

Commission Memo

To: Commissioners
From: Steve Burdick
Date: May 21, 2013
Re: PocketFuel, Trane Oregon HVAC Programming and Wiring

Trane Oregon has an existing service / maintenance contract with the Port for the HVAC systems in the Halyard Building. This includes not only the mechanical systems but also the highly sophisticated software and hardware systems that control the mechanical units.

The West 20 ton roof top unit has never been activated because Suite 103 has never been occupied and because Real Carbon chose to segregate their heating system from the building system to avoid fumes from Real Carbon mixing with the supply air for Suite 103. Now that PocketFuel will occupy Suite 103, the West roof top unit, the new and relocated VAVs in Suite 103 and the software / hardware systems controlling those units must be connected with low voltage wiring, programmed and made functional.

These services require specialized knowledge of the Trane control systems and the interface between these systems and the mechanical hardware. This expertise does not exist in firms that provide mechanical system installations.

Trane Oregon proposes to provide these specialized services including the engineering for submittals on the control system and As-Built documents for \$14,120.

RECOMMENDATION: Authorize a contract with Trane Oregon for programming services associated with the HVAC system serving Halyard Building Suite #103 in an amount not to exceed \$14,120.00.



Proposal

PROPRIETARY AND CONFIDENTIAL PROPERTY OF TRANE
DISTRIBUTION TO OTHER THAN THE NAMED RECIPIENT IS PROHIBITED
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Prepared For:
Steve Burdick

Date: 4/30/13

Proposal Number: MT04302013HB

Job Name:
Halyard Building- Pocket Fuel TI

Engineer: TraneOregon

Delivery Terms:
Freight Allowed and Prepaid - F.O.B. Factory

Payment Terms:
Net 30 Days

Trane is pleased to provide the enclosed proposal for your review and approval.

Tag Data - Controls

Item	Tag(s)	Qty	Description	Model Number
Z1	BAS	1	Building Automation System	Trane Summit

Product Data – Items: Z1

- Existing Summit Building Control Panels with internal modem
- Existing Tracer ES Web Interface
- UL 916 listed, Energy Management System
- 1st Year Parts & Labor Limited Warranty

DDC System provides central monitoring and control of the following new devices:

- 7 - Trane DDC-VAV terminal units w/ electric reheat
- 1 - Exhaust fan

Engineering and Programming Services by TraneOregon

- Engineered submittal, install and as-built drawings
- Programming/Checkout of Summit, workstation and all Trane provided controls
- Owner training

Installation Services by TraneOregon Controls

- Control electrical installation including device mounting & wiring
- Installation per TraneOregon standards, utilizing only Trane approved comm and sensor wire
- VAV boxes are wired as needed using plenum rated cable with no conduit
- Only Wiring inside electrical room is included in EMT conduit
- Control tubing including duct static and building static pressure sensing

Notes – Items: Z1

1. Less: any demolition, any labor overtime charges, any desktop for computer, any modem phone line (must be operational at startup), and any surface restoration including; cutting, patching, painting, or repairs.
2. Less: Fire/Life Safety control, Fire/smoke dampers & wiring, duct smoke detectors & power wiring.
3. Less: Mounting & wiring of smoke detectors, dampers and damper actuators.
4. Less: Mounting & piping of water valves, flow devices, DP switches, and sensor wells.
5. Less: Installation & furnishing of Variable Frequency Drives and Control Dampers.

6. Any work, or material due to defective/malfunctioning existing devices or equipment is not included. This work must be addressed as an additional charge.
7. VAV box controllers are included with VAV boxes and mounted at factory.

Pricing:

Total Net Price for controls retrofit (*Excluding Sales Tax*)\$ 14,120

Sincerely,

Matt Travis - Trane

7257 SW Kable Lane
Portland, OR 97224-7181
Phone: (503)620-8031
Fax: (503)639-1454

Final proposal will be subject to your acceptance of the attached Trane terms and conditions.

Terms and Conditions

This Agreement (hereafter the "Agreement") is made and entered into as of this ___th day of, _____ 2013 by and between Robert G. Davis & Associates, dba TraneOregon,, (hereinafter "Trane") and _____ (hereinafter "Customer") for the purpose of furnishing certain services and work designed to improve the facility at the Premises (as defined below).

ARTICLE 1 - THE SERVICES AND COMPENSATION

Section 1.01. Contract Price. Subject to the terms and conditions hereof, as payment for Trane's performance and furnishing of the Services (as defined below) at the Premises identified in Exhibit B hereto, Customer shall pay or cause to be paid to Trane, in accordance with the dates and amounts determined, the sum of _____ dollars (\$ _____), which Contract Price includes all sales, consumer, use and similar taxes (excluding income taxes) for the Services which are legally enacted as of the date of this Agreement.

Section 1.02. The Services And Exclusions. No later than *SUBSTANTIAL COMPLETION DATE*, Trane shall have designed and substantially completed installation of the equipment and performance of the work and services (hereinafter, collectively, the "Services"). Trane's obligation hereunder is limited to the Services as defined herein. Excluded from the Services are any modifications or alterations to the Premises (not expressly included within the Services as defined) that may be required by operation of the Americans With Disabilities Act or any other law or building code(s).

Section 1.03. Construction Procedures And Changes To Services. Trane shall supervise and direct the Services using its best skill and attention. Trane shall have exclusive control over construction means, methods, techniques, sequences and procedures. Trane shall at all times have the right to replace, delete or substantially alter any item of equipment or part of the Services or revise any procedures included in this Agreement.

Section 1.04. Payment Terms. Customer shall pay Trane or cause Trane to be paid for the Services as follows:

Initial Payment: Upon execution hereof, 0% of the Contract Price (for engineering, drafting and other mobilization costs incurred prior to on-site installation) shall be due; and

Progress and Final Payments: Trane will invoice in accordance with Exhibit A for all materials and equipment delivered to the Premises (or, as applicable, to an off-site storage facility) and for all installation, labor and services performed during the billing period; Customer shall pay all amounts within 30 days of the invoice and any invoice not paid within 30 calendar days of its date shall be past due.

All amounts outstanding 30 calendar days beyond the due date shall bear interest payable to Trane at the maximum allowable legal rate, retroactive to the due date. Customer shall pay all costs (including attorneys' fees) incurred by Trane in attempting to collect amounts due from Customer.

Section 1.05. Final Completion. Upon Customer's receipt of written notice from Trane that the installation work included in the Services is ready for final inspection and acceptance, Customer and Trane shall inspect the installation work and determine whether the same has been performed in accordance with this Agreement. If Customer considers the installation work to have been performed in accordance with this Agreement, Customer shall issue a Certificate of Final Completion and Acceptance, substantially in the form attached hereto as Exhibit D.2, to be executed by an authorized representative of Customer. In the event Trane presents a Certificate of Final Completion and Acceptance to Customer for execution and, within fourteen calendar days from the date noted in the Certificate as the date of such presentation, Customer fails to deliver an executed original of the Certificate to Trane and does not provide to Trane written objections to issuance of the Certificate, providing specific facts as to why the Services have not been finally completed, the Date of Final Completion shall be the date noted in the Certificate as the date the Certificate was submitted to Customer.

Section 1.06. Delays. If Trane is delayed in the commencement or completion of any part of the Services due to events beyond Trane's control (including, but not limited to, fire, flood, labor disputes, unusual delays in deliveries, unavoidable casualties, abnormal adverse weather, and acts of God), or due to Customer's action(s) or failure to perform its obligations under this Agreement or to cooperate with Trane in the timely performance of the Services, then Trane will notify Customer in writing of the existence, extent of, and reason(s) for such delay(s). Trane and Customer shall extend the contract time and/or increase the Contract Price by Change Order for such reasonable time and/or amount as they shall agree.

Section 1.07. Equipment Location And Access. Customer shall provide, without charge, a mutually satisfactory location or locations for the installation and operation of the equipment and the performance of the installation work, including sufficient areas for staging, mobilization, and storage. Customer shall provide access to the Premises for Trane and its contractors or subcontractors during regular business hours, or such other hours as may be requested by Trane and acceptable to Customer, to install, adjust, inspect, and correct the installation work. Trane's access to correct any emergency condition shall not be restricted by Customer.

