



**THE PORT OF TACOMA  
REQUEST FOR QUALIFICATIONS  
No. 071777**

**Wapato Creek Culvert Alternatives Analysis**

Issued by  
Port of Tacoma  
One Sitcum Plaza  
P.O. Box 1837  
Tacoma, WA 98401-1837

<b>RFQ INFORMATION</b>	
Contact:	Jerry Clardy, Procurement
Email Addresses:	<a href="mailto:procurement@portoftacoma.com">procurement@portoftacoma.com</a>
Phone:	(253) 888-4751
Deadline for Questions	DECEMBER 13, 2022 @ 2:00 PM (PST)
Proposal Submittal Deadline	DECEMBER 20, 2022 @ 2:00 PM (PST)

PLEASE SUBMIT ALL QUESTIONS AND PROPOSALS  
VIA THE PROCUREMENT PORTAL  
(LINK LOCATED ON THE LEFT SIDE OF THE PROCUREMENT PAGE)

THE PORT OF TACOMA  
Request for Qualifications (RFQ) # 071777  
**Wapato Creek Culvert Alternatives Analysis**

The Port of Tacoma (Port) is soliciting Statements of Qualifications (SOQ) from firms qualified and interested in providing professional consulting services in engineering design (civil, structural, geotechnical and environmental), cost estimating, project management and permit support to develop an Alternatives Analysis Report for the Wapato Creek Culvert (WCC) in the Pierce County Terminal (PCT). The WCC is near the end of its service life. The Alternatives Analysis Report will identify repair/replacement concepts as well as associated costs, schedule and significant considerations and impacts to assist the Port in identifying a preferred path forward.

The Port anticipates awarding one (1) professional service contract. The period of performance of the contract is anticipated to be one (1) year from the execution of the contract.

**A. BACKGROUND**

The Port of Tacoma is a major center for container cargo, bulk, break-bulk, autos, and heavy-lift cargo. Created by Pierce County citizens in 1918, the Port has become one of the largest container ports in North America and one of the top 50 in the world. The Port manages a diverse set of business operations relating to maritime trade.

To learn more about the Port of Tacoma, visit [www.portoftacoma.com](http://www.portoftacoma.com).

Within the Port, the WCC conveys Wapato Creek and tidal waters underground through the Pierce County Terminal (PCT). The WCC is situated in a logistically and geographically constrained corridor between the main container terminal and terminal upland gate facility. Within this corridor, the alignment of the culvert transects terminal gate and yard traffic routes for straddle carriers and trucks, a rail line and a host of utilities including a PS&E high pressure gas line, a water main and multiple overhead high voltage electrical and communication transmission lines. The structural steel plate (SSP) pipe arch culvert is approximately 247-feet long with an elbow approximately 95-feet from the downstream end and 152-feet from the upstream end. The culvert generally has a span of 8'-10" and a height of 6'-1" to the inside of the corrugations which are approximately 2-inches deep (crest to valley) and 6-inches wide (crest-to-crest). The culvert is covered in approximately 14 feet of fill for an overall depth of about 20 feet from top of grade to invert of culvert. The original construction date of the culvert is unknown; however, it is believed to be the mid- to late-1960s based on historic photographs and maps of the area.

Attachment A to the RFQ contains the Instructions and Information for proposing to the solicitation.

The Port's Standard Terms and Conditions are included as Attachment B to this solicitation. By submitting a Proposal, the Proposer represents that it has carefully read

and agrees to be bound by the Port's Standard Terms and Conditions. Identify during the question submittal and response period, any sections you consider onerous, clarify why you consider these sections onerous, propose alternative language, and describe why it is in the Port's best interests to adopt the alternative language. Taking exceptions to these terms and conditions or conditioning your proposal on terms and conditions other than the Port's will render your proposal non-responsive.

\* By submitting a proposal, the Proposer represents that it has carefully read all attachments. As applicable, proposers shall identify propose alternate wording, if any, to these documents as an appendix to their submitted proposal.

Attachment C to the RFQ contains area, vicinity, known utility and traffic maps to assist with project understanding.

Attachment D to the RFQ contains historical drawings of the terminal development which includes utility, shoreline, crossing and surface infrastructure information.

## **B. SCOPE OF SERVICES:**

The scope of services will be to assist the Port in developing an Alternatives Analysis Report that includes concept design for upgrade/replacement alternatives. The Port anticipates the four (4) primary alternatives will be evaluated:

1. Repair: rehabilitation/repair/strengthening of the existing culvert
2. Replacement: replace existing culvert In-kind or similar replacement (precast concrete culvert)
3. Upgraded Culvert: precast segmental construction with sediment/granular channel
4. Limited Channel Restoration: open bridging structure and channelization to the extent practical

The Alternatives Analysis is not intended to be strictly limited to these concepts. Permutations and variations are anticipated to be required as project opportunities and limitations are better understood.

Any work on the culvert will present a multitude of permit, cost, operational, geotechnical and structural considerations and challenges. The Alternatives Analysis will identify, evaluate and present these considerations and challenges in a report. The scoped alternatives will be developed to the extent necessary to develop construction cost estimates that carry a reasonable contingency for project planning. Costs, schedule (phasing), impacts, obligations, and opportunities will be collectively assessed to identify a preferred alternative for future work. The primary services anticipated for developing the alternatives analysis report include the following:

- Engineering: Civil, Structural, Geotechnical, Hydraulic
- Environmental: Environmental strategies, permit requirement identification, agency and stakeholder coordination
- Utility evaluation and coordination
- Review and analysis of existing site data and records
- Project management and oversight

- Stakeholder identification, coordination and negotiations
- Project scheduling (permitting, design, construction – phasing and sequencing)
- Cost estimating
- Field investigation
- Supplemental investigations or reporting and feasibility review
- Grant support
- Cultural resources

### **C. DELIVERABLES:**

The deliverable for this contract will be an Alternatives Analysis Report that will include drawings, figures, costs, schedules, and stakeholder considerations to the extent necessary to support long term decision making. The anticipated key components of the report are listed, but not limited to, the following sections. The components may be standalone investigation reports or technical memos attached to or summarized within the Alternatives Analysis Report.

#### Engineering Analysis:

Prepare an engineering assessment at a level of detail needed to support planning and environmental review. The analysis shall include preliminary calculations, drawings and figures as necessary to develop feasible concepts and support other components of alternative development.

#### Environmental Strategy:

Prepare an environmental strategy at a level of detail needed to support planning and environmental review (SEPA and potentially NEPA depending on grants) and future permit applications. Provide stakeholder and agency coordination to understand permit requirements and conditions. Planning shall include Port identified grant opportunities.

#### Implementation Strategy:

Include discussion of sequencing plan and scheduling of project work. Implementation planning should consider a variety of factors including, but not limited to, container terminal operations, tides, stream flows, short- and long-term environmental impacts, permits and the interests of other project stakeholders.

#### Cost Estimates

The report shall include cost estimates for each alternative including design and construction. The estimates shall be as detailed as available funding permits. Major work components shall be clearly identified and priced. Application of contingencies, escalation, lump sums and miscellaneous costs shall be clearly tracked. Alternative costs are expected to be presented in ranges and incorporate findings from the study.

#### Utility Coordination

Multiple utilities underground and overhead transect the alignment of the WCC. Ground disturbing and construction activities would impact these utilities in terms of alternative

cost, schedule and implementation. The Alternative Analysis Report shall address these impacts and how utility service would be maintained or restored.

### Rail

Similar to the utilities, a Tacoma Rail line transects the alignment of the WCC. Ground disturbing and construction activities would impact the rail line. Each alternative must accommodate the rail line and restore/maintain service. The Alternative Analysis Report shall address the impacts of rail line operation disturbance/accommodation and how this right-of-way maintenance impacts each evaluated alternatives in terms of cost, schedule and implementation.

