



# Request for Proposals

## Marketing Services for the Port of Vancouver USA

RFP 19-34

Notice is hereby given that the Port of Vancouver will receive proposals by mail or at its administrative office, located at 3103 NW Lower River Road, Vancouver, WA 98660, up to the hour of:

**5:00 p.m.  
Wednesday, September 25, 2019**

All interested proposers must register on ProcureWare system. To access ProcureWare on the port's website, visit [www.portvanusa.com](http://www.portvanusa.com) and under the About section, go to the Doing Business with the Port page and click on the ProcureWare Website button. For assistance, please call 360-693-3611.



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### Port of Vancouver USA

3103 NW Lower River Road  
Vancouver, WA 98660

360-693-3611

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# I. INTRODUCTION / PROJECT REQUIREMENTS



## 1.1 Purpose, Objectives, Background

The Port of Vancouver USA (port) is seeking a full-service agency to assist in its advertising, marketing and public relations efforts and is seeking qualified consultants to submit proposals for consideration. The port's primary customers and partners are international shipping lines, beneficial cargo owners, logistics providers, warehouse and distribution centers, manufacturing companies, site selectors, industrial real estate developers, foreign investors, trucking companies, railroads, economic development partners and community members.

Responses to this RFP will be evaluated by a team of port staff that will independently score each proposal based on the criteria defined in this solicitation. The port will then conduct interviews with finalists to determine the final selection of the most capable consultants. The highest scoring proposer shall be recognized as the successful consultant for the award of services.

Located in Vancouver, Washington along the Columbia River, the Port of Vancouver USA is a multi-purpose port authority that has served as a global point of connection and a regional engine for economic growth for more than 100 years.

Established in 1912 to ensure public ownership of trade docks, the port is a leader in marine and industrial business, handling more than eight million tons of cargo each year. Products such as wheat, mineral and liquid bulks, vehicles and project cargoes make their way to and from our port by ship, train, truck or barge from points as far away as Asia and South America. The port is home to more than 50 industrial tenants, ranging from wood panel manufacturing to electronics recycling and small-batch beer malt distribution.

Whether through creating jobs, taking a proactive approach to environmental stewardship, or creating a new destination waterfront, the Port of Vancouver USA takes the long view and an optimistic approach to our work. We are always thinking ahead and finding ways to help the Vancouver community open doors, put people to work and connect to what's possible.

Please review the port's [Strategic Plan](#) as it provides some detail and perspective of the port's mission and values. The plan provides insight to the port's vision and sets an expectation of the selected consultant to support strategic plan goals in advertising, marketing and public relations.

## **1.2 Consultant Profile**

The Consultant will be expected to perform all functions normally required of a full-service marketing and advertising agency. Key personnel should have at least 10 years of experience in communications strategy, brand management, marketing and advertising. Business-to-business marketing experience is essential; experience within the shipping/port industry is ideal.

With the various types of projects in which the port engages, having access to consultants with flexibility and various skill sets provides significant advantages and benefits to the port. Firms of all sizes, depth, and capabilities are encouraged to submit proposals. The most successful consultants will be determined by demonstrating not only the capability to excel in these services but the ability to maintain cost control and recommend ways to reduce project costs related to these services. It is also expected that the consultant will be available to attend regular meetings in person. The execution of this agreement is not a guarantee of work or that the port will hire the consultant to perform work.

## **1.3 Scope of Work**

The selected consultant's responsibilities will include collaboration with port staff to fulfil the marketing, advertising and public relations needs of the port. The activities below include a sample of the required services.

- Develop a marketing and advertising plan to support the port's marine, industrial and community audiences (print, digital, broadcast etc.)
- Conduct media planning and buying, including research, media negotiations and correspondence related to specific media plans/buys for international, national, regional and local media
- Collaborate on creative strategy and design for advertisements, collateral, sales literature, videos, presentation and event materials, tradeshow booth displays, direct mail and other promotional materials as needed
- Provide website and social media strategy, digital advertising, ongoing maintenance and assistance with website/social media analytics
- Provide creative support such as copywriting, message strategy, graphic design and branding guidance as needed - the port will own all original artwork, layout, design and final product
- Develop direct mail, email marketing and other business-to-business marketing programs
- Maintain active budget control and shared responsibility for cost control
- Provide quarterly written progress reports with analysis and advice for ongoing campaigns

### **Public Relations:**

- Pitch port-related stories and establish strong relationships with key marine and industrial trade media, as needed
- Work closely with port staff to develop and implement effective public relations campaigns that target key stakeholders, as needed
- Provide consulting services for media training and crisis communication, as needed
- Assist in the development of a social media strategy using tools like: Facebook, Twitter, LinkedIn and Instagram

The Consultant will develop an annual budget for fees and hard costs related to all marketing and advertising expenditures and other services required by this RFP or the contract resulting from this RFP. The port will expect the Consultant to develop a cost-effective plan that is responsive to marketing and advertising needs. The level of anticipated annual spending is estimated to be approximately \$300,000 – 500,000 for advertising, marketing and public relations services.

## **1.4 Pre-Proposal Meeting and Tour**

An optional pre-proposal meeting and tour will be conducted at the port's office at 3103 NW Lower River Road, Vancouver, WA, at **9:30 AM on Wednesday, September 11, 2019**. Attendance at the pre-proposal meeting is not mandatory, but interested firms are encouraged to attend. The meeting will include a review of the Scope of Work, a question and answer period and a tour of the port.

## **1.5 Contract Period of Performance**

The period of performance of an agreement resulting from this RFP is expected to be up to three years. A contract extension may be issued to provide the time necessary to complete projects in process not completed by the original contract completion date. Amendments extending the period of performance, if any, shall be by mutual agreement.

## 2. GENERAL INFORMATION FOR CONSULTANTS



### 2.1 RFP COORDINATOR

The RFP Coordinator is the sole point of contact at the port for this procurement. All communication between the Consultant and the port upon receipt of this request shall be with the RFP Coordinator, as follows:

Name	Rick Cline, Contracts Manager
Address	3103 NW Lower River Road
City, State, Zip Code	Vancouver, Washington, 98660
Phone Number	(360) 693-3611
Fax Number	(360) 735-1565
E-Mail Address	rcline@portvanusa.com

Any other communication will be considered unofficial and non-binding on the port. Consultants are to rely on written statements issued by the RFP Coordinator. Communication directed to parties other than the RFP Coordinator may result in disqualification of the Consultant.

### 2.2 SUBMISSION OF PROPOSALS

The proposal, whether mailed or hand delivered, must be received by the port **no later than 5:00 pm on Wednesday September 25, 2019 at the Port of Vancouver Administrative Office, 3103 NW Lower River Road, Vancouver, Washington 98660.** The proposal is to be sent in an envelope clearly marked to the attention of the RFP Coordinator at the address noted in Section 2.1.

Consultants mailing proposals should allow normal mail delivery time to ensure timely receipt of their proposals by the RFP Coordinator. Consultants hand delivering proposals should allow time for traffic congestion. Consultants assume the risk for the method of delivery chosen. The port assumes no responsibility for delays caused by any delivery service.

Late proposals will not be accepted and will be automatically disqualified from further consideration. The proposals must respond to the procurement requirements. Do not respond by referring to material presented elsewhere. The proposal must be complete and must stand on its own merits. Failure to respond to any portion of the procurement document may result in rejection of the proposal as non-responsive. All proposals and any accompanying documentation become the property of the port and will not be returned.

### **2.3 PROPRIETARY INFORMATION/PUBLIC DISCLOSURE**

All proposals received shall remain confidential until the AGREEMENT, if any, resulting from this RFP, is signed by the authorized representative of the port and the apparent successful Consultant; thereafter, the proposals shall be deemed public records as defined in Chapter 42.56 RCW, "Public Records."

Any information in the proposal that the Consultant desires to claim as proprietary and exempt from disclosure under the provisions of Chapter 42.56 RCW must be clearly designated in writing on the page. The page must be identified and the particular exception from disclosure upon which the Consultant is making the claim. Each page claimed to be exempt from disclosure must be clearly identified by the word "Confidential" printed on the lower right-hand corner of the page.

The port will consider a Consultant's request for exemption from disclosure; however, the port will make a decision predicated upon Chapter 42.56 RCW. Marking the entire proposal exempt from disclosure will not be honored. The Consultant must be reasonable in designating information as confidential. If any information is marked as proprietary in the proposal, such information will not be made available until the affected Proposer has been given an opportunity to seek a court injunction against the requested disclosure.

### **2.4 REVISIONS TO THE RFP**

In the event it becomes necessary to revise any part of this RFP, or if questions arise, an addendum may be published through the ProcureWare system. To access ProcureWare on the port's website, visit [www.portvanusa.com](http://www.portvanusa.com) and under the About section, go to the Doing Business with the Port page and click on the ProcureWare Website button. Questions arising from this proposal request will be documented and answered in written form and made available on this system.

The port reserves the right to cancel or to reissue the RFP in whole or in part, prior to execution of an AGREEMENT.

### **2.5 ADDENDUM ACKNOWLEDGEMENT**

The Proposer must acknowledge receipt of any addenda to the solicitation by use of the "Submittal and Addendum Acknowledgement" form (see Exhibit II). ***Failure to acknowledge receipt of Addenda MAY render the proposal non-responsive and therefore void.***

### **2.6 RESPONSIVENESS**

All proposals will be reviewed by the RFP Coordinator to determine compliance with administrative requirements and instructions specified in this RFP. The Consultant is specifically notified that failure to comply with any part of the RFP may result in rejection of the proposal as non-responsive. The port also reserves the right, however, at its sole discretion to waive minor administrative irregularities.

The execution of this agreement is not a guarantee of work or that the port will hire the consultant to perform work.

### **2.7 MOST FAVORABLE TERMS**

The port reserves the right to make an award without further discussion of the proposal submitted. Therefore, the proposal should be submitted initially on the most favorable terms that the Consultant can propose. The port reserves the right to contact a Consultant for clarification of its proposal during the evaluation process. In addition, if the Consultant is selected as the apparent successful Consultant, the port reserves the right to enter into contract negotiations with the apparent successful Consultant, which may include discussion regarding the terms of the proposal. Contract negotiations may result in incorporation of some or all of the Consultant's proposal. The Consultant should be prepared to accept this RFP for incorporation into an AGREEMENT resulting from this RFP. It is also understood that the proposal will become part of the official contract file.

