



## INVITATION TO BID (ITB)

FOR

FY 2024-25 Pile Replacement  
West Basin Marina

**ITB Contact:**

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Port of Astoria

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FY 2024-25 Pile Replacement  
422 Gateway Avenue, Suite 100  
Astoria, OR 97103

### **INVITATION TO BID**

The Port of Astoria (“Port”) will receive sealed bids up to that date and time as specified on the Solicitation Schedule (“Schedule”) below. Bids will be publicly opened and read aloud in accordance with the Schedule at the Port Administration Offices located at 422 Gateway Avenue, Suite 100, Astoria, Oregon, 97103.

The Port seeks to engage a qualified contractor to complete the following work denoted in Exhibit A:

#### **West Basin Marina – 25 Steel Piles (50 ft length, 12” diameter, .375” wall thickness)**

- Pull existing 9” piles and dispose in accordance with Oregon law
- Furnish and Install 25 steel piles and bird caps

The Port’s FY 2024-25 Pile Replacement Project provides maintenance necessary to facilitate moorage within the Central Waterfront District. The project includes removal and replacement of damaged piles in accordance with the Port of Astoria’s current maintenance permits:

- USACE: NWP-2017-249-1, dated August 16, 2023; IWWW: Oct 1 through Nov 30, 2024
- DSL: 60219-RF Renewal, dated May 29, 2024; IWWW: Nov 1, 2024 through Feb 28, 2025

The above permits will be available on the Port’s website during the solicitation period. The West Basin permits allow for the removal/replacement of 197 piles. To date, 84 piles have been replaced. The Central Waterfront permits allow for the removal/replacement of 2,546 cubic yards of material within the Central Waterfront respectively. To date, less than 700 cubic yards have been removed/replaced within the Central Waterfront District under the respective permits.

This is a public works project subject to Oregon prevailing wage requirements (ORS 279C.800 *et seq.*).

The Port will not consider a Bid under this solicitation unless the Bidder is licensed by the Construction Contractors Board.

The Port shall give preference to Bids that are based on the use of goods manufactured from recycled materials *if*:

- i) the recycled product is available,
- ii) the recycled product meets applicable standards,
- iii) the recycled product can be substituted for a comparable nonrecycled product, and
- iv) the recycled product's costs do not exceed the costs of nonrecycled products by more than five percent.

A mandatory pre-bid meeting and site visit will be held as per the date and time indicated on the Schedule.

Bid documents and addenda for this project will be available online at the Port of Astoria website: [www.portofastoria.com/Public\\_Notice.aspx](http://www.portofastoria.com/Public_Notice.aspx). It is the bidder's responsibility to check with the Port prior to submitting a bid to confirm that it has received a complete solicitation package, including but not limited to any addenda.

Each potential Bidder is responsible for performing its own investigations and making its own assessments as to the extent and nature of the work and best approach to accomplishing the work while complying with any and all applicable permits.

The Port reserves the following rights regarding this Invitation to Bid:

1. The Port may cancel this solicitation, reject any and all bids submitted, or waive minor informalities in bids if, in the judgment of the Port Commissioners, the best interests of the Port would be served.
2. The Port may modify or otherwise vary the terms and conditions of the ITB at any time prior to the deadline for submission of bids, including but not limited to deadlines for submission, schedules and Bid requirements;
3. If all bids exceed estimated costs, the Port may negotiate with the highest-ranked bidder in order to modify the scope and cost for the work. If the Port is unable to reach agreement with the highest-ranked Bidder, the Port may negotiate terms with the second-ranked Bidder, and so on.
4. A written or verbal response to a Bid does not obligate the Port to an agreement.

**Estimated Schedule:**

<b>West Marina Piling Replacement - Solicitation Schedule</b>		
<b>Event</b>	<b>Scheduled Time or Deadline</b>	
	<b>Date</b>	<b>Time</b>
Issue ITB	8/13/2024	N/A
Pre-Bid Meeting / Site Inspection	8/22/2024	1:00 PM
Question Deadline	8/26/2024	5:00 PM
Submission Deadline	8/29/2024	3:00 PM
Subcontractor Disclosure Deadline	8/29/2024	5:00 PM
Bid Opening	8/29/2024	5:00 PM
Notice of Intent to Award	9/5/2024	N/A
Execute Contract	9/12/2024	N/A
Notice to Proceed	9/17/2024	N/A

All questions must be submitted in writing to Matt McGrath at [mmcgrath@portofastoria.com](mailto:mmcgrath@portofastoria.com) by the date and time indicated on the Schedule. If necessary, an addendum to this ITB will be issued to all parties in attendance at the Pre-Bid Meeting with responses to all questions that have been received by the deadline.

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Matt McGrath – Deputy Director

[mmcgrath@portofastoria.com](mailto:mmcgrath@portofastoria.com)

C: 503 298-0909

O: 503 741-3336

## PROJECT DESCRIPTION AND SCOPE

The Port reserves the right to adjust the scope of this work and/or schedule to match available funds.

The Port of Astoria (“Port”) is located in Clatsop County and situated along Young’s Bay and the Columbia River in northwestern Oregon, approximately 75 miles northwest of Portland. The Central Waterfront District covers roughly 140 acres, inclusive of moorage boundaries and adjoining parking. Pier 1 is the Port’s primary deep draft terminal and hosts cruise, cargo, research, military and dredge and other vessels.

## INFRASTRUCTURE AND FACILITIES



The most recent bathymetric survey data will be available on the Port’s website and is for informational purposes only.

The project in-water work schedules shall be determined by contractor availability and respective in water work windows as defined in the Port’s maintenance permits. All work listed in this ITB is to be completed by February 28, 2025.

## INSTRUCTIONS TO BIDDERS

The contract, if one is awarded, will be awarded to the lowest responsive, responsible bidder. To be considered the Bidder must complete all bid instructions and satisfy all qualifications as provided below:

**Bidder Qualifications.** At minimum, the successful bidder must:

1. Comply with all submission requirements described in this solicitation.
2. At the time of award of contract and throughout the term of performance of this Agreement, not be disqualified from bidding on any public works contract(s).
3. Be a legal entity licensed to do business in the State of Oregon.
4. Demonstrate a minimum of ten (10) years prior experience in the marine construction and/or dredging business with specific experience working with public agencies.
5. Demonstrate familiarity and expertise with environmental permit compliance (USACE, DSL, DEQ, NMFS, etc.).
6. Be in compliance with all federal, state, and local laws, including but not limited to applicable tax laws.
7. Have available or have the ability to obtain the appropriate financial, material, equipment, facility and personnel resources and expertise to meet all contractual responsibilities.
8. Hold all required current licenses at all material times in the performance of this Agreement.
9. Have completed previous contracts of a similar nature with a satisfactory record of performance, including staying within the time and budget allotted for the contract.
10. Have a satisfactory record of integrity in obtaining or performing any contract or subcontract.
11. At all times during the effective dates of this Agreement, have in place an employee drug-testing program.

**Submission Requirements.** Each Bid shall comply with the following requirements:

1. Bids must be submitted to the **Port of Astoria – Attn: FY 2024-25 Pile Replacement, 422 Gateway Avenue, Suite 100, Astoria, OR 97103**, on the forms provided for this purpose. Late Bids and Bids delivered to locations other than as indicated above will not be accepted.
2. Two (2) copies of the Bid shall be placed in a sealed envelope clearly marked with “**FY 2024-25 Pile Replacement**” the name of the bidder, and the date of the bid opening. All responses shall be mailed or delivered to the Port as shown in this Invitation to Bid. Bids submitted by FAX or e-mail will not be accepted.

