

Port of Kennewick
Request for Proposals (RFP)

Port of Kennewick Governance and Management Audit

Proposals Due: December 1, 2021

A. Purpose

The Port of Kennewick (Port) is soliciting proposals from qualified consulting firms that are interested in undertaking a Governance and Management Audit (Audit) of the Port’s policies, practices, and keystone operating documents that are further defined in this RFP.

The Audit is being undertaken to advance the organization by updating, revamping, and/or adopting new or revised policies, practices, and keystone operating documents. The overall outcome is intended to better equip the organization to cost effectively accomplish its mission in serving the community; capitalize on new opportunities; and better respond to challenges.

The specific outcomes will include, but not be limited to, (i) assessing Port’s operations, processes, and practices as well as its governance and management roles for consistency with regulatory requirements and best management practices for Washington public port districts and (ii) recommending appropriate changes to develop a more effective organization.

In the long term the Port is striving for exceptional performance as one of Washington’s most effective Washington public port districts.

B. Background

The Port of Kennewick is an independent special purpose public port district located in Benton County, Washington. Washington public port districts are independent municipal governments with taxing authority and a broad statutory authority including transportation infrastructure development, economic development and promotion of trade and tourism.

Created, pursuant to Title 53 of the Revised Code of Washington, in 1915 by a vote of the electorate its original purpose was to capitalize on Celilo Canal improvements that would connect the community to distant markets. Today the Port’s Mission ***“is to provide and support sound economic growth opportunities, which foster new business, industry, and jobs, improve infrastructure, and enhance the quality of life for the Port district citizens.”***

The Port’s significant operations include:

- 103-acre Vista Field which is designed to be a vibrant, pedestrian-focused regional town center
- Transformation of Kennewick’s Historic Waterfront District by enhancing areas of Clover Island and taking a phased redevelopment approach to three project sites along Columbia Drive: Columbia Gardens Urban Wine & Artisan Village, The Willows and Cable Greens.

- The Willows which is part of the 15.8-acre Columbia Drive Urban Revitalization Area in east Kennewick. The Port, City of Kennewick and Benton County have partnered to transform the former industrial neighborhood into a waterfront destination.
- Cable Greens is a 3-acre site in the Columbia Drive Urban Revitalization Area adjacent to Columbia Gardens Urban Wine & Artisan Village. The Port is planning infrastructure enhancements within the next several years to open Cable Greens to private-sector investment.
- The Oak Street Industrial Park is just over 12 acres in northeast Kennewick and is zoned for light industrial development. The Port operates five business incubator buildings in a campus-like setting at the Industrial Park with building space currently available for lease.
- Other Port projects have included the Yakima River Gateway open space; the 93-acre West Richland Industrial Park; the Badger Mountain Trailhead Park; the Spaulding Business Park; the 15-acre Wine Estates Development Park; and participation in the Southridge development area with the City of Kennewick.
- Clover Island Boat Launch and Marina, home to 150 moorage slips and associated amenities.

C. Governance

The Port is governed by a three-member elected Board of Commissioners. Commissioners serve for 6-year staggered terms and select board officers bi-annually. The current 2021 Board:

President: Don Barnes¹ *(Serving since 2012)*

Vice President: Skip Novakovich² *(Serving since 2010)*

Secretary: Thomas Moak³ *(Serving since 2014)*

Typically, the Port Commission meets in an open public meeting twice a month on the second and fourth Tuesday of each month. Except in limited circumstances, Washington law precludes the port commissioners from discussing Port business outside of the open public meetings.

The Port Commission retains outside legal counsel for the Port. Legal counsel provides legal advice to the Port Commission and works directly with the Port staff.

D. Management

The Port is managed by a 13 member staff led by the Port’s Chief Executive Officer (CEO) who reports directly to the Port Commission. Staff includes a deputy CEO, a director of planning and development, a director of real estate and operations, a CFO, administrative and accounting staff, a facilities manager, and maintenance staff.

