



**PORT OF TACOMA
REQUEST FOR PROPOSALS
No. 071799**

**STORMWATER INFRASTRUCTURE
COMPREHENSIVE PLAN**

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

RFP INFORMATION	
Contact:	Axa Turney, Contract & Procurement Analyst
Email Addresses:	procurement@portoftacoma.com
Phone:	(253) 888-4744
Deadline for Questions	DECEMBER 13, 2022 @ 2:00 PM (PST)
Submittal Date	DECEMBER 20, 2022 @ 2:00 PM (PST)

**PLEASE SUBMIT ALL QUESTIONS AND RFPS VIA THE PROCUREMENT PORTAL
(LINK LOCATED ON THE LEFT SIDE OF THE PROCUREMENT PAGE).**

PORT OF TACOMA
Request for Proposals (RFP) # 071799
Stormwater Infrastructure Comprehensive Plan

A. PURPOSE

The Port of Tacoma (**Port**) is soliciting Proposals (**RFP**) from firms qualified and interested in providing services to develop a Stormwater Infrastructure Comprehensive Plan.

B. BACKGROUND

The Port of Tacoma is a major center for container cargo, bulk, break-bulk, autos, and heavy-lift cargo. Created by Pierce County citizens in 1918, the Port has become one of the largest container ports in North America and one of the top 50 in the world. The Port manages a diverse set of business operations relating to maritime trade.

To learn more about the Port of Tacoma, visit www.portoftacoma.com.

The Port anticipates awarding a professional service agreement for researching and writing a Stormwater Infrastructure Comprehensive Plan. The selection will be based on the most qualified team that includes all key members whether from the prime consultant firm or subconsultants for all necessary project services and commence negotiations with the intent to issue professional service contract based upon the information provided herein. Following successful negotiation of rates and fees, the Port will execute the contract for one year (with one (1) separate one (1) year renewal option at the sole discretion of the Port).

Attachment A to the RFP contains the Instructions and Information for proposing to the solicitation.

The Port's Standard Terms and Conditions are included in Attachment B to this RFP. By submitting an RFP, the Proposer represents that it has carefully read and agrees to be bound by the Port's Standard Terms and Conditions. Identify during the question submittal and response period, any sections you consider onerous, clarify why you consider these sections onerous, propose alternative language and describe why it is in the Port's best interests to adopt the alternative language.

RFPs submitted with altered or conditioned Terms and Conditions without prior written agreement from the Port will be considered non-responsive and not considered for evaluation.

Proposers submit RFPs understanding all Contract terms and conditions are mandatory. Response submittal is agreement to the Contract without exception. The Port reserves the right to negotiate changes to submitted RFPs and to change the Port's otherwise mandatory Contract form during negotiations. If the Proposer is awarded a contract and refuses to sign the attached Contract form, the Port may reject the Proposer from this and future solicitations for the same work. Under no circumstances shall Proposer submit its own boilerplate of terms and conditions. * By submitting an RFP, 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 RFP.

RFPs submitted with altered or conditioned Terms and Conditions or Bid Documents without prior written agreement from the Port will be considered non-responsive and not considered for evaluation.

C. SCOPE OF SERVICES

This is a request for proposals for developing a Stormwater Infrastructure Comprehensive Plan for the Port of Tacoma (Port). This plan will help the Port and its partners better understand what types of stormwater infrastructure exists in the Tideflats, who owns that infrastructure and the underlying property, whether there are any encumbrances on the land, and who is responsible for the maintenance, repair, and when needed, replacement of the identified infrastructure.

The consultant will coordinate, via the Port, with other interested parties including the City of Fife, Pierce County, Drainage District 23, Washington State Department of Transportation (**WSDOT**), Puyallup Tribe of Indians, and the City of Tacoma (**City**). Our primary partner is the City. The City is also working on a Comprehensive Stormwater Plan, likely to start in 2023; the Port will work closely with the City Project Manager so that this effort will be consistent with the City's larger plan.

The overall project goal is to produce a document that charts a path forward for interagency collaboration and management of stormwater infrastructure in the Tideflats. This document will inform the next iteration of the Interlocal Agreement with the City of Tacoma. The maps and deliverables produced for this document will set the course for infrastructure priorities and improvements over the next ten years. The Port is amenable to alternate methodology proposals and innovative ways to gather and consolidate the desired information.

It is not the intent nor goal of this plan to develop a Climate Action response; rather to gather enough information to assess potential climate related considerations for stormwater infrastructure replacement and sizing to prevent increased future flooding. When assessing stormwater infrastructure needs, this plan should identify and document opportunities for low impact development and green stormwater infrastructure. The plan should also identify ways stormwater managers can engage and educate the public, improve environmental equity and justice, collaborate with the community, and support natural habitat.

SCOPE OF WORK:

Task A: Project management & stakeholder facilitation

- a. Manage project budget and deliverables on schedule.
- b. Communicate impacts or changes to the project schedule and budget to the Port's Water Quality Manager.

- c. Prepare and distribute meeting agendas, meeting minutes, and action items.
- d. Facilitate meetings among Tribal, state, and local governments and local businesses, as identified and contacted by Port staff, to foster agreement on infrastructure ownership, operations and maintenance, and repair and replacement needs.
- e. Prepare materials for Port staff review and support presentation(s) for Port leadership and Commission.
- f. Maintain open lines of communication with Port water quality staff.

Task B: Stormwater infrastructure inventory, ownership, and service area

This task will assess the baseline conditions looking at existing stormwater infrastructure ownership and service areas in the Tideflats. Inventory existing property owners within the study area, identify whether they hold an NPDES permit (and what type), and determine what properties are served by the Port or other jurisdictional Municipal Separate Storm Sewer Systems (**MS4s**) within the Tideflats. The Port has completed about 70% of this work. Consultant will build on Port work and verify as below.

a. Infrastructure Inventory

- i. Review current stormwater infrastructure asset data (size, material, age, invert elevations, condition, etc.), including GIS data, plans, and other information, and identify future asset data collection needs.
- ii. Review planned Port and non-Port stormwater infrastructure projects in the service area
- iii. Summarize and communicate data needs from task a.i above to Port for review and evaluation. Support resolution of data gaps as requested. Water Quality will work with Port IT to implement these changes / updates in the schema as needed.
- iv. Conduct review of Port stormwater infrastructure GIS data and information on Port and non-Port properties. Work with Port staff to complete property research tasks, including title of record, encumbrance, easement, and agreements, for identified properties and parcels with possible Port infrastructure. Conduct the same process for City stormwater infrastructure on Port properties.
- v. The Port has initiated developing a GIS map with parcel-level titles, easements, and agreements. Review and complete the list of existing titles, easements, and agreements in collaboration with Port staff, as requested. Communicate parcels with incomplete information to the Port and support in their resolution, as requested.

- vi. Summarize Port obligations, including whether there are existing easements to allow the Port to identify and plan for MS4 obligations. Develop a list of recommended easements, rights-of-way, maintenance agreements, and/or access agreements for both Port and City in collaboration with Port staff.

b. Service Area & Ownership

The purpose of this subtask 2b is to gather and provide information to help the Port and the City establish and agree upon stormwater asset ownership, easements, and other agreements which could include key elements such as upstream users, use type, amount of drainage area contributing to infrastructure components, etc. Port will provide information developed to WSDOT for their use.

