



PERSONAL SERVICES CONTRACT

NO. XXXX-XXXX

CONTRACT NAME

This Contract is made by and between the Port of Olympia, a Washington municipal corporation (hereafter referred to as the "Port") and XXXX, UBI XXX XXX XXX, (hereafter referred to as the "Consultant"), and collectively sometimes referred to as "Parties" or individually as "Party".

The Port desires to retain the Consultant to provide XXXX, (the "Services") which requires specialized skills and other support capabilities which the Port is not able to provide.

The Consultant has been deemed to possess the required skills and the necessary capabilities, including technical and professional expertise, to perform the Services set forth in this Contract. The Parties agree that this Contract is consistent with applicable statutory and Port policy requirements.

Recitals

- I. The Washington State Legislature provides authority for Ports to enter into Personal Services Contracts under Chapter 53.19, of the Revised Code of Washington (RCW);
- II. The Washington State Legislature has empowered Port districts to delegate administrative powers and duties as they deem proper for the efficient and proper management of the Port's operations (RCW 53.12.270);
- III. The Port's Commission has delegated administrative powers and duties, including the ability to contract for Personal Services Contracts, to the Executive Director of the Port through Resolution 2019-06.
- IV. Personal Services are defined under RCW 53.19.010 as services provided by a consultant which involve technical expertise to accomplish a specific study, project, task, or other work. These activities and products are mostly intellectual in nature.

The Parties agree as follows:

1. Scope of Services/Additional Requirements.
 - 1.1. The Consultant shall perform such services and accomplish such tasks, including the furnishing of all materials and equipment necessary for full performance thereof (the "Services"), as detailed in Exhibit "A".
 - 1.2. All Services shall be provided according to the care and skill ordinarily used by members of the Consultant's profession practicing under the same or similar

circumstances at the same time and in the same locality as the Services being performed.

1.3. For any on-call contract, as identified in the title, work performed must be done through the issuance of a Task Order issued by the Port. Task Orders will have a defined Scope of Work accompanied by a not to exceed (NTE) amount for said Task Order. The compensation rates for work performed under any issued Task Order may not exceed the agreed upon rates incorporated into this Contract.

1.4. Additional Requirements include:

2. Term.

2.1. This Contract is effective upon execution by an Authorized Representative for the Consultant and the Executive Director of the Port. The Consultant shall begin and complete the provision of the Services, unless sooner terminated according to this Contract or Consultant has entered an on-call Contract as provided in paragraph 1.3 herein, as follows:

Commencement Date: XXXX

Completion Date: XXXX

2.2. In the event that the mutual execution date is after the commencement date listed above, the Parties hereby agree that the Commencement date shall be used as the starting date for this Contract.

3. Compensation and Billing.

3.1. The Port shall pay the Consultant on a Time and Expense basis or Lump Sum, not-to-exceed XXXX and zero cents (\$XX,XXX.00) for the initial term of this Contract, and paid according to the Rate Schedule shown in Exhibit "A".

3.1.1. Expenses are defined as costs incurred by the Consultant, other than payroll costs, which are directly attributable to the performance of the Services and include mileage and related expenses, long-distance telephone, facsimile, postage and delivery, and other expenses incurred in the direct interest of the Services. Expenses shall also include technical or professional services obtained by the Consultant upon prior approval of the Port that are needed by the Consultant to complete the Services. Such costs shall be reimbursed by the Port to the Consultant at cost. Mileage shall be reimbursed at the IRS mileage rate in effect at the time travel occurred. The Port will not reimburse Consultant for any costs determined in the Port's discretion to be

unreasonable or unrelated to the services provided. Consultant should obtain pre-approval from the Port for any costs which are not typical for the services to be provided.

- 3.2. The Consultant agrees to hold the Rates associated with the Contract for the entirety of the initial term unless otherwise specified in the attached rate sheet. In the event that both Parties agree to extension the Consultant may request a revision of rates. The Port may request documentation of increased costs associated with the Services provided prior to approval of a revision in Consultant's rates.
- 3.3. No payment shall be made for any Service rendered by the Consultant except for Services identified in this Contract and directly related reasonable expenses as determined by the Port. The Consultant will transmit invoices to the Port no more often than once each month, for the Services and **expenses** pursuant to this Contract.
 - 3.3.1. All invoices shall list the actual time (days and/or hours) and dates during which the Services were performed, **with a description of work performed.**
 - 3.3.2. All invoices are to be sent electronically to Contracts@portolympia.com with the invoice noting the contract number in order to be deemed complete and ready for Processing.

