



## **PERSONAL SERVICES AGREEMENT NO. 070896**

**PROJECT:** Bay Patrol 2018

**CONSULTANT:** Citizens for a Healthy Bay, 535 Dock Street, Suite 213, Tacoma, WA 98402

**PROJECT MANAGER:** Tony Warfield **PROJECT NO.** 101240.01

THIS AGREEMENT is made and entered into by and between the **Port of Tacoma** (*hereinafter referred to as the "Port"*) and **Citizens for a Healthy Bay** (*hereinafter referred to as the "Consultant"*) for the furnishing of Bay Patrol 2018 Personal Services (*hereinafter referred to as the "Project"*).

The Port and Consultant mutually agree as follows:

### **SCOPE OF WORK**

The Consultant shall provide human resource to the Port and the environment by monitoring the Commencement Bay, the surrounding waterways, and habitat (including Restoration Sites) by the bay Patrol Director.

Duties include, but are not limited to:

- Provide an early warning alert to the Port's Project Manager and any customer(s) directed by the Port to identify source of pollution;
- Complete at least 100 patrols per year, in all weather, days, nights, weekends and holidays. Consultant is responsible for notifying the Port if the Consultant's vessel is inoperable. Areas patrolled include, but not limited to:
  - Thea Foss Waterway
  - Middle Waterway
  - Sitcum Waterway
  - Blair Waterway
  - Hylebos Water way
  - Tacoma shorelines, Point Defiance and the Tacoma Narrows;
- Where possible, via coordinating with Port staff and volunteers, prevent reversal of restoration efforts for habitat areas that have been or are in, the process of being restored;
- Reduce risk to marine vessels and increase safety in commercial waterways. Hazards and anomalies that would otherwise go undetected, or unreported, are a key responsibility of the Consultant to identify. The Consultant shall visually identify obstacles that impede commercial marine traffic, or pose a hazardous threat. Consultant has a direct call line to the Department of Ecology, Coast Guard, National Response Center, and other agencies and will contact these agencies if necessary. Consultant shall divert marine traffic and remain on the scene until the appropriate authority arrives;

- During normal working hours, Consultant shall provide use of the vessel for emergency response or investigation within two hours of the request unless otherwise notified or agreed to;
- Provide Port waterways tours as agreed to agency staff and student/citizen groups;
- Provide annual bay patrol with Port staff;
- Bay Patrol Director will provide at least one briefing at an Environmental and Planning Department staff meeting; and
- The Consultant shall acknowledge the Port on the bay patrol vessel, website, printed materials and water base events that the Consultant patrol vessel participates in.

### **DELIVERABLES**

Consultant shall submit quarterly reports to the Port outlining the on-going efforts of patrolling the waterways. Quarterly reports shall summarize the locations, personnel involved, and activities or outcomes of patrolling, at a minimum. Quarterly reports shall be sent electronically and will be due as follows:

- 2<sup>nd</sup> Quarter (April 1 – June 30, 2018) – due July 31, 2018
- 3<sup>rd</sup> Quarter (July 1 – September 30, 2018) – due October 31, 2018
- 4<sup>th</sup> Quarter (October 1 – December 31, 2018) – due January 31, 2019
- 1<sup>st</sup> Quarter (January 1 – March 31, 2019) – due April 30, 2019

Consultant shall submit electronically, one annual report of all Port related activities not limited to spills, vessel management, environmental stewardship or other pertinent activities no later than **April 30, 2019**. It is permissible for the 1<sup>st</sup> Quarter 2019 report and the annual report to be delivered as one cumulative report.

Additionally, the Consultant will present a stakeholder status update to the Port of Tacoma Commission annually, as scheduled by the Port.

### **COMPENSATION**

This will be accomplished on fixed fee basis and will not exceed **\$35,000.00** without prior written approval from the Port. Payments shall be divided into quarterly payments in the amount of \$8,750.00 and will be paid upon receipt of deliverables.

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

All invoices shall be emailed to [cpinvoices@portoftacoma.com](mailto:cpinvoices@portoftacoma.com). The email must include the required supporting documentation. Incomplete or improperly prepared invoices will be returned for correction without processing or payment.

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

The length of this agreement is from April 1, 2018 to March 30, 2019.


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

**AGREED**

**PORT OF TACOMA**

**CITIZENS FOR A HEALTHY BAY**

By  3/30/18  
\_\_\_\_\_  
Mark T. Little Date  
Director Contracts & Purchasing

By  3/30/2018  
\_\_\_\_\_  
Date  
  
Melissa Malott Executive Director  
Print Name Title

## **Port of Tacoma Terms and Conditions Personal Services Agreement**

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

licenses and permits required to complete the scope of work as defined.