- i. Based on data gaps, verify and/or identify drainage areas and properties served by existing City and Port stormwater infrastructure (may involve other entity's drainage infrastructure as directed by the Port).
- ii. Based on infrastructure ownership and service areas, identify potential lead entities.

Task C: Future Infrastructure Planning

Based on current infrastructure condition, elevations, and recent storm event impacts, Port sees the need to address climate change impacts to stormwater infrastructure over a 30-year horizon.

- a. Review the Northwest Seaport Alliance's (NWSA's) Vulnerability Assessment and Response Framework (**VARF**) – for the Tacoma harbor
- b. Conduct GIS-based desktop exercise to assess impacts of climate change on existing MS4 infrastructure due to the below events:
 - i. Microburst hydrology and impact on existing hydraulic capacity.
 - ii. Sea level rise impacts on existing capacity and possible flooding.
 - iii. Combined impact of microburst and sea level rise.
- c. Provide recommendations for areas of further study and climate change related considerations to incorporate into future drainage projects.
- d. Collaborate with Port staff to develop a list and recommendations for up to 10 stand-alone drainage-related projects to address the above events.

Task D: Initial cost planning for recommended projects

- a. Develop an inventory of known stormwater infrastructure condition and/or capacity issues over the next ten years.
- b. Review Port's list of maintenance, repair and replacement, and improvement projects and, based on item "a" above, itemize any additional projects, not more than 20, to address condition and/or capacity issues.
- c. Review City of Tacoma's Climate Change Assessment, Climate Action Plan, and Capital Improvement Program Planning.

- d. Incorporate preliminary projects (from Tasks B and C) to mitigate predicted climate change impacts on Port and City tide flats stormwater infrastructure and operations.
- e. Identify potential constraints, obligations, and/or requirements for future projects.
- f. Develop initial planning level costs with listed assumptions for all identified Port and City tide flats stormwater projects for maintenance, repair and replacement, stormwater quality improvement, and mitigation of climate change impacts.
 - i. Gather, review, and update existing cost estimates for City and Port projects.
 - ii. Develop cost estimates for City and Port projects that do not have existing estimates. Recommend cost sharing percentages for projects benefitting multiple parties.
 - iii. Develop separate preliminary schedules for Port and City led tide flats projects/costs, provide the preliminary schedules to the Port/City, and revise schedule based on feedback.

Task E: Prepare Port Comprehensive Stormwater Plan

- a. Compile products from prior tasks into a full draft Port of Tacoma Stormwater Infrastructure Comprehensive Plan (**SICP**) and submit the draft for Port review.
- b. Review Port comments, develop recommended responses, and meet with the Port to obtain direction on responses.
- c. Prepare a Draft-Final SICP for Port Executive Leadership review and comment.
- d. Review Port leadership comments, develop recommended responses, and meet with Port staff to obtain direction on responses.
- e. Prepare a revised Draft-Final SICP for Fife, Tacoma, Pierce County review / concurrence.
- f. Review Fife, Tacoma, Pierce County leadership comments/requested changes, develop recommended responses, and meet with Port staff to obtain direction on final edits.
- g. Prepare the final SICP.

D. DELIVERABLES:

- a. Task A interagency meeting presentations, agendas, minutes, and action items
- b. Draft and Final Documents for Task B as appropriate to the changes being communicated.
 - i. Includes existing, incomplete, and recommended property records.
 - ii. Includes stormwater infrastructure data gaps/needs in GIS.
- c. Draft Technical Memoranda for Tasks C - D listed above for Port's review
 - i. Includes list of more specific areas for climate change impact assessment.
 - ii. Includes draft specification language, cost estimates, and schedules for projects.
- d. Final Technical Memorandums Tasks C - D (addressing Port's revisions).
 - i. Will be included as appendices of the Final SICP

- e. Task E Deliverables.
 - i. Draft SICP for Port's review
 - ii. Draft-Final SICP for Port Executive Leadership review.
 - iii. Final Plan for review / concurrence by all partners.
 - iv. Final SICP addressing all comments.
- f. Presentation for one (1) Port Executive Leadership Meeting.
- g. Presentation for one (1) Port Commission Meeting.

E. Assumptions

- Port will provide GIS shapefiles and master property list for the Port MS4 infrastructure.
- Port will provide available property title, easement, access, and agreement information.
- Port and City will provide information about known project needs and cost estimates.
- Port will provide details and documentation as available for MS4 infrastructure that is disputed or of unknown ownership.
- Climate assessment planning horizon is 30 years based on lifespan of infrastructure.
 - This assessment is not a highly complex task, merely enough data analysis using reports prepared by others to develop project specifications.
- Twelve (12) virtual meetings with the Port stormwater team.
- Six (6) facilitated virtual meetings with all stakeholders.
- At least one representative will attend the Port Commission Meeting in person.
- In-person meetings will be scheduled only as needed.
- Period of performance: 1 year with 1 optional add-on year.

F. QUALIFICATIONS

RFPs should show proposer's previous experience with stormwater comprehensive planning efforts, specification development, GIS data analysis, and property analysis. Please present any other information or team skills that allow your team to creatively deliver an outstanding plan for the Port's use.

G. RFP ELEMENTS & EVALUATION CRITERIA

RFPs should present information in a straightforward and concise manner, while ensuring complete and detailed descriptions of the firm's (to include the prime, key team members, and major sub-consultants) ability to meet the requirements and provide the required services of this RFP. Emphasis will be on completeness of content. The written RFPs should be prepared in the sequential order as outlined below.

RFPs are limited to 20 numbered pages (8 ½ by 11 inch) **excluding** the cover letter and appendices. All pages shall be in portrait orientation with one (1) inch margins. Font

size shall be eleven (11) point or larger. RFPs that do not follow this format will not be reviewed.

The cover letter shall include the RFP Title and Number, Name, Title, Email Address, Phone Number, and current Address of the submitting Firm's main contact and include the following information:

- Describe any claim submitted by any client against the prime firm within the past two (2) years related to the professional services provided by the firm or its key personnel. For purposes of this request, "claim" means a sum of money in dispute in excess of 10% of the firm's fee for the services provided.
- Any real or perceived conflicts of interest for team members, inclusive of the prime, sub-consultants, and key team members.

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

H. INITIAL EVALUATION PHASE

1. Qualifications & Experience 45 PTS

- Provide a summary of proposing team's services, experience and expertise related to the elements described in the scope of services.
- Describe recent projects which demonstrate team's unique capabilities to complete the requested services.
- Provide a list of references for recent (in the last five (5) years) 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. Highlight key project accomplishments (e.g., project savings vs. original budget, completion of tasks ahead of schedule, innovative strategies that resulted in project success). Only projects completed by proposed key team members will be considered.

2. Project Management Approach 35 PTS

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

- Describe the effective approaches and methods that will be employed to accomplish the scope of services. Also indicate approach for managing individual Task Orders, managing multiple 'mini-projects' at once and managing to the overall contract budget. Include a summary of innovative ideas and suggestions for enhancing project performance and deliverables.
- Explain company QA/QC process and note its benefits/advantages.
- Document effective/proven communications and coordination approach between the project team, the Port's project manager and the regulatory agencies.

