



SAMPLE ONLY – DO NOT COMPLETE

PORT OF ANACORTES

**AGREEMENT FOR PROFESSIONAL SERVICES
(CHAPTER 39.80 RCW)**

Agreement # _____ - _____ - _____

This **AGREEMENT FOR PROFESSIONAL SERVICES** ("**Agreement**") is made and entered into as of the later of the two signature dates below, by and between:

PORT OF ANACORTES
P.O. BOX 297
ANACORTES, WA. 98221-0297
Telephone No. 360/293-3134
Fax No. 360/293-9608
www.portofanacortes.com

(the "Port")

AND

Telephone No. _____
Fax No. _____

("Consultant")

Term of Contract: _____

- **SCOPE OF WORK:** Pursuant to specific task orders as described in the general provisions herein. **See attached Exhibit "A"**
- **COMPENSATION:** The Consultant shall be compensated on the basis of hours worked and expenses incurred by its employees at the rates shown herein: **See attached Exhibit "B"**.
- **GENERAL PROVISIONS:** Services covered by this Agreement shall be performed in accordance with the General Provisions (which are attached hereto and form a part of this Agreement) and any attachments or schedules.
- **ENTIRE AGREEMENT:** This Agreement supersedes all prior agreements and understandings and may only be changed by written amendment executed by both parties.

GENERAL PROVISIONS

In consideration of the mutual covenants and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Scope Of Work. The objective of this Agreement is the timely preparation, completion and/or delivery of the scope of work and/or deliverables described in the Task Order(s) issued pursuant to and governed by the terms of this Agreement. A copy of the Task Order form(s) to be executed by the parties is included as Exhibit "A," attached hereto and incorporated herein by this reference. Additional Task Orders and/or amendments to Task Orders shall be attached hereto as amendments and shall be made part of this Agreement upon approval as required herein.

1.1 Services covered by this Agreement shall be performed in accordance with the provisions and any attachments or schedules. Except as may be otherwise provided for herein, this Agreement may only be amended by the mutual consent of both parties hereto, in writing and signed by duly authorized representatives of both parties.

2. Term of Agreement. The Consultant shall not begin work under the terms of this Agreement or any Task Order until the Port has specifically authorized the Consultant to do so in writing. The time required for completion of all work under each Task Order and, if appropriate under a schedule for completion of phases of the work, shall be specified in each Task Order. The completion dates for Task Orders, or for phases of work under a Task Order may be modified only upon written agreement of the parties hereto. The completion dates for Task Orders, or for phases of work under a Task Order may be, but are not required to be, extended in the event of a delay caused by Extra Work requested by the Port, or if the Consultant's work is delayed by unavoidable circumstances beyond the control of the Consultant and which the Consultant could not reasonably have anticipated. This Agreement may be extended for multiple terms at the sole discretion of the Port and subject to budget appropriations and Commission approval when required; if so extended, all of the terms and conditions herein shall apply to such extension.

3. Compensation and Payment. The Consultant shall be compensated on the basis of hours worked and expenses incurred by its employees at the rates shown in the attached Consultant's Fee Schedule, Exhibit "B." The Consultant shall receive no other payment for

materials or disbursements unless expressly allowed by the Task Order. The Consultant shall not adjust the wage rates in Exhibit "B" without written authorization from the Port.

3.1 Consultant shall supply Port with a monthly invoice and written documentation, satisfactory to Port, for all amounts due under this Agreement, including but not limited to project budget status and a narrative progress description of services rendered that is acceptable in form to the Port. All invoices submitted by Consultant to Port shall reference any applicable billing codes provided by Port to Consultant. Any applicable taxes shall be listed as separate line items on each Consultant invoice. All invoices and documentation may be reviewed and audited by Port and payment may be subject to review or audit. Subject to the preceding, payments shall be net thirty (30) days of receipt of such invoice by Port. In no event shall the Port be charged interest on payments due under this Agreement. If required by Port, Consultant shall provide periodic forecasts of its total fees and costs incurred to date. With regard to time and materials contracts, only the reimbursable expenses specifically listed in the attached Exhibit "B" will be payable expenses under this Agreement.

