

PORT OF TACOMA
REQUEST FOR QUALIFICATIONS

No. 071720

Earley Business Center Master Plan and Redevelopment

Issued by
Port of Tacoma
One Sitcum Plaza
P.O. Box 1837
Tacoma, WA 98401-1837

RFQ INFORMATION	
Contact:	Jerry Clardy, Sr. Contract Administrator
Email Addresses:	procurement@portoftacoma.com
Phone:	(253) 888-4751
Deadline for Questions	AUGUST 19, 2022 @ 2:00 PM (PDT)
Proposal Submittal Deadline	AUGUST 26, 2022 @ 2:00 PM (PDT)

**PLEASE SUBMIT ALL QUESTIONS AND SOQ'S VIA THE PROCUREMENT PORTAL
(LINK LOCATED ON THE LEFT SIDE OF THE PROCUREMENT PAGE)**

PORT OF TACOMA
Request for Qualifications (RFQ) # 071720
Earley Business Center Master Plan and Redevelopment

The Port may apply for federal funding for various phases of the Earley Business Center (EBC). Therefore, the contract that results from the RFQ and various work packages will be subject to the Federal Terms and Conditions of each grant. See "Attachment D" for the generic Federal Terms and Conditions, which may be updated per each grant.

ORDER OF PRECEDENCE

Attachment D, Federal Grant Terms & Conditions, Attachment B, Port Terms and Conditions. In the event of a conflict between the documents listed in this paragraph, the controlling document shall be this Contract, then Attachment D, then Attachment B. In the event and to the extent any provisions contained in multiple documents address Earley Business Center Master Plan and Redevelopment

the same or substantially the same subject matter but do not actually conflict, the more recent provisions shall be deemed to have superseded earlier provisions.

A. PURPOSE

The Port of Tacoma (**Port**) is soliciting Statements of Qualifications (**SOQ**) from firms (teams) qualified and interested in providing site planning, building design, remediation, permitting, cost estimating and construction support. This project will include master planning and site development for the Earley Business Center in conjunction with design and construction of an approximately 75,000 to 100,000 square foot building.

B. BACKGROUND

Current uses and customers at the site focus on maritime services. Relatedly, the Port of Tacoma Strategic Plan includes foundational goals and related strategies to invest in assets that support living-wage job creation throughout Pierce County and to protect the public's investment by maintaining existing assets and positioning them for future growth.

The EBC is located at 401 Alexander Avenue. During World War I, a shipyard and sawmill operated on the site. Shipbuilding resumed during World War II and parts of the property were used for ship repair, dismantling, and salvage until about 1960. The Port purchased the EBC site in 1960 and the Port has since leased out the site for a variety of businesses and industries.

In 1983, the US Environmental Protection Agency designated much of the Tacoma Tideflats as a national Superfund site. WA State Ecology issued an Agreed Order in 2013 and the Port is presently in the process of finalizing a Clean-up Action Plan.



The Port expects the EBC to continue to be used for marine-related services while we explore opportunities to meet zero emissions, build resilience to hazards and the effects of climate change, and most importantly, continue to grow jobs. Many of the buildings on the site are at, or beyond, their expected life and are in need of constant repair. Through this Master Planning effort the Port would like to reimagine this site and create a purposeful plan for replacing old buildings, and near-term replacement of one building.

The Port anticipates awarding one contract for this project. The period of performance of **the contract will be between 24 and 48 months** to provide related services as required.

Attachment A to the RFQ contains the Instructions and Information for proposing to the solicitation.

The Port's Standard Terms and Conditions are included as Attachment B to this solicitation. By submitting a SOQ, the Proposer represents that it has carefully read and

agrees to be bound by the Port's Standard Terms and Conditions. Identify during the question submittal and response period, any sections you consider onerous, clarify why you consider these sections onerous, propose alternative language, and describe why it is in the Port's best interests to adopt the alternative language. Taking exceptions to these terms and conditions or conditioning your proposal on terms and conditions other than the Port's will render your proposal non-responsive.

* By submitting a proposal, the Proposer represents that it has carefully read all attachments. As applicable, proposers shall identify and propose alternate wording, if any, to these documents as an appendix to their submitted proposal.

C. SCOPE OF SERVICES

Overview of Deliverables

The Port is seeking consultant support to redevelop the 50-acre Earley Business Center site. Due to the urgent situation of some buildings on site, we wish to quickly investigate the possibility of building a new building, while also starting work to develop a master plan to guide overall site redevelopment. Therefore, the project includes two related but distinct parts:

Part 1: A Master Plan for the Earley Business Center (EBC), traditionally a maritime services center in the Tacoma Tideflats. Master site planning is expected to be complete by Q2 2023.

Part 2: Feasibility, design, and construction of a replacement for Building 532 located at the end of the Blair Hylebos peninsula. The EBC has two separate cleanup actions encumbering it; metals and hydrocarbon contamination associated with the historical ship building operations (Ecology Cleanup Site ID No. 2395), and solvent and pH contamination associated with Occidental Chemical Corporation (Oxy) (Ecology Cleanup Site ID No. 4326)¹. The Port is currently working under an Agreed Order with Ecology to complete a remedial investigation, feasibility study, and cleanup action plan for the property, and is cooperating with Oxy and Ecology as a cleanup action plan is being prepared to address Oxy's contamination under a separate Order. The new building is anticipated to be within an area of known contamination, but outside of the critical areas shoreline zone. Because the Port cleanup action plan has not been completed, design and construction of a new building will require Ecology interaction and oversight.

The anticipated schedule is to complete all investigations, survey and up to 60% design and cost estimating in 2022 to support permit applications. Final design, permitting and bidding are anticipated to be completed by Q2 2023 and to have a fully operational building no later than the Q3 2024.

Scope of Work

Part 1: Master Plan - The Port is looking for a firm that can provide support for port and industrially related planning, economic and workforce development, real estate analyses,

¹ More information on the cleanup sites can be found on Ecology's Cleanup and Tank Search page: [Cleanup and Tank Search Reports \(wa.gov\)](https://www.ecology.wa.gov/Cleanup-and-Tank-Search-Reports)

environmental and engineering studies, and high level cost estimating related to future building construction and site development.

The scope of work includes supportive planning services to develop a Master Plan for the EBC including:

1. Existing Conditions and Site Plan
 - a. Work closely with the assigned Port staff project team, to include review and approval by this team (or assigned PM) of all related documents, presentation, and communication materials.
 - b. Review existing planning and construction documents for properties at the EBC and adjacent properties.
 - c. Review zoning and applicable regulations for the EBC and land in the vicinity and assess covenants and other potential limiting or binding agreements on the site.
 - d. Identify the number and types of buildings, use of space, such as office space, common space, conference rooms and off-street parking needs and other site and building amenities needed for current operations.
 - e. Provide desktop review services including, but not limited to geotechnical hazards/mitigation, and environmental site assessment.
2. Market Analysis and Feasibility Study for Maritime-Related Services
 - a. Review of applicable economic development plans and strategies for the Puget Sound, focusing on marine-related industries.
 - b. Identify potential expansion opportunities at the EBC.
 - c. Identify, assess, and recommend options for integrating sustainable building features into the design of the building(s) and site, such as those related to materials use, water efficiency, indoor environmental quality, innovative stormwater management, habitat protection and/or restoration, bike storage and parking, and electric vehicle charging.
 - d. Identify, assess, and recommend guidelines for designing buildings at net zero-emission (i.e., a highly energy-efficient building that uses only renewable energy).
 - e. Support the project team in developing a concept site plan with Architectural image concepts, a program of space use, workflow analyses, and potential phasing or sequencing plan for development.
3. Prepare an environmental assessment at a level of detail needed to support long range planning and environmental review and future SEPA applications. The assessment should include desktop level review of cultural/resources and archeology, site cleanup status and constraints, geotechnical analysis, traffic impacts of development, hazard and climate likely impacts.
4. Provide an implementation strategy with information on applicable building and environmental permitting requirements, such as the City of Tacoma, the Department of Fish and Wildlife, National Marine Fisheries Service and US Army Corps of Engineers. This should include financial analysis services to support site development, including but not limited to:
 - a. Evaluate financial options for development and use of the site.
 - b. Identify investment opportunities and potential phasing of implementation.

- c. Identify potential grants and funding mechanisms to finance identified projects and summarize the financial impacts of 'federalizing' the project.
 - d. Provide high level cost estimate for the long range plan.
- 5. Internal staff communications and meeting attendance will be as needed to complete the deliverables. The proposal should recommend the level of engagement needed.
- 6. At a minimum, one draft of each deliverable will be required for Port staff to review (with a two week comment period) prior to final.
- 7. For items led by Port staff, the consultants will be provided the information but significant support will not be expected (such as visioning for the EBC).
- 8. The Earley Business Center Master Plan should be in final draft form by Q2 2023 for presentation and consideration by the Port of Tacoma Commissioners at a public meeting.

