting a proposal, and unless otherwise stated, it is understood that the Consultant has reviewed all relevant information, and, that based on that review, Consultant has developed an informed understanding of the projected scope of work and has satisfied itself with the applicable conditions and requirements expressed in this document.

Each Proposal shall give the full business address of the respondent and shall be signed by an authorized official of the respondent firm. The name of each person signing the Proposal shall be typed or printed below the signature. When requested by the District, satisfactory evidence of the authority of the person signing on behalf of the respondent shall be furnished.

a. Executive Summary

Provide a brief overview of the firm or individual that will assume all contract responsibilities and identify all proposed sub-consultants.

The following information should also be provided:

- i. Introduce the firm and summarize its qualifications;
- ii. Name(s) of authorized principals with authority to negotiate and contractually bind the firm;
- iii. A statement that binds the Consultant to its Proposal for one hundred twenty (120) calendar days;

- iv. Confirm acceptance of, or indicate exceptions to, the Professional Sample Agreement (Exhibit B);
- v. Indicate whether there are any conflicts of interest that would limit the Consultant's ability to provide the requested services.

b. Project Team

- i. Provide an organizational chart that identifies the individuals, sub-consultants, if applicable. Identify the team leader.

c. Individual Qualifications and Experience

- i. Provide resumes for each team member assigned to this District project.
- ii. Provide a minimum of two examples of recent special district, harbor and/or marina-related projects completed (or ongoing) by the proposed team. Emphasis should be given to those projects that involved the identified team leader. For each relevant project:
  - 1. Indicate the firm's role and the staff members who were responsible for the cited project work;
  - 2. Provide a brief description of the contract scope of work; state the contract amount and completion date;
  - 3. Identify all relevant information and results in relation to schedule, budget and change orders;
  - 4. Include the name, title, email and phone number for each client referenced.

d. Statement of Understanding and Approach to Scope of Work

- i. Proposals should include a statement of understanding of the District's needs by highlighting the dominant issues. Please outline the Consultant's approach toward addressing these issues. Any recommendations regarding improvements to more effectively meet the District's stated objectives should be emphasized to demonstrate a clear understanding of the project requirements.

e. Financial Stability

- i. Provide pertinent information to allow the District to reasonably formulate a determination about the financial stability and strength of the Consultant such as financial references, financial statements,

or other relevant documentation. Describe any administrative proceedings, claims lawsuits, settlements, or other exposures pending against the Consultant.

f. Format

- i. All hard copies shall be produced double-sided on post-consumer recycled paper. Electronic copies of the Consultant's response to this Request for Proposal may be presented in either Microsoft Word or Adobe Acrobat format.

C. Contents of the Cost Proposal

- a. The cost proposal should provide fully burdened hourly rates for each applicable position and should describe the estimated level of effort and the total not-to-exceed amount required for each task that makes up the Consultant's proposed scope of work.
- b. In addition, the cost proposal should reflect compensation conditions that would change the standard rate. The Consultant should also identify the firm's markup for pass through expenses (e.g. sub-consultant), per diem, travel and any other relevant data. Sufficient information should be provided in order to serve as a basis for negotiating a contract and any supplemental agreements that may be warranted for out of scope services.
- c. The cost proposal will be used to establish a not-to-exceed contract limit that will be maintained in accordance with the conditions specified herein. Regardless of the proposed method of compensation, any contract resulting from this solicitation will specify a maximum, not-to-exceed fee amount. Except in the unusual situation wherein the Consultant encounters circumstances which could not be reasonably anticipated, the District will not authorize payment beyond this amount. In consideration of this, any assumptions and/or the need for any contingencies must be clearly spelled out in the cost proposal and used as a basis to compute a not-to-exceed figure for the project. This figure should be sufficient to provide for any reasonably anticipated circumstances which may be encountered during project execution and completion.
- d. Hourly rates specified in the cost proposal must remain in effect for a minimum of twelve (12) months from contract execution.

