

Commission Memo



Prepared by: Fred Kowell
 Date: July 9, 2019
 Re: Financial Review for the Eleven Months
 Ended May 31, 2019

Attached are the following financial reports for Commission review:

- Bridge Traffic and Revenue Report
- Schedule of Expenditures by Asset Center by Fund
- Schedule of Revenues by Asset Center by Fund
- Statement of Operating Revenues, Expenditures and Other Sources and Uses

Bridge Traffic and Revenue Report

With regard to the Bridge Traffic and Revenue report you can see our traffic is starting to see a drop off from the previous year due to several factors like winter weather, the elasticity of the toll increase and the numerous bridge closures for work on the bridge in the month of April and May. For the eleven months ended, traffic is down by 3.6% from 4,095,652 trips from a year ago to 3,950,673 this year. We are starting see a trend that will carry over into FY 2019-20, and may have some consequences in the financial forecast and the amount of revenues estimated for capital improvements to our bridge. That said, our heaviest traffic months are coming up, so I will take a wait and see approach to understand if this is more than temporary lull.

Schedule of Expenditures by Cost Center by Fund

Personnel services is lower than budget overall. The Resolution Transfer has been incorporated into these financial statements, and as you can see we will come in lower than budget for Personnel Services overall and in every asset center.

Materials & Services is tracking lower than the budget in almost all areas. The Resolution Transfer was included in these budget numbers as well and will show the Port coming in below budget overall and in most, if not all asset centers. Marina Park will be the one asset center that will be very close to its revised budget depending upon the amount of maintenance activity that will occur in June.

Capital Outlay is tracking lower than budget in all asset centers, except for the Marina Office Building which will be over due to roof work that was more than the budget. This was one item I did not pick up in the Resolution Transfer.

Schedule of Revenues

Toll revenues (dollars) are down by 7% as compared to our budget due to harsh February weather, bridge closures and less bridge traffic due to elasticity of our tolls. In my model, I

had hoped for a more drastic swing of cash paying customers moving to Breezeby and making up 75% of our customers but we are still at 66%. The good news is that this helps our revenues but the bad news is that we need more of our customers to move to Breezeby which will assist in moving traffic off of our bridge.

Lease revenues from our industrial and commercial properties are higher than budget or right on target, however reimburseable costs such as utilities/taxes are higher than budget due to higher usage. The Marina and Airport leases reflect the January billings, which depicts a higher revenue than budget for the 11 months ended but will be end the year at or above budget.

The Waterfront Recreation revenues are higher than the budget and also higher than last year revenue numbers for this time of year. This year we opened up the Pre-Season passes in April such that by the end of May, we sold 548 annual passes and 166 daily passes. This is compared to 542 annual passes and 292 daily passes sold in 2018 for the comparable time period.

Street parking is now taking hold and June will show our first summer month of activity. Since we didn't start street parking until July 19, 2018, I don't have any comparable data to share with you.

Statement of Operating Revenues, Expenditures and Other Sources and Uses

Overall, the actuals are tracking according to the activities we have incurred during the eleven months of the year as outlined in the budget. This includes the revised Budget that was approved by the Board at its last meeting in June.

Accounts Receivables Update – Most accounts receivables are caught up with a few exceptions that are on a payment plan that will bring their accounts current over the agreed upon terms outlined by staff.

RECOMMENDATION: Discussion.

PORT OF HOOD RIVER
Bridge Traffic and Revenue Report
For the TenMonths Ended April 30, 2019 and Four Prior Years

	2014-15		2015-16		2016-17		2017-18		2018-19		Change from Prior year	
	Traffic	Revenue	Traffic	Revenue	Traffic	Revenue	Traffic	Revenue	Traffic	Revenue	Traffic	Revenue
JUL	379,536	\$ 341,480	398,634	\$ 382,921	423,744	\$ 402,074	442,251	\$ 399,618	437,364	\$ 608,941	0.99	1.52
AUG	360,914	\$ 348,030	391,499	\$ 376,690	425,567	\$ 407,839	435,364	\$ 401,815	426,907	\$ 608,085	0.99	1.51
SEPT	344,693	\$ 317,989	364,125	\$ 350,020	387,860	\$ 372,099	412,452	\$ 332,996	396,517	\$ 558,537	0.96	1.68
OCT	336,623	\$ 303,073	353,313	\$ 339,194	357,180	\$ 337,294	389,210	\$ 361,315	390,814	\$ 527,573	1.00	1.46
NOV	274,601	\$ 244,065	312,731	\$ 297,037	330,795	\$ 313,529	341,147	\$ 312,337	340,044	\$ 452,602	1.00	1.45
DEC	290,855	\$ 249,793	269,296	\$ 269,344	285,209	\$ 260,625	324,278	\$ 298,530	328,913	\$ 408,966	1.01	1.37
Calendar Year Total	3,829,791	\$3,424,449	4,063,317	\$3,814,690	4,280,160	\$4,028,417	4,377,500	\$4,038,137	4,480,038	\$5,969,681	1.02	1.48
JAN	296,390	\$ 259,626	291,674	\$ 272,828	245,670	\$ 238,709	327,522	\$ 293,677	323,461	\$ 428,669	0.99	1.46
FEB	281,351	\$ 259,207	305,800	\$ 286,071	266,202	\$ 244,472	296,977	\$ 387,737	241,313	\$ 302,296	0.81	0.78
MAR	324,912	\$ 299,162	342,162	\$ 317,959	350,470	\$ 324,146	357,160	\$ 501,543	345,915	\$ 437,390	0.97	0.87
APR	334,016	\$ 307,643	365,654	\$ 338,556	362,559	\$ 334,362	362,150	\$ 491,217	346,668	\$ 459,806	0.96	0.94
MAY	360,643	\$ 341,172	381,248	\$ 357,119	399,271	\$ 368,296	407,141	\$ 564,038	370,757	\$ 523,822	0.91	0.93
JUN	365,407	\$ 332,673	363,267	\$ 362,425	408,626	\$ 421,541	406,529	\$ 566,765			0.99	1.34
Fiscal Year Total	3,959,941	\$3,603,914	4,180,403	\$3,950,764	4,241,533	\$4,026,965	4,302,161	\$4,911,568	3,950,073	\$3,335,697	1.00	1.22

PORT OF HOOD RIVER
 SCHEDULE OF EXPENDITURES BY COST CENTER BY FUND
 BUDGET AND ACTUAL - 92% THROUGH THE BUDGET
 FOR THE ELEVEN MONTHS ENDED MAY 31, 2019

EXPENDITURES	Personal Services				Materials & Services				Capital Outlay					Debt Service				Total Appropriation		
	Budget	Actual	Unspent	%	Budget	Actual	Unspent	%	Budget	Actual	Total	Unspent	%	Budget	Actual	Unspent	%	Budget	Actual	Unspent
<i>Toll Bridge</i>	1,007,900	860,967	146,933	85%	1,730,100	696,875	1,033,225	40%	457,000	171,098	171,098	285,902	37%	-	-	-	-	3,195,000	1,728,940	1,466,060
<i>Industrial Facilities</i>																				
Big 7	53,300	42,736	10,564	80%	166,700	144,813	21,887	87%	280,000	-	-	280,000	0%	-	-	-	-	500,000	187,549	312,451
Jensen Property	64,000	50,109	13,891	78%	198,000	177,431	20,569	90%	54,000	34,721	34,721	19,279	64%	145,000	132,863	12,137	92%	461,000	395,125	65,875
Maritime Building	39,600	33,298	6,302	84%	92,600	63,414	29,186	68%	4,284,000	-	-	4,284,000	0%	-	-	-	-	4,416,200	96,712	4,319,488
Halyard Building	62,500	49,492	13,008	79%	296,600	257,563	212,246	87%	10,000	-	-	10,000	0%	-	-	-	-	369,100	307,055	62,045
Timber Incubator Building	28,200	24,709	3,491	88%	35,300	24,966	10,334	71%	12,000	-	-	12,000	-	-	-	-	-	75,500	49,675	25,825
Wasco Building	49,900	38,940	10,960	78%	110,000	88,200	21,800	80%	25,000	-	-	25,000	-	-	-	-	-	184,900	127,140	57,760
Hanel Site	34,800	31,121	3,679	89%	38,800	17,496	21,304	45%	520,000	497,822	497,822	22,178	96%	1,853,800	1,853,771	29	100%	2,447,400	2,400,210	47,190
	332,300	270,405	61,895	81%	938,000	773,884	337,326	83%	5,185,000	532,543	532,543	4,652,457	10%	1,998,800	1,986,635	12,165	99%	8,454,100	3,563,465	4,843,445
<i>Commercial Facilities</i>																				
State Office (DMV) Building	24,600	20,645	3,955	84%	43,500	36,473	7,027	84%	11,000	9,621	9,621	1,379	-	-	-	-	-	79,100	66,739	12,361
Marina Office Building	35,600	30,279	5,321	85%	49,000	41,591	7,409	85%	13,000	24,500	24,500	(11,500)	188%	-	-	-	-	97,600	96,370	1,230
Port Office Building	37,400	28,989	8,411	78%	25,600	21,903	3,697	86%	100,000	-	-	100,000	0%	-	-	-	-	163,000	50,892	112,108
	97,600	79,913	17,687	82%	118,100	99,967	18,133	85%	124,000	34,121	34,121	89,879	28%	-	-	-	-	339,700	214,001	125,699
<i>Waterfront Industrial Land</i>																				
	70,900	49,894	32,936	70%	189,400	142,754	46,646	75%	145,000	127,643	127,643	17,357	88%	-	-	-	-	405,300	320,290	85,010
<i>Waterfront Recreation</i>																				
Eventsite	122,700	91,141	31,559	74%	62,800	51,235	11,565	82%	45,000	-	-	45,000	0%	-	-	-	-	230,500	142,376	88,124
Hook/Spit/Nichols	51,200	39,117	36,841	76%	35,000	27,969	7,031	80%	113,000	5,840	5,840	107,160	5%	-	-	-	-	199,200	72,926	126,274
Marina Park	175,300	140,677	119,039	80%	62,900	58,291	4,609	93%	48,000	3,960	3,960	44,040	8%	-	-	-	-	286,200	202,928	83,272
	349,200	270,935	187,439	78%	160,700	137,496	23,205	86%	206,000	9,800	9,800	196,200	5%	-	-	-	-	715,900	418,231	297,669
<i>Marina</i>																				
	154,400	130,123	24,277	84%	115,000	98,451	16,549	86%	124,000	-	-	124,000	0%	94,500	90,029	4,471	95%	487,900	318,603	169,297
<i>Airport</i>																				
	152,700	135,593	17,107	89%	131,000	105,032	104,680	80%	1,606,300	280,671	280,671	1,325,629	17%	-	-	-	-	1,890,000	521,296	1,368,704
<i>Administration</i>																				
	27,200	16	27,184	0%	250,000	105,489	144,511	42%	20,000	9,466	9,466	10,534	47%	-	-	-	-	297,200	114,970	182,230
<i>Maintenance</i>																				
	-	-	-	-	122,500	105,290	17,210	86%	64,000	53,897	53,897	10,103	84%	-	-	-	-	186,500	159,187	27,313
<i>Total Expenditures</i>	2,192,200	1,797,846	515,458	82%	3,754,800	2,265,237	1,741,485	60%	7,931,300	1,219,238	1,219,238	6,712,062	15%	2,093,300	2,076,663	16,637	99%	15,971,600	7,358,984	8,565,426
<i>Bridge Repair & Replacement Fund</i>																				
	264,000	234,178	29,822	89%	2,581,700	917,773	1,663,927	36%	749,000	739,186	739,186	9,814	99%	486,000	485,775	225	100%	4,080,700	2,376,913	1,703,787
<i>General Fund</i>																				
	175,400	148,397	27,003	85%	471,950	332,375	139,575	70%	-	-	-	-	-	-	-	-	-	647,350	480,771	166,579

Unfavorable Variance - Expenditures

Personnel Services is in line with the budget which includes the resolution transfer for year end.

Materials & Services is in line with the budget which includes the Resolution Transfer that occurred in June.

The Bridge Repair & Replacement Fund's Capital Outlay should come in on budget as we have one more month of activity.

Capital Outlay for the Marina Office Building will be over due to a late invoice that was posted after the Resolution Transfer was prepared.

PORT OF HOOD RIVER
 Schedule of Revenues by Cost Center By Fund
 BUDGET TO ACTUALS - 92% THROUGH THE YEAR
 FOR THE ELEVEN MONTHS ENDED MAY 31, 2019

	REVENUES				
	Budget	Actual	Total	Variance	%
REVENUE FUND					
<u>Toll Bridge</u>					
Bridge Tolls	6,250,000	5,304,659	5,304,659	(955,341)	85%
Cable Crossing Leases	10,000	12,500	12,500	2,500	125%
Other	71,000	5,130	5,130	(65,870)	7%
	6,341,000	5,322,289	5,322,289	(1,018,711)	84%
<u>Industrial Facilities</u>					
<u>Big 7</u>					
Lease Revenues	284,500	260,346	260,346	(24,154)	92%
Reimbursements/Other	86,200	86,547	86,547	347	100%
Jensen Property	357,100	325,901	325,901	(31,199)	91%
Reimbursements/Other	130,300	125,702	125,702	(4,598)	96%
Maritime Building	149,000	135,070	135,070	(13,930)	91%
Lease Revenues	52,000	38,770	38,770	(13,230)	75%
Reimbursements/Other	5,050,000				
Financing					
Halyard Building	228,100	210,649	210,649	(17,451)	92%
Lease Revenues	213,000	246,603	246,603	33,603	116%
Reimbursements/Other	19,550	89,854	89,854	70,304	460%
Note Receivable	75,300	69,611	69,611	(5,689)	92%
Timberline Incubator Building	15,800	14,852	14,852	(948)	94%
Lease Revenues	167,400	150,017	150,017	(17,383)	90%
Reimbursements	50,600	48,959	48,959	(1,641)	97%
Wasco Building					
Lease Revenues					
Reimbursements					
Hapel					
Reimbursements					
Sale of Property	1,424,400	-	-	(1,424,400)	0%
	8,303,250	1,802,880	1,802,880	(1,450,370)	22%
<u>Commercial Facilities</u>					
<u>State Office (DMV) Building</u>					
Lease Revenues	45,200	41,758	41,758	(3,442)	92%
Reimbursements	-	7,231	7,231	7,231	#DIV/0!
Marina Office Building	73,100	67,111	67,111	(5,989)	92%
Lease Revenues	22,300	21,373	21,373	(927)	96%
Reimbursements	48,550	44,504	44,504	(4,046)	92%
Lease Revenues	1,000	-	-	(1,000)	0%
Reimbursements	190,150	181,977	181,977	(8,173)	96%
<u>Waterfront Industrial Land</u>					
Lease Revenues	600	900	900	300	150%
Land Sale	207,500	75,106	75,106	(132,394)	36%
Parking	1,500	4,050	4,050	2,550	270%
Other Income	-	-	-	-	-
URA Payments	209,600	80,056	80,056	(129,544)	38%
<u>Waterfront Recreation</u>					
<u>Eventsite, Hook and Spit</u>					
Eventsite - Passes/Permits and Concessions	142,300	150,477	150,477	8,177	106%
Hook/Spit/Nichols	21,700	11,092	11,092	(10,608)	51%
Marina Park	9,100	10,961	10,961	1,861	120%
Sailing Schools, Showers and Events	6,600	6,460	6,460	(140)	98%
Lease Revenues	2,100	765	765	(1,335)	36%
Reimbursements	181,800	179,755	179,755	(2,045)	99%
Grant					
<u>Marina</u>					
Lease Revenues	202,800	215,599	215,599	12,799	106%
Moorage Assessment	84,900	87,517	87,517	2,617	103%
Reimbursements/Other	65,350	47,503	47,503	(17,847)	73%
Grant	16,050	7,050	7,050	(9,000)	44%
Other Financing Sources	369,100	357,669	357,669	(11,431)	97%
<u>Airport</u>					
Lease Revenues	186,500	186,623	186,623	123	100%
Reimbursements	20,700	19,307	19,307	(1,393)	93%
Grants	1,057,300	121,984	121,984	(935,316)	12%
Other Financing Sources	-	-	-	-	-
Budget to Actual Revenues	1,264,500	327,914	327,914	(936,586)	26%
Revenues less Other financing sources	16,859,400	8,252,540	8,172,484	(3,427,316)	49%
	14,271,100	8,024,522	7,948,466	(1,063,034)	56%
GENERAL FUND					
Property Taxes	68,000	70,914	70,914	2,914	104%
Transfers from other funds	579,350	730,571	730,571	151,221	126%
	\$ 647,350	\$ 801,485	\$ 801,485	\$ 154,135	124%
BRIDGE REPAIR & REPLACEMENT FUND					
Transfers from other funds	\$ 2,191,000	\$ 2,080,595	2,080,595	(110,405)	95%

PORT OF HOOD RIVER
STATEMENT OF OPERATING REVENUES, EXPENDITURES AND OTHER SOURCES AND USES OF FUNDS
AND BUDGET VS ACTUAL PERFORMANCE
FOR THE ELEVEN MONTHS ENDED MAY 31, 2019

	REVENUE FUND								GENERAL FUND	BRIDGE REPAIR & REPLACEMENT FUND	TOTAL
	Bridge	Industrial Buildings	Commercial Buildings	Waterfront Land	Waterfront Recreation	Marina	Airport	Administration Maintenance			
OPERATING REVENUES											
Tolls	\$ 5,322,289										\$ 5,322,289
Leases		\$ 1,051,594	\$ 153,373	\$ 900	\$ 6,440	\$ 303,715	\$ 196,673				1,802,066
Reimbursements		561,437	28,604	75,100	765	47,509	19,307				732,717
Fees, Events, Passes and Concessions					172,530						172,530
Property taxes									70,914		70,914
Total Operating Revenues	5,322,289	1,713,026	181,977	76,006	179,755	350,619	205,930		70,914		9,309,516
Operating Expenses											
Personnel Services	860,957	270,405	79,912	49,894	270,935	150,123	135,593	15	148,397	234,178	2,180,421
Materials & Services	696,875	773,844	59,967	142,754	177,490	98,611	105,032	710,778	332,375	917,773	3,515,385
Total Operating Expenses	1,557,832	1,044,249	179,880	192,648	408,431	228,574	240,625	210,794	480,771	1,151,951	5,695,805
Operating income/(Loss)	3,764,456	668,778	2,097	(116,642)	(128,676)	122,045	(134,695)	(110,774)	(409,857)	(1,151,951)	2,404,711
Other Resources											
Income from other sources	-	-	-	4,050	-	-	-	154,277	5,556	24,014	188,897
Grants	-	-	-	-	-	7,050	121,984	-	-	373,848	502,882
Sale of and	-	-	-	-	-	-	-	-	-	-	-
Note receivables	-	89,854	-	-	-	-	-	-	-	-	89,854
Total Other Resources	-	89,854	-	4,050	-	7,050	121,984	154,277	6,556	397,862	781,632
Other (Uses)											
Capital projects	(171,098)	(512,543)	(34,121)	(137,643)	(9,800)	-	(280,671)	(53,363)	-	(730,186)	(1,358,434)
Debt service	-	(1,938,635)	-	-	-	(90,029)	-	-	-	(485,775)	(2,562,439)
Total Other (Uses)	(171,098)	(2,519,177)	(34,121)	(127,643)	(9,800)	(90,029)	(280,671)	(53,363)	-	(1,224,962)	(4,520,963)
Transfers In/(Out)	(2,080,595)							(730,571)	730,571	2,080,595	
Net Cashflow	\$ 1,512,754	\$ (1,760,585)	\$ (22,024)	\$ (240,234)	\$ (128,476)	\$ 33,066	\$ (191,393)	\$ (850,451)	\$ 327,270	\$ 101,544	\$ (1,334,519)
BUDGET VS ACTUAL PERFORMANCE											
FY 2018-19 Budget											
Operating revenues - Budget	\$ 6,270,000	\$ 6,859,300	\$ 190,150	\$ 209,000	\$ 160,100	\$ 353,050	\$ 207,200	\$ -	\$ 68,000	\$ -	\$ 14,317,400
Operating revenues - Actuals	5,322,289	1,713,026	181,977	76,006	178,305	350,519	205,930	-	70,914	-	8,059,066
Actuals greater/(Less) than budget	(947,711)	(5,146,274)	(8,173)	(133,594)	18,205	(2,431)	(1,270)	-	2,914	-	(6,218,334)
	87%	25%	95%	36%	112%	99%	99%	-	10%	-	57%
Operating expenses - Budget	2,738,000	1,270,300	215,700	260,300	509,900	269,400	283,700	199,700	647,350	2,845,700	9,440,050
Operating expenses - Actuals	1,557,843	1,044,288	179,880	192,648	408,431	228,574	240,625	210,794	480,771	1,151,951	5,695,805
Actuals (greater)/Less than budget	1,180,157	226,012	35,820	67,652	101,469	40,826	43,075	188,906	166,579	1,693,749	3,744,245
	57%	82%	88%	26%	60%	55%	16%	95%	74%	40%	53%
Other Resources - Budget	71,000	1,443,950	-	-	21,700	16,050	1,057,500	120,000	6,500	2,397,900	5,134,200
Other Resources - Actuals	5,130	89,854	-	4,050	-	7,050	121,984	154,277	6,556	397,862	781,632
Actuals greater/(Less) than budget	(65,870)	(1,354,096)	-	4,050	(21,700)	(9,000)	(935,516)	(64,723)	256	(2,000,038)	(4,347,437)
Other (Uses) - Budget	457,000	7,183,900	174,000	145,000	706,000	719,500	1,606,300	84,000	-	1,231,000	11,259,600
Other (Uses) - Actuals	171,098	2,519,177	34,121	127,643	9,800	30,025	280,671	53,363	-	1,224,962	4,520,863
Actuals (greater)/Less than budget	285,902	4,664,723	139,879	17,357	696,200	689,475	1,325,629	20,637	-	10,038	6,738,737
	37%	35%	79%	88%	9%	41%	17%	75%	-	99%	40%
Net Position - Budget vs Actuals	\$ 452,479	\$ (1,609,735)	\$ 117,576	\$ (44,534)	\$ 294,174	\$ 157,966	\$ 432,117	\$ 243,820	\$ 169,749	\$ (396,251)	\$ (82,783)



BRIDGE REPLACEMENT PROJECT

Project Director Report

July 9, 2019

The following summarizes Bridge Replacement Project activities from June 14-July 3, 2019.

WSP CONTRACT – EXHIBIT F BILLING RATES

Last month, the Project Director received notice that the Port's lead consulting firm, WSP USA, had acquired BergerABAM on April 27th. BergerABAM had been serving as a sub-consultant on this project. The Port is working with Schwabe Williamson to amend the contract allowing for Exhibit F to be modified. Elements in the amendment include:

- Sr. Planning Manager billing rate increase.
- Updating Key Personnel names. Anne Pressentin replaced Alex Cousins as the Public Involvement lead last year.
- Conversion of title categories from BergerABAM to WSP USA.

It should be noted that the billing rates listed in the exhibit are maximum rates and few, if any, positions are charging at the maximum rate. Angela Findley, WSP Project Manager, noted that WSP's overhead rate is slightly lower than BergerABAM's. No additional scope of work is being included at this time and the adjustments would not affect the "Not to Exceed" amount in the original contract. An amendment will be forthcoming.

FINAL ENVIRONMENTAL IMPACT STATEMENT (FEIS) PROGRESS

(What follows is a brief summary of EIS progress. A more detailed report in packet along with May invoice.)