3. Completed First-tier Subcontractor Disclosure forms, if not submitted with the Bid, must be submitted no later than two (2) hours after timely submission of the Bid, in the same manner as required for submission of Bids.
4. Bids will be opened at the Port of Astoria Administrative Offices, 422 Gateway Avenue, Suite 100, Astoria, Oregon at the time and date specified in the Schedule.
5. Each Bid shall include the following:
  - a. Names and titles of principal contacts for project;
  - b. Company address/location(s) and other appropriate contact information;
  - c. A completed First-Tier Subcontractor Disclosure form, unless the Bidder elects to submit this Disclosure within the time as defined in the Schedule;
  - d. A statement identifying whether the bidder is a resident bidder, as defined in ORS 279A.120;
  - e. A description of business activities and experience that demonstrates:
    - 1) Familiarity and expertise with environmental permit compliance (USACE, DSL, DEQ, NMFS, etc.); and
    - 2) a minimum of ten (10) years prior experience in the marine construction and/or dredging business with specific experience working with public agencies;
  - f. A description of all applicable licenses held in the state of Oregon, including the number and expiration date;
  - g. A certification that the Bidder provides worker's compensation coverage for all its employees working in Oregon, or is an exempt employer under ORS chapter 656;
  - h. A certification that the Bidder will ensure responsibility for each subcontractor engaged to work on the project.
  - i. A certification that the Contractor has in place an employee drug-testing program that will be maintained throughout the term of this Agreement.
  - j. Contact information for at least three (3) companies for whom the Bidder has performed work;
  - k. A description of any litigation in last five (5) years pertaining to previous marine construction contracts, including how the matter was resolved.
6. Each Bid must be accompanied by a signed acknowledgement of any addenda to the Invitation to Bid. It is the sole responsibility of the bidder to learn of any addenda. Addenda information may be obtained from the Port's website at [www.portofastoria.com/Public\\_Notice.aspx](http://www.portofastoria.com/Public_Notice.aspx).
7. Each Bid must be accompanied by a bid bond in the form provided in this solicitation in the amount of ten (10) percent of the total amount of the Bid.



8. Each Bid must include completed and signed forms provided in this solicitation, including but not limited to a proposed lump-sum cost as provided on the required bid table.

The Port is not responsible for any errors in Bids.

Bidders may not alter Bids after the submittal deadline. No bidder may withdraw his/her bid after the time set for the opening thereof, unless the award of contract is delayed for a period exceeding sixty (60) days. If it is determined to be in the best interests of the Port, the Port reserves the right to request an extension of bid prices during the review process. Bids will remain in effect for sixty (60) days.

**Contract Award.** Once bids have been received, opened, and reviewed, staff will prepare a recommendation to be presented to the Board of Commissioners. Once the Board of Commissioners has formally awarded the contract an award letter will be sent as evidence of acceptance of the Bid. No other act of the Port shall constitute acceptance of the Bid.

The following forms are to be executed and delivered by the successful bidder to the Port within seven (7) days after the Notice of Intent to Award is published:

1. Contract – Executed by the successful bidder.
2. Separate Performance and Payment Bonds – Issued by a surety company licensed to do business within the State of Oregon and executed by the successful bidder for 100 percent of the bid amount
3. Liability and Property Damage Insurance – With the Port named as an additional insured on all policies.
4. Prevailing Wage Law / Lien for Labor, Materials, Taxes on Public Works – The contractor and each subcontractor shall complete or have on file an approved “Statement of Intent to Pay Prevailing Wages” form before payment will be made for work performed. An approved “Affidavit of Wages Paid” form must be filed upon completion of the project.

**BID BOND FORM**  
**FY 2024-25 PILE REPLACEMENT**  
**CASHIER'S CHECK**

Herewith find deposit in the form of a cashier's check in the amount of \$\_\_\_\_\_, which amount is not less than ten percent (10%) of the total bid.

Signature \_\_\_\_\_

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**BID BOND**

Name of Firm: \_\_\_\_\_

We, \_\_\_\_\_ as Principal, and \_\_\_\_\_, as Surety, are held and firmly bound unto the Port of Astoria, an Oregon Special District, in the penal sum of ten percent (10%) of the amount of Bid, for the payment of which we jointly and severally bind ourselves and our legal representatives and successors.

The conditions of the obligation are that if the Port of Astoria shall make timely award to the Principal according to the terms of the bid documents; and the Principal shall within ten (10) days after notice of the award, exclusive of the day of notice, enter into the contract with the Port of Astoria and furnish the contractor's performance and payment bonds with Surety satisfactory to the Port of Astoria, each in an amount equal to one hundred percent (100%) of the amount of the bid proposed, then this obligation shall be null and void. Otherwise, if the Principal fails to enter into the contract and furnish the contractor's bond within ten (10) days, after notice of the award, exclusive of the day of notice, the amount of the bid deposit shall be forfeited to the Port of Astoria; but in no event will the Surety's liability exceed this bond's face amount.

SIGNED AND SEALED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, YEAR \_\_\_\_\_

\_\_\_\_\_  
SURETY

\_\_\_\_\_  
PRINCIPAL

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

**FIRST-TIER SUBCONTRACTOR DISCLOSURE FORM  
FY 2024-25 PILE REPLACEMENT**

BID CLOSING: Date: \_\_\_\_\_ Time: \_\_\_\_\_

**Prime Contractor Name:** \_\_\_\_\_

This form must be submitted at the location specified in the Invitation to Bid on the advertised bid closing date within two (2) working hours after the advertised bid closing time.

List below the name of each subcontractor that will be furnishing labor or will be furnishing labor and materials and that is required to be disclosed, the category of work that the subcontractor will be performing and the dollar value of the subcontract. Enter "NONE" if there are no subcontractors that need to be disclosed. (ATTACH ADDITIONAL SHEETS IF NEEDED.)

NAME	DOLLAR VALUE	CATEGORY OF WORK
1 _____	\$ _____	_____
2 _____	\$ _____	_____
3 _____	\$ _____	_____

## BID & ACKNOWLEDGEMENT OF ADDENDA

To: Board of Commissioners  
Port of Astoria  
Astoria, Oregon

The undersigned hereby certifies that the location and details of the work outlined below and further delineated in Exhibit A have been personally examined for the Port of Astoria’s **West Basin Marina Pile Replacement** project and that he/she: i) has read and thoroughly understands the specifications and all attachments and conditions associated with the U.S. Army Corps of Engineers and Department of State Lands’ permits issued for the Port of Astoria’s FY 2024-25 West Basin Marina Pile Replacement Project referenced on page 4 of this Invitation to Bid; ii) acknowledges and agrees to the terms and conditions of all forms and requirements included in the bid documents; and iii) certifies that he/she has personally examined the contract governing the work included in this project and the method by which payment will be made for such work and hereby proposes to undertake and complete the work included in this project in accordance with said specifications, contract and schedule.

**Award will be based on the lowest bid from a responsive, responsible bidder.**

### Instructions regarding completion of Bid table:

- Show prices in legible figures (not words) written in ink or typed
- Where conflict occurs unit price shall prevail
- Bid shall be considered non-responsive and void if:
  - Figures are illegible
  - Minimum bid requirements are not met (where applicable)

Item #	Qty	Description	Unit Price	Total Price
1	1 LS	Mobilization	Lump Sum	\$
2	25	West Basin Marina – Remove Existing Piles and Furnish/Install New Piles (50 ft, 12” diameter, .375 thickness)		\$
<b>3 Grand Total (Add Items 1 &amp; 2 for total project cost)</b>				\$

The following Addendum/Addenda is/are hereby acknowledged:

Addendum No.	Date of Addendum/Addenda	Signed Acknowledgement
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_____	_____	_____
_____	_____	_____

Note: Failure to acknowledge addenda may render the bid non-responsive and therefore void. If no addenda, mark "none."