## **5. INSURANCE REQUIREMENTS**

The Consultant shall procure and maintain, for the duration of the agreement, insurance against claims for injuries to persons or damage to property that may arise from, or be in connection with, the performance of the work described

herein by the Consultant, its agents, representatives, employees, and sub-consultants. At the very least, the Consultant shall maintain the insurance coverage, limits of coverage and other insurance requirements as described in the sample Professional Services Agreement (Exhibit B).

## 6. SELECTION AND AGREEMENT

The District will review all Proposals and the most qualified Consultants may be selected for an interview and/or to make verbal presentations of their Proposals and qualifications. The District may check references of the firm and of key personnel, and may check the firm's financial stability as part of a final selection process. The District reserves the right to award the contract without conducting interviews.

Proposals will be evaluated in the following areas:

- Understanding of and Approach to Scope (30%)
- Qualifications and Relevant Experience (30%)
- Clarity and quality of written and oral communications in the Proposal and interview (20%)
- Cost Proposal (20%)

The recommendation to award a contract is subject to approval by the Board of Harbor Commissioners. If an award of contract is made, the Board reserves the right to award the contract to the responsive and responsible Consultant that it deems offers the most advantageous Proposal and best meets the requirements of the District, including technical approach, qualifications, and cost.

The Consultant will enter into an agreement with the District (Exhibit B). **If the Consultant desires any modifications to the agreement, they must be submitted for consideration with the Proposal. Otherwise, the Consultant will be deemed to have accepted the form of agreement without modification.** The Consultant to whom award is made shall execute the agreement with the District within ten (10) calendar days after receiving it for execution. If the Consultant to whom award is made fails to enter into the agreement as provided, the award may be annulled and an award may, at the discretion of the Board, be made to the Consultant whose Proposal is the next most acceptable in the opinion of the Board. Such Consultant shall fulfill every stipulation of the RFP as if it were the party to whom the first award was made.

The District expects work to begin immediately after entering into the agreement with the Consultant.

This solicitation in no way obligates the District to award a contract for the services described herein, nor to guarantee any value of projects that may be awarded during the term of any resultant contract. Neither will the District assume any liability for the costs incurred in the preparation and transmittal of



proposals in response to this solicitation. The District reserves the right to not accept any proposal, to reject any or all proposals, to reject any part of any proposal, to negotiate and modify any proposal, to suspend any and all aspects of the process indicated in this RFP at any time, to reissue this RFP, to extend deadlines for accepting proposals, to accept amendments to proposals after expiration of deadlines, and to waive any defects or irregularities in any proposal at the District's sole discretion. Furthermore, the District shall have the sole discretion to award a contract as it may deem appropriate to best serve the interests of the District.

Proposals submitted by the deadline will be reviewed by the District for completeness, understanding of and responsiveness to the intent of this RFP, demonstration of respondent's capability and experience to meet the needs of the District.

The District may request additional information from any or all respondents after the initial evaluation of the Proposals as may be deemed necessary or desirable.

The District will provide written notification of selection or non-selection of Proposals to each respondent.

## **7. CONFIDENTIALITY**

The California Public Records Act mandates public access to government records. Therefore, unless the information is exempt from disclosure by law, the content of any request for explanation, exception or substitution, response to these specifications, protest or any other written communication between the District and the Consultant shall be available to the public.

If the Consultant believes any communication contains trade secrets or other proprietary information that the Consultant believes would cause substantial injury to the Consultant's competitive position if disclosed, the Consultant shall request that the District withhold from disclosure the proprietary information by marking each page containing such proprietary information as confidential. The Consultant may not designate its entire Proposal as confidential. Additionally, the Consultant may not designate Proposal forms as confidential.

If the Consultant requests that the District withhold from disclosure information identified as confidential, and the District complies with the Consultant's request, the Consultant shall assume all responsibility for any challenges resulting from the non-disclosure, indemnify and hold harmless the District from and against all damages (including but not limited to attorneys' fees that may be awarded to the party requesting the Consultant's information), and pay any and all cost and expenses related to the withholding of the Consultant's information. The Consultant shall not make a claim, sue or maintain any legal action against the District or its Board, officers, employees or agents in connection with the withholding from disclosure of the Consultant's information.

