

## ATTACHMENT B

### PROFESSIONAL SERVICES AGREEMENT WITH MOFFATT & NICHOL FOR HARBOR PIERS REHABILITATION

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is made and entered into as of this 11th day of January, 2022 ("Effective Date"), by and between the CITY OF NEWPORT BEACH, a California municipal corporation and charter city ("City"), and MOFFATT & NICHOL, a California corporation ("Consultant"), whose address on file with the Secretary of State is 4225 E. Conant St., Suite 101, Long Beach, California 90808, with a local address of 555 Anton Blvd., Suite 400, Costa Mesa, California 92626, and is made with reference to the following:

#### RECITALS

- A. City is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California and the Charter of City.
- B. City desires to engage Consultant to provide harbor piers rehabilitation work ("Project").
- C. Consultant possesses the skill, experience, ability, background, certification and knowledge to provide the professional services described in this Agreement.
- D. City has solicited and received a proposal from Consultant, has reviewed the previous experience and evaluated the expertise of Consultant, and desires to retain Consultant to render professional services under the terms and conditions set forth in this Agreement.

**NOW, THEREFORE**, it is mutually agreed by and between the undersigned parties as follows:

#### 1. TERM

The term of this Agreement shall commence on the Effective Date, and shall terminate on February 1, 2026, unless terminated earlier as set forth herein.

#### 2. SERVICES TO BE PERFORMED

Consultant shall diligently perform all the services described in the Scope of Services attached hereto as Exhibit A and incorporated herein by reference ("Services" or "Work"). City may elect to delete certain Services within the Scope of Services at its sole discretion.

#### 3. TIME OF PERFORMANCE

3.1 Time is of the essence in the performance of Services under this Agreement and Consultant shall perform the Services in accordance with the schedule included in

Exhibit A. In the absence of a specific schedule, the Services shall be performed to completion in a diligent and timely manner. The failure by Consultant to strictly adhere to the schedule set forth in Exhibit A, if any, or perform the Services in a diligent and timely manner may result in termination of this Agreement by City.

3.2 Notwithstanding the foregoing, Consultant shall not be responsible for delays due to causes beyond Consultant's reasonable control. However, in the case of any such delay in the Services to be provided for the Project, each party hereby agrees to provide notice within two (2) calendar days of the occurrence causing the delay to the other party so that all delays can be addressed.

3.3 Consultant shall submit all requests for extensions of time for performance in writing to the Project Administrator as defined herein not later than ten (10) calendar days after the start of the condition that purportedly causes a delay. The Project Administrator shall review all such requests and may grant reasonable time extensions for unforeseeable delays that are beyond Consultant's control.

3.4 For all time periods not specifically set forth herein, Consultant shall respond in the most expedient and appropriate manner under the circumstances, by hand-delivery or mail.

#### **4. COMPENSATION TO CONSULTANT**

4.1 City shall pay Consultant for the Services on a time and expense not-to-exceed basis in accordance with the provisions of this Section and the Schedule of Billing Rates attached hereto as Exhibit B and incorporated herein by reference. Consultant's compensation for all Work performed in accordance with this Agreement, including all reimbursable items and subconsultant fees, shall not exceed **Three Hundred Seventeen Thousand Four Hundred Thirty Three Dollars and 00/100 (\$317,433.00)**, without prior written authorization from City. No billing rate changes shall be made during the term of this Agreement without the prior written approval of City.

4.2 Consultant shall submit monthly invoices to City describing the Work performed the preceding month. Consultant's bills shall include the name of the person who performed the Work, a brief description of the Services performed and/or the specific task in the Scope of Services to which it relates, the date the Services were performed, the number of hours spent on all Work billed on an hourly basis, and a description of any reimbursable expenditures. City shall pay Consultant no later than thirty (30) calendar days after approval of the monthly invoice by City staff.

4.3 City shall reimburse Consultant only for those costs or expenses specifically identified in Exhibit B to this Agreement or specifically approved in writing in advance by City.

4.4 Consultant shall not receive any compensation for Extra Work performed without the prior written authorization of City. As used herein, "Extra Work" means any Work that is determined by City to be necessary for the proper completion of the Project, but which is not included within the Scope of Services and which the parties did not

reasonably anticipate would be necessary at the execution of this Agreement. Compensation for any authorized Extra Work shall be paid in accordance with the Schedule of Billing Rates as set forth in Exhibit B.

## **5. PROJECT MANAGER**

5.1 Consultant shall designate a Project Manager, who shall coordinate all phases of the Project. This Project Manager shall be available to City at all reasonable times during the Agreement term. Consultant has designated Jerry Holcomb to be its Project Manager. Consultant shall not remove or reassign the Project Manager or any personnel listed in Exhibit A or assign any new or replacement personnel to the Project without the prior written consent of City. City's approval shall not be unreasonably withheld with respect to the removal or assignment of non-key personnel.

5.2 Consultant, at the sole discretion of City, shall remove from the Project any of its personnel assigned to the performance of Services upon written request of City. Consultant warrants that it will continuously furnish the necessary personnel to complete the Project on a timely basis as contemplated by this Agreement.

5.3 If Consultant is performing inspection services for City, the Project Manager and any other assigned staff shall be equipped with a cellular phone to communicate with City staff. The Project Manager's cellular phone number shall be provided to City.

## **6. ADMINISTRATION**

This Agreement will be administered by the Public Works Department. City's Director of Public Works or designee shall be the Project Administrator and shall have the authority to act for City under this Agreement. The Project Administrator shall represent City in all matters pertaining to the Services to be rendered pursuant to this Agreement.

## **7. CITY'S RESPONSIBILITIES**

To assist Consultant in the execution of its responsibilities under this Agreement, City agrees to provide access to and upon request of Consultant, one copy of all existing relevant information on file at City. City will provide all such materials in a timely manner so as not to cause delays in Consultant's Work schedule.

## **8. STANDARD OF CARE**

8.1 All of the Services shall be performed by Consultant or under Consultant's supervision. Consultant represents that it possesses the professional and technical personnel required to perform the Services required by this Agreement, and that it will perform all Services in a manner commensurate with community professional standards and with the ordinary degree of skill and care that would be used by other reasonably competent practitioners of the same discipline under similar circumstances. All Services shall be performed by qualified and experienced personnel who are not employed by City. By delivery of completed Work, Consultant certifies that the Work conforms to the

requirements of this Agreement, all applicable federal, state and local laws, and legally recognized professional standards.

8.2 Consultant represents and warrants to City that it has, shall obtain, and shall keep in full force and effect during the term hereof, at its sole cost and expense, all licenses, permits, qualifications, insurance and approvals of whatsoever nature that is legally required of Consultant to practice its profession. Consultant shall maintain a City of Newport Beach business license during the term of this Agreement.

8.3 Consultant shall not be responsible for delay, nor shall Consultant be responsible for damages or be in default or deemed to be in default by reason of strikes, lockouts, accidents, acts of God, or the failure of City to furnish timely information or to approve or disapprove Consultant's Work promptly, or delay or faulty performance by City, contractors, or governmental agencies.

