

PORT OF HOOD RIVER COMMISSION
Tuesday, October 6, 2015
Marina Center Boardroom
5:00 p.m.

Regular Session Agenda

1. Call to Order
 - a. Modifications, Additions to Agenda
 2. Public Comment (5 minutes per person per subject; 30 minute limit)
 3. Consent Agenda
 - a. Approve Minutes of September 22, 2015 Regular Session (*Laurie*)- Page 3
 - b. Approve Contract with Archaeological Investigations Northwest, Inc. for Archeological Services at Lower Mill Property Not to Exceed \$6,907.54 (*Anne*) – Page 9
 - c. Approve Contract Amendment No. 1 with Vista GeoEnvironmental Services LLC for Lower Mill Site Design Not to Exceed \$2,500.00, for a Total Contract Amount of \$19,491.00 (*Anne*) – Page 17
 - d. Approve Contract with Mascott Equipment Company, Inc. for Replacement of Aviation Hose Reel Not to Exceed \$5,985.00 (*Anne*) – Page 21
 4. Reports, Presentations and Discussion Items
 - a. Tolling System Upgrade Project Update - P-Square Solutions representative and Dennis Switaj, HDR Engineering (*Fred*) – Page 27
 5. Director’s Report (*Michael*) – Page 29
 6. Commissioner, Committee Reports
 7. Action Items
 - a. Approve Resolution No. 2015-16-3 Authorizing the Sale of a Taxable General Revenue Bond and Execution of a Supplemental Revenue Bond Declaration (*Fred*) – Page 39
 - b. Approve Grant Contract with Oregon Business Development Dept. for the Oregon Coalition Brownfield Clean-up Grant (*Anne*) – Page 53
 - c. Approve Contract with JAL Construction, Inc. for Lower Mill Grade and Fill Project Not to Exceed \$145,223.50 (*Anne*) – Page 55
 - d. Approve Contract with IRS Environmental of Portland for Lower Mill Asbestos Removal Not to Exceed \$8,500.00 (*Anne*) – Page 145
 - e. Approve Waterfront Recreation Concession Permits for the 2016-2020 Seasons (*Liz*) – Page 151
 8. Commission Call
-
9. Executive Session under ORS 192.660(2)(e) Real Estate Negotiations
 10. Possible Action
 11. Adjourn

If you have a disability that requires any special materials, services, or assistance, please contact us at 541-386-1645 so we may arrange for appropriate accommodations.

*The chair reserves the opportunity to change the order of the items if unforeseen circumstances arise. The Commission welcomes public comment on issues not on the agenda during the public comment period. With the exception of factual questions, the Commission does not immediately discuss issues raised during public comment. The Commission will either refer concerns raised during public comment to the Executive Director for a response or will request that the issue be placed on a future meeting agenda. People distributing copies of materials as part of their testimony should bring **10 copies**. Written comment on issues of concern may be submitted to the Port Office at any time.*

**Port of Hood River Commission
 Regular Session Meeting Minutes of September 22, 2015
 Marina Center Boardroom**

THESE MINUTES ARE NOT OFFICIAL until approved by the Port Commission at the next regular meeting.

Present: Commissioners Jon Davies, Fred Duckwall, Rich McBride, and Brian Shortt; Port Counsel Jerry Jaques; from staff, Michael McElwee, Fred Kowell, Anne Medenbach, Genevieve Scholl, and Laurie Borton

Absent: Commissioner Hoby Streich

Media: None

1. Call to Order: President Shortt called the Regular Session meeting to order at 5:00 p.m.

a. Modifications, Additions to Agenda: The winter dockage Consent Agenda item was moved to an Action Item; the accounts payable item related to Tonkin Wilsonville Nissan under Consent Agenda will be further clarified; a revised memo related to the Lower Mill Excavate and Haul Project Action Item was provided; and formal action related to the Special Districts Insurance Services “Best Practices Program” checklist was added to the agenda.

b. Vincent Ormando Retirement Presentation: Vince Ormando was acknowledged for his 16 years of friendly and courteous service as a toll collector with the Port of Hood River. Fred Kowell, Chief Financial Officer and toll staff supervisor, presented gifts to Ormando and stated he would be missed and that he was wished the best in his pending retirement.

2. Public Comment: Pat Scallon, who has volunteered for a standup paddleboard non-profit organization, spoke about the importance of all waterfront concessionaires needing to provide proof of liability insurance coverage, having trained and certified instructors, and a safety plan. It was his opinion that past predictors are indicators of future behavior. Scallon also suggested that concession agreements could include language that public, common areas should not be used.

3. Consent Agenda: Executive Director Michael McElwee commented on the Tonkin Wilsonville Nissan item to clarify the vehicle purchase is part of a state pricing agreement and that volume sales allow for the best pricing. The current vehicle has over 150,000 miles and has been a part of the Port’s fleet for over eight years.

- a. Approve Minutes of September 1, 2015 Regular Session
- b. Approve Minutes of September 15, 2015 Special Session
- c. Approve Lease Amendment No. 1 with Hitch Source at Maritime Building
- d. Approve Accounts Payable to Jaques Sharp Attorneys at Law for \$8,276.00; to Schwabe, Williamson & Wyatt, PC for \$5,661.00; and to Tonkin Wilsonville Nissan for \$40,568.00
- e. Approve Amendment No. 1 to Contract with simp.L for Hook Waterfront Trail Project Not to Exceed \$2,630.00
- f. Approve Amendment No. 1 to Contract with Rick Williams Consulting for Parking Analysis and Management Planning Not to Exceed \$2,360.00
- g. Approve ~~Winter Dockage Permit for M/Y Pastime at Commercial Dock~~ [moved to Action Items]

Motion: Move to approve Consent Agenda as amended

Move: Duckwall

Second: Davies

Discussion: Davies cited a potential conflict of interest with the Hitch Source lease amendment and Jaques Sharp Attorneys at Law accounts payable items due to his Columbia River Insurance client relationship

Vote: Aye: Davies, Duckwall, McBride, and Shortt

Absent: Streich

MOTION CARRIED

4. Reports, Presentations and Discussion Items

a. Federal Advocacy Update: Michelle Giguere, Summit Strategies, was available by speakerphone from Washington, D.C. to provide an update on House Transportation and Infrastructure Committee activity. Giguere reported a House bill had not yet been released and that her office was working closely with Oregon and Washington legislators on the MAP 21 federal transportation funding reauthorization. Giguere was asked to contact the Port if there was anything that Commission or staff could do to further assist.

b. Discontinuance of Toll Tickets January 1, 2016: With the move to migrate to a new tolling system that will not have ticket purchase/sell capabilities, and with the need to account, control, secure and issue tickets usually doubling or tripling the cost of cash, a cut-off point of January 1, 2016 was recommended as the best time to cease ticket sales. Fred Kowell, Chief Financial Officer, commented that tickets make up about 18% of bridge payments and he predicts that over 60% will turn to BreezeBy. Customers will have the open-ended option, after January 1, to come into the office to receive a refund on unused tickets or receive a credit if a BreezeBy account is established. Ongoing notification to customers regarding the discontinuance of tickets will begin in October.

c. Bridge Truck Assessment: Key take-aways from the Columbia River Port Engineers final report identifying issues associated with overweight trucks on the Hood River-White Salmon Bridge were reviewed. McElwee noted the report, as it relates directly to the longevity of the bridge, is a good foundation and starting point for plan development and implementation over the next 6-8 months to decrease overweight use of the bridge and increase compliance with the 80,000 pound weight limit. A preliminary list of educational, informational, and enforcement measures was presented for discussion.

5. Director’s Report: McElwee recommended the Commission hold its annual fall planning work session on November 17 with the meeting to begin at noon and a regular session meeting to follow. Staff will be attending various conferences in October (OPPA, PNWA, Oregon Connections Telecommunications). McElwee noted there would be a discussion in Executive Session regarding the recent theft of toll funds. Two new SUP applicants, along with all of the current waterfront concessionaires, have responded to the Letter of Interest for the 2016-2020 concession permit period. Action will be considered at the October 6 meeting. An open house reviewing Lot 1 conceptual planning work was held September 15. Next steps will include tightening the plan and cost estimates, identifying legal lots and addressing policy questions. There was Commission consensus that no additional public outreach meetings were necessary. Kowell and Anne Medenbach, Development/Property Manager, were thanked for attending WAAAM’s Fly In and staffing an Airport Master Plan informational booth. Bridge welding that had been postponed from August began today. As part of the SDIS checklist for public meetings and records best practices, a personal copy of “A Guide for Public Officials” was provided to the Commissioners for their review.

McElwee shared a moorage tenant’s request for a variance regarding subleasing rules. The family is preparing to take the boat on an extended journey across the Pacific and possibly around the world and could be gone from 1 to 3 years. The tenant has requested to keep the slip during this time; however,

current rules states the maximum sublease term is 12 months subject to Port approval. Legal Counsel Jerry Jaques commented that a sublease should not be open-ended. The following consensus was reached following a discussion: allow a deviation from the current rules to permit a 24-month sublease with the understanding the tenant will advise the Port at 18-months of their intention to return to the slip or terminate moorage; modify the Marina Moorage Rules & Regulations that a deviation from the 12-month maximum sublease period is subject to Port approval; a tenant requesting a longer-term sublease needs to be in good standing for one year; and that an extended sublease must be offered to a Wait List person.

6. Commissioner, Committee Reports:

a. Urban Renewal: Commissioner Davies reported on the September 14 meeting. Debt limitations (the amount of spending authority remaining) of each plan were reviewed; and Davies reported that City Administrator Steve Wheeler has directed lower level decisions can be made by the Advisory Committee. Davies said that while more may be accomplished, he suggested that the Agency should keep an eye on which topics are being referred.

b. Airport Advisory Committee: Kowell reported the Committee met on September 15 to review where the Master Plan process is today and what the Committee thought should be added as placeholders. Kowell also commented on the Fly In—there were 80 more planes this year and the event is expected to grow again next year.

7. Action Items:

a. Approve Intent to Award and Award of Contract Barring No Protests for Lower Mill Excavate & Haul Excavate, Sort & Stockpile Project: A revised memo identifying Westech Construction Inc., with the apparent low bid of \$78,000, was provided for discussion.

Motion: Move to approve Intent to Award and award of contract barring no protests to Westech Construction Inc. for Lower Mill excavate, sort, and stockpile project not to exceed \$78,000.00 subject to review of EPA final documentation and legal counsel review

Move: Duckwall

Second: Davies

Discussion: Davies requested a brief summary before a vote was taken. Medenbach commented the Excavate and Haul Project scope had been reduced and the plan to stockpile wood waste on site had been approved by the EPA/DEQ as an acceptable method of disposal.

Vote: **Aye:** Davies, Duckwall, McBride, and Shortt

Absent: Streich

MOTION CARRIED

b. Approve Contract with P Square Solutions Along with Attachment A, Scope of Work, Not to Exceed \$293,920.00: The tolling system contract with P Square Solutions was initially approved by the Commission on July 14, subject to legal counsel review. Legal expertise has been provided by Schwabe, Williamson and Wyatt, and it was determined there were enough significant changes that warranted the contract being brought back to the Commission for re-approval. Kowell stated his confidence in the contract and noted the Port now has an interest in ownership rights and built-in extensions.

Motion: Move to approve bridge software, development, license and support services contract with P Square Solutions along with Attachment A, Scope of Services, not to exceed \$293,920.00 (*rescinds July 14, 2015 motion*)

Move: Davies

Second: McBride

Vote: **Aye:** Davies, Duckwall, McBride, and Shortt

Absent: Streich

MOTION CARRIED

c. Authorize Amendment No. 3 to the Amended and Restated Disposition and Development Agreement with Key Development Corporation for Parcels 1 and 2 of the Waterfront Business Park: McElwee reported this third amendment would approve a new schedule of performance for the two parcels to reflect the length of time it has taken the City to process Land Use Review applications.

Motion: Move to authorize Amendment No. 3 to the Amended and Restated Disposition and Development Agreement with Key Development Corporation for Parcels 1 and 2 of the Waterfront Business Park

Move: McBride

Second: Duckwall

Vote: **Aye:** Davies, Duckwall, McBride, and Shortt

Absent: Streich

MOTION CARRIED

d. Approve Winter Dockage Permit for M/Y Pastime at Commercial Dock: This item was pulled from the Consent Agent to correct the identification of the Permittee. Marina Manager Laurie Borton confirmed the permit would be issued to, and signed by, an individual rather than a corporate entity.

Motion: Move to approve winter dockage permit for M/Y Pastime at commercial dock, as amended

Move: McBride

Second: Duckwall

Vote: **Aye:** Davies, Duckwall, McBride, and Shortt

Absent: Streich

MOTION CARRIED

e. Approve SDIS Best Practices Checklist:

Motion: Move to certify that the Port of Hood River Board of Directors has reviewed and approved all answers on the Special District Insurance Services “Public Meetings and Records Best Practices Checklist” and “Training or Board Practices Assessment”

Move: Davies

Second: Duckwall

Vote: **Aye:** Davies, Duckwall, McBride, and Shortt

Absent: Streich

MOTION CARRIED

d. Approve Moorage Sublease Request: [See Director’s Report.]

Motion: Move to approve sublease variance for Peter Arpag for a period not to exceed two years, require tenancy update at 18 months, and select sublessee from Marina Wait List
Move: Davies
Second: Duckwall
Vote: **Aye:** Davies, Duckwall, McBride, and Shortt
Absent: Streich

MOTION CARRIED

8. Commission Call: McBride posed questions for further discussion regarding a non-profit organization providing SUP equipment-- does the Port consider a paid concession permit, which requires liability insurance and appropriate City and State permitting, and hold the organization to all contractual requirements? If a permit is offered but not at a preferred site, and the club sets up at a different location(s), how or would enforcement be addressed? McElwee and Jaques responded enforcement of Port Ordinance No. 24 would be challenging and that it would be difficult to legally prohibit public use of public property. Permits for the 2016-2020 concession period will be brought to the Commission on October 6.

9. Executive Session: Regular Session was recessed at 7:25 p.m. and the Commission was called into Executive Session under ORS 192.660(2)(e) Real Property Transactions and ORS 192.660(2)(f) Exempt Public Records.

10. Possible Action: The Commission was called back into Regular Session at 8:08 p.m. The following action was taken as a result of Executive Session.

Motion: Move to approve the Purchase and Sale Agreement with Marvin and Irene Duniphin for approximately 2.53 acres (2N 10E 25C Tax Lot 300) for a purchase price of \$141,000.00
Move: McBride
Second: Duckwall
Vote: **Aye:** Davies, Duckwall, McBride, and Shortt
Absent: Streich

MOTION CARRIED

Motion: Move to approve Termination and Replacement of Airport Land Lease Hangar Agreement with Dwayne D. and Jeanne A. Troxel
Move: Duckwall
Second: Davies
Vote: **Aye:** Davies, Duckwall, McBride, and Shortt
Absent: Streich

MOTION CARRIED

Motion: Move to approve Land Lease with Russell Werner for the 29,420 SF area around the “Blue Hangar” located on the Ken Jernstedt Airfield, subject to legal counsel review
Move: Duckwall
Second: Davies

Vote: **Aye:** Davies, Duckwall, McBride, and Shortt
 Absent: Streich

MOTION CARRIED

Motion: Move to adjourn
Move: Davies
Second: McBride
Vote: **Aye:** Davies, Duckwall, McBride, and Shortt
 Absent: Streich

MOTION CARRIED

11. Adjourn: President Shortt adjourned the meeting at 8:10 p.m.

Respectfully submitted,

Laurie Borton

ATTEST:

Brian Shortt, President, Port Commission

Jon Davies, Secretary, Port Commission



Prepared by: Anne Medenbach
Date: October 6, 2015
Re: Archaeological Investigations Northwest, Inc.

As a requirement of the grant process with the EPA, the Lower Mill Site redevelopment project must conform with both the Endangered Species Act (ESA) and the National Historical Preservation Act (NHPA). To achieve this, the project scope and grant application were reviewed by the State Historic Preservation Office (SHPO) and the National Wildlife Federation (NWF). The EPA grant administrator was not anticipating any review comments by these agencies. However, SHPO did comment (on September 21) that they felt that there was a high likelihood that artifacts of cultural significance would be found in the 100 year old log pond.

Due to this review, the EPA now requires the Port to have an archeologist on site during the wood waste portion of the excavation. This will require up to 5 five days of on-site archaeological monitoring. The archeologist's scope is very narrow and they are not qualified to also monitor for potential contamination.

Archaeological Investigations Northwest, Inc. has done work for the Port in the past and is able to accommodate the short notice. This contract cost is eligible to be covered by the grant funding.

RECOMMENDATION: Approve contract with Archaeological Investigations Northwest Inc., for archeological monitoring of the log pond excavation at the Lower Mill Site not to exceed \$6,907.54.

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**Personal Services Contract
For Services Under \$50,000**

1. This Contract is entered into between the Port of Hood River ("Port") and **Archaeological Investigations Northwest, Inc.**, ("Contractor"). Contractor agrees to perform the Scope of Work described in attached Exhibit A to Port's satisfaction in accordance with the terms in attached Exhibits, A, B and C. Port shall pay Contractor amounts stated in Exhibit C, which totals an amount not to exceed **\$6,907.54**.
2. This Contract shall be in effect from the date at which each party has signed this Contract through the duration of the excavation of the Lower Mill Log pond project (Project #_____). Either Contractor or Port may terminate this Contract in the event of a breach of the Contract by the other. Port may terminate this Contract for any reason by giving 15 days written notice to Contractor at Contractor's address listed below. If Port terminates this Contract, Contractor shall only receive compensation for work done and expenses paid by Contractor prior to the Contract termination date.
3. All work products of the Contract, which result from this Contract, are the exclusive property of Port. Port shall have access to all books, documents, papers and records of Contractor which relate to this Contract for purpose of making audit, examination, excerpts, and transcripts for a period of three years after final payment.
4. Contractor will apply that skill and knowledge with care and diligence to perform the work in a professional manner and in accordance with standards prevalent in Contractor's industry, trade or profession. Contractor will, at all times during the term of the Contract, be qualified, professionally competent, and duly licensed to perform the work.
5. Contractor certifies that Contractor is an Independent Contractor as defined in ORS 670.600 and shall be entitled to no compensation other than that stated above.
6. Contractor shall indemnify, defend, save, and hold harmless Port, its Commissioners, officers, agents, and employees from all claims, suits, or actions of whatsoever nature resulting from or arising out of the activities of Contractor or its subcontractors, agents or employees under this Contract. Contractor shall provide insurance in accordance with attached Exhibit B.
7. This Contract may be executed in any number of counterparts, and any single counterpart or set of counterparts signed, in either case, by all parties hereto shall constitute a full and original instrument, but all of which shall together constitute one and the same instrument.
8. This Contract shall be governed by the laws of the State of Oregon and any litigation involving any question arising under this Contract must be brought in the Circuit Court in Hood River County, Oregon. If any provision of this Contract is found to be illegal or unenforceable, this Contract shall remain in full force and effect and the provision shall be stricken.
9. Contractor shall adhere to all applicable federal, state, and local laws and regulations, including those governing its relationship with its employees.
10. This Contract contains the entire agreement between Contractor and Port and supersedes all prior written or oral discussions or agreements. Any modification to this Contract shall be reduced to writing and signed by the Contractor and Port. Contractor shall not assign this Contract or subcontract its work under this Contract without the prior written approval of Port.
11. The person signing below on behalf of Contractor warrants they have authority to sign for and bind Contractor.

Contractor: **Archeological
Investigations Northwest
Inc. (dba AINW)**

Port of Hood River

Signed: _____
Date: _____
Address: Jo Reese, Vice President
 3510 NE 122nd Ave.
 Portland, OR 97230
Phone/Email: (503) [761-6605](tel:761-6605) / jo@ainw.com

Signed: _____
Date: _____
Address: Michael McElwee, Executive Director
 1000 E. Port Marina Drive
 Hood River, OR, 97031
Phn/Email (541) [386-1645](tel:386-1645) / porthr@gorge.net

**Personal Services Contract
Exhibit A**

I. SCOPE OF WORK:

Location: 3289 Neal Mill Creek Road, Lower Mill Site, Odell, Oregon

Scope Summary: Removal of woody debris contained in the former log pond site is being funded by the EPA through the Oregon Brownfields Program. Part of the grant funding requirement is to have a review of the project site by the Oregon State Historic Preservation Office (SHPO) to determine if there is a high likelihood of uncovering cultural artifacts or human remains. SHPO has requested that during the removal of the woody debris in the former log pond at the site, that an archeologist be present to monitor the excavation in the case that an artifact is found.

Specific Requirements: The Contractor will be on-site during the excavation of the woody debris in the log pond area. This could require a site presence for up to 5 working days. At the conclusion of the excavation, the Contractor will present a report to the Port which contains the monitoring process that was followed and any findings that were made. This report will meet the guidelines set forth by the EPA or SHPO for such reporting.

Contractor shall provide work and documents described in Contractor's proposal Memo dated September 23, 2015, attached hereto as Exhibit "C".

II. DELIVERABLES AND TIMEFRAME:

The deliverable(s) covered under this Contract shall be: Summary report of all fieldwork and findings. This will be in a memorandum format and include maps and photographs of the location and any findings. The report will be submitted directly to SHPO or the EPA at the Port's request.

The due dates for the deliverable(s) shall be: 30 days after the excavation project has concluded.

III. CONSIDERATION:

Contractor shall be paid hourly rates set forth in Exhibit "C" for work performed and be reimbursed for reasonable expenses, not to exceed a total of \$6,907.54. If evidence of an archeological resource is found Contractor will immediately notify Port. In that event a change order may be issued for additional services.

IV. BILLING AND PAYMENT PROCEDURE:

The Contractor shall submit to the Port for payment an itemized invoice in a form and in sufficient detail to determine the work performed for the amount requested. The invoice shall contain at a minimum:

- Invoice date
- Contract project title
- Record of hours worked and a brief description of activities
- Billing rate applied

The Port shall process payment in its normal course and manner for Accounts Payable, net 30 days.

Personal Services Contract
Exhibit B

INSURANCE

Contractors, please send this to your insurance agent immediately.

During the term of this Contract, Contractor shall maintain in force at its own expense, each insurance noted below:

- 1. Workers' Compensation insurance in compliance with ORS 656.017, which requires subject employers to provide Oregon workers' compensation coverage for all their subject workers. (Required of contractors with one or more employees, unless exempt order ORS 656.027.)

Required and attached OR Contractor is exempt

Certified by Contractor: _____
Signature/Title

- 2. Commercial General Liability insurance on an occurrence basis with a limit of not less than \$1,000,000 each occurrence for bodily injury and property damage and \$2,000,000 general aggregate. The Liability Insurance coverage shall provide contractual liability. The coverage shall name the Port of Hood River and each of its Commissioners, officers, agents, and employees as Additional Insured with respect to the Contractor's services to be provided under the Contract.

Required and attached Waived by Finance Manager _____

- 3. Automobile Liability insurance with a combined single limit of not less than \$1,000,000 each occurrence for bodily injury and property damage, including coverage for owned, hired, or non-owned vehicles, as applicable.

Required and attached Waived by Finance Manager _____

- 4. Professional Liability insurance with a \$1,000,000 per claim and \$1,000,000 in the aggregate for malpractice or errors and omissions coverage against liability for personal injury, death or damage of property, including loss of use thereof, arising from the firm's acts, errors or omissions in any way related to this Contract.

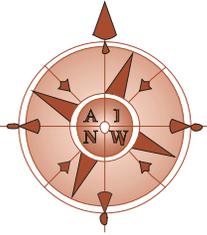
Required and attached Waived by Finance Manager _____

- 5. **Certificate of Insurance.** As evidence of the insurance coverage required by this Contract, the Contractor shall furnish acceptable insurance certificates to the Port at the time Contractor returns the signed Contract.

The General Liability certificate shall provide that the Port, its Commissioners, officers, agents, and employees are Additional Insured but only with respect to the Contractor's services to be provided under this Contract.

Endorsement CG 20 10 11 85 or its equivalent must be attached to the Certificate. **AINW will provide a 30-day** notification in writing to the Certificate Holder (Port of Hood River). Insuring companies or entities are subject to Port acceptance. If requested, complete copies of the insurance policy shall be provided to the Port. The Contractor shall be financially responsible for all pertinent deductibles, self-insured retentions, and/or self-insurance.

EXHIBIT C



Archaeological Investigations Northwest, Inc.

3510 N.E. 122nd Ave. • Portland, Oregon 97230
 Phone (503) 761-6605 • Fax (503) 761-6620

Vancouver Phone (360) 696-7473
 E-mail: ainw@ainw.com
 Web: www.ainw.com

MEMO

Date: September 23, 2015
 To: Anne Medenbach, Port of Hood River
 From: Jo Reese, M.A., R.P.A., VP/Senior Archaeologist
 Re: Former Log Pond in Odell
 Archaeological Monitoring

The following is my (AINW) proposal for tasks related to archaeological monitoring that are needed at the request of the Oregon State Historic Preservation Office (SHPO) as part of your project at the former sawmill site in Odell. Removal of woody debris from the former log pond, that had been filled and covered many years ago, is being funded by the Environmental Protection Agency (EPA). At this time, I am aware that your compliance steps for Section 106 of the National Historic Preservation Office have been completed except for the requested monitoring.

Monitoring would be done to meet the review by the SHPO and possibly the EPA. AINW personnel overseeing and directing the project will meet the professional qualifications of the Secretary of the Interior's Standards and Guidelines in Archaeology. The field monitoring may be accomplished by a qualified archaeologist. The work will also meet the SHPO guidelines.

Monitoring On-Site

Per our conversations, AINW will have an archaeologist present during the woody debris removal, which is anticipated to require up to five consecutive days. This is likely to be done in October. Responsibilities and communication will be through me.

In-field time and the travel time to and from the job site, plus coordination and paperwork tasks such as downloading digital data and photographs, would be billed. Some related non-field tasks may be performed by support staff. If overtime is *incurred* due to long days or monitoring on a weekend, the billing rate will be 1.5 times the straight-time rate. The cost estimate attached does not take into account overtime. On-site monitoring is assumed to be accomplished in 8-hour days. The cost estimate assumes the field monitoring may be performed by a qualified archaeologist.

Summary Report

A summary will be prepared to document the fieldwork and findings. The monitoring summary would be a memorandum format and include maps of the location and photographs. The report can be submitted to the SHPO and EPA.

Cost

The attached cost estimate notes that the total for both tasks is expected to not exceed \$6,908.00. Cost would be billed on a time and expenses basis. Our payment terms are Net 30 days. If evidence of an archaeological resource is found, agency coordination and documentation needed to address it would be at additional costs.

I can provide you with certificates of our worker's compensation insurance, general and auto liability insurance, and professional liability insurance, upon request. I appreciate the opportunity to serve as your archaeological consultant. Please feel free to call me if you have any questions.

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Prepared by: Anne Medenbach
Date: October 6, 2015
Re: Lower Mill Site Design - Vista GeoEnvironmental Services

Vista GeoEnvironmental Services, LLC (“Vista”) is our engineer for the site design and clean-up work at the Lower Mill Site. When their two contracts (a. Site Design and b. Compaction testing and monitoring) were signed, the anticipated schedule had work beginning in September and completed by October.

That schedule has been pushed back due to EPA review of the Remedial Action Plan. Therefore, the contracts need to be amended to reflect the extended schedule.

Also, due to the extended process, re-phasing, and re-design of the cleanup project, Port staff requires additional engineering support. This support would add \$2,500.00 to the contract.

RECOMMENDATION: Approve Contract Amendment #1 to the Site Design Contract with Vista GeoEnvironmental, LLC in an amount of \$2,500.00 with a total contract amount not to exceed \$19,491.00.

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**AMENDMENT NO. 1
TO PERSONAL SERVICES CONTRACT**

This Amendment No. 1 to the Personal Services Contract For Engineering & Related Services ("Contract") is entered into by and between VISTA GeoEnvironmental Services, LLC ("Contractor") and the Port of Hood River ("Port").

RECITALS:

WHEREAS, Contractor and Port entered into a Personal Services Contract dated July 21, 2015 for Site engineering and design services for the Hanel Mill site in Odell, Oregon ("Project") for an amount not to exceed \$16,991 ("Original Contract Price"); and

WHEREAS, EPA Project grant fund requirements has caused the Project to be delayed, requiring the Contract work completion date to be extended from October 1, 2015 ("Original Completion Date") to November 30, 2015 ("New Completion Date"); and

WHEREAS, Contractor's Scope of Work has increased to include additional engineering support during bid and contracting processes as described in attached Exhibit A-1, resulting in an addition to the Original Contract Price;

NOW, THEREFORE, Port and Contractor agree that the Contract has remained in effect after the Original Completion Date and will remain in effect through the New Completion Date for Contractor to carry out the work described in Contract Exhibit A for an amount not to exceed **\$16,991.00**, and Contractor shall provide additional work described in attached Exhibit A-1 at rates listed in Contract Exhibit C plus receive reimbursable expenses in an amount not to exceed \$2,500.00, resulting in a total Contract amount not to exceed **\$19,491.00** payable for completion of all Contractor's Contract work by November 30, 2015.

Except as changed by this Amendment No. 1, all terms of the Contract remain unchanged and in effect.

VISTA GeoEnvironmental Services, LLC

PORT OF HOOD RIVER

Carlso Garrido
Member
Date: _____
489 N. 8th Street
Hood River, OR 97031
(541) 386-6480
cgarrido@v-ges.com

Michael S. McElwee
Executive Director
Date: _____
1000 E. Port Marina Drive
Hood River OR 97031
(541) 386-1645
porthr@gorge.net

cc: Finance Manager

**Personal Services Contract
Exhibit A-1**

I. SCOPE OF WORK:

Contractor will provide engineering services for site development and design of the Lower Mill site, located at 3289 Neal Mill Creek Road, Hood River, OR 97031.

