

**REQUEST FOR PROPOSAL
25-003-POW COLFAX RAW LAND PLANNING STUDY
PERSONAL SERVICES CONSULTING CONTRACT**

The Port of Whitman County (Port) seeks proposals from professional consultants to complete a scope of work related to a planning and feasibility study for raw industrial land at the Port of Whitman Business Air Center (POWBAC) in Colfax, Washington. The study will help inform the Port Commission as they determine the most effective development strategy to prepare the land for private-sector tenants.

Response Deadline: Tuesday, September 30, 2025, 2:00 p.m. PST. Submittals including all requested information must be received by the Port no later than the Response Deadline. Submittals received after that date and time may be rejected without review. Submittals that arrive on time, but are incomplete, may be rejected at the Port's discretion.

Method of Submittal: Proposals must be in writing and address each of the elements outlined in the Request for Proposal (RFP). Submittals must be submitted by email to jacquelyn@portwhitman.com. Please use "25-003-POW – Feasibility Study Proposal" as the subject line. The body of the email shall contain the following information: RFP title; name of Proposer; and name, address, email, phone number of the point of contact for any questions concerning the proposal.

It is the Proposer's responsibility to confirm the Port's receipt.

Background:

The Port was awarded a \$75,000.00 grant from the Washington State Community Economic Revitalization Board (CERB) for its Colfax Raw Land Planning Study. The Port recently acquired approximately 8.5 acres of industrial land at POWBAC (Attachment A). The grant funds a planning study to prepare a development strategy that outlines how the site can be responsibly and efficiently prepared for private-sector use.

Desired benefits of the Port's ownership and pursuit of this project are to increase economic activity, attract business investment, and create jobs by making the site development-ready for long-term lease.

Scope of Work:

In addition to the CERB planning study minimum requirements (Attachment B), the contract for the planning study will include the following elements:

1. Environmental review and site assessment including cultural/archaeological survey, wetlands, geotechnical studies, and State Environmental Policy Act (SEPA)
2. Geotechnical analysis
3. Topographic mapping
4. Survey of boundaries to include field work to set ground control points for aerial mapping (GCP's), corner search and boundary analysis, and preparation of exhibit map
5. Infrastructure needs assessment (e.g., water, sewer, power, fiber, road access)
6. Permitting and regulatory pathway review and strategy
7. Market analysis and site positioning strategy
8. Conceptual site plan (30% design) and phased development recommendations
9. Cost estimates for full site preparation and infrastructure improvements

Contractor Required RFP Submittals:

1. Cover Letter – Provide a cover letter indicating your interest in serving as the organization to conduct the scope of work for the Port.
2. Background Information – Describe your firm or business, including years in operation, size, location, and number of professional staff to be assigned to work on this project with a brief resume for each person. Include similar information for any subcontractors that will be engaged for portions of the work. List other government agencies that you have worked with to conduct similar projects.
3. Methodology – A detailed description of the proposed approach and methodology for conducting the scope of work.
4. Use of AI –Provide a summary of the company's policy and philosophy related to the use of AI. Specify how your company may integrate AI into this project, and which AI tools and models are used.
5. Timeline and Project Plan – including key milestones.
6. Fee for Service – Please provide a description and payment schedule overview of the fees to provide this service.
7. References – Please provide us with 3 – 5 organizations that we can contact as a reference for working with you to provide this service.

Rejection of Proposals:

The Port will have the right to reject any and all proposals and in particular to reject a proposal not received by the deadline stated above or any proposal in any way incomplete or irregular. The Port further reserves the right to accept that proposal which is in the best interest of the Port of Whitman County. The Port reserves the right to reject any proposal if the Port's review of the above submittals and its investigation fails to establish that the Contractor possesses to the satisfaction of the Port, in its discretion, the qualifications necessary to fully, properly and timely carry out all obligations described in this Request for Proposal Document. The Contractor will be required to comply with all Local, State and Federal laws and regulations pertaining to equal employment opportunities. The Contractor will upon successful award be required to execute a contract with the Port.

Selection Process:

Each proposer will be evaluated against the five (5) selection criteria set forth below. A ranking system will be used with a low of 1 point to a high of 10 points for each criterion with a total of fifty (50) points. Any proposer receiving a score of less than four (4) on any individual criteria shall be deemed "not responsible" regardless of the total score.

The Port will consider the completeness of the proposal and how well the proposal meets the needs of the Port. All proposals will be evaluated using the criteria listed below:

1	Responsiveness to solicitation requirements	1 – 10 points
2	Previous experience in service areas	1 - 10 points
3	Expertise of key personnel/subcontractors	1 - 10 points
4	Previous experience with similar contracts	1 - 10 points
5	Cost	1 - 10 points

Interviews: The Port may conduct interviews on **Friday, October 10, Monday, October 13 or Tuesday, October 14, 2025**, with respondents who earn top ratings based on the criteria listed above. If needed, respondents will be contacted to schedule an interview.

