

[OUR COMPANY] Requested Contract Changes

1. Key Personnel.

The Consultant and/or its subconsultants' key personnel, as described in [the applicable Task Order](#) ~~its Consultant selection submittals~~, shall remain assigned for the duration of the Project unless otherwise agreed to by the Port.

2. Relationship of the Parties

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

3. Conflicts of Interest

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

4. Compliance with Laws

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

5. Records and other Tangibles

The Port of Tacoma 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 years after the term of this Agreement, Consultant agrees to maintain accurate records of all work done in providing services specified by the Agreement and to deliver such records to the Port upon termination of the Agreement or otherwise as requested by the Port.

6. Ownership of Work

[Except as described in the applicable Task Order](#), ~~t~~The services to be performed by Consultant shall be deemed instruments of service for purposes of the copyright laws of the United States. The Port has ownership rights to the plans, specifications, and other products prepared by the Consultant. Consultant shall not be responsible for changes made in the models, programs, reports or other products by anyone other than the Consultant. [Except as described in the applicable Task Order](#), 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 models, programs, reports or other products prepared

Commented [A1]: [Our Company] is willing to accept assignment for duration of the task order. Note that some support work is best managed on a "help-desk" basis, which would not involve dedicated resources.

This is in the Port's best interest as it allows [Our Company] to provide the requested services at an acceptable price. **RESPONSE:** This will not be adapted. Scoring and award decisions will be made based on the personnel presented.

Commented [A2]: [Our Company] requests these changes to permit management of IP issues on a case by case basis. There are certain circumstances where [Our Company] would seek to use certain code or customizations for other projects, and [Our Company] would identify those items and seek the Port's agreement in a Task Order.

This is in the Port's best interest as it allows [Our Company] to provide a broader range of services or potentially at a reduced price if the benefit to [Our Company] is broader than one contract – provided this is acceptable to the Port and agreed in the Task Order. **RESPONSE:** This will not be adapted. What this seeks is already addressed.

under this Agreement 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

Except as described in the applicable Task Order, a All information developed by the Consultant and all information made available to the Consultant by the Port, and all analyses or opinions reached by the Consultant shall be confidential and shall not be disclosed by the Consultant without the written consent of the Port.

8. Compensation

As full compensation for the performance of its obligations of this Agreement and the services to be provided, the Port shall pay Consultant as specified in the Agreement and the applicable Task Order. Compensation for vehicle usage will be paid at the current Internal Revenue Service allowable mileage reimbursement rate. Consultant's expenses will be reimbursed at cost, subject to attached guidelines, with the exception of all third party costs which will be reimbursed at cost plus the negotiated percentage markup.

9. Payment Schedule

Consultant shall submit detailed numbered invoices showing description of work items being invoiced, work order number, title of project, total authorized, total current invoice, balance of authorization, individual's names and titles, hours, hourly rate and all authorized expenses itemized, with backup, in accordance with the Port's "Guidelines for Consultant Fees and Reimbursable Items", by the 10th of the month to be paid by the end of the current month, 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 services under this Agreement.

11. 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 and automobile liability insurance as shall protect Consultant and any subconsultants performing work under this Agreement from claims or damages from bodily injury, including death, resulting there from as well as from claims for property damage 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. Certificates of Insurance shall evidence:

- i. Commercial General Liability coverage on occurrence form CG0001 or equivalent with limits of \$1,000,000 per occurrence and \$2,000,000 aggregate.
- ii. Automobile Liability: ISO Form Number CA 00 01 covering owned, non-owned and hired vehicles of \$1,000,000 combined single limit per accident.

Commented [A3]: [Our Company] requests this change for the same reason as the change above - to permit management of the issue on a case by case basis. As noted above, there are certain circumstances where [Our Company] would seek to use certain code or customizations for other projects, and [Our Company] would identify those items and seek the Port's agreement in a Task Order.

This is in the Port's best interest as it allows [Our Company] to provide a broader range of services or potentially at a reduced price if the benefit to [Our Company] is broader than one contract – provided this is acceptable to the Port and agreed in the Task

Order. **RESPONSE:** This language will not be adapted.

Commented [A4]: [Our Company] requests this change as certain elements of compensation may be addressed in the applicable task order.

This is in the Port's best interest as it allows greater flexibility for each project. **RESPONSE:** This section will be modified in an Amendment to this RFP.

