

PROFESSIONAL SERVICES AGREEMENT BETWEEN PORT OF LONGVIEW

AND

XXX

PROFESSIONAL SERVICES AGREEMENT NO. 19-038-PSC On-Call Hydrographic Surveying & Mapping Services

This Agreement ("Agreement") is made and entered into this _____ day of _____, 2019, by and between the **PORT OF LONGVIEW**, a municipal corporation, organized and existing under the laws of the State of Washington (hereinafter "Port") and **XXX** (hereinafter the "Consultant"). The Agreement, including all exhibits, schedules and attachments referenced herein, constitutes the entire agreement between the Port and the Consultant.

WITNESSETH

WHEREAS, Consultant is engaged in the business providing hydrographic services, including but not limited to, bathymetric surveys and possesses the expertise and skill required to perform the Work as set forth herein and in compliance with Washington State and federal statutes related to conducting the agreed upon Work with the Port.

WHEREAS, the Port desires to hire Consultant, and Consultant desires to perform, the Work set forth in this Agreement; and

NOW, THEREFORE, in consideration of the terms, conditions, covenants, and promises contained herein, or attached and incorporated and made a part hereof, the parties hereto agree as follows:

1. **SCOPE OF SERVICES** Consultant shall perform the described tasks as set forth herein by furnishing all services, labor, related materials, supplies, equipment, and incidentals (the "Work") necessary to conduct and complete **xxx** Services (the "Project") as designated in this Agreement.
2. **AGREEMENT MANAGEMENT** Each of the parties shall designate a "Project Manager" as the contact person for all communications related to the performance of this Agreement. Communications regarding contract provisions and billings are to be directed to the Contract Administrator as well as the Project Manager.

CONSULTANT PROJECT MANAGER:	PORT PROJECT MANAGER & CONTRACT ADMINISTRATOR:
Consultant Project Manager: xxx Address: xxx xxx Phone: xxx Email: xxx	Port Project Manager: xxx Address: 10 Port Way Longview, WA 98632 Phone: 360-425-3305, ext. xxx Email: xxx
Federal Tax ID: xxx Washington UBS: xxx	Contract Administrator: Candi Engebo Phone: 360.425.3305, ext. 219 Fax: 360-425-8650
Has any member of the consulting team retired from a Washington State Retirement System using the 2008 Early Retirement Factor?	Port of Longview 10 Port Way Longview, WA 98632
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

3. PROJECT AUTHORIZATION AGREEMENTS

- a. Each major item of Work (each a "Project Authorization") under this Agreement will be set forth in a Project Authorization Document, substantially in the form of the "Formal Project Authorization Document", attached hereto as Exhibit A. The nature, scope and schedule of the Project Authorization to be performed by the Consultant thereunder, to the satisfaction of the Port, shall at a minimum include the following elements:
 - i. A narrative discussion of the proposed work including Port directives, assumptions, sequence and description of task groups, description of deliverables (type and number), and time estimated for completion and shall include at least one interim milestone for purposes of performance measurement.
 - ii. A breakdown of fees proposed for the project work. This requirement shall be met regardless of compensation method for the Project Authorization. Other billable amounts, such as subcontractors, reimbursables, etc. shall be explicitly shown on the breakdown.
 - iii. A schedule for work and completion of the Project Authorization. Schedule shall be as detailed as reasonably necessary so that the Port can balance workloads for Port staff as well as multiple consultants. The Port may, based on the nature of the Project Authorization, require schedule to be submitted in electronic form (Microsoft® Project or as otherwise specified).
- b. When a Project Authorization develops or a need arises within the scope of the Work and necessary for completion of the Project, the Port Project Manager shall communicate a request to produce a Formal Project Authorization Document to the Consultant Project Manager. Upon approval of such Project Authorization, the Port Project Manager and Consultant Project Manager shall execute the Formal Project Authorization Document. Consultant is not to begin work until a Formal Project Authorization Document is fully executed by both the Port and Consultant Project Managers. A Project Authorization shall become effective as of the date set forth in the Formal Project Authorization Document.
- c. The total fee set forth in each Project authorization will be the maximum amount payable for that Project authorization unless modified in writing by the Port. The total fee for all Project authorizations shall not exceed the amount set forth in Section 7(c) of this Agreement.
- d. The Port is not obligated to assign any specific number of Project Authorizations to the Consultant, and the Port's and Consultant's obligations hereunder are limited to Project Authorizations set forth in writing.
- e. Any changes to a Project authorization requiring a material adjustment to the cost, workmanship, specified materials, completion date or as otherwise set forth herein or in the applicable Formal Project Authorization Document, must be requested in writing to the Project Manager and must be approved in writing by each party's execution of an amended Formal Project Authorization Document prior to implementation of the adjustment. The Port may request changes to any Project authorization by negotiating and executing an amended Formal Project Authorization Document with Consultant.
- f. If the Consultant acts on a Project Authorization without formally requesting a change in writing, it is implied by the Port that such work is included in the original Formal Project Authorization Document's scope of work and cost and no adjustments will be made to the original Formal Project Authorization Document.

4. CHANGES OF WORK

- a. The Consultant agrees not to make any changes to any Project authorization, unless such changes are set forth in accordance with Section 3(e) of this Agreement. In the event Consultant deems a material change to the Project authorization to be necessary, whether by reason of unavailability of materials or otherwise, the Port shall be notified in advance in writing of the necessity of such changes and the reasons therefore. Such notification shall include a list of substitution materials or services and any agreed upon changes or adjustments shall be set forth in an amended Formal Project authorization Document.
- b. Any changes the Port requires which are attributable to Consultant's error or failure to meet the standards set forth in this Agreement, shall be corrected by Consultant at no additional cost to the Port.