3.2 If a Task Order specifies that the work is to be performed on a fixed fee basis, the Consultant shall be paid the amount of the fixed fee as consideration for full and satisfactory performance of the work regardless of the Consultant's cost to perform the work. The Port shall have sole authority for determining when all work has been satisfactorily performed by the Consultant. The Consultant's payment for the work shall not exceed the specific amount unless authorized in writing by the Port, as provided herein. The fixed fee amount comprises all of the Consultant's payment for the work and includes without limitation all costs of salaries, overhead, non-salary expenses (including, but not limited to, travel, reproductions, telephone, supplies, and fees of outside consultants), as well as the Consultant's profits. The Consultant's payment for the work shall not exceed the specified amount unless first authorized by the Port.

3.3 The Consultant shall obtain the prior written approval of the Port for any charges for

additional services by the Consultant, the additional services of others retained by Consultant, or the furnishing of additional supplies, materials or equipment. The Consultant shall not be entitled to compensation for any such additional charges incurred in violation of this paragraph.

4. **Payment of Sub-Consultants.** At the time of project completion, the Consultant agrees to certify to the Port that all employees (including without limitation any union fees and any benefit plans), and Subconsultants have been paid in full. Final payment shall be preconditioned upon receipt of such certification by the Port; the Port may, in its sole discretion, withhold final payment until receipt of such certification. The Consultant shall be solely responsible for the performance and payment of any and all Subconsultants. All such sub-consultants shall possess all licenses and insurance as required by the laws of the State of Washington.

5. **Termination.** This Agreement may be terminated by either party upon seven (7) days' written notice should one party fail to perform in accordance with its terms through no fault of the other. In the event the party that fails to perform is the Consultant, the determination of "fail to perform in accordance with its terms" shall be in the sole judgment of the Port. In the event of termination, the Consultant shall be compensated for satisfactory services performed to the termination date by reimbursement of the Consultant's actual costs directly related to the project plus normal overhead and reasonable profit. The Port shall have sole authority for determining when all work has been satisfactorily performed by the Consultant. In no case, however, shall such reimbursement exceed the agreed upon fee as approved and amended by the Port. Any work product generated by the Consultant prior to such termination shall be the sole property of the Port, and the Consultant agrees to provide the Port with all such materials. If the accumulated payment made to the Consultant prior to notice of intent to terminate exceeds the total amount that would be due as set forth herein above, then no final payment shall be due and the Consultant shall promptly reimburse the Port for the excess paid.

5.1 Further, this Agreement may be terminated by the Port at any time for any reason whatsoever, at the sole discretion of the Port, with seven (7) days' written notice. If the Port terminates for

convenience, the Port will pay according to the payment terms as provided in Paragraph 5, above. If, after termination for failure of the Consultant to fulfill contractual obligations, it is determined that the Consultant has not so failed, the termination shall be deemed to have been effected for the convenience of the Port.

5.2 In addition to the above, the Port reserves the right to suspend all or any portion of the work and services for Consultant's default or Port's convenience. If the Consultant's work is delayed for more than thirty (30) calendar days due to circumstances for which the Consultant is responsible, the Port may find the Consultant in default and terminate the Task Order and/or this Agreement.

6. **Deviations From Scope of Work.** The Port may at any time issue written directions within the general scope of this Agreement. If any such direction causes an increase or decrease in the cost of this Agreement or otherwise affect any other provision of this Agreement, the Consultant shall immediately notify the Port and take no further action concerning those written directions until such time as the parties have executed a written change order. No additional work shall be performed or charges incurred unless and until the Port approves in writing the change order and the increased cost thereof. Any work done in violation of this paragraph shall be at the sole expense of the Consultant. Additionally, the Port reserves the right to modify the amount spent for identified project tasks within the scope of work, provided that the Contract Amount, as may be modified under Paragraph 3.3, is not exceeded.

6.1 The Consultant shall make all revisions and changes in the completed work under this Agreement as are necessary to correct the Consultant's, and those of its sub-consultants errors or omissions, without additional compensation from Port.

7. **Insurance.** Consultant, concurrently with the execution of this Agreement, shall provide the Port with evidence that Consultant has obtained and is maintaining the insurance listed as follows:

7.1 Workers' Compensation Insurance as required by law.

7.2 Employers' Liability Insurance (bodily injuries) with a limit of One Hundred Thousand Dollars (\$100,000) per occurrence with an insurance company authorized to write such

insurance in all states where the Consultant will have employees located in the performance of its work covering its common law liability to such employees.

7.3 Comprehensive General Liability Insurance and Automobile Liability Insurance covering all owned and non-owned automobiles or vehicles used by or in behalf of Consultant with a One Million Dollar (\$1,000,000) combined single limit for bodily injury and/or property damage per occurrence and an annual aggregate limit of One Million Dollars (\$1,000,000).

