



**Solicitation 00320367**  
**Policing and Civil Rights Task Force Facilitation and Assessment**

Proposals Due  
August 7, 2020  
12:00 PM PT

Port of Seattle  
Central Procurement Office  
2711 Alaskan Way  
Seattle, WA 98121

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## List of Exhibits

Proposers should become familiar with each of these attachments. Understanding these documents will become part of/or referenced when developing and signing the Service Agreement (the “Agreement”), and any future amendments, for services with the Port of Seattle (“PORT”). These documents are available in electronic format with the solicitation on the PORT’s VendorConnect system.

Exhibit 1: Scope of Work

Exhibit 2: Service Agreement Terms and Conditions

Attachment A – Scope of Work

Attachment B – Fee Schedule

Attachment C – Supplemental Terms

Attachment D – Company Information

Attachment E – Reserved

Attachment F – Title VI Provisions

Attachment G – Consultant Ethics and Conflict of Interest, CC-2

Attachment H – Nondisclosure Agreement

Exhibit 3: Reserved

Exhibit 4: Company Information (Uploaded as a separate attachment in VendorConnect)

Exhibit 5: Mock Fee Schedule (Uploaded as a separate attachment in VendorConnect)



## **Solicitation 00320367**

### **Policing and Civil Rights Task Force Facilitation and Assessment**

The PORT invites written proposals from qualified firms, or teams of firms, interested in providing **Policing and Civil Rights Task Force Facilitation and Assessment** services.

The PORT intends on issuing one (1) project-specific contract as a result of this solicitation. The initial period of performance of any Agreement resulting from this solicitation is expected to be one (1) year.

#### **I. Overview of Project**

On July 14, 2020, the PORT Commission voted for Motion 2020-15 (Motion) to direct a comprehensive assessment of the PORT Police Department's (Port PD) policies, protocols and procedures impacting issues of diversity, equity and civil rights, in order to develop recommendations for action.

In accordance with the Motion, the PORT will procure an independent consultant to facilitate a Task Force effort to conduct an assessment on the Port PD. The successful firm will be a subject matter expert in the area of racial equity, civil rights, policing, police practices, police policy, policy reforms, labor negotiation process as pertains to unions, and collective bargaining agreements and processes as pertains to police unions. The desired firm must have demonstrable experience in these areas with a distinct equity lens and is required to provide the full range of services as described in the Scope of Work in a collaborative, professional and responsive manner.

Detailed information about the Scope of Work may be found in Exhibit 1 of this solicitation.

#### **II. Estimated Project Fee**

The estimated fee for this Agreement will fall in the range of \$200,000 and \$250,000.

#### **III. Solicitation Schedule**

The solicitation schedule is outlined below. The PORT intends to maintain this schedule and requests the same of firms interested in submitting a response to this solicitation. The PORT does, however, reserve the right to modify the schedule as circumstances warrant.

<u>Description</u>	<u>Date, Time</u>
Advertisement	July 27, 2020
Pre-Proposal Conference	August 3, 2020, 11:00 AM PT
Last Day to Ask Questions	August 4, 2020, 12:00 PM PT
<b>Proposals Due</b>	<b>August 7, 2020, 12:00 PM PT</b>
Shortlist Notification	Week of August 10, 2020
Interviews/Discussions	Week of August 17, 2020
Request for Revised Proposals Addendum	Week of August 17, 2020
Revised Proposals Due	Week of August 17, 2020
Notice of Selection	Week of August 24, 2020
Execute Agreement	Week of August 31, 2020

#### IV. Questions

All questions must be submitted in writing through the PORT's VendorConnect website (<https://hosting.portseattle.org/sops>) by August 4, 2020, 12:00 PM PT, in order to allow adequate time for preparation of a response. Questions are to be posted on the Questions tab of the solicitation on VendorConnect. Questions received after this deadline may not be considered.

#### V. Pre-Proposal Conference

The PORT will **not** be offering an in-person Pre-Proposal Conference for this solicitation and intends to conduct a Pre-Proposal Presentation regarding this solicitation on the following date via **Microsoft Teams**:

August 3, 2020  
 11:00 AM to 12:00 PM PST  
[Join Microsoft Teams Meeting](#)  
[+1 425-660-9954](tel:+14256609954) United States, Seattle (Toll)  
 Conference ID: 324 392 668#

The PORT will upload the presentation in VendorConnect at the start of the meeting. You must RSVP on VendorConnect to join the meeting; however, this will not preclude any firm from proposing. The RSVP list will serve as the attendance sheet.

Please keep in mind:

1. The Pre-Proposal Presentation will start on time;
2. Keep yourself on mute unless the facilitator prompts you;
3. Enter all questions/comments in VendorConnect immediately following the presentation; and
4. Log on 10 minutes in advance to troubleshoot any technical issues you may have.

#### VI. Communications

Communication with the PORT regarding this procurement shall be directed to the assigned Contract Administrator listed below. Communication with any other PORT officials will cause the firm involved to be disqualified from this procurement.

## VII. Reserved

## VIII. Proposal Submittal Process

1. The PORT is requiring electronic proposals for this solicitation. Hard copy or linked (including but not limited to file hosting services such as Citrix Files and DropBox) proposals will not be accepted.
2. The PORT reserves the right to reject any and all late proposals.
3. Proposals must be delivered through e-mail to [e-submittals-sa@portseattle.org](mailto:e-submittals-sa@portseattle.org). It is the responsibility of the Proposer to ensure timely delivery of proposals.
  - a. The proposal e-mail subject line shall include the solicitation number, firm name and solicitation title.
    - i. Exhibit 4: Company Information, shall be submitted as a separate Excel file attachment in the same email.
    - ii. Exhibit 5: Mock Fee Schedule
    - iii. Appendix: Resumes, shall be submitted as a separate PDF file attachment in the same email.
    - iv. Appendix: Sample Publications or Reports, shall be submitted as a separate PDF file attachment in the same email.
  - b. The PORT's e-mail server will not accept files larger than 10MB. If the Proposal file is larger than 10MB it shall be sent in multiple emails and be labeled "Email 1 of 5," "Email 2 of 5," etc.
  - c. The PORT's e-mail server will not accept compressed files. By PORT security policy, all compressed files, including .ZIP file attachments, are removed at the email firewall and will not be accessible as part of your Proposal submittal.
  - d. The PORT may use the time stamp on the proposal e-mail(s) to determine timeliness.
  - e. The PORT is not responsible for Proposers' technical difficulties in submitting electronically.
4. Proposal shall meet the following requirements:
  - a. Proposals shall be formatted in searchable PDF format.
  - b. Proposals shall be named with the company name and the solicitation number (e.g. 123Consulting\_003XXXXX). Do not use any special characters in the description.
  - c. The body of the proposal shall be organized in accordance with the Evaluation Criteria. Each section of the proposal may be separated by a separator page. Separator pages will not contain any text beyond the section name.
  - d. The body of the proposal shall be limited to **one (1)** page of content and with legible font. Page shall be single-sided, 8.5" x 11" in size. In the event that the body of the proposal exceeds the page limitation, excess pages will not be considered. After removal of the excess pages, the proposal may further be rejected as unacceptable or uncompetitive if the PORT concludes that it would not have reasonable chance for award or is outside the competitive range.
5. The following required items are not included in the page count limitation:
  - a. Cover page and tables of contents are not considered part of the total page count.
  - b. To conserve paper, Proposers should not use separator pages. If included, separator pages are not included as part of the total page count.
  - c. Letter of Interest. Include a 1 page, single-sided Letter of Interest. Include the name, phone number, email address, and mailing address of the point of contact for this solicitation,

- d. Exhibits
  - i. Exhibit 4 – Company Information
  - ii. Exhibit 5 – Mock Fee Schedule
- e. Appendix
  - i. Resumes
  - ii. Sample Past Publications and/or Reports

## **IX. Overview of the Procurement Process**

### **A. Compliance with Legal Requirements**

1. The procurement of these consultant services will be in accordance with applicable federal, state, and local laws, and PORT policies and procedures. The PORT reserves the right to reject any and all proposals.
2. The PORT will evaluate the proposals in accordance with the provisions set forth herein. If the PORT makes a selection, it will select the Proposer it determines to be the most highly qualified on the basis of its evaluation.

### **B. Addenda**

1. All changes shall be documented via addenda. Proposers are advised to not rely on verbal information or direction. Email notification of addenda will be provided to all firms on the VendorConnect planholders list. Interested firms are responsible for ensuring that current registration information is on the VendorConnect planholders list.

### **C. Minor Informalities and Cancellation**

1. The PORT reserves the right to waive any minor irregularity and/or reject any and all firms and cancel the procurement.

### **D. Costs Borne by Proposers**

1. All costs incurred in the preparation of a proposal, and participation in this solicitation and negotiation process shall be borne by the Proposers.

### **E. Public Disclosure**

1. Proposals shall become property of the PORT and considered public documents under applicable Washington State laws. All documentation provided to the PORT may be subject to disclosure in accordance with Washington State public disclosure laws including the Public Disclosure Act (RCW 42.56). The PORT will determine whether requested documents may be disclosed. In no event shall the PORT be liable for any disclosure of documents and information it deems necessary to disclose under the law.

### **F. Service Agreement Terms and Conditions**

1. A copy of the PORT's Service Agreement Terms and Conditions is contained in Exhibit 2. By offering a proposal, the firm represents that it has carefully read the Service Agreement Terms and Conditions and agrees to be bound by them. Specific insurance requirements for this Agreement are contained in the attachment.

### **G. Conflict of Interest**

1. Proposers have a duty to disclose all potential situations that could present a real or perceived conflict of interest to the PORT. A conflict of interest may exist when a proposing firm has a

business relationship with another entity if those services (1) potentially adversely impact the PORT or (2) require or result in disclosure of confidential information. See Consultant Ethics and Conflict of Interest—CC-2 contained in Exhibit 2.

2. The PORT will evaluate whether a Proposer has a relationship, contract, or other activities that may result in the Proposer (1) having a financial interest in a competing business; (2) being unable, or potentially unable to render impartial assistance or advice to the PORT, or (3) having impaired objectivity in performing the Agreement. If a conflict of interest exists and the PORT is unwilling to waive the conflict, the PORT will not enter into an Agreement with the Proposer.
3. A Proposer maybe precluded from competition if the Proposer has performed prior work for the PORT related to the scope of this solicitation and the PORT determines there is an unfair competitive advantage. A competitive advantage determination may depend on factors such as what prior work was performed, the knowledge and information gained through that work and if that knowledge gives Proposers any advantage over others in proposing on future work that cannot be appropriately mitigated.

#### H. Protests

1. Protest procedures can be found here: <https://www.portseattle.org/page/procurement-documents>.

### X. Selection Process

#### A. Evaluation

1. Proposals and interviews will be evaluated in accordance with the criteria established in this solicitation. The result of the evaluation will be a comparative ranking of Proposers.
2. The PORT may seek clarifications and/or ask for additional information through a request for revised proposal(s). Responses to such requests may be considered in evaluating the proposal.

