



**AGREEMENT**

**PROFESSIONAL CONSULTING SERVICES**

**Port of Redwood City**

**(name of consultant)**

**THIS AGREEMENT**, (the "Agreement") made and entered into this \_\_\_\_ day of \_\_\_\_ (the "Effective Date"), by and between the City of Redwood City, by and through its Board of Port Commissioners, a municipal corporation of the State of California, ("Port"), and \_\_\_\_\_ of \_\_\_\_\_ ("Consultant");

**WITNESSETH:**

**WHEREAS**, Port desires to conduct a \_\_\_\_\_ (the "Project") in connection with \_\_\_\_\_ at the Port of Redwood City; and

**WHEREAS**, in connection with the Project, the Port requires professional services; and

**WHEREAS**, Consultant represents that it possesses the experience, and is qualified to perform the aforesaid services for the Project.

**NOW, THEREFORE**, the parties hereto agree as follows:

**1. CONSULTANT'S SERVICES.** Consultant shall perform consulting and related services described on Consultant's proposal dated \_\_\_\_\_, 20\_\_, consisting of \_\_\_\_ pages, marked Exhibit "A," attached hereto and by this reference incorporated herein (the "Proposal").

**2. COMPENSATION; EXPENSES; PAYMENT.** (a) Port shall compensate Consultant for all services performed by Consultant pursuant to the Proposal in an amount based upon Consultant's hourly rates set forth on Exhibit "A".



Notwithstanding the foregoing, the combined total of compensation and reimbursement of costs payable pursuant to the Proposal shall not exceed the sum of \$\_\_\_\_\_.

(b) Port shall compensate Consultant for all services performed by Consultant for Additional Services requested in writing by the Port at the hourly rates set forth on Exhibit "A".

(c) Compensation and reimbursement of costs and expenses hereunder shall be payable upon monthly billing therefor by Consultant to Port, which billing shall include an itemized statement briefly describing by task and labor category or cost/expense items billed, the date services were rendered, the name of the person who rendered the services and the time spent each day on each task. Each billing shall provide an allocation of time spent per task.

**3. ADDITIONAL SERVICES.** In the event that services which are not included and/or contemplated within the services described in Exhibit "A" are requested by the Port in writing (the "Additional Services"), Consultant shall provide such services pursuant to the terms and conditions of this Agreement. Additional Services are required to be authorized by the Board of Port Commissioners.

**4. ASSIGNABILITY.** Neither Consultant nor Port shall subcontract any part or portion of the services to be performed by Consultant and/or assign, sell, mortgage, hypothecate or otherwise transfer their respective interests or obligations in this Agreement without the express prior written consent of the non-transferring party.

**5. STATUS.** In the performance of services hereunder, Consultant shall be, and is, an independent contractor, and shall not be deemed to be an employee or agent of Port.



6. **PERFORMANCE STANDARDS.** In performing services hereunder, Consultant shall adhere to the standards generally prevailing for the performance of expert consulting services similar to those to be performed by Consultant hereunder.

7. **DOCUMENTS.** All documents, reports, plans, drawings, renderings, and other papers (collectively, the “Documents”) or copies thereof, as finally rendered, prepared by Consultant pursuant to the terms of this Agreement, shall, upon preparation and delivery to Port, become the property of Port.

8. **SCHEDULE.** Consultant shall generally adhere to the schedule set forth in Exhibit “A”; provided, that Port shall grant reasonable extensions of time for unavoidable delays occasioned by circumstances; provided, further, that such unavoidable delay shall not include strikes, lockouts, work stoppages, or other labor disturbances conducted by, or on behalf of, Consultant’s officers or employees.

Consultant acknowledges the importance to Port of Port’s Project schedule and agrees to put forth its best professional efforts to perform its services under this Agreement in a manner consistent with that schedule. Port understands, however, that Consultant’s performance must be governed by sound practices. Time is of the essence.

9. **TERM; TERMINATION.** (a) The term of this Agreement shall commence upon the date first hereinabove written and shall expire upon completion of performance of services hereunder by Consultant.

(b) Notwithstanding the provisions of (a) above, Port may terminate this Agreement without cause by giving written notice thereof not less than ten (10) days prior to the effective date of termination, which date shall be included in said notice. In the event of such termination, Port shall compensate Consultant for services rendered, and reimburse



Consultant for costs and expenses incurred, to the date of termination, calculated in accordance with the provisions of paragraph 2. In ascertaining the services actually rendered to the date of termination, consideration shall be given both to completed work and work in process of completion. Nothing herein contained shall be deemed a limitation upon the right of Port to terminate this Agreement for cause, or otherwise to exercise such rights or pursue such remedies as may accrue to Port hereunder. In no event shall the amount due Consultant upon termination of this Agreement pursuant to this Paragraph 9, exceed the amount of compensation set forth in Paragraph 2, above.

**10. RECORDS.** Consultant shall keep and maintain accurate records of all time expended and costs and expenses incurred relating to services to be performed by Consultant hereunder. Said records shall be available to Port for review and copying during regular business hours at Consultant's place of business or as otherwise agreed upon by the parties.

