

Contract for Professional Engineering Services

This **Agreement**, effective as of the date of last signature below (“Effective Date”), is by and between the following Parties:

PORT OF ASTORIA
 (“**Port**”)

ENGINEER
 (“**Engineer**”)

Port of Astoria
 422 Gateway Ave, Suite 100
 Astoria, OR 97103

Phone: 503-741-3300

Phone:

E-mail: mmcgrath@portofastoria.com

E-mail:

Engineer agrees to provide the services described in Addendum A, which is expressly incorporated into this **Agreement**, to **Port** for:

Project Name:

Engineering Services for Port of Astoria Pier 3 Boatyard Haul Out Piers

In consideration of the mutual covenants and obligations contained herein, Port and Engineer hereby agree as set forth herein.

1.01 Services

A. **Engineer** shall provide, or cause to be provided, the services set forth in this **Agreement**, and **Port** shall pay **Engineer** for such Services as set forth in Paragraph 2.01.

2.01 Payment

A. **Engineer** will prepare a monthly invoice in accordance with **Engineer's** standard invoicing practices and submit the invoice to **Port**.

B. Invoices are due and payable within 30 days of receipt. If **Port** fails to make any payment owing to **Engineer** for services and expenses within 30 days after receipt of **Engineer's** invoice, the amounts due to **Engineer** will be increased at the rate of 1 ½ % per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day.

In addition, **Engineer** may, without liability, after giving seven days written notice to **Port**, suspend services under this **Agreement** until **Engineer** has been paid in full all amounts due for services, expenses, and other related charges. Payments will be credited first to interest and then to principal.

C. The **Engineer's** compensation is determined by and conditioned on the time to complete the **Project** as described in **Addendum A**. Should the time to complete the **Project** be extended beyond the described periods through no fault of the **Engineer**, the total compensation to the **Engineer** shall be adjusted appropriately.

D. Should the time to complete the **Project** be extended beyond the defined periods through no fault of the **Port**, the total compensation to the **Engineer** shall not exceed the amounts specified in **Addendum A**. Both Parties acknowledge and agree that absent a duly executed amendment in accordance with Section 12.01, this **Agreement** is a Fixed Fee or Lump Sum contract

3.01 Additional Services

A. If authorized by Client in writing, **Engineer** shall furnish services in addition to those set forth in **Addendum A**.

B. If **Port** authorizes **Engineer** to perform additional services not described in **Addendum A**, unless an alternative method of payment is otherwise agreed to in writing by the parties, **Port** agrees to pay **Engineer** an amount equal to the **Engineer's** employees

cumulative hours charged to the additional services by each class of employee times standard hourly rates for each applicable billing class; plus reimbursable expenses and **Engineer's** consultants' charges, if any, plus markup. Alternatively, the **Port** and **Engineer** may make additional compensation agreements such as Lump Sum (LS) or Fixed Fee (FF), but only in writing.

4.01 Termination

A. Either party shall have the right to terminate this **Agreement** in whole or in part at any time and for reasonable cause, by delivery of 15 days' written notice, specifying the extent and effective date thereof. After receipt of such notice from **Port**, **Engineer** shall stop work hereunder on the date specified in such notice, terminate all subcontracts and other commitments to the extent they relate to the work terminated, and deliver to the **Port** all completed deliverables in connection with the work terminated.

B. In the event of termination by **Port** pursuant to this clause, and provided **Engineer** is not in default of a material obligation under the **Agreement**, **Engineer** shall be paid as follows.

B.1 Time and Material Contracts:

Port shall pay **Engineer** for all time and material costs incurred as of the date of Termination per **Engineer's** Standard Rate Schedule.

B.2 Fixed Fee or Lump Sum Contracts:

Port shall pay **Engineer** the percentage of the Fixed Fee or Lump sum equivalent to the percentage of work completed as of the date of Termination. Except as provided in this clause, any such termination shall not alter or affect the rights or obligations of the parties under this **Agreement**.

5.01 Controlling Law

A. This **Agreement** is to be governed by the law of the State of Oregon.

6.01 Successors, Assigns, and Beneficiaries

A. **Port** and **Engineer** each is hereby bound and the partners, successors, and executors of **Port** and **Engineer** (and to the extent permitted by paragraph 6.01.B the assigns of **Port** and **Engineer**) are hereby bound to the other party to this **Agreement** and to the partners, successors, and executors (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this **Agreement**.

