

Invitation to Bid (“ITB”)  
Port of Astoria  
Marine Contractor Services for  
Pier 3 Boatyard Haul Out Piers Rehabilitation

ISSUE DATE: April 13, 2026  
PROPOSAL SUBMISSION DEADLINE: **May 19, 2026, 2:30 P.M. PDT**  
ISSUING PARTY: Port of Astoria  
Will Isom, Executive Director  
422 Gateway Avenue, Suite 100  
Astoria, OR 97103

(503) 741-3300      General Number

Direct all inquiries and requests for clarification to:

Matt McGrath, Deputy Director  
422 Gateway Ave, Suite 100  
Astoria, OR 97103

Phone: 503-741-3336  
Email: [bids@portofastoria.com](mailto:bids@portofastoria.com)

This ITB, and supporting documents, will be available here:  
<https://www.portofastoria.com/public-notices>

## **1 Requested Services (“Work”)**

The Port of Astoria (“Port”) seeks to retain the services of a qualified contractor to complete certain improvements to the haul piers at the Pier 3 Boatyard.

The purpose of the Work is to increase the load-bearing capacity of the existing haul out piers to accommodate larger vessels and ensure long-term operational reliability. The project involves both in-water and over-water construction activities, including installation of new steel piles, demolition and reconstruction of runway and approach slabs, and removal of existing timber piles.

Work details can be obtained from the Plans & Drawings, attached as Exhibit 1.

All work must comply with environmental and regulatory requirements under the U.S. Army Corps of Engineers Permit NWP-2025-150 (issued June 6, 2025) and the Oregon Department of State Lands Permit 65501-RF (issued July 15, 2025).

To satisfy compensatory mitigation requirements, the Work includes removal of twenty one (21) 16-inch timber piling at the designated site indicated in Exhibit 2.

Remaining engineering work needed for this project will be completed under separate contract with an engineering firm.

## **2 Sample Contract**

If a contract is awarded, the Port will negotiate an agreement based upon the attached sample contract. This is a Public Improvement Contract and is subject to Oregon prevailing wage requirements for Region 1 (Clatsop, Columbia, and Tillamook Counties). Prevailing wage rates may be found here: <https://www.oregon.gov/boli/employers/Pages/prevailing-wage-rates.aspx>.

The successful Bidder’s Bid will be incorporated into the contract awarded under this ITB (see § 2.1 of the sample contract attached hereto).

Bidders are hereby notified that while the anticipated time to complete the requested Services under this ITB will be part of the scoring criteria (see § 4.2.3 below), *the post-contract Notice to Proceed will not be issued until the Port has secured funding for the scope of work under this ITB.*

## **3 Reservation of Rights**

The Port reserves the right to: i) seek clarification of Bids and to request any information the Port deems reasonably necessary to permit the Port to evaluate, rank and select the most qualified Contractor to perform the services described in this ITB; ii) negotiate a contract that is in the best interests of the Port; and iii) reject any or all Bids and/or terminate the

solicitation process at any time if doing so would be in the public interest as determined by the Port.

## 4 Bidder Requirements

### 4.1 Procedural Requirements

#### 4.1.1 Pre-Bid Meeting

A mandatory Pre-Bid Meeting will be held at the Pier 3 Boatyard office, located near the haul out piers, at 9:00 am on the date specified in the Selection Schedule (Addendum 3). Statements made by the Port's representatives at the Pre-Bid meeting are not binding upon the Port unless confirmed by written addendum.

All questions and clarifications regarding the Pre-Bid Meeting should be directed to Matt McGrath at [bids@portofastoria.com](mailto:bids@portofastoria.com).

Additional inspections may be scheduled at least 48 hours in advance with Matt McGrath.

#### 4.1.2 Form of Submission

One (1) paper and one (1) electronic copy must be submitted. The paper copy must be delivered in a sealed envelope. The electronic copy may be included with the paper copy (included in the sealed envelope on electronic media, such as on a thumb drive), or emailed. Regardless of the form in which the electronic copy is sent, however, *the electronic copy must be received by the deadline while the physical copy must be postmarked by the deadline*. The electronic copy of the Bid may only include files with the following formats: .pdf (Adobe Acrobat, Foxit, etc.), .doc or .docx (Microsoft Word), .xls or .xlsx (Microsoft Excel), or ODF files (Apache Open Office: .odt or .ods). Physical copies must be received at the address listed on page one (1) of this ITB document. Emailed copies must be emailed to [bids@portofastoria.com](mailto:bids@portofastoria.com). All written materials must be 8-1/2" x 11" format. If bound, the Bid must be bound vertically (11" side) in a type no smaller than 11 point. No other material may be submitted. Bids must not include extensive artwork, unusual printing or other materials not essential to the utility and clarity of the Bid.

No facsimile (fax) Bids will be accepted.

#### 4.1.3 Deadline & Bid Opening

The deadline for Bid submission is identified on page one (1) of this ITB and in the Selection Schedule (Addendum 3). Sealed Bids (including the electronic copy) may be mailed or personally delivered to Port offices at the address indicated on page one (1) of this ITB document.

Each Bidder is solely responsible for ensuring its Bid is received in accordance with ITB requirements. The Port of Astoria is not responsible for delays in mail or by common carriers, transmission errors, or mistaken delivery. A Bid submitted in a form or manner not authorized will be rejected.

Bids will be publicly opened at Port offices on the date specified in the Selection Schedule (Addendum 3). The Port will read aloud the name of each Bidder, the Bid price, and such other information as the Port deems appropriate.

#### 4.1.4 Bidder Certification Statement.

The Bid Certification Statement (Addendum 1) must be completed, signed and included with the Bid.

#### 4.1.5 Construction Contractor's Board

In order for a Bid to be eligible for consideration, the Bidder must be registered with the Oregon Construction Contractors Board.

#### 4.1.6 Asbestos Certification

Bidders are not required to be licensed under ORS 468A.730 or retain the services of a Subcontractor who is so licensed.

#### 4.1.7 Questions, Protests, Amendments

##### 4.1.7.1 Questions

As it is the Bidder's responsibility to perform its own investigation(s) and make its own assessment(s) as to the nature and extent of the Work, and the best methods for accomplishing the Work, a Bidder may submit written questions or otherwise seek clarification regarding ITB contents. The deadline for questions ('Question Deadline') is stated on the Selection Schedule (Addendum 3). All questions received, the response to which materially affects this ITB, will be answered by amendment and posted on the Port's website. All Questions must be: i) delivered in writing (email or physical mail) to Matt McGrath, or ii) received at bids@portofastoria.com, on or before the Question Deadline.

##### 4.1.7.2 Protest to ITB

A Bidder may submit a written protest to the solicitation process or the solicitation document in accordance with the provisions of Oregon Administrative Rules ("OAR") 137-049-0260 (collectively, "Solicitation Protest". The deadline for Solicitation Protests is stated in the Selection Schedule (Addendum 3). If the resolution to the protest results in modifications to the ITB, an amendment will be issued in accordance with OAR 137-049-0250 and § 4.1.7.4 below. All Solicitation Protests must be:

i) delivered in writing (email or physical mail) to Matt McGrath, or ii) received by email at bids@portofastoria.com, on or before the stated deadline.

#### 4.1.7.3 Protest to Bidder Selection

A Bidder may submit a written protest to the contract award or the notice of intent to award in accordance with the provisions of OAR 137-049-0450 (collectively, "Award Protest"). The deadline for Award Protests is stated in the Selection Schedule (Addendum 3). All Award Protests must be: i) delivered in writing (email or physical mail) to Matt McGrath, or ii) received by email at bids@portofastoria.com, on or before the stated deadline.

#### 4.1.7.4 Amendment Notification

The Port reserves the right to modify this ITB, and notify potential Bidders of any resulting amendments, by publication on the Port's website only. The existence of, and contents within, any such amendment will not be advertised by newspaper or trade journal. Bidders are responsible for checking the Port's website regularly to ensure timely notice of any amendments issued under this ITB. The Port recommends that Bidders check the website at least once weekly until the week of Closing and at least once daily during the week of Closing up to the third day prior to Closing.

No amendment to this ITB shall be effective unless made in writing and posted on the Port's website.

#### 4.1.8 Public Records & Confidentiality

Bids submitted to the Port are public records open to public inspection. If a Bidder believes any of its Bid is exempt from disclosure under Oregon law, the Bid must: 1) clearly identify those portions of the Bid it believes to be exempt from disclosure; 2) draft the Bid in such a manner as to separate the exempt material from the non-exempt portions of the Bid; and 3) clearly mark the exempt material as follows: "This data constitutes a trade secret under ORS 192.345(2) and shall not be disclosed except in accordance with the Oregon Public Records Law, ORS chapter 192."

Failure to identify a portion as confidential shall be deemed a waiver of any future claim of breach of confidentiality. The Port will take reasonable steps to protect information claimed to be confidential but makes no guarantee of confidentiality if disclosure is required by law or ordered by the court or other authorized body.