The undersigned hereby certifies that said person(s), firm, association or corporation has/have not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the project for which this Bid is submitted.

The undersigned declares that before preparing the bid, he or she read carefully the specifications and requirements for bidders; the bid is made with the full knowledge of the kind, quality and quantity of services and equipment to be furnished; and the bid is as stated on these pages. By signing below, the Contractor acknowledges and agrees to the terms and conditions of each of the forms and all requirements included in the bid documents.

_____	_____
Authorized Official (Signature)	Date

_____	_____
Printed Name of Authorized Official	Title of Authorized Official

_____	_____
Company Name	Telephone Number

_____	_____	_____
Address	City, State, Zip	E-mail

OR State Contractor's License #: \_\_\_\_\_

Federal I.D. #: \_\_\_\_\_

## CONTRACT

This Agreement is made by and between the Parties below and shall be effective upon the date of last signature.

PORT: Port of Astoria (“Port”)  
422 Gateway Avenue, Suite 100  
Astoria, OR 97103

CONTRACTOR: [Contractor Name] (“Contractor”)  
[Address]  
[City, State, Zip]

Tax Identification # (TIN): \_\_\_\_\_

Contractor License #: \_\_\_\_\_

PROJECT: FY 2024-25 West Basin Pile Replacement

### ARTICLE 1 – THE WORK

The following components shall comprise the work (“Work”), which is further delineated in Exhibit A and Exhibit B attached hereto and incorporated herein by this reference:

- West Basin Marina Pile Replacement

Contractor shall diligently perform the Work in an expeditious manner consistent with the Contract Documents. Contractor shall provide all labor, materials, equipment and services necessary to complete the Work in full accord with and reasonably inferable from the Contract Documents.

Work shall begin (“Commencement”) no earlier than October 1, 2024, and shall be completed no later than November 30, 2024.

Whereas West Marina sub-surface geological conditions are likely to prevent the full driving of some of the piles, sections of piling that are cut off due to these conditions are to be delivered to the Port.

## **ARTICLE 2 – PRICE**

As full compensation for performance by Contractor of the Work, Port shall pay Contractor a lump sum of \$\_\_\_\_\_ for mobilization and an additional \$\_\_\_\_\_ per pile for all piles installed within the designated areas of the West Basin Marina. This price shall be effective through February 28, 2025.

## **ARTICLE 3 – EXHIBITS AND ENCLOSURES**

The following exhibits and enclosures are included in this Agreement and incorporated herein by this reference:

1. Attachment 1 – Contractor Certification Statement
2. Exhibit A – The Work

## **ARTICLE 4 – ETHICS**

In the performance of this Agreement each party shall:

- (a) avoid conflicts of interest;
- (b) promptly disclose to the other party any conflicts that arise;
- (c) warrant that it has not and shall not pay nor receive any contingent fees or gratuities to or from the other party, including its agents, officers, employees, subcontractors, suppliers, or others to secure preferential treatment.

## **ARTICLE 5 – CONTRACTOR’S RESPONSIBILITIES**

5.1 Contractor shall be responsible for supervision and coordination of the Work, including the means, methods, techniques, sequences, and procedures utilized, unless the Contract Documents give other specific instructions.

- 5.1.1 Except for permits and fees that are the responsibility of the Port pursuant to this Agreement, Contractor shall obtain and pay for all necessary permits, licenses and renewals pertaining to the Work.
- 5.1.2 Contractor shall pay any applicable taxes for the Work provided by Contractor.
- 5.1.3 Port may elect to perform work at the worksite directly or by others retained by the Port. The Parties shall coordinate the activities of all forces at the Worksite and shall agree upon fair and reasonable schedules and operational procedures for Worksite activities. Port shall

require each separate contractor to cooperate with Contractor and to assist with the coordination of activities and the review of schedules and operations. Contract price and time may be equitably adjusted in accordance with this Agreement for changes made necessary by the coordination of activities and the schedule shall be revised accordingly.

5.1.4 Before commencing the Work, Contractor shall examine and compare any drawings and specifications with information furnished in the Contract Documents; relevant field measurements made by Contractor; and any visible conditions at the Worksite affecting the Work.

5.1.5 Contractor shall comply with all laws at its own costs. Contractor shall be liable to Port for all loss, cost or expense, attributable to any acts or omissions by Contractor, its employees, subcontractors, suppliers, and agents for failure to comply with laws, including fines, penalties, or corrective measures.

5.1.6 Warranty

5.1.6.1 Contractor warrants that all materials and equipment shall be new unless otherwise specified, of good quality, in conformance with the Contract Documents, and free from defective workmanship and materials. Contractor further warrants that the Work will be free from material defects not intrinsic in the design or materials required in the Contract Documents. Contractor's warranty does not include remedies for defects or damages caused by normal wear and tear during normal usage, use for a purpose for which the Project was not intended, improper or insufficient maintenance, modifications performed by the Port or other retained by the Port, or abuse.

5.1.6.2 If, prior to the Date of Substantial Completion and within one year after the date of Substantial Completion of the Work, any portion of the Work is found to be not in conformance with the Contract Documents ("Defective Work"), Port shall promptly notify Contractor in writing. Unless Port provides written acceptance of the condition, Contractor shall promptly correct the Defective Work at its own cost and time and bear the expense of additional services required for correction of any Defective Work for which it is responsible.

5.1.7 Contractor shall have overall responsibility for safety precautions and programs in the performance of the Work, except that Contractor's subcontractors shall also be responsible for the safety of persons or property in the performance of their work, and for compliance with the provisions of laws. Contractor shall prevent against injury, loss, or damage to persons or property by taking reasonable steps to protect its employees and other persons at the Worksite, materials and equipment stored at on-site or off-site locations for use in the Work; and property located at the Worksite and adjacent to Work areas, whether or not the property is part of the Work.



- 5.1.8 A Hazardous Material is any substance or material identified now or in the future as hazardous under any federal, state or local law or regulation, or any other substance or material which may be considered hazardous or otherwise subject to statutory or regulatory requirement governing handling, disposal, or clean-up. Contractor shall not be obligated to commence or continue work until any Hazardous Material discovered at the Worksite has been removed or rendered or determined to be harmless by Port as certified by an independent testing laboratory and approved by the appropriate government agency. If Contractor incurs additional costs or is delayed due to the presence or remediation of Hazardous Material, Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Time.
- 5.1.9 Contractor shall be responsible for the proper delivery, handling, application, storage, removal and disposal of all materials and substances brought to the Worksite by Contractor in accordance with the Contract Documents and used or consumed in the performance of the Work.
- 5.1.10 Contractor shall submit to Port for review and approval all shop drawings, samples, product data and similar submittals required by the Contract Documents. Contractor shall be responsible to Port for the accuracy and conformity of its submittals to the Contract Documents. Contractor shall prepare and deliver its submittals to Port in a manner consistent with the schedule of the Work and in such time and sequence so as not to delay the performance of the Work or the work of Port and others retained by Port. Contractor submittals shall identify in writing for each submittal all changes, deviations, or substitutions from the requirements of the Contract Documents. The approval of any Contractor submittal shall not be deemed to authorize deviations, substitutions, or changes in the requirement so the Contract Documents unless a change order or interim directive specifically authorizes such deviations, substitution or change. To the extent a change, deviation, or substitution causes an impact to the contract price or contract time, such approval shall be memorialized in a change order no later than seven (7) days following approval by Port. Port shall not make any change, deviation, or substitution through the submittal process without specifically identifying and authorizing such deviation to Contractor. Port shall be responsible for review and approval of submittals with reasonable promptness to avoid causing delay. Contractor shall perform all work strictly in accordance with approved submittals. Port's approval does not relieve Contractor from responsibility for Defective Work resulting from errors or omissions of any kind on the approved drawings.
- 5.1.11 If a condition encountered at the Worksite is (a) a subsurface or other physical condition which is materially different from those indicated in the Contract Documents; or (b) an unusual and unknown physical condition which is materially different from conditions ordinarily encountered and generally recognized as inherent in the Work provided for in the Contract Documents, Contractor shall stop work and give prompt written notice of the condition to Port. Port shall investigate and then issue an Interim Directive specifying the extent to which Port agrees that a concealed or unknown condition exists and directing how Contractor is to proceed. Contractor shall not be required to perform any work relating to

the condition without the written mutual agreement of the Parties. Any change in the Contract Price or Contract Time as a result of the unknown condition shall be made by Change Order.

