

**PORT OF BELLINGHAM
STANDARD AGREEMENT FOR PROFESSIONAL SERVICES**

Port of Bellingham: 1801 Roeder Avenue, P.O. Box 1677, Bellingham, WA 98227

Project Name: _____

Project Location: Bellingham, WA

Consultant: _____

Address: _____

Consultant Contact: _____ Contact Phone: _____

● **CONSULTANT'S SCOPE OF WORK:**

The Consultant's Scope of Work is incorporated herein and attached as Exhibit "A". In the event of a conflict between any provision of the Port of Bellingham's General Provisions and the attached Exhibit "A", the Port of Bellingham's General Provisions shall prevail.

● **TERM OF AGREEMENT:**

The term of this Agreement shall commence with the execution of this document and will terminate when all tasks associated with the scope of work herein and as modified by written Amendment have been completed by the Consultant on or before _____. This Agreement may be extended for multiple terms at the sole discretion of the Port. If so extended, all of the terms and conditions herein shall apply to such extension.

● **COMPENSATION:**

The Consultant shall be compensated on the basis of the attached Exhibit "A". The Consultant shall not adjust any compensation rates without written authorization from the Port. **See attached Exhibit "A"**

This Agreement is limited to a total expenditure of \$0.00.

Services covered by this Agreement shall be performed in accordance with the General Provisions and any attachments or schedules. This Agreement supersedes all prior agreements and understandings and may only be changed by written amendment executed by both parties.

THIS AGREEMENT IS SUBJECT TO THE GENERAL PROVISIONS ATTACHED HERETO AND INCORPORATED HEREIN.

● **DATE OF EXECUTION:**

This Agreement is made and entered into on _____.

CONSULTANT:

Signature: _____

Name: _____

Title: _____

PORT OF BELLINGHAM:

Signature: _____

Name: _____

Title: _____

GENERAL PROVISIONS

1. Selection. The Consultant was chosen after a process that complied with all provisions of federal, state, and local law concerning selection of professional services.

2. Termination for Cause. This Agreement may be terminated by either party upon seven (7) days' written notice should one party fail to perform in accordance with its terms through no fault of the other. In the event the party that fails to perform is the Consultant, the determination of "fail to perform in accordance with its terms" shall be in the sole judgment of the Port. In the event of termination, the Consultant shall be compensated for satisfactory services performed prior to the termination date. In no case, however, shall such compensation exceed the original amount of the Agreement as approved or as amended by the Port. Any work product generated by the Consultant prior to such termination shall be the sole property of the Port, and the Consultant agrees to provide the Port with all such materials as a condition of receiving final payment.

3. Termination Without Cause. Further, this Agreement may be terminated by the Port at any time for any reason whatsoever, at the sole discretion of the Port, with seven (7) days' written notice. In the event of such termination, compensation shall be paid as provided in Paragraph 2 above.

4. Consultant Services. Consultant's services shall meet the standard for similar services performed by licensed professionals performing work in the Puget Sound region.

5. Charges for Additional Services. The Consultant shall obtain the written approval of the Port for any charges for additional services performed by the Consultant, the additional services of others retained by Consultant, or the furnishing of additional supplies, materials or equipment. The Consultant shall not be entitled to compensation for any such additional charges incurred in violation of this paragraph without prior written Amendment to the Agreement.

6. Monthly Progress Statements. The Consultant shall submit monthly statements of services rendered to the Port in a form acceptable to the Port. The Port shall make prompt monthly payments for work completed to the Port's satisfaction. In no event shall the Port be charged interest on payments due under this Agreement.

7. Applicable Law. All federal, state and local laws applicable in the rendering of the services by

the Consultant shall be complied with in all respects by the Consultant as shall all rules and regulations of the Port and any other applicable governmental agency. The Consultant shall register to do business in the State of Washington and upon request provide proof of the same to the Port. By executing this Agreement Consultant further certifies that neither it nor its principals is presently debarred, suspended, proposed for debarment, or declared ineligible or voluntarily excluded from participation in this transaction by any Federal department or agency. It further agrees by submitting this proposal or acceptance of this Agreement that it will include this clause without modification in all lower tier transactions, solicitations, proposals, agreements, contracts, and subcontracts. Where the offeror/consultant or any lower tier participant is unable to certify to this statement it shall attach an explanation to this Agreement. The Port reserves the right to require Consultant to replace a sub-consultant or lower tier participant who cannot meet the foregoing certification requirements.