B. Neither **Port** nor **Engineer** may assign, sublet, or

transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this **Agreement** without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this **Agreement**.

7.01 General Considerations

A. The standard of care for all professional engineering and related services performed or furnished by **Engineer** under this **Agreement** will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. **Engineer** makes no guarantees or warranties, express or implied, under this **Agreement** or otherwise, in connection with **Engineer's** services. **Engineer** and its consultants may use or rely upon the design services of others, including, but not limited to, contractors, manufacturers, and suppliers.

B. **Engineer** shall not at any time supervise, direct, or have control over contractor's work, nor shall **Engineer** have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, for safety precautions and programs incident to a contractor's work progress, nor for any failure of any contractor to comply with laws and regulations applicable to contractor's work.

C. **Engineer** neither guarantees the performance of any contractor nor assumes responsibility for any contractor's failure to furnish and perform its work in accordance with the contract between **Port** and such contractor.

D. **Engineer** shall not be responsible for the acts or omissions of any contractor, subcontractor, or supplier, or of any contractor's agents or employees or any other persons (except **Engineer's** own employees) at the **Project** site otherwise furnishing or performing any of the construction work; or for any interpretations or clarifications of the construction contract given by **Port** or contractor without consultation and advice of **Engineer**.

E. All design documents prepared or furnished by **Engineer** are instruments of service, and **Engineer** retains an ownership and property interest (including the copyright and the right of reuse) in such documents, whether or not the **Project** is completed. The **Port** shall not rely in any way on any design

document unless it is in printed final form and signed and sealed by the **Engineer** or one of the **Engineer's** subconsultants.

F. To the fullest extent permitted by law, **Port** and **Engineer** (1) waive against each other, and the other's employees, officers, directors, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the **Agreement**, and (2) agree that **Engineer's** total liability to **Port** under this **Agreement** shall be limited to \$100,000 or the total amount of compensation received by **Engineer**, whichever is the larger amount.

The **Port** shall immediately notify **Engineer** of any claim asserted in connection with the **Project** that relates to Services under this **Agreement**.

G. The parties acknowledge that **Engineer's** scope of services does not include any services related to a Hazardous Environmental Condition (the presence of asbestos, PCBs, petroleum, hazardous substances or waste, and radioactive materials). If **Engineer** or any other party encounters a Hazardous Environmental Condition, **Engineer** may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the **Project** affected thereby until **Port**: (i) retains appropriate specialist consultants or contractors to identify and, as appropriate, abate, remediate, or remove the Hazardous Environmental Condition; and (ii) warrants that the Site is in full compliance with applicable Laws and Regulations.

H. Changes to the design may be necessary as the work proceeds for several reasons including:

H.1 **Project** Betterment – Items that are added to the work to improve the overall **Project** that were not considered during design.

H.2 Unforeseen Conditions – Items of work added due to unknown conditions often associated with geotechnical variations and as-built conditions that could not have been reasonably foreseen beforehand.

H.3 Design Revisions - Items of work needed to revise the design, including typographical items, changes due to conflicts or inconsistencies, and conflicts or inconsistencies which may become apparent during construction.

The **Port** acknowledges that **Project** betterment,

unforeseen conditions and design revisions can occur and that all cost associated with those items are part of the normal course of business and shall not be charged to the **Engineer**.

I. All documents, including Drawings and Specification furnished by **Engineer** pursuant to this **Agreement**, are instruments of **Engineer's** services in respect to the **Project**. They are not intended or represented to be suitable for reuse by **Port** or others on extensions of the **Project** or on any other project. Any reuse without specific written verification or adaptation by **Engineer** will be at **Port's** sole risk without liability or legal exposure to **Engineer**, and **Port** shall indemnify, defend, and hold harmless **Engineer** from all claims, damages, losses and expenses, including attorneys' fees, arising out of or resulting therefrom. Any such verification or adoption will entitle **Engineer** to further compensation at rates to be agreed upon by **Port** and **Engineer**.

