



**PURCHASED 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 "Vendor"), and collectively sometimes referred to as "Parties" or individually as "Party".

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

The Vendor 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. Additionally, both the RCWs, and the Port's internal Policies, have been followed to ensure compliance with all applicable laws and regulations.

Recitals

- I. The Washington State Legislature provides authority to procure goods and services as demonstrated in Chapter 39.26, and Title 53, 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 Purchased Services Contracts, to the Executive Director of the Port via Resolution 2019-06.
- IV. Purchased Services are services provided by a vendor to accomplish routine, continuing and necessary functions, involving minimal decision making. Examples are services for delivery/courier service, litter pickup and disposal, and vehicle repair services, and other similar services not classified as public works or professional services.

The Parties agree as follows:

1. Scope of Services/Additional Requirements.
  - 1.1 The Vendor shall perform such services and accomplish such tasks, including the furnishing of all labor, materials and equipment necessary for full performance 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 Vendor'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 Work Order by the Port. Work Orders will have a defined Scope of Work accompanied by a not to exceed (NTE) amount for said Work Order. The compensation rates for work performed under any issued Work 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 mutual execution by the Executive Director of the Port, or his/her delegate and an Authorized Representative of the Vendor.

2.2 The Vendor shall begin and complete the provision of the Services, unless sooner terminated according to this Contract, as follows:

**Commencement Date:** XXXX

**Completion Date:** XXXX

2.3 In the event that the mutual execution date is after the commence 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 Vendor 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 Vendor, 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 Vendor upon prior approval of the Port that are needed by the Vendor to complete the Services. Such costs shall be the reimbursed by the Port to the Vendor at cost. Mileage shall be reimburse at the current IRS mileage rate.

3.2 The Vendor 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. Any request must be accompanied by documentation of increased costs associated with the Services provided.

3.3 No payment shall be made for any Service rendered by the Vendor except for Services **and expenses** identified in this Contract. The Vendor 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 narrative of work performed**.

3.3.2 All invoices are to be sent electronically to [Contracts@portolympia.com](mailto: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 RCWs.

#### 5. Information Requests.

The Vendor shall furnish to the Port within a reasonable time, as determined by the Port, such statements, records, reports, data, and information as the Port may request pertaining to the Services. Failure to do so may result in a breach of contract and reason to Termination for Cause.

#### 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 Vendor. No agent, employee, servant or representative of the Vendor shall be deemed to be an employee, agent, servant or representative of the Port for any purpose, and the employees of the Vendor are not entitled to any of the benefits the Port provides for its employees.

6.1.1 The Vendor 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 Vendor 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 Vendor 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, inspect the Services provided in this Contract at any time. 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 prior to payment.

8. Hold Harmless/Indemnification.

8.1 Vendor shall defend, indemnify and hold the Port, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or resulting from the acts, errors or omissions of the Vendor 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 Vendor and the Port, its officers, officials, employees, and volunteers, the Vendor's liability, including the duty and cost to defend, hereunder shall be only to the extent of the Vendor's negligence.

**8.2 It is further specifically and expressly understood that the indemnification provided herein constitutes the Vendor'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. Prevailing Wage.

9.1 The Contractor shall comply with the requirements of RCW 39.12, and shall pay each employee an amount not less than the Prevailing Rate of Wage, as specified by the Industrial Statistician of the Washington State Department of Labor and Industries (L&I) <https://secure.lni.wa.gov/wagelookup>. Before commencement and upon completion of work, the Contractor shall file the forms and pay the filing

fees required by L&I. The Contractor shall indemnify and hold the Port harmless from any claims related to the payment or non-payment of such wages by the Contractor.

9.2 For the purpose of this Contract the prevailing wage rate is set as the Bid closing date identified in the Solicitation. In the event that no such date is listed, the effective date for the prevailing wage rate is set as of the date of this fully executed contract. Unless otherwise noted, all work performed under this contract will take place in Thurston County, Washington.

9.3 At any point the Contractor may request the Port provide a copy of the wage rate and have it electronically or hard mailed upon request.

9.4 As required in RCW 39.12.110, The Contractor, shall file a copy of its certified payroll records using the department of labor and industries' online system at least once per month. If the department of labor and industries' online system is not used, a contractor, subcontractor, or employer shall file a copy of its certified payroll records directly with the department of labor and industries in a format approved by the department of labor and industries at least once per month. The Contractor is required to keep Certified Payrolls on file for a minimum of three years.