### **2.8 PORT OF VANCOUVER AGREEMENT AND GENERAL TERMS & CONDITIONS**

The apparent successful Consultant will be expected to accept and enter into a Port of Vancouver AGREEMENT (see ProcureWare document file for sample) and its Professional/Personal General Terms and Conditions (see Exhibit III). In no event is a Consultant to submit its own standard contract terms and conditions in response to this solicitation. The port will review requested exceptions and accept or reject the same at its sole discretion. The successful Consultant shall comply with all local, state, and federal requirements and, when applicable, adheres to all federally mandated procedures and requirements for projects utilizing federal funding.

## **2.9 COSTS TO PROPOSE / NO OBLIGATION TO CONTRACT**

The port will not reimburse Consultant for any costs involved in the preparation and submission of responses to this RFP or in the preparation for and attendance at subsequent interviews. Furthermore, this RFP does not obligate the port to accept or contract for any expressed or implied services. The port reserves the right to request any Consultant to clarify their proposal or to supply any additional material deemed necessary to assist in the evaluation of the Consultant's proposal.

## **2.10 REJECTION OF PROPOSALS**

The port reserves the right at its sole discretion to reject any and all proposals received without penalty and not issue an AGREEMENT as a result of this RFP.

## **2.11 DEBRIEFING OF UNSUCCESSFUL PROPOSERS REJECTION OF PROPOSALS**

Upon request, debriefing conferences are offered for Proposers after the award of contract and made available by contacting the RFP Coordinator.

## **2.12 TITLE VI POLICY STATEMENT**

The Port of Vancouver assures that no person shall on the grounds of race, color, national origin, or sex, as provided by Title VI of the Civil Rights Act of 1964 and as amended, and the Civil Rights Restoration Act of 1987 (P.L. 100.259) be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance from the Washington State Department of Transportation. The Port of Vancouver further assures every effort will be made to ensure nondiscrimination in all of its programs and activities, whether those programs or activities are federally funded or not. In the event the Port of Vancouver distributes federal aid funds to another governmental entity or other sub-recipient, the Port of Vancouver will include Title VI language in all written agreements and will monitor for compliance. The Port of Vancouver's Office of the Title VI Coordinator is responsible for initiating and monitoring Title VI activities, preparing required reports and other the Port of Vancouver responsibilities as required by 23 CFR 200 and 49 CFR 21.

## **2.13 COOPERATIVE PURCHASING**

The Washington State Interlocal Cooperation Act, Ch. 39.34 RCW, authorizes public agencies to cooperatively purchase goods and services if all parties agree. By responding to this RFP, Consultant agrees that other public agencies may purchase goods and services under this solicitation or contract at their own cost and without the Port of Vancouver incurring any financial or legal liability for such purchases. The Port of Vancouver agrees to allow other public agencies to purchase goods and services under this solicitation or contract, provided that the Port of Vancouver is not held financially or legally liable for purchases and that any public agency purchasing under such solicitation or contract file a copy of this invitation and such contract in accordance with RCW 39.34.040.

## **2.14 FEDERAL GRANT FUNDING**

The port reserves the right to apply at any time for state or federal grant funding, obligating the port to comply with grant management common rules as defined by individual government departments. Consultant shall comply with any or all applicable grant requirements.

## **2.15 AMERICANS WITH DISABILITIES ACT (ADA) INFORMATION**

The Port of Vancouver in accordance with Section 504 of the Rehabilitation Act (Section 504) and the Americans with Disabilities Act (ADA), commits to nondiscrimination on the basis of disability, in all of its programs and activities. This material can be made available in an alternate format by emailing Port of Vancouver, Rick Cline at [rccline@portvanusa.com](mailto:rccline@portvanusa.com) or by calling 360-693-3611.

### 3. PROPOSAL SUBMITTAL AND EVALUATION PROCESS



#### 3.1 EVALUATION METHODOLOGY

The objective of this solicitation is to evaluate and select one consultant to enter into agreement. Responses to this RFP will be evaluated by a team of selected port staff who will independently score each proposal based on the criteria defined in this solicitation. Interviews shall be conducted with firms determined to be finalists and the proposer receiving the highest score from the interview evaluation will be selected to enter into an agreement. The execution of the contract or agreement is not a guarantee of work or that the port will hire the consultant to perform work.

#### 3.2 ANTICIPATED SOLICITATION SCHEDULE

Issue Request for Proposals	Tuesday, Aug. 27
Pre-proposal meeting at port admin office	9:30 a.m. Wednesday, Sept. 11
Question and answer period closes	5:00 p.m. Wednesday, Sept. 18
Issue addendum to RFP (if applicable)	Friday, Sept. 20
<b>Proposals due</b>	<b>5:00 p.m. Wednesday, Sept. 25</b>
Complete proposal evaluation	October 2019
Conduct interviews with finalists	October 2019
Announce "Apparent Successful Consultant"	October 2019
Board of Commissioners approval of contract	November 2019
Hold debriefing conferences (if requested)	December 2019
Begin contract work	January 2020

#### 3.3 REQUEST FOR PROPOSAL FORMAT

Proposers are required to submit ten (10) hard copies of their submittal and an electronic version. One (1) copy must have original signature(s) and copies can have photocopied signatures.

Proposals must be submitted on 8.5 x 11-inch paper with tabs separating major sections of the proposal. Proposers are encouraged to print/copy on both sides of a single sheet of paper wherever applicable; if sheets are printed on both sides, it is considered to be two pages. It is preferred that proposal responses be limited to **20 pages** (excluding cover pages, personnel resumes and required forms). This limit serves only as a guide and scoring will not be impacted if the proposal stays within a reasonable range to this limit request. Proposals shall provide information in the same order as presented in this document with the same headings. This will not only be helpful to the evaluators of the proposal but should assist the Proposer in preparing a thorough response.

#### 3.4 CONFLICT OF INTEREST

Please provide disclosure of any conflicts or potential conflicts of interest that may in any way influence or impact the ability to perform the services defined in this solicitation.



**3.5 EVALUATION CRITERIA**

The following information is required and will be used to evaluate and rank responses (*failure to submit these items may be cause for deeming a proposal non-responsive*). The teams advancing to the interview phase will be selected based on the following criteria. Relative weighting is as indicated.

**Scoring Criteria 1: Project Approach and Methodology.....30 Points**

**Address the following areas:**

- Accessibility/continuity of agency staff expected to perform work
- Extent of principal and/or owner involvement, if any
- Quality assurance/ quality control
- Plan for communication and coordination with port External Affairs team

**Describe the following:**

- Role of account manager assigned to this contract. Specify their interaction with the port’s External Affairs team with specific responsibilities and limitations
- Role of your creative department
- Role of your media department. Specify strengths and history of any international/overseas media experience
- Role of your public relations department
- Role of your digital services department (video, website, etc.)
- Role of sub-consultants, if any, and percentage of total work they will perform

**Scoring Criteria 2: Firm’s Background, Qualifications, General Experience.....30 Points**

**Discuss the following areas:**

- Agency’s history; how long it has been in business; type of work firm normally performs, areas of special expertise
- Management and organizational structure, please provide an organizational chart
- Work firm has performed for government/public agencies
- Work firm has performed for marine services or facilities, transportation, and industrial property marketing services
- Work firm has performed with international/national media
- Work firm has performed for business-to-business clients and most recent successful campaigns

**Provide the following:**

- A list of current accounts and the length of time they have been with you
- Samples of current Business-to-Business marketing campaigns
- Three client references (specify type of client, current point of contact including name, telephone, address, and email). References should be a similar-sized account and should be business-to-business in nature, not including the Port of Vancouver.

**Scoring Criteria 3: Experience and Education of Assigned Staff .....25 Points**

**Address the following areas:**

- Provide resumes of individual staff who will have a key role in this account (not to exceed one page per individual). Minimum qualifications for key personnel to perform services are 10 years of work experience. Include professional education of the assigned staff, experience and certifications for each and their current role in the organization. Provide information on staff members’ expected role for this contract.

**Scoring Criteria 4: Cost.....15 Points**

**Address the following areas:**

- Provide information on the average billing (dollar amount) of your accounts on an annual basis. Specify largest and smallest accounts billing (dollar amount)
- Describe services your agency provides through media commission
- Describe your media billing and payment policy
- Provide a fee schedule for personnel identified to be used in the contract defined by roles and services

## EXHIBIT I: CERTIFICATIONS AND ASSURANCES

### RFP 19-34

I/we make the following certifications and assurances as a required element of the proposal to which it is attached, understanding that the truthfulness of the facts affirmed here and the continuing compliance with these requirements are conditions precedent to the award or continuation of the related AGREEMENT(s):

1. I/we declare that all answers and statements made in the submittal are true and correct.
2. The attached submittal is a firm offer for consideration to enter into contract with the port for a period of 60 days following receipt of submittal and it may be accepted by the port without further negotiation (except where obviously required by lack of certainty in key terms) at any time within the 60-day period.
3. In preparing this submittal, I/we have not been assisted by any current or former employee of the Port of Vancouver whose duties relate (or did relate) to this submittal or prospective contract, and who was assisting in other than his or her official, public capacity.
4. I/we understand that the port will not reimburse me/us for any costs incurred in the preparation of this submittal. All submittals become the property of the port, and I/we claim no proprietary right to the ideas, writings, items, or samples, unless so stated in this submittal.
5. I/we agree that submission of the attached submittal constitutes acceptance of the solicitation contents and the contract general terms and conditions located online in the port's ProcureWare system. If there are any exceptions to these terms, I/we have described those exceptions in detail on a page attached to this document.
6. No attempt has been made or will be made by the Proposer to induce any other person or firm to submit or not to submit a submittal for the purpose of restricting competition.
7. I/we grant the port the right to contact references and others, who may have pertinent information regarding the Proposer's prior experience and ability to perform the services contemplated in this procurement.

