



REQUEST FOR PROPOSALS (RFP) NO. 072143

WORKERS' COMPENSATION THIRD PARTY CLAIMS ADMINISTRATION

Issued by
Port of Tacoma and The Northwest Seaport Alliance
One Sitcum Plaza
P.O. Box 1837
Tacoma, WA 98401-1837

RFP INFORMATION	
Contact:	Axa Turney, Procurement
Email Addresses:	procurement@portoftacoma.com
Phone:	(253) 888-4768
Submittal Date	September 3, 2024 @ 2PM
Questions Due Date	August 19, 2024 @ 2PM

SUBMIT ALL QUESTIONS AND PROPOSALS VIA THE PROCUREMENT PORTAL. (LINK LOCATED ON THE LEFT SIDE OF THE PROCUREMENT WEB PAGE)

PORT and NWSA
Request for Proposals (RFP) 072143
Workers' Compensation Third Party Claims Administration

A. PURPOSE

The Port of Tacoma (**PORT**) and Northwest Seaport Alliance (**NWSA**) is soliciting proposals from firms interested in providing Third Party Workers' Compensation Administrative services. The PORT and NWSA anticipates awarding one contract for each entity using the same administrator. The period of performance of the contract is two (2) years from the execution of the contract, with three (3) options for one (1) additional year of renewal at the sole discretion of the PORT and NWSA, for a possible total of five (5) years. There will be two contracts for not exceed a total of \$300,000.00 for Port of Tacoma and \$150,000.00 for Northwest Seaport Alliance.

B. BACKGROUND

Created by Pierce County citizens in 1918, the Port of Tacoma is a major center for container cargo, bulk, break-bulk, autos and heavy-lift cargo. To learn more about the PORT, visit www.portoftacoma.com.

Formed in 2015, The Northwest Seaport Alliance is a marine cargo operating partnership of the ports of Tacoma and Seattle. The NWSA is the fourth-largest container gateway in North America. To learn more about the NWSA, visit www.nwseaportalliance.com.

The Port of Tacoma began a program of self-insurance in July of 1986 and the NWSA began an equivalent program of self-insurance in January of 2015.

Combined, the Port and the NWSA have fewer than 350 full-time employees performing managerial, supervisory, administrative, maintenance, security, longshore cargo handling and related functions. As public agencies organized under the Revised Code of Washington (**RCW**), the Port and the NWSA are not subject the U.S. Longshore Harbor Workers' and Compensation Act.

The PORT and NWSA's Standard Terms and Conditions are included in Attachment B to this RFP. By submitting a proposal, the Proposer represents that it has carefully read and agrees to be bound by the PORT and NWSA's Standard Terms and Conditions. Identify during the question submittal and response period, any sections you consider onerous, clarify why you consider these sections onerous, propose alternative language and describe why it is in the PORT and NWSA's best interests to adopt the alternative language.

Proposals submitted with altered or conditioned Terms and Conditions without prior written agreement from the PORT and NWSA will be considered non-responsive and not considered for evaluation.

Proposers submit proposals understanding all contract terms and conditions are mandatory. Response submittal is agreement to the Contract without exception. The PORT and NWSA reserves the right to negotiate changes to submitted proposals and to change the PORT and NWSA's otherwise mandatory Contract form during negotiations. If the Proposer is awarded a contract and refuses to sign

the attached Contract form, the PORT and NWSA may reject the Proposer from this and future solicitations for the same work. Under no circumstances shall Proposer submit its own boilerplate of terms and conditions.

C. SCOPE OF SERVICES

Consultant shall provide self-insured workers' compensation claims administration services to the Port of Tacoma (hereinafter **Port**) and The Northwest Seaport Alliance (hereinafter **NWSA**) as required under Chapter 296-15 of the Washington Administrative Code (**WAC**). For simplicity, the term **Client** (below) shall serve to indicate either the Port of Tacoma or The Northwest Seaport Alliance as their respective interests apply. Services under these contracts shall include:

1. Receive notice of and create files on each claim reported and maintain these files for the Client.
2. Investigate all claims as required to determine their validity and compensability.
3. Determine proper benefits due on compensable claims.
4. Make timely payment of medical and indemnity benefits due, in accordance with payment procedures as established from funds provided by the Client.
5. Prepare documentation and defense of cases considered non-compensable and assist legal counsel selected by the Client in preparation of cases for hearing, appeals and/or trial.
6. Maintain and provide the Client pertinent data on all claim payments.
7. Provide monthly and annual loss and payment reports in tailored formats, as mutually agreed at the inception of the program, showing descriptive data, details of each month's payments, total payments, reserves and total experience for each claim. Loss reports must include annual (calendar year) summaries for the period beginning July 1986 for the PORT and 2015 for NWSA.
8. Develop and execute proactive claim resolution strategies for all open indemnity (and extended medical only) claims in close coordination with designated Client contact(s). Track and report progress relative to the same.
9. Coordinate additional claim-related (i.e., allocated) services including but not limited to vocational, nursing, legal and investigation services.
10. Provide the Client, its insurance broker and excess insurers such reports as may be reasonably required under the applicable insurance policy. Monitor retentions to ensure any and all potential payments are received.
11. Provide information and assistance as may be required for preparation and filing of all reports required by the Industrial Insurance Act of the State of Washington (hereinafter **Act**), and any other applicable law, in connection with the Client's approved self-insured status.
12. File with the appropriate State of Washington administrative agencies, including but not limited to the Department of Labor and Industries, such information as is required by the Act and any other applicable law with respect to each claim.