Section 1.08. Permits And Governmental Fees. Trane shall secure (with Customer's assistance) and pay for building and other permits and governmental fees, licenses, and inspections necessary for proper performance and completion of the installation work and which are legally required when bids from Trane's subcontractors are received, negotiations thereon concluded, or the effective date of a relevant Change Order, whichever is later. Customer is responsible for necessary approvals, easements, assessments and charges for construction, use or occupancy of permanent structures or for permanent changes to existing facilities.

Section 1.09. Utilities During Construction. At no cost to Trane, Customer shall provide and pay for water, heat, and utilities consumed by Trane during performance of the Services hereunder. Trane shall install and pay the cost of any temporary facilities not already in existence, which will be required during construction for accessing such water, heat, and utilities.

Section 1.10. Concealed Or Unknown Conditions. In the performance of the installation work, if Trane encounters conditions at the Premises that are (i) subsurface or otherwise concealed physical conditions that differ materially from those indicated on the drawings or (ii) unknown physical conditions of an unusual nature that differ materially from those conditions ordinarily found to exist and generally recognized as inherent in construction activities of the type and character as the installation work, Trane shall notify Customer of such conditions as promptly as practicable, prior to significantly disturbing the same. If such conditions differ materially and cause an increase in Trane's cost of, or time required for, performance of any part of the Services, Trane shall be entitled to, and Customer shall consent by Change Order to, an equitable adjustment in the Contract Price, Contract Time, or both.

Section 1.11. Damage to Equipment; Casualty or Condemnation of Premises. (a) If any fire, flood, other casualty, or condemnation renders a majority of the Premises incapable of being occupied and the affected portion is not reconstructed or restored within ninety (90) days from the date of such casualty or condemnation, Trane may terminate this Agreement by delivery of a written notice to Customer, whereupon both parties shall have no further liability to each other, subject to Customer's obligation to pay to Trane for all parts of the Services, equipment and material furnished to the date of termination, including any specially manufactured or non-stock items, whether in production or delivered.

- (b) If any significant item of equipment is irreparably damaged by Customer, its employees, agents or invitees, or is destroyed or stolen, and if Customer fails to repair or replace said item within a reasonable period of time, Trane may terminate this Agreement by delivery of a written notice to Customer, whereupon both parties shall have no further liability to each other, subject to Customer's obligation to pay to Trane for all parts of the Services, equipment and material furnished to the date of termination, including any specially manufactured or non-stock items, whether in production or delivered. Any such termination shall not be considered any Event of Default on the part of either party.

Section 1.12. Changes to the Services. (a) Customer, by written Change Order, may request that Trane perform work in addition to the Services. Trane shall be obligated to perform such additional work only pursuant to a Change Order agreed to and executed by Customer and Trane. The Change Order shall reflect the parties' agreement with respect to the scope of the additional work, the amount of any adjustment in the Contract Price, and the extent of any adjustment in the contract time.

(b) If a Change Order provides for an adjustment to the Contract Price, such adjustment shall be based on one of the following methods:

- (1) a lump sum agreed to by Customer and Trane;
- (2) unit prices set forth in this Agreement or subsequently agreed to;
- (3) cost of the work ordered plus a fee agreed to by the parties; or

(c) The following types of costs, which listing is not all-inclusive, shall be included in the determination of the cost of the additional work:

- (1) costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or industry practice or custom, and workers' compensation insurance;
- (2) costs of materials, supplies and equipment, including transportation thereof, whether the same is incorporated or consumed in the additional work;
- (3) the costs of renting machinery and equipment, except handtools;
- (4) premium costs for all bonds and insurance, permit or other governmental approval or inspection fees, and sales, use or comparable taxes relating to the additional work; and
- (5) additional costs of supervision and field office personnel directly attributable to the additional work.

Section 1.13. Adjustment To Contract Time. Trane shall be allowed an equitable adjustment in the Contract Time for performance of additional Work that increases the amount of time required to perform the Services.

ARTICLE 2 - CUSTOMER'S OBLIGATIONS

Section 2.01. Representations and Warranties of Customer. Customer hereby warrants and represents to Trane that:

- (a) Customer is the legal fee owner of the Premises and/or otherwise has all requisite authority to make the improvements to the Premises that will result from Trane's performance of the Services;
- (b) Customer has provided Trane with all records heretofore requested by Trane and the information set forth therein is, and all information in other records to be subsequently provided pursuant to this Agreement will be, true and accurate in all material respects except as may be disclosed to Trane by Customer in writing;
- (c) Customer has disclosed in writing to Trane the existence and location of all known or suspected asbestos and other hazardous materials on the Premises; and
- (d) Customer has no knowledge of any facts or circumstances that, but for the passage of time, would materially, adversely affect either party's ability to perform its respective obligations hereunder and, if Customer is a governmental entity or instrumentality thereof, Customer has complied with all laws and regulations relative to bidding or procurement.

Section 2.02. Customer Default. Each of the following events or conditions shall constitute a default by Customer and shall give Trane the right to, without an election of remedies: (a) proceed pursuant to Section 7.01; and/or (b) terminate this Agreement by delivery of written notice declaring termination, upon which event Customer shall be liable to Trane for all Services furnished to date, including any specially manufactured or non-stock items, whether in production or delivered, and any damages sustained by Trane, including anticipatory profits:

- (1) Any failure by Customer to pay or cause to be paid amounts due Trane more than thirty (30) days after the date of the invoice therefor;
- (2) Any representation or warranty furnished by Customer in this Agreement is false or misleading in any material respect when made;
- (3) Any default by Customer under any instrument or agreement related to the financing of all or any part of the Services or equipment hereunder;
- (4) Any failure by Customer to perform or comply with any material term or condition of this Agreement, including breach of any covenant contained herein, provided that such failure continues for ten (10) days after written notice to Customer demanding that such failure be cured or, if cure cannot be effected in such ten (10) days, Customer fails to promptly begin to cure and diligently proceed to completion thereof; or
- (5) The commencement of any voluntary or involuntary proceedings in bankruptcy or receivership by or against Customer, Customer shall become insolvent, make a general assignment for the benefit of creditors, or Customer shall fail to pay its debts as and when they become due.

ARTICLE 3 - INSURANCE

Section 3.01. Trane's Liability Insurance. Trane shall purchase from and maintain, without interruption from the commencement of the Services until the date of final payment, a commonly available commercial general liability policy of insurance through a company or companies rated A- or above by A.M. Best Company, providing coverages for workers' compensation insurance, comprehensive automobile insurance and commercial general liability insurance.

Section 3.02. Customer's Liability And Property Insurance. (a) Customer shall be responsible for purchasing and maintaining Customer's liability insurance of the type and amount Customer deems necessary and appropriate.

(b) Customer shall purchase and maintain until Final Payment property insurance for the installation work in progress at least in an amount equal to the Contract Price, as the same may be adjusted from time to time, for the installation work (including the equipment) on a replacement cost basis with a deductible of no more than \$5,000 from an insurer reasonably acceptable to Trane. Such property insurance shall include the interests of Customer, Trane, and its subcontractors (at whatever tier). The property insurance purchased by Customer shall be on an all-risk policy form and shall insure against the perils of fire and extended coverage and physical damage or loss, including (without duplication of coverage) theft, vandalism, malicious mischief, collapse, falseworks, temporary buildings and debris removal, including demolition occasioned by enforcement of any applicable legal requirements. The property insurance shall cover portions of the installation work stored off site after written approval of Customer at the value established in the approval and any installation work in transit. Customer, for itself and its insurance carriers, hereby waives all rights of subrogation against Trane and any of its subcontractors, agents, employees, and officers with respect to property insurance and any other insurance coverages maintained by Customer.

- (c) A loss insured under Customer's property insurance shall be adjusted by Customer as a fiduciary and made payable to Customer as a fiduciary for the insureds, as their respective interests may appear, subject to requirements of any applicable mortgagee clause. Trane shall pay its subcontractors their just shares of insurance proceeds received by Customer, and, by appropriate agreements, written where legally required for validity, shall require said subcontractors to make payments to their subcontractors in a similar manner. In its fiduciary role, Customer shall have the power to adjust and settle a loss with insurers; provided, however, that at least 10 days prior to agreeing to the proposed adjustment or settlement, Customer shall advise the parties in interest in writing of the terms of the same and the parties in interest shall have seven days thereafter to object in writing to the proposed adjustment or settlement; if such objection is made, Customer shall not enter into or agree to the proposed adjustment or settlement and the parties shall proceed pursuant to Section 7.01.