## **9. HOLD HARMLESS**

9.1 To the fullest extent permitted by law, Consultant shall indemnify, defend and hold harmless City, its City Council, boards and commissions, officers, agents, volunteers and employees (collectively, the "Indemnified Parties"), from and against any and all claims (including, without limitation, claims for bodily injury, death or damage to property), demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including, without limitation, attorneys' fees, disbursements and court costs) of every kind and nature whatsoever (individually, a Claim; collectively, "Claims"), and which relate (directly or indirectly) to the negligence, recklessness, or willful misconduct of the Consultant or its principals, officers, agents, employees, vendors, suppliers, subconsultants, subcontractors, anyone employed directly or indirectly by any of them or for whose acts they may be liable, or any or all of them.

9.2 Notwithstanding the foregoing, nothing herein shall be construed to require Consultant to indemnify the Indemnified Parties from any Claim arising from the sole negligence, active negligence or willful misconduct of the Indemnified Parties. Nothing in this indemnity shall be construed as authorizing any award of attorneys' fees in any action on or to enforce the terms of this Agreement. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by the Consultant.

## **10. INDEPENDENT CONTRACTOR**

It is understood that City retains Consultant on an independent contractor basis and Consultant is not an agent or employee of City. The manner and means of conducting the Work are under the control of Consultant, except to the extent they are limited by statute, rule or regulation and the expressed terms of this Agreement. No civil service status or other right of employment shall accrue to Consultant or its employees. Nothing in this Agreement shall be deemed to constitute approval for Consultant or any

of Consultant's employees or agents, to be the agents or employees of City. Consultant shall have the responsibility for and control over the means of performing the Work, provided that Consultant is in compliance with the terms of this Agreement. Anything in this Agreement that may appear to give City the right to direct Consultant as to the details of the performance of the Work or to exercise a measure of control over Consultant shall mean only that Consultant shall follow the desires of City with respect to the results of the Services.

## **11. COOPERATION**

Consultant agrees to work closely and cooperate fully with City's designated Project Administrator and any other agencies that may have jurisdiction or interest in the Work to be performed. City agrees to cooperate with the Consultant on the Project.

## **12. CITY POLICY**

Consultant shall discuss and review all matters relating to policy and Project direction with City's Project Administrator in advance of all critical decision points in order to ensure the Project proceeds in a manner consistent with City goals and policies.

## **13. PROGRESS**

Consultant is responsible for keeping the Project Administrator informed on a regular basis regarding the status and progress of the Project, activities performed and planned, and any meetings that have been scheduled or are desired.

## **14. INSURANCE**

Without limiting Consultant's indemnification of City, and prior to commencement of Work, Consultant shall obtain, provide and maintain at its own expense during the term of this Agreement or for other periods as specified in this Agreement, policies of insurance of the type, amounts, terms and conditions described in the Insurance Requirements attached hereto as Exhibit C, and incorporated herein by reference.

## **15. PROHIBITION AGAINST ASSIGNMENTS AND TRANSFERS**

Except as specifically authorized under this Agreement, the Services to be provided under this Agreement shall not be assigned, transferred contracted or subcontracted out without the prior written approval of City. Any of the following shall be construed as an assignment: The sale, assignment, transfer or other disposition of any of the issued and outstanding capital stock of Consultant, or of the interest of any general partner or joint venturer or syndicate member or cotenant if Consultant is a partnership or joint-venture or syndicate or co-tenancy, which shall result in changing the control of Consultant. Control means fifty percent (50%) or more of the voting power or twenty-five percent (25%) or more of the assets of the corporation, partnership or joint-venture.

## **16. SUBCONTRACTING**

The subcontractors authorized by City, if any, to perform Work on this Project are identified in Exhibit A. Consultant shall be fully responsible to City for all acts and omissions of any subcontractor. Nothing in this Agreement shall create any contractual relationship between City and any subcontractor nor shall it create any obligation on the part of City to pay or to see to the payment of any monies due to any such subcontractor other than as otherwise required by law. City is an intended beneficiary of any Work performed by the subcontractor for purposes of establishing a duty of care between the subcontractor and City. Except as specifically authorized herein, the Services to be provided under this Agreement shall not be otherwise assigned, transferred, contracted or subcontracted out without the prior written approval of City.

## **17. OWNERSHIP OF DOCUMENTS**

17.1 Each and every report, draft, map, record, plan, document and other writing produced, including but not limited to, websites, blogs, social media accounts and applications (hereinafter "Documents"), prepared or caused to be prepared by Consultant, its officers, employees, agents and subcontractors, in the course of implementing this Agreement, shall become the exclusive property of City, and City shall have the sole right to use such materials in its discretion without further compensation to Consultant or any other party. Additionally, all material posted in cyberspace by Consultant, its officers, employees, agents and subcontractors, in the course of implementing this Agreement, shall become the exclusive property of City, and City shall have the sole right to use such materials in its discretion without further compensation to Consultant or any other party. Consultant shall, at Consultant's expense, provide such Documents, including all logins and password information to City upon prior written request.

17.2 Documents, including drawings and specifications, prepared by Consultant pursuant to this Agreement are not intended or represented to be suitable for reuse by City or others on any other project. Any use of completed Documents for other projects and any use of incomplete Documents without specific written authorization from Consultant will be at City's sole risk and without liability to Consultant. Further, any and all liability arising out of changes made to Consultant's deliverables under this Agreement by City or persons other than Consultant is waived against Consultant, and City assumes full responsibility for such changes unless City has given Consultant prior notice and has received from Consultant written consent for such changes.

17.3 Computer Aided Design and Drafting ("CADD") data delivered to City shall include the professional stamp of the engineer or architect in charge of or responsible for the Work. City agrees that Consultant shall not be liable for claims, liabilities or losses arising out of, or connected with (a) the modification or misuse by City, or anyone authorized by City, of CADD data; or (b) any use by City, or anyone authorized by City, of CADD data for additions to this Project, for the completion of this Project by others, or for any other Project, excepting only such use as is authorized, in writing, by Consultant. By acceptance of CADD data, City agrees to indemnify Consultant for damages and liability resulting from the modification or misuse of such CADD data. All original drawings

shall be submitted to City in the version of AutoCAD used by the City in .dwg file format, and should comply with the City's digital submission requirements for improvement plans available from the City's Public Works Department.

17.4 All improvement and/or construction plans shall be plotted on standard twenty-four inch (24") by thirty-six inch (36") paper size. Consultant shall provide to City digital 'As-Built' drawings in both AutoCAD and Adobe PDF file format within thirty (30) days after finalization of the Project.

## **18. OPINION OF COST**

Any opinion of the construction cost prepared by Consultant represents the Consultant's judgment as a design professional and is supplied for the general guidance of City. Since Consultant has no control over the cost of labor and material, or over competitive bidding or market conditions, Consultant does not guarantee the accuracy of such opinions as compared to Consultant or contractor bids or actual cost to City.