- c. Failure to agree to any adjustment shall be a dispute under Section 30 of this Agreement. However, nothing in this clause shall excuse the Consultant from performance under this Agreement or any Formal Project authorization Document as if unchanged, unless such performance falls under Section 6(b) of this Agreement.
 - d. Notwithstanding the terms and conditions of Sections 3 and 4 of this Agreement, the maximum amount payable under this Agreement as set forth in Section 7(c) shall not be increased or exceeded except by specific written amendment to this Agreement.
5. **DELIVERABLES** All tangible materials produced as required by this any Formal Project authorization Document shall be prepared and delivered as specified therein. Delivery of materials produced shall consist both of the tangible materials and one copy of any computer file used in the creation of the tangible product on CD-ROM in a PDF format or other format specified by the Port. The Port may offset from the Consultant's fee expenses incurred by the Port in correcting drawings or specifications not prepared in accordance with the Port's procedure. The Port's approval of plans, drawings and specifications shall not relieve Consultant of responsibility for the adequacy or accuracy thereof. The Consultant shall remain liable for damages and costs incurred by the Port arising from the Consultant's errors, omissions or negligent performance of services as set forth in this Agreement.
6. **DELAY IN COMPLETION**
 - a. Time is of the essence in the performance of the Work required by this Agreement. Consultant shall ensure that the each Project authorization is commenced within the time frame set forth in the applicable Formal Project authorization Document, tasks and services set forth therein are completed within the milestones set forth therein and each Project authorization is completed within the time frame set forth therein. In agreeing to the time for completion of the Work set forth in the applicable Formal Project authorization Document, Consultant has taken into consideration and made allowance for ordinary delays and hindrances incident to or which otherwise may be reasonably anticipated to affect completion of the Work or the Project. Any issues which may affect Consultant's ability to comply with the requirements set forth in this Section 6(a) shall immediately be brought to the Port Project Manager's attention and addressed as set forth in Section 4 of this Agreement.
 - b. Consultant shall not be excused from any delay in performance under this Agreement, including any Formal Project authorization Document, unless (i) approved by the Port in accordance with Sections 3 or 4 above, (ii) attributable to any damage caused by fire or other casualty through no fault, neglect, act or omission on Consultant's part, (iii) attributable to extraordinary and unanticipated conditions arising out of war, national emergency or governmental regulations, or (iv) any other cause beyond the Consultant's control and which Consultant could not reasonably anticipate, and not due to any fault, neglect, act or omission on Consultant's part, including any delay attributable to the Port. In the event of any delay excused under items (i) – (iv) above, the time for performance may be extended by such reasonable time as shall be mutually agreed upon by the Consultant and the Port and shall be incorporated in a written amendment to the applicable Formal Project authorization Document.
7. **COMPENSATION AND PAYMENT**
 - a. The Consultant shall be paid by the Port for completed Work rendered under this Agreement as provided for in the Payment Terms attached hereto as Exhibit B. Such total payment shall be full compensation for Work performed for the Project. The Consultant shall conform to all applicable portions of 48 CFR Part 31.6.
 - b. Payment for each Project authorization shall not exceed the agreed upon rates set forth in each Formal Project authorization Document unless authorized in writing by the Port according to Section 3(e) of this Agreement.
 - c. The total amount payable for all Project authorizations combined under this Agreement shall not exceed \$xxx (the "Maximum Total Amount Payable") except by specific written amendment to this Agreement. The Maximum Total Amount Payable includes Washington State Sales Tax, if applicable and is not to be construed as a guaranteed payable amount. In the event of contract renewals, the total not to exceed will be increased by the amount agreed to in writing by both parties.

