



## **Klickitat County Port District No. 1**

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

### **Contract**

2011-06  
**Financial Consulting Services**

January 31, 2012

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## Contract

2011-06 - Financial Consulting Services

This Contract is between **Klickitat County Port District No. 1**, a Washington municipal corporation (hereinafter "**Port**"), and **Jan T. Fancher CPA, PLLC**, a Washington Limited Liability Company (hereinafter "**Provider**"), and is effective as of **January 31, 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 of Klickitat is a public port district in Washington State as established under RCW 53.04. In conducting its business, the Port is subject to audit by the State Auditor's Office and must use and maintain an accounting system, generate various reports, and produce an annual financial report. The Port's accounting method is accrual basis.

**5. CHANGES**

All changes and claims for extra cost shall be in writing 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 according to the following schedule:

Principal (CPA)	\$147.50 per hour
Staff Accountant	\$87.50 per hour

Provider's mileage shall be reimbursed at the current IRS mileage reimbursement rate and all other expenses, including third party expenses, shall be reimbursed at cost.

**6.2 PAYMENTS**

Provider shall submit detailed numbered invoices showing the description and cost/price of work items being invoiced, 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 10<sup>th</sup> 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. HAZARDOUS SUBSTANCES**

If the scope of work includes the use of, or exposure to, hazardous substances:

#### **13.1 DEFINITION**

The term "Hazardous Substances", as used herein, shall mean any substance designated as, or containing components designated as, hazardous, extra hazardous, dangerous, toxic, or harmful and which are subject to environmental regulation by any local, state, or federal law, regulation, statute, or ordinance including, but not limited to, the Resource Conservation and Recovery Act, 42 U.S.C. Sec. 6901 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. Sec. 1257 et seq.; the Clean Air Act, 42 U.S.C. Sec. 2001 et seq.; the Comprehensive Environmental Response Compensation and Liability Act of 1980, 42 U.S.C. Sec. 9601 et seq.; or the Hazardous Waste Cleanup-Model Toxics Control Act, RCW 70.105D, all as amended and subject to all regulations promulgated thereunder. Hazardous substances, for purposes of this Contract, shall not include any material excepted from the definition in the relevant regulations, including, for example, by reason of its small quantity or ordinary presence.

#### **13.2 HAZARD COMMUNICATION**

Port shall furnish Provider with the information required by the Hazard Communication standard materials preexisting on the project site. Provider will ensure that this information is made available to Provider's personnel and subproviders, and incorporated into the contract documents as appropriate.

#### **13.3 INDEMNIFICATION**

Provider shall indemnify and hold Port harmless from any and all claims, demands, judgments, orders, or damages resulting from the use of Hazardous Substances by Provider or the failure of Provider to properly handle, store, recover, and dispose of Hazardous Substances as part of its performance of this Contract.

#### **13.4 REGULATORY REQUIREMENTS**

Where the nature of the work performed by Provider under this Contract shall involve Hazardous Substances, Provider agrees to promptly, timely and completely comply with all local, state, and federal government regulations, including those identified in Section 31.1 ("Definition"), for reporting, handling, storing, recovering, or disposing of Hazardous Substances.

### **14. INDEMNIFICATION**

To the maximum extent permitted by law, Provider shall 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, willful misconduct, or use of any copyrighted or non-copyrighted composition, secret process, article, or application except to the extent caused by the negligence or willful misconduct of Port. The provisions of this paragraph shall survive the termination of this Contract.

### **15. 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 Professional Liability (aka Errors & Omissions).

#### **15.1 COVERAGE**

Prior to the commencement of services, Provider shall secure, and maintain at all times, such insurance as will protect it from claims under Title 51 RCW (Industrial Insurance) and providing the following:

- a. Commercial General Liability (or Homeowner's or Renter's) not less than \$1,000,000 per claim and not less than \$500 for third-party property loss;
- b. Automobile Liability coverage for owned, non-owned and hired vehicles of \$500,000 combined single limit per accident; and
- c. Professional Liability not less than \$1,000,000 per claim. Coverage shall remain in effect for the term of this Contract plus three years.

#### **15.2 ISSUING COMPANY**

All policies shall be issued by responsible insurance companies authorized to issue insurance in the State of Washington and rated "A-" (Excellent) or better and be of financial size category

“VII” (\$50-\$100 million policyholders' surplus) or equivalent successor rating as defined by A.M. Best Company or a national, commercially-accepted successor rating agency. 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.

