



Solicitation 00320860
Terminal 18 IDIQ

Proposals Due
December 29, 2021
12:00 PM PT

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

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List of Exhibits

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

Exhibit 1: Scope of Work

Exhibit 2: Service Agreement Terms and Conditions

Attachment A – Scope of Work

Attachment B – Schedule of Fees

Attachment B-1 – Other Direct Costs

Attachment C – U.S. Department of Transportation Provisions

Attachment D – WA State Department of Ecology Grant

Attachment E – Company Information

Attachment F – Diversity in Contracting Inclusion Plan

Attachment G – Title VI Provisions

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

Exhibit 3: Diversity in Contracting Inclusion Plan

Exhibit 4: Company Information



Solicitation 00320860 Terminal 18 IDIQ

The PORT invites written proposals from qualified firms, or teams of firms, interested in providing professional services for three Terminal 18 (T18) projects: T18 Bollard Replacement Design, T18 Shore Power Design, and T18 Dock Rehabilitation Assessment and Design. All projects will be worked under this one contract.

The PORT intends on issuing one (1) Indefinite Delivery/Indefinite Quantity (IDIQ) contract as a result of this solicitation. The initial period of performance of any Agreement resulting from this solicitation is expected to be five (5) years, with a five (5) year ordering period.

I. Overview of Project

The work of this IDIQ includes three projects at Terminal 18: T18 Bollard Replacement project, the T18 Shore Power Project, and the T18 Dock Rehabilitation project. All three projects are within or adjacent to each other in location, rely on each other for infrastructure, and may have similar timing for design, permitting, and construction, and will require close coordination with each other.

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

II. Estimated Project Fee

The Estimated Project Fee applies to all tasks identified in Exhibit 1, Scope of Work.

The fee for this Agreement is not to exceed (NTE) \$15,000,000 for the duration of the Agreement.

The PORT does not guarantee any minimum quantity of work under this contract. Work will be ordered on an as-required basis through Service Directives for the duration of the Agreement.

III. Solicitation Schedule

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

<u>Description</u>	<u>Date, Time</u>
Advertisement	November 23, 2021
Pre-Proposal Conference	December 9, 2021, 10:00 AM PT

Last Day to Ask Questions	December 10, 2021, 12:00 PM PT
Proposals Due	December 29, 2021, 12:00 PM PT
Shortlist Notification	Week of January 10, 2022
Interviews/Discussions	Week of January 24, 2022
Request for Revised Proposals Addendum	Week of January 31, 2022
Revised Proposals Due	Week of February 7, 2022
Notice of Selection	Week of February 28, 2022
Execute Agreement	Week of April 25, 2022

IV. Questions

All questions must be submitted in writing through the PORT's VendorConnect website (<https://hosting.portseattle.org/sops>) by December 10, 2021, 12:00 PM PT, in order to allow adequate time for preparation of a response. Questions are to be posted on the Questions tab of the solicitation on VendorConnect. Questions received after this deadline may not be considered.

V. Pre-Proposal Conference

The PORT intends to conduct a Pre-Proposal Conference to answer questions regarding this solicitation on the following date and location:

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

December 9, 2021
10:00 AM PT

Microsoft Teams meeting
Join on your computer or mobile app

[Click here to join the meeting](#)

Or call in (audio only)

[+1 425-660-9954, 604482345#](tel:+14256609954604482345) United States, Seattle
Phone Conference ID: 604 482 345#

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

Please keep in mind:

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

VI. Communications

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

Contract Administrator: **Jason Gates**
Contract Administrator Email: **Gates.J@portseattle.org**

VII. Diversity in Contracting Program

- A. The PORT promotes equitable opportunities for all businesses to participate in the performance of its contracts. It is the intention of the PORT that consultants, contractors, subcontractors, sub-subcontractors, subconsultants and suppliers shall afford equal opportunity while providing materials, supplies, and services for and to the PORT.
- B. It is a priority for the PORT to affirmatively expand its efforts to increase WMBE and other diverse participation in PORT contracts and develop tools to ensure that WMBEs and other diverse entities are afforded fair and equitable opportunity to compete for PORT contracts and succeed as consultants, contractors, subcontractors and subconsultants. One of the PORT's Century Agenda Strategic Objectives is to use its influence as an institution to promote diverse business growth and workforce development.

VIII. Proposal Submittal Process

- A. The PORT is requiring electronic proposals for this solicitation. Hard copy or linked (including but not limited to file hosting services such as Citrix Files and DropBox) proposals will not be accepted.
- B. The PORT reserves the right to reject any and all late proposals.
- C. Proposals must be delivered through email to e-submittals-sa@portseattle.org. It is the responsibility of the Proposer to ensure timely delivery of proposals.
 - 1. The proposal email subject line shall include the solicitation number, firm name, and solicitation title.
 - a. Proposal shall be submitted as a separate PDF attachment in the same email.
 - b. Exhibit 3A: Diversity in Contracting Inclusion Plan, shall be submitted as a separate Word document attachment in the same email.
 - c. Exhibit 3B: Diversity in Contracting Evidence of Agreement, shall be submitted as a separate PDF file attachment in the same email.
 - d. Exhibit 4: Company Information, shall be submitted as a separate Excel file attachment in the same email.
 - e. Appendix: Resumes, shall be submitted as a separate PDF file attachment in the same email.
 - 2. The PORT's email server will not accept files larger than 5MB. If the Proposal file is larger than 5MB it shall be sent in multiple emails and be labeled "Email 1 of 5," "Email 2 of 5," etc.
 - 3. The PORT's email server will not accept compressed files. By PORT security policy, all compressed files, including .ZIP file attachments, are removed at the email firewall and will not be accessible as part of your proposal submittal.
 - 4. The PORT may use the time stamp on the proposal email(s) to determine timeliness.
 - 5. The PORT is not responsible for Proposers' technical difficulties in submitting electronically.

- D. Proposal shall meet the following requirements:
1. Proposals shall be formatted in searchable PDF format.
 2. Proposals shall be named with the company name and the solicitation number (e.g., 123Consulting_00320860). Do not use any special characters in the description.
 3. The body of the proposal shall be organized in accordance with the Evaluation Criteria. Each section of the proposal may be separated by a separator page. Separator pages will not contain any text beyond the section name.
 4. The body of the proposal shall be limited to **eight (8)** pages of content and with legible font. Pages shall be single-sided, 8.5" x 11" in size. In the event that the body of the proposal exceeds the page limitation, excess pages will not be considered. After removal of the excess pages, the proposal may further be rejected as unacceptable or uncompetitive if the PORT concludes that it would not have reasonable chance for award or is outside the competitive range.
- E. The following required items are not included in the page count limitation:
1. Cover page and tables of contents are not considered part of the total page count.
 2. To conserve paper, Proposers should not use separator pages. If included, separator pages are not included as part of the total page count.
 3. Letter of Interest. Include a 1 page, single-sided Letter of Interest. Include the name, phone number, email address, and mailing address of the point of contact for this solicitation,
 4. Exhibits
 - a. Exhibit 3A – Diversity in Contracting Inclusion Plan
 - b. Exhibit 3B – Diversity in Contracting Evidence of Agreement
 - c. Exhibit 4 – Company Information
 5. Appendix – Resumes

IX. Overview of the Procurement Process

- A. Compliance with Legal Requirements
1. The procurement of these consultant services will be in accordance with applicable federal, state, and local laws, and PORT policies and procedures. The PORT reserves the right to reject any and all proposals.
 2. The PORT will evaluate the proposals in accordance with the provisions set forth herein. If the PORT makes a selection, it will select the Proposer it determines to be the most highly qualified on the basis of its evaluation.
 3. The PORT maintains a neutral competitive environment for all Proposers to protect the integrity of the selection process. Any communication concerning the content of this solicitation by a potential or actual Proposer, or anyone on its behalf, with any PORT elected official or employee other than the PORT assigned Contract Administrator, may result in the rejection of that Proposer's response.
- B. Addenda
1. All changes shall be documented via addenda. Proposers are advised to not rely on verbal information or direction. Email notification of addenda will be provided to all firms on the VendorConnect planholders list. Interested firms are responsible for ensuring that current registration information is on the VendorConnect planholders list.

C. Minor Informalities and Cancellation

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

D. Costs Borne by Proposers

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

E. Public Disclosure

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

F. Service Agreement Terms and Conditions

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

G. Conflict of Interest

1. Proposers have a duty to disclose all potential situations that could present a real or perceived conflict of interest to the PORT. A conflict of interest may exist when a proposing firm has a business relationship with another entity if those services (1) potentially adversely impact the PORT or (2) require or result in disclosure of confidential information. See Consultant Ethics and Conflict of Interest—CC-2 contained in Exhibit 2.
2. The PORT will evaluate whether a Proposer has a relationship, contract, or other activities that may result in the Proposer (1) having a financial interest in a competing business; (2) being unable, or potentially unable to render impartial assistance or advice to the PORT, or (3) having impaired objectivity in performing the contract. If a conflict of interest exists and the PORT is unwilling to waive the conflict, the PORT will not enter into an Agreement with the Proposer.
3. A Proposer maybe precluded from competition if the Proposer has performed prior work for the PORT related to the scope of this solicitation and the PORT determines there is an unfair competitive advantage. A competitive advantage determination may depend on factors such as what prior work was performed, the knowledge and information gained through that work and if that knowledge gives Proposers any advantage over others in proposing on future work that cannot be appropriately mitigated.
 - a. The PORT has determined that there is a real or perceived conflict of interest with a Consultant performing the Dock Rehab assessment under this IDIQ procurement and in potentially performing design services for Dock Rehab, Shore Power, and Bollards. The PORT has decided to waive any conflict of interest prohibiting a Consultant from providing services under the Dock Rehab assessment and in performing design for Dock Rehab, Shore Power, and Bollards.

H. Protests

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

X. Selection Process

A. Evaluation

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

B. Evaluation Rating

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

Rating	Description
Outstanding	Indicates an exceptional approach and understanding of the requirements and contains multiple strengths that far outweigh any weaknesses. Risk of unsuccessful performance is low.
Good	Indicates a thorough approach and understanding of the requirements and contains at least one strength, and risk of unsuccessful performance is low.
Acceptable	Meets requirements and indicates an adequate approach and understanding of the requirements, and risk of unsuccessful performance is no worse than moderate.
Marginal	Has not demonstrated an adequate approach and understanding of the requirements, and/or risk of unsuccessful performance is high.
Unacceptable	Does not meet requirements and therefore contains one or more significant weaknesses or deficiencies, and/or risk of unsuccessful performance is unacceptable.

Refer to Section XII for additional definitions.

C. Interviews

1. If an award is not made based on the written evaluations alone, the PORT may conduct interviews with Proposers in the competitive range following evaluations of the proposal.
 - a. Interview questions may include topics from the Evaluation Criteria and Scope of Work.

- b. Proposers may not be given questions in advance of the interviews
- c. Formal presentations are generally not allowed unless specifically requested by the PORT.
- d. Failure to participate in the interview process may result in the Proposer's disqualification from further consideration.

D. Discussions

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

E. Notice of Selection

1. The PORT Notice of Selection will be made to the highest rated firm(s).
2. Within seven (7) business days of receiving Notice of Selection, the selected firm(s) shall provide the following:
 - a. Firm Input Sheet – The selected firm shall submit a list of all anticipated personnel, including subconsultant personnel, along with a summary of each person's qualifications and proposed fully-burdened hourly billing rate. Please see the "Professional Rate Negotiation Process" document in the Service Agreements section of the PORT's Procurement Documents webpage (<https://www.portseattle.org/page/procurement-documents>). An overview of the rate negotiation process and an example of the firm input sheet, along with instructions, is provided for reference. Refer to Section V.E of the Service Agreement Terms and Conditions for the annual rate escalation clause.
 - b. The PORT anticipates the following positions will be the most relevant for the Agreement. This list is not comprehensive, and the selected firm(s) may propose additional specialties or titles in order to fulfill the anticipated scope of work:

- | | |
|-------------------------------------|---|
| • Principal | • CADD Technician/Drafter |
| • Diver – Architectural/Engineering | • Technical Writer/Specification Writer |
| • Engineer – Civil | • GIS Technician/GIS Specialist |
| • Engineer – Structural | • Project Manager |
| • Engineer – Geotechnical | • Project Controls – Scheduling |
| • Engineer – Environmental | • Project Assistant |
| • Engineer – Electrical | • Cost Estimator |
| • Engineer – Mechanical | • Construction Manager |
| • Scientist – Environmental | |
| • Scientist -- Geology | |

Note: each of the positions will need at least 3 levels from junior to senior.

3. The PORT reserves the right to conduct negotiations after the selection decision.

4. If the PORT does not receive the Firm Input Sheet within the specified time frame or is unable to finalize an Agreement with the top-rated firm, the PORT may either enter into negotiations and contract with the next ranked firm or cancel the procurement.

XI. Evaluation Criteria and Proposal Information

The evaluation criteria will be used to rate the proposals and the listed relative order of importance is as follows: Criteria A is moderately more important than Criteria B and C combined. If conducted, Criteria D, interviews, are of equal importance to Criteria A.

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

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

A. Specialized Experience and Technical Competence of Key Individuals/Firm

The PORT will evaluate:

1. The specialized experience and technical competence of the key individuals who will provide the requested services as detailed in the Scope of Work, including but not limited to the proposed project manager, major subconsultants, and key staff from each firm.
2. The proposed firm's recent experience and expertise in providing services similar in scope and complexity as those detailed in the Scope of Work.
3. Projects similar in scope and complexity. Areas of interest include:
 - a. Major container terminal infrastructure work.
 - b. Assessment and rehabilitation of submerged concrete structure.
 - c. Life cycle cost analysis for project alternatives.
 - d. Environmental considerations for design alternatives.
 - e. Marine terminal shore power infrastructure.
 - f. Major in-water construction in the Pacific Northwest.
 - g. Major infrastructure work within a Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) site.
 - h. Project construction value between \$10M to \$100M.

Proposal Requirements:

1. Include brief resumes of the key individuals who will provide the requested services as detailed in the Scope of Work. Brief resumes shall include, at a minimum, the following information:
 - a. Full name.
 - b. Proposed title and position on the project.

- c. Relevant employment history, education, and professional licensure(s).
2. Include a representative list of past or current projects within the last 7 years performed by the key individuals or firm who will provide the requested services. Proposals shall include information about the project manager, major subconsultant staff, and other key staff. Proposals shall include, at a minimum, the following information:
 - a. Project name, location, duration, and dates key staff worked on the project.
 - b. Brief description of the key staff's role on the project and how that role relates to the project detailed in the Scope of Work.
 - c. Contract/Project value.
3. Organizational chart that illustrates reporting relationships and communication plan.
4. Appendix – Resumes: Include full (one-page per person) resumes of the key individuals who will provide the requested services as detailed in the Scope of Work.

B. Project Approach

Scenario: A major active container terminal is in need of a major assessment and rehabilitation of the dock structure. Meanwhile, there is urgent need to replace and upgrade bollards. In addition, there is grant funding opportunity available to bring shore power infrastructure to the container ships. The terminal is within a CERCLA site. All projects are anticipated to be completed in 5 years. Please describe the consultant's project approach.

The PORT will evaluate:

1. Proposer's problem identification and proposed approach to accomplish the work as described in the Scope of Work and, appropriate, demonstrated capability to explore and develop innovative project recommendations.
2. Proposer's approach will be evaluated for comprehensiveness, accuracy of understanding of key issues and risks, and cogency of strategic thinking. Innovative approaches to mitigating predicted risks, where appropriate, will be rated favorably.

Proposal Requirements

1. Expand on project considerations and key challenges, including special problems and risks.
2. Develop Quality Assurance Plan.
3. Recommendation on potential technical approach for addressing the Scope of Work to include basis of design and alternatives analysis.
4. Recommendation on project coordination and phasing.

C. Diversity in Contracting Inclusion Plan

The PORT will evaluate:

1. The firm's inclusion plan detailing the anticipated diverse business participation, inclusion strategy, team composition; and affirmative efforts in seeking to meet or exceed the PORT's Diversity in Contracting aspirational goal of **15%**.
2. Answers to Questions 1 through 7 of Exhibit 3, Section VII, Affirmative Efforts/Business Support Strategies.
3. The firm's commitment to track goal attainment, including but not limited to, submitting monthly payment information for tracking purposes and meeting monthly with the PORT to discuss progress.