If the Consultant does not request that the District withhold from disclosure information identified as confidential, the District shall have no obligation to withhold the information from disclosure and may release the information sought without liability to the District.

## **8. OTHER TERMS AND CONDITIONS**

- A. Failure by the District to object to an error, omission, or deviation in any proposal will in no way modify this RFP or excuse respondent from full compliance with the requirements of this RFP or any agreement resulting from this RFP.
- B. The District may modify, clarify, and change this RFP by issuing one or more written addenda. Such addenda may be posted on the District website, sent via e-mail and/or delivered by regular first-class United States mail to the last known business address of each potential respondent receiving a copy of this RFP. The District will make reasonable efforts to notify respondents in a timely manner of modifications of this RFP. Notwithstanding this provision, each respondent assumes the risk of submitting its Proposal(s) on time.
- C. All proposals submitted shall become the property of the District. Proposals and related materials submitted by respondents will not be returned.
- D. Consultant(s) employed under any agreement(s) executed by the District pursuant to this RFP will act as independent contractors, not as agents or employees of the District.
- E. All documents generated during the conduct of services under any agreement(s) executed by the District pursuant to this RFP will be the property of the District. Originals of all such documents, including electronic, shall be submitted to the District prior to final payment.
- F. Copyright privileges for materials developed to satisfy any agreement(s) pursuant to this RFP will remain the property of the District.

## 9. PROJECT INQUIRIES

Up to one week prior to the submission deadline, Consultants may submit specific questions about the project in writing or e-mail to:

Steve McGrath  
San Mateo County Harbor District  
PO Box 1449  
504 Avenue Alhambra, Suite 200  
El Granada, CA 94018  
smcgrath@smharbor.com  
(650) 583-4400

Any interpretation, change, or correction of the RFP will be made by addenda only, duly issued by the District. Consultants should check the District's website at [www.smharbor.com](http://www.smharbor.com) and click on Requests for Proposals to find any addenda that may be issued relative to this RFP.

Copies of such addenda will be mailed or otherwise furnished to each firm notifying District via Special Note No. 1, "Potential Bidder's/Proposer's Form" in Microsoft Word format, posted with the RFP documents. All oral modifications of these conditions are void and ineffective.

# Professional Services Agreement (Exhibit B)

## AGREEMENT

### STRATEGIC PLAN DEVELOPMENT

THIS AGREEMENT is made as of this [redacted] day of [redacted] 201[redacted], by and between the **San Mateo County Harbor District** ("District") and [Contractor Name]. ("Contractor"). WHEREAS, the District desires to obtain professional services in connection with the Strategic Plan Development Project and has issued an RFP dated May 26, 2017, a copy of which is attached and incorporated as Exhibit A; and WHEREAS, Consultant desires to perform such services and has represented that it is experienced and qualified to perform such services. It has submitted a written proposal, dated [Proposal Date], a copy of which is attached and incorporated as Exhibit B; and WHEREAS, the District's Board of Harbor Commissioners, at its meeting on [Meeting Date], authorized the General Manager to enter into this Agreement.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

#### 1. RENDITION OF SERVICES

The Consultant agrees to provide professional services to the District in accordance with the terms and conditions of this Agreement. In the performance of its work, the Consultant represents that it (1) has and will exercise the degree of professional care, skill, efficiency, and judgment of Consultants with special expertise in providing such services; (2) carries all applicable licenses, certificates, and registrations in current and good standing that may be required to perform the work; and (3) will retain all such licenses, certificates, and registrations in active status throughout the duration of this engagement.

#### 2. SCOPE OF SERVICES

Consultant will provide District the scope of services set forth in Exhibit A, as supplemented by Exhibit B, in accordance with the terms and conditions of this Agreement. In the event of any inconsistency between the terms this Agreement and the terms of Exhibit A or B, this agreement shall prevail.

#### 3. SCHEDULE

Consultant will commence work upon District's issuance of a Notice to Proceed and, unless the Agreement is terminated sooner pursuant to Section 20 will complete all work within [Insert timeline for completion of the work].

#### 4. KEY PERSONNEL

It is understood and agreed by the parties that at all times during the term of this Agreement that [NAME AND TITLE] shall serve as the primary staff person of the Consultant to undertake, render and oversee all of the services under this Agreement.