## **19. CONFIDENTIALITY**

All Documents, including drafts, preliminary drawings or plans, notes and communications that result from the Services in this Agreement, shall be kept confidential unless City expressly authorizes in writing the release of information.

## **20. INTELLECTUAL PROPERTY INDEMNITY**

Consultant shall defend and indemnify City, its agents, officers, representatives and employees against any and all liability, including costs, for infringement or alleged infringement of any United States' letters patent, trademark, or copyright, including costs, contained in Consultant's Documents provided under this Agreement.

## **21. RECORDS**

Consultant shall keep records and invoices in connection with the Services to be performed under this Agreement. Consultant shall maintain complete and accurate records with respect to the costs incurred under this Agreement and any Services, expenditures and disbursements charged to City, for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to Consultant under this Agreement. All such records and invoices shall be clearly identifiable. Consultant shall allow a representative of City to examine, audit and make transcripts or copies of such records and invoices during regular business hours. Consultant shall allow inspection of all Work, data, Documents, proceedings and activities related to the Agreement for a period of three (3) years from the date of final payment to Consultant under this Agreement.

## **22. WITHHOLDINGS**

City may withhold payment to Consultant of any disputed sums until satisfaction of the dispute with respect to such payment. Such withholding shall not be deemed to

constitute a failure to pay according to the terms of this Agreement. Consultant shall not discontinue Work as a result of such withholding. Consultant shall have an immediate right to appeal to the City Manager or designee with respect to such disputed sums. Consultant shall be entitled to receive interest on any withheld sums at the rate of return that City earned on its investments during the time period, from the date of withholding of any amounts found to have been improperly withheld.

## **23. ERRORS AND OMISSIONS**

In the event of errors or omissions that are due to the negligence or professional inexperience of Consultant which result in expense to City greater than what would have resulted if there were not errors or omissions in the Work accomplished by Consultant, the additional design, construction and/or restoration expense shall be borne by Consultant. Nothing in this Section is intended to limit City's rights under the law or any other sections of this Agreement.

## **24. CITY'S RIGHT TO EMPLOY OTHER CONSULTANTS**

City reserves the right to employ other Consultants in connection with the Project.

## **25. CONFLICTS OF INTEREST**

25.1 Consultant or its employees may be subject to the provisions of the California Political Reform Act of 1974 (the "Act") and/or Government Code §§ 1090 et seq., which (1) require such persons to disclose any financial interest that may foreseeably be materially affected by the Work performed under this Agreement, and (2) prohibit such persons from making, or participating in making, decisions that will foreseeably financially affect such interest.

25.2 If subject to the Act and/or Government Code §§ 1090 et seq., Consultant shall conform to all requirements therein. Failure to do so constitutes a material breach and is grounds for immediate termination of this Agreement by City. Consultant shall indemnify and hold harmless City for any and all claims for damages resulting from Consultant's violation of this Section.

## **26. NOTICES**

26.1 All notices, demands, requests or approvals, including any change in mailing address, to be given under the terms of this Agreement shall be given in writing, and conclusively shall be deemed served when delivered personally, or on the third business day after the deposit thereof in the United States mail, postage prepaid, first-class mail, addressed as hereinafter provided.

26.2 All notices, demands, requests or approvals from Consultant to City shall be addressed to City at:

Attn: Director of Public Works  
Public Works Department



City of Newport Beach  
100 Civic Center Drive  
PO Box 1768  
Newport Beach, CA 92658

26.3 All notices, demands, requests or approvals from City to Consultant shall be addressed to Consultant at:

Attn: Jerry Holcomb  
Moffatt & Nichol  
555 Anton Blvd., Suite 400  
Costa Mesa, CA 92626

## **27. CLAIMS**

Unless a shorter time is specified elsewhere in this Agreement, before making its final request for payment under this Agreement, Consultant shall submit to City, in writing, all claims for compensation under or arising out of this Agreement. Consultant's acceptance of the final payment shall constitute a waiver of all claims for compensation under or arising out of this Agreement except those previously made in writing and identified by Consultant in writing as unsettled at the time of its final request for payment. Consultant and City expressly agree that in addition to any claims filing requirements set forth in the Agreement, Consultant shall be required to file any claim Consultant may have against City in strict conformance with the Government Claims Act (Government Code sections 900 *et seq.*).

## **28. TERMINATION**

28.1 In the event that either party fails or refuses to perform any of the provisions of this Agreement at the time and in the manner required, that party shall be deemed in default in the performance of this Agreement. If such default is not cured within a period of two (2) calendar days, or if more than two (2) calendar days are reasonably required to cure the default and the defaulting party fails to give adequate assurance of due performance within two (2) calendar days after receipt of written notice of default, specifying the nature of such default and the steps necessary to cure such default, and thereafter diligently take steps to cure the default, the non-defaulting party may terminate the Agreement forthwith by giving to the defaulting party written notice thereof.

28.2 Notwithstanding the above provisions, City shall have the right, at its sole and absolute discretion and without cause, of terminating this Agreement at any time by giving no less than seven (7) calendar days' prior written notice to Consultant. In the event of termination under this Section, City shall pay Consultant for Services satisfactorily performed and costs incurred up to the effective date of termination for which Consultant has not been previously paid. On the effective date of termination, Consultant shall deliver to City all reports, Documents and other information developed or accumulated in the performance of this Agreement, whether in draft or final form.

## **29. PREVAILING WAGES**

29.1 Pursuant to the applicable provisions of the Labor Code of the State of California, not less than the general prevailing rate of per diem wages including legal holidays and overtime Work for each craft or type of workman needed to execute the Work contemplated under the Agreement shall be paid to all workmen employed on the Work to be done according to the Agreement by the Consultant and any subcontractor. In accordance with the California Labor Code (Sections 1770 et seq.), the Director of Industrial Relations has ascertained the general prevailing rate of per diem wages in the locality in which the Work is to be performed for each craft, classification, or type of workman or mechanic needed to execute the Agreement. A copy of said determination is available by calling the prevailing wage hotline number (415) 703-4774, and requesting one from the Department of Industrial Relations. The Consultant is required to obtain the wage determinations from the Department of Industrial Relations and post at the job site the prevailing rate or per diem wages. It shall be the obligation of the Consultant or any subcontractor under him/her to comply with all State of California labor laws, rules and regulations and the parties agree that the City shall not be liable for any violation thereof.

29.2 Unless otherwise exempt by law, Consultant warrants that no contractor or subcontractor was listed on the bid proposal for the Services that it is not currently registered and qualified to perform public work. Consultant further warrants that it is currently registered and qualified to perform "public work" pursuant to California Labor Code section 1725.5 or any successor statute thereto and that no contractor or subcontractor will engage in the performance of the Services unless currently registered and qualified to perform public work.

## **30. STANDARD PROVISIONS**

30.1 Recitals. City and Consultant acknowledge that the above Recitals are true and correct and are hereby incorporated by reference into this Agreement.