Part 2: New building - The design team must be capable of providing the following services associated with the site development, permitting, cost estimating, design, bid documents and support and construction support:

- 1. Cultural Resource Evaluation and reporting.
 - a. Support the port in the development of an inadvertent discovery plan and support information needed for coordination and consultation with the Puyallup Tribe of Indians.
 - b. On-site monitoring during ground disturbing activities.
- 2. Geotechnical investigations and survey.
 - a. Geotechnical investigations of the anticipated construction area to support the design and construction.
 - b. Seismic considerations for the new facility must account for a magnitude 9 earthquake.
 - c. Complete topographic survey of the anticipated site development area.
- 3. Interim Action Cleanup Investigation, Design and Construction support, and Agency negotiations
 - a. In conjunction with the geotechnical investigations, analytical sampling and testing of the soils and soil gas for contaminants will be completed.
 - b. The team must be able to support the Port with discussions with the Department of Ecology and Oxy. This may include preparation of an investigation work plan, completing and reporting on field investigations, and preparation of an Interim Action Workplan that will support design and construction efforts.
 - c. Additional remediation deliverables as required by Ecology, including, but not limited to, a work plan, sampling plan, health and safety plan, contaminated media management plan, construction reports, and an interim action construction completion report.
- 4. Complete site design for utilities to support future development at the Earley Business Center site. The Port is contemplating a new below grade utility corridor to support the new building and other existing and future facilities located at the Earley Business Center. Utilities include:
 - a. Power

- b. Communications, both public and private
 - c. Water, domestic and fire
 - d. Sanitary Sewer
 - e. Storm Sewer including treatment
 - f. Natural gas
5. Site design
- a. Employee parking and parking needed for maritime uses on the site.
 - b. Access drives for oversized loads to include loading and unloading areas with potential heavy lift zones.
 - c. Associated landscaping and irrigation.
6. Exploration of net zero-emission building design: The 2020 Northwest Ports Clean Air Strategy, which port commissioners unanimously adopted in April 2021, sets the goal of zero-emission port buildings by 2050. Zero-emission buildings minimize energy needs and use only renewable energy sources to meet those needs. The consulting team will assess and present to decision-makers the lifecycle benefits and costs of measures to advance the net zero-emissions goal in this building, including but not limited to:
- a. Reducing heating, cooling, and lighting demand through passive strategies such as climate-responsive design and daylighting: using passive solar design; orienting, sizing, and specifying windows to balance daylighting versus heat loss; using high-performance building envelopes; selecting walls, roofs, and other assemblies based on long-term insulation, air barrier performance, and durability requirements;
 - b. Using highly efficient HVAC and lighting systems; and
 - c. Employing only clean, renewable energy sources such as zero-carbon electricity, solar water heating, and rooftop solar
7. Building design
- a. Due to the proximity to Commencement Bay, the Port is considering a concrete tilt up structure with a steel infrastructure and membrane roof.
 - b. All exterior components of the structure shall be designed to consider a saltwater marine environment.
 - c. Bridge cranes will be utilized inside the building.
 - d. As this facility or some portion of this facility will be utilized for the construction of marine vessels, large openings to allow them to be moved in and out will be required.
 - e. Office space and other ancillary space will also be included in the design.
 - f. Consideration for a large paint booth will also be included as a component of the building or as a separate facility.
 - g. The Port does not intend to pursue LEED or other certification programs for the new facility.

D. DELIVERABLES

Part 1: Master plan – The following deliverables are anticipated for this contract:

1. Visioning will be led by Port staff before contract begins. The consultant team will be provided long term goals for EBC by the Port.

- a. Consultant may be asked to help establish performance targets, such as number of new jobs created and business retention.
 - b. Report on customer future plans, with research led by Port staff.
2. Existing Conditions and Site Plan
 - a. Site plan of existing development and port management area (**PMA**)
 - b. Summary of existing uses
3. Market Analysis and Feasibility Study for Maritime-Related Services
 - a. Review of existing economic development plans and market studies for the Tideflats and the region.
 - b. Review of City of Tacoma development regulations, the Shoreline Master Program, Container Port element.
 - c. Identify potential uses that align with the economic goals stated in the Port of Tacoma Strategic Plan.
4. Environmental Assessment – level of detail needed to support long range planning.
 - a. Cultural/Resources and Archeology Review
 - b. Site cleanup status and constraints
 - c. Geotechnical analysis
 - d. Traffic impacts of development
 - e. Hazard and climate likely impacts
 - f. Planned Action SEPA Analysis (to be led by Port staff)
5. Master Plan document
 - a. Individual chapters or sections with details and summary of 1-4 above
 - b. Building and site design guidelines
 - c. Future site plan(s)
6. Implementation Strategy
 - a. Sequencing plan and phasing of development
 - b. Analysis of likely permitting requirements
 - c. High level cost estimates
 - d. Options for financing and grants
7. Iterative draft documents related to the forgoing items and information to support related commission presentations and internal communications.

Part 2: New building - The following deliverables are anticipated for this contract:

1. Geotechnical Report.
2. Remediation plans and reports; a work plan, sampling plan, health and safety plan, contaminated media management plan, construction reports, and an interim action construction completion report.
3. Report on findings from lifecycle benefit-cost assessment of potential measures to meet zero-emission building goal (specified in Section 6 above), including recommendation for exemption from, or compliance with, state Clean Buildings Law.
4. Existing Topographic Survey and electronic shape files of final design.
5. Basis of Design Drawings with schedule and cost estimate.
6. 30% Design Drawings with schedule and cost estimate.
7. 60% Design Drawings with outline specifications, schedule and cost estimate
8. Permit submittals and support.

9. 90% Design Drawings with full specifications, schedule and cost estimate.
10. Final Bid Documents with specifications, schedule and cost estimate.
 - a. Both electronic and paper copies of all items.
 - b. CAD drawings in dwg format that meet Port standard requirements.
 - c. BIM modeling of the building.
11. Asset management report.
12. As built documents and reports.

E. QUALIFICATIONS

Submitting firms must be licensed to practice in the State of Washington and must have a minimum of five (5) years of experience in similar planning and design. Key team members must have active State of Washington professional licenses. Key personnel must be able to support the Port in negotiations and discussions with permitting agencies and Oxy.

F. SOQ ELEMENTS & EVALUATION CRITERIA

Statements of Qualification should present information in a straightforward and concise manner, while ensuring complete and detailed descriptions of the proposing team (to include the prime consultant's key team members and any major sub-consultants) and the team's ability to meet the requirement of this solicitation. Attention will be given to the technical competencies and completeness of content. The written SOQ should be prepared in the sequential order as outlined below.

SOQ's are limited to 20 pages (8 ½ by 11 inch) **including** the cover letter and any submitted appendices, but **excluding** the compensation proposal and references. All pages shall be in portrait orientation with 1 inch margins. Font size shall be 11 point or larger. Proposals that do not follow this format may be deemed nonresponsive.

The cover letter shall include the solicitation Title and Number, Name, Title, Email Address, Phone Number and Addresses of the Proposing Team's main contact and include the following information:

- Describe all claims submitted by any client against the firm within the past two years related to the personal services provided by the firm or its key personnel. For purposes of this request, "claim" means a sum of money in dispute in excess of 10% of the firm's fee for the services provided.
- Any real or perceived conflicts of interests for team members, inclusive of the prime, sub-consultants and key team members.

SOQ's are to address, and will be evaluated upon, the following criteria:

INITIAL EVALUATION PHASE

1. Qualifications of Key Personnel.....30 PTS

Describe the qualifications and experience of the firm submitting the proposal, including:

- a. Identify the proposed team (to include working titles, degrees, certificates and licenses), demonstrate the team's experience in performing the requested services and describe how the team meets or exceeds the required qualifications.

- b. Explain any unique qualifications individual team members have that make them a good fit for this scope of services, or subset thereof.
- c. Resumes of the key individuals may be included as an appendix and are not included in the total page count. Resumes are to be limited to one (1) single-sided, letter-size page. Resumes exceeding this limit will not be reviewed.

2. Experience of Key Personnel and Firm30 PTS

- a. Identify the experience and technical competence of the key personnel identified, their project specific roles and responsibilities, and overall organization of the Project Team. Emphasis will be placed on experience and expertise in performing work of similar scope and complexity.
- b. Explain or demonstrate any unique experience or technical competence of individual team members that are a good fit for this scope of services, or subset thereof.
- c. Include a list of recent contracts/projects in the last three (3) years, to include a point of contact, contact information (phone and email), and brief description, for services relevant to the items listed in the Scope of Services as performed by the key personnel. Only projects completed by key members of the project team will be considered.

3. Project Approach Narrative40 PTS

SOQs should clearly outline the team's recommended approach and methodology for:

- a. Accomplishing the Scope of Services. Clearly describe the approaches and methods that will be used to accomplish the tasks required in the Scope of Services. Include a summary of innovative ideas and suggestions for enhancing the scope of services. Explain in detail any suggestions for phasing tasks to facilitate efficient planning, site design, and development of the overall site and/or buildings.
- b. Schedule. Outline the team's strategy for completing requested services within the stated schedule and describe how the team would manage various projects that may have overlapping timelines.
- c. Coordination & Communication. Provide a plan for communications and coordination between the Project Team, the Port's Project Manager, and the various Stakeholders.
- d. Explain any risks beyond your control in providing this service and how the team would mitigate them.

FINAL EVALUATION PHASE (if applicable)

4. ReferencesPass/Fail

- References Pass/Fail Reference checks may be performed on the selected firm, if based directly on the proposals received, or on shortlisted firms if interviews are being requested. The Port may evaluate the reference checks to assess the proposed team's overall performance and success of previous, similar work.

Reference checks may also be utilized to validate information contained in the proposal.

5. Interviews (as requested by the Port)..... 100 PTS

- If an award is not made based on the written evaluations alone, interviews will be conducted with the top-ranked proposers. Failure to participate in the interview process will result in the Proposer's disqualification from further consideration. If interviews are conducted, they will be held at the Port of Tacoma, Tacoma, WA., or virtually via Teams meeting. Travel costs will not be reimbursed for the interview.