Task 1. Engineering Support

- A. Contractor will provide support to Port staff for:
 - a. Contract Specification clarification
 - b. Coordination with Contractors
 - c. General engineering support through Phase 1 and Phase 2 of Log pond Clean up.



Prepared by: Anne Medenbach
Date: October 6, 2015
Re: Airport Fuel Reel- Mascott Equipment Company, Inc.

The fuel reel system at the airport was replaced in October of 2013 by SME, of Portland. That fuel reel was not an aviation grade fuel reel and is now failing and leaking. The warranty is no longer valid. Additionally, there were some electrical issues on the system that were repaired in May of 2015 by Gorge Electric.

The reel needs to be replaced to stop the leaking, ensure that the system is functioning properly, and is aviation grade. Mascott Equipment Company, Inc. has good references and is the only other fuel system maintenance company in the area that works on aviation fuel systems.

The contract includes a replacement of the reel, hose and portions of a stand pipe. An electrician will also be needed, provided by the Port, to disconnect and connect the old and new hose reels.

RECOMMENDATION: Approve Contract with Mascott Equipment Company, Inc. for replacement of aviation hose reel at Ken Jernstedt Airfield not to exceed \$5,635.00 with up to \$350 of additional reimbursable expenses.

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**Maintenance Contract
For Services Under \$50,000**

1. This Contract is entered into between the Port of Hood River ("Port") and **Mascott Equipment Company, Inc.** ("Contractor"). Contractor agrees to perform the Scope of Work described in attached Exhibit A to Port's satisfaction in accordance with the terms in attached Exhibits, A and B. Port shall pay Contractor amounts stated in Exhibit C, which in total shall not exceed **\$5,985.00**.
2. This Contract shall be in effect from the date at which every party has signed this Contract through **October 23, 2015**. Either Contractor or Port may terminate this Contract in the event of a breach of the Contract by the other. Port may terminate this Contract for any reason by giving 15 days written notice to Contractor at Contractor's address listed below. If Port terminates this Contract, Contractor shall only receive compensation for work done and expenses paid by Contractor prior to the Contract termination date.
3. All work products of the Contract, which result from this Contract, are the exclusive property of Port. Port shall have access to all books, documents, papers and records of Contractor which relate to this Contract for purpose of making audit, examination, excerpts, and transcripts for a period of three years after final payment.
4. Contractor will apply that skill and knowledge with care and diligence to perform the work in a professional manner and in accordance with standards prevalent in Contractor's industry, trade or profession. Contractor will, at all times during the term of the Contract, be qualified, professionally competent, and duly licensed to perform the work.
5. Contractor certifies that Contractor is an Independent Contractor as defined in ORS 670.600 and shall be entitled to no compensation other than that stated above.
6. Contractor shall indemnify, defend, save, and hold harmless Port, its Commissioners, officers, agents, and employees from all claims, suits, or actions of whatsoever nature resulting from or arising out of the activities of Contractor or its subcontractors, agents or employees under this Contract. Contractor shall provide insurance in accordance with attached Exhibit B.
7. This Contract may be executed in any number of counterparts, and any single counterpart or set of counterparts signed, in either case, by all parties hereto shall constitute a full and original instrument, but all of which shall together constitute one and the same instrument.
8. This Contract shall be governed by the laws of the State of Oregon and any litigation involving any question arising under this Contract must be brought in the Circuit Court in Hood River County, Oregon. If any provision of this Contract is found to be illegal or unenforceable, this Contract shall remain in full force and effect and the provision shall be stricken.
9. Contractor shall adhere to all applicable federal, state, and local laws and regulations, including those governing its relationship with its employees.
10. This Contract contains the entire agreement between Contractor and Port and supersedes all prior written or oral discussions or agreements. Any modification to this Contract shall be reduced to writing and signed by the Contractor and Port. Contractor shall not assign this Contract or subcontract its work under this Contract without the prior written approval of Port.
11. The person signing below on behalf of Contractor warrants they have authority to sign for and bind Contractor.

Contractor: Mascott Equipment Company Inc.

Port of Hood River

Signed:

Signed:

Title:

Title:

Executive Director

Date:

Date:

Address:

435 NE Hancock
Portland, OR 97212

Address:

1000 E. Port Marina Drive
Hood River, OR 97031

Phone/Email:

(503) 282-2587

Phone/Email:

(541) 386-1645 porthr@gorge.net

**Personal Services Contract
Exhibit A**

I. SCOPE OF WORK:

Location: Ken Jernstedt Airfield, FBO fuel

Work Description: Contractor will remove existing hose reel and replace it with an aviation hose reel. Contractor will supply the hose reel and flex hose. Existing nozzle and non-flex hose shall be reused. Contractor will also modify the piping to accommodate the new reel installation.

-Labor	\$3,200.00
-Flex connect pipe and hardware	\$125.00
-Hose Reel	\$1,710.00

Port shall supply an on-site electrician to disconnect the old reel and reconnect the new reel. Contractor shall give Port 3 days' notice of the work start date and time in order to have the electrician there.

Contractor will ensure that the new hose reel fits properly and matches dimensions and that the new piping fits correctly to ensure proper function. If the reel does not fit, Contractor will re-order the one that does and charge that increased item price to reimburse for the actual reel price. Invoices for that reel price change will need to be provided to the Port before final payment can be made.

II. DELIVERABLES AND TIMEFRAME:

The deliverable(s) covered under this Contract shall be: A new aviation hose reel which functions properly and is installed to manufacturer's warranty.

Contractor shall provide a copy of such manufacturer's warranty with the final billing.

The due dates for the deliverable(s) shall be: October 23, 2015.

III. CONSIDERATION:

Hourly rates under this Contract shall be \$89.00.

Reimbursables under this Contract shall be \$350.00 for meals and lodging IF the work takes more than 1 business day and with receipts provided. This amount may be added to the contract amount for a total of 5,985.00.

IV. BILLING AND PAYMENT PROCEDURE:

The Contractor shall submit to the Port for payment an itemized invoice in a form and in sufficient detail to determine the work performed for the amount requested. The invoice shall contain at a minimum:

- Invoice date
- Contract project title
- Record of hours worked and a brief description of activities
- Billing rate applied
- Description of reimbursable items

The Port shall process payment in its normal course and manner for Accounts Payable, net 30 days.

Personal Services Contract
Exhibit B

INSURANCE

Contractors, please send this to your insurance agent immediately.

During the term of this Contract, Contractor shall maintain in force at its own expense, each insurance noted below:

- 1. Workers' Compensation insurance in compliance with ORS 656.017, which requires subject employers to provide Oregon workers' compensation coverage for all their subject workers. (Required of contractors with one or more employees, unless exempt order ORS 656.027.)

Required and attached OR Contractor is exempt

Certified by Contractor: _____
Signature/Title

- 2. Commercial General Liability insurance on an occurrence basis with a limit of not less than \$1,000,000 each occurrence for bodily injury and property damage and \$2,000,000 general aggregate. The Liability Insurance coverage shall provide contractual liability. The coverage shall name the Port of Hood River and each of its Commissioners, officers, agents, and employees as Additional Insured with respect to the Contractor's services to be provided under the Contract.

Required and attached Waived by Finance Manager _____

- 3. Automobile Liability insurance with a combined single limit of not less than \$1,000,000 each occurrence for bodily injury and property damage, including coverage for owned, hired, or non-owned vehicles, as applicable.

Required and attached Waived by Finance Manager _____

- 4. Professional Liability insurance with a \$1,000,000 per claim and \$1,000,000 in the aggregate for malpractice or errors and omissions coverage against liability for personal injury, death or damage of property, including loss of use thereof, arising from the firm's acts, errors or omissions in any way related to this Contract.

Required and attached Waived by Finance Manager _____

- 5. **Certificate of Insurance.** As evidence of the insurance coverage required by this Contract, the Contractor shall furnish acceptable insurance certificates to the Port at the time Contractor returns the signed Contract.

The General Liability certificate shall provide that the Port, its Commissioners, officers, agents, and employees are Additional Insured but only with respect to the Contractor's services to be provided under this Contract.

Endorsement CG 20 10 11 85 or its equivalent must be attached to the Certificate. The Certificate must contain a standard 30 day notice of cancellation clause which guarantees notification in writing to the Certificate Holder (Port of Hood River). Insuring companies or entities are subject to Port acceptance. If requested, complete copies of the insurance policy shall be provided to the Port. The Contractor shall be financially responsible for all pertinent deductibles, self-insured retentions, and/or self-insurance.

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Prepared by: Fred Kowell
Date: October 6, 2015
Re: Tolling System Upgrade Project Update

Dennis Switaj from HDR Engineering and a representative from P-Square Solutions will present the Commission with an update to the Tolling System Upgrade project.

RECOMMENDATION: Informational.

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Executive Director's Report

October 6, 2015

Staff & Administrative

- A draft Fall Planning Work Session agenda will be distributed at the October 20 meeting for Commission review and input.
- I attended the OPPA Annual Meeting in Bandon on October 1 and 2. This completes my second and final year as president of OPPA. I will remain on the board for two years. OPPA's two major legislative objectives in the 2017 legislative session are updating ORS 777 and securing dedicated funds for shovel-ready infrastructure projects.
- Summit Strategies and legislative offices are seeking changes in the forthcoming transportation bill in the U.S. House of Representatives.
- Former Port Commissioner Bill Lyons passed away on September 21. We will send a condolence card and small contribution to the American Cancer Society in Mr. Lyons memory.
- "Oregon Business Magazine" is completing preparation of the article on the Port of Hood River. Thanks to all Commissioners for interviewing with the reporter.
- On September 18th, Anne led a tour of the waterfront for the County Planners of Oregon.
- Genevieve and Paige Rouse have begun work on the fall newsletter. This will be a print edition; distribution planned for mid-November.

Recreation

- Portions of the new concrete pedestrian path through the Marina parking lot must be re-paved because they slightly exceeded ADA standards. The contractor did not explicitly follow the plans and specs. There will be no cost to the Port.
- The Moorage Agreement with the owners of the vessel "Pastime" has been executed.
- Re-construction of E. Port Marina Drive is complete. Seal coating of the Marina and Event Site parking lots is expected to be complete by October 7.
- On September 15th, Hood River Valley Parks & Recreation completed a traffic assessment of a proposed Dog Park west of the sewer plant (attached). Staff has reviewed the report and provided input. The report recommends placing a crosswalk across Portway Ave. and removing the fence and trees at the southwest corner of the Maritime property to improve driver visibility that would be problematic to implement.

- The City has established the following construction schedule for the new sewer outfall and paved trail on the Hook: Construction Start/Mobilization: 11/6; Paving: 3/14-3/24; Final Completion: 4/1. If the Commission approves, we will start the additional improvements (rigging area, etc.) after the City has finished.
- Pacific Northwest National Labs (PNNL) installed a weather station on Lot 1. The station will gauge temperature, wind direction and speed, solar radiation, and humidity. PNNL will provide a feed to our website.
- Art of Community has completed the installation of this year's two new art pieces on the waterfront. "The Thinker," (pictured) is an amphibian take on Rodin's famous sculpture, is now pondering the quiet waters of the Nichols Basin at the new beach.



Development/Property

- Now that the public meeting has occurred, the next step for Walker | Macy's Lot #1 work is to prepare infrastructure cost estimates and a draft subdivision plan for discussion with the Commission. I will be meeting in Portland with Walker | Macy on this final phase of work.
- Naito Development has issued an invitation for a Hard Hat Tour of the hotel project on October 15 in the afternoon. All Commissioners are welcome to attend.
- As of September 29, Naito Development has not commenced construction of the driveway from the Naito access road, although we expect work to begin very soon. I have heard of no further progress on the trail connection.
- The Hood River Juice Company has not yet moved the metal fence. We will be in touch with the company soon, reiterating the need to carry out this work.
- The City has issued a letter to Key Development stating that the Site Plan Review application for the Expo Light Industrial Buildings is complete. A formal decision is required by December 26—120 days.
- I met with Ben Sheppard on September 29 to review the construction plans. Application for the building permit will occur the week of October 5. Sheppard is targeting a construction start date of March 1.
- A grade and fill permit and minor partition applications have been filed with Hood River County to complete the necessary permitting for the Lower Mill site.

- The EPA should be finalizing their review of all Lower Mill Site documents within the next week. Once the review is complete, contractors are lined up to begin work immediately. We hope to complete the work in the good weather window.
 - The Energy Trust is nearly complete with their energy audits of the Jensen and DMV Buildings. These audits will result in a report of available funding for HVAC unit replacement.
 - Fall clean-up is currently occurring on all Port properties in preparation for winter weather.
-

Airport

- In mid-September a truck struck the service line to the Yellow Hangar, ripping off the mast arm and building meter. PP&L helped with the repairs and replaced the service line but a significant expense was also incurred by the Port.
 - CenturyWest is preparing the final draft Airport Layout Plan. The Airport Master Plan is about 85% complete and we have incorporated the comments from the Airport Advisory Committee as well as the Planning Advisory Committee through several meetings. Port staff went to the Oregon Airport Management Association conference where they met with CenturyWest consultants and the FAA regarding the next five year CIP forecast. This will include the south taxi runway improvements as well as the subsequent north apron improvements. The FAA representative stated that 2016-18 is over committed, and that 2019-20 is open for funding for this type of project. They also stated that if the Port were to move forward with design, there is a likelihood that funding could open up sooner.
-

Bridge/Transportation

- Port crews finished maintenance welding of the bridge deck on September 30. A big thanks to the entire Facilities crew for completing this challenging work safely and well, particularly welders Louis Ambers and Steve DePriest.
- Rumble strips were installed near the Toll Booth on September 23rd.
- Staff is looking at replacing one of the transponder readers, working with TransCore and HDR to purchase a transponder reader that will function with the current transponders as well as the future transponders.
- Maintenance crews will begin repairing the IDRIS loops that are showing wear. This will occur over the next six months.
- Patriot Guard Riders will lead a caravan of military veterans across the bridge on October 2. This is part of an annual event to honor veterans and provide an opportunity

to enable access to hunting. As in years past, the Port will waive tolls and participants will not be required to stop at the toll booth.

- We will soon advertise job openings for part-time toll collectors due to recent turnover and upcoming retirements.



117 Commercial Street NE
Suite 310
Salem, OR 97301
503.391.8773
www.dksassociates.com

MEMORANDUM

DATE: September 9, 2015
TO: Scott Baker, Assistant Director, Hood River Valley Parks and Recreation
FROM: Scott Mansur, P.E.
Jordin Ketelsen, EIT
SUBJECT: Hood River Dog Park Transportation Safety Study

P15159-000

This memorandum documents the site plan review and transportation safety evaluation for the proposed Dog Park located adjacent to The Hook along the Columbia River in the City of Hood River, Oregon. The facility would be accessed at the bend in Portway Ave, as shown in Figure 1. The purpose of this memorandum is to present a review and safety evaluation of the site plan. This memorandum will serve to identify multimodal connectivity to the facility and identify potential sight distance concerns. It will also present the code requirements for the facility's parking lot.

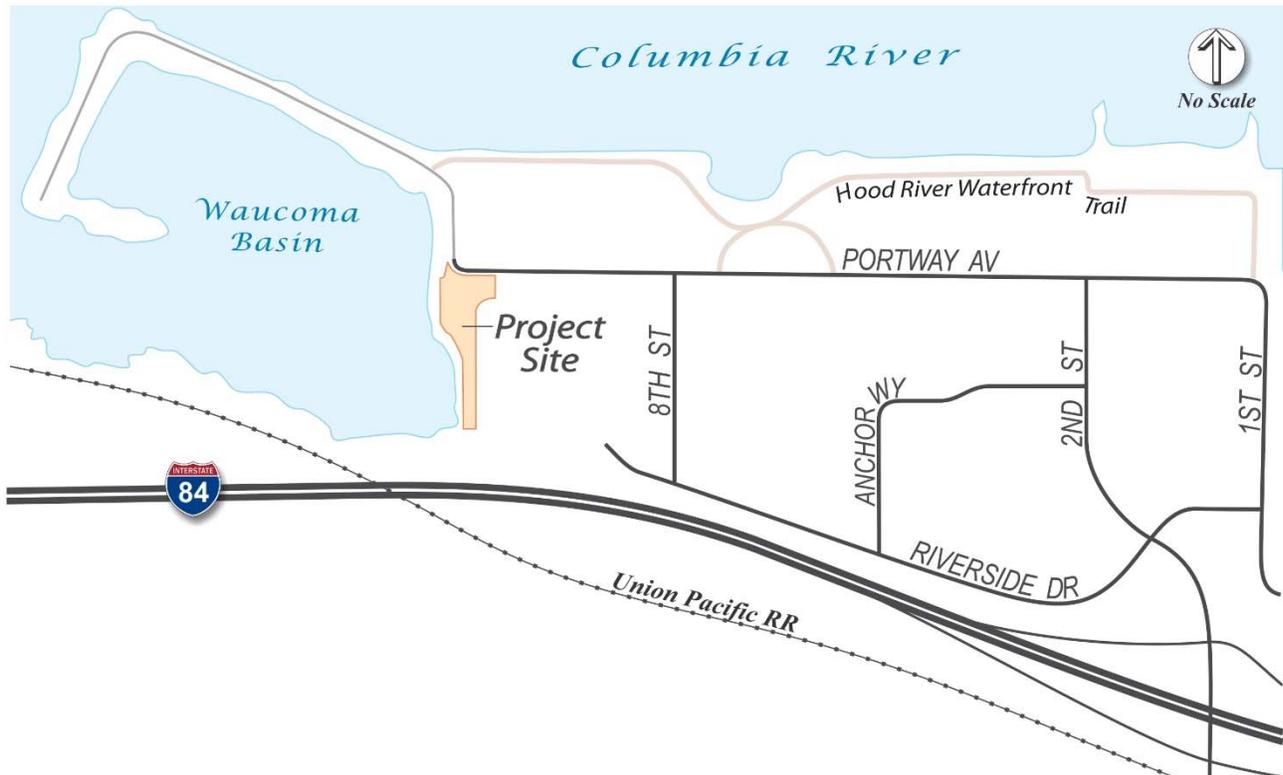


Figure 1: Study Area

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Site Plan Review

The preliminary site plan was provided by Hood River Parks and Recreation and is attached in the appendix.¹ It was reviewed to evaluate multimodal site access and parking requirements. Special consideration was taken to identify connectivity between the proposed Dog Park and the Hood River Waterfront Trail.

Site Access/Sight Distance

The proposed Dog Park proposes a new access point on Portway Ave. Based on the design speed of 30 mph along Portway Avenue (posted speed of 25 mph), the American Association of State Highway and Transportation Officials (AASHTO) intersection sight distance of 290 feet should be provided.² Currently, both sides of Portway Avenue are utilized as storage for freight trailers by the Port of Hood River. Storage of freight trailers on the south side of Portway Avenue should be removed from within the sight distance triangle (approximately 160 feet) as shown in Figure 2. This would eliminate storage for approximately 4 trailers.

Another alternative that addresses the preliminary sight distance concerns at the access point that doesn't require losing any freight trailer storage space on the south side of Portway Avenue is to restrict exiting movements to right turns only so vehicles aren't permitted to travel north on Portway Avenue and cross conflicting traffic.

At the time the project site plan is finalized, sight distance at the proposed access point should be re-evaluated to confirm the final sight distance measurements. Prior to occupancy, final sight distance will need to be verified, documented, and stamped by a registered professional Civil or Traffic Engineer licensed in the State of Oregon prior to occupancy.

Parking

The City of Hood River Municipal Code does not include minimum parking stall requirements for dog parks, however parking demand information for this development can be acquired from the *ITE Parking Generation* manual.³ In the manual, recommended parking stalls for City Parks (ITE Land Use Code 411) vary and the parking needs of a dog park are not specifically stated. However, the manual does recommend that for a similar suburban site with picnic area and playground, the parking supply ratio should be 2.6 spaces per acre. Since the proposed dog park is less than an acre in area, the 7 parking stalls shown in the preliminary site plan should meet the parking demand for the Dog Park.

Minimum bicycle parking requirements specifically for dog parks is also not included in the City of Hood River Municipal Code.⁴ However, bicycle parking should be provided to meet demand of the site. Bicycle parking demand of the proposed dog park is assumed to be necessary as this is a recreational facility as well as its close proximity to the Hood River Waterfront Trail and Park.

¹ Proposed Dog Park, FLI Landscape

² *Geometric Design of Highways and Streets*, AASHTO, 2011, Case B3

³ *Parking Generation*, 4th Edition, 2010, Institute of Transportation Engineers

⁴ Chapter 17.03 - Land Use Zones, City of Hood River Municipal Code

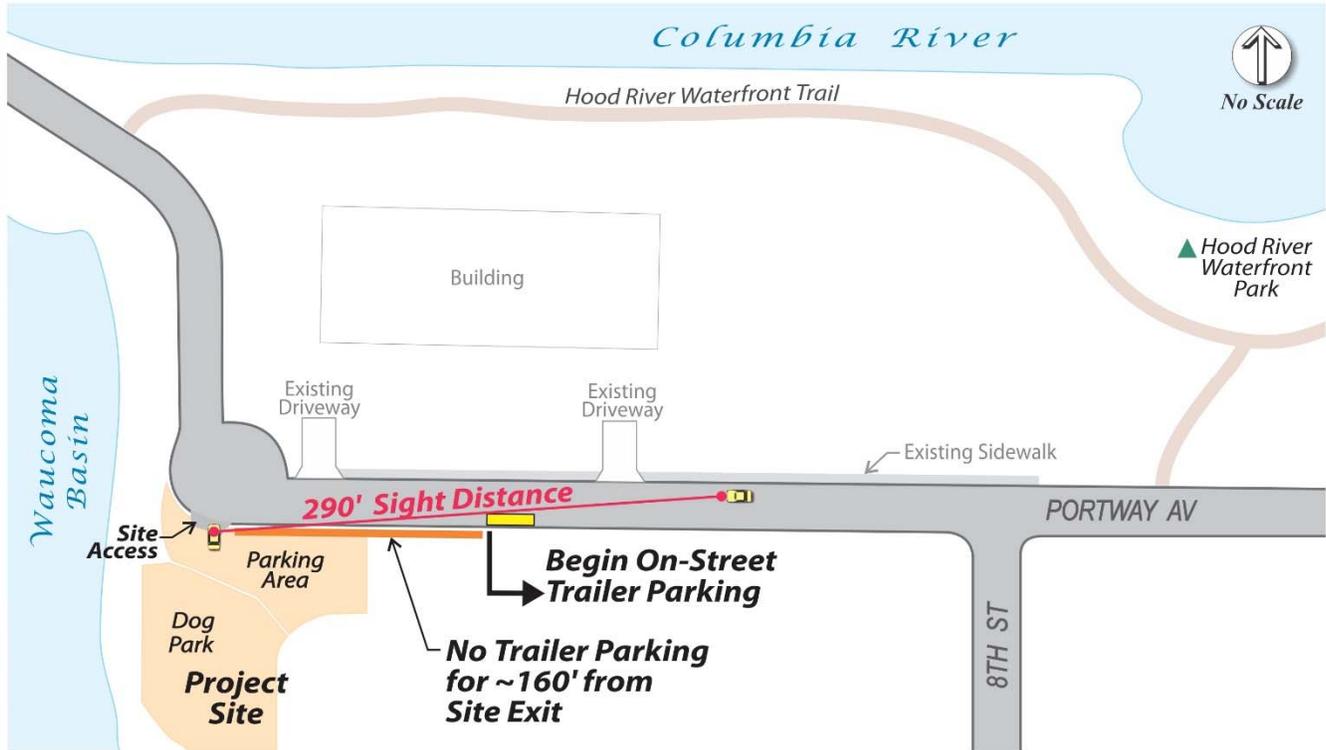


Figure 2: Preliminary Intersection Sight Distance Evaluation

Bicycle and Pedestrian Access

The preliminary site plan does not identify any pedestrian and bicycle connections between the Dog Park and the Hood River Waterfront Trail. Since it is likely that users of the Dog Park will also desire to travel along the Hood River Waterfront Trail, it is important to provide safe connections between the two facilities. Two potential connections are outlined below.

As shown in Figure 3 on the following page, the first option involves connecting a new multiuse trail along the Waucoma Basin waterfront that connects the proposed dog park to the termination of the Hood River Waterfront Trail. A marked crossing across Portway Avenue would be needed at the existing trail’s termination in order to provide a safe connection between the existing trail and the new multiuse path.

The second option is to establish a pedestrian crossing on Portway Ave between the proposed dog park and the existing sidewalk on the north side of Portway Ave (see Figure 3). The current sidewalk extends to the east but includes a gap in the sidewalk before connecting to the Hood River Waterfront Trailhead. In this option it is recommended that this gap in the sidewalk be constructed in order to provide an adequate connection between the Dog Park and the Hood River Waterfront Trail.

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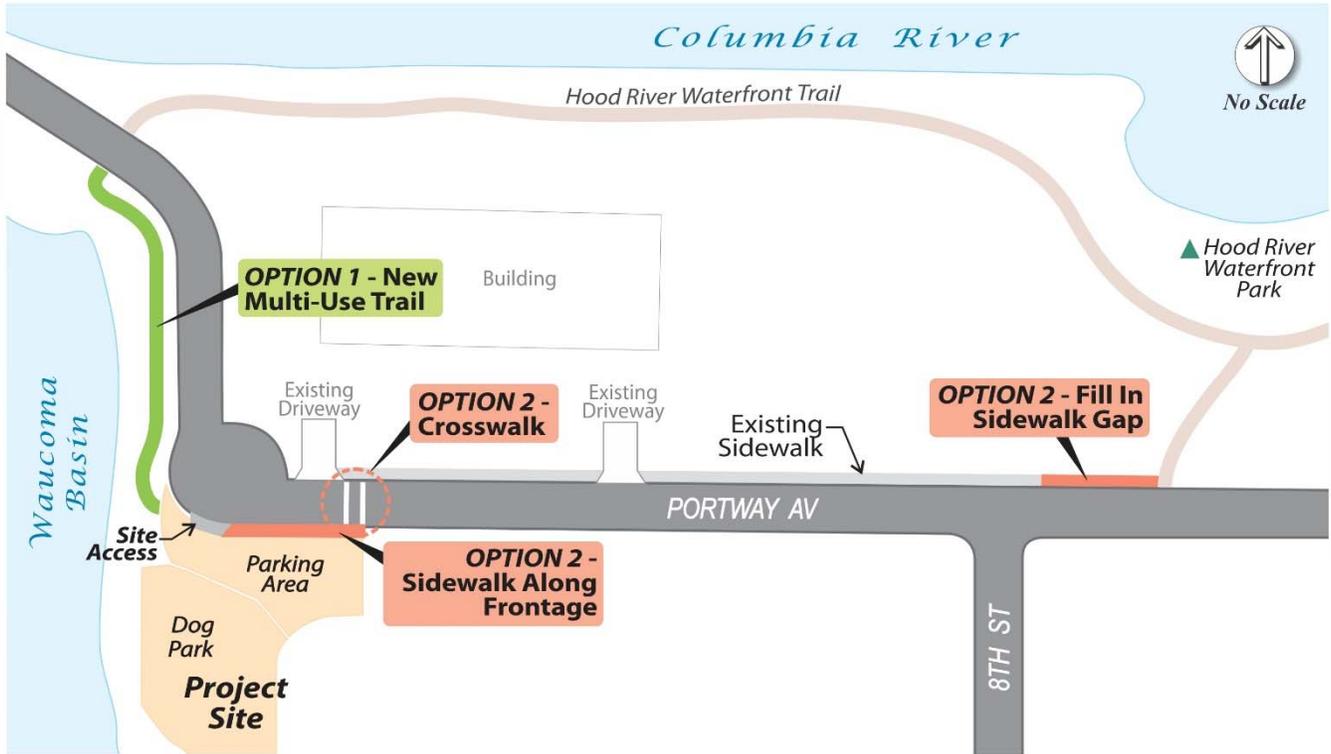


Figure 3: Dog Park and Hood River Waterfront Trail Pedestrian Connection Options

If option 2 is selected, there are stopping sight distance concerns regarding the placement of the crosswalk in the vicinity of a sharp curve.⁵ As shown in Figure 4, trees or other small obstructions may have to be removed prior to completion of the crosswalk in order to ensure adequate stopping sight distance for south/eastbound vehicles. If Hood River Parks and Recreation decides to move forward with Option 2, stopping sight distance at the proposed access point and the crosswalk will need to be verified, documented, and stamped by a registered professional Civil or Traffic Engineer licensed in the State of Oregon prior to occupancy.

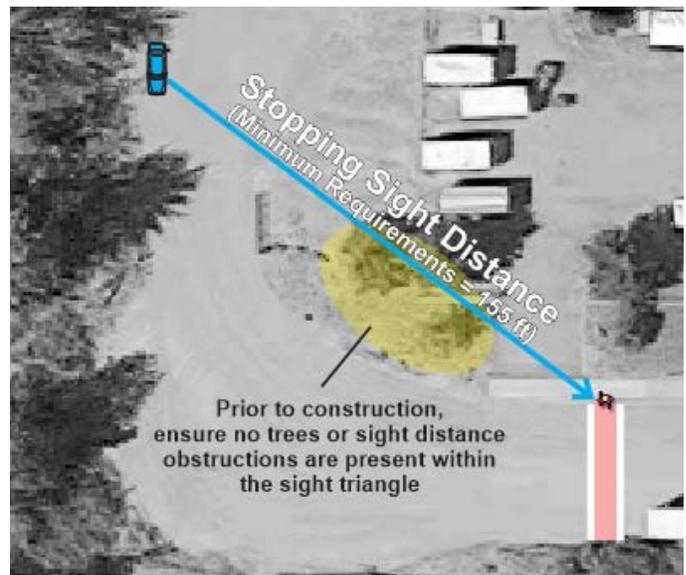


Figure 4: Preliminary Stopping Sight Distance Evaluation for Option 2

⁵ AASHTO minimum stopping sight distance requirements for a road with a design speed of 30 mph (posted speed of 25 mph) is 155 feet of unobstructed vision.