8. **DURATION OF AGREEMENT** This agreement shall commence upon the date of execution and shall remain in effect until such time as the contracted services have been completed, and accepted by the Port's authorized representative, unless earlier terminated in accordance with its provisions. The Port of Longview reserves the right to extend this Agreement of up to two additional one-year extensions, by providing the Consultant prior written notice of such extension. Upon expiration of this Agreement, no additional services may be negotiated under this Agreement, excepting that services, which are already in process but not completed shall continue to be governed by the terms of this Agreement until their completion.
9. **STANDARD OF CARE** Consultant shall perform the Work in a first class, workman-like manner in conformance with generally accepted standards of an industry professional of similar education, experience and skill. Consultant shall be responsible for the professional quality, technical adequacy and accuracy, timely completion and coordination of all plans, designs, drawings and specifications prepared under this Agreement. Any action necessary to correct or revise any errors or omissions in the Work due to Consultant's failure to meet this standard of care shall be completed by Consultant in accordance with Section 4(b) of this Agreement.
10. **KEY PERSONNEL** The key personnel specified in any Formal Project authorization Document or those listed in a Request for Proposal or Request for Qualifications submittal are considered to be essential to the performance of the Work and completion of the Project. At least 30 days prior to diverting from any of the specified individuals to other programs (or as soon as possible, if an individual must be replaced, for example, as a result of leaving the employ of the Consultant), the Consultant shall notify the Port Contracts Administrator and Port Project Manager and shall submit comprehensive justification for the diversion or replacement, including proposed substitution for key personnel, to permit evaluation by the Port of the impact on performance under this Agreement. The Consultant shall not divert or otherwise replace any key personnel without the written consent of the Port. The Port may modify the Formal Project authorization Document to add or delete key personnel at the request of the Consultant.
11. **SUBCONSULTANTS** The Consultant shall not sub-contract for the performance of any Work under this Agreement without prior written permission of the Port. No permission for sub-contracting shall create, between the Port and sub-consultant, any contract, employment, agency, joint venture or other relationship. Consultant is responsible for hiring, compensating and overseeing the work of any approved sub-consultant and shall ensure such sub-consultant's compliance with this Agreement and with any applicable Formal Project authorization Document. With respect to sub-consultant payment, the Consultant shall comply with all applicable sections of the Prompt Payment law as set forth in RCW 39.04.250 and RCW 39.76.011. To the fullest extent permitted by law, Consultant shall indemnify, defend, and hold harmless the Port, its agents, and their respective employees for, from, and against claims, damages, losses and expenses, including but not limited to attorneys' and experts' fees, arising out of or resulting from performance of the Work by any sub-consultant, or anyone for whose acts they may be liable.
12. **RIGHT OF INSPECTION** The Consultant shall provide right of access to its facilities to the Port, or any of its officers, or to any other authorized agent or official of the state of Washington or the federal government, at all reasonable times, as necessary in order to monitor and evaluate performance, compliance, and/or quality assurance under this Agreement.
13. **SITE SECURITY** While on Port premises, Consultant, its agents, employees, or sub-consultants shall conform in all respects with physical, fire, or other security regulations. All Consultant agents, employees and sub-consultants who perform work within the secured area of the Port will be required to have a Transportation Worker Identification Credential (TWIC) in order to perform their duties unescorted. This program was established by Congress and is administered by the Transportation Security Agency and the United States Coast Guard. More information and guidance can be found at www.tsa.gov/twic.
14. **INSURANCE REQUIREMENTS**
 - a. Consultant shall obtain and keep in force during the entire term of this Agreement, liability insurance against any and all claims for damages to person or property which may arise out of the performance of this Agreement whether such Work shall be by the Consultant, sub-consultants, and/or their agents and/or employees. The Consultant agrees to the following requirements relating to insurance coverage and shall provide evidence of all insurance required by submitting an insurance certificate to the Port on a standard "ACORD" or comparable form:

- i. Commercial General Liability – coverage as broad as Insurance Services form number CG 00 01 with minimum limits of \$1,000,000 combined single limit per occurrence and \$2,000,000 aggregate limit.
 - ii. Automobile Liability – \$1,000,000 combined single limit per accident for bodily injury and property damage. Coverage shall be as broad as Insurance Services Office form number (CA 00 01) covering **BUSINESS AUTO COVERAGE**, symbol 1 "any auto", or the combination of symbols 2, 8 and 9. If the work involves the transport of pollutants (as defined by the standard auto policy exclusion of pollution) the auto policy shall be endorsed to include endorsement CA 9948 (or its equivalent), MCS 90, or auto pollution coverage, and
 - iii. Professional Liability – a minimum of \$2,000,000 in the aggregate and \$1,000,000 per claim in professional liability insurance. Insurance coverage shall have a retroactive date before the date of notice to proceed and coverage shall remain in effect for the entire term of the Agreement.
- b. If coverage is approved and purchased on a "claims made" basis, the Consultant shall continue coverage either through (1) policy renewals for not less than three (3) years from the date of the completion of the Work which is the subject of this Agreement or (2) the purchase of an extended discovery period not less than three years (3) years from the date of completion of the Work which is the subject of this Agreement, if such extended coverage is available.
 - c. The insurance required by this Agreement shall be issued by an insurance company authorized to do business within the State of Washington, and the policies shall name the Port, its agents and employees as additional insured's. Except, however, that Consultant is not required to add the Port or its agents and employees as an additional insured on its professional liability policy or workers compensation policy. All policies shall be primary to any other valid and collectable insurance and not contributory to any similar insurance carried by the Port, and shall contain severability of interest or cross liability clause. Such insurance shall not be canceled or materially altered without first giving thirty (30) days' written notice thereof to the Port. The Consultant shall submit renewal certificates as appropriate during the term of the Agreement (plus three years).
 - d. By requiring insurance herein, the Port does not represent that coverage and limits will be adequate to protect Consultant and such coverage limits shall not limit Consultant's liability under the indemnities and reimbursements granted to the Port in this Agreement.
 - e. Additional Requirements:
 - i. Worker's Compensation The Consultant shall comply with the Washington State Department of Labor & Industries Industrial Insurance program or applicable statutory requirements of the State of Washington, for all of its employees who are required to be so covered by the laws of the State of Washington and in case any work is subcontracted, the Consultant shall require the subconsultant to provide worker's compensation insurance for all of its employees as required by law.
 - ii. Employer's Liability or "Stop Gap" Coverage shall be at least as broad as the protection provided by the Workers Compensation policy Part 2 (Employers Liability) or, in states with monopolistic state funds, the protection provided by the "Stop Gap" endorsements to the general Liability policy.
 - iii. Employment Security The Consultant shall comply with all employment security laws of the State of Washington, and shall timely make all required payments in connection therewith.
 - f. The insurance policies required in this Agreement are to contain, or be endorsed to contain the following provisions:
 - i. The Port, its officers, officials, employees and agents are to be covered as additional insured as respects to liability arising out of activities performed by or on behalf of the Consultant in connection with this Agreement. Such additional insured status shall include Products-Completed Operations.
 - ii. To the extent of the Consultant's negligence, the Consultant's insurance coverage shall be primary insurance as respect the Port, its officers, officials, employees and agents. Any insurance and/or

self-insurance maintained by the Port, its officers, officials, employees and agents shall not contribute with the Consultant's insurance or benefit the Consultant in any way.

- iii. The Consultant's insurance shall apply separately to each insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.
- iv. The Consultant's General Liability, Automobile, and Protection and Indemnity, if applicable, policies shall waive rights of subrogation against the Port.

