

SERVICE PROVIDER AGREEMENT

THIS SERVICE PROVIDER AGREEMENT ("Agreement") is entered into this 8th day of October, 2018, by and between **RiverRock Real Estate Group**, a California Corporation (hereinafter referred to as "Manager") as Agent for the **CITY OF ALAMEDA**, a Municipal Corporation (the "City"), and **BAY SHIP & YACHT** (a California Corporation), whose address is 2900 Main Street #2100, Alameda CA 94501 (the "Provider"), in 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 the City.
- B. The City is in need of the following services: Port Management Services for Piers one (1) through three (3) at Alameda Point. City staff issued a RFP/RFQ on May 24, 2018 and after a submittal period of twenty-one (21) days received two (2) of timely submitted proposals. Staff reviewed the proposals, interviewed qualified firms and selected the service provider that best meets the City's needs.
- C. Provider possesses the skill, experience, ability, background, certification and knowledge to provide the services described in this Agreement on the terms and conditions described herein.
- D. RiverRock Real Estate Group, a California Corporation, has been appointed as the manager of the Project and is authorized to enter into this Agreement as "Agent" for the City of Alameda.
- E. City and Provider desire to enter into an agreement for Port Management Services upon the terms and conditions herein.

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 8th day of October 2018, and shall terminate on the 7th day of October 2020, unless terminated earlier as set forth herein.

This Agreement may be mutually extended on a year-by-year basis, for up to four (4) additional years, at the sole discretion of the City Manager, based, at a minimum, upon satisfactory performance of all aspects of this Agreement. The City Manager may submit written notice that the Agreement is to be extended and the compensation adjusted by the Consumer Price Index for the San Francisco Bay area as reported by the U.S. Department of Labor, Bureau of Labor Statistics for the previous calendar year.

2. SERVICES TO BE PERFORMED:

Provider agrees to do all necessary work at its own cost and expense, to furnish all labor, tools, equipment, materials, except as otherwise specified, and to do all necessary work included

in Exhibit A as requested. The Provider acknowledges that the work plan included in Exhibit A is tentative and does not commit the City to request Provider to perform all tasks included therein.

3. COMPENSATION TO PROVIDER:

a. By the 7th day of each month, Provider shall submit to the City an invoice for the total amount of work done the previous month. Pricing and accounting of charges are to be according to the fee schedule as set forth in Exhibit B and incorporated herein by this reference. Extra work must be approved in writing by the City Manager or his/her designee prior to performance and shall be paid on a Time and Material basis as set forth in Exhibit B. The City shall pay all invoices within 30 (thirty) days of receipt.

b. The total compensation for the work under this Agreement is not to exceed **\$800,404.00.**

RP

4. TIME IS OF THE ESSENCE:

Provider and City agree that time is of the essence regarding the performance of this Agreement.

5. STANDARD OF CARE:

Provider agrees to perform all services hereunder in a manner commensurate with the prevailing standards of like professionals or service providers, as applicable, in the San Francisco Bay Area and agrees that all services shall be performed by qualified and experienced personnel who are not employed by the City.

6. INDEPENDENT PARTIES:

Provider hereby declares that Provider is engaged as an independent business and Provider agrees to perform the services as an independent contractor. The manner and means of conducting the services and tasks are under the control of Provider, except to the extent they are limited by statute, rule or regulation and the express terms of this Agreement. No civil service status or other right of employment will be acquired by virtue of Provider's services. None of the benefits provided by City to its employees, including but not limited to unemployment insurance, workers' compensation plans, vacation and sick leave are available from City to Provider, its employees or agents. Deductions shall not be made for any state or federal taxes, FICA payments, PERS payments, or other purposes normally associated with an employer-employee relationship from any compensation due to Provider. Payments of the above items, if required, are the responsibility of Provider.

7. IMMIGRATION REFORM AND CONTROL ACT (IRCA):

Provider assumes any and all responsibility for verifying the identity and employment authorization of all of its employees performing work hereunder, pursuant to all applicable IRCA or other federal, or state rules and regulations. Provider shall indemnify, defend, and hold City harmless from and against any loss, damage, liability, costs or expenses arising from any noncompliance of this provision by Provider.

8. **NON-DISCRIMINATION:**

Consistent with City's policy and state and federal law that harassment and discrimination are unacceptable conduct, Provider agrees that harassment or discrimination directed toward a job applicant, a City employee, or a citizen by Provider or Provider's employee on the basis of race, religious creed, color, national origin, ancestry, handicap, disability, marital status, pregnancy, sex, age, or sexual orientation will not be tolerated. Provider agrees that any and all violations of this provision shall constitute a material breach of this Agreement.

9. **HOLD HARMLESS:**

a. Provider shall indemnify, defend, and hold harmless the City, its City Council, boards, commissions, officials, employees, and volunteers ("**Indemnitees**") from and against any and all loss, damages, liability, claims, suits, costs and expenses whatsoever, including reasonable attorneys' fees ("**Claims**"), arising from or in any manner connected to Provider's negligent act or omission, whether alleged or actual, regarding performance of services or work conducted or performed pursuant to this Agreement. If Claims are filed against Indemnitees which allege negligence on behalf of the Provider, Provider shall have no right of reimbursement against Indemnitees for the costs of defense even if negligence is not found on the part of Provider. However, Provider shall not be obligated to indemnify Indemnitees from Claims arising from the sole negligence or willful misconduct of Indemnitees.

b. **Indemnification for Claims for Professional Liability Only:** As to Claims for professional liability only, Provider's obligation to defend Indemnitees (as set forth above) is limited as provided in California Civil Code Section 2782.8.

c. Provider's obligation to indemnify, defend and hold harmless Indemnities shall expressly survive the expiration or early termination of this Agreement.