- Identify sustainable/cost savings methods that are used as part of field/office practices (recycling options, minimized mobilizations, idle and noise reduction, alternative fuel and renewable energy usage, reuse of excavated materials, etc.)
- Describe how the team will respond to the Port's requests for services.

I. FINAL EVALUATION PHASE (if applicable)

3. References Pass/Fail

Reference checks may be performed on the selected firm, if based directly on the RFPs received, or on shortlisted firms if interviews are being requested. The Port may evaluate the reference checks to assess the proposed firm's overall performance and success of previous, similar work. Reference checks may also be utilized to validate information contained in the RFP.

4. Interviews (as requested by the Port) 100 PTS

If an award is not made based on the written evaluations alone, interviews may be conducted with at least the top two (2) ranked Proposers. Failure to participate in the interview process will result in the Proposer's disqualification from further consideration. Travel costs for the interview will not be reimbursed.

ATTACHMENT A – INSTRUCTIONS FOR RESPONDING

ATTACHMENT B – SAMPLE PROFESSIONAL SERVICES AGREEMENT & TERMS AND CONDITIONS

ATTACHMENT C-RATE SHEET TEMPLATE

ATTACHMENT A INSTRUCTIONS FOR RESPONDING

PROCUREMENT PROCESS

SOLICITATION TIMELINE:

Issuance of Solicitation	NOVEMBER 29, 2022
Last Day to Submit Questions	DECEMBER 13, 2022 @ 2:00 PM (PST)
Submittal Packets Due	DECEMBER 20, 2022 @ 2:00 PM (PST)
Review/Shortlist*	DECEMBER 27, 2022
Interviews (if required)*	JANUARY 04, 2023
Final Selection*	JANUARY 06, 2023
Execute Contract*	JANUARY 31, 2023

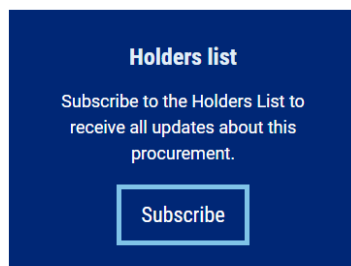
*Dates are tentative.

All status updates on the above solicitation timeline will be announced on the Port's website for this solicitation.

VENDOR OBLIGATION

The Port of Tacoma's (**Port**) Invitation to Bid, Request for Proposals (**RFP**) can be accessed on the Port's website, www.portoftacoma.com under 'Business -> Contracting -> Procurement'.

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



By subscribing to the Holder's List, firms will automatically be notified when new documents or changes relating to this procurement occur.

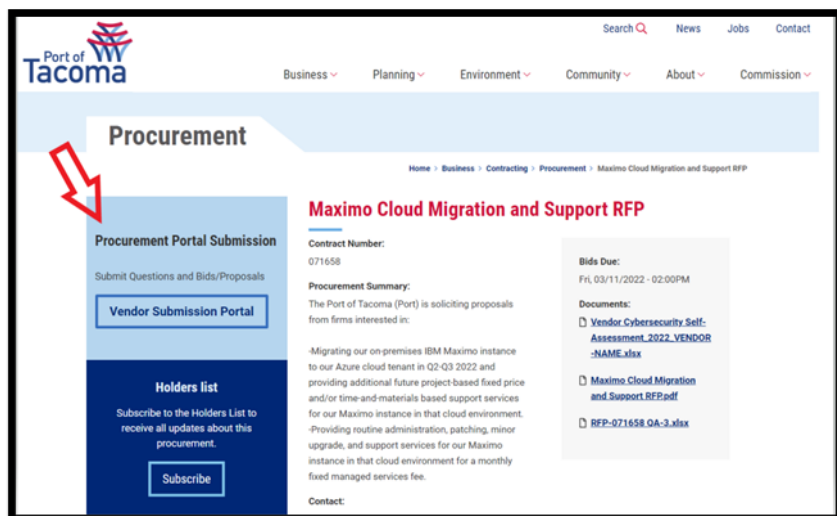
***Only those who have subscribed to the Holder's List will receive notifications throughout the procurement process, up until a firm is selected.**

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 solicitation may be disqualified from consideration.

Written questions about the meaning or intent of the Solicitation Documents shall only be submitted to the Procurement Department via the Procurement Portal (**Portal link is accessible via this specific procurements website. See left side of page.**).

ATTACHMENT A INSTRUCTIONS FOR RESPONDING



Proposers who may have questions about provisions of these documents are to submit their questions by the date listed above. The Port will respond to all written questions submitted by this deadline, and responses will be posted on the corresponding procurements website.

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. If at any time, the Port changes, revises, deletes, increases, or otherwise modifies the Solicitation, the Port will issue a written Addendum to the Solicitation. Addenda will be posted to the Port's web site and conveyed to those potential submitters who have requested to be placed on the Holder's List.

SUBMITTAL PROCESS

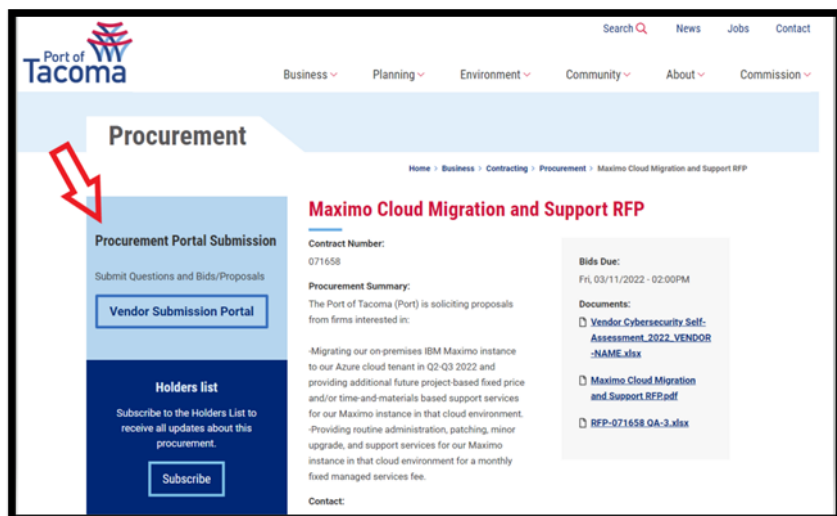
Electronic Submittal:

RFP must be received via the procurement portal on or before the date and time outlined on the front page of this RFP.

Procurement Submission Portal Instructions:

Navigate to the procurements web page (referencing the number and name) via the following link [Procurement | Port of Tacoma](#). While on the procurements page, click on the 'Procurement Submission Portal' link (located on the lefthand side of the page).

ATTACHMENT A INSTRUCTIONS FOR RESPONDING



Full instructions on how to utilize the submission portal can be found on the Port's website, www.portoftacoma.com under 'Business -> Contracting -> Procurement'. See bold red heading above the bid search box "Bid and Question Submittal Instructions", to access the thorough instructions in PDF format.