*Note: On behalf of the firm submitting this submittal, my name below attests to the accuracy of the above statements.*

---

Signature of Proposer

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Title

---

Date

**EXHIBIT II: SUBMITTAL AND ADDENDUM ACKNOWLEDGEMENT**

**RFP 19-34**

This form must be signed by a person authorized to make submittals and enter into contract negotiations on behalf of your company. To be considered for this project, the submittals must be completed in accordance with this RFP and this cover sheet must be attached. ***Failure to submit this form may result in your submittal being deemed non-responsive.***

\_\_\_\_\_  
Authorized Official (Signature)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name of Authorized Official

\_\_\_\_\_  
Title of Authorized Official

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Contact Person

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State, Zip

\_\_\_\_\_  
Phone Number

\_\_\_\_\_  
Fax Number

\_\_\_\_\_  
Email Address

\_\_\_\_\_  
Federal Tax ID #

\_\_\_\_\_  
UBI #, Contractor's License # (if applicable)

The following Addenda is/are hereby acknowledged:

Addendum #	Date of Addendum/Addenda	Signed Acknowledgement
1.	_____	
2.	_____	
3.	_____	

**NOTE: Failure to acknowledge receipt of Addenda may render the submittal non-responsive and therefore void.**

### **EXHIBIT III: PROFESSIONAL/PERSONAL SERVICES GENERAL TERMS & CONDITIONS**

**Acceptance of the Agreement by either CONSULTANT's written acknowledgment thereof or commencement of performance under the contract shall create a binding agreement and shall be conclusive evidence of the CONSULTANT's acceptance of these terms and conditions. The CONSULTANT certifies that it has legal authority to enter into this Agreement and is at least 18 years of age. The Agreement, including all attachments referenced herein, constitutes the entire agreement between the PORT and the CONSULTANT.**

DEFINITIONS -- As used throughout this Agreement, the following terms shall have the meaning set forth below:

- A. "PORT" shall mean the PORT OF VANCOUVER, Vancouver, WA, or any of the officers or other officials lawfully representing that PORT.
- B. "Authorized Representative" shall mean the Executive Director, Port of Vancouver, WA, and/or the delegate authorized in writing to act on the Director's behalf.
- C. "CONSULTANT" shall mean employees, subconsultants, and individuals representing or acting on behalf of the firm, provider, organization, individual or other entity performing service under this Agreement.
- D. "Agreement" shall mean the contract between the PORT and CONSULTANT which may include scope of work, schedule for completion, agreed amount or rates and any other provisions referenced in the contract, including but not limited to the General Terms and Conditions incorporated herein by reference.
- E. "Project" shall mean the provision of all labor, materials, tools, equipment, and necessary items needed to successfully complete the work, task or work order according to the Agreement.

ACCESS TO DATA -- CONSULTANT shall provide access to data generated under this Agreement to PORT and its duly authorized agents at no additional cost. This includes access to all information that supports the findings, conclusions, and recommendations of the CONSULTANT's reports, including computer models and methodology for those models.

AMENDMENTS -- Agreement shall not be altered, changed, or amended except by an instrument in writing executed by the parties hereto. Any changes in the scope of work or compensation shall be mutually agreed upon between PORT and the CONSULTANT and shall be incorporated in written revisions to this Agreement.

ASSIGNMENT -- The work to be provided under this Agreement is not assignable or delegable by either party, in whole or in part, without the express prior written consent of the other party, which consent shall not be unreasonably withheld.

ATTORNEYS' FEES -- In the event of litigation or other action brought to enforce Agreement terms, each party agrees to bear its own attorney's fees and costs, provided however, that in the event that a trier of fact determines that a party's claims are frivolous or fraudulent, said party shall pay the other party's attorney's fees and costs.

COMPLIANCE WITH LAWS -- CONSULTANT agrees to comply with all local, state and federal laws and regulations applicable to the Project, including building codes and permitting regulations existing at the time this Agreement was executed and those regarding employee safety, the workplace environment, and employment eligibility verifications as required by the Immigration and Naturalization Service. CONSULTANT shall obtain all professional licenses and permits required to complete the scope of work as defined.

COMPENSATION AND SCHEDULE OF PAYMENTS -- PORT shall pay the CONSULTANT at the rates indicated for work performed under the terms of this Agreement. This is the maximum amount to be paid under this Agreement and it shall not be exceeded without PORT's prior written authorization in the form of a negotiated and executed amendment. Such payment shall be full compensation for work performed or services rendered and for all labor, Materials, supplies, equipment and incidentals necessary to complete the Project as set forth herein. Invoices will be paid thirty (30) days after the Port's receipt and acceptance of the invoice for services, provided that all appropriate forms and or supplemental or supporting documents have been submitted. Payment periods will be computed from the date of receipt of a correct invoice. No payment shall be due prior to the Port's receipt and acceptance of the items identified in the invoice thereof.

Notwithstanding the provisions above, the Port reserves the right to refuse payment, in whole or in part, until such time as the Port is satisfied that the Consultant and its subconsultants have satisfied all claims and requirements of the Washington Department of Revenue and Washington Department of Labor and Industries, as well as all claims of suppliers or labor, materials, or equipment. The PORT reserves the right to correct any invoices submitted in error and adjust according to the rates and allowable costs set forth in this Agreement. PORT and CONSULTANT agree that any amount paid in error by PORT does not constitute a rate change in the amount of the agreement. The total on the agreement is to be the not to exceed amount and is not to be construed as a guaranteed pay out total.

The PORT may, in its sole discretion, terminate the agreement or withhold payments claimed by the CONSULTANT for services rendered if the CONSULTANT fails to satisfactorily comply with any term or condition of this agreement.

No payments in advance or in anticipation of services or supplies to be provided under this agreement shall be made by the PORT.

**CONFIDENTIALITY / SAFEGUARDING OF INFORMATION** -- The use or disclosure by any party of any information concerning the PORT, designated confidential by the PORT, which is not otherwise in the public domain, for any purpose not directly connected with the administration of the PORT's or the CONSULTANT's responsibilities with respect to services provided under this Agreement, is prohibited except by written consent of the PORT or its attorney or as required by law, court order or subpoena.

**CONFLICT OF INTEREST** – CONSULTANT represents that it has no direct or indirect economic interest which conflicts in any manner with its performance of the services required under this Agreement. CONSULTANT represents that it has not retained any person to solicit this Agreement and has not agreed to pay such person any compensation or other compensation contingent upon execution of this agreement.

**CONFORMANCE** - If any provision of this Agreement violates any applicable federal or Washington State statute or rule of law, such provision is considered modified to conform to that statute or rule of law.

**COPYRIGHT PROVISIONS** -- Unless otherwise provided, all Materials produced under this Agreement shall be considered "works for hire" as defined by the U.S. Copyright Act and shall be owned by the PORT. The PORT shall be considered the author and owner of such Materials, whether or not the Project is completed, or this Agreement is terminated at any point. In the event the Materials are not considered "works for hire" under the U.S. Copyright laws, CONSULTANT hereby irrevocably assigns all right, title, and interest in Materials, including all intellectual property rights, to the PORT effective from the moment of creation of such Materials.

Materials means all items in any format and includes, but is not limited to, data, reports, documents, drawings, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. Ownership includes the right to copyright, patent, register, and the ability to transfer these rights.

For Materials that are delivered under the Agreement, but that incorporate pre-existing materials not produced under the Agreement, CONSULTANT hereby grants to the PORT a nonexclusive, royalty-free, irrevocable license (with rights to sublicense others) in such Materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. The CONSULTANT warrants and represents that CONSULTANT has all rights and permissions, including intellectual property rights, and rights of publicity, necessary to grant such a license to the PORT and is free from claims from any other party.

The CONSULTANT shall exert all reasonable effort to advise the PORT, at the time of delivery of Materials furnished under this Agreement, of all known or potential invasions of privacy contained therein and of any portion of such document which was not produced in the performance of this Agreement. The PORT shall receive prompt written notice of each notice or claim of copyright infringement received by the CONSULTANT with respect to any data delivered under this Agreement. The PORT shall have the right to modify or remove any restrictive markings placed upon the data by the CONSULTANT.

The PORT may allow qualified professionals to use and alter the Materials for additions or changes to the Project or for use on any other project, so long as those professionals (1) remove all references to the CONSULTANT from any modified work product, and (2) assume all responsibility for the modified work product. In the event that PORT reuses or modifies the Materials without engaging the CONSULTANT, the PORT releases CONSULTANT from any and all claims that may arise from such reuse or modification, unless the PORT has rightfully terminated this Agreement for cause.

CONSULTANT shall have the right to retain copies of all Materials created pursuant to this Agreement and may use elements of the Materials in other projects with the express written consent of the PORT.

**DELIVERABLES** – All tangible Materials produced as a result of this Agreement shall be prepared as specified by the PORT's Project Manager. Delivery of Materials produced shall consist both of the tangible materials and one copy of any computer file used in the creation of the tangible product on CD-ROM in a PDF format or other format specified by the PORT. The PORT may offset from the CONSULTANT's fee expenses incurred by the PORT in correcting drawings or specifications not prepared in accordance with the PORT's procedure.

**DISPUTES** – If a dispute arises relating to this Agreement and cannot be settled through direct discussions, the parties may agree to endeavor to settle the dispute through a mediation firm acceptable to both parties, the cost which shall be divided equally. The PORT reserves the right to join any dispute under this Agreement with any other claim in litigation or other dispute resolution forum and the CONSULTANT agrees to such joinder, so that all disputes related to the Project may be consolidated and resolved in one forum.

PORT and CONSULTANT agree that, the existence of a dispute notwithstanding, they will continue without delay to carry out all their respective responsibilities under this Agreement which are not affected by the dispute. Both parties agree to exercise good faith in the dispute resolution and to settle disputes prior to using the dispute resolution panel whenever possible.

**GOVERNING LAW** – This Contract shall be deemed to have been executed and delivered within the State of Washington, and the rights and obligations of the parties hereunder shall be construed and enforced in accordance with, and governed by, the laws of the State of Washington without regard to the principles of conflict of laws. Any action or suit brought in connection with this Agreement shall be brought in the Superior Court of Clark County, Washington.