10. **INSURANCE:**

a. On or before the commencement of the terms of this Agreement, Provider shall furnish the City's Risk Manager with certificates showing the type, amount, class of operations covered, effective dates and dates of expiration of insurance coverage in compliance with subsections 10A, B, C and D. Such certificates, which do not limit Provider's indemnification, shall also contain substantially the following statement:

"Should any of the above insurance covered by this certificate be canceled or coverage reduced before the expiration date thereof, the insurer affording coverage shall provide ten (10) days' advance written notice to the City of Alameda. Attention: Risk Manager."

b. It is agreed that Provider shall maintain in force at all times during the performance of this Agreement all appropriate coverage of insurance required by this Agreement with an insurance company that is acceptable to City and licensed to do insurance business in the State of California. Endorsements naming the City, its City Council, boards, commissions, officials, employees, and volunteers as additional insured shall be submitted with the insurance certificates.

A. COVERAGE:

Provider shall maintain the following insurance coverage:

(1) Workers' Compensation:

Statutory coverage as required by the State of California.

(2) Liability:

Commercial general liability coverage in the following minimum limits:

Bodily Injury: \$1,000,000 each occurrence
 \$2,000,000 aggregate - all other

Property Damage: \$1,000,000 each occurrence
 \$2,000,000 aggregate

If submitted, combined single limit policy with aggregate limits in the amounts of \$2,000,000 will be considered equivalent to the required minimum limits shown above.

(3) Automotive:

Comprehensive automobile liability coverage (any auto) in the following minimum limits:

Bodily injury: \$1,000,000 each occurrence
Property Damage: \$1,000,000 each occurrence

Or

Combined Single Limit: \$2,000,000 each occurrence

(4) Professional Liability:

Professional liability insurance which includes coverage for the professional acts, errors and omissions of Provider in the following minimum limits:

\$1,000,000 each occurrence, which may be
combined with the commercial general liability limits

B. SUBROGATION WAIVER:

Provider agrees that in the event of loss due to any of the perils for which it has agreed to provide comprehensive general and automotive liability insurance, Provider shall look solely to its insurance for recovery. Provider hereby grants to City, on behalf of any insurer providing comprehensive general and automotive liability insurance to either Provider or City with respect to the services of Provider herein, a waiver of any right to subrogation which any such insurer of said Provider may acquire against City by virtue of the payment of any loss under such insurance.

C. FAILURE TO SECURE:

If Provider at any time during the term hereof should fail to secure or maintain the foregoing insurance, City shall be permitted to obtain such insurance in the Provider's name or as

an agent of the Provider and shall be compensated by the Provider for the costs of the insurance premiums at the maximum rate permitted by law and computed from the date written notice is received that the premiums have not been paid.

D. ADDITIONAL INSURED:

City, its City Council, boards, commissions, officials, employees, and volunteers shall be named as an additional insured under all insurance coverages, except worker's compensation and professional liability insurance. The naming of an additional insured shall not affect any recovery to which such additional insured would be entitled under this policy if not named as such additional insured. An additional insured named herein shall not be held liable for any premium, deductible portion of any loss, or expense of any nature on this policy or any extension thereof. Any other insurance held by an additional insured shall not be required to contribute anything toward any loss or expense covered by the insurance provided by this policy.

E. SUFFICIENCY OF INSURANCE:

The insurance limits required by City are not represented as being sufficient to protect Provider. Provider is advised to consult Provider's insurance broker to determine adequate coverage for Provider.

11. CONFLICT OF INTEREST:

Provider warrants that it is not a conflict of interest for Provider to perform the services required by this Agreement. Provider may be required to fill out a conflict of interest form if the services provided under this Agreement requires Provider to make certain governmental decisions or serve in a staff capacity as defined in Title 2, Division 6, Section 18700 of the California Code of Regulations.

12. PROHIBITION AGAINST TRANSFERS:

a. Provider shall not assign, sublease, hypothecate, or transfer this Agreement, or any interest therein, directly or indirectly, by operation of law or otherwise, without prior written consent of the City Manager. Provider shall submit a written request for consent to transfer to the City Manager at least thirty (30) days in advance of the desired transfer. The City Manager may consent or reject such request in his/her sole and absolute discretion. Any attempt to do so without said consent shall be null and void, and any assignee, sub lessee, hypothecate or transferee shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer. However, claims for money against the City under this Agreement may be assigned by Provider to a bank, trust company or other financial institution without prior written consent.

b. The sale, assignment, transfer or other disposition of any of the issued and outstanding capital stock of Provider, or of the interest of any general partner or Joint Venturer or syndicate member or cotenant, if Provider is a partnership or joint venture or syndicate or cotenancy, which shall result in changing the control of Provider, shall be construed as an assignment of this Agreement. Control means fifty percent or more of the voting power of the corporation.

13. APPROVAL OF SUB-PROVIDERS:

a. Only those persons and/or businesses whose names and resumes are attached to this Agreement shall be used in the performance of this Agreement. However, if after the start of this Agreement, Provider wishes to use sub-providers, at no additional costs to the City, then Provider shall submit a written request for consent to add sub-providers including the names of the sub-providers and the reasons for the request to the City Manager at least five (5) days in advance. The City Manager may consent or reject such requests in his/her sole and absolute discretion.

b. Each sub-provider shall be required to furnish proof of workers' compensation insurance and shall also be required to carry general, automobile and professional liability insurance (as applicable) in reasonable conformity to the insurance carried by the Provider. In addition, any tasks or services performed by sub-providers shall be subject to each provision of this Agreement.

c. The requirements in this Section 13 shall not apply to persons who are merely providing materials, supplies, data or information which the Provider then analyzes and incorporates into its work product.