Nondiscrimination and Equal Opportunity:

The Port complies with state and federal laws prohibiting discrimination on the basis of any protected status.

In accordance with Section 504 of the Rehabilitation Act and the Americans with Disabilities Act, the Port commits to nondiscrimination on the basis of disability in all of its programs and activities.

In accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 USC §2000d to 2000d-4) and the Regulations, the Port will affirmatively ensure that in this RFP process and in any contract entered into pursuant to this RFP, disadvantaged business enterprises will be afforded full and fair opportunity and will not be discriminated against on the grounds of race, color, national origin, or sex in consideration for an award.

Women- and minority-owned business enterprises (WMBE) and veteran-owned firms are encouraged to respond to this opportunity.

Contractual Terms and Conditions:

The successful Proposer will be expected to execute a contract with the Port of Whitman County on a form that is approved by the Port Attorney. A sample of the Port's "Personal Services Contract" is attached (Attachment C) and may be modified at the Port's discretion or as negotiated between Port and selected Contractor.

Questions can be directed to:

Jacquelyn Huff

Properties and Development Manager

Port of Whitman County

jacquelyn@portwhitman.com

Attachment A – Site

The southwest quarter of the southwest quarter of Section 21, Township 16 North, Range 43 E.W.M.

EXCEPTING THEREFROM a tract of land lying in the southwest quarter of Section 21, the northwest quarter of Section 28, the northeast quarter of Section 29, and the southeast quarter of Section 20, all in Township 16 North, Range 43 E.W.M., more particularly described as follows: Beginning at a point on the west line of Section 21, Township 16, Range 43 E.W.M., north 0°32' west, 1358.4 feet from the southwest corner of said Section 21, and running thence south 89°45' east, 1365.1 feet to a point on the north and south 16th subdivision line; thence south 0°06' west, 700.0 feet along said subdivision line; thence north 89°45' west, 536.0 feet; thence south 23°11' west, 719.1 feet to a point on the south line of Section 21, Township 16 North, Range 43 E.W.M., said point being south 89°20' east, 532.7 feet from the southwest corner of Section 21; thence south 23°11' west, 373.6 feet; thence south 43°52' east, 1295.1 feet; thence south 46°08' west, 700.0 feet; thence north 43°52' west, 1109.9 feet to a point on the west line of Section 28, Township 16 North, Range 43 E.W.M., said point being south 0°32' east, 968.1 feet from the northwest corner of said Section 28; thence north 43°52' west, 1342.5 feet to a point on the north line of Section 29; thence north 43°52' west, 1897.6 feet; thence south 89°45' east, 2223.0 feet to the point of beginning.

Tax Parcel No.: **2-0000-43-16-21-3390**

TOGETHER with Grantor's interest in the 2025 growing crop.

SUBJECT TO: Said lands have been reclassified as agricultural for tax purposes. They will be subject to further taxation and interest thereupon as provided by chapter 84.34 RCW upon withdrawal from such classification or change in use.

SUBJECT TO: An easement affecting the portion of said premises and for the purposes stated herein, and for incidental purposes.

For: Roadway Purposes
In Favor of: State of Washington
Recorded: May 7, 1915
Auditor's No.: 176/559

SUBJECT TO: An easement affecting the portion of said premises and for the purposes stated herein, and for incidental purposes.

For: Right of Way and Agreement
In Favor of: Mockonema Light and Power Company
Recorded: September 9, 1935
Auditor's No.: 239/444 (118923)

SUBJECT TO: An easement containing certain terms, conditions and provisions affecting a portion of said premises and for the purposes stated herein.

For: The right to erect, construct, reconstruct and maintain an electrical distribution line consisting of wires, poles and associated fixtures, to be located over, along and across said lands, together with the right to inspect said line and to remove brush and trees that may interfere with the construction, maintenance and operation of the same.

In Favor of: The Washington Water Power Company, a corporation, its successors and/or assigns
Recorded: November 10, 1941
Auditor's No.: 253/40 (179102)

SUBJECT TO: An easement affecting the portion of said premises and for the purposes stated herein, and for incidental purposes.

For: Electrical distribution line
In Favor of: The Washington Water Power Company
Recorded: January 2, 1953
Auditor's No.: 261566

SUBJECT TO: Reservations contained in Deed

Executed by: The Oregon Railway and Navigation Company
Recorded: October 31, 1903
Volume/Page: 113/591

