

NOTICE INVITING PROPOSALS

NOTICE IS HEREBY GIVEN that sealed proposals will be received in the Administration Offices of the San Mateo County Harbor District (District) either by U.S. Postal Service addressed to its mailing address, P.O. Box 1449, El Granada, CA 94018; or by courier or personal delivery to the San Mateo County Harbor District, 504 Ave Alhambra, Ste. 200, El Granada, CA, by **January 28, 2019 at 4:00 p.m., Pacific Time**, for the following:

2019-01 REQUEST FOR PROPOSALS (RFP): Executive Search Services to Assist with the Recruitment for General Manager

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 if addressed to the District's P.O. Box address.

The San Mateo County Harbor District ("District") is requesting proposals from qualified firms or individuals (Proposer) to provide Executive Search Services to assist with the recruitment for General Manager.

The District hereby notifies all Proposers that it is the policy of the District to ensure nondiscrimination on the basis of race, color, national origin, sex, or any other characteristics protected under federal, state, or local laws in the award and administration of contracts.

Requests for modifications or clarifications of any requirement must be submitted in writing by email to: jvanhoff@smharbor.com, or by U.S. Mail to U.S. Postal Service address above. All such requests must be received in District's office by: **January 17, 2019 at 4:00 p.m.**, Pacific Time.

The District reserves the right to reject any and all proposals; or to waive any irregularities or informalities in any proposal or in the proposal procedure; or to postpone the proposal opening for good cause. No Proposer may withdraw its proposal for a period of one hundred twenty (120) calendar days after the date of opening of the proposals. Each Proposer will be notified of award of contract, if an award is made.

The RFP Documents are available for download on the District's website. To download the documents, go to the District's website home page at www.smharbor.com, click on BIDS/RFPs, scroll down to RFP 2019-01. Downloading RFP documents from the District's website does not imply your firm is a potential proposer nor will your name automatically appear on the District's "List of Potential Proposers." Ultimately, it is the responsibility of the Proposer to check the District's website for any Addenda that may be issued relative to this RFP.



Board of Harbor Commissioners

Virginia Chang Kiraly, President
Robert Bernardo, Vice President
Edmundo Larenas, Secretary
Tom Mattusch, Treasurer
Sabrina Brennan, Commissioner

John Moren, Interim General Manager
Steven D. Miller, District Counsel

January 4, 2019

To: Prospective Executive Search Firms

Subject: Request for Proposals #2019-01 for Executive Search Services to Assist with Recruitment for General Manager

The Board of Harbor Commissioners of the San Mateo County Harbor District (District) is embarking upon a recruitment process for a new General Manager. We are inviting experienced consulting firms to submit proposals for undertaking this recruitment on behalf of the District. The scope of services, in general, will consist of:

- 1) Development of recruitment materials for the position of General Manager, including refinement of the candidate profile for the position;
- 2) Outreach on a nation-wide basis to the public and private sector for qualified candidates;
- 3) Background investigation and preliminary screening of applicants based upon criteria to be developed in consultation with the Ad Hoc Search Committee;
- 4) Periodic meetings and progress reports to the Ad Hoc Search Committee and the full Board of Harbor Commissioners; and
- 5) Assistance to the Ad Hoc Search Committee and Commission as required during the interview and evaluation process.

A four to six-month period to complete the recruitment process is anticipated.

To assist in the development of responsive proposals, information concerning the District's operations, and the scope of the General Manager's responsibilities is provided.

Consultants who wish to be considered for this work should submit a proposal describing the following:

- relevant qualifications
- experience with recruiting in the public sector, and harbor districts in particular if applicable
- proposed recruiting approach and workplan
- proposed schedule
- background of the key individuals proposed to perform the recruitment
- references
- consulting charges, estimated hours, and any estimated reimbursable expenses

Three copies of your proposal should be addressed to:

Virginia Chang Kiraly, Commission President
San Mateo County Harbor District
504 Avenue Alhambra, Ste. 200
P.O. Box 1449
El Granada, CA 94018

and should be received by **4:00 p.m. (Pacific Time) on January 28, 2019.**

The Ad Hoc Search Committee of the Commission will evaluate the written proposals and may invite some or all of the proposing consulting firms to present their proposals in person at an interview session held for that purpose. Following the evaluation, the Committee will recommend one of the proposing firms to the full Commission for award of a contract. The District's standard form of Professional Services Agreement (see attached) will be the basis for retention of the consultant. The District reserves the right to reject any and all proposals and to waive informalities or irregularities in the proposals or in the offering process. Consultants shall bear all costs associated with the proposal process.

Questions relating to the recruitment process should be addressed to Julie van Hoff at jvanhoff@smharbor.com.

Very truly yours,

A handwritten signature in blue ink that reads "Julie van Hoff". The signature is written in a cursive, flowing style.