#### B. Evaluation Rating

1. The Evaluation Criteria rating reflects the degree to which the written proposal meets or does not meet the minimum performance or capability requirements through an assessment of strengths, weaknesses, deficiencies, and risks of a proposal. Assessment of technical risk, which is manifested by the identification of weakness(es), considers potential for disruption of schedule, increased costs, degradation of performance, the need for increased oversight, or the likelihood of unsuccessful contract performance. If shortlisted for interviews, the same criteria rating applies.

Rating	Description
<b>Outstanding</b>	Indicates an exceptional approach and understanding of the requirements and contains multiple strengths that far outweigh any weaknesses. Risk of unsuccessful performance is low.
<b>Good</b>	Indicates a thorough approach and understanding of the requirements and contains at least one strength, and risk of unsuccessful performance is low.

<b>Acceptable</b>	Meets requirements and indicates an adequate approach and understanding of the requirements, and risk of unsuccessful performance is no worse than moderate.
<b>Marginal</b>	Has not demonstrated an adequate approach and understanding of the requirements, and/or risk of unsuccessful performance is high.
<b>Unacceptable</b>	Does not meet requirements and therefore contains one or more significant weaknesses or deficiencies, and/or risk of unsuccessful performance is unacceptable.

Refer to Section XII for additional definitions.

#### C. Interviews

1. If an award is not made based on the written evaluations alone, the PORT may conduct interviews with Proposers in the competitive range following evaluations of the proposal.
  - a. Interview questions may include topics from the Evaluation Criteria and Scope of Work.
  - b. Proposers may not be given questions in advance of the interviews
  - c. Formal presentations are generally not allowed unless specifically requested by the PORT.
  - d. Failure to participate in the interview process may result in the Proposer's disqualification from further consideration.

#### D. Discussions

1. The PORT, at its option, may elect to conduct discussions regarding the technical proposal. During discussions, the PORT will identify any material weaknesses and have an opportunity to ask questions about the proposal. This will be an informal conversation and will not be rated.
  - a. Based on the information acquired during the discussion, the PORT may issue an addendum requesting a revised proposal(s).
  - b. Proposers may have the opportunity to revise its proposal in response to the additional information provided by the PORT. Proposer shall submit the information detailed in the addendum and by the time and date specified.

#### E. Selection

1. Award will be made to the firm whose proposal offers the best value to the PORT. Price is an important factor; however, it is not the sole determining factor. The PORT will make a qualitative assessment of proposal differences and determine whether one proposal's superiority under the non-cost factors is worth the potential difference in cost. As proposals become more technically equivalent, cost may become more important in making the award decision. Evaluation ratings are a tool to use in making a best value determination, but not an exclusive analysis.

#### F. Notice of Selection

1. The PORT shall issue a Notice of Selection to the Proposer selected for award.
2. The PORT reserves the right to conduct future negotiations after the selection decision to lower cost and price.
3. If the PORT is unable to finalize an Agreement with the preferred firm, the PORT may either enter into negotiations and contract with the next ranked firm or cancel the procurement.



## **XI. Evaluation Criteria and Proposal Information**

The evaluation criteria will be used to rate the proposals with Criteria A being significantly more important than both B and C; and B being slightly more important than C.

All criteria are important, however, and Proposers should provide equal attention to thoroughly responding to each criterion. In responding to the evaluation criteria, proposals should be organized so that the Proposer's qualifications are clearly illustrated in each of the categories, using the proposal requirements for each criterion.

As part of the evaluation of all criteria, the Port will consider the overall quality of the material presented, such as formatting and proposal layout; spelling and grammatical accuracy; legibility of figures and chart information; quality and relevance of graphical presentations; coherent and logical flow of written responses; and accuracy of information presented.

### **A. Specialized Experience of Key Individuals**

The Port will evaluate:

1. The proposed key individuals' recent experience and expertise in providing services similar in scope and complexity as those detailed in the Scope of Work, with a focus on policing and experience in racial equity and civil rights issues including but not limited to:
  - a. Best practices in policing procedures, policy, and reforms;
  - b. Labor negotiations, particularly as it pertains to police unions and collective bargaining agreements; and
  - c. Equity, diversity, and inclusion.
  
2. The specialized experience of the key individuals who will provide the requested services as detailed in the Scope of Work and who will be identified in the resulting contract include:
  - a. Meeting facilitation and management;
  - b. Qualitative and quantitative data collection, review, and analysis; and
  - c. Report writing.

#### Proposal Requirements:

1. Resumes: In the Appendix, firms shall include brief, one (1) page resumes of the key individuals who will provide the requested services as detailed in the Scope of Work. Brief resumes shall include, at a minimum, the following information:
  - a. Full name.
  - b. Proposed title and position on the project.
  - c. Relevant employment history, education and professional licensure(s).

### **B. Sample Past Publications and/or Reports**

The Port will evaluate:

1. Quality of past publications and/or reports on projects similar in scope and complexity and including one or more of the elements listed below. The more elements incorporated in a project, the more this criterion will be rated favorably:
  - a. Policing;
  - b. Civil Rights; and
  - c. Equity.

**Proposal Requirements:**

1. Include a representative one (1) page list of past publications and/or reports on projects similar in scope and complexity created by the key individual(s) who will provide the requested services. Proposals shall include, at a minimum, the following information:
  - a. Summary of the publication/report project.
  - b. Brief description of the key staff's role on the publication/report.
2. Sample Past Publications or Reports: In the Appendix, firms shall include the full one (1) to three (3) representative sample(s) of past publications or reports on projects similar in scope and complexity.

**C. Interview**

The Interview will consist of approximately sixty (60) minutes to answer specific questions. The Port is requesting the actual proposed key individuals identified for this project attend and answer the standard questions.

The Port will evaluate:

1. The proposer's response to a series of standard questions focusing on:
  - a. The proposer's effectiveness to communicate verbally and ability to answer questions clearly, concisely, and with specific examples.
  - b. The proposer's response to questions regarding experience, past projects, collaboration with clients, team cohesiveness, creativity, and vision.
  - c. Proposer's problem identification and proposed approach to accomplish the work as described in the Scope of Work and, appropriate, demonstrated capability to explore and develop innovative project recommendations.
  - d. Proposer's comprehensiveness, accuracy of understanding of key issues and risks, and cogency of strategic thinking. Innovative approaches to mitigating predicted risks, where appropriate, will be rated favorably.

**D. Price Proposal**

1. The Port will evaluate the proposal which offers the best value to the Port and is not scored with adjective rating. Price is an important factor; however, it is not the sole determining factor. The Port will make a qualitative assessment of proposal differences and determine whether one proposal's superiority under the non-cost factors is worth the potential difference in cost. As proposals become more technically equivalent, cost may become more important in making the award decision.

## Proposal Requirements

1. Exhibit 5 – Mock Fee Schedule: Firms shall complete the Exhibit 5 template for the core team member(s).

## **XII. Definitions**

The following definitions shall apply throughout this solicitation.

- A. Best Value means the expected outcome of a procurement that, in the Port's estimation, provides the greatest overall benefit in response to the requirements.
- B. Deficiency is a material failure of a proposal to meet a requirement or a combination of significant weaknesses in a proposal that increases the risk of unsuccessful contract performance to an unacceptable level.
- C. Significant Weakness in the proposal is a flaw that appreciably increases the risk of unsuccessful contract performance.
- D. Strength is an aspect of an offeror's proposal that has merit or exceeds specified performance or capability requirements in a way that will be advantageous during contract performance.
- E. Weakness means a flaw in the proposal that increases the risk of unsuccessful contract performance.
- F. Women or Minority Business (WMBE) is an umbrella term that includes MBE, WBE, CBE and MWBEs
- G. Minority Business Enterprise (MBE) is a business that is at least 51 percent (51%) owned and controlled by minority (including, but not limited to African Americans, Native Americans, Asians, and Hispanics) group members.
- H. Women Business Enterprise (WBE) is a business that is at least 51 percent (51%) owned and controlled by women.
- I. Minority Women Business Enterprise (MWBE) is a business that is at least 51 percent (51%) owned and controlled minority women (including, but not limited to African Americans, Native Americans, Asians, and Hispanics) group members.
- J. Combination Business Enterprise (CBE) is a business that is 51% owned and controlled by a combination of minorities or women that would not otherwise meet the definition of MBE, WBE, MWBE.
- K. Small Business Enterprise (SBE) is a business that meets the applicable size standards adopted by the U.S. Small Business Administration. An SBE may be either a Certified Small Business or a business that is self-declared to meet the applicable U.S. Small Business Administration size standard. NAICS codes commonly used along with the applicable Small Business Administration size standards can be found at the following web address:  
<https://www.sba.gov/contracting/getting-started-contractor/make-sure-you-meet-sba-size-standards/table-small-business-size-standards>
- L. Veteran Business Enterprise (VOB) is a business that is at least 51% owned and controlled by a veteran or service member.
- M. LGBTQ Business Enterprise (LGBTQBE) is a business that is at least 51% owned and controlled by one or more individuals who identify as LGBTQ.

## EXHIBIT 1 SCOPE OF WORK

### **Background:**

Considering the national movement to reexamine policing within our communities and in accordance with the Port of Seattle's (Port) Century Agenda goal to "Become a Model for Equity, Diversity, and Inclusion," conducting a review of current policies, practices and oversight of the Port of Seattle Police Department (Port PD) is fully appropriate. On July 14, 2020, the Port Commission voted to direct a comprehensive assessment of the Port PD's policies, protocols and procedures impacting issues of diversity, equity and civil rights, in order to develop recommendations for action.

In accordance with the Motion, the Port will procure an independent consultant to facilitate a Task Force effort to conduct an assessment on the Port PD. The successful firm will be a subject matter expert in the area of racial equity, civil rights, policing, police practices, police policy, policy reforms, labor negotiation process as pertains to unions, and collective bargaining agreements and processes as pertains to police unions. The desired firm must have demonstrable experience in these areas with a distinct equity lens. The successful consultant will be required to provide the full range of services as described below in a collaborative, professional and responsive manner.

### **Mandatory Tasks:**

#### **1. Phase 1 – Initial Assessment**

The initial assessment consists of a qualitative and quantitative data analysis of the Port PD. Including but not limited to the following areas:

- 1.1. Review of all current Policies and Procedures that govern use of force;
- 1.2. Review of any Port PD strategic plan, should it exist;
- 1.3. Recruitment and hiring practices;
- 1.4. Internal review of demographics of Port PD's current police force;
- 1.5. Training and development;
- 1.6. Oversight, transparency and accountability measures;
- 1.7. Collective bargaining agreements;
- 1.8. Mutual aid agreements;
- 1.9. Expenditures related to military grade equipment or other related expenses;
- 1.10. Research best practices in policing with lens for racial biases and equity;
- 1.11. Coordinate and attend regular monthly check-in meetings at a minimum with Policing Assessment Task Force Co-Chairs and the two Port Commissioners assigned to the Task Force;
- 1.12. Conduct Internal and External Stakeholder Listening Sessions

#### **Phase 1 Deliverables:**

- A. Draft initial recommendations due October 1, 2020.
- B. Meeting and Listening Session summaries due within one week of meeting/Listening Session.
- C. Briefings with Port Commissioners, Policing Task Force Co-Chairs, and Port of Seattle Policing Assessment Staffers (Staffers).
- D. Final initial recommendations due October 15, 2020 to allow the Task Force ample time to review and report prior to the October 31, 2020 deadline to Commission. The final initial assessment must include immediate actions that can be considered for implementation.