## **D. RFQ ELEMENTS & EVALUATION CRITERIA:**

Proposals should present information in a straightforward and concise manner, while ensuring complete and detailed descriptions of the proposing team (to include the prime consultant's key team members and any major sub-consultants) and the team's ability to meet the requirement of this solicitation. Attention will be given to the technical competencies and completeness of content. The written proposals should be prepared in sequential order as outlined below.

Proposals are limited to 8 numbered pages (8 ½ by 11 inch) **excluding** the cover letter any submitted appendices the compensation proposal and references. All pages shall be in portrait orientation with 1-inch margins. Font size shall be 11 point or larger. Proposals that do not follow this format may be deemed nonresponsive.

The cover letter shall include the solicitation Title and Number, Name, Title, Email Address, Phone Number and Addresses of the Proposing Team's main contact and include the following information:

- Describe all claims submitted by any client against the firm within the past two years related to the professional services provided by the firm or its key personnel. For purposes of this request, "claim" means a sum of money in dispute in excess of 10% of the firm's fee for the services provided.
- Any real or perceived conflicts of interests for team members, inclusive of the prime, sub-consultants and key team members.

**Proposals are to address, and will be evaluated upon, the following criteria:**

### INITIAL EVALUATION PHASE

#### **1. Qualifications & Experience.....50 PTS**

Identify the proposed team (to include working titles, degrees, certificates, and licenses), demonstrate the team's experience in performing the requested services and describe how the team meets or exceeds the required qualifications with emphasis on the following elements:

- Engineering Design (10 PTS)
  - Structural

- Geotechnical
- Civil
- Cost estimating and scheduling
- Environmental implementation including permit and agency/stakeholder coordination **(10 PTS)**
- Describe recent projects which demonstrate the team’s unique capabilities to complete the requested services. **(10 PTS)**
- The Port will evaluate the experience, technical competence, and qualifications of the key personnel identified, their project specific roles and responsibilities, and overall organization of the Project Team. Emphasis will be placed on experience and expertise in performing work of similar scope and complexity in the Pacific Northwest region. **(15 PTS)**
- Provide a list of references for recent (in the last five (5) years) contracts/projects, to include a client point of contact name and title, contact information (phone and email), period of performance, key personnel involved, and brief description of services relevant to the services being requested. Highlight key project accomplishments (e.g., project savings vs. original budget, completion of tasks ahead of schedule, innovative strategies that resulted in project success). Only projects completed by proposed key team members will be considered. **(5 PTS)**

**2. Project Management Approach.....35 PTS**

- Describe the anticipated approaches and methods that will be employed to accomplish the scope of services. Also indicate approach for managing multiple professional disciplines and managing to the overall contract budget. Include a summary of innovative ideas and suggestions for enhancing project performance and deliverables. **(25 PTS)**
- Explain company QA/QC process and note its benefits/advantages. **(5 PTS)**
- Document effective/proven communications and coordination approach between the project team, the Port’s project manager and the regulatory agencies. **(5 PTS)**

**3. Project Schedule.....15 PTS**

Describe the team’s availability, capacity and ability to undertake the work immediately and dedicate the necessary personnel and resources to meet the anticipated schedule. • Schedule: Provide a basic schedule identifying anticipated completion of the four alternatives above including permitting, and how the team anticipates adhering to that schedule.

**4. References.....Pass/Fail**

Reference checks may be performed on the selected firm, if based directly on the proposals received, or on shortlisted firms if interviews are being requested. The Port may evaluate the reference checks to assess the proposed team’s overall performance and success of previous, similar work. Reference checks may also be utilized to validate information contained in the proposal.

FINAL EVALUATION PHASE (if applicable)**5. Interviews (as requested by the Port)****100 PTS**

If an award is not made based on the written evaluations alone, interviews will be conducted with the top-ranked proposers. Failure to participate in the interview process will result in the Proposer's disqualification from further consideration. If interviews are conducted, they will be held at the Port of Tacoma, Tacoma, WA., or virtually via Teams meeting. Travel costs will not be reimbursed for the interview.

**Attachments:****ATTACHMENT A – SUBMITTAL INSTRUCTIONS****ATTACHMENT B – CONTRACT TEMPLATE & TERMS AND CONDITIONS****ATTACHMENT C – EXISTING SITE PLANS****ATTACHMENT D – 6320-PCT WHARF AND PHASE 2 DREDGING**

**ATTACHMENT “A”**  
**SUBMITTAL INSTRUCTIONS**

**PROCUREMENT PROCESS**

**SOLICITATION TIMELINE:**

Issuance of Solicitation	NOVEMBER 9, 2022
Last Day to Submit Questions	DECEMBER 13, 2022 @ 2:00 PM (PST)
<b>Submittal Packets Due</b>	<b>DECEMBER 20, 2022 @ 2:00 PM (PST)</b>
Review/Shortlist*	JANUARY 4, 2022
Interviews (if required) *	JANUARY 10, 2022
Final Selection*	JANUARY 12, 2022
Execute Contract*	JANUARY 31, 2022

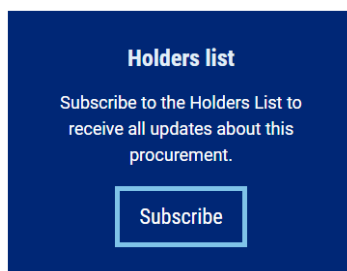
\*Dates are tentative.

All status updates on the above solicitation timeline will be announced on the Port’s website for this solicitation.

**VENDOR OBLIGATION**

The Port of Tacoma’s (Port) Invitation to Bid, Request for Proposals and Request for Qualifications can be accessed on the Port’s website, [www.portoftacoma.com](http://www.portoftacoma.com) under ‘Business -> Contracting -> Procurement’.

When viewing the details page for this procurement on the Port’s Website firms have the option of subscribing to the Holder’s List.



By subscribing to the Holder’s List, firms will automatically be notified when new documents or changes relating to this procurement occur.

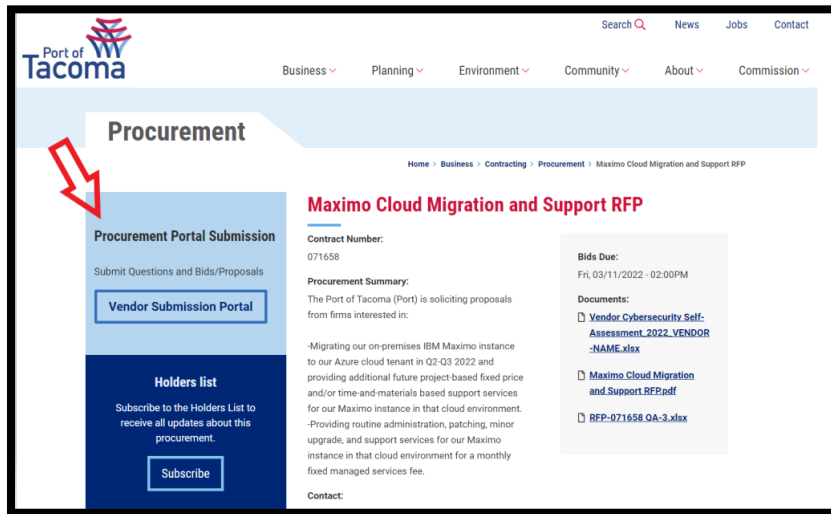
**\*Only those who have subscribed to the Holder’s List will receive notifications throughout the procurement process, up until a firm is selected.**



## COMMUNICATION / INQUIRES

Proposers who, relative to this scope of services, contact any individuals or Commission members representing the Port, other than the Procurement Representative listed on the solicitation may be disqualified from consideration.