Section 3.03. Customer's Loss of Use Insurance. Customer may purchase and maintain insurance to protect against loss of use of Customer's property due to fire or other hazards, however such fire or hazards may be caused. CUSTOMER HEREBY WAIVES ALL CLAIMS AND CAUSES OF ACTION IT MAY HAVE AGAINST TRANE AND ANY OF ITS SUBCONTRACTORS, AGENTS, EMPLOYEES, AND OFFICERS FOR LOSS OF USE OF CUSTOMER'S PROPERTY, WHETHER INSURED OR NOT, INCLUDING CONSEQUENTIAL, INCIDENTAL, SPECIAL, OR OTHER DAMAGES DUE TO SUCH HAZARDS, REGARDLESS OF CAUSE.

Section 3.04. Evidence of Insurance. Certificates of insurance acceptable to the Customer and to Trane shall be provided by each party to the other prior to commencement of performance of any Services. Such certificates shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least thirty (30) days prior written notice has been given to the other party. If any of the insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final application for payment. Customer's certificate shall clearly name Trane as an additional insured with an endorsement containing no restrictions or limitations on the policy that do not also apply to the named insured. Neither the procurement nor maintenance of any type of insurance by Customer shall in any way be construed or deemed to limit, waive, or release Customer from any of the obligations and risks of Customer under this Agreement, or to be a limitation on the nature and extent of such obligations and risks.

ARTICLE 4 - HAZARDOUS MATERIALS

Section 4.01. Asbestos And Hazardous Materials. Trane's Services and other work in connection with this Agreement expressly excludes any work connected or associated with Hazardous Materials. Hazardous Material means any pollutant, contaminant, toxic or hazardous waste, dangerous substance, potentially dangerous substance, noxious substance, toxic substance, flammable, explosive, radioactive material, urea formaldehyde, foam insulation, asbestos, asbestos-containing materials ("ACM's"), polychlorinated biphenyl ("PCB"), or any other substances, the removal of which is required, or the manufacture, preparation, production, generation, use, maintenance, treatment, storage, transfer, handling, or ownership of which is restricted, prohibited, regulated, or penalized by any and all federal, state, county, or municipal statutes or laws now or at any time hereafter in effect, including but not limited to, the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. §§ 9601 et seq.), the Hazardous Materials Transportation Act (49 U.S.C. §§ 1801 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. §§ 6901 et seq.), the Federal Water Pollution Control Act (33 U.S.C. §§ 1251 et seq.), the Clean Air Act (42 U.S.C. §§ 7401 et seq.), the Toxic Substances Control Act, as amended (15 U.S.C. §§ 2601 et seq.), and the Occupational Safety and Health Act (29 U.S.C. §§ 651 et seq.), as the laws have been and may be amended and supplemented.

Trane shall not be required to perform any identification, abatement, cleanup, control, or removal of Hazardous Materials. Customer warrants and represents that, except as expressly, and by reference to this Section, set forth in Exhibit B (Description of Premises) or Exhibit D (Scope of Services), there are no Hazardous Materials on the Premises that will in any way affect Trane's Services and Customer has disclosed to Trane the existence and location of any Hazardous Materials in all areas within which Trane will be performing any part of the Services. The existence or location of any Hazardous Materials that have been so disclosed by Customer to Trane shall be the responsibility of Customer.

Should Trane become aware of or suspect the presence of Hazardous Materials, Trane shall have the right to immediately stop work in the affected area and shall notify Customer. Customer will be responsible for taking any and all action necessary to correct the condition in accordance with all applicable laws and regulations. Trane shall be required to resume performance of the Services in the affected area only in the absence of Hazardous Materials or when the affected area has been rendered harmless; if the area has not been or cannot be rendered harmless within 30 days of discovery of the Hazardous Material, Trane may terminate this Agreement and Customer shall be liable to Trane for the Services completed to date of termination and anticipatory profits. Customer shall compensate Trane for any additional costs incurred by Trane as a result of work stoppage, including demobilization and remobilization. Under no circumstances shall Trane be obligated to transport or handle Hazardous Material, to provide any notices to any governmental authority or agency, or to inspect or examine the Premises for the presence of Hazardous Materials. In addition to any other indemnity obligation of Customer to Trane, Customer will indemnify, defend, and hold harmless Trane, its officers, directors, beneficiaries, shareholders, partners, agents, and employees (collectively referred to as "Trane" for purposes of this Article 4) from all fines, suits, procedures, claims and actions of every kind, and all costs associated therewith (including attorneys' and consultants' fees) arising out of or in any way connected with any deposit, spill, discharge, or other release or disposal of Hazardous Materials that occurs while Trane is performing in connection with this Agreement or the Maintenance Agreement, or from Customer's failure to provide all information, make all submissions, and take all steps required by all federal, state, county, or municipal statutes or laws now or at any time hereafter in effect.

ARTICLE 5 - INDEMNIFICATION AND LIMITATION OF LIABILITY

Section 5.01. Indemnification. To the maximum extent permitted by law, Trane and Customer shall indemnify and hold each other harmless from any and all actions, costs, expenses, damages and liabilities, including reasonable attorneys' fees, resulting from death or bodily injury or damage to tangible physical property of the other, to the extent arising out of or resulting from the negligence of their respective employees or other authorized agents in connection with the Premises. However, neither party shall indemnify the other against actions, costs, expenses, damages and liabilities to the extent attributable to the acts or omissions of the other party. If the parties are both at fault hereunder, then any obligation to indemnify shall be proportional to their relative fault. The duty to indemnify will continue in full force and effect, notwithstanding the expiration or early termination of this Agreement, with respect to any claims based on facts or conditions which occurred prior to expiration or termination. NOTWITHSTANDING ANY PROVISION TO THE CONTRARY, TRANE SHALL NOT BE LIABLE TO CUSTOMER FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES.

ARTICLE 6 - WARRANTY

Section 6.01. Workmanship And Equipment Warranty. Trane warrants that, for a period of one year from the date of Substantial Completion (the "Warranty Period"), Trane-manufactured equipment installed hereunder and the installation work (i) shall be free from defects in material, manufacture, and workmanship and (ii) shall have the capacities and ratings set forth in Trane's catalogs and bulletins. For Trane-manufactured equipment not installed by Trane the Warranty Period is the lesser of 12 months from initial start-up or 18 months from the date of shipment. Equipment and/or parts that are not manufactured by Trane are not warranted by Trane and have such warranties as may be extended by the respective manufacturer. If such defect in Trane-manufactured equipment or the installation work is discovered within the Warranty Period, Trane will correct the defect or furnish replacement equipment (or, at its option, parts therefor) and, if said Trane-manufactured equipment was installed pursuant hereto, labor associated with the replacement of parts or equipment not conforming to this warranty. No liability whatever shall attach to Trane until said equipment and Services have been paid for in full and then said liability shall be limited to Trane's cost to correct the defective equipment or work and/or the purchase price of the equipment shown to be defective. Trane's warranties expressly exclude any remedy for damage or defect caused by corrosion, erosion, or deterioration, abuse, modifications or repairs not performed by Trane, improper operation, or normal wear and tear under normal usage. Trane shall not be obligated to pay for the cost of lost refrigerant.

SELLER MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, REGARDING PREVENTION OF MOLD, FUNGUS, BACTERIA, MICROBIAL GROWTH, OR ANY OTHER CONTAMINATES.

THE WARRANTY AND LIABILITY SET FORTH IN THIS SECTION ARE IN LIEU OF ALL OTHER WARRANTIES AND LIABILITIES, WHETHER IN CONTRACT OR IN NEGLIGENCE, EXPRESS OR IMPLIED, IN LAW OR IN FACT, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR USE OR FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL TRANE BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES.