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Summary

The key findings for the site plan and pedestrian connections evaluation for the proposed dog park include the following:

- Preliminary intersection sight distance evaluation at the proposed access point suggests a potential issue with the existing freight trailer storage on the south side of Portway Avenue. It is recommended that either freight trailer storage be removed from within the sight distance triangle (approximately 160 feet) or the exiting movements of the dog park access is restricted to right turning movements only.
- Bicycle parking should be provided as part of the dog park for potential bicycle users.
- The preliminary site plan does not identify any pedestrian and bicycle connections between the Dog Park and the Hood River Waterfront Trail. Since it is likely that users of the Dog Park will also desire to travel along the Hood River Waterfront Trail, it is important to provide safe connections between the two facilities. Two potential connections are outlined in this memorandum.

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Commission Memo

To: Commissioners

From: Fred Kowell

Date: October 6, 2015

Re: Authorization to Sale Taxable General Revenue Bond and Execution of Supplemental Revenue Bond Declaration

Please find in the attached documents a resolution authorizing the sale of a taxable General Revenue Bond and the execution of a Supplemental Revenue Bond Declaration.

The resolution is for the sale of \$2,000,000 principal amount of debt which is to be used for the purchase, environmental cleanup, development, design and construction of the old Hanel Mills site. This resolution and supplemental revenue bond declaration will also delegate to either the Executive Director or Chief Financial Officer to act on behalf of the Port to execute the loan agreements.

This loan agreement must follow the guidelines presented in the Master Declaration that was approved in June 2003. Due to the complexity with the Master Declaration it was necessary and required to have Bond Counsel provide legal advice on this issuance. The loan fee will be \$2,500, with bank legal costs not to exceed \$4,500. Bond Counsel may cost up to \$9,500 depending upon the amount of work needed to close this loan agreement.

Motion: Approve Resolution 2015-16-3 authorizing the sale of a taxable general revenue bond and execution of a supplemental revenue bond declaration as outlined in the attached documents.

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RESOLUTION NO. 2015-16-3**A RESOLUTION AUTHORIZING THE SALE OF TAXABLE GENERAL REVENUE BOND AND EXECUTION OF A SUPPLEMENTAL REVENUE BOND DECLARATION****The Board of Commissioners of the Port of Hood River finds that:**

- A. The Port Board of Commissioners adopted Resolution No. 2002-03-5 on June 17, 2003 (“**Resolution No. 2002-03-5**”), authorizing the Port to execute and deliver the Master General Revenue Bond Declaration (the “**Master Declaration**”), which establishes the terms under which the Port may issue general revenue bonds, and to issue up to \$8,000,000 of its general revenue bonds (the “**Series 2003 Bonds**”).
- B. The Series 2003 Bonds are dated August 15, 2003, and were issued under Oregon Revised Statutes (“**ORS**”) Section 777.560 in the aggregate principal amount of \$8,000,000.
- C. Section 7 of the Master Declaration provides that Parity Obligations may be issued for any purpose relating to the Facilities that is authorized by law.
- D. The Port Board of Commission adopted Resolution No. 2013-14-1 on September 10, 2013 authorizing the Port to execute and deliver a first Supplemental Master Revenue Bond Declaration (the “**First Supplement**”) which established the terms under which the Port issued its General Revenue Refunding Bond, Series 2013 in the principal amount of \$3,703,000 (the “**Series 2013 Bond**”) for the purpose of refunding the Series 2003 Bonds.
- E. Notice of Regular Meeting of the Board of Commissioners was given for a period of not less than two consecutive weeks prior to the meeting by publication in the Hood River News, a newspaper of general circulation published within the Port.
- F. The Port adopts this resolution to authorize the sale of its Taxable General Revenue Bond, Series 2015 (the “**Series 2015 Bond**”) and execution of a Second Supplemental Revenue Bond Declaration (the “**Second Supplement**”) for the purpose of financing the acquisition of and improvements to certain Port Facilities (the “**Project**”), fund any required debt service reserve and pay costs of issuance of the Series 2015 Bond.
- G. Capitalized terms used but not defined herein shall have their respective meanings as set forth in the Master Declaration.

NOW, THEREFORE, based upon the above findings,

BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE PORT OF HOOD RIVER, a municipal corporation of the State of Oregon, as follows:

Section 1. Bond Authorized

- 1.1 The Port hereby authorizes the sale and delivery of the Series 2015 Bond in a maximum aggregate principal amount not to exceed \$2,000,000, to finance the Project and fund any required debt service reserve and pay costs of issuance of the Series 2015 Bond in accordance with this Resolution and the Master Declaration, as supplemented.
- 1.2 The Series 2015 Bond is Parity Obligations payable from the Net Operating Revenues of the Port as provided in the Master Declaration. The Owner of the Series 2015 Bond shall not have a lien or security interest on any property of the Port, including any property financed with the proceeds of the Series 2015 Bond.
- 1.3 The purchaser of the Series 2015 Bond shall be Columbia State Bank (the “**Bank**”).

Section 2. Delegation

The Executive Director or the Chief Financial Officer are designated by the Board of Commissioners to act on behalf of the Port under this resolution and the Master Declaration, as supplemented (any of whom is referred to in this resolution as a “Port Official”) and the Port Official may, on behalf of the Port:

- 2.1 Establish the final principal amounts, maturity schedules, interest rates, sale prices, redemption terms, payment terms and dates, reserve amount, record dates and other terms for the Series 2015 Bond.
- 2.2 Determine if any required debt service reserve amount will be funded with Series 2015 Bond proceeds or funds of the Port.
- 2.3 Finalize the terms of, execute and deliver the Second Supplement, which describes the terms under which the Series 2015 Bond may be issued. The Second Supplement shall be in substantially the form attached to this Resolution as Exhibit A, with such insertions and changes as the Port Official may approve. The Port Official may approve and execute and deliver additional covenants and terms for the Series 2015 Bond. The covenants contained in the Second Supplement and covenants, terms or events of default in the closing documents for the Series 2015 Bond, including but not limited to additional covenants, terms or events of default in any credit facility agreements approved by the Port Official, shall constitute contracts with the Owner of the Series 2015 Bond, and shall be enforceable by them.

- 2.4 Appoint and enter into agreements with professionals and service providers in connection with the Series 2015 Bond.
- 2.5 Execute a credit facility agreement and any other documents, and take any other action in connection with the Series 2015 Bond, that the Port Official finds advantageous to the Port.

Section 3. Effective Date

This resolution takes effect upon adoption by the Board of Commissioners.

PASSED by the Board of Commissioners of the Port of Hood River this 6th day of October, 2015

Brian Shortt
President

Fred Duckwall
Vice-President

Jon Davies
Secretary

Richard McBride
Treasurer

Hoby Streich
Commissioner

EXHIBIT A
FORM OF SECOND SUPPLEMENTAL DECLARATION

SECOND SUPPLEMENTAL REVENUE BOND DECLARATION

THIS SECOND SUPPLEMENTAL REVENUE BOND DECLARATION is executed as of October 9, 2015, by the Port Official of the Port of Hood River, Hood River County, Oregon pursuant to authority granted to the Port Official by Port Resolution 2015-16-3 to establish the terms under which the Port's Taxable General Revenue Bond, Series 2015 may be issued.

Section 1. Recitals.

The Port finds:

- 1.1 The Port's Master General Revenue Bond Declaration (the "Master Declaration") was executed as of August 28, 2003 by the Port Official of the Port of Hood River, Hood River County, Oregon pursuant to authority granted to the Port Official by Port Resolution 2002-03-5 to establish the terms under which the Port's General Revenue Bonds, Series 2003 and future general revenue bonds may be issued.
- 1.2 The Port issued its Series 2003 Bonds in the aggregate principal amount of \$8,000,000 under the authority of the Master Declaration and Oregon Revised Statutes ("ORS") Section 777.560 for the purpose of financing improvements to the Port's toll bridge, other improvements, funding the reserve account and paying the costs of issuance of the Series 2003 Bonds. The Series 2003 Bonds are dated August 15, 2003.
- 1.3 In 2013, the Port issued a general revenue bond the aggregate principal amount of \$3,730,000, under the authority of the Master Declaration, the First Supplemental Declaration, Port Resolution No. 2013-14-1, for the purpose of refinancing the Series 2003 Bonds. The Series 2013 Bonds are dated October 3, 2013.
- 1.4 Section 7 of the Master Declaration provides that Parity Obligations may be issued for any purpose relating to the Facilities that is authorized by law.
- 1.5 The Board of Port Commissioners has adopted Resolution No. 2015-16-3, authorizing the Port to issue its taxable general revenue bond in the maximum principal amount of \$2,000,000 (the "Series 2015 Bond"), to finance the acquisition of and improvements to certain Port Facilities (the "Project"), fund any required debt service reserve and pay costs of issuance of the Series 2015 Bond, and to execute and deliver this Second Supplemental Declaration which establishes the terms under which the Series 2015 Bond is issued.

Section 2. Definitions.

As used in this Second Supplemental Declaration, the following words shall have the following meanings. Capitalized terms used but not defined herein shall have the meanings assigned in the Master Declaration, as modified by the First Supplemental Declaration.

“Agreement” means the Facility Agreement, dated as of October 9, 2015, between the Port and Columbia State Bank in connection with the Series 2015 Bond.

“Bond Counsel” means Mersereau Shannon LLP or such other counsel designated by the Port.

“Closing Date” means October 9, 2015.

“Declaration” means collectively the Master Declaration, the First Supplemental Declaration and this Second Supplemental Declaration.

“First Supplemental Declaration” means the Port’s Supplemental Declaration executed October 3, 2013.

“Master Declaration” means the Port’s Master Revenue Bond Declaration executed on August 28, 2003.

“Payment Date” means each April 15 and October 15, commencing April 15, 2016.

“Port Official” means the Executive Director of the Port or the Chief Financial Officer of the Port.

“Second Supplemental Declaration” means this Second Supplemental Revenue Bond Declaration dated as of October 9, 2015, authorized by the Resolution and executed by the Port Official.

Section 3. The 2015 Bond.

3.1 Sale Authorized. Pursuant to Section 7 of the Master Declaration, ORS Chapter 777 and Port Resolution 2015-16-3, the Port issues its Series 2015 Bond in the principal amount of \$2,000,000 for the purpose of financing the Project, any required debt service reserve and to pay costs of issuance of the Series 2015 Bond. The Series 2015 Bond shall be a Bond as defined in the Master Declaration and shall have a lien on the Net Operating Revenues that is equal to the lien of all then Outstanding Bonds and all Parity Obligations issued in accordance with Section 7 of the Master Declaration. The Series 2015 Bond shall bear interest payable on April 15 and October 15 of each year at the rate of three and fifty-one hundredths percent (3.51%) per annum, commencing April 15, 2016. Principal and interest of the Series 2015 Bond is payable by the Port on the dates and in the amounts set forth in the amortization schedule attached as Exhibit A to the Agreement.

3.2 Limitation on Payment. The Series 2015 Bond shall be a special obligation of the Port, and shall be payable from the Net Operating Revenues and amounts required to be deposited in the Revenue Bond Reserve Account as required and as provided by the Declaration.

3.3 Bond Form. The Series 2015 Bond shall be in substantially the form attached as Exhibit A hereto and shall be signed with the facsimile or manual signatures of the President and Secretary of the Board of Port Commissioners.

3.4 Purchaser; Authentication. Columbia State Bank ("Bank") shall be the purchaser of the Series 2015 Bond. The Series 2015 Bond shall not be entitled to any right or benefit under the Declaration unless it shall have been authenticated by the Port.

3.5 Paying Agent. The Paying Agent shall deliver each Series 2015 Bond interest and principal payment on the Payment Date (or the next business day if the payment date is not a business day) to the Bank. The Port will act as Paying Agent for the Series 2015 Bond.

3.6 Prepayment. The Series 2015 Bond may be prepaid, in whole or in part, at the election of the Port on any Payment Date with thirty (30) days prior written notice to the Bank, together with accrued interest through the date fixed for prepayment.

3.7 Disposition of Series 2015 Bond Proceeds. The Sale Proceeds actually or constructively received by the Port from the sale of the Bond is as follows:

Face Amount of Bond	<u>\$2,000,000.00</u>
Sale Proceeds	<u>\$2,000,000.00</u>
Total	<u>\$2,000,000.00</u>

The Sale Proceeds received by the Port from the sale of the Series 2015 Bond will be allocated to the following uses in the following amounts:

Commitment Fee	2,500.00
Bank Counsel Fee	4,500.00
MDAC Fee	
Deposit to Reserve Account	
Deposit to Port Account	
Total	<u>\$2,000,000.00</u>

3.8 Covenants.

(A) The Port shall charge rates and fees projected to generate Net Operating Revenues equal to the amount described in Section 5.1 of the Master Declaration, including the Series 2015 Bond.

(B) The Port shall make a deposit to the Revenue Bond Reserve Account in an amount sufficient to make the balance in the Revenue Bond Reserve Account at least equal to the Required Reserve.

- (C) The Port Official may approve and execute and deliver additional covenants, terms or events of default for the Series 2015 Bond. The covenants contained in this Section 3.8 and any covenants in the closing documents for the Series 2015 Bond, including but not limited to additional covenants, terms or events of default in any credit facility agreements approved by the Port Official, shall constitute contracts with the Owners of the Series 2015 Bond, and shall be enforceable by them.
- (D) To the extent permitted by law, the Port agrees to indemnify and hold harmless the Bank and all of its agents and employees against any and all losses, claims, damages, liabilities and expenses arising out of any statement made by the Port to the Bank, its agents or employees, that relates to the Agreement or the Series 2015 Bond and that is untrue or incorrect in any material respect.
- (E) The Port shall provide the Bank with all financial reporting required under the Agreement.
- (F) The Port shall not issue Bonds or other obligations having a claims superior to the claim of the Series 2015 Bond upon Net Operating Revenues.
- (G) While the Series 2015 Bond is outstanding, the Port shall maintain a balance in the Revenue Bond Reserve Account at least equal to the annual debt service due on the Series 2015 Bond in the then current Fiscal Year.

3.10 Series 2015 Event of Default. If Series 2015 Event of Default occurs, the Bank may exercise any remedy available for an Event of Default, subject to the requirements of the Master Declaration, at law or in equity, and under section 3.5 of the Agreement. No remedy shall be exclusive. The Bank may waive any Series 2015 Event of Default, but no such waiver shall extend to a subsequent Series 2015 Event of Default.

“Series 2015 Event of Default” means the occurrence of any of the following: (i) a failure to pay when due any principal, interest or other amount that is required to be paid under this Agreement; (ii) a failure by the Port to comply with any of its obligations or to perform any of its duties under this Agreement, other than a failure described in clause (i) of this definition, which failure continues and is not cured for a period of more than 30 days after the Bank has made written demand on the Port to cure such failure (iii) a material misrepresentation by the Port in this Agreement, the Resolution or the Series 2015 Bond; or (iv) a material breach or Default under the Declaration.

If a Series 2015 Event of Default shall occur, then the interest rate under the Series 2015 Bond may be increased at the option of the Bank to an interest rate five percentage points (5.0%) in excess of the interest rate otherwise applicable to the Series 2015 Bond.

3.11 Fees, Costs and Expenses.

- (A) Bank Fees. The Port shall pay the Bank an origination fee of \$2,500 on the Closing Date.
- (B) Bank Costs of Enforcement. If the Bank incurs any expenses in connection with enforcing the Agreement or the Series 2015 Bond, or if the Bank takes collection action under the Agreement or the Series 2015 Bond, the Port shall pay to the Bank, on demand, the Bank's reasonable costs and attorneys' fees, whether at trial, on appeal, in bankruptcy or insolvency proceedings or otherwise, including any allocated costs of in-house counsel.
- (C) Other Fees and Costs. The Port shall pay the fees and costs of Bond Counsel, and any other expenses and costs that the Port incurs in connection with the Agreement. The Port shall pay all of the Bank's attorney fees for the Agreement in an amount not to exceed \$4,500.

3.12 Waiver of Jury Trial. To the extent permitted by applicable law, each of the parties waives any right to have a jury participate in resolving any dispute, whether sounding in contract, tort, or otherwise between the parties arising out of, connected with, related to, or incidental to the relationship between any of them in connection with the Agreement or the transactions contemplated hereby. Instead, any such dispute resolved in court will be resolved in a bench trial without a jury.

Section 4. Notices.

Port: Port of Hood River, Oregon
1000 E. Port Marina Driver
Hood River, OR 97031

Bank: Columbia State Bank
1000 SW Broadway, Suite 1100
Portland, OR 97205

Dated as of October 9, 2015.

**PORT OF HOOD RIVER,
HOOD RIVER COUNTY, OREGON**

By: _____
Port Official

ACCEPTED:

By: _____
Columbia State Bank

**Exhibit A
Form of Bond**

**UNITED STATES OF AMERICA
STATE OF OREGON
PORT OF HOOD RIVER
HOOD RIVER COUNTY, OREGON
TAXABLE GENERAL REVENUE BOND
SERIES 2015**

NUMBER: R-1

*****\$2,000,000*****

<u>DATED</u>	<u>RATE OF INTEREST</u>	<u>MATURITY DATE</u>
October 9, 2015	3.51%	October 15, 2018

Port of Hood River, Hood River County, Oregon (the "Port"), for value received, acknowledges itself indebted and hereby promises to pay to the order of Columbia State Bank (the "Bank"), the aggregate principal amount of TWO MILLION AND NO/100 U.S. DOLLARS (\$2,000,000.00). The outstanding principal amount shall bear interest at 3.51% per annum, based on an Actual/360-day basis. Principal and interest shall be due and payable in accordance with the schedule attached as Exhibit A to the Agreement.

Capitalized terms used in this Bond have the meanings defined for such terms in the Master Revenue Bond Declaration dated as of August 28, 2003, as supplemented by the Supplemental Revenue Bond Declaration dated as of October 3, 2013 and the Second Supplemental Revenue Bond Declaration dated as of October 9, 2015 (collectively, the "Declaration").

This Bond is authorized by Port Resolution 2015-16-3 adopted October 6, 2015 and the Declaration. This Bond is issued for the purpose of financing improvements to Port Facilities, as that term is defined in the Declaration.

This Bond constitutes a valid and legally binding special obligation of the Port and is authorized pursuant to Oregon Revised Statutes Chapter 287A, the Declaration, and Resolution No 2015-16-3 of the Port adopted October 6, 2015. The Net Operating Revenues, as defined in the Declaration, are pledged for the punctual payment of the principal of and interest on this Bond. The Port is not authorized to levy any additional taxes to pay this Bond. Parity Obligations may be issued on a parity of lien with this Bond, subject to certain conditions described in the Declaration.

This Bond does not constitute a debt or indebtedness of Hood River County, the State of Oregon or any political subdivision thereof other than the Port.

This Bond is subject to prepayment as described in the Declaration.

It is hereby certified, recited and declared that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of this Bond do exist, have happened and have been performed in the form and manner required by the Constitution and Statutes of the State of Oregon and that this Bond, together with all other indebtedness of the Port does not exceed any limitation prescribed by law.

IN WITNESS WHEREOF, the Port has caused this Bond to be signed on its behalf by its Board of Commissioners, as of October 9, 2015.

**PORT OF HOOD RIVER
HOOD RIVER COUNTY, OREGON**

By: _____
Brian Shortt, President

By: _____
Jon Davies, Secretary



Prepared by: Anne Medenbach
Date: October 6, 2015
Re: Grant Contract- Oregon Coalition Brownfield Cleanup
Grant Fund

The Oregon Business Development Department (OBDD) is the grant administrator for the EPA through a program called the Oregon Coalition Brownfields Cleanup Grant Fund. Staff applied for this grant before the Port closed on the Lower Mill site. The grant amount applied for was \$200,000 with up to a \$40,000 Port match for any amount over the grant amount.

The Port was awarded the grant on July 28, 2015. Since that time, staff has been working with the grant administrator to meet the multiple requirements of the grant. These included: Budgeting, Health and Safety Plans, Community Notification Plans and FAQs, site engineering and cleanup plan and two bid processes for the actual clean-up work.

The EPA and DEQ had to review all of the above tasks and ensure that no additional tasks were needed and that the project continued to meet the grant requirements. We have been waiting for the final review from SHPO (State Historic Preservation Office) and NWF (National Wildlife Federation) in order to receive the grant contract. Those two reviews were completed on September 21.

The contract documents will be available at the meeting.

RECOMMENDATION: Contract to be approved at meeting with specific language provided.

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Prepared by: Anne Medenbach
 Date: October 6, 2015
 Re: Lower Mill-Grade and Fill Contract

The Lower Mill Site brownfield clean-up project was split into two Phases. Phase 1 was the excavate, sort and stockpile portion; the Commission awarded this phase to Westech Construction, Inc. on September 22, 2015.

Phase 2 is the grade and fill portion of the project. This went out to bid September 11, 2015.

Eight base bids were received on September 29, 2015. The results are as follows:

1. JAL Construction	\$145,223.50
2. Crestline Construction Inc.	\$145,360.00
3. Valley Pacific Construction, Inc.	\$151,685.00
4. Elting Northwest, Inc.	\$161,945.00
5. Westech Construction, Inc.	\$169,243.00
6. NW Construction General Contracting Inc.	\$170,568.50
7. Groat Brothers Inc.	\$178,864.00
8. Tapani Inc.	\$223,947.01

JAL Construction Inc. is the low bidder and is not on the excluded parties list. Staff recommends that the board approve the contract award, barring no protests.

Grant Funding and Project Budget

The total grant amount is for \$200,000 plus a \$40,000 match from the Port (\$240,000) for any costs over the grant amount. The contract totals including: excavation, site grade and fill, DEQ oversight, additional archeological services, engineering and environmental consultant oversight is \$258,822.04.

Staff has requested an additional amount (up to \$60,000), from the Oregon Brownfields grant pool to cover the budget overage and additional unforeseen costs that may be incurred through the project. To date that request is still pending and it is undetermined whether the Port will be a recipient of those additional funds.

The Port has a \$98,268 (20%) contingency budgeted for the site development and clean-up. If we do not receive the additional grant funds, we will use \$18,822.04 of this contingency.

Attached is a draft contract for Commission review, the final contract will be provided at the meeting.

RECOMMENDATION: Approve Intent to Award and Award of Contract Barring No Protests to JAL Construction Inc., for Lower Mill Grade and Fill project not to exceed \$145,223.50.

CONTRACT
PORT OF HOOD RIVER PUBLIC
IMPROVEMENT CONTRACT GRADE & FILL

This Contract entered into between the PORT OF HOOD RIVER, an Oregon municipal corporation, ("PORT") and _____ ("CONTRACTOR"), shall become effective when this Contract has been signed by both parties.

WITNESSETH:

WHEREAS, CONTRACTOR, having examined the Work site and become familiar and satisfied with conditions, has submitted an acceptable bid to grade to design grades and fill and compact existing excavated log pond at the location commonly known as the Lower Mill, located at 3289 Neal Mill Creek Road, Odell, Oregon ("Work"); and,

WHEREAS, the parties hereto desire that this Contract be undertaken and completed on the terms and conditions as hereafter set forth;

THEREFORE, IT IS AGREED AS FOLLOWS:

Terms of Performance

CONTRACTOR agrees to perform the described Work and provide all machinery, tools, apparatus, materials, equipment, labor and other means of construction necessary to complete the Work at the designated location in accordance with all terms specified in the Contract Documents, which by this reference are incorporated herein, including the following:

- A) Invitation to Bid
- B) Bidding Instructions
- C) First-Tier Subcontractor Disclosure Form
- D) Bid Form/Bid Schedule
- E) Bid Bond
- F) Performance Bond
- G) Payment Bond
- H) Certificate of Insurance
- I) General Conditions of Public Works Contracts
- J) Notice of Intent to Award
- K) Notice to Proceed
- L) Payment of Prevailing Wages Rates
- M) Grading Plan, geotechnical reports and DEQ NFA
- N) Specifications prepared for/or issued by PORT
- O) All affidavits and certifications submitted by CONTRACTOR as part of CONTRACTOR's Bid Documents, which affidavits and certifications CONTRACTOR agrees will remain effective throughout the term of this Contract.
- P) Addendum #1 to Invitation to Bid
- Q) Remedial Action Plan for the Log Pond

Contract Price:

Subject to the provisions of all Contract Documents and in consideration of the faithful performance of the terms and conditions thereof by the CONTRACTOR, PORT agrees to pay CONTRACTOR \$145,223.50, in the manner and at the times provided in the Contract Documents. The Contract price is for completing the Work. No alternates are included.

Contract Dates: 16 working days

Project Start Date: October 26th or within 5 calendar days from issuance of Notice to Proceed
Substantial Completion: November 16, 2015
Final Completion: November 30, 2015

Liquidated damages

If the CONTRACTOR fails to complete the Work within the time specified or within any extension of time agreed to by both parties in writing, CONTRACTOR shall pay liquidated damages of \$100.00, for each day of delay beyond the completion day identified above. (If no dollar amount is specified this paragraph shall not apply to this Contract.)

Representatives

Unless otherwise specified in the Contract Documents, the Port designates Anne Medenbach, as its Authorized Representative in the administration of this Contract. The above-named individual shall be the initial point of contact for matters relating to performance, payment, authorization, and to carry out the responsibilities of the Port. Contractor has named _____ its Authorized Representative to act on its behalf.

Integration

The Contract Documents and this Contract constitute the entire agreement between the parties. No waiver, consent, modification or change of terms of this Contract shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no other understandings, agreements, or representations, oral or written, not specified herein regarding this Contract. Contractor, by the signature below of its authorized representative, hereby acknowledges that it has read this Contract, understands it, and agrees to be bound by its terms and conditions.

IN WITNESS WHEREOF the parties have executed this Contract on _____, 20 .

CONTRACTOR

PORT OF HOOD RIVER

By _____

By Michael S. McElwee _____

Its _____

Its Executive Director _____

Lower Mill Grade and Fill

Issued: September 11, 2015

PORT OF HOOD RIVER
1000 E. PORT MARINA DRIVE
Hood River, Oregon 97031
MICHAEL S. MCELWEE, EXECUTIVE DIRECTOR

Owner:

PORT OF HOOD RIVER
1000 E. Port Marina Drive Hood River, Oregon 97031
Telephone: (541) 386-1645
Fax: (541) 386-1395
porthr@gorge.net
www.portofhoodriver.com

**Lower Mill
Grade & Fill
Project**

Bid Solicitation

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PART 1
SCHEDULE

SCHEDULE

Invitation to Bid Advertised	Sept. 11-Sept. 25, 2015
Walk through	Sept. 22, 2015, 11 A.M.
Bids Due	Sept. 29 2015, 10 A.M.
Bid Opening	Sept. 29, 2015, 10 A.M.
First-Tier Subcontractor Disclosure Form Due	Sept. 29, 2015, 12 P.M.
Notice of Intent to Award Issued	Sept. 30, 2015
Protest Deadline	October 7, 2015
Award of Contract	October 8, 2015
Required Documents Due from Awarded Contractor (Including bonding and insurance)	October 19, 2015
Notice to Proceed	October 19, 2015
Substantial Completion	November 25, 2015
Final Completion	November 30, 2015

**PART 2
INVITATION TO
BID**

Invitation to Bid Lower Mill Grade & Fill Project

The Port of Hood River is requesting bids for filling with structural, compacted fill a pre-excavated historical log pond and for grading the surrounding site. The location is at Lower Mill, 3289 Neal Mill Creek Road, Hood River, Oregon 97031. **This work includes: Fill approximately 16,860 cubic yards of open and pre-excavated log pond area with 8,540 CY of on-site, stockpiled fill. Grade the 6.6 acre site to design grades and use resulting soil (approx. 8,320 CY) to fill the remainder of the log pond area (approx. 3,850 CY). Remaining graded material will be left in on-site stock piles. All fill will be compacted to meet density testing, provided by the Port.** Contractor shall supply equipment, labor and materials at no additional cost to the Port of Hood River.

This is a federally funded project.

Beginning September 11, 2015 a complete solicitation document, including scope of work, sample contract, and design specifications may be examined or purchased during normal business hours at:

Port of Hood River
1000 E. Port Marina Drive
Hood River, Oregon, 97031

The document can also be viewed or printed online at www.portofhoodriver.com. If plans are obtained online, please email porthr@gorge.net with the subject line "Plan Holder List" and provide business name, contact name, mailing address, email address, phone and fax numbers. Plan Holders will be notified of any bid addenda by email.

Bidders are not required to be pre-qualified under ORS 279C.430.

A non-mandatory walk through will be held at the work site (3289 Neal Mill Creek Road) on Tuesday, September 22nd, 2015 at 11:00 AM.

Bids must be addressed to Michael McElwee, Executive Director, Port of Hood River. Bids must be delivered by **10:00 A.M. PST on Tuesday, September 29, 2015** to the Port office located at 1000 E. Port Marina Drive, Hood River OR 97031. Bids will not be accepted after 10:00 A.M. PDT on Tuesday, September 29. Bids will be publicly opened in the Port office immediately following the bid deadline.