Proposal Requirements

1. Exhibit 3A – Diversity in Contracting Inclusion Plan (Word Document)
2. Exhibit 3B – Diversity in Contracting Evidence of Agreement (PDF)
3. Exhibit 4 – Company Information (Excel Workbook)

D. Interview

If conducted, the interview will consist of an approximately one-hour question and answer meeting.

The PORT will evaluate:

1. The Proposer's response to questions regarding experience, past projects, collaboration with clients and stakeholders, and proposed project approach
The Proposer's effectiveness to communicate verbally, and ability to answer questions clearly, concisely, and with specific examples.

XII. Definitions

The following definitions shall apply throughout this solicitation.

- A. Best Value means the expected outcome of a procurement that, in the PORT's estimation, provides the greatest overall benefit in response to the requirements.
- B. Deficiency is a material failure of a proposal to meet a requirement or a combination of significant weaknesses in a proposal that increases the risk of unsuccessful contract performance to an unacceptable level.
- C. Significant Weakness in the proposal is a flaw that appreciably increases the risk of unsuccessful contract performance.
- D. Strength is an aspect of an offeror's proposal that has merit or exceeds specified performance or capability requirements in a way that will be advantageous during contract performance.
- E. Weakness means a flaw in the proposal that increases the risk of unsuccessful contract performance.
- F. Women or Minority Business (WMBE) is an umbrella term that includes MBE, WBE, CBE and MWBEs
- G. Minority Business Enterprise (MBE) is a business that is at least 51 percent (51%) owned and controlled by minority (including, but not limited to African Americans, Native Americans, Asians, and Hispanics) group members.

- H. Women Business Enterprise (WBE) is a business that is at least 51 percent (51%) owned and controlled by women.
- I. Minority Women Business Enterprise (MWBE) is a business that is at least 51 percent (51%) owned and controlled minority women (including, but not limited to African Americans, Native Americans, Asians, and Hispanics) group members.
- J. Combination Business Enterprise (CBE) is a business that is 51% owned and controlled by a combination of minorities or women that would not otherwise meet the definition of MBE, WBE, MWBE.
- K. Small Business Enterprise (SBE) is a business that meets the applicable size standards adopted by the U.S. Small Business Administration. An SBE may be either a Certified Small Business or a business that is self-declared to meet the applicable U.S. Small Business Administration size standard. NAICS codes commonly used along with the applicable Small Business Administration size standards can be found at the following web address:
<https://www.sba.gov/contracting/getting-started-contractor/make-sure-you-meet-sba-size-standards/table-small-business-size-standards>
- L. Veteran Business Enterprise (VOB) is a business that is at least 51% owned and controlled by a veteran or service member.
- M. LGBTQ Business Enterprise (LGBTQBE) is a business that is at least 51% owned and controlled by one or more individuals who identify as LGBTQ.

Exhibit 1

Scope of Work

Background

The work of this IDIQ contract includes three projects at Terminal 18 (T-18): T-18 Bollard Replacement project, the T-18 Shore Power Project, and the T-18 Dock Rehabilitation project. All three projects are within or adjacent to each other in location, rely on each other for infrastructure, and may have similar timing for design, permitting, and construction, and will require close coordination with each other. However, these projects will be authorized separately under separate Service Directives within this IDIQ contract due to different business priorities, grant funding opportunities, and deadlines. There is no guarantee of any work and of timing of the work.



Project location map (not to scale)

Scope of Work Description

The work of this IDIQ contract shall include T-18 Bollard Replacement Design, T-18 Shore Power Design, and T-18 Dock Rehabilitation Assessment and Design.

- I. **T-18 Bollard Replacement:** 100% Design to initially replace two bollards to 60-ton capacity to meet minimum vessel operation requirements. Additional bollards may be added to the scope in future phases. Feasibility of replacing any additional bollards will depend on condition assessment of the existing dock.
- II. **T-18 Shore Power:** 100% to install shore power infrastructure at T-18 and upgrade electrical infrastructure as required, which will likely include Seattle City Light primary substations, underground duct bank to bring power to the dock, shore power vaults and switchgear at the dock.
- III. **T-18 Dock Rehabilitation:** Condition assessment and 100% Design to rehabilitate piles, pile cap, deck panels, and related infrastructure to preserve existing use while extending the service life of the rehabilitated components by 25 to 30 years.

Tasks shall be assigned in project specific service directives. Project timing may vary but in general, all projects are expected to be completed within 5 years from contract execution. The consultant will be required to take a wholistic approach to design and coordinate with adjacent projects and terminal operations requirements. Below

description of scope of services is intended to be inclusive of all possible needs and as if each project goes forward separately from the other projects. Actual requirements for each project will be negotiated under Service Directives for each project when these projects are ready to move forward. The Port of Seattle (Port) may combine two or all three projects for design, permitting, and construction contracts to achieve overall efficiency and quality of work.

Tasks and Deliverables:

I. T-18 Bollard Replacement

TASK 1 Development of design, construction and bid advertisement contract documents. This includes design, specifications, estimate, and final bid documents.

Task 1A Pre-design/Planning may include:

- 1) Cost benefit analysis
- 2) Life cycle cost analysis
- 3) Preliminary cost estimates
- 4) Hazardous material surveys, laboratory testing, and removal of possible buried underwater contaminated or regulated materials
- 5) Review existing studies and as-built documents

DELIVERABLES

- A. High level summary report
- B. Project notebook
- C. Memos and presentations to the Northwest Seaport Alliance (NWSA) Managing Members

Task 1B Design may include:

- 1) Base map and surveys if needed
- 2) Development of drawings and specifications, as per general industry standards
- 3) Port Master Specifications
- 4) Quality control documentation
- 5) Preparation of construction bid packages
- 6) Attending or leading design meetings as required
- 7) Structural calculations and analysis as needed
- 8) Estimated Construction Cost: Upon completion of each design milestone, the Consultant shall submit an Estimated Construction Cost (ECC) in format and extent to the satisfaction of the Project Manager. The ECC shall include, at a minimum, a breakdown of significant construction elements including quantities and unit prices; detailed estimates for lump sum items organized according to Construction Specifications Institute (CSI) Unifomat or Master Format Divisions, Contractor's overhead and profit, material, and equipment acquisitions (suppliers' estimates for major equipment), applicable sales tax; permitting costs, and anticipated design fees. All contingencies shall be explicitly identified in the estimate. The ECC shall be based on the current, local bidding climate with an identified estimate of inflation to the midpoint of the construction schedule. The Consultant shall continuously monitor the ECC during the course of the design project and provide timely notification to the Project Manager of variances to the approved ECC. Changes to the design that have caused increases to the ECC must be clearly identified and approved.

DELIVERABLES

- A. 30% Design and class 4 estimate
- B. 60% design, specs, and class 3 estimate, comment resolution file and Quality Assurance (QA) process
- C. 90% design, specs, and class 1 estimate, comment resolution file and QA process
- D. 100% design, specs, and class 1 estimate, comment resolution file and QA process
- E. Bid package, comment resolution file and QA process

Task 2 Permit Assistance and Regulatory Compliance

The Port/NWSA will apply for and obtain all necessary permits for projects using information prepared by the consultant and/or Port/NWSA. Consultant shall be familiar with all applicable codes and permit requirements and prepare all documents necessary to support the Port's permit process. Such documents may include environmental reports and/or permit drawings.

- 1) Prior to commencing design, the Consultant shall review the Port's environmental documents relevant to the Project (e.g., State Environmental Policy Act (SEPA) documents available from the Port, Environmental Impact Statements available from public libraries, etc.) to become informed of the significant environmental considerations of the Project, and to ensure that the Consultant's design is consistent with the Port's goals and commitments in these areas.
- 2) The Port will be the primary contact with all governmental agencies and will apply for and obtain all permits. Permit activities and submittals shall be consistent with and in compliance with existing inter-agency and inter-local agreements.
- 3) The Consultant shall assist the Port with permit applications and other permit-related activities as needed.

DELIVERABLES

- A. Summary of recommended permits
- B. Permit Set (as needed)
- C. Inter-agency coordination and periodic updates to Project Manager (PM) and schedule

Task 3 Design support during construction may include:

- 1) Responding to contractor's "Request for Information" (RFI)
- 2) Reviewing, approving, and/or rejecting contractor preconstruction submittals
- 3) Reviewing, approving, and/or rejecting contractor submittals during construction
- 4) Change order review and recommendations
- 5) Attending construction meetings as required
- 6) Site visits to inspect for design and quality compliance
- 7) Construction supervision and inspection
- 8) Provide Site Observation Reports (SOR) and progress photographs whenever on-site for inspection
- 9) Documentation of deficiencies noted in site visits, including full or part time inspection services

DELIVERABLES

- A. Requests for Information
- B. Submittal Review and Approval
- C. Site Observation Reports: including deficiencies

Task 4 Project Closeout:

- 1) Compile redline as-built drawings
- 2) Convert redlines to Port Auto Computer-Aided Design (ACAD) per Port Engineering standards at the time
- 3) Compile finalized permit conditions and compliance

DELIVERABLES

- A. Project redlines
- B. As-builts in Port Computer-aided design (CAD) standards at the time
- C. Finalized permit conditions and compliance

Task 5 Project Schedule and Progress Reports

- 1) The Port and the Consultant agree on the project schedule identifying the specific dates for all design and construction phases applicable to the project including milestones and required completion dates described in individual Service Directives.
- 2) Along with each Design Review Submittal, the Consultant shall submit to the Project Manager for approval a detailed Critical Path Method (CPM) based Master Project Schedule compatible with the Port's Program Master Schedule and based on information developed by the Consultant and provided by the Port and others involved with the project. This schedule shall be developed using Primavera Project Planner, Primavera Sure-Trak Project Manager or Microsoft Project at current Port version levels. It shall include all phases of design, design reviews, bidding, procurement (including long-lead items), construction, and construction phasing. It shall also identify permits and other governmental and regulatory approvals including the date/time sequence pertaining to each application for both Owner and Contractor-filed applications. It shall specifically identify construction activities that likely may be impacted by weather, permit conditions, operational constraints, and any long-lead procurement items. The critical path including milestones shall be clearly identified and the logical inter-relationships between activities shall be clearly portrayed in a standard CPM format schedule.
- 3) By the fifth day of each month and until the commencement of construction on the project, the Consultant shall provide the Port's Project Manager with regular progress reports. The report shall describe progress made through the previous month, critical items requiring attention, actual delays and causes, and potential future delays. The Consultant shall attach an updated Project Schedule to this report showing the actual schedule status.

DELIVERABLES

- A. Master schedule and monthly updates
- B. Monthly Project Management Progress Reports

Task 6 Communications and Meeting Requirements:

- 1) The Consultant shall attend and participate in regular meetings during the course of the Project. Additionally, the Consultant's Project Manager shall meet with the Port's Project Manager when requested and with other organizational representatives as required for the successful completion of the Project. All meetings to be attended by the Consultant will be identified in individual Service Directives. Responsibilities of the Consultant and the Port at meetings (e.g., scheduling, minute taking, etc.) will also be described in individual Service Directives.
- 2) The Consultant shall confirm in writing all conferences, telephone conversations, consultations, and meetings that resolve or establish a question of scope, a design element, or other project development consideration and provide copies to the Project Distribution List within 3 calendar days.
- 3) The Consultant shall provide written response to design document review comments and requests for information within seven (7) calendar days of receipt

DELIVERABLES

- A. Meeting Minutes
- B. Response to design document review comments and requests for information

Task 7 Utility Coordination:

On behalf of the Port/NWSA, the consultant will coordinate directly with utility companies during design and throughout the project for anything that may impact utility companies. Consultant will also facilitate coordination with and between the Port and utility companies in support of the assigned projects. The consultant will also report results of its coordination with utility companies to Port project managers.

DELIVERABLES

- A. Meeting notes
- B. Draft agreements

Task 8 Constructability analysis, value engineering, risk analysis:

The consultant may be required to coordinate constructability, value engineering, and risk analysis for selected project(s) at the appropriate stages of design to be determined by the Port.

DELIVERABLES

- A. Constructability analysis reports and recommendations
- B. Value engineering reports and recommendations
- C. Risk register

Assumptions:

The Consultant shall use the following software to produce any report, spreadsheet, presentation, Personal Computer (PC) database, or drawing:

- 1) Microsoft Office Products including Word, Excel, PowerPoint and Access for Windows 2010 or current Port version in use at the execution of the Agreement
- 2) AutoCAD Version 2016 or current Port version in use at the execution of the Agreement
- 3) Primavera Project Planner, Primavera Sure-Trak Project Manager or Microsoft Project at current Port version levels.

Port Provided Materials and Services

- 1) As built drawings
- 2) Existing studies and reports
- 3) On site utility shutdown support

II. T-18 Shore Power

TASK 1. Development of design, construction and bid advertisement contract documents. This includes design, specifications, estimate, and final bid documents.

Task 1A Pre-design/Planning may include:

- 1) Cost benefit analysis
- 2) Life cycle cost analysis
- 3) Preliminary cost estimates
- 4) Hazardous material surveys, laboratory testing, and removal of possible buried underwater contaminated or regulated materials
- 5) Review existing studies and as-built documents

DELIVERABLES

- A. High level summary report
- B. Project notebook
- C. Memos and presentations to the Northwest Seaport Alliance Managing Members

Task 1B Design may include:

- 1) Base map and surveys if needed
- 2) Development of drawings and specifications, as per general industry standards
- 3) Port Master Specifications
- 4) Quality control documentation

- 5) Preparation of construction bid packages
- 6) Attending or leading design meetings as required
- 7) Structural calculations and analysis as needed
- 8) Estimated Construction Cost: Upon completion of each design milestone, the Consultant shall submit an Estimated Construction Cost (ECC) in format and extent to the satisfaction of the Project Manager. The ECC shall include, at a minimum, a breakdown of significant construction elements including quantities and unit prices; detailed estimates for lump sum items organized according to CSI Unifomat or Master Format Divisions, Contractor's overhead and profit, material, and equipment acquisitions (suppliers' estimates for major equipment), applicable sales tax; permitting costs, and anticipated design fees. All contingencies shall be explicitly identified in the estimate. The ECC shall be based on the current, local bidding climate with an identified estimate of inflation to the midpoint of the construction schedule. The Consultant shall continuously monitor the ECC during the course of the design project and provide timely notification to the Project Manager of variances to the approved ECC. Changes to the design that have caused increases to the ECC must be clearly identified and approved.

DELIVERABLES

- A. 30% Design and class 4 estimate
- B. 60% design, specs, and class 3 estimate, comment resolution file and QA process
- C. 90% design, specs, and class 1 estimate, comment resolution file and QA process
- D. 100% design, specs, and class 1 estimate, comment resolution file and QA process
- E. Bid package, comment resolution file and QA process

Task 2 Permit Assistance and Regulatory Compliance

The Port/NWSA will apply for and obtain all necessary permits for projects using information prepared by the consultant and/or Port/NWSA. Consultant shall be familiar with all applicable codes and permit requirements and prepare all documents necessary to support the Port's permit process. Such documents may include environmental reports and/or permit drawings.

- 1) Prior to commencing design, the Consultant shall review the Port's environmental documents relevant to the Project (e.g., SEPA documents available from the Port, Environmental Impact Statements available from public libraries, etc.) to become informed of the significant environmental considerations of the Project, and to ensure that the Consultant's design is consistent with the Port's goals and commitments in these areas.
- 2) The Port will be the primary contact with all governmental agencies and will apply for and obtain all permits. Permit activities and submittals shall be consistent with and in compliance with existing inter-agency and inter-local agreements.
- 3) The Consultant shall assist the Port with permit applications and other permit-related activities as needed.