13. Provide loss control services, consultations and surveys as mutually agreed.
14. Perform all services rendered pursuant to this Agreement in full compliance with the Act and all other applicable law(s).
15. Prepare annual OSHA 300 reports, or equivalent as may apply.
16. Electronically interface with the Centers for Medicare and Medicaid Services (**CMS**) to capture and report data in the format prescribed by CMS Specifications.
17. Report directly to CMS on behalf of the Client as an Account Designee (reporting agent), as such term is defined in the CMS User Guide published on March 16, 2009 (**Account Designee**), or as defined in any more recent CMS User Guide, or equivalent.
18. To the extent the Client is the Responsible Reporting Entity (**RRE**) as that term is defined in Medicare, Medicaid and SCHIP Extension Act (**MMSEA**) Section 111 as set forth in 42 U.S.C. 1395Y, Consultant will assist the Client as follows:
 - a. Develop or maintain an electronic interface with CMS to forward the information needed to meet Client's MMSEA reporting obligations.
 - b. As the custodian of the original claims information from which reports are compiled, Consultant will be the authorized Account Designee for the Client. As Account Designee, the Consultant will prepare and submit test files to CMS in accordance with the applicable regulations and requirements of the CMS Specifications.
 - c. Consultant will prepare the CMS Medicare beneficiary required data files and submit them to CMS or otherwise forward them as required by applicable regulations.
 - d. Consultant will establish and implement proper safeguards against unauthorized use and disclosure of the data exchanges for purposes of complying with MMSEA. Proper safeguards shall include, but not be limited to, the adoption of policies and procedures to ensure that the data obtained shall be used solely in accordance with Section 1106 of the Social Security Act [42 U.S.C. 1306], Section 1874(b) of the Social Security Act [42 U.S.C. 1395kk(b)], Section 1862(b) of the Social Security Act [42 U.S.C. 13958y(b)], and the Privacy Act of 1974, as amended [5 U.S.C. 552a]. Consultant will establish appropriate administrative controls to protect the confidentiality of data to prevent unauthorized access to the data provided by CMS. Further, Consultant agrees to grant an authorized representative of the Center for Medicare and Medicaid Services (CMS) and/or Client access to facilities where the Client's Medicaid data is stored or kept for purposes of inspecting security arraignments at a mutually agreeable date and time. The purpose of any such inspection will be to confirm that the Consultant is in compliance with all applicable security requirements. Access to the records matched to any records created by the matching process shall be restricted to authorized CMS, Consultant and Client employees, agents and/or officials who require access to perform their official duties in accordance with the uses of the information as authorized under Section 111 of the MMSEA of 2007 and this Agreement. Such personnel shall be advised of (1) the confidential nature of the information; (2) safeguards required to protect the information; and (3) the administrative, civil and criminal penalties for noncompliance contained in applicable Federal laws.

19. Consultant will be responsible for payment of any and all fines assessed to the Client in regards to compliance with the Medicare beneficiary reporting requirements of MMSEA of 2007 that relate to the negligent acts or omissions of the Consultant except to the extent that:

- a. Such fines or penalties are the direct result of specific direction given by the Client and/or its agent or the negligent actions or omissions of Client and/or its agent;
- b. Consultant did not receive information from Client that is essential to the performance of the duties set forth herein in a timely manner so as to be able to comply with the terms this Agreement.

20. Assist and provide guidance and expertise in responding to audits by the state or other inquiries from outside agencies. Prepare reports or documentation to justify or defend decisions or actions taken by the TPA if required to respond to the audit.

D. DELIVERABLES:

1. Monthly and annual summary and detailed loss reports
2. Ability to convert existing data and loss histories into a useable format to maintenance consistency of records.
3. Monthly check registers
4. Additional reports as required by the Department of Labor and Industries and/or applicable statute. This may include reports, letters or documentation needed to respond to any Labor and Industries audits.
5. Weekly, monthly or quarterly meetings as determined by the Client.
6. Ability to securely transmit documentation between client and vendor

E. PROPOSAL ELEMENTS & EVALUATION CRITERIA:

Proposals should present information in a straightforward and concise manner, while ensuring complete and detailed descriptions of the proposing Vendor (to include the prime, key team members and major sub-consultants) and the team's ability to meet the requirements and provide the requested services of this RFP. The written proposals should be prepared in the same sequential order of proposal criteria as outlined below.

Proposals are limited to 10 numbered pages (8 ½ by 11 inch) **excluding** the cover letter, compensation information and all appendices. All pages shall be in portrait orientation with 1-inch (1") margins. Font size shall be 10 point or larger. Proposals that do not follow this format may be rejected. Submittals need to be limited to **9 MB** in total size.

The cover letter shall include the RFP Title and Number, Name, Title, Email Address, Phone Number and current Address of the submitting firm's main contact and include the following information:

- Describe any claim submitted by any client against the prime firm (TPA) within the past two (2) years related to the professional services provided by the firm or its key personnel. For purposes of this request, **claim** means a sum of money in dispute in excess of 10% of the firm's fee for the services provided.

- Any real or perceived conflicts of interest for team members, inclusive of the prime, sub-consultants and key team members.

Proposals are to address, and will be evaluated upon, the following criteria:

INITIAL EVALUATION PHASE

1. Qualifications & Experience.....40 PTS

- Identify the proposed team (to include working titles, degrees, certificates, and licenses), demonstrate the team's experience in performing the requested services, and describe how the team meets or exceeds the required qualifications.
 - Resumes of the key individuals may be included as an appendix and are not included in the total page count. Resumes are to be limited to one single-sided, letter-size page. Resumes exceeding this limit will not be reviewed.
- Provide an organizational chart demonstrating the relationships and hierarchy of the team described above and availability to support Port and NWSA's account. Identify individuals by name, position, discipline and firm. Identify key back up personnel.
- The Port and NWSA will evaluate the experience, technical competence, and qualifications of the Key Personnel identified in their project-specific roles and responsibilities, and the overall organization of the project team. Emphasis will be placed on experience and expertise in performing work of similar scope and complexity.
- Capacity to perform the work (including any specialized services) within the time constraints identified, considering the firm's current and planned workload.
- Include a list of three (3) recent contracts in the last five (5) years, including a point of contact, contact information (phone and email), and brief description, for services relevant to the items listed in the Scope of Services as performed by the key personnel. Only projects completed by key members of the project team will be considered.

2. Claims handling approach and reporting methodology50 PTS

Proposals should clearly outline the team's recommended approach and methodology for:

- Accomplishing the Scope of Services: Clearly describe the approaches and methods that will be used to accomplish the tasks required in the scope of services. Include a summary of innovative ideas and suggestions for enhancing the scope of services.
- Coordination & Communication: Provide a plan for communications and coordination between the team and various stakeholders.
- What risks that are beyond your control do you see in providing this service and how would you mitigate them?

3. Compensation 10 PTS

Present detailed information on the firm's proposed fee structure for all resources for the services proposed.

Compensation information MUST be provided separately from the proposal, in an individual PDF document.

All rates quoted shall be:

- a) Fixed, fully burdened, including, but not limited to, per diem, administrative overhead, travel, lodging, and transportation (all direct/indirect expenses included);
- b) Quoted in US Dollars;
- c) Full cost inclusive of sales tax and other government fees, taxes and charges; and
- d) Valid throughout the contract period unless otherwise amended and agreed to by both parties in writing.

4. Vendor Cybersecurity Self-Evaluation (if requested) Pass/Fail

VENDOR CYBERSECURITY SELF-ASSESSMENT (Attachment E) information **MUST** be provided in an individual PDF document as a separately labeled attachment.

