

**AGREEMENT**  
**PROFESSIONAL SERVICES AGREEMENT**  
**COWI CONTRACT**

THIS AGREEMENT is made as of this 13th day of September 2016, by and between the **San Mateo County Harbor District** ("District") and COWI. ("Contractor").

WHEREAS, the District desires to obtain professional engineering and related consulting services in connection with the completion of the approved Five Year Capital Improvement Plan; and

WHEREAS, the District has issued a Request for Qualifications dated June 6, 2016 , 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 July 1, 2016, a copy of which is attached and incorporated as Exhibit B; and

WHEREAS, the District's Board of Harbor Commissioners, at its meeting on August 3, 2016, authorized the General Manager to enter into this Agreement.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

**1. SCOPE OF SERVICES**

Contractor will provide District services consistent with Exhibits A and B, in accordance with the terms and conditions of this Agreement and in accordance with specific work directives issued under this Agreement. Prior to the issuance of any Work Directive, the District may solicit a proposal from Contractor for a specified scope of work. Contractor will provide a proposal and, if agreed to by the District, the District will issue a Work Directive which, along with the scope of work, will be incorporated into this Agreement.

**2. SCHEDULE AND TERM**

The term of this agreement will be for a four-year term commencing upon the District's issuance of a written notice to proceed. Work Directives may be issued under this Agreement any time during the four-year term. The Contractor's performance of services shall commence for each Work Directive upon receipt of the Notice to Proceed issued by the District for the respective Work Directive and the Contractor shall complete the services within the period specified in the Work Directive. The Agreement will remain in full force and effect until all outstanding services under all Work Directives are completed or terminated. The District may exercise its option to extend this

Agreement for five additional one-year periods by giving the Contractor thirty (30) days written notice prior to the termination of the original term or option period. Upon such notice, the Agreement shall continue under the same terms and conditions.

### 3. COMPENSATION

There is no guaranteed compensation under this Agreement. Compensation for each Work Directive will be as set forth in each Work Directive and will be either on a firm price basis or a time and materials basis with a not-to-exceed maximum. The hourly rate by personnel category that applies to all Work Directives shall be as set forth in Exhibit B. Issuance of any Work Directive in an amount greater than \$25,000 will require approval by the District's Board of Harbor Commissioners.

### 4. MANNER OF PAYMENT

Unless specified otherwise in a Work Directive, the 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. Hourly rates per personnel category shall be in accordance with the Consultant's Cost Proposal in Exhibit B. Invoices will also include total expenditures to date on each project and the remaining balance on the budgeted or not-to-exceed amount. Invoices will be prepared in a format acceptable to District.

District will pay for work satisfactorily performed within thirty (30) days after receipt of an invoice meeting the requirements of this section. Should District dispute the accuracy of any invoice, or deem Contractor's work unsatisfactory, District will notify Contractor within 30 days of receipt of such an invoice. District will only pay the undisputed portion of any invoice. Resolution of a dispute over an invoice will be pursuant to Section 20.

### 5. CHANGES

District may from time to time make changes to the scope of work by written notice to Contractor. If such changes increase, or decrease, the Contractor's cost of performing the work, or the time required for its completion, an equitable adjustment as mutually agreed will be made to the limit on compensation contained in Section 3, or the Schedule referred to in Section 2, 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 will notify the District immediately of such condition or contingency. The Contractor will explain the circumstances giving rise to the unforeseen condition or contingency and will suggest the proposed adjustment in schedule or compensation. Contractor will notify the District prior to the time that the Contractor performs work or services related to any proposed adjustment. Any agreed-upon changes will be memorialized in a written amendment to the Agreement.

6. **CONTRACTOR'S STATUS**

Contractor is an independent contractor and not a partner or agent of, nor a joint venturer with, District. Neither Contractor nor any of Contractor's officers or employees are employees of District for any purpose. Contractor will determine the means and methods by which the work is performed; District may, however, monitor Contractor's performance.

7. **ASSIGNMENT**

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

8. **SUBCONTRACTORS**

Contractor may not subcontract any work to be performed under this Agreement without the prior written consent of District, except for minor administrative services. Contractor will be solely responsible for reimbursing any subcontractors and District will have no obligations to them.

9. **KEY PERSONNEL**

A material consideration in District's selection of Contractor is the experience and qualifications of the following person(s).

- Jack Gerwick PE;
- Ted Trenkwalder, PE, SE

The Contractor agrees that these personnel will devote their personal attention to the work, as further described in Exhibit B. Contractor may substitute Key Personnel only with written approval of the District, which approval will not be unreasonably withheld. A request for substitution must demonstrate the replacement person's similar qualifications and experience for a position.

