REQUEST FOR QUALIFICATION (RFQ)
NO. 072026-1045
PARCEL 132 AND PARCEL 94 TRIANGLE CLEANUP

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

RFQ INFORMATION	
Contact:	Michelle Walker
Email Addresses:	procurement@portoftacoma.com
Phone:	(253) 888-4744
Submittal Date	**October 1, 2026**
Questions Due Date	**September 24, 2026**

SUBMIT ALL QUESTIONS AND SOQS VIA THE PROCUREMENT PORTAL. (LINK LOCATED ON THE LEFT SIDE OF THE PROCUREMENT WEB PAGE)

PORT

RFQ 072026-1045

Parcel 132 and Parcel 94 Triangle Cleanup

A. PURPOSE

The PORT is soliciting Statements of Qualifications (**SOQ**) from highly Qualified Environmental Professional (**QEP**) teams interested in providing professional Environmental and Civil consulting services to assist the Port with planning, permitting, surveying, design, and constructions services for the Parcel 132 and Parcel 94 Triangle Cleanup Project.. The PORT anticipates awarding one (1) Professional Service contract. The anticipated period of performance of the contract is three (3) years from the execution of the contract, extension of the contract is at the sole discretion of the PORT, for a possible total of four (4) years.

The successful respondent may be precluded from competing for, or participating in, subsequent contracts that are the direct result of or primarily generated by, the work performed under the contract resulting from this procurement.

Interlocal Cooperation Act-RCW 39.34 allows cooperative purchasing between public agencies, and other political subdivisions. If a public agency files or has filed an Intergovernmental Cooperative Purchasing Agreement with the Port of Tacoma, those agencies are eligible to purchase from Contracts established by the Port. Such agencies may ask Port of Tacoma Contractors to accept orders from the agency, citing the Port of Tacoma contract as the basis for the order. The Contractor may accept or decline such orders. If the Contractor accepts an order from another public agency using the Port of Tacoma contract as the basis, the Contractor agrees to sell additional items at the contract prices, terms, and conditions. The Port of Tacoma accepts no responsibility for the payment of the purchase price by other governmental agencies.

B. GRANT FUNDED

Partial funding of this project is being provided by the Environmental Protection Agency. All terms and conditions included in the grant agreement between the Port of Tacoma and Environmental Protection Agency are fully incorporated into the agreement with the Firm (Attachment C).

C. BACKGROUND

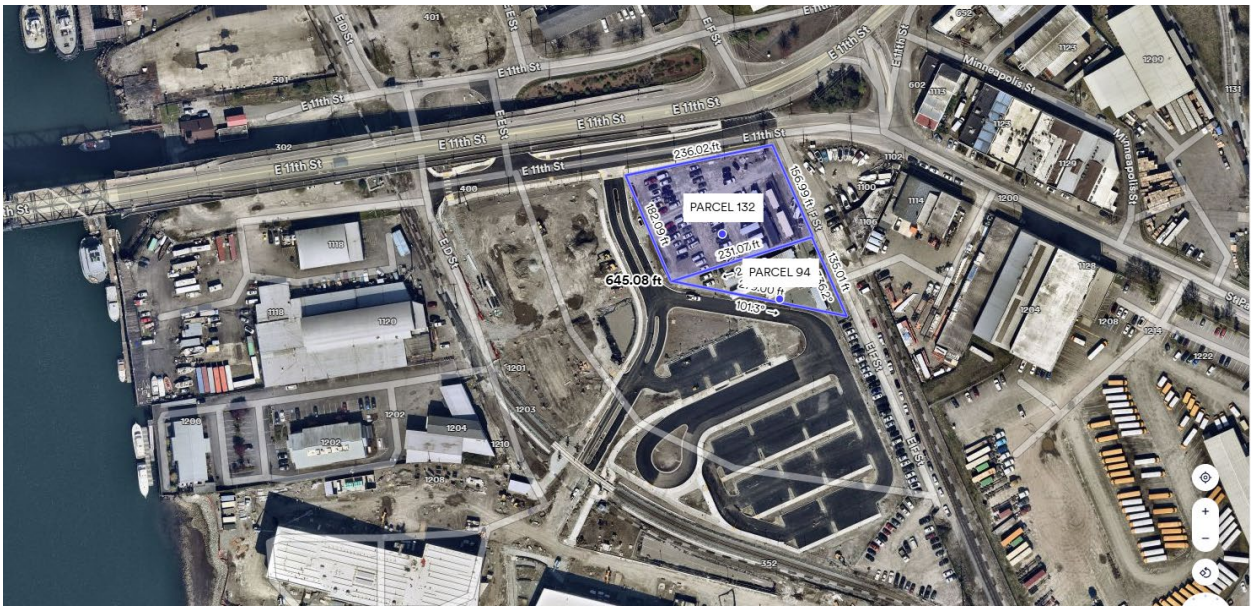
Created by Pierce County citizens in 1918, the Port of Tacoma is a major center for container cargo, bulk, break-bulk, autos and heavy-lift cargo. To learn more about the PORT, visit www.portoftacoma.com.