#### 4.1.9 Bid Security

Bids must be accompanied by a bid security instrument payable to the Port of Astoria in an amount equal to ten percent (10%) of the Bid amount and must be in one of the forms prescribed by OAR 137-049-0290(3), which allows for either a surety bond, irrevocable letter of credit, a cashier's check, or a Bidder's certified check. If a Bidder elects to provide a surety bond, the bond must be in substantially the same form as the Bid Bond form attached to this ITB as Exhibit 5 (Bid Bond Form).

#### 4.1.10 First-Tier Subcontractor Disclosure

As required by ORS 279C.370 and OAR 137-049-0360, within two (2) working hours of the Bid submission deadline, Bidders must submit the First-Tier Subcontractor Disclosure form, attached hereto (Addendum 4). *This form may also be submitted with the Bid documents.*

#### 4.1.11 Modification or Withdrawal of Bid

Bidders may modify or withdraw their Bid in accordance with the provisions of OAR 137-049-0320.

#### 4.1.12 Right to Reject Bidder Not in Compliance

The Port reserves the right to reject any Bid not in compliance with this ITB and all prescribed public contracting procedures and requirements, including the requirement to demonstrate the Bidder's responsibility under ORS 279C.375(3)(b) and OAR 137-049-0390(2), and may reject for good cause all Bids after finding that doing so is in the public interest.

#### 4.1.13 Licenses

The successful Bidder must provide documentation that it possesses all required licenses to undertake or perform the work specified in the ITB.

### 4.2 Substantive Bid Requirements

The Bidder must respond to each subject listed below, in the same sequence as presented.

#### 4.2.1 Project Team

- Provide a simple resume for each project team member (including anticipated subcontractors, if applicable; see § 4.1.10 above), including, at minimum, the following:

- primary role(s),
- years of experience,
- particular expertise each member provides, and

- brief description of previous work experience and/or projects relevant to the work requested under this ITB.

#### 4.2.2 Project Experience

- Describe three (3) completed projects that demonstrate experience and competence in performing the type of work requested in this ITB.
- Provide the name of the project client, address, telephone number, project title and contact person.

#### 4.2.3 Project Schedule

- *Assuming a contract execution date of June 30, 2026*, provide a Final Completion date and describe your company’s capability to complete the Work by that date. Include a list, if any, of assumptions on which this completion date is based.

NOTE: Bidders are hereby notified that while the anticipated time to complete the requested Services under this ITB will be part of the scoring criteria, *the post-contract Notice to Proceed will not be issued until the Port has secured funding for the scope of work under this ITB.*

- Contract negotiations with the successful Bidder will include determination of all Milestone dates, which schedule (“Schedule of Values”) will be incorporated into the contract.

#### 4.2.4 Project Cost

- Provide a Not-to-Exceed cost for the Work on the attached Bid Sheet (Addendum 2). While the Bid Sheet is provided as an excel file to facilitate data entry, calculations, and formatting ease, *the Bid Sheet(s) must be printed to and submitted as a single .pdf file.*

- The Port has made every effort to draft a Bid Sheet that categorizes the scope of work in such a manner that i) accurately reflects the scope of work required for this project, and ii) facilitates a fair and impartial evaluation process. If a Bidder believes that the Bid Sheet, the scope of Work description, the Plans & Drawings (Exhibit 1), or some combination thereof fails to achieve either of these two objectives, questions, requests for changes, and/or protests must be submitted to the Port by the Solicitation Protest deadline (see Addendum 3).

#### 4.2.5 Licenses

Provide proof that Bidder possesses all required licenses to perform the Work described herein.

## 5 Evaluation Criteria

### 5.1 Evaluation Factors

Subject to the statutory preference requirements outlined in ORS 279A.120 and ORS 270A.125, and provided that a contract is awarded, the Port will award the contract to the Responsible Bidder (see ORS 279C.375(3)(b) and OAR 137-049-0390(2)) submitting a Responsive Bid at the lowest cost.

### 5.2 Negotiation

If all responsive Bids from Responsible Bidders exceed the Port's cost estimate, the Port reserves the right to negotiate with the lowest Bidder according to the provisions of ORS 279C.340 and OAR 137-049-0430.

## 6 Selection Process

### 6.1 Selection Timeline

Addendum 3 (Selection Schedule) provides a reasonable estimate of the time necessary to complete the selection process; however, the Port reserves the right to adjust the Selection Schedule as needed. Any adjustments will be posted on the Port's website; Bidders will not be individually notified. See § 4.1.7.4 above.

### 6.2 Notice of Intent to Award

After review and evaluation *by Port staff*, the Notice of Intent to Award will be posted here: <https://www.portofastoria.com/public-notice>.

*Bidders are hereby notified that final approval of the selected Bidder is subject to Port Commission approval. Therefore, issuance of the Notice of Intent to Award does not guarantee that the contract will be awarded to the selected Bidder.*

## 7 Other Provisions

### 7.1 Bidder Own Expense

Bidders responding to this ITB do so solely at their own expense. The Port of Astoria is not responsible for any Bidder expenses associated with this ITB.

### 7.2 Bonds

- If a contract award is for \$100,000 or more, at or before the time of contract execution the selected contractor must provide separate performance and payment bonds equal to one hundred percent (100%) of the total amount of the contract and that satisfy the conditions for such bonds outlined in ORS 279C.380.
- The selected contractor must i) provide a Public Works bond, and ii) require all subcontractors to provide a Public Works bond. All Public Works bonds must comply with the specific requirements of ORS 279C.830(2) and ORS 279C.836.

The Port will not issue a Notice to Proceed until acceptable proof of executed bonds is received.

### 7.3 Insurance Requirements

If a contract is awarded pursuant to this ITB, the successful Bidder must maintain all insurance policies required by the contract. A contract will not be executed, and the Port will not issue a Notice to Proceed, until acceptable proof of coverage is received.

## 8 Supporting Documents

<b>ITB - Marine Contractor Services for BY Haul Out Pier Rehab Supporting Documents</b>		
<b>ITB Supporting Document</b>	<b>Appellation</b>	<b>Number</b>
Certification Statement	Addendum	1
Bid Sheet	Addendum	2
Selection Schedule	Addendum	3
First-Tier Subcontractor Disclosure	Addendum	4
Plans & Drawings	Exhibit	1
Site Diagrams	Exhibit	2
Sample Form Contract	Exhibit	3
Permits	Exhibit	4
Sample Bond Form	Exhibit	5

**BIDDER INFORMATION AND CERTIFICATION SHEET**

The undersigned hereby acknowledges she/he has read and understands all requirements and specifications of the Invitation to Bid (ITB), including all attachments of whatever type.

OFFICIAL CONTACT: The Port requests that the Bidder designate one person as authorized to receive, on behalf of the Bidder, all communication from the Port of Astoria regarding the attached Bid. Identify the Contact name and fill in the information below. Please print clearly.

Legal Name of Bidder	
Address	
City, State, Zip	
State of Entity Registration	
Entity Type	
Contact Name	
Phone	
Email	
OR Business Registry No. (if applicable)	
Resident Bidder under ORS 279A.120? [yes or no]	

By its submission of this Bid and authorized signature below, Bidder certifies to the following:

1. (a) Bidder grants permission to the Port of Astoria to contact the above-named person (Contact Name) to verify the information contained therein and for all other purposes in connection with the Bid.  
  
 (b) The information contained within the Bid is true and accurate.
  
2. (a) The Bid is the original work of the Bidder and has been developed independently, without consultation, communication or agreement with any employee, agent, or consultant to the Port.  
  
 (b) The Bid is the original work of the Bidder and has been developed independently, without consultation, communication or agreement with any other Bidder or other parties for the purpose of restricting competition or any other illicit purpose.  
  
 (c) No attempt has been made or will be made by the Bidder to induce any other Bidder to submit or not to submit a Bid for the purpose of restricting competition.  
  
 (d) No relationship exists or will exist during the contract period between Bidder and the Port or any other State agency that interferes with fair competition or constitutes a conflict of interest.

3. (a) Bidder acknowledges receipt of any and all addenda, exhibits, or other attachments to this ITB, including any amendments thereto.  
  
(b) Bidder understands and accepts the procedures, evaluation criteria, and other requirements of this ITB.  
  
(c) If selected for award of the contract, Bidder i) agrees to negotiate a contract with the Port for completion of the Project in good faith, and ii) certifies that it has the power and authority to enter into and perform the contract.
4. Bidder is not in violation of any tax laws of the state or a political subdivision of the state, including, without limitation, ORS 305.620 and ORS chapters 316, 317 and 318.
5. (a) Bidder does not discriminate in its employment practices with regard to race, creed, age, religious affiliation, gender, disability, sexual orientation, national origin. When awarding subcontracts, Bidder does not discriminate against any business certified under ORS 200.055 as 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. If applicable, Bidder has, or will have prior to contract execution, a written policy and practice, that meets the requirements described in ORS 279A.112 (formerly HB 3060), of preventing sexual harassment, sexual assault and discrimination against employees who are members of a protected class.  
  