8. Deviations from Scope of Work. The Port may at any time issue written directions within the general scope of this Agreement. If any such direction causes an increase or decrease in the cost of this Agreement or otherwise affects any other provision of this Agreement, the Consultant shall immediately notify the Port. The Port may modify the amount spent for identified tasks within the scope of work providing the total amount of the Agreement, or as modified by written Amendment, is not exceeded. Any work done in violation of this paragraph shall be at the sole expense of the Consultant.

9. Port Review of Title Documents and Permit Documents. Prior to the submission of any documents related to any permits or the execution or recordation of any documents effecting title to any property, the said document shall be reviewed by the Port. The Port shall be responsible for all costs associated with such review.

10. Conflict of Interest. Consultant covenants that it presently has no interest and shall not acquire an interest, directly or indirectly, which would conflict in any manner or degree with its performance under this Agreement. Consultant further covenants that in the performance of this Agreement, no person having such interest shall be employed by it or any of its sub-consultants.

11. Insurance. Consultant, concurrently with the execution of this Agreement, shall provide the Port with evidence that Consultant has obtained and is

maintaining the insurance listed as follows:

(a) Workers' Compensation Insurance as required by law.

(b) Employers' Liability Insurance (bodily injuries) with a limit of One Hundred Thousand Dollars (\$100,000) per occurrence with an insurance company authorized to write such insurance in all states where the Consultant will have employees located in the performance of its work covering its common law liability to such employees.

(c) Commercial General Liability Insurance and Automobile Liability Insurance covering all owned and non-owned automobiles or vehicles used by or in behalf of Consultant with a Five Hundred Thousand Dollar (\$500,000) combined single limit for bodily injury and/or property damage per occurrence and an annual aggregate limit of One Million Dollars (\$1,000,000).

_____[Initial if applicable]: Consultant represents that Consultant will not perform any driving as part of this Agreement. Based on this representation, Consultant shall maintain automobile liability insurance but shall be permitted to maintain lower limits provided that such limits meet the State of Washington minimum insurance coverage. All other terms of this Agreement relating to insurance (including but not limited to subsection d) shall apply to this insurance.

(d) Professional Liability Insurance covering Errors and Omissions of the Consultant in the amount of not less than Two Million Dollars (\$2,000,000) per claim.

(e) Except with regard to Professional Liability Insurance and Workers' Compensation Insurance, each of the policies required herein **shall name the Port as an additional insured**. Furthermore, each policy of insurance required herein shall (i) be written as a primary policy; (ii) expressly provide that such insurance may not be materially changed, amended or canceled with respect to the Port except upon thirty (30) days' prior written notice from the insurance company to the Port; (iii) contain an express waiver of any right of subrogation by the insurance company against the Port and its elected officials, employees, or agent; (iv) expressly provide that the insurance proceeds of any loss will be payable notwithstanding any act or negligence of Consultant which might otherwise result in a forfeiture of said insurance; and (v) in regard to physical property damage coverage, expressly provide that all proceeds shall be paid jointly to Consultant and Port.

(f) With regard to the Professional Liability Insurance, the Consultant shall maintain the same in full force and effect during the term of this

Agreement and for a period of one year thereafter.

(g) The Consultant shall furnish the Port with two (2) copies of Certificates of Insurance, including endorsements, evidencing policies of insurance required herein. **A Blanket Additional Insured Endorsement is not acceptable. The Certificate of Insurance shall specifically identify the name of the project.** The Consultant shall maintain these policies as identified above for itself and its sub-consultants for the term of this Agreement and for a period of one year thereafter. Except with regard to the Professional Liability Insurance, such Certificates shall specifically state that the insurance company or companies issuing such insurance policies shall give the Port at least thirty (30) days' written notice in the event of insurance company's or companies' cancellation or material changes in any of the policies.

If Unmanned Aerial Vehicles (UAVs or Drones) are to be used during the project, 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 ownership, maintenance or use of UAVs. This insurance shall include limits of no less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate and shall name the Port of Bellingham as an additional Insured. The Consultant shall furnish the Port with original Certificates of Insurance including all required additional insured endorsements or copies of the applicable policy language effecting coverage as required by this clause, and a copy of the Declarations and Endorsement Page of the policy listing all policy endorsements.

The Port's receipt and acceptance of the Consultant's certificate of insurance does not waive the Consultant's obligation to comply with the insurance requirements of this agreement.