Please submit RFPs, including all appendices and compensation in separate Adobe Acrobat PDF format. Submittals need to be limited to **9 MB in total email size**. Please provide one (1) non-redacted version, and one (1) redacted version (**removing all Company information**) of your PDF submittal. It is the **Consultant's responsibility to verify the receipt of the submittal. Electronic verification will be provided.**

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

All RFPs submitted shall be valid and binding on the submitting firm for a period of ninety (90) days following the submittal deadline and for any extension of time granted by the submitting firm.

EVALUATION AND AWARD PROCESS

An evaluation team, using the point method of award, will review each RFP and evaluate all responses received based upon the criteria listed herein. The Port may request clarifications or additional information, if needed. After the evaluation team individually scores each RFP, the scores are tallied and the firms are ranked based on the scores.

A selection may be made based on the RFPs and initial evaluation criteria alone. Alternatively, the evaluation team may create a short list of the top ranked firms and invite the short-listed firms in for interview and/or check references. Scores for reference checks and interviews will be tallied and added to the short-listed firm's initial evaluation scores. Final selection will be based on the accumulative score.

The Port intends to select the Proposer who represents the best value to the Port.

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 RFP submitted as non-responsive or non-responsible.

ATTACHMENT A INSTRUCTIONS FOR RESPONDING

Procedure When Only One RFP is received

In the event that a single responsive RFP is received, the Proposer shall provide any additional data required by the Port to analyze the RFP. The Port reserves the right to reject such RFPs for any reason.

GENERAL INFORMATION

News releases pertaining to this RFP, 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 RFP and participation in this RFP and negotiation process shall be borne by the proposing firms.

PROTEST PROCESS

A Bidder protesting for any reason the Bidding Documents, a Bidding procedure, the Port's objection to a Bidder or a person or entity proposed by the Bidder, including but not limited to a finding of non-Responsibility, the Award of the Contract or any other aspect arising from or relating in any way to the Bidding shall cause a written protest to be filed with the Port within two (2) business days of the event giving rise to the protest. (Intermediate Saturdays, Sundays, and legal holidays are not counted as business days.) The written protest shall include the name of the protesting Bidder, the bid solicitation number and title under which the protest is submitted, a detailed description of the specific factual and legal grounds for the protest, copies of all supporting documents, evidence that the apparent low bidder has been given notice of the protest, and the specific relief requested. The written protest shall be sent by email to procurement@portoftacoma.com

Consideration. Upon receipt of the written protest, the Port will consider the protest. The Port may, within three (3) business days of the Port's receipt of the protest, provide any other affected Bidder(s) the opportunity to respond in writing to the protest. If the protest is not resolved by mutual agreement of the protesting Bidder and the Port, the Contracts Director of the Port or his or her designee will review the issues and promptly furnish a final and binding written decision to the protesting Bidder and any other affected Bidder(s) within six (6) business days of the Port's receipt of the protest. (If more than one (1) protest is filed, the Port's decision will be provided within three (3), but no more than six (6) business days of the Port's receipt of the last protest.) If no reply is received from the Port during the six (6) business-day period, the protest will be deemed rejected.

Waiver. Failure to comply with these protest procedures will render a protest waived.

Condition Precedent. Timely and proper compliance with and exhaustion of these protest procedures shall be a condition precedent to any otherwise permissible judicial consideration of a protest.

SMALL BUSINESS AND DISADVANTAGED BUSINESS OPPORTUNITIES

The Northwest Seaport Alliance encourages participation in all of its contracts by MWBE firms certified by the Office of Minority and Women's Business Enterprises

ATTACHMENT A

INSTRUCTIONS FOR RESPONDING

(OMWBE). Participation may be either on a direct basis in response to this solicitation/invitation or as a subcontractor to a Bidder/Proposer. However, unless required by federal statutes, regulations, grants, or contract terms referenced in the contract documents, no preference will be included in the evaluation of bids/submittals, no minimum level of MWBE participation shall be required as a condition for receiving an award and bids/submittals will not be rejected or considered non-responsive on that basis. Any affirmative action requirements set forth in federal regulations or statutes included or referenced in the contract documents will apply. The selected firm will be required to show evidence of outreach.

PUBLIC DISCLOSURE

RFPs submitted under this Solicitation will be considered public documents and, with limited exceptions, will become public information and may be reviewed by appointment by anyone requesting to do so following the conclusion of the evaluation, negotiation, and award process. This process is concluded when a signed contract is completed between the Port and the selected Consultant.

If a firm considers any portion of its response to be protected under the law, the vendor shall clearly identify each such portion with words such as "CONFIDENTIAL," "PROPRIETARY" or "TRADE 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 vendor 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 RFP. 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.

**ATTACHMENT B
SAMPLE PERSONAL SERVICES AGREEMENT**

PERSONAL SERVICES AGREEMENT NO. 071799

PROJECT: Stormwater Infrastructure Comprehensive Plan

CONSULTANT: Company, Address, City, State, Zip

PROJECT MANAGER: _____ **PROJECT NO.** _____

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 services to assist in supporting requirements for a Stormwater Infrastructure Comprehensive Plan. (hereinafter referred to as the **Project**).

The Port and Consultant mutually agree as follows:

SERVICES

The scope of services is ...

COMPENSATION

This will be accomplished on a time and materials basis and will not exceed \$0.00 without prior written approval from the Port.

The length of this agreement is from the date of execution to **December 31, 2023**, with one (1) separate one (1) year renewal option at the sole discretion of the Port.

This agreement is expressly conditioned upon the following Terms and Conditions and Rate Sheet. Consultant acknowledges reading this Agreement, understands it and agrees to be bound by its Terms and Conditions.

AGREED

PORT OF TACOMA

CONSULTANT (LEGAL NAME)

By _____

By _____

Sharon Rothwell Date

Date

Director, Contracts Procurement

Print Name

Title

**Port of Tacoma Terms and Conditions
for Professional Service Agreements
Dated 4/18/22**

1. Relationship of the Parties

Consultant and its employees are independent Contractors. Nothing contained herein shall be deemed to create a relationship of employer and employee or of principal and agent.

2. Subconsultant and Supplier Relations

- a. Subconsultants at all tiers shall be approved by the Port prior to performing Services in support of this Agreement between Consultant and Port.
- b. The award of a subcontract does not create a contract between the Port and the subconsultant. Subconsultants shall have no rights whatsoever against the Port by reason of their contract with the Consultant. The foregoing provision shall apply with equal force to subconsultants, suppliers and all other persons or parties otherwise engaged by the Consultant to do any portion of the Services.
- c. The Consultant shall ensure every subcontract shall bind the subconsultant to the applicable terms of the Agreement. The Consultant shall appropriately monitor the activities of the subconsultant. In no event shall the activities of the subconsultant operate to release or reduce the liability of the Consultant to the Port for any breach in the performance of the Consultant's duties.

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 Services existing at the time this Agreement was executed or that became applicable subsequent to this Agreement's execution, and those regarding employee safety, the workplace environment, and employment eligibility verifications as required by the Immigration and Naturalization Service. Consultant shall obtain and maintain all professional licenses and permits required to complete the Services.
- b. Consultant must comply with all Occupational Safety and Health Administration (OSHA), Washington Industrial Safety and Health Act (WISHA), Department of Labor, Environmental Protection Agency and other applicable environmental standards as prescribed by law while on or occupying Port-owned properties.
- c. The Consultant is responsible for ensuring that all personnel performing Services are paid

wages in accordance with federal, state and local laws when applicable.