(b) Bidder complies with ORS 652.220 regarding prohibition of discriminatory wage rates based on a protected class and prohibition of discrimination against employee who is complainant. If selected for award under this ITB, Bidder's continuing compliance with ORS 652.220 constitutes a material element of the contract entered into between Owner and Bidder and failure to comply constitutes a breach that entitles The Port to terminate the contract for cause.
6. Bidder and Bidder's employees, agents, and subcontractors are not included on:
  - A. the "Specially Designated Nationals and Blocked Persons" list maintained by the Office of Foreign Assets Control of the United States Department of the Treasury found at: <https://www.treasury.gov/ofac/downloads/sdnlist.pdf>, or
  - B. the government wide exclusions lists in the System for Award Management found at: <https://www.sam.gov/portal/>
7. Bidder certifies that, to the best of its knowledge, there exists no actual or potential conflict between the business or economic interests of Bidder, its employees, or its agents, on the one hand, and the business or economic interests of the Port, on the other hand, arising out of, or relating in any way to, the subject matter of the ITB. If any changes occur with respect to Bidder's status regarding conflict of interest, Bidder shall promptly notify the Port in writing.
8. Bidder understands that any statement or representation it makes, in response to this ITB, if determined to be false or fraudulent, a misrepresentation, or inaccurate because of the omission of material information could result in a "claim" {as defined by the Oregon False Claims Act, ORS 180.750(1)}, subject to the Oregon False Claims Act, ORS 180.750 to 180.785, and to any liabilities or penalties associated with the making of a false claim under that Act.
9. Bidder certifies that neither it, nor any of its principals:

(a) have been debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by a Federal Agency or State Agency;

(b) have within a three year period preceding this Bid been convicted of, or had a civil judgment rendered against them for commission of fraud, a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction, violation of antitrust statutes; commission of embezzlement, theft, forgery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) are presently indicted for or criminally or civilly charged by a government entity (federal, state, or local) with the commission of any of the offenses enumerated in this certification; and

(d) have not within a three year period preceding this Bid had one or more public transactions (federal, state, or local) terminated for cause. This certification is a material representation of fact upon which the Port will rely in entering into any contract with the Bidder. If it is later determined that Bidder knowingly rendered an erroneous certification, in addition to other remedies available, the Port may pursue available remedies including suspension, debarment, or termination of the contract.

10. Bidder certifies that it has available the appropriate financial, material, equipment, facility and personnel resources and expertise, or ability to obtain the resources and expertise, necessary to demonstrate the capability of the firm to meet all contractual responsibilities.
11. Bidder certifies that it holds all required licenses to perform the full scope of work under the contract to be awarded.
12. Bidder certifies that it qualifies as a carrier-insured employer or a self-insured employer under ORS 656.407 or has elected coverage under ORS 656.128.
13. If the contract awarded under this solicitation is greater than \$50,000, Contractor agrees to be bound by and will comply with the provisions of ORS 279C.800 thru ORS 279C.870 or 40 U.S.C. §§ 3141 to 3148.
14. If the contract awarded under this solicitation is subject to federal law, Contractor agrees to be bound by the Davis-Bacon Act, 40 U.S.C. §§ 3141 to 3148.
15. Bidder certifies that it has reviewed the sample contract attached to the ITB and, if selected for award, possesses the resources and technical capacity to comply with all terms and provisions and agrees to be bound thereby.
16. Bidder certifies that it has either i) not been a party to any litigation or arbitration within the last five (5) years in connection with the performance of a contract, or ii) if Bidder has been a party to such litigation or arbitration, has disclosed in its Bid documents sufficient detail including but not limited to how the matter was resolved to enable the Port to make the necessary Responsible Bidder determinations as part of this solicitation.
17. Bidder acknowledges these certifications are in addition to any certifications required under the Contract.

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Authorized Signature

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Date

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(Printed Name and Title)

Invitation to Bid (“ITB”)  
 Port of Astoria  
 Marine Contractor Services for  
 Pier 3 Boatyard Haul Out Piers Rehabilitation  
 Addendum 3 – Selection Schedule

<b>Marine Contractor Services for Pier 3 Boatyard Haul Out Piers Rehabilitation</b>	
<b>Estimated Solicitation Schedule</b>	
<b>Task Item</b>	<b>Anticipated Completion Date</b>
Draft & Issue ITB for Haul Out Piers Rehab	4/13/2026
Pre-Bid Meeting	4/29/2026
Solicitation Protest Deadline	5/6/2026
Question Deadline	5/6/2026
ITB Submission Deadline	5/19/2026
Subcontractor Disclosure Deadline	5/19/2026
Bid Opening	5/19/2026
Issue Notice of Award	5/22/2026
Award Protest Deadline	5/29/2026
Port Commission Approval	6/16/2026
Execute Contract	6/30/2026

**FIRST-TIER SUBCONTRACTOR DISCLOSURE FORM**

Marine Contractor Services for  
Pier 3 Boatyard Haul Out Piers Rehabilitation

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 _____	\$ _____	_____

# Marine Contractor Services for Pier 3 Boatyard Haul Out Piers Rehabilitation

## Exhibit 2 - Site Diagrams I



# Marine Contractor Services for Pier 3 Boatyard Haul Out Piers Rehabilitation

## Exhibit 2 - Site Diagrams II



# Marine Contractor Services for Pier 3 Boatyard Haul Out Piers Rehabilitation

## Exhibit 2 - Site Diagrams III

**Mitigation Area**



**Project Area**

## Agreement between Owner and Contractor

This construction services agreement (“Agreement”) is made and entered into by and between the following Parties for services in connection with the Project identified below. The Agreement shall be effective upon signing by both Parties (“Effective Date”).

### OWNER:

Port of Astoria (“Port”)  
422 Gateway Ave., Suite 100  
Astoria, OR 97103

### OWNER’S REPRESENTATIVE:

Matt McGrath, Deputy Director  
503-741-3336  
mmcgrath@portofastoria.com

### Contractor:

**PROJECT: Port of Astoria Regional Airport Terminal Building Improvements**

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

## **1. Contractor's Responsibilities**

### **1.1 Complete the Work**

Consistent with applicable state licensing laws, Contractor or subcontractors employed by Contractor shall provide all supervision, labor, inspection, testing, start-up, material, equipment, tools, machinery, temporary utilities and other temporary facilities necessary to complete the work described in and reasonably inferable from the Contract Documents (hereafter, "Work" or Project").

### **1.2 Comply with Plans**

1.2.1 Contractor will perform, furnish, and complete the Work in strict accordance with the Contract Documents, including all Plans and Drawings, Specifications, and any approved addenda, modifications, and clarifications issued under this Agreement (collectively, the "Plans"). Contractor will not deviate from the Plans without (i) a written change order or written directive issued under this Agreement and (ii) the Engineer's prior written approval of the deviation.

1.2.2 Contractor will prepare, coordinate, and submit to Engineer for review and approval all shop drawings, product data, samples, mix designs, method statements, schedules, calculations, and other submittals required by the Contract Documents or reasonably requested by Engineer (each, a "Submittal").

1.2.3 Contractor's submission of a Submittal constitutes a representation that Contractor has: (a) verified field measurements and existing conditions as applicable; (b) determined and verified quantities, dimensions, performance criteria, installation requirements, coordination information, and interface requirements with other work; (c) coordinated the Submittal with the Work and with all subcontractors, suppliers, and manufacturers; and (d) confirmed the Submittal complies with the Contract Documents.

Engineer is entitled to rely on these representations.

1.2.4 Engineer's review and approval of any Submittal is for general conformance with the design intent and information shown in the Contract Documents. Engineer's approval does not: (i) relieve Contractor of responsibility for the means, methods, techniques, sequences, procedures, safety precautions, or programs of construction; (ii) relieve Contractor of responsibility for errors, omissions, deviations, or nonconforming items in a Submittal; or (iii) authorize a change in the Contract Price or Contract Time, unless expressly stated in a written change order or written directive issued under this Agreement.

1.2.5 Contractor will submit Submittals in accordance with the Contract's submittal schedule (or, if none, within a commercially reasonable time to avoid delay to the Work). Contractor will promptly resubmit corrected Submittals as required by

Engineer's comments. Any delay caused by late, incomplete, or nonconforming Submittals, or by required resubmittals, will be Contractor's responsibility and will not entitle Contractor to an extension of time or adjustment of compensation.

1.2.6 If Contractor identifies any ambiguity, discrepancy, or conflict within the Contract Documents or between the Work and existing conditions, Contractor will promptly notify Engineer and Owner in writing and will not proceed with the affected portion of the Work until Engineer provides written clarification, direction, and/or initiates a Change Order. Contractor will be responsible for the consequences of proceeding without required written clarification.

### 1.3 Comply with Permits

The Work shall be performed in compliance with all environmental and regulatory requirements under the U.S. Army Corps of Engineers Permit NWP-2025-150 (issued June 6, 2025) and the Oregon Department of State Lands Permit 65501-RF (issued July 15, 2025).

### 1.4 Materials Handling

Contractor shall be responsible for the proper delivery, handling, storage, removal and disposal, as applicable, of all materials and substances brought to the Work site by Contractor, subcontractors, or supply vendors in accordance with the Contract Documents and used or consumed in the performance of the Work.