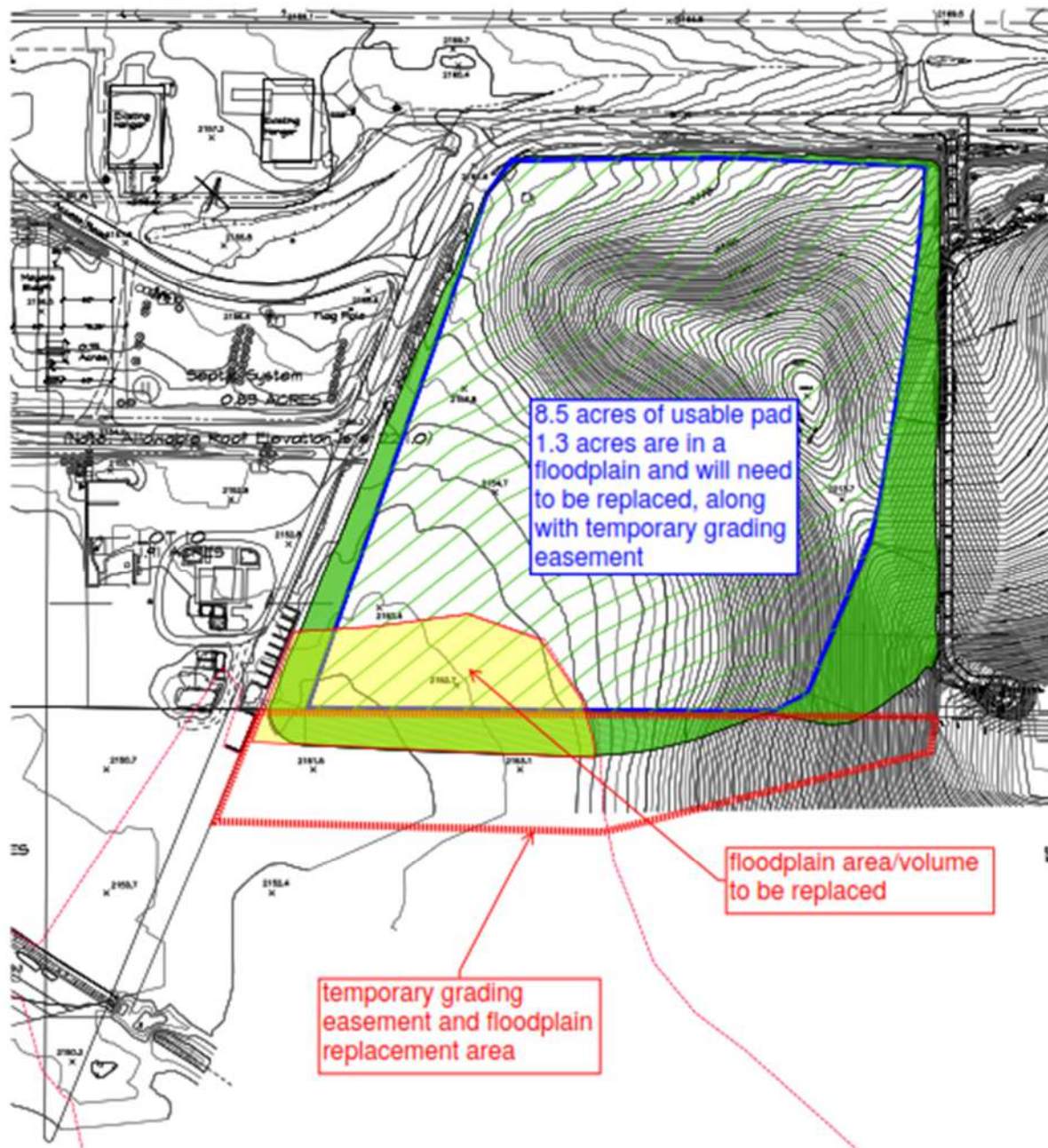
As Follows: Excepting and reserving, however, a strip of land 100 feet in width through said land, being 50 feet on each side of the centerline of the main track of the Oregon Railway and Navigation Company, as the same is now located across said land, and also excepting and reserving a right of way 100 feet in width over any of said lands for the use of the Oregon Railway and Navigation Company, or the Oregon Short Line and Utah Northern Railway Company, or any lines constructed in the interest of either or both of said companies in case such lines shall be located on or over land of said lands at any time hereafter; and also reserving to said companies the right to take all water needful for the operation and use of said railroad lines.

SUBJECT TO: An easement and agreement affecting the portion of said premises and for the purposes stated herein, and for incidental purposes.

For: Pipeline Easement
In Favor of: Washington Water Power Company
Recorded: May 14, 1985
Auditor's No.: 507258

SUBJECT TO: Rights of the public in and to that portion lying within County Road No. 8010, Colfax Airport Road.

Attachment A – Site (continued)



Attachment A – Site (continued)



Blue Dotted Line indicates Creek.