Julie van Hoff
Interim Director of Operations

SAN MATEO COUNTY HARBOR DISTRICT OPERATIONS

The San Mateo County Harbor District is an independent special district created by San Mateo County in 1933 “to assure the public is provided with clean, safe, well-managed, financially sound and environmentally pleasant marinas”. 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.

In 1948, the District created a harbor of safe refuge for the fishing fleet at Pillar Point Harbor per the State of California Harbors and Navigation Code Section 70.5. 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 1980's, along with a second, inner breakwater to provide further protection. This later work was financed by loans from the California Department of Boating and Waterways (DBW), now a Division of the State Parks Department.

In 1977, the District assumed operational control over the City of South San Francisco's Oyster Point Marina/Park. A Joint Powers Agreement 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 1980's again with loans from DBW. On Board action on April 6, 2016, all DBW loans were paid off in their entirety, three and a half years early.

The District operates both as an **enterprise agency** (generating revenue through fees) and as a provider of **public services** (non-revenue generating services that are made available to the public). Enterprise revenue is generated primarily from berth rentals, liveaboard fees, boat launch fees, property rentals, and permit fees all of which go toward operational expenses.

In addition, the District contributes substantial resources, both monetary and staff time, towards providing services and maintaining several public facilities and activities. Including:

- Coastal Trail access and maintenance
- Beach access
- Public fishing piers
- Park and landscape maintenance
- Public parking
- Trash removal
- Bay Trail access and maintenance
- Search and rescue operations
- Toxic environmental clean-up
- Public events
- Public restrooms
- Public education and outreach

These public services and activities serve a broad segment of San Mateo County's population and visitors. The District receives no direct revenues from the public for these facilities or services. Rather the District uses its share of the property tax revenue, paid to special districts within San Mateo County, to offset the costs of providing these popular facilities and services. The District has partnered with the federal government on addressing beach erosion and repair of the Coastal

Trail. These projects have significant community interest and affect a wide range of visitors to Pillar Point Harbor.

In addition to operational responsibilities at Pillar Point Harbor and Oyster Point Marina/Park, the District assists other agencies including the City of San Francisco with vessel traffic control during major events and the U.S. Coast Guard out of Yerba Buena Island in San Francisco Bay with search and rescue operations. Oyster Point Marina/Park also assists San Mateo County communities having San Francisco Bay shorelines with water transit-related emergency preparation and response. Lastly, the District hopes to join the municipalities of San Mateo County in addressing the challenges of climate change, specifically adapting to sea level rise.

General Manager Responsibilities

The General Manager is the Executive Officer of the District and is appointed by the Board of the San Mateo County Harbor District. The General Manager leads, plans, organizes, coordinates, directs, and has exclusive management and control of the operations and works of the District consistent with Board direction. In conjunction with the District's Board, the General Manager sets organizational standards and objectives.

The General Manager attends all meetings of the District's Board, unless otherwise requested, and such other meetings as the Board specifies. The General Manager recommends issues for Board consideration and action.

The General Manager employs such employees as the General Manager deems necessary for the proper administration of the District and the proper operation of the works of the District in accordance with District Personnel Policy. Compensation of the General Manager and compensation ranges of such employees are subject to approval by the Harbor District Board. The General Manager shall delegate authority at his discretion and has authority over all employees, including terminating for cause or lack of worthwhile work in accordance with District Personnel Regulations. The General Manager will provide a motivating work climate for District employees.

The General Manager shall maintain cordial relations with all persons entitled to the services of the District and attempt to resolve all public and employee complaints. The General Manager shall encourage citizen participation in the affairs of the District.

The General Manager shall carry into effect the expressed policies of the Harbor Commission Board. The General Manager should plan the short, medium and long term work program for the District. The General Manager shall lead budget, grant writing, and presentation of financial strategies for Board consideration.

The General Manager serves as the principal spokesman for the District and oversees public information programs and coordinates with media relations.

AGREEMENT

EXECUTIVE RECRUITMENT SERVICES

THIS AGREEMENT is made as of this [Date TBD] 2019, 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 a search for a new General Manager (Project) and has issued an RFP dated January 4, 2019 a copy of which is attached and incorporated as Exhibit A; and

WHEREAS, Contractor 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 [____], a copy of which is attached and incorporated as Exhibit B; and

WHEREAS, the District's Board of Harbor Commissioners, at its meeting on [Date TBD], 2019, authorized the Interim General Manager to enter into this Agreement.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. RENDITION OF SERVICES

The Contractor 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 Contractor represents that it (1) has and will exercise the degree of professional care, skill, efficiency, and judgment of contractors 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

Contractor 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 of this Agreement and the terms of Exhibit A or B, this agreement shall prevail.

