



SMALL WORKS CONTRACT NO. XXXX-XXXX
Contract Name

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

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

The Contractor has been deemed to possess the required skills and the necessary capabilities, including technical and professional expertise, to perform the Project set forth in this Contract. Additionally, the competitive bid process as defined in both the RCWs, and the Port's internal Policies, has been followed to ensure compliance with all applicable laws and regulations.

Recitals

- I. The Washington State Legislature has empowered Port districts to contract for public works projects via Title 53 for 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 public works projects, to the Executive Director of the Port via Resolution 2019-06,
- IV. The Executive Director, or his/her delegate, has authorized the use of the small works roster process as defined in RCW 39.04.155 based on the criteria established to complete the Project.

The Parties agree as follows:

1. Scope of Services.

The Contractor shall perform such services and accomplish such tasks, including the furnishing of all labor, permits, materials and equipment necessary for full performance thereof (the "Services"), as detailed in their submission, Exhibit "A". All Services shall be provided according to the care and skill ordinarily used by members of the Contractor's profession practicing under the same or similar circumstances at the same time and in the same locality as the Services being performed.

2. Term.

This Contract is effective upon mutual execution by the Executive Director of the Port, or his/her delegate and an authorized representative for the Contractor.

The Contractor may not begin physical work on this Project until a formal Notice to Proceed has been issued by the Port.

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

Anticipated Commencement Date: XXXX
Anticipated Completion Date: XXXX

3. Compensation and Method of Payment.

3.1 The Contractor shall submit **monthly, or one upon final completion**, as agreed upon in writing, an Application and Certificate for Payment, using a format approved by the Port, to the Project Manager. Upon approval from the Project Manager in writing, the Contractor shall submit an invoice to the Contract Administrator for the approved amount. The Not-To-Exceed (NTE) for this contract is **XXXX (\$XXXX)**.

3.2 No payment shall be made for any Service rendered by the Contractor except for the Project associated with this Contract. In order to expedite the payment process, Contractor shall note the contract number on all invoices as well as in the subject line of any electronically delivered invoice. All invoices must be submitted to Contracts@portolympia.com. Unless otherwise agreed on, payments shall be due 30 days after electronically delivered.

4. Contractor Requirements.

4.1 The Contractor must have, or obtain, prior to the execution of this Contract, the following:

- ✓ From the Washington State Department of Labor and Industries - A current certificate of registration as a Contractor in compliance with Chapter 18.27 RCW.
- ✓ From Washington State Department of Revenue - A current Washington Unified Business Identified (UBI) number, state excise tax registration number.

- ✓ From Washington State Employment Security Department – A current Employment Security Number (ES Number).
 - ✓ Industrial Insurance (workers' compensation) coverage for the bidder's employees working in Washington, as required by Title 51 RCW.
- 4.2 At the time of contract award, the Contractor shall not have been disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065(3).
- 4.3 The Contractor shall comply with all employment security laws of the State of Washington, and shall timely make all required payments in connection therewith.
- 4.4 The Contractor shall comply with all supplemental requirements that the Port may determine necessary for a particular project.
5. Subcontractors.
- The Contractor must verify responsibility criteria of any subcontractors hired to perform this project. Verification shall include that each subcontractor, at the time of subcontract execution, meets the Contractor Requirements listed in Section 2. Any subcontractor must be approved by the Port in writing prior to them performing any work. The approval of a subcontractor shall not affect the not to exceed amount of the contract.
6. Change Order/Modifications.
- Any changes to this Contract, after execution, will only be made through a mutually agreed upon Change Order(s) and ratified by signature of the appropriate Authorized Representatives of each Party.
7. Quality of Work.
- 7.1 The Contractor shall supervise and direct the work using its best efforts, skills and attention. The Contractor shall be solely responsible for, and shall have full control and charge of, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the work under the contract.
- 7.2 Unless otherwise specifically stated in the Contract, the Contractor shall provide and pay for all permits, materials, labor, tools, equipment, water, light, power, transportation, supervision, and temporary construction, and other services and facilities of any nature necessary to execute, complete and deliver the work within the Contract Time. Material and equipment shall be new and of a quality equal to or better than that specified. Equipment offered shall be current models which



have been in successful regular operation under comparable conditions. The work performed shall be in conformity with the best modern practice of the trade with the intent to secure the best standard of construction and equipment of work as a whole and in part.

8. Prevailing Wage.

- 8.1 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.
- 8.2 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.
- 8.3 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.
- 8.4 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.

9. Independent Contractor Relationship.

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

- 9.2 In the performance of the Services, the Contractor 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 secure the satisfactory performances of the Services. Notwithstanding, the Port may, at its sole discretion, require the Contractor to remove an employee(s), agent(s) or subcontractor(s) from providing Services or otherwise being involved with the Project.

10. 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 secure the satisfactory performances of the Services prior to payment.

11. Hold Harmless/Indemnification.

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

- 11.2 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 Contract.**

12. Insurance.

- 12.1 The Contractor 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 Contractor, its agents, representatives, or employees.

12.2 Contractor shall obtain insurance of the types described below:

- a. 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.
- b. 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 Contractor's Commercial General Liability insurance policy with respect to the work performed for the PORT.
- c. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

12.3 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 with respect to the Port. Any insurance, self-insurance, or insurance pool coverage maintained by the Port 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 Port.

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

12.5 Contractor 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 Contractor before commencement of the Services.

13. Dispute Resolution. Any controversy or claim arising related to this Contract, or the breach thereof, shall be subject to dispute resolution as described below:

- 13.1 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.
- 13.2 Failing resolution after following the requirements of paragraph 13.1, 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 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.
- 13.3 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.

14. Ownership of Property.

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

15. Compliance with Laws.

- 15.1 The Contractor, 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.
- 15.2 Additionally, the Contractor 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.
- 15.3 The Contractor specifically agrees to pay any applicable business and occupation (B&O) taxes that may be due because of this Contract.

16. Nondiscrimination.

- 16.1 In the performance of this Contract, the Contractor 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 Contractor 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 Contractor 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.

- 16.2 The Contractor 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.
- 16.3 If the Port has authorized any assignment or subcontracting, the assignment or subcontract shall include appropriate safeguards against discrimination.

17. Assignment/Subcontracting.

- 17.1 The Contractor 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.
- 17.2 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.
- 17.3 Any subcontractor not included in this Contract must have written approval of the Port prior to working on the Project.

18. Maintenance and Inspection of Records.

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

19. Termination.

- 19.1 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 Contractor. Upon such termination for convenience, the Port shall pay the



Contractor for all Services provided under this Contract through the date of termination.

19.2 Termination for Cause. If the Contractor fails to perform in the manner called for in this Contract, or if the Contractor 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 effected by serving a notice of termination on the Contractor setting forth the manner in which the Contractor is in default and the date of the termination. The Contractor will only be paid for Services performed in accordance with this Contract through the date of termination.

20. Notice.

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

PORT

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

CONTRACTOR

XXXX
XXXX
XXXX
XXXX

21. 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.

22. Jurisdiction and Venue.

22.1 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.

22.2 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.



23. 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.

24. 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

XXXXXXXXXXXXXXXXXXXX
XXXX XXXXXXXX XXXX
XXXX XXXXXXXX XXXX

Sam Gibboney Date
Executive Director

XXXXXXXXXX Date
XXXXXXXXXXXX