15. **LICENSING, ACCREDITATION AND REGISTRATION** Prior to performing work under this Agreement, Consultant shall have obtained all applicable local, state, federal and professional licenses, permits, accreditation and registrations required to complete the Work or standard for the performance of this Agreement, including registration with the Washington State Department of Revenue for payment of all state taxes due on payments made under this Agreement.

16. **COMPLIANCE WITH LAWS** During the performance of this Agreement, the Consultant, for itself, its assignees, and successors in interest agrees to comply with all applicable current federal, state, and local laws, rules, and regulations including, but not limited to:

- a. Building codes and permitting regulations and those regarding employee safety, the workplace environment, and employment eligibility verifications as required by the Immigration and Naturalization Service;
- b. Qualification to perform "personal services" or "architectural and engineering services" or "professional services", including any services rendered by any person, other than as an employee of the agency, contracting to perform activities within the scope of the general definition of professional practice in Chapters 18.08, 18.43, or 18.96 RCW;
- c. Title VI of the Civil Rights Act of 1964 (42 USC Chapter 21 Subchapter V Section 2000d through 2000d-4a) and with regard to this act, the Consultant is also bound by the provisions of Section 16(l) below;
- d. Federal-aid Highway Act of 1973 (23 USC Chapter 3 Section 324);
- e. Rehabilitation Act of 1973 (29 USC Chapter 16 Subchapter V Section 794);
- f. Age Discrimination Act of 1975 (42 USC Chapter 76 Section 6101 et. seq.);
- g. Civil Rights Restoration Act of 1987 (Public Law 100-259);
- h. American with Disabilities Act of 1990 (42 USC Chapter 126 Section 12101 et seq.);
- i. 23 CFR Part 200;
- j. RCW 49.60.180; and
- k. Regulations relative to non-discrimination in federally assisted programs of the Port, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the "Regulations"), including items (i) through (iv) below, which the Consultant shall include in every sub-contract, provided, however, that in the event a Consultant becomes involved in, or is threatened with, litigation with a sub-consultant or supplier as a result of such direction, the Consultant may request that the Port and the State of Washington enter into such litigation to protect the interest of the relevant state or federal agency and the State of Washington and, in addition, the Consultant may request the United States enter into such litigation to protect the interests of the United States:
 - i. *Non-discrimination*: The Consultant, with regard to the Work performed during the Agreement, shall not discriminate on the grounds of race, color, sex, or national origin in the selection and retention of sub-consultants, including procurement of materials and leases of equipment. The Consultant shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the Agreement covers a program set forth in Appendix B of the Regulations;
 - ii. *Solicitations for Sub-consultants, Including Procurement of Materials and Equipment*: In all solicitations either by competitive bidding or negotiations made by the Consultant for work to be performed under a sub-contract, including procurement of materials or leases of equipment, each

potential sub-consultant or supplier shall be notified by the Consultant of the Consultant's obligations under this Agreement and the Regulations relative to non-discrimination on the grounds of race, color, sex, or national origin and shall agree to be bound by the Regulations.

- iii. *Information and Reports:* The Consultant shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts other sources of information, and its facilities as may be determined by the Port, State or the Federal agency (including Federal Highway Administration) to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a Consultant is in the exclusive possession of another who fails or refuses to furnish this information, the Consultant shall so certify to the Port, State or Federal agency as appropriate, and shall set forth what efforts it has made to obtain the information.
- iv. *Sanctions for Non-compliance:* In the event of the Consultant's non-compliance with the non-discrimination provisions of this Agreement, the Agency shall impose such Agreement sanctions as it, the State or Federal agency may determine to be appropriate, including but not limited to:
 1. Withholding of payments to the Consultant under the Agreement until the Consultant complies, and/or;
 2. Cancellation, termination, or suspension of the Agreement, in whole or in part.

17. NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY

- a. The Consultant warrants that they have not employed or retained any company or person, other than a bona fide employee working solely for the Consultant, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Consultant, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warrant, the Port shall have the right to annul this Agreement without liability or, in its discretion, to deduct from this Agreement price or consideration or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.
- b. In the event that the Port uses USDOT funds in relation to this Agreement, the Consultant, and each sub-consultant, shall carry out applicable requirements of 49 CFR in the award and administration of USDOT-assisted contracts. Failure by the Consultant to carry out these requirements is a material breach of this Agreement that may result in the termination of this Agreement.
- a. Participation for Disadvantaged Business Enterprises (DBE), if required, per 49 CFR, or participation of Minority Business Enterprises (MBE), and Women Business Enterprises (WBE), shall be shown on the heading of this Agreement. If DBE, MBE or WBE firms are utilized, the amounts authorized to each firm and their certification number will be listed in this Agreement by amendment. If the Consultant is a DBE firm they must comply with the Commercial Useful Function (CUF) regulation outlined in the Port's "DBE Program Participation Plan", if the Port has adopted such a plan. The mandatory DBE participation goals of the Agreement are those established by WSDOT's Highway and Local Programs Development Engineer in consultation with the Port, if the Port has adopted such a plan.

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

19. RELATIONSHIP OF THE PARTIES The Consultant's relationship with the Port shall be that of an independent contractor and this Agreement shall not be construed to create any association, partnership, joint venture, employee or agency relationship between the Parties. Consultant shall have no authority (and shall not hold itself out as having authority) to bind the Port and shall not make any agreements, commitments or representations that would bind, purport to bind or create obligations on the part of the Port without the Port's prior written consent. Consultant shall not be entitled to any benefits offered by the Port to its employees and the Port shall not be responsible for withholding or paying any income, payroll, Social Security or other federal, state or local taxes, making any insurance

contributions, including unemployment or disability, or obtaining worker's compensation insurance on Consultant's behalf.

