



**PORT OF HOOD RIVER COMMISSION**  
**MEETING AGENDA**  
**Wednesday, August 28, 2019**  
**Marina Center Boardroom**

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**2:00 P.M.**  
**Special Meeting**

1. Call to Order
  - a. Modifications, Additions to Agenda
2. Action Items
  - a. Approve Contract with Beam Excavating for Lower Mill Grade & Pave Project Not to Exceed \$440,000, Subject to Legal Counsel Review (*Anne Medenbach*)
3. Adjourn

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

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

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# Commission Memo



Prepared by: Anne Medenbach  
Date: August 28, 2019  
Re: Lower Mill Grade and Pave Contract

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The Lower Mill Grade and Pave project bid opening took place on August 20 and all received bids were significantly over the engineer's estimate. The project was originally intended to be completed in 2017 and engineering, specifications, and plans were completed. Wetland permits took longer than expected and by the time they were received in 2019, the project had changed. Originally, the project included a large stormwater pond and did not include the road paving. Staff added the road paving and deleted the pond in 2019, as it was not required.

The Port engaged HRK Engineering, who have been working on the Lower Mill since 2015, to put the road and the grading project specs together into one bid package for cost efficiency. They did this in April of 2019 and the cost estimate increased to \$299,000.

Staff requested an update to the estimate prior to bidding. This update showed a new engineer's estimate of \$321,990. Additionally, a change in specification was needed for the rock fill to ensure fair bidding. ODOT specs were inserted rather than individual submissions. This strategy has been confirmed as correct by contractors polled by staff. However, ODOT-sped rock is more expensive. After the project went to bid, the engineers provided a new estimate using the ODOT spec which was closer to \$400,000. The lowest bid came in at \$484,443.00.

Other contributing factors for the large difference in the engineers estimate and the received bids were as follows:

1. The engineer did not include prevailing wage, which would increase the estimate by 15% or \$60,000.
2. ODOT rock prices increased during the construction season and prices used in the estimate were from the beginning of the season.

Staff recommends the Commission evaluated the following three options moving forward:

1. Delay the project. If the project is delayed, we can go out to bid for it in 2020, include it in the 20/21 budget and begin work as early as July 2020. The bid docs won't change, and we can't anticipate how much prices will fluctuate between now and then.
2. Cancel the bid and get quotes for doing just the road this year, which is likely under \$120,000. This would appease the party that we are currently negotiating with for

purchase of a lot that is served by the road. We could then go to bid as outlined in Option 1 above for the grading portion.

3. Move forward this year. If the Port moves forward this year, we will need to change project budgets (see below). The contractor is working with staff to value engineer the larger line items in order to reduce the project budget. Additionally, staff has made it clear that cost change orders will not be approved, and we have prioritized the project tasks to ensure that the if the project does have to be cut short due to budget, the essential components are completed.

Requested budget	\$	300,000.00		
Approved budget	\$	236,000.00		
Proposed Contract amount	\$	440,000.00		
Proposed engineering	\$	13,972.00		
	\$	453,972.00		
Project deficit	\$	217,972.00		
<b>Projects pulling from</b>				
<b>Property</b>	<b>Project</b>	<b>Amount</b>	<b>Notes</b>	
Lower mill	Due Dilligence	\$ 30,000.00	undertermined use	
Lower mill	contingency	\$ 24,000.00	contingency	
Big 7	parking/landscape	\$ 36,000.00	no projects planned	
Big 7	HVAC placeholder	\$ 20,000.00		
Maritime	placeholder	\$ 15,000.00		
Halyard	TI	\$ 10,000.00	no projects planned	
Jensen	Entry doors	\$ 20,000.00	would need to push	
Airport	Light replacement	\$ 12,000.00	no project planned	
Airport	Box hangar design	\$ 50,000.00	no project planned	
		\$217,000.00		
<b>Contingency left</b>				
<b>Property</b>	<b>Project</b>	<b>Amount</b>		
Big 7	TI placeholder	\$ 30,000.00		
Halyard	HVAC	\$ 18,000.00		
State office	placeholder	\$ 10,000.00		
Marina office	placeholder	\$ 5,000.00		
Marina office	deck repairs	\$ 8,000.00		
Timber inc	placeholder	\$ 5,000.00		
Timber inc	concrete	\$ 10,000.00		
Airport	lights	\$ 12,000.00		
		\$ 98,000.00		

**RECOMMENDATION:** Approve contract with Beam Excavating Inc in an amount not to exceed \$440,000.00, barring no protests and subject to legal counsel review.

# Lower Mill Grading and Paving Project

August 6, 2019

## **PORT OF HOOD RIVER**

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

**Engineer: HRK Engineering and Field Services**

Carlos Garrido  
489 N. 8<sup>th</sup> Street, Suite 201  
Hood River, OR 97031  
Telephone: (541) 386-6480

**Owner: PORT OF HOOD RIVER**

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

# **Lower Mill Grading and Paving Project**

## **Bid Solicitation**

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**PART 1**  
**SCHEDULE**

## **SCHEDULE**

<b>Invitation to Bid Advertised</b>	August 6, 2019-August 14, 2019
<b>Mandatory Pre-Bid Walk Through</b>	August 15, 2019, 2 P.M PDT
<b>Bids Due</b>	August 20, 2019, 2 P.M. PDT
<b>Bid Opening</b>	August 20, 2019, 2 P.M. PDT
<b>First-Tier Subcontractor Disclosure Form Due</b>	August 20, 2019, 4 P.M. PDT
<b>Notice of Intent to Award Issued</b>	August 21, 2019
<b>Protest Deadline</b>	August 28, 2019
<b>Award of Contract</b>	August 29, 2019
<b>Required Documents Due from Awarded Contractor (Including bonding and insurance)</b>	September 6, 2019
<b>Substantial Completion</b>	November 1, 2019
<b>Final Completion</b>	November 15, 2019



**PART 2**  
**INVITATION TO BID**

**Invitation to Bid  
Lower Mill Grading and Paving Project**

The Port of Hood River is requesting bids for Lower Mill Grading and Paving at Hood River, Oregon 97031. This work includes:

1. Grading:
  - a. Excavate unsuitable material from wetland
  - b. Place structural fill to proposed grades
  - c. Grade site to proposed contours
  - d. Locate existing culvert and create drainage path
  - e. Install rip rap at bottom of ditch
2. Paving:
  - a. Remove unsuitable road material
  - b. Import and install base rock to speck
  - c. Pave with approx. 305 ton of hot mix AC
  - d. Reshape existing ditch
  - e. Install road markings as specified

This is a Prevailing Wage project subject to ORS 279C.800 to 279C.870.

Beginning Tuesday, August 6, 2019, a complete solicitation document, including scope of work, sample contract, and design specifications, may be examined or purchased during normal business hours at:

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

There will be a \$15 nonrefundable charge for each printed copy of the solicitation document. The document can also be viewed or printed online at <https://portofhoodriver.com/projects/rfp-bid-center/lower-mill-grading-and-paving-project/>. If plans are obtained online, please subscribe to project updates using the registration form at the bottom of the project page. Plan Holders will be notified of any bid addenda by email.

There is a mandatory project walk-through for prospective prime contractors at the work area scheduled on **Thursday, August 15, 2:00 PM the driveway to be paved, on 3331 Neal Creek Mill road, near Odell, OR.** Contractors that do not have an authorized representative attending this walk-through will be considered non-responsive.

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

Bids must be addressed to Michael McElwee, Executive Director, Port of Hood River. Bids must be delivered by **2:00 P.M. PDT on Tuesday, August 20, 2019** the Port office located at 1000 E. Port Marina Drive, Hood River OR 97031. Bids will not be accepted after 2:00 P.M. PDT on Tuesday, August 20, at 2:00 P.M. Bids will be publicly opened in the Port office immediately following the bid deadline.