Engineer does not sell or convey any property interest in the design including drawings; **Engineer** only licenses their use to the **Port** for Project purposes and for the duration of the **Agreement**, provided that the **Port** is entitled to retain copies of all **Project** deliverables indefinitely. The **Port** shall not convey, sell or authorize any other party to use the design. The **Port** shall not reuse the design for any other purpose. The **Port** agrees to use reasonable measures to keep the information confidential and avoid any unauthorized reuse or dissemination. For any unauthorized use by the **Port**, the **Port** agrees to pay the **Engineer** reasonable licensing fees and/or damages.

J. Electronic files may be supplied for convenience. Use of this electronic information is at the risk of the end user, and **Engineer** is not responsible for any errors or misuse that may arise out of use of electronic information. AutoCAD files are only an electronic copy of the graphical representations of the plans. Actual dimensions and locations as shown on the hard copy plans provided by **Engineer** shall govern.

8.01 Indemnification and Mutual Waiver

A. **Engineer**. To the fullest extent permitted by law, **Engineer** shall indemnify and hold harmless **Port**, and **Port's** officers, directors, partners, agents, consultants, and employees from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the **Agreement**, but only to the extent that any such claim, cost, loss, or damage

is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property), and is caused by any negligent act or omission of **Engineer** or **Engineer's** officers, directors, partners, employees, or Consultants.

B. **Port**. To the fullest extent permitted by law, and subject to the obligations and protections of the Oregon Tort Claims Act, ORS 30.260 to 30.300, **Port** shall indemnify and hold harmless **Engineer**, **Engineer's** officers, directors, partners, agents, employees, and consultants from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the **Agreement**, but only to the extent that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death or to injury to or destruction of tangible property, and is caused or alleged to be caused by any negligent act or omission of **Port** or **Port's** officers, directors, partners, agents, consultants, or employees, or others retained by or under contract to the **Port** with respect to this **Agreement** or to the **Project**.

C. **Percentage Share of Negligence**. To the fullest extent permitted by law, and subject to the damage limits in the Oregon Tort Claims Act, a party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, shall not exceed the percentage share that the party's negligence bears to the total negligence of **Port**, **Engineer**, and all other negligent entities and individuals.

D. **Mutual Waiver**. To the fullest extent permitted by law, **Port** and **Engineer** waive against each other, and the other's employees, officers, directors, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the **Agreement**.

9.01 Insurance

A. The **Engineer** shall maintain, at **Engineer's** own expense the minimum insurance coverage as outlined below. Upon request by **Port**, a current Certificate of insurance will be provided.

B. Workers' Compensation Insurance: **Engineer** shall provide and maintain, for all employees engaged in work under this contract, Workers' Compensation and Employers Liability Insurance as required by AS

23.30.045, to include:

1. Statutory coverage;
2. Employer's Liability Protection in the amount of \$1,000,000.

C. Commercial Comprehensive General Liability Insurance with coverage limits of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate for bodily injury, personal injury and property damage.

D. Automobile Liability Insurance: Such insurance shall cover all owned, hired and non-owned vehicles and provide coverage not less than \$1,000,000 combined single limit per accident for bodily injury and property damage.

E. Professional Liability Insurance with limits of not less than \$1,000,000 each claim and \$1,000,000 aggregate.

10.01 Dispute Resolution

A. **Port** and **Engineer** agree to negotiate all disputes for a minimum period of thirty days from the date **Port** or **Engineer** provides notice of a dispute. If the dispute is not resolved by negotiation, the parties agree to mediate the disputes in good faith prior to filing of any lawsuit.

11.01 Entire Agreement

A. This **Agreement** together with any expressly incorporated addenda, exhibits, supplements, or appendices constitutes the entire **Agreement** between **Port** and **Engineer** and supersedes all prior written or oral understandings. This **Agreement** may only be amended, supplemented, modified, or canceled by a duly executed written instrument. The following documents are expressly incorporated into this **Agreement**:

IN WITNESS WHEREOF, the parties hereto have executed this **Agreement**, the **Effective Date** of which is the date of last signature below. The parties acknowledge that each party and its counsel have reviewed and approved this Agreement.

Port: Port of Astoria

Engineer:

Signature: _____

Signature: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Date Signed: _____

Date Signed: _____

Address for giving Notices:

Address for giving Notices or Payments:

Port of Astoria
422 Gateway Ave, Suite 100
Astoria, OR 97103
(503) 741-3300