**INDEMNIFICATION & HOLD HARMLESS** – CONSULTANT agrees to hold the PORT harmless, and to indemnify the PORT against any and all claims of third parties arising out of CONSULTANT's negligent performance under this Agreement, provided however, that the CONSULTANT shall not be required to so indemnify the PORT against liability for damages caused by or resulting from the negligence of the PORT, its agents or employees; and provided further that if such damages are caused by or result from the concurrent negligence of the PORT or its agents or employees and of the CONSULTANT or its agents, consultants, subconsultants or employees, then the CONSULTANT's indemnity shall be limited to the extent of the negligence by the CONSULTANT or its agents, consultants, subconsultants or employees. Consultant shall have liability for reasonable and necessary defense costs incurred by persons indemnified to the extent caused by Consultant's negligence herein and recoverable under applicable law on account of negligence. This indemnity and hold harmless shall include any claim made against the PORT by an employee of CONSULTANT or subconsultant or agent even if CONSULTANT is thus otherwise immune from liability pursuant to the workers' compensation statute, Title 51 RCW, except to the extent that such liability arises from the negligence of the PORT. CONSULTANT specifically acknowledges that the provisions contained herein have been mutually negotiated by the parties and it is the intent of the parties that CONSULTANT provide the broadest scope of indemnity permitted by RCW 4.24.115. CONSULTANT is an independent CONSULTANT and responsible for the safety of employees.

**INDEPENDENT CAPACITY OF THE CONSULTANT** – The CONSULTANT, its subconsultants, agents and employees are independent contractors performing services for the PORT and are not employees of the PORT. The CONSULTANT, its subconsultants, agents and employees, shall not, as a result of this Agreement, accrue leave, retirement, insurance, bonding or any other benefits afforded to PORT employees. The CONSULTANT, subconsultants, agents and employees shall not have the authority to bind PORT in any way except as may be specifically provided herein.

**KEY PERSONS** – The CONSULTANT acknowledges and agrees that the PORT selected the CONSULTANT team and is entering into this Agreement because of the qualifications of the CONSULTANT's Key Person(s), including subconsultant Key Person(s). In particular, the PORT, through this Agreement is engaging the expertise, experience, judgment and personal attention of those listed in Exhibit B of the Agreement. Each Key Person shall not delegate performance of any management powers or other responsibilities he or she is required to perform under this Agreement without first obtaining written consent from the PORT. Further, the CONSULTANT shall not re-assign or transfer any Key Person to other duties or positions such that the Key Person is no longer available to provide the PORT with his or her expertise, experience, judgment and personal attention according to any schedule established under this Agreement without receiving written consent from

the PORT. In the event the CONSULTANT requests the PORT to approve a re-assignment or transfer of a Key Person, the PORT shall have the right to interview, review the qualifications of, and approve or disapprove the proposed replacement(s) for the Key Person. Any approved substitute or replacement for a Key Person shall be deemed to be a Key Person under this Agreement.

**LICENSING, ACCREDITATION AND REGISTRATION** -- The CONSULTANT shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements/standard, necessary for the performance of this Agreement. Prior to performing work under this Agreement, CONSULTANT shall be responsible to obtain all necessary licenses and/or permits required to perform the work associated with this Agreement, including, but not limited to a City of Vancouver Business License and all associated requirements.

**LIMITATION OF AUTHORITY** -- Only the Agent or Agent's delegate by writing (delegation to be made prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Agreement. Furthermore, any alteration, amendment, modification, or waiver of any clause or condition of this Agreement is not effective or binding unless made in writing and signed by the Agent.

**NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY** -- During the term of this Agreement, the CONSULTANT agrees as follows: The CONSULTANT will not discriminate against any employee or applicant for employment because of creed, religion, race, color, sex, marital status, sexual orientation, political ideology, ancestry, national origin, or the presence of any sensory, mental or physical handicap, unless based upon a bona fide occupational qualification. The CONSULTANT will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their creed, religion, race, color, sex, national origin, or the presence of any sensory, mental or physical handicap. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

#### **ORDER OF PRECEDENCE**

In the event of an ambiguity in this Agreement, the ambiguity shall be resolved by giving precedence in the following order (1 presiding over 2, 2 presiding over 3, etc.):

1. Executed Amendments to Agreement
2. Executed Agreement
3. Exhibit "A" - Professional/Personal Services – General Terms and Conditions
4. Exhibit "B" – CONSULTANT Scope of Work/Rates/Fees
5. Request for Proposal
6. Applicable federal, state and local statutes and regulations
7. Any other provision, term, or document incorporated herein by reference or otherwise incorporated

**PRIVACY** -- Personal information collected, used, or acquired in connection with this Agreement shall be used solely for the purposes of this Agreement. CONSULTANT agrees not to release, divulge, publish, transfer, sell, or otherwise make known to unauthorized persons or organizations personal information without the express written consent of the PORT. CONSULTANT agrees to implement physical, electronic, and managerial safeguards to prevent unauthorized access to personal information.

Any breach of this provision may result in termination of the Agreement and the demand for return of all personal information. The CONSULTANT agrees to indemnify and hold harmless the PORT for any damages related to the CONSULTANT's unauthorized use of personal information.

For purposes of this provision, personal information includes, but is not limited to, information identifiable to an individual that relates to a natural person's health, finances, education, business, use or receipt of governmental services, or other activities, names, addresses, telephone numbers, social security numbers, driver license numbers, financial profiles, credit card numbers, financial identifiers, and other identifying numbers.

**PROPRIETARY AND CONFIDENTIAL INFORMATION** -- The CONSULTANT acknowledges that the PORT is required by statute (RCW 42.56) to make its records available for public inspection, with certain exceptions. PORT staff believes that this legal obligation would not require the disclosure of proprietary descriptive information that contains valuable designs, drawings or formulas. The CONSULTANT, by submission of Materials marked proprietary and confidential, nevertheless acknowledges and agrees that the PORT will have no obligation or any liability to the CONSULTANT in the event that the PORT must disclose these Materials.

**PUBLICITY** -- The CONSULTANT agrees to submit to the PORT all advertising and publicity matters relating to this Agreement which, in the PORT's judgment, PORT's name can be implied or is specifically mentioned. The CONSULTANT agrees not to publish or use such advertising and publicity matters without the prior written consent of the PORT.

**RATIFICATION** -- Acts taken pursuant to this Agreement but prior to its effective date are hereby ratified and affirmed.

**RECORDS MAINTENANCE** -- The CONSULTANT shall maintain complete financial records relating to this Agreement and the services rendered including all books, records, documents, magnetic media, receipts, invoices, and other evidence relating to this Agreement and performance of the services described herein, including but not limited to, accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Agreement. CONSULTANT shall retain such records for a period of six years following the date of Project completion. At no additional cost, these records, including Materials generated under the Agreement, shall be subject at all reasonable times to inspection, review, or audit by the PORT, the Office of the State Auditor, and federal and State officials so authorized by law, rule, regulation, or agreement. If any litigation, claim, or audit is started before the expiration of the six-year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

**REGISTRATION WITH DEPARTMENT OF REVENUE** -- The CONSULTANT shall complete registration with the Washington State Department of Revenue and be responsible for payment of all taxes due on payments made under this Agreement.

**RIGHT OF INSPECTION** -- The CONSULTANT shall provide right of access to its facilities to the PORT, or any of its officers, or to any other authorized agent or official of the state of Washington or the federal government, at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this Agreement.

**SAVINGS** -- In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Agreement and prior to normal completion, the PORT may terminate the Agreement under the "Termination for Convenience" clause, without the ten-day notice requirement, subject to renegotiation at the PORT's discretion under those new funding limitations and conditions.

**SEVERABILITY** -- The provisions of this Agreement are intended to be severable. If any term or provision is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the Agreement.

**SITE SECURITY** -- While on PORT premises, CONSULTANT, its agents, employees, or sub-consultants shall conform in all respects with physical, fire, or other security regulations.

All CONSULTANT's who perform work within the secured area of the PORT will be required to have a Transportation Worker Identification Credential (TWIC) in order to perform their duties unescorted. This program was established by Congress and is administered by the Transportation Security Agency and the United States Coast Guard. More information and guidance can be found at [www.tsa.gov/twic](http://www.tsa.gov/twic).

**STANDARD OF CARE** -- CONSULTANT shall perform its work to conform to generally accepted professional standards. CONSULTANT shall be responsible for the professional quality, technical adequacy and accuracy, timely completion and coordination of all plans, designs, drawings and specifications prepared under this agreement. CONSULTANT shall, without additional compensation, correct or revise any errors or omissions due to its failure to meet this standard of care.

The PORT's approval of plans, drawings and specifications shall not relieve CONSULTANT of responsibility for the adequacy or accuracy thereof. The CONSULTANT shall remain liable for damages and costs incurred by the PORT arising from the CONSULTANT's errors, omissions or negligent performance of services furnished under this agreement.

**SUBCONTRACTS** -- The CONSULTANT shall not sub-contract for any of the work contemplated under this Agreement without obtaining prior written approval of the PORT.

**TAXES** -- All payments accrued on account of payroll taxes, unemployment contributions, any other taxes, insurance, or other expenses for the CONSULTANT or its staff shall be the sole responsibility of the CONSULTANT.

**TERMINATION FOR CAUSE** -- In the event the PORT determines the CONSULTANT has failed to comply with the



conditions of this Agreement in a timely manner, the PORT has the right to suspend or terminate this Agreement. However, the PORT will not terminate this Agreement for cause without providing CONSULTANT written notice of the breach and a reasonable opportunity to cure. The PORT reserves the right to suspend all or part of the Agreement, withhold further payments, or prohibit the CONSULTANT from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action by the CONSULTANT or a decision by the PORT to terminate the Agreement.

In the event of termination, the CONSULTANT shall be liable for damages as authorized by law including, but not limited to, any cost difference between the original Agreement and the replacement or cover Agreement and all administrative costs directly related to the replacement Agreement, e.g. cost of the competitive bidding, mailing, advertising, and staff time. The PORT may withhold final payment to the CONSULTANT until the Project is completed or a new consultant is retained. The termination shall be deemed to be a "Termination for Convenience" if it is determined that the CONSULTANT: (1) was not in default, or (2) failure to perform was outside of his or her control, fault, or negligence. The rights and remedies of the PORT provided in this Agreement are not exclusive and are in addition to any other rights and remedies provided by law.