20. CONFIDENTIALITY

- a. In connection with the performance of this Agreement, the Consultant may be provided with certain information concerning the Port which is confidential, proprietary or otherwise not generally available to the public and all portions of analyses, data, compilations, notes, forecasts, summaries, studies and other materials prepared by Consultant or Consultant's representatives, or otherwise on Consultant's behalf, that contain, reflect or are based in whole or in part, on such information (the "Confidential Information"). The Consultant agrees that such Confidential Information shall be used solely for the purposes of performing Consultant's obligations under this Agreement, shall be kept strictly confidential and shall not be disclosed to any person for any reason, except to the Consultant's representatives who need to know such Confidential Information for the purpose of performing this Agreement. The Consultant agrees to undertake reasonable precautions to safeguard and protect the confidentiality of the Confidential Information and to prevent its representatives from prohibited or unauthorized disclosure or uses of the Confidential Information, and Consultant will be responsible for any breach or threatened breach of this Section 20 by any of its representatives.
- b. In the event that Consultant is required by law, or any governmental, judiciary or regulatory authority or securities exchange to disclose any Confidential Information, Consultant will provide the Port with prompt written notice of such requirement, and in no case later than 48 hours after becoming aware of such requirement, but in all events in sufficient time to enable the Port to object to disclosure and/or to seek an appropriate protective order or other remedy or, in the Port's sole discretion, waive compliance with the provisions of this Section 20, and Consultant will consult and cooperate with the Port to the extent permitted by law, regulation and the requesting authority with respect to taking steps to resist or narrow the scope of such requirement or legal process. If a protective order or other remedy is not obtained and the terms of this Section 20 are not waived, and disclosure of Confidential Information is legally required, Consultant will disclose such information only to the extent legally required, in the opinion of Consultant's counsel.
- c. The Consultant acknowledges that the Port is required by statute (RCW 42.56) to make certain of its records available for public inspection, which may include submission of materials related to Consultant. Consultant acknowledges and agrees that the Port will have no obligation or any liability to the Consultant in the event that the Port must disclose any such materials, including those marked proprietary, confidential or otherwise.

21. ACCESS TO DATA Consultant shall provide access to data generated under this Agreement to Port and its duly authorized agents at no additional cost. This includes access to all information that supports the findings, conclusions, and recommendations of the Consultant's reports, including computer models and methodology for those models.

22. TREATMENT OF ASSETS

- a. All property furnished by the Port to Consultant shall be used solely for the performance of this Agreement, shall remain the sole legal property of the Port and shall remain on the Port's premises.
- b. Title to all property furnished by the Consultant, for the cost of which the Consultant is entitled to be reimbursed as a direct item of cost under this Agreement, shall pass to and vest in the Port upon delivery of such property by the Consultant. Title to other property, the cost of which is reimbursable to the Consultant under this Agreement, shall pass to and vest in the Port upon (i) issuance for use of such property in the performance of this Agreement, or (ii) commencement of use of such property in the performance of this Agreement, or (iii) reimbursement of the cost thereof by the Port in whole or in part, whichever first occurs.
- c. The Consultant shall be responsible for any loss or damage to property of the Port which results from the negligence of the Consultant or which results from the failure on the part of the Consultant to maintain and administer that property in accordance with sound management practices.
- d. If any Port property is lost, destroyed, or damaged, the Consultant shall immediately notify the Port and shall take all reasonable steps to protect the property from further damage.

- e. The Consultant shall surrender to the Port all property of the Port prior to settlement upon completion, termination, or cancellation of this Agreement.
- f. All references to the Consultant under this clause shall also include Consultant's employees or agents.

23. COPYRIGHT PROVISIONS

- a. Unless otherwise provided, all Materials produced under this Agreement shall be considered "works for hire" as defined by the U.S. Copyright Act and shall be owned by the Port. The Port shall be considered the author of such Materials. In the event the Materials are not considered "works for hire" under the U.S. Copyright laws, Consultant hereby irrevocably assigns all right, title, and interest in Materials, including all intellectual property rights, to the Port effective from the moment of creation of such Materials. "Materials" means all items in any format and includes, but is not limited to, data, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions, including any deliverables pursuant to Section 5 of this Agreement. Ownership includes the right to copyright, patent, register, and the ability to transfer these rights.
- b. For Materials that are delivered under the Agreement, but that incorporate pre-existing materials not produced under the Agreement, Consultant hereby grants to the Port a nonexclusive, royalty-free, irrevocable license (with rights to sublicense others) in such Materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. The Consultant warrants and represents that Consultant has all rights and permissions, including intellectual property rights and rights of publicity, necessary to grant such a license to the Port and is free from claims from any other party.
- c. The Consultant shall exert all reasonable effort to advise the Port, at the time of delivery of Materials furnished under this Agreement, of all known or potential invasions of privacy contained therein and of any portion of such document which was not produced in the performance of this Agreement. The Port shall receive prompt written notice of each notice or claim of copyright infringement received by the Consultant with respect to any data delivered under this Agreement. The Port shall have the right to modify or remove any restrictive markings placed upon the data by the Consultant.
- d. Any reuse or modification by Port of such materials for purposes other than intended by the Consultant shall be at the Port's risk.
- e. Consultant shall have free right to retain, copy and use any tangible materials or information procedure but only for its own internal purposes. Use of documents or other materials prepared under this Agreement for promotional purposes shall require the Port's prior consent.