ARTICLE 7 - GENERAL PROVISIONS

Section 7.01. Dispute Resolution. Except for claims of nonpayment of sums due pursuant to Section 1.04 or the enforcement of any mechanics' or other lien rights, any dispute, controversy or claim (hereinafter collectively referred to as "Dispute") arising out of or relating to this Agreement or any breach or alleged breach hereof, upon the request of either party, first shall be submitted to mediation. Said mediation shall commence no later than 30 days after submission of the Dispute and shall be conducted at the locality where the Premises are situated and in accordance with the then prevailing rules of the Construction Industry Mediation Rules of the American Arbitration Association. In the event that the Dispute is not resolved pursuant to mediation, the Dispute may be submitted by either party for settlement by arbitration no later than 60 days after the first mediation session. The arbitration shall occur at the locality where the Premises are situated, unless otherwise agreed, and shall be conducted in conformance with the Construction Industry Arbitration Rules of the American Arbitration Association then in effect. Any award rendered shall be final and conclusive and a judgment thereon may be entered in the highest court of a forum, state or federal, having jurisdiction. Except to the extent that this Agreement expressly permits a party to suspend performance, pending final resolution of a Dispute, the parties shall each proceed diligently and faithfully with performance of their respective obligations under this Agreement. The expenses of any mediation or arbitration shall be borne equally by the parties thereto, provided that each party shall pay for and bear the cost of its own experts, evidence and counsel.

Section 7.02. Notices And Changes Of Address. All notices to be given by either party to the other shall be in writing and must be either delivered or mailed by registered or certified mail, return receipt requested, addressed as follows:

If to Trane: TraneOregon
7257 SW Kable Lane
Portland OR 97221

If to Customer: _____

or such other addresses as either party may hereinafter designate by notice to the other. Notices are deemed delivered or given and become effective upon mailing if mailed as aforesaid and upon actual receipt if otherwise delivered. All notices or other communications under this Agreement shall be in writing and may be delivered in person, or may be sent by receipted courier, facsimile transmission, express mail, e-mail, or postage prepaid certified or registered mail, addressed to the party for whom it is intended, at the addresses set forth in this Agreement. Either party may change its address for notice by giving written notice to the other party of the change. Any notice or other communication shall be deemed given no later than the date actually received. Notice by courier, express mail, certified mail, or registered mail shall be deemed given on the date it is officially recorded as delivered by return receipt or equivalent and, in the absence of such record of delivery, it shall be rebuttably presumed to have been delivered on the third business day after it was deposited, first-class postage prepaid, in the mails. Notices sent by fax or e-mail shall require tangible confirmation of receipt from the person to whom addressed.

Section 7.03. Assignment. Customer may not assign, transfer, or convey this Agreement, or any part hereof, or its right, title or interest herein, without the written consent of Trane. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of Customer's successors and assigns.

Section 7.04. Applicable Law and Jurisdiction. This Agreement is made and shall be interpreted and enforced in accordance with the laws of the state in which the Services are to be performed. Customer hereby submits to the personal jurisdiction of the courts of the state in which the Services are to be performed and to being sued in such jurisdiction.

Section 7.05. Term of Agreement. The term ("Term") of this Agreement shall commence as of the date first written above and shall end upon final completion of the Services, provided, however, that the warranty obligation set forth in Article 6 shall survive expiration of the Term.

Section 7.06. Complete Agreement. This Agreement and the Exhibits attached hereto, together with any documents expressly incorporated herein by reference, shall constitute the entire Agreement between both parties regarding the subject matter hereof. This Agreement may not be amended, modified or terminated except by a writing signed by the parties hereto.

Section 7.07. Further Documents. The parties shall timely execute and deliver all documents and perform all further acts that may be reasonably necessary to effectuate the provisions of this Agreement.

Section 7.08. Conditions Beyond Trane's Control. Except as otherwise provided herein, if Trane shall be unable to carry out any material obligation under this Agreement due to events beyond its control, such as acts of God, governmental or judicial authority, insurrections, riots, labor disputes, labor or material shortages, fires, explosions, or floods, this Agreement shall, at the election of Trane, (i) remain in effect but Trane's obligations shall be suspended until the uncontrollable event terminates; or (ii) be terminated upon ten (10) calendar days notice to the other party, in which event, Customer shall pay Trane for all parts of the Services furnished to the date of termination, including anticipatory profits.

Section 7.09. Signatures In Counterpart. This Agreement may be executed in several counterparts, each of which when executed shall be deemed to be an original, but all together shall constitute but one and the same Agreement. A facsimile copy hereof shall suffice as an original.

Section 7.10. Severability. If any provision of this Agreement is or becomes invalid, illegal or unenforceable, such invalidity, illegality or unenforceability will not affect the other provisions of this Agreement, which shall be valid and enforceable to the fullest extent permitted by law.

IN WITNESS WHEREOF, the duly authorized representatives of the parties have each executed this Agreement, effective as of the date first above written.

Robert G. Davis & Assoc. dba TraneOregon

Customer

By: _____

By: _____

Its: _____

Its: _____

Date: _____

Date: _____

Commission Memo

To: Commissioners
From: Steve Burdick
Date: May 21, 2013
Re: Hearts of Gold, Marina Park Office Lease

Hearts of Gold, a hospice services provider, has been a Port tenant since January 2011 in the DMV Building. Their lease expires in December 2013. They now have nine people in their office plus 70 care givers and have physically outgrown their present space. They therefore desire to lease the 1,400 s.f. West second floor office in the Marina Park Office building. This space is now unimproved and will require office walls, carpeting, lighting modifications and a coffee bar / sink for the proposed use.

As shown on the attached sheet, the key lease terms would be:

- \$1.15 psf
- 3% annual rent increase
- Five year term on a NNN basis
- Port share of tenant improvements limited to \$50,000

Staff recommends authorization of this proposed lease.

RECOMMENDATION: Authorize the lease of Suite 200 in the Marina Park Office Building to Hearts of Gold.

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 Hearts of Gold Caregivers LLC, hereinafter referred to as “Lessee.”

1. **Description.** In consideration of the covenants of the parties and subject to the provisions of this lease, Lessor leases to Lessee approximately 1,400 square feet of space in Lessor’s building commonly known as Suite 200 in the Marina Park Office (“building”) located at 720 E Port Marina Way, Hood River, Oregon (“Leased Premises”). The Leased Premises are identified in the attached “Exhibit A.”
2. **Term.** Subject to the provisions of this lease, the lease term shall be for the period commencing on the date of issuance of the final occupancy permit, and continuing through June 29, 2018. If not in default, and if Lessee pays Lessor all real property taxes Lessee owes or may be responsible to pay under the terms of the lease, Lessee has the option to extend the lease for one extension term of five years, through June 29, 2023, 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 given to Lessor no later than May 1, 2018.
3. **Rental.** Monthly Rent for the Leased Premises will be the following Monthly Base Rates, plus the applicable Consumer Price Index (CPI) Rate Adjustment, as set forth below:

<u>Space</u>	<u>Square Footage</u>	<u>Rate per s.f. per month</u>	<u>Monthly Base Rate</u>
200	1,400	\$1.15	\$1,610.00

All rental amounts are payable in advance on the first day of each month, beginning on the date Lessee is entitled to occupy the Leased Premises. However, if the lease does not begin on the first day of a month, rental for the first month shall be prorated to reflect the actual number of days in that month that the lease is in effect and shall be payable immediately.

Starting on July 1, 2014, and occurring annually thereafter, including any extensions of this lease, monthly rent will be increased by three percent (3%).

4. **Use.** Lessee shall use the Leased Premises for office uses supporting elder or hospice care. The Leased Premises shall not be used for any other purposes without the written consent of Lessor.
5. **Leased Premises Improvements.** Subject to Lessee’s right to terminate the lease if improvement costs exceed \$60,000 as provided below in this paragraph 5, if Lessor is satisfied, in Lessor’s discretion, with the construction bid, related construction costs and manner of payment of those costs the lease will remain in effect. Otherwise, Lessor may terminate the lease prior to undertaking construction of leased premises improvements. If the

lease remains in effect, Lessor agrees to make improvements to the Leased Premises prior to Lessee's right to occupy the Leased Premises, as depicted on the attached "Exhibit B – Hearts of Gold Concept Space Plan". If Lessor proceeds with the improvements, Lessor will use its best efforts to complete construction of the improvements prior to August 1, 2013. However, Lessor does not represent or warrant that the improvements will be completed by August 1, 2013. The improvements Lessor intends to make prior to Lessee's occupancy will be described in bid documents prepared by Lessor's architect and/or engineer. Lessor's improvements may be modified by Lessor prior to or after commencement of construction. Lessor's improvements to the Leased Premises shall be deemed acceptable to the Lessee.

