



**ARCHITECT/ENGINEER SERVICES AGREEMENT NO. 000000**

Project: \_\_\_\_\_

Port Representative: \_\_\_\_\_ Project No. \_\_\_\_\_

Consultant: \_\_\_\_\_

Consultant Representative: \_\_\_\_\_

THIS AGREEMENT is made and entered into by and between the Port of Olympia (*hereinafter referred to as the "Port"*) and \_\_\_\_\_ (*hereinafter referred to as the "Consultant"*) for the furnishing of \_\_\_\_\_ services for the \_\_\_\_\_ (*hereinafter referred to as the "Project"*).

The Port and Consultant mutually agree as follows:

A. Description of Work

1. Tasks/Phases (Include if appropriate or detail in Attachment)
2. Deliverables (include if appropriate or detail in Attachment)

B. Effective Dates of the Agreement

The length of this Agreement is from **monthdayyear** to **monthdayyear**.

C. Compensation

1. As full compensation for the performance of its obligations of this Agreement and the services to be provided, the Port shall pay Consultant the maximum amount as specified in this Agreement. Such payment shall be the total compensation for all work performed under this Agreement, including but not limited to all labor, materials and supplies, incidental expenses, subconsultant's fees, reimbursable expenses, and equipment expenses.

2. This will be accomplished on a (time and materials basis at the following hourly rates) (or lump sum basis) and will not exceed \$ \_\_\_\_\_, without prior written approval from the Port.

3. Rate Schedule

<u>Personnel</u>	<u>Hourly Rate</u>
(TITLE)	\$
	\$
	\$
	\$
	\$
	\$
Third Party Costs	Actual + 8%
Field supplies consumed in the work	Actual + 8%

4. To be eligible for payment, Consultant shall submit detailed numbered invoices showing description of work items being invoices, work order number, title of project, total authorized, total current invoice, and balance of authorization. Invoices shall be sent directly to the attention of Accounts Payable, at 1022 Marine Drive NE, Olympia, WA 98501. Payment shall be made through the Port's ordinary payment process and shall be considered timely if made within 30 days of receipt of a properly completed invoice.
5. The Port may withhold payment to the Consultant for any work not completed to the Port's satisfaction, until such time as the Consultant modifies such work to the satisfaction of the Port.
6. All payments shall be subject to adjustment for any amounts, upon audit or otherwise, determined to have been improperly invoiced.
7. In the event Consultant incurs cost in excess of the sum stated above, Consultant shall pay such excess from its own funds, and the Port shall not be required to pay any part of such excess, and Consultant shall have no claim against the Port on account thereof.
8. The Port will reimburse the following expenses at cost, when appropriate backup is provided:
  - a. Printing of review and final sets of deliverables; all deliverables shall also be provided on formatted disk at no additional charge.
  - b. Postage/shipping cost for deliverables
  - c. Film development
  - d. Mileage at current Internal Revenue Service allowable mileage reimbursement rate.
  - e. Lab samples and analysis: The unit price should include analytical costs. Sampling should be scheduled to ensure that results are received when required at normal turnaround rates. 24-hour or rush turnaround rates will be paid only when specifically requested by the Port.
9. The Port will reimburse the following expenses at cost, plus eight percent (8%) markup, when appropriate backup is provided:
  - a. Subconsultant fees
  - b. Project field supplies consumed in the work
  - c. Lab services provided by a third party
10. Unless specifically negotiated, the Port will not separately reimburse the firm for routine overhead and internal expenses, including:
  - a. Computer software or hardware usage
  - b. Graphics supplies or plotter use
  - c. Digital camera or batteries usage

- d. Communications including; Cell phone rental; Fax transmissions; Routine postage or courier
- e. Routine reproduction or copying, except for deliverables

D. Representatives

The Port's Project Manager and Consultant's Representative for this Agreement are as specified. Alternate representatives may be appointed by either party with written notice to the other party.

E. Key Personnel

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

F. Contract Administration, Records, and Right to Audit

All communications with the Port will be through the Port's Project Manager. The Project Manager shall provide Consultant with all information and documents pertinent to the services Consultant is to perform.

Until the expiration of six years after the term of this Agreement, Consultant agrees to maintain accurate records of all work done in providing services specified by the Agreement and to deliver such records to the Port upon termination of the Agreement or otherwise as requested by the Port.