Attachments:

ATTACHMENT A – SUBMITTAL INSTRUCTIONS

ATTACHMENT B – CONTRACT TEMPLATE & PORT TERMS AND CONDITIONS

ATTACHMENT C – RATE SHEET TEMPLATE

ATTACHMENT D – FEDERAL GRANT TERMS & CONDITIONS

ATTACHMENT “A”
SUBMITTAL INSTRUCTIONS

PROCUREMENT PROCESS

SOLICITATION TIMELINE:

Issuance of Solicitation	JULY 12, 2022
Last Day to Submit Questions	AUGUST 2, 2022 @ 2:00 PM (PDT)
Submittal Packets Due	AUGUST 10, 2022 @ 2:00 PM (PDT)
Review/Shortlist*	AUGUST 17, 2022
Interviews (if required)*	AUGUST 19, 2022
Final Selection*	AUGUST 26, 2022
Execute Contract*	SEPTEMBER 2, 2022

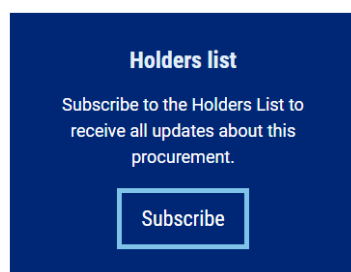
*Dates are tentative.

All status updates on the above solicitation timeline will be announced on the Port's website for this solicitation.

VENDOR OBLIGATION

The NWSA and Port of Tacoma's (Port) Invitation to Bid, Request for Proposals and Request for Qualifications can be accessed on the Port's website, www.portoftacoma.com under 'Business -> Contracting -> Procurement'.

When viewing the details page for this procurement on the Port's Website firms have the option of subscribing to the Holder's List.



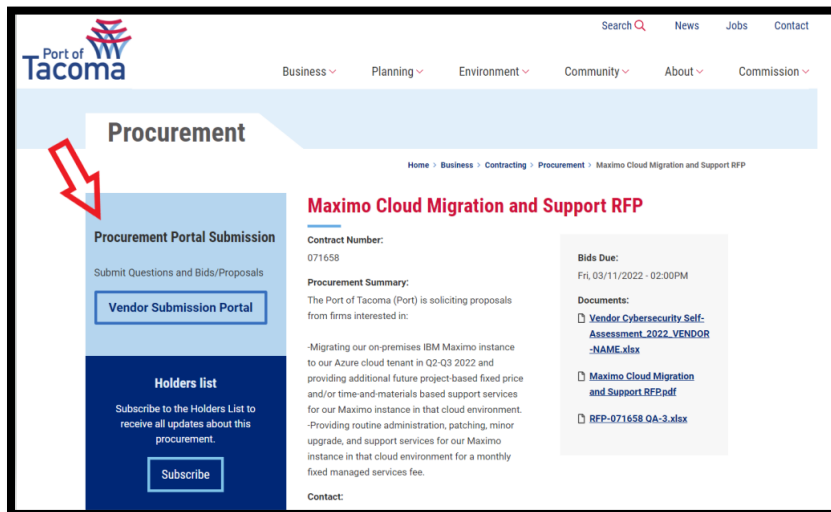
By subscribing to the Holder's List, firms will automatically be notified when new documents or changes relating to this procurement occur.

***Only those who have subscribed to the Holder's List will receive notifications throughout the procurement process, up until a firm is selected.**

COMMUNICATION / INQUIRES

Proposers who, relative to this scope of services, contact any individuals or Commission members representing the NWSA or the Port, other than the Procurement Representative listed on the solicitation may be disqualified from consideration.

Written questions about the meaning or intent of the Solicitation Documents shall only be submitted to the Procurement Department via the Procurement Portal (**Portal link is accessible via this specific procurements website. See left side of page.**)



Proposers who may have questions about provisions of these documents are to submit their questions by the date listed above. The Port will respond to all written questions submitted by this deadline, and responses will be posted on the corresponding procurements website.

ADDENDA

The Port may make changes to this Solicitation. Oral or other interpretations, clarifications or submittal instructions will be without legal effect. Any information modifying a solicitation will be furnished in a formal, written addendum. If at any time, the Port changes, revises, deletes, increases, or otherwise modifies the Solicitation, the Port will issue a written Addendum to the Solicitation. Addenda will be posted to the Port's web site and conveyed to those potential submitters who have requested to be placed on the Holder's List.

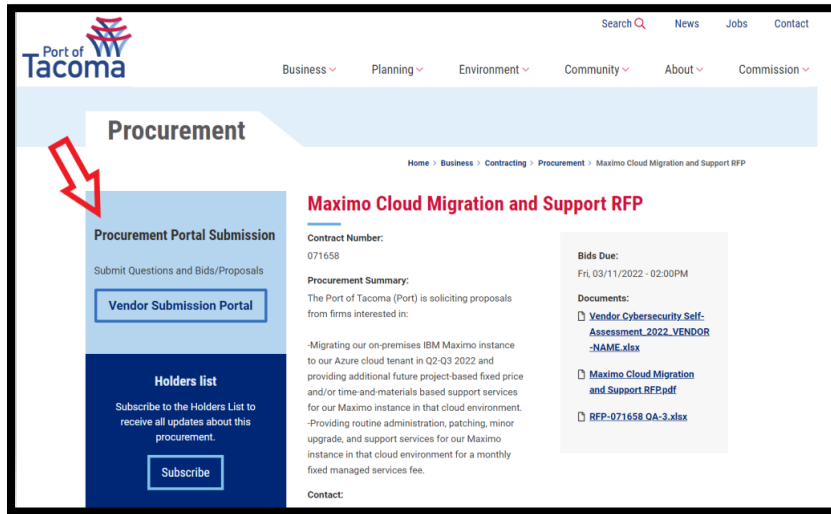
SUBMITTAL PROCESS

Electronic Submittal:

Statements of Qualification must be received via the procurement portal on or before the date and time outlined on the front page of this proposal.

Procurement Submission Portal Instructions:

Navigate to this procurements web page (referencing the number and name) via the following link [Procurement | Port of Tacoma](#). While on the procurements page, click on the 'Procurement Submission Portal' link (located on the lefthand side of the page).



Full instructions on how to utilize the submission portal can be found on the Port's website, www.portoftacoma.com under 'Business -> Contracting -> Procurement'. See bold red heading above the bid search box "Bid and Question Submittal Instructions", to access the thorough instructions in PDF format.

Please submit your SOQ, including all appendices and compensation in separate Adobe Acrobat PDF format. Submittals need to be limited to **9 MB in total email size**. Please provide one (1) non-redacted version, and one (1) redacted version (**removing all Company information**) of your PDF submittal. It is the **Consultant's responsibility to verify the receipt of the submittal. Electronic verification will be provided.**

***Late proposals will not be accepted by the Port. Proposals received after the stated date and time will not be reviewed and shall be deemed non-responsive.**

All proposals submitted shall be valid and binding on the submitting firm for a period of ninety (90) days following the submittal deadline and for any extension of time granted by the submitting firm.

EVALUATION AND AWARD PROCESS

An evaluation team, using the point method of award, will review each proposal and evaluate all responses received based upon the criteria listed herein. The Port may request clarifications or additional information, if needed. After the evaluation team individually scores each proposal, the scores are tallied and the firms are ranked based on the scores.

A selection may be made based on the SOQ and initial evaluation criteria alone. Alternatively, the evaluation team may create a short list of the top ranked firms and invite the short-listed firms in for interview and/or check references. Scores for reference checks

and interviews will be tallied and added to the short-listed firm's initial evaluation scores. Final selection will be based on the accumulative score.

The Port intends to select the proposer who represents the best value to the Port.

The Port reserves the right to accept or reject any or all information in its entirety or in part and to waive informalities and minor irregularities and to contract as the best interest of the Port may require. The Port reserves the right to reject any or all Proposals submitted as non-responsive or non-responsible.

Procedure When Only One Proposal is received

In the event that a single responsive proposal is received, the Proposer shall provide any additional data required by the Port to analyze the proposal. The Port reserves the right to reject such proposals for any reason.

GENERAL INFORMATION

News releases pertaining to this RFQ, the services, or the project to which it relates, shall not be made without prior approval by, and then only in coordination with, the Port.

COSTS BORNE BY PROPOSERS

All costs incurred in the preparation of a Proposal and participation in this RFQ and negotiation process shall be borne by the proposing firms.

PROTEST PROCESS

A Submitter protesting for any reason the Award Process, an evaluation procedure, the Port's objection to a submittal or a person or entity proposed by the Submitter, including but not limited to a finding of non-Responsibility, the Award of the Contract or any other aspect arising from or relating in any way to the Solicitation shall cause a written protest to be filed with the Port within two (2) business days of the event giving rise to the protest. (Intermediate Saturdays, Sundays, and legal holidays are not counted as business days.) The written protest shall include the name of the protesting Submitter, the solicitation number and title under which the protest is submitted, a detailed description of the specific factual and legal grounds for the protest, copies of all supporting documents, evidence that the apparent low bidder has been given notice of the protest, and the specific relief requested. The written protest shall be sent by email to procurement@portoftacoma.com.

Consideration. Upon receipt of the written protest, the Port will consider the protest. The Port may, within three (3) business days of the Port's receipt of the protest, provide any other affected Submitter(s) the opportunity to respond in writing to the protest. If the protest is not resolved by mutual agreement of the protesting Submitter and the Port, the Contracts Director of the Port or his or her designee will review the issues and promptly furnish a final and binding written decision to the protesting Submitter and any other affected Submitter(s) within six (6) business days of the Port's receipt of the protest. (If more than one (1) protest is filed, the Port's decision will be provided within three (3), but no more than six (6) business days of the Port's receipt of the last protest.) If no reply is received from the Port during the six (6) business-day period, the protest will be deemed rejected.

Waiver. Failure to comply with these protest procedures will render a protest waived.

Condition Precedent. Timely and proper compliance with and exhaustion of these protest procedures shall be a condition precedent to any otherwise permissible judicial consideration of a protest.

