



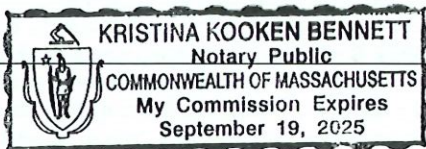
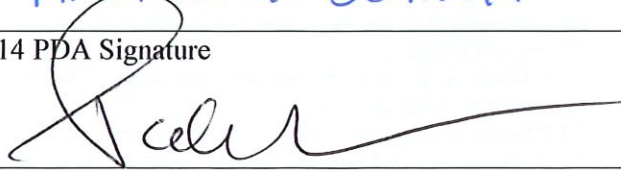
SUBJECT: Rye Harbor Assessment and Recommendations for Improvements

AGREEMENT

The Pease Development Authority and the Contractor hereby mutually agree as follows:

GENERAL PROVISIONS

1. IDENTIFICATION

| | | | |
|--|---------------------------|---|----------------------------------|
| 1.1 Pease Development Authority (PDA) | | 1.2 PDA Address 55 International Drive Portsmouth, NH 03801 | |
| 1.3 Contractor Name Tighe & Bond | | 1.4 Contractor Address 117 Corporate Drive Portsmouth, NH 03801 | |
| 1.5 Contractor Phone 603-433-8818 | 1.6 Account Number N/A | 1.7 Completion Date See Section 3.3 | 1.8 Price Limit See Exhibit B |
| 1.9 Contracting Officer for PDA Paul E. Brean, Executive Director | | 1.10 PDA Phone Number 603-433-6088 | |
| 1.11 Contractor Signature  | | 1.12 Name and Title of Contractor Signatory JOSEPH P. VITAMARI, JR. SENIOR VICE PRESIDENT | |
| 1.13 Acknowledgement: State of <u>MA</u> , County of <u>Hampden</u> On <u>1/21/2025</u> , before the undersigned officer, personally appeared the person identified in block 1.12, or satisfactorily proven to be the person whose name is signed in block 1.11, and acknowledged that s/he executed this document in the capacity indicated in block 1.12. | | | |
| 1.13.1 Signature of Notary Public or Justice of the Peace  | | | |
| 1.13.2 Name and Title of Notary or Justice of the Peace Kristina K. Bennett | |  | |
| 1.14 PDA Signature  | | 1.15 Name and Title of Signatory for PDA Paul E. Brean, Executive Director | |

2. EMPLOYMENT OF CONTRACTOR/SERVICES TO BE PERFORMED.

2.1 The Pease Development Authority, identified in block 1.1 ("Entity"), engages contractor identified in block 1.3 ("Contractor") to perform, and the Contractor shall perform, the work identified and more particularly described in the attached **EXHIBIT A** which is incorporated herein by reference ("Services").

2.2 During the term of this Agreement, Services shall be provided at the rates set forth in **EXHIBIT B**. As necessary, the parties shall negotiate a scope of work and corresponding fee for any requested additional services (a "Project Contract"); for small projects the parties may utilize a short description of the services and proposed estimated fee (a "Task Assignment"). Each Project Contract or Task Assignment, following any required approval by the PDA Board of Directors as determined necessary by the PDA, shall be executed by the PDA and the Consultant prior to being made a part of this Agreement. Following execution, the Project Contract or Task Assignment attached to Exhibit A hereto and incorporated herein by reference and made part of this Agreement. Each Project Contract or Task Assignment attached to Exhibit A shall be identified by a distinct sequential number (i.e. Attachment 1, 2, etc.).

3. EFFECTIVE DATE/COMPLETION OF SERVICES.

3.1 Notwithstanding any provision of this Agreement to the contrary, this Agreement, and all obligations of the parties here under, shall not become effective until January 23, 2025 ("Effective Date").

3.2 If the Contractor commences the Services and/or purchases Goods prior to the Effective Date, all Services performed and Goods purchased by the Contractor prior to the Effective Date shall be performed at the sole risk of the Contractor, and in the event that this Agreement does not become effective, the PDA shall have no liability to the Contractor, including without limitation, any obligation to pay the Contractor for any costs incurred or Services performed. Contractor must complete all Services and/or deliver all Goods by the Completion Date specified in block 1.7.

3.3 This Term of this Agreement shall commence on the Effective Date and run through the completion of performance of the Services. The timetable for completion of the Services is set forth in **EXHIBIT B**.