30.2 Compliance with all Laws. Consultant shall, at its own cost and expense, comply with all statutes, ordinances, regulations and requirements of all governmental entities, including federal, state, county or municipal, whether now in force or hereinafter enacted. In addition, all Work prepared by Consultant shall conform to applicable City, county, state and federal laws, rules, regulations and permit requirements and be subject to approval of the Project Administrator and City.

30.3 Waiver. A waiver by either party of any breach, of any term, covenant or condition contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition contained herein, whether of the same or a different character.

30.4 Integrated Contract. This Agreement represents the full and complete understanding of every kind or nature whatsoever between the parties hereto, and all

preliminary negotiations and agreements of whatsoever kind or nature are merged herein. No verbal agreement or implied covenant shall be held to vary the provisions herein.

30.5 Conflicts or Inconsistencies. In the event there are any conflicts or inconsistencies between this Agreement and the Scope of Services or any other attachments attached hereto, the terms of this Agreement shall govern.

30.6 Interpretation. The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of the Agreement or any other rule of construction which might otherwise apply.

30.7 Amendments. This Agreement may be modified or amended only by a written document executed by both Consultant and City and approved as to form by the City Attorney.

30.8 Severability. If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

30.9 Controlling Law and Venue. The laws of the State of California shall govern this Agreement and all matters relating to it and any action brought relating to this Agreement shall be adjudicated in a court of competent jurisdiction in the County of Orange, State of California.

30.10 Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, sex, sexual orientation, age or any other impermissible basis under law.

30.11 No Attorneys' Fees. In the event of any dispute or legal action arising under this Agreement, the prevailing party shall not be entitled to attorneys' fees.

30.12 Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original and all of which together shall constitute one (1) and the same instrument.

**[SIGNATURES ON NEXT PAGE]**

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed on the dates written below.

**APPROVED AS TO FORM:  
CITY ATTORNEY'S OFFICE**

Date: 12/22/21

By:   
for Aaron C. Harp  
City Attorney

12.22.21  
JMS

**ATTEST:**

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

By: \_\_\_\_\_  
Leilani I. Brown  
City Clerk

**CITY OF NEWPORT BEACH,**  
a California municipal corporation

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

By: \_\_\_\_\_  
Kevin Muldoon  
Mayor

**CONSULTANT: MOFFATT & NICHOL, a  
California corporation**

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

By: \_\_\_\_\_  
Omar Jaradat  
Vice President

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

By: \_\_\_\_\_  
David W. Huchel  
Secretary

**[END OF SIGNATURES]**

Attachments:      Exhibit A – Scope of Services  
                         Exhibit B – Schedule of Billing Rates  
                         Exhibit C – Insurance Requirements

## **EXHIBIT A SCOPE OF SERVICES**

### **I. PROJECT UNDERSTANDING**

The City is planning improvements to the network of Newport Public Docks to enhance public access to the harbor. Consultant shall:

1. Conduct site investigations to perform inspection for the existing public dock facilities and additional field site data collection to validate preliminary design concepts.
2. Obtain regulatory permitting approvals.
3. Prepare plans, specifications, and estimates (PS&E) construction documents for demolition and improvements to the network of public docks to issue bid documents for construction.
4. Perform engineering support during construction to act as City's representative for reviewing construction activities.

The outline of tasks is presented in the following section to illustrate Consultant's overall project work plan. Descriptions have been provided for each task, with details and assumptions of Consultant's approach to completing a successful project. In addition to these tasks, Consultant shall provide general project management for the duration of the project and attend meetings as follows:

- Coordinate with City, subconsultants, and contractors.
- Consultant's team will attend one kick-off meeting, six in-person design progress meetings, and four tele-conference meetings with City staff.
- Prepare and maintain an overall project schedule showing major milestones and submittal deadlines
- General administration, management, and processing of monthly invoices.

### **II. TASK 1 – FIELD WORK**

The goal of this task is to provide on-site evaluation of existing conditions; engineering assessment of damage and deterioration; and recommendations of practical solutions to rehabilitate, restore or maintain the facility for continued use into the future. Inspection and assessment efforts will be conducted for the ten existing dock locations (Design Package #2). Efforts include a repair-level inspection program to identify deficiencies that require repair to accommodate new floating dock improvements at each respective public dock location. Inspection and rehabilitation services for the existing waterfront facilities includes the following tasks:

- Above and below water inspection.
- Structure and utility condition assessments.
- Development of alternatives for repairs.

- Recommendation of practical solutions; cost effective, constructable and phased to maintain operability and accommodate new building improvements.

In addition to the structural assessments, additional site data will be gathered to support the final design and permitting process. This will include identifying other relevant existing data useful in developing a basis for the proposed floating dock improvements. Additional investigations and studies shall include:

- Geotechnical soil investigations (Package #1 only)
- Site Topographic surveys
- Biological site surveys and assessments

#### Site Inspection and Condition Assessment

**Safety Planning.** Before the project's study phase launches, a customized Safety Plan will be prepared that includes the following elements:

- Activity Hazards Analyses (Both underwater and above water inspections)
- Dive Operations Plan (including site specific above and underwater inspection safety plan and emergency contact list)
- All aspects of the field investigations will be analyzed, and risks mitigated by Consultant's Safety Officers. This comprehensive safety plan will be provided to the City, prior to commencing field inspection, including Consultant's Health Safety & Environment Manual and Safe Diving Practice Manual.

**Inspection Personnel and Equipment Mobilization/ Demobilization.** For the Newport Public Dock project, Consultant will mobilize all personnel and gear from Southern California. All Surface Supplied Air (SSA) and SCUBA diving gear, boats, and inspection equipment are maintained in-house by Consultant. Crew mobilization and demobilization will occur from Consultant's dive locker located in Long Beach, CA and includes equipment preparation, travel expenses, and initial site setup.

**Above Water Inspection.** Above water inspection is expected to require two staff for three days. The above water inspection methods are based upon ASCE – Manual 130 "Waterfront Facilities Inspection and Assessment" standard practices. Consultant's inspection team will perform the routine above water inspection in such a manner as to be least disruptive to pedestrian and/or vehicle access. It is anticipated public access will be maintained during the inspection, with proper traffic control measures. Consultant will conduct a visual inspection on all above water exposed structural members and connections, as well as the decking. Inspection will also examine utilities and utility hangers including electrical (lighting, shore power), wet utilities (potable water, fire water), and sanitary sewage lines. Additional above water inspection will be done by boat and free swimmers as necessary.

**Underwater Inspection.** The Above Water Inspection program detailed above will allow Consultant's team to do initial recon on the need for additional Underwater Inspections. After the Above Water Inspection has been conducted, an allowance has been included

for as-needed Underwater Inspection for up-to four staff for one day. The underwater inspection methods are based upon ASCE Underwater inspection will be performed using engineer-divers. The underwater inspection will include a 100% Level I (visual) inspection effort and a Level II (clean marine growth and provide diameter measurements) inspection effort on a minimum of 15% of the piles. Level III Inspection (concrete core sampling) is not anticipated to be performed as part of this effort. However, these services can be performed for an additional fee if deemed necessary after Level I and Level II observations.