- 5.1.12 Contractor shall, as necessary, coordinate the various parts of the Work with the work of Port and others retained by Port.
- 5.1.13 Contractor shall regularly remove debris and waste materials at the Worksite resulting from the Work. Prior to discontinuing work in an area, Contractor shall clean the area and remove all rubbish and its construction equipment, tools, machinery, waste and surplus materials. Contractor shall minimize and confine dust, waste and debris resulting from work activities. At the completion of the Work, Contractor shall remove from the Worksite all construction equipment, tools, surplus materials, waste materials, and debris.

## **ARTICLE 6 – PORT’S RESPONSIBILITIES**

6.1 Any information or services to be provided by Port shall be provided in a timely manner

6.1.1 At the written request of Contractor, Port shall provide Contractor with evidence of project financing. Evidence of such financing shall be a condition precedent to Contractor’s commencing or continuing the Work. Contractor shall be notified prior to any material change in Project financing.

6.1.2 To the extent Port has obtained or is required to obtain the following Worksite information, then Port shall provide Contractor with the following:

6.1.2.1 Information describing the physical characteristics of the Worksite, including surveys, Worksite evaluations, legal descriptions, data or drawings depicting existing conditions, subsurface, and environmental studies, reports and investigations;

6.1.2.2 Tests, inspections and other reports dealing with environmental matters, hazardous material, and other existing conditions, including structural, mechanical and chemical tests required by the Contract Documents or by law;

6.1.2.3 The limits of Pollution Liability Insurance covering the Worksite held by Port; and any other information or services requested in writing by Contractor which are required for Contractor’s performance of the Work and under Port’s control.

6.1.3 **MECHANICS AND CONSTRUCTION LIEN INFORMATION** - Within seven (7) days after receiving Contractor’s written request, Port shall provide Contractor with the information necessary to give notice of or enforce mechanics lien rights and, where applicable, stop notices. This information shall include Port’s interest in the real property on which the Project is located and the record legal title.

6.1.4 PERMITS, FEES AND APPROVALS – Except for those required of Contractor pursuant to this Agreement, Port shall secure and pay for all other permits, approvals, easements, assessments, and fees required for completion of the Work.

6.1.5 DOCUMENTS IN ELECTRONIC FORM – If Port requires that Port, Design Professional and Contractor exchange documents and data in electronic or digital form, before any such exchange, Port, Design Professional, and Contractor shall agree on and follow a written protocol governing all exchanges.

## ARTICLE 7 – SUBCONTRACTS

Contractor agrees to bind every subcontractor and supplier (and require every subcontractor to so bind its subcontractors and suppliers) to all the provisions of this Agreement and the Contract Documents as they apply to the subcontractor’s and supplier’s portions of the Work.

## ARTICLE 8 – CONTRACT TIME

8.1 TERM. The Agreement shall take effect on the date on page one, unless otherwise set forth below:

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8.2 TIME. Substantial Completion of all Work shall be achieved in **thirty (30) Days from the Date of Commencement. Unless otherwise specified in the Certificate of Substantial Completion, Final Completion shall occur within forty-five (45) days after the date of Substantial Completion**, subject to adjustments as provided for in the Contract Documents. Time is of the essence for obligations of the Contract Documents.

8.3 COMPLETION. The Agreement shall expire upon Final Completion of all work as described in Section 13.7, or upon termination as provided in Article 18 below.

## ARTICLE 9 – SCHEDULE OF THE WORK

9.1 SCHEDULE OF THE WORK – Before submitting its first application for payment, Contractor shall submit to Port a Schedule of the Work showing the dates on which Contractor plans to begin and to complete various parts of the Work, including dates on which information and approvals are required from Port.

9.1.1 Port may determine the sequence in which the Work shall be performed, provided it does not unreasonably interfere with the Schedule of the Work. Port may require Contractor to make reasonable changes in the sequence at any time during the performance of the Work in order to facilitate the performance of work by Port or others. If Contractor subsequently incurs costs or is delayed, Contractor may seek equitable adjustment in the Contract Price and Contract Time under this Agreement.

## **ARTICLE 10 – DELAYS AND EXTENSION OF TIME**

10.1 If Contractor is delayed at any time in the commencement or progress of the Work by any cause beyond the control of Contractor, Contractor shall be entitled to an equitable extension of the Contract Time. Examples of causes beyond the control of Contractor include, but are not limited to the following: (a) acts or omissions of Port, Design Professional, or others; (b) changes in the Work or the sequencing of the Work ordered by Port or arising from an Port decision that impacts Contract Time; (c) encountering hazardous materials, or concealed and unknown conditions; (d) delay authorized by Port pending dispute resolution or suspension by Port; (e) labor disputes not involving Contractor; (f) general labor disputes impacting the Project but not specifically related to the Worksite; (g) fire; (h) terrorism; (i) adverse weather conditions not reasonably anticipated. Contractor shall process any requests for equitable extensions of Contract Time in accordance with the provisions of Article 12.

10.2 In addition, if Contractor incurs additional costs as a result of a delay that is caused by items (a) through (d) in Section 10.1, Contractor may be entitled to an equitable adjustment in the Contract Price subject to Article 12.

10.3 In the event delays to the Work are encountered for any reason, Contractor shall provide prompt written notice to Port of the cause of such delays after Contractor first recognizes the delay. The Parties each agree to undertake reasonable steps to mitigate the effect of such delays.

10.4 NOTICE OF DELAY CLAIMS – If Contractor requests an equitable extension of the Contract Time or an equitable adjustment in the Contract Price as a result of a delay, Contractor shall give Port written notice of the claim. If Contractor causes delay in the completion of the Work, Port shall be entitled to recover its additional costs, subject to Article 17.

## **ARTICLE 11 – ALLOWANCES**

11.1 All allowances stated in the Contract Documents shall be included in the Contract Price. While Port may direct the amounts of, and particular suppliers or subcontractors for, specific allowance items, if Contractor reasonably objects to a supplier or subcontractor, it shall be not required to contract with them. Port shall select allowance items in a timely manner so as not to delay the Work. Allowances shall include the costs of materials and equipment delivered to the Worksite less applicable trade discounts and including requisite taxes, unloading and handling at the Worksite, and labor and installation, unless specifically stated otherwise. Contractor's overhead and profit for the allowances shall be included in the Contract Price, but no in the allowances. The Contract Price shall be adjusted by Change Order to reflect the actual costs when they are greater than or less than the allowances.

## **ARTICLE 12 – CHANGES**

12.1 Contractor may request, or Port may order changes in the Work or the timing or sequencing of performance of the Work that impacts the Contract Price or the Contract Time. All such changes in the Work that affect the Contract Time or Contract Price shall be formalized in a Change Order.