- Technical report writing for Supplement DEIS in full swing. See attached matrix of reports and review progress.
- Mitigation approaches are acknowledged as part of each tech report. Will report on mitigation concepts as they are developed.
- Supplemental Draft EIS outline received. Portions of the technical reports will provide much of the content for the SDEIS.
- An older neighborhood of Hood River had been considered to be included in the Area of Potential Effect (APE), due to the age of many homes/structures in the area. It was determined that impacts were minimal and ODOT agreed to exclude the area from the APE, which would have required assessing almost 100 structures.

- The ODOT cultural resources officer continues to press for an Ethnographic Study (ES) and could be an emerging issue. WSP is contracted to conduct a survey and evaluation of cultural resources including tribal consultation to complete Sec. 106 compliance. An ES is a deeper dive than a cultural resources survey and was not included in the original budget.
- Site surveys have begun on Washington side of the river.
- Engineering Task 6.8.1 includes developing three architectural concepts for the bike/ped path and overlook. The concepts will be shared with the EISWG and generally reflect (1) green steel railings reminiscent of the current bridge (see below), (2) historic Hwy 30 elements, and (3) modern concept that uniquely fits the environment.



Figure 1. First of three design concepts focusing on the green steel treatments of the current bridge. Two additional concepts will be shared with the EISWG.

OTHER ITEMS

- No WSDOT work from May; yet to receive statement from ODOT for May.
- Meeting with Mott McDonald to discuss engineering timing/costs for Post-NEPA phases.

MEETING/OUTREACH SCHEDULE

- Thorn Run Partners, July 8
- NEPA Tech. Reports/Sec. 106 Coordination Meeting, July 11
- Mott McDonald to discuss post-NEPA design phases, July 12
- NEPA Project Team Meeting, July 17
- One Gorge, July 24
- NEPA Tech. Reports/Sec. 106 Coordination Meeting, July 25

Hood River Bridge Replacement Project - Technical Report Status

		Concurrent Activities					
		Draft WSP <i>Finish</i>	Review Port, ODOT, WSDOT <i>Finish</i>	Revise Draft WSP <i>Finish</i>	Confirm Edits ODOT <i>Finish</i>	Review FHWA <i>Finish</i>	Finalize WSP <i>Finish</i>
Group 1	Air	28-May	11-Jun	25-Jun	10-Jul	10-Jul	31-Jul
	Energy	28-May	11-Jun	25-Jun	10-Jul	10-Jul	31-Jul
	Geology	28-May	11-Jun	25-Jun	10-Jul	10-Jul	31-Jul
	Hazmat	28-May	11-Jun	25-Jun	10-Jul	10-Jul	31-Jul
	Water	28-May	11-Jun	25-Jun	10-Jul	10-Jul	31-Jul
Group 2	Land Use	11-Jun	25-Jun (WSDOT)	10-Jul	24-Jul	24-Jul	14-Aug
	Recreation	11-Jun	25-Jun (WSDOT)	10-Jul	24-Jul	24-Jul	14-Aug
Group 3	Noise	25-Jun	10-Jul	24-Jul	7-Aug	7-Aug	28-Aug
	Social/Economic/EJ	25-Jun	10-Jul	24-Jul	7-Aug	7-Aug	28-Aug
Group 4	Fish/Wildlife	26-Jul	9-Aug	23-Aug	9-Sep	9-Sep	30-Sep
	Section 6(f)	26-Jul	9-Aug	23-Aug	9-Sep	9-Sep	30-Sep
	Vegetation/Wetland	26-Jul	9-Aug	23-Aug	9-Sep	9-Sep	30-Sep
	Visual	26-Jul	9-Aug	23-Aug	9-Sep	9-Sep	30-Sep
	Cumulative	26-Jul	9-Aug	23-Aug	9-Sep	9-Sep	30-Sep
Group 5	Section 4(f)	18-Oct	1-Nov	18-Nov	4-Dec	4-Dec	26-Dec
Other	Biological Assessment	21-Aug	5-Sep	26-Sep	10-Oct	10-Oct	31-Oct
	Cultural	14-Nov	2-Dec	23-Dec	8-Jan	n/a	23-Jan

Gray shaded items are complete.
 Orange: WSP activity
 Yellow: Port, ODOT and WSDOT activity
 Blue: FHWA activity

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*Ok to pay
Kgreenwood
Bridge Replacement*

June 30, 2019
2-5500-150

INVOICE

WSP USA
851 SW 6TH AVE
SUITE 1600
PORTLAND, OR 97204
503-478-2800
503-274-1412

KEVIN GREENWOOD
PORT OF HOOD RIVER
1000 EAST PORT MARINA DRIVE
HOOD RIVER, OR 97031

Invoice Date: June 27, 2019
Invoice No: 877508
Project No: 80550A

Company Legal Name: WSP USA Inc.
Company Tax ID: 11-1531569

Project Manager: Angela Findley
Project: 80550A Hood River Bridge Replacement
Customer Order No: 2018-01
Invoice Description: Invoice 10 PE 31May19

Services provided from Apr 27, 2019 to May 31, 2019

**Summary of Costs
by Top Task**

Task Number	Task Name	Contract Value	Current Invoice	Previously Billed	Total Billed To Date	Contract Balance	Percent Invoiced	Physical % Complete
0	Direct Expenses	\$271,914.00	\$1,211.26	\$18,153.32	\$19,364.58	\$252,549.42	7.12%	10.00%
1	Project Management	\$382,625.00	\$17,120.76	\$132,433.94	\$149,554.70	\$233,070.30	39.09%	34.80%
2	Public Involvement	\$278,002.00	\$3,284.88	\$106,831.01	\$110,115.89	\$167,886.11	39.61%	43.24%
3	Project Delivery Coordination	\$19,440.00	\$0.00	\$0.00	\$0.00	\$19,440.00	0.00%	0.00%
4	Tolling/Revenue Coordination	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	0.00%	0.00%
5	Environmental	\$1,046,102.00	\$133,900.18	\$197,267.14	\$331,167.32	\$714,934.68	31.66%	30.50%
6	Engineering	\$790,196.00	\$59,245.72	\$126,842.88	\$186,088.60	\$604,107.40	23.55%	26.04%
7	Transportation	\$153,962.00	\$3,329.13	\$112,901.73	\$116,230.86	\$37,731.14	75.49%	83.40%
8	Permit Assistance	\$205,759.00	\$34,898.83	\$72,433.42	\$107,332.25	\$98,426.75	52.16%	56.27%
Totals		\$3,148,000.00	\$252,990.76	\$766,863.44	\$1,019,854.20	\$2,128,145.80	32.40%	33.34%

Billings-To-Date

	Current	Prior	Total
Labor	226,276.90	564,722.95	790,999.85
Expenses	754.80	2,846.78	3,601.58
Subcontractor	25,959.06	199,293.71	225,252.77
Total	252,990.76	766,863.44	1,019,854.20

I hereby certify that the charges invoiced are true and correct and include only such charges as were directly incurred in the performance of the work on the project, have not been previously submitted, and are in accordance with the terms and conditions of the Agreement.

Angela Findley
Project Manager

Port of Hood River
Hood River Bridge Replacement

Invoice #: _____
 Date: _____
 Period: _____

		Budget	Current Invoice	Previously Invoiced	To-Date Invoiced	Amount Remaining	Financial % Complete	Physical % Complete	Performance Ratio (Phys/Fin)
0	Direct Expenses	\$271,914.00	\$1,211.26	\$18,153.32	\$19,364.58	\$252,549.42	7.12%	10.00%	1.40
DE	Direct Expenses	\$271,914.00	\$1,211.26	\$18,153.32	\$19,364.58	\$252,549.42	7.12%	10%	1.40
1	Project Management	\$382,625.00	\$17,120.76	\$132,433.94	\$149,554.70	\$233,070.30	39.09%	34.80%	0.89
1.1	Project Management and Coordination	\$277,955.00	\$14,415.72	\$97,233.50	\$111,649.22	\$166,305.78	40.17%	33%	0.82
1.2	Client Progress Meetings	\$68,105.00	\$1,731.62	\$24,134.40	\$25,866.02	\$42,238.98	37.98%	47%	1.24
1.3	Consultant Team Coordination Meeting	\$26,773.00	\$973.42	\$10,569.91	\$11,543.33	\$15,229.67	43.12%	33%	0.77
1.4	Change Control	\$8,074.00	\$0.00	\$0.00	\$0.00	\$8,074.00	0.00%	0%	n/a
1.5	Risk Management	\$1,718.00	\$0.00	\$496.13	\$496.13	\$1,221.87	28.88%	33%	1.14
2	Public Involvement	\$278,002.00	\$3,284.88	\$106,831.01	\$110,115.89	\$167,886.11	39.61%	43.24%	1.09
2.1	Public Involvement Plan and Task Cod	\$41,553.00	\$206.09	\$20,695.67	\$20,901.76	\$20,651.24	50.30%	55%	1.09
2.2	Stakeholder Interviews	\$20,615.00	\$0.00	\$18,619.47	\$18,619.47	\$1,995.53	90.32%	100%	1.11
2.3	Media Releases, Fact Sheets, and eNe	\$16,257.00	\$0.00	\$4,507.57	\$4,507.57	\$11,749.43	27.73%	30%	1.08
2.4	Social Media, Digital Ads and Videos	\$8,265.00	\$0.00	\$2,338.29	\$2,338.29	\$5,926.71	28.29%	30%	1.06
2.5	Project Website Support	\$24,770.00	\$331.04	\$6,951.45	\$7,282.49	\$17,487.51	29.40%	30%	1.02
2.6	Bridge Replacement Advisory Commit	\$58,568.00	\$2,547.57	\$12,880.58	\$15,428.15	\$43,139.85	26.34%	30%	1.14
2.7	Stakeholder Working Groups	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	n/a	0%	n/a
2.8	Public Open Houses	\$52,321.00	\$0.00	\$24,372.44	\$24,372.44	\$27,948.56	46.58%	50%	1.07
2.9	Public Comments	\$10,776.00	\$0.00	\$1,121.80	\$1,121.80	\$9,654.20	10.41%	13%	1.25
2.10	Community Outreach Events	\$19,482.00	\$0.00	\$8,472.10	\$8,472.10	\$11,009.90	43.49%	45%	1.03
2.11	Environmental Justice	\$16,961.00	\$0.00	\$3,926.28	\$3,926.28	\$13,034.72	23.15%	30%	1.30
2.12	Status Reports	\$8,434.00	\$200.18	\$2,945.36	\$3,145.54	\$5,288.46	37.30%	35%	0.94
3	Project Delivery Coordination	\$19,440.00	\$0.00	\$0.00	\$0.00	\$19,440.00	0.00%	0.00%	n/a
3.1	Project Delivery Coordination	\$19,440.00	\$0.00	\$0.00	\$0.00	\$19,440.00	0.00%	0%	n/a
4	Tolling/Revenue Coordination	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	0.00%	0.00%	n/a
4.1	Tolling/Revenue Coordination	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	n/a	0%	n/a
5	Environmental	\$1,046,102.00	\$133,900.18	\$197,267.14	\$331,167.32	\$714,934.68	31.66%	30.50%	0.96
5.1	Environmental Study Plan and Coordin	\$38,626.00	\$395.70	\$17,221.27	\$17,616.97	\$21,009.03	45.61%	45%	0.99
5.2	Agency Coordination	\$115,512.00	\$11,197.95	\$51,458.73	\$62,656.68	\$52,855.32	54.24%	55%	1.01
5.3	Methodology Memoranda	\$28,246.00	\$0.00	\$27,931.63	\$27,931.63	\$314.37	98.89%	95%	0.96
5.4	Technical Report, Technical Memorand	\$266,994.00	\$96,591.76	\$51,112.91	\$147,704.67	\$119,289.33	55.32%	50%	0.90
5.5	ESA Section 7 Compliance	\$33,681.00	\$1,175.01	\$0.00	\$1,175.01	\$32,505.99	3.49%	5%	1.43
5.6	Cultural / NHPA Section 106 Complian	\$94,111.00	\$11,773.37	\$6,040.31	\$17,813.68	\$76,297.32	18.93%	20%	1.06
5.7	Section 4(f)/Section 6(f)	\$21,595.00	\$0.00	\$669.43	\$669.43	\$20,925.57	3.10%	3%	0.97
5.8	Draft EIS Re-Evaluation	\$48,384.00	\$0.00	\$38,095.30	\$38,095.30	\$10,288.70	78.74%	100%	1.27
5.9	Supplemental Draft EIS	\$165,337.00	\$12,766.39	\$4,737.56	\$17,503.95	\$147,833.05	10.59%	5%	0.47
5.10	Responses to Comments on the 2003	\$76,199.00	\$0.00	\$0.00	\$0.00	\$76,199.00	0.00%	0%	n/a
5.11	Mitigation Plan	\$25,668.00	\$0.00	\$0.00	\$0.00	\$25,668.00	0.00%	0%	n/a
5.12	Final EIS	\$95,877.00	\$0.00	\$0.00	\$0.00	\$95,877.00	0.00%	0%	n/a
5.13	Record of Decision, Notice of Availabil	\$29,562.00	\$0.00	\$0.00	\$0.00	\$29,562.00	0.00%	0%	n/a
5.14	Administrative Record	\$6,310.00	\$0.00	\$0.00	\$0.00	\$6,310.00	0.00%	0%	n/a
6	Engineering	\$790,196.00	\$59,245.72	\$126,842.88	\$186,088.60	\$604,107.40	23.55%	26.04%	1.11
6.1	Engineering Coordination	\$147,696.00	\$8,345.50	\$34,484.34	\$42,829.84	\$104,866.16	29.00%	30%	1.03
6.2	Land Survey	\$14,740.00	\$1,990.00	\$12,022.50	\$14,012.50	\$727.50	95.06%	100%	1.05
6.3	Geotechnical	\$174,924.00	\$1,727.04	\$0.00	\$1,727.04	\$173,196.96	0.99%	2%	2.03
6.4	Hydraulics	\$30,851.00	\$13,938.49	\$5,911.45	\$19,849.94	\$11,001.06	64.34%	70%	1.09
6.5	Civil	\$157,499.00	\$18,706.10	\$65,568.43	\$84,274.53	\$73,224.47	53.51%	60%	1.12
6.6	Bridge	\$150,796.00	\$12,969.69	\$7,909.13	\$20,878.82	\$129,917.18	13.85%	15%	1.08
6.7	Wind Analysis	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	n/a	0%	n/a
6.8	Architecture and Simulations	\$73,695.00	\$908.22	\$947.03	\$1,855.25	\$71,839.75	2.52%	5%	1.99
6.9	Cost Estimating	\$39,995.00	\$660.68	\$0.00	\$660.68	\$39,334.32	1.65%	2%	1.21
7	Transportation	\$153,962.00	\$3,329.13	\$112,901.73	\$116,230.86	\$37,731.14	75.49%	83.40%	1.10
7.1	Methodology Memorandum	\$12,930.00	\$0.00	\$7,785.98	\$7,785.98	\$5,144.02	60.22%	95%	1.58
7.2	Data Review and Collection	\$15,760.00	\$0.00	\$11,308.30	\$11,308.30	\$4,451.70	71.75%	100%	1.39
7.3	Existing and Future No Build Condition	\$42,275.00	\$0.00	\$42,068.26	\$42,068.26	\$206.74	99.51%	100%	1.00
7.4	Build Alternatives Analysis Update	\$29,116.00	\$0.00	\$27,668.08	\$27,668.08	\$1,447.92	95.03%	100%	1.05
7.5	Transportation Technical Report	\$28,629.00	\$3,018.10	\$23,072.89	\$26,090.99	\$2,538.01	91.13%	95%	1.04
7.6	Tolling/Revenue Coordination	\$25,252.00	\$311.03	\$998.22	\$1,309.25	\$23,942.75	5.18%	7%	1.35
8	Permit Assistance	\$205,759.00	\$34,898.83	\$72,433.42	\$107,332.25	\$98,426.75	52.16%	56.27%	1.08
8.1	Permit Plan and Coordination	\$27,552.00	\$1,359.26	\$19,268.15	\$20,627.41	\$6,924.59	74.87%	80%	1.07
8.2	In-water Permits for Geotechnical Inve	\$17,201.00	\$942.11	\$349.84	\$1,291.95	\$15,909.05	7.51%	10%	1.33
8.3	US Coast Guard Permit	\$121,142.00	\$26,568.88	\$38,214.98	\$64,783.86	\$56,358.14	53.48%	60%	1.12
8.4	Columbia River Gorge National Scenic	\$16,700.00	\$5,962.98	\$11,142.34	\$17,105.32	(\$405.32)	102.43%	95%	0.93
8.5	U.S. Army Corp of Engineers Permits	\$23,164.00	\$65.60	\$3,458.11	\$3,523.71	\$19,640.29	15.21%	15%	0.99
8.6	Washington State Permits – Reserved	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	n/a	0%	n/a
8.7	Oregon State Permits – Reserved	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	n/a	0%	n/a
8.8	Washington Local Agency Permits (Cit	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	n/a	0%	n/a
8.9	Oregon Local Agency Permits	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	n/a	0%	n/a
Totals		\$3,148,000.00	\$252,990.76	\$766,863.44	\$1,019,854.20	\$2,128,145.80	32.40%	33.34%	1.03



June 27, 2019

Mr. Kevin Greenwood
Hood River Bridge Replacement Project Director
Port of Hood River
1000 E. Port Marina Drive
Hood River, OR 97031

Subject: Hood River Bridge Replacement Project – Environmental Studies, Design and Permitting
Contract No. 2018-01
Progress Report #10: April 27, 2019 - May 31, 2019

Dear Mr. Greenwood:

This progress report summarizes the services performed during this reporting period, issues encountered, and decisions or actions pending for all active tasks. The enclosed invoice includes details on all labor and expense billings. A set of charts are also provided to compare project budget to actual costs by major tasks.

I. Major services performed during this period:

- Met with the Columbia River Gorge Commission staff and Hood River County planning staff.
- Met with the US Coast Guard staff.
- Published Notice of Intent in the Federal Register.
- Submitted Group 1 environmental technical reports.
- Please see following table for detailed progress summary by task.

II. Issues encountered:

- Historic/cultural resources and tribal consultation schedule is experiencing delay as more coordination is being conducted with ODOT staff to develop Section 106 strategy and implementation protocols.

III. Decisions or actions pending:

- A cost-to-complete will be conducted in July/August to reallocate budget among tasks as needed.

Sincerely,
WSP USA, Inc.

A handwritten signature in blue ink that reads "Angela J. Findley". The signature is written in a cursive style.

Angela J. Findley, PMP
Project Manager

Detailed Progress Summary by Task
Work Performed: April 27 - May 31, 2019

TASK 1. PROJECT MANAGEMENT

1.1 Project Management and Coordination

Work Performed this Month:

- Coordinated with Port and project team to address emerging issues and deliver work products on time.
- Updated the detailed project schedule on May 13 and May 22.
- Prepared a schedule change log to support presentations to the Port's Board of Commissioners meetings; submitted May 13.
- Prepared a scope change log; draft delivered on May 23.
- Prepared April invoice packet.

Work Scheduled for Next Month:

- Continue coordination with Port and project team.
- Update the detailed project schedule.
- Update the schedule change log.
- Update the scope change log.
- Prepare May invoice packet.

1.2 Client Progress Meetings

Work Performed this Month:

- Prepared for and facilitated a client progress meeting on May 23.
- Prepared and distributed the action items log.

Work Scheduled for Next Month:

- Prepare for and facilitate client progress meeting on June 21.

1.3 Consultant Team Meetings

Work Performed this Month:

- Prepared for and facilitated consultant team meeting with project task leads on May 9.

Work Scheduled for Next Month:

- Prepare for and facilitate Consultant team meeting on June 13.

1.4 Change Control

Work Performed this Month:

- No activity this period.

Work Scheduled for Next Month:

- Begin preparing draft cost-to-complete.

Detailed Progress Summary by Task
Work Performed: April 27 - May 31, 2019

1.5 Risk Management

Work Performed this Month:

- No activity this period.

Work Scheduled for Next Month:

- Update Risk Management Plan as needed.

TASK 2. PUBLIC INVOLVEMENT

2.1 Public Involvement Plan and Task Coordination

Work Performed this Month:

- Provided direction to the Port and Consultant team on upcoming public involvement activities and deliverables.

Work Scheduled for Next Month:

- Continue providing direction to the Port and Consultant team on upcoming public involvement activities and deliverables.

2.2 Stakeholder Interviews – Task Complete

2.3 Media Releases, Fact Sheets and eNewsletters

Work Performed this Month:

- No activity this period.

Work Scheduled for Next Month:

- No activity planned.

2.4 Social Media, Digital Ads and Videos

Work Performed this Month:

- No activity this period.

Work Scheduled for Next Month:

- No activity planned.

2.5 Project Website Support

Work Performed this Month:

- Packaged up Working Group #3 materials and sent to Port for uploading to the project website.

Work Scheduled for Next Month:

- Update website and troubleshoot issues with Port as needed.

2.6 Bridge Replacement Advisory Committee (now called the EIS Working Group)

Work Performed this Month:

- Prepared agenda, slide presentation and materials for Meeting #3.
- Attended and facilitated Meeting #3.

Detailed Progress Summary by Task
Work Performed: April 27 - May 31, 2019

Work Scheduled for Next Month:

- Review and comment on meeting notes prepared by the Port.
- Strategize with the Port on meeting topics and schedule for Meeting #4.

2.7 Stakeholder Working Group – Task Closed (not used)

2.8 Public Open Houses

Work Performed this Month:

- No activity this period.

Work Scheduled for Next Month:

- No activity planned.

2.9 Public Comments

Work Performed this Month:

- No activity this period.

Work Scheduled for Next Month:

- No activity planned.

2.10 Community Outreach Events

Work Performed this Month:

- No activity this month.

Work Scheduled for Next Month:

- Set dates and locations for next round of community outreach events; investigate venues to engage the community.

2.11 Environmental Justice

Work Performed this Month:

- No activity this month.

Work Scheduled for Next Month:

- Set dates and locations for next round of EJ outreach events.

2.12 Status Reports

Work Performed this Month:

- Prepared and submitted a final June status report on May 13.

Work Scheduled for Next Month:

- Prepare the July status report.

TASK 5. ENVIRONMENTAL

5.1 Environmental Study Plan and Coordination

Work Performed this Month:

- Led discipline specialists to advance environmental technical reports, answer questions from the Port, ODOT and FHWA.
- Obtained clarification from Port and ODOT on technical impacts and mitigation.

Detailed Progress Summary by Task
Work Performed: April 27 - May 31, 2019

Work Scheduled for Next Month:

- Continue leading discipline specialists to advance environmental technical reports, answer questions from the Port, ODOT and FHWA.

5.2 Agency Coordination

Work Performed this Month:

- Prepared for and facilitated a NEPA coordination meeting with ODOT and FHWA on May 9 and May 23; distributed meeting notes on May 9 and June 5 respectively.
- Logged responses from agencies and tribes.

Work Scheduled for Next Month:

- Log responses from agencies and tribes.
- Update the Agency Coordination Plan.
- Distribute methodology memoranda to cooperating and participating agencies.
- Hold teleconferences twice a month with FHWA, ODOT and the Port to manage and implement NEPA activities.
- Resolve issues and respond to questions as needed with FHWA, ODOT, and other agencies on the EIS.

5.3 Methodology Memoranda

Work Performed this Month:

- No work this period.

Work Scheduled for Next Month:

- Revise methodology memoranda based on agency reviews, if needed.

5.4 Technical Reports, Memoranda and Study Updates

Work Performed this Month:

- Conducted noise and hazardous materials field work on May 6-7.
- Submitted draft Air Quality, Energy, Geology and Soils, Hazardous Materials, and Water Quality technical reports (Group 1) on May 28 for Port, ODOT and WSDOT review.
- Advanced remaining environmental technical reports by conducting impact analysis and writing reports.
- Conduct wetland/vegetation and fish/wildlife fieldwork on the Oregon portion of the study area.