It is assumed that unforeseeable delays due to weather or environmental factors which may affect inspection safety may require additional effort not considered as part of this proposal. Consultant's inspection team will perform the underwater inspection in a manner that existing environmental and wave conditions will allow.

**Inspection and Condition Assessment Report Preparation.** Report preparation will be performed in a format acceptable to the City. The report will typically contain an Executive Summary, clear narrative, accurate figures, photos, repair recommendations, and supporting documentation. The report will include evaluation of the overall condition of the public docks as well as individual elements. A structural engineering assessment will summarize any degradation of the dock's capacity to support public use, or the newly proposed improvements as necessary. Finally, recommendations for repair will be given for the short-term (immediate to 1 years), mid-term (2 to 5 years), and long term (5-10 plus years) directives. The objective would be to develop, if possible, a maintenance plan to extend the service life of the existing facilities to accommodate dock expansions. Recommendations for repair will be made considering the following criteria:

- Expected remaining service life of the dock structure.
- Opportunities to minimize environmental impacts.
- Ease of execution.
- Maintaining facility access; if possible, repairs should be configured for execution with minimal or no dock closures.
- Ease of maintenance; maintenance personnel should be involved with review of the repair concepts with a goal of minimizing maintenance.

Full plans, specifications, and cost estimates (PS&E) for the rehabilitation and structural repairs will be included in Task 3 of this proposal.

#### Site Data Collection

**Soil Investigation and Geotechnical Evaluation Report.** Consultant's geotechnical sub-consultant (EMI) will perform investigations necessary to determine site specific soil properties and characterization in the vicinity of the 29th St. Dock (Design Package #1), including:

- Perform one day of Cone Penetration Testing (CPT) soundings
- For this proposal, it is assumed that no existing subsurface soil data is available from previous investigations in the project vicinity for either landside or waterside.

Therefore, additional field exploration (CPT) site investigations will be conducted as part of this proposal

- Interpret available field and laboratory results and site-specific CPT soundings to develop idealized soil profiles and strength parameters representing the weaker soil profile/cross section.
- Geology, fault mapping, and subsurface conditions. Recommendations will be developed for geotechnical and seismic hazards including; seismic site classification, acceleration response spectra (ARS Curve, Ground Motion, etc.), and liquefaction potential analyses.
- Recommendations will be made for input into structural design including pile tip elevations, axial capacity, and lateral capacity. Lateral soil springs (p-y springs) for the proposed piles will be developed for structural evaluations. Slope stability and kinematic loading on piles will also be performed.
- Recommendations will be included in a Geotechnical Report (draft and final as necessary). Report will also include construction considerations related to pile driving.

It is assumed no additional geotechnical investigations will be required for existing public docks included in Design Package #2, as it is contemplated all piles will be sufficient for reuse and no new piles will be required.

**Topographic Site Survey.** Consultant's survey subconsultant will perform investigations necessary to determine the horizontal location and vertical elevations of important existing site features. The site surveying services are anticipated to include:

- Allowance for up-to 3 staff in the field for a total of 4 days to perform as-needed topographic surveying services. Additionally, utility location services can be rendered as needed.
- As-needed survey of features necessary to develop base map of proposed and existing site locations and may include: elevations of existing gangway connections with landside, location of and top elevation of existing piles

### **Biological Resources Field Verification.**

Consultant's marine biology subconsultant will conduct eelgrass and invasive algae "verification level" surveys at each of the sites to determine presence/absence. These surveys will be conducted by diver-biologists using standard underwater transect methods. The purpose is to simply verify the presence or absence of eelgrass and invasive algae, not map their distribution. It is estimated that the eelgrass/invasive algae survey verification surveys at the eleven locations will take one day to complete. Should invasive algae be present, the National Marine Fisheries Service will be notified, at which point the Caulerpa Survey Protocol (National Marine Fisheries Service, 2008) will be implemented to further map and eradicate any invasive algae. The results of the verification surveys will be included in the Marine Biological Resources Assessment report (part of Task 2).



## DELIVERABLES

- Site specific above-water and underwater inspection safety plan
- Inspection and Condition Assessment Report
- Site-specific geotechnical soils report (Design Package #1 only)
- Topographic Survey Data (As-Needed)
- Inputs to marine biological assessment report (Task 2)

## EXCLUSIONS

- The proposal excludes inspection of landside and other support facilities including, but not limited to: Buildings, Landside Pier and/or Concrete Abutments and/or, Bulkhead Walls, Shoreline Protection & Rock Revetments, Breakwater/Wave Protection, and Upland Utilities.
- Level III Inspection efforts and Destructive Testing (timber core sampling) are not anticipated to be performed as part of this effort but can be performed for an additional fee if deemed necessary after Level I and Level II observations.
- Inspection scope of services assumes structural inspection includes only floating public dock portion of (waterside of gangway connection). Additional utility inspection will be performed along length of entrance piers, up-to the landside connection points.

## **III. TASK 2 – REGULATORY PERMITTING**

The Consultant's Permitting Plan features the following:

- Address all ten Design Package #2 docks in one set of applications to view potential impacts from a net standpoint, i.e., new overwater coverage in one location can be offset by removal of overwater coverage in another location.
- Provide a table which shows the new, removed, and replaced square footage at each public pier location, along with detailed rationale for why additional dock space is needed and/or why existing docks need to be replaced.
- Consider use of grating or translucent panels for the docks design to mitigate for overwater shading for both the new additions and replacement areas.
- Work with USACE staff to pursue applicability of Nationwide Permit (NWP) 3a for "repair, rehabilitation, or replacement of previously authorized, currently serviceable structures or fills" to this project. The State Water Board has a pending General Order (Order No. WQ 2021-0048-DWQ) which conditionally certifies NWP 3a. Per the State Water Board website, this Order is supposed to go into effect in late 2021/early 2022. The approved use of NWP-3a would substantially simplify the Regional Water Quality Control Board 401 application process. Note that for the purposes of the proposed permitting fee, it is assumed a full 401 application will be required.
- Prepare and submit a marine biological resources assessment as part of the permit application packages. The subconsultant will prepare this document, in consultation with Consultant's staff.

- Conduct telecons with regulatory agency staff prior to permit application submittals to confirm permitting approach and identify any special information needs or agency issues.
- Develop a coastal hazards analysis and submit with the permit applications; this will demonstrate to the agencies that the City understands and is addressing future potential sea level rise.
- Work closely with Consultant's engineering, City, and regulatory staff throughout the process to effectively manage the permits' critical path; a key factor for schedule expediency is quick responses to agency questions and information requests, which requires this close coordination.
- Negotiate permit conditions with regulatory agencies as early as possible and prior to final permit issuance so as to avoid unwieldy or onerous conditions.

