



**PORT OF TACOMA  
REQUEST FOR QUALIFICATIONS  
No. 069955**

**092938 – NORTH LEAD RAIL IMPROVEMENTS**

Issued by  
Port of Tacoma  
One Sitcum Plaza  
P.O. Box 1837  
Tacoma, WA 98401-1837

RFQ INFORMATION	
Contact:	Georgette Reidburn, Procurement
Email Addresses:	<a href="mailto:procurement@portoftacoma.com">procurement@portoftacoma.com</a>
Submittal Date	<b>AUGUST 27, 2014 @ 3:00 PM</b>

PLEASE SUBMIT ALL CORRESPONDENCE AND STATEMENT OF QUALIFICATIONS VIA E-MAIL DIRECTLY TO THE PROCUREMENT CONTACT LISTED ABOVE AND INCLUDE IN THE SUBJECT LINE:  
**'092938 NORTH LEAD RAIL IMPROVEMENTS'**

PORT OF TACOMA  
Request for Qualifications (RFQ) #069955  
092938 – North Lead Rail Improvements

The [Port of Tacoma](#) (Port) is soliciting Statements of Qualifications (SOQ) from highly qualified teams interested in providing project management, planning, transportation studies, conceptual and final engineering design, environmental permitting support, cost estimating, scheduling, bidding and construction support for improving rail infrastructure in the Tacoma Tideflats.

**A. CONTRACTING DESCRIPTION**

The Port will select the most qualified team (team includes all key members whether from the prime consultant firm or subconsultants for all necessary project AE services) and enter into negotiations with the intent to issue one professional service contract based upon the information provided herein. Following successful negotiation of rates and fees, the Port will execute the contract for the initial phase of work negotiated or may contract for all AE services requested for the entire project.

The scope of AE services for future phases may be contingent on the work results of the initial phase; therefore the Port reserves the right to amend the general statement of work tasks listed below as required to accomplish the project scope and goals; and additionally reserves the right to select another team to perform additional phases, if needed.

Overall contract period of performance (to be extended, as needed through contract amendments) is intended to encompass the duration of the project. Project milestones are noted further in this RFQ.

The following documents are attached to this RFQ:

- Attachment A – Instructions for Proposing
- Attachment B – Sample Professional Service Agreement
- Attachment C – Standard Terms and Conditions
- Attachment D – Project Terms and Conditions
- Attachment E – Sample Rate Sheet
- Attachment F – Copy of Department of Commerce Direct Appropriation Grant 13-96701-012, with Amendments

\* By submitting a Statement of Qualifications (SOQ), the Proposer represents that it has carefully read all attachments. As applicable, proposers shall identify propose alternate wording, if any, to these documents as an appendix to their submitted SOQ.

## **B. PROJECT BACKGROUND, SCOPE AND GOALS**

### **PROJECT BACKGROUND**

In support of the Port's Strategic Plan, the Port of Tacoma is planning rail capacity improvements for future growth. The Port's rail network is an ideal example of an operating port's commitment to intermodal fluidity, efficiency, and service, with a system of working ramps, support track, and industrial leads. As the existing terminals' intermodal or bulk businesses increase, and proposed terminal developments are built in the tideflats, additional rail infrastructure is required to support the growth. To address future Port intermodal and bulk capacity, new lead tracks are planned. The North Lead Rail Project will identify, design and construct projects that include lead rail tracks to the Peninsula and related rail corridor improvements required to increase the capacity and efficiency of the Port's rail system.

The existing corridor has a number of constraints. The corridor is bounded on the west end by the Tacoma Rail yard. The Port of Tacoma Road bridge columns constrain the number and location of tracks and how the inspection aisles are configured at this location. The width of the corridor between Port of Tacoma Road and Alexander Avenue is constrained by Pierce County Terminal on the north and SR-509 on the south. Previously considered alignments on the west side of Taylor Way have now been excluded.

Currently the Port anticipates the new lead tracks will be accommodated through a number of projects with the existing rail corridor between Milwaukee to Alexander Road along the SR-509, though other alternatives may develop and pursued as a part of this work.

The North Lead Project is partially funded by a Washington State Department of Commerce (DOC) Grant. The consultant shall be bound to the requirements set out by the DOC grant (Attachment F) and the consultant's scope of work will incorporate all applicable terms of the grant, and as may be further amended.

### **SCOPE OF PROJECT**

The scope of the overall project includes construction of lead tracks, rail infrastructure modifications, and related construction required to complete the project.

The length and alignment of the lead tracks as well as the related scope of the project will be determined during conceptual design. Rail infrastructure modifications may include track work, special track work, ground air supply, compressed air for brake testing, power switch control system, and automatic equipment identification. Utility relocation and construction required to accommodate the new and modified rail infrastructure may include water, power, stormwater, gas, communication utilities, area lighting and other utilities as determined. Depending on the alignment of the track work and other rail modifications, roadway construction may include service roads and realignment of Alexander Avenue.

Potential related infrastructure modification include, but are not limited to, realignment of support tracks in the existing rail yards, modification of the Erdahl ditch and related structural work to accommodate track realignment, demolition of existing Arrival and Departure tracks that do not align to maximize length of lead tracks, as well as other modifications identified in planning and conceptual engineering.

## **PROJECT GOALS AND OBJECTIVES**

The goal and objective of the project is to increase the capacity and efficiency of the Port of Tacoma's rail infrastructure.

This includes maximizing the track lengths to accommodate longer trains, increase the number of tracks that can fit within the corridor, increase the ratio of total support track length to total working track lengths, providing efficient rail access between support and lead tracks and access to both ends of the rail corridor, and provide for future extended haul inspections.

## **C. PROFESSIONAL SERVICES STATEMENT OF WORK TASKS**

The conceptual phase will define other improvements and/or development needs to be designed and constructed to meet the overall goals of the project.

The initial scope of services for this contract is to provide project conceptual design. The full detailed scope for providing conceptual design will be negotiated with the selected team. Generally, conceptual design services will include, and are not limited to, the following items:

- Assist the Port in refining the project scope, schedule and budget.
- Provide project management and coordination of the professional services team.
- Study the existing rail infrastructure within the corridor that will serve the Blair Hylebos Peninsula and identify alternatives and projects that best meet the project goals and objectives.
- Develop a program of required, related rail infrastructure improvements, identify contract package(s) and prepare conceptual designs for the proposed contract packages.
- Prepare conceptual design drawings and a Basis of Design Report outlining the design parameters and features included in the project.
- Develop a permitting strategy.
- Provide support for the DOC Grant including but not limited to coordination with the Department of Historic Preservation and Archeology.
- Conceptual design package(s) will also include cost estimate(s) and project schedule(s).

The scope for future phases will generally include, but in no way is limited to, the following elements for any or all of the proposed contract packages identified in the conceptual design phase:

- Project management and coordination, incorporating services from other professional disciplines as needed
- Field investigations and engineering analyses
- Additional conceptual and preliminary design for related infrastructure work
- Project Design Development: Preliminary design through final design with milestone document submittals to the Port for review and comments (generally 30%, 60%, 90% and 100%) and final bid documents for construction for all packages, as determined
  - Support creating, editing and finalizing Port Division 00 and 01 specifications, as requested
- Environmental and project permitting application and support through construction
- Project estimates
- Project schedules
- Bidding management and support, as requested
- Construction management and support as requested
- Contract and project close-out activities
- Any other engineering and/or professional support or management required to meet the project's goals and intent.

#### **D. SOQ ELEMENTS & EVALUATION CRITERIA:**

Submittals should present information in a straightforward and concise manner, while ensuring complete and detailed descriptions of the proposing team (to include the prime, key team members and major sub-consultants) and the team's ability to meet the requirements and provide the requested services listed in this RFQ. Attention will be paid to technical competence and completeness of content. The written SOQ shall be prepared in the same sequential order of SOQ criteria outlined below.

SOQs must not exceed **10 numbered pages** (8 ½ by 11 inch) **excluding** the cover page, cover letter and requested appendices. All pages shall be in portrait orientation with 1 inch margins. Font size shall be 11 point or larger. SOQs that do not follow this format will not be reviewed. Use of color is not prohibited but note that SOQs are often reproduced for review in black and white.

The cover letter shall include the RFQ Title and Number; Name, Title, Email Address, Phone Number and Addresses of the Proposing's team main contact and include the following information:

- Descriptions of all claims submitted by any client against the prime within the past two years related to the professional services provided by the prime (inclusive of the prime and sub-consultants) or their key personnel. For this purpose, "claim" means a sum of money in dispute in excess of 10% of the prime's fee for the services provided;
- Any real or perceived conflicts of interests for team members, inclusive of the prime, sub-consultants and key team members.

**SOQs are to address, and will be evaluated upon, the following criteria:**

**INITIAL EVALUATION PHASE**

**1. Qualifications and experience of the key team members who will be responsible for overseeing and performing the services ..... 35 PTS**

- a. Describe key personnel of the proposed team and overall organization of the project team. Provide a summary of background, experience, technical competence and qualifications of key personnel (include working titles, degrees, certificates and licenses, etc.) and their project specific roles and responsibilities. Emphasize experience and expertise in performing services of similar scope and complexity.
- b. Provide a summary of proposing team's services, experience and expertise related to the elements described in the scope of services and more specifically with the following scope elements:
  - 1) Experience in preparing studies and recommendations to optimize capacity and efficiency of rail infrastructure systems.
  - 2) Experience in designing, bidding and constructing rail infrastructure in complex terminal rail networks including working ramps, support track and industrial leads.
  - 3) Experience supporting environmental permitting.
  - 4) Experience in providing other services identified in Section C, Professional Services Statement of Work Tasks.
- c. Provide a list of references for recent contracts/projects, to include a client point of contact name and title, contact information (phone and email), period of performance, key personnel involved, and brief description of services relevant to the services being requested. Only projects completed by proposed key team members will be considered.

**2. Project Approach Narrative.....35 PTS**

SOQs should clearly outline the team's recommended approach and methodology for:

- Accomplishing the necessary services to accomplish the project scope: Clearly describe the approaches and methods that will be used to accomplish the necessary services. Include a summary of innovative ideas and suggestions for implementing or enhancing the scope of services.
- Coordination & Communication: Provide a plan for communications and coordination between the project team, the Port's project manager and the various stakeholders.

**3. Project Schedule.....20 PTS**

Describe the team's availability, capacity and ability to undertake the work immediately and dedicate the necessary personnel and resources to meet the anticipated schedule.

- Schedule: The following schedule milestones have been identified for the North Lead Project:
  - Conceptual design(s), estimate and schedule complete      December 19, 2014
  - NTP for final design      January 15, 2015
  - Construction complete      April 2017

Discuss how the team anticipates approaching and adhering to the milestone schedule listed above and what risks and/or constraints may negatively affect the timeline. Describe experience and approach in addressing scheduling constraints.

**4. Accuracy and Completeness of the SOQ.....10 PTS**

SOQs will be evaluated on the following criteria:

- Formatting and layout.
- Spelling and grammatical accuracy.
- Legibility of figures and chart information.
- Coherent and logical flow of written responses.

**FINAL EVALUATION PHASE (if applicable)**

**5. References.....50 PTS**

The Port will evaluate the reference checks to assess the project team's overall performance and success of previous, similar work. Reference checks will also be utilized to validate information contained in the SOQ. Reference checks may be checked on only the selected, most qualified team, or the short-listed teams.

**6. Interviews (as requested by the Port).....100 PTS**

If an award is not made based on the written evaluations and references alone, interviews may be conducted with the top-ranked teams. Failure to participate in the interview process will result in the team's disqualification from further consideration. The Port will inform top-ranked teams invited for an interview of the interview schedule, agenda and criteria for scoring to time of invitations.



## **PROCUREMENT PROCESS**

### **SOLICITATION TIMELINE:**

Issuance of RFQ	AUGUST 8, 2014
Last Day To Submit Questions	AUGUST 20, 2014
<b>SOQs due</b>	<b>AUGUST 27, 2014 @ 3:00 PM</b>
Short List Consultants*	SEPTEMBER 5, 2014
Interviews (if required)*	SEPTEMBER 11/12, 2014
Final Selection*	SEPTEMBER 15, 2014
Execute Contract*	OCTOBER 10, 2014

\*Dates with an asterisk are estimated dates and are for information purposes only.