#### **2. Phase 1.5 - Task Force Meeting Management**

The Consultant shall act as an independent, neutral party responsible for communicating with the Task Force Co-Chairs regularly about the development and process to assure information is shared in a timely manner. The Consultant will work with Task Force Staffers to:

- 2.1. Facilitate each Task Force Subcommittee Meeting.

- 2.2. Identify areas of agreement and dissention moving the discussion in a positive and constructive manner, and develop consensus among the group.
- 2.3. Manage the flow of the agenda during meetings and the expectation of the meetings to assure all members stay on task and are meeting the desired objectives.
- 2.4. Keep Task Force members apprised of new developments and/or issues associated with Task Force deliberations.
- 2.5. Review and finalize draft meeting minutes prepared by Staffers to ensure accuracy. Once finalized, the meeting minutes are to be distributed to the Task Force and Subcommittee membership as appropriate.
- 2.6. Provide the most up-to-date research on topics relevant to the assessment whenever needed or requested.

**Phase 1.5 Deliverables**

- A. At least 1 week prior to any Task Force meeting, the facilitator must confirm a final agenda with the Task Force Co-Chairs and Subcommittee leads, as appropriate.
- B. At least 3 days prior to any Task Force or Subcommittee meeting, the Consultant must provide background materials necessary to facilitate discussion with Task Force and Subcommittees as necessary or appropriate.
- C. Within 1 week following a meeting, the Consultant shall work with Task Force Staffers to deliver a written document summary in an agreed upon format to the Task Force for accuracy. The Task Force shall respond within 5 days, if necessary

**3. Phase 2 – Reporting**

The Consultant must have dedicated staff to research, review, analyze and report on a continual basis to internal and external stakeholders. Work product on recommendations will be kept confidential by the Consultant until such time as they are due and completed. Reports will be prepared for the following groups:

- 3.1. Task Force Co-Chairs and the two Port Commissioners on the Task Force on regular intervals determined by the Task Force.
- 3.2. Task Force Subcommittees. Information provided to Task Force Subcommittees will be determined by the specific area assigned to each Task Force Subcommittee.
- 3.3. Executive Leadership. All reporting to Executive Leadership must be pre-approved by the Task Force Co-Chairs.
- 3.4. Port Commission. Monthly reporting to the Commission will be directed by the Task Force Co-Chairs and Task Force Staffers assigned to the project.
- 3.5. External Stakeholder Groups. These meetings will be coordinated by and with the Task Force Staffers to assure diverse and interested groups are represented.

**Phase 2 Deliverables:**

- A. A summary of recommendations shall be submitted to Task Force Co-Chairs via email within 3 business days of the request. All data collected, reviewed, analyzed, and reported will be accessible to the Task Force Co-Chairs, the two Commissioners assigned to the Task Force, and Task Force Staffers upon request.

**4. Phase 3 – Stakeholder Meeting Facilitation**

This will include facilitating discussions based on the analysis of data provided in the reports. Facilitation and reporting are required in the following areas:

- 4.1. Community Forums and Outreach Events. Events will be coordinated as prescribed in Phase 2.
- 4.2. Townhalls that include internal and external stakeholders. Meetings will be coordinated as prescribed in Phase 2.
- 4.3. Internal working groups for Port employees, Port Employee Resource Groups (ERGs), and Port Police Officers.

### **Phase 3 Deliverables**

- A. Meeting summary submitted to Task Force Co-Chairs via email within 1 week of meeting.

### **5. Phase 4 – Final Assessment**

Consultant shall coordinate the data and reporting from Phase 2, information gathered in Phase 2 and 3, and compile a final assessment of the Port PD. The final assessment must include:

- 5.1. Baseline and measurable metrics that can be tracked to demonstrate progress in the Port PD toward adopted recommendations.
- 5.2. Key performance indicators the Port Commission can use to evaluate the success of the Port PD in the context of racial equity and civil rights.
- 5.3. Recommendation for policy (if needed) that would align the department with the Commissions Century Agenda goals and the OEDI strategic plan.

### **Phase 4 Deliverables**

- A. Draft Assessment submitted to Task Force Co-Chairs via email by July 1, 20201.
- B. Final Assessment submitted to Task Force Co-Chairs via email by July 30, 2021.

### **Assumptions:**

- 1. The Port will provide available supporting documentation needed to perform the work.
- 2. The Port will provide access to technology like Microsoft Teams for the purpose of conducting internal and external meetings.
- 3. The Port will assist in the coordination of meetings with internal and external stakeholders.
- 4. The final report shall be submitted in a format deemed acceptable to the Port. The documents must be editable in Word or PDF formats.
- 5. All data collected, reviewed, analyzed, and reported will be accessible to the Port Task Force Co-Chairs, the two Commissioners assigned to the Task Force, and Task Force Staffers upon request.
- 6. Data recorded shall be accurate to best of the Consultant's ability.

### **Other Direct Costs (ODCs):**

**Important** – Per the Port's Terms and Conditions, maximum reimbursement rates for meals, incidentals, and lodging shall not exceed the federal per diem rate ([GSA Calculator](http://www.gsa.gov/travel-resources) [www.gsa.gov/travel-resources](http://www.gsa.gov/travel-resources)).

- 1. Airfare and Transportation
- 2. Lodging
- 3. Per Diem

**Exhibit 2**  
**Standard Terms and Conditions**



P-00320367

**SERVICE AGREEMENT**

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THIS document is an AGREEMENT by and between the Port of Seattle, State of Washington (hereinafter referred to as the "PORT") and **TBD** (hereinafter referred to as the "CONSULTANT"), for the furnishing of services for the **Policing and Civil Rights Task Force Facilitation and Assessment** (hereinafter referred to as the "Project").

The PORT and the CONSULTANT mutually agree as follows:

**I. SCOPE OF WORK**

CONSULTANT shall perform all necessary actions to accomplish the work specified in this Agreement, or which may hereafter be requested by the PORT.

**II. PROJECT MANAGEMENT**

- A. The PORT shall designate a Project Manager to coordinate and review the work of CONSULTANT. The Project Manager for the PORT is **TBD**. CONSULTANT is expected to work closely with the Project Manager throughout the duration of this Agreement.
- B. CONSULTANT has designated **TBD** as Project Manager for the Project. This designation shall not be changed without the prior written approval of the PORT.

**III. COMPENSATION**

- A. The PORT agrees to pay CONSULTANT, on a time and expense basis, a not to exceed total price of **Two Hundred Fifty Thousand** dollars (**\$250,000**) payable according to the schedule of fees (or payment schedule) in Attachment B of this Agreement. This amount shall constitute complete compensation.
- B. Compensation will be made only to the extent to which CONSULTANT presents documented evidence of fees earned in proportion to progress in accomplishing the scope of services, and expenses incurred during the period for which payment is requested. In no case shall the total compensation exceed the sum set forth herein.
- C. CONSULTANT shall submit a monthly invoice for services provided during that billing period. Payment shall be made thirty (30) days ("Net 30") from date a properly completed invoice is received by the PORT. If there are disputed items or amounts or both on any invoice, the PORT will present these items to the CONSULTANT for resolution. Those items that are undisputed will be identified on the invoice and payment will be made for the undisputed amount. All billing shall be to the Port of Seattle, Attn.: **TBD**, P.O. Box 1209, Seattle, WA 98111-1209. Invoices must reference the Agreement number.
- D. CONSULTANT shall report Monthly Amounts Paid (MAPs) to each subconsultant for the prior invoicing period. The MAPs shall be submitted electronically utilizing the PORT'S Contractor Database System (CDS) available here: <https://hosting.portseattle.org/cds/>. The MAPs shall identify the subconsultant name, its status as a Small Business Enterprise or certified Small Business, and amounts paid, including taxes if any, to each subconsultant. At the conclusion of this Agreement, CONSULTANT shall submit a final payment request and a final MAP including all total amounts paid to all subconsultants for the term of the Agreement.
- E. Within ten (10) business days of receipt of payment by the PORT, the CONSULTANT shall pay subconsultants for all work satisfactorily completed by the subconsultant. This paragraph shall not impair or limit any remedies otherwise available to the CONSULTANT or subconsultant in the event of a dispute involving late payment or non-payment by the CONSULTANT or deficient performance or non-performance.
- F. Markups shall be limited to the billing rates. Markup on work performed by the first tier subconsultants shall not exceed four (4%) percent. Markups on second tier subconsultants are not allowed. Markups shall not be applied to travel costs, materials, supplies or other direct costs.
- G. Hourly rates include all of CONSULTANT'S routine administration and overhead expenses, including all equipment, (not including allowable field equipment), software, tools and supplies reasonably required to perform the scope of services. The PORT will not separately reimburse CONSULTANT for routine overhead expenses or administration including but not limited to:
  - 1. Computer hardware or software usage
  - 2. Digital camera or recording equipment
  - 3. Communication Equipment - including phone, radio, walkie talkie, internet and fax.
  - 4. Postage and courier services
  - 5. Routine reproduction except for documents reproduced by an outside vendor
  - 6. Small tools and expendables
  - 7. Personal protective equipment
  - 8. Federal, state or local taxes
  - 9. B&O Taxes
  - 10. Safety training and equipment
  - 11. Time devoted to Agreement negotiation, invoicing, and/or dispute resolution; and/or
  - 12. Time devoted to development or refinement of scope of work, unless directed by the PORT through a Service Directive.



- H. The PORT will not pay for travel mileage, parking, or travel time within a 50 mile radius of Pier 69.
- I. To qualify for travel reimbursement, CONSULTANT shall notify the PORT Project Manager, obtain advance written approval of travel status and, provide the PORT Project Manager a not to exceed estimate of travel expenses. Reimbursement of travel expenses shall be at cost, without markup, and in accordance with the following standards:
  1. Air travel shall be by coach class at the lowest available commercial price;
  2. Vehicular travel costs shall not exceed the current IRS Standard Mileage Rates;
  3. Rental car reimbursement is allowed only when required, and in conjunction with air travel and then at compact car rental rates;
  4. Maximum reimbursement for meals and incidental expenses (m & ie) shall be reimbursed at the per diem rates for the location established by the United States General Services Administration, Transportation Management Policy, <http://www.gsa.gov/portal/content/104877>.
  5. Maximum reimbursement for lodging shall be reimbursed at cost, no greater than the rate for the location established by the United States General Services Administration, Transportation Management Policy, <http://www.gsa.gov/portal/content/104877>.
  6. Receipts shall be required in order to receive reimbursement for air travel, rental car, and lodging.
  7. Travel shall be limited for the purpose of the work of this Agreement.
  8. CONSULTANT will not be compensated for travel time.

