

PERSONAL SERVICES AGREEMENT

BETWEEN

PORT OF SKAMANIA COUNTY

AND

SKAMANIA COUNTY ECONOMIC DEVELOPMENT COMMISSION

DRAFT

This Agreement ("Agreement") is made and entered into this 1st day of January, 2022 by and between the Port of Skamania County, a Washington municipal corporation (hereinafter referred to as the "PORT"), and SKAMANIA COUNTY ECONOMIC DEVELOPMENT COMMISSION, a Washington Not-for-profit corporation (hereinafter referred to as "EDC").

WITNESSETH

WHEREAS, the PORT desires to contract for operations, administration and accounting services referenced below; and

WHEREAS, the PORT does not have sufficient staffing or expertise available within the agency to perform the desired services and therefore deems it advisable and desirable to engage the assistance of EDC to provide the necessary services to address its staffing needs; and

WHEREAS, EDC is willing to furnish services to the PORT, in a satisfactory and proper manner, as determined by the PORT, and is in compliance with Washington State statutes related to conducting agreed-upon services with the PORT.

NOW, THEREFORE, in consideration of the terms, conditions, covenants, and performance contained herein, or attached and incorporated and made a part hereof, the parties hereto agree as follows:

GENERAL TERMS AND CONDITIONS The General Terms and Conditions of this agreement are attached hereto as Exhibit A and incorporated herein by this reference.

SCOPE OF SERVICES

The work under this Agreement shall consist of the described work and services as herein defined and necessary to accomplish the completed work for this project. The EDC shall furnish all services, labor, related materials and equipment necessary to conduct and complete the work designated in this Agreement.

EDC agrees to perform the following scope of services detailed in Exhibit B attached hereto and by this reference made part of this Agreement.

AGREEMENT MANAGEMENT

The Project Manager for each of the parties shall be the contact person for all communications and billings regarding the performance of this Agreement and all subsequent Work requests assigned to this Agreement.

EDC Project Manager:	PORT Project & Contract Manager:
Project Manager: Kevin Waters Phone: 509-427-5110 Fax:	Project Manager: Pat Albaugh Phone: 509 427-5484 Fax: 509 427-7984
Federal Tax ID: Washington UBI:	Contract Manager: Pat Albaugh Phone: 509 427-5484 Fax: 509 427-7984
Has any member of the EDC team retired from a Washington State Retirement System using the 2008 Early Retirement Factor? <input type="checkbox"/> Yes <input type="checkbox"/> No	Port of Skamania County PO Box 1099 212 SW Cascade Avenue Stevenson, WA 98648

DURATION OF AGREEMENT

The EDC shall not begin work under the terms of this Agreement until authorized in writing by the PORT.

The service of the EDC is to commence as soon as practicable after the execution of this Agreement. It is agreed services hereunder shall be completed by December 31 2022, unless it is modified or terminated pursuant to the terms of this Agreement.

COMPENSATION AND PAYMENT

The Port shall pay the EDC for completed work and services rendered under this Agreement on a monthly basis in accordance with Exhibit B attached. Such payment shall be full compensation for all labor, materials, supplies, equipment, and incidentals as necessary to complete the work allowed for in this Agreement. Payment for these services shall be in the sum of Ninety-Three Thousand Eight hundred and twenty-three and 00/100 Dollars (\$ 93,823.00) per year (\$7,818.59 per month) unless otherwise authorized in writing by the PORT according to the terms of this Agreement. The amount listed above DOES NOT include Washington State Sales Tax, if applicable. The monthly sum shall be net of EDC's rental under the Lease of 212 SW Cascade Avenue, Stevenson, WA 98648 (the "Lease"), executed contemporaneously herewith, not including Washington State Leasehold Taxes, as specifically set forth in Exhibit B.

AMENDMENT TO AGREEMENT

The PORT shall pay the EDC at the rates indicated in this Agreement for work performed under the terms of this Agreement. This is the maximum amount to be paid and it shall not be exceeded without the PORT's prior written authorization in the form of a negotiated and executed Amendment.

If the EDC acts on a task without formally requesting a written Amendment, it is implicitly agreed by the parties that work is included in the original agreed-upon scope of work and cost.