Work Scheduled for Next Month:

- Submit draft Group 2 (Land Use and Recreation) and Group 3 (Noise and Social/Economics/EJ) technical reports for Port, ODOT and WSDOT review.
- Incorporate comments from Port, ODOT and WSDOT into Group 1 technical reports and submit for concurrent ODOT confirmation and FHWA review.
- Advance remaining technical work on all 14 reports by performing fieldwork, conducting impact analysis, and writing reports.
- Conduct wetland/vegetation and fish/wildlife fieldwork on the Washington portion of the study area.

Detailed Progress Summary by Task
Work Performed: April 27 - May 31, 2019

5.5 ESA Section 7 Compliance

Work Performed this Month:

- Met with ODOT on May 22 to discuss framework for the biological assessment and ESA consultation.

Work Scheduled for Next Month:

- Begin drafting the biological assessment.
- Prepare for and present the project at the June 20 ODOT/NMFS coordination meeting.

5.6 Cultural/NHPA Section 106 Compliance

Work Performed this Month:

- Prepared for, attended and facilitated a cultural resource coordination meeting with ODOT on May 31.
- Continued revising the Area of Potential Effects (APE)/Methodology Memo based on additional information requested by ODOT for historic/cultural resources for Port and ODOT review
- Completed a baseline scan report of known historic and cultural resources in the APE; submitted to the Port and ODOT.

Work Scheduled for Next Month:

- Complete revisions to the Area of Potential Effects (APE)/Methodology Memo for historic/cultural resources; confirm APE via a site visit.
- Participate and facilitate monthly cultural resources meetings; track action items and distribute to the team.

5.7 Section 4(f)/Section 6(f) Evaluation

Work Performed this Month:

- Advanced the Section 4(f) evaluation by identifying applicable Section 4(f) resources, delineating boundaries, determining owners with jurisdiction and conducting literature reviews, conducting impact analysis, and writing the report.
- Identified a potential Section 6(f) resource; requested resource files from Oregon Parks and Recreation Department and the National Parks Service.

Work Scheduled for Next Month:

- Advance the Section 4(f) evaluation by preparing impact analysis maps and continue writing the report.
- Develop a strategy for addressing compliance with Section 6(f) resource conversion.

5.8 Draft EIS Re-Evaluation – Task Complete

5.9 Supplemental Draft EIS

Work Performed this Month:

- Updated project maps and drafted detailed descriptions of the four alternatives to support the EIS and technical reports.

Detailed Progress Summary by Task
Work Performed: April 27 - May 31, 2019

Work Scheduled for Next Month:

- Prepare an outline for the SDEIS; submit for Port, ODOT and FHWA review.
- Begin drafting sections of the SDEIS (Administrative Draft #1).

5.10 Responses to Comments (Task has not started)

5.11 Mitigation Plan (Task has not started)

5.12 Final EIS (Task has not started)

5.13 Record of Decision (Task has not started)

5.14 Administrative Record (Task has not started)

TASK 6. ENGINEERING

6.1 Engineering Coordination

Work Performed this Month:

- Organized and managed Consultant team engineers to provide design-related information for environmental team, agency coordination and permitting.
- Participated in WSDOT meeting (April 30) for design review, prepared notes following the meeting.
- Established a design footprint for the three build alternatives for the environmental technical analysis.
- Oversaw resolution on the navigation datum, water level measurements (pool level, OHW, floodplains, etc.); the Port, USACE and USCG have conflicting measurements and use a mix of datum.
- Prepared a graphic on nested navigation envelopes to support the discussion with the USCG on May 17.
- Finalized the utility letter based on Port review and comment; submitted final letter to the Port.
- Directed the stormwater team to address WSDOT's comments on splitting the stormwater facility for runoff on WSDOT roadways and non-WSDOT roadways.
- Reviewed and approved land survey data/map revisions.
- Supported development of a white paper that documents the past evaluation and decision on the bridge type.

Work Scheduled for Next Month:

- Oversee the refinements to the three build alternatives to incorporate comments from ODOT, WSDOT, the Port and the Working Group.
- Log additional questions from the environmental and permitting teams in the FAQ and provide answers.
- Schedule ODOT meeting for design review of updated Oregon approach exhibits.
- Provide engineering information to support the development of in-water geotechnical investigations permit.
- Oversee the completion of the Bridge Hydraulics Report.

Detailed Progress Summary by Task
Work Performed: April 27 - May 31, 2019

6.2 Land Survey

Work Performed this Month:

- Adjusted datum to correlate with TS&L and rectify data.

Work Scheduled for Next Month:

- Close task.

6.3 Geotechnical

Work Performed this Month:

- Provided proposed drilling types and locations to the permitting team to prepare the application for in-water work permits.

Work Scheduled for Next Month:

- Review the draft permit materials.

6.4 Hydraulics

Work Performed this Month:

- Researched available datum and coordinated with the USACE to help team resolve inconsistencies in water level measurements provided by the USACE, USCG and the Port. Completed hydraulic modeling.
- Began preparing Bridge Hydraulic Report.

Work Scheduled for Next Month:

- Complete Bridge Hydraulics Report; submit to the Port.

6.5 Civil

Work Performed this Month:

- Met with WSDOT (April 30) design staff to confirm the design of the bridge approaches, other roadway work, and pedestrian/bicycle connections. Made subsequent revisions to address ODOT, WSDOT and Port comments.
- Developed two alternate options for connecting the shared use path on the bridge to the Waterfront Trail as requested by the Port.
- Completed concept design of roadway approaches for EC-1 and EC-3, including pedestrian/bicycle connections on both approaches, and stormwater treatment pond layouts.

Work Scheduled for Next Month:

- Update the FAQ with additional information requests from the environmental and permitting team; developed responses and data as needed.
- Refine connections for the shared use path on the bridge to the Waterfront Trail as requested. Address comments received from the Working Group #3 meeting.

Detailed Progress Summary by Task
Work Performed: April 27 - May 31, 2019

6.6 Bridge

Work Performed this Month:

- Refined the bridge design to incorporate the latest water level measurements and made minor adjustments to the bridge design to provide a 90-foot vertical clearance.
- Prepared for and attended the May 21 meeting with the Gorge Commission staff to provide technical input on bridge types, deck treatments, pier options, and answer bridge design questions.

Work Scheduled for Next Month:

- Continue refinement as needed to support Task 5 and Task 8.

6.7 Reserved

6.8 Architecture and Simulations

Work Performed this Month:

- Participated in the meeting with the Gorge Commission staff on May 21.

Work Scheduled for Next Month:

- Complete review of existing material and Columbia River Gorge guidelines.
- Develop architectural concept #1 for Port and ODOT review.

6.9 Cost Estimating

Work Performed this Month:

- Estimated construction-related jobs based on existing cost estimate to support the economic technical analysis.

Work Scheduled for Next Month:

- No activity planned.

TASK 7. TRANSPORTATION

7.1 Methodology Memorandum – Task Complete

7.2 Data Review and Collection – Task Complete

7.3 Existing and Future No Build Conditions – Task Complete

7.4 Build Alternatives Analysis – Task Complete

7.5 Transportation Technical Report

Work Performed this Month:

- Incorporated comments from the Port, ODOT and WSDOT; prepared a revised draft and submitted to FHWA for review on May 28.

Work Scheduled for Next Month:

- Incorporate comments from FHWA and cooperating/participating agencies.

Detailed Progress Summary by Task
Work Performed: April 27 - May 31, 2019

7.6 Tolling/Revenue Coordination

Work Performed this Month:

- No activity this period.

Work Scheduled for Next Month:

- No activity planned.

TASK 8. PERMIT ASSISTANCE

8.1 Permit Plan and Coordination

Work Performed this Month:

- Updated plan as information is gained.
- Identified and mapped all properties in the Washington project area; submitted the list and map on May 2 to the Port.
- Prepared individualized letters and maps for distribution to private property owners to obtain rights of entry for field work; submitted on May 28.

Work Scheduled for Next Month:

- Update plan as needed.
- Log responses to the Port's request for rights of entry.
- Prepare and submit applications for environmental fieldwork on public lands and rights-of-way managed by the City of White Salmon and Klickitat County.

8.2 In-water Permits for Geotechnical Investigations

Work Performed this Month:

- Continued developing permit application materials for in-water geotechnical investigations; prepared maps, incorporated information provided by the geotechnical team, and wrote additional narrative.

Work Scheduled for Next Month:

- Complete draft permit application materials for in-water geotechnical investigations; submit for Port review.

8.3 US Coast Guard Permit

Work Performed this Month:

- Continued preparing the Navigation Impact Report by integrating responses to the river users survey, contacting respondents for clarification on data supplied, and contacting non-respondents to encourage participation in the survey.
- Logged and analyzed vessel survey responses.
- Attended and facilitated meeting with USCG on May 17 to discuss options to provide 90-foot vertical clearance for USCG vessels as well as mitigation for other vessels over 90 feet.
- Developed and gave a presentation to the USCG Industry Breakfast on May 16.

Detailed Progress Summary by Task
Work Performed: April 27 - May 31, 2019

Work Scheduled for Next Month:

- Complete the preliminary draft of the Navigation Impact Report; submit to the USCG for preliminary review.

8.4 Columbia River Gorge NSA Permit

Work Performed this Month:

- Prepared a draft matrix that indicates the replacement bridge would be consistent with the Columbia River Gorge NSA Management Plan
- Attended and facilitated a meeting with the Columbia River Gorge Commission staff and local agency staff on May 21.

Work Scheduled for Next Month:

- Prepare notes and finalize the consistency matrix.

8.5 US Army Corps of Engineers Permits

Work Performed this Month:

- Contacted the USACE to obtain the letter regarding vessels that would travel upriver of the bridge.

Work Scheduled for Next Month:

- Coordinate as needed with the USACE.

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Executive Director's Report

July 9, 2019

Staff & Administrative

- Welcome to Position #4 Commissioner Kristi Chapman! The meeting will include the Oaths of Office of Commissioners Chapman and Streich as required by statute.
- Generally, the Commission has held only one meeting in the month of July. If needed actions require a second meeting this year, it will be held on July 23.
- Summer interns Tyler Mann and Jose Santillan started work on June 20th and 22nd, respectively. Mr. Mann will be assisting CFO Fred Kowell with the identification of opportunities to expand the Breeze-By tolling system, while Mr. Santillan will be looking at the electrical system and proposing the placement and purchase of a backup system for the Port building and Shop.
- John Mann and Daryl Stafford are registered to attend the SDAO Board Training in Redmond on August 13 at Eagle Crest Resort. This training opportunity is also open to all board members, and attendance results in a percentage credit to the Port's insurance premium.
- There was excellent coverage about the retirements of Commissioner Shortt and Rob Arnold in the June 31st edition of the "Hood River News".
- HB 5030, the lottery omnibus bill, was approved by the Oregon Legislature. The bill includes \$1,700,000 to the City of Hood River for the Waterfront Stormwater Line Replacement. The funding is expected to cover the first phase of the project, including de-coupling the line from downtown and routing it around the HRD property. Representative Anna Williams was the major proponent of this request with assistance from Sen. Chuck Thomsen. Thorn Run Partners also played a significant role. See attached.

Recreation/Marina

- Sharon and John Chow are back as Event Site hosts for the summer. The Chows have served as hosts for the last five years and are well known and highly respected among the various waterfront user groups. Attached is their first weekly report, written by Sharon.
- The Marina electrical system has been holding and operating well for the past three weeks. All slips are under at least a 40 Milli-Amp trip threshold at the pedestal GFI breakers.
- Thanks to the Oregon & Washington Departments of Fish and Wildlife and Columbia River Inter-Tribal Fish Commission personnel for successfully removing the sea lion that had taken up residence in the Marina.



- Temporary Signs have been installed notifying users of the recent incidents of theft on the waterfront, again designed with a clever and engaging design by Rountree Rouse. Signs are posted at the Event Site, Frog Beach and the Nichols Dock.



- New stone benches have been installed around the Marina Basin footpath. The benches are concrete for lower long-term maintenance.
- Asphalt patching occurred at various street and pathway locations throughout the waterfront and airport on June 25th.
- The Event Site was closed to kite launching & landing on June 21st. Additional signage will be put up before the 4th of July.
- Large Events scheduled on the Port Waterfront for July include:
 - Kiteboard 4 Cancer at the Event Site, July 12-14. 500+ expected.
 - Gorge Downwind Paddle Champs at the Waterfront Park July 15-19. 1000+ expected.
 - Pfreim Waterfront Concert Series at the Waterfront Park, July 12 & 26, 500+ expected
 - World Class Academy Jr. Slider Jam at the Marina Beach, July 18-21, 50 people expected
 - Slider Project Hood Kite Jam at the Marina Beach, July 22-27, 50 expected
- Hood River Outrigger Canoe Club is now offering a kid's course. 25 children have begun practicing in the Nichols Basin twice a week. The club introduces kids to the Hawaiian Outrigger Canoe sport and has been well attended.

Development/Property

- Port staff will meet this week to discuss the roll out of the Lease Strategy. Letters informing tenants of the upcoming changes were issued on June 20th. Staff has received very little response to date. Subsequent letters were sent out the week of July 1st to those tenants whose leases are expiring soon or in holdover status to explain specific impacts and request a meeting.
- The Cloud Cap lease in the Wasco Building was executed on June 28th. Renaissance Learning Inc. will be vacating the building on June 15th. The remainder of the tenants will vacate July 31st with Cloud Cap occupying the entire building at that time.

- Our entire summer crew is now on board and fully engaged in work tasks. Completion of waterfront maintenance tasks has accelerated quickly. Unfortunately, one full time crew member has had a serious medical issue and will be on leave for the next 4-5 weeks, and then returning to light duty for several weeks after that.
 - A fire occurred in the overnight hours of July 1 on the island inside the Hook Basin. It is highly likely that the fire was started by an illegal campsite. No on-site firefighting was possible; the fire was monitored by HRFD and USFS.
-

Airport

- A Connect VI project update includes the following:
 - Staff held a phone conference with the DEQ and the Governor's office on July 1 to discuss the 401-b form, which is tied to the USACE Environmental Assessment process and will have an update at the meeting.
 - USACE continues to hold to the month of July timeframe as a deadline for delivering the final EA. Permits will follow, once that has been finalized.
 - Staff responded to additional DSL comments for the permits which are scheduled to be approved August 20.
 - Staff met with FID to discuss wetland watering for the project. Additional meetings with Ice Fountain Water District are being scheduled to reduce the water loop that they currently require. Staff may have an update on the 9th.
 - ODOT approved the Port's Change Order request for the COVI grant. This extends the project timeline to June 30, 2020.
 - Gorge Electric replaced a power meter that had been damaged. This meter will have to be moved during the COVI project as it is on WAAAM property and includes a direct burial cable.
-

Bridge/Transportation

- The Columbia Gorge Express bus service resumed summer operations on Friday, June 14 and is working with Columbia Area Transit for commuter service between Hood River, Portland and The Dalles. Between Cascade Locks and Hood River there will be three daily round trips.
- Concrete testing of the WA and OR approach ramps was carried out by HRD on May 15th and their final report was issued June 28. Due to high levels of chloride at depth in the concrete, an active corrosive condition is occurring. It is likely that the top few inches of concrete will need to be stripped out and replaced in the next 1-2 years. There will be significant traffic impacts when this work occurs.
- License plate recognition camera information is now being tested with ODOT DMV. The testing will continue for another 30-45 days.

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HB 5030 -2 STAFF MEASURE SUMMARY**Joint Committee On Ways and Means**

Prepared By: Amanda Beitel, Budget Analyst

Meeting Dates: 4/19, 6/25

WHAT THE MEASURE DOES:

House Bill 5030 authorizes the issuance of lottery revenue bonds for specified projects.

A total of \$273,211,872 of net lottery bond proceeds are authorized to be spent on 37 projects included in HB 5030. Total costs of issuance are estimated to be \$5,040,491 and amounts required for debt service reserve accounts are estimated to be \$24,252,637. HB 5005 establishes statutory lottery revenue bond authority of \$302,505,000 to allow for the issuance of lottery revenue bonds in HB 5030; generating proceeds for project costs, costs of issuance, and debt service reserves.

Authority to spend bond proceeds for project costs and pay for the cost of issuing bonds is included in the budget reconciliation (HB 5050) and capital construction (HB 5006) bills. Lottery revenue bonds are scheduled to be issued in spring 2021 and debt service payments will begin in the 2021-23 biennium.

Lottery revenue bonds are authorized for the projects listed on the following page.

ISSUES DISCUSSED:**EFFECT OF AMENDMENT:**

-2 The introduced bill includes the lottery revenue bonds included in the Governor's Budget. The -2 amendment replaces the bill with the lottery revenue bonds authorized in the 2019-21 Legislatively Adopted Budget.

BACKGROUND:

This summary has not been adopted or officially endorsed by action of the committee.

HB 5030 -2 STAFF MEASURE SUMMARY

**Lottery Bond Projects
2019-21 Legislatively Adopted Budget**

HB 5030 Section	Project	Project Funding	2019-21 Debt Service	2021-23 Debt Service
<i>Department of Administrative Services</i>				
10	Oregon Coast Aquarium	5,000,000	-	864,612
11	Center for Hope and Safety - HOPE Plaza	2,500,000	-	429,446
12	City of Gresham - Gradin Community Sports Park	2,000,000	-	349,011
13	City of Roseburg - Southern Oregon Medical Workforce Center	10,000,000	-	1,726,955
14	Curry Health District - Brookings Emergency Room	2,000,000	-	349,011
15	Eugene Family YMCA Facility	15,000,000	-	2,569,340
16	Hacienda CDC - Las Adelitas Housing Project	2,000,000	-	349,011
17	Jefferson County - Jefferson County Health and Wellness Center	4,100,000	-	699,976
18	Multnomah County School District - Reynolds High School Health Center	2,331,872	-	407,652
19	Parrott Creek Child and Family Services - Building Renovation	3,500,000	-	600,118
20	Port of Cascade Locks - Business Park Expansion	2,400,000	-	414,666
21	Port of Morrow - Early Learning Center Expansion	1,400,000	-	248,803
22	Umatilla County Jail - Expansion for Mental Health Services	1,600,000	-	279,096
23	Wallowa Valley Center for Wellness	2,500,000	-	429,446
24	YMCA of Columbia-Willamette - Beaverton Hoop YMCA	5,000,000	-	864,612
		61,331,872	-	10,581,755
<i>Department of Transportation</i>				
37	City of Sherwood - Pedestrian Connectors	2,000,000	-	349,011
38	Port of Coos Bay - Coos Bay Rail Line Repairs and Bridge Replacement	5,000,000	-	864,612
		7,000,000	-	1,213,623
<i>Department of Veterans' Affairs</i>				
39	YMCA of Marion and Polk Counties - Veterans' Affordable Housing	4,000,000	-	690,005
<i>Higher Education Coordinating Commission</i>				
25	Blue Mountain CC - Facility for Agricultural Resource Management	6,500,000	-	1,115,125

HB 5030 -2 STAFF MEASURE SUMMARY

	<i>Housing and Community Services Department</i>			
7	Affordable Housing Preservation	25,000,000	-	4,274,920
8	Affordable Market Rate Housing Acquisition Loan Program	15,000,000	-	2,960,060
		<u>40,000,000</u>	-	<u>7,234,980</u>
	<i>Oregon Business Development Department</i>			
1	Special Public Works Fund	30,000,000	-	5,884,221
2	Brownfields Redevelopment Fund	5,000,000	-	992,087
27	City of Mill City - Storm Drainage Improvements	1,880,000	-	327,104
28	City of Salem - Drinking Water Improvements	20,000,000	-	3,421,427
29	City of Sweet Home - Wastewater Treatment Plant	7,000,000	-	1,200,582
30	Confederated Tribes of the Warm Springs Reservation - Warm Springs Wastewater Treatment Plant, Water Meter, and Water Distribution System Improvements	7,800,000	-	1,335,592
31	City of Hood River - Waterfront Stormwater Line Replacement	1,700,000	-	299,194
33	Levee Grant Program	15,000,000	-	2,569,340
35(2)(a)	Beaverton Arts Foundation - Patricia Reser Center for the Arts	1,500,000	-	263,859
35(2)(b)	Lincoln City Cultural Center - Cultural Plaza and Exterior Grounds	1,500,000	-	263,859
42	Port of Coos Bay - Channel Deepening Project	15,000,000	-	2,569,340
		<u>106,380,000</u>	-	<u>19,126,605</u>
	<i>Parks and Recreation Department</i>			
41	Oregon Main Street Revitalization Grant Program	5,000,000	-	864,612
	<i>Water Resources Department</i>			
3(2)(a)	Water Supply Development Account	15,000,000	-	2,569,340
3(2)(b)	Deschutes Basin Board of Control Piping Project	10,000,000	-	1,726,955
4	City of Newport - Big Creek Dams	4,000,000	-	789,895
5	Wallowa Lake Dam Rehabilitation	14,000,000	-	2,399,013
		<u>43,000,000</u>	-	<u>7,485,203</u>
	Total Lottery Bond projects authorized in HB 5030	273,211,872	-	48,311,908

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From: [sharon.chow](#)
To: [Daryl Stafford](#); [John Mann](#); [Michael McElwee](#); [Genevieve Scholl](#)
Subject: EVENT SITE HOST REPORT: JUNE 25th. - JUNE 30th.
Date: Monday, July 01, 2019 9:08:39 AM

Good Morning,

Below is our weekly report. . It is REALLY GREAT to be back and it looks like we have some good wind in store.

Cheers
Sharon.

EVENT SITE HOST REPORT: JUNE 25th. - JUNE 30th.

TUESDAY JUNE 25th.

We arrived today!!! HOME SWEET HOME. It's nice to see the parking lines have been painted and trees pruned. Things look spruced up. . We spent much of the afternoon educating Kiter that the 'Launch/Land' had ended. We were happy to see the 'A' Frame signage show up to reinforce the message. Thank You! The lot was clear by about 9:45 and there was no Lost & Found.

WEDNESDAY JUNE 26th.

Pretty quiet day all around. With the rain kicking in the beach was very quiet. We met Kenton this evening and had a great chat with him. There was no Lost and Found again.

THURSDAY JUNE 27th.

Quiet day user wise. We seemed to have a fair bit of dog leashing education though. We also had several kiter launch from the beach still. Amazing....considering all the signage that's up now. . At least there was some wind....even with the rain. Another 'all clear' on Beach Sweep.

FRIDAY JUNE 28th.

Fairly average user group day. Certainly busier than the past 3 days. Still having some Launch/Land education happening. We had 1 item at Beach Sweep which we left in the back storage room for the morning person to shuttle to the Port Office. I spoke with Nigel on Saturday morning about the new Lost and Found protocol but it may be a good idea to let all the guys know that we will now put it in the back room at night, since Kenton is doing lock-up. . The lot emptied out by about 9:40. .

SATURDAY JUNE 29th.

Definitely a 'multi user' day. We had everything related to water here due to the extremely light wind. Lots of washroom lineups even though we weren't parked out. I was surprised. It was a disappointing day for the Gorge Cup Windsurf racers and things looked pretty quiet at the Windance Demo Days on the sandbar. Beach Sweep was only one item for the brown bin. At midnight we were awoken by fireworks being set off behind the washrooms. When they moved to the East End parking lot and set off a HUGE one we decided it was time to call Kenton. He answered and said"Where is it because I'm looking for them as well". I said "At the East End" and he said "I am right outside here, is that your husband outside with the flashlight?" I replied "yes". He was already driving on Portway!! We were so impressed. He was not able to catch the kids as they left in a hurry.....but.....mission accomplished. The rest of the night was quiet. Having him on board is amazing!

SUNDAY June 30th.