12. Indemnification. The Consultant shall defend (with legal counsel satisfactory to the Port), indemnify and hold the Port, its elected officials, agents and employees (collectively "Port") harmless from and against all liabilities, obligations, fines, claims, damages, penalties, lawsuits, governmental proceedings, judgments, costs and expenses (including, without limitation, all attorneys' fees, costs and expenses of litigation):

- Arising out of any negligent act or omission of Consultant, its directors, officers, consultants, agents and/or employees (collectively "Consultant") in connection with the services provided pursuant to this Agreement provided, however, that in the event of concurrent negligence of the Consultant and the Port, then

this defense and indemnification shall apply only to the extent of the Consultant's negligence; and/or

- Arising from a breach of this Agreement by Consultant; and/or
- Arising out of or due to any failure on the part of Consultant to perform or comply with any rule, ordinance or law to be kept and performed.

The Port will inform Consultant of any such claim or demand that alleges liability based in whole or in part on any act or omission of Consultant, its directors, officers, agents, or employees. Thereafter the Consultant shall (i) reasonably cooperate in the defense of such claim and (ii) pay its defense of such claim as incurred, whether or not such claim is ultimately successful. In this regard, the Port will reasonably cooperate with Consultant in allowing Consultant to jointly select, with the Port, attorneys to defend the Port and Consultant provided that Consultant confirms its obligation to pay the Port's defense costs.

12.1 In the event of concurrent negligence by the Port and Consultant then at the conclusion of the action (e.g., judgment, arbitration award or settlement) the attorneys' fees and costs incurred in defending the Port shall be apportioned to the parties based on their respective fault as provided by RCW 4.24.115.

12.2 The foregoing indemnification obligation shall include, but is not limited to, all claims against the Owner by an employee or former employee of the Consultant or any sub-consultant or service provider. For this purpose, the Consultant expressly waives, as respects the Owner only, all immunity and limitation on liability under any industrial insurance Act, including Title 51 RCW, or other workers compensation act, disability act, or other employees benefits of any act of any jurisdiction which would otherwise be applicable in the case of such a claim. **BY INITIALING BELOW THE OWNER AND CONSULTANT CERTIFY THE WAIVER OF IMMUNITY SPECIFIED BY THIS PROVISION WAS MUTUALLY NEGOTIATED.**

Consultant:

By:

Port of Bellingham

By:

13. Confidentiality. Any reports, documents, questionnaires, records, information or data given to or prepared or assembled under this Agreement

shall be kept confidential unless a specific written waiver is obtained from the Port and shall not be made available by the Consultant to any individual or organization without prior written approval of the Port except as may be ordered by a court of competent jurisdiction. The provisions of this section shall survive the expiration or earlier termination of this Agreement.

14. Plans, etc. Property of Port. All original plans, drawings and specifications prepared by the Consultant and any and all sub-consultants for the Port and funded by the Port are and shall remain the property of the Port whether or not the Project for which they are made is executed. This shall not apply to proprietary software or documentation that may be provided to the Port and that was developed independent of funding by the Port. The Consultant assumes no liability for any use of the Drawings and Specifications other than that originally intended for this Project. Originals, including electronic forms of the data prepared by the Consultant and funded by the Port shall become the property of the Port. No reports, records, questionnaires, software programs provided by Port or other documents produced in whole or in part by the Consultant under this Agreement shall be the subject of an application for copyright by or on behalf of the Consultant.

As part of the project close-out, the **Consultant** is responsible for providing the Port with a FINAL RECORD drawing set that incorporates all of the Contractor's as-built redlines into the CAD file. Consultant shall deliver the following as part of the close-out to Port Engineering:

- CAD files (all)
- PDF (1 file of all pages combined)
- Bound hard copy 11x17 (1)
- Contractors original paper redline

15. Public Disclosure Request. Correspondence, reports and other written work that is generated during the course of the relationship created by this Agreement, may be requested by third parties pursuant to the Washington State Public Disclosure Act (RCW 42.56 *et. seq.*). The parties agree that in the event that such a request is filed, the party with whom the request is filed will promptly notify all other parties to this Agreement. The parties further agree that they will not disclose any such requested material until at least ten (10) business days after providing notification to all other parties to this Agreement. The intent of this clause is to provide all parties the opportunity to seek injunctive relief pursuant to RCW 42.56 so as to protect the vital functions of those entities. This clause shall survive the termination or expiration of this Agreement.

16. Electronic File Compatibility. All electronically-transmitted output must be compatible with existing Port software. The Port currently operates Microsoft Office, AutoCad 2012 and Adobe Acrobat. Consultants shall check with the Port for software application and system compatibility. Consultant shall transfer data via drawings saved as zip files using etransmit to bundle CAD support files accompanied by Adobe .pdf files. Large files can be transmitted via CD or in DVD format.