INSURANCE REQUIREMENTS

EDC shall obtain and keep in force during the entire term of this Agreement, liability insurance against any and all claims for damages to person or property which may arise out of the performance of this Agreement whether such work shall be by the EDC, sub-EDCs, and/or their agents and/or employees. The EDC agrees to the following requirements relating to insurance coverage and shall provide evidence of all insurance required by submitting an insurance certificate to the PORT on a standard "ACORD" or comparable form:

- a. Commercial General Liability - coverage on occurrence form CG0001 or equivalent with minimum limits of \$1,000,000 per occurrence and \$2,000,000 aggregate.
- b. Automobile Liability - covering owned, non-owned and hired vehicles with minimum of \$1,000,000 combined single limit per accident; and
- c. Professional Liability - not less than \$1,000,000 per claim and in the aggregate. Insurance coverage shall have a retroactive date before the date of notice to proceed and coverage shall remain in effect for the entire term of the Agreement (plus 3 years).
- d. The insurance required by this Agreement shall be issued by an insurance company authorized to do business within the State of Washington, and the policies shall name the PORT, its agents and employees as additional insureds. Except, however, that EDC is not required to add the PORT or its agents and employees as an additional insured on its professional liability policy or workers comp policy. All policies shall be primary to any other valid and collectable insurance and not contributory to any similar insurance carried by the Port, and shall contain a severability of interest or cross liability clause. Such insurance shall not be canceled or materially altered without first giving thirty (30) days written notice thereof to the Port. The EDC shall submit renewal certificates as appropriate during the term of the Agreement.
- e. Excess Coverage - By requiring insurance herein, the PORT does not represent that coverage and limits will be adequate to protect EDC and such coverage and limits shall not limit EDC's liability under the indemnities and reimbursements granted to the PORT in this Agreement.

Additional requirements:

- f. Worker's Compensation - The EDC shall comply with the Washington State Department of Labor & Industries Industrial Insurance program, for all of its employees who are required to be so covered by the laws of the State of Washington and in case any work is subcontracted, the EDC shall require the subcontractor to provide worker's compensation insurance for all of its employees.
- g. Employment Security - The EDC shall comply with all employment security laws of the State of Washington, and shall timely make all required payments in connection therewith.

ASSURANCES

The PORT and EDC agree that all work undertaken pursuant to this Agreement will be in accordance with all the applicable current federal, state, and local laws, rules, and regulations. . The parties understand and acknowledge that each agency receives information from clients and prospective tenants that is meant to be confidential and which may constitute trade secrets under the Uniform Trade Secrets Act, RCW 19.108. Each party acknowledges that under the Uniform Trade Secrets Act, it has an obligation to maintain the confidentiality of such trade secrets, as legally permissible under RCW Ch. 42.56, the Washington Public Records Act, applicable to the Port. The parties shall safeguard confidential information from each other and covenant that any information learned inadvertently shall be held in strict confidence from the public and from others.

ENTIRE AGREEMENT

The Agreement and the Lease between the parties for 212 SW Columbia Street, Stevenson, WA 98648 incorporate all contracts, covenants and understandings between the parties hereto are merged into this written Agreement and the Lease. No prior agreement or prior understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless set forth in this agreement.

CROSS DEFAULT

Either party's default under this agreement shall constitute a default under the Lease described herein, and vice versa.

NOTICES

All formal notices that are given or required to be given pursuant to this Agreement shall be hand delivered or mailed postage paid as follows:

PORT:
Port of Skamania County
PO Box 1099
212 SW Cascade Ave
Stevenson WA 98648

EDC: _____

APPROVAL

This Agreement shall be subject to the written approval of PORT'S authorized representative and shall not be binding or effective until so approved. The Agreement may be altered, amended, or waived only by a written amendment executed by both parties.