SMALL BUSINESS AND DISADVANTAGED BUSINESS OPPORTUNITIES

The Northwest Seaport Alliance and Port of Tacoma encourage participation in all of its contracts by MWBE firms certified by the Office of Minority and Women's Business Enterprises (**OMWBE**). Participation may be either on a direct basis in response to this solicitation/invitation or as a subcontractor to a Bidder/Proposer. However, unless required by federal statutes, regulations, grants, or contract terms referenced in the contract documents, no preference will be included in the evaluation of bids/submittals, no minimum level of MWBE participation shall be required as a condition for receiving an award and bids/submittals will not be rejected or considered non-responsive on that basis. Any affirmative action requirements set forth in federal regulations or statutes included or referenced in the contract documents will apply. The selected firm will be required to show evidence of outreach.

PUBLIC DISCLOSURE

Proposals submitted under this Solicitation will be considered public documents and, with limited exceptions, will become public information and may be reviewed by appointment by anyone requesting to do so following the conclusion of the evaluation, negotiation, and award process. This process is concluded when a signed contract is completed between the Port and the selected Consultant.

If a firm considers any portion of its response to be protected under the law, the vendor shall clearly identify each such portion with words such as "CONFIDENTIAL," "PROPRIETARY" or "TRADE SECRET" on each page for which the protection is sought. If a request is made for disclosure of such portion, the Port will notify the vendor of the request and allow the vendor not less than ten (10) days to seek a protective order from the Courts or other appropriate remedy and/or waive the claimed confidentiality. Unless such protective order is obtained and provided to the Port by the stated deadline, the Port will release the requested portions of the proposal. By submitting a response the vendor assents to the procedure outlined in this paragraph and shall have no claim against the Port on account of actions taken under such procedure.

ATTACHMENT "B"**PROFESSIONAL SERVICES AGREEMENT NO. 071720**

PROJECT: Earley Business Center Master Plan and Redevelopment**CONSULTANT:** Company, Address, City, State, Zip**PROJECT MANAGER:** XXXXXXXXXX **GL ACCOUNT NO.** XXXXXXX

THIS AGREEMENT is made and entered into by and between the **Port of Tacoma** (hereinafter referred to as the "Port") and xxCOMPANYxx (hereinafter referred to as the "Consultant") for the furnishing of xxxxxx (hereinafter referred to as the "Project").

SCOPE OF WORK

Consultant will provide

DELIVERABLES

Deliverables will include:

COMPENSATION

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

Consultant is responsible for working within the budget as agreed. Should the Consultant incur costs beyond the not-to-exceed contract budget amount without an executed amendment to this contract, the Consultant is solely responsible for the additional costs.

PORT OF TACOMA and NWSA**CONSULTANT (LEGAL NAME)**

By _____

By _____

Sharon Rothwell	Date	Print Name	Date
Director, Contracts & Purchasing		Title	

Invoices shall be submitted by the consultant through e-Builder® each month. Training and account information for e-Builder® will be provided by the Port upon contract execution. Invoice period is for the previous calendar month and shall be computed pursuant to the rates and limitations set forth in the Agreement. Consultant agrees to submit monthly invoices as the Services progress. Invoices that are submitted for payment ninety (90) days or more after the Services were completed are subject to non-payment. Under no circumstances will the Port of Tacoma pay interest on payment.

The length of this agreement is from **the date of execution to xxDATExx (48 months)**. This agreement is expressly conditioned upon the **Terms and Conditions** attached and by reference incorporated herein. Consultant acknowledges reading this Agreement, understands it and agrees to be bound by its Terms and Conditions.

AGREED

1. Relationship of the Parties

Consultant and its employees are independent Contractors. Nothing contained herein shall be deemed to create a relationship of employer and employee or of principal and agent.

2. Subconsultant and Supplier Relations

- a. Subconsultants at all tiers shall be approved by the Port prior to performing Services in support of this Agreement between Consultant and Port.
- b. The award of a subcontract does not create a contract between the Port and the subconsultant. Subconsultants shall have no rights whatsoever against the Port by reason of their contract with the Consultant. The foregoing provision shall apply with equal force to subconsultants, suppliers and all other persons or parties otherwise engaged by the Consultant to do any portion of the Services.
- c. The Consultant shall ensure every subcontract shall bind the subconsultant to the applicable terms of the Agreement. The Consultant shall appropriately monitor the activities of the subconsultant. In no event shall the activities of the subconsultant operate to release or reduce the liability of the Consultant to the Port for any breach in the performance of the Consultant's duties.

3. 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.

4. Compliance with Laws

- a. Consultant agrees to comply with all local, state, tribal, and federal laws and regulations applicable to the Services existing at the time this Agreement was executed or that became applicable subsequent to this Agreement's execution, and those regarding employee safety, the workplace environment, and employment eligibility verifications as required by the Immigration and Naturalization Service. Consultant shall obtain and maintain all professional licenses and permits required to complete the Services.
- b. Consultant must comply with all Occupational Safety and Health Administration (OSHA), Washington Industrial Safety and Health Act (WISHA), Department of Labor, Environmental Protection Agency and other applicable environmental standards as prescribed by

law while on or occupying Port-owned properties.

- c. The Consultant is responsible for ensuring that all personnel performing Services are paid wages in accordance with federal, state and local laws when applicable.

5. Records and other Tangibles

- a. The Port is a public entity and must maintain access to, and be able to provide, records per RCW 40.14, RCW 42.56, and the Secretary of State's Local Government Common Records Retention Schedule (CORE) Version 3.3 (October 2016). Therefore, until the expiration of six (6) years after the term of this Agreement, consultant agrees to maintain accurate records of all activities done in providing the Services and to deliver such records to the Port upon termination of the Agreement or otherwise as requested by the Port.
- b. The Port or its designated agent, and federal and state auditing authorities have the right to audit this Agreement and access to all records and documents, including financial data, for a period of not less than six (6) years after Completion of all projects related to this Agreement or until resolution of any litigation related to this Agreement whichever occurs last.

6. Ownership of Intellectual Property (IP)

- a. The plans, specifications, models, programs, reports, and other products prepared by the Consultant in performing the Services are Instruments of Service for purposes of the copyright laws of the United States. The Port has ownership rights to the Instruments of Service. Consultant shall not be liable for changes made in the Instruments of Service 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. Any patentable result or materials suitable for copyright arising out of this Agreement shall be owned by and made available to the Port for public use, unless the Port determines it is not in the public interest that it be owned or available.
- b. The Instruments of Service shall include all calculations, notes, draft documents, reports, drawings, specifications, electronic files, including e-mails, and any other materials, information or documentation developed or prepared in the performance of the Services and shall be owned by and treated as Port property. The Consultant

shall obtain no proprietary rights or interest in the Instruments of Service.

c. Any items incorporated into the Instruments of Service that were developed by the Consultant prior to the execution of this Agreement, and not paid for by the Port, is not covered by this provision "Consultant Data."

d. All information, materials, data and documentation furnished or made available to the Consultant by the Port for purposes of performing services pursuant to this Agreement on this project shall remain the property of the Port "Port Data." The Consultant shall obtain no proprietary rights or ownership interests to such Port Data. At the Port's written request, the Consultant shall return all such Port Data remaining in the Consultant's possession at the termination or expiration of this Agreement.

7. Disclosure

All information developed by the Consultant, all analyses or opinions reached by the Consultant (Instruments of Service) and all information made available to the Consultant by the Port (Port Data), shall not be disclosed by the Consultant without the written consent of the Port.

8. Compensation

a. As full compensation for the performance of its obligations of this Agreement and the Services, the Port shall pay Consultant as specified in the Agreement.

b. Consultant is responsible for working within the agreement amount. Should the consultant incur costs beyond the agreement amount without an executed amendment to this agreement, the Consultant is solely responsible for the additional costs.

9. Invoices

a. Consultant shall submit detailed **numbered invoices showing** descriptions of the Services being invoiced, work order number, title of the Project, total authorized, total current invoice, balance of authorization, individual's names and titles, hours, hourly rate, and all authorized expenses, if allowed, for the month, itemized, with backup, in accordance with the Port's "Guidelines for Consultant Fees and Reimbursable Items", by the 10th of the following month to be paid by the end of the 30th, unless other terms are agreed to by the parties.

b. Consultant agrees to submit timely invoices as the Services progress. Invoices that are submitted for payment ninety (90) days or more after the Services were completed are subject to non-payment.

c. Un-invoiced Services performed through December 31 of each year shall be invoiced no later than the 7th day of January. If the Consultant is unable to provide an invoice, they shall advise the Port in writing with a summary of the work completed and the accrual amount to be invoiced through December 31 of that year.

10. Costs and Disbursements

Consultant is responsible for and shall pay all costs and disbursements required for the performance of the Services.

11. Standard of Care

a. Consultant shall perform the Services 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 Services.

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 the Services.

12. Time

Time is a material consideration in the performance of the Services. The Consultant shall complete the Services within the agreed upon schedule, including any established milestones and task completion dates, and the overall period of performance. The completion dates for tasks may be modified by a written directive; however, the period of performance for the Agreement may only be modified through an amendment. The period of performance and contract milestones shall not be extended because of any unwarranted delays attributable to the Consultant. The period of performance and contract milestones may be extended in the event of a delay caused by the Port which results in a delay in the performance of an affected task, because of unavoidable delay caused by any governmental action, or other conditions beyond the control of the Consultant, which could not reasonably be anticipated and which results in a delay in the period of performance and contract schedule. Upon mutual agreement, the period of performance may be accelerated to meet Project requirements.