All status updates on the above solicitation timeline will be announced on the Port's [website for this solicitation](#).

### **VENDOR OBLIGATION**

Port of Tacoma Requests for Bids, Requests for Proposals and Requests for Qualifications can be accessed on the Port's website, [www.portoftacoma.com](http://www.portoftacoma.com) under 'Contracts'; Procurement.

When viewing the details page for this procurement on the Port's Website firms have the option of subscribing to the Holders List.



By subscribing to the Holders List, firms will automatically be notified when new documents or changes relating to this procurement occurs.

### **COMMUNICATION / INQUIRES**

Proposers who, relative to this scope of services, contact any individuals or Commission members representing the Port, other than the Procurement Representative listed on the RFQ may be disqualified from consideration.

Written questions about the meaning or intent of the Solicitation Documents shall only be submitted to the Procurement Department, [procurement@portoftacoma.com](mailto:procurement@portoftacoma.com) (**Solicitation Name** in subject line).

Proposers who may have questions about provisions of these documents are to email their questions by the date listed above. The Port will respond to all written questions submitted by this deadline.

### **PRE-PROPOSAL CONFERENCE**

The Port will not conduct a pre-proposal conference for this procurement. To obtain answers to any questions or for further clarifications, submit all questions as noted above.

## **ADDENDA**

The Port may make changes to this Solicitation. Oral or other interpretations, clarifications or submittal instructions will be without legal effect. Any information modifying a solicitation will be furnished in a formal, written addendum. Addenda will be posted to the Port's web site and conveyed to those potential submitters who have subscribed to the Holders List.

## **SUBMITTAL PROCESS**

SOQs must be received via email on or before the date and time outlined on the front page of this RFQ. Send your electronic submittal to:

[procurement@portoftacoma.com](mailto:procurement@portoftacoma.com).  
Name of Firm, RFQ Title (Subject Line)

Please submit one electronic copy in Adobe Acrobat PDF format, including all appendices. Submittals need to be limited to **9 MB in total email size**. It is the Consultant's responsibility to verify the receipt of the submittal. Electronic verification will be provided upon request.

**\*Late SOQs will not be accepted by the Port. SOQs received after the stated date and time will not be reviewed and shall be deemed non-responsive.**

## **EVALUATION AND AWARD PROCESS**

An evaluation team will review the SOQs and evaluate all responses received based upon the criteria listed herein. The Port may request clarifications or additional information, if needed. A selection may be made based on the SOQ's and initial evaluation criteria alone or the firms determined to be most qualified through the initial evaluation phase will be invited in for interviews and the final determination for short listed firms will be based on reference checks and interviews.

The Port intends to select the proposed Team which represents the most qualified team to the Port and begin the negotiation and award process based on the evaluated scores.

The selected Consultant will be invited to enter into contract negotiations with the Port. Should the Port and the selected consultant not reach a mutual agreement, the Port will terminate negotiations and move to the next highest ranked team and proceed with negotiations.

The Port reserves the right to accept or reject any or all information in its entirety or in part and to waive informalities and minor irregularities and to contract as the best interest of the Port may require. The Port reserves the right to reject any or all SOQs submitted as non-responsive or non-responsible.

News releases pertaining to this RFQ, the services, or the project to which it relates, shall not be made without prior approval by, and then only in coordination with, the Port.

## **COSTS BORNE BY PROPOSERS**

All costs incurred in the preparation of a SOQ and participation in this RFQ and negotiation process shall be borne by the proposing firms.

## **PUBLIC DISCLOSURE**

SOQs submitted under this Solicitation will be considered public documents and, with limited exceptions, will become public information and may be reviewed by anyone requesting the document under a Public Records Request following the conclusion of the evaluation, negotiation, and award process. This process is concluded when a signed contract is executed between the Port and the selected Consultant.

If a firm considers any portion of its response to be protected under the law, the firm shall clearly identify each such portion with words such as “CONFIDENTIAL”, “PROPRIETARY” or “BUSINESS SECRET” on each page for which the protection is sought. If a request is made for disclosure of such portion, the Port will notify the firm of the request and allow the vendor not less than ten (10) days to seek a protective order from the Courts or other appropriate remedy and/or waive the claimed confidentiality. Unless such protective order is obtained and provided to the Port by the stated deadline, the Port will release the requested portions of the response. By submitting a response, the vendor assents to the procedure outlined in this paragraph and shall have no claim against the Port on account of actions taken under such procedure.



## PROFESSIONAL SERVICES AGREEMENT NO. 000000

PROJECT: Project Title

CONSULTANT: Company, Address, City, State, Zip

PROJECT MANAGER: Contract Owner PROJECT NO. 09XXXX

THIS AGREEMENT is made and entered into by and between the **Port of Tacoma** (hereinafter referred to as the "Port") and **xxCOMPANYxx** (hereinafter referred to as the "Consultant") for the furnishing of **xxTitlexx** Professional Services (hereinafter referred to as the "Project").

The Port and Consultant mutually agree as follows:

### SCOPE OF WORK

The Consultant will

### DELIVERABLES

### ASSUMPTIONS

### COMPENSATION

This will be accomplished on a **time and materials** basis and will not exceed **\$00,000.00** without prior written approval from the Port.

The length of this agreement is from **the date of execution** to **xxDATExx**.

This agreement is expressly conditioned upon the **Standard and Project Terms and Conditions, Rate Sheet, and Department of Commerce Grant Terms and Conditions** attached to this agreement. Consultant acknowledges reading this Agreement, understands it and agrees to be bound by its Terms and Conditions.

Contract XXXXXX  
Project No. XXXXXX

Page 2 of 2  
August 7, 2014

**AGREED**

**PORT OF TACOMA**

**CONSULTANT (LEGAL NAME)**

By \_\_\_\_\_

Name  
Title

Date

By \_\_\_\_\_

Date

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

## **Port of Tacoma Standard Terms And Conditions Professional Services Agreement**

In consideration of the mutual covenants, obligations, and compensation to be paid by the Port to Consultant, it is agreed that:

### **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. Relationship of the Parties**

Consultant, its subconsultants and employees, is an independent Contractor. Nothing contained herein shall be deemed to create a relationship of employer and employee or of principal and agent.

### **3. Conflicts of Interest**

Consultant warrants that it has no direct or indirect economic interest which conflicts in any manner with its performance of the services required under this Agreement. Consultant warrants that it has not retained any person to solicit this Agreement and has not agreed to pay such person any compensation or other consideration contingent upon the execution of this Agreement.

### **4. Compliance with Laws**

a) Consultant agrees to comply with all local, state, tribal and federal laws and regulations applicable to the project, including building codes and permitting regulations existing at the time this Agreement was executed and those regarding employee safety, the work place environment, and employment eligibility verifications as required by the Immigration and Naturalization Service. Consultant shall obtain all professional licenses and permits required to complete the scope of work as defined.

b) 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.

### **5. Records and other Tangibles**

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.

## **6. 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.

## **7. 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.

## **8. Compensation**

As full compensation for the performance of its obligations of this Agreement and the services to be provided, the Port shall pay Consultant as specified in the Agreement.

Consultant agrees to submit timely invoices as the work progresses. Invoices that are submitted for payment 90 days or more after the work was completed are subject to non-payment.

Consultant is responsible for working within the budget as agreed. Should the Consultant incur costs beyond the not-to-exceed contract budget amount without an executed amendment to this contract, the consultant is solely responsible for the additional costs.

Invoices for services performed through December 31 of each year shall be submitted annually no later than 7th day of January. If the Consultant is unable to provide an invoice they shall advise the Port in writing with a summary of the work completed and the accrual amount to be invoiced through December 31 of that year.

## **9. Costs and Disbursements**

Consultant shall pay all costs and disbursements required for the performance of its services under this Agreement.

## **10. Standard of Care**

a) 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.

b) The Port's approval of plans, drawings and specifications shall not relieve Consultant of responsibility for the adequacy or accuracy thereof. The Consultant shall remain liable for damages and costs incurred by the Port arising from the Consultant's errors, omissions or negligent performance of services furnished under this Agreement.

#### **11. 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.

#### **12. 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.

#### **13. Term of this Agreement**

The effective dates of this Agreement are as specified. This Agreement may be terminated by the Port for cause when the Port deems continuation to be detrimental to its interests or for failure of the consultant to perform the services specified in the Agreement. The Port may terminate this Agreement at any time for government convenience in which case it shall provide notice to the Consultant and reimburse the Consultant for its costs and fees incurred prior to the notice of termination.

#### **14. 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 Pierce County Superior Court of the state of Washington and the prevailing party shall be entitled to recover its costs and reasonable attorney(s) fees.

#### **15. Extent of 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.

#### **16. Prevailing Wages**

The Consultant is responsible for ensuring that all personnel performing work on the contract are paid wages in accordance with federal, state and local laws when applicable.



## Port of Tacoma Project Terms And Conditions Professional Services Agreement

### 1. Key Personnel

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

### 2. Insurance - Assumption of Risk

- a) As a further consideration in determining compensation amounts, the Consultant shall procure and maintain, during the life of this Agreement, such commercial general liability insurance, professional liability insurance and other insurance as required by contract for this project that shall protect Consultant and any subconsultant performing work under this Agreement from claims for damages from bodily injury, including death, resulting therefrom as well as from claims for property damage, economic damage which may arise under this Agreement, whether arising from operations conducted by the Consultant, any subconsultant, or anyone directly or indirectly employed by either of them. Consultant recognizes that it is the obligation of the Consultant to ensure that all Subconsultants of any tier have insurance for the activities performed under this agreement.
- b) Consultant shall indemnify, defend, and hold harmless the Port, its officials, officers, agents, and employees, and the State of Washington, its agents, officers, and employees, from any and all claims, demands, 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 amended.
- c) This indemnification shall extend to and include attorney's fees and the cost of establishing the right of indemnification hereunder in favor of the Port **and the State**. This indemnification shall survive the termination of this Agreement.
- d) Consultant specifically assumes potential liability for actions brought by Consultant's own employees against the Port and, solely for the purpose of this indemnification and defense, Consultant specifically waives any immunity under the state industrial insurance law, Title 51 RCW. Consultant recognizes that this waiver was the subject of mutual negotiation.
- e) This indemnification shall extend to and include attorney's fees and the cost of establishing the right of indemnification hereunder in favor of the Port **and the State**. This indemnification shall survive the termination of this Agreement.

- f) With respect to professional liability claims only, and not commercial general liability claims, Consultant agrees to indemnify and hold harmless the Port of Tacoma, its appointed and elective officers and its employees **and the State of Washington, its agents, officers, and employees** from and against any and all suits, claims, actions, losses, costs, penalties and damages of whatever kind and nature, including attorney fees and costs by reason of any and all claims and demands on it, its officers and employees, arising from the negligent acts, errors or omissions by the Consultant in the performance of the Consultant's professional services.
- g) Consultant shall submit to the Port of Tacoma, prior to the commencement of services, certificates of insurance evidencing:
  - i) Commercial General Liability coverage on occurrence form CG0001 or equivalent with limits of \$1,000,000 per occurrence and \$2,000,000 aggregate. Coverage will include: Products and Completed Operations, Contractual Liability and Personal & Advertising Injury; and
  - ii) Automobile Liability covering owned, non-owned and hired vehicles of \$1,000,000 combined single limit per accident; and
  - iii) Professional Liability not less than \$1,000,000 per claim and in the aggregate. If the scope of Professional Services includes environmental testing, consulting or other such professional services, the Consultant's Professional Liability policy shall include coverage for these services. If such coverage is written on a claims-made basis, any retroactive date on the policy shall be prior to the start of this contract. Coverage shall remain in effect for the term of this Agreement plus three years. Certificates of Insurance citing the contract and project number shall be provided to the Port of Tacoma on an annual basis for each of the three years.
  - iv) Workers Compensation Insurance: Statutory Workers Compensation Insurance as required by the State of Washington.
  - v) Stop Gap/Employers Liability Insurance shall be provided with a limit of not less than \$1,000,000 per claim.
- h) All policies shall be issued by a company having an A. M. Best Financial Strength Rating of A- and Financial Size Category of VI or better. The Consultant shall be responsible for notifying the Port in writing within ten (10) days of receipt of notice of coverage being suspended, voided, cancelled or materially reduced. Except for professional liability, the Port **and the State of Washington, its agents, officers, and employees**, shall be named as an additional insured on all policies by endorsement on ISO Form CG 20 10 Form B or equivalent. Except for Workers Compensation and Professional Liability, waivers of subrogation shall be provided by endorsement to all policies.