Written questions about the meaning or intent of the Solicitation Documents shall only be submitted to the Procurement Department via the Procurement Portal (**Portal link is accessible via this specific procurements website. See left side of page.**).



Proposers who may have questions about provisions of these documents are to submit their questions by the date listed above. The Port will respond to all written questions submitted by this deadline, and responses will be posted on the corresponding procurements website.

## ADDENDA

The Port may make changes to this Solicitation. Oral or other interpretations, clarifications or submittal instructions will be without legal effect. Any information modifying a solicitation will be furnished in a formal, written addendum. If at any time, the Port changes, revises, deletes, increases, or otherwise modifies the Solicitation, the Port will issue a written Addendum to the Solicitation. Addenda will be posted to the Port's web site and conveyed to those potential submitters who have requested to be placed on the Holder's List.

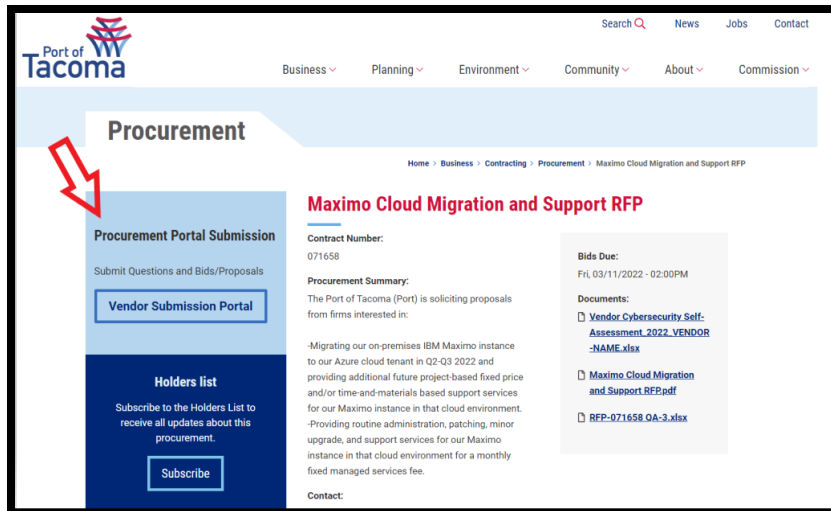
## SUBMITTAL PROCESS

### Electronic Submittal:

Proposals must be received via the procurement portal on or before the date and time outlined on the front page of this proposal.

### Procurement Submission Portal Instructions:

Navigate to this procurements web page (referencing the number and name) via the following link [Procurement | Port of Tacoma](#). While on the procurements page, click on the 'Procurement Submission Portal' link (located on the lefthand side of the page).



Full instructions on how to utilize the submission portal can be found on the Port's website, [www.portoftacoma.com](http://www.portoftacoma.com) under 'Business -> Contracting -> Procurement'. See bold red heading above the bid search box "Bid and Question Submittal Instructions", to access the thorough instructions in PDF format.

Please submit proposal, including all appendices and compensation in separate Adobe Acrobat PDF format. Submittals need to be limited to **9 MB in total email size**.

**\*Late proposals will not be accepted by the Port. Proposals received after the stated date and time will not be reviewed and shall be deemed non-responsive.**

All proposals submitted shall be valid and binding on the submitting firm for a period of ninety (90) days following the submittal deadline and for any extension of time granted by the submitting firm.

## EVALUATION AND AWARD PROCESS

An evaluation team, using the point method of award, will review each proposal and evaluate all responses received based upon the criteria listed herein. The Port may request clarifications or additional information, if needed. After the evaluation team individually scores each proposal, the scores are tallied and the firms are ranked based on the scores.

A selection may be made based on the proposals and initial evaluation criteria alone. Alternatively, the evaluation team may create a short list of the top ranked firms and invite the short-listed firms in for interview and/or check references. Scores for reference checks and interviews will be tallied and added to the short-listed firm's initial evaluation scores. Final selection will be based on the accumulative score.

The Port intends to select the Proposer who represents the best value to the Port.

The Port reserves the right to accept or reject any or all information in its entirety or in part and to waive informalities and minor irregularities and to contract as the best interest of the

Port may require. The Port reserves the right to reject any or all Proposals submitted as non-responsive or non-responsible.

### **Procedure When Only One Proposal is received**

In the event that a single responsive proposal is received, the Proposer shall provide any additional data required by the Port to analyze the proposal. The Port reserves the right to reject such proposals for any reason.

### **GENERAL INFORMATION**

News releases pertaining to this RFP, the services, or the project to which it relates, shall not be made without prior approval by, and then only in coordination with, the Port.

### **COSTS BORNE BY PROPOSERS**

All costs incurred in the preparation of a Proposal and participation in this RFP and negotiation process shall be borne by the proposing firms.

### **PROTEST PROCESS**

A Bidder protesting for any reason the Bidding Documents, a Bidding procedure, the Port's objection to a Bidder or a person or entity proposed by the Bidder, including but not limited to a finding of non-Responsibility, the Award of the Contract or any other aspect arising from or relating in any way to the Bidding shall cause a written protest to be filed with the Port within two (2) business days of the event giving rise to the protest. (Intermediate Saturdays, Sundays, and legal holidays are not counted as business days.) The written protest shall include the name of the protesting Bidder, the bid solicitation number and title under which the protest is submitted, a detailed description of the specific factual and legal grounds for the protest, copies of all supporting documents, evidence that the apparent low bidder has been given notice of the protest, and the specific relief requested. The written protest shall be sent by email to [procurement@portoftacoma.com](mailto:procurement@portoftacoma.com)

Consideration. Upon receipt of the written protest, the Port will consider the protest. The Port may, within three (3) business days of the Port's receipt of the protest, provide any other affected Bidder(s) the opportunity to respond in writing to the protest. If the protest is not resolved by mutual agreement of the protesting Bidder and the Port, the Contracts Director of the Port or his or her designee will review the issues and promptly furnish a final and binding written decision to the protesting Bidder and any other affected Bidder(s) within six (6) business days of the Port's receipt of the protest. (If more than one (1) protest is filed, the Port's decision will be provided within three (3), but no more than six (6) business days of the Port's receipt of the last protest.) If no reply is received from the Port during the six (6) business-day period, the protest will be deemed rejected.

Waiver. Failure to comply with these protest procedures will render a protest waived.

Condition Precedent. Timely and proper compliance with and exhaustion of these protest procedures shall be a condition precedent to any otherwise permissible judicial consideration of a protest.

### **SMALL BUSINESS AND DISADVANTAGED BUSINESS OPPORTUNITIES**

The Northwest Seaport Alliance encourages participation in all of its contracts by MWBE firms certified by the Office of Minority and Women's Business Enterprises (OMWBE).

Participation may be either on a direct basis in response to this solicitation/invitation or as a subcontractor to a Bidder/Proposer. However, unless required by federal statutes, regulations, grants, or contract terms referenced in the contract documents, no preference will be included in the evaluation of bids/submittals, no minimum level of MWBE participation shall be required as a condition for receiving an award and bids/submittals will not be rejected or considered non-responsive on that basis. Any affirmative action requirements set forth in federal regulations or statutes included or referenced in the contract documents will apply. The selected firm will be required to show evidence of outreach.

### **PUBLIC DISCLOSURE**

Proposals submitted under this Solicitation will be considered public documents and, with limited exceptions, will become public information and may be reviewed by appointment by anyone requesting to do so following the conclusion of the evaluation, negotiation, and award process. This process is concluded when a signed contract is completed between the Port and the selected Consultant.