**PART 3**  
**INSTRUCTIONS TO BID**

## **INSTRUCTIONS TO BID**

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

This Invitation to Bid and the resulting Contract are governed by Oregon Law. Specific laws and rules that govern the solicitation process are found in Chapters 279A and 279C of the Oregon Revised Statutes (ORS), and Chapter 137, Divisions 046 and 049 of the Administrative Rules of the Oregon Department of Justice (OAR). Bidders should obtain and become acquainted with the applicable provisions of the above laws and rules.

### **DESCRIPTION**

Bids are requested to grade a 5.87 acre site in Odell OR and pave the access road to the site. The grading work consists of: fill wetland, grade a 4.85 acre site to specified contours, route a drainage ditch. The paving work consists of: grading, importing base material and paving 16,900 sf of road with 3" of Hot mix AC. This is a Prevailing Wage Project subject to ORS 279C.800 to 279C.870. Project scope of work, plans and specifications are included in this Contract Solicitation document.

The work contemplated under this Contract includes all labor, tools, machinery, materials, transportation, equipment and services necessary for, and reasonably incidental to, the completion of all work in connection with the project described in the Contract, the General Conditions, all applicable special conditions, plans, specifications, and addenda.

All questions regarding the project should be directed via email (not phone) to **Anne Medenbach** at [amedenbach@portofhoodriver.com](mailto:amedenbach@portofhoodriver.com). Questions and answers will be posted on the Port of Hood River web page. Each contractor must register on the website [www.portofhoodriver.com](http://www.portofhoodriver.com) on the Bid Center page. All updates will be posted on this page and emailed to the plan holders list.

### **REGULATORY PERMITS**

Approval for this project was obtained from State and Federal jurisdictions. Permits are included for reference, and copies must be kept at the job site.

### **INVITATION TO BID DOCUMENT AVAILABILITY**

A complete solicitation document may be examined or obtained (\$15.00) during normal working hours at the Port office, 1000 E. Port Marina Drive, Hood River, Oregon after 2:00 P.M. PDT on Thursday, September 24, 2018 or by calling the Port Office (541)386-1645. Plans will be available to download at the Port of Hood River website project page at: <https://portofhoodriver.com/projects/rfp-bid-center/lower-mill-grading-and-paving-project/>

### **SOLICITATION LAW AND RULES**

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

### **BRAND NAME USAGE:**

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

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

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

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

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

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

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

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

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

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

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

**EXAMINATION OF THE CONTRACT DOCUMENTS AND WORK SITE**

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

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

specifications such as those included in the Contract Documents and has thoroughly examined and is familiar with the Contract Documents.

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

**BID FORMAT**

**Sealed Bids** must be received in the Port office, 1000 E. Port Marina Drive, or by mail to 1000 E. Port Marina Drive, Hood River, OR 97031 on or before 2 P.M., Tuesday August 20, 2019.

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

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

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

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

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

- First Tier Subcontractor Disclosure Form

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

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

- Lower Mill Grading and Paving project
- Closing Date
- Bidder Legal Name
- Oregon CCB #

Bidders may not modify bid after closing.

**BID SUBMISSION**

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

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

- Lower Mill Grading and Paving project
- Closing Date & Time
- Bidder Legal Name
- Oregon CCB #

Port of Hood River  
Attn: Michael McElwee

1000 E. Port Marina Drive  
Hood River OR 97031

**BID WITHDRAWAL**

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

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

**CLOSING AND OPENING?FIRST TIER SUBMITTAL**

Bids will be received until 2:00 PM PDT on Tuesday, August 20, 2019 where they will be immediately opened publicly and read aloud. Award decisions will not be made at Bid opening.

Bids received after 2:00 PM PDT on Tuesday, August 20, 2019 will be non-responsive and not be opened.

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

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

**BID ACCEPTANCE**

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

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

**METHOD OF AWARD**

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

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

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

**BID EVALUATION CRITERIA**

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

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

Prior to award of a contract, the Port of Hood River will evaluate whether the apparent successful Bidder meets the applicable standards of responsibility identified in ORS

279C.375(2)(b) and OAR 137-049-0390. In doing so, the Port of Hood River may investigate the Bidder and request information in addition to that already required in the ITB, when the Port of Hood River, in its sole discretion, considers it necessary or advisable.

**BID SECURITY REQUIREMENTS**

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

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

**PROCESSING OF BIDS**

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

**WITHDRAWAL OF BID ITEMS**

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

**REJECTION OF BIDS**

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

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

**INTENT-TO-AWARD ANNOUNCEMENT**

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

**PROTEST OF INTENT-TO-AWARD**

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

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

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

**RESPONSE TO INTENT-TO-AWARD PROTESTS**

The Port of Hood River will respond in writing to Intent-to-Award protests submitted by adversely affected or aggrieved Bidders. The Port of Hood River may also respond to Intent-to-Award protests submitted by other Bidders for the purpose of clarification. However, any



reponse made by the Port of Hood River is not intended to, and shall not in and of itself constitute, confirmation that the Bidder is, in fact, adversely affected or aggrieved, and therefore entitled to protest an Intent-to-Award, or that the protest was timely filed.

**AWARD**

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

**COMMENCEMENT OF WORK**

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

**REVIEW OF AWARDED BID FILES**

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

**INFORMATION TO BE SUBMITTED BY APPARENT SUCCESSFUL BIDDER**

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

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

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

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

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

**OREGON PREVAILING WAGES RATES (BOLI REQUIREMENTS)**

The Contractor and subcontractors shall comply with all the provisions of 279C.800 through 279C.870, relative to Prevailing Wage Rates. The current (July 1, 2019 for Region 9) Prevailing Wage Rates for Public Works Contract in Oregon subject to the State PWR will apply to this project and can be found at:

<https://www.oregon.gov/boli/WHD/PWR/July%202019/Q%20-%20region%2009%20-7-1-19.pdf>

The work takes place in Hood River County.

## **FIRST-TIER SUBCONTRACTOR DISCLOSURE INSTRUCTIONS AND FORM**

Pursuant to ORS 279C.370, Bidders are required to disclose information about certain First-Tier Subcontractors when the Owner estimates the contract value for a Public Improvement to be greater than \$100,000. Specifically, when the Contract amount of a First-Tier Subcontractor furnishing labor, or labor and materials, has a Contract value that is equal to or greater than five percent (5%) of the total project bid or \$15,000, whichever is greater, or \$350,000 regardless of the percentage of the total project bid, the Bidder must disclose the following information about that Subcontract in its Bid submission or within two (2) working hours after Bid Closing:

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

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

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

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

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

**PART 4**

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

**BID PROPOSAL**

**DATE:** \_\_\_\_\_

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

**PRICE SUBMITTAL:**

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

**BASE BID: Lower Mill Dirt Move**

FOR THE LUMP SUM OF: \$ \_\_\_\_\_ . (\$ \_\_\_\_\_ )

**CHANGES TO THE WORK**

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

**BID ALTERNATIVES:**

A.

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

\_\_\_\_\_, 20\_\_.