Attachment B – CERB Planning Study Minimum Requirements

The planning study must contain the following **minimum requirements**:

- a. A product market analysis linked to economic development.
- b. A market strategy containing action elements linked to timelines.
- c. Identification of targeted industries.
- d. Identification of the group responsible for implementing the marketing strategy. Describe the group's capacity to complete the responsibility.
- e. The site's appropriateness by addressing, at minimum, appropriate zoning, affect to the state or local transportation system, environmental restrictions, cultural resource review, and the site's overall adequacy to support the anticipated development upon project completion.
- f. A location analysis of other adequately served vacant industrial land.
- g. Total funding for the public facilities improvements is secured or will be secured within a given time frame.
- h. An analysis of how the project will assist local economic diversification efforts.
- i. Indicate the specific issues that will be addressed.
- j. List one or more economic outcomes that you expect from the proposed CERB project.
- k. Describe the specific, quantifiable measures of the outcome(s) that will indicate success. Describe in measurable terms what you expect to be able to show as progress toward the outcome for each year before the whole outcome has been achieved.
- l. Describe what data you will collect to determine whether the outcome is being achieved.
- m. Describe the data collection procedure including when data will be collected, from whom and by whom.
- n. The estimated median hourly wage of the jobs created when development occurs.
- o. If the project is determined to be feasible, the following information must be provided within the final report:

1. Total estimated jobs created (in FTEs).
2. Describe benefits offered to employees.
3. Describe the median hourly wage of the new jobs in relation to the median hourly county wage.
4. The county three-year unemployment rate in relation to the state rate.
5. County population change in the last five years.
6. The estimated jobs created represent what percentage of the county's labor force.
7. The estimated jobs created represent what percentage of the county's unemployed workers.
8. Estimated new annual state and local revenue generated by the private business.
9. Estimated private investment generated by project.

**AGREEMENT FOR PERSONAL SERVICES
(CHAPTER 53.19 RCW)**

This **AGREEMENT FOR PERSONAL SERVICES** ("**Agreement**") is made and entered into as of the later of the two signature dates below, by and between:

PORT OF WHITMAN COUNTY

Attn:
302 North Mill St.
Colfax, WA 99111

AND

[CONSULTANT]
[STREET ADDRESS]
[CITY, STATE ZIP]
[PHONE NUMBER]
[WEBSITE]

("Consultant")

Term of Contract: _____ **[DATE] – [DATE]** _____

- I. **SCOPE OF WORK:** Pursuant to specific task orders as described in the general provisions herein.
See attached Exhibit "A".
 - II. **COMPENSATION:** The Consultant shall be compensated on the basis of hours worked and expenses incurred by its employees at the rates shown herein: **See attached Exhibit "B".**
 - III. **GENERAL PROVISIONS:** Work covered by this Agreement shall be performed in accordance with the General Provisions (which are attached hereto and form a part of this Agreement) and any attachments or schedules.
 - IV. **ENTIRE AGREEMENT:** This Agreement supersedes all prior agreements and understandings and may only be changed by written amendment executed by both parties.
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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the later of the dates indicated below. By signing below, each signatory represents that he or she has authority on behalf of his or her respective party to enter into this agreement, which shall be binding upon the parties according to its terms.

[Signatures on following page]

CONSULTANT

PORT OF WHITMAN COUNTY

Signature: _____

Signature: _____

Name/Title: _____

Name/Title: Kara Riebold, Executive Director

Date: _____

Date: _____

GENERAL PROVISIONS

In consideration of the mutual covenants and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Scope of Work. The objective of this Agreement is the timely preparation, completion and/or delivery of the scope of work and/or deliverables described in the Task Order(s) issued pursuant to and governed by the terms of this Agreement. A copy of the Task Order form(s) to be executed by the parties is included as Exhibit "A," attached hereto and incorporated herein by this reference. Additional Task Orders and/or amendments to Task Orders shall be attached hereto as amendments and shall be made part of this Agreement upon approval as required herein. Any Task Order(s) issued by the Port prior to the termination date of this Agreement shall be governed by the terms of this Agreement until completed even if the Task Order work extends beyond the termination date of this Agreement.

1.1 Work covered by this Agreement shall be performed in accordance with the provisions and any attachments or schedules. Except as may be otherwise provided for herein, this Agreement may only be amended by the mutual consent of both parties hereto, in writing and signed by duly authorized representatives of both parties.

2. Term of Agreement. The Consultant shall not begin work under the Agreement or any Task Order until the Port has specifically authorized the Consultant to do so in writing. The time required for completion of all work under each Task Order and, if appropriate under a schedule for completion of phases of the work, shall be specified in each Task Order. The completion dates for Task Orders, or for phases of work under a Task Order, may be modified only upon written agreement of the parties hereto. The completion dates for Task Orders, or for phases of work under a Task Order may be, but are not required to be, extended in the event of a delay caused by change order work requested by the Port, or if the Consultant's work is delayed by unavoidable circumstances beyond the control of the Consultant and which the Consultant could not reasonably have anticipated. This Agreement may be extended for multiple terms at the sole discretion of the Port and subject to budget appropriations and Commission approval when required; if so extended, all of the terms and conditions herein shall apply to such extension.

3. Compensation and Payment. Unless a Task Order specifically establishes a fixed fee payment,

the Consultant shall be compensated on the basis of hours worked and expenses incurred by its employees at the rates shown in the attached Consultant's Fee Schedule, Exhibit "B". The Consultant shall receive no other payment for materials or disbursements unless expressly allowed by the Task Order. The Consultant shall not adjust the wage rates in Exhibit "B" without written authorization from the Port.