13. Assignability

The Consultant may not assign, transfer, or novate all or any portion of the Agreement, including but not limited to any claim or right to the Contract Sum, without the Port's prior written consent. If the

Consultant attempts to make an assignment, transfer, or novation without the Port's consent, the assignment or novation, shall be of no effect, and the Consultant shall nevertheless remain legally responsible for all obligations under the Agreement. The Consultant also shall not assign or transfer to any third party any claims it may have against the Port arising under the Agreement or otherwise related to the Project.

14. Termination of Agreement

a. Termination for Default:

i. The Port may terminate this Agreement, in writing, if the Consultant substantially fails to fulfill any or all of its material obligations under this Agreement through no fault of the Port; provided that the Consultant has been given an opportunity to cure.

1. Cure Notice: If the Port determines that a breach of this Agreement has occurred, that is, the Consultant has failed to comply with any material terms or conditions of this Agreement or the Consultant has failed to provide in any manner the Services agreed to herein, and if the Port deems said breach to warrant corrective action, the following sequential procedure will apply:

ii. The Port will provide the Consultant with a written Cure Notice, notifying the Consultant of the nature of the breach.

iii. The Consultant shall respond within five (5) calendar days of the notification. The Consultant shall submit a corrective action plan indicating the steps to be taken to correct the specified deficiencies within fifteen (15) calendar days of the notification. The corrective action plan shall specify the proposed completion date for bringing this Agreement into compliance within the number of calendar days specified by the Port;

b. Show Cause Notice:

i. In the event that the Consultant does not respond within the appropriate time with a corrective action plan, the Port will provide the Consultant with a written

Show Cause Notice; notifying the Consultant of their requirement to notify the Port in writing within seven (7) calendar days of any reason the Port should not terminate this Agreement. At the expiration of the seven (7) calendar day period the Port may commence termination of this Agreement in whole or in part.

ii. The Port may withhold payment owed the Consultant, instruct the Consultant to stop work and to refrain from incurring additional costs until the Port is satisfied that the breach has been corrected.

iii. No increase in total price or period of performance shall result from breach of this Agreement; and

iv. Nothing herein shall be deemed to affect or waive any other rights of the Port.

c. Notice of Termination:

i. If the Port terminates this Agreement for default, the Port shall determine the amount of Services satisfactorily performed to the date of termination and the amount owing to the Consultant using the criteria set forth below; provided, that (a) no amount shall be allowed for anticipated profit on unperformed Services or other work and (b) any payment due to the Consultant at the time of termination may be adjusted to the extent of any additional costs the Port incurs because of the Consultant's default. In such event, the Port shall consider the actual costs incurred by the Consultant in performing this Agreement to the date of termination, the amount of Services originally required which was satisfactorily completed to the date of termination, whether the Services are in a form or of a type which is usable and suitable to the Port at the date of termination, the cost to the Port of completing the Services itself or of employing another firm to complete it and the inconvenience and time which may be required to do so, and other factors which affect the value to the Port of the Services performed to the date of termination. Under no circumstances shall payments

made under this provision exceed the Total Price set forth in this Agreement. This provision shall not preclude the Port from filing claims and/or commencing litigation to secure compensation for damages incurred beyond that covered by withheld payments.

ii. Upon receipt of a termination notice the Consultant shall at no additional cost to the Port:

1. Promptly discontinue all Services (unless the notice directs otherwise);

2. No later than fourteen (14) calendar days after receipt of termination, promptly deliver or otherwise make available to the Port all Instruments of Service and Port Data including data, drawings, electronic drawing files, specifications, calculations, reports, estimates, summaries, official Project documentation and other Project documentation, such other information and materials as the Consultant or subconsultants may have accumulated in performing this Agreement, whether completed or in progress and all equipment/materials purchased specifically for this Agreement where the Port has paid the Consultant for such items.

3. Upon termination, the Port may take over the Services and prosecute the same to completion by agreement with another party or otherwise.

d. Termination for Convenience:

i. The Port may terminate this Agreement, for the convenience of the Port. The Port shall terminate by delivery to the Consultant a Notice of Termination specifying the termination and the effective date.

ii. If the Port terminates this Agreement for convenience, the Port shall pay the Consultant for the following items:

1. An amount for Direct Labor Costs and Indirect Costs in accordance with

the Agreement for Services satisfactorily performed to the date of termination.

2. Reasonable invoiced Other Direct Costs as allowed by the Agreement, actually incurred before the date of termination; or

3. Reasonable termination settlement costs the Consultant actually incurred unless the Port determines to assume said commitments. Reasonable termination settlement costs include settlement costs for subconsultants, and reasonable accounting and clerical costs actually incurred by the Consultant.

iii. Upon receipt of a termination notice the Consultant shall at no additional cost to the Port:

1. Promptly discontinue all Services (unless the notice directs otherwise);

2. No later than fourteen (14) calendar days after receipt of termination, promptly deliver or otherwise make available to the Port all Instruments of Services and Port Data including drawings, specifications, calculations, reports, estimates, summaries, official Project documentation, other Project documentation, and such other information and materials as the Consultant may have accumulated in performing this Agreement, whether completed or in progress and all equipment/materials purchased specifically for this Agreement where the Port has reimbursed the Consultant for such costs;

3. Take any action necessary, or that the Port may direct, for the protection and preservation of property related to this Agreement that is in the possession of the Consultant and in which the Port has or may acquire an interest.

iv. Within sixty (60) calendar days of receipt of the notice of Termination for Convenience, the Consultant shall submit to the Port a Termination Settlement Proposal. The Termination Settlement Proposal shall include:

1. Request for Direct Labor Costs and Indirect Costs for services satisfactorily performed to the date of termination.
2. As allowed by the Agreement, Actual and reasonable Other Direct Costs incurred before the termination.
3. Documentation supporting all costs identified in the Termination Settlement Proposal; and
4. A statement certifying, under penalty of perjury, that the Termination Settlement Proposal is made in good faith, the Termination Settlement Proposal and supporting data are true and accurate to the best of the Consultant's knowledge and belief, the Termination Settlement Proposal is fully supported by the accompanying data, and the amount requested accurately reflects the amount for which the Consultant believes the Port is responsible.

v. Termination settlement costs and proposals are subject to audit verification by the Port.

vi. Upon termination, the Port may take over the work and prosecute the same to completion by agreement with another party or otherwise.

15. 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 this

Agreement may be consolidated and resolved in one forum.

16. Venue & Governing Law

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 attorney(s) fees. This Agreement shall be interpreted under the laws of the State of Washington.

17. Integration and Merger/ Extent of Agreement

a. This Agreement represents the entire and integrated understanding between the Port and Consultant, supersedes any previous written or oral representations and may be amended only by written instrument signed by both the Port and Consultant. No verbal agreement or conversation between any officer, agent, associate or employee of Port and any officer, agency, employee or associate of consultant prior to or following the execution of this Agreement shall affect or modify any of the terms or obligations contained in this Agreement.

b. Authority to sign. Every signer of this Agreement warrants that they have the authority to enter into this Agreement and to bind the entity for which they represent.

18. Non-Discrimination

a. Nondiscrimination in Employment and Provision of Services: During performance of this Agreement, the Consultant and all parties subcontracting under the authority of this Agreement agrees that it will not discriminate against any employee or applicant for employment because of the employee or applicant's age, sex, marital status, sexual orientation, race, creed, color, national origin, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability.

b. Equal Employment Opportunity Efforts: The Consultant and all parties subcontracting under the authority of this Agreement agree to undertake equal employment opportunity efforts to ensure that applicants and employees are treated, without regard to their age, sex, marital status, sexual orientation, race, creed, color, national origin, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability.

c. The Consultant and all parties subcontracting under the authority of this Agreement shall comply fully with all applicable federal, state, and local laws,

ordinances, executive orders and regulations that prohibit discrimination.

19. Indemnity / Hold Harmless Clause

a. The Consultant shall indemnify, defend and hold harmless the Port of Tacoma and the Northwest Seaport Alliance and its officers, managing members, employees and agents from and against any liability, claims, damages, losses, expenses or actions, including reasonable attorney's fees and costs, arising out of the negligence, recklessness, or intentional wrongdoing of Consultant or its officers, employees, subcontractors, or agents; or arising out of a failure to comply with any applicable state, federal, local, law, statute, rule, regulation or act by the Consultant or its officers, employees, subcontractors, or agent's provided, however, that for any defense obligation related to a claim for which Contractor has insurance coverage under a professional liability policy, such obligation shall be limited to reimbursement by the Consultant for expenses incurred by the Port of Tacoma or the Northwest Seaport Alliance.

b. This duty to indemnify, defend and hold harmless shall not apply to claims which arise solely out of negligence on the part of the Port of Tacoma and the Northwest Seaport Alliance, and this duty shall survive the termination or expiration of this Agreement.

c. Consultant specifically assumes potential liability for actions brought by Consultant's own employees against the Port and the Northwest Seaport Alliance and, solely for the purpose of this indemnification and defense, Consultant specifically waives any immunity under the state industrial insurance law, Title 51 RCW. Consultant's indemnity obligations shall not be limited by any limitation on the amount or type of damages, compensation, or benefits payable to or for any third party under the Worker Compensation Acts, Disability Benefit Acts, or other employee benefit acts. Consultant recognizes that this waiver was the subject of mutual negotiation.

d. Consultant shall indemnify and hold the Port of Tacoma and Northwest Seaport Alliance harmless from and against any liability, expense, fines, penalties, cost, demand, or other obligation, resulting from or out of any cyber-related risk that include theft, loss or misuse of data, release of private information as result of a network breach, penetration, compromise, or loss of IT systems control.

e. The provisions of this Section 19 shall survive the expiration or termination of this Agreement.