Company: \_\_\_\_\_ Telephone: \_\_\_\_\_

Company Address: \_\_\_\_\_

Email: \_\_\_\_\_ Fax: \_\_\_\_\_

Construction Contractors Board Number \_\_\_\_\_ Expiration Date \_\_\_\_\_

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

By: \_\_\_\_\_

---

Signature / Name & Title / Date

**BID SHEET**

## Bid Sheet

Item number	Specification	Item Description	Unit	Quantity	Unit Cost	Bid Item total
1	210	Mobilization	LS	1		
				<b>Subtotal</b>		
2	280	<b>Errosion Control</b>				
2.1	280.16	Furnish and place silt fence	LF	1562		
2.2	280.16	Furnish and place straw bale barrier	Each	5		
2.3	280.16	Furnish and place construction entrance	Each	1		
				<b>Subtotal</b>		
3	305	<b>Surveying</b>				
3.1		Construction Surveys	Each	4		
				<b>Subtotal</b>		
4	320	<b>Excavation and Grading</b>				
4.1	330	General Excavation	CY	16,350		
4.2	330	Imported Structural fill- wetland	CY	3,840		
4.3	330	Imported Structural fill- General grading	CY	3,450		
4.4	350	Geotextile- Wetland stabilization	SF	37,500		
4.5	390	Install rip-rap in drainage ditch	SF	100		
4.6	330,370	Drainage Ditch-Finish grade	LF	1,000		
				<b>Subtotal</b>		
5	330	<b>Roadway Construction</b>				
5.1	610	Scarification and excavation of existing roadway	SY	1,761		
5.2	350	Furnish and place geotextile	SF	16,900		
5.3	641	Furnish and place 4"-1.5" minus base rock	CY	200		
5.4	641	Furnish and place 2"-3/4 Leveling Course rock	CY	100		
5.5	744	Furnish and place - 3" HMAc	Ton	305		
5.6	876	Furnish and place stop bar	Each	1		
5.7	940	Furnish and place stop sign	Each	1		
				<b>Subtotal</b>		
6		<b>Stormwater/Sanitary Sewer</b>				
6.1	415	Furnish and place Type D Ditch inlet	Each	1		
6.2	445	Furnish and place MP 12" Storm drainage pipe	LF	120		
6.3	415	Extend sanitary clean out	LS	1		
				<b>Subtotal</b>		
7	1030	Permanent Seeding	Acre	1		
				<b>Total</b>		

**CONTRACTOR REGISTRATION FORM**

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

**1. CCB Requirements**

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

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

**Construction Contractors Board Number:** \_\_\_\_\_  
**Expiration Date:** \_\_\_\_\_

**2. Asbestos Abatement Licensing Requirements**

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

**3. Joint Venture/Partnership Disclosure**

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

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

**4. Addendum or Addenda Acknowledgement**

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

<b>ADDENDUM NO.</b>	<b>DATED</b>	<b>ADDENDUM NO.</b>	<b>DATED</b>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

**5. Responsibility Inquiry/ Contractor References**

**6. Recycled Products**

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

**7. Residency Information**

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

If a Resident Bidder, enter your Oregon business address:

\_\_\_\_\_  
\_\_\_\_\_

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

**8. Compliance with Tax Laws**

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

**9. Certification of Drug-Testing Law Requirements**

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

**10. Certification of Compliance with Non-Discrimination Laws**

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

**11. Signature of Bidder’s Duly Authorized Representative**

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

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

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



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

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

Authorized Signature

Title

---

FEIN ID # or SSN # \_\_\_\_\_

Contact Person: \_\_\_\_\_

Telephone Number ( ) \_\_\_\_\_ Fax ( ) \_\_\_\_\_

**FIRST-TIER SUBCONTRACTOR DISCLOSURE FORM**

**Project Name** \_\_\_\_\_

**Bid Opening Date** \_\_\_\_\_

**Name of Bidding Contractor** \_\_\_\_\_

**Email Address** \_\_\_\_\_

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

**FIRST-TIER SUBCONTRACTORS**

<b>Firm Name</b>	<b>Dollar Amount</b>
<b>Category of Work</b>	

<b>Firm Name</b>	<b>Dollar Amount</b>
<b>Category of Work</b>	

<b>Firm Name</b>	<b>Dollar Amount</b>
<b>Category of Work</b>	

<b>Firm Name</b>	<b>Dollar Amount</b>
<b>Category of Work</b>	

<b>Firm Name</b>	<b>Dollar Amount</b>
<b>Category of Work</b>	

**PART 5**  
**BID BOND FORM**

**BID BOND FORM**

**Project Name: Lower Mill Dirt Move**

We, \_\_\_\_\_, as "Principal,"  
(Name of Principal)

And \_\_\_\_\_, an \_\_\_\_\_ Corporation,  
(Name of Surety)

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

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

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

**PRINCIPAL:** \_\_\_\_\_ **SURETY:** \_\_\_\_\_

By \_\_\_\_\_  
Signature

BY ATTORNEY-IN-FACT:

\_\_\_\_\_  
Official Capacity

\_\_\_\_\_  
Name

Attest: \_\_\_\_\_  
Corporation Secretary

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Address

\_\_\_\_\_  
City State Zip

\_\_\_\_\_  
Phone Fax

**PART 6**  
**PERFORMANCE BOND FORM**  
**PAYMENT BOND FORM**

**PERFORMANCE BOND FORM**

Bond No. \_\_\_\_\_  
Solicitation \_\_\_\_\_  
Project Name \_\_\_\_\_

\_\_\_\_\_ (Surety #1)      Bond Amount No. 1:      \$ \_\_\_\_\_  
\_\_\_\_\_ (Surety #2)\*      Bond Amount No. 2:\*      \$ \_\_\_\_\_  
• *If using multiple sureties*  
Total Penal Sum of Bond \$ \_\_\_\_\_

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

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

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

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

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

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

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

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

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

**PRINCIPAL:** \_\_\_\_\_

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Official Capacity

Attest: \_\_\_\_\_  
Corporation Secretary

**SURETY:** \_\_\_\_\_  
*[Add signatures for each if using multiple bonds]*

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

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Address

\_\_\_\_\_  
City State Zip

\_\_\_\_\_  
Phone Fax

**PAYMENT BOND FORM**

Bond No. \_\_\_\_\_  
Solicitation \_\_\_\_\_  
Project Name \_\_\_\_\_

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

- *If using multiple sureties*

Total Penal Sum of Bond \$ \_\_\_\_\_

We, \_\_\_\_\_, as Principal, and the above identified Surety(ies), authorized to transact surety business in Oregon, as Surety, hereby jointly and severally bind ourselves, our respective heirs, executors, administrators, successors and assigns firmly by these presents to pay unto the Port of Hood River the sum to (Total Penal Sum of Bond)

\_\_\_\_\_ (Provided, that we the Sureties bind ourselves in such sum "jointly and severally" as well as "severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such surety), and

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

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

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

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

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



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

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

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

**PRINCIPAL:** \_\_\_\_\_

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Official Capacity

Attest: \_\_\_\_\_  
Corporation Secretary

**SURETY:** \_\_\_\_\_  
*[Add signatures for each if using multiple bonds]*

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

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Address

\_\_\_\_\_  
City State Zip

\_\_\_\_\_  
Phone Fax

**PART 7**  
**CERTIFICATE OF INSURANCE FORM**

**CERTIFICATE OF INSURANCE FORM**

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

\_\_\_\_\_  
 Name and Address of Insured

\_\_\_\_\_  
 Name and Address of Insurance Company

Description of Contract \_\_\_\_\_

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

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

\*Indicate the following property liability features: Yes    No

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

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

\_\_\_\_\_  
 Name of Insurance Company

\_\_\_\_\_  
 Authorized Representative

**PART 8**  
**GENERAL CONDITIONS (A-L)**

**PORT OF HOOD RIVER  
GENERAL CONDITIONS FOR PUBLIC WORKS CONTRACTS**

**SECTION A**  
General Provisions

**DEFINITION OF TERMS**

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

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

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

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

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

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

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

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

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

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

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

**Contractor**-person awarded the Contract for Work contemplated.

**Days**-are calendar days, unless otherwise specified.

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

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

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

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

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

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

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

**Owner**-Port of Hood River.

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

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

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

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

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

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

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

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

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

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

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

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

### **SCOPE OF WORK**

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

### **INTERPRETATION OF CONTRACT DOCUMENTS**

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

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

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

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

### **EXAMINATION OF PLANS, SPECIFICATIONS, AND SITE**

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

## **SECTION B**

### **Administration of the Contract**

### **PORT'S ADMINISTRATION OF THE CONTRACT**

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

The Port's Authorized Representative will visit the site at intervals appropriate to the stage of the Contractor's operations (1) to become generally familiar with and to keep the Port informed about the

progress and quality of the portion of the Work completed, (2) to endeavor to guard the Port against defects and deficiencies in the Work, and (3) to determine in general if Work is being performed in a manner indicating that the Work, when fully completed will be in accordance with the Contract Documents.