Upon written notice by the Consultant and approval by the District, which will not be unreasonably withheld, the Consultant may substitute this person with another person, who shall possess similar qualifications and experience for this position.

**5. COMPENSATION**

The Consultant agrees to perform all of the services included in Section 1 for the total all inclusive not-to-exceed amount] of \_\_\_\_\_, in accordance with Exhibit A. The all inclusive amount includes all labor, materials, taxes, profit, overhead, insurance, sub-consultant costs and all other costs and expenses incurred by the Consultant. The not-to-exceed amount is not guaranteed; compensation will be based on services actually rendered and expenses actually incurred. In addition to the overall not-to-exceed amount stated above, Consultant may not exceed the amounts specified in Exhibit B for each individual task within the scope of services without the written permission of the District. Nor may the Consultant apply time spent on one task to the budgeted amount for another task without the written permission of the District.]

In the event the District requests Consultant to perform any additional services, the parties will agree on the cost of such services, either on an agreed upon lump sum amount, or on a time and materials basis at the hourly rates listed in Exhibit A.

**6. NOTICES**

All communications relating to the day-to-day activities of the project shall be exchanged between the District's [TITLE, NAME] and the Consultant's [TITLE, NAME].

All other notices and communications regarding interpretation of the terms of this Agreement and changes thereto shall be given to the other party in writing and may be given by personal delivery to a representative of the parties or by mailing the same postage prepaid, addressed as follows:

If to the District: San Mateo County Harbor District  
504 Ave. Alhambra, 2<sup>nd</sup> Floor  
P.O. Box 1449  
El Granada, CA 94018  
Attention: General Manager

If to the Consultant: [REDACTED]

The address to which mailings may be made may be changed from time to time by notice mailed as described above. Any notice given by mail shall be deemed given on the day after that on which it is deposited in the United States Mail as provided above.

## **7. OWNERSHIP OF WORK**

All reports, designs, drawings, plans, photographic images, video and sound recording, specifications, analyses, charts, tables, schedules and all other materials prepared, or in the process of being prepared, for the services to be performed by the Consultant shall be and are the property of the District. The District shall be entitled access to and copies of these materials during the progress of the work. Any such materials remaining in the hands of the Consultant or in the hands of any sub-consultant upon completion or termination of the work shall be immediately delivered to the District. If any materials are lost, damaged or destroyed before final delivery to the District, the Consultant shall replace them at its own expense, and the Consultant assumes all risks of loss, damage or destruction of or to such materials. The Consultant may retain a copy of all material produced under this Agreement for its use in its general business activities.

Any and all rights, title, and interest (including, without limitation, patent rights, copyright and any other intellectual-property or proprietary right) to materials prepared under this Agreement are hereby assigned to the District. The Consultant agrees to execute any additional documents which may be necessary to evidence such assignment.

The Consultant represents and warrants that all materials prepared under this Agreement are original or developed from materials in the public domain (or both) and that all materials prepared under and services provided under this Agreement do not infringe or violate any copyright, trademark, patent, trade secret, or other intellectual-property or proprietary right of any third party.

## **8. CONFIDENTIALITY**

Any District materials to which the Consultant has access or materials prepared by the Consultant during the course of this Agreement ("confidential information") shall be held in confidence by the Consultant, who shall exercise all reasonable precautions to prevent the disclosure of confidential information to anyone except the officers, employees, and agents of the Consultant as necessary to accomplish the rendition of services set forth in Section 2 of this Agreement.

The Consultant, its employees, sub-consultants, and agents shall not release any reports, information or other materials prepared in connection with this Agreement, whether deemed confidential or not, to any third party without the approval of the District.

**9. SUBCONSULTANTS**

The Consultant shall not subcontract any services to be performed by it under this Agreement without the prior written approval of the District, except for service firms engaged in drawing, reproduction, typing, and printing. Any sub-consultants must be engaged under written contract with the Consultant with provisions allowing the Consultant to comply with all requirements of this Agreement, including without limitation the “Ownership of Work” provisions in Section 7. The Consultant shall be solely responsible for reimbursing any sub-consultants, and the District shall have no obligation to them.