E. Precipitating Event

In early 2019, following a real estate transaction, there was a citizen complaint filed at the Port pursuant to a long-adopted Port policy concerning such complaints. This resulted in the application of Port policies

¹ Commissioner Barnes’ term expires on December 31, 2021 and he is not seeking reelection. Ken Hohenberg, retiring Police Chief, City of Kennewick, was the only candidate that filed for the position and will take office January 1, 2022.

² Commissioner Novakovich’s current term ends December 31, 2023.

³ Commissioner Moak’s current terms ends December 31, 2025.

and procedures that had not been recently reviewed. It also resulted in a series of legal actions that were dismissed and settled in 2020. That experience has caused the Port's Commission to move forward with this Governance and Management Audit to review policies, practices, and keystone operating documents. It is noted that the review is broader than the policies related to the 2019 complaint and should encompass the broad range of Port policies, practices, and keystone operating documents to maximize the Port's ability to achieve its mission.

Additional background information on the citizen complaint can be viewed at: <https://www.portofkennewick.org/public-records-request/>

The Port anticipates awarding a single contract to the selected firm in January 2022 based on a recommendation by the current 2021 Commission. The period to complete the work is one year, however, an option to extend for additional time can be considered if necessary. The contract to be approved by the Board of Commissioners will be consistent with the Port's standard terms and conditions contained in its Consultant/Service Agreement. See Appendix A to this RFP.

F. Scope of Work & Deliverables

The Port is seeking consulting services to work directly with the Port Commission and staff to undertake this Audit. It is expected that work will begin in early 2022. The selected firm will develop a set observations, findings, and recommendations as Deliverables as described below.

Work will be coordinated by the Port's independent Project Manager.

The Port will select an independent Project Manager to oversee the work of the selected consultant.

It is anticipated that the approach to undertake the following tasks would consist of some combination of Commission and staff interviews; review of the literature, practices, and statutory requirements for Washington public port districts; and comparative analysis of Port documents.

Applicants should address the expected deliverables in their Project Approach Narrative. The Port's expectation is that there will be a series of 'Findings' for the three major assessment areas followed by a comprehensive series of 'Recommendations' on steps the Port should take to improve the organization's effectiveness and concurrency with both statutory requirements and best management practices.

Task 1: Assessment Area-Systems & Process Evaluation

Task Purpose: Evaluation of the systems and processes the Port utilizes to manage its affairs and reach binding decisions for the organization.

Task Topic: In general, the **Systems and Process Evaluation** will explore the Port's current approach to decision making and the respective roles of the elected Commission and appointed staff. Specifically, it is intended to include the review of the effectiveness and functionality of the following traditional Systems and Processes. The successful applicant will be encouraged to propose additional areas for evaluation at the proposal stage or as the work progresses. Applicant's proposal should delineate differing costs for each Tier of review. Tier 1 is to be included in the 'Base Fee' and Tier 2 in an 'Add On' fee.

Tier 1 Base:

- Contracting for legal and State audit services
- Roles and responsibilities of the Commission officers
- Strategic and asset planning
- Ethics practices
- Personnel: Hiring, training, development, as well as salary structure and benefit administration
- Contract negotiations and approvals
- Financial management and the statutory required audit by the State Auditor
- Purchasing and contracting for services
- Legal guidance and risk management
- Organizational structure and performance capacity of the Port
- Performance evaluations of key personnel including CEO, internal auditor, and legal counsel

Tier 2 Add On:

- Agenda formulation and meeting protocols (ie. Use of a Consent Agenda)
- Development, adoption, and management of operating and capital budgets
- Internal communications
- Travel policies and expense reimbursement
- Public outreach, transparency, and community affairs
- Leasing, property acquisition and sales, as well as tenant and customer relations

In addition, the review and evaluation of these Systems and Processes will address the role, reporting structure, and responsibility of the elected Commission, CEO, internal Port auditor, and Port attorney.

Key Task 1 Deliverables: Written “Findings Report- Systems and Process Evaluation” that captures the outcomes of the evaluation in sufficient detail to support the recommendations within Task 4. Presentation to the Commission on the Task 1 findings.