3.1 Consultant shall supply Port with a monthly invoice and written documentation, satisfactory to Port, for all amounts due under this Agreement, including but not limited to project budget status and a narrative progress description of work performed that is acceptable in form to the Port. All invoices submitted by Consultant to Port shall reference any applicable billing codes provided by Port to Consultant. Any applicable taxes shall be listed as separate line items on each Consultant invoice. All invoices and documentation may be reviewed and audited by Port and payment may be subject to review or audit. Subject to the preceding, payments shall be due net thirty (30) days of receipt of such invoice by Port. In no event shall the Port be charged interest on payments due under this Agreement. If required by Port, Consultant shall provide periodic forecasts of its total fees and costs incurred to date. With regard to time and materials Task Orders, only the reimbursable expenses specifically listed in the attached Exhibit "B" will be payable expenses under this Agreement.

3.2 If a Task Order specifies that the work is to be performed on a fixed fee basis, the Consultant shall be paid the amount of the fixed fee as consideration for full and satisfactory performance of the work regardless of the Consultant's cost to perform the work. The Port shall have sole authority for determining when all work has been satisfactorily performed by the Consultant. The fixed fee amount comprises all of the Consultant's payment for the work and includes without limitation all costs of salaries, overhead, non-salary expenses (including, but not limited to, travel, reproductions, telephone, supplies, and fees of outside consultants), as well as the Consultant's profits. The Consultant's payment for the work shall not exceed the specified amount unless first authorized by the Port in writing.

3.3 The Consultant shall obtain the prior

written approval of the Port for any charges for additional services by the Consultant, the additional services of others retained by Consultant, or the furnishing of additional supplies, materials or equipment. The Consultant shall not be entitled to compensation for any such additional charges incurred in violation of this paragraph.

4. Payment of Subconsultants. At the time of project completion, the Consultant agrees to certify to the Port that all employees (including without limitation any union fees and any benefit plans), and subconsultants have been paid in full. Final payment shall be preconditioned upon receipt of such certification by the Port; the Port may, in its sole discretion, withhold final payment until receipt of such certification. The Consultant shall be solely responsible for the performance and payment of any and all subconsultants. All such subconsultants shall possess all licenses and insurance as required by this Agreement and/or the laws of the State of Washington.

5. Termination.

5.1 This Agreement may be terminated by either party upon seven (7) days' written notice and opportunity to cure should the other party breach the terms of this Agreement through no fault of the terminating party. In the event the party that fails to perform is the Consultant, the determination of "fail to perform in accordance with its terms" shall be in the sole judgment of the Port. In the event the Port terminates the Consultant for breach, the Consultant shall be compensated for satisfactory services performed to the termination date as set forth in Paragraph 3, less any damages incurred by the Port as a result of such breach. In the event the Consultant terminates the Port for breach, the Consultant shall be compensated for satisfactory services performed prior to the termination date as set forth herein, but in no case shall Consultant be compensated for any work not performed as a result of the termination. In no case, however, shall such reimbursement exceed the agreed upon fee as approved and amended by the Port. The Port shall have sole authority for determining when all work has been satisfactorily performed by the Consultant. Any work product generated by the Consultant prior to such termination shall be the sole property of the Port, and the Consultant agrees to provide the Port with all such materials. If the accumulated payment made to the Consultant prior to notice of intent to terminate

exceeds the total amount that would be due as set forth herein above, then no final payment shall be due, and the Consultant shall promptly reimburse the Port for the excess paid.

5.2 Further, this Agreement may be terminated by the Port at any time for any reason whatsoever, at the sole discretion of the Port, with seven (7) days' written notice. If the Port terminates for convenience, the Port will pay Consultant for satisfactory services performed up to the termination date as set forth in Paragraph 3, but in no case shall Consultant be compensated for any work not performed as a result of the termination. If, after termination for the Consultant's breach it is determined that the Consultant has not breached the Agreement, the termination shall be deemed to have been effected for the convenience of the Port.

5.3 In addition to the above, the Port reserves the right to suspend all or any portion of the work and services for Consultant's default or Port's convenience. If the Consultant's work is delayed for more than thirty (30) calendar days due to circumstances for which the Consultant is responsible, the Port may find the Consultant in default and terminate the Task Order and/or this Agreement.

6. Deviations from Scope of Work. The Port may at any time issue written directions within the general scope of this Agreement. If any such direction causes an increase or decrease in the cost of this Agreement or otherwise affects any other provision of this Agreement, the Consultant shall immediately notify the Port and take no further action concerning those written directions until such time as the parties have executed a written change order. No additional work shall be performed or charges incurred unless and until the Port approves in writing the change order and the increased cost thereof. Any work done in violation of this paragraph shall be at the sole expense of the Consultant. Additionally, the Port reserves the right to modify the amount spent for identified project tasks within the scope of work, provided that the Contract Amount, as may be modified under Paragraph 3.3, is not exceeded.

6.1 The Consultant shall make all revisions and changes in the completed work under this Agreement as are necessary to correct the Consultant's, and its subconsultants', errors or omissions without additional compensation from the Port.