**10. CHANGES**

The District may, at any time, by written order, make changes within the scope of work and services described in this Agreement. If such changes cause an increase in the budgeted cost of or the time required for performance of the agreed upon work, an equitable adjustment as mutually agreed shall be made in the limit on compensation as set forth in Section 5 or in the time of required performance as set forth in Section 3, or both. In the event that the Consultant encounters any unanticipated conditions or contingencies that may affect the scope of work or services, schedule, or the amount of compensation specified herein, the Consultant shall so advise the District immediately upon notice of such condition or contingency. The written notice shall explain the circumstances giving rise to the unforeseen condition or contingency and shall set forth the proposed adjustment in schedule or compensation. This notice shall be given to the District prior to the time that the Consultant performs work or services related to any proposed adjustment. The pertinent changes shall be expressed in a written supplement to this Agreement prior to implementation of such changes.

**11. RESPONSIBILITY; INDEMNIFICATION**

The Consultant shall indemnify, keep and save harmless the District and its Commissioners, officers, agents and employees against any and all suits, claims or actions arising out of any of the following:

- A. Any injury to persons or property that may occur, or that may be alleged to have occurred, arising from the performance of this Agreement by the Consultant caused by a negligent act or omission or willful misconduct of the Consultant or its employees, sub-consultants or agents; or
- B. Any allegation that materials or services provided by the Consultant under this Agreement infringe or violate any copyright, trademark, patent, trade secret, or any other intellectual-property or proprietary right of any third party.

The Consultant further agrees to defend any and all such actions, suits or claims, with counsel acceptable to the District in its sole discretion, and pay all charges of attorneys and all other costs and expenses of defenses as they are incurred. If any judgment is rendered, or settlement reached, against the District, or any of the other individuals enumerated above in any such action, the Consultant shall, at its expense,

satisfy and discharge the same. This indemnification shall survive termination or expiration of the Agreement.

## 12. **INSURANCE**

### A. **Types of Insurance**

The Consultant shall not commence work until proper evidence of insurance coverage of the types and amounts specified in this section has been provided to the District. The Consultant shall not violate or permit to be violated any conditions or provisions of said policies of insurance, and at all times shall satisfy the requirements of the insurer for the purpose of maintaining said insurance in effect.

If any claim is made by any third person against the Consultant on account of any incident connected to the Agreement, the Consultant shall promptly report the fact in writing to the District, giving full details of the claim.

Any person, firm, or corporation that the Consultant authorizes to work upon the District's property, including any sub-consultant, shall be deemed to be the Consultant's agent and shall be subject to all applicable terms of this Agreement. Prior to the Consultant's start of the work or entry onto the District's property, the Consultant agrees to require its sub-consultants to procure and maintain, at the Consultant's (or its sub-consultant(s)) sole cost and expense (and to prove to the District's reasonable satisfaction that it remains in effect throughout the performance of the work under this Agreement), the kinds of insurance described below. Such insurance must remain in effect throughout the term of this Agreement and will be at the sole cost and expense of the Consultant (or its sub-consultant(s)).

#### 1) **Commercial General Liability Insurance**

The Consultant shall, at its own expense, procure and maintain Commercial General Liability insurance providing bodily injury and property damage coverage with a combined limit of at least One Million Dollars (\$1,000,000) each occurrence and a general aggregate limit of at least Two Million Dollars (\$2,000,000). This insurance shall include, but not be limited to, premises and operations, contractual liability covering the indemnity provisions contained in this Agreement, personal injury, products and completed operations, and broad form property damage, and include a Cross Liability endorsement.



Said Policy shall protect the Consultant and the District in the same manner as though a separate policy had been issued to each, but nothing in said policy shall operate to increase the insurance company's liability as set forth in its policy beyond the amount or amounts shown or to which the insurance company would have been liable if only one interest had been named as an insured.

