



PURCHASED SERVICES AGREEMENT NO. 000000

Project: _____

Project Manager: _____ Project No. _____

Contractor: _____

Contractor Representative: _____

THIS AGREEMENT is made and entered into by and between the Port of Olympia (*hereinafter referred to as the "Port"*) and _____ (*hereinafter referred to as the "Contractor"*) for the furnishing of _____ services for the _____ (*hereinafter referred to as the "Project"*).

The Port and Contractor mutually agree as follows:

A. Description of Work

1. Tasks/Phases (Include if appropriate or detail in Attachment)
2. Deliverables (include if appropriate or detail in Attachment)

B. Effective Dates of the Agreement

The length of this Agreement is from **monthdayyear** to **monthdayyear**.

C. Compensation

1. As full compensation for the performance of its obligations of this Agreement and the services to be provided, the Port shall pay Contractor the maximum amount as specified in this Agreement. Such payment shall be the total compensation for all work performed under this Agreement, including but not limited to all labor, materials and supplies, incidental expenses, subcontractor's fees, reimbursable expenses, and equipment expenses.
2. This will be accomplished on a (time and materials basis at the following hourly rates) (or lump sum basis) and will not exceed \$ _____, without prior written approval from the Port.
3. Rate Schedule

<u>Personnel</u>	<u>Hourly Rate</u>
(TITLE)	\$
	\$
	\$
	\$
	\$
	\$
Third Party Costs	Actual + 8%

Field supplies consumed in the work	Actual + 8%
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4. To be eligible for payment, Contractor shall submit detailed numbered invoices showing description of work items being invoices, work order number, title of project, total authorized, total current invoice, and balance of authorization. Invoices shall be sent directly to the attention of Accounts Payable, at 1022 Marine Drive NE, Olympia, WA 98501. Payment shall be made through the Port's ordinary payment process and shall be considered timely if made within 30 days of receipt of a properly completed invoice.
5. The Port may withhold payment to the Contractor for any work not completed to the Port's satisfaction, until such time as the Contractor modifies such work to the satisfaction of the Port.
6. All payments shall be subject to adjustment for any amounts, upon audit or otherwise, determined to have been improperly invoiced.
7. In the event Contractor incurs cost in excess of the sum stated above, Contractor shall pay such excess from its own funds, and the Port shall not be required to pay any part of such excess, and Contractor shall have no claim against the Port on account thereof.
- 8. Prevailing Wages. Services are subject to prevailing wage requirements** and the Contractor shall follow the requirements set forth by the Department of Labor and Industries of the State of Washington.
9. The cost of filling Prevailing Wage forms with the Department of Labor and Industries shall be at no cost to the Port.
10. With the first invoice of the calendar year, the Contractor shall submit a Statement of Intent to pay Prevailing Wages. No payment will be made on this first invoice until the Contractor and each and every sub-contractor has submitted a *Statement of Intent to pay Prevailing Wages* that has been approved by the Department of Labor and Industries. With the final invoice of the calendar year, the Contractor shall submit an *Affidavit of Wages Paid* that has been approved by the Department of Labor and Industries.

D. Representatives

The Port's Project Manager and Contractor's Representative for this Agreement are as specified. Alternate representatives may be appointed by either party with written notice to the other party.

E. Contract Administration, Records, and Right to Audit

All communications with the Port will be through the Port's Project Manager. The Project Manager shall provide Contractor with all information and documents pertinent to the services Contractor is to perform.

Until the expiration of six years after the term of this Agreement, Contractor 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.

Upon the Port's request, Contractor shall make available to the Port all accounts, records, and documents related to the Scope of Work for the Port's inspection, auditing, or evaluation during normal business hours as reasonably needed by the Port to assess performance, compliance, and/or quality assurance under this Agreement.

F. Relationship of Parties

Contractor, is and shall be at all times during the term of this Contract, an independent Contractor, and not an employee of the Port. Nothing contained herein shall be deemed to create a relationship of employer and employee or of principal and agent.

This Agreement shall be for the sole benefit of the parties hereto, and nothing contained herein shall create a contractual relationship with, or create a cause of action in favor of, a third party against either party hereto.

G. Conflict 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. Contractor further covenants that in performance of this Agreement, no person having any such interest shall be employed.

H. Compliance with Laws

Contractor shall, during the term of this Agreement, comply with all local, state, tribal and federal laws and regulations applicable to the project, including building codes, environmental protections, and permitting regulations existing at the time this Agreement was executed and those regarding employee safety, health, the work place environment, and employment eligibility verifications as required by the Immigration and Naturalization Service.

Contractor certifies that it has, or shall obtain prior to starting work under this Agreement, all licenses, registrations, permits and/or any other authorization required under federal, state, local or tribal law to perform the work as defined in this Agreement. Contractor agrees to indemnify and hold the Port harmless from and against any claims or demands made or brought against the Port and for costs (including, but not limited to attorneys' fees and costs), the Port incurs due to the Contractor's failure to: (1) comply with all applicable laws and regulations, and/or (2) have or maintain the required licenses, registrations, permits and/or other authorizations, as required by this Agreement.