4. CONTRACT PRICE/PRICE LIMITATION / PAYMENT.

4.1 The contract price, method of payment, and terms of payment are identified and more particularly described in **EXHIBIT B** which is incorporated herein by reference.

4.2 The payment by the PDA of the contract price shall be the only and the complete reimbursement to the Contractor for all expenses, of whatever nature incurred by the Contractor in the performance hereof. The PDA shall have no liability to the Contractor other than the contract price.

4.3 Notwithstanding any provision in this Agreement to the contrary, and notwithstanding unexpected circumstances, in no event shall the total of all payments authorized, or actually made hereunder, exceed the Price Limitation set forth in block 1.8 without executing a duly authorized Amendment.

5. COMPLIANCE BY CONTRACTOR WITH LAWS AND REGULATIONS/ EQUAL EMPLOYMENT OPPORTUNITY.

5.1 In connection with the performance of the Services, the Contractor shall comply with all statutes, laws, regulations, and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the Contractor, including, but not limited to, civil rights and equal opportunity laws. In addition, the Contractor shall comply with all applicable copyright laws.

5.2 During the term of this Agreement, the Contractor shall not discriminate against employees or applicants for employment because of race, color, religion, creed, age, sex, handicap, sexual orientation, or national origin and will take affirmative action to prevent such discrimination.

5.3 If this Agreement is funded in any part by monies of the United States, the Contractor shall comply with all the provisions of Executive Order No. 11246 ("Equal Employment Opportunity"), as supplemented by the regulations of the United States Department of Labor (41 C.F.R. Part 60), and with any rules, regulations and guidelines as the State of New Hampshire or the United States issue to implement these regulations. The Contractor further agrees to permit the State or United States access to any of the Contractor's books, records and accounts for the purpose of ascertaining compliance with all rules, regulations and orders, and the covenants, terms and conditions of this Agreement.

6. PERSONNEL.

6.1 The Contractor shall at its own expense provide all personnel necessary to perform the Services. The Contractor warrants that all personnel engaged in the Services shall be qualified to perform the Services and shall be properly licensed and otherwise authorized to do so under all applicable laws.

6.2 Unless otherwise authorized in writing, during the term of this Agreement, and for a period of six (6) months after the Completion Date in block 1.7, the Contractor shall not hire, and shall not permit any subcontractor or other person, firm or corporation with whom it is engaged in a combined effort to perform the Services to hire, any person who is a PDA employee or official, who is materially involved in the procurement, administration or performance of this Agreement. This provision shall survive termination of this Agreement.

6.3 The Contracting Officer specified in block 1.9, or his or her successor, shall be the PDA's representative. In the event of any dispute concerning the interpretation of this Agreement, the Contracting Officer's decision shall be final for the PDA.

7. EVENT OF DEFAULT/REMEDIES.

7.1 Any one or more of the following acts or omissions of the Contractor shall constitute an event of default hereunder ("Event of Default"):

7.1.1 failure to perform the Services and supply Services satisfactorily or on schedule;

7.1.2 failure to submit any report required hereunder; and/or

7.1.3 failure to perform any other covenant, term or condition of this Agreement.

7.2 Upon the occurrence of any Event of Default, the PDA may take any one, or more, or all, of the following actions:

7.2.1 give the Contractor a written notice specifying the Event of Default and requiring it to be remedied within, in the absence of a greater or lesser specification of time, thirty (30) days from the date of the notice; and if the Event of Default is not timely remedied, terminate this Agreement, effective two (2) days after giving the Contractor notice of termination;

7.2.2 give the Contractor a written notice specifying the Event of Default and suspending all payments to be made under this Agreement and ordering that the portion of the contract price which would otherwise accrue to the Contractor during the period from the date of such notice until such time as the PDA determines that the Contractor has cured the Event of Default shall never be paid to the Contractor;

7.2.3 set off against any other obligations the PDA may owe to the Contractor any damages the PDA suffers by reason of any Event of Default; and/or

7.2.4 treat the Agreement as breached and pursue any of its remedies at law or in equity, or both.

8. DATA/ACCESS/ CONFIDENTIALITY/PRESERVATION

8.1 As used in this Agreement, the word "data" shall mean all information and things developed or obtained during the performance of, or acquired or developed by reason of, this Agreement, including, but not limited to, all studies, reports, files, formulae, surveys, maps, charts, sound recordings, video recordings, pictorial reproductions, drawings, analyses, graphic representations, computer programs, computer printouts, notes, letters, memoranda, papers, and documents, all whether finished or unfinished.