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

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

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

### **CONTRACTOR'S MEAN AND METHODS; MITIGATION OF IMPACTS**

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

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

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

### **MATERIALS AND WORKMANSHIP**

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

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

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

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

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



## **PERMITS**

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

## **COMPLIANCE WITH GOVERNMENT LAWS AND REGULATIONS**

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

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

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

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

- (a) Contractor shall not discriminate against Disadvantaged, Minority, Women, or Emerging Small Business enterprises, as those terms are defined in ORS 200.005, in the awarding of subcontracts (ORS 279A.110)
- (b) Contractor shall maintain, in current and valid form, all licenses and certificates required by tax, regulation, or this Contract when performing the Work.

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

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

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

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

**INSPECTION**

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

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

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

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

If directed to do so at any time before the Work is accepted, the Contractor shall uncover portions of the completed Work for inspection. After inspection, the Contractor shall restore such portions of Work to the standard required by the Contract. If the Work uncovered is unacceptable or was done with sufficient notice to Port's Authorized Representative, the uncovering and restoration will be paid for as a Change Order.

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

**SEVERABILITY**

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

**ACCESS TO RECORDS**

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

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

**WAIVER**

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

**SUBCONTRACTS AND ASSIGNMENT**

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

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

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

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

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

**SUCCESSORS IN INTEREST**

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

**PORT'S RIGHT TO DO WORK**

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

**OTHER CONTRACTS**

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

**LITIGATION**

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

**ALLOWANCES**

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

Unless otherwise provided in the Contract Documents:

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

### **SUBMITTALS, SHOP DRAWINGS, PRODUCT DATA AND SAMPLES**

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

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

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

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

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

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

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

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

### **SUBSTITUTIONS**

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

### **USE OF PLANS AND SPECIFICATIONS**

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

### **FUNDS AVAILABLE AND AUTHORIZED**

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

### **NO THIRD PARTY BENEFICIARIES**

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

## **SECTION C** Wages & Labor

### **MINIMUM WAGE RATES ON PUBLIC WORKS**

Contractor shall comply fully with the provisions of ORS 279C.800 through 279C.870. Documents establishing those conditions, as determined by the Commissioner of the Bureau of Labor and Industries (BOLI), are included as attachments to or are incorporated by reference in the Contract Documents.

Contractor shall pay workers at not less than the specified minimum hourly rate of wage, and shall include that requirement in all subcontracts.

**INTENT TO PAY PREVAILING WAGE**

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

**PAYROLL CERTIFICATION; ADDITIONAL RETAINAGE; FEE REQUIREMENTS**

In accordance with ORS 279C.845, the Contractor and every Subcontractor shall submit written certified statements to the Port's Authorized Representative, on the form prescribed by the Commissioner of the Bureau of Labor and Industries, certifying the hourly rate of wage paid each worker which the Contractor or the Subcontractor has employed on the project and further certifying that no worker employed on the project has been paid less than the prevailing rate of wage or less than the minimum hourly rate of wage specified in the Contract, which certificate and statement shall be verified by the oath of the Contractor or the Subcontractor has read such statement and certificate and knows the contents thereof and that the same is true to the Contractor or Subcontractor's best knowledge and belief. The certified statements shall set out accurately and completely the payroll records for the prior week including the name and address of each worker, the worker's correct classification, rate of pay, daily and weekly number of hours worked, deductions made and actual wages paid. Certified statements for each week during which the Contractor or Subcontractor has employed a worker on the project shall be submitted once a month, by the fifth business day of the following month.

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

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

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

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

**PROMPT PAYMENT AND CONTRACT CONDITIONS**

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

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

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

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

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

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

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

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

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

- (a) A payment clause that obligates the Contractor to pay the first-tier Subcontractor for satisfactory performance under its subcontract within ten (10) days out of such amounts as are paid to the Contractor by Port under the Contract;
- (b) An interest penalty clause that obligates the Contractor if payment is not made within thirty (30) days after receipt of payment from Port, to pay to the first-tier Subcontractor an interest penalty on amounts due in the case of each payment not made in accordance with the payment clause included in the subcontract pursuant to paragraph (a) of this subsection. Contractor or first-tier Subcontractor shall not be obligated to pay an interest penalty if the only reason that the Contractor or first-tier Subcontractor did not make payment when payment was due is that the Contractor or first-tier

Subcontractor did not receive payment from Port or Contractor when payment was due. The interest penalty shall be for the period beginning on the day after the required payment date and ending on the date on which payment of the amount due is made; and shall be computed at the rate specified in ORS 279C.515(2).

- (c) A clause which requires each of Contractor's Subcontractor's to include, in each of their contracts with lower-tier Subcontractors or suppliers, provisions to the effect that the first-tier Subcontractor shall pay its lower-tier Subcontractors and suppliers in accordance with the provisions of subsections (a) and (b), above and requiring each of their Subcontractors and suppliers to include such clauses in their subcontracts and supply contracts.

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

### **PAYMENT FOR MEDICAL CARE**

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

### **HOURS OF LABOR**

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

- (a) For all overtime in excess of eight (8) hours a day or forty (40) hours in any one week when the work week is five consecutive days, Monday through Friday, or
- (b) For all overtime in excess of ten (10) hours a day or forty hours (40) in any one week when the work week is four consecutive days Monday through Friday; and
- (c) For all Work performed on Saturday and on any legal holidays specified in ORS 279C.540.

This section will not apply to Contractor's Work under this Contract if Contractor is currently a party to a collective bargaining agreement with any labor organization.

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

## **SECTION D** Changes in Work

### **CHANGES IN WORK**

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

It is mutually agreed that changes in Plans, quantities, or details of construction are inherent in the nature of construction and may be necessary or desirable during the course of construction. Within the general scope of this Contract, the Port's Authorized Representative may at any time, without notice to sureties and



without impairing the Contract, require changes consistent with this section. All Change Order Work shall be executed under the conditions of the Contract Document. Such changes may include, but are not limited to:

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

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

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

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

- (a) Unit pricing may be utilized at the Port's option when unit prices or solicitation alternatives were provided that established the cost for additional Work, and a binding obligation exists under the Contract on the parties covering the terms and conditions of the additional work.
- (b) If the Port elects not to utilize the unit pricing, or if in the event that unit pricing is not available or appropriate, fixed pricing may be used for Change Work Order. In fixed pricing the basis of payments or total price shall be agreed upon in writing between the parties to the Contract, and shall be established before the Work is done whenever feasible. The mark-ups set forth following shall be utilized by the parties as a guide in establishing fixed pricing, and will not be exceeded by Port without adequate justification. Cost and price data relating to Change Orders shall be supplied by Contractor to Port upon request, but Port shall be under no obligation to make such requests.
- (c) In the event that unit pricing and fixed pricing are not utilized, then the Change Order Work shall be performed on a cost reimbursement basis for Direct Costs. Such work shall be compensated on the basis of the actual, reasonable and allowable cost of labor, equipment, and material furnished on the Work performed. In addition, the following mark-ups shall be added to the Contractor's or Subcontractor's Direct Costs as full compensation for profit, Overhead and other indirect costs for Work directly performed with the Contractor's or Subcontractor's own forces:

On labor .....15%  
On Equipment..10%  
On Materials.....10%

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

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

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

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

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

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

### **DELAYS**

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

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

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

Unavoidable Delays include delays other than Avoidable delays that are:

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

construed as abnormal. The parties agree that rainfall greater than the following levels cannot be reasonably anticipated:

- a. Daily rainfall equal to, or greater than, 0.50 inch during a month when the monthly rainfall exceeds the normal monthly average by twenty-five percent (25%) or more.
- b. Daily rainfall equal to, or greater than, 0.75 inch at any time.