7.4 Professional Liability Insurance covering Errors and Omissions of the Consultant in the amount of not less than One Million Dollars (\$1,000,000) per claim.

7.5 Except with regard to the Professional Liability Insurance, each of the policies required herein **shall name the Port as an additional insured**. Furthermore, each policy of insurance required herein shall (i) be written as a primary policy; (ii) expressly provide that such insurance may not be materially changed, amended or canceled with respect to the Port except upon forty-five (45) days' prior written notice from the insurance company to the Port; (iii) contain an express waiver of any right of subrogation by the insurance company against the Port and its elected officials, employees, or agent; (iv) expressly provide that the insurance proceeds of any loss will be payable notwithstanding any act or negligence of Consultant which might otherwise result in a forfeiture of said insurance; and (v) in regard to physical property damage coverage, expressly provide that all proceeds shall be paid jointly to Consultant and Port.

7.6 With regard to the Professional Liability Insurance, the Consultant shall maintain the same in full force and effect during the term of this Agreement and for a period of one year thereafter.

7.7 The Consultant shall furnish the Port with copies of Certificates of Insurance evidencing policies of insurance required herein. The Consultant shall maintain these policies as identified above for itself and its sub-consultants for the term of this Agreement and for a period of one year thereafter. The Port's failure to request such certificates shall not relieve the Consultant of the obligation to provide them.

7.8 The Consultant shall maintain the insurance in effect at all times that it is performing

work under this Agreement. Failure to obtain and/or maintain such insurance shall be grounds for the Port to find the Consultant in default and terminate the Agreement accordingly.

Alternatively, the Port may at its option purchase such insurance and deduct the reasonable expense therefore from payments made to or owing to the Consultant.

8. Consultant Not an Agent or Employee of the Port.

In performing work and services hereunder, the Consultant and Consultant's employees, agents, and representatives shall be acting as independent Consultants and shall not be deemed or construed to be partners, employees or agents of the Port in any manner whatsoever. No employee of the Consultant shall be considered an employee of the Port even while performing work required under this Agreement.

Furthermore, the Consultant shall not hold itself out as, nor claim to be, an officer or employee of the Port by reason hereof and will not make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the Port.

9. **Conflict of Interest.** Consultant covenants that it presently has no interest and shall not acquire an interest, directly or indirectly, which would conflict in any manner or degree with its performance under this Agreement. Consultant further covenants that in the performance of this Agreement, no person having such interest shall be employed by it or any of its Subconsultants.

10. **Compliance With Applicable Law.** The Consultant shall comply with all the Port's resolutions and all federal, state, and local laws, regulations and ordinances that are applicable to the work performed pursuant to this Agreement. Both parties mutually agree to re-negotiate scope, budget, and schedule should a change in any of the applicable Port's resolutions, federal, state or local laws, regulations or ordinances during the performance of the work affect the cost of performing the work. The Consultant shall register (and shall require the same of all Subconsultants), as required by RCW 23B.15.010, to do business in the State of Washington and provide proof of the same to the Port. By executing this Agreement, Consultant further certifies that neither it nor its principals is presently debarred, suspended, proposed for debarment, or declared ineligible or voluntarily excluded from participation in this transaction by any federal department or agency. It further agrees by acceptance of this

Agreement that it will include this clause without modification in all lower tier transactions, solicitations, proposals, agreements, contracts, and subcontracts. Where the offeror/consultant or any lower tier participant is unable to certify to this statement it shall attach an explanation to this Agreement. The Port reserves the right to require Consultant to replace a sub-consultant or lower tier participant who cannot meet the foregoing certification requirement.

11. **Industrial Insurance Waiver.** Consultant expressly waives any claim of defense against the Port as may be provided by the Industrial Insurance Act, RCW51.04.010 *et seq.* for any claim asserted by any person (or relative or estate thereof) for injury or death sustained during the course of the Contract Work.

11.1 CONSULTANT AND PORT EXPRESSLY AGREE THAT THIS SECTION 11 HAS BEEN READ AND REVIEWED AND HAS BEEN THE SUBJECT OF NEGOTIATION BETWEEN THE PARTIES, AND THAT CONSULTANT AGREES TO BE BOUND BY THE TERMS THEREOF.

