



**PORT OF TACOMA**  
**REQUEST FOR PROPOSALS**  
**No. 070878**

**Conservation Easement Holder for Upper Clear  
Creek Mitigation Bank**

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

RFP INFORMATION	
Contact:	Juli Tuson, Procurement
Email Addresses:	<a href="mailto:procurement@portoftacoma.com">procurement@portoftacoma.com</a>
Submittal Date	<b>MARCH 21, 2018 @ 2:00 PM (PST)</b>

PLEASE SUBMIT ALL CORRESPONDENCE AND PROPOSALS  
VIA E-MAIL DIRECTLY TO THE PROCUREMENT CONTACT LISTED ABOVE  
AND INCLUDE 'CONSERVATION EASEMENT HOLDER FOR UPPER CLEAR  
CREEK MITIGATION BANK' IN THE SUBJECT LINE

**PORT OF TACOMA**  
**Request for Proposals (RFP) #070878**  
**CONSERVATION EASEMENT HOLDER FOR UPPER CLEAR CREEK**  
**MITIGATION BANK**

The Port is requesting proposals from qualified, non-profit nature preservation/conservancy entities or Government agencies to be a third party holder of a conservation easement for the Port of Tacoma's (Port) Upper Clear Creek (UCC) Mitigation Bank Site. To be qualified, proposers must meet the qualifications outlined in RCW 64.04.130 and RCW 84.34.230.

**A. BACKGROUND**

The Port of Tacoma is a major center for container cargo, bulk, break-bulk, autos and heavy-lift cargo. Created by Pierce County citizens in 1918, the Port of Tacoma has become one of the largest container ports in North America and one of the top 50 in the world. The Port of Tacoma manages a diverse set of business operations relating to maritime trade. To learn more about the Port of Tacoma, visit [www.portoftacoma.com](http://www.portoftacoma.com).

The Port of Tacoma owns approximately 2,200 acres of valuable industrial uplands in Tacoma, WA. The Port has created several habitat sites to mitigate for unavoidable impacts to the environment due to Port development and clean-up actions. The UCC Mitigation Bank Site provides mitigation credit prior to development impacts. The United States Army Corps of Engineers (USACE), Washington State Department of Ecology (Ecology), and several other state and federal agencies have developed an interagency review team (IRT) to establish mitigation bank sites. One of the requirements of establishing a mitigation bank site is that the site must be protected in perpetuity. Establishing a conservation easement on the UCC Mitigation Bank Site will provide perpetual protection.

**B. CONTRACTING DESCRIPTION**

The Port anticipates awarding one contract to the selected organization to act as the third party Conservation Easement holder (Grantee) for the Port's UCC Mitigation Bank Site. The Grantee will remain the third party holder of the conservation easement in perpetuity; the contract will be reviewed every ten (10) years. The Port and IRT co-chairs reserve the right to transfer or reassign the Conservation Easement.

The Port's Standard Terms and Conditions are included as Attachment C to this RFP. By submitting a Proposal, 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.

Proposals 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.

### **C. SCOPE OF SERVICES:**

Through this RFP the Port aims to select a qualified non-profit nature preservation/conservancy or Government agency to assist in the development, establishment, and enforcement of a conservation easement for the Port's UCC Mitigation Bank Site.

Proposing organizations are expected to provide the following services:

#### **1. Third Party Holder of Conservation Easement**

Assist with the development and establishment of a conservation easement in accordance with the IRT. The conservation easement will protect the Port-owned/managed wetland mitigation bank site in perpetuity.

Tasks may include, but not be limited to:

- Communicate with the Port Environmental Department on all stages of the process;
- Initial review of title;
- Confirm the baseline documentation report (as-built);
- Draft the conservation easement deed;
- Conduct the final legal review of title documentation and the conservation easement deed prior to closing the recording of the easement deed;
- Obtain and purchase title insurance for the conservation easement deed;
- Annual monitoring and long-term defense of the conservation easement in accordance with the terms of the conservation easement.