If a firm considers any portion of its response to be protected under the law, the vendor shall clearly identify each such portion with words such as "CONFIDENTIAL," "PROPRIETARY" or "TRADE SECRET" on each page for which the protection is sought. If a request is made for disclosure of such portion, the Port will notify the vendor of the request and allow the vendor not less than ten (10) days to seek a protective order from the Courts or other appropriate remedy and/or waive the claimed confidentiality. Unless such protective order is obtained and provided to the Port by the stated deadline, the Port will release the requested portions of the proposal. By submitting a response, the vendor assents to the procedure outlined in this paragraph and shall have no claim against the Port on account of actions taken under such procedure.

**ATTACHMENT "B"**

**PROFESSIONAL SERVICES AGREEMENT NO. 071777**

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**PROJECT: WAPATO CREEK CULVERT ALTERNATIVES ANALYSIS**

**CONSULTANT: Company, Address, City, State, Zip**

**PROJECT MANAGER: XXXXXXXXX GL ACCOUNT NO. XXXXXXXX**

THIS AGREEMENT is made and entered into by and between the **Port of Tacoma** (*hereinafter referred to as the "Port"*) and **xxCOMPANYxx** (*hereinafter referred to as the "Consultant"*) for the furnishing of Water Quality Program Support Services (MS4 Permit) (*hereinafter referred to as the "Project"*).

**SCOPE OF WORK**

Consultant will provide .....

**DELIVERABLES**

Deliverables will include:

**COMPENSATION**

This will be accomplished on fully burdened, time and materials basis and will not exceed **\$00,000.00** without prior written approval from the Port.

Consultant is responsible for working within the budget as agreed. Should the Consultant incur costs beyond the not-to-exceed contract budget amount without an executed amendment to this contract, the Consultant is solely responsible for the additional costs.

Invoices shall be submitted by the consultant to [cpinvoices@portoftacoma.com](mailto:cpinvoices@portoftacoma.com) each month. Invoice period is for the previous calendar month and shall be computed pursuant to the rates and limitations set forth in the Agreement. Consultant agrees to submit monthly invoices as the Services progress. Invoices that are submitted for payment ninety (90) days or more after the Services were completed are subject to non-payment. Under no circumstances will the Port of Tacoma pay interest on payment.

The length of this agreement is from **the date of execution** to **xxDATExx**. This agreement is expressly conditioned upon the **Terms and Conditions** attached and by reference incorporated herein. Consultant acknowledges reading this Agreement, understands it and agrees to be bound by its Terms and Conditions.

**AGREED**

**PORT OF TACOMA**

**CONSULTANT (LEGAL NAME)**

By \_\_\_\_\_ Date \_\_\_\_\_  
Jerry Clardy  
Sr. Contract Administrator

By \_\_\_\_\_ Date \_\_\_\_\_  
Print Name Title

**Port of Tacoma  
Terms and Conditions  
Personal and Professional Service Agreements**

**1. Relationship of the Parties**

Consultant and its employees, are independent Contractors. Nothing contained herein shall be deemed to create a relationship of employer and employee or of principal and agent.

**2. Subconsultant and Supplier Relations**

- a. Subconsultants at all tiers shall be approved by the Port prior to performing Services in support of this Agreement between Consultant and Port.
- b. The award of a subcontract does not create a contract between the Port and the subconsultant. Subconsultants shall have no rights whatsoever against the Port by reason of their contract with the Consultant. The foregoing provision shall apply with equal force to subconsultants, suppliers and all other persons or parties otherwise engaged by the Consultant to do any portion of the Services.
- c. The Consultant shall ensure every subcontract shall bind the subconsultant to the applicable terms of the Agreement. The Consultant shall appropriately monitor the activities of the subconsultant. In no event shall the activities of the subconsultant operate to release or reduce the liability of the Consultant to the Port for any breach in the performance of the Consultant's duties.

**3. Conflicts of Interest**

Consultant warrants 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 warrants that it has not retained any person to solicit this Agreement and has not agreed to pay such person any compensation or other consideration contingent upon the execution of this Agreement.

**4. Compliance with Laws**

- a. Consultant agrees to comply with all local, state, tribal, and federal laws and regulations applicable to the Services existing at the time this Agreement was executed or that became applicable subsequent to this Agreement's execution, and those regarding employee safety, the workplace environment, and employment eligibility verifications as required by the Immigration and Naturalization Service. Consultant shall obtain and maintain all professional licenses and permits required to complete the Services.
- b. Consultant must comply with all Occupational Safety and Health Administration (OSHA), Washington Industrial Safety and Health Act (WISHA), Department of Labor, Environmental Protection Agency and other applicable environmental standards as prescribed by law while on or occupying Port-owned properties.
- c. The Consultant is responsible for ensuring that all personnel performing Services are paid wages in accordance with federal, state and local laws when applicable.

**5. Records and other Tangibles**

- a. The Port is a public entity and must maintain access to, and be able to provide, records per RCW 40.14, RCW 42.56, and the Secretary of

State's Local Government Common Records Retention Schedule (CORE) Version 3.3 (October 2016). Therefore, until the expiration of six (6) years after the term of this Agreement, consultant agrees to maintain accurate records of all activities done in providing the Services and to deliver such records to the Port upon termination of the Agreement or otherwise as requested by the Port.

- b. The Port or its designated agent, and federal and state auditing authorities have the right to audit this Agreement and access to all records and documents, including financial data, for a period of not less than six (6) years after Completion of all projects related to this Agreement or until resolution of any litigation related to this Agreement whichever occurs last.

#### **6. Ownership of Intellectual Property (IP)**

- a. The plans, specifications, models, programs, reports, and other products prepared by the Consultant in performing the Services are Instruments of Service for purposes of the copyright laws of the United States. The Port has ownership rights to the Instruments of Service. Consultant shall not be liable for changes made in the Instruments of Service by anyone other than the Consultant. Consultant shall have free right to retain, copy and use any tangible materials or information produced but only for its own internal purposes. Any patentable result or materials suitable for copyright arising out of this Agreement shall be owned by and made available to the Port for public use, unless the Port determines it is not in the public interest that it be owned or available.
- b. The Instruments of Service shall include all calculations, notes, draft documents, reports, drawings,

specifications, electronic files, including e-mails, and any other materials, information or documentation developed or prepared in the performance of the Services and shall be owned by and treated as Port property. The Consultant shall obtain no proprietary rights or interest the Instruments of Service.

- c. Any items incorporated into the Instruments of Service that were developed by the Consultant prior to the execution of this Agreement, and not paid for by the Port, is not covered by this provision "Consultant Data."
- d. All information, materials, data and documentation furnished or made available to the Consultant by the Port for purposes of performing services pursuant to this Agreement on this project shall remain the property of the Port "Port Data." The Consultant shall obtain no proprietary rights or ownership interests to such Port Data. At the Port's written request, the Consultant shall return all such Port Data remaining in the Consultant's possession at the termination or expiration of this Agreement.

#### **7. Disclosure**

All information developed by the Consultant, all analyses or opinions reached by the Consultant (Instruments of Service) and all information made available to the Consultant by the Port (Port Data), shall not be disclosed by the Consultant without the written consent of the Port.

#### **8. Compensation**

- a. As full compensation for the performance of its obligations of this Agreement and the Services, the Port shall pay Consultant as specified in the Agreement.

b. Consultant is responsible for working within the agreement amount. Should the consultant incur costs beyond the agreement amount without an executed amendment to this agreement, the Consultant is solely responsible for the additional costs.