As per the RFP, additional tasks include:

- Obtaining local agency approval and CEQA determination (Categorical Exemption) from City for submittal with the Coastal Development Permit (CDP) application.
- Submitting permit applications to California Coastal Commission (CCC), Regional Water Quality Control Board (RWQCB) and U.S. Army Corps of Engineers (USACE). (All application fees to be paid directly by the City). The RFP lists a 60% level of design for the permit application submittals, but Consultant suggests submitting earlier based on a conceptual (~30%) design as we have done on other projects.
- Responding to two CCC requests for information. We will assume attendance at CCC hearing is not required.
- Responding to two requests for information each from the RWQCB and USACE.
- Facilitating all post-permit issuance conditions, and all post-construction permit reporting. Our fee is based on an assumed set of permit conditions from other projects, i.e. the specific scope for this subtask will not be fully understood until final permits are issued.
- Not listed in the RFP, but we also suggest three other permitting tasks as mentioned earlier: a) development of a Coastal Hazards Analysis (brief memo report) in compliance with City Planning and CCC requirements, for submittal in the CDP application package, b) negotiation/coordination with agency staff on permit conditions and c) follow-through with CCC staff on CDP prior-to-issuance conditions. These are included in our fee.

### Marine Habitat

In support of the permit applications, the subconsultant will prepare a marine biological assessment report that documents existing conditions, potential project effects on marine resources, and mitigation measures to avoid, reduce, or compensate for identified impact at each of the ten Design Package #2 public dock locations. The subconsultant will focus this effort on sensitive non-listed species (i.e., eelgrass), listed endangered, rare, or threatened species (i.e., California least terns), Essential Fish Habitat (i.e., eelgrass), and

marine mammals. The report will also include the results of the Task 1 Caulerpa verification surveys which will be also important to the regulatory agencies.

**Preliminary Conceptual Design.** Consultant will develop conceptual design alternatives, and assist the City in selecting a preferred design alternative. Designs shall be based on existing site constraints, public access requirements, and with the goal of issuing to regulatory agencies as part of permit requirements.

- Prepare up to two (2) conceptual layout alternatives for each public dock facility reconstruction. Provide typical plan view schematics of structure improvements.
- Prepare schematic potable water, fire water, and sewer piping plans (as needed).
- Evaluate the gangway access to provide pedestrian access from landside facilities.
- Evaluate options to consider potential grade increase to account for effects due to sea level rise (SLR).

#### EXCLUSIONS

- All permit application fees are excluded and assumed to be paid by the City directly.
- Pre-and-post-construction eelgrass and Caulerpa surveys
- Marine mammal monitoring during construction (assumed to not be required by regulatory agencies)

#### DELIVERABLES

- Permit Application Packages
- Preliminary Conceptual Design Package
- Marine Biological Resources Assessment Report
- Post-permit issuance submittals required by the regulatory agencies
- Post-construction reporting per assumed likely permit conditions

#### **IV. TASK 3 – PREPARE PLANS, SPECIFICATIONS, AND COST ESTIMATES (PS&E)**

As the first stage in the design process, Consultant's team will work with the City to refine alternatives for the public dock improvements to best increase usable berthing lengths and incorporating findings from field work from Task 1. Once a preferred replacement concept is decided upon for each location, a final design will be performed and plans, specifications, estimates (PS&E) and necessary construction documents will be prepared for necessary improvements. Construction documents will be prepared and bid documents assembled in the preferred format.

Prepare Construction Documents (60%, 90%, and 100%). The design drawing package will include the following plan sheets. A breakdown has been provided for each Design Package #1 and #2:

##### **Design Package #1**

1. Cover Sheet (1-sheet)
2. General Notes and Project Requirements (1-sheet)

3. Demolition Notes, Plan, and Details (1-sheet)
4. Floating Dock Structural Improvement Plan(s), Sections, and Details (1-sheet)
5. Gangway Platform Improvement Plan(s), Sections, and Details (1-sheet)
6. Access Gangway Improvement Plan(s), Sections, and Details (1-sheet)
7. (If needed) Electrical System Plans, Feeder Schedules, and Details (1-sheet)
8. (If needed) Potable Water Distribution Plans, Sections, and Details (1-sheet)
9. (If needed) Fire Water Protection & Distribution Plans, Sections, and Details (1-sheet)

## **Design Package #2**

1. Cover Sheet (1-sheet)
  2. General Notes and Project Requirements (10-sheets)
  3. Typical Demolition Notes, Plan, and Details (2-sheets)
  4. Typical Floating Dock Structural Repair Plan(s), Sections, and Details (3-sheets)
  5. Typical Floating Dock Structural Improvement Plan(s), Sections, and Details (3-sheets)
  6. (If needed) Utility Improvement Line Plans, Sections, and Details (2-sheets)
- Plans will include the control points for contractor layout, demolition plans, structural plan sheets of the proposed improvements, and general details. Plan sheets and typical details will also be required for any utility upgrades. Additional engineering information developed throughout the design process from 60%, 90%, and 100% plans will be included in the complete set. The plan set will also reflect all permit conditions required by the City and other agencies.
  - All drawings shall be transmitted electronically to the City in AutoCAD 2015 or later in ".dwg" file format. All written documents shall be transmitted to the City, in the City's latest adopted version of Microsoft Word and Excel, and original signed and stamped plans and specifications upon completion of the project.

**Prepare Engineering Design Calculations.** The calculation package will accompany the construction documents as part of the building permit package and will include the following:

- Prepare Basis of Design criteria. Reference relevant codes and provide a synthesis of engineering criteria for the site. Submit for City review at Draft and Final milestones.
- Prepare structural calculations for improvements to accommodate the proposed dock expansions. Special considerations will include adhering to current building codes, coordination with City to define load desired layouts for functional usage, and defining type of dock repairs, and coordinating soil stability and loading on piles with geotechnical engineer.
- It is assumed no structural calculations will be required for existing public docks support piles included in Design Package #2, as it is contemplated all piles will be sufficient for reuse and no new piles will be required.

- (If needed) Provide engineering design for utility improvements and tie-ins to landside connection points including electrical systems, potable water, fire water, and sewer. It is assumed for Design Package #1 that existing utilities at 29th Street Dock may be reused for future new dock improvements, and no expansion of utilities is anticipated. In addition, for Design Package # 2 it is assumed only docks at Washington St. and Fernando St. may require utility improvements due to existing pumpout stations.

**Supplementary Technical Specifications (60%, 90%, 100%).** The design specification package will include:

- Specifications prepared to describe and quantify construction methods and materials to the contractor.
- It is assumed that the City will provide all front-end boiler-plate General Provisions and Standard Agreements as a Word file for revision by Consultant. Addition Special Provisions, Technical Specifications, and Bid Forms will be prepared in a standard format in accordance with City guidelines.

**Estimate of Probable Construction Costs and Schedule (60%, 90%, and 100%).** The probable cost estimates and schedule will include:

- As the cost estimates and schedule progress from 60%, 90%, and 100%, design, they will include modifications needed from review comments. The contingency included in the costs and schedule will also be reduced from the preliminary estimates due to the development of more design information leaving less unforeseen occurrences that could affect the project.

**Local City Building Permitting.** Submit construction documents to Community Development Department for plan check approval / permit.