Task 2: Assessment Area- Organizational Culture Assessment

Task Purpose: An assessment of both the current and desired organizational culture and working atmosphere of the Port and how it may or may not impact effective operations.

Task Topic: An assessment of the formal and informal culture and working atmosphere at the Port from both an internal and external perspective. This includes the relationships between and amongst the Commission; between the professional staff and the Commission, amongst all levels of the staff; and with the Port’s external stakeholders, including tenants, other governmental agencies, and the overall community.

Applicants should consider utilizing traditional organizational assessment tools such as a SWOT or SOAR analysis. These tools, or others recommended by the successful applicant, should engage both the professional staff and the elected Commission. The intended outcome is an assessment but also should recommend a pathway forward to addressing the organizational culture and work atmosphere.

Note: The SOAR analysis maintains the Strengths and Opportunities of a SWOT analysis but introduces Aspirations and Results in place of Weaknesses and Threats. A SOAR analysis is more oriented toward action whereas a SWOT analysis is more analytical in nature.

Applicants should identify and propose a methodology to assess the current and desired organizational culture and working atmosphere of the Port from both an internal as well as external perspective such as tenants, customers, and other local governments.

Key Task 2 Deliverables: Written “Findings Report- Organizational Culture Assessment” that describes the current culture as well as defines a preferred culture for the Port. Presentation to the Commission on the Task 2 findings.

Task 3: Assessment Area-Document Review

Task Purpose: Identification and review of existing documents that underpin the Port’s operation and decision-making ability against regulatory requirements and best management practices.

Task Topic: As in all organizations there are a host of required and recommended documents that institutionalize the Port’s practice, policies, and responsibilities. Task 3 is intended to be an in-depth review of those existing documents to determine if they are consistent with regulatory requirements and/or best management practices for a Washington port authority. The work will determine if there should be revisions to existing documents; a sense of the efficacy of each document, if there are any opportunities for consolidation, or if there are additional documents that should be considered. In reviewing existing documents, the successful applicant should gain a sense of historical context and why certain documents were adopted.

The documents that have been identified include the following. Documents that are reviewed shall include the most recent version with up-to-date amendments. This list may not be exhaustive, the successful applicant is encouraged to propose the review of other materials as well. A number of these documents are captured as resolutions of the Commission. Applicant’s proposal should delineate differing costs for each Tier of review. Tier 1 is to be included in the ‘Base Fee’ and Tier 2 in an ‘Add On’ fee.

Tier 1 Base:

- Port Commission Rules of Policy & Procedure
- CEO Procedures & Staff Handbook
- CEO Delegation of Powers including secondary delegation to staff
- Public records and information management program
- Commission directives for Port assets
- CEO evaluation policies
- CEO and Staff employment contracts
- Attorney contract
- Port’s organizational chart

Tier 2 Add On:

- Budget financial and operational policies
- Art Policy
- Buyback clause language
- Declaring local emergency and Delegation of Authority (CEO)
- Appointment of Port auditor
- Job descriptions of all employees
- Comprehensive Scheme of Harbor Improvements
- Financial reports
- Strategic Plan
- 2019 Audit
- 2020 Audit

Key Task 3 Deliverables: Written “Findings Report-Documents Review” that summarizes the review and analysis of existing policies, contracts, and other relevant documents. Presentation to the Commission on the Task 3 findings.

Task 4: Recommendations

Task Purpose: Specific and general recommendations regarding the Port’s processes and systems; organizational culture; and document adoption and use.

Task Topic: Building on the findings of Tasks 1 through 3 the successful applicant will produce a series of general and specific recommendations for the Port’s consideration. Specifically, this task should bring forward phased changes and improvements to advance the Port’s effectiveness, compliance with regulatory and industry practices as well as overall operating culture.

Key Task 4 Deliverables: Written report summarizing the specific recommendations on the three assessment areas to also include recommended modifications to processes and or documents. The recommendations should include suggested language and may include sample documents from other organizations or resources. The successful applicant shall vet all proposed amendments and modifications to existing documents against statutory requirements. Regarding recommendations for organizational culture the deliverables shall include a proposed course of action.