14. PERMITS AND LICENSES:

Provider, at its sole expense, shall obtain and maintain during the term of this Agreement, all appropriate permits, certificates and licenses, including a City Business License that may be required in connection with the performance of the services and tasks hereunder.

15. REPORTS:

a. Each and every report, draft, work product, map, record and other document produced, prepared or caused to be prepared by Provider pursuant to or in connection with this Agreement shall be the exclusive property of City.

b. No report, information or other data given to or prepared or assembled by Provider pursuant to this Agreement shall be made available to any individual or organization by Provider without prior approval of the City Manager or his/her designee.

c. Provider shall, at such time and in such form as City Manager or his/her designee may require, furnish reports concerning the status of services and tasks required under this Agreement.

16. RECORDS:

a. Provider shall maintain complete and accurate records with respect to the services, tasks, work, documents and data in sufficient detail to permit an evaluation of the Provider's performance under the Agreement, as well as maintain books and records related to sales, costs, expenses, receipts and other such information required by City that relate to the performance of the services and tasks under this Agreement (collectively the "**Records**").

b. All Records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Provider shall provide free access to the Records to the representatives of City or its designees during regular business hours upon

reasonable prior notice. The City has the right to examine and audit the Records, and to make copies or transcripts therefrom as necessary, and to allow inspection of all proceedings and activities related to this Agreement. Such Records, together with supporting documents, shall be kept separate from other documents and records and shall be maintained by Provider for a period of three (3) years after receipt of final payment.

c. If supplemental examination or audit of the Records is necessary due to concerns raised by City's preliminary examination or audit of records, and the City's supplemental examination or audit of the records discloses a failure to adhere to appropriate internal financial controls, or other breach of this Agreement or failure to act in good faith, then Provider shall reimburse the City for all reasonable costs and expenses associated with the supplemental examination or audit.

17. NOTICES:

a. All notices shall be in writing and delivered: (i) by hand; or (ii) sent by registered, express, or certified mail, with return receipt requested or with delivery confirmation requested from the U.S. postal service; or (iii) sent by overnight or same day courier service at the party's respective address listed in this Section.

b. Each notice shall be deemed to have been received on the earlier to occur of: (x) actual delivery or the date on which delivery is refused; or (y) three (3) days after notice is deposited in the U.S. mail or with a courier service in the manner described above (Sundays and City holidays excepted).

c. Either party may, at any time, change its notice address (other than to a post office box address) by giving the other party three (3) days prior written notice of the new address.

d. All notices, demands, requests, or approvals from Provider to City shall be addressed to City at:

City of Alameda
C/O RiverRock Real Estate Group
950 West Mall Square, Suite 239
Alameda, CA 94501
ATTENTION: Property Manager
Ph.: 510.749.0304

e. All notices, demands, requests, or approvals from City to Provider shall be addressed to Provider at:

Bay Ship & Yacht Company
2900 Main Street, Suite 2100
Alameda, CA 94501
ATTENTION: General Manager
Ph.: 510.337.9122 Ext. 221

18. SAFETY:

a. The Provider will be solely and completely responsible for conditions of all vehicles owned or operated by Provider, including the safety of all persons and property during performance of the services and tasks under this Agreement. This requirement will apply continuously and not be limited to normal working hours. In addition, Provider will comply with all safety provisions in conformance with U.S. Department of Labor Occupational Safety and Health Act, any equivalent state law, and all other applicable federal, state, county and local laws, ordinances, codes, and any regulations that may be detailed in other parts of the Agreement. Where any of these are in conflict, the more stringent requirements will be followed. The Provider's failure to thoroughly familiarize itself with the aforementioned safety provisions will not relieve it from compliance with the obligations and penalties set forth herein.

b. The Provider will immediately notify the City within 24 hours of any incident of death, serious personal injury or substantial property damage that occurs in connection with the performance of this Agreement. The Provider will promptly submit to the City a written report of all incidents that occur in connection with this Agreement. This report must include the following information: (i) name and address of injured or deceased person(s); (ii) name and address of Provider's employee(s) involved in the incident; (iii) name and address of Provider's liability insurance carrier; (iv) a detailed description of the incident; and (v) a police report.

19. TERMINATION:

a. In the event Provider fails or refuses to perform any of the provisions hereof at the time and in the manner required hereunder, Provider shall be deemed in default in the performance of this Agreement. If such default is not cured within two (2) business days after receipt by Provider from City of written notice of default, specifying the nature of such default and the steps necessary to cure such default; City may thereafter immediately terminate the Agreement forthwith by giving to the Provider written notice thereof.

b. The foregoing notwithstanding, City shall have the option, at its sole discretion and without cause, of terminating this Agreement by giving seven (7) days' prior written notice to Provider as provided herein.

c. Upon termination of this Agreement either for cause or for convenience, each party shall pay to the other party that portion of compensation specified in this Agreement that is earned and unpaid prior to the effective date of termination. The obligation of the parties under this Section 19.c. shall survive the expiration or early termination of this Agreement.

20. ATTORNEY'S FEES:

In the event of the bringing of any action or suit by a party hereto against the other party by reason of any breach of any covenants, conditions, obligation or provision arising out of this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party all of its costs and expenses of the action or suit, including reasonable attorneys' fees, experts' fees, all court costs and other costs of action incurred by the prevailing party in connection with the prosecution or defense of such action and enforcing or establishing its rights hereunder (whether or not such action is prosecuted to a judgment). For the purposes of this Agreement, reasonable fees of attorneys of the Alameda City Attorney shall be based on the fees regularly charged by

private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the Alameda City Attorney's services were rendered who practice in Alameda County in law firms with approximately the same number of attorneys as employed by the Alameda City Attorney's Office.