7. **Insurance.** Consultant, concurrently with the execution of this Agreement, shall provide the Port with evidence that Consultant has obtained and is maintaining the insurance listed as follows:

7.1 **Workers' Compensation Insurance** with statutory limits as required by law.

7.2 **Employers' Liability Insurance** (bodily injuries) with a limit of at least One Million Dollars (\$1,000,000) per occurrence with an insurance company authorized to write such insurance in all states where the Consultant will have employees located in the performance of its work covering its common law liability to such employees.

7.3 **Commercial General Liability ("CGL") Insurance** with limits of at least Two Million Dollars (\$2,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate and **Automobile Liability Insurance** covering any auto or all owned, hired, and non-owned autos used by or on behalf of Consultant with policy limits of not less than One Million Dollars (\$1,000,000) combined single limit for bodily injury and/or property damage. "Auto" carries the same meaning as found in ISO Form CA 00 01. The CGL policy shall be written on an occurrence basis with the insurer's duty to defend outside of the limits of the policy, meaning that the defense obligation does not erode the liability limits. The CGL policy shall provide coverage for damage to the Port's property caused by Consultant.

7.4 Each of the policies required herein, except for Workers' Compensation Insurance, shall name the Port as an additional insured by way of a policy endorsement. Furthermore, each policy of insurance required herein shall (i) be written as a primary policy; (ii) expressly provide that such insurance may not be materially changed, amended or canceled with respect to the Port except upon forty-five (45) days' prior written notice from the insurance company to the Port; (iii) contain an express waiver of any right of subrogation by the insurance company against the Port and its elected officials, employees, or agents; (iv) expressly provide that the defense and indemnification of the Port as an "additional insured" will not be effected by any act or omission by Consultant which might otherwise result in a forfeiture of said insurance; (v) contain a separation of insureds provision such that the policy applies separately to each insured that is subject of a claim or suit; and (vi) not contain a cross-claim, cross-suit, or other exclusion that

eliminates coverage by one insured against another.

7.5 The Consultant shall furnish the Port with copies of Certificates of Insurance evidencing policies of insurance required herein. The Consultant and its subconsultants shall maintain these policies as identified above for the term of this Agreement and for a period of one year thereafter. The Port's failure to request such certificates shall not relieve the Consultant of the obligation to provide them.

7.6 The Consultant shall maintain the insurance in effect at all times that it is performing work under this Agreement. Failure to obtain and/or maintain such insurance shall be grounds for the Port to find the Consultant in default and terminate the Agreement accordingly. Alternatively, the Port may at its option purchase such insurance and deduct the reasonable expense therefore from payments made to or owing to the Consultant.

7.7 If the Consultant maintains broader coverage and/or higher limits than the minimums set forth above, the Port requires and shall be entitled to such broader coverage and/or higher limits maintained by Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage listed herein shall be available to the Port.

7.8 If any Excess or Umbrella Insurance policies are used to meet the limits of liability required herein, said policies shall be "following form" of the underlying policy coverage, terms, conditions, and provisions, and shall meet all of the liability insurance requirements stated herein, as evidenced by a Following Form Endorsement. Such Excess or Umbrella Insurance carrier shall have a duty to defend the Port outside of the policy limits. No insurance policies maintained by the additional insureds, whether primary or excess, shall be called upon to contribute to a loss until Consultant's primary and excess liability policies are exhausted.

8. **Consultant Not an Agent or Employee of the Port.** In performing work and services hereunder, the Consultant and Consultant's employees, agents, and representatives shall be acting as independent Consultants and shall not be deemed or construed to be partners, employees or agents of the Port in any manner whatsoever. No employee of the Consultant shall be considered an employee of the Port even while performing

work required under this Agreement. Furthermore, the Consultant shall not hold itself out as, nor claim to be, an officer or employee of the Port by reason hereof and will not make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the Port.

9. **Conflict of Interest.** Consultant covenants that it presently has no interest and shall not acquire an interest, directly or indirectly, which would conflict in any manner or degree with its performance under this Agreement. Consultant further covenants that no person having such interest shall be employed by it or any of its subconsultants.

10. **Compliance with Applicable Law.** The Consultant shall comply with all the Port's resolutions and all federal, state, and local laws, regulations and ordinances that are applicable to the work performed pursuant to this Agreement. Both parties mutually agree to re-negotiate scope, budget, and schedule should a change in any of the applicable Port's resolutions, federal, state or local laws, regulations or ordinances during the performance of the work affect the cost of performing the work. The Consultant shall register (and shall require the same of all subconsultants), as required by RCW 23B.15.010, to do business in the State of Washington and provide proof of the same to the Port.