If Lessor enters into a contract to construct the leased premises improvements, Lessor will pay (1) engineering fees, architect fees and City fees to allow occupancy of the leased premises ("soft costs") and (2) Lessor's general contractor charge to construct the improvements ("hard costs") shown on 'Exhibit B', up to \$50,000.00 (hard costs and soft costs combined are "improvement costs"). If the improvement costs exceed \$50,000 Lessee shall promptly pay Lessor costs exceeding \$50,000, up to \$10,000. If improvement costs will exceed \$60,000 Lessee may terminate this lease within 14 calendar days after Lessor receives the lowest qualifying bid to construct the improvements ("post bid period"). In the alternative, during the post bid period Lessee and Lessor may enter into an agreement for Lessee to pay for or for both parties to share payment of improvement costs above \$60,000. The agreement will establish the amount of improvement costs exceeding \$60,000 Lessee will pay and terms of payment ("Tenant Improvement Costs Agreement"). Lessee's performance of the terms of the Tenant Improvement Agreement shall be an obligation of the lease. Non-performance shall be considered a default of the lease. The Tenant Improvement Costs Agreement shall also be personally guaranteed by persons designated by Lessor who shall sign the personal guarantee form attached to this lease as Exhibit 'C'. Lessee may terminate the lease during the post bid period if not satisfied with the terms of the Tenant Improvement Costs Agreement proposed by Lessor. If Lessee fails or refuses to enter into a Tenant Improvement Costs Agreement presented by Lessor during the post bid period Lessee's failure or refusal shall also be considered a termination of the Lease by Lessee. If Lessee terminates the lease during the post bid period Lessee shall promptly pay Lessor 50% of the soft costs Lessor has incurred or will incur. If either party terminates the lease during the post bid period neither shall have any further rights or obligations under the lease, except for Lessee's obligation to pay 50% of Lessor's soft costs if Lessee terminates the lease.

If Lessee requests Lessor to make tenant improvement changes that will increase the construction cost or project soft costs, and Lessor in Lessor's discretion agrees to make changes, Lessor and Lessee will promptly execute a written agreement describing the changes and how and when the costs will be paid.

6. **Taxes.** Lessee shall pay all taxes on its personal property located on the Leased Premises. Lessee shall pay all real property taxes of governmental units assessed against the Leased Premises, and all real property taxes assessed against all inside and outside common areas of the building based on the amount of lease space occupied by Lessee as a percentage of the total lease space in the building. Lessee shall pay all such real property taxes which have

been assessed and are payable during Lessee's occupancy. Lessee shall also pay all such taxes which arise during a tax year as a result of Lessee's occupancy, even if the lease term has ended, or if Lessee has vacated the Leased Premises. However, if another tenant occupies the Leased Premises and agrees to pay any portion of the real property taxes otherwise payable by Lessee, Lessee shall not be required to pay those taxes which the new tenant pays. [Note: Under current law, Port real property is exempt from property taxation during an upcoming fiscal tax year (July 1 through June 30) unless a private party occupies such Port property on June 30. If a private party is in possession of Port property on June 30, that Port property is taxed for the entire subsequent fiscal tax year "as a result of Lessee's occupancy."] Although Lessee is responsible to pay real property taxes, Lessor will pay the real property taxes to the taxing authority when due and send a bill to Lessee for the amount of taxes Lessor has paid, which will be payable by Lessee to Lessor within ten days after the date of Lessor's bill.

7. **Utilities.** Lessee shall be solely responsible for gas and electricity used or consumed by Lessee on the leased premises. If electric or gas utility service is provided to Lessee in common with other tenants of Lessor, Lessee shall pay a portion of the total cost of such service based on the amount of lease space occupied by Lessee as a percentage of the total lease space of all tenants who are using the same utilities in common with Lessee. Lessor agrees to provide Lessee with calculations for utility allocations and agrees to consider a different allocation formula for the lease space if it is reasonably shown that the charges for utility service would be more or less based upon machinery or employee numbers in other lease space in the building. Lessor shall provide and pay for sewer, water and garbage service for domestic purposes. Janitorial and refuse service for the leased premises are Lessee's responsibility. In no event shall Lessor be liable for an interruption or failure in the supply of any utilities to the leased premises.
8. **Liability Insurance and 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.

Lessee agrees during the term hereof to keep a policy of general commercial liability insurance in effect with respect to the Leased Premises with minimum coverage of one million dollars (\$1 million) combined single limits. If Lessee renews this lease, at the outset of the renewal term Lessor may, with written notice, raise the minimum insurance requirement to an amount of insurance that is reasonably commercially available. The policy shall name Lessor as additional insured, and expressly include Lessor's Port Commissioners, officers, employees, and agents as additional named insured, 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. A copy of the policy or certificate of insurance shall be delivered to Lessor no later than three days after Lessee occupies the Leased Premises.

9. **Fire Insurance and Waiver of Subrogation.** If the Leased Premises or building where the Leased Premises are located are partially or totally destroyed 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. Each party shall provide its own insurance protection at its own expense, and each party shall look to its respective insurance carrier for reimbursement of loss, which may be insured against by a standard form of fire insurance with extended coverage. There shall be no subrogated claim by one party's insurance carrier against the other party arising out of any such loss.
10. **Lessee/Lessor Covenants.** Lessee shall not do anything which may damage the Leased Premises or any systems in the building or other areas surrounding the building. Lessee shall not be a nuisance or a menace to other tenants in the building. Lessee will not create or use hazardous substances, or dispose of hazardous waste of any kind, unless in strict compliance with environmental laws and regulations. Lessee, at Lessee's expense, shall be responsible to provide improvements and equipment, and to obtain any required permits or approvals necessary for Lessee to engage in activities at the Leased Premises. Lessee promises to comply with all laws, ordinances, and government regulations applicable to the Leased Premises and to Lessee's activities at the Leased Premises, and to comply with reasonable rules adopted by Lessor which apply to all tenants of the building.

Lessee shall not attach any fixtures or make any improvements or alterations to the Leased Premises without describing them in writing and receiving Lessor's prior written consent. Lessee shall not suffer or give cause for the filing of any lien against the Leased Premises.

Lessor shall maintain the building roof, bearing and exterior walls, permanent interior walls, windows and the drainage, plumbing, electrical, heat and cooling systems installed by Lessor and make repairs to carpet and fixtures when such repairs are necessary due to faulty installation by Lessor. Lessor shall maintain exterior and interior common areas, including interior and exterior lighting, security lighting, emergency exit doors and emergency exit stairway and landscaping, and provide ice and snow removal outside the Leased Premises

including the parking area, exterior walkways between the parking area and the building entry doors and the outside areas adjacent to the first floor West emergency exit and the second floor East emergency exit.

11. **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.
12. **Care of Leased Premises.** Lessee shall at all times keep the Leased Premises in as good condition as they are in at the outset of this lease, or if improvements are made thereafter in at least as good condition as after such improvements, and shall surrender the Leased Premises to Lessor in such good condition, reasonable wear and tear, or loss by fire or other casualty covered by insurance excepted.
13. **Fixtures and Personal Property.** Unless otherwise agreed in writing, all permanent improvements now located or hereafter placed on the Leased Premises during the term of the lease, other than Lessee's trade fixtures, equipment, and items related to Lessee's equipment, shall be the property of Lessor, and shall remain on the Leased Premises at the expiration or termination of the lease, provided that Lessor reserves the right within 30 days after the lease term ends to require Lessee to promptly remove any improvements which Lessee has placed on the Leased Premises at Lessee's expense, in a way which does not cause damage to the Leased Premises.

At the expiration or earlier termination of the lease term Lessee shall remove all furnishings, furniture, equipment, goods of any kind 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 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 effect 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.

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 building common areas without the prior written consent of Lessor, which consent shall not be unreasonably withheld. Lessee agrees to maintain in good condition any signs or displays which are allowed.
15. **Common Areas.** Lessee understands and agrees that other tenants may occupy the building. This lease grants to Lessee and to Lessee's agents, employees, business invitees, customers

and suppliers in connection with Lessee's business in the Leased Premises the non-exclusive right to use and enjoy throughout the existence of this lease all of the "common areas" associated with the building. "Common areas" shall be defined as all areas and improvements outside the building provided by Lessor for the joint use or benefit of tenants, their employees, customers and other invitees, including public parking areas, access roads, driveways, entrances and exits, landscaped areas, and sidewalks, excepting those parking spaces that may be designated for use by other building tenants. Use of available common areas shall be subject to like, non-exclusive use on the part of other tenants who occupy space in the building or any addition thereto, as well as their agents, employees, business invitees, customers and suppliers. Lessee agrees that its usage of such common areas shall not interfere with or be inconsistent with the similar rights of other tenants. All common areas shall be subject to the exclusive control and management of Lessor. Lessor shall have the right from time to time to establish, modify and enforce equitable rules with respect to all common areas, which Lessee agrees to abide by.