4. Amendments/Modifications.

- 4.1. Any changes to this Contract, after execution, will be made through a mutually agreed upon Amendment(s) and executed by signature of the appropriate Authorized Representatives of each Party. Any and all amendments must not conflict with the Port's policies at time of execution, or any applicable statutory requirements. Consultant is responsible for compliance with any statutory requirements applicable for the work to Consultant's work or profession.

4.2. In the event that a single or combination of Amendments is issued that will increase the aggregate value of the Contract in excess of authority delegated to the Executive Director, the Port must seek approval of the Amendment with the Commission and make said Amendment at a public meeting. Consultant understands that this Contract is a public records under the Washington Public Records Act, RCW 42.56.

5. Information Requests.



The Consultant shall furnish to the Port within a reasonable time such statements, records, report, data, and information as the Port may request pertaining to the Services and the Project. Consultant will cooperate with the Port in conjunction with any audit performed by the Washington State Auditors Office.

6. Independent Contractor Relationship.

6.1. The Parties intend that an independent contractor relationship will be created by this Contract. The Port is interested primarily in the results to be achieved by the Services. The implementation of Services will lie solely with the discretion of the Consultant. No agent, employee, servant or representative of the Consultant shall be deemed to be an employee, agent, servant or representative of the Port for any purpose, and the employees of the Consultant are not entitled to any of the benefits the Port provides for its employees.

6.1.1. The Consultant will be solely and entirely responsible for its acts and for the acts of its agents, employees, servants, subcontractors or representatives during the performance of the Services.

6.2. In the performance of the Services, the Consultant is an independent contractor with the authority to control and direct the performance of the details of the Services; however, the results of the Services shall be approved by the Port and shall be subject to the Port's general rights of inspection and review to ensure the satisfactory performances of the Services

6.2.1. Notwithstanding, the Port may, at its sole discretion, require the Consultant to remove an employee(s), agent(s) or subcontractor(s) from providing the agreed upon Services.

7. Right to Inspection.

The Port reserves the right to, or have a third party at the Port's request, inspect, audit, or review the Services provided in this Contract at any time and determine the services performed were satisfactory prior to payment.

8. Hold Harmless/Indemnification.

8.1. Consultant shall defend, indemnify and hold the Port, its officers, officials, agents, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees and costs, arising out of, in connection with, or resulting from the acts, errors or omissions of the Consultant in performance of this Contract, except for injuries and damages caused by the sole negligence of the Port. Should a court of competent jurisdiction determine that

this Contract 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 Consultant and the Port, its officers, officials, employees, and volunteers, the Consultant's liability, including the duty and cost to defend, hereunder shall be only to the extent of the Consultant's negligence.

8.2. It is further specifically and expressly understood that the indemnification provided herein constitutes the Consultant'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 Contract.

9. Insurance.

9.1. The Consultant shall procure and maintain for the duration of the Contract, insurance against claims for injuries to persons or damage to property which may arise from, or in connection with, the performance of the Services by the Consultant, its agents, representatives, or employees.

9.2. Consultant shall obtain insurance of the types described below:

9.2.1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles, with a minimum combined single limit for bodily injury and property damage of One Million Dollars (\$1,000,000) per accident. 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.

9.2.2. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors and personal injury and advertising injury, with limits no less than One Million Dollars (\$1,000,000) each occurrence, Two Million Dollars (\$2,000,000) general aggregate. The Port shall be named as an insured under the CONSULTANT's Commercial General Liability insurance policy with respect to the work performed for the Port.