**TERMINATION FOR CONVENIENCE** – The work outlined in this Agreement meets the PORT's current Project needs. It is acknowledged and accepted by the CONSULTANT that all work defined under any Agreement or Task is subject to authorized available and budgeted funds. The PORT may, by 10 days written notice, beginning on the second day after the mailing, terminate this Agreement, in whole or in part. If this Agreement is so terminated, the PORT shall be liable only for payment required under the terms of this Agreement for services rendered or goods delivered prior to the effective date of termination.

**TERMINATION PROCEDURES** -- Upon termination of this Agreement, the PORT, in addition to any other rights provided in this Agreement, may require the CONSULTANT to deliver to the PORT any property specifically produced or acquired for the performance of such part of this Agreement as has been terminated. The provisions of the "Treatment of Assets" clause shall apply in such property transfer.

The PORT shall pay to the CONSULTANT the agreed upon price, if separately stated, for completed work and services accepted by the PORT, and the amount agreed upon by the CONSULTANT and the PORT for (i) completed work and services for which no separate price is stated, (ii) partially completed work and services, (iii) other property or services which are accepted by the PORT, and (iv) the protection and preservation of property, unless the termination is for default, in which case the PORT shall determine the extent of the liability of the PORT. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause of this Agreement. The PORT may withhold from any amounts due the CONSULTANT such sum as the PORT determines to be necessary to protect the PORT against potential loss or liability.

The rights and remedies of the PORT provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

After receipt of a notice of termination, and except as otherwise directed by the Authorized Representative, the CONSULTANT shall:

1. Stop work under the Agreement on the date, and to the extent specified, in the notice;
2. Place no further orders or subcontracts for Materials, services, or facilities except as may be necessary for completion of such portion of the work under the Agreement that is not terminated;
3. Assign to the PORT, in the manner, at the times, and to the extent directed by the Authorized Representative, all of the rights, title, and interest of the CONSULTANT under the orders and subcontracts so terminated, in which case the PORT has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
4. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the PORT to the extent PORT may require, which approval or ratification shall be final for all the purposes of this clause;
5. Transfer title to the PORT and deliver in the manner, at the times, and to the extent directed by the PORT any property which, if the Agreement had been completed, would have been required to be furnished to the PORT;
6. Complete performance of such part of the work as shall not have been terminated by the PORT; and
7. Take such action as may be necessary, or as the PORT may direct, for the protection and preservation of the property related to this Agreement which is in the possession of the CONSULTANT and in which the PORT has or may acquire an interest.

TIME OF PERFORMANCE – Time is of the essence in the performance by the CONSULTANT of the services required by this Agreement. The CONSULTANT shall complete its services within the milestones set forth in the Project schedule. It is agreed services hereunder shall be completed by completion date listed on the Agreement. The CONSULTANT shall address immediately issues which may result in completion beyond the established schedule. Any request for an extension of time shall be made in writing to PORT. If the time for performance is allowed to be extended upon mutual agreement by CONSULTANT and PORT, it shall be incorporated in a written Amendment or Change Order to this Agreement.

TREATMENT OF ASSETS --

- A. Title to all property furnished by the PORT shall remain in the PORT. Title to all property furnished by the CONSULTANT, for the cost of which the CONSULTANT is entitled to be reimbursed as a direct item of cost under this Agreement, shall pass to and vest in the PORT upon delivery of such property by the CONSULTANT. Title to other property, the cost of which is reimbursable to the CONSULTANT under this Agreement, shall pass to and vest in the PORT upon (i) issuance for use of such property in the performance of this Agreement, or (ii) commencement of use of such property in the performance of this Agreement, or (iii) reimbursement of the cost thereof by the PORT in whole or in part, whichever first occurs.
- B. Any property of the PORT furnished to the CONSULTANT shall, unless otherwise provided herein or approved by the PORT, be used only for the performance of this Agreement.
- C. The CONSULTANT shall be responsible for any loss or damage to property of the PORT which results from the negligence of the CONSULTANT or which results from the failure on the part of the CONSULTANT to maintain and administer that property in accordance with sound management practices.
- D. If any PORT property is lost, destroyed, or damaged, the CONSULTANT shall immediately notify the PORT and shall take all reasonable steps to protect the property from further damage.
- E. The CONSULTANT shall surrender to the PORT all property of the PORT prior to settlement upon completion, termination, or cancellation of this Agreement.
- F. All reference to the CONSULTANT under this clause shall also include CONSULTANT's employees or agents.

**End of RFP 19-34**

## PROFESSIONAL SERVICES AGREEMENT

BETWEEN

PORT OF VANCOUVER, USA

AND

XXXX

### PROFESSIONAL SERVICES AGREEMENT # XXXX

This Agreement ("Agreement") is made and entered into this **XX Day of XX 2019** by and between the Port of Vancouver, USA, a Washington municipal corporation (hereinafter referred to as the "PORT"), and **XX** (hereinafter referred to as "CONSULTANT.")

#### WITNESSETH

**WHEREAS**, the PORT desires to accomplish projects referenced below; and

**WHEREAS**, the PORT does not have sufficient staffing or expertise available within the agency to perform the desired services and therefore deems it advisable and desirable to engage the assistance of CONSULTANT to provide the necessary services to accomplish its projects; and

**WHEREAS**, CONSULTANT signifies a willingness to furnish services to the PORT, in a satisfactory and proper manner, as defined by the PORT, and represents compliance with Washington State statutes related to conducting agreed upon services with the PORT.

**NOW, THEREFORE**, in consideration of the terms, conditions, covenants, and performance contained herein, or attached and incorporated and made a part hereof, the parties hereto agree as follows:

#### **SCOPE OF SERVICES**

The work under this Agreement shall consist of the described work and services as herein defined and necessary to accomplish the completed work for this project. The CONSULTANT shall furnish all services, labor, related materials and equipment necessary to conduct and complete the work designated in this Agreement.

Consultant agrees to perform the following: **Perform all services in accordance with**

Exhibit A: Professional/Personal Services General Terms and Conditions

Exhibit B: Scope of services, and/or rate sheets

**AGREEMENT MANAGEMENT**

The Project Manager for each of the parties shall be the contact person for all communications and billings regarding the performance of this Agreement and all subsequent Work requests assigned to this Agreement.

CONSULTANT Project Manager:	PORT Project & Contract Manager:
<p><b>Project Manager:</b></p> <p><b>Address:</b></p> <p><b>Phone:</b></p> <p><b>Email Address:</b></p>	<p><b>Project Manager: TBD</b></p> <p><b>Port of Vancouver USA</b>  <b>3103 NW Lower River Rd</b>  <b>Vancouver, WA. 98660</b></p> <p><b>Phone:</b></p> <p><b>Email Address:</b> _____</p>
<p><b>Federal Tax ID:</b></p> <p><b>Washington UBI:</b></p>	<p><b>Contract Manager: Rick Cline</b></p> <p><b>Phone: (360) 823-5295 (D)</b>  <b>(360) 518-1264 (C)</b></p> <p><b>Email Address: <a href="mailto:rcline@portvanusa.com">rcline@portvanusa.com</a></b></p>

**DURATION OF AGREEMENT**

The CONSULTANT shall not begin work under the terms of this Agreement until authorized in writing by the PORT.

The service of the CONSULTANT shall be in effect through **xx**; unless it is modified or terminated pursuant to the terms of this Agreement. Contract extensions may be issued to provide the time necessary to complete task orders in process not completed by the original contract completion date.

**COMPENSATION AND PAYMENT**

The CONSULTANT shall be paid by the PORT based on time and materials for completed work and services rendered under this Agreement. Such payment shall be full compensation for all labor, materials, supplies, equipment and incidentals as necessary to complete the work allowed for in this Agreement.

The port shall be entitled to receive a discount on the bill at a percentage, as negotiated with the Consultant, of the face amount of the bill. In order to receive this discount, we must receive full payment of the bill within a number of days, as negotiated with the Consultant, of receipt of the invoice.

Payment for these services shall not exceed the agreed upon rates unless authorized in writing by the PORT according to the terms of this Agreement.

Payment for services under this Agreement shall not exceed **\$xx** unless authorized in writing by the PORT according to the terms of this Agreement. The amount listed above includes Washington State Sales Tax, if applicable.

**WORK REQUESTS (Task Orders)**

When a project develops or a need arises, the PORT's project manager shall communicate a request to produce a scope of services and fee to perform the work. Upon the PORT project manager's approval of CONSULTANT's proposed scope of work, fee to perform the work and time for performance, a task order in the form of a purchase order is issued to the CONSULTANT for the execution of services.

The amount of compensation payable to CONSULTANT for each work assignment may not exceed the maximum amount specified on the Purchase Order for the given work assignment unless modified in writing by the PORT.

Any addition or deletion to the Purchase Order requiring an adjustment to the cost or completion date must be requested using the Port's Amendment Request Form and must be approved in writing by the PORT's Authorized Representative prior to implementation of the adjustment.

If the CONSULTANT acts on a task without formally requesting a change using the Amendment Request Form, it is implied by the PORT that work is included in the original agreed upon scope of work and cost and no adjustments will be made to original agreement.

### **AMENDMENT TO AGREEMENT**

If the CONSULTANT is delayed at any time in the progress of providing services covered by the Agreement, by any causes beyond the CONSULTANT's control, the time for performance may be extended by such time as shall be mutually agreed upon by the CONSULTANT and the PORT and shall be incorporated in a written amendment to this Agreement. Any request for an extension of time shall be made in writing to the PORT.

The PORT shall pay the CONSULTANT at the rates indicated in this Agreement for work performed under the terms of this Agreement. This is the maximum amount to be paid and it shall not be exceeded without the PORT's prior written authorization in the form of a negotiated and executed Amendment.

Any addition or deletion to the Agreement requiring an adjustment to the cost or completion date must be requested using the Port's Amendment Request Form and must be approved in writing by the PORT's Authorized Representative prior to implementation of the adjustment.