9. Invoices shall be submitted by the consultant through e-Builder® each month. Training and account information for e-Builder® will be provided by the Port upon contract execution. Invoice period is for the previous calendar month and shall be computed pursuant to the rates and limitations set forth in the Agreement. Consultant agrees to submit monthly invoices as the Services progress. Invoices that are submitted for payment ninety (90) days or more after the Services were completed are subject to non-payment. Under no circumstances will the Port pay interest on payment.

a. Consultant shall submit detailed numbered invoices showing descriptions of the Services being invoiced, work order number, title of the Project, total authorized, total current invoice, balance of authorization, individual's names and titles, hours, hourly rate, and all authorized expenses, if allowed, for the month, itemized, with backup, in accordance with the Port's "Guidelines for Consultant Fees and Reimbursable Items", by the 10<sup>th</sup> of the following month to be paid by the end of the 30<sup>th</sup>, unless other terms are agreed to by the parties.

b. Consultant agrees to submit timely invoices as the Services progress. Invoices that are submitted for payment ninety (90) days or more after the Services were completed are subject to non-payment.

c. Un-invoiced Services performed through December 31 of each year shall be invoiced no later than the 7<sup>th</sup> day of January. If the Consultant is unable to provide an invoice they shall advise the Port in writing with a summary of the work completed and the accrual amount to be invoiced through December 31 of that year.

## 10. Costs and Disbursements

Consultant is responsible for and shall pay all costs and disbursements required for the performance of the Services.

## 11. Standard of Care

a. Consultant shall perform the Services 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 in such Services.

b. 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 the Services.

## 12. Time

Time is a material consideration in the performance of the Services. The Consultant shall complete the Services within the agreed upon schedule; including any established milestones and task completion dates, and the overall period of performance. The



completion dates for tasks may be modified by a written directive; however, the period of performance for the Agreement may only be modified through an amendment. The period of performance and contract milestones shall not be extended because of any unwarranted delays attributable to the Consultant. The period of performance and contract milestones may be extended in the event of a delay caused by the Port which results in a delay in the performance of an affected task, because of unavoidable delay caused by any governmental action, or other conditions beyond the control of the Consultant, which could not reasonably be anticipated and which results in a delay in the period of performance and contract schedule. Upon mutual agreement, the period of performance may be accelerated to meet Project requirements.

### **13. Assignability**

The Consultant may not assign, transfer, or novate all or any portion of the Agreement, including but not limited to any claim or right to the Contract Sum, without the Port's prior written consent. If the Consultant attempts to make an assignment, transfer, or novation without the Port's consent, the assignment or novation, shall be of no effect, and the Consultant shall nevertheless remain legally responsible for all obligations under the Agreement. The Consultant also shall not assign or transfer to any third party any claims it may have against the Port arising under the Agreement or otherwise related to the Project.

### **14. Termination of Agreement**

#### **a. Termination for Default:**

- i. The Port may terminate this Agreement, in writing, if the Consultant substantially fails to fulfill any or all of its material obligations under this Agreement through no

fault of the Port; provided that the Consultant has been given an opportunity to cure.

1. Cure Notice: If the Port determines that a breach of this Agreement has occurred, that is, the Consultant has failed to comply with any material terms or conditions of this Agreement or the Consultant has failed to provide in any manner the Services agreed to herein, and if the Port deems said breach to warrant corrective action, the following sequential procedure will apply:

- ii. The Port will provide the Consultant with a written Cure Notice; notifying the Consultant of the nature of the breach;
- iii. The Consultant shall respond within five (5) calendar days of the notification. The Consultant shall submit a corrective action plan indicating the steps to be taken to correct the specified deficiencies within fifteen (15) calendar days of the notification. The corrective action plan shall specify the proposed completion date for bringing this Agreement into compliance within the number of calendar days specified by the Port;

#### **b. Show Cause Notice:**

- i. In the event that the Consultant does not respond within the appropriate time with a corrective action plan, the Port will provide the

Consultant with a written Show Cause Notice; notifying the Consultant of their requirement to notify the Port in writing within seven (7) calendar days of any reason the Port should not terminate this Agreement. At the expiration of the seven (7) calendar day period the Port may commence termination of this Agreement in whole or in part;

- ii. The Port may withhold payment owed the Consultant, instruct the Consultant to stop work and to refrain from incurring additional costs until the Port is satisfied that the breach has been corrected;
  - iii. No increase in total price or period of performance shall result from breach of this Agreement; and
  - iv. Nothing herein shall be deemed to affect or waive any other rights of the Port.
- c. Notice of Termination:
- i. If the Port terminates this Agreement for default, the Port shall determine the amount of Services satisfactorily performed to the date of termination and the amount owing to the Consultant using the criteria set forth below; provided, that (a) no amount shall be allowed for anticipated profit on unperformed Services or other work and (b) any payment due to the Consultant at the time of termination may be adjusted to the extent of any additional costs the Port incurs because of the Consultant's default. In such event, the

Port shall consider the actual costs incurred by the Consultant in performing this Agreement to the date of termination, the amount of Services originally required which was satisfactorily completed to the date of termination, whether the Services are in a form or of a type which is usable and suitable to the Port at the date of termination, the cost to the Port of completing the Services itself or of employing another firm to complete it and the inconvenience and time which may be required to do so, and other factors which affect the value to the Port of the Services performed to the date of termination. Under no circumstances shall payments made under this provision exceed the Total Price set forth in this Agreement. This provision shall not preclude the Port from filing claims and/or commencing litigation to secure compensation for damages incurred beyond that covered by withheld payments.

- ii. Upon receipt of a termination notice the Consultant shall at no additional cost to the Port:
  - 1. Promptly discontinue all Services (unless the notice directs otherwise);
  - 2. No later than fourteen (14) calendar days after receipt of termination, promptly deliver or otherwise make available to the Port all Instruments of Service and Port Data including data, drawings, electronic

drawing files, specifications, calculations, reports, estimates, summaries, official Project documentation and other Project documentation, such other information and materials as the Consultant or subconsultants may have accumulated in performing this Agreement, whether completed or in progress and all equipment/materials purchased specifically for this Agreement where the Port has paid the Consultant for such items.

3. Upon termination, the Port may take over the Services and prosecute the same to completion by agreement with another party or otherwise.

d. Termination for Convenience:

- i. The Port may terminate this Agreement, for the convenience of the Port. The Port shall terminate by delivery to the Consultant a Notice of Termination specifying the termination and the effective date.
- ii. If the Port terminates this Agreement for convenience, the Port shall pay the Consultant for the following items:
  1. An amount for Direct Labor Costs and Indirect Costs in

accordance with the Agreement for Services satisfactorily performed to the date of termination;

2. Reasonable invoiced Other Direct Costs as allowed by the Agreement, actually incurred before the date of termination; or
3. Reasonable termination settlement costs the Consultant actually incurred unless the Port determines to assume said commitments. Reasonable termination settlement costs include settlement costs for subconsultants, and reasonable accounting and clerical costs actually incurred by the Consultant.

- iii. Upon receipt of a termination notice the Consultant shall at no additional cost to the Port:

1. Promptly discontinue all Services (unless the notice directs otherwise);
2. No later than fourteen (14) calendar days after receipt of termination, promptly deliver or otherwise make available to the Port all Instruments of Services and Port Data including drawings, specifications, calculations, reports,

estimates, summaries, official Project documentation, other Project documentation, and such other information and materials as the Consultant may have accumulated in performing this Agreement, whether completed or in progress and all equipment/materials purchased specifically for this Agreement where the Port has reimbursed the Consultant for such costs;

3. Take any action necessary, or that the Port may direct, for the protection and preservation of property related to this Agreement that is in the possession of the Consultant and in which the Port has or may acquire an interest.

- iv. Within sixty (60) calendar days of receipt of the notice of Termination for Convenience, the Consultant shall submit to the Port a Termination Settlement Proposal. The Termination Settlement Proposal shall include:

1. Request for Direct Labor Costs and Indirect Costs for services satisfactorily performed to the date of termination;
2. As allowed by the Agreement, Actual

and reasonable Other Direct Costs incurred before the termination;

3. Documentation supporting all costs identified in the Termination Settlement Proposal; and
4. A statement certifying, under penalty of perjury, that the Termination Settlement Proposal is made in good faith, the Termination Settlement Proposal and supporting data are true and accurate to the best of the Consultant's knowledge and belief, the Termination Settlement Proposal is fully supported by the accompanying data, and the amount requested accurately reflects the amount for which the Consultant believes the Port is responsible.