**11. HOLD HARMLESS.** Consultant hereby agrees to defend, indemnify, and save harmless Port, its Board, the City of Redwood City ("City"), its Council and their respective boards, commissions, officers, employees and agents, from and against any and all claims, suits, actions, liability, loss, damage, expense, cost (including, without limitation, costs and fees of litigation) of every nature, kind or description, which may be brought against, or suffered or sustained by, Port, its Board, City, its Council, and their respective boards, commissions, officers, employees or agents caused by, or alleged to have been caused by, the negligence, intentional tortious act or omission, or willful misconduct of Consultant, its officers, employees or agents in the performance of any services or work pursuant to this Agreement.



The duty of Consultant to indemnify and save harmless, as set forth herein, shall include the duty to defend as set forth in Section 2778 of the California Civil Code; provided, however, that nothing herein contained shall be construed to require Consultant to indemnify Port, its Board, City, its Council and their respective boards, commissions, officers, employees and agents against any responsibility or liability in contravention of Section 2782 of the California Civil Code.

**12. INSURANCE.** Consultant shall acquire and maintain Workers' Compensation, employer's liability, commercial general liability, owned and non-owned and hired automobile liability, and professional liability insurance coverage relating to Consultant's services to be performed hereunder covering Port's risks in form subject to the approval of the Port Attorney. The minimum amounts of coverage corresponding to the aforesaid categories of insurance per insurable event, shall be as follows:

<u>Insurance Category</u>	<u>Minimum Limits</u>
Workers' Compensation	statutory minimum.
Employer's Liability	\$1,000,000 per accident for bodily injury or disease.
Commercial General Liability	\$1,000,000 per occurrence and \$2,000,000 aggregate for bodily injury, personal injury and property damage.
Automobile Liability	\$1,000,000 per accident, \$2,000,000 aggregate for bodily injury and property damage (coverage required to the extent applicable to Consultant's vehicle usage in performing services hereunder).
Professional Liability	\$1,000,000 per claim and aggregate.



Consultant hereby waives any and all right of recovery against the additional insureds listed in Paragraph 12(c), below, for any loss occurring on or about the Premises and/or in connection with the work performed by Consultant, and the insurance policy required by this Paragraph shall contain an endorsement recognizing this release by the Consultant and waiving all rights of subrogation by the insurer.

Concurrently with the execution of this Agreement, Consultant shall furnish Port with certificates and copies of information or declaration pages of the insurance required hereunder and, with respect to evidence of commercial general liability and automobile liability insurance coverage, original endorsements:

- (a) Precluding cancellation in coverage before the expiration of thirty (30) days after Port shall have received written notification of cancellation in coverage by first class mail;
- (b) Providing that Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability (cross liability endorsement);
- (c) Naming the Port, its Board, City, its Council, and their respective officers, boards, commissions, employees, and agents, as additional insureds;
- (d) Providing that Consultant's insurance coverage shall be primary insurance with respect to Port, its Board, City, its Council, and their respective officers, boards, commissions, employees, and agents, and any insurance or self-insurance maintained by Port for itself, its Board, City, its Council, and their respective officers, boards, commissions, employees, or agents shall be in excess of Consultant's insurance and not contributory with it; and
- (e) Containing a "waiver of subrogation" endorsement recognizing Consultant's release as set forth above.



13. **BUSINESS LICENSE.** Consultant will obtain and maintain a City of Redwood City Business License for the term of the Agreement, as may be amended from time to time.

14. **COVENANT AGAINST CONTINGENT FEES.** Consultant hereby warrants that. Consultant has not employed or retained any company or person, other than a *bona fide* employee working for Consultant, to solicit or secure this Agreement, and Consultant has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon or resulting from the award or formation of this Agreement. For breach or violation of this warranty, Port shall have the right to annul this Agreement without liability, or at Port's discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

15. **NOTICES.** Written notices required or convenient hereunder shall be delivered personally or by depositing the same with the United States Postal Service, first class (or equivalent) postage prepaid and addressed, in the case of Consultant to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

and, in the case of Port, to:

Port Executive Director  
Port of Redwood City  
675 Seaport Boulevard  
Redwood City, CA 94063

16. **PARAGRAPH HEADINGS.** Paragraph headings as used herein are for convenience only and shall not be deemed to be a part of such paragraphs and shall not be construed to change the meaning thereof.



17. **TIME OF THE ESSENCE.** Time is of the essence in the performance of the services by Consultant.

18. **CONFLICT.** In the event of a conflict between this Agreement and the Proposal, the terms and conditions of this Agreement shall prevail.

**IN WITNESS WHEREOF,** the parties hereto have executed this Agreement the day and year first hereinabove written.

The City of Redwood City, a municipal corporation, by and through its Board of Port Commissioners.

By: \_\_\_\_\_  
Kristine Zortman  
Port Executive Director

ATTEST:

\_\_\_\_\_  
Executive Secretary/Clerk of the Board

By: \_\_\_\_\_  
\_\_\_\_\_  
(Title)