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

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

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

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

In the event of any requests for additional compensation or additional Contract Time, or both, as applicable, arising under this section for Unavoidable Delays, other than requests for additional compensation or additional Contract Time for differing site conditions for which a review process is established under previous section, Contractor shall submit a written notification of the delay to the Port's Authorized Representative within two (2) days of the occurrence of the cause of the delay. This written notification shall state the cause of the potential delay, the project components impacted by the delay, and the anticipated additional Contract Time or the additional compensation, or both, as applicable, resulting from the delay. Within seven (7) days after the cause of the delay has been mitigated, or in no case more than thirty (30) days after the initial written notification, the Contractor shall submit to the Port's Authorized Representative, a complete and detailed request for additional compensation or additional Contract Time, or both, as applicable, resulting from the delay. If the Port's Authorized Representative denies Contractor's request for additional compensation or adjustment of Contract Time, the Contractor may proceed to file a Claim under the following section, *Claims Review Process*.

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

### **CLAIMS REVIEW PROCESS**

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

The Detailed Notice of the Claim shall be submitted in writing by Contractor and shall include a detailed, factual statement of the basis of the Claim, pertinent dates, Contract provisions which support or allow the Claim, reference to or copies of any documents which support the Claim, the dollar value of the Claim, and the Contract Time extension requested for the Claim. If the Claim involves Work to be completed by Subcontractors, the Contractor will analyze and evaluate the merits of the Subcontractor claim prior to forwarding it and that analysis and evaluation to the Port's Authorized Representative. The Port's Authorized Representative and the Port will not consider direct claims from Subcontractors, suppliers, manufacturers, or others not a party to this Contract. Contractor agrees that it will make no agreement, covenant, or

assignment, nor will it commit any other act that will permit or assist any Subcontractor, supplier, manufacturer, or other to directly or indirectly make a claim against Port.

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

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

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

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

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

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

## **SECTION E**

### **Payments**

#### **BID SHEET**

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

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

**APPLICATIONS FOR PAYMENT**

Port shall make progress payments on the Contract monthly as Work progresses. Payments shall be based upon estimates of Work completed and the Schedule of Values. The Port's Authorized Representative shall approve all payments. A progress payment shall not be considered acceptance or approval of any Work or waiver of any defects therein. Port shall pay to Contractor interest on the progress payment, not including retainage, due the Contractor. The interest shall commence thirty (30) days after the receipt of invoice from the Contractor or fifteen (15) days after the payment is approved by the Port's Authorized Representative, whichever is the earlier date. The rate of interest shall equal three times the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve district that includes Oregon on the date that is thirty (30) days after receipt of the application for payment from the Contract or fifteen (15) days after the payment is approved by the Port, whichever is the earlier date, but the rate of interest shall not exceed thirty percent (30%). Notwithstanding the foregoing, in instances when an application for payment is filled out incorrectly, or when there is any defect or impropriety in any submitted application or when there is a good faith dispute, Port shall so notify the Contractor within fifteen (15) days stating the reason or reasons the application for payment is defective or improper or the reasons for the dispute. A defective or improper application for payment, if corrected by the Contractor within seven (7) days of being notified by the Port, shall not cause a payment to be made later than specified in this section unless interest is also paid. Accrual of interest will be postponed when payment on the principal is delayed because of disagreement between the Port and the Contractor.

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

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

Signed:

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

- (a) The request for stored material shall be submitted at least thirty (30) days in advance of the application for payment on which it appears. Applications for payment shall be entertained for major equipment, components or expenditures only.
- (b) The Contractor shall submit applications for payment showing the quantity and cost of the material stored.
- (c) The material shall be stored in a bonded warehouse and Port's Authorized Representative shall be granted the right to access the material for the purpose of removal or inspection at any time during the Contract Period.
- (d) The Contractor shall name the Port as co-insured on the insurance policy covering the full value of the property while in the care and custody of the Contractor until it is installed. A certificate noting this coverage shall be issued to the Port.
- (e) Payments shall be made for materials only. The submitted amount of the application for payment shall be reduced by the cost of transportation and for the cost of an inspector to check the delivery at out of town storage sites. The cost of said inspection shall be borne solely by the Contractor.
- (f) Within sixty (60) days of the application for payment, the Contractor shall submit evidence of payment covering the material stored.

- (g) Payment for stored materials shall in no way indicate acceptance of the materials or waive any rights under this Contract for the rejection of the Work or materials not in conformance with the Contract Documents.
- (h) All required documentation must be submitted with the respective application for payment.

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

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

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

- (a) Take that portion of the Contract Price properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the total Contract Price allocated to that portion of the Work in the Schedule of Values, less retainage as provided in section, *Retainage*. Pending final determination of cost to the Port of changes in the Work, amounts not in the dispute may be included even though the Contract Price has not yet been adjusted by Change Order.
- (b) Add that portion of the Contract Price properly allocable to materials and equipment delivered and suitably stored at the at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Port pursuant to previous section, suitably stored off the site at a location agreed upon in writing), less retainage as provided in Section, *Retainage*.
- (c) Subtract the aggregate of previous payments made by the Port; and
- (d) Subtract any amounts for which the Port's Authorized Representative has withheld or nullified payment as provided in the Contract Documents.

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

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

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

**PAYROLL CERTIFICATION REQUIREMENT**

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

**DUAL PAYMENT SOURCES**

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

**RETAINAGE**

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

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

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

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

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

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

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

Contractor agrees that if Contractor elects to reserve a retainage from any progress payment due to any Subcontractor or supplier, such retainage shall not exceed five percent (5%) of the payment, and such

retainage withheld from Subcontractors and suppliers shall be subject to the same terms and conditions stated in Subsection, *Retainage* as apply to Port's retainage from any progress payment due to Contractor.

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

### **FINAL PAYMENT**

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

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

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

## **SECTION F**

### **Job Site Conditions**

### **USE OF PREMISES**

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

### **PROTECTION OF WORKERS, PROPERTY, AND THE PUBLIC**

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



Contractor shall take all necessary precautions for the safety of all personnel on the job site, and shall comply with the Contract Documents and all applicable provisions of federal, state and municipal safety laws and building codes to prevent accidents or injury to persons on, about or adjacent to the premises where the Work is being performed. Contractor shall erect and properly maintain at all times, as required by the conditions and progress of workers and the public against any hazards created by construction. Contractor shall designate a responsible employee or associate on the Work site, whose duty shall be the prevention of accidents. The name and position of the person designated shall be reported to the Port's Authorized Representative. The Port's Authorized Representative has no responsibility for Work site safety. Work site safety is the responsibility of the Contractor.