16. **Lessor's Access to Premises.** 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) for the purpose of inspecting it, or to make repairs, additions or alterations to the premises or any property owned or controlled by Lessor. E-mail from Lessor to Lessee (or Lessee's on site manager) 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.
17. **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.
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 will not unreasonably withhold its consent.
20. **Default.** Time is of the essence of performance of all the requirements of this lease. If any rental 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 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 rents 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. **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, to the person signing the lease, or to Lessee's on site manager who at the date of this lease is Thomas Keolker, 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.
22. **Dispute Resolution.** Any dispute involving this lease may be resolved by mediation. 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 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.
23. **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 May, 2013.

Lessee:
Hearts of Gold Caregivers, LLC

Name: Thomas Keolker
Address
5565 Lost Lake Road
Hood River, OR 97031

Lessor:
Port of Hood River

Name: Michael McElwee
Address
1000 E Port Marina Drive
Hood River, OR 97031

Tele: 541-387-0207
Email: Thomas@heartsofgoldcaregivers.com

541-386-1645
porthr@gorge.net

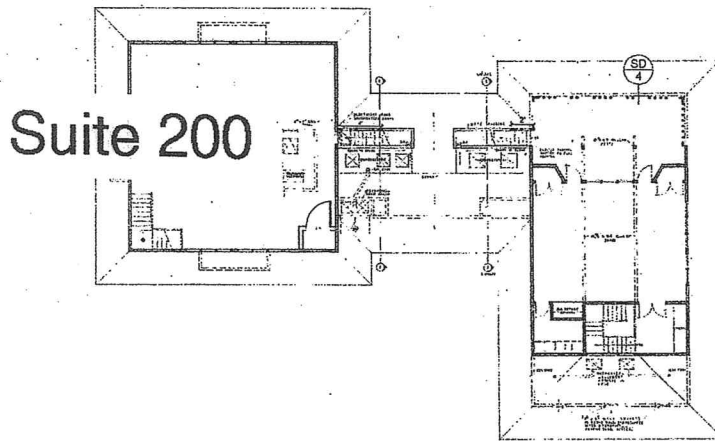
BY:

BY:

Name: Thomas Keolker
Title: Member

Name: Michael S. McElwee
Title: Executive Director

AhHa ! architecture, llc
office . design . project management



1 Second Level Plan

Exhibit A

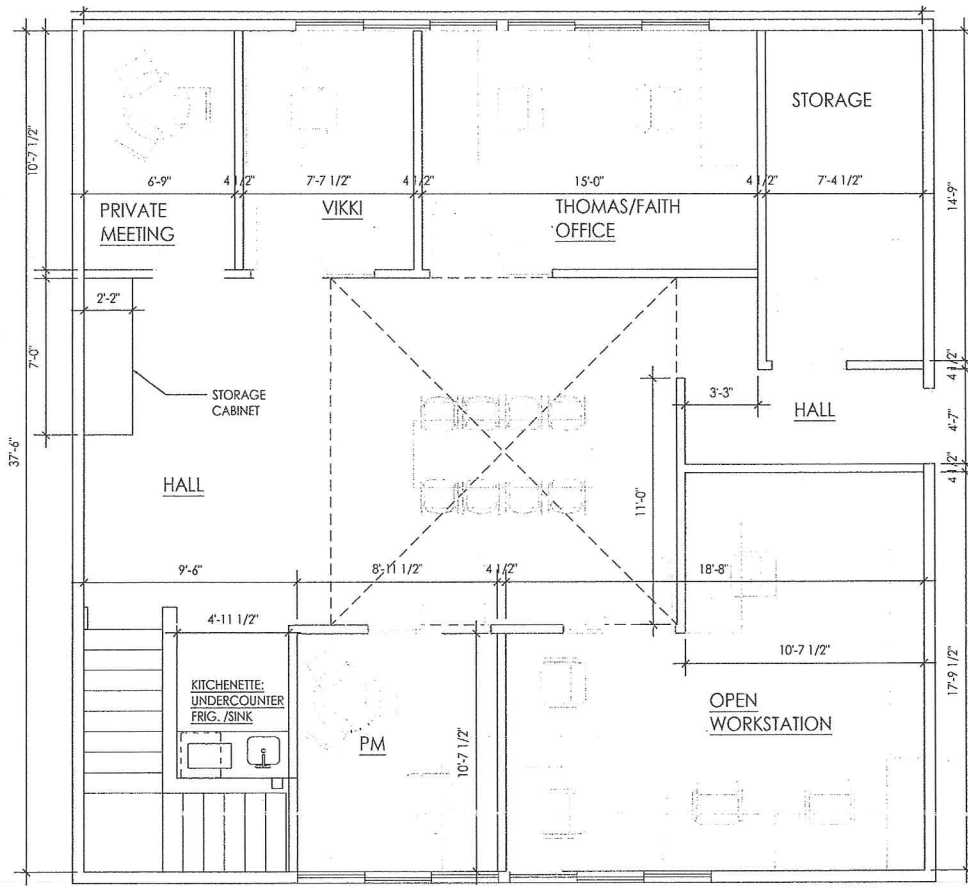
ADDENDUM #2 Jan 5, 2011
Set Date December 10, 2014
Permit set December 10, 2014

633 W. Main, Suite 100
Portland, OR 97204
Tel: 503.222.1119
Fax: 503.222.1119

www.ahha-llc.com



Part of Hood River



1 HEARTS OF GOLD CONCEPT SPACE PLAN
 SCALE 1/4"=1'-0"

FOR REVIEW: NGS FOR CONSTRUCTION
 A PLAN FOR THE PORT OF HOOD RIVER 04.24.13



Exhibit B

Commission Memo

To: Commissioners

From: Steve Burdick

Date: May 21, 2013

**Re: OrangeWallStudios, Architect and Engineering Services
for Hearts of Gold Space in Marina Park Office Building**

OrangeWallstudios, Inc. (OWS) is the Port's architect for the Pfriem Brewery expansion in the Halyard Building. Port staff have found their services to be reasonably priced and of high quality.

Port staff is recommending approval of a lease to Hearts of Gold for Suite 200 of the Marina Park Office building. That space will require tenant improvements such as office walls, lighting modification and a coffee bar / sink. These improvements will architectural services including plans and specifications for pricing, permits and construction.

The attached professional services contract describes the full scope of work for the needed work. The contract is contingent upon Commission approval of the lease to Hearts of Gold.

RECOMMENDATION: Contingent upon Commission approval of the Hearts of Gold lease, authorize an agreement with ORANGEWALLstudios, Inc. for architect and engineering services in the Marina Park Office building not to exceed \$7,500 plus reasonable reimbursable expenses.

Fee Proposal for Design Services

April 16th, 2013 (*revision 1 April 17th*)
Job Number: 13-PHR-MARINA
Job Name: Hearts of Gold Tenant Improvement

By:
ORANGEWALLstudios inc dba ORANGEWALLstudios architecture and planning
240 N Broadway | Suite 202
Portland, OR 97227
Ph 503.227.8100 | Fx 503.227.5569
Contact: Gary Hartill, AIA, President | Principal
garyh@orangewallstudios.com

To:
Port of Hood River
1000 E. Marine Drive
Hood River, OR 97031
Ph: 541.386.1645 | Fx: 541.386.1395
Attn: Steve Burdick
sburdick@portofhoodriver.com

For design work for the project located at :

Hearts of Gold Tenant Improvement
Second floor of the Marina Office Building
720 E. Port Marina Drive
Hood River, OR 97031

Thank you for the opportunity to present this fee proposal for the Tenant Improvement project for Hearts of Gold.

The following proposal outlines the scope of work and related fees for such work.

If accepted, this proposal will be attached as an exhibit to the Port of Hood River Standard form of agreement between owner and architect. Work under this scope during bidding and construction will be provided for under the terms and requirements of the AIA A201 General Conditions of the Contract for Construction and scope and fee under this proposal assumes the General Contractor and Sub contractors shall be subject to the requirements of the AIA A201.