2) Business Automobile Liability

The Consultant shall, at its own cost and expense, procure and maintain Business Automobile Liability insurance providing bodily injury and property damage with a combined single limit of at least One Million Dollars (\$1,000,000) per occurrence for all owned, non-owned and hired automobiles. This insurance shall provide contractual liability covering all motor vehicles and mobile equipment to the extent coverage may be excluded from general liability insurance.

3) Workers' Compensation and Employers' Liability Insurance

If the Consultant employs any person to perform work in connection with this Agreement, the Consultant shall procure and maintain at all times during the performance of such work Workers' Compensation Insurance in conformance with the laws of the State of California, and federal laws where applicable. Employers' Liability Insurance shall not be less than One Million Dollars (\$1,000,000) for each accident and One Million Dollars (\$1,000,000) for each disease, with a policy limit of One Million Dollars (\$1,000,000).

The policy shall contain a waiver of subrogation in favor of the District and its officers, Commissioners, employees, volunteers, and agents, while acting in such capacity, and their successors and assignees, as they now or as they may hereafter be constituted, singly, jointly, or severally.

4) Professional Liability Insurance

The Consultant shall also maintain Professional Liability Insurance covering the Consultant's performance under this Agreement with a limit of liability of One Million Dollars (\$1,000,000) for any one claim. This insurance shall be applicable to claims arising from the work performed under this Agreement. Prior to commencing work under this Agreement, the Consultant shall furnish to the District a

Certificate of Insurance or certified copy of the insurance policy if requested, indicating compliance with the requirements of this paragraph. This certificate or policy shall further stipulate that thirty (30) days' advance written notice of cancellation, non-renewal or reduction in limits shall be given to the District.

**B. General Insurance Requirements**

1) Acceptable Insurance

All policies will be issued by insurers acceptable to the District. This insurance shall be issued by an insurance company or companies authorized to do business in the State of California with minimum "Best's" rating of B+ and with minimum policyholder surplus of Twenty-Five Million Dollars (\$25,000,000) or a company acceptable to the District in its sole discretion. All policies shall be issued in a form satisfactory to the General Manager of the District and shall be issued specifically as primary insurance. Workers' Compensation coverage requirements may be met with the California State Compensation Fund.

2) Procure and Maintain Insurance

The Consultant must, at its own cost and expense, procure and maintain at all times during the performance of this Agreement, all of the required policies specified above. The failure to procure or maintain the required insurance policies and/or an adequately funded self-insurance program acceptable to the District will constitute a material breach of the Agreement.

3) Terms of Policies

All insurance specified above shall remain in force until all work to be performed is satisfactorily completed. If the insurance is provided on a claims-made basis, it must remain in force for the entire term of the Agreement and a minimum of three (3) years thereafter.

4) Self-Insurance

Upon evidence of financial capacity satisfactory to the District and Consultant's agreement to waive subrogation against the District respecting any and all claims that may arise, the

Consultant's obligations hereunder may be satisfied in whole or in part by adequately funded self-insurance.

5) Deductibles and Retentions

The Consultant shall be responsible for payment of any deductible or retention on the Consultant's policies without right of contribution from the District. Deductible and retention provisions shall not contain any restrictions as to how or by whom the deductible or retention is paid. Any deductible or retention provision limiting payment to the Named Insured is unacceptable.

In the event that the policy of the Consultant or any sub-consultant contains a deductible or self-insured retention, and in the event that the District seeks coverage under such policy as an additional insured, the Consultant shall satisfy such deductible or self-insured retention to the extent of loss covered by such policy for a lawsuit arising from or connected with any alleged act or omission of the Consultant, sub-consultant, or any of their officers, directors, employees, agents, or suppliers, even if the Consultant or sub-consultant is not a named defendant in the lawsuit.

**C. Evidence of Insurance and Endorsements**

Prior to commencing work or entering onto the District's property, the Consultant shall file a Certificate of Insurance with the District evidencing the foregoing coverage's, including the following endorsements:

- 1) The insurance company(ies) issuing such policy(ies) will provide at least thirty (30) days' notice to the District of cancellation or non-renewal.
- 2) That the policy(ies) is primary insurance and the insurance company(ies) providing such policy(ies) shall be liable thereunder for the full amount of any loss or claim that the Consultant is liable for under this section, up to and including the total limit of liability, without right of contribution from any other insurance maintained or which may be maintained by the District.
- 3) Such insurance shall include as additional insureds the District, and its respective Commissioners, officers, employees, and agents while acting in such capacity, and their successors or assignees, as they now or as they may hereafter be constituted, singly, jointly, or severally.