5. Records and other Tangibles

- a. The Port is a public entity and must maintain access to, and be able to provide, records per RCW 40.14, RCW 42.56, and the Secretary of State's Local Government Common Records Retention Schedule (CORE) Version 3.3 (October 2016). Therefore, until the expiration of six (6) years after the term of this Agreement, consultant agrees to maintain accurate records of all activities done in providing the Services and to deliver such records to the Port upon termination of the Agreement or otherwise as requested by the Port.
- b. The Port or its designated agent, and federal and state auditing authorities have the right to audit this Agreement and access to all records and documents, including financial data, for a period of not less than six (6) years after Completion of all projects related to this Agreement or until resolution of any litigation related to this Agreement whichever occurs last.

6. Ownership of Intellectual Property (IP)

- a. The plans, specifications, models, programs, reports, and other products prepared by the Consultant in performing the Services are Instruments of Service for purposes of the copyright laws of the United States. The Port has ownership rights to the Instruments of Service. Consultant shall not be liable for changes made in the Instruments of Service 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. Any patentable result or materials suitable for copyright arising out of this Agreement shall be owned by and made available to the Port for public use, unless the Port determines it is not in the public interest that it be owned or available.
- b. The Instruments of Service shall include all calculations, notes, draft documents, reports, drawings, specifications, electronic files, including e-mails, and any other materials, information or documentation developed or prepared in the performance of the Services and shall be owned by and treated as Port property. The Consultant shall obtain no proprietary rights or interest the Instruments of Service.
- c. Any items incorporated into the Instruments of Service that were developed by the Consultant prior to the execution of this Agreement, and not paid for by the Port, is not covered by this provision "Consultant Data."
- d. All information, materials, data and documentation furnished or made available to the Consultant by the Port for purposes of performing services pursuant to this Agreement

**Port of Tacoma Terms and Conditions
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on this project shall remain the property of the Port "Port Data." The Consultant shall obtain no proprietary rights or ownership interests to such Port Data. At the Port's written request, the Consultant shall return all such Port Data remaining in the Consultant's possession at the termination or expiration of this Agreement.

7. Disclosure

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

Compensation

- a. As full compensation for the performance of its obligations of this Agreement and the Services, the Port shall pay Consultant as specified in the Agreement.
- b. Consultant is responsible for working within the agreement amount. Should the consultant incur costs beyond the agreement amount without an executed amendment to this agreement, the Consultant is solely responsible for the additional costs.

8. Invoices

- a. Consultant shall submit detailed **numbered invoices showing** descriptions of the Services being invoiced, work order number, title of the Project, total authorized, total current invoice, balance of authorization, individual's names and titles, hours, hourly rate, and all authorized expenses, if allowed, for the month, itemized, with backup, in accordance with the Port's "Guidelines for Consultant Fees and Reimbursable Items", by the 10th of the following month to be paid by the end of the 30th, unless other terms are agreed to by the parties.
- b. Consultant agrees to submit timely invoices as the Services progress. Invoices that are submitted for payment ninety (90) days or more after the Services were completed are subject to non-payment.
- c. Un-invoiced Services performed through December 31 of each year shall be invoiced no later than the 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 is responsible for and shall pay all costs and disbursements required for the performance of the Services.

10. Standard of Care

- a. Consultant shall perform the Services 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 Services.

- 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 the Services.

11. Time

Time is a material consideration in the performance of the Services. The Consultant shall complete the Services within the agreed upon schedule, including any established milestones and task completion dates, and the overall period of performance. The completion dates for tasks may be modified by a written directive; however, the period of performance for the Agreement may only be modified through an amendment. The period of performance and contract milestones shall not be extended because of any unwarranted delays attributable to the Consultant. The period of performance and contract milestones may be extended in the event of a delay caused by the Port which results in a delay in the performance of an affected task, because of unavoidable delay caused by any governmental action, or other conditions beyond the control of the Consultant, which could not reasonably be anticipated and which results in a delay in the period of performance and contract schedule. Upon mutual agreement, the period of performance may be accelerated to meet Project requirements.

12. Assignability

The Consultant may not assign, transfer, or novate all or any portion of the Agreement, including but not limited to any claim or right to the Contract Sum, without the Port's prior written consent. If the Consultant attempts to make an assignment, transfer, or novation without the Port's consent, the assignment or novation, shall be of no effect, and the Consultant shall nevertheless remain legally responsible for all obligations under the Agreement. The Consultant also shall not assign or transfer to any third party any claims it may have against the Port arising under the Agreement or otherwise related to the Project.

13. Termination of Agreement

- a. Termination for Default:
 - i. The Port may terminate this Agreement, in writing, if the Consultant substantially fails to fulfill any or all of its material obligations under this Agreement through no fault of the Port; provided

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that the Consultant has been given an opportunity to cure.

1. Cure Notice: If the Port determines that a breach of this Agreement has occurred, that is, the Consultant has failed to comply with any material terms or conditions of this Agreement or the Consultant has failed to provide in any manner the Services agreed to herein, and if the Port deems said breach to warrant corrective action, the following sequential procedure will apply:
 - ii. The Port will provide the Consultant with a written Cure Notice, notifying the Consultant of the nature of the breach.
 - iii. The Consultant shall respond within five (5) calendar days of the notification. The Consultant shall submit a corrective action plan indicating the steps to be taken to correct the specified deficiencies within fifteen (15) calendar days of the notification. The corrective action plan shall specify the proposed completion date for bringing this Agreement into compliance within the number of calendar days specified by the Port;
- b. Show Cause Notice:
 - i. In the event that the Consultant does not respond within the appropriate time with a corrective action plan, the Port will provide the Consultant with a written Show Cause Notice; notifying the Consultant of their requirement to notify the Port in writing within seven (7) calendar days of any reason the Port should not terminate this Agreement. At the expiration of the seven (7) calendar day period the Port may commence termination of this Agreement in whole or in part.
 - ii. The Port may withhold payment owed the Consultant, instruct the Consultant to stop work and to refrain from incurring additional costs until the Port is satisfied that the breach has been corrected.
 - iii. No increase in total price or period of performance shall result from breach of this Agreement; and
 - iv. Nothing herein shall be deemed to affect or waive any other rights of the Port.
- c. Notice of Termination:
 - i. If the Port terminates this Agreement for default, the Port shall determine the amount of Services satisfactorily performed to the date of termination and

the amount owing to the Consultant using the criteria set forth below; provided, that (a) no amount shall be allowed for anticipated profit on unperformed Services or other work and (b) any payment due to the Consultant at the time of termination may be adjusted to the extent of any additional costs the Port incurs because of the Consultant's default. In such event, the Port shall consider the actual costs incurred by the Consultant in performing this Agreement to the date of termination, the amount of Services originally required which was satisfactorily completed to the date of termination, whether the Services are in a form or of a type which is usable and suitable to the Port at the date of termination, the cost to the Port of completing the Services itself or of employing another firm to complete it and the inconvenience and time which may be required to do so, and other factors which affect the value to the Port of the Services performed to the date of termination. Under no circumstances shall payments made under this provision exceed the Total Price set forth in this Agreement. This provision shall not preclude the Port from filing claims and/or commencing litigation to secure compensation for damages incurred beyond that covered by withheld payments.