Task Approach

Section F of this RFP requests that submittals describe the applicant’s approach to the work and the individual tasks. Inherent in the applicant’s approach applicant proposals should include an early series of interviews with current and former elected Commissioners to better define the extent of each Task and review of Commission meeting tapes (minutes) and news articles.

Applicants should plan on an early kick off meeting with the Commission and staff to forecast a schedule of work and their approach.

G. Qualifications

The successful applicant for this Scope of Work should have extensive working knowledge of local government governance and management concepts and practices. It is anticipated there will be a lead consultant supported by an “on call” panel of experts that specialize in a wide variety of topics and each will bring a distinct focus to the work. This model is intended to capitalize on the available expertise and knowledge of the “on call” panel members when needed during the Audit. Panel members may be from the lead consultants’ firm; however, applicants are encouraged to assemble and propose a diverse group of panel members with differing perspectives. The extent of the use of the “on call” panel will evolve as the work progresses.

The combined knowledge and experience of the lead consultant and ‘on call panel’ should include, but not be limited to, the following areas:

- Port governance and management roles, concepts, and challenges
- Title 53 of the Revised Code of Washington as well as all statutes regulating special purpose districts such as the Open Public Meetings Act and the Public Records Act
- Strategic planning
- Organizational dynamics and cultural effectiveness
- Public finance, budgeting, purchasing, and contracting
- Washington State statutory audit requirements and practice
- Personnel and human resource practices

Applicants are encouraged to recommend and include other skill sets on the “on call” panel. The successful applicant will have exceptional communication and interview skills as well as the ability to identify and analyze the effectiveness of organizational functions.

The successful applicant will be demonstrably neutral in the approach to the work and have no real or perceived conflicts with the Port. It is preferred that the successful applicant will not have worked under contract to the Port in the past.

H. Evaluation of Proposals

Proposals should present the applicants information in a straightforward and concise manner, while ensuring complete and detailed descriptions of the lead consultant and on call panel members abilities to meet the requirements of this RFP.

Written proposals are limited to 20 numbered pages (8.5 by 11 inch) including the cover letter and all appendices. Font size shall be 11 point or larger. All resumes and bios are not included in the total page count. Applicants are encouraged to abbreviate those to only include pertinent and relevant experience information.

Proposals should include a primary contact for further amendments or notices.

The cover letter shall include the RFP title as well as the name, email, phone number, and address of the lead consultant and further include the following information:

- Describe any claim submitted by a client against the lead consultants' firm or its key personnel. For purposes of this RFP claim means any sum of money in dispute in excess of the firm's fee for the services required.
- Any real or perceived conflicts of interest for the lead consultant and or the 'on call' panel.
- A statement indicating acceptance or any objections to the Port's Consultant/Service Agreement and knowledge any addenda to this RFP issued.

Proposals will be evaluated by the Port of Kennewick Commission and will be based on the following criteria:

1. Qualifications and Experience

Identify the areas of expertise for the lead consultant and each member of the 'on call' panel. Include their role in the proposal, education, experience in similar efforts, and work experience. In addition to experience and knowledge identify the capacity of each individual given their other commitments.

2. Project Approach Narrative

Describe in detail the applicants proposed approach to accomplishing the work defined in Section C of this RFP. Describe the proposed engagement with the Port, its staff and Commission, including a sense of the amount of Port resources or anticipated time commitment for those Port resources. The Port will entertain suggested modifications, innovative ideas, and suggestions to enhance the 'on call' panel approach.

3. Project Management

Provide the applicants proposed project management approach including a preliminary timeline with key milestones, phases, tasks, and the like. Describe the level and timing of involvement of Port staff and the Commission. Define the assumptions made regarding the applicant's approach to the work as well as the factors that the applicant believes are risks to successfully completing the work. Describe the method for maintaining communications with the Port during the project.

4. Compensation

Proposals should include an estimated cost to perform the work including the assumptions made in developing that cost proposal. The applicants should include a 'base fee' proposal and a 'add on fee' proposal. All costs should be provided including, but not limited to each consultant or expert hourly rates fully burdened, travel, direct/indirect expenses, and overhead. All costs to complete the work as described herein shall be included. The 'base fee' proposed is to evaluate the Tier I items in Task 1 and Task 3. The 'add on fee' is to evaluate the Tier II items in Task 1 and Task 3.