20. General Insurance Requirements

The Consultant shall procure and maintain during the life of this Agreement such insurance as shall protect it from claims or damages for, IT Professional or Cyber Liability, bodily injury, including death resulting therefrom as well as from claims for property damage, and cyber-related risks such as theft, loss or misuse of data, release of private information as result of a network breach, penetration, compromise, or loss of IT systems control, which may arise from operations under this Agreement, whether such operations be by itself, its agents, or by anyone directly or indirectly employed by either of them, and shall comply with any such Project specific insurance requirements as determined by the Port.

21. Miscellaneous Provisions

a. Remedies Cumulative: Rights under this Agreement are cumulative and nonexclusive of any other remedy at law or in equity.

b. Captions: All titles, including sections or subsections, are for convenience only and do not define or limit the contents.

c. Severability: Any term or provision of this Agreement found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remainder of the Agreement.

d. Waiver: No covenant, term, or the breach thereof shall be deemed waived, except by written consent of the Party against whom the waiver is claimed, and any waiver of the breach of any covenant, term or condition shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term or condition. Neither the acceptance by Port of any performance by consultant after the time the same shall have become due nor payment to consultant for any portion of the Services shall constitute a waiver by Port of the breach or default of any covenant, term or condition unless otherwise this is expressly agreed to by Port, in writing. Port's failure to insist on performance of any of the terms or conditions herein or to exercise any right or privilege or Port's waiver of any breach hereunder shall not thereafter waive any other term, condition, or privilege, whether of the same or similar type.

e. Negotiated Agreement: The Parties acknowledge that this is a negotiated Agreement, that they have had the opportunity to have this Agreement reviewed by respective legal counsel, and that terms

and conditions are not construed against any Party on the basis of such Party's draftsmanship thereof.

f. No Personal Liability: No officer, agent or authorized employee of either Port or Consultant shall be personally responsible for any liability arising under this Agreement, whether expressed or implied, nor for any statement or representation made herein or in any connection with this Agreement.

22. Key Personnel

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

23. 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, professional liability insurance and environmental liability insurance including asbestos abatement liability and other insurance as required by contract for this project that 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, economic damage or cleanup costs, 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. Consultant recognizes that it is the obligation of the Consultant to ensure that all Subconsultants of any tier have insurance for the activities performed under this agreement. If this agreement requires that a Subconsultant perform ultra-hazardous operations the Port will require that it be named as an Additional Insured by endorsement on all Subconsultant insurance policies and waivers of subrogation shall be provided by endorsement. Workers Compensation and Professional Liability are exempted from the additional insured requirement.

b. Consultant shall submit to the Port of Tacoma, prior to the commencement of services, certificates of insurance evidencing:

i. Commercial General Liability coverage on occurrence form CG0001 or equivalent with limits of \$2,000,000 per occurrence and \$4,000,000 aggregate. Coverage will include: Products and Completed Operations,

Contractual Liability and Personal & Advertising Injury; and

- ii. Automobile Liability covering owned, non-owned and hired vehicles of \$2,000,000 combined single limit per accident; and
- iii. Professional Liability including environmental consulting services of not less than \$2,000,000 per claim and in the aggregate. If the scope of Professional Services includes environmental testing, consulting or other such professional services, the Consultant's Professional Liability policy shall include coverage for these services. If such coverage is written on a claims-made basis, any retroactive date on the policy shall be prior to the start of this contract. Coverage shall remain in effect for the term of this Agreement plus three years. Certificates of Insurance citing the contract and project number shall be provided to the Port of Tacoma on an annual basis for each of the three years.
- iv. Workers Compensation Insurance: Statutory Workers Compensation Insurance as required by the State of Washington.
- v. Stop Gap/Employers Liability Insurance shall be provided with a limit of not less than \$2,000,000 per claim.
- vi. Protection and Indemnity Insurance/Jones Act: \$1,000,000 limits shall be provided covering all vessels and crew.
- vii. Maritime Employers Liability: \$1,000,000 limits shall be provided covering all divers.

c. All policies shall be issued by a company having an A. M. Best Financial Strength Rating of A- and Financial Size Category of VIII or better. The Consultant shall be responsible for notifying the Port in writing within ten (10) days of receipt of notice of coverage being suspended, voided, cancelled or materially reduced. Except for professional liability, the Port and the Northwest Seaport Alliance shall be named as an additional insured on all policies by endorsement on ISO Form CG 20 10 Form B or equivalent. Except for Workers Compensation and Professional Liability, waivers of subrogation shall be provided by endorsement to all policies.

d. Consultant is responsible for complying with the Washington State laws that pertain to industrial insurance (RCW 51). Consultant shall submit a current employer liability certificate as issued by the Washington Department of Labor and Industries that shows the status of Consultant's worker compensation account prior to contract execution, including those Consultants who are qualified self-insurers with the state. Consultant bears the responsibility to ensure that any out-of-state (non-Washington) employees and subconsultants have appropriate workers compensation coverage while working for the Port in Washington State. Consultant may be exempt from state worker compensation insurance requirements (RCW 51.12.020) such as if Consultant is a sole proprietor.

e. Certain Services under this Agreement may require United States Longshoremen's and Harbor Worker's Act (USL&H) and Jones Act. The Consultant shall be solely responsible for determining the applicability of USL&H and Jones Act coverage. The failure of the Consultant to procure either USL&H or Jones Act coverage shall at no time create liability on the part of the Port. The Consultant shall bear all responsibility and shall indemnify and hold harmless the Port for any and all liability, cost and/or damages.

24. Payment Schedule

- a. Consultant shall submit detailed numbered invoices in accordance with the Agreement by the 10th of the month. After a complete and correct invoice has been received by the Port, payment will be made within thirty (30) days.
- b. Consultant shall submit detailed invoices showing the following:
- i. Invoice Number, Contract number, Title, Invoice Period.
 - ii. Summary page with a brief description of Services completed during the invoice period, deliverables provided during the invoice period, and forthcoming milestones / deliverables.
 - iii. Further, provide a summary breakdown of all projects with the amount of the overall invoice to be charged to each project.
 - iv. Current Amount Due, with a Time and Materials Breakdown: titles, hours, hourly rates, and all expenses itemized, with backup, in accordance with the Contract.
 - v. Total amount of the Contract, and balance of Contract amount.

Indicate "Final Invoice" when invoice is the final billing.

25. Compensation

- a. Consultant expenses will be reimbursed at cost with the exception of:
- i. Subconsultant services will be reimbursed at cost plus negotiated markup.
 - ii. Services provided by a third party will be reimbursed at cost plus negotiated markup.
- b. Costs marked up by a sub-tier shall be passed through to higher tiers as a direct cost. In no case shall the mark up at any tier exceed the negotiated percentage.
- c. Reimbursable expenses by a sub-tier shall be passed through to higher tiers as a direct cost. In no case shall markup be applied to reimbursable expenses at any level.
- d. Rates: Rates are fully burdened and will remain in effect for the contract term unless renegotiated and agreed to by both parties in a written amendment.
- i. Rates may be negotiated no more than once annually. Rate adjustments will be tied to the CPI for the Seattle, Tacoma/Bremerton area.
- e. Rates and Markup: are defined in the attached Rate Sheet and made a part of this contract.

26. 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 files used in the creation of the tangible product in a PDF format or other format specified by the Port.

27. Drawing, Specification and GIS

- a. Consultant shall prepare specifications using BSD Speclink-E, Masterformat specification organization, latest edition.
- b. Consultant shall prepare specifications in accordance the Port's Specification Standards available at <https://www.portoftacoma.com/business/contracting/forms> and from the Port Project Manager. The Port's Master format specifications are available at <https://www.portoftacoma.com/business/contracting/forms>.
- c. All site plans, derivative drawings, record drawings, and bid plans shall be completed using Port GIS and CADD standards and layer/block protocols available at <https://www.portoftacoma.com/business/contracting/forms>.

[tracing/forms](#) and from the Port Project Manager.

28. Security – Transportation Worker Identification Credential (TWIC)

a. The Services may require the consultant to work within a secured/restricted TWIC regulated terminal.

b. TWIC is a credentialing program managed by the Department of Homeland Security (DHS), through the United States Coast Guard and the Transportation Security Administration. All credentialed merchant mariners and individuals who will need unescorted access to secure areas of a maritime regulated facility or vessel must obtain a TWIC. For more information on TWIC visit <https://www.tsa.gov/for-industry/twic>.

c. The Consultant shall have a minimum of one TWIC compliant employee trained as an escort for every five workers not possessing TWIC cards working on a secured or restricted site. Each escort will be required to receive Terminal Operator provided escort training.

29. Existing Hazardous Material Information

The Port shall furnish the Consultant with the information as required by the Hazard Communication standard for materials pre-existing on the Project. The Consultant is solely responsible for ensuring that this information is made available to the Consultant's personnel, subconsultants, and that relevant information is incorporated into work products including, but not limited to, reports, specifications, and contract documents.

30. Extent of Agreement

a. In the event the Consultant identifies something that may impact the Services, Project schedule, total price, task budget(s) or cost of performing the Services, the Consultant shall inform the Project Manager in writing prior to exceeding the task budget(s) and within seven (7) calendar days of the event and possible impacts to scope, schedule and cost or task budget.

b. The Project Manager may, at any time, by written directive require the Consultant to perform the Services consistent with the Agreement; provided that this directive does not add scope or cost to the project.

c. Any directive shall not constitute an amendment to the Agreement nor entitle the Consultant to any additional compensation or a time adjustment.