- ii. Upon receipt of a termination notice the Consultant shall at no additional cost to the Port:
 1. Promptly discontinue all Services (unless the notice directs otherwise);
 2. No later than fourteen (14) calendar days after receipt of termination, promptly deliver or otherwise make available to the Port all Instruments of Service and Port Data including data, drawings, electronic drawing files, specifications, calculations, reports, estimates, summaries, official Project documentation and other Project documentation, such other information and materials as the Consultant or subconsultants may have accumulated in performing this Agreement, whether completed or in progress and all

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- equipment/materials purchased specifically for this Agreement where the Port has paid the Consultant for such items.
3. Upon termination, the Port may take over the Services and prosecute the same to completion by agreement with another party or otherwise.
- d. Termination for Convenience:
- i. The Port may terminate this Agreement, for the convenience of the Port. The Port shall terminate by delivery to the Consultant a Notice of Termination specifying the termination and the effective date.
 - ii. If the Port terminates this Agreement for convenience, the Port shall pay the Consultant for the following items:
 1. An amount for Direct Labor Costs and Indirect Costs in accordance with the Agreement for Services satisfactorily performed to the date of termination.
 2. Reasonable invoiced Other Direct Costs as allowed by the Agreement, actually incurred before the date of termination; or
 3. Reasonable termination settlement costs the Consultant actually incurred unless the Port determines to assume said commitments. Reasonable termination settlement costs include settlement costs for subconsultants, and reasonable accounting and clerical costs actually incurred by the Consultant.
 - iii. Upon receipt of a termination notice the Consultant shall at no additional cost to the Port:
 1. Promptly discontinue all Services (unless the notice directs otherwise);
 2. No later than fourteen (14) calendar days after receipt of termination, promptly deliver or otherwise make available to the Port all Instruments of Services and Port Data including drawings, specifications, calculations, reports, estimates, summaries, official Project documentation, other Project documentation, and such other information and materials as the
- Consultant may have accumulated in performing this Agreement, whether completed or in progress and all equipment/materials purchased specifically for this Agreement where the Port has reimbursed the Consultant for such costs;
3. Take any action necessary, or that the Port may direct, for the protection and preservation of property related to this Agreement that is in the possession of the Consultant and in which the Port has or may acquire an interest.
- iv. Within sixty (60) calendar days of receipt of the notice of Termination for Convenience, the Consultant shall submit to the Port a Termination Settlement Proposal. The Termination Settlement Proposal shall include:
 1. Request for Direct Labor Costs and Indirect Costs for services satisfactorily performed to the date of termination.
 2. As allowed by the Agreement, Actual and reasonable Other Direct Costs incurred before the termination.
 3. Documentation supporting all costs identified in the Termination Settlement Proposal; and
 4. A statement certifying, under penalty of perjury, that the Termination Settlement Proposal is made in good faith, the Termination Settlement Proposal and supporting data are true and accurate to the best of the Consultant's knowledge and belief, the Termination Settlement Proposal is fully supported by the accompanying data, and the amount requested accurately reflects the amount for which the Consultant believes the Port is responsible.
 - v. Termination settlement costs and proposals are subject to audit verification by the Port.
 - vi. Upon termination, the Port may take over the work and prosecute the same to completion by agreement with another party or otherwise.

14. Disputes

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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 this Agreement may be consolidated and resolved in one forum.

15. Venue & Governing Law

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. This Agreement shall be interpreted under the laws of the State of Washington.

16. Integration and Merger/ Extent of Agreement

- a. This Agreement represents the entire and integrated understanding between the Port and Consultant, supersedes any previous written or oral representations and may be amended only by written instrument signed by both the Port and Consultant. No verbal agreement or conversation between any officer, agent, associate or employee of Port and any officer, agency, employee or associate of consultant prior to or following the execution of this Agreement shall affect or modify any of the terms or obligations contained in this Agreement.
- b. Authority to sign. Every signer of this Agreement warrants that they have the authority to enter into this Agreement and to bind the entity for which they represent.

17. Non-Discrimination

- a. Nondiscrimination in Employment and Provision of Services: During performance of this Agreement, the Consultant and all parties subcontracting under the authority of this Agreement agrees that it will not discriminate against any employee or applicant for employment because of the employee or applicant's age, sex, marital status, sexual orientation, race, creed, color, national origin, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability.
- b. Equal Employment Opportunity Efforts: The Consultant and all parties subcontracting under the authority of this Agreement agree to undertake equal employment opportunity efforts to ensure that applicants and employees are treated, without regard to their age, sex, marital status, sexual orientation, race, creed, color, national origin, honorably discharged veteran or

military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability.

- c. The Consultant and all parties subcontracting under the authority of this Agreement shall comply fully with all applicable federal, state, and local laws, ordinances, executive orders and regulations that prohibit discrimination.

18. Indemnity / Hold Harmless Clause

- a. The Consultant shall indemnify, defend and hold harmless the Port of Tacoma and the Northwest Seaport Alliance and its officers, managing members, employees and agents from and against any liability, claims, damages, losses, expenses or actions, including reasonable attorney's fees and costs, arising out of the negligence, recklessness, or intentional wrongdoing of Consultant or its officers, employees, subcontractors, or agents; or arising out of a failure to comply with any applicable state, federal, local, law, statute, rule, regulation or act by the Consultant or its officers, employees, subcontractors, or agent's provided, however, that for any defense obligation related to a claim for which Contractor has insurance coverage under a professional liability policy, such obligation shall be limited to reimbursement by the Consultant for expenses incurred by the Port of Tacoma or the Northwest Seaport Alliance.
- b. This duty to indemnify, defend and hold harmless shall not apply to claims which arise solely out of negligence on the part of the Port of Tacoma and the Northwest Seaport Alliance, and this duty shall survive the termination or expiration of this Agreement.

Consultant specifically assumes potential liability for actions brought by Consultant's own employees against the Port and the Northwest Seaport Alliance 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's indemnity obligations shall not be limited by any limitation on the amount or type of damages, compensation, or benefits payable to or for any third party under the Worker Compensation Acts, Disability Benefit Acts, or other employee benefit acts. Consultant recognizes that this waiver was the subject of mutual negotiation.

- c. Consultant shall indemnify and hold the Port of Tacoma and Northwest Seaport Alliance harmless from and against any liability, expense, fines, penalties, cost, demand, or other obligation, resulting from or out of any cyber-related risk that include theft, loss or misuse of data, release of private information as result of a network breach, penetration, compromise, or loss of IT systems control.

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- d. The provisions of this Section 19 shall survive the expiration or termination of this Agreement.