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

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

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

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

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

### **CUTTING AND PATCHING**

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

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

### **CLEANING UP**

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

### **DISPOSAL OF SURPLUS MATERIALS**

No waste site has been provided by Owner for the disposal of excess materials and debris. Debris shall be taken by Contractor to a disposal site approved by Owner. Contractor shall keep site clean, safe and free of debris. Contractor shall dispose of waste materials in an Owner-approved location.

### **ENVIRONMENTAL CONTAMINATION**

Contractor will be held responsible for and shall indemnify, defend (with counsel of Port's choice) and hold harmless Port from and against any costs, expenses, damages, claims, and causes action, (including attorney fees), or any of them, resulting from all spills, releases, discharges, leaks and disposal of

environmental pollution, including storage, transportation and handling during the performance of the Contract which occur as a result of, or are contributed by, the negligence or actions of Contractor or its personnel, agents, or Subcontractors or any failure to perform in accordance with the Contract Documents (except to the extent otherwise void under ORS 30.140). Nothing in this section shall limit Contractor's responsibility for obtaining insurance coverage required under section titled *Insurance* of these General Conditions, and Contractor shall take no action that would void or impair such coverages.

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

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

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

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

- (a) Description of items released (identity, quantity, manifest no., and all other documentation required by law.
- (b) Whether amount of items released is EPA/DEQ reportable, and, if so, when it was reported.
- (c) Exact time and location of release, including a description of the area involved.
- (d) Containment procedures initiated.
- (e) Summary of communications about the release Contractor has had with members of the press or State officials other than Port.
- (f) Description of cleanup procedures employed or to be employed at the site, including disposal location of spill residue.
- (g) Personnel injuries, if any, resulting from, or aggravated by, the release.

#### **ENVIRONMENTAL CLEAN-UP**

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

encountered if continued to work in such area would present a risk or danger to the health or well being of Contractor's or any Subcontractor's work force.

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

### **FORCE MAJEURE**

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

## **SECTION G**

### **Indemnity, Bonding, and Insurance**

### **RESPONSIBILITY FOR DAMAGES/INDEMNITY**

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

To the fullest extent permitted by law, Contractor shall indemnify and hold harmless the PORT, Port's Authorized Agent, its properties, officers, employees, and Architect/Engineer Consultants from and against all liabilities, damages, losses, claims, expenses (including reasonable attorney fees), demands and actions of any nature whatsoever which arise out of, result from or are related to (a) any damage, injury, loss, expense, inconvenience or delay described here, (b) any accident or occurrence which happens or is alleged to have happened in or about the project site or any place where the Work is being performed, or in the vicinity of either at any time prior to the time the Work is fully completed, (c) any failure of the Contractor to observe or perform any duty or obligation under the Contract Documents which is to be observed or performed by the Contractor, or any breach of agreement, representation or warranty of the Contractor contained in the Contract Document or any subcontract, (d) the negligent acts or omissions of the Contractor, a subcontractor or anyone directly or indirectly employed by them or any one of them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder (except to the extent otherwise void under ORS 30.140) and (e) any lien filed upon the project or bond claim in connection with the Work. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or persons described in this section.

### **PERFORMANCE AND PAYMENT SECURITY; PUBLIC WORKS BOND**

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

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

### **INSURANCE**

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

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

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

**Commercial General Liability Insurance:** Contractor shall obtain, at Contractor's expense, and keep in effect during the term of this Contract, Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverages that are satisfactory to the Port. This insurance shall include personal injury liability, products and completed operations, and contractual liability coverage for the indemnity provided under this Contract (to the extent contractual liability coverage for the indemnity is available in the marketplace), and shall be issued on an occurrence basis. Combined single limit per occurrence shall not be less than \$1,000,000 for each job site or location. Each aggregate limit shall not be less than \$1,000,000.

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

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

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

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

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

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

**Jones Act: The contractor must be aware of the requirements of this act and have the necessary maritime insurance in place.**

## **SECTION H** Schedule of Work

### **CONTRACT PERIOD**

Time is of the essence on this contract. The Contractor shall at all times carry on the Work diligently, without delay and punctually fulfill all requirements herein. Contractor shall commence work within ten (10) days of Notice to Proceed, unless otherwise directed.

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

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

### **SCHEDULE**

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

### **WORKING DAYS**

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

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

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

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

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

1. The physical Work on the project must be complete; and

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

## **SECTION I**

### Correction of Work

#### **BEFORE FINAL PAYMENT**

The Contractor warrants to the Port that materials and equipment furnished under this Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the work will be free from defects, and that the Work will conform to the requirements of the Contract Documents. Work failing to conform to these requirements shall be deemed defective. Contractor shall promptly remove from the premises and replace all defective materials and equipment as determined by the Port's Authorized Representative, whether incorporated in the Work or not. Removal and replacement shall be without loss or expense to the Port, and Contractor shall bear the cost of repairing all Work destroyed or damaged by such removal or replacement. Contractor shall be allowed a period of no longer than sixty (60) days for completion of defective (punch list) work, unless otherwise agreed. At the end of that period, or earlier if requested by the Contractor, the Port shall arrange for inspection of the Work by the Architect/Engineer. Should the work not be complete, and all corrections made, the costs for all subsequent re-inspections shall be borne by the Contractor. If Contractor fails to complete the punch list work within the above time period, without affecting Contractor's obligations the Port may perform such work and Contractor shall reimburse the Port all costs of the same within thirty (30) days after demand.

#### **WARRANTY WORK**

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

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

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

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

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

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

## **Section J**

### Suspension or Termination of the Work

#### **PORT'S RIGHT TO SUSPEND WORK**

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

- (a) Failure of the Contractor to correct unsafe conditions;
- (b) Failure of the Contractor to carry out any provision of the Contract;
- (c) Failure of the Contractor to carry out orders;
- (d) Conditions, in the opinion of the Port's Authorized Representative, which are unsuitable for performing the work;
- (e) Time required to investigate differing site conditions;
- (f) Any reason considered to be in the public interest.

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

#### **CONTRACTOR'S RESPONSIBILITIES**

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

#### **COMPENSATION FOR SUSPENSION**

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

#### **PORT'S RIGHT TO TERMINATE CONTRACT**

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

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

At any time the above occurs, the Port may exercise all rights and remedies available to Port at law or equity, and in addition, Port may take possession of the premises and all of the materials and appliances and finish the Work by whatever method it may deem expedient. In such case, the Contractor shall not be

entitled to receive further payment until the work is completed. If the Port's cost of finishing the Work exceeds the unpaid balance of the Contract Price, Contractor shall pay the difference to the Port.

**TERMINATION FOR CONVENIENCE**

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

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

**ACTION UPON TERMINATION**

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

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

**SECTION K**  
Contract Close Out

**RECORD DOCUMENTS**

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

**OPERATION AND MAINTENANCE MANUALS**

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

**AFFIDAVIT/RELEASE OF LIENS AND CLAIMS**

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

**COMPLETION NOTICES**



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

**TRAINING**

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

**EXTRA MATERIALS**

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

**ENVIRONMENTAL CLEANUP**

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

**CERTIFICATE OF OCCUPANCY**

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

**OTHER CONTRACTOR RESPONSIBILITIES**

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

**SURVIVAL**

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

**SECTION L**

Legal Relations & Responsibilities

**LAWS TO BE OBSERVED**

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

**PART 9**  
**TECHNICAL SPECIFICATIONS**  
**Bound Separately**

**PART 10**  
**CONSTRUCTION DRAWINGS**  
**Bound Separately**

**PART 11**

**PORT OF HOOD RIVER  
PUBLIC IMPROVEMENT CONTRACT**

**PORT OF HOOD RIVER  
PUBLIC IMPROVEMENT CONTRACT**

This Contract entered into between the PORT OF HOOD RIVER, an Oregon municipal corporation, ("PORT") and \_\_\_\_\_ ("CONTRACTOR"), shall become effective when this Contract has been signed by both parties and the Port has issued to CONTRACTOR a Notice to Proceed with the Work.