31. Prevailing Wages

a. The Consultant shall ensure that all Subcontractors of any tier pay all prevailing wages and other wages (such as Davis-Bacon Act wages) applicable to the Project.

b. Pursuant to RCW 39.12, "Prevailing Wages on Public Works," no worker, laborer, or mechanic employed in the performance of any part of the Work shall be paid less than the "prevailing rate of wage" in effect as of the date that bids are due.

c. The applicable effective date for prevailing wages for this project is the execution date of this Amendment.

d. The State of Washington prevailing wage rates applicable for this public works project, which is located in Pierce County, may be found at the following website address of the Department of Labor and Industries:

<https://lni.wa.gov/licensing-permits/public-works-projects/prevailing-wage-rates/>

e. The schedule of the prevailing wage rates is made a part of the Contract Documents by reference as though fully set forth herein; and a copy of the applicable prevailing wage rates are also available for viewing at the Port Administration Building, located at One Sitcum Plaza, Tacoma, WA 98421 (253-383-5841). Upon request to the Procurement Department at procurement@portoftacoma.com, the Port will email or mail a hard copy of the applicable Journey Level prevailing wages for this project.

f. Questions relating to prevailing wage data should be addressed to the Industrial Statistician.

Mailing Address:

Department of Labor and Industries
Prevailing Wage Office
PO Box 44540, Olympia, WA 98504
Telephone: (360) 902-5335
Facsimile: (360) 902-5300

g. If there is any discrepancy between the attached or provided schedule of prevailing wage rates and the published rates applicable under WAC 296-127-011, or if no schedule is attached, the applicable published rates shall apply with no increase in the Contract Sum. It is the Contractor's responsibility to ensure that the correct prevailing wage rates are paid.

h. Prior to any payment being made by the Port under this Contract, the Contractor, and each Subcontractor of any tier, shall file a Statement of Intent to Pay Prevailing Wages under oath with the Port and certified by the Director of Labor and Industries. The statement shall include the hourly wage rate to be paid to each classification of workers entitled to prevailing wages, which shall not be less than the prevailing rate of wage, and the estimated number of workers in each classification employed on the Project by the

Contractor or a Subcontractor of any tier, as well as the Contractor's contractor registration number and other information required by the Director of Labor and Industries. The statement, and any supplemental statements, shall be filed in accordance with the requirements of the Department of Labor and Industries. No progress payment shall be made until the Port receives such certified statement.

i. The Contractor shall post in a location readily visible to workers at the Project site (1) a copy of the Statement of Intent to Pay Prevailing Wages approved by the Industrial Statistician of the Department of Labor and Industries and (2) the address and telephone number of the Industrial Statistician of the Department of Labor and Industries to whom a complaint or inquiry concerning prevailing wages may be directed.

j. If a State of Washington prevailing wage rate conflicts with another applicable wage rate (such as Davis-Bacon Act wage rate) for the same labor classification, the higher of the two shall govern.

k. Pursuant to RCW 39.12.060, if any dispute arises concerning the appropriate prevailing wage rate for work of a similar nature, and the dispute cannot be adjusted by the parties in interest, including labor and management representatives, the matter shall be referred for arbitration to the Director of the Department of Labor and Industries, and his or her decision shall be final and conclusive and binding on all parties involved in the dispute.

l. The Contractor shall defend (at the Contractor's sole cost, with legal counsel approved by Port), indemnify and hold the Port harmless from all liabilities, obligations, claims, demands, damages, disbursements, lawsuits, losses, fines, penalties, costs and expenses, whether direct, indirect, including but not limited to attorneys' fees and consultants' fees and other costs and expenses, from any violation or alleged violation by the Contractor or any Subcontractor of any tier of RCW 39.12 ("Prevailing Wages on Public Works") or Chapter 51 RCW ("Industrial Insurance"), including but not limited to RCW 51.12.050.

32. On-Call Definitions Supplementary Conditions (As Applicable)

a. Task Order: The document that memorializes agreement between the Consultant and the Port, in accordance with the terms of the On-Call Contract. Task Orders are executed for defined Services under the On-Call Contract.

b. Contract Owner: Port staff member responsible for managing the On-Call Contract and executing all Task Orders.

c. Project Manager: Port staff member responsible for managing a specific Task Order.

d. Consultant Representative: The Consultant staff member(s) delegated the authority to provide signature approval for Task Orders under the On-Call Contract.

e. Task Order Proposals:

i. The Project Manager will request consultant to provide a fee proposal for the Services requested by the Port.

ii. The Port will not pay for time or materials associated with development of fee proposals, unless such costs are approved by the Project Manager and Contract Owner in advance.

iii. Task Order proposals shall be signed and submitted by the Consultant Representative to the Port's Project Manager in writing. Proposals shall include one of the following:

1. Time and Materials Proposal

- a. Description of Task Order scope and deliverables.
- b. Consultant's Personnel Titles and Rates as negotiated.
- c. Hours per person per task.
- d. Sub-tier consultant scope and deliverables (when applicable).
- e. Anticipated reimbursable costs.
- f. Total proposal with Not to Exceed dollar amount.

f. Task Order Execution:

Executed Task Orders will be issued by the Contract Owner to the Consultant.

g. Task Order Revision:

i. Revisions include when the Consultant becomes aware of the potential to exceed the executed amount or when changes are requested by the Project Manager.

ii. Consultant shall provide a revised proposal detailing all revisions per

2A and B above. Consultant shall not proceed with changed work until a revised Task Order is executed by the Contract Owner.

h. Payment Schedule:

- i. Each Task Order shall be invoiced separately. Consultant shall submit detailed invoices showing the following:
- ii. Invoice Number, Contract number, Title, Task Order Number and Title.
- iii. Summary page with a brief description of Services completed during the invoice period, deliverables provided during the invoice period, and forthcoming milestones / deliverables.
- iv. Current Amount Due:
- v. For Lump Sum Task Orders: Percentage of Services complete, percentage of completed Services billed.
 1. For Time and Materials Task Orders: titles, hours, hourly rates, and all

expenses itemized, with backup, in accordance with the contract.

vi. Total amount of the Task Order, and balance of Task Order amount.

vii. Indicate "**Final Invoice**" when invoice is the final billing for that Task Order.

i. Task Order Closure:

When the Services have been completed and final invoice processed by the Port, the Contract Owner will issue a Task Order Completion Notification to the Consultant Representative.

j. Task Order Termination:

The Port may terminate the Task Order at its convenience with or without cause. In such case, the Consultant shall be paid for all Services performed and reasonable expenses properly incurred in connection with the termination.

RATE SHEET TEMPLATE
Earley Business Center Master Plan and Redevelopment

PSA No. 071720

Consultant Personnel/Title	Years of Experience	Cost* (Hourly Rate)
Sr. Consultant 1		\$
Consultant 2		\$
Consultant 1		\$
Project 2		\$
Project 1		\$
Staff 2		\$
Staff 1		\$

*Costs are fixed, fully burdened

Sub-Consultant Personnel/Title	Years of Experience	Cost* (Hourly Rate)
Sr. Consultant 1		\$
Consultant 2		\$
Consultant 1		\$
Project 2		\$
Project 1		\$
Staff 2		\$
Staff 1		\$

*Costs are fixed, fully burdened

**Attachment "D"
Federal Grant Terms & Conditions****1. Federal funding**

The Contractor is notified that this contract may be funded using federal funds in the future.

The Contractor must comply with the terms and conditions below.

2. Access to Records and Reports.

In accordance with CFR 200.336, the Contractor agrees to provide the Port, applicable federal agencies, the Comptroller General of the United States, the State of Washington, or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.

3. Termination of Contract.

Port reserves the right to terminate this Agreement at any time by sending written notice of termination to Consultant ("Notice"). The Notice shall specify a termination date ("Termination Date") at least fourteen (14) days after the date the Notice is issued. The Notice shall be effective ("Notice Date") upon the earlier of either actual receipt by Consultant or three business days after issuance of the Notice. Upon the Notice Date, Consultant shall immediately commence to end the Work in a reasonable and orderly manner. Unless terminated for Consultant's material breach, the Consultant shall be paid or reimbursed for (a) all hours worked and Eligible Expenses incurred up to the Notice Date, less any payments previously made and (b) those hours worked and Eligible Expenses incurred after the Notice Date, but prior to the Termination Date, that were reasonable necessary to terminate the Work in an orderly manner. The Notice shall be sent by express mail (such as Federal Express), by the United States Mail to Consultant's address provided herein, postage prepaid, certified or registered mail, return receipt requested, or by hand delivery. The Port does not by this section waive, release or forego any legal remedy for any violation, breach or non-performance of any of the provisions of this Agreement. At its sole option, Port may deduct from the final payment due the Consultant (a) any damages, expenses or costs arising out of any such violations, breaches, or non-performance and (b) any other back charges or credits.

4. Recycled Products

To the extent practicable and economically feasible, the Contractor shall provide a competitive preference for products and services that conserve natural resources and protect the environment and are energy efficient. Examples of such products may include, but are not limited to, products described in U.S. Environmental Protection Agency (U.S. EPA) guidelines at 40 C.F.R. Parts 247-253, implementing section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962. The Contractor shall include this provision in all of its subcontracts, with the requirement that it shall flow down to all subcontracts regardless of tier.

5. Contract Work Hours and Safety Standards Act

- a) Overtime Requirements: No contractor or subcontractor contracting for any part of the Work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- b) Violation; Liability for Unpaid Wages; Liquidated Damages: In the event of any violation of the clause set forth in paragraph (A) of this provision, the Contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (A) of this provision, in the sum of \$ 10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in subparagraph (A) of this provision.
- c) Withholding for Unpaid Wages and Liquidated Damages: The Port shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (B) of this provision.
- d) Compliance with OSHA: The Contractor agrees to comply with section 107 of the Contract Work Hours and Safety Standards Act, 40 U.S.C. 333, and applicable Department of Labor regulations, "Safety and Health Regulations for Construction" 29 CFR 1926. Among other things, the Contractor agrees that it will not require any laborer or mechanic to work in unsanitary, hazardous, or dangerous surroundings or working conditions.
- e) Subcontracts: The Contractor or subcontractor shall insert in any subcontracts the paragraphs set forth in this provision 12, Contract Work Hours and Safety Standards Act, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this provision.

