

ATTACHMENT B – PERSONAL SERVICES CONTRACT TEMPLATE & TERMS AND CONDITIONS

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

1. Key Personnel **Changes not accepted by NWSA**

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 agreed to by the NWSA.

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 warrants 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 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 Laws

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 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 NWSA 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 5.5 (October 2024). 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 NWSA upon termination of the Agreement or otherwise as requested by the NWSA.

6. Ownership of IP **No changes, if awarded NWSA will negotiate**

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 NWSA 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 NWSA'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 NWSA.

7. Disclosure

All information developed by the Consultant and all information made available to the Consultant by the NWSA, 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 NWSA.

8. Compensation

As full compensation for the performance of its obligations of this Agreement and the Services, the NWSA shall pay Consultant as specified in the Agreement.

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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 **Changes not accepted by NWSA**

- 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 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 from the negligent acts, errors, or omissions by the Consultant in the performance of the Services.
- ~~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.

13. Time

"Timeliness is material 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 NWSA.

15. Term of this Agreement **Changes not accepted by NWSA**

The effective dates of this Agreement are as specified. This Agreement may be terminated by the NWSA for cause when the NWSA deems continuation to be detrimental to its interests or for failure of the Consultant to perform the Services. The NWSA 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.

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 NWSA 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.

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17. Extent of Agreement

This Agreement represents the entire and integrated understanding between the NWSA and Consultant and may be amended only by written instrument signed by both the NWSA and Consultant.

~~18. Limitation of Liability~~ Additional clause not accepted by NWSA

~~19. Waivers of Consequential Damages~~ Additional clause not accepted by NWSA