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

### 1.5 Permits

With the exception of environmental permits, Contractor shall secure all permits required to complete the Work.

### 1.6 Standard of Care

Contractor shall perform all construction activities efficiently and with the requisite expertise, skill and competence to satisfy the requirements of the Contract Documents. The standard of care for all construction services performed to execute the Work shall be the care and skill ordinarily used by members of the applicable profession practicing under similar conditions at the same time and locality of the Project.

### 1.7 Contractor Responsible for Subcontractors

Contractor is responsible to Owner for the proper performance of the work of subcontractors and any acts and omissions in connection with any subcontractor's performance.

Nothing in the Contract Documents is intended or shall be interpreted to create any legal or contractual relationship between Owner and any subcontractor or sub-subcontractor. As per ORS 279C.580(2), Owner shall not be included as a party to any dispute between Contractor and any subcontractor.

Contractor shall coordinate the activities of all subcontractors and shall at all times exercise complete and exclusive control over the means, methods, sequences and techniques of construction.

#### 1.8 Separate Contractors

If Owner performs other work on the Project or at the Site with separate contractors under Owner's control, Contractor agrees to reasonably cooperate and coordinate its activities with those of such separate contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption.

#### 1.9 Debris

Contractor shall keep the Site reasonably free from debris, trash and construction wastes to permit Contractor to perform its construction services efficiently, safely and without interfering with the use of adjacent areas within the building. Upon Substantial Completion of the Work, or a portion of the Work, Contractor shall remove all debris, trash, construction wastes, materials, equipment, machinery and tools arising from the Work or applicable portions thereof to permit Owner to occupy the Project or a portion of the Project for its intended use.

#### 1.10 Safety

Contractor shall assume the material obligation for implementing all safety precautions and programs necessary to prevent damage, injury or loss to (i) all individuals at the Site, whether working or visiting; (ii) the Work, including materials and equipment incorporated into the Work or stored on-Site or off-Site; and (iii) all other property at the Site or adjacent thereto.

##### 1.10.1 Warranty

Contractor warrants to Owner that the construction, including all materials and equipment furnished as part of the construction, shall be new unless otherwise specified in the Contract Documents, of good quality, in conformance with the Contract Documents, and free of defects in materials and workmanship.

Contractor's warranty obligation excludes defects caused by abuse, alterations, or failure to maintain the Work in a commercially reasonable manner. Nothing in this warranty is intended to limit any manufacturer's warranty which provides Owner with greater warranty rights than set forth in this Section 1.10.1 or the Contract Documents. Contractor will provide Owner with all manufacturers' warranties upon Substantial Completion.

##### 1.10.2 Non-conforming Work

Contractor agrees to correct any Work that is found to not be in conformance with the Contract Documents, including that part of the Work subject to Section 1.10.1 hereof, within a period of one (1) year from the date of Substantial Completion of the Work or any portion of the Work, or within such longer period to the extent required by any specific warranty included in the Contract Documents. The one-

year period referenced in this section applies only to Contractor's obligation to correct nonconforming Work and is not intended to constitute a period of limitations for any other rights or remedies Owner may have regarding Contractor's other obligations under the Contract Documents.

Contractor shall, within seven (7) days of receipt of written notice from Owner that the Work is not in conformance with the Contract Documents, take meaningful steps to commence correction of such nonconforming Work, including the correction, removal or replacement of the nonconforming Work and any damage caused to other parts of the Work affected by the nonconforming Work. If Contractor fails to commence the necessary steps within such seven (7) day period, Owner, in addition to any other remedies provided under the Contract Documents, may provide Contractor with written notice that Owner will commence correction of such nonconforming Work with its own forces. If Owner does perform such corrective Work, Contractor shall be responsible for all reasonable costs incurred by Owner in performing such correction. If the nonconforming Work creates an emergency requiring an immediate response, the seven (7) day period identified herein shall be deemed inapplicable.

#### 1.11 Environmental Regulations

To the best knowledge and belief of Owner, there are no ordinances, rules or regulations dealing with the prevention of environmental pollution and the preservation of natural resources that affect the performance of this Agreement. If the successful bidder awarded the Project is delayed or must undertake additional work by reason of existing ordinances, rules or regulations of agencies, resolution of the issue(s) shall be governed by ORS 279C.525.

#### 1.12 Hazardous Materials

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 Work site 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.

## 2. Contract Documents

2.1 The following comprise the Contract Documents:

2.1.1 This Agreement, including all exhibits, supplements, schedules and addenda expressly incorporated herein.

- 2.1.2 All written amendments to this Agreement, including duly executed Change Orders.
- 2.1.3 The Invitation to Bid (“ITB”), including all addenda and exhibits, issued by the Owner under which the Contractor was selected.
- 2.1.4 Contractor’s Bid, including all addenda, exhibits, or other ancillary documents thereto, submitted in response to the ITB.

### **3. Contract Time**

3.1 Date of Commencement. The Work shall commence within five (5) days of Contractor’s receipt of Owner’s Notice to Proceed (“Date of Commencement”) unless the parties agree otherwise in writing. Contractor shall not commence work under this Agreement until it has received the Notice to Proceed. Owner is not liable for any expenses incurred by Contractor prior to issuance of the Notice to Proceed.

3.2 Substantial Completion and Final Completion.

3.2.1 Completion Dates

Substantial Completion of discretely identified portions of the Work (“Interim Milestones”), Substantial Completion of the entire Work, and Final Completion shall be achieved no later than those dates as set forth in **Schedule 1 (“Schedule of Values”)**, incorporated herein by this reference.

3.2.2 Delay

If Contractor is delayed in the performance of the Work due to acts, omissions, conditions, events, or circumstances beyond its control and due to no fault of its own or those for whom Contractor is responsible, and subject to the conditions that Contractor notifies Owner promptly of the cause for such delay and works with Owner to mitigate the effects of such delay, the Contract Time(s) for performance shall be reasonably extended by Change Order.

3.2.3 Time is of the Essence.

Owner and Contractor agree that time is of the essence with respect to the dates and times set forth in the Contract Documents.

3.3 Liquidated Damages

3.3.1 Liquidated Damages – Substantial Completion

Contractor understands that if Substantial Completion is not attained by the Substantial Completion Date, Owner will suffer damages which are difficult to determine and accurately specify. Contractor agrees that failure to achieve Substantial Completion by the Substantial Completion date, as defined in **Schedule 1**, will obligate Contractor to pay Owner two hundred fifty dollars (\$250.00) as liquidated damages for each day or portion thereof that Substantial Completion extends beyond the Substantial Completion Date.

3.3.2 Liquidated Damages – Final Completion

Contractor understands that if Final Completion is not attained by the Scheduled Final Completion Date, Owner will suffer damages which are difficult to determine and accurately specify. Contractor agrees that failure to achieve Final Completion by the Final Completion date, as defined in Schedule 1, will obligate Contractor to pay Owner three hundred fifty dollars (\$350.00) as liquidated damages for each day or portion thereof that Final Completion extends beyond the Final Completion Date.

### 3.3.3 In Lieu Of

Any liquidated damages assessed pursuant to this Agreement shall be in lieu of all liability for any and all extra costs, losses, expenses, claims, penalties and any other damages, whether special or consequential, and of whatsoever nature, incurred by Owner which are occasioned by any delay in achieving the Contract Time(s).

## 4. Contract Price

- 4.1 Owner shall pay Contractor, in accordance with § 5 below, the following amount for completion of the Work, subject to any adjustments made in accordance with the Contract Documents: \_\_\_\_\_ (“Contract Price”)

## 5. Payments

### 5.1 Progress Payments

- 5.1.1 Payments shall be made monthly and shall be based upon satisfactory completion of Work Milestones, or portions thereof, as defined in the Schedule of Values (Schedule 1).
- 5.1.2 Owner reserves the right to withhold from any progress payment an amount not to exceed five percent (5%) of the payment (“Retainage”). Retainage withholding shall be in accordance with ORS 279C.550 through ORS 270C.570. Retainage shall be paid to Contractor according to the terms of § 5.6 below.
- 5.1.3 On or before the respective Milestone dates established in Schedule 1, Contractor shall submit an Application for Payment that i) provides all supporting documentation reasonably necessary to substantiate the requested payment, and ii) coherently presents the documentation such that a reasonable person can readily discern the basis for the request, and, iii) if applicable, any other documentation required by the Contract Documents. After receipt of such application, Owner and Contractor shall inspect the portion of Work completed to that date. Subject to Owner’s approval, payment shall then be authorized and issued within twenty-one (21) days of such approval. Progress payments not issued by the 21<sup>st</sup> day shall incur interest (not including Retainage) at the rate of nine percent per annum, payable to Contractor.
- 5.1.4 Contractor’s request for, and completion of, the inspection required in § 5.1.3 above shall constitute Contractor’s representation that the Work inspected and approved by Owner has been performed consistent with the Contract Documents,

has progressed to the point indicated in the Schedule of Values, and that title to all Work will pass to Owner free and clear of all claims, liens, encumbrances, and security interests upon the incorporation of the Work into the Project, or upon Contractor's receipt of payment, whichever occurs earlier.