FINAL EVALUATION PHASE (if applicable)

1. Oral Presentations (if requested) 100 PTS

Oral Presentations will be conducted with the top-ranked Vendors. Failure to participate in the process will result in the Vendor's disqualification from further consideration. Oral Presentations will be conducted by online video meeting.

2. References (if requested) Pass/Fail

Reference checks may be performed on the selected firm, if based directly on the proposals received, or on shortlisted firms if Oral Presentations are being requested. The PORT and NWSA may evaluate the reference checks to assess the proposed Vendor's overall performance and success of previous, similar work. Reference checks may also be utilized to validate information contained in the proposal.

LIST OF ATTACHMENTS:

ATTACHMENT A – INSTRUCTIONS FOR PROPOSING (ATTACHED TO RFP)

ATTACHMENT B – PERSONAL SERVICES CONTRACT TEMPLATE & TERMS AND CONDITIONS (ATTACHED TO RFP)

ATTACHMENT C – COST BREAKDOWN-OFFER TEMPLATE (SEPARATE ATTACHMENT)

ATTACHMENT E – VENDOR CYBERSECURITY SELF-ASSESSMENT (SEPARATE ATTACHMENT)

PROCUREMENT PROCESS

SOLICITATION TIMELINE:

This is the procurement schedule for this RFP. The dates shown below are estimated, are provided for information only, and are subject to change at the sole discretion of the PORT & NWSA.

Issuance of RFP	August 5, 2024
*Last Day To Submit Questions	August 19, 2024
*Proposal packets due	September 3, 2024
Review/Shortlist	September 10, 2024
Oral Presentations (if required)	September 23-26, 2024
*Final Selection	October 4, 2024
*Execute Contract	October 2024

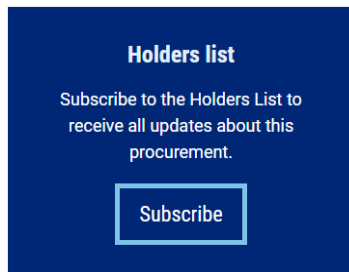
*Dates are tentative and may be subject to change.

All status updates on the above solicitation timeline will be announced on the PORT's website for this solicitation.

VENDOR OBLIGATION

The Northwest Seaport Alliance (**NWSA**) and Port of Tacoma's (**PORT**) Invitation to Bid, Request for Proposals and Request for Qualifications can be accessed on the PORT's website, www.portoftacoma.com under 'Business -> Contracting -> Procurement.'

When viewing the details page for this procurement on the PORT's Website firms have the option of subscribing to the Holder's List.



By subscribing to the Holder's List, firms will automatically be notified when new documents or changes relating to this procurement occur.

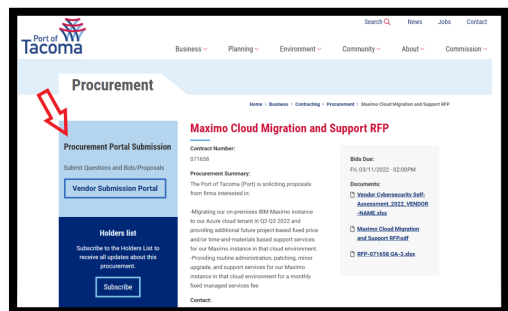
***Only those who have subscribed to the Holder's List will receive notifications throughout the procurement process, up until a firm is selected.**

COMMUNICATION / INQUIRES

All communications is to be sent through the RFP Coordinator.

Proposers who, relative to this scope of services, contact any individuals or Commission members representing the NWSA or the PORT, other than the Procurement Representative listed on the solicitation may be disqualified from consideration.

Written questions about the meaning or intent of the Solicitation Documents shall only be submitted to the Procurement Department via the Procurement Portal (Portal link is accessible via this specific procurements website. See left side of page.).



Proposers who may have questions about provisions of these documents are to submit their questions by the date listed on the solicitation. The PORT will respond to all written questions submitted by this deadline, and responses will be posted on the corresponding procurements website.

ADDENDA

The PORT may make changes to this Solicitation. Oral or other interpretations, clarifications or submittal instructions will be without legal effect. Any information modifying a solicitation will be furnished in a formal, written addendum. If at any time, the PORT changes, revises, deletes, increases, or otherwise modifies the Solicitation, the PORT will issue a written Addendum to the Solicitation. Addenda will be posted to the PORT's web site and conveyed to those potential submitters who have requested to be placed on the Holder's List.

SUBMITTAL PROCESS

Electronic Submittal:

Proposals must be received via the procurement portal on or before the date and time outlined on the front page of this proposal.

Procurement Submission Portal Instructions:

Navigate to this procurements web page (referencing the number and name) via the following link [Procurement | Port of Tacoma](#). While on the procurements page, click on the 'Procurement Submission Portal' link (located on the lefthand side of the page).

Full instructions on how to utilize the submission portal can be found on the PORT's website, www.portoftacoma.com under 'Business -> Contracting -> Procurement'. See bold red heading above the bid search box "Bid and Question Submittal Instructions", to access the thorough instructions in PDF format.

Please submit proposal, including all separate attachments and compensation in separate Adobe Acrobat PDF format. Submittals need to be limited to **9 MB in total size**.

It is the Consultant's responsibility to verify the receipt of the submittal. Electronic verification will be provided.

***Late proposals will not be accepted by the PORT. Proposals received after the stated date and time will not be reviewed and shall be deemed non-responsive.**

All proposals submitted shall be valid and binding on the submitting firm for a period of ninety (90) days following the submittal deadline and for any extension of time granted by the submitting firm.

EVALUATION AND AWARD PROCESS

An evaluation team, using the point method of award, will review each proposal and evaluate all responses received based upon the criteria listed herein. The PORT may request clarifications or additional information, if needed. After the evaluation team individually scores each proposal, the scores are tallied, and the firms are ranked based on the scores.

A selection may be made based on the proposals and initial evaluation criteria alone. Alternatively, the evaluation team may create a short list of the top ranked firms and invite the short-listed firms in for interview and/or check references. Scores for reference checks and interviews will be tallied and added to the short-listed firm's initial evaluation scores. Final selection will be based on the accumulative score.

The PORT intends to select the Proposer who represents the best value to the PORT.

The PORT reserves the right to accept or reject any or all information in its entirety or in part and to waive informalities and minor irregularities and to contract as the best interest of the PORT may require. The PORT reserves the right to reject any or all Proposals submitted as non-responsive or non-responsible.