Parcel 132 is located at the gateway of the greater Port of Tacoma Maritime Center master planning area just across the 11th Street Bridge from downtown Tacoma. The Port purchased this property in December 2023, as a further investment in the master planning area, and more broadly to support the continued redevelopment along the Thea Foss Waterway. Parcel 132 is a 0.91-acre brownfield site located at the gateway to the Port Maritime Center Area. Environmental investigations identified contaminated soil and localized groundwater impacts associated with historic industrial uses, including lumber treatment, a historic warehouse fire, and heavy-equipment storage. The contaminated

soils restrict use to industrial activities. Parcel 132 and the adjacent Parcel 94 Triangle are currently vacant and are proposed for redevelopment for maritime trades-related uses. Future development opportunities include additional education and training facilities, business incubator space, additional office space for maritime logistics and supply companies, commercial and retail spaces, green spaces, and public amenities. The cleanup and redevelopment of Parcel 132 and Parcel 94 Triangle will help catalyze the next phase of the Maritime Center project.

The Port proposes to cleanup Parcel 132 and the adjacent portion of property to the south (Parcel 94 Triangle) to prepare both properties for the next phase of the Maritime Center project. Cleanup planning is expected to support unrestricted use standards so that engineering controls, such as fencing, are not required for future non-residential uses. The Analysis of Brownfields Cleanup Alternatives evaluated No Action, Capping, and Excavation with Offsite Disposal. Excavation with Offsite Disposal is the recommended cleanup approach because it permanently removes contaminated soil, eliminates long-term exposure pathways and maintenance obligations, and best supports redevelopment objectives.

Tentative construction for the Parcel 132 and Parcel 94 Triangle cleanup project is anticipated to occur during the summer of 2028. This schedule is preliminary and subject to refinement based on completion of cleanup planning, design, permitting, grant and regulatory coordination, procurement, and other project delivery considerations.



The PORT's Standard Terms and Conditions are included with the Sample Professional Services Agreement (Attachment B) to this RFQ. By submitting a SOQ, the Firm 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.

SOQs submitted with altered or conditioned Terms and Conditions without prior written agreement from the PORT will be considered non-responsive and not considered for evaluation.

Firms submit SOQs understanding all contract terms and conditions are mandatory. Response submittal is agreement to the Contract without exception. The PORT reserves the right to negotiate changes to submitted SOQs and to change the PORT's otherwise mandatory Contract form during negotiations. If the Firm is awarded a contract and refuses to sign the attached Contract form, the PORT may reject the Firm from this and future solicitations for the same work. Under no circumstances shall Firm submit its own boilerplate of terms and conditions.

D. SCOPE OF SERVICES

Services to be provided include professional environmental, civil, geotechnical, permitting, and construction support services necessary to advance the Brownfields cleanup analysis into final cleanup planning, design, permitting, procurement support, construction support, confirmation sampling, and closeout documentation. Services may include, but are not limited to:

1. Compilation, validation, and analysis of existing site investigation data, including Parcel 132 and Parcel 94 Triangle data relevant to soil, groundwater, and potential stormwater management considerations
2. Identification of data gaps necessary to finalize cleanup planning, remedial design, permitting, construction sequencing, cost estimating, and confirmation sampling
3. Development and refinement of cleanup standards, remedial action objectives, and points of compliance for contaminants of concern in applicable media, consistent with MTCA, EPA Brownfields grant requirements, and intended future site use
4. Proposed site cleanup standards for all COCs in applicable media
5. Evaluation of site geotechnical conditions and concerns
6. Analysis of appropriate institutional controls for the site
7. Prepare draft and final cleanup planning documents, including updates to the Analysis of Brownfields Cleanup Alternatives, Cleanup Action Plan, Engineering Design Report, Quality Assurance Project Plan, Health and Safety Plan, and other EPA- or Ecology-required documents
8. Develop design documents for the recommended cleanup alternative of excavation with offsite disposal, including excavation limits, contaminated-material handling, dewatering and stormwater controls, erosion and sediment controls, dust control, truck haul routes, site restoration, and coordination with future redevelopment
9. Assist the Port with agency negotiations and permitting actions (SEPA, City of Tacoma Site Development, etc.)
10. Stormwater analysis, engineering, permitting support, and construction-phase water management planning, including proactive stormwater controls during cleanup activities
11. Prepare plans, technical specifications, bid schedules, and engineer’s opinions of probable construction cost suitable for construction procurement, including

separate cost tracking for Parcel 132 and the Parcel 94 Triangle as needed to maintain grant-funding accountability

12. Perform additional soil, sediment, groundwater, surface water, waste characterization, and confirmation sampling as necessary to support design, construction, disposal, and cleanup completion documentation
13. Perform construction support services, including pre-bid support, contractor submittal review, RFI responses, field observations, construction meetings, change support, quantity verification, waste-profile coordination, confirmation sampling coordination, and cleanup closeout support
14. Support EPA Brownfields grant coordination, documentation, reporting inputs, ACRES-related project information, and cost documentation necessary to demonstrate compliance with grant requirements

E. DELIVERABLES

Known and potential deliverables for this contract include:

- Final Analysis of Brownfields Cleanup Alternatives update or addendum, if required
- Cleanup Action Plan, Engineering Design Report, and supporting technical memoranda
- Public Involvement Plan, community engagement materials, fact sheets, meeting materials, and other Brownfields outreach support documents
- Technical memoranda, work plans, sampling and analysis plans, waste characterization documentation, and permit-support materials
- Engineer's opinions of probable construction cost, bid schedules, and grant-cost tracking support documentation
- Forensic analyses, allocation findings, and data evaluations as requested to support cleanup planning, cost allocation, or regulatory coordination
- Construction Plans (30%, 60%, 90% Reviews, and 100% Plans)
- Construction Specifications – bid documents to include full CSI technical specifications and support for CSI specifications divisions 0 and 1 utilizing the Port's specification system BSD Speclink.
- Final Cleanup Report documenting cleanup implementation, confirmation sampling results, attainment of cleanup standards, waste disposal documentation, and any required institutional or engineering controls
- Construction Support Services (Submittal review, RFI responses, Construction meetings, etc.)
- Quality Management Plan (QMP)/Quality Assurance Project Plan (QAPP), as applicable
- Other deliverables as requested or required.

F. QUALIFICATIONS

Key team personnel shall have the appropriate license and/or certifications for the services provided and be determined to be a Qualified Environmental Professional. For this procurement, the definition is:

Qualified Environmental Professional (**QEP**) means an individual who meets the EPA definition of an Environmental Professional under 40 CFR §312.10, including the required education, professional credentials, and relevant experience necessary to exercise professional judgment in environmental assessment, cleanup planning, remedial design,

regulatory coordination, and remediation activities. The proposed QEP and key technical staff shall demonstrate experience with EPA Brownfields-funded cleanup projects, Washington Model Toxics Control Act cleanup requirements, ABCA preparation or implementation, QAPP/HASP development, excavation and offsite disposal remedies, contaminated-media sampling, and cleanup completion documentation.

G. SOQ ELEMENTS & EVALUATION CRITERIA

SOQs should present information in a straightforward and concise manner, while ensuring complete and detailed descriptions of the Firm (including the prime, key team members, and major sub-consultants) and the team's ability to meet the requirements and provide the requested services of this RFQ. Emphasis will be on completeness of content. The written SOQs should be prepared in the same sequential order as outlined below.