#### **2. Enforcement of Conservation Easement**

It will be the responsibility of both the Port and the successful bidding organization to ensure ongoing stewardship and other activities are consistent with the conservation easement. In the event any party to the conservation easement determines that another party is in violation of the terms and conditions of the conservation easement, corrective action or enforcement may be required.

Tasks include, but may not be limited to:

- Annual monitoring to ensure the terms and conditions of the conservation easement are being adhered to;
- Enforce the terms and conditions of the conservation easement, as specified in the legal document(s) if necessary;
  - Communication and coordination with the Port regarding issues that may be inconsistent with the terms of the conservation easement.

### 3. Port Coordination and Responsibilities

Port coordination will include any agency or governmental body with management responsibilities, sensitive resource responsibilities, or permit authority over the UCC Mitigation Bank Site. The Port will handle all negotiations with the IRT and other agencies regarding mitigation bank credit release schedule, performance standards, and other site-specific requirements.

The Port will be responsible for monitoring performance standards established for the mitigation bank, as well as any stewardship activities to preserve, protect, or enhance the ecological function and health of the UCC Mitigation Bank Site. This includes constructing, installing, planting, maintaining, and engaging in other activities to maintain, further restore, or enhance the site's conservation values.

### **C. DELIVERABLES:**

Deliverables may include:

- A hard copy and digital copy of the baseline documentation report;
- A signed hard copy and digital copy of the final conservation easement and copies of all other legal documents pertaining to the conservation easement; and
- Annual monitoring reports.

### **D. RFP ELEMENTS & EVALUATION CRITERIA:**

Proposals should present information in a straightforward and concise manner, while ensuring complete and detailed descriptions of the organization's abilities to meet the requirement of this RFP. Emphasis will be on completeness of content. The written proposals should be prepared in the sequential order as outlined below.

Proposals are limited to 8 numbered pages (8 ½ by 11 inch) excluding the cover letter and all appendices. 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 will not be reviewed.

The cover letter shall include the RFP title and number as well as the name, title, email address, phone number and address of the proposing team's main contact and include the following information:

- Describe any claim submitted by any client against the firm within the past two years related to the 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 5% 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.

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

#### **INITIAL EVALUATION PHASE**

1. Qualifications & Experience..... 40 PTS

- Describe the qualification and experience of the organization submitting the proposal, including:
  - Length of time in business; length of time offering services similar to those proposed.
  - Business history including patterns of growth, mergers or acquisitions; office locations.
  - Knowledge and experience in conservation easement third-party holding, and an explanation of how the organization is qualified to hold the conservation easement.
  - Number and experience of key personnel proposed to be assigned to this work.

2. Work Approach.....35 PTS

- Describe the organization's proposed project management approach. Include approaches to the scope of work, use of new technology and/or efficiencies, and innovations.
- Assumptions and Risks: Define the assumptions made regarding accomplishing the Scope of Services. Define the factors the organization believes are risks to the successful completion of this project and proposed mitigation strategies.
- Coordination & Communication: Provide a plan for communications and coordination between the organization and the Port.
- Include a summary of innovative ideas and suggestions for enhancing the Scope of Services.

3. Compensation.....25 PTS

Present detailed information on the firm's proposed recurring and non-recurring costs for services proposed.

**Compensation information MUST be provided separately from the proposal, in an individual PDF document.**

All rates and costs/fees quoted shall be:

- **Fully burdened, including, but not limited to, administrative overhead and all direct/indirect expenses.**
- Quoted in US Dollars,
- Full cost inclusive of sales tax and other government fees, taxes and charges, and
- Valid throughout the contract review period (10 years) unless otherwise amended and agreed to by both parties in writing.

NOTE: THE PORT OF TACOMA RESERVES THE RIGHT TO AWARD CONTRACTS FROM THE INITIAL EVALUATION PHASE TO THOSE TOP RANKED FIRMS. IF THIS RIGHT IS NOT EXERCISED, THE PORT MAY REQUEST REFERENCES FROM AND INTERVIEW THE TOP RANKED FIRMS. THE REFERENCES AND INTERVIEWS WILL BE SCORED AS INDICATED BELOW IN THE FINAL EVALUATION PHASE. THE AWARD WILL THEN BE BASED ON THE FINAL, ACCUMLATIVE SCORE.