## 10. Insurance.

10.1 The Vendor 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 Vendor, its agents, representatives, or employees.

10.2 Vendor shall obtain, at minimum, the insurance of the types described below:

10.2.1 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.

10.2.2 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 Vendor's Commercial General Liability insurance policy with respect to the work performed for the Port.

- 10.2.3 Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
- 10.3 The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability, Professional Liability and Commercial General Liability insurance:
  - 10.3.1 The Vendor'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 Vendor's insurance and shall not contribute with it.
  - 10.3.2 The Vendor'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.
- 10.4 Insurance is to be placed with insurers with a current A.M. Best rating of not less than A: VII.
- 10.5 Vendor 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 Vendor before commencement of the Services.
- 11. Dispute Resolution. Any controversy or claim arising related to this Contract, or the breach thereof, shall be subject to dispute resolution as described below:
  - 11.1 Prior to the initiation of any action or proceeding to resolve disputes between the parties, both shall make a good faith effort 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.
  - 11.2 Failing resolution after following the requirements of paragraph 10.1, 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, in writing, of both parties. The parties will each pay one half of the mediation fee, as well as their own costs and fees. If the parties are unable to agree as to the appointment of a mediator within

the aforementioned 30-day time period, they will submit to mediation through the Washington Arbitration & Mediation Service (WAMS) in Seattle and the mediator appointed by WAMS.

- 11.3 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 Contractor 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.

## 12. Ownership of Property.

- 12.1 All property furnished by the Port for the use of the Vendor shall remain the property of the Port.
- 12.2 All documents, including drawings and specifications, prepared by the Vendor 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 Vendor fee by the Port. The Vendor 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 Vendor 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 Vendor will be at the Port's sole risk and without liability or legal exposure to the Vendor, and the Port shall indemnify and hold the Vendor harmless from all claims, damages; losses, and expenses including attorney's fees arising out of or resulting therefrom.

## 13. Compliance with Laws.

- 13.1 The Vendor, 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.
- 13.2 Additionally, the Vendor 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.



13.3 The Vendor specifically agrees to pay any applicable business and occupation (B&O) taxes that may be due because of this Contract.

14. Nondiscrimination.

14.1 In the performance of this Contract, the Vendor will not discriminate against any employee or applicant for employment 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 dog guide or service animal by a person with a disability; provided that the prohibition against discrimination in employment because of disability, or the use of a trained dog guide or service animal by a person with a disability, shall not apply if the particular disability prevents the proper performance of the particular worker involved. The Vendor shall ensure that applicants are employed, and that employees are treated during employment without discrimination because of their 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. Such action shall include, but not be limited to: employment, upgrading, demotion or transfers, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and programs for training including apprenticeships. The Vendor 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.

14.2 The Vendor 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.

14.3 If the Port has authorized any assignment or subcontracting, the assignment or subcontract shall include appropriate safeguards against discrimination.

15. Assignment/Subcontracting.

15.1 The Vendor shall not assign its performance of the Services or any portion of this Contract without the Port's prior written consent, in writing. The Port reserves the right to reject without cause any such assignment.



15.2 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.

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

16. Maintenance and Inspection of Records.

16.1 The Vendor 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.

16.2 The Vendor shall retain all books, records, documents and other material relevant to this Contract, for six (6) years after its expiration. The Vendor 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.

17. Termination.

17.1 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 Vendor. Upon such termination for convenience, the Port shall pay the Vendor for all Services provided under this Contract through the date of termination.

17.2 Termination for Cause. If the Vendor fails to perform in the manner called for in this Contract, or if the Vendor 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 Vendor setting forth the manner in which the Vendor is in default and the date of the termination. The Vendor will only be paid for Services performed in accordance with this Contract through the date of termination.

18. Notice.

Notice provided for in this Contract shall be sent by certified mail to the addresses designated for the PARTIES on the listed below:

**PORT**

**VENDOR**



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

XXXX  
XXXX  
XXXX  
XXXX

19. 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.

20. Jurisdiction and Venue.

20.1 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.

20.2 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.

21. 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.

22. 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.

23. 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.