Super busy day!! The wind was unexpected and quite lovely up until noonish. We parked out by 1:00. Lots of lineups at the washrooms. Beach Sweep was only brown bin stuff again. It was a quiet night until about 11:00

when we heard the fire sirens. Looking West we could see the glow in the sky. We didn't realize exactly where it was until Retro and I did our usual morning walk on Monday morning and saw the smouldering remains on the Hook Island. Now we know why the emergency vehicles seemed to be confused as to how to access it.

WOW! Week one is already over. Crazy fast!

Sent from my iPad

Commission Memo



Prepared by: Michael McElwee
Date: July 9, 2019
Re: Dog Park Lease Amendment

In May of 2017, the Commission approved a no-cost lease agreement with Hood River Valley Parks & Recreation District (“Parks”) and a related Inter-Governmental Agreement (“IGA”) for Parks to utilize Port property at the east end of the Hook lagoon for creation of an enclosed dog play park.

Parks has a separate lease with the City of Hood River for complementary use of a section of land now enclosed inside the fence for the sewage treatment plant. The City is also a party to the IGA.

The original Lease required that the construction of all improvements be completed by December 31, 2017. Due to Parks budgetary constraints and other delays, the park has not been developed. The attached Amendment No. 1 to the Lease extends the deadline for construction to June 1, 2020.

RECOMMENDATION: Approve Amendment No. 1 to Lease with Hood River Valley Parks and Recreation District for Dog Park.

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AMENDMENT TO LAND LEASE FOR DOG PARK

PARTIES: Port of Hood River (“Lessor”)
1000 E. Port Marina Drive
Hood River, Oregon 97031

and

Hood River Valley Parks and Rec. District (“Lessee”)
1601 May Ave.
Hood River, OR 97031

RECITALS

- A. The Parties entered into Land Lease for Dog Park which was mutually executed by the parties on July 26, 2017 (the “Lease”).
- B. Section 5.B. of the Lease required Lessee to complete construction of all Improvements no later than December 31, 2017.
- C. Lessor and Lessee agree that the time period for construction of all Improvements should be extended in accordance with this Amendment.

NOW, THEREFORE, BASED ON THE MUTUAL PROMISES OF THE PARTIES, THE PARTIES AGREE AS FOLLOWS:

- 1. Section 5.B. of the Lease is amended to state that Lessee shall complete construction of all the Improvements at Lessee’s sole expense, no later than June 1, 2020.
- 2. Except as set forth by this Amendment, all terms and conditions of the Lease remain in full force and effect.

Dated: _____

Dated: _____

Lessee: Hood River Parks and Recreation
District

Lessor: Port of Hood River

Signed: _____
Title: District Director
Address: 1601 May Street
Hood River, OR 97031
Phone: 541- 386-1303
Email: mark@hoodriverparksandrec.org

Signed: _____
Title: Executive Director
Address: 1000 E. Port Marina Drive
Hood River, OR 97031
Phone: (541) 386-1645
Email: porthr@gorge.net

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Commission Memo



Prepared by: Anne Medenbach
Date: July 9, 2019
Re: Hood River Distillers Lease

Hood River Distillers (HRD) and Staff have been working for a couple of months on a lease addendum for the Maritime building. Due to the new Lease Policy and the agreed upon clauses below, staff felt it more efficient to execute a new lease rather than another addendum. The new lease will use the new Lease Template and include the following clauses:

1. Reduce HRD's leased premises by taking the east side of the Maritime lot out of their Lease.
2. Add 3 more renewal option years, which extends the lease through 2024
3. Include a clause which adds the ability of the Port to pass through any new assessments/taxes, (i.e., Local Improvement District)
4. Include a clause which releases the Port from any fees or costs associated with the storm line to the date of the Lease.

Staff received a response that the lease was satisfactory as the clauses are the same as the addendum. However, HRD's legal counsel cannot review the final lease document before the 9th. Staff suggests that the Board authorize execution of the lease if there are no substantive edits by HRD's legal counsel.

RECOMMENDATION: Approve Lease with Hood River Distillers for the property located at 900 Portway Avenue, subject to legal counsel review.

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LEASE

THIS LEASE is entered into at Hood River, Oregon by and between **PORT OF HOOD RIVER**, an Oregon municipal corporation, hereinafter referred to as “Lessor,” and Hood River Distillers Inc., an Oregon Corporation, hereinafter referred to as “Lessee”, and replaces any prior lease of the Leased Premises or adjacent areas by Lessor to Lessee.

- 1. Leased Premises Description.** In consideration of the covenants of the parties, Lessor leases to Lessee approximately 38,474 square feet of space in Lessor’s building commonly known as the Maritime Building located at 910 Portway Ave., Hood River, Oregon (“Building”) and adjacent areas outside the Building hereafter described (“Leased Premises”). The Leased Premises outside areas adjacent to the Building are bounded on the North and West by the existing fence, on the South by Portway Avenue and a portion of the existing fence and on the East extending from the Eastern wall of the Building, North to the existing fence and South to a portion of the existing fence (“Outside Lease Area”). The Leased Premises are identified in the attached “Exhibit A.”

Building Name:	Maritime
Building Address:	910 Portway Ave.
Lessee Suite/Description:	Entire Building and Outside Lease Area

- 2. Term.** The Lease shall be binding when both parties sign the Lease. The Lease Term shall be for the period effective on **July 1, 2019** and continuing through June 30, 2021. If not in default under the Lease, and if Lessee pays Lessor all Rent Lessee owes or may be responsible to pay under the Lease, Lessee has the option to extend the Lease for three extension term(s) of one years each, through June 30, 2024, provided Lessee gives Lessor written notice of Lessee’s intent to renew the Lease for the additional term while the Lease is in effect. To be effective, Lessee’s notice to renew must be received by Lessor no later than 90 days prior to the Lease termination date.

Effective Date:	July 1, 2019
Lease Expiration Date:	June 30, 2021
Renewal Options:	three (1) year options
Renewal Notice Requirement:	90 day

- 3. Allowed Use; Building Condition.** Lessee shall use the Leased Premises for warehousing and storage. The Leased Premises shall not be used for any other purposes without the written consent of Lessor, which may be granted or denied in Lessor’s discretion. The Leased Premises is leased to Lessee in “As Is” condition. Lessor will have no obligation to maintain or make any improvements or repairs to the Leased Premises or the Building, including but not limited to the ground or any surface or subsurface conditions, to any Building structural components, to the roof, to windows, to Building siding cladding, waterproofing or any Building system including the electrical system and heating and cooling system.

4. Rent

The rents Lessee owes Lessor shall be and consist of Base Rent (“Base Rent”) plus Additional Rent (“Additional Rent”). For purposes of this Lease, Base Rent and Additional Rent are referred to collectively as “Rent”.

4.1 Base Rent. When this Lease is signed Lessee shall pay Lessor Base Rent in the amount stated below from the Effective Date through the month when signed. Base Rent shown below shall be payable thereafter in equal monthly installments in advance on the first day of each calendar month thereafter during the Term of this Lease, except to the extent otherwise specifically provided elsewhere in this Lease.

<u>Suite #</u>	<u>Rentable Area Square Footage</u>	<u>Rate per s.f. per month</u>	<u>Monthly Base Rent</u>
Entire Building	38,474	\$0.65	\$25,008.00

4.1.1 Consumer Price Index (CPI). Starting on the first anniversary of the Effective Date, and occurring annually thereafter, including any extensions of this Lease, Base Rent will be adjusted by adding to the monthly Base Rent amount payable during the previous 12-month period a percentage increase equal to the previous twelve months base rent amount times the percentage change in the Consumer Price Index for the Western Region Class BC, or a similar U.S. Government inflation index selected by Lessor (CPI) for the most recent 12-month period for which a published CPI is available. However, in no event will the annual increase be less than 1 percent or more than 5 percent.

4.2 Additional Rent. Additional Rent shall be all other sums of money that shall become due from and payable by Lessee to Lessor under this Lease, including without limitations, Operating Expenses as defined in Section 4.3.1 and Taxes and Assessments as defined in Section 4.3.2.

4.3 Additional Rent Calculation.

<u>Rentable Area (Square Footage)</u>	<u>Estimated rate per s.f. per month</u>	<u>Monthly Estimated Additional Rent</u>
38,474	\$0.19	\$7,310

4.3.1 Operating Expenses. Except as otherwise provided in this Section 4.3, Lessee shall be responsible to pay or reimburse Lessor for paying all operating expenses incurred by Lessor associated with Lessee’s occupancy and use of the Leased Premises (“Operating Expenses”).

4.3.1.1 Operating Expenses include all Lessor Leased Premises repair and maintenance costs Lessor chooses to incur, if any, and all costs and

expenses incurred by Lessor for utility usage that is not payable directly by Lessee, including but not limited to: electricity, gas, water, telecommunications and internet.

4.3.1.2 Operating Expenses shall not include (a) Lessor's capital expenditures, if any, determined pursuant to Generally Accepted Accounting Principles as interpreted by Lessor, consistently applied, made in connection with the Leased Premises or any equipment therein or thereon, except for those (i) required to comply with laws enacted after the date of this Lease, or (ii) made for the primary purpose of reducing Operating Expenses (b) attorneys' fees incurred in enforcing the terms of any lease; (c) any amount paid to an entity or individual affiliated with or otherwise related to Lessor which exceeds the amount which would be paid for similar goods or services on an arms-length basis between unrelated parties; (d) any cost of selling, exchanging or refinancing the Leased Premises or Building and any tax increase caused by a revaluation by virtue of a sale of the Leased Premises by Lessor; (e) Lessor's 's general administrative overhead not directly attributable to the Leased Premises, and (f) costs for services normally provided by a property manager where the Operating Expenses already include a management fee.

4.3.2 **Taxes and Assessments.** Lessee shall promptly pay when due all assessments, real estate taxes, other taxes, fees and other charges levied or imposed by any governmental body against the Leased Premises and the property where the Leased Premises are located whether or not now customary or within the contemplation of the parties. Payment of the assessments, taxes, fees or charges shall be made as an Additional Rent charge. Lessee shall pay directly all taxes levied on or with respect to Lessee's personal property located on the Leased Premises.

4.3.3 **Annual Adjustment/Reconciliations.** Within a reasonable time following the end of each Lessor fiscal year ending June 30 ("Fiscal Year") during the Term, Lessor shall furnish to Lessee an itemized statement prepared by Lessor, setting forth Lessee's total Rent, including Additional Rent, for the preceding Fiscal Year, the estimated amount of Lessee's share of future Additional Rent for the upcoming Fiscal Year, and the Rent payments made by Lessee, including Additional Rent, during the prior Fiscal Year ("Itemized Statement"). Should Lessee's prior Fiscal Year Additional Rent payments exceed the actual Additional Rent owed, Lessor shall credit Lessee that over payment amount to apply to the next Fiscal Year Additional Rent amount. Should Lessee's prior Fiscal Year Additional Rent payments be less than actual Additional Rent owed, Lessee shall pay Lessor for such deficiency in a lump sum within thirty (30) days after receipt of the Itemized Statement.

The upcoming Fiscal Year Additional Rent payable by Lessee will be based on the preceding Fiscal Year actual expenses allocated to Lessee and any new or higher costs or expenses allocated to Lessee which Lessee will owe based on Lessor's forecast of the future Fiscal Year expenses, which shall be reflected in the

Itemized Statement. The new monthly Additional Rent amount will be sent to Lessee by Lessor in the annual Itemized Statement. Lessor shall adjust the Additional Rent monthly payment amount beginning every July 1 of the Term, which Lessee shall pay monthly in advance on the first day of each month during the Fiscal Year. The updated Additional Rent payment payable by Lessee for July and any other month that begins after the Itemized Statement is sent by Lessor to Lessee shall be due within ten (10) days after the date Lessor sends the Itemized Statement to Lessee.

4.4 Additional Consideration.

As part of the consideration for Lessor executing this Lease, Lessee, for itself, any affiliated business in which Lessee may have an interest, its successors, assigns and insurers, hereby releases Lessor and the City of Hood River, as a third party beneficiary, from any claim, cause of action, obligation, liability or damage, including any claim or right to indemnity, contribution, design professional expenses, attorneys' fees, expert expenses or costs, of any kind related in any way to the underground storm water drainage pipe line and its effect on Lessee's real property and building located at 660 Riverside Drive, Hood River, Oregon, arising prior to the date of this Lease. This release includes but is not limited to the \$97,201 Lessee states Lessee has spent investigating and remediating storm drainage line issues as of May 6, 2019.

5. Building Exterior Areas.

Lessee is granted a license during the Lease term to travel unimpeded by vehicle, including semi-trucks and trailers over the Leased Premises to circumnavigate the Building and to access existing Building roll up doors and loading docks.

To accommodate travel of others and in order to maintain Lessee access and use of the southern loading bay, located on the South eastern corner of the Building, Lessor agrees to expand the eastern driveway from Portway Avenue located southerly from the southeast portion of the Building ("Eastern Driveway") by one lane width to the east if Lessor undertakes improvement or construction activities on land east of the Shared Travel Area described below.

Lessee, the Port and others will have the right to travel over the Eastern Driveway and travel over an adjacent area thirty feet wide extending easterly from the east wall of the Building, thirty feet easterly from a line extending north from the Building northeast corner to the Lease northern boundary and thirty feet easterly from a line extending south from the Building southeast corner to Portway Avenue ("Shared Travel Area").

Lessee may temporarily block the Eastern Driveway and Shared Travel Area during unloading and loading activities.

Lessee may not park vehicles or trailers or store anything or take any action or allow any action to be taken, that impedes vehicular travel by others at any time in the Shared Travel

Area. Lessee's failure to abide by this obligation after notice and failure to promptly cure will be a material breach of the Lease.

The Port grants to others, subject to revocation and any limitations the Port may impose, the right in common with Lessee, to travel by motor vehicle unimpeded through the Shared Travel Area.

During the lease term the Port will not authorize licensees to park vehicles or trailers, store anything or take any action that impedes Lessee's vehicular travel at any time within the Shared Travel Area.

A diagram labelled Exhibit "B" attached to this Lease shows outside areas including the Building, the Leased Premises, the Eastern Driveway and the Shared Travel Area described above and Port property east of the Building.

6. Parking. Lessee may park vehicles on the Leased Premises.

7. Insurance

7.1 Lessee Hold Harmless Agreement. Lessee agrees to indemnify and save Lessor, Lessor's Port Commissioners, officers, employees and agents harmless from any claims by any persons, firms, or corporations arising from business conducted on the Leased Premises or from anything done by Lessee at the Leased Premises, and will further indemnify and save Lessor harmless from all claims arising as a result of any breach or default on the part of Lessee under the terms of this Lease, or arising from any willful or negligent act or omission of Lessee's agents, contractors, employees, or licensees in or about the Leased Premises, and from all costs, counsel fees, and liabilities incurred in any action or proceeding brought thereon; and in case any action or proceeding is brought against Lessor by reason of any such claim, Lessee, upon notice from Lessor, covenants to resist and defend such action or proceeding by counsel.

7.2 Lessee Insurance. On or before the effective date of the Lease and thereafter during the Lease Term, Lessee shall maintain insurance and provide Lessor with current certificates of insurance, including an additional insured endorsement, ensuring coverage of:

(a). Commercial General Liability insurance covering the insured against claims arising out of Lessee's operations, assumed liabilities under this Lease and use of the Leased Premises. The combined single limit shall not be less than One Million Dollars (\$1,000,000) per occurrence with a Two Million Dollar (\$2,000,000) aggregate limit. Lessee agrees to keep the policy in effect for the duration of the Lease Term. The policy shall name Lessor as additional insured, and expressly include Lessor's Port Commissioners, officers, employees, and agents as additional named insured. The policies shall state that the coverage is primary and will not seek any contribution from any insurance or self-insurance carried by Lessor and shall contain a clause that the

insurer will not cancel or change the insurance without first giving Lessor at least fourteen days prior written notice. The insurance shall be provided by an insurance company registered to do business in the State of Oregon, or by a company approved by Lessor.

(b). Property Damage insurance covering (a) all furniture, trade fixtures, equipment, merchandise and all other items of Lessee's property on the Leased Premises and all alterations and other improvements and additions to the Leased Premises whether owned or constructed by Lessee or Lessor pursuant to the Lease. Such insurance shall be written on an "all risks" of physical loss or damage basis, for the guaranteed replacement costs new value without deduction for depreciation of the covered items and in amounts that meet any co-insurance clauses of the policies.

7.3 Building Damage or Destruction. Lessor shall maintain property insurance covering the Building, Exterior Building Areas and Building Common Areas providing protection against "all risk of physical loss". If the Leased Premises or Building are partially destroyed (more than 25%) by fire or other casualty, Lessor may decide to repair the Leased Premises or Building, or not, in Lessor's sole discretion. Lessor shall notify Lessee in writing of Lessor's intent regarding repair within 30 days after the date of the damage. If Lessor notifies Lessee that Lessor does not intend to repair the damage the Lease shall terminate effectively at the date of the damage. If Lessor notifies Lessee that Lessor intends to repair the damage the Lease shall continue and Lessor shall return the Leased Premises or Building to as good a condition as existed prior to the damage, in a prompt manner reasonable under the circumstances. If Lessee's use of the Leased Premises is disrupted during Lessor's repairs a reasonable portion of the Rent shall be abated during the disruption. In no event shall Lessor be required to repair or replace Lessee's property including Lessee's fixtures, furniture, floor coverings or equipment. In no event shall Lessee be entitled to recover damages from Lessor related to destruction of the Leased Premises or Building or related to repairs undertaken by Lessor.

8. Tenant Alterations. Lessee shall not make any alterations, additions, or improvements ("Alterations") in, on or to the Leased Premises or any part thereof without the prior written consent of Lessor which Lessor may agree to, with or without conditions, or deny in Lessor's discretion after receiving a Lessee request to make Alterations Lessor will consider the following, among other issues: (i) the Alterations are nonstructural, do not impair the strength of the Building or any part thereof, and are not visible from the exterior of the Leased Premises; (ii) the Alterations do not affect the proper functioning of the Building heating, ventilation and air conditioning, mechanical, electrical, sanitary or other utilities, systems and services of the Building; (iii) Lessor shall have reviewed and approved the final plans and specifications for the Alterations; (iv) Lessee pays Lessor a fee for Lessor's indirect costs, field supervision or coordination in connection with the Alterations equal to five percent (5%) of the actual cost of such Alterations or such other sum as Lessor determines if Lessee agrees; (v) Materials used are consistent with existing materials in the Leased Premises and Building and comply with Lessor's Building standards; and (vi) before proceeding with any Alteration, which will cost more than \$10,000, Lessee obtains and delivers to Lessor a performance bond and a labor and materials payment bond for the benefit of Lessor, issued by a corporate surety licensed to do business in Oregon each in an

amount equal to one hundred twenty five percent (125%) of the estimated cost of the Alterations and in form satisfactory to Lessor, or such other security as shall be satisfactory to Lessor.

12. Fixtures and Personal Property. Lessee shall not suffer or give cause for the filing of any lien against the Leased Premises or Building. Lessee shall promptly notify Lessor of, and shall defend, indemnify and save harmless, Lessor from and against any and all construction and other liens and encumbrances filed in connection with Alterations, or any other work, labor, services or materials done for or supplied to Lessee.

At the expiration or earlier termination of the Lease Term Lessee shall remove all furnishings, furniture, equipment, other personal property and trade fixtures from the Leased Premises in a way that does not cause damage to the Leased Premises. If Lessee fails to remove any personal property, this shall be an abandonment of such property, and Lessor may retain Lessee's abandoned property and all rights of Lessee with respect to it shall cease; provided however, that Lessor may give Lessee written notice within 30 days after the Lease expiration or termination date electing to hold Lessee to its obligation of removal. If Lessor elects to require Lessee to remove personal property and Lessee fails to promptly do so, Lessor may affect a removal and place the property in storage for Lessee's account. Lessee shall be liable to Lessor for the cost of removal, transportation to storage, storage, disposal, and other costs incurred by Lessor with regard to such personal property.

13. Condemnation. If more than twenty- five percent (25%) of the Leased Premises and/or Building shall be taken or appropriated under the power of eminent domain or conveyed in lieu thereof, Lessor shall have the right to terminate this Lease. If the Lease is terminated, Lessor shall receive all income, rent award or any interest thereon which may be paid or owed in connection with the exercise of such power of eminent domain or convey in lieu thereof, and Lessee shall have no claim against the agency exercising such power or receiving such conveyance, for any part of such. If Lessor elects not to terminate the Lease, Lessor shall receive any and all income, rent award or any interest thereon paid or owed in connection with such taking, appropriation or condemnation.

14. Signs. Lessee shall not erect or install any signs, flags, lights or advertising media nor window or door lettering or placards visible from outside the Leased Premises or visible from the Building Common Areas or Exterior Common Areas without the prior written consent of Lessor, which Lessor may grant or deny in Lessor's discretion. Lessee agrees to maintain in good condition any signs or displays which are allowed.

15. Leased Premises Condition; Lessor Access. Lessee has inspected the Leased Premises and accepts them in AS IS condition. Lessee shall return the Leased Premises to Landlord in good, broom clean condition, ordinary wear and tear condition at the termination of this Lease. Any cost to bring the Leased Premises back to acceptable condition shall be the sole responsibility of Lessee.

Upon termination or expiration of this Lease, Lessor shall inspect the Leased Premises and shall either accept the condition AS IS or require Lessee to remove personal property and/or repair the Leased Premises to a condition that is acceptable including reasonable wear and tear. Any

cost to bring the Leased Premises back to acceptable condition shall be the sole responsibility of the Lessee.

Lessor shall have the right to enter upon the Leased Premises at all reasonable hours after 24 hours oral notice (without notice to protect public health and safety in an emergency) to inspect it or to make repairs, additions or Alterations to the Leased Premises or any property owned or controlled by Lessor. E-mail from Lessor to Lessee (or Lessee's on-site manager if any) may serve as notice of inspection of the Leased Premises. If Lessor deems any repairs reasonably required to be made by Lessee to be necessary, Lessor may give notice that Lessee shall make the same within 30 days (immediately in an emergency involving public health and safety), and if Lessee refuses or neglects to commence such repairs and complete the same in a timely manner, Lessor may make or cause such repairs to be made. If Lessor makes or causes such repairs to be made Lessee agrees that it will, within 30 days, pay to Lessor the cost thereof and pay Lessor's related costs.

Lessor shall provide up to 5 access keys to the Building or up to 5 access cards. Additional keys or lost keys may be purchased from Lessor for \$20 per key. Additional access cards may be purchased from Lessor for \$25 per card. If Lessor is managing a key system which requires issuance of a rekey Lessee shall be responsible for the cost associated with Lessor issuing a rekey.

16. Entire Agreement; Amendments. This Lease contains the entire agreement of the parties with respect to the Leased Premises. No prior agreement, statement, or promise made by any party to the other not contained herein shall be valid or binding. This Lease may not be modified, supplemented or amended in any manner except by written instrument signed by both parties.

17. Quiet Enjoyment. From the date the Lease commences Lessee will have the right to use the Leased Premises consistent with this Lease without hindrance or interruption by Lessor or any other persons claiming by, through or under Lessor, subject, however, to the terms and conditions of this Lease. The foregoing notwithstanding, Lessee agrees that Lessor may make improvements to the Building and adjacent areas which may cause noise or otherwise temporarily disrupt Lessee's quiet enjoyment of the Leased Premises.

18. Waiver. One or more waivers of any covenants or conditions by either party shall not be construed as a waiver of a subsequent breach of the same covenant or condition, and the consent or approval by Lessor to any act by Lessee requiring Lessor's consent or approval shall not be construed as consent or approval to any subsequent similar act by Lessee.