24. PRIVACY Personal information collected, used, or acquired in connection with this Agreement shall be used solely for the purposes of this Agreement. Consultant agrees not to release, divulge, publish, transfer, sell, or otherwise make known to unauthorized persons personal information without the express written consent of the Port. Consultant agrees to implement physical, electronic, and managerial safeguards to prevent unauthorized access to personal information. Any breach of this provision may result in termination of the Agreement and the demand for return of all personal information. The Consultant agrees to indemnify and hold harmless the Port for any damages related to the Consultant's unauthorized use of personal information. For purposes of this provision, personal information includes, but is not limited to, information identifiable to an individual that relates to a natural person's health, finances, education, business, use or receipt of governmental services, or other activities, names, addresses, telephone numbers, social security numbers, driver license numbers, financial profiles, credit card numbers, financial identifiers, and other identifying numbers.

25. PUBLICITY The Consultant agrees not to publish or use the Port's name, or any description which in the Port's sole judgment can reasonably be implied to refer to the Port, in any advertising, marketing or publicity materials without the prior written consent of the Port.

26. RECORDS MAINTENANCE The Consultant shall maintain complete financial records relating to this Agreement and the Work performed hereunder, including all books, records, documents, magnetic media, receipts, invoices, and other evidence relating to this Agreement and performance of the services described herein, including but not limited to, accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Agreement. Consultant shall retain such records for a period of six years

following the date of project completion. At no additional cost, these records, including materials generated under the Agreement, shall be subject at all reasonable times to inspection, review, or audit by the Port, the Office of the State Auditor, and federal and State officials so authorized by law, rule, regulation, or agreement. If any litigation, claim, or audit is started before the expiration of the six-year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

27. TERMINATION FOR CAUSE

- a. The Port may terminate this Agreement for cause if the Consultant is in material breach under any provision of this Agreement and such breach is not cured within thirty (30) days after Consultant is made aware of the action giving rise to such breach;
- b. Prior to termination under this Section 27(a), and upon notice to Consultant, the Port has the right to suspend all or part of the Agreement, withhold further payments, or prohibit the Consultant from incurring additional obligations to investigate the alleged breach and determine whether corrective action or termination will be required.
- c. In the event of termination under this Section 27(a), the Consultant shall be liable for damages as authorized by law including, but not limited to, any cost difference between the original Agreement and the replacement or cover costs and all administrative costs directly related to the replacement costs, e.g. cost of the competitive bidding, mailing, advertising, and staff time.
- d. Consultant shall be entitled to terminate this Agreement for cause if the Port is in material breach under any provision of this Agreement and such breach is not cured within thirty (30) days after Port is made aware of the action giving rise to such breach.
- e. The rights and remedies of the Port provided in this Section 27 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.
- f. If termination for cause is determined later to have been wrongful or without justification, then the termination will be considered to have been termination for convenience.

28. TERMINATION FOR CONVENIENCE

- a. The Port may terminate this Agreement for convenience if:
 - i. The Port provides Consultant with 10 days written notice of such intent to terminate this Agreement in whole or in part; or
 - ii. In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Agreement and prior to normal completion, subject to renegotiation at the Port's discretion under any new funding limitations and conditions.
- b. If the Port terminates this Agreement under Section 28(a), the Port shall be liable only for payment required under the terms of this Agreement for services rendered or goods delivered prior to the effective date of termination and for costs incurred by reason of such termination. Consultant hereby waives and forfeits all other claims for payment and damages, including without limitation, anticipated profits.

29. TERMINATION PROCEDURES Upon notice of termination of this Agreement:

- a. The Port shall pay to the Consultant the agreed upon price, if separately stated, for completed Work accepted by the Port, and the amount agreed upon by the Consultant and the Port for (i) completed Work for which no separate price is stated, (ii) partially completed Work, (iii) other property or services which are accepted by the Port, and (iv) the protection and preservation of property, unless the termination is for breach, in which case the Port shall determine the extent of the liability of the Port. Failure to agree with such determination shall be a dispute within the meaning of Section 30 of this Agreement.
- b. Except as otherwise directed by the Port Project Manager or Contracts and Purchasing Manager, the Consultant shall:
 - i. Stop work under the Agreement on the date, and to the extent specified, in the notice;

- ii. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the Work under the Agreement that is not terminated;
- iii. Assign to the Port, in the manner, at the times, and to the extent directed by the Port Project Manager, all of the rights, title, and interest of the Consultant under the orders and subcontracts so terminated, in which case the Port has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
- iv. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Port to the extent Port may require, which approval or ratification shall be final for all the purposes of this clause;
- v. Transfer title to the Port and deliver in the manner, at the times, and to the extent directed by the Port any property which, if the Project had been completed, would have been required to be furnished to the Port;
- vi. Complete performance of such part of the Work as shall not have been terminated by the Port; and
- vii. Take such action as may be necessary, or as the Port may direct, for the protection and preservation of the property related to this Agreement which is in the possession of the Consultant and in which the Port has or may acquire an interest.

30. DISPUTE RESOLUTION

- a. If a dispute arises relating to this Agreement and cannot be settled through direct discussions after thirty (30) days, the parties agree to endeavor to settle the dispute through a mediation process acceptable to both parties, the cost which shall be divided equally. The Port reserves the right to join any dispute under this Agreement with any other claim in litigation or other dispute resolution forum and the Consultant agrees to such joinder, so that all disputes related to the Project may be consolidated and resolved in one forum.
- b. Port and Consultant agree that, the existence of a dispute notwithstanding, they will continue without delay to carry out all their respective responsibilities under this Agreement which are not affected by the dispute. Both Parties agree to exercise good faith in the dispute resolution and to settle disputes prior to using the dispute resolution panel whenever possible.