SOQs are limited to 10 numbered pages (8 ½ by 11 inch) **excluding** the cover letter and all appendices. All pages shall be in portrait orientation with 1-inch (1") margins. Font size should be 10 point or larger. SOQs that do not follow this format may be rejected. Submittals need to be limited to **9 MB** in total size.

The cover letter shall include the RFQ Number & Title in the subject line, and the Name, Title, Email Address, Phone Number, and current Address of the submitting team. SOQ's that do not follow this format may be rejected. The cover letter shall include the following information (even if the answer is None):

- **Describe any claim submitted by any client against the prime firm within the past two (2) years related to the professional 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 interest for team members, inclusive of the prime, sub-consultants, and key team members.**

SOQs are to address, and will be evaluated upon, the following criteria:

INITIAL EVALUATION PHASE

1. Qualifications & Experience ..... 50 PTS

a) Identify the proposed team (to include working titles, degrees, certificates and licenses), demonstrate the team's experience in performing contaminated site cleanup under MTCA, civil design, stormwater, permitting, and construction support services, and describe how the team meets or exceeds the required qualifications for this project. (40 PTS)

- 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.
- Provide an organizational chart demonstrating the relationships and hierarchy of the team described above and availability to support PORT projects. Identify individuals by name, position, discipline and firm. Identify key back up personnel.

- Provide support how you meet the definition for Qualified Environmental Professional per the EPA guidelines.
- The PORT will evaluate the experience, technical competence, and qualifications of the key personnel identified, their project-specific roles and responsibilities, and overall organization of the project team. Emphasis will be placed on demonstrated experience with Brownfields cleanup planning, ABCA implementation, MTCA cleanup actions, excavation and offsite disposal remedies, grant-funded documentation, public involvement support, and work of similar scope and complexity.

b) Include a list of three (3) recent contracts/projects in the last five (5) 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. (10 PTS)

2. Project Approach Narrative ..... 50 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 advance the Brownfields cleanup analysis into final cleanup planning, design, permitting, procurement support, construction support, confirmation sampling, and closeout documentation. Include a summary of innovative ideas and suggestions for managing excavation with offsite disposal, stormwater and dust control, haul-route logistics, grant-cost tracking, and coordination with future redevelopment. (40 PTS)

- Project Management: Describe how the team will manage and coordinate the necessary disciplines required to accomplish the services requested.
- General information for supporting the PORT with an overall approach to environmental cleanup, civil design, permitting, procurement support, and construction-phase services at the PORT.
- What risks beyond your control do you see in providing this service, and how would you mitigate them?

b) Coordination & Communication. Provide a plan for communications and coordination between the Project Team, the PORT's Project Manager, and the various Stakeholders. (5 PTS)

c) Quality Control (**QC**) and Quality Assurance (**QA**) program for the requested services. (5 PTS)

FINAL EVALUATION PHASE (if applicable)

1. Oral Presentations (if requested) ..... 100 PTS

Oral Presentations will be conducted with the top-ranked SOQ. Failure to participate in the process may result in the Firm's disqualification from further consideration. Oral Presentations will be conducted by online video meeting.

2. References (if requested).....Pass/Fail

Reference checks may be performed on the selected firm, if based directly on the SOQ's received, or on shortlisted firms if Oral Presentations are being requested. The PORT may evaluate the reference checks to assess the proposed Firm's overall performance and success of previous, similar work. Reference checks may also be utilized to validate information contained in the SOQ.

LIST OF ATTACHMENTS:

ATTACHMENT A – INSTRUCTIONS FOR PROPOSING (ATTACHED)

ATTACHMENT B –PROFESSIONAL SERVICES CONTRACT TERMPLATE & TERMS AND CONDITIONS (ATTACHED)

ATTACHMENT C – GRANT TERMS & CONDITIONS (ATTACHED)

ATTACHMENT D – PHASE 1 ENVIRONMENTAL SITE ASSESSMENT OF THE PROPERTY AT 426 EAST 11TH STREET (SEPARATE ATTACHMENT)

ATTACHMENT E - PHASE 2 ENVIRONMENTAL ASSESSMENT REPORT FOR THE PROPERTY AT 426 EAST 11TH STREET (SEPARATE ATTACHMENT)

ATTACHMENT F - ANALYSIS OF BROWNSFIELD CLEANUP ALTERNATIVES (ABCA) (SEPARATE ATTACHMENT)

