



July 18, 2017

TO: **HOLDERS LIST**
SUBJECT: **BENEFIT BROKER**
CONTRACT #070634

ADDENDUM NO. 04

This addendum revises the RFP Attachment B – PSA Template: Section 11 – Insurance – Assumption of Risk.

PERSONAL SERVICES AGREEMENT NO. XXXXX

PROJECT: Title

CONSULTANT: Company, Address, City, State, Zip

PROJECT MANAGER: PM

PROJECT NO. / GL ACCOUNT NO. #####

THIS AGREEMENT is made and entered into by and between the **Northwest Seaport Alliance** (*hereinafter referred to as the "NWSA"*) and **xxCOMPANYxx** (*hereinafter referred to as the "Consultant"*) for the furnishing of **xxTITLExx** (*hereinafter referred to as the "Project"*).

The NWSA and Consultant mutually agree as follows:

SCOPE OF WORK

The Consultant will

DELIVERABLES

ASSUMPTIONS

COMPENSATION

This will be accomplished on ~~a time and materials a fully burdened, fixed basis~~ and will not exceed \$00,000.00 without prior written approval from the NWSA.

Consultant is responsible for working within the budget as agreed. Should the Consultant incur costs beyond the not-to-exceed contract budget amount without an executed amendment to this contract, the Consultant is solely responsible for the additional costs.

All invoices shall be emailed: NWSAinvoices@nwseaportalliance.com. The email must include the required supporting documentation. Incomplete or improperly prepared invoices will be returned for correction without processing or payment. Invoices may be mailed "Attention: Contracts Department."

Consultant agrees to submit timely invoices as the work progresses. Invoices that are submitted for payment 90 days or more after the work was completed are subject to non-payment.

The length of this agreement is from the date of execution to xxDATExx.

This agreement is expressly conditioned upon the Terms and Conditions attached and by reference incorporated herein. Consultant acknowledges reading this Agreement, understands it and agrees to be bound by its Terms and Conditions.

AGREED

NORTHWEST SEAPORT ALLIANCE

CONSULTANT (LEGAL NAME)

By

By

Name
Title

Date

Name
Title

Date

Northwest Seaport Alliance Terms and Conditions Personal Services Agreement

In consideration of the mutual covenants, obligations, and compensation to be paid by the NWSA to Consultant, it is agreed that:

1. Key Personnel

The Consultant and/or its subconsultants' key personnel, as described in its Consultant selection submittals, shall remain assigned for the duration of the Project unless otherwise agreed to by the NWSA, or unless such key personnel leave the employ of the Consultant and informs the NWSA such key personnel no longer work for the Consultant.

2. Relationship of the Parties

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

3. Conflicts of Interest

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

4. Compliance with Laws

This Agreement shall be governed exclusively by the laws of the State of Washington both as to interpretation and performance without recourse to any principles of Conflicts of Laws. Any action at law, suit in equity or judicial

proceeding for the endorsement of this Agreement or any provisions thereof shall be instituted and maintained only in any of the courts of competent jurisdiction in Pierce County, Washington. Consultant agrees to comply with all local, state, tribal and federal laws and regulations applicable to the project, including building codes and permitting regulations existing at the time this Agreement was executed and those regarding employee safety, the work place environment, and employment eligibility verifications as required by the Immigration and Naturalization Service. Consultant shall obtain all professional licenses and permits required to complete the scope of work as defined.

5. Records and other Tangibles

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

The NWSA and Port of Tacoma are public entities and must maintain access to, and be able to provide, records per RCW 40.14, RCW 42.56 and the Secretary of State's Local Government Common Records Retention Schedule (CORE) Version 3.3 (October 2016). Therefore, until the expiration of six years after the term of this Agreement, Consultant agrees to maintain accurate records of all work done in providing services specified by the Agreement and to deliver such records to the NWSA upon termination of the Agreement or otherwise as requested by the NWSA.