PROCEDURE WHEN ONLY ONE PROPOSAL IS RECEIVED

In the event that a single responsive proposal is received, the Proposer shall provide any additional data required by the PORT to analyze the proposal. The PORT reserves the right to reject such proposals for any reason.

GENERAL INFORMATION

News releases pertaining to this RFP, the services, or the project to which it relates, shall not be made without prior approval by, and then only in coordination with, the PORT.

COSTS BORNE BY PROPOSERS

All costs incurred in the preparation of a Proposal and participation in this RFP and negotiation process shall be borne by the proposing firms.

PROTEST PROCESS

A Bidder protesting for any reason the Bidding Documents, a Bidding procedure, the PORT's objection to a Bidder or a person or entity proposed by the Bidder, including but not limited to a finding of non-Responsibility, the Award of the Contract or any other aspect arising from or relating in any way to the Bidding shall cause a written protest to be filed with the PORT within two (2) business days of the event giving rise to the protest. (Intermediate Saturdays, Sundays, and legal holidays are not counted as business days.) The written protest shall include the name of the protesting Bidder, the bid solicitation number and title under which the protest is submitted, a detailed description of the specific

factual and legal grounds for the protest, copies of all supporting documents, evidence that the apparent low bidder has been given notice of the protest, and the specific relief requested. The written protest shall be sent by email to procurement@portoftacoma.com.

Consideration. Upon receipt of the written protest, the PORT will consider the protest. The PORT may, within three (3) business days of the PORT's receipt of the protest, provide any other affected Bidder(s) the opportunity to respond in writing to the protest. If the protest is not resolved by mutual agreement of the protesting Bidder and the PORT, the Contracts Director of the PORT or his or her designee will review the issues and promptly furnish a final and binding written decision to the protesting Bidder and any other affected Bidder(s) within six (6) business days of the PORT's receipt of the protest. (If more than one (1) protest is filed, the PORT's decision will be provided within three (3), but no more than six (6) business days of the PORT's receipt of the last protest.) If no reply is received from the PORT during the six (6) business-day period, the protest will be deemed rejected.

Waiver. Failure to comply with these protest procedures will render a protest waived. Condition Precedent. Timely and proper compliance with and exhaustion of these protest procedures shall be a condition precedent to any otherwise permissible judicial consideration of a protest.

SMALL BUSINESS AND DISADVANTAGED BUSINESS OPPORTUNITIES

The Port of Tacoma encourages participation in all its contracts by MWBE firms certified by the Office of Minority and Women's Business Enterprises (**OMWBE**). Participation may be either on a direct basis in response to this solicitation/invitation or as a subcontractor to a Bidder/Proposer. However, unless required by federal statutes, regulations, grants, or contract terms referenced in the contract documents, no preference will be included in the evaluation of bids/submittals, no minimum level of MWBE participation shall be required as a condition for receiving an award and bids/submittals will not be rejected or considered non-responsive on that basis. Any affirmative action requirements set forth in federal regulations or statutes included or referenced in the contract documents will apply. The selected firm will be required to show evidence of outreach.

PUBLIC DISCLOSURE

Proposals submitted under this Solicitation will be considered public documents and, with limited exceptions, will become public information and may be reviewed by appointment by anyone requesting to do so following the conclusion of the evaluation, negotiation, and award process. This process is concluded when a signed contract is completed between the PORT and the selected Consultant.

If a firm considers any portion of its response to be protected under the law, the vendor shall clearly identify each such portion with words such as **CONFIDENTIAL**, **PROPRIETARY** or **TRADE SECRET** on each page for which the protection is sought. If a request is made for disclosure of such portion, the PORT will notify the vendor of the request and allow the vendor not less than ten (10) days to seek a protective order from the Courts or other appropriate remedy and/or waive the claimed confidentiality. Unless such protective order is obtained and provided to the PORT by the stated deadline, the

PORT will release the requested portions of the proposal. By submitting a response, the vendor assents to the procedure outlined in this paragraph and shall have no claim against the PORT on account of actions taken under such procedure.

PERSONAL SERVICES AGREEMENT NO. [CONTRACTNO]

TITLE: [TITLE]

Consultant: [VENDOR], [VENDORADD]

CONTRACT OWNER: [PM] **PROJECT NO./G/L NO.:** [PROJECTNO]/[G/L]

THIS AGREEMENT is made and entered into by and between the [ENTITY] (*hereinafter referred to as the [PORT/NWSA]*) and [VENDOR] (*hereinafter referred to as the **Consultant***) for the furnishing of [DESCRIPTION] (*hereinafter referred to as the **Project***).

The Port and Consultant mutually agree as follows:

SCOPE OF WORK

Consultant shall provide self-insured workers' compensation claims administration services to the Port of Tacoma (*hereinafter **Port***) and The Northwest Seaport Alliance (*hereinafter **NWSA***) as required under Chapter 296-15 of the Washington Administrative Code (**WAC**). For simplicity, the term **Client** (below) shall serve to indicate either the Port of Tacoma or The Northwest Seaport Alliance as their respective interests apply. Services under these contracts shall include:

1. Receive notice of and create files on each claim reported and maintain these files for the Client.
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5. Prepare documentation and defense of cases considered non-compensable and assist legal counsel selected by the Client in preparation of cases for hearing, appeals and/or trial.
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18. To the extent the Client is the Responsible Reporting Entity (**RRE**) as that term is defined in Medicare, Medicaid and SCHIP Extension Act (**MMSEA**) Section 111 as set forth in 42 U.S.C. 1395Y, Consultant will assist the Client as follows:
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 - d. Consultant will establish and implement proper safeguards against unauthorized use and disclosure of the data exchanges for purposes of complying with MMSEA. Proper safeguards shall include, but not be limited to, the adoption of policies and procedures to ensure that the data obtained shall be used solely in accordance with Section 1106 of the Social Security Act [42 U.S.C. 1306], Section 1874(b) of the Social Security Act [42 U.S.C. 1395kk(b)], Section 1862(b) of the Social Security Act [42 U.S.C. 13958y(b)], and the Privacy Act of 1974, as amended [5 U.S.C. 552a]. Consultant will establish appropriate administrative controls to protect the confidentiality of data to prevent unauthorized access to the data provided by CMS. Further, Consultant agrees to grant an authorized representative of the Center for Medicare and Medicaid Services (CMS) and/or Client access to facilities where the Client's Medicaid data is stored or kept for purposes of inspecting security arraignments at a mutually agreeable date and time. The purpose of any such inspection will be to confirm that the Consultant is in compliance with all applicable security requirements. Access to the records matched to any records created by the matching process shall be restricted to

authorized CMS, Consultant and Client employees, agents and/or officials who require access to perform their official duties in accordance with the uses of the information as authorized under Section 111 of the MMSEA of 2007 and this Agreement. Such personnel shall be advised of (1) the confidential nature of the information; (2) safeguards required to protect the information; and (3) the administrative, civil and criminal penalties for noncompliance contained in applicable Federal laws.