21. COMPLIANCE WITH ALL APPLICABLE LAWS:

During the Term of this Agreement, Provider shall keep fully informed of all existing and future state and federal laws and all municipal ordinances and regulations of the City of Alameda which affect the manner in which the services or tasks are to be performed by the Provider, as well as all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the same. Provider shall comply with all applicable laws, state and federal and all ordinances, rules and regulations enacted or issued by City.

22. CONFLICT OF LAW:

This Agreement shall be interpreted under, and enforced by the laws of the State of California without regard to any choice of law rules which may direct the application of laws of another jurisdiction. The Agreement and obligations of the parties are subject to all valid laws, orders, rules, and regulations of the authorities having jurisdiction over this Agreement (or the successors of those authorities.) Any suits brought pursuant to this Agreement shall be filed with the courts of the County of Alameda, State of California.

23. WAIVER:

A waiver by City 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.

24. INTEGRATED CONTRACT:

The Recitals and Exhibits are a material part of this Agreement and are expressly incorporated herein. 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 hereof. Any modification of this Agreement will be effective only by written execution signed by both City and Provider.

25. CAPTIONS:

The captions in this Agreement are for convenience only, are not a part of the Agreement and in no way affect, limit or amplify the terms or provisions of this Agreement.

26. NONDISCRIMINATION – FEDERAL REQUIREMENTS:

a. Provider certifies and agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, ancestry, sex, age, or condition or physical or mental handicap (as defined in 41 C.F.R. Section 60-741, et. seq.), in accordance with requirement of state or federal law. Provider shall take affirmative action to ensure that qualified applicants are employed and that employees are treated during employment without regard to race, color, religion, national origin, ancestry, sex, age, or condition of physical

or mental handicap in accordance with requirements of state and federal law. Such shall include, but not be limited to, the following:

A. Employment upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation.

B. Selection for training, including interns and apprentices.

(i) Provider agrees to post in conspicuous places in each of Provider's facilities providing services hereunder, available and open to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

(ii) Provider shall, in all solicitations or advertisements for employees placed by or on behalf of Provider, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, ancestry, sex, age, or condition of physical or mental handicap, in accordance with requirements of state and federal law.

(iii) Provider shall send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice advising the labor union or workers' representative of Provider's commitments under this paragraph.

(iv) Provider certifies and agrees that it will deal with its subcontractors, bidders, or vendors without regard to race, color, religion, national origin, ancestry, sex, age, or condition of physical or mental handicap, in accordance with requirement of state and federal law.

(v) In accordance with applicable state and federal law, Provider shall allow duly authorized county, state and federal representatives access to its employment records during regular business hours in order to verify compliance with the anti-discrimination provisions of this paragraph. Provider shall provide such other information and records as such representatives may require in order to verify compliance with the anti-discrimination provisions of this paragraph.

b. If the City finds that any of the provisions of this paragraph have been violated, the same shall constitute a material breach of Agreement upon which City may determine to cancel, terminate, or suspend this Agreement. City reserves the right to determine independently that the anti-discrimination provisions of this Agreement have been violated. In addition, a determination by the California Fair Employment Practices Commission or the Federal Equal Employment Opportunity Commission that Provider has violated state and federal anti-discrimination laws shall constitute a finding by City that Provider has violated the anti-discrimination provisions of Agreement.

c. The parties agree that in the event Provider violates any of the anti-discrimination provisions of this paragraph, City shall be entitled, at its option, to the sum of \$500.00 pursuant to California Civil Code Section 1671 as liquidated damages in lieu of canceling, terminating, or suspending this Agreement.

d. Provider hereby agrees that it will comply with Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. Section 794), all requirements imposed by the applicable regulations (45 C.F.R.), and all guidelines and interpretations issued pursuant thereto, to the end that no qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity of Provider receiving Federal Financial Assistance. In addition, Provider shall comply with the Uniform Federal Accessibility Standards, and Provider, Engineer, or Architect responsible for any design, construction or alteration shall certify compliance with those Standards.

e. Provider's attention is directed to laws, including but not limited to:

A. CIVIL RIGHTS/EQUAL OPPORTUNITY

(i) Civil Rights Act of 1964. Under Title VII of the Civil Rights Act of 1964, no person shall, on the grounds of race, sex, religion, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

(ii) Section 109 of the Housing and Community Development Act of 1974. No person in the United States shall, on the grounds of race, color, national origin, or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title.

(iii) Section 109 of the Act further provides that any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.) or with respect to an otherwise qualified handicapped individual as provided in Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) shall also apply to any program or activity funded in whole or in part with funds made available pursuant to the Act.

B. PROGRAM ACCESSIBILITY FOR INDIVIDUALS WITH DISABILITIES

This Agreement is subject to laws and regulations concerning the rights of otherwise qualified individuals with handicaps for equal participation in, and benefit from federally assisted programs and activities, including but not limited to:

(i) Americans with Disabilities Act of 1990 (ADA) (28 C.F.R. 35). Title II, Subpart A of the Americans with Disabilities Act of 1990 applies to all publicly funded activities and programs. Provider shall also comply with the public accommodations requirements of Title III of the ADA, as applicable.

(ii) Nondiscrimination on the Basis of Handicap (24 CFR 8). These regulations, which implement Section 504 of the Rehabilitation Act of 1973, as amended, and as cited in Section 109 of the Housing and Community Development Act, apply to all federally assisted activities and programs and are implemented through the regulations at 24 C.F.R. 8.

(iii) Architectural Barrier Act of 1968. Any building or facility, excluding privately owned residential structures, designed, constructed, or altered with federal funds, shall comply with the Uniform Federal Accessibility Standards, 1984 (41 C.F.R. 3) and the Handicapped Accessibility Requirements of the State of California Title 24. The Consultant, Engineer or Architect responsible for such design, construction or alteration shall certify compliance with the above standards.