8.2 All data and any property which has been received from the PDA or purchased with funds provided for that purpose under this Agreement, shall be the property of the PDA, and shall be returned to the PDA upon demand or upon termination of this Agreement for any reason.

8.3 Confidentiality of data shall be governed by N.H. RSA chapter 91-A, or other existing law. Disclosure of data requires prior written approval of the PDA.

9. TERMINATION.

9.1 Either party may terminate this Agreement for any reason upon ninety (90) days written notice to the other.

9.2 In the event of an early termination of this Agreement for any reason other than the completion of the Services and/or delivery of Goods, the Contractor shall deliver to the Contracting Officer, not later than fifteen (15) days after the date of termination, a report ("Termination Report") describing in detail all Services performed and/or Goods delivered, and the contract price earned, to and including the date of termination.

10. CONTRACTOR'S RELATION TO THE PDA. In the performance of this Agreement the Contractor is in all respects an independent contractor, and is neither an agent nor an employee of the PDA. Neither the Contractor nor any of its officers, employees, agents or members shall have authority to bind the PDA or receive any benefits, workers'

compensation or other emoluments provided by the PDA to its employees.

11. ASSIGNMENT/DELEGATION /

SUBCONTRACTS. The Contractor shall not assign, or otherwise transfer any interest in this Agreement without the prior written consent of the PDA.

12. INDEMNIFICATION.

For claims arising out of or relating to negligent errors and omissions in the performance of professional services rendered by the Contractor: The Contractor shall indemnify the Owner and the State of New Hampshire, their officers, board members, and employees (the "Indemnitees") from and against all liabilities, costs, and expenses, including without limitation reasonable attorneys' fees, on account of personal/bodily injury, death, or property damage to the extent caused by the Contractor's negligent acts, errors or omissions in the performance of its obligations under this Agreement; or to the extent which is caused in whole or in part by any negligent or willful act or omission of the Contractor, its subcontractors, anyone directly or indirectly employed by either the Contractor or its subcontractors, or anyone for whose acts any of the foregoing may be liable. The agreements contained in the preceding sentence do not extend to claims for damages caused by the negligence or willful misconduct of the Indemnitees.

For all other claims: The Contractor shall defend and indemnify the Owner and the State of New Hampshire, their officers, board members, and employees (the "Indemnitees") from and against all losses, suits, claims, liabilities, penalties, fines, judgments, costs, and expenses, including without limitation reasonable attorneys' fees, on account of personal/bodily injury, death, or property damage resulting from, related to, caused by (or which may be claimed to be caused by), or arising out of (or which may be claimed to arise out of) the Contractor's negligent acts, errors or omissions in the performance of its obligations under this Agreement; or which is caused in whole or in part (or which may be claimed to be caused in whole or in part) by any negligent or willful act or omission of the Contractor, its subcontractors, anyone directly or indirectly employed by either the Contractor or its subcontractors, or anyone for whose acts any of the foregoing may be liable. The agreements contained in the preceding sentence do not extend to claims for damages caused by the negligence or willful misconduct of the Indemnitees.

Notwithstanding the foregoing, nothing herein shall be deemed to constitute a waiver of the sovereign immunity of PDA or the State of New Hampshire which is hereby reserved to PDA and the State of New Hampshire.

The provisions of this indemnification shall survive the expiration or termination of this Agreement, and the Contractor's obligations hereunder shall apply whenever any one of the Indemnitees incur costs or liabilities described above.

13. INSURANCE.

13.1 The Contractor shall, at its sole expense, obtain and maintain in force, and shall require any subcontractor or assignee to obtain and maintain in force, the following insurance:

13.1.1 general liability insurance against all claims of bodily injury, death or property damage in amounts of not less than \$2,000,000 per occurrence and \$2,000,000 in the aggregate; and

13.1.2 professional liability insurance in amounts of not less than \$4,000,000 per occurrence and \$4,000,000 in the aggregate.

13.1.3 automobile liability insurance in amounts of not less than \$1,000,000 combined single limit.

13.2 The policies described in subparagraph 13.1.1 and 13.1.3 herein shall be primary and non-contributory with respect to insurance of the PDA, include a waiver of subrogation in favor of the PDA, and be on policy forms and endorsements approved for use in the State of New Hampshire by the N.H. Department of Insurance, and issued by insurers licensed in the State of New Hampshire.