In the event Contractor fails to pay any taxes, assessments, penalties, or fees imposed by any governmental body, including a court of law, then Contractor authorizes the Port to deduct and withhold or pay over to the appropriate governmental body those unpaid amounts upon demand made to the Port by the governmental body. Any such payments shall be deducted from Contractor's total compensation.

The Port shall furnish Contractor with the information required by the Hazard Communication standard for materials preexisting on the project site. Contractor will ensure that this information is made available to the Contractor's personnel and subcontractors, and incorporated into the contract documents as appropriate.

I. Ownership of Work

The services to be performed by Contractor shall be deemed instruments of service for purposes of the copyright laws of the United States. The Port has ownership rights to the products prepared by the Contractor. Contractor shall not be responsible for changes made in the products by anyone other than the Contractor. Contractor shall have free right to retain, copy and use any tangible materials or information produced but 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.

J. Standard of Care

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

K. Disclosure

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

L. Indemnification

The Contractor shall defend, indemnify and hold the District, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or in connection with the performance of this Agreement, except for injuries and damages caused by the sole negligence of the District.

Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Contractor and the District, its officers, officials, employees, and volunteers, the Contractor's liability hereunder shall be only to the extent of the Contractor's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Contractor's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

M. Insurance

1. The Contractor 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 Contractor, their agents, representatives, employees or subcontractors.
2. No Limitation. Contractor's maintenance of insurance as required by the agreement shall not be construed to limit the liability of the Contractor to the coverage provided by

such insurance, or otherwise limit the District's recourse to any remedy available at law or in equity.

3. Minimum Scope of Insurance

Contractor shall obtain insurance of the types described below:

- a. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form, providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.
- b. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 or the equivalent and shall cover liability arising from premises, operations, independent contractors, products-completed operations, stop gap liability, personal injury and advertising injury, and liability assumed under an insured contract. The District shall be named as an insured under the Contractor's Commercial General Liability insurance policy with respect to the work performed for the District.
- c. Workers' Compensation coverage as required by the Industrial Insurance laws of the state of Washington.

4. Minimum Amounts of Insurance

Contractor shall maintain the following insurance limits:

- a. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
- b. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate and a \$2,000,000 products-completed operations aggregate limit.

5. Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability and Commercial General Liability insurance:

- a. The Contractor's insurance coverage shall be primary insurance as respect the District. Any Insurance, self-insurance, or insurance pool coverage maintained by the District shall be excess of the Contractor's insurance and shall not contribute with it.
- b. The Contractor's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the District.

6. Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

7. Verification of Coverage

Contractor shall furnish the District with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Contractor before commencement of the work.

8. Subcontractors

Contractor shall ensure that each subcontractor of every tier obtain at a minimum the same insurance coverage and limits as stated herein for the Contractor. Upon request from the District, the Contractor shall provide evidence of such insurance.

N. Competitive Specification

If the scope of work includes development of specifications:

Contractor 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.

Contractor 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 requirements are necessary to demonstrate a specific outcome or to provide for necessary interchangeability of parts and equipment. Contractor 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.

O. Time

Time is of the essence in the performance by the Contractor of the services required by this Agreement. The Contractor shall complete its services within the milestones set forth in the project schedule.

The Port may suspend this Agreement, at its sole discretion, upon one week's advance notice to Contractor. Such notice shall indicate the anticipated period of suspension. Any reimbursement for expenses incurred due to the suspension shall be limited to Contractor's reasonable expenses, and shall be subject to verification. Contractor shall resume performance of services under this Agreement without delay when the suspension period ends.

P. Termination

The effective dates of this Agreement are as specified. Anything to the contrary herein notwithstanding, Port may terminate this agreement upon immediate verbal notice, followed by written notice within 2 business days.

Q. Assignability

Contractor 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.

R. 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 Contractor 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 Thurston County Superior Court of the state of Washington and the prevailing party shall be entitled to recover its costs and reasonable attorney's fees.

S. Non-Discrimination

During the term of this Agreement, the Contractor shall not create barriers to open and fair opportunities to participate in Port contracts or to obtain or compete for contracts and subcontracts as sources of supplies, equipment, construction and services. During the performance of this Agreement, neither the Contractor nor any party subcontracting under the authority of this Agreement shall discriminate nor tolerate harassment on the basis of race, color, sex, religion, nationality, creed, marital status, sexual orientation, age, or the presence of any sensory, mental, or physical disability in the employment or application for employment or in the administration or delivery of services or any other benefits under this Agreement.

The selected Contractor shall comply fully with all applicable federal, state and local laws, ordinances, executive orders and regulations that prohibit such discrimination including RCW Chapter 49.60. The Contractor further agrees to comply with all applicable civil rights statutes and implementing regulations.

The Contractor shall cause the foregoing provision to be inserted in all subcontracts for any work covered by this Agreement so that such provisions shall be binding upon such third parties,

T. Notice.

Except for routine administrative communications, which may be delivered personally or transmitted by electronic mail or facsimile, all notices required hereunder shall be in writing and shall be deemed to have been duly given if delivered personally or mailed first-class mail, postage prepaid.