(iv) In resolving any conflict between the accessibility standards cited in paragraphs (i), (ii) and (iii) above, the more stringent standard shall apply.

27. NONDISCRIMINATION – HUD REQUIREMENTS:

a. Provider certifies and agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, ancestry, sex, age, or condition or physical or mental handicap (as defined in 41 C.F.R. Section 60-741, et. seq.), in accordance with requirement of state or federal law. Provider shall take affirmative action to ensure that qualified applicants are employed and that employees are treated during employment without regard to race, color, religion, national origin, ancestry, sex, age, or condition of physical or mental handicap in accordance with requirements of state and federal law. Such shall include, but not be limited to, the following:

A. Employment upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation.

B. Selection for training, including interns and apprentices.

(i) Provider agrees to post in conspicuous places in each of Provider's facilities providing services hereunder, available and open to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

(ii) Provider shall, in all solicitations or advertisements for employees placed by or on behalf of Provider, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, ancestry, sex, age, or condition of physical or mental handicap, in accordance with requirements of state and federal law.

(iii) Provider shall send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice advising the labor union or workers' representative of Provider's commitments under this paragraph.

(iv) Provider certifies and agrees that it will deal with its subcontractors, bidders, or vendors without regard to race, color, religion, national origin, ancestry, sex, age, or condition of physical or mental handicap, in accordance with requirement of state and federal law.

(v) In accordance with applicable state and federal law, Provider shall allow duly authorized county, state and federal representatives access to its employment records during regular business hours in order to verify compliance with the anti-discrimination provisions of this paragraph. Provider shall provide such other information and records as such

representatives may require in order to verify compliance with the anti-discrimination provisions of this paragraph.

b. If the City finds that any of the provisions of this paragraph have been violated, the same shall constitute a material breach of Agreement upon which City may determine to cancel, terminate, or suspend this Agreement. City reserves the right to determine independently that the anti-discrimination provisions of this Agreement have been violated. In addition, a determination by the California Fair Employment Practices Commission or the Federal Equal Employment Opportunity Commission that Provider has violated state and federal anti-discrimination laws shall constitute a finding by City that Provider has violated the anti-discrimination provisions of this Agreement.

c. The parties agree that in the event Provider violates any of the anti-discrimination provisions of this paragraph, City shall be entitled, at its option, to the sum of \$500.00 pursuant to California Civil Code Section 1671 as liquidated damages in lieu of canceling, terminating, or suspending this Agreement.

d. Provider hereby agrees that it will comply with Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. Section 794), all requirements imposed by the applicable regulations (45 C.F.R.), and all guidelines and interpretations issued pursuant thereto, to the end that no qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity of Provider receiving Federal Financial Assistance. In addition, Provider shall comply with the Uniform Federal Accessibility Standards, and Provider, Engineer, or Architect responsible for any design, construction or alteration shall certify compliance with those Standards.

e. Provider's attention is directed to laws, including but not limited to:

A. CIVIL RIGHTS/EQUAL OPPORTUNITY

(i) Civil Rights Act of 1964. Under Title VII of the Civil Rights Act of 1964, no person shall, on the grounds of race, sex, religion, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

(ii) Section 109 of the Housing and Community Development Act of 1974. No person in the United States shall, on the grounds of race, color, national origin, or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title.

(iii) Section 109 of the Act further provides that any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.) or with respect to an otherwise qualified handicapped individual as provided in Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) shall also apply to any program or activity funded in whole or in part with funds made available pursuant to the Act.

B. EMPLOYMENT AND CONTRACTING OPPORTUNITIES

(i) Section 3. The work to be performed under this Agreement is on a project assisted under a program providing direct Federal financial assistance from the Department of Housing and Urban Development Department and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that to the greatest extent feasible, opportunities for training and employment be given to lower income residents of the area of the Section 3 covered project, and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in the area of the Section 3 covered project.

(ii) The parties to this Agreement will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of the Housing and Urban Development set forth in 24 Part C.F.R. 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of this Agreement. The parties to this Agreement certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.

(iii) Provider will send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers' representative of its commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

(iv) Provider will include this Section 3 clause in every subcontract for work in connection with the project and will, at the direction of the applicant for or recipient of Federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 C.F.R. Part 135. Provider will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 C.F.R. part 135 and will not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

(v) Compliance with the provisions of Section 3, the regulations set forth in 24 C.F.R. Part 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of the Agreement, is a condition of the Federal financial assistance provided to the project, binding upon the applicant or recipient, its contractors and subcontractors, its successors, and assigns to those sanctions specified by the grant or loan agreement or contract through which Federal assistance is provided, and to such sanctions as are specified by 24 C.F.R. Part 135.

C. PROGRAM ACCESSIBILITY FOR INDIVIDUALS WITH DISABILITIES

This Agreement is subject to laws and regulations concerning the rights of otherwise qualified individuals with handicaps for equal participation in, and benefit from federally assisted programs and activities including but not limited to:

(i) Americans with Disabilities Act of 1990 (ADA) (28 C.F.R. 35). Title II, Subpart A of the Americans with Disabilities Act of 1990 applies to all publicly funded activities and programs. Provider shall also comply with the public accommodations requirements of Title III of the ADA, as applicable.

(ii) Nondiscrimination on the Basis of Handicap (24 C.F.R. 8). These regulations, which implement Section 504 of the Rehabilitation Act of 1973, as amended, and as cited in Section 109 of the Housing and Community Development Act, apply to all federally assisted activities and programs and are implemented through the regulations at 24 C.F.R. 8.