19. Assignment. Lessee agrees not to assign or in any manner transfer this Lease or any estate or interest therein without the previous written consent of Lessor, and not to sublet the premises or part or parts thereof without like consent. Lessor may withhold consent in Lessor's discretion.

20. Default. Time is of the essence of performance of all the requirements of this Lease. If any Rent or other sums payable by Lessee to Lessor shall be and remain unpaid for more than ten (10) days after the same are due and payable, or if Lessee shall fail to comply with any term or condition or fulfill any obligation of the Lease (other than the payment of Rent or other charges) within fourteen (14) days after written notice to Lessee specifying the nature of the default with

reasonable particularity, or if Lessee shall declare bankruptcy or be insolvent according to law or if an assignment of Lessee's property shall be made for the benefit of creditors or if Lessee shall abandon the Leased Premises, then in any of said events Lessee shall be deemed in default hereunder. In the event of a default the Lease may be terminated at the option of Lessor. If the Lease is terminated, Lessee's liability to Lessor for Rent and damages shall survive such termination and Lessor may re-enter, take possession of the premises, and remove any persons or property by legal action or by self-help with the use of reasonable force and without liability for damages. The foregoing remedies shall be in addition to and shall not exclude any other remedy available to Lessor under applicable law.

21. Holdover. If Lessee does not vacate the Leased Premises when the Lease term expires, Lessor shall have the option to treat Lessee as a Lessee from month to month, subject to all the provisions of this Lease except the provisions for term and renewal, and at a rental rate equal to one hundred and fifty percent (150%) of the daily prorated amount of the Rent for the last period prior to the date of expiration. Lessor may choose to lower the rental rate and will notify Lessee of such choice in writing once Lessee is Holding over. Failure by Lessee to remove fixtures, furnishings, trade fixtures, or other personal property which Lessee is required to remove under this Lease shall constitute a failure to vacate to which this paragraph shall apply. If a month-to-month tenancy results from holdover by Lessee under this paragraph, the tenancy shall be terminable at the end of any monthly rental period on written notice from Lessor given to Lessee not less than 10 days prior to the termination date specified in Lessor's notice. Lessee waives any notice which would otherwise be required by this Lease or by law with respect to month-to-month tenancy.

22. Notices. Whenever under this Lease a provision is made for notice of any kind, it shall be deemed sufficient if such notice to Lessee is in writing delivered personally to Lessee's registered agent if any, to the person signing the Lease, or to Lessee's on site manager if any who at the date of this Lease is _____, or sent by certified mail with postage prepaid to the address indicated on the signature page of this Lease; and if such notice is to Lessor, delivered personally to the Executive Director, 1000 E. Port Marina Drive, Hood River, OR 97031 or sent by certified mail with postage prepaid to the address indicated on the signature page of this Lease. Notice shall be deemed given on the date of personal delivery or if mailed, two business days after the date of mailing.

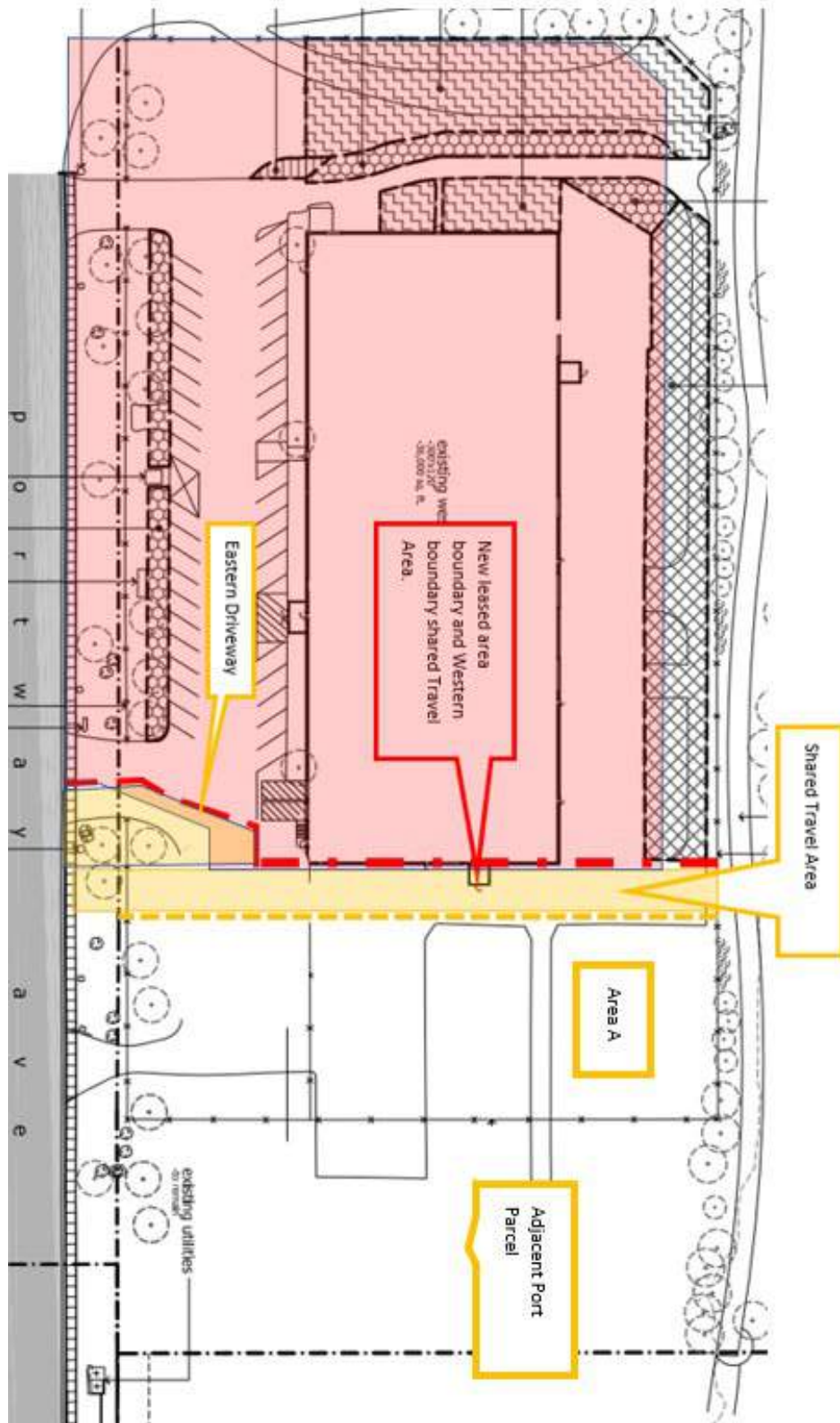
23. Dispute Resolution. Any dispute involving this Lease may be resolved by court action or mediation if both parties agree. If the parties agree to use a mediator, they will each pay one half the costs of mediation. If mediation does not occur or does not result in a solution satisfactory to both parties, the dispute shall be resolved by arbitration. Any arbitration shall be in accordance with the rules of the Arbitration Service of Portland then in effect. The parties shall use a single arbitrator mutually agreeable to them. If they are unable to agree on an arbitrator, or a process to select one, either party may apply to the Hood River County Circuit Court to appoint an arbitrator. The award rendered by an arbitrator shall be binding on the parties and may be entered in the Hood River County Circuit Court. The prevailing party in court action or an arbitration proceeding, including any appeal therefrom or enforcement action, shall be entitled to recover their reasonable attorney's fees and costs and disbursements incident thereto.

24. Authority to Execute. The persons executing this Lease on behalf of Lessee and Lessor warrant that they have the authority to do so.

DATED this ____ day of _____, 20---

Lessee:		Lessor:	Port of Hood River
Signed:	_____	Signed:	_____
By:		By:	Michael McElwee
Its:		Its:	Executive Director
Address:		Address:	1000 E. Port Marina Drive Hood River, OR 97031
Email/phone:		Email/phone:	(541) 386-1645

Exhibit B OUTSIDE AREAS



Commission Memo

Prepared by: Michael McElwee
Date: July 9, 2019
Re: HDR Bridge Contract- Task Order No. 9



On June 16, 2015, the Commission approved a master contract ("Contract") with HDR Engineering (HDR) for a variety of bridge engineering tasks. On June 18, 2019 the Commission approved Amendment No. 1 to the Contract extending it through June 30, 2021.

Under the Contract, specific scopes of work that the Port needs to have carried out are identified with a specific task order. Task Order No. 1 has been designated for "On-call Services," which makes HDR technical expertise available to assist staff with both miscellaneous and un-foreseen bridge tasks associated with the bridge. Over the past four years, efforts under this task order have included updates to the 30-year model, preparation of the annual capital plan, review of ODOT bridge inspection reports, etc.

Task Order No. 1 is typically amended prior to each new fiscal year to allocate funding. This year, for billing/tracking reasons, a new task order has been created, Task Order No. 9. This is for the same on-call services as in prior years.

RECOMMENDATION: Approve Task Order No. 9 to the Master Services Agreement with HDR Engineering, Inc. for on-call engineering services not to exceed \$30,000 plus reasonable reimbursable expenses.

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TASK ORDER 09

SCOPE OF SERVICES for ON-CALL ENGINEERING

June 26, 2019

This Task Order pertains to a **Personal Services Master Service Agreement**, (“**Agreement**”) by and between **Port of Hood River**, (“**Port**”), and **HDR Engineering, Inc.** (“**Consultant**”), dated June 17, 2015 (“the Agreement”) and as amended on July 21, 2017 and on June 27, 2019. Engineer shall perform Services on the project described below as provided herein and in the Agreement. This Task Order shall not be binding until it has been properly signed by both parties. Upon execution, this Task Order shall supplement the Agreement as it pertains to the Services described below.

PART 1.0 PROJECT DESCRIPTION & PURPOSE

The Port of Hood River has prioritized immediate and long-term action plans for the goal of maintaining the safety and functionality of their various infrastructure assets, including the Hood River Bridge crossing the Columbia River. As part of this effort, the Port requires technical expertise to assist their staff in assessing, analyzing, and designing various repairs and projects. This on-call contract will allow the Consultant to provide these services throughout the course of the fiscal year, up to but not over the not-to-exceed amount listed herein. This amendment gives the Port continued access to specialized expertise.

PART 2.0 SCOPE OF SERVICES

Task 1: Technical Services & Professional Advice

The Consultant may perform aspects of the following tasks associated with the Port’s facilities as requested by Port staff:

- Update the short term work plan and long term preservation plan for the Hood River-White Salmon (Columbia River) Bridge.
- Review and comment on ODOT routine, fracture critical, fatigue prone, and underwater inspection reports. Address scoping of potential repair projects and changes to maintenance plan due to inspection report findings.
- Review and evaluate underwater sonar scanning data provided by others. Address scoping of potential repair projects and changes to maintenance plan due to inspection report findings.
- Provide expert advice on specific issues associated with bridge inspection, maintenance, repair, rehabilitation, and retrofit.
- Provide minor technical engineering design services as it relates to the Port facilities.
- Serve as a Technical Advisor on applications and forms associated with Port project funding, such as STIP applications.
- Present to the Port Commission regarding any of the above mentioned items.
- Attend meetings, workshops, or other events as requested by the Port at the Port’s office in Hood River.
- Other Port requests specific to engineering as agreed to on a limited basis.

Assumptions

The following assumptions are made:

- All deliverables shall be electronic in MS Word, MS Excel, MS Project, and/or PDF format.
- Items listed above are specific to this on-call engineering task. Major professional service items may require a separate Task Order to execute.
- Port will provide existing documents such as plans, reports, and letters stating decisions impacting the task order to aid the Consultant's efforts.
- Expenses for printing, shipping, and travel mileage for this Task Order are reimbursable at cost. Any specific expenses over \$100 require prior approval.
- This on-call Task Order is intended to cover fees and costs not explicitly covered by other Task Orders.

Deliverables

The following items will be delivered to the Port:

- The format of the deliverable will depend on the specific task but may include technical memoranda, correspondence logs, drawings, calculations, spreadsheets, template documents, or any combination of these.

Task 2: Project Management & Administration

The Consultant will provide project management and contract administration for the services provided by the Consultant including project setup, invoicing and progress reports, client coordination, and quality control reviews of deliverables. Consultant will:

- Provide monthly progress reports to the Port and identify budget status and tasks performed to date during the billing period.
- Correspond with Port regarding contracts, billing, expenses, earned value, deliverables;
- Perform Quality Control (QC) reviews on all deliverables prior to submitting to Port;

Deliverables:

The following items will be delivered to the Port:

- Invoices and progress reports

PART 3.0 PORT'S RESPONSIBILITIES:

Port shall provide the documents noted above, provide access to Port properties as needed, and be available for mutually agreed upon times for site visits.

PART 4.0 PERIODS OF SERVICE:

All work shall be completed by June 30, 2020.

PART 5.0 PAYMENTS TO CONSULTANT:

The total fees for labor and expenses for this Task Order shall be a not-to-exceed amount of \$30,000, billed monthly based on actual staff hours expended, actual staff hourly rates times a multiplier of 2.95. Expenses billable to the project and in conformance with the Agreement will be reimbursed at cost and are included in the total not-to-exceed amount.

PART 6.0 OTHER:

None

This Task Order is executed this _____ day of _____, 2019.

PORT OF HOOD RIVER
"Port"

HDR ENGINEERING, INC.
"Consultant"

BY: _____

BY: _____

NAME: Michael S. McElwee

NAME: Zachary Toledo

TITLE: Executive Director

TITLE: Vice President

ADDRESS: 1000 E. Port Marina Drive
Hood River, Oregon 97031

ADDRESS: 1050 SW 6th Ave
Suite 1800
Portland, OR 97204

LAUREL 'B'
Port of Hood River - T09 On Call
HDR Engineering, Inc. - Fee Estimate (2019-20)

Tasks	Project Resource	Bill Rate	Principal-in-Charge	Project Manager	Bridge Engineer IV	Bridge Engineer II	Bridge EIT	Cad Technician	Project Admin. Asst	Project Accountant	Labor Hours	Labor Dollars	Telephone/ Printing/ Shipping	Travel/ Mileage/ Equipment Rental	Total Labor & Expenses	
1.0 Technical Services & Professional Advice Bridge Work Plan Updates & Reporting Review ODOT Inspection reports Review sonar scan data Minor technical engineering design and support Meetings, workshops, or other Port requests				12	8	4	12	4	16	2	0	\$2,830	\$ 15	\$ -	\$2,845	
				8	4	12	4	16	2	0	8	\$1,887	\$ 15	\$ -	\$1,902	
				4	12	16	12	16	2	0	8	\$1,376	\$ 10	\$ -	\$1,386	
				12	12	2	16	16	2	0	14	\$8,390	\$ 15	\$ 382	\$8,405	
				0	0	0	0	0	0	0	0	\$0	\$ -	\$ -	\$0	
				48	48	0	18	16	16	2	0	100	\$17,582	\$ 75	\$ 382	\$18,039
				6	6	0	0	0	0	4	2	12	\$1,889	\$ 15	\$ -	\$1,889
				12	12	16	0	0	0	4	18	30	\$4,396	\$ 15	\$ -	\$4,411
				8	8	16	0	0	0	4	20	30	\$5,646	\$ 30	\$ -	\$5,661
				2	26	16	0	0	0	8	20	72	\$11,931	\$ 30	\$ -	\$11,961
			2	74	16	18	16	16	10	20	172	\$29,513	\$ 105	\$ 382	\$30,000	
			\$514	\$17,453	\$2,945	\$2,425	\$1,728	\$1,958	\$750	\$1,739						
2.0 Project Management & Administration Project coordination Project Invoicing and reporting Quality reviews and management			0	48	0	18	16	16	2	0	100	\$17,582	\$ 75	\$ 382	\$18,039	
			0	6	0	0	0	0	4	2	12	\$1,889	\$ 15	\$ -	\$1,889	
			2	12	16	0	0	0	4	18	30	\$4,396	\$ 15	\$ -	\$4,411	
			2	8	16	0	0	0	4	20	30	\$5,646	\$ 30	\$ -	\$5,661	
			2	26	16	0	0	0	8	20	72	\$11,931	\$ 30	\$ -	\$11,961	
			2	74	16	18	16	16	10	20	172	\$29,513	\$ 105	\$ 382	\$30,000	
			\$514	\$17,453	\$2,945	\$2,425	\$1,728	\$1,958	\$750	\$1,739						
			Total Hours	Total Hours	Total Hours	Total Hours	Total Hours	Total Hours	Total Hours	Total Hours	Total Hours	Total Dollars	Total Dollars	Total Dollars	Total Dollars	

Commission Memo



Prepared by: Fred Kowell
Date: July 9, 2019
Re: Columbia Bank Merchant Service Contract

The Port of Hood River has used Sage Payments (now called Paya) for credit card processing services since 2007. Every 3 years, staff would go out and solicit banks and credit card processors for quotes based upon our credit card traffic. The results were always the same with the Merchant provider. They would be able to “meet” the costs that Paya provided the Port, but never beat Paya’s pricing.

However, this year Columbia Bank has been able to beat Paya’s pricing by about \$12,000 to \$15,000 per year depending upon the card used. It’s enough to move away from Paya. The other benefit is the time zone in which the Merchant Provider is on. Paya is on east coast time and Columbia Bank is on pacific time, syncing with our back office systems so we won’t have to fool our back office systems to be on the same time zone.

Columbia Bank partners with World Pay for its credit card transactions such that Columbia Bank clients enjoy the benefit of this partnership. The one other benefit in using Columbia Bank’s World Pay is that parking meter transactions flow through World Pay to Columbia Bank as well.

This migration will not occur until September 1, 2019, but we need to have a contract in place to make this transfer occur by that date.

RECOMMENDATION: Approve Contract with Columbia Bank for credit card merchant services.

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worldpay

Merchant Service
COLUMBIA BANK

Port of Hood River Pricing Guide

**A strategic partnership that helps
you become more efficient, more
secure and more successful**

Per Account Fees	Equip. Lease	Equip. Purchase
Pricing Method	*Interchange Pass Thru	*Interchange Pass Thru
Processing Rate	0.25%	0.25%
Clearing Fee	0.02%	0.02%
Network Acquirer Fee	0.15%	0.15%
Application	\$0	\$0
Monthly Location Fee	\$2.50/mo	\$2.50/mo.
OmniShield Breach Protection	\$0	\$19.95/mo.
Annual Fee	\$219.00/yr	\$219.00/yr.
Early Termination	\$295.00	\$295.00
Equipment Cost per unit	\$39.99/mo.	\$349.00

**Interchange includes card brands wholesale rates, network dues and assessments, international and other fees per occurrence passed directly through to merchant.*

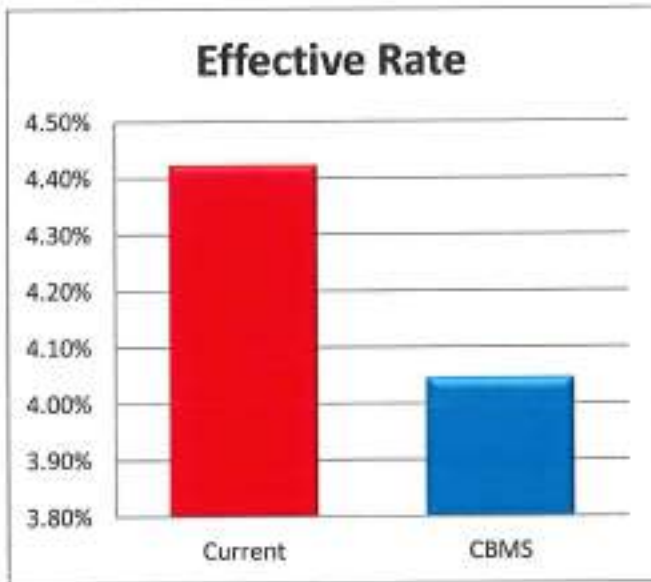


Merchant Services
COLUMBIA BANK

PORT OF HOOD RIVER
July/August/December 2018

	Current	Proposed
Total Monthly Net VS / MC / Discover Volume	\$ 1,028,143.50	\$ 1,028,143.50
Total Monthly Net VS / MC / Discover Transactions	41,626	41,626
Total Fees	\$ 45,483.68	\$ 41,595.70

Monthly Estimated Reduction in Cost - Dollars		\$ 3,887.98
Monthly Estimated Reduction in Cost - Percent		8.55%
Annual Estimated Reduction in Cost - Dollars		\$ 946.60



45 Days - Columbia Online

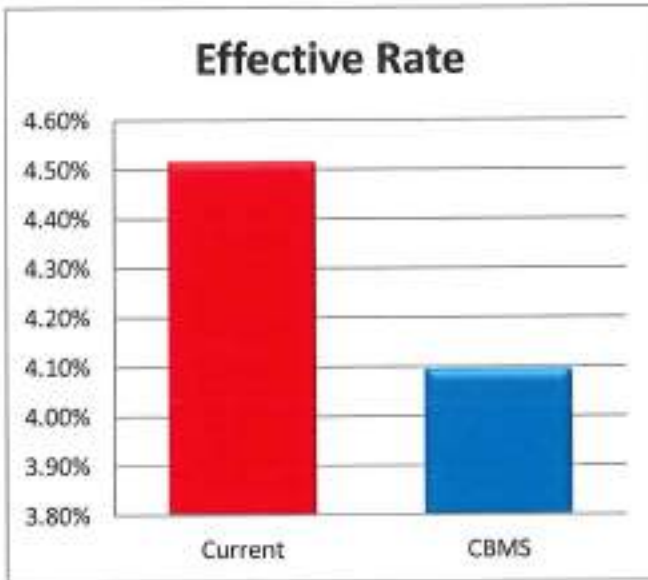


Merchant Services
COLUMBIA BANK

**PORT OF HOOD RIVER
Dec-18**

	Current	Proposed
Total Monthly Net VS / MC / Discover Volume	\$ 305,396.85	\$ 305,396.85
Total Monthly Net VS / MC / Discover Transactions	8,211	8,211
Total Fees	\$ 13,789.07	\$ 12,506.34

Monthly Estimated Reduction in Cost - Dollars	\$ 1,282.73
Monthly Estimated Reduction in Cost - Percent	9.30%
Annual Estimated Reduction in Cost - Dollars	\$ 946.60



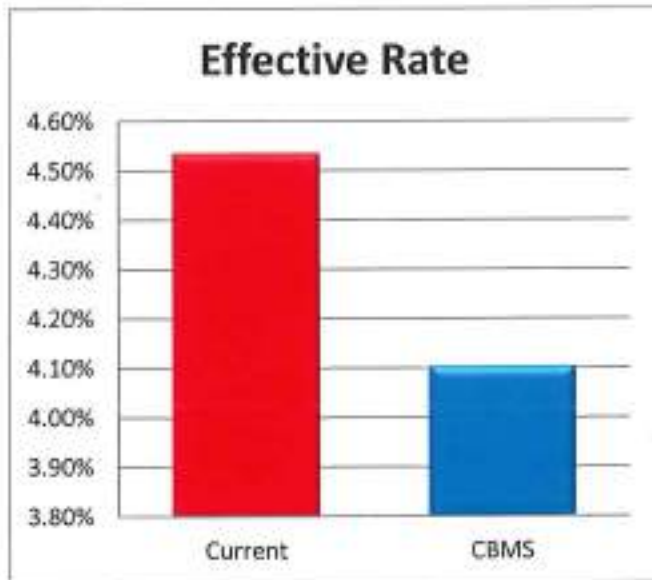


Merchant Services
COLUMBIA BANK

PORT OF HOOD RIVER
Aug-18

	Current	Proposed
Total Monthly Net VS / MC / Discover Volume	\$ 335,210.96	\$ 335,210.96
Total Monthly Net VS / MC / Discover Transactions	15,070	15,070
Total Fees	\$ 15,202.89	\$ 13,757.62

Monthly Estimated Reduction in Cost - Dollars	\$ 1,445.27
Monthly Estimated Reduction in Cost - Percent	9.51%
Annual Estimated Reduction in Cost - Dollars	\$ 946.60



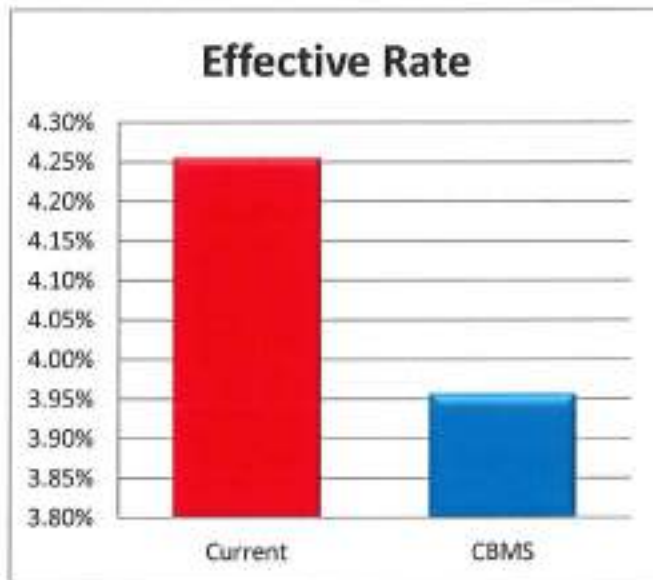


Merchant Services
COLUMBIA BANK

PORT OF HOOD RIVER
Jul-18

	Current	Proposed
Total Monthly Net VS / MC / Discover Volume	\$ 387,535.70	\$ 387,535.70
Total Monthly Net VS / MC / Discover Transactions	18,345	18,345
Total Fees	\$ 16,491.72	\$ 15,331.74

Monthly Estimated Reduction in Cost - Dollars		\$ 1,159.98
Monthly Estimated Reduction in Cost - Percent		7.03%
Annual Estimated Reduction in Cost - Dollars		\$ 946.60



Merchant Processing Agreement Terms and Conditions

4/2

These Terms and Conditions apply to your card processing program. For simplicity, we refer to ourselves (i.e., We/Us, LLC) as "Processor," "we," "our," or "us" in this document. We refer to you (i.e., the legal entity or sole proprietorship on the Application) as "you," or "your" or "Merchant." Other parties may also be parties to this Agreement (e.g., Member Bank, Processor, etc.). Terms that are capitalized but not defined are defined in Section 17.