- i) Consultant is responsible for complying with the Washington State laws that pertain to industrial insurance (RCW 51) for. Consultant shall submit a current employer liability certificate as issued by the Washington Department of Labor and Industries that shows the status of Consultant's worker compensation account prior to contract execution, including those Consultants who are qualified self-insurers with the state. Consultant bears the responsibility to ensure that any out-of-state (non-Washington) employees and subconsultants have appropriate workers compensation coverage while working for the Port in Washington State. Consultant may be exempt from state worker compensation insurance requirements (RCW 51.12.020) such as if Consultant is a sole proprietor.
- j) Certain work or services under this Agreement may require Longshore and Harbor Worker's Compensation Act (33 U.S.C. §§901 et seq.) insurance coverage, coverage to comply with the Federal Employers Liability Act, or Jones Act coverage. Consultant is fully responsible for ascertaining whether or not such insurance is required. If these or any other federally required insurance coverages apply to this Agreement, the Consultant is responsible for obtaining the coverage, and/or meeting any self-insurance requirements to qualify as a self-insurer.

### 3. Payment Schedule

Consultant shall submit detailed numbered invoices in accordance with the Agreement by the 10th of the month. After a complete and correct invoice has been received by the Port, payment will be made within thirty (30) days.

All invoices shall be sent "Attention: Facilities Development". Invoices shall be emailed to [cpinvoices@portoftacoma.com](mailto:cpinvoices@portoftacoma.com). The email must include the required supporting documentation. Incomplete or improperly prepared invoices will be returned for correction without processing or payment.

Consultant shall submit detailed invoices showing the following:

- a) Invoice Number, Contract number, Title, Invoice Period
- b) Summary page with a brief description of work completed during the invoice period, deliverables provided during the invoice period, and forthcoming milestones / deliverables.
- c) Further, provide a summary breakdown of all projects with the amount of the overall invoice to be charged to each project.
- d) Current Amount Due:
  - i) Time and Materials Breakdown: titles, hours, hourly rates, and all expenses itemized, with backup, in accordance with the contract.
- e) Total amount of the Contract, and balance of Contract amount.
- f) Indicate "**Final Invoice**" when invoice is the final billing.

#### 4. Compensation

Consultant expenses will be reimbursed at cost with the exception of:

- a) Subconsultant services will be reimbursed at cost plus negotiated markup.
- b) Services provided by a third party will be reimbursed at cost.

Costs marked up by a sub-tier shall be passed through to higher tiers as a direct cost. In no case shall the mark up at any tier exceed the negotiated percentage.

Reimbursable expenses by a sub-tier shall be passed through to higher tiers as a direct cost. In no case shall markup be applied to reimbursable expenses at any level.

**Rates:** Rates are fully burdened and will remain in effect for the contract term unless renegotiated and agreed to by both parties in a written amendment.

Rates may be negotiated no more than once annually. Rate adjustments will be tied to the CPI for the Seattle, Tacoma/Bremerton area.

**Rates and Markup** are defined on **Attachment E** of this contract.

**Overtime:** The Port will allow overtime rates for preapproved labor categories, as required by federal law, at 1.25 times the rate when approved in advance by the Project Manager and when required by the nature of the Work. The Consultant shall submit a list of labor classifications to which overtime rates are applicable to by law.

**Local Travel:** Compensation for vehicle usage will be paid at the current Internal Revenue Service allowable mileage reimbursement rate. Out of state mileage will not be paid. Consultants who are located within 50 miles of the project site will not be reimbursed for meals, lodging or mileage.

#### **Other Travel:**

The Port will reimburse the Consultant for all allowable travel expenses (including expenses for travel by car, air, water and rail, accommodation and meals) incurred in order to provide the scope of work to the Port in accordance with the following guidelines:

Lodging and meal reimbursement is in accordance with the following Per Diem rates established by the IRS at <http://www.ofm.wa.gov/resources/travel.asp>

Amounts reimbursed will be computed at the rate for physical location to which travel is authorized by the Project Manager. Lodging, travel and local mileage must be approved in writing by the Project Manager prior to performing travel. Request for travel should include a breakout of costs associated with the requested travel.

Airfare will be reimbursed at the lowest available commercial coach rate. Airfare will be booked at least 15 days in advance of travel. The Port will reimburse for up to a mid-size vehicle with standard equipment (this does not include GPS, video screens, etc). The Port will also reimburse for gasoline expense associated with rental vehicle with the exception of gasoline provided/billed by the rental car company. The Port will not reimburse the Consultant for mileage at the IRS rate on a rented vehicle. Receipts are required for all reimbursed expenses with the exception of meals. Reimbursement (other than meals) will be for actual costs incurred subject to the Per Diem rates established by the IRS at <http://www.ofm.wa.gov/resources/travel.asp> for the location to which travel has been authorized.

## **5. 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 files used in the creation of the tangible product on CD-Rom in a PDF format or other format specified by the Port.

## **6. Drawing, Specification and GIS**

- a) Consultant shall prepare specifications using BSD Speclink-E software, and CSI Masterformat, latest edition, specification organization.
- b) Consultant shall prepare specifications in accordance with the Port's Specification Standards available from the Port Project Manager. The Port's Master specifications for Division 00 and Division 01 are available at <http://portoftacoma.com/contracts.forms>.
- c) All site plans, derivative drawings and bid plans shall be completed using Port GIS and CADD standards and layer/block protocols available at <http://portoftacoma.com/contracts.forms> and from the Port Project Manager.

## **7. Security – Transportation Worker Identification Credential (TWIC)**

The requested services may require the consultant to work within a secured/restricted TWIC regulated terminal.

TWIC is a credentialing program managed by the Department of Homeland Security (DHS), through the United States Coast Guard and the Transportation Security Administration. All credentialed merchant mariners and individuals who will need unescorted access to secure areas of a maritime regulated facility or vessel must obtain a TWIC. For more information on TWIC visit [www.tsa.gov/twic](http://www.tsa.gov/twic).

The Consultant shall have a minimum of one TWIC compliant employee trained as an escort for every five employee not possessing TWIC cards accessing a secured or restricted site. Each escort will be required to receive Terminal Operator provided escort training.

## **8. Existing Hazardous Material Information**

The Port shall furnish the Consultant with the information as required by the Hazard Communication standard for materials pre-existing on the Project. The Consultant is solely responsible for ensuring that this information is made available to the Consultant's personnel, subconsultants, and that relevant information is incorporated into work products including, but not limited to, reports, specifications, and contract documents.

## **9. Extent of Agreement**

In the event the Consultant identifies something that may impact the scope of work, project schedule, total price, task budget(s) or cost of performing work, the Consultant shall inform the Project Manager in writing prior to exceeding the task budget(s) and within seven (7) calendar days of the event and possible impacts to scope, schedule and cost or task budget.

The Project Manager may, at any time, by written directive require the Consultant to perform work consistent with the Agreement's scope of work; provided that this directive does not add scope or cost to the project.

Any directive shall not constitute an amendment to the Agreement nor entitle the Consultant to any additional compensation or a time adjustment.

## HOURLY RATES

**Consultant**  
**Project Name**

**Personnel**

**Hourly Rates**

Sr. Consultant 2	\$
Sr. Consultant 1	\$
Consultant 2	\$
Consultant 1	\$
Project 2	\$
Project 1	\$
Staff 2	\$
Staff 1	\$

**Reimbursable**

Outside Lab services	Cost
Subconsultants	Cost + Negotiated Markup (Markup is limited to 4%)

Attachment F



STATE OF WASHINGTON  
**DEPARTMENT OF COMMERCE**

1011 Plum Street SE • PO Box 42525 • Olympia, Washington 98504-2525 • (360) 725-4000

[www.commerce.wa.gov](http://www.commerce.wa.gov)

May 6, 2013

Scott Bickel  
Port of Tacoma  
P.O. Box 1837  
Tacoma, WA 98401-1837

**RECEIVED**  
**MAY - 7 2013**  
**ENGINEERING DEPT.**

Re: Department of Commerce – Direct Appropriation Grant 13-96701-012

Dear Scott Bickel:

Enclosed is a fully executed contract for your Department of Commerce – Direct Appropriation Grant contract between Port of Tacoma and Commerce

This contract is for South Lead Rail. Please keep this original document with other local records related to your project.

We have enclosed an A19 voucher and instructions on how to submit the A19 for requesting funds and will email the electronic version, (if needed) for your completion once funds are ready to be expended.

Please send A19 invoices to: Denise Fry  
Department of Commerce  
Attn: Contracts Administration Unit  
P. O. Box 42525  
Olympia, WA 98504-2525

I will be your project manager and look forward to working with you and your staff.

Sincerely,

Denise Fry  
CAU Project Manager  
360-725-2741  
[denise.fry@commerce.wa.gov](mailto:denise.fry@commerce.wa.gov)

Enclosures





**Washington State  
Department of Commerce**

1011 Plum Street SE  
Post Office Box 42525  
Olympia, Washington 98504-2525

---

**RECEIVED**  
**MAY - 7 2013**  
**ENGINEERING DEPT.**

**Direct Appropriations Agreement between:**

**Port of Tacoma**

**and**

**Washington State  
Department of Commerce**

**For:**

Project Name: **South Lead Rail**

Contract Number: **13-96701-012**

Contract Type: **Commerce - Direct Appropriation**

**Execution / Start Date:**

**Contract Execution Date**

---

## DECLARATIONS

### CLIENT INFORMATION

<i>Legal Name</i>	Port of Tacoma
<i>Contract Number</i>	13-96701-012
<i>Federal Tax ID #</i>	91-6001026
<i>State Client #</i>	SWV0019909-00

### PROJECT INFORMATION

<i>Title</i>	South Lead Rail
<i>Project City</i>	Tacoma
<i>Project State</i>	Washington
<i>Project Zip</i>	98402

### CONTRACT TERMS and CONDITIONS

<i>Contract Amount</i>	\$4,950,000.00
<i>Appropriation Number</i>	ESB 5127, 2012, Section 306
<i>Contract End Date</i>	Jun 30, 2015
<i>Biennium</i>	2011 - 2013
<i>Biennium Close Date</i>	Jun 30, 2013
<i>Earliest Date for Construction Reimbursement</i>	Apr 23, 2012 (earliest date for reimbursable expenditures)
<i>Special Conditions</i>	Right Of Way must be secured by 12/31/2013

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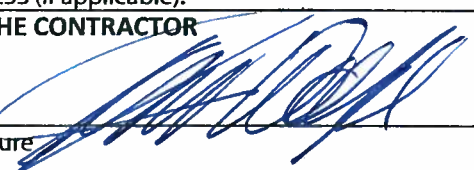
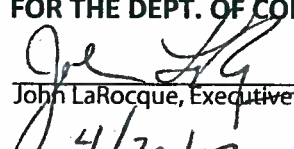
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# CONTRACT FACE SHEET