11. **Indemnification.** The Consultant shall defend (with legal counsel reasonably satisfactory to the Port), indemnify and hold the Port, its elected officials, agents and employees (collectively "Port") harmless from and against all liabilities, obligations, fines, claims, damages, penalties, lawsuits, governmental proceedings, judgments, costs and expenses (including, without limitation, all attorneys' fees, costs and expenses of litigation):

- Arising out of any negligent act or omission of Consultant, its directors, officers, subconsultants, agents and/or employees (collectively "Consultant") in connection with the work performed pursuant to this Agreement; provided, however, that in the event of concurrent negligence of the Consultant and the Port, then this defense and indemnification shall apply only to the extent of the Consultant's negligence; and/or
- Arising from a breach of this Agreement by Consultant; and/or
- Arising out of or due to any failure on the part

of Consultant to perform or comply with any rule, ordinance or law to be kept and performed.

The Port will inform Consultant of any such claim or demand that alleges liability based in whole or in part on any act or omission of Consultant, its directors, officers, agents, or employees. Thereafter the Consultant shall (i) reasonably cooperate in the defense of such claim and (ii) pay the Port's defense of such claim as incurred, whether or not such claim is ultimately successful. In this regard, the Port will reasonably cooperate with Consultant in allowing Consultant to jointly select, with the Port, attorneys to defend the Port and Consultant provided that Consultant confirms its obligation to pay the Port's defense costs.

11.1 In the event of concurrent negligence by the Port and Consultant, then at the conclusion of the action (e.g., judgment, arbitration award or settlement), the attorneys' fees and costs incurred in defending the Port shall be apportioned to the parties based on their respective fault as provided by RCW 4.24.115.

11.2 The foregoing indemnification obligation shall include, but is not limited to, all claims against the Port by an employee or former employee of the Consultant or any subconsultant or service provider. For this purpose, the Consultant expressly waives, as respects the Port only, all immunity and limitation on liability under any industrial insurance Act, including Title 51 RCW, or other workers compensation act, disability act, or other employees benefits of any act of any jurisdiction which would otherwise be applicable in the case of such a claim. **BY INITIALING BELOW THE PORT AND CONSULTANT CERTIFY THE WAIVER OF IMMUNITY SPECIFIED BY THIS PROVISION WAS MUTUALLY NEGOTIATED.**

Consultant

Port

12. **Work Product Confidentiality.** Any reports, documents, questionnaires, records, information or data given to or prepared or assembled under this Agreement which the Port requests to be kept confidential shall not be made available by the Consultant to any individual or organization without prior written approval of the Port except as may be ordered by a court of competent jurisdiction. No reports, records, questionnaires,

or software programs provided by the Port or other documents produced in whole or in part by the Consultant under this Agreement shall be the subject of an application for copyright by or on behalf of the Consultant.

13. Public Disclosure Request.

Correspondence, reports, and other written work product will be generated during the course of the relationship created by this Agreement, and third parties may request such information pursuant to the Washington State Public Disclosure Act (RCW 42.17.250 *et. seq.*). The parties agree that in the event that such a request is filed, the party with whom the request is filed will promptly notify all other parties to this Agreement. The parties further agree that they will not disclose any such requested material until at least ten (10) business days after providing notification to all other parties to this Agreement. The intent of this clause is to provide all parties the opportunity to seek injunctive relief so as to protect the vital functions of those entities.

14. Work Product Property of Port. All work performed under this Agreement is work for hire. All deliverables, including but not limited to original plans, drawings and specifications, prepared by the Consultant and any and all sub-consultants for the Port and funded by the Port are and shall remain the property of the Port whether or not the project for which they are made is executed. This shall not apply to proprietary software or documentation that may be provided to the Port and that was developed independent of funding by the Port. The Consultant assumes no liability for any use of the drawings and specifications other than that originally intended for the project. Originals, including electronic forms of the data prepared by the Consultant and funded by the Port, shall become the property of the Port. No reports, records, questionnaires, software programs provided by Port or other documents produced in whole or in part by the Consultant under this Agreement shall be the subject of an application for copyright by or on behalf of the Consultant. The Consultant's work shall not infringe on any copyright, patent, trade secret, or other proprietary rights held by any third party.

15. Electronic File Compatibility. All electronically transmitted output must be compatible with existing Port software and shall be provided to the Port in an appropriate electronic format. Consultants shall check with the Port for software application, system compatibility, and

preferred file type. All CAD deliverables shall be consistent with the Port's standard CAD layering system, as provided by the Port to the Consultant.

16. Non-Discrimination. In connection with the performance of this Agreement, the Consultant shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age, marital status, or being handicapped, a disadvantaged person, or a disabled or Vietnam-era veteran or a member of any other protected class. The Consultant shall take affirmative action to ensure that applicants are employed and the employees are treated during employment without regard to their race, color, religion, sex, national origin, age, marital status, or being a handicapped or disadvantaged person or a disabled or Vietnam-era veteran or a member of any other protected class.