DELIVERABLES

- A. Summary of recommended permits
- B. Permit Set (as needed)
- C. Inter-agency coordination and periodic updates to PM and schedule

Task 3 Design support during construction may include:

- 1) Responding to contractor's "Request for Information" (RFI)
- 2) Reviewing, approving, and/or rejecting contractor preconstruction submittals
- 3) Reviewing, approving, and/or rejecting contractor submittals during construction
- 4) Change order review and recommendations
- 5) Attending construction meetings as required
- 6) Site visits to inspect for design and quality compliance

- 7) Construction supervision and inspection
- 8) Provide Site Observation Reports (SOR) and progress photographs whenever on-site for inspection
- 9) Documentation of deficiencies noted in site visits, including full or part time inspection services

DELIVERABLES

- A. Requests for Information
- B. Submittal Review and Approval
- C. Site Observation Reports: including deficiencies

Task 4 Project Closeout:

- 1) Compile redline as-built drawings
- 2) Convert redlines to Port ACAD per Port Engineering standards at the time
- 3) Compile finalized permit conditions and compliance

DELIVERABLES

- A. Project redlines
- B. As-builts in Port CAD standards at the time
- C. Finalized permit conditions and compliance

Task 5 Project Schedule and Progress Reports

- 1) The Port and the Consultant agree on the project schedule identifying the specific dates for all design and construction phases applicable to the project including milestones and required completion dates described in individual Service Directives.
- 2) Along with each Design Review Submittal, the Consultant shall submit to the Project Manager for approval a detailed CPM based Master Project Schedule compatible with the Port's Program Master Schedule and based on information developed by the Consultant and provided by the Port and others involved with the project. This schedule shall be developed using Primavera Project Planner, Primavera Sure-Trak Project Manager or Microsoft Project at current Port version levels. It shall include all phases of design, design reviews, bidding, procurement (including long-lead items), construction, and construction phasing. It shall also identify permits and other governmental and regulatory approvals including the date/time sequence pertaining to each application for both Owner and Contractor-filed applications. It shall specifically identify construction activities that likely may be impacted by weather, permit conditions, operational constraints, and any long-lead procurement items. The critical path including milestones shall be clearly identified and the logical inter-relationships between activities shall be clearly portrayed in a standard CPM format schedule.
- 3) By the fifth day of each month and until the commencement of construction on the project, the Consultant shall provide the Port's Project Manager with regular progress reports. The report shall describe progress made through the previous month, critical items requiring attention, actual delays and causes, and potential future delays. The Consultant shall attach an updated Project Schedule to this report showing the actual schedule status.

DELIVERABLES

- A. Master schedule and monthly updates
- B. Monthly Project Management Progress Reports

Task 6 Communications and Meeting Requirements:

- 1) The Consultant shall attend and participate in regular meetings during the course of the Project. Additionally, the Consultant's Project Manager shall meet with the Port's Project Manager (PM) when requested and with other organizational representatives as required for the successful completion of the Project. All meetings to be attended by the Consultant will be identified in individual Service Directives. Responsibilities of the Consultant and the Port at meetings (e.g., scheduling, minute taking, etc.) will also be described in individual Service Directives.
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- 3) The Consultant shall provide written response to design document review comments and requests for information within seven (7) calendar days of receipt

DELIVERABLES

- A. Meeting Minutes
- B. Response to design document review comments and requests for information

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On behalf of the Port/NWSA, the consultant will coordinate directly with utility companies during design and throughout the project for anything that may impact utility companies. Consultant will also facilitate coordination with and between the Port and utility companies in support of the assigned projects. The consultant will also report results of its coordination with utility companies to Port project managers.

DELIVERABLES

- A. Meeting notes
- B. Draft agreements

Task 8 Constructability analysis, value engineering, risk analysis:

The consultant may be required to coordinate constructability, value engineering, and risk analysis for selected project(s) at the appropriate stages of design to be determined by the Port.

DELIVERABLES

- A. Constructability analysis reports and recommendations
- B. Value engineering reports and recommendations
- C. Risk register

Assumptions:

The Consultant shall use the following software to produce any report, spreadsheet, presentation, PC database, or drawing:

- 1) Microsoft Office Products including Word, Excel, PowerPoint and Access for Windows 2010 or current Port version in use at the execution of the Agreement
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Port Provided Materials and Services

- 1) As built drawings
- 2) Existing studies and reports
- 3) On site utility shutdown support

III. T-18 Dock Rehabilitation

TASK 1 Condition Assessment and Evaluations:

Condition Assessment for the Dock Rehab project may include: Inspect dock condition, including under dock slope, piling, pile cap, decking, and evaluate results; Recommend repair options; Estimate costs, timeframe, urgency, and advise remaining service life once repairs are completed. More specifically, this may include:

- 1) Asset condition assessments including site investigations of existing dock and pier systems to determine general condition and detailed assessments
- 2) Diving services to support condition assessments and throughout the project
- 3) Written reports that include test results from non-destructive and destructive tests. Testing may include but is not limited to, infrared thermography, nuclear detection, electric capacitance/impedance, corrosion protection equipment and system testing, Hydrographic/ Bathymetric and underwater surveys.
- 4) Any destructive testing shall be repaired and restored.
- 5) Photos and recommendations for remedial repair.
- 6) Anticipated useful life analysis
- 7) Hazardous material surveys, laboratory testing, and removal of possible contaminated or regulated materials
- 8) Development of long-term strategies for repair, maintenance, and rehabilitation of current and future dock and pier systems; and suggestions for “green” options
- 9) Documentation may include detailed summary reports, spreadsheets, or PowerPoint presentations

DELIVERABLES

- A. Condition assessment report

TASK 2. Development of design, construction and bid advertisement contract documents. This includes design, specifications, estimate, and final bid documents.

Task 2A Pre-design/Planning may include:

- 1) Cost benefit analysis
- 2) Life cycle cost analysis
- 3) Preliminary cost estimates
- 4) Hazardous material surveys, laboratory testing, and removal of possible buried underwater contaminated or regulated materials
- 5) Review existing studies and as-built documents

DELIVERABLES

- A. High level summary report
- B. Project notebook
- C. Memos and presentations to the Northwest Seaport Alliance Managing Members

Task 2B Design may include:

- 1) Base map and surveys if needed
- 2) Development of drawings and specifications, as per general industry standards
- 3) Port Master Specifications
- 4) Quality control documentation
- 5) Preparation of construction bid packages
- 6) Attending or leading design meetings as required
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- B. Draft agreements

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- 3) On site utility shutdown support

Exhibit 2
Professional Standard Terms and
Conditions

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THIS document is an AGREEMENT by and between the Port of Seattle, State of Washington (hereinafter referred to as the "PORT") and **TBD** (hereinafter referred to as the "CONSULTANT"), for the furnishing of services for the **Terminal 18 IDIQ** (hereinafter referred to as the "Project").

The PORT and the CONSULTANT mutually agree as follows:

I. SCOPE OF WORK

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

II. PROJECT MANAGEMENT

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

III. COMPENSATION

- A. The PORT agrees to pay CONSULTANT a not to exceed total price of **Fifteen Million** dollars (\$15,000,000).
- B. Work will be issued through Service Directives (SD). The SD will identify if compensation will be on a firm fixed price (lump sum) or time and expense (billing rate) basis. This amount shall constitute complete compensation for all services provided under the SDs.
- C. If an SD is written on a lump sum basis;
 - 1. CONSULTANT shall submit a monthly request for payment for milestones completed within the billing period. Payment shall be made thirty (30) days ("Net 30") from date a properly completed invoice is received by the PORT. If there are disputed items or amounts or both on any invoice, the PORT will present these items to the CONSULTANT for resolution within thirty (30) days of receipt of such invoice. Those items that are undisputed will be identified on the invoice and payment will be made for the undisputed amount. All billing shall be to the Port of Seattle, Attn.: **TBD**, P.O. Box 1209, Seattle, WA 98111-1209 Invoices must reference the Agreement number.
 - 2. CONSULTANT shall report Monthly Amounts Paid (MAPs) to each subconsultant for the prior invoicing period. The MAPs shall be submitted electronically utilizing the PORT's Contractor Database System (CDS) available here: <https://hosting.portseattle.org/cds/>. The MAPs shall identify the subconsultant name, its status as a Minority/Women/Disadvantaged business, and amounts paid, including taxes, if any, to each subconsultant. At the conclusion of this Agreement, CONSULTANT shall submit a final payment request and a final MAP including all total amounts paid to all subconsultants for the term of the Agreement.
 - 3. Within ten (10) business days of receipt of payment by the PORT, the CONSULTANT shall pay subconsultants for all work satisfactorily completed by the subconsultant. This paragraph shall not impair or limit any remedies otherwise available to the CONSULTANT or subconsultant in the event of a dispute involving late payment or non-payment by the CONSULTANT or deficient performance or non-performance.
 - 4. Markups shall be limited to the billing rates. Markup on work performed by the first tier subconsultants shall not exceed four (4%) percent. Markups on second tier subconsultants are not allowed. Markups shall not be applied to travel costs, materials, supplies or other direct costs.
- D. If an SD is written on a billing rate basis;
 - 1. Compensation will be made only to the extent to which CONSULTANT presents documented evidence of fees earned in proportion to progress in accomplishing the scope of services, and expenses incurred during the period for which payment is requested. In no case shall the total compensation exceed the sum set forth herein.
 - 2. CONSULTANT shall submit a monthly invoice for services provided during that billing period. Payment shall be made thirty (30) days ("Net 30") from date a properly completed invoice is received by the PORT. If there are disputed items or amounts or both on any invoice, the PORT will present these items to the CONSULTANT for resolution within thirty (30) days of receipt of such invoice. Those items that are undisputed will be identified on the invoice and payment will be made for the undisputed amount. All billing shall be to the Port of Seattle, Attn.: **TBD**, P.O. Box 1209, Seattle, WA 98111-1209 Invoices must reference the Agreement number.

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6. The PORT may require additional tasks be performed by the CONSULTANT related to this contract. A task is established to set up a contingency for those services. CONSULTANT shall not use or bill against this task without specific written direction from the PORT. Such direction will be sent either via letter or email from the PORT Project Manager. The specific scope of work, deliverables, level of effort, and not to exceed value will be established in the letter or email.
7. Hourly rates include all of CONSULTANT'S routine administration and overhead expenses, including all equipment, (not including allowable field equipment) software, tools and supplies reasonably required to perform the scope of services. The PORT will not separately reimburse CONSULTANT for routine overhead expenses or administration including but not limited to:
 - a) Computer hardware or software usage
 - b) Digital camera or recording equipment
 - c) Communication Equipment - including phone, radio, walkie talkie, internet, and fax.
 - d) Postage and courier services
 - e) Routine reproduction except for documents reproduced by an outside vendor
 - f) Small tools and expendables
 - g) Personal protective equipment
 - h) Federal, state or local taxes
 - i) B&O Taxes
 - j) Safety training and equipment
 - k) Time devoted to Agreement negotiation, invoicing, and/or dispute resolution; and/or
 - l) Time devoted to development or refinement of scope of work, unless directed by the PORT through a Service Directive.
8. The PORT will not pay for travel mileage, parking, or travel time within a 50 mile radius of Seattle-Tacoma International Airport.
9. CONSULTANT shall obtain advance written approval of travel status to qualify for travel reimbursement. CONSULTANT shall notify the PORT Project Manager, and, provide the PORT Project Manager a not to exceed estimate of travel expenses. Reimbursement of travel expenses shall be at cost, without markup, and in accordance with the following standards:
 - a) Air travel shall be by coach class at the lowest available commercial price;
 - b) Vehicular travel costs shall not exceed the current IRS Standard Mileage Rates;
 - c) Rental car reimbursement is allowed only when required by the scope of work, and in conjunction with air travel and then at compact car rental rates;
 - d) Maximum reimbursement for meals and incidental expenses (M&IE) shall be reimbursed at the per diem rates for the location established by the United States General Services Administration, Transportation Management Policy, <http://www.gsa.gov/portal/content/104877>.
 - e) Maximum reimbursement for lodging shall be reimbursed at cost, no greater than the rate for the location established by the United States General Services Administration, Transportation Management Policy, <http://www.gsa.gov/portal/content/104877>.
 - f) Receipts shall be required in order to receive reimbursement for air travel, rental car, meals, and lodging.
 - g) Travel shall be limited for the purpose of the work of this Agreement.
 - h) CONSULTANT will not be compensated for travel time.

IV. AGREEMENT DURATION

- A. CONSULTANT shall complete all specified work, including submission of reports and/or other required documentation, within the time periods set forth in this Agreement and related documents. Time is of the essence in each and every portion of this Agreement.

- B. The Agreement shall expire **five (5) years** after execution of this Agreement; provided however, at the PORT'S sole discretion, this Agreement may be extended. If the PORT determines to extend this Agreement as described herein, the PORT shall issue an amendment extending the Period of Performance. Execution of Agreement is the date the PORT signs this Agreement.

V. CHANGES

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

VI. ADMINISTRATION OF THE WORK THROUGH SERVICE DIRECTIVES

- A. Attachment A identifies the general scope of work for this Agreement. The work will be authorized on a task basis by means of Services Directives (SD). SDs may be issued on a firm fixed price (lump sum) or billing rate (time and expense) basis.
- B. The PORT Project Manager will prepare SDs for specific scopes of work for the CONSULTANT. The PORT and CONSULTANT will negotiate a final scope (with tasks and deliverables) and Level of Effort (LOE) for each SD.
1. CONSULTANT shall not perform any work prior to execution of the SD. A PORT executed SD serves as the Notice to Proceed for the services or tasks identified therein.
 2. The PORT shall not compensate the CONSULTANT for any work performed by the CONSULTANT or its subconsultants of any tier for work performed that:
 - a) Has not been authorized by an executed SD, or SD modification;
 - b) Is out of scope,
 - c) Exceeds the not to exceed dollar value; and/or
 - d) Is completed after expiration of Agreement Duration
- C. SDs and SD Modification shall include the following elements:
1. A scope of work with a description of tasks and deliverables;
 2. A schedule for receipt of deliverables;
 3. A schedule for completion of the SD
 4. A maximum allowable not to exceed sum, supported by a level of effort identifying CONSULTANT staff and/or job classifications, hours and rates that supports a maximum allowable not to exceed sum and, a schedule for receipt of deliverables OR;
 5. An agreed upon firm fixed price for performance of the work and a milestone payment or deliverable(s) schedule whereon the lump sum amounts should be paid.
 6. The PORT may require additional tasks be performed by the CONSULTANT related to this contract. A task is established to set up a contingency for such tasks. CONSULTANT may not use or bill against this task

without specific written direction from the PORT. Such direction will be sent either via letter or email from the PORT Project Manager. The specific scope of work, deliverables, level of effort, and not to exceed value will be established in the letter or email.

D. Service Directive (SD) Modifications

1. An SD modification documents changes to the SD if the CONSULTANT and/or the PORT determine that;
 - a) The work of the SD requires additional time, scope and compensation; and/or
 - b) Personnel are added to or deleted from the SD
2. If the PORT agrees that the changes to the SD identified by the CONSULTANT or the PORT are required, the changes will be documented in an SD modification.

E. The execution of individual SDs may occur at any time up to the expiration of the agreement ordering period, or when the not to exceed total compensation amount is expended, whichever occurs first.

1. The ordering period is five (5) years.
2. The PORT will not initiate new SDs after the expiration of the ordering period.
3. The PORT will amend the Agreement to extend the duration to coincide with the completion of the Work of SDs executed during the ordering period to ensure all work ordered is allowed to complete.

VII. RESPONSIBILITIES OF THE PORT

- A. The PORT shall designate a Project manager to coordinate and review the work of CONSULTANT and to coordinate the work of CONSULTANT with all agencies and individuals involved with the Project. CONSULTANT is expected to work closely with the Project Manager throughout the duration of this Agreement.
- B. The PORT shall furnish master specifications and standards for the preparation of the final plans and specifications for the Project. The PORT shall furnish standards for any electronic media provided by the CONSULTANT.
- C. As an accommodation to CONSULTANT, the PORT will upon request, furnish without charge such structural, mechanical, soils, chemical and other laboratory tests, inspections, appraisals, legal descriptions, data, reports, records and maps, as it may have in its possession or may hereafter obtain, that are necessary to complete the service under this Agreement. Except as identified in Sections XXXII through XXXV of this Agreement, such information shall be provided "as-is" for general guidance only, and the PORT in no way warrants its sufficiency, adequacy or correctness, or any interpretation, deductions or conclusions derived there from. The use of such information for any purpose shall be at the sole risk and responsibility of CONSULTANT who shall, prior to such use, have satisfied itself that such information is adequate for such use.
- D. The PORT may furnish property, topographic, and construction surveys, for the Project. CONSULTANT shall immediately notify the PORT in writing of any errors, omissions, or inconsistencies found therein.
- E. Unless otherwise specified in the Scope of Services, the PORT shall be responsible for administration of construction contracts, if any, on the Project. CONSULTANT assumes no responsibility for proper construction techniques or any construction contractor's failure to perform its services in accordance with any contract documents.

