

**STANDARD AGREEMENT FOR PROFESSIONAL SERVICE
CHAPTER 39.80 RCW**

This Standard Agreement for Personal Services (the "Agreement") is made and entered into on _____, 2018, by the Port of _____, a Washington municipal corporation (the "Port"), and the consultant listed below (the "Consultant") for the scope of work outlined in this Agreement.

The Port:

Port Contact:

Telephone: _____
Email: _____

Consultant

Fed. Id. No. _____

Consultant Contact:

Telephone: _____
Email: _____

Project:

1. **Scope of Work.** The Consultant will promptly undertake and complete the tasks according to the schedule provided (the "Scope of Services") in support of the Project as outlined on **Exhibit "A"**. Additional task orders may be negotiated for additional work.
2. **Compensation.** The Consultant shall be compensated for services provided and for expenses on the basis of the attached "Fee Schedule" attached hereto as **Exhibit "B"**. The total expenditure by the Port for this Agreement shall not exceed \$ _____.
3. **Term of the Agreement.** The term of this Agreement shall commence with the mutual execution of this Agreement and will terminate when all tasks associated with the scope of services herein (as modified by written amendment) have been completed by the Consultant but in no event later than _____.
4. **Incorporation of Exhibits and General Provisions.** 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.

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THIS AGREEMENT CONTAINS AN INDEMNIFICATION FROM THE CONSULTANT TO THE PORT AND A LIMITED WAIVER OF IMMUNITY UNDER TITLE 51, THE WASHINGTON WORKERS COMPENSATION ACT. THIS AGREEMENT INCLUDES THE EXHIBITS ATTACHED HERETO AND THE GENERAL PROVISIONS.

PORT OF _____

By: _____

Its: _____

By: _____

Its: _____

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GENERAL PROVISIONS

1. Selection. The Consultant was chosen in accordance with chapter 39.80 RCW and the Port's applicable policies and procedures.

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 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.

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 or exceed the standard for similar services performed by professionals in the State of Washington.

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 and expenses incurred 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 and expenses incurred. 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 governmental agency. 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) Comprehensive General Liability Insurance and Automobile Liability Insurance covering all owned and non-owned automobiles or vehicles used by or on 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);

(d) Professional Liability Insurance covering Errors and Omissions of the Consultant in the amount of not less than One Million Dollars (\$1,000,000) per claim.

(e) Except with regard to the Professional Liability 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 forty-five (45) 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; and

(g) Except with regard to the Professional Liability Insurance, the Consultant shall furnish the Port with two (2) copies of Certificates of Insurance evidencing policies of insurance required herein. 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. Such Certificates shall specifically state that the insurance company or companies issuing such insurance policies shall give the Port at least forty-five (45) days' written notice in the event of insurance company's or companies' cancellation or material changes in any of the policies.

12. Indemnification. The Consultant shall defend (with legal counsel satisfactory to the Port), indemnify and hold the Port, its elected officials, agents and employees 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 act or omission of Consultant, its directors, officers, consultants, agents and/or employees in connection with the services provided pursuant to this Agreement; 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 4.24.114.

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.

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. When Consultants work results in the preparation of plans and specifications for bidding purposes, the Port will provide the Consultant with five (5) completed sets of bid documents. Additional sets will be the responsibility of the Consultant.

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 from the Port by third parties pursuant to the Washington State Public Disclosure Act (RCW 42.17.250 *et. seq.*). The Port shall be solely responsible for making a good faith determining of its obligation to release its public records and not be liable to the Consultant for any such release. 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. Consultants shall check with the Port for software application and system compatibility.

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. 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, religion, sex, national origin, age, marital status, or being handicapped, a disadvantaged person, or a disabled or Vietnam-era veteran.

20. Survivability. All covenants, promises and performance which are not fully performed as of the date of termination shall survive termination as binding obligations.

21. Notices. All notices, demands, requests, consents and approvals which may, or are required to be given by any party to any other party hereunder, shall be in writing and shall be deemed to have been duly given if delivered personally, sent by electronic mail to the email address provided above with confirmation of receipt, sent by a nationally recognized overnight delivery service, or sent by United States registered or certified mail, return receipt requested, postage prepaid to the address provided on the first page of the Agreement.

22. Time of Performance. Time is specifically declared to be of the essence of this Agreement and of all acts required to be done and performed by the parties hereto.

23. No Third-Party Beneficiaries. There are no third-party beneficiaries to this Agreement.

24. Counterparts and Authority. This Agreement may be signed in counterparts. Each person signing below represents and warrants that they have complete authority to execute this Agreement.

25. Facsimile or Electronic PDF File Transmission. This Agreement and all subsequent notices or modifications may be executed by the parties and transmitted by facsimile or electronic transmission of

a PDF file and, if so executed and transmitted this and all subsequent notices or modifications will be for all purposes as effective as if the parties had delivered an executed original.

26. Attorney Fees. The prevailing party in any action concerning this Agreement shall be awarded their reasonable attorney fees and costs.

27. Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

28. Waiver. No failure by either party to insist upon the strict performance of any covenant, duty, agreement, or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof, shall constitute a waiver of any such breach or any other covenant, agreement, term or condition.

29. Law and Jurisdiction. This Agreement is made and delivered in the State of Washington in the county wherein the Port is located and shall be construed and enforced in accordance with Washington law. Exclusive jurisdiction and venue for any disputes under this Agreement shall be solely in the Superior Courts of the county in which the Port is located and not in any federal court.

30. Amendment. No modification, termination or amendment of this Agreement may be made except by written agreement signed by all parties, except as provided herein.

31. 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 his/her supervisors are authorized to direct the work of the Consultant.

EXHIBIT "A"
SCOPE OF SERVICES

The following services will be provided to the Port by the Consultant on or before the date due.

TASK	DETAILED DESCRIPTION OF TASK	DATE DUE
Task 1:		
Task 2:		
Task 3:		
Task 4:		

Provide additional description of the tasks below:

EXHIBIT "B"
FEE SCHEDULE

The following fees and expenses will be charged to the Port by the Consultant for the Scope of Services

FEES

TASKS	TYPE OF FEE	DETAILED DESCRIPTION OF FEES

Hourly fees shall be billed to the closest ½ hour increment.

Travel time shall be paid at ½ the normal hourly fees.

EXPENSES

In addition to the fees noted above, the Port shall reimburse the Consultant for the following expenses, without markup. The Consultant shall provide the Port with receipts for expenses as required by the Port.

- Mileage at the approved IRS rate
- Meals not to exceed \$_____ per person per meal
- Airfare at coach rates for refundable tickets unless pre-approved by the Port
- Rental car fees for a standard or below sized rental car unless pre-approved by the Port
- Lodging expenses as pre-approved
- Copy charges at \$.25 per page
- Overnight letter or package delivery charges
- OTHER: _____