U. Miscellaneous Provisions

1. Governing Law and Venue. Washington law shall govern the interpretation of this Agreement. Thurston County shall be the venue of any mediation, arbitration or litigation arising out of this Agreement.
2. Waiver. A waiver of failure by either party to enforce any provision of this Agreement shall not be construed as a continuing waiver of such provision(s), nor shall the same constitute a waiver of any other provision of this Agreement.
3. Severability and Survival. If any term, condition or provision of this Agreement is declared void or unenforceable or limited in its application or effect, such event shall not affect any other provisions hereof and all other provisions shall remain fully enforceable. The provisions of this Agreement, which by their sense and context are reasonably intended to survive completion, expiration of cancellation of this Agreement, shall survive termination of this Agreement.

4. Entire Agreement. This Agreement represents the entire and integrated understanding between the Port and Contractor and may be amended only by written instrument signed by both the Port and Contractor. All previous or contemporaneous agreements, representations or promises and conditions relating to the subject matter of this Agreement are superseded hereby.

V. Transportation Worker Identifications Credentials (TWIC)

Transportation Worker Identification Credentials (TWIC): The Transportation Worker Identification Credential (TWIC™) program is a Transportation Security Administration and U.S. Coast Guard initiative. The TWIC™ program provides a tamper-resistant biometric credential (TWIC Card) to maritime workers requiring unescorted access to secure areas of port facilities, outer continental shelf facilities, and vessels regulated under the Maritime Transportation Security Act, or MTSA, and all U.S. Coast Guard credentialed merchant mariners.

W. TWIC Escorting

A Transportation Identification Credential (TWIC) is issued and controlled by TSA under 49 CFR §1572. It is an authorized credential for fulfilling the identification requirements for access control. Possession of a TWIC itself does not, on its own, guarantee access to any MTSA regulated facility, including the Port. The individual must also have a valid reason to access the terminal as determined by the Port of Olympia's Marine Terminal personnel (the "Marine Terminal").

It is the Port of Olympia's policy that any personnel who require regular access to the Marine Terminal should obtain a TWIC. This includes Port employees, tenant employees, contractor personnel, and longshoremen. Additionally, any other person seeking unescorted access to any terminal in the USCG's Sector Puget Sound must possess a valid TWIC to gain access. All non-TWIC card holders must be accompanied by an approved TWIC escort at all times while on the Marine Terminal facility.

There are two types of areas in a terminal: restricted and secure access areas. Restricted access areas are generally the marine docks, tank storage areas and offices. All other areas within the fenced property may be defined as secure access areas. In a restricted area, the ratio is one TWIC escort per every 5 non-TWIC holders. For a secure area, the ratio is one TWIC escort per every 10 non-TWIC holders. If the non-TWIC holders are transported in an enclosed vehicle (e.g. van or bus) escorting ratios do not apply as long as the visitors are not allowed to depart the vehicle.

The Escort must have a Port of Olympia TWIC escort endorsement to be an eligible escort. Escorts must agree to the security and safety regulations of our facility. Specifically, escorts must have knowledge of this escorting procedure and how to make emergency notification if the escorted individual(s) are engaged in activities other than those for which escorted access was granted.

Escorting may only be conducted in areas the badge holder has approved access. If other access is required, authorized personnel may escort only by pre-arrangement with the Marine Terminal office and upon completion of an escort permission form. The form establishes an understanding of the escort requirements and responsibilities and is an agreement to accept any liability imposed upon the Port of Olympia by the USCG or any

Federal entities for failure of the escort to fulfill those responsibilities. The form is available from the Marine Terminal office.

TWIC escorting privileges are granted at the sole discretion of the Marine Terminal for a period of time determined by the facility. The facility reserves the right to deny granting privileges or to suspend, revoke or deny renewal of escorting privileges previously granted.

Although the sponsoring agency providing a TWIC escort is responsible for the actions of both its visitor and the escort, ultimately the Marine Terminal is responsible for violations. Any escort who fails to perform satisfactorily may be required to leave the facility and may be disqualified from conducting escorts in the future. Furthermore, said person shall be liable for the payment of any fine levied by the United States Coast Guard (USCG). While on the facility all TWIC holders must be able to present a valid TWIC within ten (10) minutes to the USCG or the Marine Terminal personnel. Persons unable to produce a valid TWIC will be escorted off the facility and may be subject to criminal prosecution. The facility may, at its sole discretion, ban any person for any period of time for violation of Federal laws or facility rules and regulations. Those persons who violate access control procedures may be subject to arrest, prosecution and/or loss of facility privileges.

X. Authority to Enter Into This Agreement

The undersigned Contractor representative, by his/her signature below, represents and warrants that he/she is fully authorized to execute this legally binding Agreement for and on behalf of Contractor and further represents and warrants that he/she acknowledges reading this Agreement, understands it and agrees to be bound by its Terms and Conditions.

PORT OF OLYMPIA

(FIRM NAME)

915 Washington St NE
Olympia WA 98501

(address)

By

By

E. B. Galligan
Executive Director

Date

Date

Print Name

Title

WA State UBI #

Fed. EIN