PART 3
INSTRUCTIONS TO BID

INSTRUCTIONS TO BID

OWNER: Port of Hood River, 1000 E. Port Marina Drive, Hood River, OR 97031, Telephone (541) 386-1645, Fax (541) 386-1395, Email porthr@gorge.net, Website www.portofhoodriver.com.

DESCRIPTION

Bids are requested to fill approximately 16,860 cubic yards of open and pre-excavated log pond area with 8,540 CY of on-site, stockpiled fill. Grade site to design grades and use resulting soil (approx. 8,320 CY) to fill the remainder of the log pond area. All fill will be compacted to meet density testing.

This is a federally funded project and is Prevailing Wage and subject to ORS 279C.800 to 279C.870 and the Davis Bacon Act whichever is a higher wage per skill level.

The work contemplated under this Contract includes all labor, tools, machinery, materials, transportation, equipment and services necessary for, and reasonably incidental to, the completion of all work in connection with the project described in the Contract, the General Conditions, all applicable special conditions, plans, specifications, and addenda. Contractor shall supply equipment, labor and materials at no additional cost to the Port of Hood River.

All questions regarding the project should be directed via email (not phone) to **Anne Medenbach**, amedenbach@portofhoodriver.com Questions and answers will be posted on the Port of Hood River web page. Contractor names will not be included.

REGULATORY PERMITS

Approval for this project was obtained from State and Federal jurisdictions. A grade and fill permit will be obtained by the Port from Hood River County. There are no regulatory permits required by the Contractor.

INVITATION TO BID DOCUMENT AVAILABILITY

A complete solicitation document may be examined or obtained during normal working hours at the Port office, 1000 E. Port Marina Drive, Hood River, Oregon after 10:00 A.M. PDT on September 11, 2015, or by calling the Port Office (541) 386-1645. Plans will be available to download at the Port of Hood River website, www.portofhoodriver.com.

SOLICITATION LAW AND RULES

This Invitation to Bid (I T B) and resulting Contract are governed by Oregon Law. Specific laws and rules that govern the solicitation process are found in the Davis Bacon Act and Chapters 279A and 279C of the Oregon Revised Statutes, and Chapter 137, Divisions 046 and 049 of the Administrative Rules of the Oregon Department of Justice (Model Public Contracting Rules). The Invitation to Bid and resulting Contract may be subject to other laws and rules. Offerors should obtain and become acquainted with the applicable provisions of the above laws and rules.

BRAND NAME USAGE:

Any brand name listed in the specifications without an "or approved equal" shall establish the minimum requirements for quality, utility, durability, function and purpose. Other brand names may be used in the construction of the product as long as they are equal to or better than the product brand named, and the brand name listed is not mandated pursuant to a brand name exemption.

Any brand name listed in the specifications with an "or approved equal" shall establish the minimum requirements for quality, utility, durability, function and purpose. Other brand names may be used in the construction of the project as long as they are equal to or better than the product brand named, and the proposed product has been approved in writing by the Owner's Authorized Representative prior to installation, and the brand named is not mandated pursuant to a brand name exemption.

The Owner's Representative shall determine, in its sole discretion, whether a product is "or approved equal."

Any brand name listed in the specifications with an "or approved equal" or an "or approved equivalent" shall establish the minimum requirements for quality, utility, durability, function and purpose. Other brand names may be used in the construction of the project as long as they are equal to or better than the product brand named, and the proposed product has been approved in writing during the bidding process detailed in the following section and the brand named is not mandated pursuant to a brand name exemption.

SOLICITATION PROTEST; REQUEST FOR CHANGE; REQUEST FOR CLARIFICATION; REQUEST FOR BRAND NAME/PRODUCT SUBSTITUTION

If a Bidder finds discrepancies in, or omissions from the plans, specifications or Contract documents, or has doubt as to their meaning, the Bidder shall at once notify the Owner. The Owner will then investigate and determine if an Addendum will be issued.

Bidders may, in writing, request brand approval, requests for substitutions, requests for clarifications, requests for change, Bid protest. The Owner must receive this written protest or request no later than five (5) calendar days prior to the Bid Closing date. The written protest or request shall include the reasons for the protest or request, and any proposed changes to the Bid specifications or contract terms. Envelopes containing Bid protests shall be marked as follows: "Contract Provision Request for Change" or "Contract Provision Protest", and Solicitation Document Identification Project Title.

Clarifications, whether verbal, in writing, or included in an Addendum or Addenda as a "clarification," do not change Plans, Specifications, contractual terms, or procurement requirements of an ITB. If a request for clarification raises an issue that the Owner determines should be handled by formally amending the ITB, the Owner will do so only by announcing such a change in an Addendum or Addenda, not through information identified as a "clarification."

The Owner will promptly respond to each properly submitted written request for brand approval, request for substitution, request for change, and protest. Where appropriate, the Owner will issue ITB revisions via Addenda made by fax or email and will posted on the Owner's website. A Bidder shall provide written acknowledgement of receipt of all issued Addenda with its Bid.

INFORMAL RESPONSES DO NOT AFFECT THE PROVISIONS OF THE ITB. PROVISIONS OF THE ITB CAN ONLY BE CHANGED VIA ADDENDA ISSUED BY THE OWNER.

Pursuant to OAR 137-049-0250, no protest against award because of the content of bid specifications or contract terms shall be considered after the deadline established above for submitting protests of bid specifications or contract terms.

EXAMINATION OF THE CONTRACT DOCUMENTS AND WORK SITE

Bidders should carefully examine the bid and contract documents and familiarize themselves with the work site to fully acquaint themselves with all the conditions and matters which can in any way affect the work or the cost thereof.

Each bidder shall thoroughly examine and be familiar with legal and procedural documents, general conditions, specifications, drawings, plans, addenda (if any), and all other Contract Documents. The submission of a bid shall constitute an acknowledgment upon which the Port District may rely, that the bidder is experienced in the uses and interpretation of plans and specifications such as those included in the Contract Documents and has thoroughly examined and is familiar with the Contract Documents.

The failure or neglect of a bidder to receive or examine any of the Contract Documents, perform site investigations and/or other investigations or examinations shall in no way relieve the bidder from any obligations with respect to the bid or the contract. No claim for additional compensation will be allowed which is based upon a lack of knowledge of any Contract Documents or existing site conditions.

BID FORMAT

Sealed Bids must be received in the Port office, 1000 E. Port Marina Drive, or by mail to 1000 E. Port Marina Drive, Hood River, OR 97031 on or before 10 A. M, Tuesday, September 29, 2015.

All Bids must be sealed and received prior to the bid closing time and date. All Bids shall be prepared in ink or by computer, but must be signed in ink by an authorized representative of the Bidder. Facsimile Bids will not be accepted.

Required Information shall be submitted on the forms specific in the ITB.

The following forms and schedules shall be completed, signed and included in the bidder package and shall be submitted prior to the Bid Deadline:

- Bid Proposal
- Bid Sheet
- Contractor Registration Form
- Bid Bond Form

The following shall be submitted within two (2) working hours after Closing.

- First Tier Subcontractor Disclosure Form

Alteration and erasures made before Bid submission must EACH be INDIVIDUALLY initialed in ink by the person signing the Bid. Bids, once submitted, may be modified in writing before closing. Modifications made after Offer submissions shall be prepared on Bidder's letterhead, be signed by an authorized representative, and state that the modifications amend and supersede the prior bid. Failure to comply with the provisions of this paragraph shall result in Bid rejection. Nothing in this paragraph shall be construed as allowing the Bidder to alter or otherwise change the form of the proposal, the form of the Contract, the conditions of the Bid, the specifications, and/or plans attached to the Bid documents.

Modifications must be submitted in a sealed envelope marked as follows:

Lower Mill, Grade & Fill project Bid

Closing Date

Bidder Legal
Name Oregon
CCB #

Bidders may not modify bid after closing.

BID SUBMISSION

All Bid documents requiring signature must be signed in ink by an authorized representative.

Bids must be submitted in a sealed package or envelope. To ensure proper identification and handling, all packages and envelopes shall be clearly marked as follows:

Lower Mill Grade & Fill Project
Bid Closing Date & Time
Bidder Legal Name
Oregon CCB #

Port of Hood River
Attn: Michael McElwee
1000 E. Port Marina Drive
Hood River OR 97031

BID WITHDRAWAL

Bids may be withdrawn in writing submitted on the Bidder's letterhead, signed by an authorized representative, and received by the Owner prior to closing. Offer withdrawals submitted in writing must be labeled as such and contain the Project Name.

Bids may be withdrawn in person before Closing upon presentation of appropriate identification and evidence of authorization to act for Bidder. Signature confirmation of withdrawal may also be required.

CLOSING & OPENING/FIRST TIER SUBMITTAL

Bids will be received until 10:00 AM PDT on Tuesday September 29, 2015 when they will be immediately opened publicly and read aloud. Award decisions will not be made at Bid opening.

Bids received after 10:00 AM PDT on Tuesday, September 29 2015 will be considered non-responsive and will not be opened.

First Tier Subcontractor(s) Disclosure Forms must be returned within two (2) working hours after closing, at the Port of Hood River office, 1000 E. Port Marina Drive, Hood River, Oregon. Failure to comply with this requirement shall result in rejection of the Bid as non-responsive.

Prior to the Intent to Award Announcement, the Port of Hood River may post preliminary bid results on its website www.portofhoodriver.com. Such postings are preliminary and are not final until all submission materials are validated.

BID ACCEPTANCE

A Bid is a firm offer, irrevocable, valid and binding on the Bidder for not less than thirty (30) calendar days from the closing date.

The Port of Hood River may request, orally or in writing, that Bidders extend, in writing, the time during which the Port of Hood River may consider their Bid. If a bidder agrees to such extension, the Bid shall continue as a firm Bid, irrevocable, valid and binding on the Bidder for the agreed-upon extension period.

METHOD OF AWARD

The responsiveness and responsibility of Bidders and their proposed Subcontractors will be considered in making the award.

Base Bid, and alternates (if applicable), unless modified by addendum. The Port reserves the right to arrange the proposal forms with alternates and additives, if such be to the advantage of the Port. The bidder shall bid on all alternates and additives set forth in the proposal forms unless otherwise specified.

Award will be made to the lowest responsive and responsible bidder.

BID EVALUATION CRITERIA

Bids will be evaluated to identify the lowest responsive Bid submitted by a responsible Bidder and not otherwise disqualified. (Refer to OAR 137-049-0390). Adjustments made to account for reciprocal preferences will be for Offer evaluation purposes only. No such adjustments shall operate to amend Bidder's Bid or any Contract awarded pursuant thereto.

To be considered responsive, the Bidder must substantially comply in all material respects with applicable solicitation procedures and requirements and the solicitation documents. In making such evaluation, the Port of Hood River may waive minor informalities and irregularities.

Prior to award of a contract, the Port of Hood River will evaluate whether the apparent successful Bidder meets the applicable standards of responsibility identified in ORS 279C.375(2)(b) and OAR 137-049-0390 and the Davis Bacon Act. In doing so, the Port of Hood River may investigate the Bidder and request information in addition to that already required in the ITB, when the Port of Hood River, in its sole discretion, considers it necessary or advisable.

BID SECURITY REQUIREMENTS

A surety bond, irrevocable letter of credit issued by an insured institution as defined in ORS 706.008, cashier's or certified check, executed in favor of the Port of Hood River in the amount equal to ten percent (10%) of the total amount of the Bid, shall be submitted with or posted for all Bids as bid security unless the Contract has been exempted from this requirement under ORS 279C.390.

If the undersigned fails to (1) execute the contract, (2) furnish a Performance and Payment Bond, or (3) furnish the certificates of insurance within ten (10) calendar days of the written Notice of Intent-to-Award a Contract, then the Port of Hood River may cash the check, draw under the letter of credit or otherwise collect under the Bid Security.

PROCESSING OF BIDS

Neither the release of Bid Security, nor acknowledgement that the selection process is complete (whether by posting of a bid tabulation sheet, issuance of Notice of Intent to Award, or otherwise), shall operate as a representation by the Port of Hood River that any Bid submitted was complete, sufficient, lawful in any respect, or

otherwise in substantial compliance with the ITB requirements.

WITHDRAWAL OF BID ITEMS

The Port of Hood River reserves the right to withdraw Bid items. The deletion of one or more bid items will not affect the method of award.

REJECTION OF BIDS

The Port of Hood River may reject all Bids for good cause upon finding that it is in the public interest to do so.

The Port of Hood River may reject a particular Bid for any reason listed under OAR 137-049-0440.

INTENT-TO-AWARD ANNOUNCEMENT

The Port of Hood River reserves the right to announce its Intent-to-Award prior to formal Contract award by posting the tabulation sheet of bid results on the Port of Hood River website, or by letter or fax. The Intent-to-Award Announcement shall serve as notice to all Bidders the Port of Hood River intends to make an award.

PROTEST OF INTENT-TO-AWARD

Adversely affected or aggrieved Bidders shall have seven (7) calendar days from the date of the Intent-to-Award Announcement within which to file a written protest. Protests submitted after that date will not be considered. Protests must specify the grounds upon which the protest is based.

In order to be an adversely affected or aggrieved Bidder, the Bidder must claim to be eligible for award of the contract as the lowest responsible and responsive Bidder and that any and all lower Bidders are ineligible to receive Contract award.

An Actual Bidder who is adversely affected or aggrieved by the award of the Contract to another Bidder may protest award, in writing, within the timeline established. The written protest shall state the grounds upon which the protest is based. No protest of award shall be considered after the deadline.

RESPONSE TO INTENT-TO-AWARD PROTESTS

The Port of Hood River will respond in writing to Intent-to-Award protests submitted by adversely affected or aggrieved Bidders. The Port of Hood River may also respond to Intent-to-Award protests submitted by other Bidders for the purpose of clarification. However, any response made by the Port of Hood River is not intended to, and shall not in and of itself constitute, confirmation that the Bidder is, in fact, adversely affected or aggrieved, and therefore entitled to protest an Intent-to-Award, or that the protest was timely filed.

AWARD

After expiration of the seven (7) calendar day Intent-to-Award protest period, and resolution of all protests, the Port of Hood River may proceed with final award. If the Port of Hood River receives only one Bid, the Port of Hood River may dispense with the Intent-to-Award protest period and proceed with award of a Contract.

COMMENCEMENT OF WORK

Contractor shall not commence Work under this Contract until the Notice to Proceed has been issued.

REVIEW OF AWARDED BID FILES

Awarded Bid files are public records and available for review at the Port of Hood River office by appointment during regular business hours (Monday through Friday, 8am until 5pm).

INFORMATION TO BE SUBMITTED BY APPARENT SUCCESSFUL BIDDER

The apparent successful Bidder shall provide all required proof of insurance to the Port of Hood River within ten (10) calendar days of notification of the Intent-to-Award. Failure to present the required documents within ten (10) calendar days may result in Bid rejection. Bidders are encouraged to consult their insurance agent about the insurance requirements as identified in Section G of the General Contract Conditions prior to Bid submission.

Bidders must satisfy these insurance requirements by obtaining insurance coverage from insurance companies or entities acceptable to the Port of Hood River that are allowed to provide such insurance under Oregon law.

The successful Bidder shall be required to furnish a Performance and Payment Bond each in the total amount of one hundred percent (100%) of the awarded contract, executed in favor of the Port of Hood River, to ensure faithful performance of the Contract and payment for services and goods.

The apparent low bidder shall provide all required bonding to the Port of Hood River within ten calendar days of notification of Intent-to-Award. Failure to present the required documents within ten (10) calendar days may be grounds for award disqualification.

The apparent successful Bidder, if a Joint Venture/Partnership, shall provide a copy of the Joint Venture Agreement or Partnership Agreement evidencing authority to Offer and to enter into the resulting Contract that may be awarded, together with corporate resolutions (if applicable) evidencing corporate authority to participate as a Joint Venture or Partner. A contact person must also be designated for purposes of receiving all notices and communications under the Contract. All Partners and Joint Venturers will be required to sign the Contract awarded.

PREVAILING WAGES RATES (BOLI REQUIREMENTS)

The Contractor and subcontractors shall comply with all the provisions of 279C.800 through 279C.870 and the Davis Bacon Act, relative to Prevailing Wage Rates. The current Prevailing Wage Rates for Public Works Contract in Oregon subject to the State PWR will apply to this project and can be found at:

http://www.oregon.gov/boli/WHD/PWR/Pages/july2015/region_09_1-1-15.pdf
http://www.oregon.gov/boli/WHD/PWR/docs/April_1_2015_PWR_Amendments.pdf

The current Prevailing Wage Rates for Federally funded projects subject to the Davis Bacon Act Wage Decisions will apply to this project and can be found at:

<http://www.wdol.gov/>

The work takes place in Hood RiverCounty.

FIRST-TIER SUBCONTRACTOR DISCLOSURE INSTRUCTIONS AND FORM

Pursuant to ORS 279C.370, Bidders are required to disclose information about certain

First-Tier Subcontractors when the Owner estimates the contract value for a Public Improvement to be greater than \$100,000. Specifically, when the Contract amount of a First-Tier Subcontractor furnishing labor, or labor and materials, has a Contract value that is equal to or greater than five percent (5%) of the total project bid or \$15,000, whichever is greater, or \$350,000 regardless of the percentage of the total project bid, the Bidder must disclose the following information about that Subcontract in its Bid submission or within two (2) working hours after Bid Closing:

- a) Subcontractor's name;
- b) Category of work that Subcontractor would be performing;
- c) Dollar value of each Subcontract.

If the Bidder will not be using any subcontractors that are subject to the above disclosure requirements, the Bidder is required to write "NONE" on the Disclosure Form.

The Port of Hood River must reject a Bid if the Bidder fails to submit the disclosure form with this information by the stated deadline.

The Bidder must submit the Disclosure Form required by OAR 137-049-0360 either in its Bid submission or within two (2) working hours after closing.

The Port of Hood River shall obtain, and make available for public inspection, the Disclosure Forms required by OAR 137-049-0360. The Port of Hood River shall also provide copies of the Disclosure Forms to the Bureau of Labor and Industries as required by ORS 279C.835. The Port of Hood River is not required to determine the accuracy or completeness of the information submitted. Substitution of affected first-tier subcontractors shall be made only in accordance with ORS 279C.585.

PART 4

**BID PROPOSAL, BID SHEET, CONTRACTOR REGISTRATION FORM,
AND FIRST TIER SUBCONTRACTOR DISCLOSURE FORM**

BID PROPOSAL

DATE: _____

**PORT OF HOOD RIVER
1000 E. PORT MARINA DRIVE
HOOD RIVER, OREGON 97031**

PRICE SUBMITTAL:

The Undersigned proposes and agrees, if this Bid is accepted, to enter into an agreement with the Port of Hood River to furnish all Work as specified or indicated herein for the ITB indicated and within the schedule indicated in the Invitation to Bid. Bidder has familiarized itself with the Work and has visited and inspected the site and is familiar with all the field conditions, legal requirements (federal, state, and local laws, ordinances, rules and regulations), and conditions affecting cost, progress and performance of work, and has made such independent investigations as Bidder deems necessary. Bidder has given the Port written notice of all conflicts, errors, and/or discrepancies that it has discovered in the Contract Documents and the written resolution thereof by the Port is acceptable to Bidder.

BASE BID: Lower Mill Grade & Fill Project

FOR THE TOTAL SUM OF: \$ _____ . (\$)

CHANGES TO THE WORK

- A. If adjustments to the work occur, the Bid Sheet will be used for basis of cost adjustment. If quantities are adjusted by more than 25% equitable overhead factor may be applied.

BID ALTERNATES:

The Undersigned agrees, if awarded the Contract, to complete this work not later than:

_____, 2015.

Company: _____ Telephone: _____

Company Address: _____

Email: _____ Fax: _____

Construction Contractors Board Number _____ Expiration Date _____

I attest that I have the authority to commit the firm named above to this Bid amount and acknowledge that the firm meets the qualifications necessary to perform this work as outlined in the Invitation to Bid. I understand that I will be required to provide necessary information to verify that the firm meets these qualifications if selected for the Contract.

By: _____

Signature / Name & Title / Date

BID SHEET

Lower Mill Grade & Fill Project

Item	Description	Estimated Qty	Unit	Unit Cost	Total
1	Mobilization	LS	LS		
2	Maintain erosion and sediment control, to be placed by others	LS	LS		
3	Gravel	3,000	Ton		
4	On-site engineered fill from stock pile	8,320	CY		
5	On-site engineered fill from excavation outside log pond	3,850	CY		
6	Non-woven geotextile	5,600	SY		
7	Grade site to design grades per grading plan	LS	LS		
		TOTAL Bid			

Contractor Name	
Address	
Address	
City, State, Zip	
Phone	
Fax	
Email	
Registration Number	
Contact	
Phone	

SCHEDULE OF ALTERNATES Lower Mill Grade & Fill Project

Ite	Description	Qty	Unit	Unit Cost	Total
1	Import and place off-site engineered fill	1	Ton		
2					
3					
4					
5					
6					
7					
8					
9					
10					
11					
				Alternates Total	\$
Written Bid Total:					

Contractor Name	
Address	
Address	
City, State, Zip	
Phone	
Fax	
Email	
Registration Number	
Contact	
Phone	

CONTRACTOR REGISTRATION FORM

This Bid must be signed in ink by an authorized representative of the Bidder; any alterations or erasures to the Bid must be initialed in ink by the undersigned authorized representative.

1. CCB Requirements

All Bidders shall be licensed with the State of Oregon Contractors Board (CCB) prior to bidding on Public Improvement Contracts. Failure to comply with this requirement shall result in Bid Rejection.

All subcontractors participating in the project shall be similarly registered with the State of Oregon Contractors Board at the time they propose to engage in subcontract work. The CCB registration requirements apply to all public works contracts unless superseded by federal law.

Construction Contractors Board Number: _____
Expiration Date: _____

2. Asbestos Abatement Licensing Requirements

An asbestos abatement license under ORS 468A.720 will not be required of the Contractor or its subcontractors.

3. Joint Venture/Partnership Disclosure

The Undersigned has authority on behalf of the following entity and is (check one of the following and insert information requested):

- ___ a. A corporation organized and existing under the laws of the State of _____; or
- ___ b. A partnership/joint venture registered under the laws of the State of _____;
If yes, name of the contact person for the partnership/joint venture _____; or
- ___ c. A limited liability corporation (LLC) or limited liability partnership (LLP) under the laws of the State of _____; or
- ___ d. An individual doing business under an assumed name registered under the laws of the State of _____.

4. Addendum or Addenda Acknowledgement

ADDENDA: The Undersigned hereby acknowledges receipt of the following Addenda:

ADDENDUM NO.	DATED	ADDENDUM NO.	DATED
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

5. Responsibility Inquiry/ Contractor References

(Provide (3) related project references and contact information)

6. Recycled Products

Bidder will comply with the recycled products provision in the Invitation to Bid in accordance with ORS 279A.125. Contractors shall use recyclable products to the maximum extent economically feasible in the performance of the contract work as set forth in this document.

7. Residency Information

Bidder is a () Resident Bidder () Non-resident Bidder

If a Resident Bidder, enter your Oregon business address:

If a Non-resident Bidder, enter State of residency: _____

8. Compliance with Tax Laws

By my signature, I hereby attest or affirm under penalty of perjury: that I am authorized to act on behalf of the Contractor in this matter, that I have authority and knowledge regarding the payment of taxes, and that Contractor is, to the best of my knowledge, not in violation of any Oregon Tax Laws and any local tax laws administered by the Oregon Department of Revenue under ORS 305.620.

9. Certification of Drug-Testing Law Requirements

By my signature, I certify that Contractor shall demonstrate that an employee drug testing program is in place.

10. Certification of Compliance with Non-Discrimination Laws

By my signature, I hereby attest or affirm under penalty of perjury: that I am authorized to act on behalf of Contractor in this matter, and to the best of my knowledge, the Contractor has not discriminated against minority, women or emerging small business enterprises in obtaining any required subcontracts, and that the Contractor is not in violation of any Discrimination Laws.

11. Signature of Bidder's Duly Authorized Representative

The Bid must be signed in ink by an authorized Representative of the Bidder. Any alterations or erasures to the bid must be initialed in ink by the undersigned authorized representative.

The undersigned acknowledges, attests and certifies individually and on behalf of the Bidder that:

1. He/She is a duly authorized representative of the Bidder, has been authorized by Bidder to make all representations, attestations, and certifications contained in this Bid and all Addendum or Addenda, if any, issued.
2. Bidder, acting through its authorized representatives, has read and understands all Bid instructions, specifications, plans, terms and conditions contained in this Bid document, including all attachments, exhibits, and Addenda, if any, issued.
3. The Bid submitted is in response to the specific language contained in the Invitation to Bid, and Bidder has made no assumptions based upon either (a) verbal or written statements not contained in the Invitation to Bid, or (b) any previously issued Invitation to Bid, if any.
4. The Owner shall not be liable for any claims or be subject to any defenses asserted by Bidder based upon, resulting from, or related to, Bidder's failure to comprehend all the requirements of the Invitation to Bid.
5. The Owner shall not be liable for any expenses incurred by Bidder in preparing and submitting its Bid or in participating in the Bid evaluation/selection process.
6. The Bidder agrees to be bound by and comply with all applicable requirements of ORS 279C.800 through ORS 279C.870 and the administrative rules of the Bureau of

Labor and Industries (BOLI) regarding prevailing wage rates and payment of a fee to BOLI.

7. The Bid was (1) prepared independently from all other Bidders, and without collusion, fraud, or other dishonesty and without any agreement, understanding, or planned common course of action with, any other vendor of materials, supplies, equipment, or services described in the Invitation to Bid designed to limit independent bidding or competition; and (2) the contents of this Bid have not been communicated by the Undersigned or its employees or agents to any person not an employee or agent of the Undersigned or its surety on any bond furnished with the Bid and will not be communicated to such person prior to the official opening of the Bids.
8. Bidder is bound by and will comply with all requirements, specifications, plans, terms and conditions contained this Bid, including all attachments, exhibits and Addendum or Addenda, if any, issued.
9. Bidder will furnish the designated items and/or services in accordance with the Bid specifications, plans, and requirements, and will comply in all respects with the terms of the resulting Contract upon award.
Bidder represents and warrants that Bidder has the power and authority to enter into and perform the Contract and that the Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms.
10. All affirmations and certifications contained in sections 6,7,8,9 and 10 are true and correct.

Authorized Signature _____ Title _____

FEIN ID # or SSN # _____

Contact Person: _____

Telephone Number () _____ Fax () _____

FIRST-TIER SUBCONTRACTOR DISCLOSURE FORM

Project Name _____

Bid Opening Date _____

Name of Bidding Contractor _____

Email Address _____

· *THIS BOX IF YOU WILL NOT BE USING ANY FIRST-TIER SUBCONTRACTORS OF IF YOU ARE NOT SUBJECT TO THE DISCLOSURE REQUIREMENTS (SEE INSTRUCTIONS).*

FIRST-TIER SUBCONTRACTORS

Firm Name	Dollar Amount
Category of Work	

Firm Name	Dollar Amount
Category of Work	

Firm Name	Dollar Amount
Category of Work	

Firm Name	Dollar Amount
Category of Work	

Firm Name	Dollar Amount
Category of Work	

PART 5
BID BOND FORM

BID BOND FORM

Project Name: Lower Mill, Grade & Fill Project

We, _____, as
"Principal," (Name of Principal)

And _____, an
_____ Corporation, (Name of Surety)

authorized to transact Surety business in Oregon, as "Surety," hereby jointly and severally bind ourselves, our respective heirs, executors, administrators, successors and assigns to pay unto the Port of Hood River ("Obligee") the sum of (\$_____) _____ dollars.

NOW, THEREFORE, if the proposal or bid submitted by Principal is accepted, and if a contract pursuant to the proposal or bid is awarded to Principal, and if Principal enters into and executes such contract within the time specified in the procurement document and executes and delivers to Obligee its good and sufficient performance and payment bonds required by Obligee, as well as any required proof of insurance, within the time fixed by Obligee, then this obligation shall be void; otherwise, it shall remain in full force and effect.

IN WITNESS WHEREOF, we have caused this instrument to be executed and sealed by our duly authorized legal representatives this _____ day of ____, 20__ .

PRINCIPAL: _____ **SURETY:** _____

By _

Signature

BY ATTORNEY-IN-FACT:

Official Capacity

Name

Attest: _____
Corporation Secretary

Signature

Address

City State Zip

Phone Fax

PART 6
PERFORMANCE BOND FORM
PAYMENT BOND FORM

PERFORMANCE BOND FORM

Bond No. _____
Solicitation _____
Project Name _____

_____ (Surety #1) Bond Amount No. 1: \$ _____

_____ (Surety #2)* Bond Amount No. 2:* \$ _____

- *If using multiple sureties*

Total Penal Sum of Bond \$ _____

We, _____, as Principal, and the above identified Surety(ies), authorized to transact surety business in Oregon, as Surety, hereby jointly and severally bind ourselves, our respective heirs, executors, administrators, successors and assigns firmly by these presents to pay unto the Port of Hood River the sum of (Total Penal Sum of Bond) _____ (Provided, that we the Sureties bind ourselves in such sum "jointly and severally" as well as "severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such surety), and

WHEREAS, the Principal has entered into a contract with the Port of Hood River, the plans, specifications, terms and conditions of which are contained in above-referenced Solicitation;

WHEREAS, the terms and conditions of the contract, together with applicable plans, standard specifications, special provisions, schedule of performance, and schedule of contract prices, are made a part of this Performance Bond by reference, whether or not attached to the contract (all hereafter called "Contract"); and

WHEREAS, the Principal has agreed to perform the Contract in accordance with the terms, conditions, requirements, plans and specifications, and all authorized modifications of the Contract which increase the amount of the work, the amount of the Contract, or constitute an authorized extension of the time for performance, notice of any such modifications hereby being waived by the Surety;

NOW, THEREFORE, THE CONDITION OF THIS BOND IS SUCH that if the Principal herein shall faithfully and truly observe and comply with the terms, conditions and provisions of the Contract, in all respects, and shall well and truly and fully do and perform all matters and things undertaken by Contractor to be performed under the Contract, upon the terms set forth therein, and within the time prescribed therein, or as extended as provided in the Contract, with or without notice to the Sureties, and shall indemnify and save harmless the Port of Hood River and members thereof, its officers, employees and agents, against any direct or indirect damages or claim of every kind and description that shall be suffered or claimed to be suffered in connection with or arising out of the performance of the Contract by the Principal or its subcontractors, and shall in all respects perform said Contract according to law, then this obligation is to be void; otherwise it shall remain in full force and effect.

Nonpayment of the bond premium will not invalidate this bond nor shall the Port of Hood River be obligated for the payment of any premiums.

This bond is given and received under authority of ORS Chapter 279C, the provisions of which hereby are incorporated into this bond and made a part thereof.

IN WITNESS WHEREOF, WE HAVE CAUSED THIS INSTRUMENT TO BE EXECUTED AND SEALED BY OUR DULY AUTHORIZED LEGAL REPRESENTATIVES:

Dated this _____ day of _____, 20_____.

PRINCIPAL: _____

By: _____
Signature

Official Capacity

Attest: _____
Corporation Secretary

SURETY: _____
[Add signatures for each if using multiple bonds]

BY ATTORNEY-IN-FACT:
[Power-of-Attorney must accompany each bond]

Name

Signature

Address

City State Zip

Phone Fax

PAYMENT BOND FORM

Bond No. _____
Solicitation _____
Project Name _____

_____ (Surety #1) Bond Amount No. 1: \$ _____
_____ (Surety #2)* Bond Amount No. 2:* \$ _____

- *If using multiple sureties*

Total Penal Sum of Bond \$ _____

We, _____, as Principal, and the above identified Surety(ies), authorized to transact surety business in Oregon, as Surety, hereby jointly and severally bind ourselves, our respective heirs, executors, administrators, successors and assigns firmly by these presents to pay unto the Port of Hood River the sum to (Total Penal Sum of Bond) _____ (Provided, that we the Sureties bind ourselves in such sum "jointly and severally" as well as "severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such surety), and

WHEREAS, the Principal has entered into a contract with the Port of Hood River, the plans, specifications, terms and conditions of which are contained in above-referenced Solicitation;

WHEREAS, the terms and conditions of the contract, together with applicable plans, standard specifications, special provisions, schedule of performance, and schedule of contract prices, are made a part of this Payment Bond by reference, whether or not attached to the contract (all hereafter called "Contract"); and

WHEREAS, the Principal has agreed to perform the Contract in accordance with the terms, conditions, requirements, plans and specifications, and schedule of contract prices which are set forth in the Contract and any attachments, and all authorized modifications of the Contract which increase the amount of the work, or the cost of the Contract, or constitute authorized extensions of time for performance of the Contract, notice of any such modifications hereby being waived by the Surety;

NOW, THEREFORE, THE CONDITION OF THIS BOND IS SUCH that if the Principal shall faithfully and truly observe and comply with the terms, conditions and provisions of the Contract, in all respects, and shall well and truly and fully do and perform all matters and things by it undertaken to be performed under said Contract and any duly authorized modifications that are made, upon the terms set forth therein, and within the time prescribed therein, or as extended therein as provided in the Contract, with or without notice to the Sureties, and shall indemnify and save harmless the Port of Hood River and members thereof, its officers, employees and agents, against any claim for direct or indirect damages of every kind and description that shall be suffered or claimed to be suffered in connection with or arising out of the performance of the Contract by the Contractor or its subcontractors, and shall promptly pay all persons supplying labor, materials or both to the Principal or its subcontractors for prosecution of the work provided in the Contract; and shall promptly pay all contributions due the State Industrial Accident Fund and the State Unemployment Compensation Fund from the Principal or its subcontractors in connection with the performance of the Contract; and shall pay over to the Oregon Department of Revenue all sums required to be deducted and retained from the wages of employees of the Principal and its subcontractors pursuant to ORS 316.167, and shall permit no lien nor claim to be filed or prosecuted against the Port of Hood River on account of any labor or materials furnished; and shall do all things required of the Principal by the laws of this State, then this obligation shall be void; otherwise, it shall remain in full force and effect.

Nonpayment of the bond premium will not invalidate this bond nor shall the Port of Hood River be obligated for the payment of any premiums.

This bond is given and received under authority of ORS Chapter 279C, the provisions of which hereby are incorporated into this bond and made a part thereof.

IN WITNESS WHEREOF, WE HAVE CAUSED THIS INSTRUMENT TO BE EXECUTED AND SEALED BY OUR DULY AUTHORIZED LEGAL REPRESENTATIVES:

Dated this _____ day of _____, 20_____.

PRINCIPAL: _____

By: _____
Signature

Official Capacity

Attest: _____
Corporation Secretary

SURETY: _____
[Add signatures for each if using multiple bonds]

BY ATTORNEY-IN-FACT:
[Power-of-Attorney must accompany each bond]

Name

Signature

Address

City State Zip

Phone Fax

PART 7
CERTIFICATE OF INSURANCE FORM

CERTIFICATE OF INSURANCE FORM

This is to certify to: Port of Hood River, 1000 E. Port Marina Drive, Hood River
OR 97031 That the following described policy or policies have been issued to:

_____ Name and Address of Insured

_____ Name and Address of Insurance Company

Description of Contract _____

Types of Coverages	Limits of Liability	Policy Number	Expiration Date
1. Workers Compensation	Statutory		
2. Employer's Liability	\$		
3. Comprehensive General Liability	Bodily Injury		Property Damage
A. Premises & Operations	\$		\$
B. Blanket Contractual	\$		\$
C. Independent Sub-Contractors	\$		\$
D. Products Liability & Completed Operations	\$		\$
4. Comprehensive Automobile Liability (owner, hired, & non-owned)			
5. Other-			

Expires 12:01 Standard Time at the address of name insurance stated herein.

*Indicate the following property liability features: Yes No

- | | | |
|--|-----|-----|
| 1. "Broadform" including occurrence and care, custody and control. | ___ | ___ |
| 2. Explosion, collapse and underground damage exclusions. | ___ | ___ |

The insurer agrees that it will notify in writing, _____ of any material change, expiration or cancellation of the above-described policies not less than thirty (30) days before such change, expiration or cancellation becomes effective. It is further agreed the above named owner, his officers, agent (including his engineer) and employees are included as additional named insureds, but only as respects the performance of the above-described contract.

Authorized Representative

Name of Insurance Company

PART 8
GENERAL CONDITIONS (A-L)

PORT OF HOOD RIVER GENERAL CONDITIONS FOR PUBLIC WORKS CONTRACTS

SECTION A General Provisions

DEFINITION OF TERMS

Alternate – One of two or more units of work or groups of bid items, identified separately in the proposal, from which Owner may make a choice between different methods or material of construction for performing the same work.

Architect/Engineer-person appointed by the Port to make drawings and specifications, and to provide contract administration of the Work contemplated by this Contract.

Bid-an offer in connection with an invitation to bid and a proposal in connection with a request for proposals.

Bidder-means an Offeror in connection with an invitation to bid and proposer in connection with a request for proposals.

Change Order-written order issued by the Port's Authorized Representative to the Contractor requiring a change in the Work within the general scope of the Contract Documents.

Claim-means a demand by Contractor for review of the denial of Contractor's initial request for an adjustment of the Contract terms, payment of money, extension of Contract Time or other relief.

Contract- the written agreement between the Port and the Contractor comprised of the Contract Documents which describe the Work to be done and the obligations between the parties.

Contract Documents-means the solicitation Documents and addenda thereto, the Port of Hood River Public Improvement Contract, General Conditions, Supplemental General Conditions, if any, the accepted Bid, Plans, Specifications, amendments and change orders.

Contract Period- as set forth in the Contract Documents, means the period of time beginning with the issuance of the Notice to Proceed and concluding upon Final Completion.

Contract Price- the total of the awarded Bid amount, as increased or decreased by the price of approved alternatives and change orders.

Contract Time-means any incremental period of time allowed under the Contract to complete any portion of the Work reflected in the project schedule.

Contractor-person awarded the Contract for Work contemplated.

Days-are calendar days, unless otherwise specified.

Direct Costs-means the costs of materials, including sales tax, cost of delivery; cost of labor, including social security, unemployment insurance, and fringe benefits required by agreement or custom; worker's compensation insurance; project specific insurance; bond premiums, rental cost of equipment, and machinery required for execution of the work; and the additional costs of field personnel directly attributable to the Work.

Final Completion-means completion of all requirements under the Contract, excluding Warranty Work, and the final payment and release of retainage.

Force Majeure-means an act, event or occurrence caused by fire, riot, war, acts of God, nature, sovereign, or public enemy, strikes, freight embargoes or any other act, event or occurrence that is beyond the control of the party to this Contract who is asserting Force Majeure.

Notice to Proceed-the official written notice from the Port stating that the Contractor is to proceed with the Work defined in the Contract Documents.

Offer-a bid in connection with an invitation to bid and a proposal in connection with a request for proposals.

Offeror-means a bidder in connection with an invitation to bid and proposer in connection with a request for proposals.

Overhead-those items which may be included in the Contractor's markup and that shall not be charged as Direct Cost of Work, including without limitation such Overhead expenses as wages or salary of personnel above the level of foreman and expenses of the Contractor's office at the job site including expenses of personnel staffing the job site office.

Owner-Port of Hood River.

Owner's (Port's) Authorized Representative-those individuals identified in writing by the Owner to act on behalf of the Owner for this project.

Person-an entity doing business as a sole proprietorship, a partnership, a joint venture, a corporation, a limited liability company or partnership, or any other entity possessing the legal capacity to contract.

Plans-the drawings which show the location, type, dimensions, and details of the Work to be done under this Contract.

Punchlist-the list of Work yet to be completed or deficiencies which need to be corrected in order to achieve Final Completion of the Contract.

Record Document-means the as-built Plans, Specifications, testing and inspection records, product test data, samples, manufacturer and distributor/supplier warranties evidencing transfer to Owner, operational and maintenance manuals, shop drawings, Change Orders, correspondence, certificates of occupancy, and other documents listed in section B of these General Conditions, recording all services performed.

Solicitation Document-means invitation to bid or request for proposal or request for quotes.

Specification-means any description of the physical or functional characteristics of the Work, or of the nature of a supply, service or construction item. Specifications may include a description of any requirement for inspecting, testing or preparing a supply, service or construction item for delivery and the quantities or qualities of materials to be furnished under the Contract. Specifications will generally state the results or products to be obtained and may describe the method and manner of doing the work to be performed.

Subcontractor- a person having a direct contract with the Contractor, or another subcontractor, to perform one or more items of the Work.

Substantial Completion-the date when the Owner accepts in writing the construction, alteration, or repair of the improvement to real property or any designated portion thereof as having reached the state of completion when it may be used or occupied for its intended purpose. Substantial Completion of facilities with operating systems occurs only after thirty (30) continuous days of successful, trouble-free operation.

Substitutions- items that in function, performance, reliability, quality, and general configuration are the same or better than the product specified.

Supplemental General Conditions-those conditions that remove from, add to, or modify these General Conditions.

Work- the furnishing of all materials, equipment, labor, transportation, services and incidentals necessary to successfully complete any individual item or the entire Contract and the carrying out of duties and obligations imposed by the Contract Documents.

SCOPE OF WORK

The work contemplated under this Contract includes all labor, materials, transportation, equipment and services for, and incidental to, the completion of all construction work in connection with the project described in the Contract Documents. The Contractor shall perform all Work necessary so that the project can be legally occupied and fully used for the intended use set forth in the Contract Documents.

INTERPRETATION OF CONTRACT DOCUMENTS

Unless otherwise specifically defined in the Contract Documents, words which have well-known technical meanings or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings. Contract documents are intended to be complimentary. Whatever is called for in one, is interpreted to be called for in all. However, in the event of conflicts or discrepancies among Contract Documents, interpretations will be based on the following descending order of precedence:

1. Contract amendments and Change Orders, with those of later date having precedence over those of an earlier date;
2. The Port of Hood River Public Improvement Contract;
3. The Plans and Specifications;
4. The General Conditions;
5. The Solicitation Document and any addenda thereto;
6. The Accepted Offer.

In the case of an inconsistency between the Plans and Specifications or within either document not clarified by addendum, the better quality or greater quantity of Work shall be provided in accordance with the Owner or Owner's Authorized Representative's interpretation in writing.

If the Contractor finds discrepancies in or omissions from the Contract Documents, or if the Contractor is in doubt as to their meaning, the Contractor shall at once notify the Owner or the Owner's Authorized Representative. Matters concerning performance under, and interpretation of requirements of, the Contract Documents will be decided by the Owner's Authorized Representative, who may delegate that duty in some instances to the Architect/Engineer. Responses to the Contractor's request for interpretation of Contract Documents will be made in writing by the Owner's Authorized representative within any time limits agreed upon or otherwise with reasonable promptness. Interpretations and decisions of the Owner's Authorized Representative will be consistent with the intent of and reasonably inferable from the Contract Documents. Contractor shall not proceed without direction in writing from the Owner's Authorized Representative.

EXAMINATION OF PLANS, SPECIFICATIONS, AND SITE

It is understood that the Contractor, before submitting a bid, has made careful examination of the Contract Documents; has become fully informed as to the quality and quantity of materials and the character of the Work required; and has made a careful examination of the location and conditions of the Work and the sources of supply for materials. The Owner will in no case be responsible for any loss or for any unanticipated costs that may be suffered by the Contractor as a result of the Contractor's failure to acquire full information in advance in regard to all conditions pertaining to the Work.

SECTION B

Administration of the Contract

PORT'S ADMINISTRATION OF THE CONTRACT

The Port's Authorized Representative will provide administration of the Contract as described in

the Contract documents (1) during construction, (2) until final payment is due and (3) during the one year period for correction of work. The Port's Authorized Representative will act on behalf of the Port to the extent provided in the Contract Documents, unless modified in writing in accordance with other provisions of the contract. In performing these tasks, the Port may rely on the Architect/Engineer or other consultants to perform some or all of these tasks.

The Port's Authorized Representative will visit the site at intervals appropriate to the stage of the Contractor's operations (1) to become generally familiar with and to keep the Port informed about the progress and quality of the portion of the Work completed, (2) to endeavor to guard the Port against defects and deficiencies in the Work, and (3) to determine in general if Work is being performed in a manner indicating that the Work, when fully completed will be in accordance with the Contract Documents.

The Port's Representative will neither have control over or charge of, nor be responsible for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the work.

Except as otherwise provided in the Contract Documents or when direct communications have been specifically authorized, the Port and Contractor shall endeavor to communicate with each other through the Port's Authorized Representative or designee about matters arising out of or relating to the contract. Communications by and with the Architect/Engineer's consultants shall be through the Architect/Engineer. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Port's Authorized Representative.

Based on the Architect/Engineer's evaluation of the Contractor's Application for Payment, or unless otherwise stipulated by the Port's Authorized Representative, the Architect/Engineer will review and certify the amounts due the Contractor and will issue Certificates for Payments in such amounts.

CONTRACTOR'S MEAN AND METHODS; MITIGATION OF IMPACTS

The Contractor shall direct and supervise the Work, using the Contractor's best skill and attention. The Contractor shall solely be responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under this Contract, unless Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures.

The contractor is responsible to protect and maintain the Work during the course of construction and to mitigate any adverse impacts to the project, including those caused by authorized changes, which may affect cost, schedule, or quality.

The Contractor is responsible for the actions of all its personnel, laborers, suppliers, and Subcontractors on the project. The Contractor shall enforce strict discipline and good order among Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of persons who are unfit or unskilled for the tasks assigned to them.

MATERIALS AND WORKMANSHIP

The intent of the Contract Documents is to provide for the construction and completion of every detail of the Work described. All Work shall be performed in a professional manner and unless the means or methods of performing a task are specified elsewhere in the Contract Documents, Contractor shall employ methods that are generally accepted and used by the industry, in

accordance with industry standards.

The Contractor is responsible to perform the Work as required by the Contract Documents. Defective work shall be corrected at the Contractor's expense.

Work done and materials furnished shall be subject to inspection and/or observation by the Port's Authorized Representative to determine if they conform to the Contract Documents. Inspection of the Work by the Port's Authorized Representative does not relieve the Contractor of responsibility for the Work in accordance with the Contract Documents.

Contractor shall furnish adequate facilities, as required, for the Port's Authorized Representative to have safe access to the Work including without limitation walkways, railings, ladders, tunnels, and platforms. Producers, suppliers, and fabricators shall also provide facilities and access to their facilities.

The Contractor shall furnish Samples of Materials for testing by the Port's Authorized Representative and include the cost of the Samples in the Contract Price.

PERMITS

The Port has obtained State and Federal permit approvals, hereby made part of the Contract Documents. Contractor shall obtain and pay for all other necessary permits and licenses, except for those specifically excluded in the Supplemental General Conditions, for the construction of the Work, for temporary obstructions, enclosures, opening of streets for pipes, walls, utilities, environmental work, etc, as required for the project. Contractor shall be responsible for all violations of the law, in connection with the construction or caused by obstructing streets, sidewalks, or otherwise. Contractor shall give requisite notices to public authorities. The Contractor shall pay all royalties and license fees. The Contractor shall defend all suits and claims for infringement of any patent or other proprietary rights and save harmless and blameless from loss, on account thereof, the Port, its properties, officers, employees, and contractors.

COMPLIANCE WITH GOVERNMENT LAWS AND REGULATIONS

Contractor shall comply with all federal, state and local laws, codes, regulations and ordinances applicable to the Work and Contract. Failure to comply with such requirements shall constitute a breach of contract and shall be grounds for Contract termination. Without limiting the generality of the foregoing, Contractor expressly agrees to comply with the following as applicable:

- i) Title VI and VII of Civil Rights act of 1964, as amended
- ii) Section 503 and 504 of the Rehabilitation act of 1973, as amended
- iii) The Health Insurance Portability and Accountability Act of 1996
- iv) The Americans with Disabilities Act of 1990, as amended
- v) ORS Chapter 659A, as amended
- vi) All regulations and administrative rules established pursuant to the foregoing laws
- vii) All other applicable requirements of federal and state civil rights and rehabilitations statues, rules and regulations.

Port's performance under the Contract is conditioned upon the Contractor's compliance with the provisions of ORS 279C.505, 279C.510, 279C.515, 279C.520, and 279C.530, which are incorporated by reference herein.

Contractor shall comply with all applicable requirements of federal and state civil rights and rehabilitation statues, rules and regulations; and

- (a) Contractor shall not discriminate against Disadvantaged, Minority, Women, or Emerging Small Business enterprises, as those terms are defined in ORS 200.005, in the awarding of subcontracts (ORS 279A.110)

(b) Contractor shall maintain, in current and valid form, all licenses and certificates required by tax, regulation, or this Contract when performing the Work.

Unless contrary to federal law, Contractor shall certify that it shall not accept a bid from Subcontractors to perform Work as described in ORS 701.005 under this contract unless such Subcontractors are registered with the Construction Contractors Board in accordance with ORS 701.035 to 701.055 at any time they submit their bids to the Contractor.

Unless contrary to federal law, Contractor shall certify that each landscape contractor, as defined in ORS 671.520(2), performing Work this Contract holds a valid landscape contractor's license issued pursuant to ORS 671.560.

The following notice is applicable to Contractors who perform excavation Work. ATTENTION: Oregon law requires you to follow rules adopted by the Oregon Utility Notification Center. Those rules are set forth in OAR 952-001-0010 through OAR 952-001-0090. You may obtain copies of those rules by calling the center at (503)232-1987.

Failure to comply with any or all of the requirements set forth here shall be a breach of Contract and constitute grounds for Contract termination. Damages or costs resulting from such noncompliance shall be the responsibility of Contractor.

REQUIREMENTS FOR GRANT COMPLIANCE

Additional work, not included in this contract and required by grant, will be addressed on a change order basis.

INSPECTION

Port's Authorized Representative shall have access to the Work at all times.

The Port's Authorized Representative at its discretion will make inspection of Work. The Port's Authorized Representative will have authority to reject Work that does not conform to the Contract Documents. Any Work found to be not in conformance with the Contract Documents, in the discretion of the Port's Authorized Representative, shall be removed and replaced at the Contractor's expense.

Contractor shall make or obtain at the appropriate time all tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations, or orders of public authorities having jurisdiction. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Port, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work. The Contractor shall give the Port's Authorized Representative timely notice of when and where tests and inspections are to be made so that the Port's Authorized Representative may be present for such procedures. Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Port's Authorized Representative.

Work done or materials used without inspection or testing by the Port's Authorized Representative may be ordered removed at the Contractor's expense.

If directed to do so at any time before the Work is accepted, the Contractor shall uncover portions of the completed Work for inspection. After inspection, the Contractor shall restore such portions of Work to the standard required by the Contract. If the Work uncovered is

unacceptable or was done with sufficient notice to Port's Authorized Representative, the uncovering and restoration will be paid for as a Change Order.

If any testing or inspection reveals failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs necessary by such failure, including those of repeated procedures and compensation for the Port's Authorized Representative and Architect/Engineer's services and expenses, shall be at the Contractor's expense.

SEVERABILITY

If any provision of this Contract is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular provision held to be invalid.

ACCESS TO RECORDS

Contractor shall keep, at all times on the Work site, one record copy of the complete Contract Documents, including the Plans, Specifications, Change Orders and addenda, in good order and marked currently to record filed changes and selections made during construction, and one record copy of Shop Drawings, Product Data, Samples and similar submittals, and shall at all times give the Port's Authorized Representative access thereto.

Contractor shall retain and the Port and its duly Authorized Representatives shall have access to, for a period not less than six (6) years, all Record Documents, financial and accounting records, and other books, documents, papers and records of Contractor which are pertinent to the Contract including record pertaining to Overhead and indirect costs, for the purpose of audit, examination, excerpts and transcripts. If for any reason, any part of the Contract is involved in litigation, Contractor shall retain all such records until all litigation is resolved. The Port and/or its agents shall continue to be provided full access to the records during litigation.

WAIVER

Failure of the Port to enforce any provision of this Contract shall not constitute a waiver or relinquishment by the Port of the right to such performance in the future nor the right to enforce any other provision of this Contract.

SUBCONTRACTS AND ASSIGNMENT

Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound by the terms and conditions of these General Conditions, and to assume toward the Contractor all of the obligations and responsibilities which the Contractor assumes toward the Port thereunder, unless,

- (1) the same are clearly inapplicable to the subcontractor at issue because of legal requirements or industry practices, or
- (2) specific exceptions are requested by Contractor and approved in writing by Port.

Where appropriate, Contractor shall require each subcontractor to enter in similar agreements with sub-subcontractors at any level.

At Port's request, Contractor shall submit to Port prior to their execution either Contractor's form of subcontract, or the subcontract to be executed with any particular Subcontractor. If Port disapproves such form, Contractor shall not execute the form until the matters disapproved are resolved to Port's satisfaction. Port's review, comment upon or approval of any such form shall not relieve Contractor of its obligations under this Agreement or be deemed a waiver of such obligations of Contractor.

Contractor shall not assign, sell or transfer its rights, or delegate its responsibilities under this Contract, in whole or part, without the prior written approval of the Port. No such written approval shall relieve Contractor of any obligations of this Contract, and any transferee shall be considered the agent of the Contractor and bound to perform in accordance with the Contract Documents. Contractor shall remain liable as between the original parties to the Contract as if no assignment had occurred.

SUCCESSORS IN INTEREST

The provisions of this Contract shall be binding upon and shall accrue to the benefit of the parties to this Contract and their respective permitted successors and assigns.

PORT'S RIGHT TO DO WORK

Port reserves the right to perform other or additional work at or near the project site with other forces than those of the Contractor. If such work takes place within or next to the project site, Contractor will coordinate with all other contractors or forces, carry out the Work in a way that will minimize interference and delay for all forces involved, place and dispose of materials being used so as not to interfere with the operations of another, and join the Work with the work of others in an acceptable manner and perform it in proper sequences to that of the others. The Port's Authorized Representative will resolve any disagreements that may arise between or among Contractor and the other contractors over the method or order of doing all work (including the Work). In case of unavoidable interference, Port's Authorized Representative will establish work priority (including the Work), which generally will be in the sequence that the contracts were awarded.

OTHER CONTRACTS

In all cases and at any time, the Port has the right to execute other contracts related to or unrelated to the Work of this Contract. The Contractor of this Contract will fully cooperate with any and all other contractors without additional cost to the Port in the manner described above.

LITIGATION

Any claims between Port and Contractor that arises from or related to this Contract and that is not resolved through the Port contract review board shall be brought and conducted solely and exclusively within the Circuit Court of Hood River County.

ALLOWANCES

The contractor shall include in the Contract Price all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Port may direct.

Unless otherwise provided in the Contract Documents:

- a. When finally reconciled, allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- b. Contractor's cost for unloading and handling at the site, labor, installation costs, Overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Price but not in the allowances;
- c. Whenever costs are more than or less than allowances, the Contract Price shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section (b) and (2) changes in Contractor's costs under this Section.
- d. Unless Port requests otherwise, Contractor shall provide to Port a proposed fixed price for any allowance work prior to its performance.

SUBMITTALS, SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

Design Build requirements apply. The Contractor shall prepare and keep current, for the Architect's/Engineer's approval (or for the approval of Port's Authorized Representative if approval authority has not been delegated to the Architect/Engineer), a schedule and list of submittals which is coordinated with the Contractor's construction schedule and allows the Architect/Engineer reasonable time to review submittals. Port reserves the right to finally approve the schedule and list of submittals. Submittals include, without limitation, Shop Drawings, Product Data, and Samples which are described below:

- a. Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor (including any sub-subcontractor), manufacturer, supplier or distributor to illustrate some portion of the Work.
- b. Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.
- c. Samples are physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required by the Contract Documents the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents. Review of submittals by the Architect/Engineer is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, or for approval of safety precautions or, unless otherwise specifically stated by the Architect/Engineer, of any construction means, methods, techniques, sequences or procedures, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect/Engineer's review of the Contractor's submittals shall not relieve the Contractor of its obligations under the Contract Documents. The Architect/Engineer's approval of a specific item shall not indicate approval of an assembly of which the item is a component. Informational submittals upon which the Architect/Engineer is not expected to take responsive action may be so identified in the Contract Documents. Submittals which are not required by the Contract Documents may be returned by the Architect/Engineer without action.

The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect/Engineer Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Port or of separate contractors. Submittals which are not marked as reviewed for compliance with the Contract Documents and approved by the Contractor may be returned by the Architect/Engineer without action.

By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents that the Contractor has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect/Engineer.

The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the

Architect/Engineer's review or approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect/Engineer in writing of such deviation at the time of submittal and (1) the Architect/Engineer has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order has been executed by Port authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect/Engineer's review or approval thereof.

If any errors or omissions appear in the drawings, specifications or other documents the Contractor shall, immediately and before proceeding with that portion of the work affected, notify Owner or such error or omission. Should the Contractor proceed with erroneous work without giving notice, Contractor shall be responsible for errors and make required corrections without additional cost to Owner.

SUBSTITUTIONS

The Contractor may make Substitutions only with the consent of the Port, after evaluation by the Port's Authorized Representative and only in accordance with a Change Order. Substitutions shall be subject to the requirements of the bid documents. By making requests for Substitutions, the Contractor will provide the same warranty for the Substitution that the Contractor would for the product originally specified unless approved otherwise; certifies that the cost data presented is complete and includes all related costs under this Contract including redesign costs, and waives all claims for additional costs related to the Substitution which subsequently becomes apparent; and will coordinate the installation of the accepted Substitution, making such changes as may be required for the Work to be completed in all respects.

USE OF PLANS AND SPECIFICATIONS

Plans, Specifications and related Contract Documents furnished to Contractor by Port or Port's Architect/Engineer shall be used solely for the performance of the Work under this Contract. Contractor and its Subcontractors and suppliers are authorized to use and reproduce applicable portions of such documents appropriate to the execution of the Work, but shall not claim ownership or other interest in them beyond the scope of this Contract, and no such interest shall attach. Unless otherwise indicated, all common law, statutory and other reserved rights, in addition to copyrights, are retained by Port.

FUNDS AVAILABLE AND AUTHORIZED

Port reasonably believes at the time of entering into this Contract that sufficient funds are available and authorized for expenditure to finance the cost of this Contract within the Port's appropriation or limitation. Contractor understands and agrees that, to the extent that sufficient funds are not available and authorized for expenditure to finance the cost of this Contract, Port's Services performed after the last day of the current biennium is contingent on Port receiving from the Oregon Legislative Assembly appropriations, limitations or other expenditure authority sufficient to allow Port, in the exercise of its reasonable administrative discretion, to continue to make payments under this Contract.

NO THIRD PARTY BENEFICIARIES

Port and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.

SECTION C Wages & Labor

1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

Subrecipients¹ may obtain wage determinations from the U.S. Department of Labor's web site, www.wdol.gov.

(ii)(A) The **subrecipient(s)**, on behalf of EPA, shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The EPA award official shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates¹ contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the **subrecipient(s)** agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the **subrecipient (s)** to the State award official. The State award official²

¹ A **subrecipient** is defined as the borrower or a grantee for a BCF funded project.