10. **STANDARD OF CARE**

Contractor will exercise the same degree of care, skill and diligence in the performance of the work as would be exercised by a reasonable professional performing similar work in the San Francisco Bay Area under similar circumstances. Contractor will re-perform, at no cost to District, services which fail to meet this standard. In the performance of its work, the Contractor represents that it (1) carries all applicable licenses, certificates, and registrations in current and good standing that may be required to perform the work; and (2) will retain all such licenses, certificates, and registrations in active status throughout the duration of this engagement.

11. **OWNERSHIP OF WORK**

All reports, plans and any other materials prepared, or in the process of being prepared, by Contractor under this Agreement are the property of District. District will be entitled to access to and copies of these materials during the progress of the work.

Upon completion of the work, or earlier termination of this Agreement, all such materials in the possession of Contractor or any subcontractor will be delivered to District. Contractor may retain a copy of all materials produced under this Agreement, subject to the provisions of Section 12. Any copyrightable work created by Contractor under this Agreement will be deemed a "work made for hire" for purposes of copyright law. Contractor agrees to execute any additional documents which may be necessary to evidence the assignment of all rights of copyright to District.

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.

## 12. CONFIDENTIALITY

Contractor will hold in confidence any District materials to which the Contractor has access, or materials prepared by the Contractor during the course of this Agreement ("Confidential Information"). Contractor will 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 perform services under this Agreement. Contractor, its employees, subcontractors, and agents, may not release any Confidential Information, and any reports or other materials prepared by it under this Agreement, whether deemed confidential or not, without the prior written approval of District.

## 13. INDEMNIFICATION

Contractor will indemnify and hold harmless the District, its Commissioners, officers, employees and agents from and against any and all suits, claims or actions arising out of (i) any injury to persons or damage to property that may occur, or that may be alleged to have occurred, arising from the performance of this Agreement by the Contractor and caused by the willful misconduct, negligent act or omission by Contractor, its employees, subcontractors or agents, or (ii) 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; provided that the District gives Contractor: (a) prompt notice of any such claim; and (b) at Contractor's expense, all reasonable information, assistance, and authority in connection with the foregoing.

The Contractor further agrees to defend any and all such suits, claims or actions, and pay all reasonable charges of attorneys and all other costs and expenses of defenses as they are incurred. If any judgment is rendered against the District or any of the other individuals enumerated above in any such action, the Contractor will, at its expense, satisfy and discharge the same. This indemnification will survive the expiration or earlier termination of this Agreement.

## 14. INSURANCE

### A. Types of Insurance (Exhibit B)

(1) Workers' Compensation Insurance. If Contractor employs any person to perform work under this Agreement, Contractor will procure and maintain:

(a) Workers' Compensation Insurance meeting the requirements of the State of California, and

(b) Employer's Liability Insurance with a policy limit of at least One Million Dollars (\$1,000,000) per accident or illness.

The policy will contain a waiver of subrogation in favor of District and its Commissioners, officers, employees and agents.

(2) Commercial General Liability Insurance. Contractor will procure and maintain Commercial General Liability insurance providing bodily injury and property damage coverage with a combined single limit of at least One Million Dollars (\$1,000,000) per occurrence or claim. This insurance will 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.

(3) Comprehensive Automobile Liability Insurance. If Contractor uses a car in connection with providing services under this Agreement, Contractor will procure and maintain Automobile Liability insurance on vehicles used in connection with its business in an amount not less than One Million Dollars (\$1,000,000) combined single limit per occurrence or claim.

(4) Professional Liability Insurance. Contractor shall maintain Professional Liability insurance covering Contractor's performance of this Agreement in an amount not less than Two Million Dollars (\$2,000,000) per occurrence or claim.

### B. Other Requirements

(1) Insurers. All insurance policies must be issued by a California admitted carrier.

#### (2) Endorsements

(a) The company (ies) issuing all such policies will agree to give District thirty (30) days advance written notice of non-renewal or cancellation.

(b) The Commercial General Liability and Automobile Liability policies will include District, its directors, officer and employees as additional insureds.

(c) The Commercial General Liability and Automobile Liability policies will be primary to and not contributing with any insurance maintained by District.

(3) Evidence of Insurance. Before commencing work, Contractor will provide District with a certificate or certificates of insurance evidencing the existence of the required insurance policies. District may request a duplicate original of such policies and endorsements.

(4) Notice to District. If any claim is made by any third person against the Contractor on account of any incident connected to the Agreement, the Contractor will promptly report the fact in writing to the District, giving full details of the claim.