5. References

Proposals should include 3 to 5 references that can be used to evaluate the lead consultant's experience and ability to undertake the work. References may be included for 'on call' panel members if, in the opinion of the applicant, they are relative to assessing the overall capacity of the applicant to accomplish the work.

6. Interviews

The Port may, at its sole discretion, conduct interviews with applicants to further support its selection process. These interviews, if requested, can be conducted either remotely or in person at the Port's offices.

The Port's Commission shall make the selection of the preferred applicant based on the proposal submitted, the projected cost of the work, the results of reference checks and interviews, if necessary. The Commission will make a recommendation on the selection of the preferred applicant through the adoption of a Commission resolution. That resolution will be forward to the 2022 Commission in January 2022. On or about January 2022, the Commission will consider and award the work to the successful applicant.

The Port will consider and award the work to the applicant that represents the best value to the Port in terms of value received for cost. The Port reserves the right to accept or reject any and all proposals in their entirety, or in part, and to waive any informalities and minor irregularities and to contract in the best interest of the Port. The Commission's determination is final.

In the event only one proposal is received the Port may require that the applicant provide any additional information as required by the Port to further analyze the proposal. The port reserves the right, in any circumstance, to reject any and all proposals.

Applicant Costs for Proposal

All costs incurred by the applicant in the preparation of a proposal, as well as the cost of participating in the selectin process shall be borne by the applicant.

Minority and Women's Business Enterprise

The Port of Kennewick encourages participation in all of its contracts by MWBE firms certified by the Office of Minority and Women's Business Enterprise (OMWBE). Participation may be as the lead consultant or as a member of the 'on call' panel. It should be noted that no minimum level of MWBE participation shall be required as a condition of receiving an award for this work.

Discrimination Policy

The Port provides equal opportunity to the users of all Port services and facilities, all contracting entities, Port employees and applicants for employment, and to assure that there be absolutely no discrimination against any person on grounds of age, sex, marital status, sexual orientation, race, creed, color, national origin, honorably discharged veteran or military status, or the presence of any sensory, mental or physical disability, or the use of a trained guide dog or service animal by a person with a disability, unless based upon a bona fide occupational qualification or any other protected status.

Documents

Proposals submitted to this solicitation shall be considered public documents. If an applicant considers any part of their submittal as proprietary it should be noted on the actual proposal. In the event there is a third-party request to release that information the Port will notify the

applicant and allow the applicant 10 days to seek a protective order from the courts. The Port will own all products generated during this effort.

I. Procurement Process & Timeline

Activity	Date
RFP Issued	October 19, 2021
Last Day to Submit Questions	November 12, 2021
Proposals Due	December 1, 2021
Interviews, if required	December 6-10, 2021
Final Selection & Recommendation	December 14, 2021
Contract Award & Execution	January 2022

Applicants are advised to track solicitation updates and addenda on the Port's website:

<https://www.portofkennewick.org/contracting/#bid>

Note: Applicants who, relative to this scope of services, contact any individual staff or Commission members representing the Port, other than the Port Project Representative listed in Section F Scope of Services may be eliminated from further consideration.

Questions concerning this solicitation should be submitted via email by November 12, 2021 to the Port Project Manager at: PortRepresentative@portofkennewick.org

Proposals must be received via on or before the Proposal Due Date listed on the cover page of this RFP. Proposals are to be sent to Port of Kennewick Project Manager and include in the subject line: Governance and Management Audit. Please ensure the electronic file is less than 10 MG. Applicants are to confirm receipt of their proposal by the Port. Late proposals will not be accepted. Proposals can be submitted electronically or in hard copy or both. Hard copy submittals must include 5 copies.

Mail Proposals to:

Governance and Management Audit Project Manager
Port of Kennewick
350 N Clover Island Dr # 200
Kennewick, WA 99336

Email Proposals to: PortRepresentative@portofkennewick.org

and include in the subject line: Governance and Management Audit Project

All proposals shall be valid and binding for 90 calendar days following the submittal deadline and/or any extension agreed to by the successful applicant.