6. Ownership of Work

~~The services to be performed by Consultant shall be deemed instruments of service for purposes of the copyright laws of the United States. The NWSA has ownership rights to the plans, specifications, and other products prepared by the Consultant. Consultant shall not be responsible for changes made in the models, programs, reports or other products by anyone other than the Consultant. Consultant shall have free right to retain, copy and use any tangible materials or information produced but only for its own internal purposes. Use of models, programs, reports or other products prepared under this Agreement for promotional purposes shall require the NWSA's prior consent.~~

The services to be performed by Consultant shall be deemed instruments of service for purposes of the copyright laws of the United States. The NWSA has ownership rights to the plans, specifications, and other products prepared by the Consultant. Consultant shall not be responsible for changes made in the models, programs, reports or other products by anyone other than the Consultant. Consultant shall have free right to retain, copy and use any tangible materials or information produced but only for its own internal purposes. Use of models, programs, reports or other products prepared under this Agreement for promotional purposes shall require the NWSA's prior consent. Notwithstanding anything to the contrary in this Agreement, Consultant and its personnel are free to use and employ their general skills, know how, and expertise, and use, disclose, and employ any generalized ideas, concepts, know-how, methods, techniques, or skills gained or learned during the course of this Agreement so long as they acquire and apply such information without any unauthorized

use or disclosure of confidential or proprietary information from the NWSA or Port.

7. Disclosure

All information developed by the Consultant and all information made available to the Consultant by the NWSA, and all analyses or opinions reached by the Consultant shall be confidential and shall not be disclosed by the Consultant without the written consent of the NWSA. The foregoing protections will not apply to information which: (i) is or becomes generally known to the public other than as a result of Consultant's breach of this Section 7; (ii) prior to Consultant's receipt from NWSA, was obtained by Consultant from a third party who is under no obligation of confidentiality with respect to such information; (iii) is developed by Consultant completely independent from the confidential information of NWSA; or (iv) is required by law or regulation to be disclosed, but only to the extent and for the purpose of such required disclosure after providing NWSA with advance written notice if reasonably possible such that NWSA is afforded an opportunity to contest the disclosure or seek an appropriate protective order. Consultant shall have the burden of proving the existence of any of the exceptions described in this Subsection. The forgoing notwithstanding, the Consultant may not disclose any information gained as a result of this Agreement without the written consent of the NWSA.

8. Compensation

As full compensation for the performance of its obligations of this Agreement and the services to be provided, the NWSA shall pay Consultant as specified in the Agreement.

9. Payment Schedule

Consultant shall submit detailed numbered invoices showing contract number, description of work items being invoiced, title of project, total authorized, total current invoice, balance of authorization, hours, hourly rate by the 10th of the month to be paid by the end of the current month, unless other terms are agreed to by the parties. All payments are due within thirty (30) days of NWSA's receipt of invoice. Per RCW 39.76.011, The NWSA is required to promptly pay bills.

10. Costs and Disbursements

Consultant shall pay all costs and disbursements required for the performance of its services under this Agreement.

11. Insurance - Assumption of Risk

- a) As a further consideration in determining compensation amounts, the Consultant shall procure and maintain, during the life of this Agreement, such commercial general and automobile liability insurance as shall protect Consultant and any subconsultants performing work under this Agreement from claims for damages from bodily injury, including death, resulting there from as well as from claims for property damage which may arise under this Agreement, whether arising from operations conducted by the Consultant, any subconsultants, or anyone directly or indirectly employed by either of them.
- b) With respect to claims other than professional liability claims, Consultant and its subconsultants agree to defend, indemnify and hold harmless the NWSA, its appointed and elective officers and its

employees from and against any and all suits, claims, actions, losses, costs, penalties and damages of whatever kind and nature, including attorney fees and costs by reason of any and all claims and demands on it, its officers and employees, arising from the negligent acts, errors or omissions by the Consultant in the performance of the Consultant's professional services. The aggregate liability under this Agreement, if any, of the Consultant to the NWSA for damages shall not exceed \$20,000,000.00.

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

12. Standard of Care

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

13. Time

Time is of the essence in the performance by the Consultant of the services required by this Agreement.

14. Assignability

Consultant shall not assign any interest in this Agreement and shall not transfer any interest in the Agreement to any party without prior written consent of the NWSA.

15. Term of this Agreement

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

16. Disputes

If a dispute arises relating to this Agreement and cannot be settled

through direct discussions, the parties agree to endeavor to settle the dispute through a mediation firm acceptable to both parties, the cost of which shall be divided equally. The NWSA reserves the right to join any dispute under this Agreement with any other claim in litigation or other dispute resolution forum, and the Consultant agrees to such joinder, so that all disputes related to the project may be consolidated and resolved in one forum. Venue for any litigation shall be the Pierce County Superior Court of the state of Washington and the prevailing party shall be entitled to recover its costs and reasonable attorney's fees.

17. Extent of Agreement

This Agreement represents the entire and integrated understanding between the NWSA and Consultant and may be amended only by written instrument signed by both the NWSA and Consultant.