VIII. RESPONSIBILITIES OF CONSULTANT

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

- length of delay, state the measures taken or to be taken to minimize the delay, and estimate the timetable for implementation of the measures.
3. The affected Party shall make all reasonable efforts to promptly resume performance of this Agreement and, when able, to resume performance of its obligations and give the other Parties written notice to that effect.
 4. The PORT is not obligated to pay CONSULTANT for any costs relating to delays due to force majeure. Delays in performance prevented by force majeure are not compensable.
- F. CONSULTANT shall comply with the PORT'S Computer-Aided Design (CAD) Standards:
1. All drawings shall be prepared in strict compliance with the PORT's CAD Standards, current edition, which can be found at <https://www.portseattle.org/page/design-standards>. Additionally, the drawings shall comply with the Revised Code of Washington and Washington Administrative Code requirements for Professional Engineers and Registered Architects.
 2. All drawings must be submitted to the PORT's Design Quality Control ("QC") department by way of the PORT Project Manager for review and approval of CAD compliance prior to any publication for uses such as contract advertisement and finalization of as-builts. Such approval shall be in the PORT's sole discretion.
 3. Reuse of existing drawings in the preparation of Construction Documents for this project shall not be permitted unless approved in advance in writing by the PORT Project Manager.
- G. CONSULTANT shall use the PORT's Guide Specifications as a base document set in preparing the Project Specifications (the "Project Manual"). The PORT's Guide Specifications are available at <https://www.portseattle.org/page/guide-specifications>, and are organized according to the uniform construction specification index under Construction Specifications Institute (CSI) Master Format 2014 Edition for Divisions 1 through 50, and the PORT's Division 0 index for General and Supplemental Terms and Conditions. The Project Manual shall include all Divisions and Sections required for bidding and construction of the project. If no PORT guide specifications are available for an element of project content, the CONSULTANT shall prepare the appropriate specifications in CSI section and page format.

IX. NON-DISCRIMINATION AND AFFIRMATIVE ACTION

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

X. ACCEPTABLE WORKPLACE ENVIRONMENT

- A. An Acceptable Workplace Environment encourages inclusive, productive, and safe behaviors and procedures; focuses on positive relationships between employers and employees, and among employees; and is free from bullying, hazing, harassment, and discrimination.
- B. The CONSULTANT shall promote an Acceptable Workplace Environment. Any behavior(s) that demonstrates hostility related to race, gender or sexuality, inappropriate conduct or comments intended to harm another individual, and/or hostile or discriminatory actions against another individual are strictly prohibited.

XI. ETHICS AND INTEREST OF CONSULTANT

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

XII. SUBCONTRACTS

- A. The PORT authorizes the CONSULTANT to subcontract, as necessary for services related to the CONSULTANT's performance under this Agreement and as specified by this Agreement.
- B. CONSULTANT shall require subconsultant to be bound by the terms of this Agreement and to assume all obligations and responsibilities that CONSULTANT assumes toward the PORT via subcontract with CONSULTANT. However, if scope of subcontracted services is limited or shorter in duration, Section XXIII. Insurance may be modified as needed to reflect the actual work of the subcontracted services.
- C. The PORT must review and approve CONSULTANT's utilization of subconsultants, and any and all billing rates for all subconsultant(s) proposed to be added to the Agreement prior to any work being performed by such subconsultant(s). Such approval will be in writing, through an executed amendment.

XIII. DIVERSITY IN CONTRACTING INCLUSION PLAN

- A. The PORT has determined that this Agreement has opportunities for participation by WMBE firms and CONSULTANT has established the following commitment for WMBE participation: **TBD%** of the total amount paid, including amendments. The CONSULTANT must perform affirmative efforts to develop and achieve this commitment in accordance with the Inclusion Plan included as Attachment D. The Inclusion Plan becomes a material part of the Agreement upon execution.
- B. The CONSULTANT is required to monitor and report its progress on a monthly basis. CONSULTANT shall use the firm(s) proposed for the work identified in Attachment A, Scope of Work to this Agreement. The PORT shall monitor compliance through monthly check-in meetings with the CONSULTANT and the CONSULTANT'S submission of MAPs as defined in Section III., Compensation.
- C. If the CONSULTANT proposes to substitute a diverse business identified on Attachment D with a different diverse business, CONSULTANT shall request such substitution in writing, and the PORT may verify the proposed firm's status and must provide written concurrence prior to such substitution.
- D. If the CONSULTANT proposes to substitute a diverse business with a non-diverse business, the CONSULTANT shall demonstrate the steps it took to locate another qualified firm and why it was unsuccessful in securing the services of a diverse business in writing to the PORT for approval. The CONSULTANT will still be required to comply with the commitment included in Attachment D unless CONSULTANT can demonstrate a sound basis for the substitution and that no other diverse businesses have the capacity and qualifications to perform the work, and the PORT, in its sole discretion, may issue an amendment reflecting the change. The PORT shall not be responsible for any costs resulting from substitution of Sub-Consultants.
- E. The commitment will apply to amendments that add scope and/or increase the total price of this Agreement. If the Agreement price is decreased as a result of an Amendment that reduces or deletes any of the scope of work, the WMBE commitment will be reduced only to the extent that such work was being performed by a WMBE.
- F. Failure to comply with the affirmative efforts to develop and achieve the commitment may impact selection decisions on future opportunities with the PORT.
- G. The PORT reserves the right to publicly publish the Diversity in Contracting utilization data on this contract on the PORT's website or any other public communication forums.

XIV. CONSULTANT PERSONNEL

- A. CONSULTANT will ensure that individuals who are specifically identified in this Agreement shall perform the work assigned in Attachment A. CONSULTANT will take appropriate action with respect to any individuals that are not performing satisfactorily within five (5) business days of the CONSULTANT being made aware of such non-satisfactory performance or conduct. CONSULTANT will not charge the PORT a fee to make any replacement, and any replacements shall have equal or better skill and experience and be provided to the PORT at the same or lower rate.
- B. CONSULTANT agrees not to replace or remove any individuals who are specifically identified in this Agreement, unless unavoidable, such as due to serious illness, death or termination of employment. Assigned individuals shall remain assigned until completion of services. CONSULTANT may request that a particular individual be replaced with a person of equal or better skill and experience and, if agreed by the PORT by written consent, the period of time required to orient and familiarize the replacement with the services being performed will be provided at no charge to the PORT. Key Personnel, if any, are identified in Attachment B of this Agreement.

XV. INDEPENDENT CAPACITY OF CONSULTANT

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

XVI. CONFIDENTIALITY

- A. CONSULTANT shall not use or disclose Confidential Information for any purpose not directly connected with performance of the scope of work of this Agreement except with prior written consent of the PORT or as may be required by law.
- B. Confidential information includes, without limitation, any information in any form that the PORT considers to be confidential and proprietary. CONSULTANT shall not use confidential information for the benefit of the CONSULTANT or a relative. CONSULTANT shall not use or disclose confidential information, or any other information learned by CONSULTANT relating to operations or business practices of the PORT to any third party or in any manner that is detrimental to the PORT.

- C. CONSULTANT shall not:
1. Allow for the release, distribution or dissemination or disclosure of any documentation obtained in any manner pursuant to this Agreement;
 2. Allow the release distribution or dissemination of information or disclosure of any documentation obtained in any manner that relates to the business activities of the PORT pursuant to this Agreement; and/or,
 3. Disclose to third party any notes, reports, electronic files, including emails or any other materials, information.
- D. CONSULTANT may not use the PORT logo except on work products produced for the PORT or on a proposal/submittal to the PORT. Use of PORT name or logo that implies PORT endorsement of the entity is prohibited unless written consent is provided by the Director of Public Affairs or Manager, Corporate Communications.
- E. CONSULTANT acknowledges that monetary damages may not be a sufficient remedy for a breach of this Section XVI and that the PORT shall be entitled, without waiving any other rights or remedies, to such injunctive or equitable relief as may be deemed proper by a court of competent jurisdiction.

XVII. AUDIT AND ACCESS TO RECORDS

- A. CONSULTANT shall maintain books, ledgers, records, documents or other evidence relating to the costs and/or performance of the Agreement ("records") on a generally recognized accounting basis and to such extent and in such detail as will properly reflect and fully support all fees, costs and charges.
- B. With regard to the records, CONSULTANT shall do and require its employees, agents and subconsultants to do the following:
1. Make such records open to inspection or audit by representatives of the PORT during the term of this Agreement and for a period of not less than three years after the expiration of this Agreement.
 2. Retain such records for a period of not less than three years after the expiration of this Agreement; provided, however, if any litigation, claim, or audit arising out of, in connection with, or related to this Agreement is initiated, such records shall be retained until the later of (a) resolution or completion of litigation, claim or audit; or (b) six years after the date of termination of this Agreement.
 3. Provide adequate facilities reasonably acceptable to representatives of the PORT conducting the audit so that such representatives can perform the audit during normal business hours.
 4. Make a good faith effort to cooperate with representatives of the PORT conducting the audit. Cooperation shall include assistance as may be reasonably required in the course of inspection or audit, including access to personnel with knowledge of the contents of the records being inspected or audited so that the information in the records is properly understood by the persons performing the inspection or audit. Cooperation shall also include establishing a specific mutually agreeable timetable for making the records available for inspection by the PORT's representatives. If CONSULTANT cannot make at least some of the relevant records available for inspection within seven (7) days of the PORT's written request, cooperation will necessarily entail providing the PORT with a reasonable explanation for the delay in production of records.
 5. CONSULTANT is responsible for any audit exceptions or disallowed costs incurred by CONSULTANT.

XVIII. OWNERSHIP OF WORK PRODUCTS

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

copyright with rights to any data or documents created or developed because of or under the agreement. The Washington State Department of Ecology maintains the following:

1. Retainment of a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use the data or documents.
2. The right to authorize others to use the data or documents for federal, state, or local government purposes.

XIX. PUBLIC DISCLOSURE

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

XX. ASSIGNABILITY

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

XXI. TERMINATION FOR CONVENIENCE

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

XXII. TERMINATION FOR DEFAULT

- A. The PORT may terminate for default this Agreement, in whole or in part, in writing if the CONSULTANT substantially fails to fulfill any or all of its material obligations under this Agreement after reasonable written notice and the opportunity to cure any deficiencies.
- B. If the PORT terminates all or part of this Agreement for default, the PORT shall determine the amount of work satisfactorily performed to the date of termination and the amount owing to the CONSULTANT provided, that (a) no amount shall be allowed for anticipated profit on unperformed services and (b) any payment due to the CONSULTANT at the time of termination may be adjusted to the extent the PORT has to incur additional costs due to the CONSULTANT's default. In such event, the PORT shall consider the actual costs incurred by the CONSULTANT in performing the project work to the date of termination, the amount of work originally required which was satisfactorily completed to the date of termination, whether that work is in a form or of a type which is usable and suitable to the PORT at the date of termination, the cost to the PORT of completing the work itself or of employing another firm to complete it and, the inconvenience and time which may be required to do so, and other factors which affect the value to the PORT of the work performed to the date of termination. Under no circumstances shall payments made under this provision exceed the total price set forth in this Agreement. This provision shall not preclude the PORT from filing claims and/or commencing litigation to secure compensation for damages incurred beyond that covered by withheld payments.
- C. Upon receipt of a termination notice the CONSULTANT shall at no additional cost to the PORT:
 1. Promptly discontinue all services affected (unless the notice directs otherwise);
 2. Terminate all subcontracts to the extent they relate to the work terminated; and
 3. No later than thirty (30) calendar days after receipt of termination, promptly deliver or otherwise make available to the PORT all documentation or materials CONSULTANT or subconsultants may have accumulated in performing this Agreement, whether completed or in progress.
- D. Upon termination, the PORT may take over the work and directly or through a third party complete the work.

- E. If, after termination for default, it is determined that the CONSULTANT had not defaulted, the termination shall be deemed to have been affected for the convenience of the PORT. In such event, the equitable adjustment shall be determined as set forth in the Termination for Convenience provision.

XXIII. INSURANCE

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

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

1. Commercial General Liability insurance on ISO Form CG 00 01 10 01 (or equivalent) for third party property damage, bodily injury, personal and advertising injury, and medical payments in an amount which is not less than \$2,000,000 per occurrence and \$4,000,000 annual aggregate. The insurance shall cover liability arising from premises, operations, independent contractors, products completed operations, personal and advertising injury, and liability assumed under an insured Agreement. The CONSULTANT'S insurance shall be primary and non-contributory with respect to any insurance the PORT carries and apply separately to each insured.

This Agreement ☒ does ☐ does not require commercial general liability insurance.

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

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

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

This Agreement ☒ does ☐ does not require automobile liability insurance.

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

- a) ☒ The limit of insurance shall be not less than \$1 million per occurrence for all driving on PORT Terminals, 5, 10, 18, 25, 30, 46, 47, 86, 90, 91, 104, and 115;
- b) ☐ The limit of insurance shall be not less than \$5 million per occurrence for all driving on the non-movement area of the airfield operations area at Seattle-Tacoma International Airport;
- c) ☐ The limit of insurance shall be not less than \$10 million per occurrence for all driving on the movement area of the airfield operations area at Seattle-Tacoma International Airport;
- d) ☒ The limit of insurance shall be not less than \$300,000 per occurrence

e) ☐ The limit of insurance shall be not less than \$500,000 per occurrence for any individual or entity that is to use a PORT Vehicle.

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

This Agreement ☒ does ☐ does not require Professional Liability insurance coverage.

If required, CONSULTANT shall provide Professional Liability (E&O) insurance in an amount not less than **\$5,000,000** per claim or wrongful act and **\$10,000,000** in the policy aggregate on a practice policy to cover the CONSULTANT and its employees. CONSULTANT may choose to provide a project specific policy, in lieu of a practice policy, in which case the insurance shall be in an amount not less than **\$5,000,000** per claim or wrongful act and in the policy aggregate. Subconsultants retained by CONSULTANT who are performing professional services, shall either be added onto the policy of the CONSULTANT, or, subconsultant shall provide and obtain a similar policy of Professional Liability insurance coverage that covers the Subconsultant and its employees. When a self-insured retention (SIR) or deductible exceeds \$25,000, the PORT reserves the right, but not the obligation, to review and request a copy of the CONSULTANT'S most recent annual report or audited financial statement. If coverage is to be provided on a claims-made basis, the CONSULTANT shall warrant that any policy retroactive date precedes the effective date of this Agreement. In addition, continuous coverage must be maintained throughout the Agreement and for one year beyond the completion of the Agreement, or the CONSULTANT shall purchase an extended discovery period policy for not less than one year from the completion of work.

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

This Agreement ☐ does ☒ does not require stop gap employer's liability insurance.

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

This Agreement ☒ does ☐ does not require specialized insurance coverage, or a specialized policy endorsement.

- B. CONSULTANT is responsible for complying with the Washington State laws that pertain to industrial insurance (Reference Revised Code of Washington, Title 51 Industrial Insurance) for CONSULTANT, its employees, and subconsultants. CONSULTANT shall submit a current employer liability certificate as issued by the Washington Department of Labor and Industries that shows the status of CONSULTANT'S workers' compensation account prior to commencing work, including those CONSULTANTS who are qualified self-insurers with the state. CONSULTANT bears the responsibility to ensure that any out-of-state (non-Washington) employees and subconsultants have appropriate workers compensation coverage while working for the PORT in Washington State. CONSULTANT may be exempt from state workers' compensation insurance requirements (Reference RCW 51.12.020) such as if CONSULTANT is a sole proprietor. CONSULTANT shall indicate its status below by marking the appropriate box. If neither box is checked, CONSULTANT must show evidence of industrial insurance coverage with a current employer liability certificate.