Contract Number: 13-96701-012

## Washington State Department of Commerce Grant Programs - Direct Appropriations Projects

<b>1. Contractor</b> Port of Tacoma PO Box 1837 Tacoma, WA 98402		<b>2. Contractor Doing Business As (optional)</b> N/A	
<b>3. Contractor Representative</b> N/A		<b>4. Commerce Representative</b> N/A	
<b>5. Contract Amount</b> \$4,950,000.00	<b>6. Funding Source</b> Federal: <input type="checkbox"/> State: <input checked="" type="checkbox"/> Other: <input type="checkbox"/> N/A: <input type="checkbox"/>	<b>7. Contract Start Date</b> Contract Execution Date	<b>7. Contract End Date</b> Jun 30, 2015
<b>9. Federal Funds (as applicable)</b> Federal Agency N/A		<b>CFDA Number</b> N/A	
<b>10. Tax ID #</b> 91-6001026	<b>11. SWV #</b> SWV0019909-00	<b>12. UBI #</b>	<b>13. DUNS #</b>
<b>14. Contract Purpose</b> COMMERCE and the Contractor have entered into this Contract to undertake a legislatively-approved project that furthers the goals and objectives of Washington State Direct Appropriations Program  The Washington State Dept. of Commerce (COMMERCE), and Contractor acknowledge and accept the terms of this Contract and attachments and have executed this Contract on the date below to start as of the date and year last written below. The rights and obligations of both parties to this Contract are governed by this Contract and the following other documents incorporated by reference: Contract Terms and Conditions including ATTACHMENT I: PROJECT SCOPE OF WORK; ATTACHMENT II: CERTIFICATION OF THE PAYMENT AND REPORTING OF PREVAILING WAGES; and ATTACHMENT III: CERTIFICATION OF INTENT TO ENTER THE LEADERSHIP IN ENERGY AND ENVIRONMENTAL DESIGN (LEED) CERTIFICATION PROCESS (if applicable).			
<b>FOR THE CONTRACTOR</b>  Signature   Print Name <u>John Wolke</u>  Title <u>CEO</u>  Date <u>April 23, 2013</u>		<b>FOR THE DEPT. OF COMMERCE</b>  Signature  John LaRocque, Executive Director  Date <u>4/29/13</u>  APPROVED AS TO FORM ONLY This 14th Day of June, 2012  Signature on file Kathryn Wyatt Assistant Attorney General	



## CONTRACT TERMS AND CONDITIONS

### Washington State Department of Commerce Grant Programs - Direct Appropriations Projects

## Part 1. SPECIAL TERMS AND CONDITIONS

### 1.1. Definitions

As used throughout this Washington State Capital Budget Direct-Appropriation Contract the following terms shall have the meaning set forth below:

- A. "Contract" shall mean this Washington State Capital Budget Direct-Appropriation Contract.
- B. "Contractor" shall mean the local government identified on the Contract Face Sheet performing service (s) under this Contract and who is a Party to the Contract, and shall include all employees and agents of the Contractor.
- C. "Commerce" shall mean the Washington State Department Of Commerce, and who is a Party to the Contract.
- D. "Declarations " and "Declared" shall refer to the project information, grant terms and conditions as stated on the Declarations Page of this Grant Contract, displayed within the contract in **THIS STYLE** for easier identification.

### 1.2. Authority

Acting under the authority of Chapter 43.330 RCW, Commerce has awarded the Contractor a contract for a legislatively-approved project pursuant to the legislative **APPROPRIATION NUMBER** and **BIENNIUM** as shown on the Declarations Page.

### 1.3. Purpose

Commerce and the Contractor have entered into this Contract to undertake a legislatively-approved project that furthers the goals and objectives of Washington State. The project will be undertaken by the Contractor and will include the activities described in Attachment I: SCOPE OF WORK. The project must be undertaken in accordance with the grant terms and conditions, and all applicable federal, state and local laws and ordinances, which by this reference are incorporated into this Contract as though set forth fully herein.

### 1.4. Order of Precedence

In the event of an inconsistency in this Contract, the inconsistency shall be resolved by giving precedence in the following order:

- A. Applicable federal and state of Washington statutes and regulations.
- B. Special Terms and Conditions including attachments.
- C. General Terms and Conditions.

### 1.5. Grant Amount

Commerce shall pay an amount not to exceed the awarded **GRANT AMOUNT** as shown on the attached Declarations Page for the eligible costs necessary for or incidental to the performance of work as set forth in Attachment I: SCOPE OF WORK.

### 1.6. Certification of Funds

This section has been deleted but title retained for document continuity.

### 1.7. Modification of Project Costs

This section has been deleted but title retained for document continuity.



### **1.8. Project Expenditures Eligible for Reimbursement**

Payments to the Contractor shall be made on a reimbursement basis only. For the purposes of this Contract, eligible costs shall be construed to mean costs incurred and paid, or costs incurred and payable within thirty (30) days. Only costs that have been incurred on or after the **EARLIEST DATE FOR CONSTRUCTION REIMBURSEMENT** shown in the Declarations, are eligible for reimbursement under this Contract.

The Contractor may be reimbursed for eligible costs related to the activities identified in Attachment I: SCOPE OF WORK.

- A. Real property and costs directly associated with such purchase, when purchased or acquired solely for the purposes of the project;
- B. Design, engineering, architectural, and planning;
- C. Archaeological/historical review;
- D. Construction management and construction observation (from external sources only);
- E. Construction costs including, but not limited to, the following:
  - i. Site preparation and improvements;
  - ii. Permits and fees;
  - iii. Labor and materials;
  - iv. Taxes on project goods and services;
  - v. Capitalized equipment;
  - vi. Information technology infrastructure; and
  - vii. Landscaping.
- F. Insurance premiums as required in Section 1.19;
- G. Other costs authorized through the legislation.

### **1.9. Billing Procedures and Payment**

Commerce shall reimburse the Contractor for eligible project expenditures up to the maximum payable under this Contract. When requesting reimbursement for costs incurred or expenditures made, the Contractor shall submit a signed and completed Invoice Voucher (Form A-19), referencing the Attachment I: SCOPE OF WORK project activity performed, and any appropriate documentation. The Invoice Voucher must be certified by an official of the Contractor with authority to bind the Contractor.

Each Invoice Voucher must be accompanied by a Project Status Report, which describes, in narrative form, the progress made on the project since the last invoice was submitted, as well as a report of project status to date. Commerce will not release payment for any reimbursement request received until the Project Status Report is received. After approving the Invoice Voucher and Project Status Report, Commerce shall promptly remit a warrant to the Contractor.

The final Invoice Voucher payment shall not occur prior to the completion of all project activities as identified in Attachment I: SCOPE OF WORK. A sum not to exceed **ten percent (10%)** of the grant amount will be retained until all project activities are complete and a Certified Project Completion Report is completed and submitted by the Contractor, per Section 1.10.

The Contractor shall submit all Invoice Vouchers and any required documentation to:

Contracts Administration Unit  
Department of Commerce  
PO Box 42525  
Olympia, WA 98504-2525

Commerce will pay the Contractor upon acceptance of services provided and receipt of properly completed invoices, which shall be submitted to Commerce not more often than monthly.

Payment shall be considered timely if made by Commerce within thirty (30) calendar days after receipt of properly completed invoices. Payment shall be sent to the address designated by the Contractor.

Commerce may, in its sole discretion, terminate the Contract or withhold payments claimed by the Contractor for services rendered if the Contractor fails to satisfactorily comply with any term or condition of this Contract.

No payments in advance or in anticipation of services or supplies to be provided under this Contract shall be made by Commerce.

Duplication of Billed Costs. The Contractor shall not bill Commerce for services performed under this Contract, and Commerce shall not pay the Contractor, if the Contractor is entitled to payment or has been or will be paid by any other source, including grants, for that service.

Disallowed Costs. The Contractor is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its subcontractors.

#### **1.10. Certified Project Completion Request and Final Payment**

The Contractor shall complete a Certified Project Completion Request when activities identified in Attachment I: SCOPE OF WORK are complete.

The Contractor shall provide the following information to Commerce:

- A. A certified statement that the project, as described in Attachment I: SCOPE OF WORK, is complete and, if applicable, meets required standards.
- B. A certified statement of the actual dollar amounts spent, from all funding sources, in completing the project as described in Attachment I: SCOPE OF WORK.
- C. Certification that all costs associated with the project have been incurred and have been accounted for. Costs are incurred when goods and services are received and/or contract work is performed.
- D. A final voucher for the remaining eligible funds.

The Contractor will submit the Certified Project Completion Report together with the last Invoice Voucher for a sum not to exceed the balance of the grant amount including the ten percent (10%) retainage, as described in Section 1.9. The final Invoice Voucher payment shall not occur prior to the completion of all project activities identified in Attachment I: SCOPE OF WORK and Commerce's receipt and acceptance of the Certified Project Completion Report.

#### **1.11. Reports**

The Contractor shall furnish Commerce with Project Status Reports when submitting Invoice Vouchers (as described in Section 1.9), a Certified Project Completion Report at project completion (as described in Section 1.10), and other reports as Commerce may require. Failure to file reports as requested may result in termination of this Contract.

#### **1.12. Evaluation and Monitoring**

The Contractor shall cooperate with and freely participate in any monitoring or evaluation activities conducted by Commerce, including site inspections, if necessary.

The Contractor may be asked by Commerce to provide photographs, either hard copy or electronically, which visually depict the progress made on the project.

Commerce or the State Auditor and any of their representatives shall have full access to and the right to examine all of the Contractor's records with respect to all matters covered in this Contract. Such representatives shall be permitted to audit, examine, and make excerpts or transcripts from such records and to make audits of all contracts, invoices, materials, payrolls, and records of matters covered by this Contract. Such rights last for six (6) years from the date final payment is made.

#### **1.13. Ownership Of Project/Capital Facilities**

Commerce makes no claim to any real property improved or constructed with funds awarded under this Contract and does not assert and will not acquire any ownership interest in or title to the capital facilities and/or equipment constructed or purchased with state funds under this Contract. This provision does not extend to claims that Commerce may bring against the Contractor in recapturing funds expended in violation of this Contract.

#### **1.14. Change of Ownership or Use For Contractor-Owned Property**

The Contractor understands and agrees that any or all assets acquired, constructed, or otherwise improved by the Contractor using the funds under this Contract shall be held and used by the Contractor for the purposes stated in Attachment I: SCOPE OF WORK for a period of at least ten (10) years from the date the final payment is made.

This provision shall not be construed to prohibit the Contractor from selling any property or properties described in this section; Provided, that any such sale shall be subject to prior review and approval by Commerce, and that all proceeds from such sale shall be applied to the purchase price of a different facility or facilities of equal or greater value than the original facility and that any such new facility or facilities will be used for the purpose or purposes stated elsewhere in this contract.

For a period of at least ten (10) years from the date the final payment is made, in the event that the Contractor decides to change or transfer ownership of any or all assets acquired, constructed, or otherwise improved by the Contractor using the funds under this Contract, the Contractor agrees that any such decision or action must be submitted in writing and approved by Commerce in writing at least thirty (30) days prior to the execution of such decision or action.

In the event the Contractor is found to be out of compliance with this section, the Contractor shall repay the principal amount of the grant as stated in Section 1.5, plus interest calculated at the rate of interest on State of Washington general obligation bonds issued most closely to the effective date of the legislation in which the subject asset was authorized. Repayment shall be made pursuant to Section 1.20. Recapture Provision.

#### **1.15. Change of Use For Leased Property**

The Contractor understands and agrees that any facility leased by the Contractor that is constructed, renovated, or otherwise improved using state funds under this Contract shall be used by the Contractor for the purposes stated in Attachment I: SCOPE OF WORK for a period of at least ten (10) years from the date the final payment is made.

In the event the Contractor is found to be out of compliance with this section, the Contractor shall repay the principal amount of the grant as stated in Section 1.5, plus interest calculated at the rate of interest on State of Washington general obligation bonds issued most closely to the effective date of the legislation in which the subject facility was authorized. Repayment shall be made pursuant to Section 1.20. Recapture Provision.

#### **1.16. Historical and Cultural Resources**

Prior to commencing construction, Contractor shall complete the requirements of Governor's Executive Order 05-05, or, as a substitute for completion of Governor's Executive Order 05-05, Contractor shall complete Section 106 of the National Historic Preservation Act. Contractor agrees that the Contractor is legally and financially responsible for compliance with all laws, regulations, and agreements related to the preservation of historical or cultural artifacts and agrees to hold harmless Commerce and the State of Washington in relation to any claim related to such historical or cultural artifacts discovered, disturbed, or damaged as a result of the project funded by this Contract.