SKAMANIA COUNTY ECONOMIC DEVELOPMENT

PORT OF SKAMANIA COUNTY

COMMISSION

By: _____
Name: Kevin Waters
Title: Executive Director
Date: _____

By: _____
Name: Pat Albaugh
Title: Executive Director
Date: _____

EXHIBIT A
PROFESSIONAL/PERSONAL SERVICES
GENERAL TERMS AND CONDITIONS

Acceptance of the Agreement by either EDC's written acknowledgment thereof or commencement of performance under the contract shall create a binding agreement and shall be conclusive evidence of the EDC's acceptance of these terms and conditions. The EDC certifies that it has legal authority to enter into this Agreement and is at least 18 years of age. The Agreement, including all attachments referenced herein, constitutes the entire agreement between the Port and the EDC.

DEFINITIONS — As used throughout this Agreement, the following terms shall have the meaning set forth below:

- A. "PORT" shall mean the PORT OF SKAMANIA COUNTY, Stevenson, WA, or any of the officers or other officials lawfully representing that PORT.
- B. "Authorized Representative" shall mean the Port Executive Director, Port of Skamania County, WA, and/or the delegate authorized in writing to act on the Executive Director's behalf.
- C. "EDC" shall mean employees, agents, and individuals representing or acting on behalf of the firm, provider, organization, individual or other entity performing service under this Agreement.

ACCESS TO DATA — EDC shall provide access to data generated under this Agreement to PORT and its duly authorized agents at no additional cost. This includes access to all information that supports the findings, conclusions, and recommendations of the EDC's reports, including computer models and methodology for those models.

AMENDMENTS — Agreement shall not be altered, changed, or amended except by an instrument in writing executed by the parties hereto. Any changes in the scope of work or compensation shall be mutually agreed upon between PORT and the EDC and shall be incorporated in written revisions to this Agreement.

ASSIGNMENT — The work to be provided under this Agreement is not assignable or delegable by either party, in whole or in part, without the express prior written consent of the other party, which consent shall not be unreasonably withheld.

ATTORNEYS' FEES — In the event of litigation or other action brought to enforce Agreement terms, each party agrees to bear its own attorney's fees and costs, provided however, that in the event that a Trier of fact determines that a party's claims are frivolous or fraudulent, said party shall pay the other party's attorney's fees and costs .

COMPLIANCE WITH LAWS — EDC agrees to comply with all local, state 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 workplace environment, and employment eligibility verifications as required by the Immigration and Naturalization Service. EDC shall obtain all professional licenses and permits required to complete the scope of work as defined.

COMPENSATION AND SCHEDULE OF PAYMENTS — Port shall pay the EDC at the rates indicated for work performed under the terms of this Agreement. This is the maximum amount to be paid under this Agreement and it shall not be exceeded without PORT's prior written authorization in the form of a negotiated and executed change order. Such payment shall be full compensation for work performed or services rendered and for all labor, materials, supplies, equipment and incidentals necessary to complete the project as set forth herein in Exhibit B. The EDC shall submit invoices to PORT covering both professional fees and project expenses, if allowable. Invoices received on or before the twentieth (20th) of the month shall be paid on or before the twentieth (20th) of the following month, provided that all required information is listed on the invoice. The PORT reserves the right to correct any invoices submitted in error and adjust according to the rates and allowable costs set forth in this Agreement. PORT and EDC agree that any amount paid in error by PORT does not constitute a rate change in the amount of the agreement. The total on the agreement is to be the not to exceed amount and is not to be construed as a guaranteed pay out total.

The PORT may, in its sole discretion, terminate the agreement or withhold payments claimed by the EDC for services rendered if the EDC fails to satisfactorily comply with any term or condition of this agreement.

No payments in advance or in anticipation of services or supplies to be provided under this agreement shall be made by the PORT.

CONFIDENTIALITY / SAFEGUARDING OF INFORMATION — The use or disclosure by any party of any information concerning the PORT, designated confidential by the PORT, which is not otherwise in the public domain, for any purpose not directly connected with the administration of the PORT's or the EDC's responsibilities with respect to services provided under this Agreement, is prohibited except by written consent of the PORT or its attorney or as required by law, court order or subpoena.

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

CONFORMANCE — If any provision of this Agreement violates any applicable federal or Washington State statute or rule of law, such provision is considered modified to conform to that statute or rule of law.