#### IV. AGREEMENT DURATION

- A. CONSULTANT shall complete all specified work, including submission of reports and/or other required documentation, within the time periods set forth in this Agreement and related documents. Time is of the essence in each and every portion of this Agreement.
- B. The Agreement shall expire 365 calendar days after execution of this Agreement; provided however, at the PORT'S sole discretion, this Agreement may be extended for up to **two (2)** optional years in one-year increments. If the PORT determines to extend this Agreement as described herein, the PORT shall issue an amendment extending the Period of Performance. Execution of Agreement is the date the PORT signs this Agreement.

#### V. CHANGES

- A. The PORT may, at any time, by written amendment, direct changes in the scope of work specified in this Agreement. The PORT may, at any time, by written service directive modification, direct changes in the scope of work specified in the service directive.
- B. Any direction from the PORT to perform work that results in an increase or decrease in scope of work, changes to the compensation, performance period, or Agreement duration shall be made by written amendment or service directive modification, executed prior to the work being performed. Work performed pursuant to an amendment, prior to execution of an amendment by the PORT is not compensable.
- C. In the event CONSULTANT identifies direction, actions or potential actions by the PORT that may impact the scope of work, compensation, performance period, or Agreement duration, CONSULTANT is obligated to notify the PORT, in writing, identifying all possible impacts. The PORT will review CONSULTANT'S request.
  1. If the PORT concurs, the direction or action requires a change to the Agreement; the PORT will execute an amendment or service directive modification authorizing the change prior to the work being performed.
  2. If the PORT determines the direction or action does not require execution of an amendment, the PORT will issue a written determination that an amendment is not required and CONSULTANT shall perform the work.
- D. If CONSULTANT believes there is entitlement for time or money for the work performed, CONSULTANT shall be obligated to notify the PORT Project Manager, in writing, within seven (7) days of the PORT'S written determination that the work identified does not require additional time and/or compensation.
- E. Billing rates shall be annually adjusted (365 days after the initial contract performance date, and every 365 days thereafter).
  1. The maximum billing rate adjustment shall be the five year average of the December Employment Cost Index (ECI), wages and salaries, private industry workers, Seattle-Tacoma-Olympia, Wash. CSA., for the five years preceding the year of the rate adjustment request.
  2. Any change shall be effective after execution of an amendment to change the billing rates.
  3. Changes to billing rates will apply to existing service directives.

**VI. RESERVED**

**VII. RESPONSIBILITIES OF CONSULTANT**

- A. CONSULTANT shall, with due diligence, furnish all necessary qualified personnel, material, and equipment, managing and directing same to complete the service described in this Agreement.
- B. All personnel used in performance of services shall be qualified and shall be authorized under State and Local law to perform such services.
- C. CONSULTANT will supply the PORT with any work product produced during the course of the Agreement on electronic medium as directed by the PORT Project Manager.
- D. Neither review nor approval of CONSULTANT'S work by the PORT shall in any way relieve CONSULTANT from its duty to utilize a professional standard of care in the performance of its duties, nor will such review or approval in any way relieve CONSULTANT from liability to the PORT.
- E. No Party shall be liable to any other Party for breach of this Agreement as a result of a failure to perform or for delay in performance of any provision of this Agreement if such performance is delayed or prevented by force majeure.
  - 1. The term "force majeure" means any unforeseen or unavoidable cause reasonably beyond the affected Party's control. Force majeure may include, but is not limited to: natural events, labor or civil disruption, or orders of any court or agency having jurisdiction of the Party's actions.
  - 2. The Party whose performance is affected by force majeure shall notify the other Party in writing within 7 business days after becoming aware of any event that such affected Party contends constitutes force majeure. Such notice will identify the event causing the delay or anticipated delay, estimate the anticipated length of delay, state the measures taken or to be taken to minimize the delay, and estimate the timetable for implementation of the measures.
  - 3. The affected Party shall make all reasonable efforts to promptly resume performance of this Agreement and, when able, to resume performance of its obligations and give the other Parties written notice to that effect.
  - 4. The PORT is not obligated to pay CONSULTANT for any costs relating to delays due to force majeure. Delays in performance prevented by force majeure are not compensable.

**VIII. NON-DISCRIMINATION AND AFFIRMATIVE ACTION**

- A. CONSULTANT agrees that in all matters pertaining to the performance or carrying out of service under this Agreement, CONSULTANT shall at all times conduct business in a manner which complies with State and Federal law.
- B. It is the basic policy of the PORT to provide equal opportunity to the users of all PORT services and facilities and all contracting entities. Specifically, the PORT will not tolerate discrimination against any persons on grounds of age, race, color, national origin/ancestry, ethnicity, religion, disability, Family Medical Leave Act (FMLA) use, pregnancy, sex/gender, sexual orientation, whistleblower status, military affiliation, marital status, workers' compensation use, transgender status, political beliefs, or any other protected status, as guaranteed by local, state and federal laws. The equal opportunity principles in employment and subcontracting described in this policy shall apply to the PORT'S employees, customers, consultants, contractors and vendors to the extent possible as required by law.

**IX. ETHICS AND INTEREST OF CONSULTANT**

- A. CONSULTANT covenants on behalf of itself and its subconsultants, that the firms performing work on this Agreement currently have no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement.
- B. CONSULTANT certifies by executing this Agreement that CONSULTANT and subconsultants have reviewed and shall comply with the PORT'S Consultant Ethics and Conflict of Interest, CC-2, attached hereto.

**X. SUBCONTRACTS**

- A. The PORT authorizes the CONSULTANT to subcontract, as necessary for services related to the CONSULTANT'S performance under this Agreement and as specified by this Agreement.
- B. CONSULTANT shall require subconsultant to be bound by the terms of this Agreement (with the exception of Section XXI. Insurance) and to assume all obligations and responsibilities that CONSULTANT assumes toward the PORT via subcontract with CONSULTANT.
- C. The PORT must review and approve CONSULTANT'S utilization of subconsultants, and any and all billing rates for all subconsultant(s) proposed to be added to the Agreement prior to any work being performed by such subconsultant(s). Such approval will be in writing, through an executed amendment.

**XI. RESERVED**

**XII. CONSULTANT PERSONNEL**

- A. CONSULTANT will ensure that individuals who are specifically identified in this Agreement shall perform the work assigned in Attachment A. CONSULTANT will replace any individuals that are not satisfactory to the PORT within five (5) business days of the PORT'S written request. CONSULTANT will not charge the PORT a fee to make such replacement, and the replacement shall be provided to the PORT at the same or lower rate.
- B. CONSULTANT agrees not to replace or remove any individual who is satisfactory to the PORT without the PORT'S prior written consent, unless due to serious illness, death or leaves employment. Assigned individuals shall remain assigned until completion of services. CONSULTANT may request that a particular individual be replaced with a person of like skill and experience and, if agreed by the PORT, the period of time required to orient and familiarize the replacement with the services being performed will be provided at no charge to the PORT.

**XIII. INDEPENDENT CAPACITY OF CONSULTANT**

In performance of this Agreement, CONSULTANT, and any agents, employees of CONSULTANT and subconsultants are acting as independent consultants and not in any manner as officers or employees or agents of the PORT. Payment of any income, payroll or similar taxes due under federal, state or local law shall be the sole responsibility of CONSULTANT and its subconsultants.

**XIV. CONFIDENTIALITY**

- A. CONSULTANT shall not use or disclose Confidential Information for any purpose not directly connected with performance of the scope of work of this Agreement except with prior written consent of the PORT or as may be required by law.
- B. Confidential information includes, without limitation, any information in any form that the PORT considers to be confidential and proprietary. CONSULTANT shall not use confidential information for the benefit of the CONSULTANT or a relative. CONSULTANT shall not use or disclose confidential information or any other information learned by CONSULTANT relating to operations or business practices of the PORT to any third party or in any manner that is detrimental to the PORT.
- C. CONSULTANT shall not:
  - 1. Allow for the release, distribution or dissemination or disclosure of any documentation obtained in any manner pursuant to this Agreement;
  - 2. Allow the release distribution or dissemination of information or disclosure of any documentation obtained in any manner that relates to the business activities of the PORT pursuant to this Agreement; and/or,
  - 3. Disclose to third party any notes, reports, electronic files, including emails or any other materials, information.
- D. CONSULTANT may not use the PORT logo except on work products produced for the PORT or on a proposal/submittal to the PORT. Use of PORT name or logo that implies PORT endorsement of the entity is prohibited unless written consent is provided by the Director of Public Affairs or Manager, Corporate Communications.
- E. CONSULTANT acknowledges that monetary damages may not be a sufficient remedy for a breach of this Section XIV and that the PORT shall be entitled, without waiving any other rights or remedies, to such injunctive or equitable relief as may be deemed proper by a court of competent jurisdiction.
- F. All CONSULTANT employees, agents, and subconsultants performing work under this Agreement shall sign a Non-Disclosure Agreement prior to commencing any such work, the form of which shall be substantially similar to the form included as Attachment H.

**XV. AUDIT AND ACCESS TO RECORDS**

- A. CONSULTANT shall maintain books, ledgers, records, documents or other evidence relating to the costs and/or performance of the Agreement ("records") on a generally recognized accounting basis and to such extent and in such detail as will properly reflect and fully support all fees, costs and charges.
- B. With regard to the records, CONSULTANT shall do and require its employees, agents and subconsultants to do the following:
  - 1. Make such records open to inspection or audit by representatives of the PORT during the term of this Agreement and for a period of not less than three years after the expiration of this Agreement.
  - 2. Retain such records for a period of not less than three years after the expiration of this Agreement; provided, however, if any litigation, claim, or audit arising out of, in connection with, or related to this Agreement is initiated, such records shall be retained until the later of (a) resolution or completion of litigation, claim or audit; or (b) six years after the date of termination of this Agreement.

3. Provide adequate facilities reasonably acceptable to representatives of the PORT conducting the audit so that such representatives can perform the audit during normal business hours.
4. Make a good faith effort to cooperate with representatives of the PORT conducting the audit. Cooperation shall include assistance as may be reasonably required in the course of inspection or audit, including access to personnel with knowledge of the contents of the records being inspected or audited so that the information in the records is properly understood by the persons performing the inspection or audit. Cooperation shall also include establishing a specific mutually agreeable timetable for making the records available for inspection by the PORT's representatives. If CONSULTANT cannot make at least some of the relevant records available for inspection within seven (7) days of the PORT's written request, cooperation will necessarily entail providing the PORT with a reasonable explanation for the delay in production of records.
5. CONSULTANT is responsible for any audit exceptions or disallowed costs incurred by CONSULTANT.