In addition to the requirements set forth in this Contract, Contractor shall, in accordance with Governor's Executive Order 05-05, coordinate with the Washington State Department of Archaeology and Historic Preservation (DAHP), including any recommended consultation with any affected tribe(s), during project design and prior to construction to determine the existence of any tribal cultural resources affected by the proposed project funded by this Contract. Contractor agrees to avoid, minimize, or mitigate impacts to the cultural resource as a continuing pre-requisite to receipt of funds under this Contract.

The Contractor agrees that, unless the Contractor is proceeding under an approved historical and cultural monitoring plan or other memorandum of agreement, if historical or cultural artifacts are discovered during construction, the Contractor shall immediately stop construction and notify the local historical preservation officer and the state's historical preservation officer at DAHP. If human remains are uncovered, the Contractor shall report the presence and location of the remains to the coroner and local enforcement immediately, then contact the concerned tribe's cultural staff or committee and the DAHP.

The Contractor shall require this provision to be contained in all sub-contracts for work or services related to Attachment I: SCOPE OF WORK.

In addition to the requirements set forth in this Contract, Contractor agrees to comply with RCW 27.44 regarding Indian Graves and Records; RCW 27.53 regarding Archaeological Sites and Resources; RCW 68.60 regarding Abandoned and Historic Cemeteries and Historic Graves; and, WAC 25-48 regarding Archaeological Excavation and Removal Permits.

Completion of the Section 106 of the National Historic Preservation Act shall substitute for completion of Governor's Executive Order 05-05.

In the event that the Contractor finds it necessary to amend ATTACHMENT I: SCOPE OF WORK, the Contractor may be required to re-comply with Governor's Executive Order 05-05 or Section 106 of the National Historic Preservation Act.

#### **1.17. Signage, Markers, and Publications**

If, during the period covered by this Contract, the Contractor displays or circulates any communication, publication, or donor recognition identifying the financial participants in the project, any such communication or publication must identify "The Taxpayers of Washington State" as a participant.

#### **1.18. Prevailing Wage Law**

The project funded under this Contract is subject to state prevailing wage law (Chapter 39.12 RCW). The Contractor is advised to consult the Industrial Statistician at the Washington Department of Labor and Industries to determine the prevailing wages that must be paid. Commerce is not responsible for determining the prevailing wages applying to this project or for any prevailing wage payments that may be required by law.

#### **1.19. Insurance**

**(NOTE: SECTION 1.19 DOES NOT APPLY TO MUNICIPAL ENTITIES)**

##### **A. Private Organizations**

The Contractor shall provide insurance coverage as set out in this section. The intent of the required insurance is to protect the State of Washington should there be any claims, suits, actions, costs, damages, or expenses arising from any loss, or negligent or intentional act or omission of the Contractor or its subcontractors, or agents of either, while performing under the terms of this Contract.

The insurance required shall be issued by an insurance company authorized to do business within the State of Washington. Except for Professional Liability or Errors and Omissions Insurance, the insurance shall name the State of Washington, its agents, officers, and employees as additional insureds under the insurance policy. All policies shall be primary to any other valid and collectable insurance. The Contractor shall instruct the insurers to give Commerce thirty (30) calendar days advance notice of any insurance cancellation or modification.

The Contractor shall submit to Commerce within fifteen (15) calendar days of the Contract start date, a certificate of insurance, which outlines the coverage and limits required under this insurance section. During the term of the Contract, the Contractor shall submit renewal certificates not less than thirty (30) calendar days prior to expiration of each policy required under this section.

The Contractor shall provide insurance coverage that shall be maintained in full force and effect during the term of this Contract, as follows:

**Commercial General Liability Insurance Policy.** Provide a Commercial General Liability Insurance Policy, including contractual liability, written on an occurrence basis, in adequate quantity to protect against legal liability arising out of Contract activity but no less than \$1,000,000 per occurrence. Additionally, the Contractor is responsible for ensuring that any subcontractors provide adequate insurance coverage for the activities arising out of subcontracts.

**Automobile Liability.** In the event that performance pursuant to this Contract involves the use of vehicles, owned or operated by the Contractor or its subcontractors, automobile liability insurance shall be required. The minimum limit for automobile liability is \$1,000,000 per occurrence, using a Combined Single Limit for bodily injury and property damage.

**Professional Liability, Errors, and Omissions Insurance.** The Contractor shall maintain Professional Liability or Errors and Omissions Insurance. The Contractor shall maintain minimum limits of no less than \$1,000,000 per occurrence to cover all activities by the Contractor and licensed staff employed or under Contract to the Contractor. The State of Washington, its agents, officers, and employees need not be named as additional insureds under this policy.

**Fidelity Insurance.** Every officer, director, employee, or agent who is authorized to act on behalf of the Contractor for the purpose of receiving or depositing funds into program accounts or issuing financial documents, checks, or other instruments of payment for program costs shall be insured to provide protection against loss:

- i. The amount of fidelity coverage secured pursuant to this Contract shall be \$100,000 or the highest of planned reimbursement for the Contract period, whichever is lowest. Fidelity insurance secured pursuant to this paragraph shall name the Contractor as beneficiary.
- ii. Subcontractors that receive \$10,000 or more per year in funding through this Contract shall secure fidelity insurance as noted above. Fidelity insurance secured by subcontractors pursuant to this paragraph shall name the Contractor as beneficiary.

The Contractor shall provide, at Commerce's request, copies of insurance instruments or certifications from the insurance issuing agency. The copies or certifications shall show the insurance coverage, the designated beneficiary, who is covered, the amounts, the period of coverage, and that Commerce will be provided thirty (30) days advance written notice of cancellation.

#### **B. Self-Insured Contractors**

With prior approval from Commerce, the Contractor may provide insurance coverage under a self-insured/liability pool or self-insured risk management program. In order to obtain permission from Commerce, the Contractor shall provide:

- i. a description of its self-insurance program, and
- ii. a certificate and/or letter of coverage that outlines coverage, limits, and deductibles.

All self-insured risk management programs or self-insured/liability pool financial reports must comply with Generally Accepted Accounting Principles (GAAP) and adhere to accounting standards promulgated by:

- i. Governmental Accounting Standards Board (GASB),
- ii. Financial Accounting Standards Board (FASB), and
- iii. The Washington State Auditor's annual instructions for financial reporting.

Contractors participating in joint risk pools shall maintain sufficient documentation to support the aggregate claim liability information reported on the balance sheet. The State of Washington, its agents, and employees need not be named as additional insured under a self-insured property/liability pool, if the pool is prohibited from naming third parties as additional insured.

Contractor shall provide annually to Commerce a summary of coverages and a letter of self-insurance, evidencing continued coverage under Contractor's self-insured/liability pool or self-insured risk management program. Such annual summary of coverage and letter of self-insurance will be provided on the anniversary of the start date of this Contract.

**Employers Liability ("Stop Gap") Insurance.** In addition, the Contractor shall buy employers liability insurance and, if necessary, commercial umbrella liability insurance with limits not less than \$1,000,000 each accident for bodily injury by accident of \$1,000,000 each employee for bodily injury or disease.

**Excess Coverage.** By requiring insurance herein, Commerce does not represent that coverage and limits will be adequate to protect Contractor and such coverage and limits shall not limit Contractor's liability under the indemnities and reimbursements granted to Commerce in this Contract.

**Unemployment and Industrial Insurance.** The Contractor shall be in full compliance with all state unemployment and industrial insurance laws while performing work under this Contract. Commerce will not be responsible for payment of industrial insurance premiums or for any other claim or benefit for the Contractor, or any subcontractor or employee of the Contractor, which might arise under the industrial insurance laws during performance of this Contract.

**Protection of Project Property. Contractor's Assumption of Risk.** The Contractor shall continuously maintain adequate protection of all the project work from damage and shall protect the property from injury or loss arising in connection with this Contract. The entire work of the Contractor shall be at the sole risk of the Contractor. The Contractor may elect to secure fire, extended coverage, and vandalism insurance or all-risk insurance to cover the project work during the course of construction. The Contractor shall take all necessary precautions for the safety of employees working on the project, and shall comply with all applicable provisions of federal, state, and local safety laws and building codes to prevent accidents or injuries to persons, on, about, or adjacent to the premises where the work is being performed.

#### **1.20. Recapture Provision**

In the event that the Contractor fails to expend state funds in accordance with state law and/or the provisions of this Contract, Commerce reserves the right to recapture state funds in an amount equivalent to the extent of noncompliance. Repayment by the Contractor of state funds under this recapture provision shall occur within thirty (30) days of demand. In the event that Commerce is required to institute proceedings to enforce this recapture provision, Commerce shall be entitled to its cost thereof, including reasonable attorney's fees.

#### **1.21. Reduction in Funds**

In the event state funds appropriated for the work contemplated under this Contract are withdrawn, reduced, or limited in any way by the Washington State Governor or Legislature during the Contract period, the parties hereto shall be bound by any such revised funding limitations as implemented at the discretion of Commerce, and shall meet and renegotiate the Contract accordingly.

#### **1.22. Reappropriation**

The parties hereto understand and agree that any state funds, including the ten percent (10%) retainage as described in Section 1.9, not expended by the **BIENNIUM CLOSE DATE** listed on the Declarations Page will lapse on that date unless specifically reappropriated by the Washington State Legislature, in a budget or budget amendment proposed by the Legislature or Governor, and approved as law. Commerce will make all necessary efforts to seek reappropriation of funds into the next biennium following the declared **BIENNIUM**. If funds are so reappropriated, Commerce's obligation under the terms of this Contract shall be contingent upon the terms of such reappropriation.

## **Part 2. GENERAL TERMS AND CONDITIONS**

### **2.1. Definitions**

As used throughout this Contract, the following terms shall have the meaning set forth below:

- A. **"Authorized Representative"** shall mean the Washington State Department of Commerce Agency Director and/or the designee authorized in writing to act on the Director's behalf.
- B. **"Contractor"** shall mean the entity identified on the face sheet performing service(s) under this Contract, and shall include all employees and agents of the Contractor.
- C. **"Commerce"** shall mean the Washington State Department Of Commerce, and who is a Party to the Contract.
- D. **"Personal Information"** shall mean information identifiable to any person, including, but not limited to, information that relates to a person's name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, social security numbers, driver license numbers, other identifying numbers, and any financial identifiers.
- E. **"State"** shall mean the state of Washington.
- F. **"Subcontractor"** shall mean one not in the employment of the Contractor, who is performing all or part of those services under this Contract under a separate contract with the Contractor. The terms "subcontractor" and "subcontractors" mean subcontractor(s) in any tier.

### **2.2. Allowable Costs**

Costs allowable under this Contract are actual expenditures according to an approved budget up to the maximum amount stated on the Contract Award or Amendment Face Sheet.

### **2.3. ALL WRITINGS CONTAINED HEREIN**

This Contract contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Contract shall be deemed to exist or to bind any of the parties hereto.

### **2.4. AMENDMENTS**

This Contract may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

### **2.5. AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336, also referred to as the "ADA" 28 CFR Part 35**

The Contractor must comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.

### **2.6. APPROVAL**

This contract shall be subject to the written approval of Commerce's Authorized Representative and shall not be binding until so approved. The contract may be altered, amended, or waived only by a written amendment executed by both parties.

### **2.7. ASSIGNMENT**

Neither this Contract, nor any claim arising under this Contract, shall be transferred or assigned by the Contractor without prior written consent of Commerce.

## **2.8. ATTORNEYS' FEES**

Unless expressly permitted under another provision of the Contract, in the event of litigation or other action brought to enforce Contract terms, each party agrees to bear its own attorneys fees and costs.

## **2.9. AUDIT**

### **A. General Requirements**

Contractors are to procure audit services based on the following guidelines.

The Contractor shall maintain its records and accounts so as to facilitate the audit requirement and shall ensure that Subcontractors also maintain auditable records.