CONSULTANT'S INITIALS

12. **Indemnity.** The Consultant shall defend (with legal counsel satisfactory to the Port), indemnify, and hold harmless the Port, its elected officials, officers, employees, and agents from any and all demands, obligations, fines, penalties, lawsuits, governmental proceedings, costs and expenses (including, without limitation, all attorneys' fees, costs and expenses of litigation), claims, judgments, or liabilities:

- Arising, in whole or in part, out of any act or omission of Consultant or its directors, officers, agent, or employees in connection with the services provided pursuant to this Agreement; and/or
- Arising from a breach of this Agreement by Consultant; and/or
- Arising out of or due to any failure on the part of Consultant to perform or comply with any rule, ordinance or law to be kept and performed.

The Port will inform Consultant of any such claim or demand that alleges liability based in whole or

in part on any act or omission of Consultant, its directors, officers, agents, or employees. Thereafter the Consultant shall (i) reasonably cooperate in the defense of such claim and (ii) pay its defense of such claim as incurred, whether or not such claim is ultimately successful. In this regard, the Port will reasonably cooperate with Consultant in allowing Consultant to jointly select, with the Port, attorneys to defend the Port and Consultant provided that Consultant confirms its obligation to pay the Port's defense costs.

13. **Work Product Confidentiality.** Any reports, documents, questionnaires, records, information or data given to or prepared or assembled under this Agreement which the Port requests to be kept confidential shall not be made available by the Consultant to any individual or organization without prior written approval of the Port except as may be ordered by a court of competent jurisdiction. The provisions of this section shall survive the expiration or earlier termination of this Agreement. No reports, records, questionnaires, or software programs provided by the Port or other documents produced in whole or in part by the Consultant under this Agreement shall be the subject of an application for copyright by or on behalf of the Consultant.

14. **Public Disclosure Request.** Correspondence, reports, and other written work product will be generated during the course of the relationship created by this Agreement, and third parties may request such information pursuant to the Washington State Public Disclosure Act (RCW 42.17.250 *et. seq.*). The parties agree that in the event that such a request is filed, the party with whom the request is filed will promptly notify all other parties to this Agreement. The parties further agree that they will not disclose any such requested material until at least ten (10) business days after providing notification to all other parties to this Agreement. The intent of this clause is to provide all parties the opportunity to seek injunctive relief pursuant to RCW 42.17.330 so as to protect the vital functions of those entities. This clause shall survive the termination or expiration of this Agreement.

15. **Plans, etc. Property of Port.** All work performed under this Agreement is work for hire. All deliverables, including but not limited to original plans, drawings and specifications, prepared by the Consultant and any and all sub-consultants for the Port and funded by the Port are and shall remain the property of the Port whether or not the

Project for which they are made is executed. This shall not apply to proprietary software or documentation that may be provided to the Port and that was developed independent of funding by the Port. The Consultant assumes no liability for any use of the Drawings and Specifications other than that originally intended for this Project.

Originals, including electronic forms of the data prepared by the Consultant and funded by the Port, shall become the property of the Port. No reports, records, questionnaires, software programs provided by Port or other documents produced in whole or in part by the Consultant under this Agreement shall be the subject of an application for copyright by or on behalf of the Consultant. The Consultant's work shall not infringe on any copyright, patent, trade secret, or other proprietary rights held by any third party.

16. **Electronic File Compatibility.** All electronically-transmitted output must be compatible with existing Port software, and shall be provided to the Port in a CAD or other appropriate electronic format. All CAD deliverables shall be consistent with the Port's standard CAD layering system, as provided by the Port to the Consultant. Consultants shall check with the Port for software application, system compatibility and preferred file type.

17. **Non-Discrimination.** In connection with the performance of this Agreement, the Consultant shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age, marital status, or being handicapped, a disadvantaged person, or a disabled or Vietnam era veteran or a member of any other protected class. The Consultant shall take affirmative action to ensure that applicants are employed and the employees are treated during employment without regard to their race, color, religion, sex, national origin, age, marital status, or being a handicapped or disadvantaged person or a disabled or Vietnam-era veteran or a member of any other protected class.

18. **Federal Restrictions on Lobbying.** Consultant certifies that under the requirements of Lobbying Disclosure Act, 2 U.S.C., Section 1601 et seq., no Federal appropriated funds have been paid or will be paid, by or on behalf of the Consultant, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the

awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

19. **Federal Debarment and Suspension.** The Consultant certifies, that neither it nor its "principals" (as defined in 49 CFR.29.105 (p) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

20. **Subletting or Assigning of Agreement.** The Consultant shall not sublet or assign any of the work covered by this Agreement without the express written consent of the Port.