19. General Insurance Requirements

The Consultant shall procure and maintain during the life of this Agreement such insurance as shall protect it from claims or damages for, IT Professional or Cyber Liability, bodily injury, including death resulting therefrom as well as from claims for property damage, and cyber-related risks such as theft, loss or misuse of data, release of private information as result of a network breach, penetration, compromise, or loss of IT systems control, which may arise from operations under this Agreement, whether such operations be by itself, its agents, or by anyone directly or indirectly employed by either of them, and shall comply with any such Project specific insurance requirements as determined by the Port.

20. Miscellaneous Provisions

- a. Remedies Cumulative: Rights under this Agreement are cumulative and nonexclusive of any other remedy at law or in equity.
- b. Captions: All titles, including sections or subsections, are for convenience only and do not define or limit the contents.
- c. Severability: Any term or provision of this Agreement found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remainder of the Agreement.
- d. Waiver: No covenant, term, or the breach thereof shall be deemed waived, except by written consent of the Party against whom the waiver is claimed, and any waiver of the breach of any covenant, term or condition shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term or condition. Neither the acceptance by Port of any performance by consultant after the time the same shall have become due nor payment to consultant for any portion of the Services shall constitute a waiver by Port of the breach or default of any covenant, term or condition unless otherwise this is expressly agreed to by Port, in writing. Port's failure to insist on performance of any of the terms or conditions herein or to exercise any right or privilege or Port's waiver of any breach hereunder shall not thereafter waive any other term, condition, or privilege, whether of the same or similar type.
- e. Negotiated Agreement: The Parties acknowledge that this is a negotiated Agreement, that they have had the opportunity to have this Agreement reviewed by respective legal counsel, and that terms and conditions are not construed against any Party on the basis of such Party's draftsmanship thereof.

- f. No Personal Liability: No officer, agent or authorized employee of either Port or Consultant shall be personally responsible for any liability arising under this Agreement, whether expressed or implied, nor for any statement or representation made herein or in any connection with this Agreement.

- g. Consultant and Port waive any and all claims against each other for incidental, consequential, special, multiple, and punitive damages arising out of or relating to this Agreement. This waiver includes, but is not limited to, loss of profit, loss of business, loss of income, loss of reputation or any other consequential damage that either Party may incur.

21. 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.

22. 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 environmental liability insurance including asbestos abatement liability 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 or cleanup costs, 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. If this agreement requires that a Subconsultant perform ultra-hazardous operations the Port will require that it be named as an Additional Insured by endorsement on all Subconsultant insurance policies and waivers of subrogation shall be provided by endorsement. Workers Compensation and Professional Liability are exempted from the additional insured requirement.
- b. 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 \$2,000,000 per occurrence and \$4,000,000 aggregate. Coverage will include: Products and

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Completed Operations, Contractual Liability and Personal & Advertising Injury; and

- ii. Automobile Liability covering owned, non-owned and hired vehicles of \$2,000,000 combined single limit per accident; and
- iii. Professional Liability including environmental consulting services of not less than \$2,000,000 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 \$2,000,000 per claim.
- vi. Protection and Indemnity Insurance/Jones Act: \$1,000,000 limits shall be provided covering all vessels and crew.
- vii. Maritime Employers Liability: \$1,000,000 limits shall be provided covering all divers.
- c. All policies shall be issued by a company having an A. M. Best Financial Strength Rating of A- and Financial Size Category of VIII 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 Northwest Seaport Alliance 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.
- d. Consultant is responsible for complying with the Washington State laws that pertain to industrial insurance (RCW 51). 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.

- e. Certain Services under this Agreement may require United States Longshoremen's and Harbor Worker's Act (USL&H) and Jones Act. The Consultant shall be solely responsible for determining the applicability of USL&H and Jones Act coverage. The failure of the Consultant to procure either USL&H or Jones Act coverage shall at no time create liability on the part of the Port. The Consultant shall bear all responsibility and shall indemnify and hold harmless the Port for any and all liability, cost and/or damages.

23. Payment Schedule

- a. 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.
- b. Consultant shall submit detailed invoices showing the following:
 - i. Invoice Number, Contract number, Title, Invoice Period.
 - ii. Summary page with a brief description of Services completed during the invoice period, deliverables provided during the invoice period, and forthcoming milestones / deliverables.
 - iii. Further, provide a summary breakdown of all projects with the amount of the overall invoice to be charged to each project.
 - iv. Current Amount Due, with a Time and Materials Breakdown: titles, hours, hourly rates, and all expenses itemized, with backup, in accordance with the Contract.
 - v. Total amount of the Contract, and balance of Contract amount. Indicate "Final Invoice" when invoice is the final billing.

24. Compensation

- a. Consultant expenses will be reimbursed at cost with the exception of:
 - i. Subconsultant services will be reimbursed at cost plus negotiated markup.

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- ii. Services provided by a third party will be reimbursed at cost plus negotiated markup.
- b. 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.
- c. 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.
- d. 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.
 - i. Rates may be negotiated no more than once annually. Rate adjustments will be tied to the CPI for the Seattle, Tacoma/Bremerton area.
- e. Rates and Markup: are defined in the attached Rate Sheet and made a part of this contract.

25. 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 in a PDF format or other format specified by the Port.

26. Drawing, Specification and GIS

- a. Consultant shall prepare specifications using BSD SpecLink-E, Masterformat specification organization, latest edition.
- b. Consultant shall prepare specifications in accordance the Port's Specification Standards available at <https://www.portoftacoma.com/business/contracting/forms> and from the Port Project Manager. The Port's Master format specifications are available at <https://www.portoftacoma.com/business/contracting/forms>.
- c. All site plans, derivative drawings, record drawings, and bid plans shall be completed using Port GIS and CADD standards and layer/block protocols available at <https://www.portoftacoma.com/business/contracting/forms> and from the Port Project Manager.

27. Security – Transportation Worker Identification Credential (TWIC)

- a. The Services may require the consultant to work within a secured/restricted TWIC regulated terminal.
- b. 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 <https://www.tsa.gov/for-industry/twic>.

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

28. 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.

29. Extent of Agreement

- a. In the event the Consultant identifies something that may impact the Services, Project schedule, total price, task budget(s) or cost of performing the Services, 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.
- b. The Project Manager may, at any time, by written directive require the Consultant to perform the Services consistent with the Agreement; provided that this directive does not add scope or cost to the project.
- c. Any directive shall not constitute an amendment to the Agreement nor entitle the Consultant to any additional compensation or a time adjustment.