Attachment A: Consultant/Service Agreement

CONSULTANT/SERVICE AGREEMENT

THIS AGREEMENT is made on the _____ day of _____, 2021, between the **Port of Kennewick** (hereinafter referred to as the “Port”) and [NAME OF CONTRACTOR] (hereinafter referred to as the “Contractor”) (collectively referred to as the “Parties”). The Parties, in consideration of the mutual promises contained herein, agree as follows:

ARTICLE 1. Purpose.

The purpose of this agreement is to [PROVIDE A CONCISE DESCRIPTION OF AGREEMENT PURPOSE].

ARTICLE 2. Scope of Work.

2.1. Relationship of the Parties. It is understood by both Parties that the Contractor is an independent contractor, and not an employee of the Port. The Port will not provide the Contractor with any fringe benefits, including but not limited to health insurance benefits, paid vacation, or any other employee benefit. The Contractor shall be solely responsible for any and all local, state, or federal withholding taxes, social security, or self-employment taxes, business or occupation taxes, or any other tax obligation which arises from compensation received pursuant to this Agreement.

Contractor retains the sole right to control and direct the manner in which the services are to be performed and will determine the method, details and means of performing the services. After the effective date hereof, Contractor shall have no contact with port staff or commission other than during port commission meetings, except for the purpose of administrative details with port staff.

2.2. Contractor Responsibilities. The Contractor will provide services, staff, equipment, and otherwise do all things necessary for or incidental to the performance of work, as set forth below:

Option 1: [Delete all text in this paragraph if Option 2 is chosen.] Identify all tasks, work elements and objectives of the agreement, and timetables by which major parts of the work are to be completed. The scope of work may be included within the text of the Agreement or set forth in an attachment referred to as Exhibit “A” or as noted in Option 2 below.

Option 2: [Delete all text in this paragraph if Option 1 is chosen.] As included in the CONTRACTOR’S Proposal dated _____ attached hereto as Exhibit “A”.

2.3. Standard of Care. The Contractor shall perform its work to conform to generally accepted professional standards. The Contractor shall be responsible for the professional quality, technical adequacy and accuracy, timely completion and coordination of all work conducted under this Agreement. The Contractor shall, without additional compensation, correct or revise any errors or omissions in such work. The Port’s approval or acceptance of Contractor’s work shall not relieve the Contractor of responsibility for the adequacy or accuracy thereof. The Contractor shall remain liable for damages and costs incurred by the Port arising from the Contractor’s errors, omissions or negligent performance of services furnished under this Agreement.

ARTICLE 3. General Requirements.

3.1. Compliance With Codes and Regulations. The Contractor shall comply with all federal, state, and local laws, ordinances, and regulations, including standards for licensing, certifications, and operation of facilities and programs.

3.2. Progress Reports. At the Port's option, the Port may require the Contractor to provide a monthly (or other time increment depending upon length of project) progress report on the various phases and the order of performance of the work in sufficient detail as deemed by the Port so that the progress of the work can easily be evaluated.

3.3. Port Materials. All Reports, Port materials, and other data furnished to the Contractor by the Port shall be returned no later than thirty (30) days after completion of the work.

3.4. Ownership of Work. The services to be performed by the contractor shall be deemed instruments of service for purposes of the copyright laws of the United States. The Port has ownership rights to the work products prepared by the Contractor in performing these services. The Contractor shall not be responsible for changes made in the work products by anyone other than the Contractor. The Contractor shall have free right to retain, copy and use any tangible materials or information produced but only for its own internal purposes. Use of documents or other materials prepared under this Agreement for promotional purposes shall require the Port's prior written consent. In the event this contract is for intellectual property such as artwork or system designs for software programs the Contractor will assign to the Port an irrevocable license to use and reuse for any lawful purpose the work products created by the Contractor in the course of performing these services.

3.5. Records and other Tangibles. Until the expiration of six years after the term of this Agreement, the Contractor 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.