### **1. Key Personnel**

The Consultant and/or its subconsultants' key personnel, as described in its Consultant selection submittals, shall remain assigned for the duration of the Project unless otherwise agreed to by the Port.

### **2. Relationship of the Parties**

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

### **3. Conflicts of Interest**

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

### **4. Compliance with Laws**

Consultant agrees to comply with all local, state, tribal and federal laws and regulations applicable to the project, including building codes and permitting regulations existing at the time this Agreement was executed and those regarding employee safety, the work place environment, and employment eligibility verifications as required by the Immigration and Naturalization Service. Consultant shall obtain all professional

### **5. Records and other Tangibles**

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

### **6. Ownership of Work**

The services to be performed by Consultant shall be deemed instruments of service for purposes of the copyright laws of the United States. The Port has ownership rights to the plans, specifications, and other products prepared by the Consultant. Consultant shall not be responsible for changes made in the models, programs, reports or other products by anyone other than the Consultant. Consultant shall have free right to retain, copy and use any tangible materials or information produced but only for its own internal purposes. Use of models, programs, reports or other products prepared under this Agreement for promotional purposes shall require the Port's prior consent. Notwithstanding anything to the contrary in this Agreement, Consultant and its personnel are free to use and employ their general skills, know how, and expertise, and use, disclose, and employ any generalized ideas, concepts, know-how, methods, techniques, or skills gained or learned during the course of this Agreement so

long as they acquire and apply such information without any unauthorized use or disclosure of confidential or proprietary information from the Port.

#### **7. Disclosure**

All information developed by the Consultant and all information made available to the Consultant by the Port, and all analyses or opinions reached by the Consultant shall be confidential and shall not be disclosed by the Consultant without the written consent of the Port.

#### **8. Compensation**

As full compensation for the performance of its obligations of this Agreement and the services to be provided, the Port shall pay Consultant as specified in the Agreement. Compensation for vehicle usage will be paid at the current Internal Revenue Service allowable mileage reimbursement rate. Consultant's expenses will be reimbursed at cost, subject to attached guidelines, with the exception of all third party costs which will be reimbursed at cost plus the negotiated percentage markup.

#### **9. Payment Schedule**

Consultant shall submit detailed numbered invoices showing description of work items being invoiced, work order number, title of project, total authorized, total current invoice, balance of authorization, individual's names and titles, hours, hourly rate and all authorized expenses itemized, with backup, in accordance with the Port's "Guidelines for Consultant Fees and Reimbursable Items", by the 10<sup>th</sup> of the month to be paid by the end of the current month, unless other terms are agreed to by the parties.

#### **10. Costs and Disbursements**

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

#### **11. Insurance - Assumption of Risk**

- a) As a further consideration in determining compensation amounts, the Consultant shall procure and maintain, during the life of this Agreement, such commercial general and automobile liability insurance as shall protect Consultant and any subconsultants performing work under this Agreement from claims for damages from bodily injury, including death, resulting there from as well as from claims for property damage which may arise under this Agreement, whether arising from operations conducted by the Consultant, any subconsultants, or anyone directly or indirectly employed by either of them.
- b) With respect to claims other than professional liability claims, Consultant and its subconsultants agree to defend, indemnify and hold harmless the Port of Tacoma, its appointed and elective officers and its employees from and against any and all suits, claims, actions, losses, costs, penalties and damages of whatever kind and nature, including attorney fees and costs by reason of any and all claims and demands on it, its officers and employees, arising from the negligent acts, errors or omissions by the Consultant in the performance of the Consultant's professional services.
- c) With respect to professional liability claims only, Consultant and its subconsultants agree to indemnify and hold harmless the Port of

Tacoma, its appointed and elective officers and its employees from and against any and all suits, claims, actions, losses, costs, penalties and damages of whatever kind and nature, including attorney fees and costs by reason of any and all claims and demands on it, its officers and employees, arising from the negligent acts, errors or omissions by the Consultant in the performance of the Consultant's professional services.

#### **12. Standard of Care**

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

#### **13. Time**

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

#### **14. Assignability**

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

#### **15. Term of this Agreement**

The effective dates of this Agreement are as specified. This Agreement may be terminated by the Port for cause

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

#### **16. Disputes**

If a dispute arises relating to this Agreement and cannot be settled through direct discussions, the parties agree to endeavor to settle the dispute through a mediation firm acceptable to both parties, the cost of which shall be divided equally. The Port reserves the right to join any dispute under this Agreement with any other claim in litigation or other dispute resolution forum, and the Consultant agrees to such joinder, so that all disputes related to the project may be consolidated and resolved in one forum. Venue for any litigation shall be the Pierce County Superior Court of the state of Washington and the prevailing party shall be entitled to recover its costs and reasonable attorney's fees.

#### **17. Extent of Agreement**

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