- 5.1.5 Progress payments do not constitute acceptance or approval of the Work or a waiver of Owner's right to assert defects in the Work, and shall not relieve the Contractor of responsibility for defective workmanship or material.

## **5.2 Withholding or Adjustment of Payments.**

- 5.2.1 If Owner determines that Contractor is not entitled to all or part of a payment as a result of Contractor's failure to meet its obligations hereunder, it will notify Contractor in writing at least seven (7) days after the inspection provided for in § 5.1.3 above. The notice shall indicate the specific amounts Owner intends to withhold, the reasons and contractual basis for the withholding, and the specific measures Contractor must take to rectify Owner's concerns. Contractor and Owner will attempt to resolve Owner's concerns prior to the date payment is due. If the parties cannot resolve such concerns, Contractor may pursue its rights under the Contract Documents, including those under § 10 hereof.

## **5.3 Right to Stop Work and Interest.**

- 5.3.1 If Owner fails to timely pay Contractor any undisputed amount that becomes due, Contractor, in addition to all other remedies provided in the Contract Documents, may stop Work pursuant to § 7.3 hereof. All payments due and unpaid shall bear interest at the rate set forth in the Agreement.

## **5.4 Contractor's Payment Obligations.**

- 5.4.1 Contractor will pay subcontractors, in accordance with its contractual obligations to such parties, all the amounts Contractor has received from Owner on account of their work. Contractor will impose similar requirements on subcontractors to pay those parties with whom they have contracted.
- 5.4.2 Provided that Owner is not in breach of its contractual obligation to make payments to Contractor for the Work, Contractor shall indemnify, defend and hold harmless Owner from any claims for payment and mechanic's liens brought against Owner or against the Project as a result of the failure of Contractor, or those for whose acts it is responsible, to pay for any services, materials, labor, equipment, taxes or other items or obligations furnished or incurred in connection with the Work. Within three (3) days of receiving written notice from Owner that such a claim or mechanic's lien has been filed, Contractor shall commence to take the steps necessary to discharge said claim or lien, including, if necessary, the furnishing of a mechanic's lien bond. If Contractor fails to do so, Owner will have the right to discharge the claim or lien and hold Contractor liable for costs and expenses incurred, including attorneys' fees.
- 5.4.3 Contractor shall comply with all laws at its own costs. Contractor shall indemnify, defend and hold harmless Owner from any claims, cost or expense attributable to any failure by Contractor, its employees, subcontractors, suppliers,

and agents for failure to comply with laws, including fines, penalties, or corrective measures.

## **5.5 Substantial Completion.**

Contractor shall notify Owner when Contractor believes the Work is substantially complete. Within ten (10) days of Owner's receipt of Contractor's notice, Owner and Contractor will jointly inspect such Work to verify that it is substantially complete in accordance with the requirements of the Contract Documents. If such Work is substantially complete, Owner shall issue a Notice of Substantial Completion that will set forth (i) the date of substantial completion of the Work; (ii) the remaining items of Work that have to be completed before final payment and approval of Final Completion, (iii) the deadline for Final Completion; (iv) provisions (to the extent not already provided in the Contract Documents) establishing Owner's and Contractor's responsibility for the Project's security, maintenance, utilities and insurance pending final payment, if applicable; and (v) an acknowledgment that warranties commence to run on the date of Substantial Completion, except as may otherwise be noted in the Notice of Substantial Completion.

## **5.6 Final Payment.**

5.6.1 After receipt of a Final Application for Payment from Contractor, Owner shall make final payment by the time required in the Agreement, including all amounts retained under § 5.1.2 above, provided that Contractor has achieved Final Completion.

5.6.2 At the time of submission of its Final Application for Payment, Contractor shall provide the following:

5.6.2.1 An affidavit that there are no claims, obligations or liens outstanding or unsatisfied for labor, services, material, equipment, taxes or other items performed, furnished or incurred for or in connection with the Work which will in any way affect Owner's interests;

5.6.2.2 A general release executed by Contractor waiving, upon receipt of final payment by Contractor, all claims, except those claims previously made in writing to Owner and remaining unsettled at the time of final payment;

5.6.2.3 Consent of Contractor's surety, if any, to final payment;

5.6.2.4 As-built drawings, operating manuals, warranties and other close-out documents required by the Contract Documents; and

5.6.2.5 Certificates of insurance confirming that required coverages will remain in effect consistent with the requirements of the Contract Documents, if applicable.

5.6.2.6 Any outstanding known and unreported accidents or injuries experienced by Contractor or its subcontractors at the Work site.

5.6.3 Upon making final payment, Owner waives all claims against Contractor except claims relating to (i) Contractor's failure to satisfy its payment obligations, if

such failure affects Owner's interests; (ii) Contractor's failure to complete the Work consistent with the Contract Documents, including defects appearing after Substantial Completion; and (iii) the terms of any special warranties required by the Contract Documents.

- 5.6.4 Deficiencies in the Work discovered after Substantial Completion, whether or not such deficiencies would have been included on the punch list if discovered earlier, shall be deemed warranty work. Such deficiencies shall be corrected by Contractor and shall not be a reason to withhold final payment from Contractor provided, however, that Owner shall be entitled to withhold from the Final Payment the reasonable value of completion of such deficient work until such work is completed.

## **6. Changes to the Work**

Owner may at any time, without notice to the sureties and without impairing the Contract, require changes to the Work. Such changes shall be initiated by Owner's issuance of an Interim Directive to Contractor detailing the required changes. If the changes justify adjustments to the Contract Time or Contract Price, Owner and Contractor shall negotiate in good faith and as expeditiously as possible the appropriate adjustments to reach agreement on any resulting changes to the scope of Work, Contract Time, and/or Contract Price. Upon reaching an agreement, which shall not be unreasonably withheld, the parties shall prepare and execute an appropriate Change Order.

The increase or decrease in Contract Price resulting from a change in the Work shall be determined by a mutually accepted lump sum, properly itemized and supported by sufficient substantiating data to permit evaluation by Owner.

## **7. Contract Suspension or Termination**

### **7.1 Owner's Right to Stop Work**

- 7.1.1 Owner may, without cause and for its convenience, order Contractor in writing to stop and suspend the Work. Such suspension shall not exceed sixty (60) consecutive days or more than ninety (90) days in aggregate during the duration of the Project.
- 7.1.2 Contractor is entitled to seek an adjustment of the Contract Price and/or Contract Time(s) if its cost or time to perform the Work has been adversely impacted by any suspension of stoppage of the Work by Owner.

### **7.2 Owner's Right to Terminate for Cause and Perform**

- 7.2.1 If Contractor fails to (i) provide a sufficient number of skilled workers, (ii) supply the materials or equipment required by the Contract Documents, (iii) comply with applicable legal requirements, (iv) timely pay, without cause, subcontractors, (v) prosecute the Work with promptness and diligence according to the Milestone dates as defined in **Schedule 1** and otherwise ensure that the Work is completed by the Contract Time(s), as such times may be adjusted, or (vi) perform material obligations under the Contract Documents, then Owner, in

addition to any other rights and remedies provided in the Contract Documents or by law, shall have the rights set forth in Sections 7.2.3 and 7.2.4 below.

- 7.2.2 If Contractor becomes disqualified from bidding on public improvement contracts or fails to maintain all licenses required to perform the Work under this Agreement during the performance thereof, then Owner, in addition to any other rights and remedies provided in the Contract Documents or by law, shall have the rights set forth in Sections 7.2.3 and 7.2.4 below.
- 7.2.3 Upon the occurrence of an event set forth in Section 7.2.1 above, Owner may provide written notice to Contractor that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within seven (7) days of Contractor's receipt of such notice. If Contractor fails to cure, or reasonably commence to cure, such problem, then Owner may give a second written notice to Contractor of its intent to terminate within an additional seven (7) day period. If Contractor, within such second seven (7) day period, fails to cure, or reasonably commence to cure, such problem, then Owner may declare the Agreement terminated for default by providing written notice to Contractor of such declaration.
- 7.2.4 Upon declaring the Agreement terminated pursuant to this Section 7.2, Owner may enter upon the premises and take possession, for the purpose of completing the Work, of all materials, equipment, scaffolds, tools, appliances and other items thereon, which have been purchased or provided for the performance of the Work, all of which Contractor hereby transfers, assigns and sets over to Owner for such purpose, and to employ any person or persons to complete the Work and provide all of the required labor, services, materials, equipment and other items. In the event of such termination, Contractor shall not be entitled to receive any further payments under the Contract Documents until the Work shall be finally completed in accordance with the Contract Documents. At such time, if the unpaid balance of the Contract Price exceeds the cost and expense incurred by Owner in completing the Work, such excess shall be paid by Owner to Contractor. If Owner's cost and expense of completing the Work exceeds the unpaid balance of the Contract Price, then Contractor shall be obligated to pay the difference to Owner. Such costs and expenses shall include not only the cost of completing the Work, but also losses, damages, costs and expenses, including attorneys' fees and expenses, incurred by Owner in connection with the re-procurement and defense of claims arising from Contractor's default. These costs and expenses shall be deemed explicitly identified consequential damages under Section 13.1 below.
- 7.2.5 If Owner improperly terminates the Agreement for cause, the termination for cause will be converted to a termination for convenience in accordance with the provisions of Section 7.5 hereof.

