

Attachment A Standard Terms

1. Representatives

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

2. Key Personnel

The Consultant's key personnel, as described in Consultant's selection submittals, shall remain assigned for the duration of the Project unless otherwise agreed to by the Port.

3. 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 Consultant with all information and documents pertinent to the services Consultant is to perform.

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

4. Relationship of Parties

Consultant, 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.

5. 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. Consultant further covenants that in performance of this Agreement, no person having any such interest shall be employed.

6. Compliance with Laws

Consultant 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.

Consultant 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. Consultant 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 Consultant'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 Consultant fails to pay any taxes, assessments, penalties, or fees imposed by any governmental body, including a court of law, then Consultant 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 Consultant's total compensation.

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

7. Ownership of Work

The services to be performed by Consultant shall be deemed instruments of service for purposes of the copyright laws of the United States. The Port has ownership rights to the plans, specifications, and other products prepared by the Consultant. Consultant shall not be responsible for changes made in the plans, specifications or other products by anyone other than the Consultant. Consultant 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.

8. Standard of Care

Consultant shall perform its work to conform to generally accepted professional standards. Consultant shall be responsible for the professional quality, technical adequacy and accuracy, timely completion and coordination of all plans, designs, drawings and specifications prepared under this Agreement. Consultant shall, without additional compensation, correct or revise any errors or omissions in such work.

9. Disclosure

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

10. Deliverables

All tangible materials produced as a result of this Agreement shall be prepared as specified by the Port's Project Manager. Delivery of materials produced shall consist both of the tangible materials and one copy of any computer file used in the creation of the tangible product on floppy disk or CD-Rom in a PDF format or other format specified by the Port. Deliverable drawings shall be prepared in accordance with the Port's "Consultant Drawing Submittal Procedure" and "Technical Specification Development Procedure". The Port may offset from the Consultant's fee expenses incurred by the Port in correcting drawings or specifications not prepared in accordance with the Port's procedure.

11. Indemnification

Consultant shall indemnify, defend, and hold harmless the Port, its officials, officers, agents, and employees from any and all claims, damages, lawsuits, liabilities, losses, liens, expenses and costs arising out of the subject matter of this Agreement; provided that this provision shall not apply to the extent that damage or injury results from the fault of the Port, or its officers, agents, or employees. The term "fault" as used herein shall have the same meaning as set forth in RCW 4.22.015, as that statute may be amended.

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 injuries or damages to property caused by or resulting from the concurrent negligence of the contractor/consultant and the Port, its officers, officials, employees and volunteers, the contractor/consultant's liability hereunder shall be only to the extent of the contractor/consultant's negligence.

It is further specifically and expressly understood that the indemnification provided herein constitutes the contractor/consultant's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. CONSULTANT RECOGNIZES THAT THIS WAIVER WAS THE SUBJECT OF MUTUAL NEGOTIATION

The indemnification shall extend to and include attorney's fees and the cost of establishing the right of indemnification hereunder in favor of the Port. This indemnification shall survive the termination of this Agreement.

12. Insurance

Consultant shall obtain and keep in force during the terms of the Agreement, or as otherwise required, the following insurance with companies or through sources approved by the State Insurance Commissioner pursuant to RCW 48.

- a. Worker's Compensation and Employer's Liability insurance as required by the State.
- b. Commercial General Liability insurance in the amount of at least \$1,000,000 per occurrence; \$2,000,000 general aggregate.
- c. Automobile Public Liability Insurance coverage with total liability limits for Bodily Injury Liability and Property Damage Liability in the amount of \$1,000,000 per accident.
- d. Errors and Omissions insurance (for engineering firms only)
- e. All policies shall be issued by a company having an A. M. Best rating of A:VI or better. Each insurance policy shall be endorsed to state that coverage shall not be suspended, voided, canceled or reduced in coverage or limits except after 45 days prior written notice has been given to the Port. The Port shall be named as an additional insured on all policies on ISO Form CG 20 10 Form B. The certificates of insurance shall specify the project name, project number, and contract number.
- f. The Consultant must furnish the Port with verification of insurance and endorsements prior to any release of funds.
- g. Consultant shall ensure that each subconsultant of every tier obtain at a minimum the same insurance coverage and limits as stated herein for the Contractor. Upon request from the Port, the Consultant shall provide evidence of such insurance.

13. Competitive Specification

If the scope of work includes development of specifications:

Consultant shall provide for the maximum use of materials, equipment, construction methods and products that are readily available through competitive procurement, or through standard or proven production techniques.

Consultant shall not produce a design or specification which would be restrictive or written in a manner as to contain proprietary requirements other than those based on performance, unless such requirements are necessary to demonstrate a specific outcome or to provide for necessary interchangeability of parts and equipment. Consultant shall justify in writing the use of any sole source. Where brand names are identified, they shall be followed by the salient product performance characteristics and the words "or approved equal" so that comparable quality or utility may be determined.

14. Time

Time is of the essence in the performance by the Consultant of the services required by this Agreement. The Consultant shall complete its services within the milestones set forth in the project schedule. At the end of each month the Consultant shall submit a copy of the current schedule and a written narrative description of the work accomplished, identifying scheduled milestones and the status thereof. The Consultant shall also address issues, which may result in completion beyond the established schedule or budget.

If the time allotted for completion of Consultant's services is exceeded through no fault of Consultant, additional time to complete performance may be allowed if written notice of the cost and estimated length of the delay is given to the Port within forty-eight (48) hours of consultant's learning of the delay. Consultant will provide such additional supporting data as the Port may require in a timely manner. The sole remedy in the event of a delay, whatever its cause, is an extension of time for performance.

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

15. Assignability

Consultant shall not assign any interest in this Agreement and shall not transfer any interest in the Agreement to any party without prior written consent of the Port.

16. Disputes

If a dispute arises relating to this Agreement and cannot be settled through direct discussions, the parties agree to endeavor to settle the dispute through a 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 Consultant agrees to such joinder, so that all disputes related to the project may be consolidated and resolved in one forum. Venue for any litigation shall be the Clark County Superior Court of the state of Washington and the prevailing party shall be entitled to recover its costs and reasonable attorney's fees.

17. Non-Discrimination

During the term of this Agreement, the Consultant 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 Consultant 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 Consultant 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 Consultant further agrees to comply with all applicable civil rights statutes and implementing regulations.

The Consultant 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,

18. Governing Law and Venue.

Washington law shall govern the interpretation of this Agreement. Clark County shall be the venue of any mediation, arbitration or litigation arising out of this Agreement.

19. 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.

20. 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 or cancellation of this Agreement, shall survive termination of this Agreement.

21. Equal Opportunity to Draft.

The parties have participated and had an equal opportunity to participate in the drafting of this Agreement, and the Exhibits, if any, attached. No ambiguity shall be construed against any party upon a claim that that party drafted the ambiguous language.

22. Captions.

The captions used herein are for convenience only and are not a part of this Agreement and do not in any way limit or amplify the terms and provisions hereof.

23. Concurrent Originals.

This Agreement may be signed in counterpart originals.

24. Entire Agreement.

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

25. Authority to Enter Into This Agreement

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