COPYRIGHT PROVISIONS — Unless otherwise provided, all Materials produced under this Agreement shall be considered "works for hire" as defined by the U.S. Copyright Act and shall be owned by the PORT. The PORT shall be considered the author of such Materials. In the event the Materials are not considered "works for hire" under the U.S. Copyright laws, EDC hereby irrevocably assigns all right, title, and interest in Materials, including all intellectual property rights, to the PORT effective from the moment of creation of such Materials.

Materials means all items in any format and includes, but is not limited to, data, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. Ownership includes the right to copyright, patent, register, and the ability to transfer these rights.

For Materials that are delivered under the Agreement, but that incorporate pre-existing materials not produced under the Agreement, EDC hereby grants to the PORT a nonexclusive, royalty-free, irrevocable license (with rights to sublicense others) in such Materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. The EDC warrants and represents that EDC has all rights and permissions, including intellectual property rights, and rights of publicity, necessary to grant such a license to the PORT and is free from claims from any other party.

The EDC shall exert all reasonable effort to advise the PORT, at the time of delivery of Materials furnished under this Agreement, of all known or potential invasions of privacy contained therein and of any portion of such document that was not produced in the performance of this Agreement. The PORT shall receive prompt written notice of each notice or claim of copyright infringement received by the EDC with respect to any data delivered under this Agreement. The PORT shall have the right to modify or remove any restrictive markings placed upon the data by the EDC.

DELIVERABLES — All tangible materials produced as a result of this Agreement shall be prepared as specified by the PORT's Project Manager. Delivery of materials produced shall consist both of the tangible materials and one copy of any computer file used in the creation of the tangible product on CD-Rom in a PDF format or other format specified by the PORT. The PORT may offset from the EDC's fee expenses incurred by the PORT in correcting drawings or specifications not prepared in accordance with the PORT's procedure.

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 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 EDC agrees to such joinder, so that all disputes related to the project may be consolidated and resolved in one forum.

PORT and EDC agree that, the existence of a dispute notwithstanding, they will continue without delay to carry out all their respective responsibilities under this Agreement that are not affected by the dispute. Both parties agree to exercise good faith in the dispute resolution and to settle disputes prior to using the dispute resolution panel whenever possible.

GOVERNING LAW — This Contract shall be deemed to have been executed and delivered within the State of Washington, and the rights and obligations of the parties hereunder shall be construed and enforced in accordance with, and governed by, the laws of the State of Washington without regard to the principles of conflict of laws. Any action or suit brought in connection with this Agreement shall be brought in the Superior Court of Skamania County, Washington.

INDEMNIFICATION & HOLD HARMLESS — EDC agrees to indemnify, defend, save and hold harmless the Port, its officials, employees and agents from any and all liability, demands, claims, causes of action, suits or judgments, including costs, attorney fees and expenses incurred in connection therewith, or whatsoever kind or nature (including patent infringement or copyright claims) arising out of, or in connection with, or incident to, the performance of services pursuant to this Agreement. This indemnity and hold harmless shall include any claim made against the Port by an employee of EDC or agent even if EDC is thus otherwise immune from liability pursuant to the workers' compensation statute, Title 51 RCW, except to the extent that such liability arises from the sole negligence of the Port. EDC specifically acknowledges that the provisions contained herein have been mutually negotiated by the parties and it is the intent of the parties that EDC provide the broadest scope of indemnity permitted by RCW 4.24.115. EDC is an independent EDC and responsible for the safety of employees.

INDEPENDENT CAPACITY OF THE EDC — The EDC, its, agents and employees are independent contractors performing services for the PORT and are not employees of the PORT. The EDC, its agents and employees, shall not, as a result of this Agreement, accrue leave, retirement, insurance, bonding or any other benefits afforded to PORT employees. The EDC, agents and employees shall not have the authority to bind PORT in any way except as may be specifically provided herein.

LICENSING, ACCREDITATION AND REGISTRATION — The EDC shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements/standards, necessary for the performance of this Agreement. Prior to performing work under this Agreement, EDC shall be responsible to obtain all necessary licenses and/or permits required to perform the work associated with this Agreement.

LIMITATION OF AUTHORITY — Only the Agent or Agent's delegate by writing (delegation to be made prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Agreement.