Upon the Port's request, Consultant shall make available to the Port all accounts, records, and documents related to the Scope of Work for the Port's inspection, auditing, or evaluation during normal business hours as reasonably needed by the Port to assess performance, compliance, and/or quality assurance under this Agreement.

G. Relationship of Parties

Consultant is, and shall be at all times during the term of this Contract, an independent Contractor, and not an employee of the Port. Nothing contained herein shall be deemed to create a relationship of employer and employee or of principal and agent.

This Agreement shall be for the sole benefit of the parties hereto, and nothing contained herein shall create a contractual relationship with, or create a cause of action in favor of, a third party against either party hereto.

H. Conflict of Interest

No officer, employee or agent of the Port who exercises any function or responsibilities in connection with the planning and carrying out of the program to which this Agreement pertains, nor any member of the immediate family of any such officer, employee or agent shall have any personal financial interest, direct or indirect, in this Agreement, either in fact or in appearance. Consultant further covenants that in performance of this Agreement, no person having any such interest shall be employed.

I. Compliance with Laws

Consultant shall, during the term of this Agreement, comply with all local, state, tribal and federal laws and regulations applicable to the project, including building codes, environmental protections, and permitting regulations existing at the time this Agreement was executed and those regarding employee safety, health, the work place environment, and employment eligibility verifications as required by the Immigration and Naturalization Service.

Consultant certifies that it has, or shall obtain prior to starting work under this Agreement, all licenses, registrations, permits and/or any other authorization required under federal, state, local or tribal law to perform the work as defined in this Agreement. Consultant agrees to indemnify and hold the Port harmless from and against any claims or demands made or brought against the Port and for costs (including, but not limited to attorneys' fees and costs), the Port incurs due to the Consultant's failure to: (1) comply with all applicable laws and regulations, and/or (2) have or maintain the required licenses, registrations, permits and/or other authorizations, as required by this Agreement.

In the event Consultant fails to pay any taxes, assessments, penalties, or fees imposed by any governmental body, including a court of law, then Consultant authorizes the Port to deduct and withhold or pay over to the appropriate governmental body those unpaid amounts upon demand made to the Port by the governmental body. Any such payments shall be deducted from Consultant's total compensation.

The Port shall furnish Consultant with the information required by the Hazard Communication standard for materials preexisting on the project site. Consultant will ensure that this information is made available to the Consultant's personnel and subconsultants, and incorporated into the contract documents as appropriate.

J. Ownership of Work

The services to be performed by Consultant shall be deemed instruments of service for purposes of the copyright laws of the United States. The Port has ownership rights to the plans, specifications, and other products prepared by the Consultant. Consultant shall not be responsible for changes made in the plans, specifications or other products 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. Use of documents or other materials prepared under this Agreement for promotional purposes shall require the Port's prior consent.

K. 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 in such work.

L. Disclosure

All information developed by the Consultant and all information made available to the Consultant by the Port, and all analyses or opinions reached by the Consultant shall be

confidential and shall not be disclosed by the Consultant without the written consent of the Port.

M. 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 floppy disk or CD-Rom in a PDF format or other format specified by the Port. Deliverable drawings shall be prepared in accordance with the Port's standard format. 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.

N. Indemnification

Consultant shall defend, indemnify and hold the Port, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or resulting from the acts, errors or omissions of the Consultant in performance of this Agreement, except for injuries and damages caused by the sole negligence of the Port. Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Consultant and the Port, its officers, officials, employees, and volunteers, the Consultant's liability, including the duty and cost to defend, hereunder shall be only to the extent of the Consultant's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Consultant's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

O. Insurance

1. The Consultant shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees.
2. No Limitation. Consultant's maintenance of insurance as required by the agreement shall not be construed to limit the liability of the Consultant to the coverage provided by such insurance, or otherwise limit the Port's recourse to any remedy available at law or in equity.
3. Minimum Scope of Insurance

Consultant shall obtain insurance of the types described below:

- a. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form, providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.

- b. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors and personal injury and advertising injury. The Port shall be named as an insured under the Consultant's Commercial General Liability insurance policy with respect to the work performed for the Port.
- c. Workers' Compensation coverage as required by the Industrial Insurance laws of the state of Washington.
- d. Professional Liability insurance appropriate to the Consultant's profession.

4. Minimum Amounts of Insurance

Consultant shall maintain the following insurance limits:

- a. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
- b. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate.
- c. Professional Liability insurance shall be written with limits no less than \$1,000,000 per claim and \$1,000,000 policy aggregate limit.

5. Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability, Professional Liability and Commercial General Liability insurance:

- a. The Consultant's insurance coverage shall be primary insurance as respect the Port. Any insurance, self-insurance, or insurance pool coverage maintained by the Port shall be excess of the Consultant's insurance and shall not contribute with it.
- b. The Consultant's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the Port.

6. Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

7. Verification of Coverage

Consultant shall furnish the Port with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Consultant before commencement of the work.

P. Competitive Specification

If the scope of work includes development of specifications:

Consultant shall provide for the maximum use of materials, equipment, construction methods and products that are readily available through competitive procurement, or through standard or proven production techniques.

Consultant shall not produce a design or specification which would be restrictive or written in a manner as to contain proprietary requirements other than those based on performance, unless such requirements are necessary to demonstrate a specific outcome or to provide for necessary interchangeability of parts and equipment. Consultant shall justify in writing the use of any sole source. Where brand names are identified, they shall be followed by the salient product performance characteristics and the words "or approved equal" so that comparable quality or utility may be determined.

Q. Time

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. At the end of each month the Consultant shall submit a copy of the current schedule and a written narrative description of the work accomplished, identifying scheduled milestones and the status thereof. The Consultant shall also address issues, which may result in completion beyond the established schedule or budget.

If the time allotted for completion of Consultant's services is exceeded through no fault of Consultant, additional time to complete performance may be allowed if written notice of the cost and estimated length of the delay is given to the Port within forty-eight (48) hours of consultant's learning of the delay. Consultant will provide such additional supporting data as the Port may require in a timely manner. The sole remedy in the event of a delay, whatever its cause, is an extension of time for performance.

The Port may suspend this Agreement, at its sole discretion, upon one week's advance notice to Consultant. Such notice shall indicate the anticipated period of suspension. Any reimbursement for expenses incurred due to the suspension shall be limited to Consultant's reasonable expenses, and shall be subject to verification. Consultant shall resume performance of services under this Agreement without delay when the suspension period ends

R. Termination

The effective dates of this Agreement are as specified. Anything to the contrary herein notwithstanding, Port may terminate this agreement upon immediate verbal notice, followed by written notice within 2 business days.

S. Assignability

Consultant shall not assign any interest in this Agreement and shall not transfer any interest in the Agreement to any party without prior written consent of the Port.

T. 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 the project may be consolidated and resolved in one forum. Venue for any litigation shall be the Thurston County Superior Court of the state of Washington and the prevailing party shall be entitled to recover its costs and reasonable attorney's fees.

#### Non-Discrimination

During the term of this Agreement, the Consultant shall not create barriers to open and fair opportunities to participate in Port contracts or to obtain or compete for contracts and subcontracts as sources of supplies, equipment, construction and services. During the performance of this Agreement, neither the Consultant nor any party subcontracting under the authority of this Agreement shall discriminate nor tolerate harassment on the basis of race, color, sex, religion, nationality, creed, marital status, sexual orientation, age, or the presence of any sensory, mental, or physical disability in the employment or application for employment or in the administration or delivery of services or any other benefits under this Agreement.

The selected Consultant shall comply fully with all applicable federal, state and local laws, ordinances, executive orders and regulations that prohibit such discrimination including RCW Chapter 49.60. The Consultant further agrees to comply with all applicable civil rights statutes and implementing regulations.

The Consultant shall cause the foregoing provision to be inserted in all subcontracts for any work covered by this Agreement so that such provisions shall be binding upon such third parties,

#### U. Notice.

Except for routine administrative communications, which may be delivered personally or transmitted by electronic mail or facsimile, all notices required hereunder shall be in writing and shall be deemed to have been duly given if delivered personally or mailed first-class mail, postage prepaid.

#### V. Miscellaneous Provisions

1. **Governing Law and Venue.** Washington law shall govern the interpretation of this Agreement. Thurston County shall be the venue of any mediation, arbitration or litigation arising out of this Agreement.
2. **Waiver.** A waiver of failure by either party to enforce any provision of this Agreement shall not be construed as a continuing waiver of such provision(s), nor shall the same constitute a waiver of any other provision of this Agreement.
3. **Severability and Survival.** If any term, condition or provision of this Agreement is declared void or unenforceable or limited in its application or effect, such event shall not affect any other provisions hereof and all other provisions shall remain fully enforceable. The provisions of this Agreement, which by their sense and context are reasonably intended to survive completion, expiration or cancellation of this Agreement, shall survive termination of this Agreement.
4. **Entire Agreement.** This Agreement represents the entire and integrated understanding between the Port and Consultant and may be amended only by written instrument signed by both the Port and Consultant. All previous or contemporaneous agreements,



representations or promises and conditions relating to the subject matter of this Agreement are superseded hereby.