- Provide coordination and prepare applications for permit approval from City Building and Safety. In general, the local building permit process is anticipated to entail:
  - Submit construction documents to local building department having jurisdiction for plan check approval / permit and address comments as needed for permit approval. Assumes two (2) rounds of comments.
  - Prepare responses to comments and updated construction documents to comply with local jurisdictional requests as a part of the plan check.
  - Attend one (1) pre-application permit coordination meeting with local jurisdiction's staff.
  - Attend one (1) teleconference meeting with local jurisdiction's staff to discuss designs.

## EXCLUSIONS

It is assumed the preparation of construction documents will exclude the following:

- The proposal excludes landside support facilities including, but not limited to: buildings, landside pier and/ or concrete abutments, bulkhead walls, shoreline protection & rock revetments, breakwater/wave protection, and upland utilities.
- Scope of services assumes structural design includes only floating public dock portion of (waterside of gangway connection). Additional utility designs will be performed up-to the landside connection points for utilities impacted by proposed structural improvements.
- Improvements to allow ADA accessibility to the public dock facilities is not included in the proposal. (Landside access, 80ft gangways, etc.)
- It is assumed there will be adequate METOCEAN data available for this project from publicly available sources. Therefore, numerical modeling for wave heights and current velocities is excluded from this proposal. If site- specific numerical modeling is required, a separate scope and budget will be developed for this task.
- Proposed wet utilities distribution lines including potable water, sewage, fire water lines are assumed to tie-in to existing landside utilities. Scope of work does not envision expansion of existing main service feeds and there is no need for landside improvements to bring the system up to building code compliance (California Building Code, 2019 Edition). New installation includes new fire department dry standpipe systems located on the docks, new fire extinguishers with cabinets on the docks, and stub-up tie-ins for existing mechanical equipment.
- Electrical distribution lines are assumed to originate from the existing electrical vaults on the landside. Scope of work does not envision expansion of the existing main service feeds located within, nor upstream, of these vaults and are assumed to not require code compliance (California Building Code, 2019 Edition) upgrade for new systems. New installation includes lighting, maintenance receptacles, and stub-up tie-ins for existing electrical equipment.

## DELIVERABLES

- Construction Document Packages at 60%, 90%, and 100% milestones.
- Draft and Final Basis of Design and Calculations
- City building permit applications.

## **V. TASK 4 – CONSTRUCTION ENGINEERING ASSISTANCE**

Provide engineering support to the City during project bidding and construction/installation. Consultant will also provide Record Drawings based on the Contractor's mark-up of the final construction documents, including:

**Engineering Support During Bidding.** The design specification package will include:

- Attend one (1) pre-bid meeting with the City and bidders.
- Respond to potential bidder requests for clarification on drawings or specifications. Assumes eight (8) hours of support for answering Contractor requests for information (RFIs).

- Prepare final Conformed Contract Documents that reflect changes made during the bidding process.

#### DELIVERABLES

- Final Conformed Contract Documents.

**Engineering Support During Construction.** The design specification package will include:

- Attend one (1) construction kick-off meeting with the City and the Contractor.
- Respond to RFIs. Assumes response to up to fifteen (15) RFIs based on the anticipated construction scope, approximately two (2) hours per RFI.
- Review Contractor submittals for materials (Submittals). Assumes response to up to fifteen (15) Submittals based on the anticipated construction scope, approximately four (4) hours per Submittal.
- Perform site visit to ensure design intent is carried out in the field. Four (4) in-person site visit with two (2) staff attending is assumed based on anticipated construction scope.
- Prepare Record Drawings of the installation based on the bid documents and mark-ups from the Contractor As-Built submittals. Approximately forty (40) hours total.

#### DELIVERABLES

- Written responses to RFIs and Submittals.
- Final Record Drawings Package.

#### ASSUMPTIONS

- Site inspection by certified inspectors, underwater quality assurance inspections, and laboratory testing is outside the scope of work. It is assumed these will be provided either by City or Construction Team.
- Proposal assumes City will act as Construction Administrator / Construction Manager to track and manage daily activities, RFIs, and Submittals. M&N has excluded these services from this proposal and assumes City staff will distribute RFIs, Submittals, and Shop Drawings to Consultant for review.
- Monitoring, biological survey reports, and other regulatory permit agency required environmental mitigation measures during construction are excluded from this proposal (i.e., pre and post-construction eelgrass surveys).
- Proposal assumes construction support will occur under a single construction contract for Design Package #1 and #2, and coordination will occur only with one general contractor point-of-contact.

**EXHIBIT B**  
**SCHEDULE OF BILLING RATES**



Project Tasks <sup>1,2</sup>	Moffatt & Nichol														Labor Subtotals		ODC <sup>4</sup>		EMI <sup>6</sup>		CRM <sup>7</sup>		Coast <sup>8</sup>		Task Totals
	Principal Eng./Sci	Supervisor Eng./Sci	Senior Eng./Sci	Eng./Sci III	Eng./Sci II	Eng./Sci I	Staff Eng.	Senior Tech.	CADD Designer	CADD II	CADD I	Word Processor	General Clerical	Labor					ODC	Labor	ODC	Labor	ODC		
	P-9, P-8	P-7	P-6	P-5	P-4	P-3	P-1, P-2	T-5	T-4	T-3	T-2, T-1	A-4, A-3	A-1, A-2												
	\$292	\$278	\$246	\$230	\$175	\$194	\$150	\$210	\$198	\$170	\$126	\$126	\$99												
Task 1 - Field Work																									
1A Site Inspection and Condition Assessment	2	34	40		94			10		20				\$41,826	\$2,982							\$44,808			
1B Site Data Collection		6	8		8	8		2		2				\$7,348		\$15,000		\$5,700		\$13,506		\$41,554			
Task 2 - Regulatory Permitting <sup>3</sup>																									
2A Preparation of Conceptual Design Documents		2	12			12			20					\$9,796								\$9,796			
2B Pre-application / CEQA coordination, supporting studies			42		24	10								\$16,472			\$9,500					\$25,972			
2C Preparation and submittal of permit applications			10		50									\$11,210	\$250							\$11,460			
2D Response to agency requests			50		70									\$24,550				\$1,600				\$26,150			
2E Facilitation of permit conditions			30		28									\$12,280								\$12,280			
Task 3 - Prepare Plans, Specifications, and Cost Estimates (PS&E) <sup>5</sup>																									
3A Final Engineering Design Calculations	4	8	8	12		48	80	40						\$37,832								\$37,832			
3B Prepare PS&E Packages (60%, 90%, and 100%)	2	8	51	2		94			100			8		\$54,858	\$250	\$3,000						\$58,108			
3C Building Department Permitting			8			16								\$5,072								\$5,072			
Task 4 - Construction Engineering Assistance																									
4A Support During Bidding			5			10			8					\$4,754								\$4,754			
4B Submittal and RFI Reviews	12		12			60								\$18,096								\$18,096			
4C Meetings and Site Visits			12			12								\$5,280								\$5,280			
4D Prepare Record Drawings and Construction Close-Out			8			8			40					\$11,440								\$11,440			
														M&N Total (Labor and ODC) \$264,296		EMI Total \$18,000		CRM Total \$16,800		Coast Total \$13,506					
																M&N Markup on Subconsultant Fees %		10%		\$4,831					
																Subconsultant % of Total Cost		15%							
Total Project Estimate \$317,433																									
Notes:																									
1. Tasks to be Billed on a Hourly Rate and Reimbursable Expenses Not-to Exceed Basis																									
2. Scope/fee assumes M&N attendance at one (1) kick-off meeting, six (6) in-person progress meetings, and four (4) tele-conference meetings with City staff																									
3. Scope/fee assumes all permit/lease application fees shall be paid directly by the City.																									
4. Other Direct Costs (ODC's) includes inspection and dive equipment, repro, postage, reports, meeting materials, and mileage. Inspection & Dive Equipment, fee can be negotiated if desired by City to be removed from scope or not needed following initial inspections.																									
5. Design fees assume some utility improvements are included in scope of work (potable water, sewage, electrical shore power, and/or lighting). Design fees can be negotiated if utility service improvements are not anticipated to be required.																									
6. EMI to perform geotechnical investigations and assumes soil recommendations only for Design Package #1. Assume Design Package #2 does not require recommendations and all existing piles will be reused.																									
7. Coast Surveying to perform as-needed survey services with up-to three (3) staff for a total of four (4) days. Survey fees can be negotiated if desired by City and whether survey services are needed at all of public dock locations.																									
8. CRM to perform initial verification survey and assessment report in support of permit apps. Additional monitoring and surveys required by regulatory agencies based on are not included in this Task (e.g. pre-and-post construction surveys).																									