If the CONSULTANT acts on a task without formally requesting a change using the Amendment Request Form, it is implied by the PORT that work is included in the original agreed upon scope of work and cost.

### **INSURANCE REQUIREMENTS**

CONSULTANT shall obtain and keep in force during the entire term of this Agreement, liability insurance against any and all claims for damages to person or property which may arise out of the performance of this Agreement whether such work shall be by the CONSULTANT, sub-consultants, and/or their agents and/or employees. The CONSULTANT agrees to the following requirements relating to insurance coverage and shall provide evidence of all insurance required by submitting an insurance certificate to the PORT on a standard "ACORD" or comparable form:

- a. Commercial General Liability - coverage on occurrence form CG0001 or equivalent with minimum limits of \$1,000,000 per occurrence and \$2,000,000 aggregate.
- b. Automobile Liability - covering owned, non-owned and hired vehicles with minimum of \$1,000,000 combined single limit per accident; and
- c. Professional Liability - a minimum of \$2,000,000 in the aggregate and \$1,000,000 per claim in professional liability insurance unless otherwise negotiated and confirmed in writing by both parties. Insurance coverage shall have a retroactive date before the date of notice to proceed and coverage shall remain in effect for the entire term of the Agreement (plus 3 years).

The insurance required by this Agreement shall be issued by an insurance company authorized to do business within the State of Washington, and the policies shall name the PORT, its agents and employees as additional insured's. Except, however, that CONSULTANT is not required to add the PORT or its agents and employees as an additional insured on its professional liability policy or workers comp policy. All policies shall be primary to any other valid and collectable insurance and not contributory to any similar insurance carried by the Port, and shall contain a severability of interest or cross liability clause. Such insurance shall not be canceled or materially altered without first giving thirty (30) days' written notice thereof to the Port. The CONSULTANT shall submit renewal certificates as appropriate during the term of the Agreement.

- d. Excess Coverage - By requiring insurance herein, the PORT does not represent that coverage and limits will be adequate to protect CONSULTANT and such coverage and limits shall not limit CONSULTANT's liability under the indemnities and reimbursements granted to the PORT in this Agreement.

Additional requirements:

- e. Worker's Compensation - The CONSULTANT shall comply with the Washington State Department of Labor & Industries Industrial Insurance program, for all of its employees who are required to be so covered by the laws of the State of Washington and in case any work is subcontracted, the CONSULTANT shall require the subcontractor to provide worker's compensation insurance for all of its employees.
- f. Employment Security - The CONSULTANT shall comply with all employment security laws of the State of Washington and shall timely make all required payments in connection therewith.

**PRICE ADJUSTMENT**

Adjustments to the original approved Agreement rates will be considered at the request of either party during the annual anniversary of the contract award date and shall be approved by both parties. The CONSULTANT shall give a minimum of 30 days advance notice of any rate adjustment request to the PORT's contract manager. Any approved rate changes will be effective at the beginning of the calendar month following the end of the full 30-day notification period. The CONSULTANT shall provide a written request for the adjustment which will include the amount of the adjustment, reason for the requested price adjustment, justification for the adjustment and the amount or percentage of adjustment that would be passed on by the CONSULTANT to its subconsultants or materials suppliers, if applicable. Increased rates must be supported by appropriate index/indices such as the CPI, PPI and/or changes in local market conditions that can be quantified and shall not exceed 4%.

**ASSURANCES**

The PORT and CONSULTANT agree that all work undertaken pursuant to this Agreement will be in accordance with all the applicable current federal, state, and local laws, rules, and regulations. CONSULTANT represents that they are qualified to perform "architectural and engineering services" or "professional services", including any services rendered by any person, other than as an employee of the agency, contracting to perform activities within the scope of the general definition of professional practice in Chapters 18.08, 18.43, or 18.96 RCW and has signified a willingness to furnish consulting services to the PORT.

**ENTIRE AGREEMENT**

The Agreement incorporates all contracts, covenants and understanding between the parties hereto are merged into this written Agreement. No prior agreement or prior understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless set forth in this agreement.

**NOTICES**

All formal notices which are given or required to be given pursuant to this Agreement shall be hand delivered or mailed postage paid as follows:

**CONSULTANT:**

**PORT:**  
Contracts Department  
Port of Vancouver  
3103 NW Lower River Road  
Vancouver WA 98660

**APPROVAL**

This Agreement shall be subject to the written approval of Port's authorized representative and shall not be binding or effective until so approved. The Agreement may be altered, amended, or waived only by a written amendment executed by both parties.

XXXXX

**PORT OF VANCOUVER, USA**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**PROFESSIONAL/PERSONAL SERVICES**  
**GENERAL TERMS AND CONDITIONS**

**Acceptance of the Agreement by either CONSULTANT's written acknowledgment thereof or commencement of performance under the contract shall create a binding agreement and shall be conclusive evidence of the CONSULTANT's acceptance of these terms and conditions. The CONSULTANT certifies that it has legal authority to enter into this Agreement and is at least 18 years of age. The Agreement, including all attachments referenced herein, constitutes the entire agreement between the PORT and the CONSULTANT.**

**DEFINITIONS** -- As used throughout this Agreement, the following terms shall have the meaning set forth below:

- A. "PORT" shall mean the PORT OF VANCOUVER, Vancouver, WA, or any of the officers or other officials lawfully representing that PORT.
- B. "Authorized Representative" shall mean the Executive Director, Port of Vancouver, WA, and/or the delegate authorized in writing to act on the Director's behalf.
- C. "CONSULTANT" shall mean employees, subconsultants, and individuals representing or acting on behalf of the firm, provider, organization, individual or other entity performing service under this Agreement.
- D. "Agreement" shall mean the contract between the PORT and CONSULTANT which may include scope of work, schedule for completion, agreed amount or rates and any other provisions referenced in the contract, including but not limited to the General Terms and Conditions incorporated herein by reference.
- E. "Project" shall mean the provision of all labor, materials, tools, equipment, and necessary items needed to successfully complete the work, task or work order according to the Agreement.

**ACCESS TO DATA** -- CONSULTANT shall provide access to data generated under this Agreement to PORT and its duly authorized agents at no additional cost. This includes access to all information that supports the findings, conclusions, and recommendations of the CONSULTANT's reports, including computer models and methodology for those models.

**AMENDMENTS** -- Agreement shall not be altered, changed, or amended except by an instrument in writing executed by the parties hereto. Any changes in the scope of work or compensation shall be mutually agreed upon between PORT and the CONSULTANT and shall be incorporated in written revisions to this Agreement.

**ASSIGNMENT** -- The work to be provided under this Agreement is not assignable or delegable by either party, in whole or in part, without the express prior written consent of the other party, which consent shall not be unreasonably withheld.

**ATTORNEYS' FEES** -- In the event of litigation or other action brought to enforce Agreement terms, each party agrees to bear its own attorney's fees and costs, provided however, that in the event that a trier of fact determines that a party's claims are frivolous or fraudulent, said party shall pay the other party's attorney's fees and costs.

**COMPLIANCE WITH LAWS** -- CONSULTANT agrees to comply with all local, state and federal laws and regulations applicable to the Project, including building codes and permitting regulations existing at the time this Agreement was executed and those regarding employee safety, the workplace environment, and employment eligibility verifications as required by the Immigration and Naturalization Service. CONSULTANT shall obtain all professional licenses and permits required to complete the scope of work as defined.

**COMPENSATION AND SCHEDULE OF PAYMENTS** -- PORT shall pay the CONSULTANT at the rates indicated for work performed under the terms of this Agreement. This is the maximum amount to be paid under this Agreement and it shall not be exceeded without PORT's prior written authorization in the form of a negotiated and executed amendment. Such payment shall be full compensation for work performed or services rendered and for all labor, Materials, supplies, equipment and incidentals necessary to complete the Project as set forth herein. **Invoices will be paid thirty (30) days after the Port's receipt and acceptance of the invoice for services**, provided that all appropriate forms and or supplemental or supporting documents have been submitted. **Payment periods will be computed from the date of receipt of a correct invoice.** No payment shall be due prior to the Port's receipt and acceptance of the items identified in the invoice thereof.

Notwithstanding the provisions above, the Port reserves the right to refuse payment, in whole or in part, until such time as the Port is satisfied that the Consultant and its subconsultants have satisfied all claims and requirements of the Washington Department of Revenue and Washington Department of Labor and Industries, as well as all claims of suppliers or labor, materials, or equipment. The PORT reserves the right to correct any invoices submitted in error and adjust according to the

rates and allowable costs set forth in this Agreement. PORT and CONSULTANT agree that any amount paid in error by PORT does not constitute a rate change in the amount of the agreement. The total on the agreement is to be the not to exceed amount and is not to be construed as a guaranteed pay out total.

The PORT may, in its sole discretion, terminate the agreement or withhold payments claimed by the CONSULTANT for services rendered if the CONSULTANT fails to satisfactorily comply with any term or condition of this agreement.

No payments in advance or in anticipation of services or supplies to be provided under this agreement shall be made by the PORT.

CONFIDENTIALITY / SAFEGUARDING OF INFORMATION -- The use or disclosure by any party of any information concerning the PORT, designated confidential by the PORT, which is not otherwise in the public domain, for any purpose not directly connected with the administration of the PORT's or the CONSULTANT's responsibilities with respect to services provided under this Agreement, is prohibited except by written consent of the PORT or its attorney or as required by law, court order or subpoena.

CONFLICT OF INTEREST – CONSULTANT represents that it has no direct or indirect economic interest which conflicts in any manner with its performance of the services required under this Agreement. CONSULTANT represents that it has not retained any person to solicit this Agreement and has not agreed to pay such person any compensation or other compensation contingent upon execution of this agreement.

CONFORMANCE - If any provision of this Agreement violates any applicable federal or Washington State statute or rule of law, such provision is considered modified to conform to that statute or rule of law.

COPYRIGHT PROVISIONS -- Unless otherwise provided, all Materials produced under this Agreement shall be considered "works for hire" as defined by the U.S. Copyright Act and shall be owned by the PORT. The PORT shall be considered the author and owner of such Materials, whether or not the Project is completed or this Agreement is terminated at any point. In the event the Materials are not considered "works for hire" under the U.S. Copyright laws, CONSULTANT hereby irrevocably assigns all right, title, and interest in Materials, including all intellectual property rights, to the PORT effective from the moment of creation of such Materials.