31. INDEMNIFICATION

- a. The Consultant shall indemnify and hold the Port, its officers and employees harmless from and shall process and defend at its own expense all claims, demands, or suits at law or equity arising in whole or in part from the Consultant's negligence or breach of any of its obligations under this Agreement; provided that nothing herein shall require a Consultant to indemnify the Port against and hold harmless the Port from claims, demands or suits based solely upon the conduct of the Port, its agents, officers and employees; and provided further that if the claims or suits are caused by or result from the concurrent negligence of (1) the Consultant's agents or employees, and (2) the Port, their agents, officers and employees, this indemnity provision with respect to (i) claims or suits based upon such negligence (ii) the costs to the Port of defending such claims and suits shall be valid and enforceable only to the extent of the Consultant's negligence or the negligence of the Consultant's agents or employees.
- b. The Consultant specifically assumes potential liability for actions brought by the Consultant's own employees against the Port and, solely for the purpose of this indemnification and defense, the Consultant specifically waives any immunity under the state industrial insurance law in accordance with Title 51 of the Revised Code of Washington.
- c. Consultant specifically acknowledges that the provisions contained herein have been mutually negotiated by the parties and it is the intent of the Parties that Consultant provide the broadest scope of indemnity permitted by RCW 4.24.115. Consultant is an independent contractor and responsible for the safety of its employees.

- 32. ATTORNEYS' FEES The prevailing party in any proceeding to enforce any provision of this Agreement shall be entitled to recover reasonable attorneys' fees and costs.

33. **AMENDMENTS** This Agreement shall not be altered, changed, or amended except by an instrument in writing executed by the parties hereto.
34. **ASSIGNMENT** The Work to be provided under this Agreement is not assignable or delegable by either Party, in whole or in part, without the express prior written consent of the other party, which consent shall not be unreasonably withheld.
35. **ENTIRE AGREEMENT** The Agreement and all Exhibits and Schedules attached hereto incorporates all contracts, covenants and understandings between the Parties hereto and such Exhibits are hereby merged into and part of this Agreement. No prior agreement or prior understanding, verbal or otherwise, of the Parties or their agents shall be valid or enforceable unless set forth in this Agreement.
36. **NOTICES** All formal notices which are given or required to be given pursuant to this Agreement shall be hand delivered or mailed postage paid as follows:

If to Port: _____

Port of Longview
 10 Port Way
 Longview, WA 98632
 ATTN: Contracts Administrator
 Email: cengebo@portoflongview.com

If to Consultant: _____

37. **SEVERABILITY** The provisions of this Agreement are intended to be severable. If any term or provision is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the Agreement.
38. **WAIVER** Waiver of any default or breach shall not be deemed to be a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this Agreement unless stated to be such in writing and signed by the Port.
39. **GOVERNING LAW** This Contract shall be deemed to have been executed and delivered within the State of Washington, and the rights and obligations of the Parties hereunder shall be construed and enforced in accordance with, and governed by, the laws of the State of Washington without regard to the principles of conflict of laws. Any action or suit brought in connection with this Agreement shall be brought in the Superior Court of Cowlitz County, Washington.
40. **ORDER OF PRECEDENCE** In the event of an ambiguity in this Agreement, the ambiguity shall be resolved by giving precedence in the following order:
 - i. Executed Amendments to Agreement
 - ii. Executed Agreement
 - iii. Exhibits and Schedules to this Agreement
 - iv. Consultant Proposal
 - v. Request for Qualifications or Proposals
 - vi. Applicable federal, state and local statutes and regulations
 - vii. Any other provision, term, or document incorporated herein by reference or otherwise incorporated.

The agreement becomes effective as of the Effective Date written above.

PORT OF LONGVIEW

CONSULTANT

 Norman G. Krehbiel, Chief Executive Officer
 Chief Executive Officer

 Name, Title

ATTEST:

Port of Longview, Executive Assistant

Date

ATTEST:

Name, Title

Date

**Exhibit A – Scope of Work
Formal Project Authorization**

Project Number: 19-038-PSC

The general provisions and clauses of Agreement No. xx-xxx-PSC shall be in full force and effect for this Project authorization.

Consultant: _____

Project Title: _____

Task	Description	Budget
1		\$
2		\$
3		\$
4		\$
5		\$
6		\$
Total Not to Exceed:		\$

Completion Date: _____

Attachments: The following attachments are incorporated herein to this Project Authorization by reference with the same force and effect as though fully set forth herein:

- Proposal from Consultant dated **xxx xx, 20xx**

Description of Work:

Work as described in the Consultant's Proposal dated **xxx xx, 20xx**, attached herein and incorporated by reference.

Except as expressly provided in this Project Authorization, all other terms and conditions of the master contract, and any subsequent amendments, addenda or modifications hereto, remain in full force and effect.

Rates are as set forth in the Master Agreement No.: **xx-xxx**-PSC unless modified herein.

This Project Authorization shall be effective upon execution by both Parties.

Port Project Manager Signature: _____ Date: _____

Port Executive Signature: _____ Date: _____

Consultant Project Manager Signature: _____ Date: _____

Exhibit B
Payment Terms
(Negotiated Hourly Rates)

The Port shall pay the Consultant at the rates indicated for the Work performed under the terms of this Agreement. The Maximum Total Amount Payable under this Agreement shall not be exceeded without Port's prior written authorization in the form of a negotiated and executed amendment to the Agreement. Such payment shall be full compensation for the Work performed necessary to complete the Project as set forth herein.