Furthermore, any alteration, amendment, modification, or waiver of any clause or condition of this Agreement is not effective or binding unless made in writing and signed by the Agent.

NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY – During the term of this Agreement, the EDC agrees as follows: The EDC will not discriminate against any employee or applicant for employment because of creed, religion, race, color, sex, marital status, sexual orientation, political ideology, ancestry, national origin, or the presence of any sensory, mental or physical handicap, unless based upon a bona fide occupational qualification. The EDC will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their creed, religion, race, color, sex, national origin, or the presence of any sensory, mental or physical handicap. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

ORDER OF PRECEDENCE

In the event of an ambiguity in this Agreement, the ambiguity shall be resolved by giving precedence in the following order (1 presiding over 2, 2 presiding over 3, etc.):

1. Executed Amendments to Agreement
2. Executed Agreement
3. Exhibit A Professional Services General Terms and Conditions
4. Exhibit B Scope of Services
5. Executed Lease
6. Applicable federal, state and local statutes and regulations
7. Any other provision, term, or document incorporated herein by reference or otherwise incorporated

PRIVACY – Personal information collected, used, or acquired in connection with this Agreement shall be used solely for the purposes of this Agreement. EDC agrees not to release, divulge, publish, transfer, sell, or otherwise make known to unauthorized persons personal information without the express written consent of the PORT. EDC agrees to implement physical, electronic, and managerial safeguards to prevent unauthorized access to personal information.

Any breach of this provision may result in termination of the Agreement and the demand for return of all personal information. The EDC agrees to indemnify and hold harmless the PORT for any damages related to the EDC's unauthorized use of personal information.

For purposes of this provision, personal information includes, but is not limited to, information identifiable to an individual that relates to a natural person's health, finances, education, business, use or receipt of governmental services, or other activities, names, addresses, telephone numbers, social security numbers, driver license numbers, financial profiles, credit card numbers, financial identifiers, and other identifying numbers.

PROPRIETARY AND CONFIDENTIAL INFORMATION – The EDC acknowledges that the PORT is required by statute (RCW 42.56) to make its records available for public inspection, with certain exceptions. PORT staff believes that this legal obligation would not require the disclosure of proprietary descriptive information that contains valuable designs, drawings or formulas. The EDC, by submission of materials marked proprietary and confidential, nevertheless acknowledges and agrees that the PORT will have no obligation or any liability to the EDC in the event that the PORT must disclose these materials.

PUBLICITY – The EDC agrees to submit to the PORT all advertising and publicity matters relating to this Agreement which, in the PORT's judgment, PORT's name can be implied or is specifically mentioned. The EDC agrees not to publish or use such advertising and publicity matters without the prior written consent of the PORT.

RATIFICATION – Acts taken pursuant to this Agreement but prior to its effective date are hereby ratified and affirmed.

RECORDS MAINTENANCE – The EDC shall maintain complete financial records relating to this Agreement and the services rendered including all books, records, documents, magnetic media, receipts, invoices, and other evidence relating to this Agreement and performance of the services described herein, including but not limited to, accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Agreement. EDC shall retain such records for a period of six (6) years following the date of project completion. At no additional cost, these records, including materials generated under the Agreement, shall be subject at all reasonable times to inspection, review, or audit by the PORT, the Office of the State Auditor, and federal and State officials so authorized by law, rule, regulation, or agreement. EDC agrees to submit any requests for documents from third parties to the PORT within twenty-four (24) hours for response, and PORT shall have sole authority to respond to any such request.

If any litigation, claim, or audit is started before the expiration of the six-year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

REGISTRATION WITH DEPARTMENT OF REVENUE – The EDC shall complete registration with the Washington State Department of Revenue and be responsible for payment of all taxes due on payments made under this Agreement.

RIGHT OF INSPECTION – The EDC shall provide right of access to its facilities to the PORT, or any of its officers, or to any other authorized agent or official of the state of Washington or the federal government, at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this Agreement.

SAVINGS — In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Agreement and prior to normal completion, the PORT may terminate the Agreement under the "Termination for Convenience" clause, without the ten-day (10) notice requirement, subject to renegotiation at the PORT's discretion under those new funding limitations and conditions.

