

**PROFESSIONAL SERVICES AGREEMENT**

**BETWEEN**

**PORT OF VANCOUVER, USA**

**AND**

**XXXXXXXXXXXX**

**PROFESSIONAL SERVICES AGREEMENT # xxxx**

This Agreement (“Agreement”) is made and entered into this **XX day of XXXX, 2015** by and between the Port of Vancouver, USA, a Washington municipal corporation (hereinafter referred to as the "PORT"), and **xxx** (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 RFX**

Exhibit A: Professional/Personal Services General Terms and Conditions

Exhibit B: Scope of services, and/or rate sheets - additional details attached

**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.

<b>CONSULTANT Project Manager:</b>	<b>PORT Project &amp; Contract Manager:</b>
<p><b>Project Manager:</b></p> <p><b>Address:</b></p> <p><b>Phone:</b></p> <p><b>Fax:</b></p> <p><b>Email Address:</b></p> <hr/> <p><b>Federal Tax ID:</b></p> <p><b>Washington UBI:</b></p> <p><b>Has any member of the consulting team retired from a Washington State Retirement System using the 2008 Early Retirement Factor?</b>  <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>	<p><b>Project Manager:</b></p> <p><b>Phone:</b>  <b>Fax: (360) 735-1565</b></p> <hr/> <p><b>Contract Manager: Rick Cline</b>  <b>Phone: (360) 992-1108</b>  <b>Fax: (360) 735-1565</b>  <a href="mailto:rcline@portvanusa.com">rcline@portvanusa.com</a></p> <hr/> <p><b>Port of Vancouver USA</b>  <b>3103 NW Lower River Rd</b>  <b>Vancouver, WA. 98660</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 period of performance of an agreement resulting from this RFQ is expected to be one year, or until completion of the project. 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 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.

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 \$ \_\_\_\_\_ 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 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.

**XXXXXXX**

**PORT OF VANCOUVER, USA**

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

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

## EXHIBIT A

### 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 indemnify, and hold harmless the PORT, its officials, employees and agents from any and all liability, or judgments, to the extent caused by any act, omission, or negligence of CONSULTANT or any of its sub-consultants, agents, or employees as determined by a court of law; and/or (ii) any breach or default by CONSULTANT in the full and prompt performance of CONSULTANT's obligations under this Agreement. 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 sole 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 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. 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 ALLOWABLE AND NON-ALLOWABLE EXPENSES**

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 conducted 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.

Any travel to or from the port of Vancouver offices or port designated project locations that are within a 50 mile radius from the consultant's work office location shall not be eligible for mileage reimbursement. Travel to or from permanent or temporary residences to the Port of Vancouver is not reimbursable.

All required travel exceeding 50 miles must be identified in the consultant's proposal or project work scope and approved by port authorized personnel prior to execution.

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

- Mileage, tolls and parking fees shall be allowed for distances to the port offices that exceed 50 miles (in one direction) at current U.S. General Services Administration ( [www.gsa.gov](http://www.gsa.gov) ) allowable mileage reimbursement rate (invoice must have mileage log attached)
- 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*)
- Membership in civic and community organizations
- Membership in social/dining/country clubs
- Organization legal fees
- Organization accounting fees
- Organization incorporation fees
- Parking violations
- Personal use of company vehicle
- Relocation cost
- Rental vehicles
- Social activities

**END OF TERMS / CONDITIONS**