² The **State award official** is defined as the Oregon Business Development Department.

will transmit the report, to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the State award official or will notify the State award official within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the and the **subrecipient(s)** do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the award official shall refer the questions, including the views of all interested parties and the recommendation of the State award official, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding. The **subrecipient(s)**, shall upon written request of the EPA Award Official or an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include

the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly, for each week in which any contract work is performed, a copy of all payrolls to the **subrecipient**, that is, the entity that receives the sub-grant or loan from the State capitalization grant recipient. Such documentation shall be available on request of the State recipient or EPA. As to each payroll copy received, the **subrecipient** shall provide written confirmation in a form satisfactory to the State indicating whether or not the project is in compliance with the requirements of 29 CFR 5.5(a)(1) based on the most recent payroll copies for the specified week. The payrolls shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on the weekly payrolls. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/whd/programs/dbra/wh347.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the **subrecipient(s)** for transmission to the State or EPA if requested by EPA, the State, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the **subrecipient(s)**.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to

civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the State, EPA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency or State may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees--

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees

shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the EPA determines may be appropriate, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and **Subrecipient(s)**, State, EPA, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C.

1001.

Contract Provision for Contracts in Excess of \$100,000.

(a) Contract Work Hours and Safety Standards Act. The **subrecipient** shall insert the following clauses set forth in paragraphs (a)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by Item 3, above or 29 CFF [4.6](#). As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (a)(1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The **subrecipient**, upon written request of the EPA Award Official or an authorized representative of the Department of Labor, shall withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a)(1) through (4) of this section.

(b) In addition to the clauses contained in Item 3, above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in [29 CFR 5.1](#), the **Subrecipient** shall insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the **Subrecipient** shall insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for

inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

5. Compliance Verification

(a). The **subrecipient** shall periodically interview a sufficient number of employees entitled to DB prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a)(6), all interviews must be conducted in confidence. The **subrecipient** must use Standard Form 1445 or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.

(b) The **subrecipient** shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, the **subrecipient** must conduct interviews with a representative group of covered employees within two weeks of each contractor or subcontractor's submission of its initial weekly payroll data and two weeks prior to the estimated completion date for the contract or subcontract. **Subrecipients** must conduct more frequent interviews if the initial interviews or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. **Subrecipients** shall immediately conduct necessary interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence.

(c). The **subrecipient** shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. The **subrecipient** shall establish and follow a spot check schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, the **subrecipient** must spot check payroll data within two weeks of each contractor or subcontractor's submission of its initial payroll data and two weeks prior to the completion date the contract or subcontract . **Subrecipients** must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB . In addition, during the examinations the **subrecipient** shall verify evidence of fringe benefit plans and payments thereunder by contractors and subcontractors who claim credit for fringe benefit contributions.

(d). The **subrecipient** shall periodically review contractors and subcontractors use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S Department of Labor or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of, laborers, trainees and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in Item 5(b) and (c) above.

(e) **Subrecipients** must immediately report potential violations of the DB prevailing wage requirements to the EPA DB contact listed above and to the appropriate DOL Wage and Hour District Office listed at <http://www.dol.gov/whd/america2.htm>.

INTENT TO PAY PREVAILING WAGE

Approved Intent to Pay Prevailing Wage statements shall be provided to Owner prior to first pay application.

PAYROLL CERTIFICATION; ADDITIONAL RETAINAGE; FEE REQUIREMENTS

In accordance with ORS 279C.845, the Contractor and every Subcontractor shall submit

written certified statements to the Port's Authorized Representative, on the form prescribed by the Commissioner of the Bureau of Labor and Industries, certifying the hourly rate of wage paid each worker which the Contractor or the Subcontractor has employed on the project and further certifying that no worker employed on the project has been paid less than the prevailing rate of wage or less than the minimum hourly rate of wage specified in the Contract, which certificate and statement shall be verified by the oath of the Contractor or the Subcontractor has read such statement and certificate and knows the contents thereof and that the same is true to the Contractor or Subcontractor's best knowledge and belief. 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. Certified statements for each week during which the Contractor or Subcontractor has employed a worker on the project shall be submitted once a month, by the fifth business day of the following month.

The Contractor and Subcontractors shall preserve the certified statements for a period of six (6) years from the date of completion of the Contract.

Pursuant to ORS 279C.845(7), the Port shall retain 25 percent of any amount earned by the Contractor on this public works project until the Contractor has filed the certified statements required by previous paragraphs. The Port shall pay to the Contractor the amount retained under this subsection within 14 days after the Contractor files the required certified statements, regardless of whether a Subcontractor has failed to file certified statements.

Pursuant to ORS 279C.845(8), the Contractor shall retain 25 percent of any amount earned by a first-tier Subcontractor on this public works project until the first-tier Subcontractor has filed with the Port the certified statements required by previous section. Before paying any amount retained under this subsection, the Contractor shall verify that the first-tier Subcontractor has filed the certified statement, Within 14 days after the first-tier Subcontractor files the required certified statement the Contractor shall pay the first-tier Subcontractor any amount retained under this subsection.

In accordance with statutory requirements, and administrative rules promulgated by the Commissioner of the Bureau of Labor and Industries, the fee required by ORS 279C.825(1) will be paid by Port to the Commissioner at the time Port enters into the Contract.

PROMPT PAYMENT AND CONTRACT CONDITIONS

Pursuant to ORS 279C.505 and as a condition to Port's performance hereunder, the Contractor shall:

- Make payment promptly, as due, to all persons supplying to Contractor labor or materials for the prosecution of the Work provided for in this Contract.
- Pay all contributions or amounts due the State Industrial Accident Fund from such Contractor or Subcontractor incurred in the performance of the Contract.
- Not permit any lien or claim to be filed or prosecuted against the Port on account of any labor or material furnished. Contractor will not assign any claims that Contractor has against Port, or assign any sums due by Port, to Subcontractors, suppliers, or manufacturers, and will not make any agreement or act in any way to give Subcontractors a claim or standing to make a claim against the Port.
- Pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
- Demonstrate that an employee drug testing program is in place as follows:
 - (a) Contractor represents and warrants that Contractor has in place at the time of the execution of this Contract, and shall maintain during the term of this Contract, a Qualifying Employee Drug Testing Program for its employees that includes, at a minimum, the following:

- (1.) A written employee drug testing policy,
- (2.) Required drug testing for all new Subject Employees or, alternatively, required testing of all Subject Employees every 12 months on a random selection basis, and
- (3.) Required testing of a Subject Employee when the Contractor has reasonable cause to believe the Subject Employee is under the influence of drugs.

A drug testing program that meets the above requirements will be deemed a "Qualifying Employee Drug Testing Program." For the purposes of this section, an employee is a "Subject Employee" only if that employee will be working on the project job site.

(b) Contractor shall require each Subcontractor providing labor for the project to:

- (1.) Demonstrate to the Contractor that it has a Qualifying Employee Drug Testing Program for the Subcontractor's Subject Employees, and represent and warrant to the Contractor that the Qualifying Employee Drug Testing Program is in place at the time of subcontract execution and will continue in full force and effect for the duration of the subcontract, or
- (2.) Require that the Subcontractor's Subject Employees participate in the Contractor's Qualifying Employee Drug Testing Program for the duration of the subcontract.

Pursuant to ORS 279C.515, and as a condition to Port's performance hereunder, Contractor agrees:

- If Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the Contractor of a Subcontractor by any person in connection with the project as such claim becomes due, the proper officer(s) representing the Port may pay the claim and charge the amount of the payment against funds due or to become due to Contractor under this Contract. Payment of claims in this manner shall not relieve the Contractor or the Contractor's surety from obligation with respect to any unpaid claims.
- If the Contractor or a first-tier Subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the public contract for a public improvement within thirty (30) days after receipt of payment from Port or a contractor, the Contractor or first-tier Subcontractor shall owe the person the amount due plus interest charges commencing at the end of the 10-Day period that payment is due under ORS 279C.580(3) and ending upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest charged to the Contractor or first-tier Subcontractor on the amount due shall equal three times the discount rate on 90-Day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve district that includes Oregon on the date that is thirty (30) days after the date when payment was received from Port or from the Contractor, but the rate of interest shall not exceed thirty (30) percent. The amount of interest may not be waived.
- If the Contractor or a Subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the 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. Every contract related to this Contract shall contain a similar clause.

Pursuant to ORS 279C.580, Contractor shall include in each subcontract for property or services entered into by the Contractor and a first-tier Subcontractor, including a material supplier, for

the purpose of performing a construction contract:

- (a) A payment clause that obligates the Contractor to pay the first-tier Subcontractor for satisfactory performance under its subcontract within ten (10) days out of such amounts as are paid to the Contractor by Port under the Contract;
- (b) An interest penalty clause that obligates the Contractor if payment is not made within thirty (30) days after receipt of payment from Port, to pay to the first-tier Subcontractor an interest penalty on amounts due in the case of each payment not made in accordance with the payment clause included in the subcontract pursuant to paragraph (a) of this subsection. Contractor or first-tier Subcontractor shall not be 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 Port or Contractor when payment was due. The interest penalty shall be for the period beginning on the day after the required payment date and ending on the date on which payment of the amount due is made; and shall be computed at the rate specified in ORS 279C.515(2).
- (c) A clause which requires each of Contractor's Subcontractor's to include, in each of their contracts with lower-tier Subcontractors or suppliers, provisions to the effect that the first-tier Subcontractor shall pay its lower-tier Subcontractors and suppliers in accordance with the provisions of subsections
 - (a) and (b), above and requiring each of their Subcontractors and suppliers to include such clauses in their subcontracts and supply contracts.

All employers, including Contractor, that employ subject workers who work under this Contract in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Contractor shall ensure that each of its Subcontractors complies with these requirements.

PAYMENT FOR MEDICAL CARE

Pursuant to ORS 279C.530, and as a condition to Port's performance hereunder, Contractor shall promptly, as due, make payment to any person, partnership, association or corporation furnishing medical, surgical, and hospital care or other needed care and attention, incident to sickness or injury, to the employees of such Contractor, all sums of which the Contractor agrees to pay for such service and all moneys and sums which the Contractor has collected or deducted from the wages of personnel pursuant to any law, contract or agreement for the purpose of providing or paying for such services.

HOURS OF LABOR

As a condition to Port's performance hereunder, Contractor shall comply with ORS 279C.520, as amended from time to time and incorporated herein by this reference. Contractor shall give a written schedule to employees showing the number of hours per day and days per week the employee may be required to work. Pursuant to ORS 279C.520 and as a condition to Port's performance hereunder, no person shall be employed to perform Work under this Contract for more than ten (10) hours in any day of forty (40) in any one week, except in cases of necessity, emergency or where public policy absolutely requires it. In such instances, Contractor shall pay the employee at least time and a half pay:

- (a) For all overtime in excess of eight (8) hours a day or forty (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 ten (10) hours a day or forty hours (40) 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 holidays specified in ORS 279C.540.

This section will not apply to Contractor's Work under this Contract if Contractor is currently a

party to a collective bargaining agreement with any labor organization.

This section shall not excuse Contractor from completion of the Work within the time required under this Contract.

SECTION D

Changes in Work

CHANGES IN WORK

The terms of the Contract shall not be waived, altered, modified, supplemented or amended in any manner whatsoever without prior written approval of the Port's Authorized Representative, and then only in a manner consistent with the Change Order provisions of this conditions and after any necessary approvals required by public contracting laws have been obtained. Otherwise, a formal contract amendment is required, which shall not be effective until its execution by the parties to this Contract and all approvals required by public contracting laws have been obtained.

It is mutually agreed that changes in Plans, quantities, or details of construction are inherent in the nature of construction and may be necessary or desirable during the course of construction. Within the general scope of this Contract, the Port's Authorized Representative may at any time, without notice to sureties and without impairing the Contract, require changes consistent with this section. All Change Order Work shall be executed under the conditions of the Contract Document. Such changes may include, but are not limited to:

- (a) Modifications of specifications and design.
- (b) Increases or decreases in quantities.
- (c) Increases or decreases to the amount of Work.
- (d) Addition or elimination of any Work item.
- (e) Changes in the duration of the project.
- (f) Acceleration or delay in performance of Work.
- (g) Deductive changes.

Deductive changes are those made that reduce the scope of the Work, and shall be made by mutual agreement whenever feasible. In cases of suspension or partial termination under section I, "*Termination or Suspension*" to follow, Port reserves the right to unilaterally impose a deductive change and to self-perform such Work, for which the provisions of "Port's Right to Do Work" shall then apply.

Adjustments in compensation shall be made under the conditions following, in which costs for deductive changes shall be based upon Direct Costs adjustments together with the related percentage markup specified for profit, Overhead and other indirect costs, unless otherwise agreed to by Port.

The Port and Contractor agree that Change Order Work shall be administered and compensated according to the following:

- (a) Unit pricing may be utilized at the Port's option when unit prices or solicitation alternatives were provided that established the cost for additional Work, and a binding obligation exists under the Contract on the parties covering the terms and conditions of the additional work.
- (b) If the Port elects not to utilize the unit pricing, or if in the event that unit pricing is not available or appropriate, fixed pricing may be used for Change Work Order. In fixed pricing the basis of payments or total price shall be agreed upon in writing between the parties to the Contract, and shall be established before the Work is done whenever feasible. The mark-ups set forth following shall be utilized by the parties

as a guide in establishing fixed pricing, and will not be exceeded by Port without adequate justification. Cost and price data relating to Change Orders shall be supplied by Contractor to Port upon request, but Port shall be under no obligation to make such requests.

- (c) In the event that unit pricing and fixed pricing are not utilized, then the Change Order Work shall be performed on a cost reimbursement basis for Direct Costs. Such work shall be compensated on the basis of the actual, reasonable and allowable cost of labor, equipment, and material furnished on the Work performed. In addition, the following mark-ups shall be added to the Contractor's or Subcontractor's Direct Costs as full compensation for profit, Overhead and other indirect costs for Work directly performed with the Contractor's or Subcontractor's own forces:

On Labor	15%
On Materials	10%
On Equipment	10%

When Change Order Work is invoiced by an authorized subcontractor at any level, each ascending tier Subcontractor or Contractor will be allowed a supplemental mark-up on each piece of subcontract Work covered by such change Order as follows:

\$0.00-\$5,000.00	10%, and then
over \$5,000.00	5%

Payments made to Contractor shall be complete compensation for Overhead, profit, and all costs that were incurred by the Contractor or by other forces furnished by the Contractor, including Subcontractors, for Change Order Work. Port may establish a maximum cost for Change Order Work under this section which shall not be exceeded for reimbursement without additional written authorization from Port. Contractor shall not be required to complete such Change Order Work without additional authorization.

Any necessary adjustments of Contract Time that may be required as a result of a Change Order must be agreed upon by the parties before the start of the Change Order Work unless Port's Authorized Representative authorizes Contractor to start the work before agreement on Contract Time adjustment. Contractor shall submit any request for additional compensation and additional contract time as soon as possible but no later than thirty (30) Days after receipt of the Change Order. If not received within the time limit, Contractor's requests pertaining to that Change Order are barred. The thirty day time limit applies to claims of Subcontractors, suppliers, or manufacturers that may be affected by the Change Order.

If Port's Authorized Representative denies the Contractor's request for additional compensation or adjustment of Contract Time, the Contractor may proceed to file a claim under the Claims Review Process described hereafter in this Section D.

No request or claim by the Contractor for additional cost or an extension of Contract Time shall be allowed if made after receipt of final payment application under this Contract. Contractor agrees to submit its final payment application within ninety (90) days after Substantial Completion, unless Port grants a written extension. Contractor shall not delay final payment application for any reason.

DELAYS

Delays in construction include "Avoidable Delays", which are defined in the following section, and "Unavoidable Delays", which are defined in the one after. Found in this section are the effects of Avoidable Delays and Unavoidable Delays.

Avoidable Delays include any delays other than Unavoidable Delays, and include delays that otherwise would be considered Unavoidable Delays but that:

- (a) Could have been avoided by the exercise of care, prudence, foresight, and diligence on the part of the Contractor or its Subcontractors.
- (b) Affect only a portion of the Work and do not necessarily prevent or delay the prosecution of neither other parts of the Work nor the completion of the whole Work within the Contract Time.
- (c) Do not impact activities on the accepted critical path schedule.
- (d) Are associated with the reasonable interference of other contractors employed by the Port that do not necessarily prevent the completion of the whole Work within the Contract Time.

Unavoidable Delays include delays other than Avoidable delays that are:

- (a) Caused by any actions of the Port, Port's Authorized Representative, or any other employee or agent of the Port, or by separate contractor employed by the Port.
- (b) Caused by any site conditions which differ materially from what was represented in the Contract Documents or from conditions that would normally be expected to exist and be inherent to the construction activities defined in the Contract Documents. The Contractor shall notify the Port's Authorized Representative immediately of differing site conditions before the area has been disturbed. The Port's Authorized Representative will investigate the area and make a determination as to whether or not the conditions differ materially from either the conditions stated in the Contract Documents or those which could reasonably be expected in execution of this particular contract. If Contractor and the Port's Authorized Representative agree that a differing site condition exists, any additional compensation or additional Contract Time will be determined based on the process set forth in previous sections for Change Order Work. If the Port's Authorized Representative disagrees that a differing site condition exists and denies Contractor's request for additional compensation or Contract Time, Contractor may proceed to file a Claim under re: *Claims Review Process*. (following section)
- (c) Caused by Force Majeure acts, events or occurrences that could not have been avoided by the exercise of care, prudence, foresight, and diligence on the part of the Contractor or its Subcontractors.
- (d) Caused by adverse weather conditions. Any adverse weather conditions must be substantiated by documentary evidence that weather conditions were abnormal for the specific time period claimed, could not have been anticipated by the Contractor, and adversely impacted the project in a manner that could not be avoided by rescheduling the Work or by implementing measures to protect against the weather so that the Work could proceed. A rain, windstorm, high water, or other natural phenomenon for the specific locality of the Work, which might reasonably have been anticipated from the previous 10-year historical records of the general locality of the Work, shall not be construed as abnormal. The parties agree that rainfall greater than the following levels cannot be reasonably anticipated:
 - a. Daily rainfall equal to, or greater than, 0.50 inch during a month when the monthly rainfall exceeds the normal monthly average by twenty-five percent (25%) or more.
 - b. Daily rainfall equal to, or greater than, 0.75 inch at any time.

The Office of the Environmental Data Service of the National Oceanic and Atmospheric Administration of the U.S. Department of Commerce nearest the project site shall be considered the official agency of record for weather information.

Except as otherwise provided in ORS 279C.315, Contractor shall not be entitled to additional compensation or additional Contract Time for Avoidable Delays.

In the event of Unavoidable Delays, based on principles of equitable adjustment, Contractor may be entitled to the following:

- (a) Contractor may be entitled to additional compensation or additional Contract Time, or both, for Unavoidable Delays described earlier in section.
- (b) Contractor may be entitled to additional Contract Time for Unavoidable Delays described in previous section.

In the event of any requests for additional compensation or additional Contract Time, or both, as applicable, arising under this section for Unavoidable Delays, other than requests for additional compensation or additional Contract Time for differing site conditions for which a review process is established under previous section, Contractor shall submit a written notification of the delay to the Port's Authorized Representative within two (2) days of the occurrence of the cause of the delay. This written notification shall state the cause of the potential delay, the project components impacted by the delay, and the anticipated additional Contract Time or the additional compensation, or both, as applicable, resulting from the delay. Within seven

(7) days after the cause of the delay has been mitigated, or in no case more than thirty (30) days after the initial written notification, the Contractor shall submit to the Port's Authorized Representative, a complete and detailed request for additional compensation or additional Contract Time, or both, as applicable, resulting from the delay. If the Port's Authorized Representative denies Contractor's request for additional compensation or adjustment of Contract Time, the Contractor may proceed to file a Claim under the following section, *Claims Review Process*.

If Contractor does not timely submit the notices required under this section, then unless otherwise prohibited by law, Contractor's Claim shall be barred.

CLAIMS REVIEW PROCESS

All Contractor Claims shall be referred to the Port's Authorized Representative for review. Contractor's Claims, including Claims for additional compensation or additional Contract Time, shall be submitted in writing by Contractor to the Port's Authorized Representative within five (5) days after a denial of Contractor's initial request for an adjustment of Contract terms, payment of money, extension of Contract Time or other relief, provided that such initial request has been submitted in accordance with the requirements and within the time limits established in these General Conditions. Within thirty (30) days after the initial Claim, Contractor shall submit to the Port's Authorized Representative, a complete and detailed description of the Claim (the "Detailed Notice") that includes all information required by the following section. Unless the Claim is made in accordance with these time requirements, it shall be waived.

The Detailed Notice of the Claim shall be submitted in writing by Contractor and shall include a detailed, factual statement of the basis of the Claim, pertinent dates, Contract provisions which support or allow the Claim, reference to or copies of any documents which support the Claim, the dollar value of the Claim, and the Contract Time extension requested for the Claim. If the Claim involves Work to be completed by Subcontractors, the Contractor will analyze and evaluate the merits of the Subcontractor claim prior to forwarding it and that analysis and evaluation to the Port's Authorized Representative. The Port's Authorized Representative and the Port will not consider direct claims from Subcontractors, suppliers, manufacturers, or others not a party to this Contract. Contractor agrees that it will make no agreement, covenant, or assignment, nor will it commit any other act that will permit or assist any Subcontractor, supplier, manufacturer, or other to directly or indirectly make a claim

against Port.

The Port's Authorized Representative will review all claims and take one or more of the following preliminary actions within ten (10) days of receipt of the Detailed Notice of a Claim: (1) request additional supporting information from the Contractor; (2) inform the Contractor and Port in writing of the time required for adequate review and response; (3) reject the Claim in whole or in part and identify the reasons for rejection; (4) based on principles of equitable adjustment, recommend approval of all or part of the Claim; or (5) propose an alternate resolution.

The Port's Authorized Representative's decision shall be final and binding on the Contractor unless appealed by written notice to the Port within fifteen (15) days of receipt of the decision. The Contractor must present written documentation supporting the Claim within fifteen (15) days of the notice of appeal. After receiving the appeal documentation, the Port shall review the materials and render a decision within thirty (30) days after receiving the appeal documents.

The decision of the Port shall be final and binding unless the Contractor delivers to the Port its requests for mediation, which shall be a non-binding process, within fifteen (15) days of the date of the Port's decision. The mediation process will be considered to have commenced as of the date the Contractor delivers the request. Both parties acknowledge and agree that participation in mediation is a prerequisite to commencement of litigation of any disputes relating to the Contract. Both parties further agree to exercise their best efforts in good faith to resolve all disputes within sixty (60) days of the commencement of the mediation through the mediation process set forth herein.

In the event that a lawsuit must be filed within this sixty (60) day period in order to preserve a cause of action, the parties agree that notwithstanding the filing, they shall proceed diligently with the mediation to its conclusion prior to actively prosecuting the lawsuit, and shall seek from the Court in which the lawsuit is pending such stays or extensions, including the filing of an answer, as may be necessary to facilitate the mediation process. Further, in the event settlements are reached on any issues through the mediation, the parties agree to promptly submit the appropriate motions and orders documenting the settlement to the Court for its signature and filing.

The mediator shall be an individual mutually acceptable to both parties, but in the absence of agreement each party shall select a temporary mediator and the temporary mediators shall jointly select the permanent mediator. Each party shall pay its own costs for the time and effort involved in mediation. The cost of the mediator shall be split equally between the two parties. Both parties agree to exercise their best effort in good faith to resolve all disputes in mediation. Participation in mediation is a mandatory requirement of both the Port and the Contractor. The schedule, time and place for mediation will be mutually acceptable, or, failing mutual agreement, shall be as established by the mediator. The parties agree to comply with Port's mediation, if any, and shall execute all necessary documents to give effect to such confidentiality rules. In any event, the parties shall not subpoena the mediator or otherwise require the mediator to produce records, notes or work product, or to testify in any future proceedings as to information disclosed or representations made in the course of mediation, except to the extent disclosure is required by law.

Unless otherwise directed by Port's Authorized Representative, Contractor shall proceed with the Work while any Claim of Contractor is pending, including a Claim for additional compensation or additional Contract Time resulting from Change Order Work. Regardless of the review period or the final decision of the Port's Authorized Representative, the Contractor shall continue to diligently pursue the Work as identified in the Contract Documents. In no case is the Contractor justified or allowed to cease Work without a written stop work order from the Port or

Port's Authorized Representative.

SECTION E

Payments

BID SHEET

The contractor shall submit, at least ten (10) days prior to submission of its first application for progress payment, a schedule of values for the contracted Work. This schedule will provide a breakdown of values for the contracted Work and will be the basis for progress payments. The breakdown will demonstrate reasonable, identifiable, and measurable components of the Work. Unless objected to by the Port's

Authorized Representative, this schedule shall be used as the basis for reviewing Contractor's applications for payment. If objected to by Port's Authorized Representative, Contractor shall revise the schedule of values and resubmit the same for approval of Port's Authorized Representative.

APPLICATIONS FOR PAYMENT

Port shall make progress payments on the Contract monthly as Work progresses. Payments shall be based upon estimates of Work completed and the Schedule of Values. The Port's Authorized Representative shall approve all payments. A progress payment shall not be considered acceptance or approval of any Work or waiver of any defects therein. Port shall pay to Contractor interest on the progress payment, not including retainage, due the Contractor. The interest shall commence thirty (30) days after the receipt of invoice from the Contractor or fifteen (15) days after the payment is approved by the Port's Authorized Representative, whichever is the earlier date. The rate of interest shall equal three times the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve district that includes Oregon on the date that is thirty (30) days after receipt of the application for payment from the Contract or fifteen

(15) days after the payment is approved by the Port, whichever is the earlier date, but the rate of interest shall not exceed thirty percent (30%). Notwithstanding the foregoing, in instances when an application for payment is filled out incorrectly, or when there is any defect or impropriety in any submitted application or when there is a good faith dispute, Port shall so notify the Contractor within fifteen (15) days stating the reason or reasons the application for payment is defective or improper or the reasons for the dispute. A defective or improper application for payment, if corrected by the Contractor within seven (7) days of being notified by the Port, shall not cause a payment to be made later than specified in this section unless interest is also paid. Accrual of interest will be postponed when payment on the principal is delayed because of disagreement between the Port and the Contractor.

Contractor shall submit to the Port's Authorized Representative, an application for each payment and, if required, receipts or other vouchers showing payments for materials and labor, including payments to Subcontractors. Contractor shall include, in its application for payment, a schedule of the percentages of the various parts of the Work completed, based on the Schedule of Values which shall aggregate to the payment application total, and shall include, on the face of each copy thereof, a certificate in substantially the following form:

"I, the undersigned, hereby certify that the above bill is true and correct, and the payment therefore, has not been received."

Signed:

Generally, applications for payment will be accepted only for materials that have been installed. Under special conditions, applications for payment for stored materials will be accepted at Port's sole discretion. Such a payment, if made, will be subject to the following conditions:

- (a) The request for stored material shall be submitted at least thirty (30) days in advance of the application for payment on which it appears. Applications for payment shall be entertained for major equipment, components or expenditures only.
- (b) The Contractor shall submit applications for payment showing the quantity and cost of the material stored.
- (c) The material shall be stored in a bonded warehouse and Port's Authorized Representative shall be granted the right to access the material for the purpose of removal or inspection at any time during the Contract Period.
- (d) The Contractor shall name the Port as co-insured on the insurance policy covering the full value of the property while in the care and custody of the Contractor until it is installed. A certificate noting this coverage shall be issued to the Port.
- (e) Payments shall be made for materials only. The submitted amount of the application for payment shall be reduced by the cost of transportation and for the cost of an inspector to check the delivery at out of town storage sites. The cost of said inspection shall be borne solely by the Contractor.
- (f) Within sixty (60) days of the application for payment, the Contractor shall submit evidence of payment covering the material stored.
- (g) Payment for stored materials shall in no way indicate acceptance of the materials or waive any rights under this Contract for the rejection of the Work or materials not in conformance with the Contract Documents.
- (h) All required documentation must be submitted with the respective application for payment.

The Port reserves the right to withhold all or part of a payment, or may nullify in whole or part any payment previously made, to such extent as may be necessary in the Port's opinion to protect the Port from loss because of:

- (a) Work that is defective and not remedied, or that has been demonstrated or identified as failing to conform with the Contract Documents,
- (b) Third party claims filed or evidence reasonably indicating that such claims will likely be filed unless security acceptable to the Port is provided by the Contractor;
- (c) Failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment (in which case Port may issue checks made payable jointly to Port and such unpaid persons under this provision, or directly to Subcontractors and suppliers at any level under previous sections.
- (d) Reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Price;
- (e) Damage to the Port or another contractor;
- (f) Reasonable evidence that the Work will not be completed within the Contract Time required by the Contract, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
- (g) Failure to carry out the Work in accordance with the Contract Documents; or
- (h) Assessment of liquidated damages, when withholding is made for offset purposes.

Subject to the provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- (a) Take that portion of the Contract Price properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the total Contract Price allocated to that portion of the Work in the Schedule of

Values, less retainage as provided in section, *Retainage*. Pending final determination of cost to the Port of changes in the Work, amounts not in the dispute may be included even though the Contract Price has not yet been adjusted by Change Order.

- (b) Add that portion of the Contract Price properly allocable to materials and equipment delivered and suitably stored at the at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Port pursuant to previous section, suitably stored off the site at a location agreed upon in writing), less retainage as provided in Section, *Retainage*.
- (c) Subtract the aggregate of previous payments made by the Port; and
- (d) Subtract any amounts for which the Port's Authorized Representative has withheld or nullified payment as provided in the Contract Documents.