- 4) The policy must also contain either a Cross Liability endorsement or Severability of Interests Clause and stipulate that inclusion of the District as an additional insured will not in any way affect the District's rights as respects to any claim, demand, suit or judgment made, brought, or recovered against the Consultant. Said policy shall protect the Consultant and the District in the same manner as though a separate policy had been issued to each, but nothing in said policy shall operate to increase the insurance company's liability as set forth in its policy beyond the amount or amounts shown or to which the insurance company would have been liable if only one interest had been named as an insured.

#### **D. Consequence of Lapse**

Should any required insurance not be procured or lapse during the term of this Agreement, requests for payment originating after such lapse will not be processed until the District receives satisfactory evidence of reinstated coverage as required by the Agreement. If insurance is not reinstated, the District, may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

#### **13. MANNER OF PAYMENT**

Consultant will submit detailed monthly invoices at the end of each month describing the work performed and the associated deliverable, which will be consistent with Exhibit B. Invoices will also include total expenditures to date and the remaining balance on the budgeted or not-to-exceed amount. Invoices will be prepared in a format acceptable to District. The District shall endeavor to pay approved invoices within thirty (30) days of their receipt.

#### **14. CONSULTANT'S STATUS**

Neither the Consultant nor any party contracting with the Consultant shall be deemed to be an agent or employee of the District. The Consultant is and shall be an independent Consultant, and the legal relationship of any person performing services for the Consultant shall be one solely between that person and the Consultant.

#### **15. ASSIGNMENT**

Consultant shall not assign any of its rights nor transfer any of its obligations under this Agreement without the prior written consent of District.

#### **16. DISTRICT WARRANTIES**

The District makes no warranties, representations or agreements, either express or implied, beyond such as are explicitly stated in this Agreement.

**17. DISTRICT REPRESENTATIVE**

Except when approval or other action is required to be given or taken by the Board of Harbor Commissioners of the District, the General Manager of the District, or such person or persons as she shall designate in writing from time to time, shall represent and act for the District.

**18. DISPUTE RESOLUTION**

The District and Consultant agree to attempt in good faith to resolve all disputes informally. If agreed to by both parties, alternate methods of dispute resolution, such as mediation, may be utilized. Unless otherwise directed by the District, the Consultant shall continue performance under this Agreement while matters in dispute are being resolved.

**19. MAINTENANCE, AUDIT, AND INSPECTION OF RECORDS**

All Consultant and sub-consultant costs incurred in the performance of this Agreement will be subject to audit. The Consultant and its sub-consultants shall permit the District or its authorized representatives to inspect, audit and verify statements, invoices or bills submitted by the Consultant pursuant to this Agreement. The Consultant shall also provide such assistance as may be required in the course of such audit. The Consultant shall retain these records and make them available for inspection hereunder for a period of four (4) years after expiration or termination of the Agreement.

If, as a result of the audit, it is determined by the District's auditor or staff that reimbursement of any costs including profit or fee under this Agreement was in excess of that represented and relied upon during price negotiations or represented as a basis for payment, the Consultants agrees to reimburse the District for those costs within sixty (60) days of written notification by the District.

**20. TERMINATION**

The District shall have the right to terminate this Agreement at any time for cause or for convenience by giving written notice to the Consultant. Upon receipt of such notice, the Consultant shall not commit itself to any further expenditure of time or resources.

If the Agreement is terminated for any reason other than a breach or default by the Consultant, the District shall pay to the Consultant in accordance with the provisions of Sections 5 and 13 all sums actually due and owing from the District for all services performed and all expenses incurred up to the day written notice of termination is given, plus any costs reasonably and necessary incurred by the Consultant to affect such termination. If the Agreement is terminated for breach or default, the District shall remit final payment to the Consultant in an amount to cover only those services performed and expenses incurred in full accordance with the terms and conditions of this Agreement up to the effective date of termination.

