



Klickitat County Port District No. 1

154 E Bingen Point Way Ste. A
Bingen, WA 98605
509-493-1655

Contract

2012-03
BP Lot 17-18 Master Plan

January 25, 2012

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This Contract is between **Klickitat County Port District No. 1**, a Washington municipal corporation (hereinafter "**Port**"), and **DSP Architecture, PLLC**, a Washington limited liability company (hereinafter "**Provider**"), and is effective as of **January 23, 2012**.

WITNESSETH

1. AFFIRMATIVE ACTION

Respondent shall take affirmative action in complying with all Federal and State requirements concerning fair employment and shall not discriminate by reason of age, race, color, gender, religion, national origin, or physical handicap.

2. ASSIGNMENT AND SUBCONTRACTS

No portion of this Contract, or the Work described therein, may be assigned, subcontracted, or transferred to a party other than the Provider except as described in Provider's Personnel Roster or as approved by the Port in writing. Provider shall ensure the provisions of this Contract are incorporated into its contracts with any subproviders and shall provide a copy of all such contracts, excluding financial information, to the Port. Port reserves the right to require the substitution of any subprovider. Provider agrees that it shall remain fully responsible for the acts and omissions of subproviders, if any, used to complete the Work of this Contract.

3. AUDITING

Provider shall keep and maintain accurate books, records, and documents showing all charges, disbursements, or expenses made or incurred by Provider in the performance of this Contract for no less than three (3) years after the termination of this Contract. Port or its duly authorized agent shall have the right, upon ten (10) working days notice, to audit all such records including Provider's direct costs, timesheets, expense reports, and logs pertaining to this Contract.

4. BACKGROUND

The Port recently leveled and otherwise prepared Lots 17 and 18 of its Bingen Point Business Park for future development (either by the Port or a third-party developer). The Commission is now seeking a master plan for these properties to help identify the optimum use of the property and provide a basis for discussion of future development of the site.

5. CHANGES

All changes and claims for extra cost shall be in writing by amendment and approved by Port in advance.

6. COMPENSATION

6.1 AMOUNT

As full compensation for the performance of the obligations of this Contract and the services to be provided, Port shall pay Provider on an hourly basis at its standard hourly rates up to a maximum of Six Thousand Dollars and 00 Cents (\$6,000.00 USD). Provider's expenses will be reimbursed at cost, with the exception of all third party costs which will be reimbursed at cost plus a markup of five percent (5%).

6.2 PAYMENTS

Provider shall submit detailed numbered invoices showing the description and cost/price of work items being invoiced, work order number (if applicable), title of project, total invoice amount, hours and hourly rate (if applicable), and an itemized list of any authorized expenses with backup documentation. Invoices must be received by the 10th day of the month and will be paid at the end of that month. No payment in advance or in anticipation of services or supplies to be provided under this Contract shall be made by Port.

7. COMPLIANCE WITH LAWS

Provider agrees to fully comply with all local, state, tribal, and federal laws and regulations applicable to the services provided, including Washington business registration, taxes, employee safety, and employment eligibility. Provider shall secure, at its own expense, all licenses and permits required to complete the Work described herein.

8. CONFLICTS OF INTEREST

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

9. COSTS AND DISBURSEMENTS

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

10. DISCLOSURE

All information developed by Provider or made available to Provider by Port and all analyses or opinions reached by Provider shall be confidential and shall not be disclosed by Provider without the written consent of Port, under a court order, or to satisfy the requirements of any local, state or federal law regarding the reporting of such information to a regulatory agency.

11. DELIVERABLES

All tangible materials produced as a result of this Contract shall be prepared as specified by Port's Representative and this Contract. Delivery of materials produced shall consist of both the tangible materials and one electronic copy of any computer file used in the creation of the tangible product in an Acrobat PDF formatted file or other format agreeable to Port. Port may offset from Provider's fee any expense incurred by Port in correcting deliverables not prepared in accordance with this paragraph.

12. DISPUTES

The parties agree to make a good faith effort to settle any claims, disputes or other matters in question between Provider and Port arising out of or relating to this Contract or the breach thereof through direct negotiation.

