



PORT OF ILWACO

PERSONAL/PROFESSIONAL SERVICES AGREEMENT

Contract No. _____

This Agreement is by and between the **Port of Ilwaco (Port)**, a Washington Port District and _____ (**Consultant**). Whereas Port has need of the services which Consultant has agreed to provide; NOW THEREFORE, in consideration of the mutual covenants, obligations, and compensation to be paid by the Port to Consultant, it is agreed that:

1. **REPRESENTATIVES** – The Port's Project Manager and Consultant's Representative for this Agreement are as specified. Guidance or direction shall be valid only when communicated through these representatives. Alternate representatives may be appointed by either party with written notice to the other party.

Port Project Manager: _____

Consultant Representative: _____

2. **SCOPE OF WORK** - description/scope (or attach exhibit for specific details)

3. **EFFECTIVE DATES** - The length of this Agreement is from _____ to _____

4. **PAYMENT TERMS** - specify rate, contract agreement amount, reimbursable, etc.

5. **COMPENSATION** –

- a. 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. Consultant's expenses will be reimbursed at cost, with the exception of all third-party costs which will be reimbursed at cost plus the negotiated percentage markup.
- b. Payment shall be made through the Port's ordinary payment process and shall be considered timely if made within 30 days of receipt of the invoice. Invoices shall be sent directly to Port of Ilwaco, PO Box 307, Ilwaco, WA 98624.
- c. The Port may withhold payment to the Consultant for any work not completed to the Port's satisfaction, until such time as the Consultant modifies such work to the satisfaction of the Port.
- d. All payments shall be subject to adjustment for any amounts, upon audit or otherwise, determined to have been improperly invoiced.

6. **COSTS AND DISBURSEMENTS** – Except for any costs referenced in Section 4 above, Consultant shall pay all costs and disbursements required for the performance of its services under this Agreement.

7. **COMPLETE AGREEMENT** - This Agreement contains the entire understanding of the parties and supersedes all prior agreements, oral or written, and all other communication between the parties relating to the subject matter of this Agreement.

8. **INDEPENDENT CONSULTANT** - Consultant, in carrying out the services to be provided under this Agreement, is acting as an "independent consultant" and is not an employee of Port, and as such accepts full responsibility for taxes or other obligations associated with payment for services under this Agreement. As an independent consultant", Consultant will not receive any benefits normally accruing to Port employees unless required by applicable law. Furthermore, Consultant is free to contract with other parties, on other matters, for the duration of this Agreement.

9. **COMPLIANCE** - Consultant shall comply with all applicable federal, tribal, state and local laws, rules and regulations applicable to the services, including nondiscrimination and equal opportunity, regulations for licensing, certification and operation of facilities, programs and accreditation, and licensing of individuals, and any other standards or criteria as described in this Agreement to assure quality of services. The Consultant specifically agrees to pay any applicable business and occupation (B & O) taxes that may be due on account of this Agreement.

10. **INSURANCE** - The Consultant shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees. Consultant shall obtain insurance as follows: 1) Commercial General Liability insurance, 2) Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington and 3) Professional Liability insurance appropriate to the Consultant's profession.

Prior to the commencement of services Consultant shall submit to the Port certificates of insurance evidencing:

- i) Commercial General Liability coverage on occurrence form CG0001 or equivalent with limits of \$1,000,000 per occurrence and \$2,000,000 aggregate;
- ii) Automobile Liability covering owned, non-owned and hired vehicles of \$1,000,000 combined single limit per accident; and
- iii) Professional Liability not less than \$1,000,000 per claim and in the aggregate. Insurance shall have a retroactive date before the date of notice to proceed and coverage shall remain in effect for the term of this Agreement plus three years.

11. **INDEMNIFICATION** - Consultant shall save harmless, indemnify, and defend Port for any and all claims, damages, losses and expenses including but not limited to reasonable attorney's fees arising out of or resulting from Consultant's performance of or failure to perform the obligations of this Agreement to the extent same are caused by the negligence or misconduct of Consultant or her employees or agents. Consultant specifically assumes potential liability for actions brought by Consultant's own employees against the Port 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 RECOGNIZES THAT THIS WAIVER WAS THE SUBJECT OF MUTUAL NEGOTIATION.

12. **NONDISCRIMINATION** - No person shall be subjected to discrimination in receipt of the benefits of any services or activities made possible by or resulting from this Agreement on the grounds of sex, race, color, creed, marital status, age or national origin. Any violation of this provision shall be considered a material violation of this Agreement and shall be grounds for cancellation, termination or suspension in whole or in part by Port.