Commented [A5]: The changes in this section are required so that [Our Company] is compliant. [Our Company] cannot change its insurance program for a single client, and respectfully requests Consideration of these edits. **RESPONSE:** This section will not change.

iii. Workers Compensation Insurance: Statutory Workers Compensation Insurance as required by the State of Washington.

iv. ~~Stop Gap~~ Employers Liability Insurance shall be provided with a limit of not less than \$1,000,000 per claim.

b) With respect to claims other than professional liability claims, Consultant and its subconsultants agree to defend, indemnify and hold harmless the Port of Tacoma, its appointed and elective officers and its employees from and against any and all suits, claims, actions, losses, costs, penalties and damages of whatever kind and nature, including attorney fees and costs by reason of any and all claims and demands on it, its officers and employees ~~to the extent caused by, arising from~~ the negligent acts, errors or omissions by the Consultant in the performance of the Consultant's professional services.

c) With respect to professional liability claims only, Consultant and its subconsultants agree to indemnify and hold harmless the Port of Tacoma, its appointed and elective officers and its employees from and against any and all ~~suits, claims, actions,~~ losses, costs, penalties and damages of whatever kind and nature, including attorney fees and costs by reason of any and all claims and demands on it, its officers and employees, ~~to the extent caused by arising from~~ the negligent acts, errors or omissions by the Consultant in the performance of the Consultant's professional services.

d) All policies shall be issued by a company having an A. M. Best Financial Strength Rating of A- and Financial Size Category of VI or better. The Consultant shall be responsible for notifying the Port in writing within ten (10) days of receipt of notice of coverage being suspended, voided, cancelled or materially reduced. The Port shall be named as an additional insured on all policies by endorsement on ISO Form CG 20 10 Form B or equivalent. Additionally, except for Workers Compensation, waivers of subrogation shall be provided by endorsement to all policies.

12. Standard of Care

Consultant shall perform its work to conform to generally accepted professional standards. Consultant shall, without additional compensation, correct or revise any errors or omissions in such work.

13. Time

Consultant will meet agreed-upon deadlines so long as Port personnel and any third-parties (other than Consultant's subcontractors) comply with deadlines for providing information or data to Consultant ~~Time is of the essence in the performance by the Consultant of the services required by this Agreement.~~

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

Commented [A6]: [Our Company] requests this change because the provision requires a guarantee of timeliness and [Our Company] cannot control actions by the Port or its representatives that have direct bearing on Consultant's ability to meet deadlines.

This is in the Port's best interest as the original term inaccurately assumes [Our Company] is in sole control meeting deadlines; the updated language more accurately reflects how the work will be done under the contract. **RESPONSE:** While the Port disagrees with your **premise**, this section will be modified in an Amendment.:

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

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 and the prevailing party shall be entitled to recover its costs and reasonable attorney's fees. The parties agree to waive trial by jury in the event of any litigation.

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. In the event of a conflict between these terms and conditions and a Task Order, the Task Order will prevail.

18. Liability

a. Consultant will not be liable for any special, indirect, consequential, incidental, exemplary or punitive damages, or for any lost profits, lost savings, or lost

business opportunity, even if Consultant had reason to be aware of the possibility of such damages.

b. Except where it is judicially determined that Consultant acted with recklessness or willful misconduct, Consultant liability and any liability of its personnel will not exceed the fees actually paid to Consultant under the applicable Task Order, and a return of fees paid will be the exclusive remedy for any damages.

c. The limitations of liability in this Section on Liability and in this Agreement generally will apply to the fullest extent allowed by law and will apply to any claim, liability, or damages, including without limitation to any claims, liabilities, or damages based in negligence or other tort, contract, warranty, indemnity, fiduciary principles, statute or common law. This provision will survive termination of this Agreement, in whole or in part.

19. Each of its members are separate and independent

Global.

Commented [A7]: [Our Company] requests this change to permit a judge to resolve what is likely to be a sophisticated dispute regarding software implementation.

This provision is in the Port's best interest as it allows for a more efficient resolution of a dispute
RESPONSE: This language will not be adapted.

Commented [A8]: [Our Company] requests these changes to permit management of various issues on a case by case basis.

This is in the Port's best interest as it allows greater flexibility to address items unique to a Task Order.
RESPONSE: This language will not be adapted.
Task Orders are subordinate to the Agreement as they contain scope and don't form the Agreement..

Commented [A9]: [Our Company's] insurers push [Our Company] to include a limit of liability in its contracts, but [Our Company] has ability to negotiate the amount of the cap on liability.

This is in the Port's best interest as it allows [Our Company] to provide services at a reduced rate. This is also likely consistent with a limit of liability in the Dynamics software license. **RESPONSE:** This language will not be adapted.

Commented [A10]: This is typically required by our regulators in each state, the Board of Public Accountancy. **RESPONSE:** The deleted language will not be adapted. It was deleted because of the difficulty in removing the company names in an effort to conceal the identity.