Contractor's applications for payment may not include requests for payment for portions of the Work for which the Contractor does not intend to pay to a Subcontractor or material supplier.

The Contractor warrants to Port that title to all Work covered by an application for payment will pass to the Port no later than the time of payment. The Contractor further warrants that upon submittal of an application for payment all Work for which payments are received from the Port shall be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

If Contractor disputes any determination by Port's Authorized Representative with regard to any application for payment, Contractor nevertheless shall continue to prosecute expeditiously the Work. No payment made hereunder shall be or be construed to be final acceptance or approval of that portion of the Work to which such partial payment relates or shall relieve Contractor of any of its obligations hereunder.

PAYROLL CERTIFICATION REQUIREMENT

Payroll certification is required before payments are made on the Contract. Refer back to section, *Payroll Certification: Additional Retainage; Fee Requirements* for this information.

DUAL PAYMENT SOURCES

Contractor shall not be compensated for Work performed under this Contract from any state agency other than the agency that is a party to this Contract.

RETAINAGE

Retainage shall be withheld and released in accordance with ORS 279C.550 to 279C.580:

Port may reserve as retainage from any progress payment an amount not to exceed five percent (5%) of the payment. As Work progresses, Port may reduce the amount of the retainage and may eliminate retainage on any remaining monthly Contract payments after fifty percent (50%) of the Work under the Contract is completed if, in the Port's opinion, such Work is progressing satisfactorily. Elimination or reduction of retainage shall be allowed only upon written application by the Contractor, which application shall include written approval of Contractor's surety; except that when the Work is ninety-seven and one half percent (97.5%) completed the Port may, at its discretion and without application by the Contractor, reduce the retained amount to one hundred percent (100%) of the value of the Work remaining to be done. Upon receipt of written application by the Contractor, Port shall respond in writing within a reasonable time.

In accordance with the provisions of ORS 279C.560 and any applicable administrative rules, Contractor may request in writing:

- (a) to be paid amounts which would otherwise have been retained from progress payments where Contractor has deposited acceptable bonds and securities of equal value with Port or in a custodial account or other mutually-agreed account satisfactory to Port, with an approved bank or trust company to be held in lieu of the cash retainage for the benefit of Port;
- (b) *that retainage be deposited in an interest bearing account, established through the State Treasurer for state agencies, in a bank, savings banks, trust company or savings association for the benefit of Port, with earnings from such account accruing to the Contractor; or*
- (c) that the Port allow Contractor to deposit a surety bond for the benefit of Port, in a form acceptable to Port, in lieu of all or a portion of funds retained or to be retained. Such bonds and any proceeds therefrom shall be made priority as set forth for retainage under ORS 279C.550 to ORS 279C.625.

Where the Port has accepted the Contractor's election of option (a) or (b), Port may recover from Contractor any additional costs incurred through such election by reducing Contractor's final payment. Where the Port has agreed to Contractor's request for option (c), Contractor shall accept like bonds from Subcontractors and suppliers on the project from which Contractor has required retainages.

The retainage held by Port shall be included in and paid to the Contractor as part of the final payment of the Contract Price. The Port shall pay to Contractor interest at the rate of one and one-half percent (1.5%) per month on the final payment due Contractor, interest to commence thirty (30) days after the Work under the Contract has been completed and accepted and to run until the date Contractor shall notify Port in writing when the Contractor considers the Work complete and Port shall, within fifteen (15) days after receiving the written notice, either accept the Work or notify the contractor of Work yet to be performed on the contract. If Port does not within the time allowed notify the Contractor of Work yet to be performed to fulfill contractual obligations, the interest provided by the subsection shall commence to run thirty (30) days after the end of the fifteen (15) day period.

In accordance with the provisions of ORS 279C.560, Port shall reduce the amount of the retainage if the Contractor notifies the controller of the Port that the Contractor has deposited in an escrow account with a bank or trust company, in a manner authorized by the Port's Authorized Representative, bonds and securities of equal value of a kind approved by the Port's Authorized Representative.

Contractor agrees that if Contractor elects to reserve a retainage from any progress payment due to any Subcontractor or supplier, such retainage shall not exceed five percent (5%) of the payment, and such retainage withheld from Subcontractors and suppliers shall be subject to the same terms and conditions stated in Subsection, *Retainage* as apply to Port's retainage from any progress payment due to Contractor.

As provided in subsections under section *Payroll Certification: Additional Retainage; Fee Requirements*, additional retainage in the amount of twenty-five percent (25%) of amounts earned shall be withheld and released in accordance with ORS 279C.845(7) when the Contractor fails to file certified statements as required by the first subsection of section, *Payroll Certification: Additional Retainage; Fee Requirements*.

FINAL PAYMENT

Upon completion of all the Work under this Contract, the Contractor shall notify the Port's Authorized Representative, in writing, that Contractor has completed Contractor's part of the

Contract and shall request final payment. Upon receipt of such notice the Port's Authorized Representative will inspect the Work, and if acceptable, submit to the Port a recommendation as to acceptance of the completed Work and as to the final estimate of the amount due the Contractor. If the Work is not acceptable, Port will notify Contractor within fifteen (15) days of Contractor's request for final payment. Upon approval of this final estimate by the Port and approval of this final estimate by the Port and compliance by the Contractor with provisions found in the Section titled, *Contract Close Out*. 3 Affidavit/Release of liens and claims, and other provisions as may be applicable; the Port shall pay to the Contractor all monies due under the provisions of these Contract Documents.

Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Port's Authorized Representative (1) a notarized affidavit/release of liens and claims in a form satisfactory to Port that states that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Port or the Port's property might be responsible or encumbered (less amounts withheld by Port) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be cancelled or allowed to expire until at least thirty (30) Days' prior written notice has been given to the Port, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Port, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Port. If a Subcontractor refuses to furnish a release or waiver required by the Port, the Contractor may furnish a bond satisfactory to the Port to indemnify the Port against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Port all money that the Port may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final application for payment.

SECTION F

Job Site Conditions

USE OF PREMISES

Contractor shall confine equipment, storage of materials and operation of Work to the limits indicated by Contract Documents, law, ordinances, permits or directions of the Port's Authorized Representative. Contractor shall follow the Port's Authorized Representative's instructions regarding use of premises, if any.

PROTECTION OF WORKERS, PROPERTY, AND THE PUBLIC

Contractor shall maintain continuous and adequate protection of all of the Work from damage, and shall protect the Port's Authorized Representative, Port's workers and property from injury or loss arising in connection with this Contract. Contractor shall remedy acceptably to the Port, any damage, injury, or loss, except such as may be directly due to errors in the Contract Documents or caused by authorized representatives or personnel of the Port. Contractor shall adequately protect adjacent property as provided by law and the Contract Documents.

Contractor shall take all necessary precautions for the safety of all personnel on the job site, and shall comply with the Contract Documents and all applicable provisions of federal, state and municipal safety laws and building codes to prevent accidents or injury to persons on, about or adjacent to the premises where the Work is being performed. Contractor shall erect and

properly maintain at all times, as required by the conditions and progress of workers and the public against any hazards created by construction. Contractor shall designate a responsible employee or associate on the Work site, whose duty shall be the prevention of accidents. The name and position of the person designated shall be reported to the Port's Authorized Representative. The Port's Authorized Representative has no responsibility for Work site safety. Work site safety is the responsibility of the Contractor.

Contractor shall not enter upon private property without first obtaining permission from the property Port or its duly Authorized Representative. Contractor shall be responsible for the preservation of all public and private property along and adjacent to the Work contemplated under the Contract and shall use every precaution necessary to prevent damage thereto. In the event the Contractor damages any property, the Contractor shall at once notify the property owner and Port and make, or arrange to make, full restitution. Contractor shall report, immediately in writing, to the Port's Authorized Representative, all pertinent facts relating to such property damage and the ultimate disposition of the claim for damage.

Contractor is responsible for protection of adjacent work areas including impacts brought about by activities, equipment, labor, utilities, and materials on the site.

Contractor shall at all times direct its activities in such a manner as to minimize adverse effects on the environment. Handling of all materials will be conducted so no release will occur that may pollute or become hazardous.

In an emergency affecting the safety of life or of the Work or of adjoining property, the Contractor, without special instruction or authorization from the Port's Authorized Representative, shall act reasonably to prevent threatened loss or injury, and shall so act, without appear, if instructed by the Port's Authorized Representative. Any compensation claimed by the Contractor on account of emergency work shall be determined in accordance with the Section titled *Changes in the Work*.

Contractor shall, at its sole expense, provide all traffic control signage, barriers, and flaggers at no additional cost to Owner.

CUTTING AND PATCHING

Contractor shall be responsible for coordinating all cutting, fitting, or patching of the Work to make its several parts come together properly and fit to receive or be received by work of other Contractors or Subcontractors shown upon, or reasonably implied by, the Contract Documents.

Contractor shall be responsible for restoring all cut, fitted, or patched surfaces to an original condition; provided, however, that if a different condition is specified in the Contract Documents, then Contractor shall be responsible for restoring such surfaces to the condition specified in the Contract Documents.

CLEANING UP

From time to time as may be ordered by the Port the Contractor shall, at its own expense, clean up and remove all refuse and unused materials of any kind resulting from the Work. If Contractor fails to do so within twenty-four (24) hours after notification by the Port, the work may be done by others and the cost charged to the Contractor and deducted from payment due to the Contractor.

DISPOSAL OF SURPLUS MATERIALS

No waste site has been provided by Owner for the disposal of excess materials and debris.

Debris shall be taken by Contractor to a disposal site approved by Owner. Contractor shall keep site clean, safe and free of debris. Contractor shall dispose of waste materials in an Owner-approved location.

ENVIRONMENTAL CONTAMINATION

Contractor will be held responsible for and shall indemnify, defend (with counsel of Port's choice) and hold harmless Port from and against any costs, expenses, damages, claims, and causes action, (including attorney fees), or any of them, resulting from all spills, releases, discharges, leaks and disposal off environmental pollution, including storage, transportation and handling during the performance of the Contract which occur as a result of, or are contributed by, the negligence or actions of Contractor or its personnel, agents, or Subcontractors or any failure to perform in accordance with the Contract Documents (except to the extent otherwise void under ORS 30.140). Nothing in this section shall limit Contractor's responsibility for obtaining insurance coverage required under section titled *Insurance* of these General Conditions, and Contractor shall take no action that would void or impair such coverages.

Contractor agrees to promptly dispose of such spills, releases, discharge or leaks to the satisfaction of proper regulatory agencies in a manner that complies with applicable federal, state, and local laws and regulations. Cleanup shall be at no cost to the Port and be performed by properly qualified personnel.

Contractor shall obtain the Port's written consent prior to bringing onto the Work site any (i) environmental pollutants or (ii) hazardous substances or materials, as the same or reasonably similar terms are used in many applicable federal, state, or local statutes, rules and ordinances. Notwithstanding such written consent from the Port, the Contractor, at all times, shall:

- (a) properly handle, use and dispose of all environmental pollutants and hazardous substances or materials brought onto the Work site, in accordance with all applicable federal, state or local statutes, rules or ordinances;
 - i. Contractor must have in date spill response kit on the dock or work vessel and assessable at all times.
- (b) be responsible for any and all spills, releases, discharges, or leaks of (or from) environmental pollutants or hazardous substances or materials which Contractor has brought onto the Work site; and
- (c) promptly clean up, without cost to the Port, such spills, releases, discharges, or leaks to the Port's satisfaction and in compliance with all applicable federal, state, or local statutes, rules or ordinances.

Contractor shall report all reportable quantity releases to applicable federal, state, and local regulatory and emergency response agencies. Reportable quantities are found in 40 CFR Part 302, Table 302.4 for hazardous substances and in OAR Chapter 340 Division 108 for all products addressed therein. Upon discovery, regardless of quantity, Contractor must telephonically report all releases to the Port. A written follow-up report shall be submitted to the Port within forty-eight (48) hours of the telephonic report. Such written report shall contain, as a minimum:

- (a) Description of items released (identity, quantity, manifest no., and all other documentation required by law.
- (b) Whether amount of items released is EPA/DEQ reportable, and, if so, when it was reported.
- (c) Exact time and location of release, including a description of the area involved.
- (d) Containment procedures initiated.
- (e) Summary of communications about the release Contractor has had with members of the

- press or State officials other than Port.
- (f) Description of cleanup procedures employed or to be employed at the site, including disposal location of spill residue.
 - (g) Personnel injuries, if any, resulting from, or aggravated by, the release.

ENVIRONMENTAL CLEAN-UP

Unless disposition of environmental pollution is specifically a part of this Contract, or was caused by the Contractor (reference section titled *Environmental Contamination*), Contractor shall immediately notify Port of any hazardous substance(s) which Contractor discovers or encounters during performance of the Work required by this Contract. "Hazardous Substance(s)" means any hazardous, toxic and radioactive materials and those substances defined as "hazardous substances," "hazardous materials," "hazardous wastes," "toxic substances," or other similar designations in any federal, state, or local law, regulation, or ordinance, including without limitation asbestos, polychlorinated biphenyl (PCB), or petroleum, and any substances, materials or wastes regulated in 40 CFR, Part 261 and defined as hazardous in 40 CFR S 261.3. In addition to notifying Port of any hazardous substance(s) discovered or encountered, Contractor shall immediately cease working in any particular area of the project where a hazardous substance(s) has been discovered or encountered if continued to work in such area would present a risk or danger to the health or well being of Contractor's or any Subcontractor's work force.

Upon being notified by Contractor of the presence of hazardous substance(s) on the project site, Port shall arrange for the proper disposition of such hazardous substance(s).

FORCE MAJEURE

A party to this Contract shall not be held responsible for delay or default due to Force Majeure acts, events or occurrences unless they could have been avoided by the exercise of reasonable care, prudence, foresight, and diligence by that party. The Port may terminate this Contract upon written notice after determining that delay or default caused by Force Majeure acts, events or occurrences will reasonably prevent successful performance of the Contract.

SECTION G

Indemnity, Bonding, and Insurance

RESPONSIBILITY FOR DAMAGES/INDEMNITY

Contractor shall be responsible for all damages to property, injury to persons, and loss, expense, inconvenience, and delay that may be caused by, or result from the carrying out of Work to be done under this Contract, or from any act, omission or neglect of the Contractor, its Subcontractors, personnel, or agents.

To the fullest extent permitted by law, Contractor shall indemnify and hold harmless the PORT, Port's Authorized Agent, its properties, officers, employees, and Architect/Engineer Consultants from and against all liabilities, damages, losses, claims, expenses (including reasonable attorney fees), demands and actions of any nature whatsoever which arise out of, result from or are related to (a) any damage, injury, loss, expense, inconvenience or delay described here, (b) any accident or occurrence which happens or is alleged to have happened in or about the project site or any place where the Work is being performed, or in the vicinity of either at any time prior to the time the Work is fully completed, (c) any failure of the Contractor to observe or perform any duty or obligation under the Contract Documents which is to be observed or performed by the Contractor, or any breach of agreement, representation or warranty of the Contractor contained in the Contract Document or any subcontract, (d) the negligent acts or omissions of the Contractor, a subcontractor or anyone directly or indirectly employed by them or any one of them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party

indemnified hereunder (except to the extent otherwise void under ORS 30.140) and (e) any lien filed upon the project or bond claim in connection with the Work. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or persons described in this section.

PERFORMANCE AND PAYMENT SECURITY: PUBLIC WORKS BOND

When the contract price is \$100,000 or more (\$50,000 or more in the case of Contracts for highways, bridges and other transportation projects) the Contractor shall furnish and maintain in effect at all times during the Contract Period, a performance bond in a sum equal to the Contract Price, and a separate payment bond also in a sum equal to the Contract Price. The bonds may be required if the Contract Price is less than the above thresholds, if required by the Contract Documents.

Before starting Work, the Contractor shall file with the Construction Contractors Board, and maintain in full force and effect, the separate public works bond required by Oregon laws 2005, chapter 360, and OAR 839- 025-0015, unless otherwise exempt from those provisions. The Contractor shall also include in every subcontract a provision requiring the Subcontractor to have a public works bond filed with the Contractors Construction Board before starting Work, unless otherwise exempt, and shall verify that the Subcontractor has filed a public works bond before permitting the Subcontractor to start Work.

INSURANCE

Worker's Compensation: All employers, including Contractor, that employ subject workers who work under this contract in the State of Oregon shall comply with ORS 656.017 and provide the required Workers Compensation coverage, unless such employers are exempt under ORS 656.126. This shall include Employer's Liability Insurance with coverage limits of not less than \$100,000 for each accident. Contractors

who perform the Work without the assistance or labor of any employee need not obtain such coverage if the Contractor certifies so in writing. Contractor shall ensure that each of its subcontractors complies with these requirements. The Contractor shall require proof of such Workers' Compensation by receiving and keeping on file a certificate of insurance from each Subcontractor or anyone else directly employed by either the Contractor or Subcontractors.

Builder's Risk: During the term of this Contract, for new construction the Contractor shall maintain in force, at its own expense, Builder's Risk Insurance on an all risk form, including earthquake and flood, for an amount equal to the full amount of the Contract. Such insurance shall be maintained until the Owner has occupied the facility.

Commercial General Liability Insurance: 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 Port. This insurance shall include personal injury liability, products and completed operations, and 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. Combined single limit per occurrence shall not be less than \$1,000,000 for each job site or location. Each aggregate limit shall not be less than \$1,000,000.

Automobile Liability: Contractor shall obtain, at Contractor's expense, and keep in effect during the term of this Contract, Automobile Liability Insurance owned, non-owned and/or hired vehicles, as applicable. The coverage may be written in combination with the Commercial General Liability Insurance. Combined single limit per occurrence shall not be less than \$1,000,000, or the equivalent.

Tail Coverage: If any of the required liability insurance is on a "claims made" basis, "tail"

coverage will be required at the completion of the Contract for a duration of 24 months. Contractor will be responsible for furnishing certification of "tail" coverage as described or continuous "claims made" liability for twenty-four (24) months following Final Completion. Continuous "claims made" coverage will be acceptable in lieu of "tail" coverage, provided its retroactive date is on or before the effective date of this Contract. This will be a condition of final acceptance.

Additional Insured: The liability Insurance coverage, except for the Professional Liability if included, required for this Contract shall include the Port, officers, and employees, as Additional Insureds but only with respect to the Contractor's activities to be performed under this Contract.

There shall be no cancellation, material change, potential exhaustion coverages without thirty (30) Days' written notice from the Contractor or its insurer(s) to the Port.

As evidence of coverage, Contractor shall furnish the a certificate of insurance to Port prior to Issuance of a Notice to Proceed. The certificate will specify all of the parties who are Additional Insureds or Loss Payees. Insurance coverages required under this Contract shall be obtained from insurance companies or entities acceptable to the Port that are allowed to provide such insurance under Oregon law. The certificate will also specify that there shall be no cancellation, material change, potential exhaustion of aggregate limits or intent to not renew insurance coverages without thirty (30) Days' written notice from the insurer(s) to Port. The Contractor shall be financially responsible for all deductibles, self-insured retentions and/or self-insurance included hereunder. Any deductible, self-insured retention and/or self insurance in excess of \$50,000 shall be approved by the Port in writing prior to issuance of a Notice to Proceed and is subject to Port's approval.

Insurance coverages required under this Contract shall be obtained from insurance companies or entities acceptable to the Port that are allowed to provide such insurance under Oregon law.

SECTION H

Schedule of Work

CONTRACT PERIOD

Time is of the essence on this contract. The Contractor shall at all times carry on the Work diligently, without delay and punctually fulfill all requirements herein. Contractor shall commence work within five (5) days of Notice to Proceed, unless otherwise directed.

Unless specifically extended by Change Order, all Work shall be complete by the date contained in the Contract Documents.

The Port will not waive any rights under the Contract by permitting the Contractor to continue or complete the Work or any part of it after the date described above.

SCHEDULE

Contractor shall provide, by or before the pre-construction conference, a detailed schedule for review and acceptance by the Port. The submitted schedule must illustrate Work by significant project components, significant labor trades and long lead times. Schedules lacking adequate detail, or unreasonably detailed, will be rejected. Included within the schedule are the following: Notice to Proceed, Substantial Completion, and Final Completion. Schedules will be updated monthly and submitted with the monthly pay application. Acceptance of the schedule by the Port does not constitute agreement by the Port, as to the Contractor's sequencing, means, methods or allocated Contract Time. In no case shall the Contractor make a request for additional compensation for delays if the Work is completed within the Contract Time but after the Contractor's scheduled completion.

WORKING DAYS

Contractor shall complete all physical Contract Work within the number of "working days" stated in the Contract Provisions or as extended by Owner. Every day will be counted as a "working day" unless it is a nonworking day or an Owner-determined unworkable day. A nonworking day is defined as a Saturday, a Sunday, a day on which the Contract specifically suspends Work, or one of these Owner holidays: New Year's Day, Presidents' Day, Memorial Day, Independence Day, Labor Day, Veterans' Day, Thanksgiving Day, and Christmas Day.

An unworkable day is defined as a half or whole day Owner declares to be unworkable because of weather or conditions caused by the weather that prevents satisfactory and timely performance of the Work shown on the critical path of the Contractor's approved progress schedule. Other conditions beyond the control of the Contractor may qualify for an extension of time.

Each working day shall be charged to the Contract as it occurs, until the Contract Work is physically complete. If Substantial Completion has been granted and all the authorized working days have been used, charging of working days will cease. Each week the Owner will provide the Contractor a statement that shows the number of working days: (1) charged to the Contract the week before; (2) specified for the Physical Completion of the Contract; and (3) remaining for the Physical Completion of the Contract. The statement will also show the nonworking days and any half or whole day the Owner declares as unworkable. Within 10-calendar days after the date of each statement, the Contractor shall file a written protest of any alleged discrepancies in it. To be considered by the Owner, the protest shall be in sufficient detail to enable the Owner to ascertain the basis and amount of time disputed. By not filing such detailed protest in that period, the Contractor shall be deemed as having accepted the statement as correct.

Owner will give the Contractor written notice of the Physical Completion Date for all Work the Contract requires. That date shall constitute the Physical Completion Date of the Contract, but shall not imply Owner acceptance of the Work or the Contract.

Owner will give Contractor written notice of the Completion Date of the Contract after all the Contractor's obligations under the Contract have been performed by the Contractor. The following events must occur before the Completion Date can be established:

1. The physical Work on the project must be complete; and
2. The Contractor must furnish all documentation required by the Contract and required by law, to allow Owner to process final acceptance of the Contract. The following documents must be received by Owner prior to establishing a Completion Date:
 - a. Certified Payrolls
 - b. Material Acceptance Certification Documents
 - c. Final Contract Voucher Certification

SECTION I
Correction of Work

BEFORE FINAL PAYMENT

The Contractor warrants to the Port that materials and equipment furnished under this Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the work will be free from defects, and that the Work will conform to the requirements of the Contract Documents. Work failing to conform to these requirements shall be deemed defective. Contractor shall promptly remove from the premises and replace all defective materials and equipment as determined by the Port's Authorized Representative,

whether incorporated in the Work or not. Removal and replacement shall be without loss or expense to the Port, and Contractor shall bear the cost of repairing all Work destroyed or damaged by such removal or replacement. Contractor shall be allowed a period of no longer than sixty (60) days for completion of defective (punch list) work, unless otherwise agreed. At the end of that period, or earlier if requested by the Contractor, the Port shall arrange for inspection of the Work by the Architect/Engineer. Should the work not be complete, and all corrections made, the costs for all subsequent re-inspections shall be borne by the Contractor. If Contractor fails to complete the punch list work within the above time period, without affecting Contractor's obligations the Port may perform such work and Contractor shall reimburse the Port all costs of the same within thirty (30) days after demand.

WARRANTY WORK

Neither the final certificate of payment nor any provision of the Contract Documents shall relieve the Contractor from responsibility for defective work and, unless a longer period is specified, Contractor shall correct all defaults that appear in the work within a period of one year from the date of issuance of the written notice of substantial completion by the Port except for latent defects which will be remedied by the Contractor at any time they become apparent.

The Port shall give the Contractor notice of defects with reasonable promptness. Contractor shall perform such warranty work within a reasonable time after Port's demand. If Contractor fails to complete the warranty work within such period as Port determines reasonable, or at any time in the event of warranty work consisting of emergency repairs, without affecting Contractors obligations, Port may perform such work and Contractor shall reimburse Port all costs of the same within thirty (30) days after demand.

This provision does not negate guarantees or warranties for periods longer than one year including without limitations such guarantees or warranties required by other sections of the Contract Documents for specific installations, materials, processes, equipment or fixtures.

In addition to Contractor's warranty, manufacturer's warranties shall pass to the Port and shall not take effect until affected work has been accepted in writing by the Port's Authorized Representative.

The one-year (1) period for correction of Work shall be extended with respect to portions of Work performed after substantial completion by the period of time between substantial completion and the performance of the work, and shall be extended by corrective Work performed by the Contractor pursuant to this section, as to work corrected.

If the Port prefers to accept Work which is not in accordance with the requirements of the Contract Documents, the Port may do so instead of requiring its removal and correction, in which case the Contract Price will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

Section J

Suspension or Termination of the Work

PORT'S RIGHT TO SUSPEND WORK

The Port and the Port's Authorized Representative has the authority to suspend portions or all of the Work due to the following causes:

- (a) Failure of the Contractor to correct unsafe conditions;
- (b) Failure of the Contractor to carry out any provision of the Contract;
- (c) Failure of the Contractor to carry out orders;

- (d) Conditions, in the opinion of the Port's Authorized Representative, which are unsuitable for performing the work;
- (e) Time required to investigate differing site conditions;
- (f) Any reason considered to be in the public interest.

The Port shall notify the Contractor and the Contractor's Surety in writing of the effective date and time of the suspension and shall notify Contractor and its Surety in writing to resume work.

CONTRACTOR'S RESPONSIBILITIES

During the period of suspension, Contractor is responsible to continue maintenance at the project just as if the work were in progress.

COMPENSATION FOR SUSPENSION

Depending on the reason for suspension of the Work, the Contractor or the Port may be due compensation from the other party. If the suspension was required due to acts or omissions of the Contractor, the Port may assess the Contractor actual costs of the suspension. If the suspension was caused by acts or omissions of the Port, the Contractor shall be due compensation which shall be defined under "Changes in Work". If the suspension was required through no fault of the Contractor or the Port, neither party owes the other for the impact.

PORT'S RIGHT TO TERMINATE CONTRACT

The Port without prejudice to any other right or remedy, and after giving Contractor seven (7) Days written notice and an opportunity to cure, terminate the Contract in whole or part under the following conditions:

- (a) If Contractor should voluntarily or involuntarily, seek protection under the US Bankruptcy Code and Contractor as debtor-in-possession or the Trustee for the estate fails to assume the Contract within a reasonable time;
- (b) If Contractor should make a general assignment for the benefit of Contractor's creditors;
- (c) If a receiver should be appointed on account of Contractor's insolvency;
- (d) If Contractor should repeatedly refuse or fail to supply an adequate number of skilled workers or proper materials to carry on the Work as required by the Contract Documents, or otherwise fail to perform the Work in a timely manner;
- (e) If Contractor should repeatedly fail to make prompt payment to Subcontractors or for material or labor, or should disregard laws, ordinances or the instructions of the Port or Authorized Representative;
- (f) If Contractor is otherwise in material breach of any part of the Contract.

At any time the above occurs, the Port may exercise all rights and remedies available to Port at law or equity, and in addition, Port may take possession of the premises and all of the materials and appliances and finish the Work by whatever method it may deem expedient. In such case, the Contractor shall not be entitled to receive further payment until the work is completed. If the Port's cost of finishing the Work exceeds the unpaid balance of the Contract Price, Contractor shall pay the difference to the Port.

TERMINATION FOR CONVENIENCE

Port may terminate the Contract in whole or in part whenever Port determines that termination of the Contract is in the best interest of the public.

The Port will provide the Contractor with seven (7) Days' prior written notice of a termination for public convenience. After such notice, the Contractor shall provide the Port with immediate and peaceful possession of the premises and materials located on and off premises for which the Contractor received progress payment. Compensation for Work terminated by the Port under this provision will be paid according to the terms of "Payment of Work." In no circumstances shall Contractor be entitled to lost profits for Work not performed due to termination.

ACTION UPON TERMINATION

Upon receiving a notice of termination, and except as otherwise directed by the Port, Contractor shall immediately cease placing further subcontractors or orders for materials, services, or facilities. In addition, Contractor shall terminate all subcontracts or orders to the extent they relate to the Work terminated and, with the prior written approval of the Port, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts and orders.

As directed by the Port, Contractor shall upon termination transfer title and deliver to the Port all record documents, information, and other property that, if Contract had been completed, would have been required to be furnished to the Port.

SECTION K

Contract Close Out

RECORD DOCUMENTS

As a condition of final payment, Contractor shall comply with the following: Contractor shall provide to the Port's Authorized Representative, Record Documents ("Record Drawings;" "As Built") of the entire project. Record Documents shall depict the project as constructed and shall reflect every change, modification, and deletion made during the construction. Record Documents are part of the Work and shall be provided prior to the issuance of final payment. Record Documents include all modifications to the Contract Documents unless otherwise directed. Record Documents shall be provided in an electronic format along with paper copies in 24"x36" dimension.

OPERATION AND MAINTENANCE MANUALS

The O & M Manuals shall contain a complete set of all submittals, all product data as required by the specifications, training information, phone list of consultants, manufactures, installer and suppliers, manufacturer's printed data, record and shop drawings, schematic diagrams of systems, appropriate equipment indices, warranties and bonds. The Port's Authorized Representative shall review and return one O & M Manual for any modifications or additions required. Prior to submission of its final pay request, Contractor shall deliver three (3) complete and approved sets of O & M Manuals to the Port's Authorized Representative.