13.3 The Contractor shall furnish to the Contracting Officer identified in block 1.9, or his or her successor, a certificate(s) of insurance for all insurance required under this Agreement. Contractor shall also furnish to the Contracting Officer identified in block 1.9, or his or her successor, certificate(s) of insurance for all renewal(s) of insurance required under this Agreement no later than fifteen (15) days prior to the expiration date of each of the insurance policies. The certificate(s) of insurance and any renewals thereof shall be attached and are incorporated herein by reference. Each certificate(s) of insurance shall contain a clause requiring the insurer to endeavor to provide the Contracting Officer identified in block 1.9, or his or her successor, no less than ten (10) days prior written notice of cancellation or modification of the policy.

14. WORKERS' COMPENSATION.

14.1 By signing this agreement, the Contractor agrees, certifies and warrants that the Contractor is in compliance with or exempt from, the requirements of N.H. RSA chapter 281-A ("*Workers' Compensation*").

14.2 To the extent the Contractor is subject to the requirements of N.H. RSA chapter 281-A, Contractor shall maintain and require any subcontractor or assignee to secure and maintain, payment of Workers' Compensation in connection with activities which the person proposes to undertake pursuant to this Agreement. Contractor shall furnish the Contracting Officer identified in block 1.9, or his or her successor, proof of Workers' Compensation in the manner described in N.H. RSA chapter 281-A and any applicable renewal(s) thereof, which shall be attached and are incorporated herein by reference. The PDA shall not be responsible for payment of any Workers' Compensation premiums or for any other claim or benefit for Contractor, or any subcontractor or employee of Contractor, which might arise under applicable State of New Hampshire Workers' Compensation laws in connection with the performance of the Services under this Agreement.

15. WAIVER OF BREACH. No failure by the PDA to enforce any provisions hereof after any Event of Default

shall be deemed a waiver of its rights with regard to that Event of Default, or any subsequent Event of Default. No express failure to enforce any Event of Default shall be deemed a waiver of the right of the PDA to enforce each and all of the provisions hereof upon any further or other Event of Default on the part of the Contractor.

16. NOTICE. Any notice by a party hereto to the other party shall be deemed to have been duly delivered or given at the time of mailing by certified mail, postage prepaid, in a United States Post Office addressed to the parties at the addresses given in blocks 1.2 and 1.4, herein.

17. AMENDMENT. This Agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto.

18. CONSTRUCTION OF AGREEMENT AND TERMS.

This Agreement shall be construed in accordance with the laws of the State of New Hampshire and is binding upon and inures to the benefit of the parties and their respective successors and assigns. The wording used in this Agreement is the wording chosen by the parties to express their mutual intent, and no rule of construction shall be applied against or in favor of any party.

19. THIRD PARTIES. The parties hereto do not intend to benefit any third parties, and this Agreement shall not be construed to confer any such benefit.

20. HEADINGS. The headings throughout the Agreement are for reference purposes only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

21. SPECIAL PROVISIONS. Additional provisions set forth in the attached **EXHIBIT C** are incorporated herein by reference.

22. SEVERABILITY. In the event any of the provisions of this Agreement are held by a court of competent jurisdiction to be contrary to any state or federal law, the remaining provisions of this Agreement will remain in full force and effect.

23. ENTIRE AGREEMENT. This Agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire Agreement and understanding between the parties, and supersedes all prior Agreements and understandings relating hereto.

24. JURISDICTION. The parties submit all their disputes arising out of or in connection with this Agreement to the exclusive jurisdiction of the Courts of the State of New Hampshire.

EXHIBIT A **SERVICES**

Tighe & Bond will conduct an assessment, as set forth below, that examines existing conditions and operations (including current private commercial operations) at the Rye Harbor Marine Facility and, in presenting such conditions and operations, provide, in coordination and consultation with PDA and DPH, recommendations for improvements and modifications to the Facility as well as to operations occurring at the Facility. The Assessment will establish a baseline report and serve as a resource to the PDA and DPH. The PDA Board of Directors has outlined four goals for future development activity at the Facility that should be considered while undertaking the component parts of the Assessment. The four goals are as follows:

- 1) to ensure that the Harbor is an asset open to use by all, including commercial and sport fishing and lobstering, recreational boating, ocean sightseeing, and visitors who want to enjoy the Harbor and oceanfront;
- 2) to ensure that any existing and future improvements at the Harbor do not cause environmental degradation to the immediate surrounding areas;
- 3) to provide the public with clear, transparent, and fair rules and procedures that provide equal opportunity to make use of any facility or to seek a right of entry/concession that may be offered at the Harbor, and;
- 4) to increase DPH's income potential at the Harbor in order to sustain necessary maintenance and improvements to the Harbor over time;

Phase 1: Project Kick-off and Background Research

Project Kickoff: Tighe & Bond will schedule a kick-off meeting with the PDA to:

- Discuss the project goals, timeline, scope, schedule and budget.
- Review the RFQ/P and clarify any questions or concerns.
- Identify key points of contact and communication and/ or meeting schedules.
- Determine deliverables for each phase

Background Research: Prior to performing the Data Gathering related to the Environmental, Infrastructure, Parking/ Boat Storage, and Commercial Operations Assessments, Tighe & Bond will conduct a review of existing reports, plans, and studies related to the Rye Harbor Marine Facility. We will also prepare base maps using publicly available information, GIS data and past survey information performed for the PDA, if available. If desired, Tighe & Bond will work with one of its on-call survey sub-consultants to prepare an updated existing conditions and boundary survey.

Phase 2: Data Gathering

Environmental Assessment:

- Tighe & Bond will perform a NHDES OneStop Environmental Data Viewer review to document aboveground storage tanks (ASTs), underground storage tanks (USTs), and remediation sites that may affect the site.
- Request an Environmental Database Search Report for the Facility that will provide copies of relevant historic maps in their archive in addition to a listing of identified state, federal and local environmental files/records associated with the harbor.

- Perform a site visit to identify observable environmental conditions and interview the Harbor Master and DPH staff.
- Perform a wetland delineation and map the locations using GPS.
- Document current sea levels and the mean high tide line, as well as projected sea level rise (SLR) over the next 20-50 years.

Infrastructure Assessment:

- Tighe & Bond staff will perform a site visit to document the conditions of the existing buildings and infrastructure on-site including:
 - DPH-owned buildings and structures.
 - Privately-owned buildings and structures.
 - Existing primary utilities, including water, electric power, and telecommunications.
 - Existing stormwater management system.
 - Waste disposal and collection system(s), including Facility septic system.
 - Location and specifications of any non-utility electricity generation device located at the Facility.
 - Piers and gangways.
 - Boat ramp.
 - Fueling facilities.
 - Guardrails.
 - Revetment and other protective structures.
- The on-site assessment will include review of life safety codes, and ADA accessibility.

Parking and Boat Storage Assessment:

- Tighe & Bond will review current parking and boat storage conditions and document any changes from the 2022 Rye Harbor Marine Parking Study.

Private Commercial Operations Assessment:

- Tighe and Bond will utilize DRG Advisory Services to review and document the following with respect to the private commercial businesses operating at the Rye Harbor Marine Facility:
 - Nature of the goods/services provided.
 - Whether the same or similar service is provided within 2 miles of the Facility.
Note: This can be expanded to include other harbors along the New Hampshire Seacoast such as Portsmouth and Hampton Harbors, if desired.
 - Nature of the cost(s) charged for such goods/services.
 - Type of agreement authorizing the private commercial business to operate at the Facility.
 - Whether the service provided directly supports an activity authorized under a Pier Use Permit.
 - Approximate number of seasonal customers served by each business.
 - Impacts to Facility resulting from the private commercial businesses operating at the Facility.
- Perform interviews with the Harbor Master, PDA and DPH Staff, and the private business.
- Undertake outreach to the private business operators (approximately 20 businesses) in the form of an online and/or in person questionnaire or interviews to ascertain information needed to complete

the Assessment, as well as the needs, recommendations, and concerns of private commercial businesses operating at the Facility.

- If desired, Tighe & Bond can also work with the UNH Survey Center to create a broader survey for users of the Facility and interested parties so as to gather input from the larger community.

Phase 3: Vulnerability and Needs Assessment

This phase will include a vulnerability and needs assessment based on information gathered during Phase 2. The assessment will include the following:

- Identification of infrastructure vulnerable to environmental conditions and the nature of such impacts.
- Identify opportunities for new development and structures or modifications to existing development and structures onsite that reduce potential environmental impacts.
- Evaluate current and projected restroom Facility needs (including applicable ADA requirements) and septic system capacity requirements.
- Identification of the needs of private businesses.
- Identification of the needs of other users of the Facility and community needs, if applicable.
- Identification of operational and process improvement needs.