3. SCHEDULE

Contractor 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 [TBD].

4. KEY PERSONNEL

It is understood and agreed by the parties that at all times during the term of this Agreement that [TBD] shall serve as the primary staff person of the Contractor to undertake, render and oversee all of the services under this Agreement. Upon written notice by the Contractor and approval by the District, which will not be unreasonably withheld, the Contractor may

substitute this person with another person, who shall possess similar qualifications and experience for this position.

5. COMPENSATION

[TBD]

6. NOTICES

All communications relating to the day-to-day activities of the Project shall be exchanged between the District's [TBD] and the Contractor's [TBD].

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, 2nd Floor
P.O. Box 1449
El Granada, CA 94018
Attention: [TBD]

If to the Contractor: [REDACTED]
[REDACTED]
[REDACTED]
[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 Postal Service 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 Contractor 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 Contractor or in the hands of any subcontractor 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 Contractor shall replace them at its own expense, and the Contractor assumes all risks of loss, damage or destruction of or to such materials. The Contractor may retain a copy of all materials 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 Contractor agrees to execute any additional documents which may be necessary to evidence such assignment.

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

The Contractor, its employees, subcontractors, 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. SUBCONTRACTORS

The Contractor 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 subcontractors must be engaged under written contract with the Contractor with provisions allowing the Contractor to comply with all requirements of this Agreement, including without limitation the "Ownership of Work" provisions in Section 7. The Contractor shall be solely responsible for reimbursing any subcontractors, 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 Contractor encounters any unanticipated conditions or contingencies that may affect the scope of work or services, schedule, or the amount of compensation specified herein, the Contractor 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 Contractor 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 Contractor 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 Contractor caused by a negligent act or omission or willful misconduct of the Contractor or its employees, subcontractors or agents; or
- B. Any allegation that materials or services provided by the Contractor 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 Contractor 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 Contractor 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 Contractor 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 Contractor 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 Contractor on account of any incident connected to the Agreement, the Contractor shall promptly report the fact in writing to the District, giving full details of the claim.

Any person, firm, or corporation that the Contractor authorizes to work upon the District's property, including any subcontractor, shall be deemed to be the Contractor's agent and shall be subject to all applicable terms of this Agreement. Prior to the Contractor's start of the work or entry onto the District's property, the Contractor agrees to require its subcontractors to procure and maintain, at the Contractor's (or its subcontractor(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 Contractor (or its subcontractor(s)).

1) Commercial General Liability Insurance

The Contractor 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 Contractor 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 Contractor 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 Contractor employs any person to perform work in connection with this Agreement, the Contractor 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 Contractor shall also maintain Professional Liability Insurance covering the Contractor'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 Contractor 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 Interim 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 Contractor 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 Contractor's agreement to waive subrogation against the District respecting any and all claims that may arise, the Contractor's obligations hereunder may be satisfied in whole or in part by adequately funded self-insurance.

5) Deductibles and Retentions

The Contractor shall be responsible for payment of any deductible or retention on the Contractor'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 Contractor or any subcontractor contains a deductible or self-insured retention, and in the event that the District seeks coverage under such policy as an additional insured, the Contractor 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 Contractor, subcontractor, or any of their officers, directors, employees, agents, or suppliers, even if the Contractor or subcontractor 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 Contractor 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 Contractor 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 Contractor. Said policy shall protect the Contractor 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

Contractor 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. CONTRACTOR'S STATUS

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

15. ASSIGNMENT

Contractor 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 he/she shall designate in writing from time to time, shall represent and act for the District.

18. DISPUTE RESOLUTION

The District and Contractor 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 Contractor shall continue performance under this Agreement while matters in dispute are being resolved.

19. MAINTENANCE, AUDIT, AND INSPECTION OF RECORDS

All Contractor and subcontractor costs incurred in the performance of this Agreement will be subject to audit. The Contractor and its subcontractors shall permit the District or its authorized representatives to inspect, audit and verify statements, invoices or bills submitted by the Contractor pursuant to this Agreement. The Contractor shall also provide such assistance as may be required in the course of such audit. The Contractor 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 Contractor 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 Contractor. Upon receipt of such notice, the Contractor 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 Contractor, the District shall pay to the Contractor 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 Contractor to effect such termination. If the Agreement is terminated for breach or default, the District shall remit final payment to the Contractor 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 Contractor's actual or projected lost profits had the Contractor completed the services required by this Agreement.

21. NONDISCRIMINATION

In connection with the performance of this Agreement, the Contractor 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 Contractor 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 Contractor further agrees to insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials.

22. CONFLICT OF INTEREST

The Contractor 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 Contractor 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 Contractor, its employees, subcontractors, 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: _____

***[COMPANY NAME OF CONTRACTOR]**

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).*