Materials means all items in any format and includes, but is not limited to, data, reports, documents, drawings, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. Ownership includes the right to copyright, patent, register, and the ability to transfer these rights.

For Materials that are delivered under the Agreement, but that incorporate pre-existing materials not produced under the Agreement, CONSULTANT hereby grants to the PORT a nonexclusive, royalty-free, irrevocable license (with rights to sublicense others) in such Materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. The CONSULTANT warrants and represents that CONSULTANT has all rights and permissions, including intellectual property rights, and rights of publicity, necessary to grant such a license to the PORT and is free from claims from any other party.

The CONSULTANT shall exert all reasonable effort to advise the PORT, at the time of delivery of Materials furnished under this Agreement, of all known or potential invasions of privacy contained therein and of any portion of such document which was not produced in the performance of this Agreement. The PORT shall receive prompt written notice of each notice or claim of copyright infringement received by the CONSULTANT with respect to any data delivered under this Agreement. The PORT shall have the right to modify or remove any restrictive markings placed upon the data by the CONSULTANT.

The PORT may allow qualified professionals to use and alter the Materials for additions or changes to the Project or for use on any other project, so long as those professionals (1) remove all references to the CONSULTANT from any modified work product, and (2) assume all responsibility for the modified work product. In the event that PORT reuses or modifies the Materials without engaging the CONSULTANT, the PORT releases CONSULTANT from any and all claims that may arise from such reuse or modification, unless the PORT has rightfully terminated this Agreement for cause.

CONSULTANT shall have the right to retain copies of all Materials created pursuant to this Agreement, and may use elements of the Materials in other projects with the express written consent of the PORT.

DELIVERABLES– All tangible Materials produced as a result of this Agreement shall be prepared as specified by the PORT's Project Manager. Delivery of Materials produced shall consist both of the tangible materials and one copy of any computer file used in the creation of the tangible product on CD-ROM in a PDF format or other format specified by the PORT. The PORT may offset from the CONSULTANT's fee expenses incurred by the PORT in correcting drawings or specifications not prepared in accordance with the PORT's procedure.

DISPUTES – If a dispute arises relating to this Agreement and cannot be settled through direct discussions, the parties may agree to endeavor to settle the dispute through a mediation firm acceptable to both parties, the cost which shall be divided



equally. The PORT reserves the right to join any dispute under this Agreement with any other claim in litigation or other dispute resolution forum and the CONSULTANT agrees to such joinder, so that all disputes related to the Project may be consolidated and resolved in one forum.

PORT and CONSULTANT agree that, the existence of a dispute notwithstanding, they will continue without delay to carry out all their respective responsibilities under this Agreement which are not affected by the dispute. Both parties agree to exercise good faith in the dispute resolution and to settle disputes prior to using the dispute resolution panel whenever possible.

GOVERNING LAW -- This Contract shall be deemed to have been executed and delivered within the State of Washington, and the rights and obligations of the parties hereunder shall be construed and enforced in accordance with, and governed by, the laws of the State of Washington without regard to the principles of conflict of laws. Any action or suit brought in connection with this Agreement shall be brought in the Superior Court of Clark County, Washington.

INDEMNIFICATION & HOLD HARMLESS – CONSULTANT agrees to hold the PORT harmless, and to indemnify the PORT against any and all claims of third parties arising out of CONSULTANT's negligent performance under this Agreement, provided however, that the CONSULTANT shall not be required to so indemnify the PORT against liability for damages caused by or resulting from the negligence of the PORT, its agents or employees; and provided further that if such damages are caused by or result from the concurrent negligence of the PORT or its agents or employees and of the CONSULTANT or its agents, consultants, subconsultants or employees, then the CONSULTANT's indemnity shall be limited to the extent of the negligence by the CONSULTANT or its agents, consultants, subconsultants or employees. Consultant shall have liability for reasonable and necessary defense costs incurred by persons indemnified to the extent caused by Consultant's negligence herein and recoverable under applicable law on account of negligence. This indemnity and hold harmless shall include any claim made against the PORT by an employee of CONSULTANT or sub-consultant or agent even if CONSULTANT is thus otherwise immune from liability pursuant to the workers' compensation statute, Title 51 RCW, except to the extent that such liability arises from the negligence of the PORT. CONSULTANT specifically acknowledges that the provisions contained herein have been mutually negotiated by the parties and it is the intent of the parties that CONSULTANT provide the broadest scope of indemnity permitted by RCW 4.24.115. CONSULTANT is an independent CONSULTANT and responsible for the safety of employees.

INDEPENDENT CAPACITY OF THE CONSULTANT -- The CONSULTANT, its subconsultants, agents and employees are independent contractors performing services for the PORT and are not employees of the PORT. The CONSULTANT, its subconsultants, agents and employees, shall not, as a result of this Agreement, accrue leave, retirement, insurance, bonding or any other benefits afforded to PORT employees. The CONSULTANT, subconsultants, agents and employees shall not have the authority to bind PORT in any way except as may be specifically provided herein.

KEY PERSONS – The CONSULTANT acknowledges and agrees that the PORT selected the CONSULTANT team, and is entering into this Agreement because of the qualifications of the CONSULTANT's Key Person(s), including subconsultant Key Person(s). In particular, the PORT, through this Agreement is engaging the expertise, experience, judgment and personal attention of those listed in Exhibit B of the Agreement. Each Key Person shall not delegate performance of any management powers or other responsibilities he or she is required to perform under this Agreement without first obtaining written consent from the PORT. Further, the CONSULTANT shall not re-assign or transfer any Key Person to other duties or positions such that the Key Person is no longer available to provide the PORT with his or her expertise, experience, judgment and personal attention according to any schedule established under this Agreement without receiving written consent from the PORT. In the event the CONSULTANT requests the PORT to approve a re-assignment or transfer of a Key Person, the PORT shall have the right to interview, review the qualifications of, and approve or disapprove the proposed replacement(s) for the Key Person. Any approved substitute or replacement for a Key Person shall be deemed to be a Key Person under this Agreement.

LICENSING, ACCREDITATION AND REGISTRATION -- The CONSULTANT shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements/standard, necessary for the performance of this Agreement. Prior to performing work under this Agreement, CONSULTANT shall be responsible to obtain all necessary licenses and/or permits required to perform the work associated with this Agreement, including, but not limited to a City of Vancouver Business License and all associated requirements.

LIMITATION OF AUTHORITY -- Only the Agent or Agent's delegate by writing (delegation to be made prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Agreement. Furthermore, any alteration, amendment, modification, or waiver of any clause or condition of this Agreement is not effective or binding unless made in writing and signed by the Agent.

NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY -- During the term of this Agreement, the CONSULTANT agrees as follows: The CONSULTANT will not discriminate against any employee or applicant for employment because of creed, religion, race, color, sex, marital status, sexual orientation, political ideology, ancestry, national origin, or the presence of any sensory, mental or physical handicap, unless based upon a bona fide occupational qualification. The CONSULTANT will take affirmative action to ensure that applicants are employed, and that employees are treated during

employment, without regard to their creed, religion, race, color, sex, national origin, or the presence of any sensory, mental or physical handicap. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

#### ORDER OF PRECEDENCE

In the event of an ambiguity in this Agreement, the ambiguity shall be resolved by giving precedence in the following order (1 presiding over 2, 2 presiding over 3, etc.):

1. Executed Amendments to Agreement
2. Executed Agreement
3. Exhibit "A" - Professional/Personal Services – General Terms and Conditions
4. Exhibit "B" – CONSULTANT Scope of Work/Rates/Fees
5. Request for Proposal
6. Applicable federal, state and local statutes and regulations
7. Any other provision, term, or document incorporated herein by reference or otherwise incorporated

PRIVACY -- Personal information collected, used, or acquired in connection with this Agreement shall be used solely for the purposes of this Agreement. CONSULTANT agrees not to release, divulge, publish, transfer, sell, or otherwise make known to unauthorized persons or organizations personal information without the express written consent of the PORT. CONSULTANT agrees to implement physical, electronic, and managerial safeguards to prevent unauthorized access to personal information.

Any breach of this provision may result in termination of the Agreement and the demand for return of all personal information. The CONSULTANT agrees to indemnify and hold harmless the PORT for any damages related to the CONSULTANT's unauthorized use of personal information.

For purposes of this provision, personal information includes, but is not limited to, information identifiable to an individual that relates to a natural person's health, finances, education, business, use or receipt of governmental services, or other activities, names, addresses, telephone numbers, social security numbers, driver license numbers, financial profiles, credit card numbers, financial identifiers, and other identifying numbers.

PROPRIETARY AND CONFIDENTIAL INFORMATION -- The CONSULTANT acknowledges that the PORT is required by statute (RCW 42.56) to make its records available for public inspection, with certain exceptions. PORT staff believes that this legal obligation would not require the disclosure of proprietary descriptive information that contains valuable designs, drawings or formulas. The CONSULTANT, by submission of Materials marked proprietary and confidential, nevertheless acknowledges and agrees that the PORT will have no obligation or any liability to the CONSULTANT in the event that the PORT must disclose these Materials.

PUBLICITY -- The CONSULTANT agrees to submit to the PORT all advertising and publicity matters relating to this Agreement which, in the PORT's judgment, PORT's name can be implied or is specifically mentioned. The CONSULTANT agrees not to publish or use such advertising and publicity matters without the prior written consent of the PORT.

RATIFICATION -- Acts taken pursuant to this Agreement but prior to its effective date are hereby ratified and affirmed.

RECORDS MAINTENANCE -- The CONSULTANT shall maintain complete financial records relating to this Agreement and the services rendered including all books, records, documents, magnetic media, receipts, invoices, and other evidence relating to this Agreement and performance of the services described herein, including but not limited to, accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Agreement. CONSULTANT shall retain such records for a period of six years following the date of Project completion. At no additional cost, these records, including Materials generated under the Agreement, shall be subject at all reasonable times to inspection, review, or audit by the PORT, the Office of the State Auditor, and federal and State officials so authorized by law, rule, regulation, or agreement.