3.6. Disclosure. All information developed by the Contractor and all information made available to the Contractor by the Port, and all analyses or opinions reached by the Contractor shall be confidential and shall not be disclosed by the Contractor without prior written consent of the Port, except as may be required by the Washington State Public Records Act.

3.7. Indemnification/Hold Harmless. With respect to claims other than professional liability claims, the Contractor agrees to defend, indemnify and hold harmless the Port, its appointed and elected officers and 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 Contractor in the performance of the Contractor's services.

With respect to professional liability claims only, and not commercial general liability claims, the Contractor agrees to indemnify and hold harmless the Port, its appointed and elected 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 Contractor in the performance of the Contractor's services.

ARTICLE 4. Term of Agreement.

Term of Agreement. The period of performance under this Agreement will be from [START DATE], or date of execution, whichever is later, through [END DATE].

4.1. Cancellation. Either party may cancel this Agreement on [# OF DAYS] days' written notice to the other party, by certified mail, return receipt requested.

ARTICLE 5. Compensation and Payment.

5.1. Compensation for Services. The Contractor will be paid for the performance of all things necessary for or incidental to the performance of work as set forth in the Scope of work. Contractor's compensation for services rendered shall be based on the following rates or in accordance with the following terms:

[Option 1: Delete this paragraph if Option 2 chosen] Hourly rate of \$_____ not to exceed \$_____ during the term of this agreement unless authorized in writing by the Port.

OR

[Option 2: If deleting, delete both indented paragraphs below]
By task order as set forth in Exhibit "B" not to exceed \$_____ during the term of this Agreement unless authorized in writing by the Port.

The Port will not reimburse the Contractor for any costs or expenses incurred by Contractor while undertaking work required by this Agreement.

5.2. Billing Procedures. The Port will pay Contractor upon receipt of properly completed and Port approved invoices, which shall be submitted to the Port not more often than monthly. The invoices shall describe and document to the Port's satisfaction a description of the work performed, the progress of the project, and fees. If expenses are invoices, provide a detailed breakdown of each type. Any single expense in the amount of \$25.00 or more must be accompanied by a receipt in order to receive reimbursement. Payment shall be considered timely if made by the Port within thirty (30) days after receipt of properly completed and Port approved invoices. Payment shall be sent to the address designated by the Contractor.

The Contractor shall send invoices to the Port's electronic invoice processing system at accountspayable@portofkennewick.org. If access to that system is desired by Contractor, it will be provided at the time the Agreement is signed by all parties. It provides them access to see the status of pending invoices. The Port reserves the right to change its invoice processing method at any time during the term of this Agreement.

The Port has timely financial reporting requirements. Therefore, the Contractor shall submit invoices for work performed no later than sixty (60) days from the date work is completed in order

to ensure prompt payment. If Contractor fails to submit invoices within sixty (60) days from the date work is completed, the Port may charge an administrative fee of \$25 per day for each day the invoice is late or the Port may, in the Port's sole discretion, determine the work performed by the Contractor was donated to the Port due to the Contractor's failure to timely invoice the Port.

The Port may, at its sole discretion, terminate the Agreement or withhold payments claimed by the Contractor for services rendered if the Contractor fails to satisfactorily comply with any term or condition of this Agreement. No payment in advance or in anticipation of services or supplies to be provided under this Agreement shall be made by the Port.

5.3. Waiver of Claims. The acceptance of the final payment by the Contractor shall constitute a waiver of all claims, of whatever sort or nature, by the Contractor against the Port.

ARTICLE 6. Insurance.

The Contractor shall provide insurance coverage as set out in this section [or as set forth in an attached document with an Exhibit label]. The intent of the required insurance is to protect the Port should there be any claims, suits, actions, costs, damages or expenses arising from any negligent or intentional act or omission of the Contractor or its agents, while performing under the terms of this Agreement.