SEVERABILITY — The provisions of this Agreement are intended to be severable. If any term or provision is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the Agreement.

SITE SECURITY — While on PORT premises, EDC, its agents, employees, or sub-EDCS shall conform in all respects with physical, fire, or other security regulations.

STANDARD OF CARE — EDC shall perform its work to conform to generally accepted professional standards. EDC shall be responsible for the professional quality, technical adequacy and accuracy, timely completion and coordination of all budgets, spreadsheets, financial data, and presentations prepared under this agreement. EDC shall, without additional compensation, correct or revise any errors or omissions in such work.

The PORT's approval of plans, drawings and specifications shall not relieve EDC of responsibility for the adequacy or accuracy thereof. The EDC shall remain liable for damages and costs incurred by the PORT arising from the EDC's errors, omissions or negligent performance of services furnished under this agreement.

SUBCONTRACTS — The EDC shall not sub-contract for any of the work contemplated under this Agreement without obtaining prior written approval of the PORT.

TAXES — All payments accrued on account of payroll taxes, unemployment contributions, any other taxes, insurance, or other expenses for the EDC or its staff shall be the sole responsibility of the EDC.

TERMINATION FOR CAUSE — In the event the PORT determines the EDC has failed to comply with the conditions of this Agreement in a timely manner, the PORT has the right to suspend or terminate this Agreement. The PORT reserves the right to suspend all or part of the Agreement, withhold further payments, or prohibit the EDC from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action by the EDC or a decision by the PORT to terminate the Agreement.

In the event of termination, the EDC shall be liable for damages as authorized by law including, but not limited to, any cost difference between the original Agreement and the replacement or cover Agreement and all administrative costs directly related to the replacement Agreement, e.g. cost of the competitive bidding, mailing, advertising, and staff time. The termination shall be deemed to be a "Termination for Convenience" if it is determined that the EDC: (1) was not in default, or (2) failure to perform was outside of his or her control, fault, or negligence. The rights and remedies of the PORT provided in this Agreement are not exclusive and are in addition to any other rights and remedies provided by law.

TERMINATION FOR CONVENIENCE — The work outlined in this Agreement meets the PORT's current project needs. It is acknowledged and accepted by the EDC that all work defined under any Agreement or Task is subject to authorized available and budgeted funds. The PORT may, by thirty (30) days written notice, beginning on the second day after the mailing, terminate this Agreement, in whole or in part. If this Agreement is so terminated, the PORT shall be liable only for payment required under the terms of this Agreement for services rendered or goods delivered prior to the effective date of termination. Termination of this agreement shall also terminate the corresponding Lease on the same schedule, unless otherwise agreed to in writing by both parties.

TERMINATION PROCEDURES — Upon termination of this Agreement, the PORT, in addition to any other rights provided in this Agreement, may require the EDC to deliver to the PORT any property specifically produced or acquired for the performance of such part of this Agreement as has been terminated. The provisions of the "Treatment of Assets" clause shall apply in such property transfer.

The PORT shall pay to the EDC the agreed upon price, if separately stated, for completed work and services accepted by the PORT, and the amount agreed upon by the EDC and the PORT for (i) completed work and services for which no separate price is stated, (ii) partially completed work and services, (iii) other property or services that are accepted by the PORT, and (iv) the protection and preservation of property, unless the termination is for default, in which case the PORT shall determine the extent of the liability of the PORT. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause of this Agreement. The PORT may withhold from any amounts due the EDC such sum as the PORT determines to be necessary to protect the PORT against potential loss or liability.

The rights and remedies of the PORT provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

After receipt of a notice of termination, and except as otherwise directed by the PORT, the EDC shall:

1. Stop work under the Agreement on the date, and to the extent specified, in the notice;
2. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the Agreement that is not terminated;



3. Assign to the PORT, in the manner, at the times, and to the extent directed by the AGENT, all of the rights, title, and interest of the EDC under the orders and subcontracts so terminated, in which case the PORT has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
4. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the PORT to the extent PORT may require, which approval or ratification shall be final for all the purposes of this clause;
5. Transfer title to the PORT and deliver in the manner, at the times, and to the extent directed by the PORT any property which, if the Agreement had been completed, would have been required to be furnished to the PORT;
6. Complete performance of such part of the work as shall not have been terminated by the PORT; and
7. Take such action as may be necessary, or as the PORT may direct, for the protection and preservation of the property related to this Agreement which is in the possession of the EDC and in which the PORT has or may acquire an interest.