If any litigation, claim, or audit is started before the expiration of the six-year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

REGISTRATION WITH DEPARTMENT OF REVENUE -- The CONSULTANT shall complete registration with the Washington State Department of Revenue and be responsible for payment of all taxes due on payments made under this Agreement.

RIGHT OF INSPECTION -- The CONSULTANT shall provide right of access to its facilities to the PORT, or any of its officers, or to any other authorized agent or official of the state of Washington or the federal government, at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this Agreement.

SAVINGS -- In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Agreement and prior to normal completion, the PORT may terminate the Agreement under the "Termination for Convenience" clause, without the ten-day notice requirement, subject to renegotiation at the PORT's discretion under those new funding limitations and conditions.

SEVERABILITY -- The provisions of this Agreement are intended to be severable. If any term or provision is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the Agreement.

SITE SECURITY -- While on PORT premises, CONSULTANT, its agents, employees, or sub-consultants shall conform in all respects with physical, fire, or other security regulations.

All CONSULTANT's who perform work within the secured area of the PORT will be required to have a Transportation Worker Identification Credential (TWIC) in order to perform their duties unescorted. This program was established by Congress and is administered by the Transportation Security Agency and the United States Coast Guard. More information and guidance can be found at [www.tsa.gov/twic](http://www.tsa.gov/twic).

STANDARD OF CARE – CONSULTANT shall perform its work to conform to generally accepted professional standards. CONSULTANT shall be responsible for the professional quality, technical adequacy and accuracy, timely completion and coordination of all plans, designs, drawings and specifications prepared under this agreement. CONSULTANT shall, without additional compensation, correct or revise any errors or omissions due to its failure to meet this standard of care.

The PORT's approval of plans, drawings and specifications shall not relieve CONSULTANT of responsibility for the adequacy or accuracy thereof. The CONSULTANT shall remain liable for damages and costs incurred by the PORT arising from the CONSULTANT's errors, omissions or negligent performance of services furnished under this agreement.

SUBCONTRACTS -- The CONSULTANT shall not sub-contract for any of the work contemplated under this Agreement without obtaining prior written approval of the PORT.

TAXES -- All payments accrued on account of payroll taxes, unemployment contributions, any other taxes, insurance, or other expenses for the CONSULTANT or its staff shall be the sole responsibility of the CONSULTANT.

TERMINATION FOR CAUSE -- In the event the PORT determines the CONSULTANT has failed to comply with the conditions of this Agreement in a timely manner, the PORT has the right to suspend or terminate this Agreement. However, the PORT will not terminate this Agreement for cause without providing CONSULTANT written notice of the breach and a reasonable opportunity to cure. The PORT reserves the right to suspend all or part of the Agreement, withhold further payments, or prohibit the CONSULTANT from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action by the CONSULTANT or a decision by the PORT to terminate the Agreement.

In the event of termination, the CONSULTANT shall be liable for damages as authorized by law including, but not limited to, any cost difference between the original Agreement and the replacement or cover Agreement and all administrative costs directly related to the replacement Agreement, e.g. cost of the competitive bidding, mailing, advertising, and staff time. The PORT may withhold final payment to the CONSULTANT until the Project is completed or a new consultant is retained. The termination shall be deemed to be a "Termination for Convenience" if it is determined that the CONSULTANT: (1) was not in default, or (2) failure to perform was outside of his or her control, fault, or negligence. The rights and remedies of the PORT provided in this Agreement are not exclusive and are in addition to any other rights and remedies provided by law.

TERMINATION FOR CONVENIENCE – The work outlined in this Agreement meets the PORT's current Project needs. It is acknowledged and accepted by the CONSULTANT that all work defined under any Agreement or Task is subject to authorized available and budgeted funds. The PORT may, by 10 days written notice, beginning on the second day after the mailing, terminate this Agreement, in whole or in part. If this Agreement is so terminated, the PORT shall be liable only for payment required under the terms of this Agreement for services rendered or goods delivered prior to the effective date of termination.

TERMINATION PROCEDURES -- Upon termination of this Agreement, the PORT, in addition to any other rights provided in this Agreement, may require the CONSULTANT to deliver to the PORT any property specifically produced or acquired for the performance of such part of this Agreement as has been terminated. The provisions of the "Treatment of Assets" clause shall apply in such property transfer.

The PORT shall pay to the CONSULTANT the agreed upon price, if separately stated, for completed work and services accepted by the PORT, and the amount agreed upon by the CONSULTANT and the PORT for (i) completed work and services for which no separate price is stated, (ii) partially completed work and services, (iii) other property or services which are accepted by the PORT, and (iv) the protection and preservation of property, unless the termination is for default, in which case the PORT shall determine the extent of the liability of the PORT. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause of this Agreement. The PORT may withhold from any amounts due the CONSULTANT such sum as the PORT determines to be necessary to protect the PORT against potential loss or liability.

The rights and remedies of the PORT provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

After receipt of a notice of termination, and except as otherwise directed by the Authorized Representative, the CONSULTANT shall:

1. Stop work under the Agreement on the date, and to the extent specified, in the notice;
2. Place no further orders or subcontracts for Materials, services, or facilities except as may be necessary for completion of such portion of the work under the Agreement that is not terminated;
3. Assign to the PORT, in the manner, at the times, and to the extent directed by the Authorized Representative, all of the rights, title, and interest of the CONSULTANT under the orders and subcontracts so terminated, in which case the PORT has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
4. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the PORT to the extent PORT may require, which approval or ratification shall be final for all the purposes of this clause;
5. Transfer title to the PORT and deliver in the manner, at the times, and to the extent directed by the PORT any property which, if the Agreement had been completed, would have been required to be furnished to the PORT;
6. Complete performance of such part of the work as shall not have been terminated by the PORT; and
7. Take such action as may be necessary, or as the PORT may direct, for the protection and preservation of the property related to this Agreement which is in the possession of the CONSULTANT and in which the PORT has or may acquire an interest.

TIME OF PERFORMANCE – Time is of the essence in the performance by the CONSULTANT of the services required by this Agreement. The CONSULTANT shall complete its services within the milestones set forth in the Project schedule. It is agreed services hereunder shall be completed by completion date listed on the Agreement. The CONSULTANT shall address immediately issues which may result in completion beyond the established schedule. Any request for an extension of time shall be made in writing to PORT. If the time for performance is allowed to be extended upon mutual agreement by CONSULTANT and PORT, it shall be incorporated in a written Amendment or Change Order to this Agreement.

TREATMENT OF ASSETS --

- A. Title to all property furnished by the PORT shall remain in the PORT. Title to all property furnished by the CONSULTANT, for the cost of which the CONSULTANT is entitled to be reimbursed as a direct item of cost under this Agreement, shall pass to and vest in the PORT upon delivery of such property by the CONSULTANT. Title to other property, the cost of which is reimbursable to the CONSULTANT under this Agreement, shall pass to and vest in the PORT upon (i) issuance for use of such property in the performance of this Agreement, or (ii) commencement of use of such property in the performance of this Agreement, or (iii) reimbursement of the cost thereof by the PORT in whole or in part, whichever first occurs.
- B. Any property of the PORT furnished to the CONSULTANT shall, unless otherwise provided herein or approved by the PORT, be used only for the performance of this Agreement.
- C. The CONSULTANT shall be responsible for any loss or damage to property of the PORT which results from the negligence of the CONSULTANT or which results from the failure on the part of the CONSULTANT to maintain and administer that property in accordance with sound management practices.
- D. If any PORT property is lost, destroyed, or damaged, the CONSULTANT shall immediately notify the PORT and shall take all reasonable steps to protect the property from further damage.
- E. The CONSULTANT shall surrender to the PORT all property of the PORT prior to settlement upon completion, termination, or cancellation of this Agreement.
- F. All reference to the CONSULTANT under this clause shall also include CONSULTANT's employees or agents.

## CONSULTANT MARK-UP AND ALLOWABLE / NON-ALLOWABLE EXPENSES

Unless otherwise defined, negotiated, approved and documented, the PORT expects that the agreed upon rates include all routine overhead and internal expenses of the firm. Inclusion of expenses in the hourly rate or multiplier reduces the amount of backup documentation required to support each invoice and expedites payment. The rates should also include:

- Basic equipment and tools used to conduct business services
- Computers, software/hardware usage, supplies, digital camera, etc.
- Cell phone services /rental
- Phone / Fax transmissions
- Routine postage
- Routine reproduction or copying (8 ½ x11 or similar) required to perform the work.

The PORT will reimburse the following directly related expenses **at cost** (when appropriate backup is provided):

- Mileage, tolls, Taxi, (Uber, Lyft), parking fees, shall be allowed for project related site visits and for distances to the port offices that exceed a round trip of 50 miles at current U.S. General Services Administration or IRS mileage reimbursement rate.
- Any required travel must be identified in the consultant's proposal or project work scope and approved by port authorized personnel prior to execution. (invoice must have mileage log attached)
- Travel to or from permanent or temporary residences to the Port of Vancouver are not reimbursable.
- Lodging and meals up to current U.S. General Services Administration ( [www.gsa.gov](http://www.gsa.gov) ) allowable reimbursement rate for appropriate area (*must be pre-approved by PORT's project manager*)
- Airfare (*must be pre-approved by PORT's project manager and demonstrate cost savings over other forms of transportation*)

In no event will the PORT reimburse for the following expenses:

- Alcoholic beverages
- Costs associated with preparing and/or presenting a bid or proposal
- Employee gifts and recreation
- Entertainment
- Fines/Penalties
- Lobbying costs
- Lodging within 50 miles of consultant's place of business
- Meals not pre-approved or associated with travel – except when the meal is a bona fide business meeting or as a result of bona fide business meeting (*an itemized receipt with names of attendees and purpose of meeting must be provided*)
- Organization legal fees
- Organization accounting fees
- Organization incorporation fees
- Parking violations
- Rental vehicles (without POV approval)
- Social activities

\* Sub-consultant markup for services performed and invoiced are not to exceed 4%-no markup on expenses

**END OF TERMS / CONDITIONS**