**XVI. OWNERSHIP OF WORK PRODUCTS**

- A. All documents including, but not limited to artwork, copy, posters, billboards, photographs, video tapes, audio tapes, systems designs, drawings, estimates, field notes, investigations, software, reports, diagrams, surveys, analysis, studies or any other original works of authorship created by CONSULTANT and delivered to the PORT in the performance of this Agreement are to be and remain "works for hire" under Title 17, United States Code, and the property of the PORT and all copyright ownership and authorship rights in the work(s) shall belong to the PORT pursuant to 17 U.S.C. § 201(b). In the event that the work(s) that is/are the subject matter of this Agreement is deemed to not be work for hire, then CONSULTANT hereby assigns to the PORT all of the right, title and interest for the entire world in and to the work(s) and the copyright therein. CONSULTANT agrees to cooperate and execute additional documents reasonably necessary to conform with its obligations under this paragraph.
- B. All documents, together with all unused materials supplied by the PORT, are to be delivered to the PORT upon completion or termination of this Agreement before the final payment is made to CONSULTANT.
- C. To the extent CONSULTANT utilizes to create, or incorporates into, the works for hire described in paragraph A above, any intellectual property previously developed and owned by CONSULTANT prior to the provision of the Services under this Agreement (hereinafter referred to as "CONSULTANT Pre-existing Intellectual Property"), then the PORT shall own the tangible work product, however CONSULTANT shall continue to own such CONSULTANT Pre-existing Intellectual Property, and CONSULTANT hereby grants to PORT a non-exclusive, royalty-free, irrevocable, worldwide, perpetual license to use, reproduce, modify, adapt, distribute, make derivative works of, and disclose such CONSULTANT Pre-existing Intellectual Property for any purpose.

**XVII. PUBLIC DISCLOSURE**

CONSULTANT acknowledges that the PORT may be required to disclose information provided by CONSULTANT pursuant to the Washington State Public Disclosure Act, Chapter 42.56 R.C.W. The PORT will determine whether the documents should be disclosed. In no event shall the PORT be liable to CONSULTANT for disclosure of documents and information, including work product, excluded inventions and intellectual property rights it deems necessary to disclose under the law.

**XVIII. ASSIGNABILITY**

Neither the PORT nor CONSULTANT shall assign or transfer any interest in this Agreement without the prior written agreement of the other.

**XIX. TERMINATION FOR CONVENIENCE**

- A. The PORT may terminate this Agreement, in whole or in part, for the convenience of the PORT. To do so, the PORT shall issue a termination for convenience notice specifying the extent of the termination and the effective date.
- B. If the PORT terminates this Agreement for convenience, the PORT shall pay the CONSULTANT only for or costs incurred in accordance with the Agreement for services satisfactorily performed to the date of termination.
- C. Upon receipt of a termination notice the CONSULTANT shall at no additional cost to the PORT:
  1. Promptly discontinue all services affected (unless the notice directs otherwise);
  2. Terminate all subcontracts to the extent they relate to the work terminated; and
  3. No later than thirty (30) calendar days after receipt of termination, promptly deliver or otherwise make available to the PORT all documentation or materials CONSULTANT or subconsultants may have accumulated in performing this Agreement, whether completed or in progress.
- D. Upon termination, the PORT may take over the work and directly or through a third party complete the work.

**XX. TERMINATION FOR DEFAULT**

- A. The PORT may terminate for default this Agreement, in whole or in part, in writing if the CONSULTANT substantially fails to fulfill any or all of its material obligations under this Agreement.

- B. If the PORT terminates all or part of this Agreement for default, the PORT shall determine the amount of work satisfactorily performed to the date of termination and the amount owing to the CONSULTANT provided, that (a) no amount shall be allowed for anticipated profit on unperformed services and (b) any payment due to the CONSULTANT at the time of termination may be adjusted to the extent the PORT has to incur additional costs due to the CONSULTANT'S default. In such event, the PORT shall consider the actual costs incurred by the CONSULTANT in performing the project work to the date of termination, the amount of work originally required which was satisfactorily completed to the date of termination, whether that work is 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 work 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 work 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.
- C. Upon receipt of a termination notice the CONSULTANT shall at no additional cost to the PORT:
  - 1. Promptly discontinue all services affected (unless the notice directs otherwise);
  - 2. Terminate all subcontracts to the extent they relate to the work terminated; and
  - 3. No later than thirty (30) calendar days after receipt of termination, promptly deliver or otherwise make available to the PORT all documentation or materials CONSULTANT or subconsultants may have accumulated in performing this Agreement, whether completed or in progress.
- D. Upon termination, the PORT may take over the work and directly or through a third party complete the work.
- E. If, after termination for default, it is determined that the CONSULTANT had not defaulted, the termination shall be deemed to have been effected for the convenience of the PORT. In such event, the equitable adjustment shall be determined as set forth in the Termination for Convenience provision.

## XXI. INSURANCE

- A. Prior to commencement of services under this Agreement and if required below, CONSULTANT shall procure and maintain one or more lines of insurance coverage to be kept in force for the life of this Agreement. If required, insurance shall be procured from insurance carriers including captives, with a current A.M. Best's rating of no less than "A Minus V". Captives who are not rated by A.M. Best shall provide evidence of equivalent solvency that is acceptable to the PORT. CONSULTANT shall submit to the PORT a Certificate of Insurance which shows that it has obtained the required coverage(s). Coverage shall not lapse or be terminated without written notification to the PORT, delivered electronically or by mail, not less than thirty (30) days prior to any such lapse or termination. CONSULTANT agrees to notify the PORT upon any material change of coverage or reduction in limits. Where identified below, CONSULTANT shall submit endorsements with the Certificate of Insurance. CONSULTANT shall provide evidence of insurance on each insurance renewal date, throughout the duration of the Agreement.

When insurance is required, CONSULTANT shall procure and maintain insurance in the following minimum form and limits. The limits shall not be construed as to relieve the CONSULTANT from liability in excess of the limits. The minimum limits indicated below do not indicate that the PORT has assessed the risks that may be applicable to the CONSULTANT under this Agreement. All deductibles or self-insurance retentions are the responsibility of the CONSULTANT. CONSULTANT may meet required insurance limits through a combination of primary and umbrella or excess insurance. Any insurance the PORT may carry will apply strictly on an excess basis over any applicable insurance the CONSULTANT may carry. The CONSULTANT shall provide to the PORT, if requested, a copy of any insurance policy required under this Agreement, including a copy of the policy declarations, binder, all endorsements, and any policy amendments.

- 1. Commercial General Liability insurance on ISO Form CG 00 01 10 01 (or equivalent) for third party property damage, bodily injury, personal and advertising injury, and medical payments in an amount which is not less than **\$2,000,000** per occurrence and **\$2,000,000** annual aggregate. The insurance shall cover liability arising from premises, operations, independent contractors, products completed operations, personal and advertising injury, and liability assumed under an insured Agreement. The CONSULTANT'S insurance shall be primary and non-contributory with respect to any insurance the PORT carries and apply separately to each insured.

This Agreement  Does  Does not require commercial general liability insurance.

- a) PORT shall be named as an additional insured for all work arising out of CONSULTANT'S work using ISO Form CG 20 26 or an equivalent endorsement approved by the PORT.
- b) When a self-insured retention (SIR) or deductible exceeds \$25,000 the PORT reserves the right, but not the obligation, to review and request a copy of the CONSULTANT'S most recent annual report or audited financial statement.
- c) If the services to be provided in this Agreement include the installation or construction of a product on PORT property, the CONSULTANT shall be required to add the PORT as an additional insured with respect to "completed operations" using ISO Form CG 20 26 11 85 or equivalent.

This Agreement  Does  Does not require an endorsement to add the PORT as an additional insured for completed operations.

2. Automobile Liability Insurance: Agreements in which the CONSULTANT, will utilize one or more vehicles to complete the scope of work may require evidence of automobile liability insurance

This Agreement  Does  Does not require automobile liability insurance.

When automobile liability insurance is required, it shall be provided on a combined single limit basis for bodily injury and property damage using ISO Form CA 00 01 (or equivalent). Coverage is to be extended to all "owned, non-owned, hired, leased, and borrowed automobiles" (as defined on ISO Form CA 00 01). Sole proprietors may provide coverage on a Personal Auto Policy in lieu of a Commercial Auto coverage form. The box or boxes marked below indicate the type of coverage and limit needed; more than one box may be checked.

- a)  The limit of insurance shall be not less than \$1 million per occurrence for all driving on PORT Terminals, 5, 10, 18, 25, 30, 46, 47, 86, 90, 91, 104, and 115;
- b)  The limit of insurance shall be not less than \$5 million per occurrence for all driving on the non-movement area of the airfield operations area at Seattle-Tacoma International Airport;
- c)  The limit of insurance shall be not less than \$10 million per occurrence for all driving on the movement area of the airfield operations area at Seattle-Tacoma International Airport;
- d)  The limit of insurance shall be not less than \$300,000 per occurrence
- e)  The limit of insurance shall be not less than \$500,000 per occurrence for any individual or entity that is to use a PORT Vehicle.

3. Professional Liability Insurance (also referred to as Errors and Omissions). Agreements requiring professional services such as, but not limited to: engineering design or surveying, architectural services, software services, information technology services, environmental services, real estate management, legal services, or financial advisory services, may require Professional Liability insurance coverage.

This Agreement  Does  Does not require Professional Liability insurance coverage.

If required, CONSULTANT shall provide Professional Liability (E&O) insurance in an amount not less than **\$1,000,000** per claim or wrongful act and **\$2,000,000** in the policy aggregate on a practice policy to cover the CONSULTANT and its employees. CONSULTANT may choose to provide a project specific policy, in lieu of a practice policy, in which case the insurance shall be in an amount not less than **\$N/A** per claim or wrongful act and in the policy aggregate. Subconsultants retained by CONSULTANT who are performing professional services, shall either be added onto the policy of the CONSULTANT, or, subconsultant shall provide and obtain a similar policy of Professional Liability insurance coverage that covers the subconsultant and its employees. When a self-insured retention (SIR) or deductible exceeds \$25,000, the PORT reserves the right, but not the obligation, to review and request a copy of the CONSULTANT'S most recent annual report or audited financial statement. If coverage is to be provided on a claims-made basis, the CONSULTANT shall warrant that any policy retroactive date precedes the effective date of this Agreement. In addition, continuous coverage must be maintained throughout the Agreement and for one year beyond the completion of the Agreement, or the CONSULTANT shall purchase an extended discovery period policy for not less than one year from the completion of work.

4. Employers Liability Insurance (Washington Stop Gap Liability). If CONSULTANT is providing services that include the installation or construction of a product on PORT property, the CONSULTANT shall be required to provide Washington State Stop Gap employers' liability insurance. This shall be in an amount of \$ 1 million per accident and \$1 million per disease using ISO CG 04 42 11 03 or equivalent. This coverage may be provided by endorsing the primary commercial general liability policy.

This Agreement  Does  Does not require stop gap employers liability insurance.

5. Certain Agreements may require specialized insurance or specialized policy endorsements to cover the unique aspects of the Scope of Work. This may result in a requirement for the CONSULTANT to provide specialized insurance or a specialized policy endorsement to cover employee dishonesty liability, aircraft liability, pollution liability (including lead, asbestos, and mold), watercraft liability, network security/cyber liability, liquor liability, special event liability or other liability associated with the work to be performed. If the box below is checked, then specialized insurance coverage or a specialized endorsement is to be provided, in accordance with the requirements listed in Attachment C of this Agreement.