CONSULTANT ☐ is ☒ is not exempt from state workers' compensation and industrial insurance requirements.

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

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

XXIV. INDEMNITY

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

XXV. REPRESENTATIONS AND STANDARD OF CARE

- A. CONSULTANT represents that:
 - 1. CONSULTANT shall perform its services with that degree of care and skill ordinarily exercised by professional consultants practicing in the same discipline and claiming a similar degree of specialization and/or expertise;
 - 2. any errors or omissions in its deliverables shall be promptly corrected or revised without additional compensation; and
 - 3. CONSULTANT warrants that all deliverables or Work Product shall be the original work of CONSULTANT and CONSULTANT has the ability to transfer clear title and Intellectual Property Rights for such deliverables to the PORT.
- B. The PORT shall have the right to deduct from any payments due CONSULTANT any costs or damages incurred by the PORT, or which may be incurred by the PORT, as a result of the CONSULTANT'S failure to comply with the terms of this Agreement or failure to meet the professional standard of care.

XXVI. COMPLIANCE WITH APPLICABLE LAWS

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

XXVII. GOVERNING LAW

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

XXVIII. NO OTHER THIRD-PARTY BENEFICIARY

Other than the Washington State Department of Ecology, which is expressly designated as a third-party beneficiary, the PORT and the CONSULTANT enter into this Agreement for their sole benefit in exclusion of any other party, and no third-party beneficiary is intended or created by execution of this Agreement. Nothing in this Agreement is intended to and/or shall be construed to give any rights or benefits to any subconsultant, individual, company, and/or firm other than the PORT, the CONSULTANT and the Washington State Department of Ecology.

XXIX. ORDER OF PRECEDENCE

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

- A. Amendments
- B. U.S. Department of Transportation Provisions
- C. Washington State Department of Ecology Volkswagen Grant
- D. Service Agreement Terms and Conditions

- E. Service Directives, as modified
- F. Scope of Work
- G. Schedule of Fees
- H. Diversity in Contracting Inclusion Plan
- I. Additional attachments

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

XXX. WAIVER

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

XXXI. SURVIVORSHIP

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

XXXII. CONSULTANT IDENTIFICATION, ACCESS CONTROL, AND SECURITY REQUIREMENTS

MARITIME:

- A. A portion of this Contract requires work to be performed within an area of the Seaport controlled for security reasons. That area is defined as the area within a Coast Guard Regulated facility subject to the provisions of the Maritime Transportation Security Act (MTSA) of 2002 and Title 33 CFR, Part 105, delineated by security fence, and all other restricted areas indicated on applicable drawings, or as posted on the Seaport premises ("restricted/secured area"), or otherwise defined under each Terminal Facility Security Plan. No CONSULTANT personnel are allowed to work in these restricted areas without a valid TWIC.
- B. All CONSULTANT personnel working in secure and restricted areas (as defined in Title 33, Code of Federal Regulations (CFR) Parts 104, 105 and 106) on this project shall have valid Department of Homeland Security issued Transportation Worker Identification Credential (TWIC) in accordance with Title 33, CFR, Part 101.514.
- C. Restricted Area Training: All individuals requiring unescorted access to restricted areas will be required to provide documentation that they have successfully completed basic security awareness training as required in 33 CFR 105.215. This training must be completed prior to allowing unescorted access to restricted areas of PORT marine terminals subject to 33 CFR 105.
- D. Issuance of Identification Badges:
 - 1. In order to obtain a TWIC, the CONSULTANT must apply for a TWIC card through the TWIC program as administered by the Transportation Security Administration (TSA). Information on this program can be found on the internet at <http://www.tsa.gov/twic>.
 - 2. All work and expenses required to obtain a TWIC or for other activities required in this section shall be borne by the CONSULTANT as part of the Contract.
- E. Rules and Regulations Regarding Identification Badges
 - 1. TWIC cards must be worn at all times on the outermost garment above waist height in order to gain access to and remain in restricted areas.
 - 2. Any employee found in a restricted area without a valid TWIC will be escorted from that location and not be allowed to return until wearing a proper TWIC. This will be reported to the National Response Center as a security breach.
 - 3. Employees shall be allowed access to the restricted areas only as necessary to travel to and from the project location. Any employee found in any portion of the restricted areas other than the project location or the area to and from the project location will no longer be permitted to work at the Seaport in a restricted area.
- F. Escorting:
 - 1. Escorts must comply with the requirements of 33 CFR 101 and 105, and be authorized by the Facility Security Officer, or designee, of the facility where escorting is to be performed.
 - 2. Only those individuals with a valid TWIC authorized access to a particular door/gate, may escort no more than five (5) individual(s) in direct line of sight at all times. Those persons being escorted must possess a valid form of identification that must, at a minimum meet the following requirements:
 - a) Be laminated or otherwise secure against tampering;
 - b) Contain the individual's full name (full first and last names, middle initial is acceptable);
 - c) Contain a photo that accurately depicts that individual's current facial appearance; and
 - d) Bear the name of the issuing authority.

- e) The issuing authority must be a government authority or an organization authorized to act on behalf of a government authority.
3. THE ESCORT MUST REMAIN WITH THE INDIVIDUAL(S) BEING ESCORTED AT ALL TIMES WHILE IN RESTRICTED AREAS.
- G. Lost or Stolen TWIC.
 1. All TWIC's that are lost, stolen, or otherwise unaccounted for must be immediately reported to the Transportation Security Agency TWIC help desk 1-866-DHS-TWIC.
 2. After the applicant reports the card as lost, stolen, or damaged, the help desk will contact the card production facility to trigger production of a replacement TWIC. The replacement credential will be sent to the enrollment center designated by the applicant for pick up.
 3. TSA will add the lost, stolen, or damaged credential to the list of revoked cards to decrease the chance that the credential could be used by an unauthorized person to gain unescorted access. This list of revoked cards (the 'hotlist') will be available on the TWIC portal to appropriate individuals within the maritime community (Vessel Security Officer, Facility Security Officer, Coast Guard Captain of the PORT) in order to monitor access to secure areas. Once the replacement TWIC arrives at the enrollment center, the applicant will pick up and pay the card replacement fee. The replacement card will have the same expiration date as the original.
- H. Unsecured Doors/Gates: CONSULTANTS and their employees will be held accountable for doors and gates located within their work sites that provide direct or indirect access to restricted or secured areas of the PORT by unauthorized individuals. Doors and gates that provide such access must NOT, under ANY circumstances, be left open and unattended. Individuals who have been issued TWIC cards are required to challenge any individual attempting unauthorized access to restricted areas and report all violations to the terminal security staff immediately.
- I. CONSULTANT requiring access through vehicle gates not normally staffed must make arrangements for access through the Facility Security Officer or designated security staff on the marine terminal.
- J. Compliance with these regulations and TSA directives will be monitored by the Seaport Security Coordinator, other PORT personnel or other regulatory agencies. Failure on the part of the CONSULTANT to comply may result in fines or other monetary considerations levied against the PORT. In the event an action or absence of action, by the CONSULTANT with regard to the TSA directive leads to any damages against the PORT, the CONSULTANT shall be liable for, and reimburse the PORT for, all costs involved.

XXXIII. SAFETY

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

XXXIV. USE OF PORT EQUIPMENT

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

XXXV. RESERVED

XXXVI. ENTIRE AGREEMENT

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

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

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

XXXVII. FEDERAL FUNDING PROHIBITION ON CERTAIN TELECOMMUNICATIONS OR VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

As required by 2 CFR 200.216, federal grant, or loan recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:

1. Procure or obtain.
2. Extend or renew a contract to procure or obtain; or
3. Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that use covered telecommunications equipment, video surveillance services or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232 <https://www.govinfo.gov/content/pkg/PLAW-115pub1232/pdf/PLAW-115pub1232.pdf>, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

Recipients, subrecipients, and borrowers also may not use federal funds to purchase certain prohibited equipment, systems, or services, including equipment, systems, or services produced or provided by entities identified in section 889, are recorded in the System for Award Management (SAM) <https://sam.gov/SAM/> exclusion list.

PORT OF SEATTLE**TBD**

CONSULTANT certifies to the best of its knowledge that it is not presently disbarred or suspended from any federal department or agency transactions. CONSULTANT also declares they are not a previous PORT Employee.

By signing this agreement, CONSULTANT represents it complies with these requirements.

Authorized Signature

*(Print or Type Name and Title of Signer)*Date

Address:

Attn: Jason Gates

PO Box 1209

Seattle, WA 98111-1209Phone:

(206) 787-5565Email:

Gates.J@portseattle.org

Authorized Signature

*(Print or Type Name and Title of Signer)*Date

Address:

Phone:

()Email:

Attachments:

- ☐ Attachment A – Scope of Work
- ☐ Attachment B –Schedule of Fees
- ☐ Attachment B-1 – Other Direct Costs
- ☐ Attachment C – U.S. Department of Transportation Provisions
- ☐ Attachment D – WA State Department of Ecology Grant
- ☐ Attachment E – Company Information
- ☐ Attachment F – Diversity in Contracting Inclusion Plan
- ☐ Attachment G – Title VI Provisions
- ☐ Attachment H – Consultant Ethics and Conflict of Interest, CC-2

Taxpayer Identification Number ("TIN"):**Washington State Unified Business Identifier ("UBI") Number:****State Worker Compensation Account Number:**

ATTACHMENT A
SCOPE OF WORK
To be Inserted at Contract Execution

ATTACHMENT B
SCHEDULE OF FEES
To be Inserted at Contract Execution

ATTACHMENT B-1
OTHER DIRECT COSTS

ATTACHMENT C
U.S. DEPARTMENT OF TRANSPORTATION PROVISIONS

<https://www.maritime.dot.gov/sites/marad.dot.gov/files/2021-04/FINAL%20FY%202020%20PIDP%20marad%20exhibits.pdf>

U.S. DEPARTMENT OF TRANSPORTATION
EXHIBITS TO MARAD GRANT AGREEMENTS UNDER THE
FISCAL YEAR 2020 PORT INFRASTRUCTURE DEVELOPMENT
PROGRAM (PIDP) GRANTS
MARCH 31, 2021

EXHIBIT A

APPLICABLE FEDERAL LAWS AND REGULATIONS

By entering into this agreement, the Recipient assures and certifies, with respect to this Grant, that it will comply with all applicable Federal laws, regulations, executive orders, policies, guidelines, and requirements as they relate to the application, acceptance, and use of Federal funds for this Project. Performance under this agreement shall be governed by and in compliance with the following requirements, as applicable, to the type of organization of the Recipient and any applicable sub-recipients. The applicable provisions to this agreement include, but are not limited to, the following:

General Federal Legislation

- a. Davis-Bacon Act - 40 U.S.C. §§ 3141, et seq.
- b. Federal Fair Labor Standards Act - 29 U.S.C. §§ 201, et seq.
- c. Hatch Act - 5 U.S.C. §§ 1501, et seq.
- d. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 - 42 U.S.C. §§ 4601, et seq.
- e. National Historic Preservation Act of 1966 - 54 U.S.C. § 306108
- f. Archeological and Historic Preservation Act of 1974 - 54 U.S.C. §§ 312501, et seq.
- g. Native American Graves Protection and Repatriation Act - 25 U.S.C. §§ 3001, et seq.
- h. Clean Air Act – 42 U.S.C. §§ 7401, et seq.
- i. Clean Water Act - 33 U.S.C. §§ 1251, et seq.
- j. Endangered Species Act – 16 U.S.C. §§ 1531, et seq.
- k. Coastal Zone Management Act – 16 U.S.C. §§ 1451, et seq.
- l. Flood Disaster Protection Act of 1973 – 42 U.S.C. §§ 4001, et seq.
- m. Age Discrimination Act of 1975, as amended - 42 U.S.C. §§ 6101, et seq.
- n. American Indian Religious Freedom Act - 42 U.S.C. 1996
- o. Drug Abuse Office and Treatment Act of 1972, as amended - 21 U.S.C. §§ 1101, et seq.
- p. The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, P.L. 91-616, as amended - 42 U.S.C. §§ 4541, et seq.
- q. Sections 523 and 527 of the Public Health Service Act of 1912, as amended - 42 U.S.C. §§ 290dd through 290dd-2
- r. Architectural Barriers Act of 1968 - 42 U.S.C. §§ 4151, et seq.
- s. Power Plant and Industrial Fuel Use Act of 1978, P.L. 100-42 - Section 403 - 42 U.S.C. § 8373
- t. Contract Work Hours and Safety Standards Act - 40 U.S.C. §§ 3701, et seq.
- u. Copeland Anti-kickback Act, as amended - 18 U.S.C. § 874 and 40 U.S.C. § 3145
- v. National Environmental Policy Act of 1969 - 42 U.S.C. §§ 4321, et seq.
- w. Wild and Scenic Rivers Act – 16 U.S.C. §§ 1271, et seq.
- x. Single Audit Act of 1984 - 31 U.S.C. §§ 7501, et seq.
- y. Americans with Disabilities Act of 1990 - 42 U.S.C. § 12101, et seq.
- z. Title IX of the Education Amendments of 1972, as amended - 20 U.S.C. § 1681 through § 1683, and § 1685 through § 1687
- aa. Section 504 of the Rehabilitation Act of 1973, as amended - 29 U.S.C. § 794
- bb. Title VI of the Civil Rights Act of 1964 - 42 U.S.C. §§ 2000d, et seq.
- cc. Title IX of the Federal Property and Administrative Services Act of 1949 - 40 U.S.C. §§ 1101 -1104 541, et seq.

- dd. Limitation on Use of Appropriated Funds to Influence Certain Federal Contracting and Financial Transactions – 31 U.S.C. § 1352
- ee. Freedom of Information Act - 5 U.S.C. § 552, as amended
- ff. Magnuson-Stevens Fishery Conservation and Management Act – 16 U.S.C. §§ 1801, et seq.
- gg. Farmland Protection Policy Act of 1981 – 7 U.S.C. §§ 4201 et seq.
- hh. Noise Control Act of 1972 – 42 U.S.C. §§ 4901, et seq.
- ii. Fish and Wildlife Coordination Act of 1956 – 16 U.S.C. §§ 661, et seq.
- jj. Section 9 of the Rivers and Harbors Act and the General Bridge Act of 1946 - 33 U.S.C. §§ 401 and 525
- kk. Section 4(f) of the Department of Transportation Act of 1966, 49 U.S.C. § 303 and 23 U.S.C. § 138
- ll. Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) – 42 U.S.C. §§ 9601, et seq.
- mm. Safe Drinking Water Act - 42 U.S.C. §§ 300f, et seq.
- nn. The Wilderness Act - 16 U.S.C. §§ 1131, et seq.
- oo. Migratory Bird Treaty Act 16 U.S.C. §§ 703, et seq.
- pp. The Federal Funding Transparency and Accountability Act of 2006, as amended (Pub. L. 109–282, as amended by section 6202 of Public Law 110–252)
- qq. Cargo Preference Act of 1954 – 46 U.S.C. § 55305
- rr. Buy American Act – 41 U.S.C. § 8301–8305
- ss. Section 889 of the John D. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. 115-232

Executive Orders

- a. Executive Order 11246 – Equal Employment Opportunity
- b. Executive Order 11990 – Protection of Wetlands
- c. Executive Order 11988 – Floodplain Management
- d. Executive Order 12372 – Intergovernmental Review of Federal Programs
- e. Executive Order 12549 – Debarment and Suspension
- f. Executive Order 12898 – Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations
- g. Executive Order 13166 – Improving Access to Services for Persons With Limited English Proficiency
- h. Executive Order 14005 – Ensuring the Future is Made in All of America by All of America’s Workers

General Federal Regulations

- a. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards – 2 C.F.R. Parts 200, 1201
- b. Non-procurement Suspension and Debarment – 2 C.F.R. Parts 180, 1200
- c. Investigative and Enforcement Procedures – 14 C.F.R. Part 13
- d. Procedures for predetermination of wage rates – 29 C.F.R. Part 1
- e. Contractors and subcontractors on public building or public work financed in whole or part by loans or grants from the United States – 29 C.F.R. Part 3
- f. Labor standards provisions applicable to contracts governing federally financed and assisted construction (also labor standards provisions applicable to non-construction contracts subject to the Contract Work Hours and Safety Standards Act) – 29 C.F.R.