12.1 MEDIATION

If a dispute arises that cannot be settled through direct negotiation, the parties agree to endeavor to settle the dispute through a mediator acceptable to both parties, the cost of which shall be divided equally. Port reserves the right to join any dispute under this Contract with any other claim in litigation or other dispute resolution forum, and Provider agrees to such joinder, so that all disputes related to the project may be consolidated and resolved in one forum.

12.2 ACTION FILED

If a dispute cannot be resolved through mediation, and in case suit or action is instituted to interpret or enforce compliance with any of the provisions of this Contract, the losing party agrees to pay such sum as the trial court may adjudge reasonable as attorney's fees and associated fees and expenses to be allowed the prevailing party in such suit or action. In the event any appeal is taken from any judgment or decree in such suit or action, the losing party agrees to pay such further sum as the appellate court shall adjudge reasonable as prevailing party's attorney's fees and associated fees and expenses on such appeal.

12.3 ATTORNEY'S FEES

For purposes of this Contract, the term "attorney's fees" shall include all charges of the prevailing party's attorneys and their staff (including, without limitation, legal assistants, paralegals, word processors, court fees, and other support personnel) and the term "fees and expenses" shall include, but is not limited to, long-distance telephone charges; expenses of facsimile transmission; expenses for postage (including costs of registered or certified mail and return receipts), express mail, or parcel delivery; mileage and all deposition charges; and costs incurred in searching records.

13. INDEMNIFICATION

To the maximum extent permitted by law, Provider shall defend, indemnify and hold Port and its officers, agents, and employees harmless from any and all suits, claims, penalties, or damages arising from Provider's negligent act or omission or willful misconduct, except to the extent caused by the negligence or willful misconduct of Port, or use of any copyrighted or non-copyrighted composition, secret process, article, or application. The provisions of this paragraph shall survive the termination of this Contract.

14. INSURANCE

Provider must obtain, and maintain in force at all times during the term of this Contract, insurance for Worker's Compensation, General Liability, Auto Liability, and Errors and Omissions Liability. Such policies shall be issued by companies authorized to do business in the State of Washington and evidence of such coverage shall be submitted at the time a contract is entered into by both parties.

14.1 CERTIFICATES

Prior to the commencement of services, Provider shall secure, and maintain at all times, such insurance as will protect it from claims under the Labor and Industries Act and shall submit to Port certificates of insurance evidencing:

- a. Commercial General Liability coverage on occurrence form ISO Form CG0001 or equivalent with limits of \$1,000,000 per occurrence and \$2,000,000 aggregate;
- b. Automobile Liability covering owned, non-owned and hired vehicles 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 shall have a retroactive date before the date of notice to proceed and coverage shall remain in effect for the term of this Contract plus three years.

Except for Professional Liability insurance, Port shall be named as an Additional Insured and Provider shall deliver to Port an endorsement as evidence of such (ACORD form not acceptable).

14.2 ISSUING COMPANY

All policies shall be issued by a company having an A.M. Best rating of A:VII 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 thirty (30) days prior written notice has been given to Port. Except for professional liability, Port shall be named as an additional insured on all policies on ISO Form CG2010 Form B. The certificates of insurance shall specify the project name and project/contract number (if applicable).

15. KEY PERSONNEL

Provider and/or its subproviders' key personnel, as listed on the Personnel Roster submitted with its response, shall remain assigned for the duration of the Project unless otherwise agreed to by the Parties in a written amendment to this Contract.

16. NONDISCRIMINATION

During the performance of this Contract, Provider shall comply with all applicable state and federal nondiscrimination laws, regulations and policies. Provider shall not discriminate against any employee, applicant for employment, vendor, or customer/client because of race, color, sex, religion, national origin, creed, marital status, or mental or physical handicap.

17. NON-WAIVER

No failure of either party to insist upon the strict performance of any provision in this Contract shall be construed as depriving that party of the right to insist on strict performance of such provision or any other provision in the future. No waiver by either party of any provision of this Contract shall be deemed to have been made unless expressed in writing and signed by the party who is alleged to have waived a right. No payment to Port from Provider after any breach shall constitute a waiver of any such breach or any other breach.