12.1 The Parties shall negotiate in good faith an appropriate adjustment to the Contract Price or the Contract Time and shall conclude these negotiations as expeditiously as possible. Acceptance of the Change Order and any adjustment in the Contract Price or Contract Time shall not be unreasonably withheld. Contractor shall not be obligated to perform changes in the Work without a Change Order or Interim Directive.

### 12.3 INTERIM DIRECTIVES

12.3.1 Port may issue a written Interim Directive directing a change in the Work before agreeing on an adjustment to the Contract Price of the Contract Time, or directing Contractor to perform Work that Port believes is not a change.

12.3.2 The Parties shall negotiate expeditiously and in good faith for appropriate adjustments, as applicable, to the Contract Price or the Contract Time arising out of an Interim Directive. As the directed work is performed, Contractor shall submit its costs for such work with its application for payment. If there is a dispute as to the costs of the Work, Port shall pay Contractor fifty percent (50%) of its actual (incurred or committed) cost to perform the work. In such event, the Parties reserve their rights as to the disputed amount, subject to the requirements of Article 19.

12.3.3 When Port and Contractor agree upon the adjustment in the Contract Price or the Contract Time, for a change in the Work directed by an Interim Directed Change, such agreement shall be the subject of a Change Order.

### 12.4 COST OR CREDIT DETERMINATION

12.4.1 An increase or decrease in the Contract Price or the Contract Time resulting from a change in the Work shall be determined by one or more the following methods:

- (a) Unit prices set forth in this Agreement or as subsequently agreed;
- (b) A mutually accepted, itemized lump sum; or
- (c) Costs calculated on a basis agreed upon by Port and Contractor plus 10% overhead and 5% profit.

12.4.1.1 If a cost or credit determination cannot be agreed to above, the cost of the change in the Work shall be determined by the reasonable actual expense incurred or savings realized in the performance of the Work resulting from the change. If there is a net increase in the Contract Price, Contractor's overhead and profit shall be adjusted accordingly. In case of a net decrease in the Contract Price, Contractor's overhead and profit shall not be adjusted unless ten percent (10%) or more of the Project is deleted. Contractor shall maintain a documented itemized accounting evidencing the expenses and savings.

12.5 UNIT PRICES – If unit prices are included in the Contract Documents or are subsequently agreed to by the Parties, but the character or quantity of such unit price items as originally contemplated is so different in a proposed Change Order that the original unit prices will cause substantial inequity to Port or Contractor, such unit prices shall be equitably adjusted.

### **ARTICLE 13 – PAYMENT**

13.1 SCHEDULE OF VALUES – Within twenty-one (21) days from the date of execution of this Agreement, Contractor shall prepare and submit to Port a schedule of values apportioned to the various division or phases of the Work. Each line item contained in the schedule of values shall be assigned a monetary price such that the total of all items shall equal the Contract Price.

13.2 PROGRESS PAYMENTS – Contractor shall submit to Port a monthly application for payment no later than the 5<sup>th</sup> day of the calendar month for the preceding calendar month. Contractor’s applications for payment shall be itemized and supported by Contractor’s schedule of values based on a percentage of completion and shall include any other substantiating data as required by this Agreement. Payment applications shall include payment requests on account of properly authorized Change Orders or Interim Directives. Port shall pay the amount due on any application, less any amounts as set forth below, no later than fifteen (15) days after Contractor has submitted a complete and accurate payment application. Port may deduct, from any progress payment, such amounts as may be retained pursuant to Section 13.3.

13.3 CERTIFIED PAYROLL. The Contractor must submit Certified Payroll forms WH-38 in accordance with ORS 279C.845 to the Port of Astoria Operations Department. The Contractor shall keep accurate payroll records for three (3) years from the date of project completion. Contractor and all subcontractors shall, within ten (10) business days after receiving a written request, file a certified copy of the payroll records with the Port. Port personnel may conduct site wage audits of contractor/subcontractor employees.

13.4 RETAINAGE – From each progress payment made before Substantial Completion, Port may retain five percent (5%) of the amount otherwise due after deduction of any amounts as provided in Section 13.4. Retained amounts shall be paid in full upon Substantial Completion as provided in subparagraph 13.6.1 of this Agreement.

13.5 ADJUSTMENT OF CONTRACTOR’S PAYMENT APPLICATION – Port may adjust or reject a payment application or nullify a previously approved payment application, in whole or in part, as may reasonably be necessary to protect Port from loss or damage based upon the following, to the extent that Contractor is responsible for such under this Agreement:

13.5.1 Contractor’s repeated failure to perform the Work as required by the Contract Documents;

13.5.2 Loss or damage to Port or to others retained by Port to whom Port must be liable;

13.5.3 Contractor's failure to properly pay Subcontractors or Suppliers following receipt of payment from Port for that portion of the work or supplies, provided that Port is making payments to Contractor in accordance with the terms of this Agreement;

13.5.4 Rejected or Defective Work not corrected in a timely fashion;

13.5.5 Reasonable evidence of delay in performance of the Work such that the Work will not be completed within the Contract Time.

13.5.6 Reasonable evidence demonstrating that the unpaid balance of the Contract Price is insufficient to fund the cost to complete the Work; and

13.5.7 Uninsured third-party claims involving Contractor or reasonable evidence demonstrating that third-party claims are likely to be filed unless and until Contractor furnishes Port with adequate security in the form of a surety bond, letter of credit, or other collateral or commitment which are sufficient to discharge such claims if established.

No later than seven (7) days after receipt of an application for payment, Port shall give written notice to Contractor disapproving or nullifying it or a portion of it, specifying the reasons for the disapproval or nullifications. When the above reasons for disapproving or nullifying an application for payment are removed, payment shall be made for the amounts previously withheld.

13.6 SUBSTANTIAL COMPLETION – When Substantial Completion of the Work or a designated portion thereof is achieved, Contractor shall prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, and the respective responsibilities of Port and Contractor for interim items such as security, maintenance, utilities, insurance and damage to the Work, and fixing the time for completion of all items on the list accompanying the Certificate. The Certificate of Substantial Completion shall be submitted by Contractor to Port for written acceptance of responsibilities assigned in the Certificate. Unless otherwise provided in the Certificate of Substantial Completion, warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or a designated portion.

13.6.1 Upon receipt of the Certificate of Substantial Completion, the Port shall inspect the Work, and, if indicated, shall issue a written Notice of Substantial Completion with an itemized punch list of tasks or services to be completed before Final Completion. Upon acceptance of the Certificate of Substantial Completion, the Port shall pay to Contractor the remaining retainage held by Port for the work described in the Certificate of Substantial Completion less a sum equal to one hundred and fifty percent (150%) of the estimated cost of completing or correcting remaining items on that part of the Work, as agreed to by Port and Contractor as necessary to achieve final completion. Uncompleted items shall be completed by Contractor in a mutually agreed timeframe. Port shall pay Contractor monthly the amount retained for unfinished items as each item is completed.

13.7 FINAL COMPLETION – Final Completion shall occur when, in the Port's sole determination, Contractor has materially complied with all terms and conditions of this Agreement, including completion of the

itemized punch list described in subparagraph 13.6.1, if any. Upon making this determination the Port shall issue a written Notice of Final Acceptance to Contractor.

When Final Completion has been achieved, Contractor shall prepare for Port's acceptance a final application for payment stating the to the best of Contractor's knowledge, and based on third party bathymetry surveys and Port inspections, the Work has reached final completion in accordance with the Contract Documents.