This Agreement  Does  Does not require specialized insurance coverage, or a specialized policy endorsement.

- B. CONSULTANT is responsible for complying with the Washington State laws that pertain to industrial insurance (Reference Revised Code of Washington, Title 51 Industrial Insurance) for CONSULTANT, its employees, and subconsultants. 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 commencing work, 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 (Reference RCW 51.12.020) such as if CONSULTANT is a sole proprietor. CONSULTANT shall indicate its status below by marking the appropriate box. If neither box is checked, CONSULTANT must show evidence of industrial insurance coverage with a current employer liability certificate.

CONSULTANT  is  Is not exempt from state worker compensation and industrial insurance requirements.

The PORT reserves the right to recover funds owed to CONSULTANT under this Agreement for any fees the PORT pays to the Washington State Department of Labor and Industries that are the responsibility of the CONSULTANT under RCW 51.12.070.

- C. Certain work or services under this Agreement may require Longshore and Harbor Worker's Compensation Act (33 U.S.C. §§901 et seq.) insurance coverage, coverage to comply with the Federal Employers Liability Act, or Jones Act coverage. Failure to obtain coverage, in the amount required by law, may result in civil and criminal liabilities. CONSULTANT is fully responsible for ascertaining whether or not such insurance is required. If these or any other federally required insurance coverages apply to this Agreement, the CONSULTANT is responsible for obtaining the coverage, and/or meeting any self-insurance requirements to qualify as a self-insurer.

## **XXII. INDEMNITY**

- A. CONSULTANT'S duty to indemnify the PORT under this Agreement varies, as more particularly set forth below, depending on the circumstances that give rise to the obligation of indemnity. However, CONSULTANT'S indemnity obligation shall extend – under any and all such circumstances – to all liability, claims, damages, losses and expenses incurred by the PORT, whether direct, indirect, consequential, and specifically including (but not limited to) attorneys' and CONSULTANT'S fees and other expenses of litigation or arbitration (for convenience, these are collectively referred to as "losses") that arise from the particular act or omission giving rise to the indemnity obligation.
1. GENERAL INDEMNITY. Except to the extent subject to one of the more specific indemnity obligations set forth below, CONSULTANT shall defend, indemnify, and hold the PORT harmless from all losses which are caused, or alleged to be caused, in whole or in part, by any act or omission of CONSULTANT. This obligation of indemnity includes negligent acts, which are concurrent, contributory, or both by the PORT. The obligation of indemnity under this Subparagraph does not, however, extend to losses caused by the sole negligence of the PORT.
  2. PROFESSIONAL ERRORS AND OMISSIONS. For any losses that arise from any error, omission or other malpractice in the exercise of CONSULTANT'S professional judgment, CONSULTANT shall defend, indemnify, and hold the PORT harmless from all such losses to the extent caused, or alleged to be caused, by any negligent act or omission of CONSULTANT. The obligation of indemnity under this Subparagraph does, however, not extend to losses caused by the negligence (whether sole, concurrent or contributory) of the PORT.
- B. In any and all claims against the PORT by any employee of CONSULTANT, the indemnification obligations set forth above shall not be limited in any way by any limitation on the amount or type of damages or compensation benefits payable by or for CONSULTANT under applicable worker's or workmen's compensation, benefit, or disability laws (including, but not limited to, the Industrial Insurance laws, Title 51 of the Revised Code of Washington). To the extent necessary to effectuate such indemnity, CONSULTANT expressly waives any immunity CONSULTANT might have under such laws, and, by entering into this Agreement, acknowledges that this waiver has been mutually negotiated.
- C. The obligations of this Paragraph shall not be construed to negate, abridge, or otherwise reduce any other right or obligation which would otherwise exist as to any person or entity described in this paragraph.
- D. For purposes of this provision only, the term "PORT" shall mean and include the PORT and its commissioners, other officers, employees, and agents, and the term "CONSULTANT" shall mean and include CONSULTANT, all of its subconsultants and suppliers at all tiers, agents, and any other person directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable.

## **XXIII. WARRANTY AND STANDARD OF CARE**

- A. CONSULTANT warrants that:
1. Its services will be performed with that degree of care and skill ordinarily exercised by professional consultants practicing in the same discipline and claiming a similar degree of specialization and/or expertise;
  2. any errors or omissions in its deliverables shall be promptly corrected or revised without additional compensation; and

3. All deliverables or Work Product shall be the original work of CONSULTANT and CONSULTANT has the ability to transfer clear title and Intellectual Property Rights for such deliverables to the PORT.
- B. The PORT shall have the right to deduct from any payments due CONSULTANT any costs or damages incurred by the PORT, or which may be incurred by the PORT, as a result of the CONSULTANT'S failure to comply with the terms of this Agreement or failure to meet the professional standard of care.

**XXIV. COMPLIANCE WITH APPLICABLE LAWS**

CONSULTANT agrees to perform all services and its obligations under this Agreement in compliance with all applicable local, State and Federal laws.

**XXV. GOVERNING LAW**

This Agreement shall be governed by the laws of the State of Washington, excluding its choice of law rules. Venue for any action between the PORT and CONSULTANT, arising out of or in connection with this Agreement, shall be in the state or federal courts in King County, Washington.

**XXVI. NO THIRD PARTY BENEFICIARY**

The PORT and the CONSULTANT enter into this Agreement for the sole benefit of the two parties in exclusion of any other party, and no third party beneficiary is intended or created by execution of this Agreement. Nothing in this Agreement is intended to and/or shall be construed to give any rights or benefits to any subconsultant, individual, company, and/or firm other than the PORT and the CONSULTANT.

**XXVII. ORDER OF PRECEDENCE**

The provisions of this Agreement are complimentary and shall be interpreted to give effect to all of its provisions. Any inconsistency in this Agreement shall be resolved in the following order of precedence:

- A. Amendments
- B. Supplemental Conditions
- C. Service Agreement Terms and Conditions
- D. Scope of Work
- E. Schedule of Fees
- F. Additional attachments

In the event of a conflict between provisions of this Agreement and applicable laws, codes, ordinances, regulations or orders of governmental authorities having jurisdiction over the services or work product provided under this Agreement or any portion thereof, or in the event of any conflict between such applicable laws, codes, ordinances, regulations, or orders, the most stringent requirements of any of the above shall govern.

**XXVIII. WAIVER**

Failure at any time of the PORT to enforce any provision of this Agreement shall not constitute a waiver of such provision or prejudice the right of the PORT to enforce such provision at any subsequent time. No term or condition of this Agreement shall be held to be waived, modified or deleted except by a written amendment signed by the parties hereto.

**XXIX. SURVIVORSHIP**

The provisions and warranties contained in this Agreement that by their sense and context are intended to survive the completion of performance or termination of this Agreement shall so survive. All indemnities provided in this Agreement shall survive the expiration or any earlier termination of this Agreement.

**XXX. ENTIRE AGREEMENT**

This Agreement sets forth in full the entire Agreement of the parties in relation to the subject matter hereof and any other agreement, representation, or understanding, verbal or otherwise, relating to the services of CONSULTANT, or otherwise dealing in any manner with the subject matter of this Agreement is hereby deemed to be null and void and of no force and effect whatsoever. This Agreement may be changed, modified, waived or amended only by written amendment executed by both of the parties hereto.

If any provision of this Agreement shall be deemed in conflict with any statute or rule of law, such provision shall be deemed modified to be in conformance with said statute or rule of law. The provisions of this Agreement are intended to be severable. If any provision is illegal or invalid for any reason, such illegality or invalidity shall not affect the validity of the remaining provisions of this Agreement.

This Agreement may be executed in counterparts, which may be transmitted via facsimile or email, each of which shall constitute an original, and all of which will be deemed a single document. Signature of an email or facsimile copy of this Agreement, and transmission of a signature page by email or facsimile, shall bind the signing party to the same degree as delivery of a signed original.



**PORT OF SEATTLE**

**TBD**

\_\_\_\_\_  
*Authorized Signature*

\_\_\_\_\_  
*Authorized Signature*

\_\_\_\_\_  
*(Print or Type Name of Signer)*

\_\_\_\_\_  
*(Print or Type Name of Signer)*

Date \_\_\_\_\_

Date \_\_\_\_\_

Address: Attn: Tiffany Ngo  
17900 International Blvd, #400B  
Seattle, WA 98188  
Phone No.: (206) 787-4920  
Email: ngo.t@portseattle.org

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Phone No.: ( ) \_\_\_\_\_  
Email: \_\_\_\_\_

<p>Attachments</p> <p><input checked="" type="checkbox"/> Attachment A – Scope of Work</p> <p><input checked="" type="checkbox"/> Attachment B – Fee Schedule</p> <p><input checked="" type="checkbox"/> Attachment C – Supplemental Terms</p> <p><input checked="" type="checkbox"/> Attachment D – Company Information</p> <p><input type="checkbox"/> Attachment E – Reserved</p> <p><input checked="" type="checkbox"/> Attachment F – Title VI Provisions</p> <p><input checked="" type="checkbox"/> Attachment G – Consultant Ethics and Conflict of Interest, CC-2</p>	<p><b>Taxpayer Identification Number (“TIN”):</b></p>
	<p><b>Washington State Unified Business Identifier (“UBI”) Number:</b></p>
	<p><b>State Worker Compensation Account Number:</b></p>
	<p><b>Suspension and Debarment:</b></p> <p>CONSULTANT certifies to the best of its knowledge that it is not presently disbarred or suspended from any federal department or agency transactions. If CONSULTANT checks this box, then CONSULTANT represents that it complies with this requirement. <input type="checkbox"/></p>
	<p><b>Former PORT Employee:</b></p> <p>CONSULTANT declares by checking box that he or she is not a former PORT employee. <input type="checkbox"/></p>