9.2.3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

- 9.2.4. Additional insurance coverage as requested by the Port deemed necessary for the services to be performed such as, but not limited to, professional errors and omissions insurance.
- 9.3. The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability, Professional Liability and Commercial General Liability insurance:
- 9.3.1. The Consultant's insurance coverage shall be primary insurance with respect to the Port. Any insurance, self-insurance, or insurance pool coverage maintained by the Port shall be excess of the Consultant's insurance and shall not contribute with it.
- 9.3.2. The Consultant'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 Port.
- 9.4. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A: VII.
- 9.5. Consultant shall furnish the Port 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 Consultant deemed adequate in the Port's sole discretion before commencement of the Services.
10. Dispute Resolution. Any controversy or claim arising related to this Contract, or the breach thereof, shall be subject to dispute resolution as described:
- 10.1. Prior to the initiation of any action or proceeding to resolve disputes between the parties, both shall make a good faith effort within 10 business days from the time the dispute first became known to both Parties to resolve any such disputes by negotiation between representatives with decision-making power, who shall not have substantive involvement in the matters involved in the dispute, unless the parties otherwise agree.
- 10.2. Failing resolution under paragraph 10.1 herein, the parties shall attempt to resolve the dispute through a mediation conducted by a person(s) or organization experienced in mediation initiated within thirty (30) days from the date of the request unless extended by Contract of both parties. If the Parties fail to agree on the appointment of a mediator or mediation service within 10 business days from the date of a mediation request initiated under this

paragraph, the dispute shall be mediated by the Washington Arbitration and Mediation Service (WAMS) in Seattle, with each Party to bear its own costs, attorney fees, and one half of the mediation fee.

- 10.3. The positions expressed and mediator's recommendations, if any, shall not be admissible as evidence in any subsequent proceeding. At all times during the course of any unresolved dispute between the parties, the Consultant shall supervise, direct and perform the Work in a diligent and professional manner and without delay as provided under the terms of the Contract. The good faith completion of negotiation efforts and mediation pursuant to this Article shall be a prerequisite to the filing of any litigation. Jurisdiction and venue shall be in the Thurston County, Washington Superior Court or the Federal District Court for the Western District of Washington, depending on the nature of the dispute. Washington State law shall be applied to any litigation that is brought that arises out of, is related to, or connected with, this Agreement.

11. Ownership of Property.

- 11.1. All property furnished by the Port for the use of the Consultant shall remain the property of the Port.
- 11.2. All documents, including drawings and specifications, prepared by the Consultant pursuant to this Contract are the instruments of service with respect to the Services and shall be owned by the Port upon payment of the Consultant fee by the Port. The Consultant shall provide the Port with both the native file formats and reproducible copies of all documents, drawings, specifications, and other work products constituting the instruments of service. The instruments of service are not intended nor represented by the Consultant to be suitable for reuse by the Port or others on extensions of the services provided for the Services, or any other project. Any reuse without written verification or adaptation by the Consultant will be at the Port's sole risk and without liability or legal exposure to the Consultant, and the Port shall indemnify and hold the Consultant harmless from all claims, damages; losses, and expenses including attorney's fees arising out of or resulting therefrom.

12. Compliance with Laws.

- 12.1. The Consultant, in the performance of this Contract, shall comply with all applicable federal, state or local laws and ordinances, including 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 Contract to assure quality of services.

- 12.2. Additionally, the consultant acknowledges and understands their responsibilities under WAC 415-02-325 in relation to 2008 early retirement factors and will inform the Port if there is a conflict.
- 12.3. The Consultant specifically agrees to pay any applicable business and occupation (B&O) taxes that may be due on account of this Contract, as well as any other tax or fee related to the Consultant's business.

13. Nondiscrimination.

- 13.1. In the performance of this Contract, Consultant will not discriminate, or allow discrimination, against any employee or applicant for employment on any of the following grounds: race, creed, color, national origin, sex, marital status, sexual orientation, age, 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, or any other discrimination prohibited by law or Executive Order.. Consultant shall take such action with respect to this Contract as may be required to ensure full compliance with local, state and federal laws prohibiting discrimination in employment.
- 13.2. Additionally, Consultant will not discriminate against any recipient of any services or benefits provided for in this Contract on the grounds of race, creed, color, national origin, sex, marital status, sexual orientation, age, honorably discharged veteran or military status, or the presence of any sensory, mental or physical disability or the use of a trained guide dog or service animal by a person with a disability, or other discrimination prohibited by law or Executive Order.
- 13.3. If any assignment or subcontracting has been authorized by the Port, the assignment or subcontract shall include appropriate safeguards against discrimination meeting the requirements of this Contract.