FINAL EVALUATION PHASE (if applicable)

4. References ..... 20 PTS

Ensure completion of a **minimum of 3 maximum of 5 references** submitted using Reference Form provided at time of request. All references must be received by the Port by the requested date. The Port will evaluate the reference checks to assess the proposed team's overall performance and success of previous, similar work. Reference checks will also be utilized to validate information contained in the proposal. The Port may contact submitted reference sites directly to accomplish this.

5. Interviews ..... 100 PTS

Interviews may be conducted with the top-ranked proposers. Failure to participate in the interview process will result in the proposer's disqualification from further consideration. Interviews will be held at the Port of Tacoma, Tacoma, WA. Travel costs will not be reimbursed for the interview.

**ATTACHMENT A – INSTRUCTIONS FOR PROPOSING**

**ATTACHMENT B – SAMPLE PERSONAL SERVICE AGREEMENT**

**ATTACHMENT C - PORT'S STANDARD TERMS AND CONDITIONS**

**ATTACHMENT D – RATE SHEET**

## **PROCUREMENT PROCESS**

### **SOLICITATION TIMELINE:**

Issuance of RFP	MARCH 5, 2018
Last Day To Submit Questions	MARCH 13, 2018
<b>Proposal packets due</b>	<b>MARCH 21, 2018 @ 2:00 PM (PST)</b>
Short List Consultants*	APRIL 4, 2018
Interviews (if required)*	WEEK OF APRIL 16, 2018
Final Selection*	APRIL 20, 2018
Execute Contract*	MAY 1, 2018

\*Dates are tentative.

All status updates on the above solicitation timeline will be announced on the Port's [website](#) for this solicitation.

### **VENDOR OBLIGATION**

Port of Tacoma Requests for Bids, Requests for Proposals and Requests for Qualifications can be accessed on the Port's website, [www.portoftacoma.com](http://www.portoftacoma.com) under 'Contracts'; 'Procurements'.

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 Port, other than the Procurement Representative listed on the RFP may be disqualified from consideration.

Written questions about the meaning or intent of the Solicitation Documents shall only be submitted to the Procurement Department, [procurement@portoftacoma.com](mailto:procurement@portoftacoma.com) (**Solicitation Name** in the subject line).

Proposers who may have questions about provisions of these documents are to email their questions by the date listed above. The Port will respond to all written questions submitted by this deadline.

## **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.

## **PRE-PROPOSAL CONFERENCE**

The Port will not conduct a pre-proposal conference for this procurement. To obtain answers to any questions or for further clarifications, submit all questions as noted above.

## **SUBMITTAL PROCESS**

Proposals must be received via email on or before the date and time outlined on the front page of this RFP. Send your electronic submittal to:

[procurement@portoftacoma.com](mailto:procurement@portoftacoma.com).  
Name of Firm, RFP Title (Subject Line)

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

**\*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 days following the Proposal submittal deadline and for any extension of time granted by the submitting firm.

## **EVALUATION AND AWARD PROCESS**

An evaluation team 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 proposals 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 highest ranked firm's accumulative score.

The Port intends to select the Proposer who represents the best value to the Port and award based on the evaluated scores.

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 RFP, 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 RFP and negotiation process shall be borne by the proposing firms.

### **SMALL BUSINESS AND DISADVANTAGED BUSINESS OPPORTUNITIES**

The Port of Tacoma encourages 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 Proposals. 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**

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**PERSONAL SERVICES AGREEMENT NO. 070878**

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**PROJECT:** Conservation Easement Holder for Upper Clear Creek Mitigation Site**CONSULTANT:** Company, Address, City, State, Zip**PROJECT MANAGER:** PM**PROJECT NO. / GL ACCOUNT NO.** #####

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 **xxTITLExx** Personal Services (*hereinafter referred to as the "Project"*).