ATTACHMENT A  
SCOPE OF WORK  
To be Inserted at Contract Execution

ATTACHMENT B  
SCHEDULE OF FEES  
To be Inserted at Contract Execution

ATTACHMENT C  
SUPPLEMENTAL CONDITIONS

**CONSULTANT Identification/ Airport Access Control and Security Requirements**

- A. A portion of this agreement requires work to be performed within an area of the Airport controlled for security reasons. All CONSULTANT personnel working in restricted areas (including Airport Office Building; AOA, Secured, SIDA and Sterile areas) on this agreement shall have PORT airport-issued identification / access badges in accordance with Title 49, Code of Federal Regulations (CFR), Part 1540/1542 and the Airport Security Plan. Proposers should consider the impact of acquiring badges when preparing their cost proposals.
- B. Failure to comply with TSA rules and the Airport Security Plan may result in up to an \$11,000 fine from the TSA. Fines assessed by the TSA against a CONSULTANT, a CONSULTANT'S employee, or subconsultant will be paid by the CONSULTANT. See the following: 1) Title 49; and 2) <http://www.portseattle.org/Employee-Services/ID-Badges/Documents/idsecurityhandbook.pdf>.
- C. Obtaining an ID Badge (each applicant):
  - 1. Submit a properly completed Identification/Access badge application, Disqualifying Crimes Statement and Privacy Act Notice for each employee requiring access to restricted areas.
  - 2. Applicants must go to the Credential Center with their completed badge application, badge fees (if applicable), and two forms of identification. One must be government issued PROOF OF CITIZENSHIP. For a list of acceptable documentation, please refer to: <http://www.portseattle.org/Employee-Services/ID-badges/Pages/default.aspx>
  - 3. When applications are completed and required documentation has been supplied, the applicant will be fingerprinted in accordance with Title 49, Code of Federal Regulations (CFR), Part 1542.209. Each applicant will also be submitted for a Security Threat Assessment.
  - 4. Companies will be notified by the Credential Center when their employees have been cleared. They may then return to the Credential Center to pick up their ID badges.
- D. All identification/access badges issued by the PORT are the property of the PORT and must be immediately returned under the following conditions:
  - 1. Upon expiration;
  - 2. Upon separation of employment (for any reason);
  - 3. When job function no longer requires a PORT airport-issued identification/access badge;
  - 4. Upon demand by the PORT.
  - 5. If convicted of, or found not guilty by reason of insanity of one of the crimes listed in Title 49, CFR, Part 1542.209(d). A complete list is on the back of the Fingerprint Application.
- E. Additional information and forms associated with badging, custom bond seals and security access and key requests can be found here: <http://www.portseattle.org/Employee-Services/ID-badges/Pages/default.aspx>

**Use of Contingency Funds**

The PORT may require additional tasks be performed by the CONSULTANT related to this contract. A task is established to set up a contingency for those services. CONSULTANT shall not use or bill against this task without specific written direction from the PORT. Such direction will be sent either via letter or email from the PORT Project Manager. The specific scope of work, deliverables, level of effort, and not to exceed value will be established in the letter or email.

**Monthly Report**

- A. No later than the 10<sup>th</sup> day of each month, CONSULTANT shall report on the progress of the activities of the contract. The report shall be in a format approved by the PORT. At a minimum, the report shall include:
  - 1. Percent budget expended, percent work completed, progress toward schedule, and variances against planned vs. actual for all items reported.
  - 2. Work being performed by time and expense Service Directive will address progress toward the scope, schedule, and level of effort of work being performed.
  - 3. Work being performed on a lump sum Service Directive will address progress toward the scope or project milestones, as applicable.
  - 4. CONSULTANT shall also identify issues that may result in timely and on budget completion of the work and identify any issues that may increase the total price of the work.
- B. Failure to provide timely and accurate monthly reporting may result in denial of and/or late payment.

**Safety**

- A. CONSULTANT shall be responsible for employing adequate safety measures and taking all action reasonably necessary to protect the life, health, and safety of the CONSULTANT and its employees, contractors, and subcontractors as well as the public while working on PORT premises. Nothing the PORT may do, or fail to do, with respect to safety shall relieve CONSULTANT of this responsibility. CONSULTANT is responsible for providing all required personal protective equipment for its employees. CONSULTANT is responsible for ensuring CONSULTANT and its employees, contractors, and subcontractors are properly trained in areas of safety that pertain to the project and the complete scope of work.

### **Use of PORT Equipment**

- A. The PORT may, in the course of CONSULTANT'S performance of the services, agree to make available to CONSULTANT PORT-owned or PORT-leased equipment to carry out the terms of the Agreement. The PORT makes no warranties, express or implied, as to any matter whatsoever related to such equipment, including without limitation, the condition of the equipment, its design, its capacity, its performance, its material, its workmanship, or its fitness for any particular purpose. The PORT further disclaims any liability whatsoever for loss, damage, or injury to CONSULTANT or third parties arising from the use (or misuse) of the equipment or any defects, latent or otherwise, in the equipment. CONSULTANT shall, at its sole cost and expense, be responsible for any required or advisable training (including, but not limited to, safety training) necessary for the safe and proper use of the equipment by CONSULTANT. Nothing the PORT may do, or fail to do, with respect to safety shall relieve CONSULTANT of this responsibility.
- B. CONSULTANT agrees that CONSULTANT'S duty of indemnity under Section XXII.A.1 shall apply to any losses arising out of, connected with, or resulting from CONSULTANT'S access to and use of the equipment and that CONSULTANT'S duty of indemnity specifically extends to all loss and/or damage to the equipment arising from CONSULTANT'S access to and use of the equipment. Without limiting the generality of the foregoing, CONSULTANT recognizes and agrees that these obligations include any and all liability for injury, disability, and death of workmen and other persons caused by the operation, use, control, handling, and transportation of the equipment. Absolutely nothing the PORT may say or do in the course of allowing CONSULTANT to use PORT-owned or PORT-leased equipment shall be construed as waiving the CONSULTANT'S responsibility for damage to, or liability arising out of the use of the equipment.
- C. Except as to any subconsultant for whom CONSULTANT assumes all of the responsibilities set forth in this section, CONSULTANT shall not loan, license, permit the use of, or give the equipment to any other person without prior written consent of the project manager for the PORT as designated in this Agreement.

ATTACHMENT D  
COMPANY INFORMATION  
To be Inserted at Contract Execution

## ATTACHMENT F

### Title VI Non-Discrimination and Affirmative Action Supplemental Conditions

During the performance of this contract, the CONSULTANT, for itself, its assignees, and successors in interest (hereinafter referred to as the "CONSULTANT") agrees as follows:

1. **Compliance with Regulations:** The CONSULTANT (hereinafter includes "CONSULTANTS") will comply with the Acts and the Regulations relative to non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Federal Aviation Administration, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** The CONSULTANT, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subconsultants, including procurements of materials and leases of equipment. The CONSULTANT will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the CONSULTANT for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subconsultant or supplier will be notified by the CONSULTANT of the CONSULTANT'S obligations under this contract and the Acts and the Regulations relative to non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The CONSULTANT will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the Federal Aviation Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a CONSULTANT is in the exclusive possession of another who fails or refuses to furnish the information, the CONSULTANT will so certify to the Recipient or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a CONSULTANT'S noncompliance with the non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not necessarily limited to:
  - a. withholding payments to the CONSULTANT under the contract until the CONSULTANT complies; and/or
  - b. cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The CONSULTANT will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The CONSULTANT will take action with respect to any subcontract or procurement as the Recipient or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the CONSULTANT becomes involved in, or is threatened with litigation by a subconsultant, or supplier because of such direction, the CONSULTANT may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the CONSULTANT may request the United States to enter into the litigation to protect the interests of the United States.

## ATTACHMENT F

### Title VI Non-Discrimination and Affirmative Action Supplemental Conditions

During the performance of this contract, the CONSULTANT, for itself, its assignees, and successors in interest (hereinafter referred to as the "CONSULTANT") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

#### **Pertinent Non-Discrimination Authorities:**

1. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
2. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
3. Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
4. The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
5. Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
6. The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
7. Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR Parts 37 and 38;
8. The Federal Aviation Administration's Nondiscrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
9. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
10. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
11. Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 *et seq.*).



ATTACHMENT G  
CONSULTANT ETHICS AND CONFLICT OF INTEREST

Serving the PORT With Integrity  
CC-2 as of 8/16/2011

Original – 1/1/2010 Revisions: 8/16/2011

I. The PORT's Interests Come First

PORT consultants ("CONSULTANT") are expected to serve the PORT with the highest standards of ethical conduct and to avoid situations that create a real or perceived "conflict of interest." CONSULTANTS are also expected to conserve and responsibly use the resources that the public has entrusted to the PORT, to act in accordance with applicable laws and professional standards and to conduct business with the PORT in a manner that will reflect positively on the PORT, its employees, its CONSULTANTS, and the community.

For purposes of this policy:

"CONSULTANT" or "CONSULTANTS" refers to any organization or individual that responds to a PORT solicitation or receives compensation directly or indirectly from a Contract with the PORT. The term "CONSULTANT" or "CONSULTANTS" includes individuals working for or on behalf of the consulting organization.

"Contract" refers to an agreement for the provision of personal or professional services.

"Financial or Beneficial Interest" is defined to include (a) a creditor, debtor or ownership interest in an amount or value in excess of \$1,500; (b) any employee, consultant or partnership arrangement; or (c) any option to purchase real or personal property. A CONSULTANT shall be presumed to have knowledge of any Financial or Beneficial Interest held by a Relative.

"Representing Consultant" is a CONSULTANT who is retained to represent, or who gives the appearance of representing, the PORT.

"Relative" is defined to include a CONSULTANT'S spouse, domestic partner, parent, child, sibling, aunt, uncle, cousin, niece, nephew, grandparent, grandchild, in-law, and any person with whom the CONSULTANT has a relationship that is substantially equivalent to any of the above.

A "conflict of interest" exists when a CONSULTANT'S obligations and commitments to the PORT are, or may be, in conflict with the CONSULTANT'S financial or other personal interest, or with the CONSULTANT'S obligations or commitments to others. A conflict of interest may exist in a specific Contract, or when the nature of the services to be performed in a specific Contract creates an actual or potential conflict of interest in future work for the PORT. CONSULTANTS must ensure that any financial or personal interest, or other business activity, is kept separate from their consulting role at the PORT and does not influence their services to the PORT. CONSULTANTS need to use common sense and keep the interests of the PORT in mind at all times. In addition to avoiding actual conflicts of interests, CONSULTANTS must avoid situations that could *appear* to be a conflict of interest.

Conflicts of interest are not always obvious or clear. When in doubt, review the situation with the PORT Central Procurement Office representative identified in the solicitation ("CPO Representative") or the PORT project manager identified in the Contract. ("Project Manager"). You may also contact the PORT Workplace Responsibility Officer with any questions about this policy or to review a potential conflict of interest situation or other ethics issue.

II. Real or Perceived Conflicts of Interest

The following are examples of situations in which a CONSULTANT may feel conflicting loyalties between the CONSULTANT'S private interests or other business activities and the CONSULTANT'S responsibilities and commitments to the PORT.

A. Disclosable Conflicts from Business Relationships

The fact of a disclosable conflict of interest is not in itself a violation of this policy. Instead, it is something that must be disclosed and waived by the PORT.

A conflict of interest may exist when a CONSULTANT performs services for another entity if those services (i) potentially adversely impact the PORT or (ii) require or result in disclosure of confidential information.

A conflict of interest may exist when a Representing Consultant, a Relative, or someone with whom a Representing Consultant has a significant personal relationship, directly or indirectly, owns any significant interest in or operates an organization that competes with the PORT, is doing business with the PORT, or plans to do business with the PORT. Representing Consultants should, therefore, avoid owning interests in or operating companies that compete with the PORT, other than minimal amounts of stock in publicly traded companies.

A conflict may also arise when a Representing Consultant or a Relative is employed by or represents a regulatory agency with authority over PORT functions.