17. Federal Restrictions on Lobbying.

Consultant certifies that under the requirements of Lobbying Disclosure Act, 2 U.S.C., Section 1601 *et seq.*, no Federal appropriated funds have been paid or will be paid, by or on behalf of the Consultant, 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 cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

18. Federal Debarment and Suspension. The Consultant certifies, that neither it nor its "principals" (as defined in 49 CFR.29.105) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. Consultant will include this clause without modification in all lower tier transactions, solicitations, proposals, agreements, contracts, and subcontracts. Where the offeror/consultant or any lower tier participant is unable to certify to this statement it shall attach an explanation to this Agreement. The Port reserves the right to require Consultant to replace a subconsultant or lower tier participant who cannot meet the foregoing certification requirement.

19. **Subletting or Assigning of Agreement.**

The Consultant shall not sublet or assign any of the work covered by this Agreement without the express written consent of the Port.

20. **Notices.** All notices and payments hereunder may be delivered or mailed to the addresses listed above. If delivered by messenger or courier (including overnight air courier), they shall be deemed delivered when received at the street address. All notices and payments mailed, whether sent by regular post or by certified or registered mail, shall be deemed to have been given on the second business day following the date of mailing, if properly mailed to the mailing addresses provided above, and shall be conclusive evidence of the date of mailing. The parties may designate new or additional addresses for mail or delivery by providing notice to the other party as provided in this section. The address for delivery of notices and payments are as set forth in the introductory paragraph of this Agreement.

21. **Review of Title Documents.** Prior to the execution or recordation of any documents effecting title to any property, said document shall be reviewed and approved by the Port. Consultant shall not execute or record (or make to be executed or recorded) any such document prior to the Port's review and approval.

22. **Jurisdiction.** This Agreement is made and delivered in the State of Washington and shall be construed and enforced in accordance with the laws thereof. Jurisdiction and venue of any dispute hereunder shall be solely and exclusively in the Superior Court of the State of Washington in and for Whitman County. The parties expressly and irrevocably waive any right they may have to Federal court jurisdiction or a trial by jury. In the event of a dispute arising out of or under this Agreement, the substantially prevailing party shall be entitled to its reasonable attorneys' fees and costs.

23. **Pollution.** Port acknowledges that the

Consultant is not responsible for the creation or presence of contamination or pollution, if any, at the property except to the extent that such a discharge, release or escape is caused by the Consultant's acts or omissions. For the purpose of this clause, contamination or pollution shall mean the actual or alleged existence, discharge, release or escape of any irritant, pollutant, contaminant, or hazardous substance into or upon the atmosphere, land, groundwater, or surface water of or near the property. The Consultant will promptly notify the Port of contamination or pollution, if identified. Notwithstanding the foregoing, the Port does not waive any cause of action for damages resulting from the Port's reliance on any misrepresentation (made either knowingly or negligently) by the Consultant with regard to the presence of any contamination or pollution.

24. **Consultant Work.** Consultant's work shall meet or exceed the standard for similar services performed by professionals performing work in Whitman County, Washington.

25. **Survival.** All obligations of Consultant, as provided for in this Agreement, shall not cease upon the termination of this Agreement and shall continue as obligations until fully performed. All clauses of this Agreement which require performance beyond termination shall survive termination.

26. **Entire Agreement.** This is the entire agreement between the parties. There is no other oral or written understanding between the parties concerning this matter. The Consultant specifically understands that no Port employees other than the project manager or his/her supervisor are authorized to direct the work of the Consultant.

27. **Signing Authority.** Anyone signing this Agreement by said signature certifies that he/she has the authority to execute said document on behalf of the Consultant and that his/her signature is binding upon the firm or corporation.

EXHIBIT A

TASK ORDER FORM

PLEASE SUBMIT ON COMPANY LETTERHEAD

Port of Whitman county
Agreement for Personal Services # ____-____-____
Task Order # ____-____

PROJECT NAME

Port Project #

Port Billing Code:

This work order is issued pursuant to the Agreement for Personal Services # ____-____-____ dated xx/xx/xx between the Port of Whitman County and _____ whose address is _____. Unless otherwise specified below, the performance of services hereunder and the payment therefore shall be subject to the terms and conditions of said Agreement.

(A) **Scope of Work:** *Attachment A, Proposal is also included as reference.*

(B) **Deliverables:**

(C) **Schedule:**

(D) **Fee Basis:**

Services to be billed on a [Time and Materials Basis] [Fixed Fee Basis], not to exceed \$X,XXX as summarized below, and per the attached cost breakdown.

Task	Not-To-Exceed Dollar Amount
1.0	\$X,XXX
2.0	\$X,XXX
3.0	\$X,XXX
Reimbursable Expenditures	\$X,XXX
TOTAL	\$X,XXX

[Signatures on following page]

CONSULTANT

PORT OF WHITMAN COUNTY

Signature: _____ Signature: _____

Name/Title: _____ Name/Title: Kara Riebold, Executive Director

Date: _____ Date: _____

EXHIBIT B

CONSULTANT'S FEE SCHEDULE

[Exhibit B should set forth the agreed upon schedule of hourly rates and other charges and disbursements the Port is agreeing to pay the consultant. This should identify all job classifications, reimbursable expenses, and subconsultant mark-ups.]