- v. Termination settlement costs and proposals are subject to audit verification by the Port.

- vi. Upon termination, the Port may take over the work and prosecute the same to completion by agreement with another party or otherwise.

## **15. Disputes**

If a dispute arises relating to this Agreement and cannot be settled through direct discussions, the parties agree to endeavor to settle the dispute

through a mediation firm acceptable to both parties, the cost of 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 this Agreement may be consolidated and resolved in one forum.

## **16. Venue & Governing Law**

Venue for any litigation shall be the Pierce County Superior Court of the State of Washington and the prevailing party shall be entitled to recover its costs and reasonable attorney(s) fees. This Agreement shall be interpreted under the laws of the State of Washington.

## **17. Integration and Merger/ Extent of Agreement**

- a. This Agreement represents the entire and integrated understanding between the Port and Consultant, supersedes any previous written or oral representations and may be amended only by written instrument signed by both the Port and Consultant. No verbal agreement or conversation between any officer, agent, associate or employee of Port and any officer, agency, employee or associate of Consultant prior to or following the execution of this Agreement shall affect or modify any of the terms or obligations contained in this Agreement.
- b. Authority to sign. Every signer of this Agreement warrants that they have the authority to enter into this Agreement and to bind the entity for which they represent.

## **18. Non-Discrimination**

- a. Nondiscrimination in Employment and Provision of Services: During performance of this Agreement, the Consultant and all parties

subcontracting under the authority of this Agreement agrees that it will not discriminate against any employee or applicant for employment because of the employee or applicant's age, sex, marital status, sexual orientation, race, creed, color, national origin, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability.

- b. Equal Employment Opportunity Efforts: The Consultant and all parties subcontracting under the authority of this Agreement agree to undertake equal employment opportunity efforts to ensure that applicants and employees are treated, without regard to their age, sex, marital status, sexual orientation, race, creed, color, national origin, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability.
- c. The Consultant and all parties subcontracting under the authority of this Agreement shall comply fully with all applicable federal, state, and local laws, ordinances, executive orders and regulations that prohibit discrimination.

## **19. Indemnity / Hold Harmless Clause**

- a. The Consultant shall indemnify, defend and hold harmless the Port of Tacoma and the Northwest Seaport Alliance and its officers, managing members, employees and agents from and against any liability, claims, damages, losses, expenses or actions, including reasonable attorney's fees and costs, arising out of the negligence, recklessness, or intentional wrongdoing of Consultant or its officers, employees, subcontractors, or agents; or arising

out of a failure to comply with any applicable state, federal, local, law, statute, rule, regulation or act by the Consultant or its officers, employees, subcontractors, or agent's provided, however, that for any defense obligation related to a claim for which Contractor has insurance coverage under a professional liability policy, such obligation shall be limited to reimbursement by the Consultant for expenses incurred by the Port of Tacoma or the Northwest Seaport Alliance.

- b. This duty to indemnify, defend and hold harmless shall not apply to claims which arise solely out of negligence on the part of the Port of Tacoma and the Northwest Seaport Alliance, and this duty shall survive the termination or expiration of this Agreement.
- c. Consultant specifically assumes potential liability for actions brought by Consultant's own employees against the Port and the Northwest Seaport Alliance and, solely for the purpose of this indemnification and defense, Consultant specifically waives any immunity under the state industrial insurance law, Title 51 RCW. Consultant's indemnity obligations shall not be limited by any limitation on the amount or type of damages, compensation, or benefits payable to or for any third party under the Worker Compensation Acts, Disability Benefit Acts, or other employee benefit acts. Consultant recognizes that this waiver was the subject of mutual negotiation.
- d. Consultant shall indemnify and hold the Port of Tacoma and Northwest Seaport Alliance harmless from and against any liability, expense, fines, penalties, cost, demand, or other obligation, resulting from or out of any cyber-related risk that include theft, loss or misuse of data, release

of private information as result of a network breach, penetration, compromise, or loss of IT systems control.

- e. The provisions of this Section 19 shall survive the expiration or termination of this Agreement.

## **20. General Insurance Requirements**

The Consultant shall procure and maintain during the life of this Agreement such insurance as shall protect it from claims or damages for, IT Professional or Cyber Liability, bodily injury, including death resulting therefrom as well as from claims for property damage, and cyber-related risks such as theft, loss or misuse of data, release of private information as result of a network breach, penetration, compromise, or loss of IT systems control, which may arise from operations under this Agreement, whether such operations be by itself, its agents, or by anyone directly or indirectly employed by either of them, and shall comply with any such Project specific insurance requirements as determined by the Port.

## **21. Miscellaneous Provisions**

- a. Remedies Cumulative: Rights under this Agreement are cumulative and nonexclusive of any other remedy at law or in equity.
- b. Captions: All titles, including sections or subsections, are for convenience only and do not define or limit the contents.
- c. Severability: Any term or provision of this Agreement found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remainder of the Agreement.
- d. Waiver: No covenant, term, or the breach thereof shall be deemed waived, except by written consent of the Party against whom the waiver is

claimed, and any waiver of the breach of any covenant, term or condition shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term or condition. Neither the acceptance by Port of any performance by Consultant after the time the same shall have become due nor payment to Consultant for any portion of the Services shall constitute a waiver by Port of the breach or default of any covenant, term or condition unless otherwise this is expressly agreed to by Port, in writing. Port's failure to insist on performance of any of the terms or conditions herein or to exercise any right or privilege or Port's waiver of any breach hereunder shall not thereafter waive any other term, condition, or privilege, whether of the same or similar type.

- e. Negotiated Agreement: The Parties acknowledge that this is a negotiated Agreement, that they have had the opportunity to have this Agreement reviewed by respective legal counsel, and that terms and conditions are not construed against any Party on the basis of such Party's draftsmanship thereof.
- f. No Personal Liability: No officer, agent or authorized employee of either Port or Consultant shall be personally responsible for any liability arising under this Agreement, whether expressed or implied, nor for any statement or representation made herein or in any connection with this Agreement.

## 22. Key Personnel

The Consultant's key personnel, as described in the Consultant selection submittals, shall remain assigned for the duration of the Project unless otherwise agreed to in writing by the Port.

## 23. Insurance - Assumption of Risk

- a. As a further consideration in determining compensation amounts, the Consultant shall procure and maintain, during the life of this Agreement, such commercial general liability insurance, professional liability insurance and environmental liability insurance including asbestos abatement liability and other insurance as required by contract for this project that shall protect Consultant and any subconsultant performing work under this Agreement from claims for damages from bodily injury, including death, resulting therefrom as well as from claims for property damage, economic damage or cleanup costs, which may arise under this Agreement, whether arising from operations conducted by the Consultant, any subconsultant, or anyone directly or indirectly employed by either of them. Consultant recognizes that it is the obligation of the Consultant to ensure that all Subconsultants of any tier have insurance for the activities performed under this agreement. If this agreement requires that a Subconsultant perform ultra-hazardous operations the Port will require that it be named as an Additional Insured by endorsement on all Subconsultant insurance policies and waivers of subrogation shall be provided by endorsement. Workers Compensation and Professional Liability are exempted from the additional insured requirement.
- b. Consultant shall submit to the Port of Tacoma, prior to the commencement of services, certificates of insurance evidencing:
  - i. Commercial General Liability coverage on occurrence form CG0001 or equivalent with limits of \$2,000,000 per occurrence and \$4,000,000

aggregate. Coverage will include: Products and Completed Operations, Contractual Liability and Personal & Advertising Injury; and

provided covering all vessels and crew.