The Port and Consultant mutually agree as follows:

**SCOPE OF WORK**

Assist in the development, establishment, and enforcement of a conservation easement for the Port's UCC Mitigation Bank Site.

Proposing organizations are expected to provide the following services:

**1. Third Party Holder of Conservation Easement**

Assist with the development and establishment a conservation easement in accordance with the IRT. The conservation easement will protect the Port-owned/managed wetland mitigation bank site in perpetuity.

Tasks may include, but not be limited to:

- Communicate with the Port Environmental Department on all stages of the process;
- Initial review of title;
- Confirm the baseline documentation report (as-built);
- Draft the conservation easement deed;
- Conduct the final legal review of title documentation and the conservation easement deed prior to closing the recording of the easement deed;
- Obtain and purchase title insurance for the conservation easement deed;
- Annual monitoring and long-term defense of the conservation easement in accordance with the terms of the conservation easement.

**2. Enforcement of Conservation Easement**

It will be the responsibility of both the Port and the successful bidding organization to ensure ongoing stewardship and other activities are consistent with the conservation easement. In the event any party to the conservation easement determines that another party is in violation of the terms and conditions of the conservation easement, corrective action or enforcement may be required.

Tasks include, but may not be limited to:

- Annual monitoring to ensure the terms and conditions of the conservation easement are being adhered to;
- Enforce the terms and conditions of the conservation easement, as specified in the legal document(s) if necessary;
  - Communication and coordination with the Port regarding issues that may be inconsistent with the terms of the conservation easement.

### 3. Port Coordination and Responsibilities

Port coordination will include any agency or governmental body with management responsibilities, sensitive resource responsibilities, or permit authority over the UCC Mitigation Bank Site. The Port will handle all negotiations with the IRT and other agencies regarding mitigation bank credit release schedule, performance standards, and other site-specific requirements.

The Port will be responsible for monitoring performance standards established for the mitigation bank, as well as any stewardship activities to preserve, protect, or enhance the ecological function and health of the UCC Mitigation Bank Site. This includes constructing, installing, planting, maintaining, and engaging in other activities to maintain, further restore, or enhance the site's conservation values.

## **C. DELIVERABLES:**

Deliverables may include:

- A hard copy and digital copy of the baseline documentation report;
- A signed hard copy and digital copy of the final conservation easement and copies of all other legal documents pertaining to the conservation easement; and
- Annual monitoring reports.

## **COMPENSATION**

This will be accomplished on fully burdened, fixed 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.

All invoices shall be mailed "Attention: Contracts Department". Invoices may be emailed to [cpinvoices@portoftacoma.com](mailto:cpinvoices@portoftacoma.com). The email must include the required supporting documentation. Incomplete or improperly prepared invoices will be returned for correction without processing or payment.

Consultant agrees to submit timely invoices as the work progresses. Invoices that are submitted for payment 90 days or more after the work was completed are subject to non-payment.

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

This agreement is expressly conditioned upon the Terms and Conditions and Guidelines for Consultant Fees and Reimbursable Items attached and by reference incorporated herein. Consultant acknowledges reading this Agreement, understands it and agrees to be bound by its Terms and Conditions.

**AGREED**

**PORT OF TACOMA**

**CONSULTANT (LEGAL NAME)**

By \_\_\_\_\_  
Mark Little  
Director, Contracts & Purchasing

\_\_\_\_\_  
Date

By \_\_\_\_\_  
\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

## ATTACHMENT C

### Port of Tacoma Terms And Conditions Personal Services Agreement

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

#### 1. Key Personnel

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

#### 2. Relationship of the Parties

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

#### 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

Consultant agrees to comply with all local, state, tribal and federal laws and regulations applicable to the project, including building codes and permitting regulations existing at the time this Agreement was executed and those regarding employee safety, the work

place environment, and employment eligibility verifications as required by the Immigration and Naturalization Service. Consultant shall obtain all professional licenses and permits required to complete the scope of work as defined.