(5) Subcontractors. Any person, firm, or corporation that the Contractor authorizes to work pursuant to this Agreement, including any subcontractor, is deemed to be the Contractor's agent and is subject to all applicable terms of this Agreement. Prior to the Contractor's start of the work, 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 above.

## 15. RECORDS

District and its authorized representatives, including the California State Auditor, may inspect and make copies of Contractor's books, records and data relating to the Agreement at any reasonable time and may audit and verify invoices submitted by Contractor. Contractor will provide such assistance as may be reasonably required in the course of such inspection and audit.

Contractor will maintain its records relating to this Agreement, and make them available for inspection, for a period of three (3) years after District makes final its payment to Contractor.

## 16. NONDISCRIMINATION

In connection with the performance of this Agreement, Contractor will not discriminate against any employee or applicant for employment because of sex, sexual orientation, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, gender identity, and denial of family care leave. Contractor and subcontractors will insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors will comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Contractor will include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

**17. COMPLIANCE WITH LAW**

In connection with the performance of this Agreement, Contractor will comply with all applicable federal and state laws, including regulations of federal and state agencies, and with applicable local ordinances.

**18. MODIFICATION**

This Agreement may be modified or amended only by a written document signed by both parties.

**19. TERMINATION**

District may terminate this Agreement at any time and for any reason by written notice. Upon receiving notice of termination, Contractor will promptly deliver to District all materials prepared or obtained in performance of this Agreement and will 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 Contractor, District will pay Contractor, in accordance with the provisions of Sections 3 and 4, all sums actually due and owing from District for all services performed and all expenses incurred up to the day written notice of termination is given, plus any costs reasonably and necessarily incurred by Contractor to effect such termination. If the Agreement is terminated for breach or default, District will pay Contractor for only those services performed and expenses incurred in full accordance with the terms of this Agreement, up to the effective date of termination. Whether terminated for breach or for convenience, the District will 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.

**20. DISPUTE RESOLUTION**

In the event of any dispute, the parties will promptly meet and confer, first at a staff level and then elevated to a meeting of executives, in a good faith attempt to resolve the dispute. If a dispute cannot be resolved by the parties independently, they may agree to submit such dispute to non-binding mediation by a mutually agreed-upon neutral third party with offices in the San Francisco Bay Area. The cost of mediation will be shared equally. Unless otherwise directed by District, Contractor will continue performance under this Agreement while matters in dispute are being resolved. This section does not limit District's right to terminate the Agreement.

**21. NOTICE**

All notices will be given in writing by personal delivery, or first class mail, to the parties at the following addresses:

If to District:                   San Mateo County Harbor District  
  PO Box 1449  
  El Granada, CA 94018  
  Attention: General Manager

If to Contractor: Jack Gerwick  
COWI North America  
1300 Clay Street 7th Floor  
Oakland, CA 94612

Notice given by mail will be deemed received two days after it is deposited in the United States mail postage prepaid, addressed as provided above.

Day-to-day communications will be between John Moren, Director of Operations for District at (650) 741-9163, and Larry Kraemer at (805) 503 4554.

**22. WAIVER**

A waiver of any requirement of this Agreement must be in writing by an authorized representative of the party waiving the requirement. The waiver by either party of a breach of any requirement of this Agreement will not be deemed a waiver of any such breach in the future or of a breach of any other requirement.

**23. ENTIRE AGREEMENT**

This Agreement including any exhibits or attachments constitutes the complete agreement between the parties and supersedes any prior agreements, promises, and understandings whether written or oral. This Agreement may be modified or amended only by written instrument signed by both the Contractor and the District. In the event of a conflict between the terms and conditions of this Agreement and any Exhibit, the terms of this Agreement will control.

**24. SEVERABILITY**

If any provision of this Agreement or any portion thereof is held to be invalid or unenforceable for any reason, that provision will 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 such provision will be severable and will not affect the validity or enforceability of any other provision.

**25. 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.



26. APPLICABLE LAW

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

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: Winston Stewart Date: 9-9-2016  
Title: Senior Vice President, COWI

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By: [Signature] Date: SEPT 12, 2016  
Title: VICE PRESIDENT, COWI

By: Robert A. McGrath Date: 9/30/16  
Title: GENERAL MANAGER, SMCHE

*\*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).*

Exhibit B Scope of Services

Services including but not limited to civil, electrical, and automation engineering, landscape architecture, survey, construction management, and permitting.

Work Directive A Project Title  
Project Description  
Project not to exceed amount  
Deliverables, Completion Dates (if applicable) and Not to Exceed amount  
10% Contingency (with approval of the General Manager)

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