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- a. Such fines or penalties are the direct result of specific direction given by the Client and/or its agent or the negligent actions or omissions of Client and/or its agent;
- b. Consultant did not receive information from Client that is essential to the performance of the duties set forth herein in a timely manner so as to be able to comply with the terms this Agreement.

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DELIVERABLES

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- 2. Ability to convert existing data and loss histories into a useable format to maintenance consistency of records.
- 3. Monthly check registers
- 4. Additional reports as required by the Department of Labor and Industries and/or applicable statute. This may include reports, letters or documentation needed to respond to any Labor and Industries audits.
- 5. Weekly, monthly or quarterly meetings as determined by the Client.
- 6. Ability to securely transmit documentation between client and vendor

COMPENSATION

[AMOUNT]

TERM

The term of the Agreement shall be from January 1, 2025 through December 31, 2027, with three (3) options for one (1) additional year of renewal at the sole discretion of the PORT and NWSA, for a possible total of five (5) years

AGREED

This agreement is expressly conditioned upon the Terms and Conditions attached ...

[ENTITY]

[CONSULTANT]

By

By

[CM]

Date

[CMTITLE]

[VENDORSIGN]

Date

[VENDORTITLE]

1. Relationship of the Parties

Consultant and its employees are independent Contractors. Nothing contained herein shall be deemed to create a relationship of employer and employee or of principal and agent.

2. Subconsultant and Supplier Relations

- a. Subconsultants at all tiers shall be approved by the Port prior to performing Services in support of this Agreement between Consultant and Port.
- b. The award of a subcontract does not create a contract between the Port and the subconsultant. Subconsultants shall have no rights whatsoever against the Port by reason of their contract with the Consultant. The foregoing provision shall apply with equal force to subconsultants, suppliers and all other persons or parties otherwise engaged by the Consultant to do any portion of the Services.
- c. The Consultant shall ensure every subcontract shall bind the subconsultant to the applicable terms of the Agreement. The Consultant shall appropriately monitor the activities of the subconsultant. In no event shall the activities of the subconsultant operate to release or reduce the liability of the Consultant to the Port for any breach in the performance of the Consultant's duties.

3. Conflicts of Interest

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

4. Compliance with Laws

- a. Consultant agrees to comply with all applicable local, state, tribal, and federal laws and regulations applicable to the Services existing at the time this Agreement was executed or that became applicable subsequent to this Agreement's execution, and those regarding employee safety, the workplace environment, and employment eligibility verifications as

required by the Immigration and Naturalization Service. Consultant shall obtain and maintain all professional licenses and permits required to complete the Services.

- b. Consultant must comply with all Occupational Safety and Health Administration (OSHA), Washington Industrial Safety and Health Act (WISHA), Department of Labor, Environmental Protection Agency and other applicable environmental standards as prescribed by law while on or occupying Port-owned properties.
- c. The Consultant is responsible for ensuring that all personnel performing Services are paid wages in accordance with federal, state and local laws when applicable.

5. Records and other Tangibles

- a. The Port is a public entity and must maintain access to, and be able to provide, records per RCW 40.14, RCW 42.56, and the Secretary of State's Local Government Common Records Retention Schedule (CORE) Version 3.3 (October 2016). Therefore, until the expiration of six (6) years after the term of this Agreement, consultant agrees to maintain accurate records of all activities done in providing the Services and to deliver such records to the Port upon termination of the Agreement or otherwise as requested by the Port.
- b. The Port or its designated agent, and federal and state auditing authorities have the right to audit this Agreement and access to all records and documents, including financial data, for a period of not less than six (6) years after Completion of all projects related to this Agreement or until resolution of any litigation related to this Agreement whichever occurs last.

6. Non-Disclosure

- a. Definition of Confidential Information. "Confidential Information" means all information disclosed by a party ("Disclosing Party") to the other party ("Receiving Party"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Port's Confidential Information includes Port data relating to

the claim and medical information relating to Port employees that are protected by federal, state and local laws and regulations. However, Confidential Information does not include any information that (a) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (b) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (c) is received from a third party without breach of any obligation owed to the Disclosing Party, or (d) was independently developed by the Receiving Party.

- b. Obligations. The Receiving Party will: (i) use the same degree of care it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care); (ii) not use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement; (iii) comply with all applicable federal, state and local laws and regulations including but not limited to the Health Insurance Portability and Accountability Act, as amended ("HIPAA"); and (iv) except as otherwise authorized by the Disclosing Party in writing, limit access to Confidential Information of the Disclosing Party to those of its employees and contractors who need access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections not less protective of the Confidential Information than those herein.
- c. Exceptions. The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of the compelled disclosure and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure.

7. Equitable Relief

The parties recognize and agree there is no adequate remedy at law for breach of the provisions of the confidentiality obligations set forth in this Section, that such a breach would irreparably harm the Disclosing Party

and the Disclosing Party is entitled to seek equitable relief (including, without limitation, an injunction) with respect to any such breach or potential breach in addition to any other remedies available to it at law or in equity.

8. Services

- a. Port's Obligations. Port agrees to provide assistance, cooperation, information, equipment, and data reasonably necessary to enable Consultant to perform the Scope of Work (collectively, "Port Cooperation"). Port acknowledges that Consultant's ability to provide the Services as set forth herein may be affected if Port does not provide Port Cooperation.
- b. Project Management. Each party shall designate a project manager who shall work together with the other party's project manager to facilitate the efficient delivery of the Services.
- c. Change Order/Amendments. In order to change the description of Services under the Scope of Work, Port will submit a written request to Consultant specifying the proposed changes in detail and Consultant will provide an estimate of the charges and anticipated changes in the delivery schedule that will result from the proposed change. Consultant will continue performing the Services in accordance with this Agreement and the Scope of Work until the parties agree in writing on the change in Scope of Work, scheduling, and fees. Consultant shall not be responsible for a delay in the performance of the Services resulting from such change order.

9. Compensation

- a. As full compensation for the performance of its obligations of this Agreement and the Services, the Port shall pay Consultant as specified in the Agreement.
- b. Consultant is responsible for working within the agreement amount. Should the consultant incur costs beyond the agreement amount without an executed amendment to this agreement, the Consultant is solely responsible for the additional costs.