W. Transportation Worker Identifications Credentials (TWIC)

Transportation Worker Identification Credentials (TWIC): The Transportation Worker Identification Credential (TWIC™) program is a Transportation Security Administration and U.S. Coast Guard initiative. The TWIC™ program provides a tamper-resistant biometric credential (TWIC Card) to maritime workers requiring unescorted access to secure areas of port facilities, outer continental shelf facilities, and vessels regulated under the Maritime Transportation Security Act, or MTSA, and all U.S. Coast Guard credentialed merchant mariners.

X. TWIC Escorting

A Transportation Identification Credential (TWIC) is issued and controlled by TSA under 49 CFR §1572. It is an authorized credential for fulfilling the identification requirements for access control. Possession of a TWIC itself does not, on its own, guarantee access to any MTSA regulated facility, including the Port. The individual must also have a valid reason to access the terminal as determined by the Port of Olympia's Marine Terminal personnel (the "Marine Terminal").

It is the Port of Olympia's policy that any personnel who require regular access to the Marine Terminal should obtain a TWIC. This includes Port employees, tenant employees, contractor personnel, and longshoremen. Additionally, any other person seeking unescorted access to any terminal in the USCG's Sector Puget Sound must possess a valid TWIC to gain access. All non-TWIC card holders must be accompanied by an approved TWIC escort at all times while on the Marine Terminal facility.

There are two types of areas in a terminal: restricted and secure access areas. Restricted access areas are generally the marine docks, tank storage areas and offices. All other areas within the fenced property may be defined as secure access areas. In a restricted area, the ratio is one TWIC escort per every 5 non-TWIC holders. For a secure area, the ratio is one TWIC escort per every 10 non-TWIC holders. If the non-TWIC holders are transported in an enclosed vehicle (e.g. van or bus) escorting ratios do not apply as long as the visitors are not allowed to depart the vehicle.

The Escort must have a Port of Olympia TWIC escort endorsement to be an eligible escort. Escorts must agree to the security and safety regulations of our facility. Specifically, escorts must have knowledge of this escorting procedure and how to make emergency notification if the escorted individual(s) are engaged in activities other than those for which escorted access was granted.

Escorting may only be conducted in areas the badge holder has approved access. If other access is required, authorized personnel may escort only by pre-arrangement with the Marine Terminal office and upon completion of an escort permission form. The form establishes an understanding of the escort requirements and responsibilities and is an agreement to accept any liability imposed upon the Port of Olympia by the USCG or any Federal entities for failure of the escort to fulfill those responsibilities. The form is available from the Marine Terminal office.

TWIC escorting privileges are granted at the sole discretion of the Marine Terminal for a period of time determined by the facility. The facility reserves the right to deny granting privileges or to suspend, revoke or deny renewal of escorting privileges previously granted.

Although the sponsoring agency providing a TWIC escort is responsible for the actions of both its visitor and the escort, ultimately the Marine Terminal is responsible for violations. Any escort who fails to perform satisfactorily may be required to leave the facility and may be disqualified from conducting escorts in the future. Furthermore, said person shall be liable for the payment of any fine levied by the United States Coast Guard (USCG). While on the facility all TWIC holders must be able to present a valid TWIC within ten (10) minutes to the USCG or the Marine Terminal personnel. Persons unable to produce a valid TWIC will be escorted off the facility and may be subject to criminal prosecution. The facility may, at its sole discretion, ban any person for any period of time for violation of Federal laws or facility rules and regulations. Those persons who violate access control procedures may be subject to arrest, prosecution and/or loss of facility privileges.

Y. Authority to Enter Into This Agreement

The undersigned Consultant representative, by his/her signature below, represents and warrants that he/she is dully authorized to execute this legally binding Agreement for and on behalf of Consultant and further represents and warrants that he/she acknowledges reading this Agreement, understands it and agrees to be bound by its Terms and Conditions.

**PORT OF OLYMPIA**

915 Washington St NE  
Olympia WA 98501

**(FIRM NAME)**

(address)  
(address)

By

By

\_\_\_\_\_  
E. B. Galligan  
Executive Director

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
WA State UBI #