Part 5

- g. Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Federal and federally assisted contracting requirements) – 41 C.F.R. Parts 60, et seq.
- h. New Restrictions on Lobbying – 49 C.F.R. Part 20
- i. Nondiscrimination in Federally Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964 – 49 C.F.R. Part 21
- j. Uniform relocation assistance and real property acquisition for Federal and Federally assisted programs – 49 C.F.R. Part 24
- k. Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance – 49 C.F.R. Part 25
- l. Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance – 49 C.F.R. Part 27
- m. DOT's implementation of DOJ's ADA Title II regulations compliance procedures for all programs, services, and regulatory activities relating to transportation under 28 C.F.R. Part 35
- n. Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Department of Transportation – 49 C.F.R. Part 28
- o. Denial of public works contracts to suppliers of goods and services of countries that deny procurement market access to U.S. contractors – 49 C.F.R. Part 30
- p. Governmentwide Requirements for Drug-Free Workplace (Financial Assistance) – 49 C.F.R. Part 32
- q. DOT's implementing ADA regulations for transit services and transit vehicles, including the DOT's standards for accessible transportation facilities in Part 37, Appendix A – 49 C.F.R. Parts 37 and 38
- r. Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs – 49 C.F.R. Part 26 (as applicable under section 18.3 of this agreement)
- s. Preference for Privately Owned Commercial U.S. Flag Vessels – 46 C.F.R. Part 381

Specific assurances required to be included in the FY 2020 PIDP Grant agreement by any of the above laws, regulations, or circulars are hereby incorporated by reference into this agreement.

EXHIBIT B
GRANT ASSURANCES

EXHIBIT B1
TITLE VI ASSURANCE
(Implementing Title VI of the Civil Rights Act of 1964, as amended)

**ASSURANCE CONCERNING NONDISCRIMINATION IN FEDERALLY-ASSISTED
PROGRAMS AND ACTIVITIES RECEIVING OR BENEFITING FROM FEDERAL
FINANCIAL ASSISTANCE**

(Implementing the Rehabilitation Act of 1973, as amended, and the Americans With Disabilities
Act, as amended)

49 C.F.R. Parts 21, 25, 27, 37 and 38

The United States Department of Transportation (USDOT)

Standard Title VI/Non-Discrimination Assurances

DOT Order No. 1050.2A

By signing and submitting the Technical Application and by entering into this agreement under the FY 2020 PIDP Grant program, the Recipient **HEREBY AGREES THAT**, as a condition to receiving any Federal financial assistance from the U.S. Department of Transportation (DOT), through the Maritime Administration (MARAD), it is subject to and will comply with the following:

Statutory/Regulatory Authorities

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat.252), (prohibits discrimination on the basis of race, color, national origin);
- 49 C.F.R. Part 21 (entitled *Non-discrimination In Federally-Assisted Programs Of The Department Of Transportation—Effectuation Of Title VI Of The Civil Rights Act Of 1964*);
- 28 C.F.R. section 50.3 (U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964);

The preceding statutory and regulatory cites hereinafter are referred to as the “Acts” and “Regulations,” respectively.

General Assurances

In accordance with the Acts, the Regulations, and other pertinent directives, circulars, policy, memoranda, and/or guidance, the Recipient hereby gives assurance that it will promptly take any measures necessary to ensure that:

“No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity,” for which the Recipient receives Federal financial assistance from DOT, including MARAD.

The Civil Rights Restoration Act of 1987 clarified the original intent of Congress, with respect to Title VI and other Non-discrimination requirements (The Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973), by restoring the broad, institutional-wide scope and coverage of these non-discrimination statutes and requirements to include all programs and activities of the Recipient, so long as any portion of the program is Federally assisted.

Specific Assurances

More specifically, and without limiting the above general Assurance, the Recipient agrees with and gives the following Assurances with respect to its Federally assisted FY 2020 PIDP Grant program:

1. The Recipient agrees that each “activity,” “facility,” or “program,” as defined in §§ 21.23 (b) and 21.23 (e) of 49 C.F.R. § 21 will be (with regard to an “activity”) facilitated, or will be (with regard to a “facility”) operated, or will be (with regard to a “program”) conducted in compliance with all requirements imposed by, or pursuant to the Acts and the Regulations.
2. The Recipient will insert the following notification in all solicitations for bids, Requests For Proposals for work, or material subject to the Acts and the Regulations made in connection with the FY 2020 PIDP Grants and, in adapted form, in all proposals for negotiated agreements regardless of funding source:

“The Recipient, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that for any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.”

3. The Recipient will insert the clauses of Appendix A and E of this Assurance in every contract or agreement subject to the Acts and the Regulations.
4. The Recipient will insert the clauses of Appendix B of this Assurance, as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a Recipient.

5. That where the Recipient receives Federal financial assistance to construct a facility, or part of a facility, the Assurance will extend to the entire facility and facilities operated in connection therewith.
6. That where the Recipient receives Federal financial assistance in the form, or for the acquisition of real property or an interest in real property, the Assurance will extend to rights to space on, over, or under such property.
7. That the Recipient will include the clauses set forth in Appendix C and Appendix D of this Assurance, as a covenant running with the land, in any future deeds, leases, licenses, permits, or similar instruments entered into by the Recipient with other parties:
 - a. for the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and
 - b. for the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program.
8. That this Assurance obligates the Recipient for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property, or interest therein, or structures or improvements thereon, in which case the Assurance obligates the Recipient, or any transferee for the longer of the following periods:
 - a. the period during which the property is used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits; or
 - b. the period during which the Recipient retains ownership or possession of the property.
9. The Recipient will provide for such methods of administration for the program as are found by the Secretary of Transportation or the official to whom he/she delegates specific authority to give reasonable guarantee that it, other recipients, sub-recipients, contractors, subcontractors, consultants, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the Acts, the Regulations, and this Assurance.
10. The Recipient agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the Acts, the Regulations, and this Assurance.

By signing this ASSURANCE, the Recipient also agrees to comply (and require any sub-recipients, contractors, successors, transferees, and/or assignees to comply) with all applicable provisions governing MARAD's access to records, accounts, documents, information, facilities, and staff. You also recognize that you must comply with any program or compliance reviews, and/or complaint investigations conducted by MARAD. You must keep records, reports, and submit the material for review upon request to MARAD, or its designee in a

timely, complete, and accurate way. Additionally, you must comply with all other reporting, data collection, and evaluation requirements, as prescribed by law or detailed in program guidance.

The Recipient gives this ASSURANCE in consideration of and for obtaining any Federal grants, loans, contracts, agreements, property, and/or discounts, or other Federal-aid and Federal financial assistance extended after the date hereof to the recipients by the U.S. Department of Transportation under the FY 2020 PIDP Grants. This ASSURANCE is binding on the Recipient, other recipients, sub-recipients, contractors, subcontractors and their subcontractors', transferees, successors in interest, and any other participants in the FY 2020 PIDP Grants.

APPENDIX A

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

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

thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or MARAD may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

APPENDIX B

CLAUSES FOR DEEDS TRANSFERRING UNITED STATES PROPERTY

The following clauses will be included in deeds effecting or recording the transfer of real property, structures, or improvements thereon, or granting interest therein from the United States pursuant to the provisions of Specific Assurance 4:

NOW, THEREFORE, the U.S. Department of Transportation as authorized by law and upon the condition that the Recipient will accept title to the lands and maintain the project constructed thereon in accordance with the Further Consolidated Appropriations Act, 2020 (Pub. L. 116-94, Dec. 20, 2019) the Regulations for the Administration of FY 2020 PIDP Grants, and the policies and procedures prescribed by the Maritime Administration (MARAD) of the U.S. Department of Transportation in accordance and in compliance with all requirements imposed by Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally- assisted programs of the U.S Department of Transportation pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. § 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the Recipient all the right, title and interest of the U.S. Department of Transportation in and to said lands described in Exhibit A attached hereto and made a part hereof.

(HABENDUM CLAUSE)

TO HAVE AND TO HOLD said lands and interests therein unto Recipient and its successors forever, subject, however, to the covenants, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and will be binding on the Recipient, its successors and assigns.

The Recipient, in consideration of the conveyance of said lands and interests in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns, that (1) no person will on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed [,] [and]* (2) that the Recipient will use the lands and interests in lands and interests in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations and Acts may be amended[, and (3) that in the event of breach of any of the above-mentioned non-discrimination conditions, the Department will have a right to enter or re-enter said lands and facilities on said land, and that above described land and facilities will thereon revert to and vest in and become the absolute property of the U.S. Department of Transportation and its assigns as such interest existed prior to this instruction].*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to make clear the purpose of Title VI.)

APPENDIX C

CLAUSES FOR TRANSFER OF REAL PROPERTY ACQUIRED OR IMPROVED UNDER THE ACTIVITY, FACILITY, OR PROGRAM

The following clauses will be included in deeds, licenses, leases, permits, or similar instruments entered into by the Recipient pursuant to the provisions of Specific Assurance 7(a):

- A. The (Recipient, lessee, permittee, etc. as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add “as a covenant running with the land”] that:
 - 1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this (deed, license, lease, permit, etc.) for a purpose for which a U.S. Department of Transportation activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the (Recipient, licensee, lessee, permittee, etc.) will maintain and operate such facilities and services in compliance with all requirements imposed by the Acts and Regulations (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
- B. With respect to licenses, leases, permits, etc., in the event of breach of any of the above Non-discrimination covenants, Recipient will have the right to terminate the (lease, license, permit, etc.) and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the (lease, license, permit, etc.) had never been made or issued.*
- C. With respect to a deed, in the event of breach of any of the above Non-discrimination covenants, the Recipient will have the right to enter or re-enter the lands and facilities thereon, and the above described lands and facilities will there upon revert to and vest in and become the absolute property of the Recipient and its assigns.*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

APPENDIX D

CLAUSES FOR CONSTRUCTION/USE/ACCESS TO REAL PROPERTY ACQUIRED UNDER THE ACTIVITY, FACILITY OR PROGRAM

The following clauses will be included in deeds, licenses, permits, or similar instruments/agreements entered into by Recipient pursuant to the provisions of Specific Assurance 7(b):

- A. The (Recipient, licensee, permittee, etc., as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add, “as a covenant running with the land”) that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the (Recipient, licensee, lessee, permittee, etc.) will use the premises in compliance with all other requirements imposed by or pursuant to the Acts and Regulations, as amended, set forth in this Assurance.
- B. With respect to (licenses, leases, permits, etc.), in the event of breach of any of the above Non-discrimination covenants, Recipient will have the right to terminate the (license, permit, etc., as appropriate) and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, permit, etc., as appropriate) had never been made or issued.*
- C. With respect to deeds, in the event of breach of any of the above Non-discrimination covenants, Recipient will there upon revert to and vest in and become the absolute property of Recipient and its assigns.*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

APPENDIX E

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

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964, (42 U.S.C. §§ 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 C.F.R. Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.*), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 C.F.R. Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 U.S.C. § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 C.F.R. Parts 37 and 38;
- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);

- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. § 1681 et seq).

EXHIBIT B2
DISCLOSURE OF LOBBYING ACTIVITIES

Certification for Contracts, Grants, Loans, and Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any grant agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or grant agreement.

If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or grant agreement, the undersigned shall complete and submit Standard Form-LLL (Rev. 7-97), "Disclosure of Lobbying Activities," in accordance with its instructions.

The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans and grant agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

EXHIBIT B3
CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS IN
THE PERFORMANCE OF THE FY 2020 PIDP GRANTS

49 C.F.R. PART 32

The Recipient certifies that it will, or will continue, to provide a drug-free workplace by:

1. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Recipient's workplace, and specifying the actions that will be taken against employees for violation of such prohibition.
2. Establishing an ongoing drug-free awareness program to inform employees about:
 - (a) The dangers of drug abuse in the workplace;
 - (b) The Recipient's policy of maintaining a drug-free workplace;
 - (c) Any available drug counseling, rehabilitation, and employee assistance programs; and,
 - (d) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.
3. Making it a requirement that each employee to be engaged in the performance of work supported by the grant award be given a copy of the statement required by paragraph 1.
4. Notifying the employee in the statement required by paragraph 1 that, as a condition of employment supported by the grant award, the employee will:
 - (a) Abide by the terms of the statement; and
 - (b) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction.
5. Notifying the agency in writing, within ten calendar days after receiving notice under paragraph 4(b) from an employee or otherwise receiving actual notice of conviction. Employers of convicted employees must provide notice, including position title, to the Department. Notice shall include the order number of the grant award.
6. Taking one of the following actions, within 30 days of receiving notice under paragraph 4(b), with respect to any employee who is so convicted:
 - (a) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(b) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or local health, law enforcement, or other appropriate agency.

7. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs 1–6.
8. The Recipient may, but is not required to, provide the site for the performance of work done in connection with the specific grant. For the provision of services pursuant to this agreement, workplaces include outstations, maintenance sites, headquarters office locations, training sites and any other worksites where work is performed that is supported by the grant award. If the Recipient does so, please insert in Article 7 of this agreement the following:

Identify the Places of Performance by listing the street address, city, county, state, zip code. Also identify if there are workplaces on file that are not identified in this section of this agreement.

EXHIBIT B4
CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER
RESPONSIBILITY MATTERS -- PRIMARY COVERED TRANSACTIONS

2 C.F.R. Parts 180 and 1200

These assurances and certifications are applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring MARAD approval or that is estimated to cost \$25,000 or more – as defined in 2 C.F.R. Parts 180 and 1200.

By signing and submitting the Technical Application and by entering into this agreement under the FY 2020 PIDP Grants, the Recipient is providing the assurances and certifications for First Tier Participants and Lower Tier Participants in the FY 2020 PIDP Grant, as set out below.

1. Instructions for Certification – First Tier Participants:

- a. The prospective first tier participant is providing the certification set out below.
- b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.
- c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.
- d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- e. The terms "covered transaction," "civil judgment," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 C.F.R. Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a Recipient or subrecipient of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to

the participant who has entered into a covered transaction with a Recipient or subrecipient of Federal funds (such as the prime or general contractor). “Lower Tier Participant” refers to any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions,” provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (<https://www.sam.gov/>), which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment, including a civil settlement, rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

2. Instructions for Certification - Lower Tier Participants:

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior MARAD approval or estimated to cost \$25,000 or more - 2 C.F.R. Parts 180 and 1200)

a. The prospective lower tier participant is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms “covered transaction,” “civil settlement,” “debarred,” “suspended,” “ineligible,” “participant,” “person,” “principal,” and “voluntarily excluded,” as used in this clause, are defined in 2 C.F.R. Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. “First Tier Covered Transactions” refers to any covered transaction between a Recipient or subrecipient of Federal funds and a participant (such as the prime or general contract). “Lower Tier Covered Transactions” refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). “First Tier Participant” refers to the participant who has entered into a covered

transaction with a Recipient or subrecipient of Federal funds (such as the prime or general contractor). “Lower Tier Participant” refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction,” without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (<https://www.sam.gov/>), which is compiled by the General Services Administration.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Participants:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

EXHIBIT B5
REQUIREMENTS REGARDING DELINQUENT TAX LIABILITY OR A FELONY
CONVICTION UNDER ANY FEDERAL LAW

As required by sections 744 and 745 of Title VII, Division C of the Consolidated Appropriations Act, 2020 (Pub. L. 116-93), and implemented through USDOT Order 4200.6, the funds provided under this award shall not be used to enter into a contract, memorandum of understanding, or cooperative agreement with, make a grant to, or provide a loan or loan guarantee to, any corporation that:

- (1) Has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, where the awarding agency is aware of the unpaid tax liability, unless a Federal agency has considered suspension or debarment of the corporation and made a determination that suspension or debarment is not necessary to protect the interests of the Government; or
- (2) Was convicted of a felony criminal violation under any Federal law within the preceding 24 months, where the awarding agency is aware of the conviction, unless a Federal agency has considered suspension or debarment of the corporation and made a determination that suspension or debarment is not necessary to protect the interests of the Government.

The Recipient therefore agrees:

1. **Definitions.** For the purposes of this exhibit, the following definitions apply:

“**Covered Transaction**” means a transaction that uses any funds under this award and that is a contract, memorandum of understanding, cooperative agreement, grant, loan, or loan guarantee.