TIME OF PERFORMANCE — Time is of the essence in the performance by the EDC of the services required by this Agreement. It is agreed services hereunder shall be completed by completion date listed on the Agreement. The EDC shall address immediately issues regarding performance of its services hereunder, and use its best efforts to correct any PORT concerns.

RELATIONSHIP OF THE PARTIES

Nothing in the agreement shall constitute a partnership or other agency relationship between the PORT and the EDC. Both organizations are acting independently in a contractual relationship and neither has actual or apparent authority to represent the other's interests except as specifically authorized in the Scope of Work, attached.

TREATMENT OF ASSETS

- A. Title to all property furnished by the PORT shall remain in the PORT, including all financial data, formulas, spreadsheets, .xls files and other data relating to PORT finances, whether created by the PORT or the EDC. Title to all property furnished by the EDC, for the cost of which the EDC is entitled to be reimbursed as a direct item of cost under this Agreement, shall pass to and vest in the PORT upon delivery of such property by the EDC. Title to other property, the cost of which is reimbursable to the EDC under this Agreement, shall pass to and vest in the PORT upon (i) issuance for use of such property in the performance of this Agreement, or (ii) commencement of use of such property in the performance of this Agreement, or (iii) reimbursement of the cost thereof by the PORT in whole or in part, whichever first occurs.
- B. Any property of the PORT furnished to the EDC shall, unless otherwise provided herein or approved by the PORT, be used only for the performance of this Agreement.
- C. The EDC shall be responsible for any loss or damage to property of the PORT which results from the negligence of the EDC or which results from the failure on the part of the EDC to maintain and administer that property in accordance with sound management practices.
- D. If any PORT property is lost, destroyed, or damaged, the EDC shall immediately notify the PORT and shall take all reasonable steps to protect the property from further damage.
- E. The EDC shall surrender to the PORT all property of the PORT prior to settlement upon completion, termination, or cancellation of this Agreement.
- F. All reference to the EDC under this clause shall also include EDC's employees or agents.

WAIVER — Waiver of any default or breach shall not be deemed to be a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this Agreement unless stated to be such in writing and signed by the PORT.

ALLOWABLE EDC FEES AND REIMBURSEABLE ITEMS

The PORT expects that the agreed upon rates include all routine overhead and internal expenses of the firm. The rates should also include equipment, tools, software and supplies required to perform the work.

The PORT will reimburse the following directly related expenses at cost (when appropriate backup is provided):

- Printing of review and final sets of deliverables; all deliverables shall also be provided on formatted disk at no extra charge.
- Postage/shipping cost for deliverables; *standard ground delivery is preferred method (additional service requires pre-approval by PORT's Project Manager)*
- ~~Mileage at current Internal Revenue Service allowable mileage reimbursement rate~~
- ~~Lodging at current Internal Revenue Service allowable reimbursement rate for appropriate area (must be pre-approved by PORT's project manager).~~
- ~~Airfare (must be pre-approved by PORT's Project Manager and demonstrate cost savings over other forms of transportation)~~

In no event will the PORT reimburse for the following expenses:

- Alcoholic beverages
- Costs associated with preparing and/or presenting a bid or proposal
- Employee gifts and recreation
- Entertainment
- Fines/Penalties
- Lobbying Costs
- Lodging within 50 miles of EDC'S place of business
- Meals — except when the meal is a bona fide business meeting or as a result of bona fide business meeting
- Membership in Civic and Community Organizations
- Membership in Social/Dining/Country Clubs
- Organization Legal Fees
- Organization Accounting Fees
- Organization Incorporation Fees
- Parking Violations
- Personal use of company vehicle
- Relocation Cost
- Rental vehicles
- Social Activities

END OF TERMS / CONDITIONS