The Contractor is responsible for any audit exceptions incurred by its own organization or that of its Subcontractors.

Commerce reserves the right to recover from the Contractor all disallowed costs resulting from the audit.

As applicable, Contractors required to have an audit must ensure the audits are performed in accordance with Generally Accepted Auditing Standards (GAAS); Government Auditing Standards (the Revised Yellow Book) developed by the Comptroller General.

Responses to any unresolved management findings and disallowed or questioned costs shall be included with the audit report. The Contractor must respond to Commerce's requests for information or corrective action concerning audit issues within thirty (30) days of the date of request.

### **B. State Funds Requirements**

Contractors expending \$100,000 or more in total state funds in a fiscal year must have a financial audit as defined by Government Auditing Standards (The Revised Yellow Book) and according to Generally Accepted Auditing Standards (GAAS). The Schedule of State Financial Assistance must be included. The schedule includes:

- Grantor agency name
- State program name
- BARS account number
- Grantor
- Agency contract number
- Contract award amount including amendments (total grant award)
- Beginning balance
- Current year revenues
- Current year expenditures
- Ending balance
- Program total

If the Contractor is a state or local government entity, the Office of the State Auditor shall conduct the audit. Audits of non-profit organizations are to be conducted by a certified public accountant selected by the Contractor.

The Contractor shall include the above audit requirements in any subcontracts.

In any case, the Contractor's financial records must be available for review by Commerce.

### **C. Documentation Requirements**

The Contractor must send a copy of any required audit Reporting Package as described in OMB Circular A-133, Part C, Section 320(c) no later than nine (9) months after the end of the Contractor's fiscal year(s) by sending a scanned copy to [auditreview@commerce.wa.gov](mailto:auditreview@commerce.wa.gov) or by sending a hard copy to:

- Department of Commerce
- ATTN: Audit Review and Resolution Office
- 1011 Plum Street
- PO Box 42525
- Olympia WA 98504-2525



In addition to sending a copy of the audit, when applicable, the Contractor must include:

- Corrective action plan for audit findings within three (3) months of the audit being received Commerce.
- Copy of the Management Letter.

## **2.10. CODE REQUIREMENTS**

All construction and rehabilitation projects must satisfy the requirements of applicable local, state, and federal building, mechanical, plumbing, fire, energy and barrier-free codes. Compliance with the Americans with Disabilities Act of 1990 28 C.F.R. Part 35 will be required, as specified by the local building Department.

## **2.11. CONFIDENTIALITY/SAFEGUARDING OF INFORMATION**

A. "Confidential Information" as used in this section includes:

1. All material provided to the Contractor by Commerce that is designated as "confidential" by Commerce;
2. All material produced by the Contractor that is designated as "confidential" by Commerce; and
3. All personal information in the possession of the Contractor that may not be disclosed under state or federal law. "Personal information" includes but is not limited to information related to a person's name, health, finances, education, business, use of government services, addresses, telephone numbers, social security number, driver's license number and other identifying numbers, and "Protected Health Information" under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA).

B. The Contractor shall comply with all state and federal laws related to the use, sharing, transfer, sale, or disclosure of Confidential Information. The Contractor shall use Confidential Information solely for the purposes of this Contract and shall not use, share, transfer, sell or disclose any Confidential Information to any third party except with the prior written consent of Commerce or as may be required by law. The Contractor shall take all necessary steps to assure that Confidential Information is safeguarded to prevent unauthorized use, sharing, transfer, sale or disclosure of Confidential Information or violation of any state or federal laws related thereto. Upon request, the Contractor shall provide Commerce with its policies and procedures on confidentiality. Commerce may require changes to such policies and procedures as they apply to this Contract whenever Commerce reasonably determines that changes are necessary to prevent unauthorized disclosures. The Contractor shall make the changes within the time period specified by Commerce. Upon request, the Contractor shall immediately return to Commerce any Confidential Information that Commerce reasonably determines has not been adequately protected by the Contractor against unauthorized disclosure.

C. Unauthorized Use or Disclosure. The Contractor shall notify Commerce within five (5) working days of any unauthorized use or disclosure of any confidential information, and shall take necessary steps to mitigate the harmful effects of such use or disclosure.

## **2.12. CONFORMANCE**

If any provision of this contract violates any statute or rule of law of the state of Washington, it is considered modified to conform to that statute or rule of law.

## **2.13. COPYRIGHT PROVISIONS**

Unless otherwise provided, all Materials produced under this Contract shall be considered "works for hire" as defined by the U.S. Copyright Act and shall be owned by Commerce. Commerce shall be considered the author of such Materials. In the event the Materials are not considered "works for hire" under the U.S. Copyright laws, the Contractor hereby irrevocably assigns all right, title, and interest in all Materials, including all intellectual property rights, moral rights, and rights of publicity to Commerce effective from the moment of creation of such Materials.

"Materials" means all items in any format and includes, but is not limited to, data, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. "Ownership" includes the right to copyright, patent, register and the ability to transfer these rights.

For Materials that are delivered under the Contract, but that incorporate pre-existing materials not produced under the Contract, the Contractor hereby grants to Commerce a nonexclusive, royalty-free, irrevocable license (with rights to sublicense to others) in such Materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. The Contractor warrants and represents that the Contractor has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to Commerce.

The Contractor shall exert all reasonable effort to advise Commerce, at the time of delivery of Materials furnished under this Contract, of all known or potential invasions of privacy contained therein and of any portion of such document which was not produced in the performance of this Contract. The Contractor shall provide Commerce with prompt written notice of each notice or claim of infringement received by the Contractor with respect to any Materials delivered under this Contract. Commerce shall have the right to modify or remove any restrictive markings placed upon the Materials by the Contractor.

#### **2.14. DISALLOWED COSTS**

The Contractor is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its Subcontractors.

#### **2.15. DISPUTES**

Except as otherwise provided in this Contract, when a dispute arises between the parties and it cannot be resolved by direct negotiation, either party may request a dispute hearing with the Commerce Agency Director, who may designate a neutral person to decide the dispute. The request for a dispute hearing must:

- be in writing;
- state the disputed issues;
- state the relative positions of the parties;
- state the Contractor's name, address, and Contract number; and
- be mailed to the Director and the other party's (respondent's) Representative within three (3) working days after the parties agree that they cannot resolve the dispute.

The respondent shall send a written answer to the requestor's statement to both the Agency Director or the Director's designee and the requestor within five (5) working days.

The Director or designee shall review the written statements and reply in writing to both parties within ten (10) working days. The Director or designee may extend this period if necessary by notifying the parties.

The decision shall not be admissible in any succeeding judicial or quasi-judicial proceeding.

The parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal.

Nothing in this Contract shall be construed to limit the parties' choice of a mutually acceptable alternate dispute resolution (ADR) method in addition to the dispute hearing procedure outlined above.

#### **2.16. DUPLICATE PAYMENT**

The Contractor certifies that work to be performed under this contract does not duplicate any work to be charged against any other contract, subcontract, or other source.

#### **2.17. ETHICS/CONFLICTS OF INTEREST**

In performing under this Contract, the Contractor shall assure compliance with the Ethics in Public Service Act (Chapter 42.52 RCW) and any other applicable state or federal law related to ethics or conflicts of interest.

## **2.18. GOVERNING LAW AND VENUE**

This Contract shall be construed and interpreted in accordance with the laws of the state of Washington, and the venue of any action brought hereunder shall be in the Superior Court for Thurston County.

## **2.19. INDEMNIFICATION**

To the fullest extent permitted by law, the Contractor shall indemnify, defend, and hold harmless the state of Washington, Commerce, all other agencies of the state and all officers, agents and employees of the state, from and against all claims or damages for injuries to persons or property or death arising out of or incident to the Contractor's performance or failure to perform the Contract. The Contractor's obligation to indemnify, defend, and hold harmless includes any claim by the Contractor's agents, employees, representatives, or any Subcontractor or its agents, employees, or representatives.

The Contractor's obligation to indemnify, defend, and hold harmless shall not be eliminated by any actual or alleged concurrent negligence of the state or its agents, agencies, employees and officers.

Subcontracts shall include a comprehensive indemnification clause holding harmless the Contractor, Commerce, the state of Washington, its officers, employees and authorized agents.

The Contractor waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless the state and its agencies, officers, agents or employees.

## **2.20. INDEPENDENT CAPACITY OF THE CONTRACTOR**

The parties intend that an independent contractor relationship will be created by this Contract. The Contractor and its employees or agents performing under this Contract are not employees or agents of the state of Washington or Commerce. The Contractor will not hold itself out as or claim to be an officer or employee of Commerce or of the state of Washington by reason hereof, nor will the Contractor make any claim of right, privilege or benefit which would accrue to such officer or employee under law. Conduct and control of the work will be solely with the Contractor.

## **2.21. INDUSTRIAL INSURANCE COVERAGE**

The Contractor shall comply with all applicable provisions of Title 51 RCW, Industrial Insurance. If the Contractor fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees as may be required by law, Commerce may collect from the Contractor the full amount payable to the Industrial Insurance Accident Fund. Commerce may deduct the amount owed by the Contractor to the accident fund from the amount payable to the Contractor by Commerce under this Contract, and transmit the deducted amount to the Department of Labor and Industries, (L&I) Division of Insurance Services. This provision does not waive any of L&I's rights to collect from the Contractor.

## **2.22. LAWS**

The Contractor shall comply with all applicable laws, ordinances, codes, regulations and policies of local and state and federal governments, as now or hereafter amended including, but not limited to:

### **Washington State Laws and Regulations**

- A. Affirmative action, RCW 41.06.020 (11).
- B. Boards of directors or officers of non-profit corporations - Liability - Limitations, RCW 4.24.264.
- C. Disclosure-campaign finances-lobbying, Chapter 42.17 RCW.
- D. Discrimination-human rights commission, Chapter 49.60 RCW.
- E. Ethics in public service, Chapter 42.52 RCW.
- F. Housing assistance program, Chapter 43.185 RCW
- G. Interlocal cooperation act, Chapter 39.34 RCW.
- H. Noise control, Chapter 70.107 RCW.
- I. Office of minority and women's business enterprises, Chapter 39.19 RCW and Chapter 326-02 WAC.
- J. Open public meetings act, Chapter 42.30 RCW.

- K. Prevailing wages on public works, Chapter 39.12 RCW.
- L. Public records act, Chapter 42.56 RCW.
- M. Relocation assistance - real property acquisition policy, Chapter 8.26 RCW.
- N. Shoreline management act of 1971, Chapter 90.58 RCW.
- O. State budgeting, accounting, and reporting system, Chapter 43.88 RCW.
- P. State building code, Chapter 19.27 RCW and Energy-related building standards, Chapter 19.27A RCW, and Provisions in buildings for aged and handicapped persons, Chapter 70.92 RCW.
- Q. State Coastal Zone Management Program, Publication 01-06-003, Shorelands and Environmental Assistance Program, Washington State Department of Ecology.
- R. State environmental policy, Chapter 43.21C RCW.
- S. State Executive Order 05-05 Archeological and Cultural Resources.

#### **2.23. LICENSING, ACCREDITATION AND REGISTRATION**

The Contractor shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements or standards necessary for the performance of this Contract.

#### **2.24. LIMITATION OF AUTHORITY**

Only the Authorized Representative or Authorized Representative's designee by writing (designation to be made prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Contract.

#### **2.25. Local Public Transportation Coordination**

Where applicable, Contractor shall participate in local public transportation forums and implement strategies designed to ensure access to services.

#### **2.26. NONCOMPLIANCE WITH NONDISCRIMINATION LAWS**

During the performance of this Contract, the Contractor shall comply with all federal, state, and local nondiscrimination laws, regulations and policies. In the event of the Contractor's non-compliance or refusal to comply with any nondiscrimination law, regulation or policy, this contract may be rescinded, canceled or terminated in whole or in part, and the Contractor may be declared ineligible for further contracts with Commerce. The Contractor shall, however, be given a reasonable time in which to cure this noncompliance. Any dispute may be resolved in accordance with the "Disputes" procedure set forth herein.