(iii) Architectural Barrier Act of 1968. Any building or facility, excluding privately owned residential structures, designed, constructed, or altered with federal funds, shall comply with the Uniform Federal Accessibility Standards, 1984 (41 C.F.R. 3) and the Handicapped Accessibility Requirements of the State of California Title 24. The Consultant, Engineer or Architect responsible for such design, construction or alteration shall certify compliance with the above standards.

(iv) In resolving any conflict between the accessibility standards cited in paragraphs (i), (ii) and (iii) above, the more stringent standard shall apply.

28. RESTRICTIONS ON LOBBYING – FEDERAL REQUIREMENT:

This Agreement is subject to 24 C.F.R. 87 which prohibits the payment of Federal funds to any person for influencing or attempting to influence, any public officer or employee in connection with the award, making, entering into, extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or agreement.

Signatures on next page

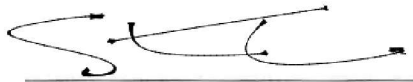
IN WITNESS WHEREOF, the parties have caused the Agreement to be executed on the day and year first above written.

BAY SHIP & YACHT COMPANY
(A California Corporation)



Name: *Alan Cameron*
Title: *General Manager/VP*

RIVERROCK REAL ESTATE GROUP
As Agent for City of Alameda



Name: Steve Core
Title: President

AH

BAY SHIP & YACHT COMPANY
(A California Corporation)



Name: *Gerona Guebre*
Title: *Estimating & Contracts Manager*

Exhibit A

Port Management Services and Cost Estimates for
Piers 1-3, Alameda Point
1399, 1499 & 1599 Ferry Point, Alameda, California
June 14, 2018



D. SCOPE OF WORK

BSY proposes to perform the following work to fulfill the requirements outlined in Exhibits A-1 and A-2 of the RFP. BSY also acknowledges that no Addenda have been received, reference Appendix 10.

1. Berthing Services:

- Layberth security plan per Captain of the Port requirements is not required per the Captain of the Port.
- Provide RiverRock with a monthly vessel arrival/departure schedule.

2. Utility Connections:

- Coordinate with vessel to provide labor to connect or disconnect the shore power cables to the receptacle on the pier and the vessel. BSY shall insure shore power cables are available. Maximum of (11) connections or disconnections per year.
- Coordinate with vessel to provide labor to connect or disconnect vessel's potable water hose to the potable water fitting on the pier. Maximum of (11) connections or disconnections per year.
- Coordinate with vessel to provide labor to connect or disconnect the sanitary sewer hose to the sewage fittings on the pier and the vessel. BSY shall insure a sanitary sewer hose is available. Maximum of (11) connections or disconnections per year.
- Coordinate with vessel to provide labor to connect or disconnect the vessel's telephone line to the junction box on the pier. Proposal is for a maximum of (11) connections or disconnections per year.
- Crane service is not included.

3. Brows and Platforms:

- Coordinate with vessel to provide labor to move brows as necessary for MARAD vessels and the Hornet. Maximum of (11) movements per year.
- Includes required forklift service to assist in positioning.

4. Boom Equipment:

- **4A Boom Equipment Maneuver**
 - Coordinate with MARAD to provide labor and a work boat to maneuver boom equipment for vessel arrivals and departures. Maximum (11) maneuvering deployments per year.
 - Item includes the cost to operate and maintain a work boat.
- **4B Maintain Boom Equipment**
 - Scrape boom in water as required.
 - Perform repairs to boom in water as required.
 - Haul out (2) booms per year, includes crane assistance.
 - High pressure fresh water wash the boom.
 - Inspect and provide a report on condition.

5. Pier and Wharf Cleanliness:

- Mechanically sweep piers and surrounding areas monthly.
- Routinely patrol for abandoned items and arrange for disposal.

6. Parking Control:

- Enforce established parking policy through weekly inspection patrols.



7. Channel Surveys:

- Subcontract a surveyor to perform channel surveys (2) times a year of the area immediately surrounding the Piers and the access channel out to channel markers "1" and "2" that mark the western end of the access channel to the Piers.
- Provide electronic copies of the sounding chart.
- A sample survey chart is provided in Appendix 3.

8. Harbor Patrols:

- Perform boat patrols of the harbor waters surrounding the MARAD vessel and the Hornet. Patrols shall occur twice daily during normal Monday through Friday workweek, excluding holidays.
- Perform boat patrols of the city-owned FISC Wharf and Seaplane Lagoon once a month.
- Utilize MP2 to develop task orders for boat patrols to verify compliance with City, State and Federal waterway laws.
- Item includes the cost to provide, operate and maintain a work boat.

9. Spill Response:

- BSY's Port Manager is committed to assuring complete environmental compliance. The Port Manager follows the Port Services Oil Spill Contingency Plan that incorporates an all agency response approach to Spill Management, see included Oil Spill Contingency Plan, Appendix 9.

10. Initial Spill Response:

- BSY assures all Shipyard Employees are not just trained to the First Responder Awareness Level as described in 29 CFR 1910.120(6)(i) but, goes a step further to assuring all employees are OSHA-10 Hour Maritime trained, with the only certified bi-lingual OSHA-10 hour trainer.
- Maintain (6) spill boxes on Piers 1-3. One box located at the foot and one box located at the head of each pier.

11. Oil Spill Contingency Plan:

- The Port Services Oil Spill Contingency Plan is currently active and the Alameda Point Emergency Procedures will be incorporated in this year's version.

12. No Financial Responsibility:

- BSY accepts the agreement as written.

13. Port Maintenance:

- See 14. Pier Maintenance for the work to be performed.

14. Pier Maintenance:

- Utilizing MP2 system, perform monthly visual inspections of the pier utilities, to include:
 - Shore power cables, receptacles and panels.
 - Sewage hoses, fittings, piping and tanks.
 - Potable water fittings, valves, piping and backflow preventers.
 - Above ground telephone lines
 - Pier light fixtures.
- Perform monthly waterborne visual inspections of the underside of the piers.
 - Includes the cost to operate and maintain a workboat.