PROCUREMENT PROCESS

SOLICITATION TIMELINE:

Issuance of RFQ	August 31, 2026
***Last Day To Submit Questions**	**September 24, 2026**
***SOQ packets due**	**October 1, 2026**
Evaluations Due	October 8, 2026
Review/Shortlist	October 9, 2026
Oral Presentations (if required)	October 13-16, 2026
*Final Selection	October 19, 2026
*Execute Contract	October 26, 2026

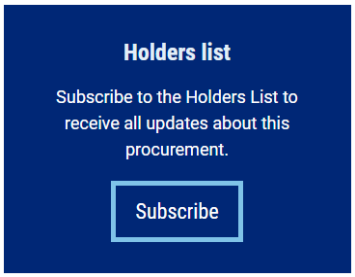
*Dates are tentative and may be subject to change.

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

FIRM OBLIGATION

The Northwest Seaport Alliance (**NWSA**) and Port of Tacoma's (**PORT**) Invitation to Bid, Request for Proposals and Request for Qualifications can be accessed on the following websites, www.portoftacoma.com (**PORT**) under 'Business -> Contracting -> Procurement' or https://www.nwseaportalliance.com/ (**NWSA**) under 'Resources -> 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.

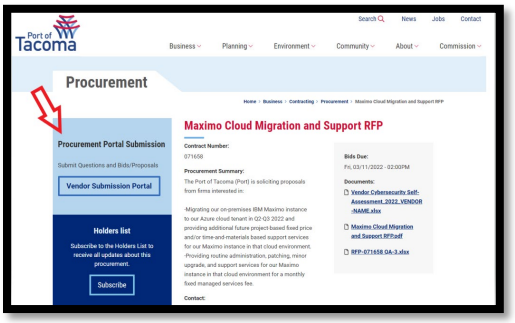
***Only those who have subscribed to the Holder's List will receive notifications throughout the procurement process, up until a firm is selected.**

COMMUNICATION / INQUIRES

All communications is to be sent through Michelle Walker, the Procurement Analyst.

Firms 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.).



Firms who may have questions about provisions of these documents are to submit their questions by the date listed on the solicitation. 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:

SOQs must be received via the procurement portal on or before the date and time outlined on the front page of this RFQ.

Procurement Submission Portal Instructions:

Navigate to this procurement's 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 PORT's Procurement website.

Please submit SOQ, including all separate attachments and compensation in separate Adobe Acrobat PDF format. Submittals need to be limited to **9 MB in total size**. **It is the Consultant's responsibility to verify the receipt of the submittal. Electronic verification will be provided**.

***Late SOQs will not be accepted by the PORT. SOQs received after the stated date and time will not be reviewed and shall be deemed non-responsive.**
All SOQs 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 SOQ 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 SOQ, the scores are tallied, and the firms are ranked based on the scores.
A selection may be made based on the SOQs 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. If Oral Presentations are not required, final selection will be based on the score of the presentations.

The PORT intends to select the Firm who represents the best value to the PORT.

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 SOQs submitted as non-responsive or non-responsible.

PROCEDURE WHEN ONLY ONE SOQ IS RECEIVED

In the event that a single responsive SOQ is received, the Firm shall provide any additional data required by the PORT to analyze the SOQ. The PORT reserves the right to reject such SOQs 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 FIRMS

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

PROTEST PROCESS

A Firm protesting for any reason the Bidding Documents, a Bidding procedure, the PORT's objection to a Firm or a person or entity proposed by the Firm, 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 Bidding 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 Firm, the bid 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 Firm 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 Firm(s) the opportunity to respond in writing to the protest. If the protest is not resolved by mutual agreement of the protesting Firm 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 Firm and any other affected Firm(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 Port of Tacoma encourages participation in all 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 Firm. 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

SOQs 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 Firm 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 Firm of the request and allow the Firm 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 SOQ. By submitting a response, the Firm assents to the procedure outlined in this paragraph and shall have no claim against the PORT on account of actions taken under such procedure.