14. Assignment/subcontracting.

- 14.1. The Consultant shall not assign its performance of the Services or any portion of this Contract without the Port's prior written consent of not less than thirty (30) days. The Port reserves the right to reject without cause any such assignment.
- 14.2. Any assignment shall be subject to each provision of this Contract and proper bidding procedures where applicable as set forth in local, state and/or federal statutes, ordinances and guidelines.

14.3. Any technical/professional service subcontract not listed in this Contract, must have express advance approval by the Port.

15. Maintenance and Inspection of Records.

15.1. The Consultant shall maintain books, records and documents, which sufficiently and properly reflect all direct and indirect costs related to the performance of this Contract and shall maintain such accounting procedures and practices as may be necessary to assure proper accounting of all funds paid pursuant to this Contract. These records shall be subject at all reasonable times to inspection, review, or audit, by the Port, its authorized representative, the State Auditor, or other governmental officials authorized by law to monitor this Contract.

15.2. The Consultant shall retain all books, records, documents and other material relevant to this Contract, for six (6) years after its expiration. The Consultant agrees that the Port or its designee shall have full access and right to examine any of said materials at all reasonable times during said period.

16. Termination.

16.1. Termination for Convenience. The Port may terminate this Contract, in whole or in part, at any time, by giving thirty (30) calendar days' written notice to the Consultant. Upon such termination for convenience, the Port shall pay the Consultant for all Services provided under this Contract through the date of termination, as well as any other Services specifically agreed to by the Parties in writing.

16.2. Termination for Cause. If the Consultant fails to perform in the manner called for in this Contract, or if the Consultant fails to comply with any other provisions of the Contract and fails to correct such failure or noncompliance within five (5) business days' written notice thereof, the Port may terminate this Contract for cause. Termination shall be effective by serving a notice of termination on the Consultant setting forth the manner in which the Consultant is in default and the date of the termination. The Consultant will only be paid for Services performed in accordance with this Contract through the date of termination.

17. Notice.

17.1. All notices provided for in this Contract shall be sent by certified mail to the addresses designated below:



Port

Contract & Grant Administrator
Port of Olympia
606 Columbia St. NW, STE 300
Olympia, WA 98501

Consultant

XXXX
XXXX
XXXX
XXXX

- 17.2. In the event either Party needs to change the contact for notices, they shall provide in writing a new contact and the contacts information in writing to the other Party in a reasonable amount of time.

18. Attorney's Fees and Costs.

In any dispute arising from the terms or performance of this Contract, whether a lawsuit is commencing, the prevailing Party shall be entitled to recover from the other Party, in addition to any other relief to which such Party may be entitled, reasonable attorney's fees and other costs incurred in that action or proceeding, including an appeal.

19. Jurisdiction and Venue.

- 19.1. This Contract has been and shall be construed as having been made and delivered within the State of Washington and shall be governed by laws of the State of Washington, both as to interpretation and performance.
- 19.2. Any action of law, suit in equity, or judicial proceeding for the enforcement of this Contract or any provisions thereof shall be instituted and maintained only in any of the courts of competent jurisdiction in Thurston County, Washington, or in the United States District Court for the Western District of Washington, depending on the nature of the dispute.

20. Severability.

If any portion of this Contract is held to be invalid or unenforceable for any reason, such holding shall not affect the validity or enforceability of the remaining portions of this Contract.

21. Electronic Signature.

An electronic signature may be used with the same force and effect as a signature affixed by hand, subject to the limitations under state and federal law.



22. Entire Contract.

This Contract, including the Exhibit(s) attached, is the complete and exclusive expression of the Contract between the Parties and shall bind their successors and assigns. Any modification of this Contract shall be in writing and signed by both Parties. Failure to comply with any provision of this Contract shall constitute a material breach of contract and be cause for termination. The Parties recognize time is of the essence in the performance of this Contract. The forgiveness or waiver of the nonperformance of any provision of this Contract does not constitute a waiver of any subsequent nonperformance by a Party.

IN WITNESS WHEREOF, the Parties hereto have signed this Contract on the day and year written below.

THE PORT OF OLYMPIA
606 Columbia St. NW, STE 300
Olympia, WA 98501

XXXXXXXXXXXXXXXXXX
XXXX XXXXXXXX XXXX
XXXX XXXXXXXX XXXX

Sam Gibboney Date
Executive Director

XXXXXXXXXX Date
XXXXXXXXXX