AFFIDAVIT/RELEASE OF LIENS AND CLAIMS

As a condition of final payment, the Contractor shall submit to the Port's Authorized Representative a notarized affidavit/release of liens and claims form, in a form satisfactory to the Port, which states that all subcontractors and suppliers have been paid in full, all disputes with property owners and the Port have been resolved, all obligations on the project have been satisfied, all monetary claims and indebtedness have been paid, and that to the best of the Contractor's knowledge, there are no claims of any kind outstanding against the project. The Contractor shall indemnify, defend (with counsel of Port's choice) and hold harmless the Port from all claims for labor and materials furnished under this Contract.

COMPLETION NOTICES

Contractor shall provide the Port notice of both Substantial and Final Completion. The certificate of Substantial Completion shall state the date of Substantial Completion, the responsibilities of the Port and the Contractor for security, maintenance, heat, utilities, damage to Work and insurance, and the time within which the Contractor shall finish all items on the punch list accompanying the Certificate. Both completion notices must be signed by the Contractor and the Port to be valid. The Port shall provide the final signature on the notices. The notices shall take effect on the date signed by the Port.

TRAINING

As part of the Work, and prior to submission of the request for final payment, the Contractor shall schedule with the Port's Authorized Representative, training sessions for all equipment and systems, as required in the individual specifications sections. The O & M Manuals shall be used as a basis for training.

EXTRA MATERIALS

As part of the Work, Contractor shall provide spare parts, extra maintenance materials, and other materials or products in the quantities specified in the specifications, prior to final payment.

ENVIRONMENTAL CLEANUP

As part of the Final Completion notice, or as a separate written notice submitted with or before the Final Completion, the Contractor shall notify the Port that all environmental pollution clean-up which was performed as part of this Contract has been disposed of in accordance with all applicable rules, regulations, laws, and statues of all agencies having jurisdiction over such environmental pollution. The notice shall reaffirm the indemnification given under Section E.

CERTIFICATE OF OCCUPANCY

The Contractor shall not be granted Final Completion or receive final payment if the Port has not received an unconditioned certificate of occupancy from the appropriate state and/or local building officials, unless failure to obtain an unconditional certificate of occupancy is due to the fault or neglect of the Port.

OTHER CONTRACTOR RESPONSIBILITIES

The Contractor shall be responsible for returning to the Port all items issued during construction such as keys and all other pertinent items. The Contractor shall be responsible for notifying the appropriate utility companies to transfer utility charges from Contractor to the Port.

SURVIVAL

All warranty and indemnification provisions of this Contract, and all of Contractor's other obligations under this contract that are not fully performed by the time of Final Completion or termination, shall survive Final Completion or any termination of the Contract.

SECTION L

Legal Relations & Responsibilities

LAWS TO BE OBSERVED

In compliance with ORS 279C.525, there are federal, state, and local agencies of which the Port has knowledge that have enacted ordinances or regulations relating to environmental pollution and the preservation of natural resources that may affect the performance of the Contract.

PART 9
TECHNICAL SPECIFICATION

Technical Specifications and Site Specific Requirements

SITE IMPROVEMENT

PART 1 GENERAL

1.1 SECTION INCLUDES

- A. Furnishing, loading, hauling, placing, compacting and grading gravel fill in excavations below groundwater or as directed by the Engineer.
- B. Placing, compacting and grading on-site soil as engineered fill above groundwater to final design grades.
- C. Supplying, hauling, placing, compacting and grading off-site soil as engineered fill above groundwater to design grades.
- D. Supplying and installing non-woven geotextile separator.
- E. Managing groundwater if encountered during the exaction. Groundwater management will be considered incidental to other work; no separate payment will be made for managing groundwater.
- F. Surveying to document quantities of materials.
- G. Field quality assurance and quality control.

1.2 REFERENCES

- A. ASTM D1557 - Standard Test Methods for Laboratory Compaction Characteristics of Soil Using Modified Effort [56,000 ft-lbf/ft³ (2,700 kN-m/m³)].
- B. ASTM D6938 - Standard Test Method for In-Place Density and Water Content of Soil and Soil-Aggregate by Nuclear Methods (Shallow Depth).

1.3 DEFINITIONS AND ACRONYMS

- A. Port: The Port of Hood River or the Port of Hood River's designated representative.
- B. Engineer: The person or entity retained by the Port to provide engineering recommendations for the work.
- C. Surveyor: Surveyor licensed in the State of Oregon, or surveyor performing work under the control of a licensed Professional Engineer, responsible for all required surveys.
- D. Work Area: The area identified as the former Log Pond that has been backfilled with wood debris and other earthen materials.
- E. Gravel fill: Crushed rock meeting specific grading criteria, imported from off-site sources.

- F. On-Site Engineered Fill: Soil material obtained from on-site excavation that is placed to specified densities and moisture contents.
- G. Off-Site Engineered Fill: Soil material imported from off-site sources that is placed to specified densities and moisture contents.

1.4 SUBMITTALS

- A. No less than 14 days prior to scheduled installation, submit 40-pound samples of proposed gravel and proposed imported off-site soil or aggregate that will be used to construct engineered fills.
- B. Submit results of required surveys and/or volume calculations within 5 days of completing work. Port may inspect Surveyor’s documents and/or perform independent surveys.
- C. Copies of all weight tickets for all off-site gravel and structural fill.

PART 2 PRODUCTS

2.1 ENGINEERED FILL

- A. On-Site soil material obtained from on-site excavations that can be placed to specified densities and moisture contents, and that is free from organic materials and other objectionable materials that might be highly compressible, too wet, or that cannot be properly compacted.
- B. Off-Site soil material.
 - 1. That can be placed to specified densities and moisture contents, consistent with the requirements of Part 3.
 - 2. Maximum particle size consistent with half the lift thickness required to meet the specified compaction requirements.
 - 3. No more than 50 percent passing the #200 U.S. sieve.
 - 4. Free of organic material, frozen material, ice, snow, and excessive moisture.

2.2 GRAVEL FILL

- A. Free of organic material, frozen material, ice, snow or other deleterious material.
- B. Consist of crushed rock meeting the following gradation.

U.S. SIEVE SIZE	PERCENT PASSING
1½-inch	95-100
¾ -inch	0-25
½-inch	0-5

PART 3 EXECUTION

3.1 PREPARATION

- A. Erosion and sediment control measures will be placed by others, prior to starting work. Contractor will maintain measures throughout the execution of the work.
- B. Remove any extraneous surface materials from the work area.
- C. Perform a pre-construction cross-section survey of existing grades in the work area.
- D. Provide dust control during the duration of the work
- E. Implement groundwater control measures if groundwater is encountered. Required groundwater control measures should employ best management practices and prevent the offsite discharge of water.
- F. Notify Port if groundwater is encountered and groundwater control measures are required.

3.2 GRAVEL FILL

- A. Initiate gravel fill procedures only when the Engineer has confirmed the presence of groundwater or the presence of native soils that are saturated or too soft for other sources of structural fill to be placed and compacted above the subgrade surface.
- B. Place a non-woven geotextile with a minimum weight of 8 oz/sy over the area where gravel will be placed. Sew adjacent geotextile panels together or overlap a minimum of 1 foot to ensure continuity.
- C. Place gravel fill over the geotextile in horizontal lifts
- D. First gravel lift may be placed up to 2-feet thick if approved by the Engineer. Subsequent gravel lifts to be a maximum of 1-foot thick.
- E. Compact gravel lifts with vibratory roller or by track walking with a dozer.
- F. Place gravel to 1 foot above the static groundwater surface, or to elevation approved by the Engineer.
- G. Place a non-woven geotextile with a minimum weight of 8 oz/sy over the gravel before placing other engineered fill materials. Sew adjacent geotextile panels together or overlap a minimum of 1 foot to ensure continuity.

3.3 PLACING ENGINEERED FILL ABOVE GROUNDWATER SURFACE

- A. Place engineered fill on native soil only when the Engineer has approved the subgrade surface. Assessment of the subgrade surface may require the Contractor to proof roll the subgrade surface, using a loaded tandem axle dump truck, or equivalent, making passes in perpendicular directions.

- B. Place engineered fill above gravel fill only after geotextile has been installed over the gravel. Do not operate construction equipment directly on the geotextile and protect geotextile during placement of structural fill.
- C. Place the structural fill in horizontal lifts, with a loose lift thickness of 8 inches or less. Contractor may propose a thicker lift thickness if it can meet compaction requirements. Initial bridging lifts may be up to 2 feet thick prior to compaction if approved by the Engineer.
- D. On slopes, key each lift in to the slope.
- E. Moisture condition structural fill as needed to attain specified relative compaction.
- F. Compact structural fill to a minimum relative compaction of 95 percent of the material's maximum dry density as determined by ASTM D1557.
- G. If density testing cannot be performed according to ASTM D6938, compact engineered fill that does not yield under equipment loads.
- H. Finish grade the surface of the structural fill to within 0.2 feet of the Port approved grading plan.
- I. Excavations required to obtain the on-site fill should be no deeper than design grades.

3.4 QUALITY CONTROL

- A. Monitor crushed gravel and engineered fill placement to ensure placement technique does not damage the underlying geotextile.

3.5 QUALITY ASSURANCE

- A. The Port will determine optimum moisture content and maximum density for engineered fill materials in accordance with ASTM D1557.
- B. Cooperate fully with the Engineer in its performance of sampling and gradation testing and in-place density and moisture testing.

PART 4 MEASUREMENT AND PAYMENT

4.1 MOBILIZATION

- A. Basis of Measurement: Lump Sum (LS)
- B. Basis of Payment: 50 percent of the Bid amount when 5 percent of the total original Contract amount has been earned from other Contract items, excluding amount paid for materials on hand. 100 percent of the Bid amount when 10 percent of the total original Contract amount has been earned from other Contract items, excluding amount paid for materials on hand. Payment includes all costs for:
 - 1. Mobilizing and demobilizing equipment;
 - 2. Prepare Contractor staging area;

3. Living expenses;
4. Bonds;

5. Insurance;
 6. Office and field overhead;
 7. Cleaning materials and equipment associated with the work prior to demobilization;
 8. Surveying; and
 9. Any other administrative cost necessary to complete the work.
- 4.2 EROSION AND SEDIMENT CONTROL
- A. Basis of Measurement: Lump Sum (LS)
 - B. Basis of Payment: Based on field verification of installed items.
- 4.3 GRAVEL
- A. Basis of Measurement: By the ton (TON) based on weigh tickets from suppliers certified scales.
 - B. Basis for Payment: Includes all costs to supply and install gravel where directed by the Engineer.
- 4.4 ON-SITE ENGINEERED FILL
- A. Basis of Measurement: By the Cubic Yard (CY) based on volume of stockpile(s) determined for item 4.03.
 - B. Basis of Payment: Includes all costs to load, haul, place, compact and grade all on-site soil and aggregate material as engineered fill above groundwater.
- 4.5 OFF-SITE ENGINEERED FILL
- A. Basis of Measurement: By the ton (TON) based on weigh tickets from suppliers certified scales.
 - B. Basis of Payment: Includes all costs to supply, load, haul, place, compact and grade off-site soil and aggregate material as engineered fill above groundwater. Payment will be reduced if all available on-site engineered fill material is not used.
- 4.6 NON-WOVEN GEOTEXTILE
- A. Basis of Measurement: By the Square Yard (SY).
 - B. Basis of Payment: Includes all costs to furnish and install non-woven geotextile having a minimum weight of 8 oz/sy. Includes costs to protect and manage material when gravel and structural fill materials are placed on the geotextile.

PART 10
Grading Plan
And structural fill clarification letter

489 N. 8TH STREET SUITE 201
HOOD RIVER, OR 97031
541.386.6480

VISTA GEOENVIRONMENTAL SERVICES

June 17, 2015

Mrs. Anne Medenbach
Port of Hood River
1000 E. Port Marina Drive
Hood River, Oregon 97031

**Subject: Recommendations for Structural Fill
Log Pond Area
Lower Hanel Mill Site
Odell, Oregon**

Dear Mrs. Medenbach:

Vista GeoEnvironmental Services, LLC (VISTA) has prepared this letter for the Port of Hood River (PORT) to provide recommendations for structural fill selection and construction at the Lower Hanel Mill site in Odell, Oregon. The planned removal of soil and wood debris from a former log pond at the site will require backfilling with structural fill.

Background

Environmental Engineering Logistics, LLC (EIL) performed two test pit excavation programs at the site in 2014 (EIL, August 2014, and EIL, September 2014). The reports indicate that the log pond covers approximately 2 to 2.5 acres within the Port property and the depth and thickness of fill material used to backfill the log pond varies considerably, reaching a maximum depth of approximately 11 feet below the existing ground surface (bgs). The test pit logs indicate the fill generally consists of layer of silty soil with basalt cobbles (referred to as crushed rock fill and granular fill in EIL, September 2014) overlying woody debris. In addition, groundwater was reported in several test pits at the interface between the woody debris and the native soil; however, at the deepest fill location the static groundwater surface was recorded in the woody debris 3-feet above the native soil. The test pits logs also indicate that the native subgrade below the log pond is a grey-blue silt.

EIL (September 2015) notes the following:

- The thickness of the crushed rock / granular fill varies from 1.3 to 4 feet (average 2.1 feet) and the estimated volume is 6,000 cubic yards (cy); and
- The thickness of the woody debris varies from 2 to 10 feet and the estimated volume is 13,700 to 15,000 cy.

Mrs. Anne Medenbach

June 17, 2015

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On this basis a total of approximately 20,000 cy of material will have to be excavated, of which 6,000 cy may be available for reuse as engineered fill (see below). The total volume of engineered fill required will depend on final design grades, which have not yet been established. However EIL (September 2015) notes that the current site grade is a few feet higher than surrounding grade. Therefore, depending on the backfill grades established prior to construction less material may need to be imported than the volume of wood debris.

Structural Fill Material Selection

VISTA recommends that structural fill selection consider the following:

1. Reuse the silty soil with basalt cobbles present throughout the log pond above the wood debris. This material appears to have been performing adequately as a surface material and will likely be acceptable as structural fill. Representative samples should be collected (suggested frequency of 1 per 5,000 cy, unless the material is variable in which case a high frequency may be warranted) and tested in the laboratory to determine the gradation (ASTM D422), natural moisture content (ASTM D2216) and compaction characteristics (ASTM D1557). If the cobbles are oversize (larger than 4 inches) care will need to be taken during compaction to ensure that the materials are well compacted.
2. Contractor selected soil(s) that can be economically sourced and hauled to the site. Generally suitable materials would be well graded, have a maximum particle size of less than 3 inches and have a low clay content. Proposed material(s) should be sampled by a qualified geotechnical engineer or inspector and prequalified, prior to acceptance by the PORT and hauling to the site, to determine the gradation (ASTM D422), natural moisture content (ASTM D2216) and compaction characteristics (ASTM D1557). Additionally, during construction representative samples should be collected (suggested frequency of 1 per 5,000 cy) and retested to confirm consistency of the material.
3. Crushed gravel to place in the bottom of the excavation if groundwater is encountered or the native soils are saturated and too soft for the other sources of structural fill to be placed and compacted. The determination to use gravel should be made by the geotechnical engineer or inspector. The following crushed gravel gradation limits are suggested:

U.S. SIEVE SIZE	PERCENT PASSING
1 ½-inch	95-100
¾ -inch	0-25
½-inch	0-5

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In addition, a non-woven geotextile separator (8 oz/sy) should be placed on the subgrade surface before crushed gravel is placed.

In addition to the above material recommendations, all structural fill materials must be free of organic materials, blocks, broken concrete, masonry rubble, industrial debris, and any other deleterious materials that are highly compressible, wet or which cannot be properly compacted.

Structural Fill Placement

VISTA recommends that earthwork construction and structural fill placement in the log pond area should generally proceed as follows:

1. Remove any extraneous surficial materials.
2. Remove silty soil with basalt from above the woods debris and segregate and stockpile separately from other materials. As discussed above, confirm, through representative samples and laboratory testing, the suitability of this material for reuse as structural fill.
3. Remove remaining soil and wood debris to expose native soils.
4. Implement groundwater control and management measures if groundwater is encountered. Contractor should report the conditions to the PORT to confirm that the proposed structural fill material is suitable, or if additional measures are required. If groundwater is encountered and pumping is required, pump water through a sediment control system before discharging.
5. A geotechnical engineer or inspector should assess the condition of the exposed native soils. In general, proof rolling of the subgrade surface, using a loaded tandem axle dump truck, or equivalent, making passes in perpendicular directions, is desirable; however, the native silt soils may be prone to yielding / rutting (particularly if saturated) and proof rolling may be of no benefit.
6. Determine if geotextile and crushed gravel, or a bridging lift of the other approved structural fill materials, are required above the native soils to provide a stable surface for subsequent structural fill construction.
7. During placement and compaction of the first lift, a Certified Density Technician should be present to observe and test the compacted material and to establish a rolling pattern that will meet the compaction requirements.
8. Place the structural fill in horizontal lifts, with a loose lift thickness of 8 inches or less. However, initial bridging lifts (soil or gravel) may be up to 2-feet thick prior to compaction and subsequent gravel lifts may be up to 1-foot thick.
9. On slopes key each lift in to the slope.

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10. Compact the structural fill with equipment consistent with the structural fill and compaction requirements (e.g. sheepsfoot compactor for soils and smooth drum vibratory roller or track walking for crushed gravel);
11. Compact each lift to the minimum criteria established by laboratory testing for the structural fill (typically a minimum density of 95 percent of the material's maximum dry density at a moisture content within 3 percent of optimum moisture as determined by ASTM D1557).
12. In general we recommend four nuclear density tests per lift, or one for every 10,000 square feet (sf) of material placed. This frequency may be varied as lifts are placed based on previous testing and understanding gained with the material. Material that cannot be tested using a nuclear density gauge should be proof rolled as described above after each lift is completed.
13. Finish grade the surface of the engineered fill to promote stormwater runoff and prevent ponding.

We appreciate the opportunity to prepare this recommendation for you. Please contact us if you have questions about the contents of this letter.

Sincerely,

Vista GeoEnvironmental Services, LLC



Luke Maddux
Geologist I / Engineering Technician
lmaddux@v-ges.com



Roger B. North, P.E., G.E.
Principal
rnorth@v-ges.com

References

EIL (August, 2014), *Report of Potential Geotechnical Constraints to Development, Hanel Mill Site, Odell, Oregon*. August 13, 2014.

EIL (September, 2014), *Additional Investigation Findings and Development Options, Hanel Mill Site, Odell, Oregon*. September 15, 2014.

Copy: Carlos Garrido (VISTA)



Prepared by: Anne Medenbach
Date: October 6, 2015
Re: Lower Mill Site - Asbestos Abatement Contract with
IRS Environmental of Portland

As part of the Lower Mill redevelopment, two buildings on the site will eventually be demolished. One building, the old shop, is on Lot 1015. The other, the office, is on the north side of Lot 1015. The office is on the lot that the Port will potentially retain and construct upon. As part of the DEQ-funded Phase 2, the building was tested for asbestos which it does contain in the windows and flooring.

Staff recommends that the asbestos be removed now, as we will have two contractors on-site with demolition equipment and expertise. Staff is currently receiving quotes from these and others to do the demolition work. The asbestos must be removed before demolition of the buildings can begin. This is budgeted in the overall site development budget.

Staff received the following quotes:

IRS Environmental:	\$8,500
Atez Environmental:	\$15,650.00

RECOMMENDATION: Approve Contract with IRS Environmental of Portland, Inc., for asbestos abatement at the Lower Mill site, not to exceed \$8,500.00.

Construction Services Contract For Services Under \$50,000

1. This Contract is entered into between the Port of Hood River ("Port") and **IRS Environmental Of Portland, Inc.** ("Contractor"). Contractor agrees to perform the Scope of Work described in attached Exhibit A to Port's satisfaction in accordance with the terms in attached Exhibits, A, B and C. Port shall pay Contractor amounts stated in Exhibit C, which totals **\$8,500.00**.
2. This Contract shall be in effect from the date at which every party has signed this Contract through December 30, 2015. Either Contractor or Port may terminate this Contract in the event of a breach of the Contract by the other. Port may terminate this Contract for any reason by giving 15 days written notice to Contractor at Contractor's address listed below. If Port terminates this Contract, Contractor shall only receive compensation for work done and expenses paid by Contractor prior to the Contract termination date.
3. All work products of the Contract, which result from this Contract, are the exclusive property of Port. Port shall have access to all books, documents, papers and records of Contractor which relate to this Contract for purpose of making audit, examination, excerpts, and transcripts for a period of three years after final payment.
4. Contractor will apply that skill and knowledge with care and diligence to perform the work in a professional manner and in accordance with standards prevalent in Contractor's industry, trade or profession. Contractor will, at all times during the term of the Contract, be qualified, professionally competent, and duly licensed to perform the work.
5. Contractor certifies that Contractor is an Independent Contractor as defined in ORS 670.600 and shall be entitled to no compensation other than that stated above.
6. Contractor shall indemnify, defend, save, and hold harmless Port, its Commissioners, officers, agents, and employees from all claims, suits, or actions of whatsoever nature resulting from or arising out of the activities of Contractor or its subcontractors, agents or employees under this Contract. Contractor shall provide insurance in accordance with attached Exhibit B.
7. This Contract may be executed in any number of counterparts, and any single counterpart or set of counterparts signed, in either case, by all parties hereto shall constitute a full and original instrument, but all of which shall together constitute one and the same instrument.
8. This Contract shall be governed by the laws of the State of Oregon and any litigation involving any question arising under this Contract must be brought in the Circuit Court in Hood River County, Oregon. If any provision of this Contract is found to be illegal or unenforceable, this Contract shall remain in full force and effect and the provision shall be stricken.
9. Contractor shall adhere to all applicable federal, state, and local laws and regulations, including those governing its relationship with its employees.
10. This Contract contains the entire agreement between Contractor and Port and supersedes all prior written or oral discussions or agreements. Any modification to this Contract shall be reduced to writing and signed by the Contractor and Port. Contractor shall not assign this Contract or subcontract its work under this Contract without the prior written approval of Port.
11. The person signing below on behalf of Contractor warrants they have authority to sign for and bind Contractor.

**Contractor: IRS Environmental of
Portland Inc.**

Signed: _____
Date: Bruce Korum, President
Address: 777 SW Armco Ave.
 Hillsboro, OR 97123
Phone/Email: (503)693-6388
brucek@irsenvironmental.com

Port of Hood River

Signed: _____
Date: Michael McElwee, Executive Director
Address: 1000 E. Port Marina Drive
 Hood River, OR, 97031
Phn/Email (541) [386-1645](tel:386-1645)/porthr@gorge.net

Construction Services Contract Exhibit A

I. SCOPE OF WORK:

Location: 3289 Neal Mill Creek Road, Lower Mill Site,

Scope Summary: Remove and dispose of asbestos found in the Office building at the Lower Mill site. A 3rd party Air Clearance Test will be completed.

Scope Specifics:

1. Contractor will remove and dispose of all asbestos-containing items located in the subject building as identified by APEX in their Hazardous Materials Survey (Survey) completed August, 2014 (Exhibit "C"). See the resulting estimated quantities in Table 1 from the Survey.
2. Contractor will submit and secure the ASN1 DEQ project notification form before work begins.
3. Contractor will have a 3rd party complete and submit DEQ Form ASN5, Air Clearance Sample Results, to the DEQ and provide such results to the Port.
4. Contractor will supply the Port with copies of all disposal tickets, survey and air clearance results and warrant that the building is free of asbestos per the DEQ guidelines.

**Table 1
Asbestos-Containing Material Quantities
3289 Neal Mill Creek Road**

Material Description	Location	Approximate Quantity Observed
12x12 beige floor tile/black mastic	Office building hallway and assumed throughout under carpet	4,000 square feet
Exterior window caulking	Office building windows	100 linear feet

II. DELIVERABLES AND TIMEFRAME:

The deliverable(s) covered under this Contract shall be: A summary report of what was removed, how it was removed and where it was disposed of.

The due dates for the deliverable(s) shall be: December 30, 2015.

III. CONSIDERATION:

This contract shall be a lump sum of \$8,500.00. Contractor shall be responsible for the DEQ ASN1 permit fees within this contracted amount.

IV. BILLING AND PAYMENT PROCEDURE:

The Contractor shall submit to the Port for payment an itemized invoice in a form and in sufficient detail to determine the work performed for the amount requested. The invoice shall contain at a minimum:

- Invoice date
- Contract project title
- Record of hours worked and a brief description of activities
- Billing rate applied

The Port shall process payment in its normal course and manner for Accounts Payable, net 30 days.

**Personal Services Contract
Exhibit B**

INSURANCE

Contractors, please send this to your insurance agent immediately.

During the term of this Contract, Contractor shall maintain in force at its own expense, each insurance noted below:

- 1. Workers' Compensation insurance in compliance with ORS 656.017, which requires subject employers to provide Oregon workers' compensation coverage for all their subject workers. (Required of contractors with one or more employees, unless exempt order ORS 656.027.)

Required and attached OR _____ Contractor is exempt

Certified by Contractor: _____
Signature/Title

- 2. Commercial General Liability insurance on an occurrence basis with a limit of not less than \$1,000,000 each occurrence for bodily injury and property damage and \$2,000,000 general aggregate. The Liability Insurance coverage shall provide contractual liability. The coverage shall name the Port of Hood River and each of its Commissioners, officers, agents, and employees as Additional Insured with respect to the Contractor's services to be provided under the Contract.

Required and attached Waived by Finance Manager _____

- 3. Automobile Liability insurance with a combined single limit of not less than \$1,000,000 each occurrence for bodily injury and property damage, including coverage for owned, hired, or non-owned vehicles, as applicable.

Required and attached Waived by Finance Manager _____

- 4. Professional Liability insurance with a \$1,000,000 per claim and \$1,000,000 in the aggregate for malpractice or errors and omissions coverage against liability for personal injury, death or damage of property, including loss of use thereof, arising from the firm's acts, errors or omissions in any way related to this Contract.

Required and attached Waived by Finance Manager _____

- 5. **Certificate of Insurance.** As evidence of the insurance coverage required by this Contract, the Contractor shall furnish acceptable insurance certificates to the Port at the time Contractor returns the signed Contract.

The General Liability certificate shall provide that the Port, its Commissioners, officers, agents, and employees are Additional Insured but only with respect to the Contractor's services to be provided under this Contract.

Endorsement CG 20 10 11 85 or its equivalent must be attached to the Certificate. The Certificate must contain a standard 30 day notice of cancellation clause which guarantees notification in writing to the Certificate Holder (Port of Hood River). Insuring companies or entities are subject to Port acceptance. If requested, complete copies of the insurance policy shall be provided to the Port. The Contractor shall be financially responsible for all pertinent deductibles, self-insured retentions, and/or self-insurance.

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Prepared by: Liz Whitmore
 Date: October 6, 2015
 Re: 2016-20 Waterfront Recreation Concession Permits

A request for a “Letter of Interest” was advertised in the Hood River News August 22, 26, and 29 editions (see attached) for qualified persons or businesses seeking a 5-year concession permit to operate a kiteboard, windsurf, or SUP instruction and rental concession on Port property.

Letters were received from the following by the deadline of September 10, 2015:

<u>Concession</u>	<u>Type</u>	<u>Location(s)</u>
1. Big Winds	Windsurfing/SUP	Event Site & Hook
2. Brian’s	Kiteboarding, Windsurfing, SUP	Event Site
3. Cascade Kiteboarding	Kiteboarding	Event Site
4. Gorge Kiteboard School	Kiteboarding/SUP	Event Site & Spit
5. Gorge SUPer Club	SUP	Hook or Marina (TBD)
6. Kite the Gorge	Kiteboarding	Spit
7. New Wind Kiteboarding	Kiteboarding/SUP	Event Site
8. WhatSUP Kayaking	SUP/Kayaking	Hook or Marina (TBD)

Bold= New Applicants

These responses include all six current concessionaires and two new applicants. Staff recommends that all six current concessionaires should be allowed to remain in their existing locations. The two new applicants can be accommodated at the Hook or Marina Park; however, it is not confirmed whether one of the applicants is interested in pursuing a permit in either of those locations.

RECOMMENDATION: Approve eight Waterfront Recreation Concession Agreements for 2016-20, subject to legal counsel review.

Hood River News Ad Text:

Request for Letter of Interest for Kiteboarding, Windsurfing, or SUP Concession on Port of Hood River Property

The Port of Hood River is requesting a Letter of Interest from qualified persons or businesses seeking to apply for a concession permit to operate a kiteboard, windsurf, or SUP instruction and rental concession on Port property. The permit will be valid for (5) years from 2016-20 for a (6) month maximum time period each annual season beginning April 1 and ending October 1.

Concession fees for primary locations are as follows:

- Event Site – Large: \$3200 (approx. 1950 square feet)
- Event Site – Small: \$1600 (approx. 960 square feet)
- Spit: \$2400
- Marina: \$2400
- Hook: \$2400
- Each secondary location: \$1600

Commencing in 2017, fees will increase on an annual basis by the published Consumer Price Index (CPI) for Portland, OR.

Letter of Interest shall be no more than (2) pages and shall include the following:

1. Business Name and Experience
2. Primary Instructor/ Manager Experience and Certifications
3. Preferred Location for Concession
4. Up to (3) References

Letter of Interest is due to Liz Whitmore, Waterfront Coordinator at the Port of Hood River, 1000 E. Port Marina Drive, Hood River, Oregon no later than **5pm on Thursday, September 10, 2015**. Letters received after that time will not be considered or eligible to apply for a concession permit.