“**Felony Conviction**” means a conviction within the preceding 24 months of a felony criminal violation under any Federal law and includes conviction of an offense defined in a section of the United States Code that specifically classifies the offense as a felony and conviction of an offense that is classified as a felony under 18 U.S.C. 3559.

“**Participant**” means the Recipient, an entity who submits a proposal for a Covered Transaction, or an entity who enters into a Covered Transaction.

“**Tax Delinquency**” means an unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

2. **Mandatory Check in the System for Award Management.** Before entering a Covered Transaction with another entity, a Participant shall check the System for Award Management (the “SAM”) at <http://www.sam.gov/> for an entry describing that entity.
3. **Mandatory Certifications.** Before entering a Covered Transaction with another entity, a Participant shall require that entity to:
 - (1) Certify whether the entity has a Tax Delinquency; and
 - (2) Certify whether the entity has a Felony Conviction.

4 **Prohibition. If**

- (1) the SAM entry for an entity indicates that the entity has a Tax Delinquency or a Federal Conviction;
- (2) an entity provides an affirmative response to either certification in section 3; or
- (3) an entity’s certification under section 3 was inaccurate when made or became inaccurate after being made

then a Participant shall not enter or continue a Covered Transaction with that entity unless MARAD has determined in writing that suspension or debarment of that entity are not necessary to protect the interests of the Government.

5. Mandatory Notice to MARAD.

- (a) If the SAM entry for a Participant indicates that the Participant has a Tax Delinquency or a Felony Conviction, the Recipient shall notify MARAD in writing of that entry.
 - (b) If a Participant provides an affirmative response to either certification in section 1, the Recipient shall notify MARAD in writing of that affirmative response.
 - (c) If the Recipient knows that a Participant’s certification under section 1 was inaccurate when made or became inaccurate after being made, the Recipient shall notify MARAD in writing of that inaccuracy.
6. **Flow Down.** For all Covered Transactions, including all tiers of subcontracts and subawards, the Recipient shall:
- (1) require the SAM check in section 2;
 - (2) require the certifications in section 3;
 - (3) include the prohibition in section 4; and

- (4) require all Participants to notify the Recipient in writing of any information that would require the Recipient to notify MARAD under section 5.

EXHIBIT C
GRANT REQUIREMENTS AND CONTRACT CLAUSES

EXHIBIT C1
TRANSPARENCY ACT AWARD TERM

2 C.F.R. PART 170

I. Reporting Subawards and Executive Compensation.

a. Reporting of first-tier subawards.

1. *Applicability.* Unless you are exempt as provided in paragraph d. of this award term, you must report each action that obligates \$25,000 or more in Federal funds that does not include Recovery funds (as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5) for a subaward to an entity (see definitions in paragraph e. of this award term).

2. *Where and when to report.*

i. You must report each obligating action described in paragraph a.1. of this award term to <http://www.fsrs.gov>.

ii. For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)

3. *What to report.* You must report the information about each obligating action that the submission instructions posted at <http://www.fsrs.gov> specify.

b. Reporting Total Compensation of Recipient Executives.

1. *Applicability and what to report.* You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if—

i. the total Federal funding authorized to date under this award is \$25,000 or more;

ii. in the preceding fiscal year, you received—

(A) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 C.F.R. 170.320 (and subawards); and

(B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 C.F.R. 170.320 (and subawards); and

iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

2. *Where and when to report.* You must report executive total compensation described in paragraph b.1. of this award term:

- i. As part of your registration profile at <https://www.sam.gov>.
- ii. By the end of the month following the month in which this award is made, and annually thereafter.

c. Reporting of Total Compensation of Subrecipient Executives.

1. *Applicability and what to report.* Unless you are exempt as provided in paragraph d. of this award term, for each first-tier subrecipient under this award, you shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if—

i. in the subrecipient's preceding fiscal year, the subrecipient received—

(A) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 C.F.R. 170.320 (and subawards); and

(B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and

ii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

2. *Where and when to report.* You must report subrecipient executive total compensation described in paragraph c.1. of this award term:

- i. To the recipient.
- ii. By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of

October of a given year (i.e., between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.

d. Exemptions

If, in the previous tax year, you had gross income, from all sources, under \$300,000, you are exempt from the requirements to report:

i. Subawards,

and

ii. The total compensation of the five most highly compensated executives of any subrecipient.

e. Definitions. For purposes of this award term:

1. *Entity* means all of the following, as defined in 2 C.F.R. part 25:

i. A Governmental organization, which is a State, local government, or Indian tribe;

ii. A foreign public entity;

iii. A domestic or foreign nonprofit organization;

iv. A domestic or foreign for-profit organization;

v. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

2. *Executive* means officers, managing partners, or any other employees in management positions.

3. *Subaward*:

i. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.

ii. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. .210 of the attachment to OMB Circular A-133,¹ “Audits of States, Local Governments, and Non-Profit Organizations”).

¹ The language of this Exhibit C1 is required by 2 C.F.R. 170.220. After that rule was issued, OMB Circular A-133 was superseded by 2 C.F.R. Part 200. See 2 C.F.R. 200.104.

iii. A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.

4. *Subrecipient* means an entity that:

- i. Receives a subaward from you (the recipient) under this award; and
- ii. Is accountable to you for the use of the Federal funds provided by the subaward.

5. *Total compensation* means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 C.F.R. 229.402(c)(2)):

- i. *Salary and bonus*.
- ii. *Awards of stock, stock options, and stock appreciation rights*. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
- iii. *Earnings for services under non-equity incentive plans*. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
- iv. *Change in pension value*. This is the change in present value of defined benefit and actuarial pension plans.
- v. *Above-market earnings on deferred compensation which is not tax-qualified*.
- vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

EXHIBIT C2
SYSTEM FOR AWARD MANAGEMENT AND UNIVERSAL IDENTIFIER
REQUIREMENTS

2 C.F.R. PART 25

A. Requirement for System for Award Management

Unless you are exempted from this requirement under 2 C.F.R. 25.110, you as the recipient must maintain the currency of your information in the SAM until you submit the final financial report required under this award or receive the final payment, whichever is later. This requires that you review and update the information at least annually after the initial registration, and more frequently if required by changes in your information or another award term.

B. Requirement for unique entity identifier

If you are authorized to make subawards under this award, you:

1. Must notify potential subrecipients that no entity (see definition in paragraph C of this award term) may receive a subaward from you unless the entity has provided its unique entity identifier to you.
2. May not make a subaward to an entity unless the entity has provided its unique entity identifier to you.

C. Definitions

For purposes of this award term:

1. *System for Award Management (SAM)* means the Federal repository into which an entity must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the SAM Internet site (currently at <http://www.sam.gov>).
2. *Unique entity identifier* means the identifier required for SAM registration to uniquely identify business entities.
3. *Entity*, as it is used in this award term, means all of the following, as defined at 2 C.F.R. part 25, subpart C:
 - a. A Governmental organization, which is a State, local government, or Indian Tribe;
 - b. A foreign public entity;
 - c. A domestic or foreign nonprofit organization;

- d. A domestic or foreign for-profit organization; and
- e. A Federal agency, but only as a subrecipient under an award or subaward to a non- Federal entity.

4. *Subaward:*

- a. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.
- b. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see 2 C.F.R. 200.330).
- c. A subaward may be provided through any legal agreement, including an agreement that you consider a contract.

5. *Subrecipient* means an entity that:

- a. Receives a subaward from you under this award; and
- b. Is accountable to you for the use of the Federal funds provided by the subaward.

EXHIBIT C3
AWARD TERM AND CONDITION FOR RECIPIENT INTEGRITY AND
PERFORMANCE MATTERS

APPENDIX XII TO 2 C.F.R. PART 200

A. Reporting of Matters Related to Recipient Integrity and Performance

1. General Reporting Requirement

If the total value of your currently active grants, cooperative agreements, and procurement contracts from all Federal awarding agencies exceeds \$10,000,000 for any period of time during the period of performance of this Federal award, then you as the recipient during that period of time must maintain the currency of information reported to the System for Award Management (SAM) that is made available in the designated integrity and performance system (currently the Federal Awardee Performance and Integrity Information System (FAPIIS)) about civil, criminal, or administrative proceedings described in paragraph 2 of this award term and condition. This is a statutory requirement under section 872 of Public Law 110-417, as amended (41 U.S.C. § 2313). As required by section 3010 of Public Law 111-212, all information posted in the designated integrity and performance system on or after April 15, 2011, except past performance reviews required for Federal procurement contracts, will be publicly available.

2. Proceedings About Which You Must Report

Submit the information required about each proceeding that:

a. Is in connection with the award or performance of a grant, cooperative agreement, or procurement contract from the Federal Government;

b. Reached its final disposition during the most recent five year period; and

c. Is one of the following:

(1) A criminal proceeding that resulted in a conviction, as defined in paragraph 5 of this award term and condition;

(2) A civil proceeding that resulted in a finding of fault and liability and payment of a monetary fine, penalty, reimbursement, restitution, or damages of \$5,000 or more;

(3) An administrative proceeding, as defined in paragraph 5 of this award term and condition, that resulted in a finding of fault and liability and your payment of either a monetary fine or penalty of \$5,000 or more or reimbursement, restitution, or damages in excess of \$100,000; or

(4) Any other criminal, civil, or administrative proceeding if:

(i) It could have led to an outcome described in paragraph 2.c.(1), (2), or (3) of this award term and condition;

(ii) It had a different disposition arrived at by consent or compromise with an acknowledgment of fault on your part; and

(iii) The requirement in this award term and condition to disclose information about the proceeding does not conflict with applicable laws and regulations.

3. Reporting Procedures

Enter in the SAM Entity Management area the information that SAM requires about each proceeding described in paragraph 2 of this award term and condition. You do not need to submit the information a second time under assistance awards that you received if you already provided the information through SAM because you were required to do so under Federal procurement contracts that you were awarded.

4. Reporting Frequency

During any period of time when you are subject to the requirement in paragraph 1 of this award term and condition, you must report proceedings information through SAM for the most recent five year period, either to report new information about any proceeding(s) that you have not reported previously or affirm that there is no new information to report. Recipients that have Federal contract, grant, and cooperative agreement awards with a cumulative total value greater than \$10,000,000 must disclose semiannually any information about the criminal, civil, and administrative proceedings.

5. Definitions

For purposes of this award term and condition:

a. Administrative proceeding means a non-judicial process that is adjudicatory in nature in order to make a determination of fault or liability (e.g., Securities and Exchange Commission Administrative proceedings, Civilian Board of Contract Appeals proceedings, and Armed Services Board of Contract Appeals proceedings). This includes proceedings at the Federal and State level but only in connection with performance of a Federal contract or grant. It does not include audits, site visits, corrective plans, or inspection of deliverables.

b. Conviction, for purposes of this award term and condition, means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere.

c. Total value of currently active grants, cooperative agreements, and procurement contracts includes—

(1) Only the Federal share of the funding under any Federal award with a recipient cost share or match; and

(2) The value of all expected funding increments under a Federal award and options, even if not yet exercised.

B. [Reserved]

EXHIBIT C4
TRAFFICKING IN PERSONS

2 C.F.R. PART 175

a. Provisions applicable to a recipient that is a private entity.

1. You as the recipient, your employees, subrecipients under this award, and subrecipients' employees may not—

i. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;

ii. Procure a commercial sex act during the period of time that the award is in effect; or

iii. Use forced labor in the performance of the award or subawards under the award.

2. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if you or a subrecipient that is a private entity—

i. Is determined to have violated a prohibition in paragraph a.1 of this award term; or

ii. Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph a.1 of this award term through conduct that is either—

A. Associated with performance under this award; or

B. Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, “OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” as implemented by our agency at 2 C.F.R. part 1200.

b. Provision applicable to a recipient other than a private entity. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity—

1. Is determined to have violated an applicable prohibition in paragraph a.1 of this award term; or

2. Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a.1 of this award term through conduct that is either—

i. Associated with performance under this award; or

ii. Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, “OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” as implemented by our agency at 2 C.F.R. part 1200.

c. Provisions applicable to any recipient.

1. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a.1 of this award term.

2. Our right to terminate unilaterally that is described in paragraph a.2 or b of this section:

i. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and

ii. Is in addition to all other remedies for noncompliance that are available to us under this award.

3. You must include the requirements of paragraph a.1 of this award term in any subaward you make to a private entity.

d. Definitions. For purposes of this award term:

1. “Employee” means either:

i. An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or

ii. Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.

2. “Forced labor” means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

3. “Private entity”:

i. Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR 175.25.

ii. Includes:

A. A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 CFR 175.25(b).

B. A for-profit organization.

4. “Severe forms of trafficking in persons,” “commercial sex act,” and “coercion” have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. 7102).

5. “Recipient” and “subrecipient” include for-profit entities for the purpose of this Exhibit C4 only.

EXHIBIT C5

RECIPIENT POLICY TO BAN TEXT MESSAGING WHILE DRIVING

(a) *Definitions.* The following definitions are intended to be consistent with the definitions in DOT Order 3902.10, Text Messaging While Driving (Dec. 30, 2009) and Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving (Oct. 1, 2009). For clarification purposes, they may expand upon the definitions in the executive order.

For the purpose of this Exhibit C5, “**Motor Vehicles**” means any vehicle, self-propelled or drawn by mechanical power, designed and operated principally for use on a local, State or Federal roadway, but does not include a military design motor vehicle or any other vehicle excluded under Federal Management Regulation 102-34-15.

For the purpose of this Exhibit C5, “**Driving**” means operating a motor vehicle on a roadway, including while temporarily stationary because of traffic congestion, a traffic signal, a stop sign, another traffic control device, or otherwise. It does not include being in your vehicle (with or without the motor running) in a location off the roadway where it is safe and legal to remain stationary.

For the purpose of this Exhibit C5, “**Text messaging**” means reading from or entering data into any handheld or other electronic device (including, but not limited to, cell phones, navigational tools, laptop computers, or other electronic devices), including for the purpose of Short Message Service (SMS) texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication. The term does not include the use of a cell phone or other electronic device for the limited purpose of entering a telephone number to make an outgoing call or answer an incoming call, unless this practice is prohibited by State or local law. The term also does not include glancing at or listening to a navigational device that is secured in a commercially designed holder affixed to the vehicle, provided that the destination and route are programmed into the device either before driving or while stopped in a location off the roadway where it is safe and legal to remain stationary.

For the purpose of this Exhibit C5, the “**Government**” includes the United States Government and State, local, and tribal governments at all levels.

(b) *Workplace Safety.* In accordance with Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving (Oct. 1, 2009) and DOT Order 3902.10, Text Messaging While

Driving (Dec. 30, 2009), the Recipient, subrecipients, contractors, and subcontractors are encouraged to:

(1) adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers including policies to ban text messaging while driving—

(i) Company-owned or -rented vehicles or Government-owned, leased or rented vehicles; or

(ii) Privately-owned vehicles when on official Government business or when performing any work for or on behalf of the Government.

(2) Conduct workplace safety initiatives in a manner commensurate with the size of the business, such as—

(i) Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and

(ii) Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

(c) *Subawards and Contracts.* To the extent permitted by law, the Recipient shall insert the substance of this exhibit, including this paragraph (c), in all subawards, contracts, and subcontracts under this award that exceed the micro-purchase threshold, other than contracts and subcontracts for the acquisition of commercially available off-the-shelf items.