The District shall not in any manner be liable for the Consultant's actual or projected lost profits had the Consultant completed the services required by this Agreement.

**21. NONDISCRIMINATION**

In connection with the performance of this Agreement, the Consultant shall not discriminate against any employee or applicant for employment because of race, color, religion, citizenship, political activity or affiliation, national origin, ancestry, physical or mental disability, marital status, age, medical condition (as defined under California law), veteran status, sexual orientation, gender identity, gender expression, sex or gender (which includes pregnancy, childbirth, breastfeeding, or related medical conditions), taking or requesting statutorily protected leave, or any other characteristics protected under federal, state, or local laws. The Consultant shall take affirmative actions to ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, religion, color, sex, disability, national origin, or any other characteristic protected under state, federal, or local laws. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Consultant further agrees to insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials.

**22. CONFLICT OF INTEREST**

The Consultant warrants and represents that it presently has no interest and agrees that it will not acquire any interest that would present a conflict of interest under California Government Code §§ 1090 et seq. or §§ 87100 et seq. during the performance of services under this Agreement. The Consultant further covenants that it will not knowingly employ any person having such an interest in the performance of this Agreement. Violation of this provision may result in this Agreement being deemed void and unenforceable.

**23. PUBLICITY**

The Consultant, its employees, sub-consultants, and agents shall not refer to the District, or use any logos, images, or photographs of the District for any commercial purpose, including, but not limited to, advertising, promotion, or public relations, without the District's prior written consent. Such written consent shall not be required for the inclusion of the District's name on a customer list.

**24. ATTORNEY'S FEES**

If any legal proceeding should be instituted by either of the parties to enforce the terms of this Agreement or to determine the rights of the parties under this Agreement, the prevailing party in said proceeding shall recover, in addition to all court costs, reasonable legal fees.

**25. WAIVER**

Any waiver of any breach or covenant of this Agreement must be in a writing executed by a duly authorized representative of the party waiving the breach. A waiver by any of the parties of a breach or covenant of this Agreement shall not be construed to be a waiver of any succeeding breach or any other covenant unless specifically and explicitly stated in such waiver.

**26. SEVERABILITY**

If any provision of this Agreement shall be deemed invalid or unenforceable, that provision shall be reformed and/or construed consistently with applicable law as nearly as possible to reflect the original intentions of this Agreement, and in any event, the remaining provisions of this Agreement shall remain in full force and effect.

**27. NO THIRD PARTY BENEFICIARIES**

This Agreement is not for the benefit of any person or entity other than the parties.

**28. APPLICABLE LAW**

This Agreement, its interpretation and all work performed under it shall be governed by the laws of the State of California.

**29. BINDING ON SUCCESSORS**

All of the terms, provisions and conditions of this Agreement shall be binding upon and inure to the benefit of the parties and their respective successors, assigns and legal representatives.

**30. ENTIRE AGREEMENT; MODIFICATION**

This Agreement, including any attachments, constitutes the entire Agreement between the parties with respect to the subject matter hereof and may not be amended except by a written amendment executed by authorized representatives of both parties. In the event of a conflict between the terms and conditions of this Agreement and the attachments, the terms of this Agreement will prevail.

IN WITNESS WHEREOF the parties have executed this Agreement by their duly authorized officers as of the day and year first above written.

**SAN MATEO COUNTY HARBOR DISTRICT**

By: \_\_\_\_\_ Date: \_\_\_\_\_

Title: \_\_\_\_\_

\*

By: \_\_\_\_\_ Date: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_ Date: \_\_\_\_\_

Title: \_\_\_\_\_

*\*This Agreement must be executed by two corporate officers, consisting of: (1) the president, vice president or chair of the board; and (2) the secretary, assistant secretary, chief financial officer or assistant treasurer. In the alternative, this Agreement may be executed by a single officer or a person other than an officer provided that evidence satisfactory to the District is provided demonstrating that such individual is authorized to bind the corporation (e.g. a copy of a certified resolution from the corporation's board or a copy of the corporation's bylaws).*