Port Management Services and Cost Estimates for
Piers 1-3, Alameda Point
1399, 1499 & 1599 Ferry Point, Alameda, California
June 14, 2018



- Maintain the proper location of the oil booms around the vessels.
- Perform megger testing on shore power cable upon vessel departure. Maximum testing of (5) sets of cables each year. Provide a report on cable condition.
- Perform monthly meetings with MARAD vessel managers. See Appendix 4 for a sample monthly meeting agenda.
- Provide monthly summary conditional reports on utilities and any maintenance recommendations to RiverRock.

15. Fendering, Mooring and Booming Systems:

- Utilize MP2 system to perform monthly visual inspection of the fendering, mooring and booming systems.

16. Maintenance and Repair Standard:

- BSY accepts the agreement as written.

17. Capital Projects:

- Provide information on potential capital projects via monthly conditional reports.
- If requested, on a project management time and material basis (Bid Form, table 1, section III), provide personnel to develop a detailed repair recommendation.
- If requested, on a project management time and material basis (Bid Form, table 1, section III), Compile an Engineer's Estimate on which to evaluate bids.

18. Optional Crane Services:

- BSY accepts the agreement as written.

19. Workboat Berthing:

- RiverRock is to provide BSY with adequate berthing for the workboat required for harbor patrols and boom movements.

Exhibit B

EXHIBIT D, BID FORM

THIS BID IS SUBMITTED BY:

Bay Ship & Yacht, Co.

Re: Alameda Point – Port Management Services and Cost Estimates for Piers 1-3, Alameda Point

1. The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an agreement with Riverrock Real Estate Group as Agent for the City of Alameda to perform and furnish all Work as specified or indicated in the Contract Documents for the Contract Sum and within the Contract Time indicated in this Bid and in accordance with all other terms and conditions of the Contract Documents.
2. Bidder accepts all of the terms and conditions of the Contract Documents including, without limitation, those dealing with the disposition of Bid Security. This Bid will remain subject to acceptance for 90 Days after the day of Bid opening.
3. In submitting this Bid, Bidder represents:
 - a. Bidder has examined all of the Contract Documents and the following Addenda (receipt of all of which is hereby acknowledged).

Addendum No.	Addendum Date	Signature of Bidder
none		

- b. Bidder has visited the Site and performed all tasks, research, investigation, reviews, examinations, and analysis and given notices, regarding the Project and the Site.
- c. Bidder has received and examined copies of the following scope of work; and technical specifications.
- d. Bidder has given Riverrock Real Estate Group prompt written notice of all conflicts, errors, ambiguities, or discrepancies that it has discovered in or among the Contract Documents and the written resolution thereof through Addenda issued by Riverrock Real Estate Group is acceptable to the Contractor.
- e. The bidder must include the following information/documents with the bid submission. Failure to provide any of these items, may result in disqualification:
 1. **Detailed Scope of Work** – Attached as Exhibits A-1 and A-2 of the Request for Proposal is the Scope of Work and MARAD Technical Specifications. The proposer is asked to define the approach and the specific scope of work and methodology to achieve the objectives presented in this RFP. The proposer should include a refined scope of work by developing a detailed description of all project tasks, both those tasks suggested in this scope of work and any changes, additions or recommendations proposed. The description of each project task

should include specification of the task itself, the methodology or analytical process, scheduling, personnel, and costs.

2. General Contractors DIR # 1000029476

3. List of Subcontractors Bay Marine Services

a. Subcontractor's DIR # n/a

4. Bid Form - Completely Filled Out, Properly Signed and Stamped.

4. Based on the foregoing, Bidder proposes and agrees to fully perform the Work within the time stated and in strict accordance with the Contract Documents for the following sums of money listed in the following Schedule of Bid Prices:

SCHEDULE OF BID PRICES

All Bid items, including lump sums and unit prices, must be filled in completely. Quote in figures only, unless words are specifically requested.

See "Bid Items," attached hereto as Attachment 1 and incorporated herein by this reference.

Total Bid Price: \$ 800,404 , Eight hundred thousand four hundred and four
(Numbers) (Words)

5. The undersigned Bidder understands that Riverrock Real Estate Group reserves the right to reject this Bid.
6. If written notice of the acceptance of this Bid, hereinafter referred to as Notice of Award, is mailed or delivered to the undersigned Bidder within the time described in paragraph 2 of this Document or at any other time thereafter before it is withdrawn, the undersigned Bidder will execute and deliver the documents required within the times specified therein.
7. Notice of Award or request for additional information may be addressed to the undersigned Bidder at the address set forth below.
8. The undersigned Bidder agrees to commence Work within 15 days after bidder is awarded. The undersigned Bidder acknowledges that Riverrock Real Estate Group has reserved the right to delay or modify the commencement date. The undersigned Bidder further acknowledges Riverrock Real Estate Group has reserved the right to perform independent work at the Site, and that the undersigned Bidder will be required to cooperate with such other work in accordance with the requirements of the Contract Documents.
9. The names of all persons interested in the foregoing Bid as principals are:

(IMPORTANT NOTICE: If Bidder or other interested person is a corporation, give the legal name of corporation, state where incorporated, and names of president and secretary thereof; if a partnership, give name of the firm and names of all individual co-partners composing the firm; if Bidder or other interested person is an individual, give first and last names in full).

NAME OF BIDDER: Bay Ship & Yacht, Co.

DIR #: 1000029476

Licensed in accordance with an act for the registration of Contractors, and with license number: _____
Expiration _____

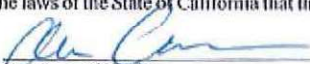
Where incorporated, if applicable

Alan Cameron

William Elliott

Principals

I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct.