13.7.1 Final payment of the balance of the Contract Price shall be made to Contractor within fifteen (15) days after Contractor has submitted to Port a complete and accurate application for final payment and the following submissions, if applicable:

- (a) An affidavit declaring any indebtedness connected with the Work to have been paid, satisfied, or to be paid with the proceeds of final payment, so as not to encumber Port's property;
- (b) As-built drawings, manuals, copies of warranties, and all other close-out documents required by the Contract Documents;
- (c) Release of any liens, conditioned on final payment being received;
- (d) Consent of any surety; and
- (e) Any outstanding known and unreported accidents or injuries experienced by Contractor or its subcontractors at the Worksite.

#### **ARTICLE 14 – INDEMNITY**

14.1 Contractor 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, attorneys' fees and expenses incurred in connection therewith, or whatsoever kind or nature, arising out of, or in connection with, or incident to, the performance of services by Contractor pursuant to this Agreement.

14.1.1 In the event that any suit based on such a claim, demand, loss, damage, cost or cause of action is brought against the Contractor, the Port retains the right to participate in the suit.

14.1.2 This obligation shall apply to any claim made against the Port by an employee of Contractor or subcontractor or agent of the Contractor, even if Contractor is thus otherwise immune from liability, except to the extent that such liability arises from the sole negligence of the Port.

14.2 Contractor assumes all responsibility for protection against loss of all tools, equipment, materials and supplies used for the completion of the Work.

14.3 **NO LIMITATION ON LIABILITY** – In any and all claims against the Indemnitees by any employee of Contractor, anyone directly or indirectly employed by Contractor or anyone for whose acts Contractor may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor under Workers' Compensation acts, disability benefit acts, or other employment benefit acts.



## ARTICLE 15 – INSURANCE

15.1 Before commencing the Work and as a condition precedent to payment, Contractor shall procure and maintain in force Workers' Compensation Insurance, Employers' Liability Insurance, Business Automobile Liability Insurance, Commercial General Liability Insurance (CGL) and Pollution Liability Insurance. The CGL policy shall include coverage for liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, contractual liability, and broad form property damage. Contractor shall maintain completed operations liability insurance for one year after Substantial Completion or as required by the Contract Documents, whichever is longer. If requested, Contractor shall provide Port with certificates of the insurance coverage required. Contractor's Employers' Liability, Business Automobile Liability, CGL and Pollution Liability policies, as required in this Article, shall be written with at last the following limits of liability

15.1.1 Employer's Liability Insurance:

- (a) \$500,000 bodily injury per accident;
- (b) \$500,000 bodily injury by disease policy limit;
- (c) \$500,000 bodily injury by disease per employee.

15.1.2 Business Automobile Liability Insurance - \$1,000,000 per accident

15.1.3 Pollution Liability Insurance – \$1,000,000 each loss and annual aggregate

15.1.4 CGL Insurance:

- (a) \$1,000,000 per occurrence;
- (b) \$2,000,000 general aggregate;
- (c) \$2,000,000 products/completed operations aggregate;
- (d) \$1,000,000 personal and advertising injury limit.

15.2 Employer's Liability, Business Automobile Liability and CGL coverage required in the subsection above may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by excess or umbrella liability policies. Contractors shall maintain in effect all insurance coverage required in Section 15.1 with insurance companies lawfully authorized to do business in the State of Oregon. If Contractor fails to obtain or maintain any insurance coverage required under the Agreement, Port may purchase such coverage and charge the expense to Contractor or terminate this Agreement. To the extent commercially available to Contractor from its current insurance company, insurance policies required under Section 15.1 shall contain a provision that the insurance company or its designee must give Port written notice transmitted in paper or electronic format:

- (a) 30 days before coverage is nonrenewed by the insurance company and;
- (b) Within 10 business days after cancelation of coverage by the insurance company.

Prior to commencing the Work and upon renewal or replacement of the insurance policies, Contractor shall furnish Port with certificates of insurance until one year after Substantial Completion or longer if required

by the Contract Documents. In addition, if any insurance policy required under Section 15.1 is not to be immediately replaced without lapse in coverage when it expires, exhausts its limits, or is to be canceled, Contractor shall give Port prompt written notice upon actual or constructive knowledge of such condition.

15.3 ADDITIONAL LIABILITY COVERAGE – Contractor shall maintain the following additional liability coverage:

15.3.1 ADDITIONAL INSURED – Port shall be named as an additional insured on Contractor’s CGL insurance specified, for on-going operations and completed operations excess/umbrella liability, commercial automobile liability and any required pollution liability, but only with respect to liability for bodily injury, property damage, or personal and advertising injury to the extent caused by the negligent acts or omissions of Contractor or those acting on Contractor’s behalf, in the performance of Contractor’s Work for Port at the Worksite. The insurance of the Contractor and its Subcontractors (both primary and excess) shall be primary to any insurance available to the additional insureds. Any insurance available to the additional insureds shall be excess and non-contributory.

## **ARTICLE 16 – BONDS**

16.1 Performance and payment bonds are required of Contractor. Such bonds shall be issued by a surety admitted in the State of Oregon and must be acceptable to Port. Port’s acceptance shall not be withheld without reasonable cause. Before Contractor commences with performance of the Agreement, it will file with the Port of Astoria a Contract Performance Bond and a Payment Bond, in the forms prescribed by the Port of Astoria, in the full amount of the contract price. The bonds shall comply with the laws of the State of Oregon.

## **ARTICLE 17 -- COMPLIANCE WITH LAWS**

Both parties agree to comply, and assist one another in complying with, all applicable federal, state and local laws and regulations, including, but not limited to, the following:

17.1 PAYMENT OBLIGATIONS; DRUG TESTING PROGRAM -- Pursuant to ORS 279C.505(1), the Contractor shall:

- (a) Make payment promptly, as due, to all persons supplying to the contractor labor or material for the performance of the work provided for in the contract.
- (b) Pay all contributions or amounts due the Industrial Accident Fund from the contractor or subcontractor incurred in the performance of the contract.
- (c) Not permit any lien or claim to be filed or prosecuted against the Port or any other public body on account of any labor or material furnished.
- (c) Pay to the Department of Revenue all sums withheld from employees under ORS 316.167.
- (d) Demonstrate to the satisfaction of the Port that an employee drug testing program is in place.

17.2 PROMPT PAYMENT -- Pursuant to ORS 279C.515, if the Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the contractor or a subcontractor by any person in connection with the public improvement contract as the claim becomes due, the Port may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due the Contractor by reason of this Agreement.

17.2.1 If the Contractor or a first-tier subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the project within 30 days after receipt of payment from the contracting agency or a contractor, the contractor or first-tier subcontractor shall owe the person the amount due plus interest charges commencing at the end of the 10-day period that payment is due under ORS 279C.580(4) and ending upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest charged to the contractor or first-tier subcontractor on the amount due shall equal three times the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve district that includes Oregon on the date that is 30 days after the date when payment was received from the contracting agency or from the Contractor, but the rate of interest may not exceed 30 percent. The amount of interest may not be waived.

17.2.2 If the Contractor or a subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the public improvement contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580.

17.3 MEDICAL PAYMENTS -- Pursuant to ORS 279C.530, the Contractor shall promptly, as due, make payment to any person, co-partnership, association or corporation furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of the contractor, of all sums that the contractor agrees to pay for the services and all moneys and sums that the contractor collected or deducted from the wages of employees under any law, contract or agreement for the purpose of providing or paying for the services.

17.4 WORKER'S COMPENSATION -- Pursuant to ORS 279C.530(2), the Contractor attests that it is either a subject employer required to comply with ORS 656.017 (worker's compensation), or an employer that is exempt under ORS 656.126. If Contractor employs subject Workers who provide Work under this Agreement in the State of Oregon, Contractor shall comply with ORS 656.017 and provide the required Worker's Compensation coverage, unless such employers are exempt under ORS 656.126. Contractor shall ensure that each of its subcontractors complies with these requirements.