**15.3 PROOF OF INSURANCE**

Upon execution of this Contract, Provider shall deliver to Port a Coverage Summary, Binder, or other similar document showing the carrier, policy number, name of the insured, effective period, coverage, limits of liability, and, if applicable, the project name and/or number.

**16. 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.

**17. 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.

**18. 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.

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

Provider: Jan T. Fancher CPA, PLLC  
Jan Fancher  
PO Box 66028  
Vancouver, WA 98666  
360-694-2460

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.

**20. 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.

## **21. OWNERSHIP**

### **21.1 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.

### **21.2 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.

## **22. 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.

## **23. PERIOD OF PERFORMANCE**

Unless otherwise extended by written notice, the period of performance under this Contract shall be from the date of signing through December 31, 2012 unless terminated as provided herein.

## **24. 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.

## **25. 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.

## **26. 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. Port shall not refer to Provider with respect to the performance of the duties embodied by this contract after completion of the contract without the written permission of the Provider

## **27. 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.

## **28. SCOPE OF WORK**

Provider shall perform the following services:

- a. Assist Port staff in using Quickbooks (accounting software) and AssetKeeper (fixed asset software).
- b. Advise Port staff regarding various financial elements such as best practices, financial policies, and public financing.
- c. Produce the Port's annual (accrual basis) financial statement in accordance with state law and

the requirements of GASB, FASB, and the State Auditor's Office.

- d. Assist Port staff, as necessary, with all state and federal financial audits.
- e. Assist Port staff with bookkeeping questions and issues.
- f. Perform any other financial and bookkeeping related tasks as may be requested by Port.

## **29. STANDARD OF CARE**

### **29.1 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.

### **29.2 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 errors, omissions or negligent performance of services furnished under this Contract.

## **30. TERMINATION**

### **30.1 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.

### **30.2 CONVENIENCE**

Port or Provider may terminate this Contract, in whole or in part, upon thirty (30) days written notice to the other party. Port shall reimburse Provider for its costs and fees incurred up to the date of termination except unabsorbed overhead or anticipatory profit.

### **30.3 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.

### **30.4 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.

### **30.5 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.

## **31. MISCELLANEOUS PROVISIONS**

### **31.1 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.

### **31.2 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.



**31.3 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.

**31.4 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.

**31.5 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.

**31.6 TIME**

Time is of the essence in the performance by Provider of the services required by this Contract.

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 31, 2012.

**Jan T. Fancher CPA, PLLC**



\_\_\_\_\_  
Jan Fancher, Manager

**Klickitat County Port District No. 1**

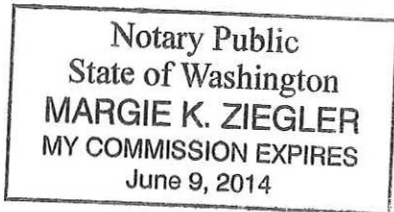


\_\_\_\_\_  
Marc Thornsbury, Executive Director

STATE OF Washington )  
 ) ss  
County of Klickitat )

On this 29 day of March, 2012, before me the undersigned, a Notary Public in and for the State of Washington, personally appeared **Jan Fancher**, personally known to me to be the Manager of **Jan T. Fancher CPA, PLLC**, who executed this instrument, and acknowledged to me that s/he signed the same freely and voluntarily on behalf of the limited liability company for the uses and purposes therein expressed, and on oath stated that s/he was authorized to execute the instrument on behalf of the limited liability company.

IN WITNESS WHEREOF, I have hereunder set my hand and affixed my seal the day and year last written above.

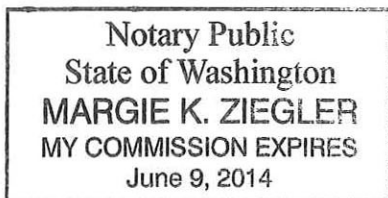


Margie K. Ziegler  
Notary Public in and for the State of Washington  
My Commission Expires: June 9, 2014

STATE OF WASHINGTON )  
 ) ss  
County of Klickitat )

On this 29 day of March, 2012, before me the undersigned, a Notary Public in and for the State of Washington, personally appeared **Marc Thornsbury**, personally known to me to be the Executive Director of **Klickitat County Port District No. 1**, who executed this instrument, and acknowledged to me that s/he signed the same freely and voluntarily on behalf of the municipal corporation for the uses and purposes therein expressed, and on oath stated that s/he was authorized to execute the instrument on behalf of the municipal corporation.

IN WITNESS WHEREOF, I have hereunder set my hand and affixed my seal the day and year last written above.



Margie K. Ziegler  
Notary Public in and for the State of Washington  
My Commission Expires: June 9, 2014