Duty to Disclose: CONSULTANTS must disclose to the CPO Representative or Project Manager all potential situations that could present a real or perceived conflict of interest. The disclosure should be made as soon as practicable, but not later than seven days after the potential conflict was known or should reasonably have been known to the CONSULTANT. The PORT will document the disclosure. The Central Procurement Office, with the concurrence of the Workplace Responsibility Officer, will determine whether the PORT will waive the conflict of interest and/or identify appropriate steps to be taken to avoid or mitigate the conflict of interest. The CONSULTANT shall not execute any contracts or perform any services for the PORT that are related to the actual or perceived conflict of interest unless and until a waiver is granted.

B. Prohibited Conflicts

Prohibited conflicts are a violation of this policy and must be disclosed to the PORT.

No CONSULTANT shall accept, directly or indirectly, any compensation, gratuity or reward in connection with a contract from any other person beneficially interested therein.

A CONSULTANT shall not participate in any decision-making, review, approval, selection, authorization or supervisory activity concerning any contract or PORT transaction in which the CONSULTANT or a Relative has a Financial or Beneficial Interest.

A CONSULTANT shall not, directly or indirectly, ask for or give or receive or agree to receive any compensation, gift, reward, or gratuity from a source outside the PORT for performing, omitting, or deferring the performance of any contractual, legal or professional obligation relating to the CONSULTANT'S consulting role, unless otherwise authorized by law.

A conflict of interest arises when a CONSULTANT is in a position to exploit the CONSULTANT'S role or use of PORT resources to advance the CONSULTANT'S financial or other business or personal interests.

CONSULTANTS must avoid circumstances in which it appears, or to a reasonable person might appear, that the CONSULTANT is requesting or otherwise seeking special consideration, treatment or advantage because of the CONSULTANT'S engagement with the PORT.

CONSULTANTS shall not use their consulting role to secure special privileges or exemptions for themselves or a Relative. This includes obtaining any items or services at below market rates or confidential information from PORT customers, suppliers, contractors, consultants, or lessees (or potential customers, suppliers, contractors, consultants, or lessees) or other CONSULTANTS. It also includes a CONSULTANT using his or her engagement with the PORT to help a Relative get a job offer from the PORT or obtain a job offer from a PORT business partner.

Duty to Disclose: CONSULTANTS must disclose to the CPO Representative or Project Manager all situations that potentially or actually constitute a prohibited conflict of interest. The disclosure should be made as soon as practicable, but not later than seven days after the prohibited conflict was known or should reasonably have been known to the CONSULTANT.

### III. Use of PORT Equipment

CONSULTANTS are expected to use PORT-owned property and equipment for official PORT business related to an existing Contract. CONSULTANTS may not use PORT-owned property or equipment for any other business purpose.

A CONSULTANT shall not take or use PORT-owned property and equipment for personal purposes, convenience, or profit. This includes, but is not limited to, taking or using PORT vehicles, shop tools, fax machines, copiers, postage, office supplies, cameras, smartphones and laptops. It is not a violation of this policy for a CONSULTANT to engage in de minimis or incidental personal use of such property or equipment while at the PORT workplace.

When using PORT electronic systems and social media, CONSULTANTS must comply with the PORT'S Electronic Systems and Social Media policies, which are posted on the PORT'S public web site.

### IV. Safeguarding Confidential Information

A CONSULTANT shall not use or disclose confidential information to third parties, unless authorized by the PORT in writing. "Confidential Information" includes, without limitation, any information in any form that the PORT considers to be confidential and proprietary, and is not publicly available. A CONSULTANT shall not use Confidential Information for the benefit of the CONSULTANT or a Relative. A CONSULTANT shall not use or disclose Confidential Information in any manner that is detrimental to the PORT, regardless of whether the use or disclosure results in any benefit to the CONSULTANT or Relative.

#### A. Employment

A CONSULTANT shall disclose an offer of employment or receipt of compensation from an Employer if the CONSULTANT knows, has reason to believe, or the circumstances would lead a reasonable person to believe, that the offer of employment or compensation was intended, in whole or in part, directly or indirectly, to influence the CONSULTANT or as compensation or reward for the performance or nonperformance of a duty by the CONSULTANT during his/her PORT engagement. For purposes of this policy, "Employer" means any person, partnership, association, corporation, firm, institution, or other entity, whether or not operated for profit.

### V. Expectations of Former Consultants

For purposes of this policy, "Termination" of PORT engagement is defined as the latest date on which the CONSULTANT provided services on a Contract or, in the case of a retainer, was paid for services.

#### A. Disclosure Requirements

For one (1) year after Termination of a PORT engagement, a Former CONSULTANT must disclose the Former CONSULTANT'S past PORT engagement to the PORT before participating in any PORT business or activity and

must also disclose the Former CONSULTANT'S past PORT engagement before participating in any proceeding before the Commission. The disclosure shall be made in writing to the CPO Representative or Project Manager and/or the Commission President.

**B. Special Consideration Prohibited**

A Former CONSULTANT shall not request or otherwise seek special consideration, treatment or advantage from other PORT staff or PORT Commissioners. A Former CONSULTANT shall avoid circumstances in which it might appear to a reasonable person that the Former CONSULTANT requesting or otherwise seeking or receiving special consideration, treatment or advantage from other PORT staff or PORT Commissioners.

**C. Appearances Before Commission**

For one (1) year after Termination of PORT engagement, a Former CONSULTANT may not appear before the PORT Commission on behalf of another individual or entity, whether or not for compensation of any kind, in relation to any matter, issue, contract, case, proceeding, application or matter in which such Former CONSULTANT participated in a decision-making, negotiation, review, selection, supervisory or other significant activity.

By way of limited exception, the Commission may waive this provision if so requested by a Former CONSULTANT and after public discussion and a finding by the Commission that the public or the PORT'S interests would be better served. The Former CONSULTANT must seek application to participate in the proceeding at least 14 days in advance of the Commission meeting. Such application shall be submitted in writing to the Central Procurement Office identifying all facts and the rationale for the appearance.

**D. Participation in Contracts with the PORT**

A Former CONSULTANT may not participate as a competitor in any competitive selection process, or have a direct or indirect Financial or Beneficial Interest in any agreement, contract, concession, or lease that was made by, authorized or funded by PORT action in which the Former CONSULTANT participated in a decision-making, negotiation, review, preparation, selection, supervisory or other significant activity.

After one (1) year following Termination of a Former CONSULTANT'S PORT engagement, the PORT may waive this provision at its sole discretion. The Central Procurement Office, with the concurrence of the Workplace Responsibility Officer, will make this determination. The waiver shall be in writing and identify all facts and the rationale for the waiver. The waiver shall be granted prior to a Former CONSULTANT participating in a competitive selection process or obtaining a Financial or Beneficial Interest.

**VI. Reporting Other Potential Violations**

CONSULTANT should report potential conflicts of interest, financial or otherwise, of any PORT employee or other CONSULTANT who is in a position to influence the selection, non-selection, or conduct of business between the PORT and any entity. Reports should be made to the PORT Workplace Responsibility Helpline (206-787-4357) or the Ethics & Compliance Hotline (1-877-571-5237). CONSULTANTS will not be retaliated against for reporting good faith concerns or potential violations of this policy.

For further information about this policy, please contact the PORT Workplace Responsibility Helpline.

ATTACHMENT H  
NONDISCLOSURE AGREEMENT

THIS NONDISCLOSURE AGREEMENT ("NDA"), is entered into on behalf of the undersigned, TBD ("Recipient").

RECITAL

In accordance with Section XIV (Confidentiality) of Service Agreement P-00320367 (the "Agreement") and Consultant Ethics and Conflict of Interest (CC-2), the Port of Seattle ("Port"), may provide information that is not generally known to the public, including but not limited to business, technical or financial information relating to business models, proprietary technologies, contracts, leases, operations, properties, patents, trademarks, trade secrets, designs, strategic initiatives, business plans, accounting, or marketing (collectively, "Port Confidential Information"). All Port Confidential Information is provided "as is." The Port makes no warranties, express, implied, or otherwise, regarding the accuracy, completeness, or utility of Port Confidential Information.

NOW, THEREFORE, in consideration of the foregoing, the mutual promises and undertakings set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Recipient, Recipient agrees as follows:

1. Nondisclosure.

(a) Recipient shall not disclose for any purpose or to any person or entity, any Port Confidential Information which is disclosed, provided, or is otherwise obtained by or becomes known to Recipient during the term of the Agreement.

(b) At the request of the Port at any time or from time to time, Recipient shall, as promptly as practicable, deliver to the Port all Port Confidential Information, including all copies, whether electronic or otherwise; provided that, in lieu thereof and with the Port's written consent, Recipient may destroy all such Port Confidential Information and provide written verification to the Port that such destruction has been accomplished.

2. Exceptions.

(a) This NDA shall be inoperative as to such portions of the Port Confidential Information which:

(i) are in the public domain or generally known at the time of disclosure to, or the time obtained by Recipient; or

(ii) come into the public domain or become generally known after the time of disclosure, other than by reason of a breach by Recipient under this NDA or the Agreement; or

(iii) are disclosed to Recipient by a third party who or which is under no legal or contractual obligation or restriction not to disclose same to Recipient.

(b) In addition, Recipient may disclose Port Confidential Information which Recipient is required by law to disclose, but only to those persons to whom disclosure is required by law and only to the extent necessary to comply with law. In any such circumstance, Recipient shall notify the Port promptly after the legal requirement of disclosure arises and becomes known to Recipient to afford the Port a reasonable period of time to seek to obtain an appropriate protective order.

3. Termination. Recipient's obligations under this NDA shall remain in effect indefinitely. This NDA may be terminated by the Port in the event of a breach or imminent breach by Recipient of its obligations under this NDA.

4. Remedies. Recipient will notify the Port immediately upon discovery of any unauthorized disclosure, use, or loss of Port Confidential Information or any breach of this NDA or the Agreement by Recipient and will reasonably cooperate as requested by the Port to recover and prohibit any further unauthorized disclosure, use or loss of Port Confidential Information. If Recipient breaches or threatens to breach this NDA or the Agreement, it will cause the Port irreparable harm. In the event of any such breach or threat thereof, and without waiver of any other rights or remedies, the Port will be entitled to injunctive or other equitable relief as well as money damages. In any lawsuit arising out of or relating to this NDA or the Agreement, including arising from any alleged tort or statutory violation, the prevailing Party will recover its reasonable costs and attorney's fees, including on appeal.

5. Ownership. All Port Confidential Information shall remain the exclusive property of the Port, and Recipient shall have no right to use Port Confidential Information except as provided in this NDA and the Agreement. Nothing contained in this NDA or the Agreement will be construed as granting any proprietary rights, by license or otherwise, to any Port Confidential Information, or to any invention, patent, copyright, trademark, trade name, or other intellectual property right that has issued or that may issue, based on such Port Confidential Information.

6. Governing Law and Venue. This NDA shall be governed by and construed under the laws of the State of Washington. All actions brought to enforce or arising out of this NDA shall be brought in King County, Washington.

IN WITNESS WHEREOF, Recipient has executed this NDA as of the date below.

\_\_\_\_\_  
Name: \_\_\_\_\_  
Entity: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_