17.5 HOURS OF WORK -- Pursuant to ORS 279C.520, Contractor shall ensure that no person is employed for more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency or when the public policy absolutely requires it, and in such cases, except in cases of contracts for personal services as defined in ORS 279C.100, the employee shall be paid at least time and a half pay:

(a)(A) For all overtime in excess of eight hours in any one day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; or

(B) For all overtime in excess of 10 hours in any one day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and

(b) For all work performed on Saturday and on any legal holiday specified in ORS 279C.540.

Each employer performing work under this Agreement must give written notice to employees who work on the project of the number of hours per day and days per week that the employees may be required to work. Such notice must be given either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees.

17.6 PREVAILING WAGE -- Pursuant to ORS 279C.830(1), the Oregon prevailing wage in effect at the time the work under this Agreement was first advertised shall be paid to workers in each trade or occupation required in the performance of this contract either by the Contractor, subcontractor, or other person doing or contracting to do the whole or any part of the work contemplated by this Agreement. A list of the applicable prevailing wages can be referenced by selecting "Prevailing Wage Publications" on the Oregon BOLI website, [www.oregon.gov/BOLI/WHD/PWR/W\\_PWR\\_Contracting.shtml](http://www.oregon.gov/BOLI/WHD/PWR/W_PWR_Contracting.shtml). The posted rates are incorporated herein by this reference. Each worker shall be paid not less than the specified minimum hourly rate of wage. The Contractor shall ensure that each subcontractor agreement complies with these requirements.

17.7 PUBLIC WORKS BOND -- Pursuant to ORS 279C.830(3), the Contractor and every subcontractor shall have a public works bond filed with the Construction Contractors Board before starting work on the project, unless exempt under ORS 279C.836 (7) or (8).

17.8 PREVAILING WAGE CERTIFICATION -- Pursuant to ORS 279C.845, by the fifth business day of the month following performance of work under this Agreement, the Contractor or subcontractor, as appropriate, shall deliver or mail to the Port, written, certified statements, on a form prescribed by the BOLI Commissioner, certifying: (a) The hourly rate of wage paid each worker whom the contractor or the subcontractor has employed upon the public works; and (b) That no worker employed upon the public works has been paid less than the prevailing rate of wage or less than the minimum hourly rate of wage specified in the contract.

17.8.1 The certified statements shall set out accurately and completely the payroll records for the prior week, including the name and address of each worker, the worker's correct classification, rate of pay, daily and weekly number of hours worked, deductions made and actual wages paid.

17.8.2 The certified statement shall be verified by the oath of the Contractor or the contractor's surety, or subcontractor or the subcontractor's surety, that the Contractor or subcontractor has read the certified statement and knows the contents thereof and that the same is true to the Contractor's or subcontractor's knowledge.

17.9 RETAINAGE WHEN CERTIFICATION NOT FILED -- Pursuant to ORS 279C.845(8), and notwithstanding and in addition to any other rights to retainage under this Agreement, the Port shall retain 25 percent of any amount earned by the Contractor under this Agreement until the Contractor has filed with the Port the certified statements as required under Section 17.8 of this Agreement. The Port shall pay the Contractor the amount retained under this Section within 14 days after the Contractor files the certified statements as required, regardless of whether a subcontractor has failed to file certified statements as required by Section 17.8. The Port has no obligation to verify the truth of the contents of certified statements filed by the contractor under Section 17.8.

17.9.1 The Contractor shall retain 25 percent of any amount earned by a first-tier subcontractor on the project until the subcontractor has filed with the Port certified statements as required by this Section. The Contractor shall verify that the first-tier subcontractor has filed the certified statements before the Contractor may pay the subcontractor any amount retained under this subsection. The Contractor shall pay the first-tier subcontractor the amount retained under this subsection within 14 days after the subcontractor files the certified statements as required by this section. Neither the Port nor the Contractor is required to verify the truth of the contents of certified statements filed by a first-tier subcontractor under Section 17.8.

17.10 OTHER LAWS -- Without limiting the generality of the foregoing, Contractor expressly agrees to comply with the following laws, regulations and executive orders to the extent they are applicable to the Agreement: (i) Titles VI and VII of the Civil Rights Act of 1964, as amended; (ii) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Americans with Disabilities Act of 1990, as amended; (iv) Executive Order 11246, as amended; (v) the Health Insurance Portability and Accountability Act of 1996; (vi) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (vii) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; (viii) ORS Chapter 659, as amended; (ix) all regulations and administrative rules established pursuant to the foregoing laws; and (x) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Agreement and required by law to be so incorporated.

## **ARTICLE 18 – NOTICE TO CURE AND TERMINATION**

18.1 NOTICE TO CURE A DEFAULT – if Contractor persistently fails to supply enough qualified workers, proper materials, or equipment to maintain the approved Schedule of the Work or fails to make prompt payment to its workers, Subcontractors, or Suppliers, disregards law or orders of any public authority having jurisdiction, or is otherwise guilty of a material breach of a provision of this Agreement, Contractor may be deemed in default. If Contractor fails to commence and to continue satisfactory correction of such default with diligence and promptness within seven (7) days after written notification, then Port shall give Contractor a second written notice to correct the default within a three (3) business day period. If Contractor fails to promptly commence and continue satisfactory correction of the default following receipt of such second notice, Port, without prejudice to any other rights or remedies, shall have the right to take reasonable steps it deems necessary to correct deficiencies and charge the cost to Contractor, who shall be liable for such payments including reasonable overhead, profit, and attorneys' fees.

18.2 TERMINATION BY PORT – Upon expiration of the second notice for default period pursuant to Section 18.1, Port may terminate this Agreement immediately by written notice. Termination for default is in addition to any other remedies available to Port. If Port's costs arising out of Contractor's failure to cure, including the costs of completing the Work and reasonable attorneys' fees, exceed the unpaid Contract Price, Contractor shall be liable to Port for such excess costs. If Port's costs are less than the unpaid Contract Price, Port shall pay the difference to Contractor. If Port exercises its rights under this section, upon the request of Contractor, Port shall furnish to Contractor a detailed accounting of the costs incurred by Port.

18.2.1 Port shall make reasonable efforts to mitigate damages arising from Contractor default and shall promptly invoice Contractor for all amounts due.

18.3 TERMINATION BY CONTRACTOR – Seven (7) days after Port’s receipt of written notice from Contractor, Contractor may terminate this Agreement if the Work has been stopped for a thirty (30) day period through no fault of Contractor including but not limited to court or other governmental order, declaration of a national emergency or other governmental act during which, through no act or fault of Contractor, materials are not available.

## **ARTICLE 19 – DISPUTE MITIGATION AND RESOLUTION**

19.1 CLAIMS FOR ADDITIONAL COST OR TIME – Except as provided in Sections 10.3 and 10.4 for any claim for an increase in the Contract Price or the Contract Time, Contractor shall give Port written notice of the claim within fourteen (14) days after the occurrence giving rise to the claim or within fourteen (14) days after Contractor first recognizes the condition giving rise to the claim, whichever is later. Except in an emergency, notice shall be given before beginning the Work. Any change in the Contract Price or the Contract Time resulting from such claim shall be authorized by Change Order.

19.2 WORKING CONTINUANCE AND PAYMENT – Contractor shall continue the Work and maintain the Schedule of the Work during any dispute resolution proceedings. If Contractor continues to perform, Port shall continue to make payments in accordance with the Agreement.

19.3 DIRECT SETTLEMENT DISCUSSIONS – If a dispute arises out of or relates to this Agreement or its breach, the parties shall endeavor to settle the dispute through direct discussions. Within five (5) business days, the Parties’ representatives, who shall possess the necessary authority to resolve such matter and who shall record the date of first discussions shall conduct direct discussions and make a good faith effort to resolve such dispute.