21. **Notices.** All notices and payments hereunder may be delivered or mailed to the addresses listed above. If delivered by messenger, courier (including overnight air courier) or facsimile transmittal, they shall be deemed delivered when received at the street address or facsimile numbers listed above. All notices and payments mailed, whether sent by regular post or by certified or registered mail, shall be deemed to have been given on the second business day following the date of mailing, if properly mailed to the mailing addresses provided below, and shall be conclusive evidence of the date of mailing. The parties may designate new or additional addresses for mail or delivery by providing notice to the other party as provided in this section. The address for delivery of notices and payments are as set forth in the introductory paragraph of this Agreement.

22. **Review of Title Documents.** Prior to the execution or recordation of any documents effecting title to any property, said document shall be reviewed by the Port. Consultant shall not execute or record (or make to be executed or recorded) any such document prior to the Port's review and approval.

23. **Jurisdiction.** This Agreement is made and delivered in the State of Washington and shall be construed and enforced in accordance with the laws thereof. Jurisdiction and venue of any dispute hereunder shall be solely in the Superior Court of the State of Washington in and for Skagit County. In the event of a dispute arising out of or under this Agreement, the substantially prevailing

party shall be entitled to its reasonable attorney's fees and costs.

24. **Pollution.** Port acknowledges that the Consultant is not responsible for the creation or presence of contamination or pollution, if any, at the property except to the extent that such a discharge, release or escape is caused by the negligent act or failure to act of the Consultant. For the purpose of this clause, contamination conditions shall mean the actual or alleged existence, discharge, release or escape of any irritant, pollutant, contaminant, or hazardous substance into or upon the atmosphere, land, groundwater, or surface water of or near the property. The Consultant will promptly notify the Port of contamination conditions, if identified. Notwithstanding the foregoing, the Port does not herein waive any cause of action for damages resulting from the Port's reliance on any

misrepresentation (made either knowingly or negligently) by the Contractor with regard to the presence of any contamination or pollution.

25. **Entire Agreement.** This is the entire agreement between the parties. There is no other oral or written understanding between the parties concerning this matter. The Consultant specifically understands that no Port employees other than the Project Manager or his/her supervisors are authorized to direct the work of the Consultant.

26. **Signing Authority.** Anyone signing this Agreement by said signature certifies that he/she has the authority to execute said document on behalf of the Consultant and that his/her signature is binding upon the firm or corporation.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the later of the dates indicated below. By signing below, each signatory represents that he or she has authority on behalf of his or her respective party to enter into this agreement, which shall be binding upon the parties according to its terms.

CONSULTANT

PORT OF ANACORTES

Signature: _____

Signature: _____

Name/Title: _____

R. W. Hyde, Executive Director

Date: _____

Date: _____

EXHIBIT A

TASK ORDER FORM

PLEASE SUBMIT ON COMPANY LETTERHEAD

Port of Anacortes
Agreement for Professional Services # ____ - ____ - ____
Task Order # __ - __

PROJECT NAME

This work order is issued pursuant to the Agreement for Professional Services # ____ - ____ - ____ dated xx/xx/xx between the Port of Anacortes and _____ whose address is _____ . Unless otherwise specified below, the performance of services hereunder and the payment therefore shall be subject to the terms and conditions of said Agreement.

(A) Scope of Work:

(B) Deliverables:

Note: All CAD deliverables shall be consistent with the Port's standard CAD layering system, as provided by the Port to the Consultant. Consultants shall check with the Port for software application, system compatibility and preferred file type.

(C) Schedule:

(D) Fee Basis:

Services to be billed on a [Time and Materials Basis] [Fixed Fee Basis], not to exceed \$X,XXX as summarized below, and per the attached cost breakdown.

Task	Not-To-Exceed Dollar Amount
1.0	\$
2.0	\$
3.0	\$
Reimbursable Expenditures	\$
TOTAL	\$

CONSULTANT

Signature: _____

Name/Title: _____

Date: _____

PORT OF ANACORTES

Signature: _____

Name/Title: _____

Date: _____

EXHIBIT B

CONSULTANT'S FEE SCHEDULE

[Exhibit B should set forth the agreed upon schedule of hourly rates and other charges and disbursements the Port is agreeing to pay the consultant. This should identify all job classifications, reimbursable expenses, and sub-consultant mark-ups.]