30. Prevailing Wages

- a. The Consultant shall ensure that all Subcontractors of any tier pay all prevailing wages and other wages (such as Davis-Bacon Act wages) applicable to the Project.
- b. Pursuant to RCW 39.12, "Prevailing Wages on Public Works," no worker, laborer, or mechanic employed in the performance of any part of the Work shall be paid less than the "prevailing rate of wage" in effect as of the date that bids are due.
- c. The applicable effective date for prevailing wages for this project is the execution date of this Amendment.
- d. The State of Washington prevailing wage rates applicable for this public works project, which is located in Pierce County, may be found at the following website address of the Department of Labor and Industries:
<https://lni.wa.gov/licensing-permits/public-works-projects/prevailing-wage-rates/>

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- e. The schedule of the prevailing wage rates is made a part of the Contract Documents by reference as though fully set forth herein; and a copy of the applicable prevailing wage rates are also available for viewing at the Port Administration Building, located at One Sitcum Plaza, Tacoma, WA 98421 (253-383-5841). Upon request to the Procurement Department at procurement@portoftacoma.com, the Port will email or mail a hard copy of the applicable Journey Level prevailing wages for this project.
 - f. Questions relating to prevailing wage data should be addressed to the Industrial Statistician.
Mailing Address:
Department of Labor and Industries
Prevailing Wage Office
PO Box 44540, Olympia, WA 98504
Telephone: (360) 902-5335
Facsimile: (360) 902-5300
 - g. If there is any discrepancy between the attached or provided schedule of prevailing wage rates and the published rates applicable under WAC 296-127-011, or if no schedule is attached, the applicable published rates shall apply with no increase in the Contract Sum. It is the Contractor's responsibility to ensure that the correct prevailing wage rates are paid.
 - h. Prior to any payment being made by the Port under this Contract, the Contractor, and each Subcontractor of any tier, shall file a Statement of Intent to Pay Prevailing Wages under oath with the Port and certified by the Director of Labor and Industries. The statement shall include the hourly wage rate to be paid to each classification of workers entitled to prevailing wages, which shall not be less than the prevailing rate of wage, and the estimated number of workers in each classification employed on the Project by the Contractor or a Subcontractor of any tier, as well as the Contractor's contractor registration number and other information required by the Director of Labor and Industries. The statement, and any supplemental statements, shall be filed in accordance with the requirements of the Department of Labor and Industries. No progress payment shall be made until the Port receives such certified statement.
 - i. The Contractor shall post in a location readily visible to workers at the Project site (1) a copy of the Statement of Intent to Pay Prevailing Wages approved by the Industrial Statistician of the Department of Labor and Industries and (2) the address and telephone number of the Industrial Statistician of the Department of Labor and Industries to whom a complaint or inquiry concerning prevailing wages may be directed.
 - j. If a State of Washington prevailing wage rate conflicts with another applicable wage rate (such as Davis-Bacon Act wage rate) for the same labor classification, the higher of the two shall govern.
 - k. Pursuant to RCW 39.12.060, if any dispute arises concerning the appropriate prevailing wage rate for work of a similar nature, and the dispute cannot be adjusted by the parties in interest, including labor and management representatives, the matter shall be referred for arbitration to the Director of the Department of Labor and Industries, and his or her decision shall be final and conclusive and binding on all parties involved in the dispute.
 - l. The Contractor shall defend (at the Contractor's sole cost, with legal counsel approved by Port), indemnify and hold the Port harmless from all liabilities, obligations, claims, demands, damages, disbursements, lawsuits, losses, fines, penalties, costs and expenses, whether direct, indirect, including but not limited to attorneys' fees and consultants' fees and other costs and expenses, from any violation or alleged violation by the Contractor or any Subcontractor of any tier of RCW 39.12 ("Prevailing Wages on Public Works") or Chapter 51 RCW ("Industrial Insurance"), including but not limited to RCW 51.12.050.
- 31. On-Call Definitions Supplementary Conditions (As Applicable)**
- a. Task Order: The document that memorializes agreement between the Consultant and the Port, in accordance with the terms of the On-Call Contract. Task Orders are executed for defined Services under the On-Call Contract.
 - b. Contract Owner: Port staff member responsible for managing the On-Call Contract and executing all Task Orders.
 - c. Project Manager: Port staff member responsible for managing a specific Task Order.
 - d. Consultant Representative: The Consultant staff member(s) delegated the authority to provide signature approval for Task Orders under the On-Call Contract.
 - e. Task Order Proposals:
 - i. The Project Manager will request consultant to provide a fee proposal for the Services requested by the Port.
 - ii. The Port will not pay for time or materials associated with development of fee proposals, unless such costs are approved by the Project Manager and Contract Owner in advance.
 - iii. Task Order proposals shall be signed and submitted by the Consultant Representative to the Port's Project

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Manager in writing. Proposals shall include one of the following:

1. Time and Materials Proposal
 - a. Description of Task Order scope and deliverables.
 - b. Consultant's Personnel Titles and Rates as negotiated.
 - c. Hours per person per task.
 - d. Sub-tier consultant scope and deliverables (when applicable).
 - e. Anticipated reimbursable costs.
 - f. Total proposal with Not to Exceed dollar amount.
- f. Task Order Execution:
Executed Task Orders will be issued by the Contract Owner to the Consultant.
- g. Task Order Revision:
 - i. Revisions include when the Consultant becomes aware of the potential to exceed the executed amount or when changes are requested by the Project Manager.
 - ii. Consultant shall provide a revised proposal detailing all revisions per 2A and B above. Consultant shall not proceed with changed work until a revised Task Order is executed by the Contract Owner.
- h. Payment Schedule:
 - i. Each Task Order shall be invoiced separately. Consultant shall submit detailed invoices showing the following:
 - ii. Invoice Number, Contract number, Title, Task Order Number and Title.
 - iii. Summary page with a brief description of Services completed during the invoice period, deliverables provided during the invoice period, and forthcoming milestones / deliverables.
 - iv. Current Amount Due:
 - v. For Lump Sum Task Orders: Percentage of Services complete, percentage of completed Services billed.
 1. For Time and Materials Task Orders: titles, hours, hourly rates, and all expenses itemized, with backup, in accordance with the contract.
 - vi. Total amount of the Task Order, and balance of Task Order amount.
- vii. Indicate "**Final Invoice**" when invoice is the final billing for that Task Order.
- i. Task Order Closure:
When the Services have been completed and final invoice processed by the Port, the Contract Owner will issue a Task Order Completion Notification to the Consultant Representative.
- j. Task Order Termination:
The Port may terminate the Task Order at its convenience with or without cause. In such case, the Consultant shall be paid for all Services performed and reasonable expenses properly incurred in connection with the termination.

**ATTACHMENT C
RATE SHEET TEMPLATE**

HOURLY RATES

**Consultant
Project Name**

<u>Personnel</u>	<u>Hourly Rates</u>
Sr. Consultant 2	\$ -
Sr. Consultant 1	\$ -
Consultant 2	\$ -
Consultant 1	\$ -
Project 2	\$ -
Project 1	\$ -
Staff 2	\$ -
Staff 1	\$ -

<u>Subconsultant</u>	<u>Hourly Rates</u>
Sr. Consultant 2	\$ -
Sr. Consultant 1	\$ -
Consultant 2	\$ -
Consultant 1	\$ -
Project 2	\$ -
Project 1	\$ -
Staff 2	\$ -
Staff 1	\$ -

<u>Equipment</u>	<u>Rate</u>	<u>Unit</u>
Equipment 1	\$ -	Day
Equipment 2	\$ -	Day
Equipment 3	\$ -	Each
Equipment 4	\$ -	Each
Equipment 5	\$ -	Feet
Equipment 6	\$ -	Feet
Equipment 7	\$ -	Day
Equipment 8	\$ -	Day

<u>Reimbursable</u>	
Subconsultants	Cost + Negotiated Markup (= or < 4%)
Other Direct Costs	Cost
Mileage (All Vehicles)	IRS allowable rate

Additional personnel are not authorized without prior written approval from the Port's Project Manager.