SCOPE:

General Architectural Scope:

Planning, interior design, documentation for approximately 1500 sq foot office space on the second floor of the Port of hood river Marina building. Office space to include enclosed offices, enclosed storage space, multi user office space, kitchenette and functions per the tenant provided floor plan Tenant provided floor plan shall be the basis for design and planning.

Preliminary Space Planning:

- 1) ***Based on Tenant provided plan sketch, develop CAD drafted space plan and submit for owner approval. One iteration of the plan. One additional iteration would be completed in subsequent phase.***

Design and Documentation:

- 1) 3 meetings with tenant and port in Hood River are allowed for under this contract.

- 1) Layout of power distribution, lighting layout and fixture specification included in the base scope of work. Final Permit drawings, load calcs and design to be Bidder Designed including documentation and verification of existing electrical circuiting to existing panels (*or new panels if required*) for remodeled scope of work (Note: assume existing service to the building is sufficient to service scope)
- 2) Coordination with client and Owner for layout of lighting, switching and power is included.

Structural Scope: No new structural work is anticipated or provided for under this proposal

FEE:

The fee for the proposed work will be billed as a lump sum fee with payment as below.

Preliminary Space Planning and approval submittal	\$750.00
Design and Documentation Fee (up to permit submittal)	\$3,250.00
Mechanical/Plumbing Design Build Scoping Fee	\$1,250.00
Permitting and Bidding	\$750.00
Construction Administration (3 site visits allowed for)	\$1,500.00

TOTAL: TOTAL DESIGN LABOR FEE \$7,500.00

Reimbursement Allowance (actual costs to be billed) \$500.00

PAYMENT TERMS:

An initial payment Start of Contract \$1,000.00
 The remainder of the fees to be billed monthly as a percentage of work complete.

Additional scope can be provided for during the design and construction process and will be estimated at time requested.

SCHEDULE:

Work for Preliminary space planning can begin with email authorization of that phase.
Design and documentation Work can start with approval of this proposal.
 Estimated total schedule for design is about 4 weeks depending on owner review time.
 ORANGEWALLstudios is not responsible for delays in product delivery schedule of ordered items or contractor installed or provided items. Construction Schedule to be set by the contractor

REIMBURSABLE EXPENSES/BILLINGS:

Printing and reimbursable costs in addition to fee and will be billed monthly as the project progresses.

Time for services is tracked in 15 minute increments. Billings will be made monthly and will include consultant and reimbursable expenses for that month. Payments are due on receipt.
 1 1/2% interest charged monthly on all unpaid invoices 30 days from invoice date.

ASSUMPTIONS and EXCLUSIONS

The fees proposed are valid for 6 months from contract date. If project commencement is delayed or the project is delayed for more than 6 months ORANGEWALLstudios inc. shall retain the right to renegotiate the design fee. If the project stops for more 3 months a fee of \$500 to restart to project shall be charged.

Should the contract documents prepared under this contract be used for future additions or alterations to this Project or for other projects such use shall be at the Owner's sole risk and without liability to ORANGEWALLstudios inc. and ORANGEWALLstudios inc's consultants.

Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third

page 3

2013 SCHEDULE OF FEES¹

HOURLY RATES:

Principal:	\$175/hour
Project Architect/Manager	\$125/hour
Job Captain/Interior Designer	\$95/hour
Draftsperson	\$75/hour
Administrative/Intern Staff	\$65/hour

CONSULTANTS: cost + 10%
UNLESS SPECIFICALLY PROVIDED FOR UNDER
THE BASE SCOPE OF WORK

PRINTING COSTS:
OUTSOURCED: cost + 10%
INHOUSE:
CAD (LEDGER-11x17) \$.50/ea
CAD (24" X 36" Plots) \$10.00 ea
COLOR PRINTING/PLOTS \$3.00/sq ft

Mileage \$.60/mile

OTHER PROJECT RELATED
EXPENSES/MISC² cost + 10%

¹Schedule of fees effective for contracts through calendar year 2013, ORANGEWALLstudios Inc reserves the right to revised the above costs after December of 2013

²Miscellaneous expenses includes but is not limited to presentation materials, report covers, binding costs, food beverages for meetings, travel costs (airfare, transportation, hotels ect) which are incurred and required for completion of the project. A summary of reimbursable expenses incurred can be made available to the client at their request.

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Commission Memo

To: Commissioners
From: Steve Burdick
Date: May 21, 2013
Re: Pocket Fuel, Change Order #4, HVAC Installation

The call for bids for the Pocket Fuel tenant improvements contained an add alternate for HVAC. Staff considered the proposals on this add alternate to be excessively high due to the lack of detail in the HVAC section of the plans and specifications. So, while the base bid was accepted, the HVAC add alternate proposal was rejected. The Port then retained a mechanical engineer to produce more detailed plans and specifications. That work was completed by Solarc. A new call for HVAC quotes was issued through Griffin Construction and all quotes were submitted by May 16, 2013.

The low HVAC bid was submitted by Stephens Heating & Cooling, Inc. in the amount of \$25,328. In addition, the HVAC system requires the addition of an electrical panel in the amount of \$9,081 and roof patching in the amount of \$5,000. With Griffin's administrative and insurance, the change order total equals \$42,243.24. This cost is approximately \$30,000 lower than the HVAC add alternate submitted with the initial Griffin Construction bid.

The change order will add \$42,242.24 to the contract and will make the total contract amount \$204,108.01.

RECOMMENDATION: Approve Change Order #4 to the contract with Griffin Construction in the amount of \$42,242.24 and increase the total contract amount to \$204,108.01.



Griffin Construction, L.L.C.

TITLE: OCO#4 - PCO#9 HVAC
PROJECT: 13013
Pocket Fuel Tenant Improvements

CHANGE ORDER
NO. 4
DATE: 05/16/2013
JOB: 13013

TO: Attn: Michael McElwee
Port Of Hood River
1000 East Port Marina Drive
Hood River, Oregon 97031
Phone:541-386-1645

CONTRACT DATE: 04/05/2013
STARTED: 05/16/2013
COMPLETED:
REQUIRED: 05/21/2013

DESCRIPTION

Provide and install HVAC per Soloarc plans dated 4/29/13. Excludes all controls, wiring and programming with is by owner (Trane).

Num	Item	Description	Ref	Qty	Unit	Unit Price	Amount
1	Stephens	Provide and install HVAC.		1.000	Each	25,328.00	25,328.00
2	Griffin	PCO#9 management, cut/patch		1.000	Each	5,000.00	5,000.00
3	Hire	Provide and install electrical for HVAC and new 200 amp panel.		1.000	Each	9,081.00	9,081.00
						Item Total:	\$39,409.00
						Insurance	\$394.09
						Fee	\$2,440.15
						Total:	\$42,243.24

The original Contract Sum was	\$168,369.00
The net change by previously authorized Change Orders is	(\$6,504.23)
The Contract Sum prior to this Change Order was	\$161,864.77
The Contract Sum will be increased by this Change Order in the amount of	\$42,243.24
The new Contract Sum including this Change Order will be	\$204,108.01
The Contract Time will be unchanged.	0 days
The date of Substantial Completion as of this Change Order therefore is	

ACCEPTED

Port Of Hood River

Griffin Construction LLC

By: _____
Michael McElwee

By: 
Samuel L Griffin

By: _____

Date: _____

Date: 05/16/2013

Date: _____

Commission Memo

To: Commissioners
From: Michael McElwee
Date: May 15, 2013
Re: Purchase & Sale Agreement with NBW Hood River, LLC

On October 16 the Commission approved a Purchase & Sale Agreement (P&S) with NBW Hood River, LLC (NBW) for small portions of Port property near Exit #63 to facilitate construction of the a hotel and retail project. That P&S has expired and it is necessary for the Commission to approve the attached Amendment #1 for this transaction to continue.

The original P&S made the purchase price contingent upon an appraisal which was completed and received on May 2. Staff and legal counsel have worked to negotiate Amendment #1 which defines a specific purchase price and requires the \$5,000 deposit to be non-refundable among other changes.

The Hood River City Council recently approved vacation of the public easement that encumbered part of Tract #1, a pre-condition to sale of the property. Since the project is moving forward on many fronts, it is timely to consider the P&S Amendment at this time.

RECOMMENDATION: Approve Amendment #1 to Purchase and Sale Agreement with NBW-Hood River, LLC for two tracts of remnant property.