18. NOTICES

Representatives for the parties to this Contract and the address to be used for notices and other official communications between the parties shall be as follows:

Port: Port of Klickitat
Marc Thomsbury
154 E Bingen Point Way Ste. A
Bingen, WA 98605
509-493-1655

Provider: DSP Architecture, PLLC
Randall C. Salisbury
500 W 8th St. Ste. 115
Vancouver, WA 98660
360-695-3306

Guidance or direction shall be valid only when communicated through these representatives or their designated agents, provided that written notification of such designation is provided to the other party. Notices and all other written communication shall be mailed or delivered to the intended recipient at the address specified. Either party may change its address by written notice within ten (10) calendar days to the other party.

19. OTHER WORK

Port shall have the right to perform, or have performed, similar or such other work as it may desire while Provider is performing work. Provider shall coordinate its work with that of others when required. Any claim of interference or delay due to other work must be made to Port within ten (10) calendar days of occurrence or such claim shall be deemed waived.

20. OWNERSHIP

20.1 MATERIALS

All documents, plans, specifications, and other materials furnished to Provider by Port shall remain the exclusive property of Port. By executing this Contract, Provider agrees that such materials shall be used for no other purpose than for the Work under this Contract.

20.2 SERVICES

The services to be performed by Provider shall be deemed instruments of service (aka "works for hire") for the purposes of the copyright laws of the United States. Port has ownership rights to the work products prepared by Provider in performing these services including, but not limited to, reports, documents, surveys, maps, studies, and advertising materials, except where the product is an artistic work or computer program incorporating commercially available software in which case the Provider assigns to Port an irrevocable license to use and reuse, for any lawful purpose, the work products created by Provider in the course of executing this Contract.

Provider shall have free right to retain, copy, and use any tangible materials or information produced only for its own internal purposes. The use of documents or other materials prepared under this Contract for promotional purposes shall require Port's prior consent. Any reuse of work products by the Port for any use other than the intended project shall be at the Port's sole risk and without liability or legal exposure to Provider.

21. PARTIAL INVALIDITY

If any term or provision of this Contract or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Contract, or any application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Contract shall be valid and be enforced as written to the fullest extent permitted by Law.

22. PERIOD OF PERFORMANCE

Unless otherwise extended by written notice, the period of performance under this Contract shall be from the date of signing through July 15, 2011, unless terminated as provided herein.

23. PROJECT COMPLETION

Upon completion, Provider shall furnish to Port, at not additional charge, all closeout documentation including any project-related instruction, training, and support materials, any licenses, and all other required deliverables.

24. PROVIDER'S RESPONSIBILITY

The Provider certifies that he/she has fully acquainted himself/herself with all conditions, limitations, restrictions, requirements, plans, specifications, and other information described in, or provided as part of, this Contract.

25. PUBLICITY

Provider shall not refer to the award of this contract in any commercial advertising in such manner as to state or imply that the products or services provided are endorsed or preferred by Port.

26. RELATIONSHIP OF THE PARTIES

Provider, including its employees and subproviders, is an independent contractor and nothing contained herein shall be deemed to create a relationship of employer and employee or of principal and agent between Port and Provider.

27. SCOPE OF WORK

Provider shall perform the following services:

- a. Develop a master plan for future industrial development on Bingen Point lots 17 and 18. Plan should fully utilize the lot space available. Footprint, orientation, and other aspects should take into account the development requirements of the Port as well as the weather and environment of the location.
- b. Prepare up to three draft design alternatives (at least one of which must be for a single large building and one must be multiple smaller buildings) including parking and loading docks.
- c. Consult with Port staff to review key issues and identify one draft design as the final master plan. Provider to complete the final plan and submit it to the Port in paper, .pdf, and .dwg versions.

28. STANDARD OF CARE

28.1 PROFESSIONAL STANDARDS

Provider shall perform its work to conform to generally accepted professional standards. Provider shall be responsible for the professional quality, technical adequacy and accuracy, timely completion and coordination of all plans, designs, drawings and specifications prepared under this Contract. Provider shall, without additional compensation, correct or revise any errors or omissions in such work.