17. Pollution. Port acknowledges that the Consultant is not responsible for the creation or presence of contamination or pollution, if any, at the property except to the extent that such a discharge, release or escape is caused by the negligent act or failure to act of the Consultant. For the purpose of this clause, contamination conditions shall mean the actual or alleged existence, discharge, release or escape of any irritant, pollutant, contaminant, or hazardous substance into or upon the atmosphere, land, groundwater, or surface water of or near the property. The Consultant will promptly notify the Port of contamination conditions, if identified. Notwithstanding the foregoing, the Port does not herein waive any cause of action for damages resulting from the Port's reliance on any misrepresentation (made either knowingly or negligently) by the Consultant with regard to the presence of any contamination or pollution.

18. Payment of Sub-Consultants. Markup on work performed by first tier Sub-consultants shall not exceed four (4%) percent; markups are not allowed on work performed by lower tier Sub-consultants. The Port may request the Consultant certify that it has paid its sub-consultants in full for all work encompassed by invoices that the Port has paid. The Consultant shall be solely responsible for the performance of and payment to its sub-consultants. All such sub-consultants shall possess all licenses and insurance as required by the laws of the State of Washington.

19. Non-Discrimination. In connection with the performance of this Agreement, the Consultant shall not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, sexual orientation, national origin, age, marital status, genetic information, honorably discharged veteran or military status, presence of a sensory, mental or physical disability, or use of a trained dog guide or service animal. The Consultant shall take affirmative action to ensure that applicants are employed and the employees are treated during employment without regard to their race, color, creed, religion, sex, sexual orientation, national origin, age, marital

status, genetic information, honorably discharged veteran or military status, presence of a sensory, mental or physical disability, use of a trained dog guide or service animal or any other protected class.

20. Jurisdiction. This Agreement is made and delivered in the State of Washington and shall be construed and enforced in accordance with the laws thereof. All claims concerning or arising out of this Agreement shall be resolved in the Superior Court for Whatcom County, Washington. Consultant expressly waives the right of removal to federal court. Both parties hereby waive the right to a jury trial in any such dispute.

21. Entire Agreement. This is the entire agreement between the parties. It may not be altered or modified except by a written amendment to this Agreement that references the intent of the parties to amend this Agreement. There is no other oral or written understanding between the parties concerning this matter. The Consultant specifically understands that no Port employees other than the designated Port representative or their supervisors are authorized to direct the work of the Consultant. This agreement may be executed in counterparts, which may be transmitted via email or other electronic transmittal, each of which shall constitute an original, and all of which will be deemed a single document. Signature of an email or other electronic transmittal copy of this agreement, and transmission of a signature page by email or other electronic transmittal, shall bind the signing party to the same degree as delivery of a signed original.

22. Signing Authority. Anyone signing this Agreement on behalf of the Consultant personally certifies that they have the authority to execute said document on behalf of the Consultant and that their signature is binding upon the Consultant.

23. Obligation to Report Employees Who Used Early Retirement Factors; Liability for Failure to Report. The Port is an employer of one or more members of the Washington State Department of Retirement Systems (DRS). As a DRS covered employer, the Port is required to advise DRS of any retiree performing services for the Port who has used the 2008 Early Retirements Factors (ERFs) to retire early and is under age 65. Workers meeting these factors cannot perform services in any capacity for a DRS-covered employer and continue to receive a pension benefit (WAC 415-02-325).

Concurrently with the execution of this Agreement and prior to commencing work, Consultant shall verify if any person who will be performing work on this project retired from a DRS employer using

ERFs. Consultant must report any such persons to the Port by: (1) completing the DRS Contractor or Third-Party Worker Retirement Status Verification form that can be downloaded by following this link (https://www.portofbellingham.com/DocumentCenter/View/9921/DRS_StatusForm) and (2) emailing it to payroll@portofbellingham.com or mailing it to Port of Bellingham Payroll at 1801 Roeder Ave, Suite 146 – Bellingham, WA 98225.

If Consultant fails to timely report any employee who used ERFs to the Port in accordance with this section, Consultant shall be liable for all assessments issued to the Port by DRS and all legal fees and costs incurred by the Port in connection with such assessment. Consultant agrees that the Port may deduct such amounts from any amounts that may be owed to Consultant. Any additional amounts owed will be paid to the Port within fifteen (15) days of receiving an invoice from the Port.

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