FIRST AMENDMENT TO PURCHASE AGREEMENT

THIS FIRST AMENDMENT TO PURCHASE AGREEMENT (this "Amendment"), dated as of _____, 2013, is entered into by and between **Port of Hood River**, an Oregon municipal corporation (collectively, "Seller"), and **NBW Hood River LLC**, an Oregon limited liability company ("Buyer").

A. Seller and Buyer have entered into that certain Purchase and Sale Agreement and Receipt for Earnest Money (the "Purchase Agreement") dated October 19, 2012 pertaining to certain real property located in Hood River Oregon and more particularly described in the Purchase Agreement (the "Property"). All capitalized terms used herein that are not defined shall have the meaning ascribed to them in the Purchase Agreement.

B. Buyer and Seller desire to execute this Amendment on the terms herein set forth.

NOW THEREFORE, in consideration of the expenses incurred by Buyer to date and the mutual undertakings of the parties hereto, it is hereby agreed as follows:

1. Purchase Price. Paragraph 1 of the Purchase Agreement is deleted and the following substituted in lieu thereof:

"The purchase price for Tract 1 is \$10,000.00 and the purchase price for Tract 2 is \$11,000.00."

2. Buyer's Contingencies. Buyer's contingencies in paragraph 1 of Addendum A are satisfied. Buyer has deposited \$5,000 in cash with Escrow. The \$5,000 deposit is non refundable but shall be applied to the purchase price, if the Property sale is closed.

3. Closing Date. Paragraph 3 of Addendum A is deleted and the following substituted in lieu thereof:

"Close of escrow shall occur on or before December 31, 2013 on a date mutually agreed to by the parties, provided all Seller's contingencies have been satisfied or waived prior to December 31, 2013. If all Seller's contingencies have not been satisfied or waived prior to December 31, 2013, unless the parties mutually agree in writing to extend the Closing Date, this Agreement shall terminate and no longer be in effect. Notwithstanding the foregoing, Buyer will have the right to extend the Closing Date by 90 days upon deposit of an additional \$5,000 earnest money, which will be non refundable but applicable to the purchase price, if the Property sale is closed."

4. Conflicts with Purchase Agreement. In the event that any specific provision in this Amendment conflicts with the Purchase Agreement in any manner, the terms and conditions of this Amendment shall control for all purposes. Except as specifically set forth herein, the Purchase Agreement is unmodified and is hereby ratified and remains in full force and effect.

5. Counterparts; Facsimile Signatures. This Amendment may be executed in one or more counterparts, each of which shall be deemed to constitute an original, but all of which, when taken together, shall constitute one and the same instrument, with the same effect as if all of the parties to this Amendment had executed the same counterpart. Facsimile signatures shall operate as originals for all purposes under this Amendment.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment effective as of the date first above written.

Buyer: NBW HOOD RIVER LLC

Seller: PORT OF HOOD RIVER

By: W. Robert Naito

Title: Member

Execution Date: _____

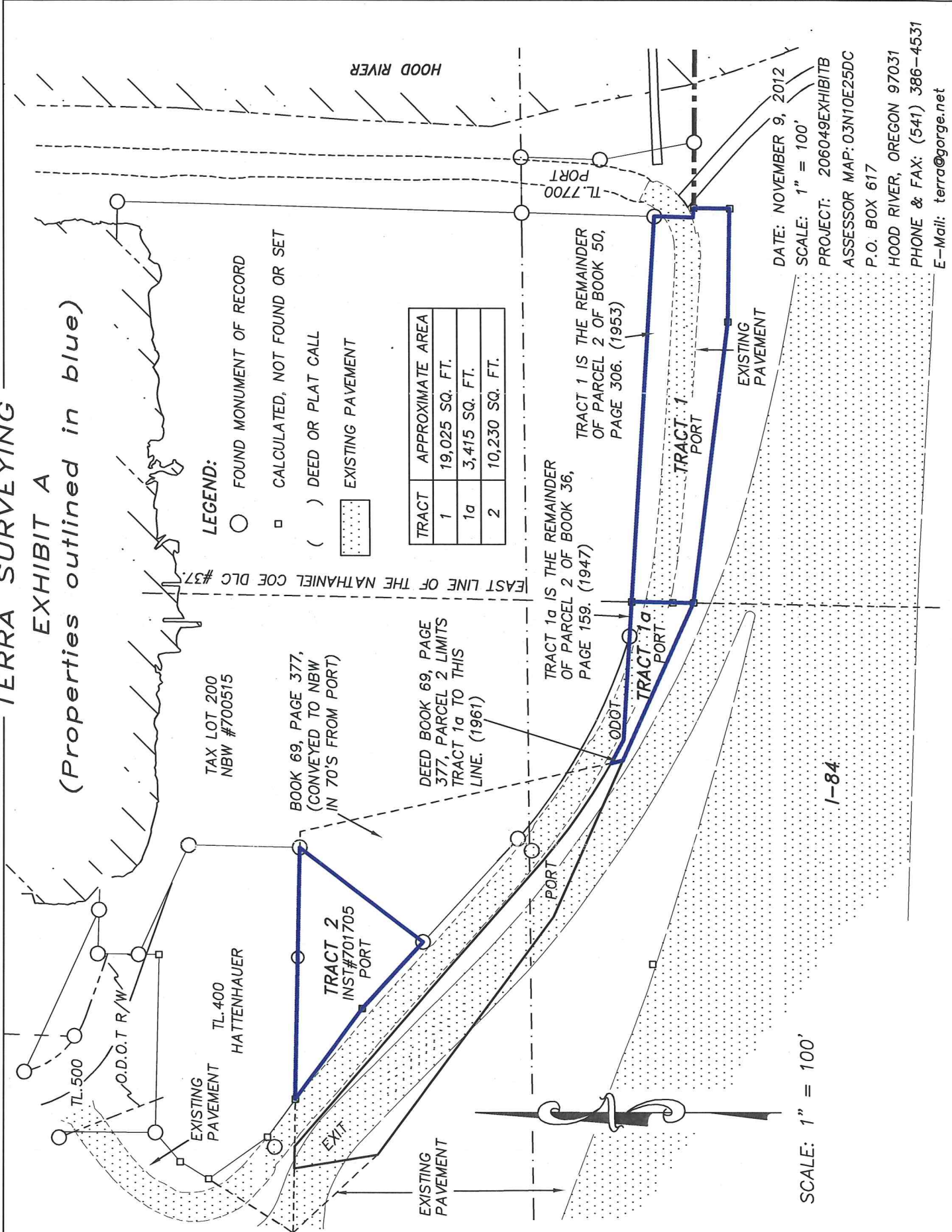
By: Michael S. McElwee

Title: Executive Director

Execution Date: _____

TERRA SURVEYING

EXHIBIT A
(Properties outlined in blue)



- LEGEND:**
- FOUND MONUMENT OF RECORD
 - CALCULATED, NOT FOUND OR SET
 - () DEED OR PLAT CALL
 - ▨ EXISTING PAVEMENT

TRACT	APPROXIMATE AREA
1	19,025 SQ. FT.
1a	3,415 SQ. FT.
2	10,230 SQ. FT.

DATE: NOVEMBER 9, 2012
 SCALE: 1" = 100'
 PROJECT: 206049EXHIBITB
 ASSESSOR MAP: 03N10E25DC
 P.O. BOX 617
 HOOD RIVER, OREGON 97031
 PHONE & FAX: (541) 386-4531
 E-Mail: terra@gorge.net

SCALE: 1" = 100'

I-84

HOOD RIVER

EAST LINE OF THE NATHANIEL COE DLC #37

TAX LOT 200
NBW #700515

BOOK 69, PAGE 377,
(CONVEYED TO NBW
IN 70'S FROM PORT)

DEED BOOK 69, PAGE
377, PARCEL 2 LIMITS
TRACT 1a TO THIS
LINE. (1961)

TRACT 1a IS THE REMAINDER
OF PARCEL 2 OF BOOK 36,
PAGE 159. (1947)

TRACT 1 IS THE REMAINDER
OF PARCEL 2 OF BOOK 50,
PAGE 306. (1953)

EXISTING PAVEMENT

EXISTING PAVEMENT

EXISTING PAVEMENT



TL-500

O.D.O.T R/W

TL-400
HATTENHAUER

TRACT 2
INST#701705
PORT

TRACT 1a
PORT

TRACT 1
PORT

TL 7700
PORT

EXIT