### 7.3 Contractor's Right to Stop Work

- 7.3.1 Contractor may, in addition to any other rights afforded under the Contract Documents or at law, stop the Work on account of Owner's failure to pay amounts properly due under Contractor's Application for Payment(s).

7.3.2 If Owner fails to make any payment due under the Contract Documents, Contractor has the right to provide Owner with written notice that Contractor will stop the Work unless said event is cured within seven (7) days from Owner's receipt of Contractor's notice. Contractor shall not stop work unless it provides such written notice and Owner has failed to cure the reason for default within the seven (7) day cure period. If Owner does not cure the problem within such seven (7) day period, Contractor may stop the Work. In such case, Contractor shall be entitled to make a claim for adjustment to the Contract Price and Contract Time(s) to the extent it has been adversely impacted by such stoppage.

#### 7.4 Contractor's Right to Terminate for Cause

7.4.1 Contractor, in addition to any other rights and remedies provided in the Contract Documents or by law, may terminate the Agreement for cause for the following reasons:

7.4.1.1 The Work has been stopped for sixty (60) consecutive days, or more than ninety (90) days during the duration of the Project, because of court order, any government authority having jurisdiction over the Work, or orders by Owner under Section 7.1.1 above, provided that such stoppages are not due to the acts or omissions of Contractor or anyone for whose acts Contractor may be responsible.

7.4.1.2 Owner's failure to provide Contractor with any information, permits or approvals that are Owner's responsibility under the Contract Documents which result in the Work being stopped for sixty (60) consecutive days, or more than ninety (90) days during the duration of the Project, even though Owner has not ordered Contractor in writing to stop and suspend the Work pursuant to Section 7.1.1 above.

7.4.1.3 Owner's failure to cure the problems set forth in Section 7.3.1 above after Contractor has stopped the Work.

7.4.2 Upon the occurrence of an event set forth in Section 7.4.1 above, Contractor may provide written notice to Owner that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within seven (7) days of Owner's receipt of such notice. If Owner fails to cure, or reasonably commence to cure, such problem, then Contractor may give a second written notice to Owner of its intent to terminate within an additional seven (7) day period. If Owner, within such second seven (7) day period, fails to cure, or reasonably commence to cure, such problem, then Contractor may declare the Agreement terminated for default by providing written notice to Owner of such declaration. In such case, Contractor shall be entitled to recover in the same manner as if Owner had terminated the Agreement for its convenience under § 7.5 of the Agreement.

#### 7.5 Termination for Convenience

7.5.1 Upon ten (10) days' written notice to Contractor, Owner may, for its convenience and without cause, elect to terminate this Agreement. In such event, Owner shall pay Contractor for the following:

- 7.5.1.1 All Work satisfactorily completed and for proven loss, cost or expense in connection with the Work;
- 7.5.1.2 The reasonable costs and expenses attributable to such termination, including demobilization costs and amounts due in settlement of terminated contracts with subcontractors.

## 8. Insurance and Bonds

### 8.1 Insurance

#### 8.1.1 Required Coverage

Contractor shall procure and maintain the insurance for the coverage amounts as set forth below. Coverage shall be secured from insurance companies authorized to do business in the state of Oregon.

##### 8.1.1.1 Commercial General Liability

Contractor shall obtain, at Contractor's expense, and keep in effect during the term of this Contract, Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverages in minimum amounts as stated below. This insurance shall include i) Premises & Operations, ii) Products & Completed Operations, iii) contractual liability coverage for the indemnity provided under this Contract, iv) Pollution Liability, v) Advertising Liability, and vi) broad form property damage coverage. Contractor shall maintain completed operations liability insurance for one year after Substantial Completion or as required by the Contract Documents, whichever is longer.

Contractor shall provide proof of insurance of not less than the amounts listed in the following schedules:

Per Occurrence Limit for any single claimant: \$1,000,000

Per Occurrence Limit for multiple claimants: \$1,800,000

Annual Aggregate Limit: \$2,000,000

Property Damage, Per Occurrence Limit for any single claimant: \$150,000

Property Damage, Per Occurrence Limit for multiple claimants: \$750,000

##### 8.1.1.2 Automobile Liability

Contractor shall obtain, at Contractor's expense, and keep in effect during the term of this Contract, Automobile Liability Insurance covering owned, non-owned and/or hired vehicles, as applicable. The coverage may be written in combination with the Commercial General Liability Insurance.

Contractor shall provide proof of insurance of not less than the amounts listed in the following schedules:

**Bodily Injury/Death:**

Per Occurrence Limit for any single claimant: \$1,000,000

Per Occurrence Limit for multiple claimants: \$2,000,000

**Property Damage:**

Per Occurrence Limit for any single claimant: \$150,000

Per Occurrence Limit for multiple claimants: \$750,000

**8.1.1.3 Excess / Umbrella Liability**

The coverage required in this subsection 8.1 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. If any excess/Umbrella Liability policies are in place, they must be on a true “following form” or broader coverage basis, with coverage at least as broad as provided on the underlying insurance.

**8.1.1.4 Employer’s Liability**

In addition to the Worker’s Compensation insurance required by § 11.4 below, Contractor shall obtain, at Contractor's expense, and keep in effect during the term of this Contract, Employer’s Liability insurance.

**8.1.2 Additional Insured**

The liability coverages, except Professional Liability and Workers Compensation /Employer’s Liability, if included, must endorse the “Port of Astoria” as an Additional Insured but only with respect to the contractor’s activities to be performed under this Agreement. Contractor’s coverage shall be primary and noncontributory with any other insurance and self-insurance. Any insurance available to the additional insured shall be excess and non-contributory.

Additional Insured Endorsements shall be submitted with the certificate(s) of insurance and must be acceptable to Owner.

**8.1.3 Proof of Coverage**

Prior to commencing any construction services hereunder, Contractor shall provide Owner with certificates evidencing that (i) all insurance obligations required by the Contract Documents are in full force and in effect and will remain in effect for the duration required by the Contract Documents; and (ii) no insurance coverage will be canceled, renewal refused, or materially changed unless at least thirty (30) days’ prior written notice is given to Owner. If any of

the foregoing insurance coverages are required to remain in force after final payment is reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the Final Application for Payment. If any information concerning reduction of coverage is not furnished by the insurer, it shall be furnished by Contractor with reasonable promptness according to Contractor's information and belief.

#### 8.1.4 Tail Coverage

If any of the required insurance policies is on a claims made basis, the Contractor shall maintain either tail coverage or continuous claims made liability coverage, provided the effective date of the continuous claims made coverage is on or before the effective date of this Agreement, for a minimum of twenty-four (24) months following the later of : (i) the contractor's completion and Recipient's acceptance of all services required under this Agreement, (ii) the expiration of all warranty periods provided under this Agreement. Notwithstanding the foregoing twenty-four (24) month requirement, if the contractor elects to maintain tail coverage and if the maximum time period tail coverage reasonably available in the marketplace is less than the twenty-four (24) month period described above, then the contractor may request and the Owner may grant approval of the maximum tail coverage period reasonably available in the marketplace. If Owner approval is granted, the contractor shall maintain tail coverage for the maximum time period that tail coverage is reasonably available in the marketplace.

#### 8.1.5 Notice of Cancellation or Change

Contractor or its insurer must provide thirty (30) days written notice to Owner before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).

#### 8.1.6 Certificate(s) of Insurance

Contractor shall provide certificates of insurance for all required insurance before the contractor performs under this Agreement. The certificates or an attached endorsement must endorse the Port of Astoria as an endorsed Additional Insured in regards to the Commercial General Liability and Automobile Liability policies. Such certificates must also provide that all liability insurance coverages shall be primary and noncontributory with any other insurance and self-insurance, with the exception of Professional Liability and Workers Compensation/Employer's Liability.

### 8.2 Bonds and Other Performance Security.

Contractor shall provide the following bonds. A Notice to Proceed shall not be issued, and work under this Agreement shall not be authorized, until proof of all bonds itemized below is received.

All bonds furnished by Contractor shall be in a form satisfactory to Owner and must be executed solely by a surety company or companies holding a certificate of authority to transact surety business in the state of Oregon.

- 8.2.1 Performance bond in an amount equal to the full contract price conditioned on the faithful performance of the contract in accordance with the plans, specifications and conditions of the Contract Documents.
- 8.2.2 Payment bond in an amount equal to the full contract price, solely for the protection of claimants under ORS 279C.600.
- 8.2.3 Public Works Bond in the amount of \$30,000, filed with the Construction Contractor's Board, that satisfies all requirements under ORS 279C.836.

## **9. Indemnity**

- 9.1 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.
- 9.2 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.
- 9.3 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.
- 9.4 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.