#### **2.27. POLITICAL ACTIVITIES**

Political activity of Contractor employees and officers are limited by the State Campaign Finances and Lobbying provisions of Chapter 42.17 RCW and the Federal Hatch Act, 5 USC 1501 - 1508.

No funds may be used for working for or against ballot measures or for or against the candidacy of any person for public office.

#### **2.28. PREVAILING WAGE LAW**

The Contractor certifies that all contractors and subcontractors performing work on the Project shall comply with state Prevailing Wages on Public Works, Chapter 39.12 RCW, as applicable to the Project funded by this contract, including but not limited to the filing of the "Statement of Intent to Pay Prevailing Wages" and "Affidavit of Wages Paid" as required by RCW 39.12.040. The Contractor shall maintain records sufficient to evidence compliance with Chapter 39.12 RCW, and shall make such records available for Commerce's review upon request.

### **2.29. PROHIBITION AGAINST PAYMENT OF BONUS OR COMMISSION**

The funds provided under this Contract shall not be used in payment of any bonus or commission for the purpose of obtaining approval of the application for such funds or any other approval or concurrence under this Contract provided, however, that reasonable fees or bona fide technical consultant, managerial, or other such services, other than actual solicitation, are not hereby prohibited if otherwise eligible as project costs

### **2.30. PUBLICITY**

The Contractor agrees not to publish or use any advertising or publicity materials in which the state of Washington or Commerce's name is mentioned, or language used from which the connection with the state of Washington's or the Commerce's name may reasonably be inferred or implied, without the prior written consent of Commerce.

### **2.31. RECAPTURE**

In the event that the Contractor fails to perform this contract in accordance with state laws, federal laws, and/or the provisions of this contract, Commerce reserves the right to recapture funds in an amount to compensate Commerce for the noncompliance in addition to any other remedies available at law or in equity.

Repayment by the Contractor of funds under this recapture provision shall occur within the time period specified by Commerce. In the alternative, Commerce may recapture such funds from payments due under this contract.

### **2.32. RECORDS MAINTENANCE**

The Contractor shall maintain all books, records, documents, data and other evidence relating to this Contract and performance of the services described herein, including but not limited to accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Contract. Contractor shall retain such records for a period of six years following the date of final payment.

If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been finally resolved.

### **2.33. REGISTRATION WITH DEPARTMENT OF REVENUE**

If required by law, the Contractor shall complete registration with the Washington State Department of Revenue.

### **2.34. RIGHT OF INSPECTION**

At no additional cost all records relating to the Contractor's performance under this Contract shall be subject at all reasonable times to inspection, review, and audit by Commerce, the Office of the State Auditor, and federal and state officials so authorized by law, in order to monitor and evaluate performance, compliance, and quality assurance under this Contract. The Contractor shall provide access to its facilities for this purpose.

### **2.35. SAVINGS**

In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Contract and prior to normal completion, Commerce may terminate the Contract under the "Termination for Convenience" clause, without the ten business day notice requirement. In lieu of termination, the Contract may be amended to reflect the new funding limitations and conditions.

### **2.36. SEVERABILITY**

If any provision of this Contract or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Contract that can be given effect without the invalid provision, if such remainder conforms to the requirements of law and the fundamental purpose of this Contract and to this end the provisions of this Contract are declared to be severable.

### **2.37. SUBCONTRACTING**

The Contractor may only subcontract work contemplated under this Contract if it obtains the prior written approval of Commerce.

If Commerce approves subcontracting, the Contractor shall maintain written procedures related to subcontracting, as well as copies of all subcontracts and records related to subcontracts. For cause, Commerce in writing may: (a) require the Contractor to amend its subcontracting procedures as they relate to this Contract; (b) prohibit the Contractor from subcontracting with a particular person or entity; or (c) require the Contractor to rescind or amend a subcontract.

Every subcontract shall bind the Subcontractor to follow all applicable terms of this Contract. The Contractor is responsible to Commerce if the Subcontractor fails to comply with any applicable term or condition of this Contract. The Contractor shall appropriately monitor the activities of the Subcontractor to assure fiscal conditions of this Contract. In no event shall the existence of a subcontract operate to release or reduce the liability of the Contractor to Commerce for any breach in the performance of the Contractor's duties.

Every subcontract shall include a term that Commerce and the State of Washington are not liable for claims or damages arising from a Subcontractor's performance of the subcontract.

### **2.38. SURVIVAL**

The terms, conditions, and warranties contained in this Contract that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Contract shall so survive.

### **2.39. TAXES**

All payments accrued on account of payroll taxes, unemployment contributions, the Contractor's income or gross receipts, any other taxes, insurance or expenses for the Contractor or its staff shall be the sole responsibility of the Contractor.

### **2.40. TERMINATION FOR CAUSE / SUSPENSION**

In event Commerce determines that the Contractor failed to comply with any term or condition of this Contract, Commerce may terminate the Contract in whole or in part upon written notice to the Contractor. Such termination shall be deemed "for cause." Termination shall take effect on the date specified in the notice.

In the alternative, Commerce upon written notice may allow the Contractor a specific period of time in which to correct the non-compliance. During the corrective-action time period, Commerce may suspend further payment to the Contractor in whole or in part, or may restrict the Contractor's right to perform duties under this Contract. Failure by the Contractor to take timely corrective action shall allow Commerce to terminate the Contract upon written notice to the Contractor.

"Termination for Cause" shall be deemed a "Termination for Convenience" when Commerce determines that the Contractor did not fail to comply with the terms of the Contract or when Commerce determines the failure was not caused by the Contractor's actions or negligence.

If the Contract is terminated for cause, the Contractor shall be liable for damages as authorized by law, including, but not limited to, any cost difference between the original contract and the replacement contract, as well as all costs associated with entering into the replacement contract (i.e., competitive bidding, mailing, advertising, and staff time).

### **2.41. TERMINATION FOR CONVENIENCE**

Except as otherwise provided in this Contract Commerce may, by ten (10) business days written notice, beginning on the second day after the mailing, terminate this Contract, in whole or in part. If this Contract is so terminated, Commerce shall be liable only for payment required under the terms of this Contract for services rendered or goods delivered prior to the effective date of termination.

## **2.42. TERMINATION PROCEDURES**

After receipt of a notice of termination, except as otherwise directed by Commerce, the Contractor shall:

- A. Stop work under the Contract on the date, and to the extent specified, in the notice;
- B. Place no further orders or subcontracts for materials, services, or facilities related to the Contract;
- C. Assign to the State all of the rights, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case Commerce has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts. Any attempt by the Contractor to settle such claims must have the prior written approval of Commerce; and
- D. Preserve and transfer any materials, contract deliverables and/or Commerce property in the Contractor's possession as directed by Commerce.

Upon termination of the Contract, Commerce shall pay the Contractor for any service provided by the Contractor under the Contract prior to the date of termination. Commerce may withhold any amount due as Commerce reasonably determines is necessary to protect Commerce against potential loss or liability resulting from the termination. Commerce shall pay any withheld amount to the Contractor if Commerce later determines that loss or liability will not occur.

The rights and remedies of Commerce under this section are in addition to any other rights and remedies provided under this Contract or otherwise provided under law.

## **2.43. WAIVER**

Waiver of any default or breach shall not be deemed to be a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this Contract unless stated to be such in writing and signed by Authorized Representative of Commerce.

## ATTACHMENT I: SCOPE OF WORK

### Washington State Department of Commerce Grant Programs - Direct Appropriations Projects

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Port of Tacoma

13-96701-012

Project Title:  
South Lead Rail

The project's scope of work is comprised of the following activities:

To construct rail leads on the East Blair Peninsula. This will open undeveloped land for maritime industrial purposes and reducing the volume of highway truck traffic through the use of rail. Costs may include, but are not limited to, engineering, environmental/cultural review, land/right-of-way acquisition, permits, public involvement, bid documents, construction, and construction management.

If the above scope of work includes engineering, planning, or design activities, the Contractor shall make all plans and documents funded in whole or in part by this Contract available for Commerce's review upon reasonable request.

The Contractor, by its signature below, certifies that the project's scope of work and performance measures set forth above have been reviewed and approved by the Contractor's governing body as of the date and year written below.

Signature

Name

Title

Date





## ATTACHMENT II: CERTIFICATION OF THE PAYMENT AND REPORTING OF PREVAILING WAGES

Washington State Department of Commerce  
Grant Programs - Direct Appropriations Projects

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**Port of Tacoma**

**13-96701-012**

Project Title:

**South Lead Rail**

The Contractor, by its signature below, certifies that all contractors and subcontractors performing work on the project as described in Attachment I: SCOPE OF WORK shall comply with prevailing wage laws set forth in Chapter 39.12 RCW, as applicable to the project funded by this Contract, including but not limited to the filing of the "Statement of Intent to Pay Prevailing Wages" and "Affidavit of Wages Paid" as required by RCW 39.12.040. The Contractor shall maintain records sufficient to evidence compliance with Chapter 39.12 RCW, and shall make such records available for Commerce's review upon request.

If any state funds are used by the Contractor for the purpose of construction, applicable State Prevailing Wages must be paid.

The Contractor, by its signature below, certifies that the declaration set forth above has been reviewed and approved by the Contractor's governing body as of the date and year written below.

Signature

Name

Title

Date



**ATTACHMENT III: CERTIFICATION OF THE INTENT TO ENTER THE  
LEADERSHIP IN ENERGY AND ENVIRONMENTAL DESIGN (LEED)  
CERTIFICATION PROCESS**

**Washington State Department of Commerce  
Grant Programs - Direct Appropriations Projects**

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**Port of Tacoma**

**13-96701-012**

**Project Title:**

**South Lead Rail**

**LEED NOT REQUIRED**



**CONTRACTS ADMINISTRATION UNIT**  
**NOTIFICATION OF CONTRACT AWARD AND START OF CONSTRUCTION**

CLIENT: \_\_\_\_\_ CONTRACT #: \_\_\_\_\_

DATE OF NOTICE TO PROCEED: \_\_\_\_/\_\_\_\_/\_\_\_\_

CONTRACT AWARD DATE: \_\_\_\_/\_\_\_\_/\_\_\_\_

PROJECT NAME: \_\_\_\_\_ CONTRACT AMOUNT: \$ \_\_\_\_\_

PROJECT LOCATION: \_\_\_\_\_

GENERAL CONTRACTOR: \_\_\_\_\_

DATE BID SOLICITATION PUBLISHED\*: \_\_\_\_/\_\_\_\_/\_\_\_\_

BID OPENING DATE: \_\_\_\_/\_\_\_\_/\_\_\_\_ NUMBER OF BIDS RECEIVED: \_\_\_\_

NAMES/ADDRESSES OF DISADVANTAGED BUSINESS ENTERPRISES SOLICITED:

\_\_\_\_\_  
\_\_\_\_\_

APPLICABLE FEDERAL WAGE DECISION NUMBER\*\*: \_\_\_\_\_

MODIFICATIONS\*\*: \_\_\_\_\_

PRECONSTRUCTION CONFERENCE DATE: \_\_\_\_/\_\_\_\_/\_\_\_\_

CONSTRUCTION START DATE: \_\_\_\_/\_\_\_\_/\_\_\_\_

SUBMITTED BY

SIGNATURE: \_\_\_\_\_ TITLE: \_\_\_\_\_

PRINTED NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

**\*Please attach copy of published bid solicitation advertisement.\***

**\*\*Federally Funded Contracts (CDBG & DWSRF)\*\***

**PLEASE NOTE: Federally funded projects are subject to paying the higher of Federal Davis Bacon or State prevailing wages.**



# **DIRECT APPROPRIATIONS GRANT RECIPIENTS IMPORTANT INFORMATION - MUST READ**

## **INSTRUCTIONS FOR COMPLETING VOUCHERS IN ORDER TO RECEIVE GRANT FUNDS!**

### **General Information**

The Grant Agreement describes the points at which your grant funds may be disbursed to you. This is referenced in your grant agreement, Section 1.9 Billing Procedure and Payment.