PROFESSIONAL SERVICES AGREEMENT NO. [CONTRACTNO]

TITLE: [TITLE]

Consultant: [VENDOR], [VENDORADD]

CONTRACT OWNER: [PM] **PROJECT NO./G/L NO.:** [PROJECTNO]/[G/L]

THIS AGREEMENT is made and entered into by and between the Port of Tacoma (hereinafter referred to as the **PORT** and [VENDOR] (hereinafter referred to as the **Consultant**) for the furnishing of [DESCRIPTION] (hereinafter referred to as the **Project**).

The PORT and Consultant mutually agree as follows:

SCOPE OF WORK

[SOW]

DELIVERABLES

[DELIVERABLES]

COMPENSATION

$[AMOUNT]…

TERM

The term of the Agreement shall be from the date of execution through…

AGREED

This agreement is expressly conditioned upon the Terms and Conditions attached …

Port of Tacoma		**[VENDOR]**	
By		By	
Jerry Clardy	Date	[VENDORSIGN]	Date
Sr. Contract Administrator		[VENDORTITLE]	

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. a. Port Data means any data, records, or information provided by or pertaining to Port of Tacoma and Northwest Seaport Alliance, collectively referred to as the Port Entities, including but not limited to operational, financial, and personal data.

b. 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 Record insurance Retention Schedule (**CORE**) (Current Version at time of execution). 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.

c. 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 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 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.

c. 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.

d. 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.

e. 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.

f. 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.

g. Rates and Markup: are defined in the attached Rate Sheet and made a part of this contract.

h. Overtime: The Port will allow overtime rates for preapproved labor categories, as required by federal law, at 1.5 times the rate when approved in advance by the Project Manager and when required by the nature of the Services. The Consultant shall submit a list of labor classifications to which overtime rates are applicable to by law.

i. Local Travel Compensation for vehicle usage will be paid at the current Internal Revenue Service allowable mileage reimbursement rate. Out of state mileage will not be paid. Consultants who are located within 50 miles of the Project site will not be reimbursed for meals, lodging or mileage.

j. Other Travel:

   i. The Port will reimburse the Consultant for all allowable travel expenses (including expenses for travel by car, air, water and rail, accommodation and meals) incurred in order to provide the Services to the Port in accordance with the following guidelines:

   ii. Lodging and meal reimbursement is in accordance with the following Per Diem rates established by the IRS at http://www.ofm.wa.gov/resources/travel.asp

   iii. Amounts reimbursed will be computed at the rate for physical location to which travel is authorized by the Project

Manager. Lodging, travel and local mileage must be approved in writing by the Project Manager prior to performing travel. Request for travel should include a breakout of costs associated with the requested travel.

iv. Airfare will be reimbursed at the lowest available commercial coach rate. Airfare will be booked at least 15 days in advance of travel. The Port will reimburse for up to a mid-size vehicle with standard equipment (this does not include GPS, video screens, etc). The Port will also reimburse for gasoline expense associated with rental vehicle with the exception of gasoline provided/billed by the rental car company. The Port will not reimburse the Consultant for mileage at the IRS rate on a rented vehicle. Receipts are required for all reimbursed expenses with the exception of meals. Reimbursement (other than meals) will be for actual costs incurred subject to the Per Diem rates established by the IRS at http://www.ofm.wa.gov/resources/travel.asp for the location to which travel has been authorized.

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 of Tacoma 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, 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 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 of Tacoma 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 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 of Tacoma 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.

g. Mailing Address:

h. Department of Labor and Industries

i. Prevailing Wage Office

j. PO Box 44540, Olympia, WA 98504

k. Telephone: (360) 902-5335

l. Facsimile: (360) 902-5300

m. 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.

n. 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.

o. 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.

p. 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.

q. 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.

r. 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. <u>On-Call Definitions Supplementary Conditions (As Applicable)</u>

a. <u>Task Order</u>: 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. <u>Contract Owner</u>: PORT staff member responsible for managing the On-Call Contract and executing all Task Orders.

c. <u>Project Manager</u>: PORT staff member responsible for managing a specific Task Order.

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

e. <u>Task Order Proposals</u>:

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. <u>Task Order Execution:</u>

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

g. <u>Task Order Revision:</u>

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. <u>Payment Schedule:</u>

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.

33. Order of Precedence

For the avoidance of doubt, in the event there are Exhibits to this Agreement, the Terms & Conditions of this Agreement shall supersede and control over the Exhibits.