

Agreement between Owner and Contractor

This dredging 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 West Basin Marina and Pier 3 Boatyard Haul Out Piers
Dredging

In consideration of the mutual covenants and obligations contained herein, Owner and Contractor (each a “Party” and both, “Parties”) 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 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”; also, see § 6.1 below). In the performance of this Agreement, Contractor shall be responsible for and provide all supervision, oversight, coordination with subcontractors, and management of the Work, including the means, methods, techniques, sequences, and procedures utilized, unless the Contract Documents give other specific instructions.

1.2 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).

1.3 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.

1.4 Permits & Taxes

With the exception of environmental permits, Contractor shall secure all permits required to complete the Work. Contractor shall pay any required taxes necessary to complete the Work and otherwise perform its obligations under this Agreement.

1.5 Standard of Care

Contractor shall perform all dredging activities efficiently and with the highest standards of expertise, skill and competence prevalent in the dredging industry and in conformance with the requirements of the Contract Documents.

1.6 Contractor Responsible for Subcontractors

1.6.1 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. Contractor shall supervise, exercise oversight over, and coordinate the activities of all subcontractors and, subject to the sole exception of § 6.1 below, shall at all times exercise complete and exclusive control over the means, methods, sequences and techniques of construction.

1.6.2 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.

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

1.7 Separate Contractors

Port may elect to directly perform work, and/or retain other contractors to perform work, at the worksite. The Parties shall i) equitably coordinate the activities of all persons at the worksite so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption, and ii) agree upon fair and reasonable schedules and operational procedures for worksite activities. Port shall require each separate contractor to cooperate with Contractor and to assist with the coordination of activities and the review of schedules and operations. The Contract Price and/or Contract Time may be equitably adjusted in accordance with this Agreement for changes made necessary by the coordination of activities by separate contractors.

1.8 Debris

Contractor shall keep any land side staging and/or work areas, if any, 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. 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 any land side staging and/or work areas, if any, for their intended use.

1.9 Safety

Contractor shall assume the material obligation for implementing all safety precautions and programs reasonably and foreseeably necessary to prevent damage, injury or loss to (i) all individuals at the worksite, 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 shall assume responsibility for these same obligations with respect to all subcontractors hired by Contractor in connection with the Work.

1.10 Warranty

Contractor warrants to Owner that the Work shall be completed in conformity to the Contract Documents. Contractor agrees to correct any Work that is found not to be in conformance with the Contract Documents, within a period of six (6) months 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 six month 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.
 - 2.1.5 [Environmental Permits – to be attached upon contract execution]

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, including but not limited to any unusual and/or unknown physical conditions which are materially different from conditions ordinarily encountered in the Work provided for in the Contract Documents, 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) and/or Contract Price shall be reasonably extended or modified by Change Order where circumstances so justify.

“Promptly” in this subsection means less than twenty-four (24) hours.

- 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, including but not limited to payroll certification documents as required by section 11.7.4.1 below. 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 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 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 on the Project 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 subcontracted.

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 Contractor 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 shall order the bathymetry required to verify that the Work is substantially complete in accordance with the requirements of the Contract Documents. Upon receipt of bathymetry reports, and 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

- 6.1 Contractor may request, or Owner may order, at any time and without notice to the sureties and without impairing the Contract, changes to the Work and/or the timing or sequence of 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. Contractor shall not be obligated to perform changes in the Work without a Change Order or Interim Directive.
- 6.2 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 thirty (30) consecutive days or more than sixty (60) 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 or 7.2.2 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 employ any person or persons to complete the Work and provide all of the required labor, services, materials, equipment and other items necessary thereto. 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 12.1 below and therefore not subject to the limitation on consequential damages imposed by that subsection.

Nothing in this Agreement shall be construed to limit Owner's right to seek damages and other relief available under this Agreement or applicable law.

- 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 thirty (30) consecutive days, or more than sixty (60) days during the duration of the Project because of i) court order, ii) order by any government authority having jurisdiction over the Work, or iii) 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 thirty (30) consecutive days, or more than sixty (60) 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 Marine General Liability

Contractor shall obtain, at Contractor's expense, and keep in effect during the term of this Contract, Marine General Liability covering third-party bodily injury and property for those risks generally exclude by CGL insurance.

8.1.1.3 Protection and Indemnity

Contractor shall obtain, at Contractor's expense, and keep in effect during the term of this Contract, Protection and Indemnity ("P&I") insurance covering at minimum the following risks:

- i) bodily injury, loss of life, and property damage to third parties, including injuries to crew members and other third parties such as passengers or others injured in connection with the ship's operations, as well as damage to other ships or structures.
- ii) cleanup costs for oil spills and other forms of marine pollution, including fines or penalties imposed due to pollution incidents.
- iii) costs associated with a compulsory order to remove a wrecked or sunken vessel.
- iv) fines and penalties levied against the Contractor for various infractions, such as pollution or immigration violations.

8.1.1.4 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

8.1.1.5 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.

8.1.1.6 Employer’s Liability

In addition to the Worker’s Compensation insurance required by § 11.5 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 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.

8.1.4 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).

8.1.5 Proof of Coverage

Prior to commencing any 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.

8.2 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 Contract Means this Agreement

11.1.1 Unless expressly indicated otherwise, all references to “contract” and “public improvement contract” mean this Agreement.

11.1.2 Unless expressly indicated otherwise, all references to “contracting agency” mean the Port of Astoria.

11.1.3 Unless expressly indicated otherwise, all references to “project” or “work” mean the labor and services that the Contractor is obligated to perform under this Agreement.

11.2 Payment

11.2.1 Contractor Payment to subcontractors

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.

11.2.2 Contractor Payment to subcontractors – Late Payment Penalty

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.

11.2.3 Contract between Contractor and subcontractors – Required Provisions

11.2.3.1 Contractor shall include in each subcontract for property or services the Contractor enters into with a first-tier subcontractor, including a material supplier, for the purpose of performance under the contract, the following Contractor obligations:

(a) Contractor shall pay the first-tier subcontractor for satisfactory performance under the subcontract within 10 days out of amounts the Port pays to the Contractor under this Agreement.

(b) Contractor shall provide all first-tier subcontractors with a standard form that the first-tier subcontractor may use as an application for payment or as another method by which the subcontractor may claim a payment due from the Contractor.

(c) Except as otherwise provided in this paragraph, Contractor shall use the same form and regular administrative procedures for processing payments during the entire term of the subcontract. A Contractor may change the form or the regular administrative procedures the Contractor uses for processing payments if the Contractor:

(A) Notifies the subcontractor in writing at least 45 days before the date on which the Contractor makes the change; and

(B) Includes with the written notice a copy of the new or changed form or a description of the new or changed procedure.

(d) If the Contractor does not pay the first-tier subcontractor within 30 days after receiving payment from the Port, Contractor shall pay the first-tier subcontractor an interest penalty on amounts due in each payment the Contractor does not make in accordance with the payment clause included in the subcontract under paragraph (a) of this subsection. A Contractor or first-tier subcontractor is not obligated to pay an interest penalty if the only reason that the Contractor or first-tier subcontractor did not make payment when payment was due is that the Contractor or first-tier subcontractor did not receive payment from the contracting agency or contractor when payment was due. The interest penalty:

(A) Applies to the period that begins on the day after the required payment date and that ends on the date on which the amount due is paid; and

(B) Is computed at the rate specified in ORS 279C.515 (2).

(e) Contractor shall require each subcontractor to 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 § 11.2.3.1 above (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.

11.2.3.2 Complaint Clause

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 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.

11.2.3.3 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.

11.2.4 Owner may Charge Contractor for Failure to Pay

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.

11.2.5 Notice of Claim

Contractor agrees that the provisions of ORS 279C.605 shall be in full force and effect.

11.3 Medical Payments by Contractor

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.

11.4 Drug Testing Program

Contractor shall demonstrate that an employee drug testing program is in place.

11.5 Worker's Compensation

(a) 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.

(b) Contractor shall ensure that each of its subcontractors complies with these requirements.

11.6 Hours of Labor

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.

11.7 Prevailing Wage

11.7.1 Contracts Must State Prevailing Wages

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.

11.7.2 Contracts Must Require Payment of Prevailing Wages

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.

11.7.3 Contractor Must Pay Prevailing Wages

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.

11.7.4 Prevailing Wage Certification

11.7.4.1 Payroll Certification Requirement

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 published by the Oregon Bureau of Labor and Industries.

11.7.4.2 Port to Retain 25% when Certification not Filed

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. 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.

11.7.4.3 Contractor to Retain 25% when Certification not Filed

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 subsection. 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.

11.7.5 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

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

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 Contractor shall salvage or recycle construction and demolition debris, if feasible and cost-effective.

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.

11.12 Discrimination in Subcontracting

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. Other Provisions

12.1 Consequential Damages

12.1.1 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.

12.1.2 The consequential damages limitation set forth in Section 12.1.1 above is not intended to limit or exclude 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.

12.2 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.

12.3 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.

12.4 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.

12.5 Successorship

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

12.6 Governing Law

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

12.7 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.

12.8 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.

12.9 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.

12.10 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 ("email").

12.11 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.

12.12 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.

13. 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