



PROFESSIONAL SERVICES AGREEMENT NO. 000000

PROJECT: _____

PROJECT MANAGER: _____ **PROJECT NO.** _____

CONSULTANT: _____

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 geotechnical professional services for the _____ (*hereinafter referred to as the "Project"*).

The Port and Consultant mutually agree as follows:

SCOPE OF WORK

Consultant will . The scope of work will

COMPENSATION

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

All third party costs will be paid at cost plus % markup. The hourly rates are as stated below.

The length of this agreement is from the date of execution to **monthdayyear**.

RATE SCHEDULE

Personnel

Hourly Rates

Principal/Sr. Project Manager	\$
Sr. Construction Mgr/Specialist	\$
Project Manager	\$
Project Engineer	\$
Senior Engineer	\$
Design Engineer	\$
CADD Operator	\$
Project Coordinator	\$
Administrative Assistant	\$

TERMS AND CONDITIONS

In consideration of the mutual covenants, obligations, and compensation to be paid by the Port to Consultant, it is agreed that:

1. 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.

2. Key Personnel

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

3. Communications

All Consultant's communications with the Port will be through the Port's Project Manager. The Project manager will provide Consultant with all information and documents pertinent to the services Consultant is to perform. All communications required by this Agreement may be personally delivered, mailed, or emailed, to the other party

4. Relationship of the Parties

Consultant, its subconsultants and employees, is an independent Contractor. Nothing contained herein shall be deemed to create a relationship of employer and employee or of principal and agent.

5. 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.

6. Compliance with Laws

a) Consultant agrees to 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 shall obtain all professional licenses and permits required to complete the scope of work as defined.

b) 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.

7. Records and other Tangibles

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.

8. 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.

9. 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.

10. 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 "Consultant Drawing Submittal Procedure" and "Technical Specification Development Procedure". 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.

11. Compensation

As full compensation for the performance of its obligations of this Agreement and the services to be provided, the Port shall pay Consultant as specified in the Agreement. Compensation for vehicle usage will be paid at the current Internal Revenue Service allowable mileage reimbursement rate. Consultant's expenses will be reimbursed at cost, with the exception of all third party costs, which will be reimbursed at cost plus the negotiated percentage markup.

12. Payment Schedule

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

13. Costs and Disbursements

Consultant shall pay all costs and disbursements required for the performance of its services under this Agreement.

14. 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 as 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 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.

b) With respect to claims other than professional liability claims, Consultant and its subconsultants agree to defend, indemnify and hold harmless the Port of Olympia, its appointed and elective officers and its employees from and against any and all suits, claims, actions, losses, costs, penalties and damages of whatever kind and nature, including attorney fees and costs by reason of any and all claims and demands on it, its officers and employees, arising from the negligent acts, errors or omissions by the Consultant in the performance of the Consultant's professional services.

c) With respect to professional liability claims only, and not commercial general liability claims, Consultant and its subconsultants agree to indemnify and hold harmless the Port of Olympia, its appointed and elective officers and its employees from and against any and all suits, claims, actions, losses, costs, penalties and damages of whatever kind and nature, including attorney fees and costs by reason of any and all claims and demands on it, its officers and employees, arising from the negligent acts, errors or omissions by the Consultant in the performance of the Consultant's professional services.

d) Consultant shall submit to the Port of Olympia, prior to the commencement of services, certificates of insurance evidencing:

- i) Commercial General Liability coverage on occurrence form CG0001 or equivalent with limits of \$1,000,000 per occurrence and \$2,000,000 aggregate;
- ii) Automobile Liability covering owned, non-owned and hired vehicles of \$1,000,000 combined single limit per accident; and
- iii) Professional Liability not less than \$1,000,000 per claim and in the aggregate. Insurance shall have a retroactive date before the date of notice to proceed and coverage shall remain in effect for the term of this Agreement plus three years.

e) All policies shall be issued by a company having an A. M. Best rating of A:VI or better. Each insurance policy shall be endorsed to state that coverage shall not be suspended, voided, canceled or reduced in coverage or limits except after 45 days prior written notice has been given to the Port. Except for professional liability, the Port shall be named as an additional insured on all policies on ISO Form CG 20 10 Form B. The certificates of insurance shall specify the project name, project number, and contract number.

15. Standard of Care

a) 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.

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 services furnished under this Agreement.

16. Competitive Specification

If the scope of work includes development of specifications:

a) 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.

b) 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.

17. 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.

18. 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.

19. Term of this Agreement

The effective dates of this Agreement are as specified. This Agreement may be terminated by the Port for cause when the Port deems continuation to be detrimental to its interests or for failure of the consultant to perform the services specified in the Agreement. The Port may terminate this Agreement at any time for government convenience in which case it shall provide notice to the Consultant and reimburse the Consultant for its costs and fees incurred prior to the notice of termination.

20. 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 Pierce County Superior Court of the state of Washington and the prevailing party shall be entitled to recover its costs and reasonable attorneys fees.

21. Extent of 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.

GUIDELINES FOR FEES AND REIMBURSABLE ITEMS

1. General Considerations

These guidelines are intended to assist consultants in developing fee proposals; exceptions may be appropriate for the particular scope of work and should be specifically negotiated. Rates and multipliers will remain in effect for the contract term unless renegotiated and agreed to by both parties in a written change order. No overtime rates of pay will be paid.

2. Hourly Rates And Expenses

The Port expects that the proposed hourly rates or multiplier of hourly 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 Port expects that the proposed hourly rate includes the equipment, tools, software and supplies required to perform the work.

Hourly rates should be identified for all classifications anticipated to be itemized on the consultant's invoice.

3. Reimbursables

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. Long distance telephone charges
- f. Computer disks
- g. Meals and lodging at current Internal Revenue Service allowable reimbursement rate (except for consultants in the local area)