28.2 PROVIDER ERRORS

Port's approval of plans, drawings and specifications shall not relieve Provider of responsibility for the adequacy and accuracy thereof. Provider shall remain liable for damages and costs incurred by Port arising from Provider's negligent performance of services furnished under this Contract.

29. TERMINATION

29.1 FAILURE TO PERFORM

Port may terminate this Contract if Provider substantially fails to fulfill its obligations under this Contract through no fault of Port or in the event Provider shall materially breach the terms of this Contract. Any payment due for services satisfactorily performed prior to termination may be offset by Port's anticipated additional costs incurred because of Provider's default. No payment shall be made for anticipated profit on unperformed work.

29.2 GOVERNMENT CONVENIENCE

Port may terminate this Contract, in whole or in part, at any time for government convenience in which case it shall provide written notice to Provider and reimburse Provider for its costs and fees incurred prior to the notice of termination except unabsorbed overhead or anticipatory profit. Upon receipt of such notice, Provider shall immediately discontinue services to the extent specified in the notice.

29.3 DELIVERABLES

Upon receipt of a termination notice Provider shall promptly deliver to Port all data and deliverables developed while performing this Contract whether completed or in progress.

29.4 REMEDIES

The rights and remedies of 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 Contract.

29.5 PROCEDURE

Upon termination of this Contract, Provider shall stop all work pertaining to the fulfillment of this Contract, place no further orders or subcontracts for materials or services, and transfer to Port title and possession of any and all property fully or partially completed under the terms of this Contract and for which Provider has been compensated.

30. MISCELLANEOUS PROVISIONS

30.1 CAPTIONS AND CONSTRUCTION

The captions and paragraph headings in this Contract are for the convenience of the reader and are not to be considered in the interpretation or construction of its terms.

30.2 ENTIRE AGREEMENT

This Contract contains the undertakings between the parties. Each party represents that no promises, representations, or commitments (hereinafter "Promises") have been made by the other as a basis for this Contract which have not been reduced to writing herein. No oral Promises, now or in the future, shall be binding upon either party unless such Promises are reduced to writing in the form of a modification to this Contract executed with all necessary legal formalities.

30.3 FORCE MAJEURE

Provider shall not be liable for any excess costs if the failure to perform arises out of cause beyond the control and without the fault or negligence of the Provider. Such causes may include, but are not limited to, fire, flood, quarantine, or unusually severe weather.

30.4 GOVERNING LAW/VENUE

This Contract shall be governed in accordance with the laws of the State of Washington and venue shall be in Klickitat County, Washington. Provider, by execution of this Contract, acknowledges the jurisdiction of the courts of the State of Washington.

30.5 NUMBER; GENDER; PERMISSIVE VERSUS MANDATORY USAGE

Where the context permits, references to the singular shall include the plural and vice versa, and references to the neuter gender shall include the feminine and masculine. Use of the word "may" shall denote an option or privilege and shall impose no obligation upon the party which may exercise such option or privilege. Use of the word "shall" shall denote a duty or an obligation.

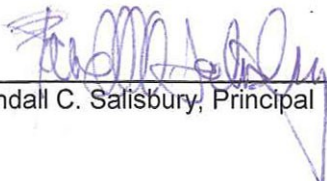
30.6 TIME

Time is of the essence in the performance by Provider of the services required by this Contract. Provider shall complete its services within the milestones set forth in the project schedule (if specified). At the end of each month, Provider shall submit to Port an updated schedule showing current progress and a description of the work accomplished to date, the status of all project milestones, and any known issues that might result in completion beyond the established schedule or budget.

The signatures below acknowledge agreement to the entire Contract and have the authority to sign for their respective entities.

IN WITNESS WHEREOF, the parties have caused this Contract to be executed on January 25, 2012.

DSP Architecture, PLLC



Randall C. Salisbury, Principal

Klickitat County Port District No. 1



Marc Thornsby, Executive Director