- ii. Automobile Liability covering owned, non-owned and hired vehicles of \$2,000,000 combined single limit per accident; and
  - iii. Professional Liability including environmental consulting services of not less than \$2,000,000 per claim and in the aggregate. If the scope of Professional Services includes environmental testing, consulting or other such professional services, the Consultant's Professional Liability policy shall include coverage for these services. If such coverage is written on a claims-made basis, any retroactive date on the policy shall be prior to the start of this contract. Coverage shall remain in effect for the term of this Agreement plus three years. Certificates of Insurance citing the contract and project number shall be provided to the Port of Tacoma on an annual basis for each of the three years.
  - iv. Workers Compensation Insurance: Statutory Workers Compensation Insurance as required by the State of Washington.
  - v. Stop Gap/Employers Liability Insurance shall be provided with a limit of not less than \$2,000,000 per claim.
  - vi. Protection and Indemnity Insurance/Jones Act: \$1,000,000 limits shall be
- vii. Maritime Employers Liability: \$1,000,000 limits shall be provided covering all divers.
- c. All policies shall be issued by a company having an A. M. Best Financial Strength Rating of A- and Financial Size Category of VIII or better. The Consultant shall be responsible for notifying the Port in writing within ten (10) days of receipt of notice of coverage being suspended, voided, cancelled or materially reduced. Except for professional liability, the Port and the Northwest Seaport Alliance shall be named as an additional insured on all policies by endorsement on ISO Form CG 20 10 Form B or equivalent. Except for Workers Compensation and Professional Liability, waivers of subrogation shall be provided by endorsement to all policies.
  - d. Consultant is responsible for complying with the Washington State laws that pertain to industrial insurance (RCW 51). Consultant shall submit a current employer liability certificate as issued by the Washington Department of Labor and Industries that shows the status of Consultant's worker compensation account prior to contract execution, including those Consultants who are qualified self-insurers with the state. Consultant bears the responsibility to ensure that any out-of-state (non-Washington) employees and subconsultants have appropriate workers compensation coverage while working for the Port in Washington State. Consultant may be exempt from state worker compensation insurance requirements (RCW 51.12.020) such as if Consultant is a sole proprietor.



- e. Certain Services under this Agreement may require United States Longshoremen's and Harbor Worker's Act (USL&H) and Jones Act. The Consultant shall be solely responsible for determining the applicability of USL&H and Jones Act coverage. The failure of the Consultant to procure either USL&H or Jones Act coverage shall at no time create liability on the part of the Port. The Consultant shall bear all responsibility and shall indemnify and hold harmless the Port for any and all liability, cost and/or damages.

#### **24. Payment Schedule**

- a. Consultant shall submit detailed numbered invoices in accordance with the Agreement by the 10th of the month. After a complete and correct invoice has been received by the Port, payment will be made within thirty (30) days.
- b. Invoices shall be submitted through the Port's Contract Management software e-Builder®. Incomplete or improperly prepared invoices will be returned for correction without processing or payment.
- c. Consultant shall submit detailed invoices showing the following:
  - i. Invoice Number, Contract number, Title, Invoice Period.
  - ii. Summary page with a brief description of Services completed during the invoice period, deliverables provided during the invoice period, and forthcoming milestones / deliverables.
  - iii. Further, provide a summary breakdown of all projects with the amount of the overall invoice to be charged to each project.

- iv. Current Amount Due, with a Time and Materials Breakdown: titles, hours, hourly rates, and all expenses itemized, with backup, in accordance with the Contract.
- v. Total amount of the Contract, and balance of Contract amount. Indicate "Final Invoice" when invoice is the final billing.

#### **25. Compensation**

- a. Consultant expenses will be reimbursed at cost with the exception of:
  - i. Subconsultant services will be reimbursed at cost plus negotiated markup.
  - ii. Services provided by a third party will be reimbursed at cost plus negotiated markup.
- b. Costs marked up by a sub-tier shall be passed through to higher tiers as a direct cost. In no case shall the mark up at any tier exceed the negotiated percentage.
- c. Reimbursable expenses by a sub-tier shall be passed through to higher tiers as a direct cost. In no case shall markup be applied to reimbursable expenses at any level.
- d. Rates: Rates are fully burdened and will remain in effect for the contract term unless renegotiated and agreed to by both parties in a written amendment.
  - i. Rates may be negotiated no more than once annually. Rate adjustments will be tied to the CPI for the Seattle, Tacoma/Bremerton area.

- e. Rates and Markup: are defined in the attached Rate Sheet and made a part of this contract.
- f. Overtime: The Port will allow overtime rates for preapproved labor categories, as required by federal law, at 1.5 times the rate when approved in advance by the Project Manager and when required by the nature of the Services. The Consultant shall submit a list of labor classifications to which overtime rates are applicable to by law.
- g. Local Travel: Compensation for vehicle usage will be paid at the current Internal Revenue Service allowable mileage reimbursement rate. Out of state mileage will not be paid. Consultants who are located within 50 miles of the Project site will not be reimbursed for meals, lodging or mileage.
- h. Other Travel:
  - i. The Port will reimburse the Consultant for all allowable travel expenses (including expenses for travel by car, air, water and rail, accommodation and meals) incurred in order to provide the Services to the Port in accordance with the following guidelines:
  - ii. Lodging and meal reimbursement is in accordance with the following Per Diem rates established by the IRS at <http://www.ofm.wa.gov/resources/travel.asp>.
  - iii. Amounts reimbursed will be computed at the rate for physical location to which travel is authorized by the Project Manager. Lodging, travel and local mileage must be approved in writing by the Project Manager prior to performing travel. Request for travel should include a breakout of costs associated with the requested travel.
- iv. Airfare will be reimbursed at the lowest available commercial coach rate. Airfare will be booked at least 15 days in advance of travel. The Port will reimburse for up to a mid-size vehicle with standard equipment (this does not include GPS, video screens, etc). The Port will also reimburse for gasoline expense associated with rental vehicle with the exception of gasoline provided/billed by the rental car company. The Port will not reimburse the Consultant for mileage at the IRS rate on a rented vehicle. Receipts are required for all reimbursed expenses with the exception of meals. Reimbursement (other than meals) will be for actual costs incurred subject to the Per Diem rates established by the IRS at <http://www.ofm.wa.gov/resources/travel.asp> for the location to which travel has been authorized.

## 26. 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 files used in the creation of the tangible product in a PDF format or other format specified by the Port.

## 27. Drawing, Specification and GIS

- a. Consultant shall prepare specifications using BSD Speclink-E,

Masterformat specification organization, latest edition.

- b. Consultant shall prepare specifications in accordance the Port's Specification Standards available at <https://www.portoftacoma.com/business/contracting/forms> and from the Port Project Manager. The Port's Master format specifications are available at <https://www.portoftacoma.com/business/contracting/forms>.
- c. Consultant shall use e-Builder® for electronic information exchange and invoicing.
- d. All site plans, derivative drawings, record drawings, and bid plans shall be completed using Port GIS and CADD standards and layer/block protocols available at <https://www.portoftacoma.com/business/contracting/forms> and from the Port Project Manager.

## **28. Security – Transportation Worker Identification Credential (TWIC)**

- a. The Services may require the consultant to work within a secured/restricted TWIC regulated terminal.
- b. TWIC is a credentialing program managed by the Department of Homeland Security (DHS), through the United States Coast Guard and the Transportation Security Administration. All credentialed merchant mariners and individuals who will need unescorted access to secure areas of a maritime regulated facility or vessel must obtain a TWIC. For more information on TWIC visit <https://www.tsa.gov/for-industry/twic>.
- c. The Consultant shall have a minimum of one TWIC compliant employee trained as an escort for every five workers not possessing

TWIC cards working on a secured or restricted site. Each escort will be required to receive Terminal Operator provided escort training.