19.4 MEDIATION – Disputes between Port and Contractor not resolved by direct discussion shall be submitted to mediation pursuant to the Construction Industry Mediation Rules of the American Arbitration Association (AAA). The Parties shall select the mediator within fifteen (15) days of the request for mediation. Engaging in mediation is a condition precedent to any form of binding dispute resolution.

19.5 BINDING DISPUTE RESOLUTION – If neither direct discussions nor mediation successfully resolves the dispute, the Parties shall submit the matter to the binding dispute resolution procedure selected below:

- ARBITRATION – The Parties choose binding arbitration decided by arbitrator in accordance with the Construction Industry Arbitration Rules of the AAA then in effect. Arbitration will be used for any claim or dispute related to this Agreement. Each party waives its right to be heard in a court of law, with or without a jury. This agreement to arbitrate shall be specifically enforceable under the prevailing arbitration law. An arbitrator’s award shall be final and binding upon the Parties, and judgment may be entered upon it in any court having jurisdiction.

- LITIGATION – Litigation in either the State of Oregon or Federal Court having jurisdiction of the matter in the location of the Project.

If indicated, then litigation is the default and not arbitration.

19.5.1 PREVAILING PARTY FEES – The prevailing party in any action to interpret or enforce the Agreement shall be entitled to collect from the other party its reasonable legal fees and costs incurred in such action, as determined by the adjudicator of the dispute.

19.5.2 VENUE – The project location shall serve as the venue.

19.5.3 Neither Party may commence arbitration if the claim or cause of action would be barred by the applicable statute of limitations had the claim or cause of action been filed in a state or federal court. Receipt of a demand for arbitration by the person or entity administering the arbitration shall constitute the commencement of legal proceedings for the purposes of determining whether a claim or cause of action is barred by the applicable statute of limitations. If, however, a state or federal court exercising jurisdiction over a timely filed claim or cause of action orders that the claim or cause of action be submitted to arbitration, the arbitration proceeding shall be deemed commenced as of the date the court action was filed, provided that the Party asserting the claim or cause of action files its demand for arbitration with the person or entity administering the arbitration within thirty (30) days after the entry of such order.

## **ARTICLE 20 – CONTRACTOR REPRESENTATIONS**

20.1 GENERAL REPRESENTATIONS -- The Contractor represents as follows:

20.1.1 Contractor has the power and authority to enter into and perform this Agreement;

20.1.2 This Agreement, when executed and delivered, will be a valid and binding obligation of Contractor enforceable in accordance with its terms;

20.1.3 Contractor will, at all times during the term of this Contract, be qualified to do business in the State of Oregon, professionally competent and duly licensed to perform the Work;

20.1.4 Contractor is not in violation of, charged with nor, to the best of Contractor’s knowledge, under any investigation with respect to violation of, any provision of any federal, state or local law, ordinance or regulation or any other requirement or order of any governmental or regulatory body or court or arbitrator applicable to provision of the Work, and Contractor’s provision of the Work shall not violate any such law, ordinance, regulation or order.

20.1.5 Contractor’s performance under this Agreement creates no potential or actual conflict of interest, as defined by ORS Chapter 244, for either Contractor or any Contractor personnel that will perform the Work under this Agreement.

## **ARTICLE 21 -- MISCELLANEOUS**

20.1 EXTENT OF AGREEMENT – Except as expressly provided, this Agreement is for the exclusive benefit of the Parties and not for the benefit of any third party. This Agreement represents the entire and integrated agreement between the Parties, and supersedes all prior negotiations, representations, or agreements, either written or oral.

20.2 ASSIGNMENT – This Agreement is not assignable.

20.3 GOVERNING LAW – This Agreement shall be governed by the laws of the State of Oregon.

20.4 NOTICE – Unless changed in writing, a Party’s address indicated in Article 1 shall be used when delivering notice to a physical address. Except for Agreement termination and as otherwise specified in the Contract Documents, notice is effective upon transmission by any effective means, including U.S. postal service and overnight delivery service.

20.5 JOINT DRAFTING – The Parties expressly agree that this Agreement was jointly drafted and that they both had the opportunity to negotiate terms and to obtain assistance of counsel in reviewing terms before execution. This Agreement shall be construed neither against nor in favor of either Party, but shall be construed in a neutral manner.

20.6 ORDER OF PRECEDENCE -- This Agreement consists of the following documents that are listed in descending order of precedence whether or not such documents are affixed hereto: (a) the terms and conditions of this Agreement, less its Exhibits; (b) the Statement of Work; (c) the Solicitation Document; (d) Contractor’s Bid; and (d) the terms of payment. In the event of a conflict between the terms of this Agreement and the terms provided in the Proposal, the Agreement terms shall prevail.

20.7 NO THIRD-PARTY BENEFICIARIES -- Port and Contractor are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.

20.8 FUNDS AVAILABLE AND AUTHORIZED -- Port believes it has sufficient funds currently available and authorized for expenditure to finance the costs of this Agreement within Port’s budgetary appropriation or limitation. Contractor understands and agrees that Port’s payment of amounts under this Agreement is contingent on Port receiving appropriations, limitations, or other expenditure authority sufficient to allow Port, in the exercise of its reasonable administrative discretion, to continue to make payments under this Agreement.

20.9 FOREIGN CONTRACTOR -- If Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State, Corporation Division, all information required by those agencies relative to this Agreement. Contractor shall demonstrate its legal capacity to perform the Work under this Agreement in the State of Oregon before entering into this Agreement.



20.10 TIME OF THE ESSENCE -- Contractor agrees that time is of the essence under this Agreement.

**SIGNATURES**

IN WITNESS WHEREOF, the parties hereto have executed this Contract:

PORT:

CONTRACTOR:

**PORT OF ASTORIA**

\_\_\_\_\_

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Print Name*

\_\_\_\_\_  
*Print Name*

\_\_\_\_\_  
*Date*

\_\_\_\_\_  
*Date*

**Attachment 1 — Contractor Certification Statement**

The undersigned certifies that he/she has read, understands and agrees to abide by all terms and conditions of the Agreement.

Contractor certifies as follows:

1. The Contractor does not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, national origin, marital status, age or disability or other non-job-related factors as per ORS chapter 659 and 42 U.S.C. 2000e.
2. The Contractor has not discriminated and will not discriminate against a subcontractor in awarding a subcontract because the subcontractor is a disadvantaged business enterprise, a minority-owned business, a woman-owned business, a business that a service-disabled veteran owns or an emerging small business that is certified under ORS 200.055.
3. Contractor agrees to perform the scope of work and meet the performance standards set forth in the final negotiated contract and statement of work.
4. The Contractor will submit performance and payment bonds as required by law.
5. All subcontractors performing construction work described in ORS 701.005(2) will be registered with the Construction Contractors Board or licensed by the State Landscape Contractors Board in accordance with ORS 701.035 to 701.055 before the subcontractors commence work under the contract;

Company Name [DBA]: \_\_\_\_\_

Legal Name: \_\_\_\_\_

Type of Organization [Circle One]: Sole Proprietor / Partnership / Corporation

If Corporation, State of Incorporation: \_\_\_\_\_

If Partnership, attach a list of the general and limited partners.

BY: \_\_\_\_\_ DATE: \_\_\_\_\_

Signature

BY: \_\_\_\_\_ TITLE: \_\_\_\_\_

Print / Type Name

CONTACT PERSON:

Name: \_\_\_\_\_ Telephone: \_\_\_\_\_

Email: \_\_\_\_\_ Fax: \_\_\_\_\_

Exhibit A