#### 5. Records and other Tangibles

The Port of Tacoma 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 years after the term of this Agreement, Consultant agrees to maintain accurate records of all work done in providing services specified by the Agreement and to deliver such records to the Port upon termination of the Agreement or otherwise as requested by the Port.

#### 6. Ownership of Work

The services to be performed by Consultant shall be deemed instruments of service for purposes of the copyright laws of the United States. The Port has ownership rights to the plans, specifications, and other products prepared by the Consultant. Consultant shall not be responsible for changes made in the models, programs, reports or other products by anyone other than the Consultant. Consultant shall have free right to retain, copy and use any tangible materials or information produced but only for its own internal purposes. Use of models, programs, reports or other products prepared under this Agreement for promotional purposes shall require the Port's prior

consent. Notwithstanding anything to the contrary in this Agreement, Consultant and its personnel are free to use and employ their general skills, know how, and expertise, and use, disclose, and employ any generalized ideas, concepts, know-how, methods, techniques, or skills gained or learned during the course of this Agreement so long as they acquire and apply such information without any unauthorized use or disclosure of confidential or proprietary information from the Port.

## **7. Disclosure**

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

## **8. Compensation**

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

## **9. Payment Schedule**

Consultant shall submit detailed numbered invoices showing description of work items being invoiced, work order number, title of project, total authorized, total current invoice, balance of authorization, individual's names and titles, hours, hourly rate and all authorized expenses itemized, with

backup, in accordance with the Port's "Guidelines for Consultant Fees and Reimbursable Items", by the 10<sup>th</sup> of the month to be paid by the end of the current month, unless other terms are agreed to by the parties.

## **10. Costs and Disbursements**

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

## **11. 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 and automobile liability insurance as shall protect Consultant and any subconsultants performing work under this Agreement from claims for damages from bodily injury, including death, resulting there from as well as from claims for property damage which may arise under this Agreement, whether arising from operations conducted by the Consultant, any subconsultants, or anyone directly or indirectly employed by either of them.
- b) With respect to claims other than professional liability claims, Consultant and its subconsultants agree to defend, indemnify and hold harmless the Port of Tacoma, its appointed and elective officers and its employees from and against any and all suits, claims, actions, losses, costs, penalties and damages of whatever kind and nature, including attorney fees and costs by reason of any and all claims and demands on it, its officers and employees, arising from the negligent acts, errors or omissions by the Consultant in the

performance of the Consultant's professional services.

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

## **12. Standard of Care**

Consultant shall perform its work to conform to generally accepted professional standards. Consultant shall, without additional compensation, correct or revise any errors or omissions in such work.

## **13. Time**

Time is of the essence in the performance by the Consultant of the services required by this Agreement.

## **14. Assignability**

Consultant shall not assign any interest in this Agreement and shall not transfer any interest in the Agreement to any party without prior written consent of the Port.

## **15. Term of this Agreement**

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

## **16. Disputes**

If a dispute arises relating to this Agreement and cannot be settled through direct discussions, the parties agree to endeavor to settle the dispute through a mediation firm acceptable to both parties, the cost of which shall be divided equally. The Port reserves the right to join any dispute under this Agreement with any other claim in litigation or other dispute resolution forum, and the Consultant agrees to such joinder, so that all disputes related to the project may be consolidated and resolved in one forum. Venue for any litigation shall be the Pierce County Superior Court of the state of Washington and the prevailing party shall be entitled to recover its costs and reasonable attorney's fees.

## **17. Extent of Agreement**

This Agreement represents the entire and integrated understanding between the Port and Consultant and may be amended only by written instrument signed by both the Port and Consultant.

## Attachment “D”

### HOURLY RATES

**Consultant**  
**Conservation Easement Holder for Upper Clear Creek Mitigation Bank**

**PSA No. 070878/ Project No./GL Account No. XXXXXX**

<b><u>Personnel</u></b>	<b><u>Hourly Rates</u></b>
Sr. Consultant 2	\$
Sr. Consultant 1	\$
Consultant 2	\$
Consultant 1	\$
Project 2	\$

Additional personnel are not authorized without prior written approval from the Port's Project Manager.