The term "subcontract" under this section is considered to refer to a person who agrees to perform any part of the labor or material requirements of a contract for construction, alteration or repair. A person who undertakes to perform a portion of a contract involving

the furnishing of supplies or materials will be considered a "subcontractor" under this provision if the work in question involves the performance of construction work and is to be performed (1) directly on or near the construction site, or (2) by the employer for the specific project on a customized basis. Thus, a supplier of materials, which will become an integral part of the construction is a "subcontractor" if the supplier fabricates or assembles the goods or materials in question specifically for the construction project and the work involved may be said to be construction activity.

If the goods or materials in question are ordinarily sold to other customers from regular inventory, the supplier is not a "subcontractor." The requirements of this section do not apply to contracts or subcontracts for the purchase of supplies or materials or articles normally available on the open market.

6. [Clean Air Act \(42 U.S.C. 7401-7671q.\) and the Federal Water Pollution Control Act \(33 U.S.C. 1251-1387\), as amended—Applies to contracts in excess of \\$150,000.](#)

The Contractor comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

All contracts must comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201).

7. [Certification Regarding Debarment, Suspension, and other Responsibility Matters – Primary Covered Transactions](#)

2 C.F.R. Parts 180 and 1200

These assurances and certifications are applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction \ estimated to cost \$25,000 or more – as defined in 2 C.F.R. Parts 180 and 1200.

By entering into the agreement, the Contractor is providing the assurances and certifications for First Tier Participants and Lower Tier Participants, as set out below.

a. Instructions for Certification – First Tier Participants:

- i) The prospective first tier participant is providing the certification set out below.
- ii) The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

- iii) The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.
- iv) The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this Bid is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- v) The terms “covered transaction,” “civil judgment,” “debarred,” “suspended,” “ineligible,” “participant,” “person,” “principal,” and “voluntarily excluded,” as used in this clause, are defined in 2 C.F.R. Parts 180 and 1200. “First Tier Covered Transactions” refers to any covered transaction between a Recipient or subrecipient of Federal funds and a participant (such as the prime or general contract). “Lower Tier Covered Transactions” refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). “First Tier Participant” refers to the participant who has entered into a covered transaction with a Recipient or subrecipient of Federal funds (such as the prime or general contractor). “Lower Tier Participant” refers to any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).
- vi) The prospective first tier participant agrees by submitting this Bid that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
- vii) The prospective first tier participant further agrees by submitting this Bid that it will include the clause titled “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions,” provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.
- viii) A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (<https://www.sam.gov/>), which is compiled by the GSA.
- ix) Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the

- prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- x) Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

8. Anti-Lobbying Amendment

Contractors who apply or bid on a solicitation valued at \$100,000 or more shall file the certification required by 31 USC 1352, " Additionally, the Contractor shall require each subcontractor and each lower tier subcontractor exceeding \$100,000 to certify to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the Contractor to be submitted to the Port.

9. Open and Fair Opportunities

During the term of this Agreement, the Contractor 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 Contractor 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 contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 C.F.R. Part 21.

The selected Contractor 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 Contractor further agrees to comply with all applicable civil rights statutes and implementing regulations including, but not limited to the following:

- a) Nondiscrimination in Federal Programs: The selected Contractor agrees to comply with the provision of, 41 CFR, Parts 60 et seq., which prohibits discrimination on the basis of race, color, creed, national origin, sex, or age, and prohibits discrimination in employment or business opportunity.
- b) Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
- c) Information and Reports: The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the federal agency to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the federal agency, as appropriate, and will set forth what efforts it has made to obtain the information.
- d) Incorporation of Provisions: The contractor will include the provisions of paragraphs this section every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Port may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

10. Davis Bacon

This Contract is subject to both the Washington State prevailing wage requirements and the federal Department of Labor (DOL) prevailing wage requirements. No claim for additional compensation will be allowed that is based upon lack of knowledge or error in interpretation of these requirements by the Contractor. A copy of the most recent state and federal prevailing wages is included in the Contract Documents, however; these wages may not be the actual wages applicable to this project. The applicable Washington State Prevailing Wages will be the prevailing wage rate for Snohomish County effective on the date the bid is due. The applicable Federal Department of Labor prevailing wage rate for Snohomish County effective **ten** days prior to the bid due date. The higher of the two wage rates will prevail.

- (A) The contractor and subcontractors shall pay each laborer or mechanic on the project on a weekly basis. The contractor shall submit weekly for each

week in which any contract work is performed a Certified Payroll Report. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR part 5. This information may be submitted in any form desired; however, Optional Form WH-347 is available for this purpose and may be downloaded from the United States Department of Labor Wage and Hour Division at <http://www.dol.gov/whd/forms/wh347instr.htm>. The prime contractor is responsible to ensure the submission of certified payrolls by all subcontractors.

- (B) Compliance with Copeland Act Requirements: The contractor shall comply with 29 CFR part 3, which requires statements of wages paid and prohibits kickbacks, incorporated by reference in this contract.

11. Contracting with Small and Minority Business, Women's Business Enterprises, and Labor Surplus Area Firms.

The prime contractor shall be required to take the affirmative steps listed in 2 CFR 200.321, if subcontracting work, to assure that minority businesses, women's business enterprises, and labor surplus area firms are used whenever possible.

12. Domestic Preference (2 CFR 200.322).

(a) to the greatest extent practicable, this procurement contains a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.

(b) For purposes of this section:

(1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(2) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

13. John D McCain National Defense Authorization Act.

Consultant agrees to comply with the requirements of Section 889 of the John D McCain National Defense Authorization Act for Fiscal Year 2019, Pub L 115-232 and 2 CFR 200.216 which places a prohibition on Certain Telecommunication and Video Surveillance Services or Equipment (AUGUST 2020) for non-U.S. organizations implemented the statutory prohibition 889(b)(1) that prohibits the use of award funds, including direct and indirect costs, cost-share and program income, to procure covered telecommunication and video surveillance services or equipment.

14. Equal Employment Opportunity.

During the performance of this contract, the contractor agrees as follows:

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity,

or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. 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. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary

of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

15. Termination of Contract.

- A. Termination for Convenience: The Port may terminate this contract, in whole or in part, at any time and for any reason by giving thirty (30) calendar days written termination notice to Contractor. Termination charges shall not apply unless they are subsequently agreed upon by both parties. Where termination charges are applicable, both parties agree to negotiate in good faith and to limit the extent of negotiations to valid documented expenses incurred by Contractor prior to date of termination. Should the parties not agree to a satisfactory settlement, the matter may be subjected to mediation and/or legal proceedings.
- B. Termination for Breach and/or Default: Except in the case of delay or failure resulting from circumstances beyond the control and without the fault or negligence of the Contractor or the Contractor's Contractors or subcontractors, the Port shall be entitled, by written or oral notice, to cancel and/or terminate this contract in its entirety or in part for breach and/or for default of any of the terms herein and to have all other rights against Contractor by reason of the Contractor's breach as provided by law.
- C. Notice: Written notice of termination will be sent to Contractor ("Notice"). The Notice shall specify a termination date ("Termination Date") as outlined above. The Notice shall be effective ("Notice Date") upon the earlier of either actual receipt by Contractor or three business days after issuance of the Notice. Upon the Notice Date, Contractor shall immediately commence to end the Work in a reasonable and orderly manner. Unless terminated for Contractor's material breach, the Contractor shall be paid or reimbursed for (a) all hours worked and Eligible Expenses incurred up to the Notice Date, less any payments previously made and (b) those hours worked and eligible expenses incurred after the Notice Date, but prior to the Termination Date, that were reasonably necessary to terminate the Work in an orderly manner. The Notice shall be sent by express mail (such as Federal Express), by the United States Mail to Contractor's address provided herein, postage prepaid, certified, or registered mail, return receipt requested, or by hand delivery. The Port does not by this section waive, release, or forego any legal remedy for any violation, breach or non-performance of any of the provisions of this Agreement. At its sole option, Port may deduct from the final payment due the Contractor (a) any damages, expenses or costs arising out of any such violations, breaches, or non-performance and (b) any other back charges or credits.

ATTACHMENT C - LOBBYING CERTIFICATE – USE IF CONTRACT EXCEEDS \$100,000

The undersigned (Contractor) certifies to the best of its knowledge or belief that it complies with 49 CFR Part 20 New Restrictions on Lobbying:

- 1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- 2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form – LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions, [as amended by “Government wide Guidance for New Restrictions on Lobbying, “61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*)]
- 3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, title 31, U.S. Code (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[Note: Pursuant to 31 U.S.C. Section 1352 (c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to amend a required certification or disclosure form shall be subject to civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

The Contractor certifies or affirms that truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.* and 49 CFR Part 20 apply to this certification and disclosure, if any.

Contractor: _____

(Type or Print Company Name)

By: _____

(Signature)

(Title)

Print Name: _____

NOTE: CONTRACTORS ARE REQUIRED, PURSUANT TO FEDERAL LAW, TO INCLUDE THE ABOVE LANGUAGE IN SUBCONTRACTS OVER \$100,000, AND TO OBTAIN THIS CERTIFICATE FROM EACH SUBCONTRACTOR BEING PAID \$100,000 OR MORE UNDER THIS CONTRACT.

16. GRANT SPECIFIC CLAUSES WILL BE ADDED BY CHANGE ORDER (AMENDMENT) ONCE RECEIVED.