## **10. Contract Adjustments and Disputes**

### **10.1 Requests for Contract Adjustments and Relief**

#### **10.1.1 Notice of Claim**

If either Contractor or Owner believes that it is entitled to relief against the other for any event arising out of or related to the Work or Project, such party shall provide written notice to the other party of the basis for its claim for relief. Such notice shall, if possible, be made prior to incurring any cost or expense in connection with the claim. Notice shall be given within a reasonable time, not to exceed five (5) days, after the event of condition giving rise to the claim for relief

or after the claiming party reasonably should have recognized the event or condition giving rise to the request, whichever is later. The claimant shall provide more complete information with respect to the claim within seven (7) days of the initial notice. The more complete information shall include sufficient information to advise the other party of the circumstances giving rise to the claim for relief, the specific contractual adjustment or relief requested and the basis of such request.

## 10.2 Dispute Avoidance and Resolution

### 10.2.1 Communicate and Avoid

The parties are fully committed to working with each other throughout the Project and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, Contractor and Owner each commit to resolving such disputes or disagreements in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the Work.

### 10.2.2 Discuss

Contractor and Owner will first attempt to resolve disputes or disagreements through discussions between Contractor's Representative and Owner's Representative, which shall conclude within seven (7) days of the written notice provided for in Section 10.1.1 above unless Owner and Contractor mutually agree otherwise.

### 10.2.3 Mediation

If the dispute cannot be resolved on terms satisfactory to both parties, the parties shall submit within thirty (30) days of the conclusion of the discussions referenced in 10.2.2 above the dispute or disagreement to non-binding mediation. The mediation shall be conducted by a mutually agreeable impartial mediator, or if the parties cannot so agree, a mediator designated by the American Arbitration Association ("AAA") pursuant to its Construction Industry Mediation Rules. The mediation will be governed by and conducted pursuant to a mediation agreement negotiated by the parties or, if the parties cannot so agree, by procedures established by the mediator. Unless otherwise mutually agreed by Owner and Contractor and consistent with the mediator's schedule, the mediation shall commence within forty-five (45) days of the submission of the dispute to mediation. Representatives of the parties with authority to resolve the dispute shall be present at any mediation.

## 10.3 Arbitration.

Any claims, disputes or controversies between the parties arising out of or relating to the Agreement, or the breach thereof, which have not been resolved in accordance with the procedures set forth in Section 10.2 above, shall be decided by arbitration in accordance

with the Construction Industry Arbitration Rules of the AAA then in effect, unless the parties mutually agree otherwise.

The award of the arbitrator(s) shall be final and binding upon the parties without the right of appeal to the courts. Judgment may be entered upon it in accordance with applicable law by any court having jurisdiction thereof.

Contractor and Owner expressly agree that any arbitration pursuant to this Section 10.3 may be joined or consolidated with any arbitration involving any other person or entity (i) necessary to resolve the claim, dispute or controversy; or (ii) substantially involved in or affected by such claim, dispute or controversy. Both Contractor and Owner will include appropriate provisions in all contracts they execute with other parties in connection with the Project to require such joinder or consolidation.

The prevailing party in any arbitration, or any other final, binding dispute proceeding upon which the parties may agree, shall be entitled to recover from the other party reasonable attorneys' fees and expenses incurred by the prevailing party. The prevailing party, if any, shall be determined by the applicable binding dispute tribunal.

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.

#### 10.4 Duty to Continue Performance

Unless provided to the contrary in the Contract Documents, Contractor shall continue to perform the Work and Owner shall continue to satisfy its payment obligations for undisputed amounts to Contractor, pending the final resolution of any dispute or disagreement between Contractor and Owner.

## **11. Compliance with Laws — State**

### 11.1 Payment

#### 11.1.1 Contractor Payment to subcontractors

As required by 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 state or a county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished.

(d) Pay to the Department of Revenue all sums withheld from employees under ORS 316.167.

#### 11.1.2 Late Contractor Payment to subcontractors – Penalty

As required by ORS 279C.515(2), if the contractor or a first-tier subcontractor fails, neglects or refuses to pay a Person that provides labor or materials in connection with the public improvement contract within 30 days after receiving payment from the contracting agency or a contractor, the contractor or first-tier subcontractor owes the Person the amount due plus interest charges that begin at the end of the 10-day period within which payment is due under ORS 279C.580(4) and that end upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest on the amount due is nine percent per annum. The amount of interest may not be waived.

#### 11.1.3 Contract between Contractor and subcontractors – Required Provisions

##### 11.1.3.1 Late Payment Penalty Clause

As required by ORS 279C.580(4), the Contractor shall include a payment clause and an interest penalty clause in each of the first-tier subcontractor's subcontracts that conforms to the standards defined in ORS 279C.580(3). In addition, the Contractor shall also require each of the Contractor's first-tier subcontractors to include the same clauses in the first-tier subcontractors' subcontracts with each lower-tier subcontractor or supplier.

##### 11.1.3.2 Complaint Clause

As required by ORS 279C.515(3), the Contractor shall include a clause in every contract related to this Agreement that if the Contractor or a subcontractor fails, neglects or refuses to pay a person that provides labor or materials in connection with the public improvement contract [the Work], 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.

##### 11.1.3.3 Public Works Bond

Contractor shall require, in every subcontract, that the subcontractor have a public works bond filed with the Construction Contractors Board before starting work on the project, unless the subcontractor is exempt under ORS 279C.836.

##### 11.1.3.4 Contract Requirements for Subcontracts

Contractor shall include in all subcontracts those provisions required by ORS 279C.580(3) and ORS 279C.580(4).

#### 11.1.4 Owner may Charge Contractor for Failure to Pay

As required by ORS 279C.515(1), if the Contractor fails, neglects or refuses to pay promptly a person's legitimate claim for labor or services that the person provides to the contractor or a subcontractor in connection with the public improvement contract as the claim becomes due, the Owner may pay the amount of the claim to the person that provides the labor or services and charge the amount of the payment against funds due or to become due the Contractor by reason of the Contract.

#### 11.2 Medical Payments by Contractor

As required by ORS 279C.530(1), 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.

#### 11.3 Drug Testing Program

As required under ORS 279C.505(2), for the duration of this Agreement the Contractor shall demonstrate that an employee drug testing program is in place.

#### 11.4 Worker's Compensation

As required under 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 the 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.

As required by § 8.1.1.4 above, Contractor shall obtain, at Contractor's expense, and keep in effect during the term of this Contract, Employer's Liability insurance.

#### 11.5 Hours of Labor

As required under ORS 279C.520 and ORS 279C.540, the 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) 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

(c) 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.

#### 11.6 Claims for Overtime

Any worker employed by the Contractor shall be foreclosed from the right to collect for any overtime provided in ORS 279C.540 unless a claim for payment is filed with the Contractor according to the requirements in ORS 279C.545.

#### 11.7 Prevailing Wage

##### 11.7.1 Payment of Prevailing Wages; Contract Requirements

Pursuant to ORS 279C.830(1)(a), the Contractor and all subcontractors of Contractor shall pay the Oregon prevailing wages in effect for Region 1 (Clatsop, Columbia, Tillamook counties) at the time the work under this Agreement was first advertised. The applicable wage rates shall be stated in the contract and are available at the Oregon BOLI website:

<https://www.oregon.gov/boli/employers/Pages/prevailing-wage-rates.aspx>

The posted rates are herein incorporated by this reference.

##### 11.7.2 Prevailing Wage Certification

###### 11.7.2.1 Payroll Certification Requirement

Pursuant to ORS 279C.845, by the fifth (5<sup>th</sup>) 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.

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. 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.

Compliance with this provision may be satisfied by submission of the completed Form WH-38.

#### 11.7.2.2 Port to Retain 25% when Certification not Filed

Pursuant to ORS 279C.845(7), 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 this subsection 11.7.2. The Port shall pay the Contractor the amount retained under this provision within 14 days after the Contractor files the certified statements, regardless of whether a subcontractor has failed to file certified statements as required by ORS 279C.845(8). The Port has no obligation to verify the truth of the contents of the certified statements so filed.

#### 11.7.2.3 Contractor to Retain 25% when Certification not Filed

As required by ORS 279C.845(8), 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 the certified statements as required by this Section 11.7.2. 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 fourteen (14) days after the subcontractor files the certified statements as required by this section. The Contractor is not required to verify the truth of the contents of certified statements filed by a first-tier subcontractor under this subsection.

#### 11.7.3 Posting of Prevailing Wage Rates

Contractor shall post the prevailing wage rates applicable to the Work in a conspicuous place at the site of work. The posting must be easily accessible to employees working on the project.

### 11.8 Bonds

#### 11.8.1 As to Contractor

As required under ORS 279C.830(2) and OAR 137-049-0815, the Contractor shall have a public works bond filed with the Construction Contractors Board before starting work on the Project, unless the Contractor is exempt under ORS 279C.836 (4), (7), (8) or (9).

#### 11.8.2 As to Subcontracts

As required under ORS 279C.830(2), the Contractor shall require that every subcontractor have a public works bond filed with the Construction Contractors Board before starting work on the project, unless the subcontractor is exempt under ORS 279C.836 (4), (7), (8) or (9). Further, every Subcontract that the

Contractor or subcontractor awards in connection with this Agreement must require any subcontractor to have a public works bond filed with the Construction Contractors Board before starting work on the public works project, unless the subcontractor is exempt under ORS 279C.836 (4), (7), (8) or (9)

#### 11.9 Construction Contractors Board

The Contractor shall provide certification, in a form acceptable to the Port, that all subcontractors are registered with the Construction Contractor's Board or will be so registered prior to commencing any Work under this Agreement.

#### 11.10 Recycle & Salvage

In accordance with ORS 279C.510(1), Contractor shall salvage or recycle construction and demolition debris, if feasible and cost-effective.

As required by ORS 279A.125, the Contractor shall give preference to the use of recycled materials if recycled materials are available, meet applicable standards, the cost does not exceed the comparable non- recycled material by more than 5%, and the recycled alternative can feasibly be substituted.

#### 11.11 Records Maintenance

Contractor shall comply with OAR 137-049-0880 concerning maintenance and retention of financial records related to the contract to be awarded under this Agreement.

#### 11.12 Discrimination in Subcontracting

Pursuant to ORS 279A.110(5), if Contractor violates its certification that Contractor has not and will not discriminate against a disadvantaged business enterprise, minority-owned business, woman-owned business, veteran-owned business, or an emerging small business in awarding a subcontract, the Port may regard the violation as a breach of contract that permits the Port to terminate this Agreement or exercise any remedies for breach of contract stated herein.

## **12. Compliance with Laws — Federal**

### 12.1 Recovered Materials

Contractor shall comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 as amended, 42 U.S.C. 6962. The requirements of Section 6002 include procuring only items designated in the guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000.

### 12.2 Domestic Procurement

12.2.1 Contractor shall, to the greatest extent practicable and consistent with law, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products).

For purposes of this section:

12.2.2 “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

12.2.3 “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

### 12.3 Equal Employment Opportunity

During the performance of this contract, the contractor agrees as follows:

12.3.1 The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

12.3.2 The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

12.3.3 The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

- 12.3.4 The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- 12.3.5 The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- 12.3.6 The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- 12.3.7 In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- 12.3.8 The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

#### 12.4 Davis-Bacon Act

If the Contract Price is greater than \$2,000, Contractor shall comply with the provisions of the Davis-Bacon Act (40 U.S.C. § 3141 – 3148; as supplemented by 29 CFR Part 5), relating to the requirement to pay wages to laborers and mechanics at a rate not less than the prevailing wages, and other wage and labor matters.

#### 12.5 Copeland Anti-Kickback Act

Contractor shall comply with the provisions of the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”), providing that Contractor and all Subcontractors are prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

#### 12.6 Contact Work Hours and Safety Standards Act

If the Contract Price is greater than \$100,000, Contractor shall comply with 40 U.S.C. § 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5), providing that Contractor and every Subcontractor shall compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous.

#### 12.7 Clean Air Act

If the Contract Price is greater than \$150,000, Contractor shall comply with the provisions in the Clean Air Act (42 U.S.C. §§7401 et seq.), relating to the prohibition on federal assistance to activities which do not comply with the state implementation plans for national primary and secondary ambient air quality standards.

#### 12.8 Water Pollution Control Act

If the Contract Price is greater than \$150,000, Contractor shall comply with the provisions in the Water Pollution Control Act (33 U.S.C. §§ 1251-1387), as amended, relating to the prohibition on federal assistance to activities which do not comply with the Act.

#### 12.9 Anti-Lobbying Certification

If the Contract Price is greater than \$100,000, Contractor shall submit the Byrd Anti-Lobbying Certification, as required by 31 USC § 1352.

### **13. Other Provisions**

#### 13.1 Consequential Damages

13.1.1 Except where the Contract Documents allow for explicitly identified consequential damages, neither Contractor nor Owner shall be liable to the other for any consequential losses or damages, whether arising in contract, warranty, tort (including negligence), strict liability or otherwise, including but not limited to losses of use, profits, business, reputation or financing.

13.1.2 The consequential damages limitation set forth in Section 13.1.1 above is not intended to affect the payment of liquidated damages set forth in the Contract Documents, which both parties recognize has been established, in part, to reimburse Owner or reward Contractor for some damages that might otherwise be deemed to be consequential.

### 13.2 Entire Agreement

The Contract Documents form the entire agreement between Owner and Contractor. No oral representations or other agreements have been made by the parties.

### 13.3 Assignment

Contractor shall not assign, sell, dispose of, or transfer rights, or delegate duties under the Contract, either in whole or in part, without the Port's prior written consent. Unless otherwise agreed by the Owner in Writing, such consent shall not relieve the Contractor of any obligations under the Agreement. Any assignee or transferee shall be considered the agent of the Contractor and be bound to abide by all provisions of the Contract. If the Owner consents in Writing to an assignment, sale, disposal or transfer of the Contractor's rights or delegation of Contractor's duties, the Contractor and its surety, if any, shall remain liable to the Owner for complete performance of the Contract as if no such assignment, sale, disposal, transfer or delegation had occurred unless the otherwise agreed in writing.

### 13.4 Third Party Beneficiaries

Except as expressly provided herein, this Agreement is for the sole benefit of the Parties and their respective permitted successors and assigns, and nothing in this Agreement (express or implied) is intended to or will confer upon any other person or entity any legal or equitable right, benefit, or remedy of any nature under or by reason of this Agreement.

Without limiting the foregoing, no employee, agent, representative, contractor, supplier, distributor, customer, or other Affiliate of a Party, or any end user of a Party's products or services, will be deemed a third-party beneficiary of this Agreement.

### 13.5 Successorship

Contractor and Owner intend that the provisions of the Contract Documents are binding upon the parties, their employees, agents, heirs, successors and assigns.

### 13.6 Governing Law

The Agreement and all Contract Documents shall be governed by the laws of the State of Oregon.

### 13.7 Severability

If any provision or any part of a provision of the Contract Documents shall be finally determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to any applicable Legal Requirements, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provision or parts of the

provision of the Contract Documents, which shall remain in full force and effect as if the unenforceable provision or part were deleted.

#### 13.8 No Waiver

The failure of either Contractor or Owner to insist, in any one or more instances, on the performance of any of the obligations required by the other under the Contract Documents shall not be construed as a waiver or relinquishment of such obligation or right with respect to future performance.

#### 13.9 Headings

The headings used in the Agreement, or any other Contract Document, are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.

#### 13.10 Notice

Whenever the Contract Documents require that notice be provided to the other party, notice will be deemed to have been validly given (i) if delivered in person to the individual intended to receive such notice; (ii) four (4) days after being sent by registered or certified mail, postage prepaid to the address indicated in the Agreement; or (iii) by electronic mail, by the time frame stated in the email-generated confirmation that notice was received by the email of the intended recipient.

#### 13.11 Amendments

The Contract Documents may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of each party.

#### 13.12 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.

## 14. Signatures

IN WITNESS WHEREOF, the parties have executed this Agreement, which shall be effective as of the last execution date below.

CONTRACTOR:

OWNER:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name (printed)

\_\_\_\_\_  
Name (printed)

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**Marine Contractor Services for Pier 3  
Boatyard Haul Out Piers Rehabilitation  
Exhibit 5: Bid Bond Form**

OREGON BID BOND

BOND NO. \_\_\_\_\_

AMOUNT: \$ \_\_\_\_\_

KNOW ALL PERSONS BY THESE PRESENTS, that \_\_\_\_\_

hereinafter called the PRINCIPAL, and \_\_\_\_\_

a corporation duly organized under the laws of the State of \_\_\_\_\_,

having its principal place of business at \_\_\_\_\_

\_\_\_\_\_ in the state of \_\_\_\_\_

and authorized to do business in the State of Oregon, as SURETY,

are held and firmly bound unto \_\_\_\_\_,

hereinafter called the OBLIGEE, in the sum of \_\_\_\_\_

\_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_),

for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS BOND IS SUCH THAT:

WHEREAS, the PRINCIPAL is herewith submitting his or its Bid or Proposal for

\_\_\_\_\_ Marine Contractor Services for Pier 3 Boatyard Haul Out Piers Rehabilitation \_\_\_\_\_

said Bid or Proposal, by reference thereto, being hereby made a part hereof.

NOW, THEREFORE, if the Bid or Proposal submitted by the PRINCIPAL is accepted, and the Contract awarded to the PRINCIPAL, and if the PRINCIPAL shall execute the proposed Contract and shall furnish such Performance and Payment Bond as required by the Contract Documents within the time fixed by the Documents, then this obligation shall be void; if the PRINCIPAL shall fail to execute the proposed Contract and furnish the bond, the SURETY hereby agrees to pay to the OBLIGEE the said sum as liquidated damages, within 10 days of such failure.

Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
PRINCIPAL

By \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_  
SURETY

By \_\_\_\_\_

Title: \_\_\_\_\_