10. Invoices

- a. Consultant shall submit detailed numbered invoices showing descriptions of the Services being invoiced, title of the Project, total cost, and all authorized expenses, if allowed, in accordance with the Port's "Guidelines for Consultant Fees and Reimbursable Items", within thirty (30) days.
- b. Consultant agrees to submit monthly invoices as the Services progress. Invoices that are submitted for payment ninety (90) days or more after the Services were completed are subject to non-payment.
- c. Un-invoiced Services performed through December 31 of each year shall be invoiced no later than the 7th day of January. If the Consultant is unable to provide an invoice, they shall advise the Port in writing with a summary of the work completed and the accrual amount to be invoiced through December 31 of that year.

11. Costs and Disbursements

Consultant is responsible for and shall pay all costs and disbursements required for the performance of the Services.

12. Time

Time is of the essence in the performance of this Contract.

13. Assignability

The Consultant may not assign, transfer, or novate all or any portion of the Agreement to a non-related entity, including but not limited to any claim or right to the Contract Sum, without the Port's prior written consent. If the Consultant attempts to make an assignment, transfer, or novation without the Port's consent, the assignment or novation, shall be of no effect, and the Consultant shall nevertheless remain legally responsible for all obligations under the Agreement. The Consultant also shall not assign or transfer to any third party any claims it may have against the Port arising under the Agreement or otherwise related to the Project.

14. Termination of Agreement

- a. Termination for Default:
 - i. The Port may terminate this Agreement, in writing, if the Consultant substantially fails to fulfill any or all of its material

obligations under this Agreement through no fault of the Port (a "Breach"); provided that the Consultant has been given a thirty (30) day opportunity to cure.

1. Cure Notice: If the Port determines that a Breach of this Agreement has occurred the following sequential procedure will apply:

- ii. The Port will provide the Consultant with a written Cure Notice, notifying the Consultant of the nature of the breach.
- iii. The Consultant shall respond within five (5) calendar days of the notification. The Consultant shall submit a corrective action plan indicating the steps to be taken to correct the specified deficiencies within fifteen (15) calendar days of the notification. The corrective action plan shall specify the proposed completion date for bringing this Agreement into compliance within the number of calendar days specified by the Port (not to be more than twenty-one (21) calendar days);

- b. Show Cause Notice:

- i. In the event that the Consultant does not respond within the appropriate time with a corrective action plan, the Port will provide the Consultant with a written Show Cause Notice; notifying the Consultant of their requirement to notify the Port in writing within seven (7) calendar days of any reason the Port should not terminate this Agreement. At the expiration of the seven (7) calendar day period the Port may commence termination of this Agreement in whole or in part.
- ii. In the event the Consultant is unable to cure a Breach of this Agreement within the requisite cure period, the Port may withhold payment owed the Consultant and instruct the Consultant to stop work to refrain

from incurring additional costs until the Port is reasonably satisfied that the Breach has been corrected or any dispute between the parties in respect of the Breach has been settled by the parties.

- iii. No increase in total price or period of performance shall result from breach of this Agreement; and
 - i. Nothing herein shall be deemed to affect or waive any other rights of the Port.
- b. Notice of Termination:
 - i. If the Port terminates this Agreement for default, the Port shall determine the amount of Services satisfactorily performed to the date of termination and the amount owing to the Consultant using the criteria set forth below; provided, that (a) no amount shall be allowed for anticipated profit on unperformed Services or other work and (b) any payment due to the Consultant at the time of termination may be adjusted to the extent of any additional costs the Port incurs because of the Consultant's default. In such event, the Port shall consider the actual costs incurred by the Consultant in performing this Agreement to the date of termination, the amount of Services originally required which was satisfactorily completed to the date of termination, whether the Services are 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 Services 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 Services 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.

- ii. Upon receipt of a termination notice the Consultant shall at no additional cost to the Port:
 - 1. Promptly discontinue all Services (unless the notice directs otherwise);
 - 2. No later than fourteen (14) calendar days after receipt of termination, promptly deliver or otherwise make available to the Port specifications, calculations, reports, estimates, summaries, official Project documentation and other Project documentation, such other information and materials as the Consultant or subconsultants may have accumulated in performing this Agreement, whether completed or in progress and all equipment/materials purchased specifically for this Agreement where the Port has paid the Consultant for such items.
 - 3. Upon termination, the Port may take over the Services and prosecute the same to completion by agreement with another party or otherwise.
- c. Termination for Convenience:
 - i. The Port may terminate this Agreement, for the convenience of the Port. The Port shall terminate by delivery to the Consultant a Notice of

Termination specifying the termination and the effective date.

- ii. If the Port terminates this Agreement for convenience, the Port shall pay the Consultant for the following items:

1. An amount for Direct Labor Costs and Indirect Costs in accordance with the Agreement for Services satisfactorily performed to the date of termination.
2. Reasonable invoiced Other Direct Costs as allowed by the Agreement, actually incurred before the date of termination; or
3. Reasonable termination settlement costs the Consultant actually incurred unless the Port determines to assume said commitments. Reasonable termination settlement costs include settlement costs for subconsultants, and reasonable accounting and clerical costs actually incurred by the Consultant.

- iii. Upon receipt of a termination notice the Consultant shall at no additional cost to the Port:

1. Promptly discontinue all Services (unless the notice directs otherwise);
2. No later than fourteen (14) calendar days after receipt of termination, promptly deliver or otherwise make available to the Port all Port Data including specifications, calculations, reports, estimates, summaries, official Project documentation, other Project documentation, and such other

information and materials as the Consultant may have accumulated in performing this Agreement, whether completed or in progress and all equipment/materials purchased specifically for this Agreement where the Port has reimbursed the Consultant for such costs;

3. Take any action necessary, or that the Port may direct, for the protection and preservation of property related to this Agreement that is in the possession of the Consultant and in which the Port has or may acquire an interest.

- iv. Within sixty (60) calendar days of receipt of the notice of Termination for Convenience, the Consultant shall submit to the Port a Termination Settlement Proposal. The Termination Settlement Proposal shall include:

1. Request for Direct Labor Costs and Indirect Costs for services satisfactorily performed to the date of termination.
2. As allowed by the Agreement, Actual and reasonable Other Direct Costs incurred before the termination.
3. Documentation supporting all costs identified in the Termination Settlement Proposal; and
4. A statement certifying, under penalty of perjury, that the Termination Settlement Proposal is made in good faith, the Termination Settlement

Proposal and supporting data are true and accurate to the best of the Consultant's knowledge and belief, the Termination Settlement Proposal is fully supported by the accompanying data, and the amount requested accurately reflects the amount for which the Consultant believes the Port is responsible.