1. Term and Exclusivity.

A. Term. This Agreement binds you on the earlier of your execution of this Agreement or your submission of a transaction for processing. This Agreement binds us the earlier of (i) the date we issue you a Merchant Identification Number, or (ii) the date we process your first transaction. Unless otherwise stated in the Agreement/Application, the term of this Agreement is 36 months ("Initial Term"). Following the end of any term, the Agreement automatically renews for periods of 36 months, unless either party gives written notice of its intent to terminate or not renew the Agreement at least 30 days before the then current term expires, provided that if automatic renewal of this Agreement violates the provisions of applicable law, the renewal term will be 30 days. For clarity, termination of this Agreement does not terminate your equipment lease.

B. Exclusivity. This Agreement is a "requirements contract." This means you shall exclusively receive the Services from us. However, we have no obligation to process a Visa or MasterCard transaction beyond the authority of a U.S. member of Visa and MasterCard, or to process Discover or American Express transactions outside the United States. Prior to exercising any right of termination or non-renewal, you agree that we shall have a right of first refusal before you enter into an agreement with a third party for the Services. Except for such length, you agree that our right includes terms and conditions that are substantially similar to those discussed with the third party.

2. Rules, Regulations and Laws. As part of this Agreement, you agree to comply with, and to cause your employees and agents to comply with: (i) the Laws; (ii) the Rules Summary; (iii) the Operating Regulations and terms and conditions requirements related to optional Association programs, if applicable (and any related ones); and (iv) the confidentiality and security requirements of (a) U.S. Patent Act and any related laws, rules, or regulations; and (b) the Associations and Networks, including the Payment Card Industry Data Security Standard, the VISA Cardholder Information Security Program, the MasterCard Site Data Protection Program, the American Express Data Security Requirements (DSR), and any other Association or Network program or requirement. You accept any responsibility or liability (e.g., costs, losses, liability) resulting from your decision not to participate in optional Association Programs (e.g., the Association EMI program).

3. Acceptance of Cards.

A. You can elect to accept all card types, or only certain Visa and MasterCard card types ("Limited Acceptance"). You are solely responsible for your Limited Acceptance program. This includes: (i) picking card types at the point of sale; (ii) paying Association fees and charges for only accepting certain card types; and (iii) paying any costs we incur in connection with your Limited Acceptance. Our obligations are limited to those expressed in the Operating Rules. Should you submit a transaction for processing for a card type you have indicated you do not wish to accept, we may process that transaction and you agree to pay any applicable fees, charges, and assessments. The card types are: (i) "Debit Card" – U.S. and non-U.S. bank issued Visa or MasterCard Cards that access consumer asset accounts with 14 days of purchase, including stored value prepaid, EBT, gift or consumer check Cards; (ii) "Other Card" – all Visa and MasterCard Cards issued by a non-U.S. bank and all Visa and MasterCard Cards other than Debit Cards, including business and consumer credit Cards. Your Limited Acceptance program only applies to U.S.-issued cards. The Visa and MasterCard Operating Regulations require merchants accepting any Card product bearing a Visa or MasterCard symbol to continue accepting both debit and credit Card products issued by non-U.S. members.

B. If we are unable to obtain or choose not to obtain authorization from an Association or Other Network, we may "stand-in" for the Association or Other Network. If we stand-in, we will authorize the Card transaction based on our own criteria. Our decision to stand-in does not change your obligations to us.

4. Our Responsibilities.

A. We will provide the Services in accordance with our then-current systems, standards and procedures. Nothing requires us to provide you with any special programming, any system program, or procedure implementation, or any special hardware or software.

B. We will provide reports online for each local day's activity by 10:00 AM ET the next calendar day. Such reports will include an accounting for each currency with supporting detail of transaction activity, Daily Forecasts, amounts and funds transfers for transaction settlement services. Reports will be available for download on the online reporting tool for a period of 14 months from the date of issue. Reports may be upgraded, enhanced, or otherwise modified by us at any time.

C. We will obtain payment to you for the amount of each accepted Card transaction only after we receive payment.

D. We have the right to honor and rely on the request(s) or instruction(s) of any person we reasonably believe to be your representative or Agent. In the event we receive returned mail intended for you, we may, but are not required to, provide a replacement address according to our standard operating procedures.

E. We are only responsible for processing credits and adjustments for Card transactions that we originally processed. You authorize us to submit Card transactions and deposits. We have the right to withhold amounts from you if we discover inaccuracies.

F. We may report information about your account, late payments, missed payments, or defaults to credit bureaus.

G. We may suspend or cease providing any Services to you in response to a Member Bank Network, or Association request. We will use reasonable efforts to notify you if we suspend or cease any Services.

H. We are responsible for the security of Cardholder data we store or transmit on your behalf only while it is in our possession and control.

5. Your Responsibilities.

A. We have the right to charge your Designated Account without notice or to require payment from you in any appropriate situation for the amount of any Card transactions. This right includes Card transactions: (i) where merchant fees are not paid; (ii) where there is no valid authorization response; (iii) where the Cardholder has not given authority (e.g. impudently drawn, accepted, or endorsed transactions); (iv) where the Card transaction record is illegible;

(v) where the Cardholder disputes the sale, quality, or delivery of merchandise; or (vi) where the Card transaction was drawn by, or captioned to, you, in a way that breaches the agreement, or violates the Laws or Operating Regulations; (vii) where we have not received and retained payment for the Card transaction (even if we have already paid you for the transaction); (viii) where it is alleged that you have failed to comply with the Operating Regulations, Rules Summary, or the Laws; (ix) where an Association or Other Network action (e.g., a chargeback or compliance case) is pending or has been resolved against you; (x) where we have incurred claims, damages, or losses from any source involving Card issuers; or (xi) where the extension of credit for a Card transaction violated the Laws or Operating Regulations. Additionally, you remain liable to us for any transaction returned to us for any reason ("chargebacks" or for PIN debit Card transactions "reversals"). You agree to review all chargeback-related notices and reports (in any format). Your failure to respond to a chargeback or reversal within the applicable deadline may forfeit your chargeback rights. We have no duty to assist you in defending a non-compliance allegation related to a chargeback or reversal.

B. You represent that any information you have supplied to us is true and accurate and that the name and tax identification number ("TIN") on the Application matches the name and TIN that you use to file your tax returns. You agree to update your information with us when it changes. We may need to share your TIN, entity name, processing volume, principal's social security number, or other information with governmental entities. You agree to cooperate with our requests for information for any reason. We may be required to withhold processing funds or to prevent processing funds to the IRS if you supply incorrect information, or a state or federal law or government agency so requires. You expressly release us from any liability in connection with our withholding of funds or submission of information to a government agency, even if named. You are responsible for any fines or penalties assessed against you or us.

C. You shall not sell, purchase, provide, share, or exchange Cardholder name, address, account number or other information to any third party (including your Agent) other than us, the Associations or the Networks, and then only for the purpose of completing a Card transaction.

D. You agree to balance and reconcile the Designated Account and the Reserve Account each day. You shall immediately notify us of any missing or improperly deposited funds. Additionally, you agree to review our (or our agents') reports including those made available online, notices, and invoices. You agree to accept any report, notice, invoice, Send a delinquent, or billing or payment error (you fail to report or dispute it in writing within 30 days of the date we made it available to you). We may make our reports, notices and invoices available to you in accordance with our standard processes which are subject to change. For 30 days following our receipt of your written notice of an error or correction, you agree to refrain from making any loss or expense claims against us so that we have time to investigate the situation. If you notify us that a Card transaction catch has not processed, we may, at our option, attempt to re-present the missing Card batches dated during the 90 day period preceding the date we received your notice. We have no obligation to correct any errors that flow from your failure to comply with the duties and obligations in this paragraph.

E. You shall not sell, assign, transfer, or encumber any part of your interest in the Reserve Account, or any present or future rights under this Agreement, including your right to receive payments or funds. Neither we nor Member Bank are obligated to honor any purported attempt to sell, assign, transfer, or encumber any interest, rights, payments, or funds. In the event you breach this Section, we have the right to withhold funds payable to you, in addition to any other rights we may have at law or equity. You shall indemnify and hold us harmless from and against any claims, liabilities and damages that any person (including a purported assignee) may assert against us arising out of your purported sale, assignment, transfer, or encumbrance of all or any of your present or future rights under this Agreement.

F. You agree to provide us with audited annual financial statements for your business using generally accepted accounting principles, at any time upon request. Additionally, you agree to provide any other financial information within fifteen days of a request by us.

G. You shall timely assist us in complying with all Laws and Operating Regulations related to the Services. This obligates you to execute and deliver all instruments we deem necessary for you to meet your obligations under the Agreement. Further, you agree to allow our auditors (third-party or internal) and the auditors of any Association or Other Network to review the documents, records, procedures, systems, controls, equipment, and physical assets related to your transactions upon reasonable notice at any time. You also agree to assist our auditors as necessary. If an Association, Member Bank, or regulatory agency requires a third-party audit or if the Operating Regulations or applicable law requires a third-party audit, we may retain a third party to conduct the audit or require you to immediately retain a specific third-party auditor and provide us with a final audit report. You agree to pay our audit costs or the audit costs of Member Bank, an Association or Other Network.

H. In the case of a delayed merchandise delivery, you agree to deliver the Card transaction record to us within two business days of the merchandise delivery (or as we specify in the Rules Summary). You agree to electronically deliver all other Card transactions and credit records to us in a suitable format within two business days of the transaction (unless the Associations or Networks require the records earlier). You also agree to deliver Card transactions and credit records to us at least once every business day. Your delivery constitutes an acknowledgment of each recorded transaction. You authorize us or our representative to place your endorsement on any Card transaction at any time. We have the right to refuse to accept any Card transaction. You waive notice of dispute related to any individual Card transaction.

I. You shall not store Cardholder data, including track 2 data, in violation of the Laws or the Operating Regulations. Further, you shall not retain or store magnetic stripe data following the authorization of a Card transaction.

J. You are solely responsible for the quality, accuracy, and adequacy of all transactions and information you supply. Accordingly, you shall implement and maintain adequate audit controls for monitoring the entry and delivery of data. When submitting Card transactions, settlement, and other data and information to us, you agree to follow our communication processes and document formats. You agree to any transfer information and data to us with a secure system.

K. You may use a third-party agent ("Agent") to perform some of your obligations under this Agreement subject to our approval. Agents include our software providers and equipment providers. You shall cause your Agent to complete any Association required steps or certifications (e.g., registration, FAFB, PCI-DSS, a.d.f.s. etc.). You shall ensure that your

Merchant Processing Agreement Terms and Conditions

4.2

Agent complies with all applicable requirements of this Agreement. You expressly assume all responsibility for the acts or omissions of your Agent as if they were your acts or omissions. If your Agent qualifies as a service provider under applicable Operating Regulations, you agree in your capacity as a service provider to cause the Agent to cooperate with us in our due diligence requests, and in performing any steps required for registration and certification. You are responsible for conducting your own due diligence on your Agents, including the fitness of their services for a particular purpose and for determining the compliance of their services with the Operating Regulations and the Laws. You expressly assume all liability for the acts and/or omissions of your Agent even if we introduce or recommend the Agent or assist the Agent's services.

1. You agree that it is important to notify us about changes in your business. Because of this, you agree to provide us 30 days prior written notice of your intent to: (i) change business form or entity type; (ii) sell stock or assets to another entity; or (iii) make changes that would affect information on the Merchant Application. Additionally, you shall notify us within three days of any judgment, writ, warrant of attachment, execution or levy against any substantial part (25% or more) of your assets. Should you change or add locations, you agree to follow our standards and procedures. Unless we agree otherwise, you agree that you will only present Card Transactions in us that correspond to the volumes and volumes described on the Merchant Application. Accordingly, we must pre-approve increases in Card transaction volume of 25% or more over the amount stated in the Merchant Application. Changes in monthly volume, the stated average ticket size or any other information on the Merchant Application entitle us to increase fees, delay or withhold settlement, or terminate this Agreement. Your failure to notify us of changes under this section subjects you to liability for any losses or expenses we incur.

M. **Virtual Private Network ("VPN"/"Secure Socket Layer ("SSL") Services.** Our standard VPN and SSL services establish an internet connection between you and us to process your transactions. You are responsible for: (i) ensuring that your communication equipment is compatible with our VPN or SSL; (ii) ensuring that each terminal with a connection to the VPN or SSL has an active personal firewall; and (iii) ensuring a secure key exchange and key management process (including a process for key revocation when your personnel leave). Our VPN or SSL communication interface relies on the internet. You agree that the internet is not always reliable and that internet problems and issues may interfere with our ability to process your transactions. Any service needs that appear in other parts of the Agreement do not apply to the VPN or SSL connection or to transactions transmitted using the VPN or SSL connection. We provide VPN and SSL services in accordance with our own standards, which are subject to change without notice. You agree to comply with any VPN and SSL standards we or the Associations or Other Networks establish.

N. **Optional Services.** We may offer you products and services through one or more third parties ("Optional Services"). You agree that, as available, the applicable third-party provider ("Provider") solely supplies and/or supports all Optional Services. We are not a party to your contracts with Providers. You are responsible for conducting your own due diligence on any Provider that you use, including the fitness of its services for a particular purpose and for determining the compliance of its services with the Operating Regulations and the Laws, even if we resell the Provider's services. You bear all of the risks associated with using an Optional Service. Although not an exclusion, we are not liable for: (i) exceeding control over Provider; (ii) units related to establishing and maintaining account relationships with Providers; (iii) ensuring service levels with respect to the Optional Service(s); (iv) our decision to offer an Optional Service shall not limit your duty to: (i) ensure that all account numbers are correct; (ii) notify Provider of changes in ACH, address, and account information; (iii) pay all fees, fines, damages, losses, or expenses arising in connection with your possession or use of an Optional Service; (iv) perform your own due diligence before using an Optional Service; and/or (v) perform any other proper act related to your use of the Optional Service. You agree to indemnify and hold us harmless for any damage, loss, claim, or liability arising from your possession and/or use of any Optional Service. Each Provider has the right to require you to enter into a separate agreement with it. Whether you and Provider enter into a separate agreement, you agree that: (i) your rights and duties regarding the use of an Optional Service are neither assignable nor delegable without Provider's prior written consent; (ii) you acquire no property right, intellectual property right, claim, or interest in any of Provider's systems, equipment, software, processes, programs or data; and (iii) you shall protect the confidentiality of Provider's software and documentation.

O. You agree to pay us all Provider imposed fees and assessments in connection with your use of the Optional Service(s). Your obligation to pay us shall continue until: (i) you have notified Provider(s) or your bank to cancel the Optional Service(s); (ii) you have provided us with notice that (a) you have notified Provider of your intent to terminate; (b) you have returned all equipment and software to Provider; and (c) you have ceased receiving all Optional Services; and (iii) Provider no longer assesses us for your receipt of the Optional Service or for possession of the equipment or software. You waive all rights to contest, challenge, or withhold payment for any fees we assess for Optional Services until you have satisfied the conditions in the preceding sentence.

P. You authorized us to contact your customers or their Card issuing bank(s) to find out information about any Card transaction. You shall not contact a Discover Cardholder unless authorized to do so by the Operating Regulations or required by Law.

Q. **Bankruptcy.** You agree to execute and deliver to us any documents we request to perfect and confirm the lien, security interest, and other rights in this Agreement. You shall immediately notify us of any bankruptcy reorganization, insolvency or similar action or proceeding initiated by or against you or any of your companies. Further, you shall include us on the list of creditors filed with the Bankruptcy Court, even if no claim exists at the time of filing. This is a security contract to make a loan or extend other debt financing or financial accommodations to or for your benefit and, as such, cannot be assumed or assigned in the event of your bankruptcy. This is a contract or recoupment and we are not required to file a major in interest from the automatic stay to notice on any of the Secured Assets. Nevertheless, you agree not to contest a motion for relief from the automatic stay. You must adequately fund the Reserve Account to provide us with adequate protection under Bankruptcy Code § 541. We have the right to consume and offset against the Reserve Account to cover your obligations under this Agreement, regardless of whether they relate to transactions created before or after your bankruptcy filing. Because this Agreement constitutes an extension of credit to your benefit, you acknowledge that you cannot assign the contract in the event of a bankruptcy. We may immediately terminate the Agreement if you fail to comply with any part of this Section.

R. **Wireless Service Acknowledgment.** We are not responsible for a wireless service coverage or for losses in coverage, or for any delays in transmitting. By selecting wireless service, you acknowledge that wireless coverage is not guaranteed and we have no control over the wireless service providers or the decisions they make. Additionally, you acknowledge that if wireless service is lost in your area, the equipment will not operate with another wireless carrier. We are not liable if wireless coverage is lost in a specific area and the equipment can no longer be used as a wireless terminal.

S. **Virtual Terminal Processor Services and Fees.** Our Virtual Terminal Processor Service (the "VT Service(s)") is an additional service (subject to separate fees and charges) that allows you to accept Card Transactions within the merchant portal application in accordance with our standards. You represent and warrant that you have implemented and will maintain secure systems for using the VT Services and transmitting information to us. You are responsible for any authorized or unauthorized transactions, whether using your user ID. You assume all liability for all acts or omissions arising out of your use of the VT Services; and (ii) risks associated with using software with internet connectivity.

T. Fees and Other Services.

A. You agree to pay fees, cost escalations, assessments, audits, penalties, fines, claims or other items under this Agreement or the Operating Regulations. We will periodically (daily, monthly, etc.) calculate your fees and charges and debit the account(s) that you designate ("Designated Account(s)") to collect those amounts. We have the right to determine and change the periods used in the systems referenced in our sale description without notice. We have the right to record, assess, and calculate interchange and other fees and amounts on an interim, chargeback, and certain other transactions retain such amounts, in accordance with our standard operating procedures. We also have the right to assess some or all of the fees and charges via a separate or combined Services invoice(s). We will charge you for any fines, fees, penalties, loss allocations, assessments, registration expenses, verification expenses, telecommunication expenses, sponsor's fees and other amounts assessed by Member Bank and/or third parties or incurred as a result of your actions, omissions, or use of the Services, or those we incurred on your behalf under the Operating Regulations, the Rules Summary and the Laws.

B. Transaction fees are levied on each authorization. Card draft, credit card, or other transaction type, regardless of the stated total ("Transaction Fee(s)"). We may charge a Transaction Fee for any late-settlement activity.

C. VISA, MasterCard and Discover Interchange fees, assessments, and other amounts will be either: (i) assessed to you separate from and in addition to the Discount Rate, Transaction Fee, and other fees listed in the Application; or (ii) included in the Discount Rate and/or Transaction Fee listed in the Application. For American Express Card transactions under Bundled Plus and Unbundled Transaction Pricing, we will assess interchange fees, assessments and other fees in addition to the Authorization Transaction Fee and other fees described on the Application. For American Express Card Transactions under Tiered Transaction Pricing, interchange fees and other amounts will be included in the Discount Rate and/or Transaction Fee listed on the Application. For PIN debit Card transactions under Bundled Plus and Unbundled Transaction Pricing, we will assess interchange fees, sponsorship fees, switch fees, gateway fees, our Transaction Fee and other fees. For PIN debit Card transactions under Tiered Transaction Pricing, we will assess interchange fees, sponsorship fees, switch fees, and gateway fees as pass through, and other amounts will be included in the Discount Rate and/or Transaction Fee listed on the Application. Certain fees are available upon request or through the Association. You are responsible for conducting your own inquiry into the nature and type of applicable fees. The Discount Rate, Transaction Fee and other fees may be based in whole or in part on interchange fees, assessments, and other fees that the Associations and Other Networks periodically change.

D. You acknowledge that in order to receive the best Discount Rate and Transaction Fee on a particular Card transaction, the transaction must first "qualify" and exactly meet certain criteria. Several factors can prevent a Card transaction from qualifying, including that it: (i) was held on a card that was not authorized; (ii) was not authorized; (iii) was not submitted for processing within 24 hours; (iv) was a Consumer or Commercial Reward transaction; a Visa Signature transaction, or a MasterCard World Elite Card transaction; (v) was deemed a "Non-Qualified" transaction by the Operating Regulations; (vi) was a foreign transaction or transaction from business, commercial, purchasing, or government Card(s); (vii) was difficult to capture; (viii) was difficult to authorize; (ix) was submitted incorrectly; or (x) was not eligible for the lowest electronic interchange fee for any other reason. Additionally, you may not qualify for the best Transaction Fee and/or Discount Rate if your average ticket differs from what we used to calculate the Transaction Fee and/or Discount Rate if you submit more than five percent of your monthly Card drafts without electronic transmission, or if your terminal software, or communications (they list in human precisely). The Associations change the transaction qualification criteria from time to time. For certain non-qualifying transactions, we assess a surcharge of a certain percent of the transaction amount. In the event that your Card transactions under Tiered Transaction Pricing do not qualify or only partially qualify for the qualified discount rate quoted on the Merchant Price Schedule under the Operating Regulations, you agree to pay the Non-Qualified Discount Rate and/or Transaction Fee or Non-Qualified Discount Rate and/or Transaction Fee set forth in the Application. In the event your Card transactions under the Bundled/Unbundled Transaction Pricing do not qualify or only partially qualify for the qualified discount rate quoted on the Merchant Price Schedule under the Operating Regulations, you agree to pay an additional Non-Qualified Surcharge if indicated on the Price Schedule. We do not guarantee that your transactions will qualify for any given rate, and we disclaim all responsibility and liability for a transaction's failure to so qualify. In addition, Card transactions that do not meet the necessary criteria for payment are subject to complete denial, reversal and/or chargeback.