**WITNESSETH:**

**WHEREAS**, CONTRACTOR, having examined the Work site and become familiar and satisfied with conditions, has submitted an acceptable bid to construct the Ken Jernstedt Airfield South Parallel Taxiway and Apron Rehabilitation Project on PORT property in Hood River, Oregon 97031 ("Work"); and,

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

**THEREFORE, IT IS AGREED AS FOLLOWS:**

**Terms of Performance**

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

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

**Contract Price:**

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

**Contract Dates:**

Project Start Date: September 9, 2019  
Substantial Completion: October 23, 2019  
Final Completion: November 1, 2019 (40 working days)

**Liquidated damages**

If the CONTRACTOR fails to complete the Work within the time specified or within any extension of time agreed to by both parties in writing, CONTRACTOR shall pay liquidated damages of \$250.00, for each day of delay beyond the completion day identified above. (If no dollar amount is specified this paragraph shall not apply to this Contract.)

**Representatives**

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

**Integration**

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

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

\_\_\_\_\_  
**CONTRACTOR**

By \_\_\_\_\_

Its Manager \_\_\_\_\_

\_\_\_\_\_  
**PORT OF HOOD RIVER**

By Michael S. McElwee \_\_\_\_\_

Its Executive Director \_\_\_\_\_

**PART 12**  
**REGULATORY PERMITS**

Department of State Lands  
1645 NE Forbes Road, Suite 112  
Bend, OR 97701  
☎ 541-388-6112

Permit No.:	<u>60720-RF</u>
Permit Type:	<u>Removal/Fill</u>
Waterway:	<u>Wetland</u>
County:	<u>Hood River</u>
Expiration Date:	<u>April 26, 2020</u>

***PORT OF HOOD RIVER***

**IS AUTHORIZED IN ACCORDANCE WITH ORS 196.800 TO 196.990 TO PERFORM THE OPERATIONS DESCRIBED IN THE REFERENCED APPLICATION, SUBJECT TO THE SPECIAL CONDITIONS LISTED ON ATTACHMENT A AND TO THE FOLLOWING GENERAL CONDITIONS:**

1. This permit does not authorize trespass on the lands of others. The permit holder must obtain all necessary access permits or rights-of-way before entering lands owned by another.
2. This permit does not authorize any work that is not in compliance with local zoning or other local, state, or federal regulation pertaining to the operations authorized by this permit. The permit holder is responsible for obtaining the necessary approvals and permits before proceeding under this permit.
3. All work done under this permit must comply with Oregon Administrative Rules, Chapter 340; Standards of Quality for Public Waters of Oregon. Specific water quality provisions for this project are set forth on Attachment A.
4. Violations of the terms and conditions of this permit are subject to administrative and/or legal action, which may result in revocation of the permit or damages. The permit holder is responsible for the activities of all contractors or other operators involved in work done at the site or under this permit.
5. Employees of the Department of State Lands (DSL) and all duly authorized representatives of the Director must be permitted access to the project area at all reasonable times for the purpose of inspecting work performed under this permit.
6. Any permit holder who objects to the conditions of this permit may request a hearing from the Director, in writing, within twenty-one (21) calendar days of the date this permit was issued.
7. In issuing this permit, DSL makes no representation regarding the quality or adequacy of the permitted project design, materials, construction, or maintenance, except to approve the project's design and materials, as set forth in the permit application, as satisfying the resource protection, scenic, safety, recreation, and public access requirements of ORS Chapters 196, 390, and related administrative rules.
8. Permittee must defend and hold harmless the State of Oregon, and its officers, agents and employees from any claim, suit, or action for property damage or personal injury or death arising out of the design, material, construction, or maintenance of the permitted improvements.
9. Authorization from the U.S. Army Corps of Engineers may also be required.

**NOTICE:** If removal is from state-owned submerged and submersible land, the permittee must comply with leasing and royalty provisions of ORS 274.530. If the project involves creation of new lands by filling on state-owned submerged or submersible lands, you must comply with ORS 274.905 to 274.940 if you want a transfer of title; public rights to such filled lands are not extinguished by issuance of this permit. This permit does not relieve the permittee of an obligation to secure appropriate leases from DSL, to conduct activities on state-owned submerged or submersible lands. Failure to comply with these requirements may result in civil or criminal liability. For more information about these requirements, please contact Department of State Lands, 541-388-6112.

Kirk Jarvie, Southern Operations Manager  
Aquatic Resource Management  
Oregon Department of State Lands

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**Authorized Signature**



## ATTACHMENT A

Permit Holder: Port of Hood River

Project Name: Lower Mill

Special Conditions for Removal/Fill Permit No. 60720-RF

### READ AND BECOME FAMILIAR WITH CONDITIONS OF YOUR PERMIT.

The project site may be inspected by the Department of State Lands (DSL) as part of our monitoring program. A copy of this permit must be available at the work site whenever authorized operations are being conducted.

- 1. Responsible Party:** By signature on the application, Michael McElwee is acting as the representative of Port of Hood River. By proceeding under this permit, Port of Hood River agrees to comply with and fulfill all terms and conditions of this permit, unless the permit is officially transferred to another party as approved by DSL.
- 2. Authorization to Conduct Removal and/or Fill:** This permit authorizes removal and fill of material in T2N R10E Section 25CA, Tax Lot 902, in Hood River County, as referenced in the application, map and drawings (See Attachment B for project location(s)), with a final date of February 4, 2019 and summarized as follows:

#### Summary of Authorized Wetland Impacts

Wetland #	Permanent			Temporary		
	Acres	Removal (cy)	Fill (cy)	Acres	Removal (cy)	Fill (cy)
Wetland A	0.86	4,162	5,550	0	0	0
<b>Total:</b>	<b>0.86</b>	<b>4,162</b>	<b>5,550</b>	<b>0</b>	<b>0</b>	<b>0</b>

This permit also authorizes removal and fill activities necessary to complete the required compensatory mitigation. In the event information in the application conflicts with these permit conditions, the permit conditions prevail. See Attachment B for project location(s).

- 3. Changes to the Project or Inconsistent Requirements from Other Permits:** It is the permittee's responsibility to ensure that all state, federal and local permits are consistent and compatible with the final approved project plans and the project as executed. Any changes made in project design, implementation or operating conditions to comply with conditions imposed by other permits resulting in removal-fill activity must be approved by DSL prior to implementation.
- 4. DSL May Halt or Modify:** DSL retains the authority to temporarily halt or modify the project or require rectification in case of unforeseen adverse effects to aquatic resources or permit non-compliance.
- 5. DSL May Modify Conditions Upon Permit Renewal:** DSL retains the authority to modify conditions upon renewal, as appropriate, pursuant to the applicable rules in effect at the time of the request for renewal or to protect waters of this state.

### **Pre-Construction**

6. **Local Government Approval Required Before Beginning Work:** Prior to the start of construction, the permittee must obtain a Industrial Land Use Permit from the Hood River County Community Development.
7. **Stormwater Management Approval Required Before Beginning Work:** Prior to the start of construction, the permittee must obtain a National Pollution Discharge Elimination System (NPDES) permit from the Oregon Department of Environmental Quality (DEQ), if one is required by DEQ.
8. **Pre-construction Resource Area Fencing or Flagging:** Prior to any site grading, the boundaries of the avoided wetlands, waterways, and riparian areas adjacent to the project site must be surrounded by noticeable construction fencing or flagging. The marked areas must be maintained during construction of the project and be removed immediately upon project completion.