EXHIBIT D
QUARTERLY PROJECT PROGRESS REPORTS AND RECERTIFICATIONS:
FORMAT AND CONTENT

- 1. Purpose.** The purpose of the Quarterly Project Progress Reports and Recertifications under this agreement for the FY 2020 PIDP Grant program are to ensure that the project scope, schedule, and budget will be maintained to the maximum extent possible.
- 2. Format and Content.** The Recipient shall produce a quarterly cost, schedule, and status report that contains the sections enumerated in the following list. At the discretion of the MARAD, modifications or additions can be made to produce a quarterly reporting format that will most effectively serve both the Recipient and MARAD. Some projects will have a more extensive quarterly status than others. For smaller projects, MARAD may determine that the content of the quarterly reports will be streamlined and project status meetings will be held on a less-frequent basis. The first quarterly progress report should include a detailed description and, where appropriate, drawings of the items funded.
 - (a) Project Overall Status.** This section provides an overall status of the project's scope, schedule, and budget. The Recipient shall note and explain any deviations from the scope of work, the schedule, or the budget that are described in this agreement.
 - (b) Project Significant Activities and Issues.** This section provides highlights of key activities, accomplishments, and issues occurring on the project during the previous quarter. Activities and deliverables to be reported on should include meetings, audits and other reviews, design packages submitted, advertisements, awards, construction submittals, construction completion milestones, submittals related to any applicable Recovery Act requirements, media or Congressional inquiries, value engineering/constructability reviews, and other items of significance.
 - (c) Action Items/Outstanding Issues.** This section should draw attention to, and track the progress of, highly significant or sensitive issues requiring action and direction in order to resolve. The Recipient should include administrative items and outstanding issues that could have a significant or adverse effect on the project's scope, schedule, or budget. Status, responsible person(s), and due dates should be included for each action item/outstanding issue. Action items requiring action or direction should be included in the quarterly status meeting agenda. The action items/outstanding issues may be dropped from this section upon full implementation of the remedial action, and upon no further monitoring anticipated.
 - (d) Project Scope Overview.** The purpose of this section is to provide a further update regarding the project scope. If the original scope contained in the grant agreement is still accurate, this section can simply state that the scope is unchanged.
 - (e) Project Schedule.** An updated master program schedule reflecting the current status of the program activities should be included in this section. A Gantt (bar) type chart is

probably the most appropriate for quarterly reporting purposes, with the ultimate format to be agreed upon between the Recipient and MARAD. It is imperative that the master program schedule be integrated, i.e., the individual contract milestones tied to each other, such that any delays occurring in one activity will be reflected throughout the entire program schedule, with a realistic completion date being reported. Narratives, tables, and/or graphs should accompany the updated master program schedule, basically detailing the current schedule status, delays and potential exposures, and recovery efforts. The following information should also be included:

- Current overall project completion percentage vs. latest plan percentage.
- Completion percentages vs. latest plan percentages for major activities such as right-of-way, major or critical design contracts, major or critical construction contracts, and significant force accounts or task orders. A schedule status description should also be included for each of these major or critical elements.
- Any delays or potential exposures to milestone and final completion dates. The delays and exposures should be quantified, and overall schedule impacts assessed. The reasons for the delays and exposures should be explained, and initiatives being analyzed or implemented in order to recover the schedule should be detailed.

(f) Project Cost. An updated cost spreadsheet reflecting the current forecasted cost vs. the latest approved budget vs. the baseline budget should be included in this section. One way to track project cost is to show: (1) Baseline Budget, (2) Latest Approved Budget, (3) Current Forecasted Cost Estimate, (4) Expenditures or Commitments to Date, and (5) Variance between Current Forecasted Cost and Latest Approved Budget. Line items should include all significant cost centers, such as prior costs, right-of-way, preliminary engineering, environmental mitigation, general engineering consultant, section design contracts, construction administration, utilities, construction packages, force accounts/task orders, wrap-up insurance, construction contingencies, management contingencies, and other contingencies. The line items can be broken-up in enough detail such that specific areas of cost change can be sufficiently tracked and future improvements made to the overall cost estimating methodology. A Program Total line should be included at the bottom of the spreadsheet. Narratives, tables, and/or graphs should accompany the updated cost spreadsheet, basically detailing the current cost status, reasons for cost deviations, impacts of cost overruns, and efforts to mitigate cost overruns. The following information should be provided:

- Reasons for each line item deviation from the approved budget, impacts resulting from the deviations, and initiatives being analyzed or implemented in order to recover any cost overruns.
- Transfer of costs to and from contingency line items, and reasons supporting the transfers.

- Speculative cost changes that potentially may develop in the future, a quantified dollar range for each potential cost change, and the current status of the speculative change. Also, a comparison analysis to the available contingency amounts should be included, showing that reasonable and sufficient amounts of contingency remain to keep the project within the latest approved budget.
- Detailed cost breakdown of the general engineering consultant (GEC) services (if applicable), including such line items as contract amounts, task orders issued (amounts), balance remaining for tasks, and accrued (billable) costs.
- Federal obligations and/or disbursements for the project, compared to planned obligations and disbursements.

(g) Federal Financial Report (SF-425). The Federal Financial Report (SF-425) is a financial reporting form used throughout the Federal Government Grant system. Recipients shall complete this form and attach it to each quarterly Project Progress and Monitoring Report. The form is available at <https://www.grants.gov/forms/post-award-reporting-forms.html>.

(h) Certifications.

- i. A certification that the Recipient is in compliance with 2 C.F.R. 200.303 (Internal Controls) and 2 C.F.R. Part 200, subpart F (Audit Requirements).
- ii. The certification required under 2 C.F.R. 200.415(a).

ATTACHMENT D
WA STATE DEPARTMENT OF ECOLOGY GRANT

*This grant is uploaded to Vendor Connect as a separate document.

ATTACHMENT E
COMPANY INFORMATION
To be Inserted at Contract Execution

ATTACHMENT F
DIVERSITY IN CONTRACTING INCLUSION PLAN
To be Inserted at Contract Execution

ATTACHMENT G
TITLE VI
NON-DISCRIMINATION AND AFFIRMATIVE ACTION
SUPPLEMENTAL CONDITIONS

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

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

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

Pertinent Non-Discrimination Authorities:

1. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR part 21.
2. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
3. Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
4. The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
5. Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);

6. The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
7. Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
8. The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
9. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
10. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
11. Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

ATTACHMENT H
CONSULTANT ETHICS AND CONFLICT OF INTEREST

Serving the PORT With Integrity
CC-2 as of 8/16/2011
Original – 1/1/2010 Revisions: 8/16/2011

I. The PORT's Interests Come First

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

For purposes of this policy:

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

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

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

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

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

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

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

II. Real or Perceived Conflicts of Interest

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

A. Disclosable Conflicts from Business Relationships

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

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

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

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

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

B. Prohibited Conflicts

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

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

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

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

A conflict of interest arises when a Consultant is in a position to exploit the Consultant's role or use of PORT resources to advance the Consultant's financial or other business or personal interests. Consultants must avoid circumstances in which it appears, or to a reasonable person might appear, that the Consultant is requesting or otherwise seeking special consideration, treatment or advantage because of the Consultant's engagement with the PORT.

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

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

III. Use of PORT Equipment

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

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

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

IV. Safeguarding Confidential Information

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

A. Employment

A Consultant shall disclose an offer of employment or receipt of compensation from an Employer if the Consultant knows, has reason to believe, or the circumstances would lead a reasonable person to believe, that the offer of

employment or compensation was intended, in whole or in part, directly or indirectly, to influence the Consultant or as compensation or reward for the performance or nonperformance of a duty by the Consultant during his/her PORT engagement. For purposes of this policy, "Employer" means any person, partnership, association, corporation, firm, institution, or other entity, whether or not operated for profit.

V. Expectations of Former Consultants

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

A. Disclosure Requirements

For one (1) year after Termination of a PORT engagement, a Former Consultant must disclose the Former Consultant's past PORT engagement to the PORT before participating in any PORT business or activity and must also disclose the Former Consultant's past PORT engagement before participating in any proceeding before the Commission. The disclosure shall be made in writing to the CPO Representative or Project Manager and/or the Commission President.

B. Special Consideration Prohibited

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

C. Appearances Before Commission

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

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

D. Participation in Contracts with the PORT

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

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

VI. Reporting Other Potential Violations

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

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

Exhibit 3
Diversity in Contracting
Inclusion Plan Instructions

I. Background

The Port of Seattle is committed to providing the maximum practicable opportunity for participation by diverse businesses. The goal is to increase spend and the number of firms we contract with by 2022; therefore, the Port has established an Aspirational Goal for this contract. The Port strongly encourages consultants to work with diverse businesses to meet or exceed the Aspirational Goal listed in the Solicitation.

All proposers must submit this completed Inclusion Plan as part of contracting with the Port. This Inclusion Plan must demonstrate in detail the specific strategies, approaches, and steps for making affirmative efforts to meet or exceed the Port's Diversity in Contracting goals.

For additional information regarding Diverse Businesses and the program, please refer to Section VI, Diversity in Contracting Program, of the Solicitation.

II. Definitions

1. Affirmative Efforts means documented reasonable attempts in good faith to contract with women and minority businesses.
2. Diverse Firm refers to a wide array of business that are owned and operated by members which can be Minority Business Enterprise (MBE), Woman Business Enterprise (WBE), Minority Woman Business Enterprise (MWBE), Veteran Owned Business (VOB), or Small Business Enterprise (SBE).
3. Utilization is defined as both the percent of contracting dollars paid to WMBE firms as well as the number of WMBE firms under contract.
4. Aspirational Goal is defined as the total percentage the prime intends to be performed by WMBE firm(s) out of the total contract spend, including all contract amendments. While this goal is aspirational, affirmative efforts to develop and achieve this goal is mandatory.
5. Diversity Coordinator Main Point of Contact who is responsible for implementing and monitoring efforts to meet utilization goals on this contract. Responsibilities of a team diversity coordinator typically include, but are not limited to:
 - a. Outreach and networking with diverse businesses throughout the life of the project.
 - b. WMBE utilization tracking and reporting to the Port Project Manager on a regular basis.
 - c. Providing one-on-one assistance to diverse businesses so that they may successfully complete their contract scope of work.
 - d. Troubleshoots subcontractor issues such as late payments.
6. Women or Minority Business Enterprise (WMBE) is an umbrella term that includes MBE, WBE, and MWBEs.
7. Minority Business Enterprise (MBE) is a business that is at least 51 percent (51%) owned and controlled by minority (including, but not limited to African Americans, Native Americans, Asians, and Hispanics) group members.
8. Women Business Enterprise (WBE) is a business that is at least 51 percent (51%) owned and controlled by women.
9. Minority Women Business Enterprise (MWBE) is a business that is at least 51 percent (51%) owned and controlled minority women (including, but not limited to African Americans, Native Americans, Asians, and Hispanics) group members.

10. Combination Business Enterprise (CBE) is a business that is at least 51 percent (51%) owned and controlled by a combination of minorities or women that would not otherwise meet the definition of MBE, WBE, MWBE.
11. Small Business Enterprise (SBE) is a business that meets the applicable size standards adopted by the U.S. Small Business Administration. An SBE may be either a Certified Small Business or a business that is self-declared to meet the applicable U.S. Small Business Administration size standard. NAICS codes commonly used along with the applicable Small Business Administration size standards can be found at the following web address: <https://www.sba.gov/contracting/getting-started-contractor/make-sure-you-meet-sba-size-standards/table-small-business-size-standards>
12. Veteran-Owned Business (VOB) is a business that is at least 51 percent (51%) owned and controlled by a veteran or service member.
13. LGBTQ Business Enterprise (LGBTQBE) is a business that is at least 51 percent (51%) owned and controlled by one or more individuals who identify as LGBTQ.

III. Monitoring & Reporting

The Port will monitor compliance through monthly check in meetings with the consultant and the consultant's submission of Monthly Amounts Paid (MAPs). For further information, refer to Solicitation's Terms and Conditions Section XIII, Diversity in Contracting Inclusion Plan.

IV. Information for Diversity Team Development

This Inclusion Plan supports an Indefinite Delivery/Indefinite Quantity (IDIQ) contract. As a result, not all work is guaranteed; however, a representative list of potential work that may be issued by service directives is provided.

1. Potential Future Projects:

The following project scopes may be issued by Service Directive. This informational project list is to aide in diverse team development; however, project approvals are dependent on Commission approval. Estimated project values have not been evaluated.

- a) T-18 Bollard Replacement
- b) T-18 Shore Power
- c) T-18 Dock Rehabilitation

V. Aspirational Goal for Solicitation

This Solicitation's Aspirational Goal is defined as the total percentage the consultant intends to be performed by WMBE firm(s) out of the total contract spend, including all contract amendments. While this goal is aspirational, affirmative efforts to develop and achieve this goal is mandatory.

Aspirational Goal for this procurement: 15%

VI. Inclusion Plan Requirements

The Port will evaluate your Inclusion Plan during the selection process. The Port, at its option, may elect to conduct discussions regarding the Inclusion Plan submittal. The Port will identify

any material weaknesses and have an opportunity to ask questions about the submitted Inclusion Plan. Based on the information acquired during this discussion, the Port may issue an addendum to request a revised Inclusion Plan. The Port may deliberate with the highest ranked firm to improve the proposed Inclusion Plan. This Inclusion Plan will become a part of the contract upon execution.

Submittal Requirements

1. Exhibit 3A: The Inclusion Plan must be submitted in full and with detailed responses as part of the Solicitation submittal.
2. Exhibit 3B: Evidence of the agreement: The Port requires all named sub-consultants to be aware of their proposed role prior to submission of this Inclusion Plan. Evidence of the agreement between the prime and the sub-consultant must be submitted as a separate attachment. Please compile all your evidence into one PDF document. Evidence must be provided in signed letters and/ or an email confirming concurrence that they are listed in your Inclusion Plan.
3. Exhibit 4 – Company Information: Complete the Prime form and complete one form for each sub consultants you commit to using on this project. For guidance for each field in the form, review the instructions tab of the worksheet. When all forms are complete, verify your proposed WMBE total in the “summary” tab of Exhibit 4.

**Exhibit 3A
Diversity in Contracting
Inclusion Plan**

Exhibit 3A is uploaded in Vendor Connect as a Word document. Please submit the Word version with your proposal

Solicitation Number and Title	00320860; Terminal 18 IDIQ
Firm Name	Enter firm name
Diversity Coordinator	Enter full name and position title within the firm
	Enter phone and email for the above
Total WMBE participation	Enter percentage

VII. Affirmative Efforts/Business Support Strategies

The Port will evaluate proposer's affirmative efforts to meet the Aspirational Goal committed on this Inclusion Plan, including the steps taken by the proposer to conduct meaningful outreach and participation; the business development support provided; how utilization is monitored; the prompt payment plan; and mitigation plan to resolve disputes.

The following questions will provide the Port comprehension to the overall success of your Inclusion Plan. Limit each response to 200 words.

1. Describe your firm's outreach strategy and the selection process used to achieve meaningful WMBE participation for this Solicitation.
Enter response here.
2. Describe any business development support your firm provides to WMBE firms, such as, but not limited to, mentorship programs and/or technical assistance.
Enter response here.
3. Describe how your firm will engage and sub-contract with WMBE firms to ensure such firms are utilized throughout the life of the contract in which work is not guaranteed.
Enter response here.
4. Describe how your firm will adjust its strategy if not on track to meet the Aspirational Goal.
Enter response here.
5. Describe how your firm will ensure prompt payment to its Diverse Firms, including, but not limited to, payment assistance.
Enter response here.
6. If challenges with sub consultants occur on this contract, describe how your firm will resolve disputes. Provide an example.
Enter response here.
7. If you are committing to less than the Aspirational Goal in this Solicitation, tell us why.
Enter response here.

Exhibit 4 is uploaded in Vendor Connect as an Excel document. Please submit the Excel version with your proposal

EXHIBIT 4 - COMPANY INFORMATION

Port of Seattle Solicitation Information

Legend:

Prime enters information

Name of Field

Automatically Generated/Calculated Field

Solicitation No.:

00320860

Solicitation Title:

Terminal 18 IDIQ

Contract Value:

\$15,000,000

Summary of Company Information and Diversity in Contracting

Instructions: The areas in green automatically calculate based on the values entered in the detail sheet for each company. If the calculations seem incorrect to you, please return to the individual detail sheet to make changes there. Please note that rows cannot be deleted once added. For unneeded rows, the % of work column can be set to 0 and a note added to the scope of work.

Companies

	Company Name	Scope of Work	% of Work	Small & Diverse Business Credentials										Is WMBE?	Est. Dollar Value
				DBE	CBE	MBE	WBE	MWBE	VOB	LGBTQBE	SBE	SCS	NP		
Prime														No	\$0
			0%												
			Number of Firms												
			Participation %												
			Est. Dollar Value of Participation												
														Prime WMBE Participation	0%
														Subcontractor WMBE Participation	0%
														Total WMBE Participation	0%