E. You shall pay all fees imposed in connection with the Services. If we pay taxes for you, we can immediately debit your Designated Account or demand payment from you.

F. We may charge and you agree to pay for any non-specified service we provide and expense we incur at the request of or on behalf of you. Your use of any service not listed on the Application or provided at the commencement of the Agreement obligates you to pay any accompanying fees, charges, and related expenses. If you receive these Services you will be deemed to have consented to the fees, charges and expenses. We have no obligation to enhance or customize Services or additional services, but we may choose to do so for a separate fee. You shall take all necessary steps to ensure that you can receive the Services.

Merchant Processing Agreement Terms and Conditions

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"Secured Assets"). To secure all of your obligations under this Agreement. For Secured Assets maintained by Member Bank, you authorize Member Bank to comply with our demands regarding the Secured Assets. Our control of the Secured Assets with Member Bank constitutes a perfected interest under Article 9 of the Uniform Commercial Code. We may direct the disposition of the Secured Assets without further consent from you. You represent and warrant that we have the only security interest in the Secured Assets. You agree not to grant a security interest in the Secured Assets to a third party without our prior written consent. Additionally, we have a contractual right of set-off against the Secured Assets. Our right of set-off shall be deemed to have been exercised immediately upon the occurrence of an Event of Default with respect to any error by us or maintain our records, even if we enter the set-off in our books and records at a later time.

9. Indemnification and Limitation of Liability.

A. You shall indemnify and hold us and our directors, officers, employees, affiliates and agents harmless from and against all proceedings, claims, demands, losses, liabilities, damages and expenses (including any fines, fees, assessments, audit fees, cost and reputational costs) or penalties levied against us by an Association, any Card issuer, or any Other Network, and attorneys and collection fees and expenses; resulting from or otherwise arising out of: (i) the Services; (ii) any breach of any term or condition of this Agreement; (iii) any misrepresentation by you under this Agreement; (iv) your acts or omissions in connection with the Services under this Agreement, including the acts and omissions of your employees and agents; (v) your processing activities and provision of goods and services to Cardholders; (vi) any violation of the Operating Regulations, the Rules Summary, or the Laws; (vii) any guarantees we provide to a third party for your benefit, including lease guarantees; (viii) any infiltration, leak, breach, or violation of the processing system resulting from, arising out of, or in any way related to your ability to use the Services including your use of an Agent or any other third party processor or system, or your ability to connect to the Internet or an external network; (ix) any act or omission of a third party with which you have contracted; (x) any bankruptcy proceeding; (xi) effecting transactions with the use of a lost, stolen, compromised, or misused Card; (xii) any action you institute against any Association, Other Network or Card issuer following a chargeback or fine; or (xiii) any action we take against the Designated Account, Reserve Account, or any other account you use, pursuant to this Agreement. You shall also defend, indemnify, and hold harmless the institution that maintains your Designated Account for acting in accordance with any instruction from us regarding the Designated Account. This indemnification shall survive the termination of this Agreement. Your enrollment in the Breach Assist Program only reduces your indemnification obligations under this Agreement by the amount we actually recover in connection with the Breach Assist Program, and only to the extent the program amounts specifically relate to a data breach safety involving you. The Breach Assist Program's limited indemnity waiver may not cover all the costs associated with a data breach. You may review the specific terms and conditions of the Breach Assist Program at www.merchantprocessing.com/breachassist/, or by contacting a customer service representative at 1-800-390-1945 or 1-877-227-6727.

B. EXCEPT FOR THOSE EXPRESS WARRANTIES MADE IN THIS AGREEMENT, WE DISCLAIM ALL WARRANTIES, INCLUDING ANY EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. You acknowledge and assume all risks associated with the acceptance of cards. We are not liable for lost profits, lost business or any incidental, special, consequential, or punitive damages (whether or not arising out of circumstances known or foreseeable by us) you or your customers or any third party suffers in connection with the Services. We are not liable for damages or losses wholly or partially caused by you or your employees or agents. Nor are we liable for any damages or losses you may sustain as a result of our exercise of post-default rights or remedies under this Agreement, provided we had a good-faith, reasonable basis to believe an Event of Default occurred. Our liability is limited to the amount of fees arising out of this Agreement that had accrued the fees paid to us for the merchant Services in question for the calendar month preceding the date of our relevant act or omission. The parties acknowledge that the limitations in this Section are integral to the amount of fees we charge for the Services. Except as otherwise described in this Section, your exclusive remedy for any claim against us is termination of the Agreement. We are not in default under this Agreement or liable for any delay or loss in the performance, failure to perform, or interruption of any Services resulting directly or indirectly, from errors in data you or other parties provide to us, or any event beyond our reasonable control, including the Force Majeure Events defined below. If we defend a claim you bring against us and prevail, you shall reimburse us the costs, attorney's fees, and other related expenses we incurred.

C. We are not liable for, nor in default under this Agreement, for any delays, failure to perform, loss of performance, or interruption of services resulting directly or indirectly from a Force Majeure Event. A Force Majeure Event includes, but is not limited to, fire, weather, acts of God, acts of a public enemy, other casualty, power outages, finding delays (however caused), governmental actions or regulations, efforts in sale provided by you or others, international, domestic, and/or economic terrorism, or any other causes, whether similar or dissimilar to those just mentioned, beyond our reasonable control.

D. Except for actions related to your failure to pay amounts due under the Agreement, no cause of action shall be brought by either party more than one year after it occurred.

E. You recognize and agree that any limitations of liability set forth in this Agreement are fair and reasonable.

10. Confidentiality.

A. We will be providing you with Confidential Information. "Confidential Information" includes this Agreement and information relating to our methods, techniques, programs, devices and operations and those of Processors, the Associations and Other Networks. You shall not disclose Confidential Information to any person or entity, other than to your employees and agents who participate directly in the performance of this Agreement and need access to the information. You agree to comply with the confidentiality and security requirements of the Rules Summary, the Laws, and the Operating Regulations. This includes the Visa Cardholder Information Security Program ("CISP") found at www.visa.com/cisp, the MasterCard Site Data Protection Program ("SDPP") found at www.mastercard.com/psd, and the American Express Data Security Operating Policy ("DSOP") found at www.americanexpress.com/merchant; and any similar Association or Other Network program requirement. You acknowledge receipt of our notice of privacy policies and practices ("Privacy Notice") notwithstanding anything to the contrary in the Privacy Notice of this Agreement; we have the right to use, disclose, share, and retain any information you provide or that arises out

of the Services, during the term and thereafter. (i) with your franchisor or its association you belong to or belonged to at the commencement of this Agreement; (ii) with your affiliates; (iii) in response to subpoenas, warrants, court orders or other legal processes; (iv) in response to requests from law enforcement agencies or government entities; (v) to comply with applicable Laws; (vi) with our affiliates, business partners and agents; (vii) to Associations and Other Networks and their designees; (viii) to Providers and their designees; (ix) to any other related source or processor, including the applicable network, ISOCWSP, or independent Card issuer; (x) to perform analysis services for you, us and/or others, including analytic, tracking, and company transaction and other data to develop and provide insights for these parties as well as for developing, marketing, maintaining and/or improving our products and services; and/or (xi) to offer or provide the Services under this Agreement. You authorize us to make public the execution of this Agreement and/or the provision of Services under this Agreement and (ii) include your name and logo on a list of our customers that may be shared with the public. Upon our request, you agree to provide testimonial information regarding the Services.

B. You must secure and prevent the unauthorized access of any systems and media containing account, Cardholder or transaction information (physical or electronic, including account numbers, Card types, and terminal identification numbers). Except for Card data you maintain in accordance with this Agreement or the Laws or Operating Regulations, you shall render obsolete and unusable any media you no longer deem necessary or appropriate to store. You shall notify us of the identity of any third party who will have access to Cardholder data ("Merchant Provider(s)"). You shall also ensure that (i) Merchant Providers cannot access Cardholder data unless authorized by the Operating Regulations; (ii) Merchant Providers have proper security measures to protect Cardholder data; (iii) you and Merchant Providers comply with the PCI DSS; and (iv) you have written agreements with Merchant Providers securing compliance with the terms of this Section. You shall immediately notify us of any suspected or confirmed loss or theft of any transaction information. This includes any loss or theft from a Merchant Provider. You are responsible for demonstrating your and Merchant Provider's compliance with the PCI DSS program. You agree to provide us, at our option, verify whether you and your Merchant Providers can prevent future security violations. In the event of a suspected or confirmed loss or theft of information, you agree at your expense, to provide any information, whether requested by us, an Association, financial institutions or a local state or federal official in connection with the event. You further agree to cooperate in any ongoing investigation, including any forensic investigation. The information you provide in response to an investigator shall be considered as confidential information. The requirements of this provision apply to Cardholder data regardless of the medium in which the information is collected and regardless of whether you process transactions on internet, mail, phone, fax-to-fax or any other method.

C. Our proprietary and confidential online portal service provider reports detail about your use of the Services ("Portal Services"). We reserve the right to disallow, discontinue, suspend or change your use of Portal Services at any time without notice. You agree to maintain the confidentiality of any Portal Services passwords in your possession. If we provide Portal Services to you, our only obligation is to make the Portal Services available in accordance with our standard operating procedures (e.g., then-current, timeframes, standards, scheduling, and procedures, including those for setup, account access, and suspension of Portal Services). You shall provide us with prompt written notice of account or user ID changes, including User IDs that are no longer active or should be deleted. You are solely responsible for any unauthorized access to Portal Services including unauthorized employees or agents, access, or third party access. We have no liability for third-party intrusions in Portal Services (e.g., against providers) or errors or irregularities in the data reported to you.

11. **Continuing Unlimited Warranty.** This Section ("Continuing Unlimited Warranty") applies to each person who signs this Agreement as a Guarantor (each a "Guarantor"). To induce us to enter the Agreement, each Guarantor jointly and severally guarantees the prompt and full payment of all Obligations (defined below) when due.

A. The word "Obligation" is used in its most comprehensive sense. It includes all indebtedness, debts and liabilities (including principal, interest, late charges, collection costs, attorney's fees and the like) that Merchant owes us, whether Merchant created the obligation alone or with others, and whether Merchant is primarily or secondarily responsible. Obligations can be secured or unsecured, absolute or contingent, liquidated or unliquidated, and direct or indirect. Obligations can be evidenced by note, draft, a guaranty agreement, or otherwise. Obligations can exist now or arise in the future. It includes all payment obligations, indemnification obligations, and liabilities Merchant owes us arising from or related to the transactions in Services under this Agreement.

B. Guarantor promises to pay any Obligation that Merchant has not promptly paid when due. Guarantor promises to pay irrespective of our actions or inactions regarding the Obligations, or whether we have exercised any security interest created under this Agreement. Guarantor further promises to pay irrespective of the insolvency, insolvency, or unenforceability of any Obligation. Guarantor's obligations shall not be affected, modified or impaired by any counterclaim, set-off, deduction, or defense based upon any claim the Guarantor may have against you, Merchant, or us, except payment or performance of the Obligations.

C. Guarantor waives notice of any acceptances of this Continuing Unlimited Warranty. Guarantor waives presentment, demand, protest, notice of protest, and notice of dishonor or other nonpayment of any Obligations. Further, Guarantor waives notice of sale or other disposition of any collateral or security we now hold or later acquire. The duties of Guarantor shall not be released, discharged, or modified by: (i) our extending the time for payment (for Merchant or Guarantor), or (ii) our delay or omissions in exercising any rights, taking any actions or pursuing any remedies against Merchant or Guarantor. Guarantor agrees that we may release or modify any collateral, security, or other guarantees without notice or consent from Guarantor and without modifying Guarantor's duties to us. This is a guaranty of payment and not of collection. We have no obligation to demand or pursue any rights against Merchant or anyone else (including another Guarantor) or to exhaust any rights or remedies related to any collateral, security or other guarantees before demanding payment from Guarantor. Guarantor waives all defenses based on suretyship or impairment of collateral. Following a default under this Agreement, we may apply and/or set-off against amounts due to us any deposits, account balances, or other credits of Guarantor in our possession. Guarantor grants us a security interest in the items just described.

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11. The obligations of any Guarantor shall be joint and several with Merchant and any other Guarantor under this Agreement. The property described in any collateral security documents Guarantor provides, whether previously rankmoredesistly, or in the future, secures this Continuing Unlimited Guaranty. This Continuing Unlimited Guaranty shall be binding upon and inure to the benefit of the parties and their respective heirs, executors, administrators, successors, transferees and assigns. Other terms and conditions applicable to this Continuing Unlimited Guaranty can be found in Section 12...

12. **Miscellaneous Terms and Conditions.** The following terms and conditions also apply:

A. **Title to the Services.** You agree that the Services are licensed and not sold. As a result, you only secure a non-transferable, nonexclusive, non-exclusive right to use the Services. The right exists only during the term of the Agreement, and only for the purpose of accepting and managing payments. We retain all rights, title, and interest in and to the Services. This includes rights in materials we deliver to you, and any invention, development, product, trade name, trademark, service mark, software program, or derivative from any item just listed. You shall not: (i) copy, reproduce, alter, modify, create derivative works, publicly display, republish, use, sell, transmit, resell, or distribute any of our material; (ii) permit any third party to use or benefit from the Services through a vendor, franchise, reseller, service bureau, or other arrangement; (iii) work around, bypass or circumvent any of the technical limitations of the Services; use any tool to enable disabled functionalities, or decompile, disassemble, or reverse engineer the Services (unless the restriction is prohibited by the laws); (iv) perform any act that interferes with proper access or use of the Services; or (v) use the Services in any manner not expressly allowed under this Agreement.

B. **Notices.** Unless otherwise stated you shall deliver notices and other communications in writing via certified mail or registered overnight courier (postage prepaid) to the following address: **Wulfsberg LLC Attention: General Counsel/Legal Department, 2500 Commonwealth Drive, 4th Floor, Columbus, OH 43249-1384.** Notices delivered in this manner become effective upon our actual receipt. Our communications to you shall be delivered via email, facsimile (effective upon transmission confirmation), ordinary or certified mail (effective the seventh day after mailing), registered overnight courier (effective the first day after submission to the courier), or via a top-of-the-line communication via Postal Service or invoice (effective when made available).

C. We have no obligation to process any Visa or MasterCard transaction beyond the authority of a U.S. member of Visa and MasterCard or any Discover Network Card or American Express transaction outside the United States and other United States territories.

D. **Account Debts and Authorizations.** In addition to our other collection rights in this Agreement, you expressly authorize us or our affiliate to collect amounts due us or our affiliate by debiting any deposit account you maintain with Member Bank.

E. **Amendments.** We may amend this Agreement or change rates at any time. You do not have the same right. We will provide notice of changes in accordance with the notice Section of this Agreement. If you continue to process transactions after, or fail to notify us that you contest a change within seven days of actual or constructive notice, you will be deemed to have accepted that change. We have the right to make Association and Other Network changes and increases in interchange fees or assessments without providing you notice. You agree to pay these increased fees and charges throughout the term. We are not bound by any changes, additions, or deletions you make to this Agreement unless they are part of a written amendment that is signed by you and us.

F. **Assignment.** We have a right to assign this Agreement. Unless you get our prior written consent, you do not. This means that any assignment, even an assignment by operation of law, is prohibited without our consent. This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, executors, administrators, successors, transferees, and assigns (if applicable). If you assign this Agreement without our consent, the assignee will be bound by the terms of this Agreement. Your sale of the business does not relieve the original owner or original Guarantors of chargeback or other liabilities, even those occurring after sale.

G. **Independent Contractors.** We are not your agent, and we are not in a joint venture, or partnership with you (or vice-versa). Neither you nor we are independent contractors.

H. **No Third-Party Beneficiary.** Unless expressly stated in these Terms and Conditions, this Agreement is for the benefit of, and may be enforced by, only you and us, and our successors and permitted transferees and assigns. It is not for the benefit of any third party.

I. **Employee and Agent Actions.** You are responsible for the acts or omissions of your employees and agents related to this Agreement and the use of the Services.

J. **Severability and Non-Waiver.** The invalidity or illegality of any part of this Agreement shall not invalidate the rest of the Agreement. The Agreement shall instead be construed as if the invalid or illegal provision were not part of the Agreement. Our delay or failure to exercise any right under this Agreement shall not constitute a waiver or acceptance of that right.

K. **Signatures.** An original, a copy, a facsimile copy, or digital, photographic or electronic copy of your signature serves as the signature for this Agreement. Further, duplicate original records of this Agreement (digital, photographic, or otherwise) have the same force and effect as the original. The parties agree that contacting through electronic means (including e-signature or "click to agree" processes) is an acceptable form of showing agreement.

1. **Arbitration, Governing Law, Jury Waiver, and Class Action Waiver.** The Section applies to you, any Guarantor, or any other party who claims an interest in this Agreement.

A. **Arbitration.** The parties agree to submit any unresolved dispute, controversy or claim between them to binding arbitration in lieu of litigation or other court or administrative proceedings. ANY ARBITRATION UNDER THIS AGREEMENT WILL ONLY BE ON AN INDIVIDUAL BASIS. CLASS ARBITRATIONS, CLASS ACTIONS, PRIVATE ATTORNEY GENERAL ACTIONS, AND CONSOLIDATION WITH OTHER ARBITRATIONS ARE NOT PERMITTED. The Federal Arbitration Act governs the interpretation and enforcement of the arbitration provisions in this Section. It also governs any arbitration proceedings that take place pursuant to this Section. The parties shall make arbitration final in Cuyahoga, Ohio or Hamilton County, Ohio. You must comply with the Consumer Arbitration Rules of the American Arbitration Association. The parties shall share the costs, fees, and expense of the arbitration and the arbitrators equally. The arbitrator's award, including awards of attorney's fees, costs, and expenses, shall bind the parties and may be entered as a judgment in any court of competent jurisdiction. The statute of limitations is a

defense to the commencement of an arbitration proceeding. However, an arbitration proceeding will be deemed to have commenced if a party initiates an arbitration proceeding in a court of competent jurisdiction for a temporary restraining order, preliminary injunction, or other equitable relief.

B. **Governing Law.** The parties have entered into this Agreement in Ohio. The laws of Ohio govern the interpretation, construction, and enforcement of this Agreement, including the Continuing Unlimited Guaranty. Without waiving our right to enforce the arbitration provisions in this Section, you/your Guarantor agree only to bring a legal suit, action, or proceeding arising out of or related to this Agreement in person in any way in the relationship between us and you, or us and Guarantor (so "Applicable Court"), in a state or federal court in Hamilton County, Ohio. With respect to any Applicable Claim brought by us, you, or Guarantor, you/your Guarantor waive any objection to venue, and submit to the jurisdiction of a state or federal court in Hamilton County, Ohio. Nothing in this Section prohibits us from bringing any action or from exercising our rights under the Agreement in another state or country. You/your Guarantor agree that our service of a Summons and Complaint at the address listed in the Agreement constitutes proper service and subjects you/your Guarantor to the personal jurisdiction of the respective court. Unless the Operating Regulations require otherwise, you shall bring any claim you have against Member Bank against us (subject to the limitations and restrictions of the Agreement), and not against Member Bank.

C. **Jury Waiver.** YOU AND/OR GUARANTOR KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHTS TO HAVE A CASE DECIDED BY A JURY. YOU AND/OR GUARANTOR AGREE THAT OUR FILING OF A COPY OF THIS PARAGRAPH IN ANY PROCEEDING CONCLUSIVELY PROVES YOUR WAIVER.

D. **Class Action Waiver.** YOU AND/OR GUARANTOR ALSO WAIVE ANY RIGHT TO PARTICIPATE IN A CLASS ACTION AGAINST US OR MEMBER BANK.

E. **Headings and Construction.** The parties have used the headings in this Agreement for convenience only. No heading shall affect the interpretation of any provision. These Terms and Conditions are subordinate to the Rules Summary, the Operating Regulations, and the Application (unless the Application is blank). Our approval of the Application does not guarantee you a right to receive processing. The parties have chosen the language in the Agreement to express their mutual intent. No use of strict construction shall operate against any party. This Agreement constitutes the entire agreement between the parties with regard to the Services and supersedes all prior or other agreements or representations regarding the Services, whether written or oral. All prior understandings have merged into this Agreement.

F. **Other Rights and Acknowledgments.** We may change Member Banks at any time without notifying you. Any Member Bank may delegate all or part of its duties to its affiliate at any time also without notifying you. We are an agent of Member Bank in connection with Visa and MasterCard transactions, and may use an ISOMSP in connection with this Agreement. The ISOMSP is an independent contractor and not our agent. Accordingly, SO has no authority to exercise an Agreement on our or Member Bank's behalf. You, our Member Bank, has the same obligations you owe us. We may exercise any rights or remedies in this Agreement individually or jointly with Member Bank, and may likewise exchange or allocate the duties and obligations each owes to you.

G. **Attorney's Fees.** You shall reimburse and indemnify us for all attorney's fees and other costs and expenses we incur or pay in (i) defending our rights under this Agreement; (ii) enforcing the Agreement; or (iii) collecting any amounts you owe us under the Agreement.

H. **Survival.** Provisions that impose or could impose a continuing obligation on you shall survive the expiration or termination (for any reason) of this Agreement. This includes your liability for chargebacks and reversals, your duty to indemnify us and Member Bank, and your duties with respect to account maintenance.

I. **Association/Other Network Agreements.** You may sign an agreement with an Association or Other Network ("Other Merchant Agreement"). An Other Merchant Agreement is a separate and independent agreement. We have no responsibility for Association's, Other Network's, or your breach of an Other Merchant Agreement. We do not have to comply with the terms or conditions of an Other Merchant Agreement. We have a right to cease providing Services for any Other Network or Association in our sole discretion. You agree to pay all fees, fines, assessments and penalties the Association or Other Network impose. We may alter those fees, fines, assessments, or penalties in any manner and in our sole discretion. You agree that all POS terminals operate with unique keys according to PIN debit network requirements.

J. **Routing.** You authorize us to create where to route a Card Transaction.
K. **Applicable Law and Non-Discrimination.** As and you shall abide by the requirements of 41 CFR §§ 101-11.6(a), 101-11.6(b), and 101-11.6(c). These regulations prohibit discrimination against qualified individuals based on their status as protected persons or individuals with disabilities and prohibit discrimination against all individuals based on their color, race, religion, sex, or national origin. Moreover, these regulations, if applicable, require each of us to take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.

L. **Representations and Warranties.** You represent and warrant that:

A. **Information.** Any information you have submitted is true, complete, and accurate. This includes information about your entity type, the nature of your business (e.g., products and services sold, manner of sale, etc.) and the financial condition and ownership and executive structure of your business.

B. **Corporate Power.** You and the person signing this Agreement on your behalf have the power to execute this Agreement and to perform under this Agreement. The person signing this Agreement may execute any future documents and take any future action on your behalf.

C. **Existence/Organization.** You are a person or an entity validly existing and organized in the United States.

D. **No Litigation.** You have no knowledge of an actual or threatened action, suit, or proceeding against you that might impair your financial condition or prevent you from operating your business as you now conduct it. You have never appeared on MasterCard's MATCH system or the Commerce Terminated Merchant File, except as a merely disclosed listing.

E. **Transactions.** The Card Transactions you submit to us (i) represent the obligations of the authorized cardholder to merchandise or services actually sold, rendered or ordered (except for any delayed delivery or advance deposit authorized by the Operating Regulations);

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and must not involve any element of credit for any other purpose (by representation, file, contract or otherwise) and/or services not previously submitted and do not represent a refinancing of any such obligation; (ii) are not subject to any dispute, suit, or counterclaim against the provider (by any means, in your knowledge or notice, fraudulent, not authorized by the Cardholder, or subject to any other inactivity or impairment) and (iii) do not result from any sale outside your normal course of business as described in the Application.