## EXHIBIT C

### INSURANCE REQUIREMENTS – PROFESSIONAL SERVICES

1. Provision of Insurance. Without limiting Consultant's indemnification of City, and prior to commencement of Work, Consultant shall obtain, provide and maintain at its own expense during the term of this Agreement, policies of insurance of the type and amounts described below and in a form satisfactory to City. Consultant agrees to provide insurance in accordance with requirements set forth here. If Consultant uses existing coverage to comply and that coverage does not meet these requirements, Consultant agrees to amend, supplement or endorse the existing coverage.
2. Acceptable Insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City's Risk Manager.
3. Coverage Requirements.
  - A. Workers' Compensation Insurance. Consultant shall maintain Workers' Compensation Insurance, statutory limits, and Employer's Liability Insurance with limits of at least one million dollars (\$1,000,000) each accident for bodily injury by accident and each employee for bodily injury by disease in accordance with the laws of the State of California, Section 3700 of the Labor Code.

Consultant shall submit to City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of City, its City Council, boards and commissions, officers, agents, volunteers and employees.
  - B. General Liability Insurance. Consultant shall maintain commercial general liability insurance, and if necessary umbrella liability insurance, with coverage at least as broad as provided by Insurance Services Office form CG 00 01, in an amount not less than one million dollars (\$1,000,000) per occurrence, two million dollars (\$2,000,000) general aggregate. The policy shall cover liability arising from premises, operations, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).
  - C. Automobile Liability Insurance. Consultant shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of Consultant arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than one million dollars (\$1,000,000) combined single limit each accident.

- D. Professional Liability (Errors & Omissions) Insurance. Consultant shall maintain professional liability insurance that covers the Services to be performed in connection with this Agreement, in the minimum amount of one million dollars (\$1,000,000) per claim and two million dollars (\$2,000,000) in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the Effective Date of this Agreement and Consultant agrees to maintain continuous coverage through a period no less than three years after completion of the Services required by this Agreement.
4. Other Insurance Requirements. The policies are to contain, or be endorsed to contain, the following provisions:
- A. Waiver of Subrogation. All insurance coverage maintained or procured pursuant to this Agreement shall be endorsed to waive subrogation against City, its City Council, boards and commissions, officers, agents, volunteers and employees or shall specifically allow Consultant or others providing insurance evidence in compliance with these requirements to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against City, and shall require similar written express waivers from each of its subconsultants.
- B. Additional Insured Status. All liability policies including general liability, excess liability, pollution liability, and automobile liability, if required, but not including professional liability, shall provide or be endorsed to provide that City, its City Council, boards and commissions, officers, agents, volunteers and employees shall be included as insureds under such policies.
- C. Primary and Non Contributory. All liability coverage shall apply on a primary basis and shall not require contribution from any insurance or self-insurance maintained by City.
- D. Notice of Cancellation. All policies shall provide City with thirty (30) calendar days' notice of cancellation (except for nonpayment for which ten (10) calendar days' notice is required) or nonrenewal of coverage for each required coverage.
5. Additional Agreements Between the Parties. The parties hereby agree to the following:
- A. Evidence of Insurance. Consultant shall provide certificates of insurance to City as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation and other endorsements as specified herein for each coverage. Insurance certificates and endorsement must be approved by City's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with City at all times during the term of this Agreement. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. At least

fifteen (15) days prior to the expiration of any such policy, evidence of insurance showing that such insurance coverage has been renewed or extended shall be filed with the City. If such coverage is cancelled or reduced, Consultant shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the City evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

- B. City's Right to Revise Requirements. City reserves the right at any time during the term of the Agreement to change the amounts and types of insurance required by giving Consultant sixty (60) calendar days' advance written notice of such change. If such change results in substantial additional cost to Consultant, City and Consultant may renegotiate Consultant's compensation.
- C. Right to Review Subcontracts. Consultant agrees that upon request, all agreements with subcontractors or others with whom Consultant enters into contracts with on behalf of City will be submitted to City for review. Failure of City to request copies of such agreements will not impose any liability on City, or its employees. Consultant shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Consultant shall ensure that City is an additional insured on insurance required from subcontractors. For CGL coverage, subcontractors shall provide coverage with a format at least as broad as CG 20 38 04 13.
- D. Enforcement of Agreement Provisions. Consultant acknowledges and agrees that any actual or alleged failure on the part of City to inform Consultant of non-compliance with any requirement imposes no additional obligations on City nor does it waive any rights hereunder.
- E. Requirements not Limiting. Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If the Consultant maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for higher limits maintained by the Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.
- F. Self-insured Retentions. Any self-insured retentions must be declared to and approved by City. City reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-

insurance will not be considered to comply with these requirements unless approved by City.

- G. City Remedies for Non-Compliance. If Consultant or any subconsultant fails to provide and maintain insurance as required herein, then City shall have the right but not the obligation, to purchase such insurance, to terminate this Agreement, or to suspend Consultant's right to proceed until proper evidence of insurance is provided. Any amounts paid by City shall, at City's sole option, be deducted from amounts payable to Consultant or reimbursed by Consultant upon demand.
- H. Timely Notice of Claims. Consultant shall give City prompt and timely notice of claims made or suits instituted that arise out of or result from Consultant's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies. City assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve City.
- I. Consultant's Insurance. Consultant shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the Work.