- v. Termination settlement costs and proposals are subject to audit verification by the Port.
- vi. Upon termination, the Port may take over the work and prosecute the same to completion by agreement with another party or otherwise.

15. Disputes

If a dispute arises relating to this Agreement and cannot be settled through direct discussions, the parties agree to endeavor to settle the dispute through a mediation firm acceptable to both parties, the cost of which shall be divided equally. The Port reserves the right to join any dispute under this Agreement with any other claim in litigation or other dispute resolution forum, and the Consultant agrees to such joinder, so that all disputes related to this Agreement may be consolidated and resolved in one forum.

16. Venue & Governing Law

Venue for any litigation shall be the Pierce County Superior Court of the State of Washington and the prevailing party shall be entitled to recover its costs and reasonable attorney(s) fees. This Agreement shall be governed by the laws of the State of Washington.

17. Integration and Merger/ Extent of Agreement

- a. This Agreement represents the entire and integrated understanding between the Port and Consultant with respect to the Scope of Work, and supersedes any previous written or oral representations and may be amended only by written instrument signed by both the Port and Consultant with respect to the Scope of Work. No verbal agreement or conversation between any officer, agent,

associate or employee of Port and any officer, agency, employee or associate of consultant prior to or following the execution of this Agreement shall affect or modify any of the terms or obligations contained in this Agreement.

- b. Authority to sign. Every signer of this Agreement warrants that they have the authority to enter into this Agreement and to bind the entity for which they represent.

18. Non-Discrimination

- a. Nondiscrimination in Employment and Provision of Services: During performance of this Agreement, the Consultant and all parties subcontracting under the authority of this Agreement agrees that it will not discriminate against any employee or applicant for employment because of the employee or applicant's age, sex, marital status, sexual orientation, race, creed, color, national origin, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability.
- b. Equal Employment Opportunity Efforts: The Consultant and all parties subcontracting under the authority of this Agreement agree to undertake equal employment opportunity efforts to ensure that applicants and employees are treated, without regard to their age, sex, marital status, sexual orientation, race, creed, color, national origin, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability.
- c. The Consultant and all parties subcontracting under the authority of this Agreement shall comply fully with all applicable federal, state, and local laws, ordinances, executive orders and regulations that prohibit discrimination.

19. Indemnity / Hold Harmless Clause

- a. The Consultant shall indemnify, defend and hold harmless the Port of Tacoma and the Northwest Seaport Alliance and its officers, managing members, and employees from and against any and all claims (including but not limited to the

Port's employees), liability, damages, losses, expenses or actions, fees and costs of attorneys or consultants to the extent arising out of the acts and omissions of the Consultant, its officers, employees or sub-contractors including but not limited to failure to comply with any applicable state, federal, local, law, statute, rule, regulation. This duty to indemnify, defend and hold harmless shall survive the termination or expiration of this Agreement.

- b. Consultant specifically assumes potential liability for actions brought by Consultant's own employees against the Port and the Northwest Seaport Alliance and, solely for the purpose of this indemnification and defense, Consultant specifically waives any immunity under the state industrial insurance law, Title 51 RCW. Consultant's indemnity obligations shall not be limited by any limitation on the amount or type of damages, compensation, or benefits payable to or for any third party under the Worker Compensation Acts, Disability Benefit Acts, or other employee benefit acts. Consultant recognizes that this waiver was the subject of mutual negotiation.
- a. Furthermore, Consultant shall indemnify and hold the Port of Tacoma and Northwest Seaport Alliance harmless from and against any liability, expense, fines, penalties, cost, demand, or other obligation, resulting from or out of any cyber-related risk that include theft, loss or misuse of data, release of private information as result of a network breach, penetration, compromise, or loss of IT systems control.
- b. The provisions of this Section 19 shall survive the expiration or termination of this Agreement.

20. General Insurance Requirements

The Consultant shall procure and maintain during the life of this Agreement such insurance in the amounts set forth below which policies cover claims or damages for, IT or cyber liability, professional liability, bodily injury, including death resulting therefrom as well as from claims for property damage, and cyber-related risks such as theft, loss or misuse of data, release of private information as result of a network breach, penetration, compromise, or loss of

IT systems control, which may arise from operations under this Agreement, whether such operations be by itself or by anyone directly or indirectly employed by either of them.

21. Miscellaneous Provisions

- a. Remedies Cumulative: Rights under this Agreement are cumulative and nonexclusive of any other remedy at law or in equity.
- b. Captions: All titles, including sections or subsections, are for convenience only and do not define or limit the contents.
- c. Severability: Any term or provision of this Agreement found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remainder of the Agreement.
- d. Waiver: No covenant, term, or the breach thereof shall be deemed waived, except by written consent of the Party against whom the waiver is claimed, and any waiver of the breach of any covenant, term or condition shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term or condition. Neither the acceptance by Port of any performance by consultant after the time the same shall have become due nor payment to consultant for any portion of the Services shall constitute a waiver by Port of the breach or default of any covenant, term or condition unless otherwise this is expressly agreed to by Port, in writing. Port's failure to insist on performance of any of the terms or conditions herein or to exercise any right or privilege or Port's waiver of any breach hereunder shall not thereafter waive any other term, condition, or privilege, whether of the same or similar type.
- e. Negotiated Agreement: The Parties acknowledge that this is a negotiated Agreement, that they have had the opportunity to have this Agreement reviewed by respective legal counsel, and that terms and conditions are not construed against any Party on the basis of such Party's draftsmanship thereof.
- f. No Personal Liability: No officer, agent or authorized employee of either Port or Consultant shall be personally responsible for any liability arising under

this Agreement, whether expressed or implied, nor for any statement or representation made herein or in any connection with this Agreement.

22. Key Personnel

The Consultant's key personnel, as described in the Consultant selection submittals (the "Key Personnel"), shall be assigned to the Project. The Port must consent to any changes to the Key Personnel. Such consent shall not be unreasonably withheld.