F. Products and Services. The following items are true: (i) you have complete power and authority to sell the products and services you offer and to display the advertisements you use; (ii) your products and services are not illegal, and you will not accept a Card for any illegal transaction; (iii) you will promptly and unequivocally inform each Cardholder of your identity at all points of interaction during the transaction to distinguish you from any other party; (iv) your products, services, and business name do not infringe upon the rights of any other person, including trademark, copyright, confidentiality or patent rights; and (v) you will not sell, market, or display any products or services that would separate our reputation.

G. PIN Debit & EBT Card Processing Services; Availability of Terminals. We will process PIN Debit Card transactions for you if indicated in the Application or an amendment. If you accept FBT Cards, the terms in Addendum 5 shall apply. We will provide sponsorship services to you through a third party bank, if applicable. You will take all steps necessary to ensure that point-of-sale devices and PIN pads will be available for Cardholder use and will maintain in a reliable manner.

14. Equipment Program. The following provisions apply if you elect to purchase supplies or purchase or rent equipment from us at any time:

A. Provision of Equipment. You acknowledge receipt of the equipment listed on the Initial Equipment Order Information and Pricing section of the Application. Our then current standard pricing applies to the equipment. You agree to pay our then-current standard price (plus shipping) for any additional equipment or supplies.

B. Purchase. You are solely responsible for maintaining and repairing the equipment you purchase from us. We make no representations or warranties about the condition of the equipment, including any express or implied warranties of merchantability or fitness for a particular purpose. You agree to accept the equipment "AS IS," and to release us from any liability related to the equipment.

C. Rental Term. Unless purchase code "S" or "C" appears in the Initial Equipment Order Information and Pricing section of the Application, each individual piece of equipment ("Rental Equipment") shall have a separate rental term. The term of each piece of Rental Equipment begins on its order date. It continues on a month-to-month basis. Any party interested in the Rental Equipment belongs solely to us for our obligations or assigns. Either party may terminate the rental term for a piece of Rental Equipment on 30 days' written notice. On the effective date of a termination, we may debit an amount equal to the fair market value of the Rental Equipment from your Designated Account. 7 days before the termination of the Rental Equipment, we will return the debited amount (less our determination of diminished value and/or cost of repairs). Call 844-249-9289 for a tag number and address for returning the Rental Equipment. You bear all return costs.

D. Equipment Swap Program. Our equipment swap program applies only to standard-issue PIN Pads and check readers, and includes our support and integrate with PIN Pads on check readers. If you use the program we or our designated equipment provider ("Equipment Provider") will provide you, with programmed terminals, PIN Pads or check readers (the "Replacement Equipment"). When you receive the Replacement Equipment, you shall meet, in accordance with any instructions, the Equipment Provider a corresponding number of used equipment of the same brand and model in good working condition ("Merchant Equipment"). The Merchant Equipment becomes the property of Equipment Provider when it receives the equipment. If Equipment Provider does not actually receive the Merchant Equipment within 30 days of the date Equipment Provider shipped the Replacement Equipment to you, we will charge you our standard purchase price for the Replacement Equipment. The Replacement Equipment shall become your property only after we receive payment from you and Equipment Provider receives the Merchant Equipment from you.

E. Equipment Rejection Services. We may offer equipment rejection services for standard-issue PIN Pads and check readers and terminals we support and integrate with PIN Pads or check readers. To use this service, you must mail your equipment in good working condition to Equipment Provider via insured shipment. Equipment Provider will reject the Merchant Equipment and return it to you.

F. We reserve the right to charge you shipping and handling fees for any equipment deliveries under the Agreement.

G. You agree that you will only permit employees who have read the operating instructions that we provided to operate the equipment. You also agree not to remove any equipment from its original place of installation without our prior consent. Neither you nor your employees may make modifications or additions to the equipment. Additionally, you shall only use the equipment in accordance with this Agreement. You shall not use the equipment for credit inquiry or account verification.

H. We have the right, but not the obligation, to enter your premises to service equipment, and to confirm the existence, condition, and proper maintenance of the equipment. We shall exercise this right during reasonable business hours. You agree to surrender the equipment to our authorized representative on our demand.

I. Malfunctioning Equipment shall be shipped to Provider. If your equipment malfunctions, call 844-249-9289 for instructions from us. For equipment we have agreed to maintain, we will either repair the equipment or send you comparable equipment. For equipment we have not agreed to maintain, you are responsible for all equipment-related expenses. These include maintenance and replacement expenses. You agree to promptly notify us at our designated terminal hop desk telephone number of any malfunction or other incident resulting in the loss of use of the equipment.

J. You agree to pay all equipment-related fees, expenses, and costs. You also agree to review all reports and/or invoices we prepare or our agents prepare. Your failure to report any report or invoice in writing within five business days constitutes an acceptance of its content.

K. You are solely responsible for compliance with the Operating Regulations and Laws regarding your use of the Equipment.

15. Gift Card Program. The following provisions apply if you elect to receive gift card program processing services and/or related services ("Gift Card Services"):

A. Compliance with Laws. You are solely responsible for complying with the Laws related to the Gift Card Services. Upon our request, you shall periodically provide us with a

written certification indicating your compliance with the Laws. We have the right to terminate the Gift Card Services if you fail to provide a certification. We make no representations or warranties about any sample materials we may provide to you. You use our sample materials at your own risk. Using our sample materials does not release you from any obligations you have under the Agreement.

B. Merchant Gift Card Responsibilities. You are responsible for gift card issuance, acceptance, and unexpired funds, and for the preparation and content of the gift cards, and of the cardholder agreements and disclosures. You assume all responsibility for funding the gift cards. You are responsible for the accuracy and security of all gift cards and gift card transactions. You are also solely liable for any losses arising out of or related to fraudulent gift cards or gift card transactions and for anything arising out of your and your gift card cardholder's participation in the gift card Services.

C. Cardholder Authorization Limits. You shall get and maintain cardholder authorization limits in accordance with the Laws and this Agreement. You shall notify us of the limits and any other terms and conditions applicable to your use of the Gift Cards.

D. Gift Card Affiliates. If we decide to provide Gift Card Services in your vicinity affiliates and/or franchisees ("Gift Card Affiliates") at your request, you agree to ensure the compliance of your Gift Card Affiliates with this Agreement. You agree to guarantee full and unconditional responsibility for the performance of any obligations of each Gift Card Affiliate related to this or any agreement between us and the Gift Card Affiliates. You agree to accept full responsibility for resolving any issues arising out of the Gift Card Services between you and any Gift Card Affiliate. Upon request, you agree to cause each Gift Card Affiliate to execute our standard addendum to Gift Card Services.

E. Trademarks. You are responsible for all content appearing on the Gift Cards. You represent and warrant that you have all rights and permissions necessary to use the content on the Gift Cards. You shall immediately notify us if a third party claims the Gift Card content infringes against its rights. You agree to indemnify and hold us harmless from any and all claims against us and any resulting liabilities, costs and expenses arising out of the content of the Gift Cards. This section shall survive termination of the Agreement. You agree that we may use your name, logo, trademarks, etc. in materials related to the Gift Card Services or in our own advertising.

16. Special Association Considerations. There are a few special rules regarding your participation in the Discover or American Express Card program:

A. Discover. We have no liability for not processing or selling a returned Discover merchant's Discover Cards (as defined by Discover).

B. American Express. The following terms apply only to your American Express Program (see the American Express merchant requirements for capitalized terms):

- You authorize us to exchange transaction and settlement information with American Express on your behalf.
- You agree to comply with the American Express Program terms provided in the Rules Summary, and the American Express Merchant Operating Guide, which can be located at <http://www.americanexpress.com/merchants> and is incorporated herein by reference.
- We may disclose Transaction Data, Merchant Data, and other information about you to American Express. American Express may use the disclosed information for any lawful business purpose.
- In the event your Charge Volume exceeds (i) \$1,000,000 in a rolling twelve month period, or (ii) \$1,000,000 in any three consecutive months ("High CV Merchant"), American Express may convert you to a direct Card acceptance relationship. Upon conversion, you will be bound by American Express' then-current Card Acceptance Agreement and merchant pricing and fees.
- You shall only sell bona fide goods and services at your establishments. Your Card transactions shall be free of fees, charges, and encumbrances, other than ordinary Card tax. Additionally, you shall not assign any payments you are due under this Agreement to a third party. However, you may sell and assign future transaction receivables to us or our affiliated entities and/or any other cash advance funding source we or our affiliated partner with.
- This Agreement confers third party beneficiary rights in American Express by enforcing terms against you. Unless we obligate us in American Express.
- You may opt out of accepting American Express Cards in writing without affecting your rights to accept other payment products.
- We may terminate your right to accept American Express Cards if: (i) you breach the Agreement; (ii) American Express assigns us, in connection with, or (iii) you engage in fraudulent or any other activity justifying termination.
- You may not solicit or collect from any American Express cardholder for any purchase or payment on the Card unless chargeback has been exercised; you have fully paid for the charge, and you otherwise have the right to do so.
- You agree to remove any American Express licensed marks from your website or any other location when your participation in the Program ends.
- If you do not participate in the American Express Program or EA Program, we will have no liability for not processing or selling your American Express transactions. Further, American Express cards will not be included in the definition of Cards.

17. Key Definitions. The following definitions are especially important:

A. "Agreement" means the Merchant Processing Agreement (including these Terms and Conditions), the Application, the Rules Summary, Operating Regulations, and any attached addenda, exhibits, schedules, or other documents.

B. "Associations" means, collectively, MasterCard International Inc. ("MasterCard"), VISA U.S.A., Inc. ("VISA"), CTS Services LLC d/b/a Discover Network ("Discover") (including any card issuer of payment cards processed and settled through the Discover network, which may include Japanese Credit Bureau ("JCB"), China Union Pay ("CUP"), and Diners Club International ("DCI"), and American Express Travel Related Services Company, Inc. ("American Express"), and certain similar entities.

C. "Application" means either the physical or virtual form or the act of making application to Workday by providing information via a web page user interface.

D. "Cards" means Association or Other Network branded cards that enable consumers to purchase goods and services from Merchants.

E. "Cardholder(s)" means authorized to use Association or Other Network branded cards.

**Merchant Processing Agreement
Terms and Conditions**

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- F. "Effective Date" means the later of (i) the date you signed the Application, or (ii) the date we approved the Application.
- G. "ISOMSP" means an independent Card organization/member service provider operating under the Operating Regulations.
- H. "Laws" means all applicable state, federal, and local laws, rules, and regulations.
- I. "Member Bank" means a member of USAA, MasterCard® and/or Other Networks, as applicable, that provides sponsorship services in connection with this Agreement.
- J. "Operating Regulations" means the Association and Network bylaws, operating regulations, rules, policies and procedures. The Operating Regulations may be changed or updated from time to time without notice.
- K. "Other Networks" or "Networks" means, collectively, all Processor supported networks not defined above as Associations.
- L. "Rules Summary" means the document containing a summary of key Operating Regulations covering this Agreement, as amended from time to time.
- M. "Service" means any services described in this Agreement and/or provided by us.

Commission Memo



Prepared by: Genevieve Scholl
Date: July 9, 2019
Re: Summit Strategies Contract

Summit Strategies, LLC (“Summit”), and in particular senior partner Hal Heimstra, continue to provide excellent advocacy services at the federal level. In the past year, Summit has cultivated relationships with key federal agencies for potential funding and permit streamlining for bridge replacement, responded to federal agency permitting conflicts at the airport, and facilitated several meetings with key legislative staff on Port priorities. Summit does a very good job monitoring funding and policy legislation for new opportunities or potential obstacles to Port projects and provides timely and sage advice on lobbying strategies to advance Port priorities.

In past years, Hood River County had contributed to the Summit contract, but due to other priorities has pulled financial commitments for the foreseeable future.

The attached revised Scope of Work details specific services and activities planned for this fiscal year, along with possible additional services, contingent upon Port request in response to new opportunities. The contract retainer amount is \$76,000. Should the Port request the deployment of the additional services, the total contract amount would not exceed the approved budget amount of \$90,000. This reflects no change from last year’s contract.

RECOMMENDATION: Authorize federal legislative advocacy contract with Summit Strategies in an amount not to exceed \$90,000.

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PORT OF HOOD RIVER PERSONAL SERVICES CONTRACT

This agreement is between the **Port of Hood River**, an Oregon Municipal Corporation ("Port") and, Summit Strategies Government Affairs LLC ("Contractor").

For mutual consideration, Port and Contractor AGREE AS FOLLOWS:

1. SCOPE OF WORK. Contractor shall furnish at its own expense, all labor, services, material and work for the completion of the work described in this contract, and as set out in Exhibit A attached to this contract. Exhibit A reflects the Scope of Services for **providing General Government Affairs Representation on behalf of the Port of Hood River.**

2. TIME OF PERFORMANCE. Contractor shall commence performance of this contract upon execution of the contract by both parties and Contractor's compliance with the insurance requirements set forth in paragraph 4 below. This contract shall be for the period July 1, 2019 through June 30, 2020.

3. PAYMENT. Port agrees to pay Contractor a monthly retainer in the amount of \$6,333 for professional services and satisfactory completion of the work. Port may pay the Contractor up to \$20,000 for additional services upon the execution of an amendment to this Contract.

The Port will also reimburse Contractor for reasonable expenses for travel, lodging, meals, communication, postage, and printing associated with the contract.

4. INSURANCE. Contractor shall provide and maintain at its expense professional liability insurance with a combined single limit of not less than \$1,000,000 each claim, incident or occurrence. This is to cover damages caused by error, omission or negligent acts related to the professional services to be provided under this contract. Any deductible shall not exceed \$25,000 each claim, incident or occurrence.

Notice of cancellation or change. There shall be no cancellation, material change, reduction of limits or intent not to renew the insurance coverage(s) without 30 days written notice from the Contractor or its insurer(s) to the Port.

5. COMPLIANCE WITH APPLICABLE LAWS. Contractor shall comply with all federal, state, and local laws and ordinances applicable to the work under this contract, including those on Exhibit B which is attached hereto and by this reference made a part hereof.

6. INDEMNITY. Contractor shall defend, save and hold harmless the Port, their 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 agreement.
7. OWNERSHIP OF WORK PRODUCT. All work products of the Contractor which result from this contract are the exclusive property of the Port.
8. NONDISCRIMINATION. Contractor agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.
9. SUCCESSORS IN INTEREST. The provisions of this agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and assigns.
10. FORCE MAJEURE. Contractor shall not be held responsible for delay or default caused by fire, riot, acts of God and war which is beyond Contractor's reasonable control. Contractor shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under the contract.
11. SEVERABILITY. The parties agree that if any term or provision of this contract is declared by a court of competent jurisdiction 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 term or provision held to be invalid.
12. ACCESS TO RECORDS. The Port and its duly authorized representative shall have access to the books, documents, papers and records of the Contractor which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts and transcript.
13. TERMINATION. This contract may be terminated by mutual consent of both parties, or by either party upon 30 days' notice, in writing and delivered by certified mail or in person. The Port may terminate this contract effective upon delivery of written notice to the Contractor or at such later date as may be established by the Port under any of the following conditions:
 - (i) If the Port funding from federal, state, or other sources is not obtained and continued at levels sufficient to allow for the purchase of the indicated quantity of services. The contract may be modified to accommodate a reduction in funds.

(ii) If federal or state regulations or guidelines are modified, changed or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this contract or are no longer eligible for the funding proposed for payments authorized by this contract.

(iii) If any license or certificate required by law or regulation to be held by the Contractor to provide the services required by this contract is for any reason denied, revoked, or not renewed.

Any such termination of this contract shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination.

14. EXTRA WORK AND MATERIALS. Contractor shall do any work and furnish any materials not specifically provided for and which may be found necessary or advisable for the proper completion of the work or the purposes thereof. In no case shall any such work or materials in excess of the amount stated in this contract be paid for by Port unless ordered by Port in writing as a change order. Then payment will only be made when an itemized claim therefore is presented to Port for allowance at the close of the phase of work in which the same has been done or furnished. Otherwise, all claims for such work or materials shall be absolutely waived by Contractor, and Port shall not be required to allow payment for the same or any part thereof.

15. ACCEPTANCE OF WORK. No act of Port or any representative of Port directing the work, or any extension of time for the completion of the work, shall be regarded as an acceptance of such work or any part thereof, or of materials used therein, either wholly or in part. Acceptance shall be evidenced only by a written acceptance there, issued by Port. Contractor's acceptance of any such payment shall be deemed full payment and settlement of all claims of account of work done for the work under this contract. Prior to final payment, Contractor agrees to certify that all claims for materials provided or labor performed have been paid by Contractor in full. No waiver of any breach of this contract by Port or anyone acting on its behalf shall be held as a waiver of any other subsequent breach. Any remedy provided herein shall be taken as cumulative

16. SUBCONTRACTORS. Contractor shall not enter into any subcontracts for any of the work scheduled under this contract or assign or transfer any of its interest in this contract, without the prior written consent of the Port.

17. WRITTEN PROVISIONS. The written provisions of this contract shall supersede all prior verbal statements of any officer or other representative of Port, and such statements shall not be effective or by construed as entering into or forming a part of, or altering in any manner this contract or the contract documents. Contractor's oral explanations and representation to Port prior to entering into this contract have been a material inducement to Port to enter into this

contract. Contractor shall be bound to perform the contract work in accordance with oral representations, to the extent not included in this written contract, in addition to all of the written provisions of this contract.

18. **NON-WAIVER.** Failure by Port at any time to require strict performance by Contractor of any provision of this contract shall in no way affect the Port's rights hereunder to enforce the provision, nor shall any waiver by Port of any breach of any provision hereof be held to be a waiver of any succeeding breach or as a waiver of the provision itself.

19. **LEGAL ACTION.** In the event of any suit, action or proceeding relating to any rights, duties or liabilities arising hereunder, the prevailing party shall be entitled to recover such sums as an arbitrator (if arbitration is agreed to by both parties), or a court, including any appellate court, may judge reasonable attorney fees in addition to any costs of arbitration, or costs and disbursements provided by statutes in any legal action.

This agreement is entered into between the parties, by a person who has been duly authorized to sign for each party, on this ____ day of _____, 2019.

PORT OF HOOD RIVER

**SUMMIT STRATEGIES
GOVERNMENT AFFAIRS, LLC**

BY: _____
Michael McElwee

BY: _____
Hal Hiemstra

Executive Director

Partner

Exhibit A
GENERAL SCOPE OF WORK
Summit Strategies Federal Representation
For
Port of Hood River

The following is a list of issues Summit Strategies Government Affairs LLC (Contractor) will pursue on behalf of the Port of Hood River. Port acknowledge that the priorities in this Exhibit will be determined collectively by the parties to this Agreement. Participants acknowledge that additions and/or deletions of priorities, either recommended by parties to this Agreement or dictated by pending legislation or federal funding opportunities, may be made from time-to-time.

Basic Services

Matter 1: General Representation. Contractor will periodically prepare position papers and Congressional updates on issues of importance to the Port and include within those papers or updates, recommendations about ways the Commission or Commissioners can best share their perspectives with Members of Congress or the State Legislature (e.g. letters to Congress or personal visits with Members of Congress or the State Legislature or their staff). Contractor will also be available to periodically meet with Port Commissioners for in-person briefings and to answer questions about progress on advancing Port matters. Contractor will schedule meetings and participate with Port in outreach efforts associated with annual PNWA's Mission to Washington in March 2020, and coordinate any additional trips to DC or familiarization trips to Hood River by congressional members or agency representatives, and their staff. Monitor opportunities for BUILD/INFRA, or other programmatic funding opportunities for Bridge pre-development activities or replacement.

Matter 2: Federal Discretionary Funding Monitoring. Contractor will continue to regularly monitor the federal appropriations process and identify possible opportunities for earmarked funding should Congress consider specific project funding in federal appropriation funding cycles. Should such opportunities emerge, Contractor will advise the Port of this development. Contractor will also continue to monitor on a regular basis, federal Notices of Funds Availability (NOFA) announcements and bring discretionary grant funding opportunities to the attention of the Port when opportunities reflect Port priorities.

Basic Services Fee: \$42,000

Matter 3: Bridge Replacement Services

- A. Continue to meet with and update IPIC, USDOT Policy Development staff re EIS efforts associated with Hood River Bridge Replacement project. Maintain regular communication with Bridge Replacement project Director, review monthly updates and periodic from the Port and share relevant materials and updates with Congressional and Administration contracts. (\$6,000)
- B. Continue outreach efforts with Build America staff re TIFIA, P3, and with USDA Rural Development staff to explore innovative funding options for the Hood River Bridge Replacement project. (\$9,000)

- C. Continue to arrange for and advise Port Officials on lobby trips to Washington, D.C. (\$10,000)
- D. Monitor Administration and Congressional negotiations over Infrastructure funding and advise port officials about same. (\$3,000)
- E. Monitor Congressional consideration of the FAST Act Re-authorization and advice Committee staff and delegation staff about the Port's position, providing written recommendations about same when appropriate. (\$6,000)

Bridge Replacement Services Fee: \$34,000

Total Annual Retainer: \$76,000

Contingent Services

The following Matters will be carried out if necessary and based on written authorization from the Port:

Matter 4: Coordinate Federal Water Resources Development Act Requests.

Contractor will monitor Congressional action on the reauthorization of the Water Resources and Reform Development Act in 2017-2018, monitor Congressional consideration of the reauthorization of same, and be available to assist the Port on issues that might arise between the Port and the U.S. Army Corps of Engineers related to Port operations on the Columbia River.

Matter 5: BUILD/INFRA Requests. Contractor will assist Port staff and contractors with application and coordinate NW Congressional delegation support should Port decide to appl.

Matter 6: When requested by the Bridge Replacement Project Director, participate in Monthly FEIS Calls w/FHWA

Contingent Services Total: \$14,000

Total Contract \$90,000

Commission Memo

Prepared by: President Hoby Streich
Date: July 9, 2019
Re: Executive Director Contract



In our capacity as the Port's Personnel Committee, Vice-President Shortt and I discussed the employment contract of Executive Director Michael McElwee. This is a routine step following the Executive Director's annual performance review.

Based on his performance in FY 18/19 and expectations going forward, the Personnel Committee recommends that the Executive Director's contract be amended to provide a 5% salary increase in FY 19/20. This amounts to an approximately 2% salary increase above the CPI rate of 2.89%.

The proposed contract amendment is attached.

RECOMMENDATION: Authorize 11th Amendment to the Employment Agreement between the Port of Hood River and Executive Director Michael McElwee.

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EMPLOYMENT AGREEMENT 11th AMENDMENT

RECITALS:

The Port of Hood River ("Port") and Michael McElwee ("McElwee") entered into an Employment Agreement dated June 17, 2008, amended on June 23, 2009, July 20, 2010, July 12, 2011, July 12, 2012, June 19, 2013, September 10, 2014, August 18, 2015, September 6, 2016, July 17, 2017 and August 28, 2018 ("Employment Agreement"). McElwee and Port wish to amend the Employment Agreement to recognize changes in the Consumer Price Index and a merit increase based on positive performance.

AGREEMENT:Salary Change

Paragraph "5" of the Employment Agreement is amended by replacing the current last sentence with the following new last sentence:

"Effective July 1, 2019, the monthly salary of the Executive Director shall increase by 5% to \$12,175.80."

Except as modified by this 11th Amendment all terms of the Employment Agreement remain unchanged and in full force and effect.

DATED: _____, 2019

DATED: _____, 2019

Michael McElwee, Port Executive Director

Hoby Streich, Port Commission President

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