- The GRANTEE, using the Invoice Voucher template, initiates disbursements.
- Funds will be disbursed on a reimbursement-basis only. Expenses incurred after the date shown on your contract Declarations Page as **Earliest Date for Construction Reimbursement**, are eligible for reimbursement.
- Disbursement requests must include documentation that supports evidence of costs incurred. Documentation may include bills or receipts from contractors.
- Each disbursement request may include costs incurred over an extended period.
- The grant agreement places conditions on the fund disbursements.
- Reimbursement requests may only be submitted once a month.

Disbursements for **construction activities** are not allowed until documentation has been received by the Contracts Administration Unit (CAU) indicating that the following conditions have been met:

- Proof of compliance with Governor's Executive Order 05-05 or Section 106 of the National Historic Preservation Act, as described in Section 1.16 of the executed Direct Appropriations Grant contract, and
- A signed Notice of Contract Award and Notice to Proceed, which follows the formal award of a construction contract (a blank copy is attached), and
- A completed Project Status Report; and
- Other conditions as required.

If you have any questions regarding these loan conditions, please contact your CAU Regional Project Manager, Denise Fry at (360) 725-2741 or [denise.fry@commerce.wa.gov](mailto:denise.fry@commerce.wa.gov)

### **Invoice Vouchers**

1. Place the disbursement request amount on the appropriate line.
2. Be sure to update the **Voucher Number** and **Total Amounts** values.
3. Attach supporting documentation including a current Project Status Report.  
Please make sure the conditions listed above have been met, otherwise the loan disbursement will be delayed.
4. Sign the Voucher in the upper right hand corner (no black ink) and return it to the following address:

Attn: Denise Fry  
Contracts Administration Unit  
Dept. of Commerce  
PO Box 42525  
Olympia WA 98504-2525

Staff will review your disbursement request upon receipt. You will receive funds within 30 days of the request.









# Washington State Department Of Commerce

1011 Plum St.  
Post Office Box 42525  
Olympia, Washington 98504-2525

## PROJECT STATUS REPORT

This form must be completed each time you submit a reimbursement request. Reimbursement requests will not be processed unless accompanied by a current Project Status Report.

Client Name:	Port of Tacoma
Contract Number:	13-96701-012
Project Name:	South Lead Rail
Anticipated Project Completion Date:	6/30/2015

Please describe the progress you have made to date on your project's scope of work (see Attachment A in your contract).

Approximately, what percentage of the project is complete?	%
--	---

When do you expect the project to be completed (month/day/year)?	___/___/___
--	-------------

If the anticipated completion date is different from the one above, what factors led to the change in the completion date?





STATE OF WASHINGTON

DEPARTMENT OF COMMERCE

1011 Plum St SE • PO Box 42525 • Olympia, Washington 98504-2525 • (360) 725-4000

[www.commerce.wa.gov](http://www.commerce.wa.gov)

December 4, 2013

Trevor Thornsley  
Port of Tacoma  
PO Box 1837  
Tacoma, WA 98401-1837

RE: Department of Commerce Direct Appropriation Grant Amendment to Port of Tacoma 13-96701-012 South Lead Rail Project

Dear Mr. Thornsley:

Enclosed is one original Amendment A to the Commerce grant contract 13-96701-012 for the South Lead Rail project. The amendment extends the right-of-way acquisition for this project to 12/31/2014.

Please keep this amendment with the original contract for the project. Have both easily accessible for audits. If you have questions or need more information, please contact me at 360-725-2741 or [denise.fry@commerce.wa.gov](mailto:denise.fry@commerce.wa.gov).

Sincerely,

Denise K. Fry  
Project Manager  
Contracts Administration

Enclosures



# Department of Commerce

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[www.commerce.wa.gov](http://www.commerce.wa.gov)

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## **Amendment to Contract Agreement between:**

**Port of Tacoma**

**and**

**Washington State  
Department of Commerce**

**For:**

Project Name: **South Lead Rail**

Contract Number: **13-96701-012**

Contract Type: **Commerce - Direct Appropriation**

**Execution / Start Date:**

**Amendment Execution Date**

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## DECLARATIONS

Amendment #:

A

Amendment Title

Extension of ROW Acquisition

## CLIENT INFORMATION

Legal Name

Port of Tacoma

Contract Number

13-96701-012

State Client #

SWV0019909-00

## PROJECT INFORMATION

Title

South Lead Rail

Project City

Tacoma

Project State

Washington

Project Zip

98402

## CONTRACT TERMS and CONDITIONS

Contract Amount

\$4,950,000.00

New Contract End Date

Jun 30, 2015

Original End Date

Jun 30, 2015

Biennium

2013 - 2015

Biennium Close Date

June 30th, 2015

Original Appropriation

ESSB 5127, 2012, Section 304

Re-appropriation

ESSB 5035, 2013/2015

Earliest Date for  
Construction  
Reimbursement

Apr 23, 2012 (earliest date for reimbursable expenditures)

Special Conditions

Land and/or right-of-way acquisition must occur no later than 12/31/2014.

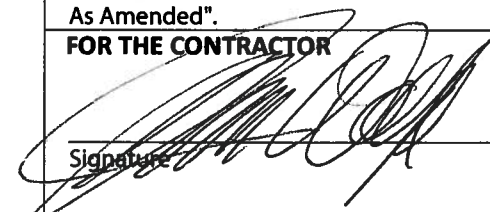



# AMENDMENT FACE SHEET

Contract Number: 13-96701-012

Amendment #: A

## Washington State Department of Commerce Commerce - Direct Appropriation

<b>1. Contractor</b> Port of Tacoma PO Box 1837 Tacoma, WA 98402		<b>2. Contractor Doing Business As (optional)</b> N/A	
<b>3. Contractor Representative</b> N/A		<b>4. COMMERCE Representative</b> N/A	
<b>5. Contract Amount</b> \$4,950,000.00	<b>6. Funding Source</b> Federal: <input type="checkbox"/> State: <input checked="" type="checkbox"/> Other: <input type="checkbox"/> N/A: <input type="checkbox"/>	<b>7. Amendment Start Date</b> <u>Contract Execution Date</u>	<b>7. Amendment End Date</b> Jun 30, 2015
<b>9. Federal Funds (as applicable)</b>		<b>Federal Agency</b> N/A	
<b>CFDA Number</b> N/A			
<b>10. Tax ID #</b> 91-6001026	<b>11. SWV #</b> SWV0019909-00	<b>12. UBI #</b>	<b>13. DUNS #</b>
<b>14. Amendment Purpose</b> The purpose of this amendment is to extend the period to obtain Right of Way for the subject project of the Agreement/Contract (as found in Declarations Pages, "Special Conditions"), from 12/31/2013 to 12/31/2014.  COMMERCE, defined as the Department of Commerce, and Contractor acknowledge and accept the terms of this Contract As Amended and attachments and have executed this Contract on the date below to start as of the date and year referenced above. The rights and obligations of both parties to this Contract are governed by this Contract and the following other documents incorporated by reference: Contract Terms and Conditions including ATTACHMENT I: PROJECT SCOPE OF WORK; ATTACHMENT II: CERTIFICATION OF THE PAYMENT AND REPORTING OF PREVAILING WAGES; and ATTACHMENT III: CERTIFICATION OF INTENT TO ENTER THE LEADERSHIP IN ENERGY AND ENVIRONMENTAL DESIGN (LEED) CERTIFICATION PROCESS (if applicable). A copy of this Contract Amendment shall be attached to and made a part of the original Contract between COMMERCE and the Contractor. Any reference in the original Contract to the "Contract" shall mean the "Contract As Amended".			
<b>FOR THE CONTRACTOR</b>   _____ Signature  <u>John Wolfe</u> Print Name  <u>Chief Executive Officer</u> Title  <u>November 22, 2013</u> Date		<b>FOR THE DEPT. OF COMMERCE</b>   _____ Kendee Yamaguchi, Assistant Director  <u>12/3/2013</u> Date  APPROVED AS TO FORM ONLY This 6th Day of June, 2004  _____ Signature on file Richard McCarten Assistant Attorney General	



# Department of Commerce

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[www.commerce.wa.gov](http://www.commerce.wa.gov)

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## **Amendment to Contract Agreement between:**

**Port of Tacoma**

**and**

**Washington State  
Department of Commerce**

**For:**

Project Name: **North Lead Rail**

Contract Number: **13-96701-012**

Contract Type: **Commerce - Direct Appropriation**

**Execution / Start Date:** \_\_\_\_\_ **Amendment Execution Date** \_\_\_\_\_

## DECLARATIONS

Amendment #:

**B**

Amendment Title

Extension of ROW Acquisition and Project Completion Dates

### CLIENT INFORMATION

Legal Name

Port of Tacoma

Contract Number

13-96701-012

State Client #

SWV0019909-00

### PROJECT INFORMATION

Title

North Lead Rail

Project City

Tacoma

Project State

Washington

Project Zip

98402

### CONTRACT TERMS and CONDITIONS

Contract Amount

\$4,950,000.00

New Contract End Date

Jun 30, 2017

Original End Date

Jun 30, 2015

Biennium

2013 - 2015

Biennium Close Date

June 30th, 2015

Original Appropriation

ESSB 5127, 2012, Section 304

Re-appropriation

ESSB 5035, 2013/2015

Earliest Date for  
Construction  
Reimbursement

Apr 23, 2012 (earliest date for reimbursable expenditures)

Special Conditions

Land and/or Right-of-Way acquisition must occur no later than 12/31/2015.

# AMENDMENT FACE SHEET

Contract Number: 13-96701-012

Amendment #: B

## Washington State Department of Commerce Commerce - Direct Appropriation

<b>1. Contractor</b> Port of Tacoma PO Box 1837 Tacoma, WA 98402		<b>2. Contractor Doing Business As (optional)</b> N/A	
<b>3. Contractor Representative</b> N/A		<b>4. COMMERCE Representative</b> N/A	
<b>5. Contract Amount</b> \$4,950,000.00	<b>6. Funding Source</b> Federal : <input type="checkbox"/> State: <input checked="" type="checkbox"/> N/A : <input type="checkbox"/> Other : <input type="checkbox"/>	<b>7. Amendment Start Date</b> <u>Contract Execution Date</u>	<b>8. Amendment End Date</b> Jun 30, 2017 <small>(provided that funds are re-appropriated for the biennium)</small>
<b>9. Federal Funds (as applicable)</b>		<b>Federal Agency</b> N/A	
<b>CFDA Number</b> N/A			
<b>10. Tax ID #</b> 91-6001026	<b>11. SWV #</b> SWV0019909-00	<b>12. UBI #</b>	<b>13. DUNS #</b>
<b>14. Amendment Purpose</b> The purpose of this amendment is to extend the period to obtain Right of Way for the subject project from 12/31/2014 to 12/31/2015; and to extend the project completion date to 6/30/2017.  Commerce, defined as the Washington State Department of Commerce, and Borrower/Contractor acknowledge and accept the terms of this Agreement/Contract As Amended and attachments and have executed this Contract on the date below to start as of this date of execution. The rights and obligations of both parties to this Agreement/Contract As Amended are governed by this Agreement/Contract Amendment and the following other documents incorporated by reference: Declarations Page, Amendment Terms and Conditions including all attachments. A copy of this Agreement/Contract Amendment shall be attached to and made a part of the original Agreement/Contract between Commerce and the Borrower/Contractor. Any reference in the original Contract to "Agreement" or "Contract" shall mean the "Agreement As Amended" or "Contract As Amended," respectively.			
<b>FOR THE CONTRACTOR</b>  Signature <u><i>John Wolfe</i></u> John Wolfe Print Name Chief Executive Officer Title Date <u>6/18/14</u>		<b>FOR THE DEPT. OF COMMERCE</b>  <u><i>Kendee Yamaguchi</i></u> Kendee Yamaguchi, Assistant Director Date <u>6/24/14</u>  APPROVED AS TO FORM ONLY This 6th Day of June, 2004  Signature on file Richard McCarten Assistant Attorney General	

John Johnston