23. Insurance - Assumption of Risk

- a. As a further consideration in determining compensation amounts, the Consultant shall procure and maintain, during the life of this Agreement, such commercial general liability insurance, professional liability insurance and other insurance as required by contract for this project in commercially reasonable amounts as set forth below that are designed to protect Consultant and any subconsultant performing work under this Agreement from claims for damages from bodily injury, including death, resulting therefrom as well as from claims for property damage which may arise under this Agreement, whether arising from operations conducted by the Consultant, any subconsultant, or anyone directly or indirectly employed by either of them. Consultant recognizes that it is the obligation of the Consultant to ensure that all Subconsultants of any tier have insurance for the activities performed under this Agreement. If this Agreement requires that a Subconsultant perform ultra-hazardous operations the Port will require that it be named as an Additional Insured by endorsement on all Subconsultant insurance policies and waivers of subrogation shall be provided by endorsement. Workers Compensation and Professional Liability are exempted from the additional insured requirement. Consultant shall procure and maintain, during the term of this Agreement, insurance in the following amounts:
 - i. Commercial General Liability: \$1,000,000 per occurrence and \$3,000,000 aggregate.
 - ii. Automobile Liability (in respect of the Services): covering owned,

non-owned and hired vehicles of \$2,000,000 combined single limit per accident; and

- i. Professional Liability of not less than \$2,000,000 per claim and in the aggregate. Coverage shall remain in effect for the term of this Agreement plus three years. Certificates of Insurance citing the contract and project number shall be provided to the Port of Tacoma on an annual basis for each of the three years.
 - iii. Workers Compensation Insurance: Statutory Workers Compensation Insurance as required by State of Washington.
 - iv. Stop Gap/Employers Liability Insurance shall be provided with a limit of not less than \$2,000,000 per claim.
 - v. E&O/Cyber Liability: \$5,000,000 in coverage for cyber-related risks such as theft, loss or misuse of data, release of private information as result of a network breach, penetration, compromise, or loss of IT systems control, which may arise from operations under this Agreement, whether such operations be by itself, its agents, or by anyone directly or indirectly employed by either of them.
- b. All policies shall be issued by a company having an A. M. Best Financial Strength Rating of A- and Financial Size Category of VIII or better. The Consultant shall be responsible for notifying the Port in writing within ten (10) days of receipt of notice of coverage being suspended, voided, cancelled or materially reduced. Except for professional liability, the Port and the Northwest Seaport Alliance shall be named as an additional insured on all policies by endorsement. Waivers of subrogation shall be provided by endorsement.
- c. Consultant is responsible for complying with the Washington State laws that pertain to industrial insurance (RCW 51). 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 contract execution, 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 (RCW 51.12.020) such as if Consultant is a sole proprietor.

24. Payment Schedule

- a. Consultant shall submit detailed numbered invoices in accordance with the Agreement. After a complete and correct invoice has been received by the Port, payment will be made within thirty (30) days.
- b. Consultant shall submit detailed invoices showing the following:
 - i. Invoice Number, Contract number, Title, Invoice Period.
 - ii. Summary page with a brief description of Services completed during the invoice period, deliverables provided during the invoice period, and forthcoming milestones / deliverables.

25. Compensation

- a. Consultant expenses will be reimbursed at cost with the exception of:
 - i. Subconsultant services will be reimbursed at cost plus negotiated markup.
 - ii. Services provided by a third party will be reimbursed at cost plus negotiated markup.
- b. Costs marked up by a sub-tier shall be passed through to higher tiers as a direct cost. In no case shall the mark up at any tier exceed the negotiated percentage.
- c. Reimbursable expenses by a sub-tier shall be passed through to higher tiers as a direct cost. In no case shall markup be applied to reimbursable expenses at any level.
- d. Rates: Rates are fully burdened and will remain in effect for the contract term unless renegotiated and agreed to by both parties in a written amendment.

- i. Rates may be negotiated no more than once annually. Rate adjustments will be tied to the CPI for the Seattle, Tacoma/Bremerton area.

- e. Rates and Markup are defined in the attached Rate Sheet and made a part of this contract.

26. Deliverables

All deliverables fully defined in this Agreement.

27. Extent of Agreement

- a. In the event the Consultant identifies something that may impact the Services, Project schedule, total price, task budget(s) or cost of performing the Services, the Consultant shall inform the Project Manager in writing prior to exceeding the task budget(s) and within seven (7) calendar days of the event and possible impacts to scope, schedule and cost or task budget.
- b. The Project Manager may, at any time, by written directive require the Consultant to perform the Services consistent with the Agreement; provided that this directive does not add scope or cost to the project.

28. Warranties

- a. No Warranties regarding data restoration: Consultant will use its commercially reasonable efforts to deploy the Services and make effective recommendations regarding data protection technologies but cannot affect the manufacturer's product from a warranty perspective, nor guarantee that such third-party products or technologies will be effective, free of bugs or other defects. The recoverability of data in the event of network or system failure is subject to the integrity of the media, success of backup procedures, and other factors that may be outside the control of Consultant. Therefore, **CONSULTANT CANNOT AND DOES NOT MAKE ANY REPRESENTATIONS,**

PROMISES, OR WARRANTIES THAT THE PORT WILL BE ABLE TO RESTORE DATA AS A RESULT OF FOLLOWING ANY SUCH CONSULTANT RECOMMENDATIONS. NO WARRANTIES REGARDING SECURITY OF THE PORT CONFIDENTIAL INFORMATION FROM ELECTRONIC THREATS & HACKING. In providing the Services, Consultant shall use commercially reasonable efforts to ensure that the Port's Confidential Information is kept secure; however, the Port understands, acknowledges, and agrees as follows:

- i. The nature of the Internet, e-mail, and other forms of electronically storing and communicating information are subject to ever-changing and evolving vulnerabilities, some, or all of which cannot be reasonably anticipated or protected against even with the use of reasonable care, including, without limitation, Electronic Threats & Hacking.
- ii. Anything in this agreement or the description of services to the contrary notwithstanding, consultant makes no representation, warranty or guarantee that the port's confidential information or it systems will be protected from breach or exposure by electronic threats & hacking.
- b. Limited Warranty From Third Party Providers: To the extent authorized under applicable third-party manufacturer or third-party provider agreements, Consultant shall provide or assign to the Port all third party product or service warranties associated with the hardware, equipment, software, or other services the third party provided in connection with the Services under this Agreement. the Port acknowledges and agrees that:
 - i. Third-party Provider agreements for hardware, equipment,

software, or services provided in connection with the Services, vary in the terms, conditions, and limited warranties they respectively provide; and some third-party Provider agreements either may not provide any warranties, or may prohibit Consultant from transferring to the Port any limited warranty they do provide;

- ii. Consultant does not and will not provide any separate, independent, or concurrent warranty of any kind or nature for third party hardware, equipment, software, or services provided in connection with the Services; and
- iii. The Port shall make any warranty claims with respect to hardware, equipment, software, or services supplied by third parties in connection with the Services, directly to the manufacturer, vendor, licensor or third-party provider of such hardware, equipment, software, or services, and not to Consultant.