Signature of Bidder

NOTE: If Bidder is a corporation, set forth the legal name of the corporation together with the signature of the officer or officers authorized to sign contracts on behalf of the corporation. If Bidder is a partnership, set forth the name of the firm together with the signature of the partner or partners authorized to sign contracts on behalf of the partnership.

Business Address:

Bay Ship & Yacht, Co.

2900 Main Street, #2100

Alameda, CA 94501

Officers authorized to sign contracts:

Alan Cameron

William Elliott

Telephone Number(s)

(510) 337-9122 x 221

Email:

acameron@bay-ship.com

Date of Bid:

June 14, 2018

END OF DOCUMENT (EXCEPT, ATTACHED HERETO AS ATTACHMENT 1)

DIRECTORS ACTION
by
Unanimous Written Consent
of the
BOARD OF DIRECTORS
of
BAY SHIP & YACHT CO.,
a California corporation

Authorizing Officers and Representatives to Execute Contracts and Bids

March 21, 2016

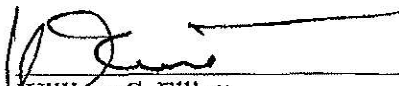
The undersigned, being all of the directors of Bay Ship & Yacht Co., a California corporation, hereby:

- A. Waive notice of any meeting of this board of directors for purposes of the actions being taken by this unanimous consent; and
- B. Adopt, approve and consent to the following actions by this board of directors by unanimous consent in lieu of holding a special meeting of this board of directors.

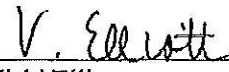
RESOLVED, that any one or more of the following officers or representatives of this corporation be and each hereby is authorized to make and execute contract documents and bid submittals on behalf of this corporation: William C. Elliott, President; Alan Cameron, Vice President and General Manager; Leslie Cameron, Secretary and Treasurer; Gerona Goethe, Contracts manager; William Shamek, Contracts & Estimating Manager.

The foregoing actions without a meeting are taken pursuant to Section 307(b) of the California Corporations Code. This Directors Action shall be filed with the minutes of the proceedings of the board of directors, and the action taken hereby shall have the same force and effect as if taken at a board of directors meeting duly called and held.

IN WITNESS WHEREOF, the undersigned, being all of the directors of the above corporation, have executed this Directors Action on and effective as of the date first set forth above.



William C. Elliott



Vicki Elliott



Alan R. Cameron

Signature Certificate



Document Reference: KNIVV3IKI426795LKKD8AD

RightSignature

Easy Online Document Signing



Steve Core

Party ID: B9PNX8IPM38RSRFX6R9IAW

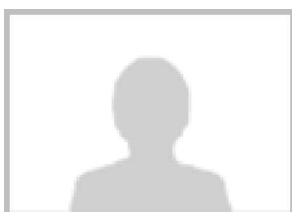
IP Address: 64.58.156.34

VERIFIED EMAIL: score@riverrockreg.com

Electronic Signature:

Multi-Factor
Digital Fingerprint Checksum

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Anne Hinz

Party ID: BFX6H7IM5IJYXHA86NANA

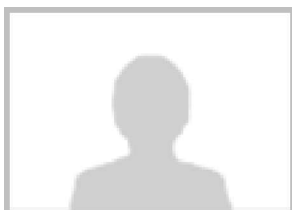
IP Address: 76.250.188.97

VERIFIED EMAIL: ahinz@riverrockreg.com

Electronic Signature:

Multi-Factor
Digital Fingerprint Checksum

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Traci Brazil

Party ID: A822XAJXCJA5DHPL52JJ7P

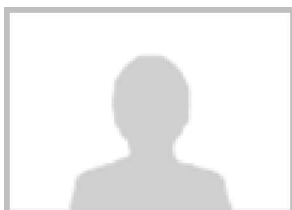
IP Address: 76.250.188.97

VERIFIED EMAIL: tbrazil@riverrockreg.com

Electronic Signature:

Multi-Factor
Digital Fingerprint Checksum

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Rich Piette

Party ID: A6I3BNITY3BD8IBRPCJR58

IP Address: 174.62.88.205

VERIFIED EMAIL: rpiette@riverrockreg.com

Electronic Signature:

Multi-Factor
Digital Fingerprint Checksum

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Signature Certificate



Document Reference: KNIVV3IKI426795LKKD8AD

RightSignature
Easy Online Document Signing

Timestamp

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2018-11-06 16:39:51 -0800

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2018-11-06 16:14:59 -0800

2018-11-06 16:13:58 -0800

2018-11-06 16:13:15 -0800

Audit

All parties have signed document. Signed copies sent to: Natalie Bowman, Daniel Mak, Steve Core, Anne Hinz, Traci Brazil, and Rich Piette.

Document signed by Steve Core (score@riverrockreg.com) with drawn signature. - 64.58.156.34

Document viewed by Steve Core (score@riverrockreg.com). - 64.58.156.34

Document signed by Anne Hinz (ahinz@riverrockreg.com) with drawn signature. - 76.250.188.97

Document viewed by Anne Hinz (ahinz@riverrockreg.com). - 76.250.188.97

Document signed by Traci Brazil (tbrazil@riverrockreg.com) with drawn signature. - 76.250.188.97

Document viewed by Traci Brazil (tbrazil@riverrockreg.com). - 76.250.188.97

Document signed by Rich Piette (rpiette@riverrockreg.com) with drawn signature. - 174.62.88.205

Document viewed by Rich Piette (rpiette@riverrockreg.com). - 174.62.88.205

Document created by Daniel Mak (dmak@riverrockreg.com). - 174.62.88.205



This signature page provides a record of the online activity executing this contract.