13. **JUDICIAL RULINGS** - If any provision of this Agreement as applied to either party or to any circumstances shall be adjudged by a court to be void or unenforceable, the same shall in no way affect any other provision of this Agreement or the validity of enforceability of the Agreement.

14. **TERMINATION OF AGREEMENT** - This Agreement may be terminated under the following conditions:

- a. By written mutual agreement of both parties. Termination under this provision may be immediate.
- b. Upon fifteen (15) calendar days written notice by either Party to the other of intent to terminate.
- c. Immediately on breach of the contract.
- d. The Port may terminate this Agreement if the Consultant substantially fails to fulfill its obligations under this Agreement through no fault of the Port. Any payment due for services satisfactorily performed prior to termination may be offset by the Port's anticipated additional costs incurred because of the Consultant's default. No payment shall be made for anticipated profit on unperformed work.
- e. 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.
- f. Any notice of termination or other communication having a material effect on this Agreement shall be served by U.S. Mail on the signatories listed.
- g. Upon receipt of a termination notice the Consultant shall promptly deliver to the Port all data and deliverables developed while performing this Agreement, whether completed or in progress.

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 mediator 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 Pacific 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. **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. If sub-consultants are authorized the Consultant shall ensure that these Terms and Conditions are incorporated into its agreement with sub-consultants.

18. **STANDARD OF SERVICES AND WARRANTY** -

- a. Consultant shall perform its work 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 work.
- 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 services furnished under this Agreement.
- c. Consultant warrants that the recommendations, guidance and performance of any person assigned under this Agreement shall be in accordance with professional standards and the requirements of this Agreement.

19. **PORT PRIORITIES** - Consultant shall comply promptly with any requests by Port relating to the emphasis or relative emphasis to be placed on various aspects of the work or to such other matters pertaining to said work.

20. **OWNERSHIP AND USE OF DOCUMENTS** - 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 work products prepared by the Consultant in performing these services. Consultant shall not be responsible for changes made in the work products by anyone other than the Consultant. Consultant shall have free right to retain, copy and use any tangible materials or information produced only for its own internal purposes. Use of documents or other materials prepared under this Agreement for promotional purposes shall require the Port's prior consent.
21. **KEY PERSONNEL** – The Consultant and/or its sub-consultants' 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.
22. **CONFLICTS OF INTEREST** – No officer, employee or agent of the Port who exercises any function or responsibilities in connection with the planning and carrying out of the program to which this Agreement pertains, nor any member of the immediate family of any such officer, employee or agent shall have any personal financial interest, direct or indirect, in this Agreement, either in fact or in appearance. Consultant further covenants that in performance of this Agreement, no person having any such interest shall be employed.
23. **RECORDS AND TANGIBLES** – Until the expiration of six years after the term of this Agreement, the Port or its representatives has the right to audit this Agreement and Consultant shall maintain accurate records related to providing services under this Agreement. Consultant shall deliver such records to the Port upon termination of the Agreement or otherwise as requested by the Port. This paragraph shall survive the termination of this Agreement.
24. **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 or court order.
25. **DELIVERABLES** – All tangible materials produced as a result of this Agreement shall be prepared as specified by the Port's Project Manager. The Port may offset from the Consultant's fee expenses incurred by the Port in correcting deliverables not prepared in accordance with this paragraph.
26. **COMPETITIVE SPECIFICATION** – If the scope of work includes development of specifications:
- a. Consultant shall provide for the maximum use of materials, equipment, construction methods and products that are readily available through competitive procurement, or through standard or proven production techniques.
 - b. Consultant shall not produce a design or specification which would be restrictive or written in a manner as to contain proprietary requirements other than those based on performance, unless such requirement are necessary to demonstrate a specific outcome or to provide for necessary interchangeability of parts and equipment. Consultant shall justify in writing the use of any sole source. Where brand names are identified, they shall be followed by the salient product performance characteristics and the words "or approved equal" so that comparable quality or utility may be determined.
27. **TIME** - Time is of the essence in the performance by the Consultant of the services required by this Agreement. The Consultant shall complete its services within the milestones set forth in the project schedule. The Consultant shall also address issues which may result in completion beyond the established schedule or budget.
28. **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.

PORT OF ILWACO
PO BOX 307
ILWACO, WA 98624

<CONSULTANT NAME>
<CONSULTANT ADDRESS>
<CITY, STATE, ZIP>

Signature Date

Signature Date

Name/Title

Name/Title