Phase 4: Recommendations and Capital Costs

Based on the vulnerability and needs assessment, Tighe & Bond shall develop a set of recommendations for improvements to the Facility and its operations. These recommendations will include:

- Recommendations for mitigation of environmental impacts including storm surge and SLR.
- Recommendations for infrastructure improvements to include:
 - Restroom and septic system capacity upgrades.
 - Compliance with applicable safety codes, and
 - ADA accessibility requirements.
- Recommendations related to private business use and/ or future development.
- Operational and process improvements including:
 - Facility management practices.
 - Improvements to agreements used by DPH authorizing private commercial service operations at the Facility.
 - Process and procedures for identifying and selecting services to be provided at the Facility.
 - Commercially reasonable fees, rentals or other rate structures for private commercial operator agreements and pier use permits.

As part of these recommendations, Tighe & Bond will provide Opinions of Probable Costs (OPC's) on the capital investment needed to accomplish the recommendations. This will include a breakdown of costs by category (e.g., infrastructure, equipment, etc.) and a potential timeline for implementation and/ or phasing. Tighe & Bond will also provide a permitting matrix that will identify the permitting and regulatory requirements that may be required for the recommended infrastructure improvements.

Phase 5: Presentation and Implementation Planning (if requested)

Although not specifically identified in the RFQ/P, Tighe & Bond would be happy to assist the PDA in a public presentation of the findings of the assessment and recommendations. Future implementation planning could also begin in advance of the public presentation or directly following.

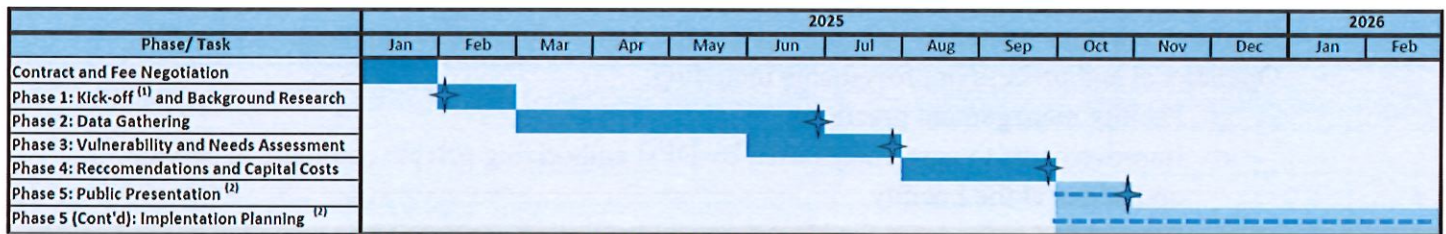
EXHIBIT B CONTRACT PRICING



The following summaries are presented to give you a better understanding of how the project budget was developed. Invoices will be submitted based on the lump sum project fee for each phase and not individual line-item budgets.

Table 1: Summary of Fees

| Summary | Fee |
|--|------------------|
| Phase 1: Project Kick-off and Background Research | \$ 12,300 |
| Phase 2: Data Gathering | \$ 46,000 |
| Phase 3: Vulnerability and Needs Assessment | |
| Vulnerability and Needs Assessment | \$ 15,750 |
| Stakeholder and Client Meetings | \$ 10,000 |
| Phase 3 Subtotal | \$ 25,750 |
| Phase 4: Recommendations and Capital Costs | |
| Recommendations and Capital Costs | \$ 46,700 |
| Stakeholder and Client Meetings | \$ 10,000 |
| Phase 4 Subtotal | \$ 56,700 |
| TOTAL | \$140,750 |
| Phase 5: Final Presentation (if requested) | \$ 7,500 |



(1) Schedule assumes project award and kick-off by February 1st, 2025.

(2) Potential services not specifically requested as part of the RFQ.

★ Milestone and/or deliverable.

EXHIBIT C
SPECIAL PROVISIONS

Disadvantaged Business Enterprises and Civil Rights:

The PDA, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 USC §§ 2000d to 2000d-4) and the related Regulations, will affirmatively ensure that in awarding and entering into this Agreement no businesses will be discriminated against on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), or age. In addition, and relative to this Project only, the above non-discrimination provision will be applicable to and bind Tighe & Bond, and any subcontractor thereof engaged relative to this Project, from the solicitation period through the completion of this Agreement.

