



October 14, 2024

TO: **Port of Tacoma Strategic Plan Consultant**

SUBJECT: RFP NO. PA000000021

ADDENDUM NUMBER # 02

This addendum is issued to add, remove, clarify, and amend the following:

Updated Terms and Conditions

See Attachment 1 to this Addendum.

PORT Terms and Conditions for Personal Service Agreement PA000000021

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

1. Key Personnel

The Consultant's and/or its subconsultants' key personnel, as described in its Consultant selection submittals, shall remain assigned for the duration of the Project unless otherwise necessary for Consultant to replace personnel and it is agreed to by the Port, such consent not being unreasonably withheld.

2. Relationship of the Parties

Consultant and its subconsultants and their employees, are independent contractors. Nothing contained herein shall be deemed to create a relationship of employer and employee nor of principal and agent.

3. Conflicts of Interest

Consultant, for duration of this agreement warrants-represents that it has no direct nor indirect economic interest which conflicts in any manner with its performance of the Services required under this Agreement. Consultant warrants-represents that it has not retained any person to solicit this Agreement and has not agreed to pay such person any compensation nor other consideration contingent upon the execution of this Agreement.

4. Compliance with Applicable Laws

Consultant agrees to comply with all applicable local, state, ~~tribal~~ and federal laws and regulations applicable to the Project, including ~~building codes and permitting regulations existing at the time this Agreement is 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 Services.

5. Records and other Tangibles

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 services, fees and expenses related to activities done in providing the Services provided under this Agreement and to deliver such records to the Port upon termination of the Agreement or otherwise as requested by the Port request.

6. Ownership of IP

The Port shall own all final reports and other completed deliverables created under this Agreement and delivered to the Port, excluding any Consultant Material (defined below) contained or embodied therein ("Deliverables"). However, the Port may not alter or amend any Deliverables issued under Consultant's name. Consultant may retain a copy of Deliverables for archival purposes. Consultant shall own: (i) its working papers and any engagement documentation; and (ii) any general skills, know-how, expertise, ideas, concepts, methods, techniques, processes, software, materials, or other intellectual property which may have been discovered, created, received, or developed by Consultant either prior to or as a result of providing services under the Agreement (collectively, "Consultant Materials"). The Port shall have a non-exclusive, non-transferable license to use Consultant Materials for its own internal use and only for the purposes for which they are delivered to the extent they form part of a Deliverable. Notwithstanding anything to the contrary in this Agreement, Consultant and its personnel are free to use and employ their general skills, know-how, and expertise, and to use, disclose, and employ any generalized ideas, concepts, know-how, methods, techniques or skills gained or learned during the course of this Agreement so long as they acquire and apply such information without any unauthorized use or disclosure of confidential or proprietary information of the Port. 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 responsible

~~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. Use of the Instruments of Service for promotional purposes shall require the Port's prior consent. Notwithstanding anything to the contrary in this Agreement, Consultant and its personnel are free to use and employ their general skills, know-how, and expertise, and use, disclose, and employ any generalized ideas, concepts, know-how, methods, techniques, or skills gained or learned during the course of this Agreement so long as they acquire and apply such information without any unauthorized use or disclosure of confidential or proprietary information from the Port.~~

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, the Port shall pay Consultant as specified in the Agreement.

9. Payment Schedule

Consultant shall submit detailed numbered invoices monthly 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 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.

10. Costs and Disbursements

Consultant shall pay all costs and disbursements required for the performance of its the Services.

11. Insurance - Assumption of Risk

- a) As a further consideration in determining compensation amounts, Consultant shall procure and maintain, during the term of this Agreement, such commercial general, IT Professional or Cyber Liability, and automobile liability insurance as shall protect Consultant and any subconsultants performing the Services from claims for damages from bodily injury, including death, resulting there from 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 under this Agreement, whether arising from operations conducted by the Consultant, any subconsultants, or anyone directly or indirectly employed by either of them.
- b) The Consultant ~~and its subconsultants~~ shall indemnify, defend ~~(the defense obligation shall not apply to professional liability claims)~~, and hold harmless the Port of Tacoma and the Northwest Seaport Alliance ~~and their respective~~ appointed and elective officers and employees ("Indemnified Parties") from and against any and all third party 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 the Indemnified Parties arising out of bodily injury (including death), damage to real property, and damage to tangible personal property to the extent caused by from the intentional misconduct, or negligent acts, errors, or omissions by of the Consultant in the performance of the Services under this Agreement.~~
- c) Not used
- d) ~~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.~~ Not used.

12. Standard of Care

Consultant shall perform the Services to conform to any applicable generally accepted professional standards for Services performed under this Agreement. Consultant shall, without additional compensation, correct or revise any errors or omissions in such the Services.

13. Time

Time is of the essence in the performance of the Services.

14. 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.

15. 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. 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.

The Consultant may terminate this Agreement in whole or in part for cause upon thirty (30) days' written notice to the Port, and the Port shall have an opportunity to cure the basis for termination within such time period.

16. Disputes

If a dispute arises relating to this Agreement and cannot be settled through direct discussions, the parties agree to endeavor to settle the dispute through a mediation firm acceptable to both parties, the cost of which shall be divided equally. The Port reserves the right to join any dispute under this Agreement with any other claim in litigation or other dispute resolution forum, and the Consultant agrees to such joinder, so that all disputes related to the Project

may be consolidated and resolved in one forum. Venue for any litigation shall be the Pierce County Superior Court of the state of Washington.

17. 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.

18. No Third-Party Beneficiaries

All services shall be solely for the Port's informational purposes and internal use, and this contract creates no privity between Consultant and any person or party other than the Port ("third party"). None of Consultant's services are intended for the express or implied benefit of any third party, and no third party is entitled to rely on the services Consultant provides to the Port.

19. LIMITATION OF LIABILITY

YOU AGREE THAT CONSULTANT'S TOTAL LIABILITY FOR ANY AND ALL DAMAGES WHATSOEVER ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT FROM ANY CAUSE, INCLUDING BUT NOT LIMITED TO CONTRACT LIABILITY OR CONSULTANT'S NEGLIGENCE, ERRORS, OMISSIONS, STRICT LIABILITY, BREACH OF CONTRACT OR BREACH OF WARRANTY SHALL NOT, IN THE AGGREGATE, EXCEED THE FEES PAID TO CONSULTANT UNDER THIS AGREEMENT. INSURANCE COVERAGE CARRIED BY CONSULTANT OR ONE MILLION DAMAGES (\$1,000,000), WHICHEVER IS GREATER.

IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH OR OTHERWISE ARISING OUT OF THIS AGREEMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR EXEMPLARY OR PUNITIVE DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT.