

Invitation to Bid (“ITB”)
Port of Astoria
General Contractor Services for
Port of Astoria Regional Airport Terminal Building Improvements

ISSUE DATE: December 15, 2025

PROPOSAL SUBMISSION DEADLINE: **January 27, 2026, 4:30 P.M. PST**

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

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

1 Requested Services

The Port seeks to retain the services of a qualified contractor to complete certain improvements to the Terminal Building at the Port of Astoria Regional Airport. The improvements are itemized in Exhibits 1 & 2 (Plans & Drawings; Specifications), attached hereto.

The scope of work is to demolish and rebuild most of the interior southeast corner of the terminal building at the Port of Astoria Regional Airport. Existing walls, plumbing, electrical, etc., will be removed. The area will be reframed and rebuilt according to the Plans, Drawings and Specifications.

NOTE: The Plans, Drawings and Specifications do not provide exact brand and model for every material to be used in this project (i.e., sinks, faucets, countertops, tile, etc.). However, all items have been described in sufficient detail that Bidders should be able to employ a realistic line item — or group-of-line-items — allowance. Selection of exact items will occur after execution of the contract and in consultation with the Contractor. Bidders are advised to clarify any uncertainty at the Pre-Bid Meeting (see § 4.1.1 below).

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>.

3 Reservation of Rights

The Port of Astoria 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 interest 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 & Inspection of Building

A mandatory Pre-Bid Meeting will be held at the Terminal Building (1110 SE Flight Line Dr, Warrenton, OR 97146) 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. Bidders in attendance at the pre-bid meeting under the previous solicitation for this same project are not required to attend the Pre-Bid Meeting.

All questions and clarifications regarding the Pre-Bid Meeting should be directed within 48 hours thereafter to Matt McGrath at bids@portofastoria.com.

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

The successful Bidder's Bid will be incorporated into the contract awarded under this ITB (see § 2.1.3 of the sample contract attached hereto).

4.1.2 Form of Submission

The Bid must be the original work of the Bidder and bear the Bidder's authorized representative's signature. One (1) paper and one (1) electronic copy must be submitted, the latter of which may be mailed (in electronic form, such as on a thumb drive) with the paper copy, 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. 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 (Closing) 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 and

such other information as the Port deems appropriate. Submitted Bids will be available for public inspection only after the Notice of Intent to Award has been issued.

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 must either 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

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 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 notify potential Bidders of any amendments to this ITB 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 Bond made payable to the Port of Astoria in an amount equal to ten percent (10%) of the Bid amount. Bid security may be in any form defined in OAR 137-049-0290(3). If a surety bond is provided, the bond must be furnished on forms accepted as standard by the insurance industry.

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 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

- Identify key project members (including anticipated subcontractors, if applicable), specify their primary roles, the particular expertise each member provides (plumbing, electrical, etc.), and previous work experience of each member 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 February 23, 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.

- 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). The Bid Sheet will be provided as an excel file to facilitate data entry, calculations, and formatting ease.
- Contract negotiations with the successful Bidder will include determination of all Milestone amounts (“Schedule of Values”), which schedule will be incorporated into the contract.

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 the 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 such 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-notices>.

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

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 278C.380.

In accordance with ORS 279C.830(2) and ORS 279C.836, the selected contractor must i) provide a Public Works bond, and ii) require all subcontractors to provide a Public Works bond.

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.

ITB - General Contractor Services for Airport Terminal Building Improvements		
Index of Supporting Documents		
ITB Supporting Document	Appellation	Number
Certification Statement	Addendum	1
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Invitation to Bid (“ITB”) - Port of Astoria - General Contractor Services for Port of Astoria Regional Airport Terminal Building Improvements

Addendum 1 - Certification Statement

PROPOSER INFORMATION AND CERTIFICATION SHEET

The undersigned hereby acknowledges she/he has read and understands all requirements and specifications of the Request for Proposals (RFP), including all attachments of whatever type.

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

Legal Name of Proposer	
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 Proposal and authorized signature below, Proposer certifies to the following:

1. (a) Proposer 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 Proposal.
 (b) The information contained within the Proposal is true and accurate.
2. (a) The Proposal has been developed independently, without consultation, communication or agreement with any employee, agent, or consultant to the Port.
 (b) The Proposal has been developed independently, without consultation, communication or agreement with any other Proposer 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 Proposer to induce any other Proposer to submit or not to submit a Proposal for the purpose of restricting competition.
 (d) No relationship exists or will exist during the contract period between Proposer and the Port or any other State agency that interferes with fair competition or constitutes a conflict of interest.

3. (a) Proposer acknowledges receipt of any and all addenda, exhibits, or other attachments to this RFP.
(b) Proposer understands and accepts the procedures, evaluation criteria, and other requirements of this RFP.
(c) If selected for award of the contract, Proposer agrees to negotiate a contract with the Port for completion of the Project in good faith.
4. Proposer 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) Proposer does not discriminate in its employment practices with regard to race, creed, age, religious affiliation, gender, disability, sexual orientation, national origin. When awarding subcontracts, Proposer 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, Proposer 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) Proposer 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 RFP, Proposer's continuing compliance with ORS 652.220 constitutes a material element of the contract entered into between Owner and Proposer and failure to comply constitutes a breach that entitles The Port to terminate the contract for cause.
6. Proposer and Proposer'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. Proposer certifies that, to the best of its knowledge, there exists no actual or potential conflict between the business or economic interests of Proposer, 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 RFP. If any changes occur with respect to Proposer's status regarding conflict of interest, Proposer shall promptly notify the Port in writing.
8. Proposer understands that any statement or representation it makes, in response to this RFP, 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. Proposer 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 Proposal 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 Proposal 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 Proposer. If it is later determined that Proposer 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. Proposer 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. Proposer 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.
12. Proposer acknowledges these certifications are in addition to any certifications required under the Contract.

Authorized Signature

Date

(Printed Name and Title)

Invitation to Bid (“ITB”)
Port of Astoria
General Contractor Services for
Port of Astoria Regional Airport Terminal Building Improvements

Addendum 3 — Selection Schedule

SELECTION SCHEDULE Addendum 3	
Event	Estimated Date of Completion
ITB Issuance	12/15/2025
Pre-Bid Meeting	1/7/2026
Question Deadline	1/12/2026
Procurement Protest Deadline	1/19/2026
Submission Deadline / Closing	1/27/2026
Issue Notice of Award	2/3/2026
Award Protest Deadline	2/10/2026
Anticipated Commission Approval	2/17/2026
Execute Contract	2/23/2026

FIRST-TIER SUBCONTRACTOR DISCLOSURE FORM

PROJECT NAME: Port of Astoria Regional Airport Terminal Building Improvements

Bid Number (if applicable): _____

BID CLOSING: Date: January 27, 2026

Time: 4:30 PM PST

This form must be submitted i) with the Bid, or ii) 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.)

SUBCONTRACTOR NAME	DOLLAR VALUE	CATEGORY OF WORK

Form Submitted By:

Company / Firm Name

Contact Name (print)

Phone email

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 General Obligation

Contractor shall, consistent with applicable state licensing laws, through itself and/or qualified, licensed subcontractors employed by Contractor, 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.

1.2 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.

1.3 Contractor Responsible for subcontractors

Contractor shall assume responsibility 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, nor shall any provision be interpreted to grant any third-party beneficiary rights. 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.

1.4 Separate subcontractors

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.

1.5 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.

1.6 Safety

Contractor recognizes the importance of performing the Work in a safe manner so as 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. Contractor assumes responsibility for implementing and monitoring all safety precautions and programs necessary to safely perform the Work.

1.7 Quality of Work

1.7.1 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 1.7 or the Contract Documents. Contractor will provide Owner with all manufacturers' warranties upon Substantial Completion.

1.7.2 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 1.7 hereof, within a period of one 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.

1.8 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.

2. Contract Documents

2.1 The Contract Documents are comprised of the following:

- 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 Contractor's Bid submitted in response to the Invitation to Bid ("ITB") documents under which the Contractor was selected.

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 mutually 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 ("Milestone Dates"), incorporated herein by this reference.

[NOTE: Schedule 1 dates shall be determined as part of the final negotiations for this Agreement and included herein.]

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, the Contract Time(s) for performance shall be reasonably extended by Change Order.

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

3.4 Liquidated Damages

3.4.1 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 that Substantial Completion extends beyond the Substantial Completion Date.

3.4.2 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 that Final Completion extends beyond the Final Completion Date.

3.4.3 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 below amount for completion of the Work, subject to any adjustments made in accordance with the Contract Documents.

The Contract Price is \$ _____.

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).

[NOTE: *The Schedule of Values shall be determined in the course of final negotiations for this Agreement and included herein.*]

- 5.1.2 Owner reserves the right to withhold from any progress payment an amount not to exceed five percent of the payment (“Retainage”). Retainage withholding shall be in accordance with ORS 279C.550 thru 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 provide all supporting documentation required by the Contract Documents, if applicable, and Owner and Contractor shall inspect the portion of Work completed to that date. Subject to the Owner’s approval, payment shall then be authorized by Owner’s Representative and payment shall be issued within twenty-one (21) days of such approval. Progress payments not issued by the 21st 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 are not acceptance or approval of the Work, do not constitute a waiver of defects in the work, and shall not relieve the Contractor of responsibility for defective workmanship or material.

5.2 Withholding of Payments.

- 5.2.1 On or before the date established in the Agreement, Owner shall pay Contractor all amounts properly due. 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 five (5) days prior to the date payment is due. 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 § 9 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. Contractor will indemnify and defend Owner against any claims for payment and mechanic's liens as set forth in § 5.4.2 hereof.

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 or 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.

5.5 Substantial Completion.

Contractor shall notify Owner when it 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; (iii) 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 (iv) 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 All operating manuals, warranties and other deliverables 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.
- 5.6.3 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 under Section 1.7 herein 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's Authorized Representative may at any time, without notice to the sureties and without impairing the Contract, require changes to the Work consistent with this Section 6. Such changes shall be initiated by Owner's issuance of a directive to Contractor detailing the required changes. 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 Contract Price. Upon reaching an agreement, 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 Perform and Terminate for Cause
- 7.2.1 If Contractor persistently fails to (i) provide a sufficient number of skilled workers, (ii) supply the materials 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 7.2.2 and 7.2.3 below.
 - 7.2.2 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.
 - 7.2.3 Upon declaring the Agreement terminated pursuant to Section 7.2.2 above, 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 11.1 below.

- 7.2.4 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 that are satisfactory to the State. This insurance shall include i) personal injury liability, ii) products and completed operations, and iii) contractual liability coverage for the indemnity provided under this Contract (to the extent contractual liability coverage for the indemnity is available in the marketplace), and shall be issued on an occurrence basis. 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: \$2,000,000

Property Damage, Per Occurrence Limit for any single claimant: \$100,000

Property Damage, Per Occurrence Limit for multiple claimants: \$250,000

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: \$1,500,000

Property Damage:

Per Occurrence Limit for any single claimant: \$100,000

Per Occurrence Limit for multiple claimants: \$250,000

8.1.2 Additional Insured

The liability coverages, except Professional Liability and Workers Compensation / Employer's Liability, if included, must endorse the "State of Oregon, the Oregon Aviation Board, and the Oregon Department of Aviation, and their respective officers, members, agents and employees" and the "Port of Astoria" as Additional Insureds but only with respect to the contractor's activities to be performed under this Agreement. Coverage shall be primary and noncontributory with any other insurance and self-insurance.

Additional Insured Endorsements on the Commercial General Liability shall be written on ISO Form CG 20 10 07 04, or equivalent, with respect to liability arising out of ongoing operations and ISO Form CG 20 37 07 04, or equivalent, with respect to liability arising out of completed operations.

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, such as Professional Liability insurance or Pollution Liability insurance, 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 ODAV may grant approval of the maximum tail coverage period reasonably available in the marketplace. If ODAV approval is granted, the contractor shall maintain tail coverage for the maximum time period that tail coverage is reasonably available in the marketplace.

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. Contract Adjustments and Disputes

9.1 Requests for Contract Adjustments and Relief

9.1.1 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 occurrence 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.

9.2 Dispute Avoidance and Resolution

9.2.1 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.

9.2.2 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 9.1.1 above unless Owner and Contractor mutually agree otherwise.

9.2.3 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 9.2.2 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.

9.3 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 9.2 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 9.3 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.

9.4 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.

10. Required Provisions

10.1 Payment

10.1.1 Contractor Payment to subcontractors

As required by ORS 279C.570(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.

10.1.2 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.

10.1.3 Contract between Contractor and subcontractors – Required Provisions

10.1.3.1 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.

10.1.3.2 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.

10.1.3.3 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.

10.1.3.4 Contract Requirements for Subcontracts

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

10.1.4 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.

10.2 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.

10.3 Drug Testing Program

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

10.4 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. Section C.4 ("Payment for Medical Care") of the General Conditions is hereby incorporated by reference.

10.5 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) (A) For all overtime in excess of eight hours in any one day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; or
- (B) For all overtime in excess of 10 hours in any one day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and
- (b) For all work performed on Saturday and on any legal holiday specified in ORS 279C.540.

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

10.6 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.

10.7 Prevailing Wage

10.7.1 Contracts Must State Prevailing Wages

Pursuant to ORS 279C.830(1)(a), all contracts or subcontracts entered into by the Contractor under this Agreement shall state the Oregon prevailing wage in effect at the time the work under this Agreement was first advertised. This provision may be complied with by referencing the current source of prevailing wages at the Oregon BOLI website located here:

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

For purposes of compliance with this provision as to this Agreement, the posted rates are herein incorporated by above reference.

10.7.2 Contracts Must Require Payment of Prevailing Wages

As required by ORS 279C.830(1)(c), all contracts or subcontracts entered into by the Contractor under this Agreement must provide that the workers must be paid not less than the specified minimum hourly rate of wage in accordance with ORS 279C.838 and 279C.840.

10.7.3 Contractor Must Pay Prevailing Wages

As required by ORS 279C.840, the hourly rate of wage that the Contractor or any contractor or subcontractor performing Work under this Agreement must pay to workers may not be less than the prevailing rate of wage as referenced above in this subsection.

10.7.4 Federal Prevailing Wages

The Contractor is hereby notified that due to the possibility of federal funding for the Project to be completed under this Agreement, the Contractor shall, in addition to the other requirements in this subsection:

(a) state the federal prevailing wage rates required under the Davis-Bacon Act (40 U.S.C 3141 et seq.) in effect at the time the work under this Agreement was first advertised;

(b) require payment of federal prevailing wage rates, if applicable, in its contracts and subcontracts entered into under this Agreement;

(c) comply with all provisions of 2 CFR Part 200 Appendix II subsection (D);

(d) as required by ORS 279C.830(1)(b) and (d) and ORS 279C.838, pay the higher of the applicable state or federal prevailing rate of wage to all workers on the public works.

10.7.5 Prevailing Wage Certification

10.7.5.1 Payroll Certification Requirement

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

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, attached to this Agreement as Exhibit AE.3.

10.7.5.2 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 17.7.5. 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.

10.7.5.3 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 10.7.5. The contractor shall verify that the first-tier subcontractor has filed the certified statements before the contractor may pay the subcontractor any amount retained under this subsection. The contractor shall pay the first-tier subcontractor the amount retained under this subsection within 14 days after the subcontractor files the certified statements as required by this section. The Contractor is not required to verify the truth of the contents of certified statements filed by a first-tier subcontractor under this subsection.

10.7.6 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.

10.8 Bonds

10.8.1 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).

10.8.2 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)

10.9 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.

10.10 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.

10.11 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 ITB.

11. Other Provisions

11.1 Consequential Damages

11.1.1 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.

11.1.2 The consequential damages limitation set forth in Section 11.1.1 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.

11.2 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.

11.3 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.

11.4 Successorship

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

11.5 Governing Law

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

11.6 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.

11.7 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.

11.8 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.

11.9 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.

11.10 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.

12. 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