The Consultant shall submit invoices to Port covering both professional fees and project expenses, if allowable. Unless otherwise stated, invoices will be paid Net 30 upon receipt of an invoice that, in the sole discretion of the Port, is acceptable to the Port. The Port reserves the right to correct any invoices submitted in error and adjust according to the rates and allowable costs set forth in this Agreement. Port and Consultant agree that any amount paid in error by Port does not constitute a rate change in the amount of the Agreement.

The Consultant shall conform to all applicable portions of 48 CFR Part 31.

No payments in advance or in anticipation of services or supplies shall be paid by the Port under this Agreement.

1. Hourly Rates:
 - a. The Consultant shall be paid by the Port for work done, based upon the negotiated hourly rates shown in Schedules 1 attached hereto.
 - b. For multi-year contracts: Contractor requests for rate increases must be no sooner than two years after contract signature, are at the discretion of the Port; and must be:
 - i. The direct result of increases to wage rates and do not exceed the U.S. Department of Labor Consumer Price Index (CPI) for All Urban Consumers Seattle-Tacoma-Bremerton or other appropriate service rates index agreed upon between the Port and the Consultant.
 - ii. Calculated over the previous 12-month period.
 - iii. Not produce a higher profit margin than that on the original contract.
 - iv. Clearly identify the service titles and hours of service performed if specified within the contract and the before and after wage rates for such titles.
 - v. Be filed with the Contracts Administrator a minimum of 90 calendar days before the effective date of proposed increase.
 - vi. Be accompanied by detailed documentation acceptable to the Contracts Administrator sufficient to warrant the increase.
 - vii. The Adjustment (if any) shall remain firm and fixed for at least 365 days after the effective date of the adjustment.
 - viii. Should not deviate from the original contract pricing scheme/methodology.
2. Direct Non-Salary Costs: Direct non-salary costs will be reimbursed at the actual cost to the Consultant. These charges may include, but are not limited to, the following items: travel, printing, long distance telephone, supplies and sub-consultant costs. All travel must be pre-approved by the Port. All non-salary costs shall comply with the following provisions:
 - a. Air or train travel will be reimbursed only to economy class levels unless otherwise approved by the Port. The Consultant shall comply with the rules and regulations regarding travel costs (excluding air, train, and rental car costs) in accordance with the Port's Travel Policy. However, air, train, and rental car costs shall be reimbursed in accordance with 48 CFR Part 31.205-46 "Travel Costs".
 - b. The billing for direct non-salary costs shall include an itemized listing of the charges directly identifiable with the Project.
 - c. Receipts shall be detailed and itemized.
 - d. Reimbursement for vehicles used in connection with the work will be at the federally approved mileage rates.
 - e. All above charges must be necessary for the Work provided under this Agreement.
3. Sub-consultants: Sections 1 and 2 shall apply to sub-consultants as they do the Consultant. Schedule 1 shall be required for approved sub-consultants prior to the sub-consultant beginning work.

4. Contingency Task: When applicable, the use of contingency may be authorized, at the Port's sole discretion, for work unanticipated but necessary to complete the deliverables as described in the Scope of Work. The use of contingency must be authorized in writing (e-mail is acceptable) by the Port, and shall be done so prior to work related to the contingency commences.
5. Monthly Progress Payments: Progress payments may be claimed on a monthly basis for all costs authorized in 1 above. The monthly billing shall be supported by detailed statements for hours expended at the rates established in Schedule 1, including names and classifications of all employees, and billing for all direct non-salary expenses. To provide a means of verifying the billed salary costs for the Consultant's employees, the Port may conduct employee interviews. These interviews may consist of recording the names, titles, salary rates, and present duties of those employees performing the Work on the Project at the time of the interview. The Consultant shall direct its employees to cooperate and provide this information when requested by the Port.
6. Final Payment: Final payment of any balance due the Consultant of the gross amount earned will be made promptly upon its verification by the Port after the completion of the Project under this Agreement, contingent upon receipt of all PS&E, plans, maps, notes, reports, electronic data and other related documents which are required to be furnished under this Agreement. Acceptance of such final payment by the Consultant shall constitute a release of all claims for payment, which the Consultant may have against the Port unless such claims are specifically reserved in writing and transmitted to the Port by the Consultant prior to its acceptance. Said final payment shall not, however, be a bar to any claims that the Port may have against the Consultant or to any remedies the Port may pursue with respect to such claims.

The payment of any billing will not constitute agreement as to the appropriateness of any item. All required adjustments will be made and reflected in a final payment. In the event that an audit reveals an overpayment to the Consultant, the Consultant will refund such overpayment to the Port within thirty (30) days of notice of the overpayment. Such refund shall not constitute a waiver by the Consultant for any claims relating to the validity of a finding by the Port of overpayment. The Consultant has twenty (20) days after receipt of the notice to repay the Port to appeal the finding.

7. Inspection of Cost Records: The Consultant and their sub-consultants shall keep available for inspection by representatives of the Port, State and Federal government, for a period of three (3) years after receipt of final payment, the cost records and accounts pertaining to this Agreement and all items related to or bearing upon these records with the following exception: if any litigation, claim or audit arising out of, in connection with, or related to this Agreement is initiated before the expiration of the three (3) year period, the cost records and accounts shall be retained until such litigation, claim, or audit involving the records is completed.

Schedule 1
Consultant Fee Determination – Summary Sheet
(Specific Rates of Pay)
Fee Schedule

Discipline or Job Title	Hourly Rate
	\$
	\$
	\$
	\$
	\$
	\$
	\$
	\$
	\$
	\$
	\$
	\$
	\$
	\$
	\$
	\$
	\$
	\$