The Contractor shall provide insurance coverage that shall be maintained in full force and effect during the term of this Agreement, as follows:

A. Commercial General Liability Insurance Policy. Contractor shall provide a Commercial General Liability Insurance Policy, including contractual liability, in adequate quantity to protect against legal liability arising out of the activity/ies contemplated by this Agreement but no less than \$1,000,000 per occurrence, \$2,000,000 aggregate. Additionally, the Contractor is responsible for ensuring that, if any subcontract has been authorized by the Port, that any such subcontractor provides adequate insurance coverage for the activities arising out of the subcontract.

B. Automobile Liability. In the event that services delivered pursuant to this Agreement involve owned, unowned or hired vehicles by the Contractor, automobile liability insurance shall be required. The minimum limit for automobile liability is \$1,000,000 combined single limit per accident.

C. Professional Liability. For Agreements involving amounts of \$50,000 or more, certain professional Contractors shall be required to maintain professional liability insurance of not less than \$1,000,000 per claim and in the aggregate. Insurance shall have an effective date prior to the effective date of this Agreement and coverage shall remain in effect for the term of this Agreement plus three years. These professional contractors subject to this provision include but are not limited to Architectural and Engineering firms or consultant firms where potential construction of improvements exceeds \$500,000.

D. All policies shall be issued by a company having an A.M. Best rating of A:VI or better. Each insurance policy shall be endorsed to state that coverage shall not be suspended, voided, canceled or reduced in coverage or limits except after 45 days prior written notice has been given to the Port. Except for professional liability, the Port shall be named as an additional

insurance on all policies. The Contractor shall submit to the Port within fifteen (15) days of the Agreement effective date a certificate of insurance that outlines the coverage and limits defined in this Section.

ARTICLE 7. General Provisions.

7.1. Time Is Of The Essence. All time limits stated in the agreement documents are of the essence to the agreement.

7.2. Commitments. The Contractor is not authorized to make any agreements or other commitments for or on behalf of the Port without the written consent of the Port.

7.3. Severability. If any part, section or provision of this Agreement is adjudged to be invalid by a court of competent jurisdiction, such paragraph, section or provision shall be read out of this Agreement and shall not affect the validity of any remaining sections, parts, or provisions of this Agreement, nor give rise to any cause of action by either party against the other, and the remainder of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

7.4. Waiver. Any failure by the Port to enforce strict performance of any provision of the Agreement will not constitute a waiver of the Port's right to subsequently enforce such provision of any other provisions of the Agreement.

7.5. Assignment. Neither the Agreement nor any of the rights or obligations of the Contractor arising under the Agreement may be assigned or transferred, directly or indirectly, (including subcontracting) without the Port's prior written consent. The Port shall have sole discretion in determining if it will approve any such assignment or transfer. Subject to the foregoing, the Agreement will be binding upon, enforceable by, and inure to the benefit of, the Parties and their successors and assigns.

7.6. Counterparts. The Agreement may be signed in counterparts, each of which shall be deemed an original, and all of which, taken together, shall be deemed one and the same document.

7.7. 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 Contractor 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 Benton County Superior Court of the State of Washington and the prevailing party shall be entitled to recover its costs and reasonable attorneys' fees.

7.8. Entire Agreement. The Parties agree that this Agreement is the complete expression of the terms and conditions hereto, and any oral representations or understandings not incorporated herein are excluded. The Parties agree that any modification of this Agreement must be in writing and signed by both Parties.

7.9. Notices. Except as otherwise provided, any notice required under this Agreement shall be made by written notice and sent to the other party by first class mail, postage paid, at the addresses below, or to any agent designated in writing by either party. Notices shall be sent to the parties as follows:

Port of Kennewick
350 Clover Island Drive, Suite 200
Kennewick, WA 99336

Email Address: _____
Washington State UBI# _____
EIN# _____

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date set forth above.

CONTRACTOR

PORT OF KENNEWICK

By: _____

By: _____

Tim Arntzen, CEO

Printed Name: _____

Title: _____

Date: _____

Date: _____

Approved as to form:

Approved by CFO or Designee:

By: _____

Lucinda J. Luke, Port Counsel/Date

By: _____

Nick Kooiker, CFO

Attachments:

Exhibit A – Scope of Work

Exhibit B – Compensation Schedule