## **29. Existing Hazardous Material Information**

The Port shall furnish the Consultant with the information as required by the Hazard Communication standard for materials pre-existing on the Project. The Consultant is solely responsible for ensuring that this information is made available to the Consultant's personnel, subconsultants, and that relevant information is incorporated into work products including, but not limited to, reports, specifications, and contract documents.

## **30. Extent of Agreement**

- a. In the event the Consultant identifies something that may impact the Services, Project schedule, total price, task budget(s) or cost of performing the Services, the Consultant shall inform the Project Manager in writing prior to exceeding the task budget(s) and within seven (7) calendar days of the event and possible impacts to scope, schedule and cost or task budget.
- b. The Project Manager may, at any time, by written directive require the Consultant to perform the Services consistent with the Agreement; provided that this directive does not add scope or cost to the project.
- c. Any directive shall not constitute an amendment to the Agreement nor entitle the Consultant to any additional compensation or a time adjustment.

## **31. Prevailing Wages**

- a. The Consultant shall ensure that all Subcontractors of any tier pay all prevailing wages and other wages

(such as Davis-Bacon Act wages) applicable to the Project.

- b. Pursuant to RCW 39.12, "Prevailing Wages on Public Works," no worker, laborer, or mechanic employed in the performance of any part of the Work shall be paid less than the "prevailing rate of wage" in effect as of the date that bids are due.
- c. The applicable effective date for prevailing wages for this project is the execution date of this Amendment.
- d. The State of Washington prevailing wage rates applicable for this public works project, which is located in Pierce County, may be found at the following website address of the Department of Labor and Industries: <https://lni.wa.gov/licensing-permits/public-works-projects/prevailing-wage-rates/>
- e. The schedule of the prevailing wage rates is made a part of the Contract Documents by reference as though fully set forth herein; and a copy of the applicable prevailing wage rates are also available for viewing at the Port Administration Building, located at One Sitcum Plaza, Tacoma, WA 98421 (253-383-5841). Upon request to the Procurement Department at [procurement@portoftacoma.com](mailto:procurement@portoftacoma.com), the Port will email or mail a hard copy of the applicable Journey Level prevailing wages for this project.
- f. Questions relating to prevailing wage data should be addressed to the Industrial Statistician.
- g. If there is any discrepancy between the attached or provided schedule of prevailing wage rates and the published rates applicable under WAC 296-127-011, or if no schedule is attached, the applicable published rates shall apply with no increase in the Contract Sum. It is the Contractor's responsibility to ensure that the correct prevailing wage rates are paid.
- h. Prior to any payment being made by the Port under this Contract, the Contractor, and each Subcontractor of any tier, shall file a Statement of Intent to Pay Prevailing Wages under oath with the Port and certified by the Director of Labor and Industries. The statement shall include the hourly wage rate to be paid to each classification of workers entitled to prevailing wages, which shall not be less than the prevailing rate of wage, and the estimated number of workers in each classification employed on the Project by the Contractor or a Subcontractor of any tier, as well as the Contractor's contractor registration number and other information required by the Director of Labor and Industries. The statement, and any supplemental statements, shall be filed in accordance with the requirements of the Department of Labor and Industries. No progress payment shall be made until the Port receives such certified statement.
- i. The Contractor shall post in a location readily visible to workers at the Project site (1) a copy of the Statement of Intent to Pay Prevailing Wages approved by the Industrial Statistician of the Department of Labor and Industries and (2) the address and telephone number of the Industrial Statistician of the Department of Labor and Industries to whom a complaint or inquiry concerning prevailing wages may be directed.

Mailing Address:  
Department of Labor and Industries  
Prevailing Wage Office  
PO Box 44540, Olympia, WA 98504  
Telephone: (360) 902-5335  
Facsimile: (360) 902-5300

- j. If a State of Washington prevailing wage rate conflicts with another applicable wage rate (such as Davis-Bacon Act wage rate) for the same labor classification, the higher of the two shall govern.
  - k. Pursuant to RCW 39.12.060, if any dispute arises concerning the appropriate prevailing wage rate for work of a similar nature, and the dispute cannot be adjusted by the parties in interest, including labor and management representatives, the matter shall be referred for arbitration to the Director of the Department of Labor and Industries, and his or her decision shall be final and conclusive and binding on all parties involved in the dispute.
  - l. The Contractor shall defend (at the Contractor's sole cost, with legal counsel approved by Port), indemnify and hold the Port harmless from all liabilities, obligations, claims, demands, damages, disbursements, lawsuits, losses, fines, penalties, costs and expenses, whether direct, indirect, including but not limited to attorneys' fees and consultants' fees and other costs and expenses, from any violation or alleged violation by the Contractor or any Subcontractor of any tier of RCW 39.12 ("Prevailing Wages on Public Works") or Chapter 51 RCW ("Industrial Insurance"), including but not limited to RCW 51.12.050.
- b. Contract Owner: Port staff member responsible for managing the On-Call Contract and executing all Task Orders.
  - c. Project Manager: Port staff member responsible for managing a specific Task Order.
  - d. Consultant Representative: The Consultant staff member(s) delegated the authority to provide signature approval for Task Orders under the On-Call Contract.
  - e. Task Order Proposals:
    - i. The Project Manager will request consultant to provide a fee proposal for the Services requested by the Port.
    - ii. The Port will not pay for time or materials associated with development of fee proposals, unless such costs are approved by the Project Manager and Contract Owner in advance.
    - iii. Task Order proposals shall be signed and submitted by the Consultant Representative to the Port's Project Manager in writing. Proposals shall include one of the following:
      - 1. Time and Materials

**32. On-Call Definitions  
Supplementary Conditions (As Applicable)**

- a. Task Order: The document that memorializes agreement between the Consultant and the Port, in accordance with the terms of the On-Call Contract. Task Orders are executed for defined Services under the On-Call Contract.

Proposal

- a. Description of Task Order scope and deliverables.
- b. Consultant's Personnel Titles and Rates as negotiated.

- c. Hours per person per task.
  - d. Sub-tier consultant scope and deliverables (when applicable).
  - e. Anticipated reimbursable costs.
  - f. Total proposal with Not to Exceed dollar amount.
- iii. Summary page with a brief description of Services completed during the invoice period, deliverables provided during the invoice period, and forthcoming milestones / deliverables.
  - iv. Current Amount Due:
  - v. For Lump Sum Task Orders: Percentage of Services complete, percentage of completed Services billed.
    - 1. For Time and Materials Task Orders: titles, hours, hourly rates, and all expenses itemized, with backup, in accordance with the contract.
  - vi. Total amount of the Task Order, and balance of Task Order amount.
  - vii. Indicate "**Final Invoice**" when invoice is the final billing for that Task Order.
- f. Task Order Execution:
- Executed Task Orders will be issued by the Contract Owner to the Consultant.
- g. Task Order Revision:
- i. Revisions include when the Consultant becomes aware of the potential to exceed the executed amount or when changes are requested by the Project Manager.
  - ii. Consultant shall provide a revised proposal detailing all revisions per 2A and B above. Consultant shall not proceed with changed work until a revised Task Order is executed by the Contract Owner.
- h. Payment Schedule:
- i. Each Task Order shall be invoiced separately. Consultant shall submit detailed invoices showing the following:
  - ii. Invoice Number, Contract number, Title, Task Order Number and Title.
- i. Task Order Closure:
- When the Services have been completed and final invoice processed by the Port, the Contract Owner will issue a Task Order Completion Notification to the Consultant Representative.
- j. Task Order Termination:
- The Port may terminate the Task Order at its convenience with or without cause. In such case, the Consultant shall be paid for all Services performed and reasonable expenses properly incurred in connection with the termination.