### **General Construction Conditions**

9. **Water Quality Certification:** The Department of Environmental Quality (DEQ) may evaluate this project for a Clean Water Act Section 401 Water Quality Certification (WQC). If the evaluation results in issuance of a Section 401 WQC, that turbidity condition will govern any allowable turbidity exceedance and monitoring requirements.
10. **Erosion Control Methods:** The following erosion control measures (and others as appropriate) must be installed prior to construction and maintained during and after construction as appropriate, to prevent erosion and minimize movement of soil into waters of this state.
  - a. All exposed soils must be stabilized during and after construction to prevent erosion and sedimentation.
  - b. Filter bags, sediment fences, sediment traps or catch basins, leave strips or berms, or other measures must be used to prevent movement of soil into waterways and wetlands.
  - c. To prevent erosion, use of compost berms, impervious materials or other equally effective methods, must be used to protect soil stockpiled during rain events or when the stockpile site is not moved or reshaped for more than 48 hours.
  - d. Unless part of the authorized permanent fill, all construction access points through, and staging areas in, riparian and wetland areas must use removable pads or mats to prevent soil compaction. However, in some wetland areas under dry summer conditions, this requirement may be waived upon approval by DSL. At project completion, disturbed areas with soil exposed by construction activities must be stabilized by mulching and native vegetative plantings/seeding. Sterile grass may be used instead of native vegetation for temporary sediment control. If soils are to remain exposed more than seven days after completion of the work, they must be covered with erosion control pads, mats or similar erosion control devices until vegetative stabilization is installed.
  - e. Where vegetation is used for erosion control on slopes steeper than 2:1, a tackified seed mulch must be used so the seed does not wash away before germination and rooting.
  - f. Dredged or other excavated material must be placed on upland areas having stable slopes and must be prevented from eroding back into waterways and wetlands.
  - g. Erosion control measures must be inspected and maintained as necessary to ensure their continued effectiveness until soils become stabilized.

- h. All erosion control structures must be removed when the project is complete, and soils are stabilized and vegetated.

11. **Hazardous, Toxic, and Waste Material Handling:** Petroleum products, chemicals, fresh cement, sandblasted material and chipped paint, wood treated with leachable preservatives or other deleterious waste materials must not be allowed to enter waters of this state. Machinery refueling is to occur at least 150 feet from waters of this state and confined in a designated area to prevent spillage into waters of this state. Barges must have containment system to effectively prevent petroleum products or other deleterious material from entering waters of this state. Project-related spills into waters of this state or onto land with a potential to enter waters of this state must be reported to the Oregon Emergency Response System (OERS) at 1-800-452-0311.
12. **Archaeological Resources:** If any archaeological resources, artifacts or human remains are encountered during construction, all construction activity must immediately cease. The State Historic Preservation Office must be contacted at 503-986-0674. You may be contacted by a Tribal representative if it is determined by an affected Tribe that the project could affect Tribal cultural or archeological resources.
13. **Construction Corridor:** There must be no removal of vegetation or heavy equipment operating or traversing outside the designated construction corridor or footprint (Drawing(s) C4).
14. **Temporary Ground Disturbances:** All temporarily disturbed areas must be returned to original ground contours at project completion.

#### Payment-in-Lieu

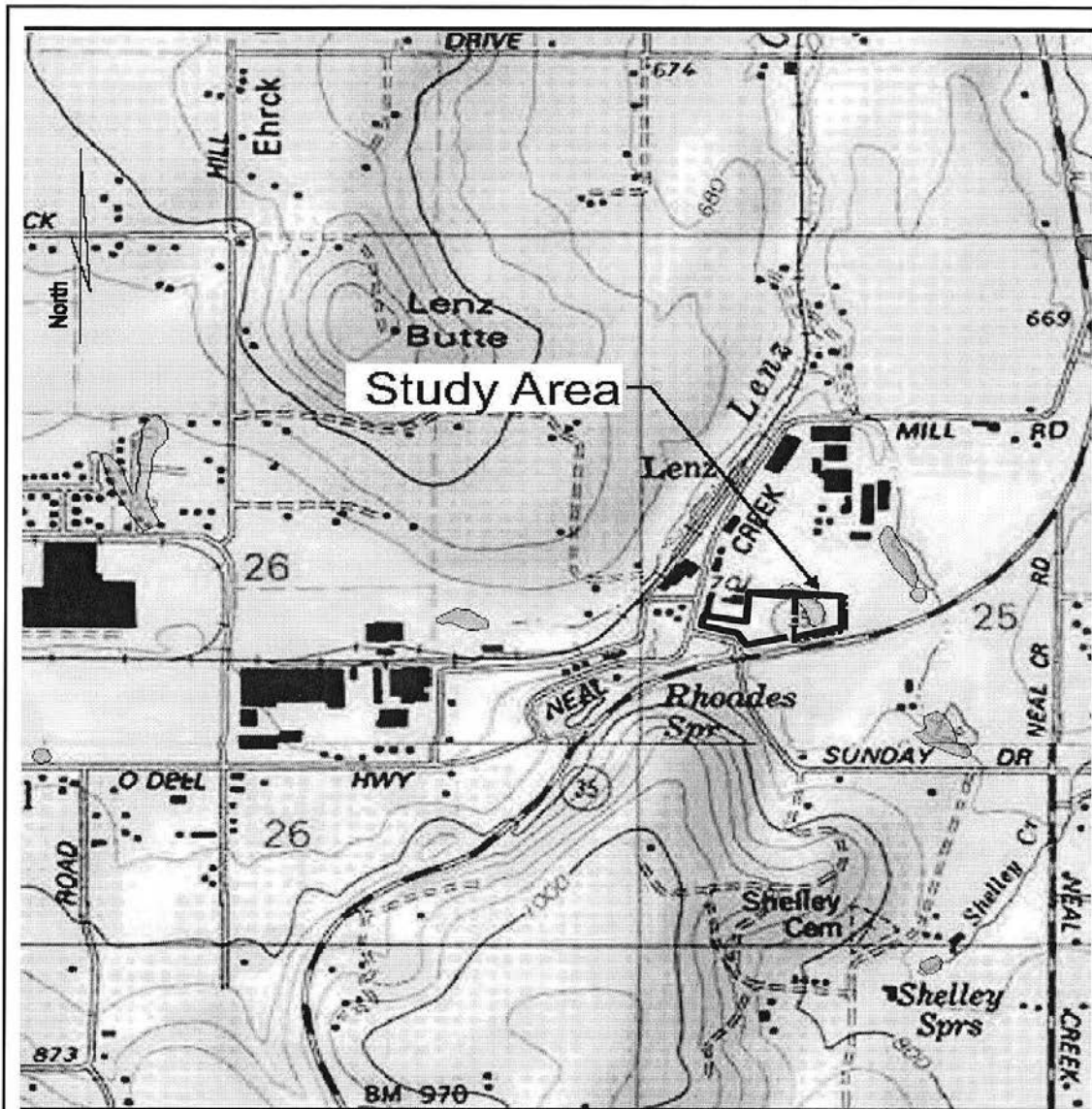
15. **Payment-in-Lieu Mitigation:** Wetland mitigation for the unavoidable loss of 0.86 acres of depressional, Palustrine Scrub-shrub (PSS) wetland has been accomplished via payment to DSL's Removal-Fill Mitigation Fund in the amount of \$132,218.57. Once the authorized fill has commenced, the payment is non-refundable.

**ATTACHMENT B**

**Permit Holder: Port of Hood River**

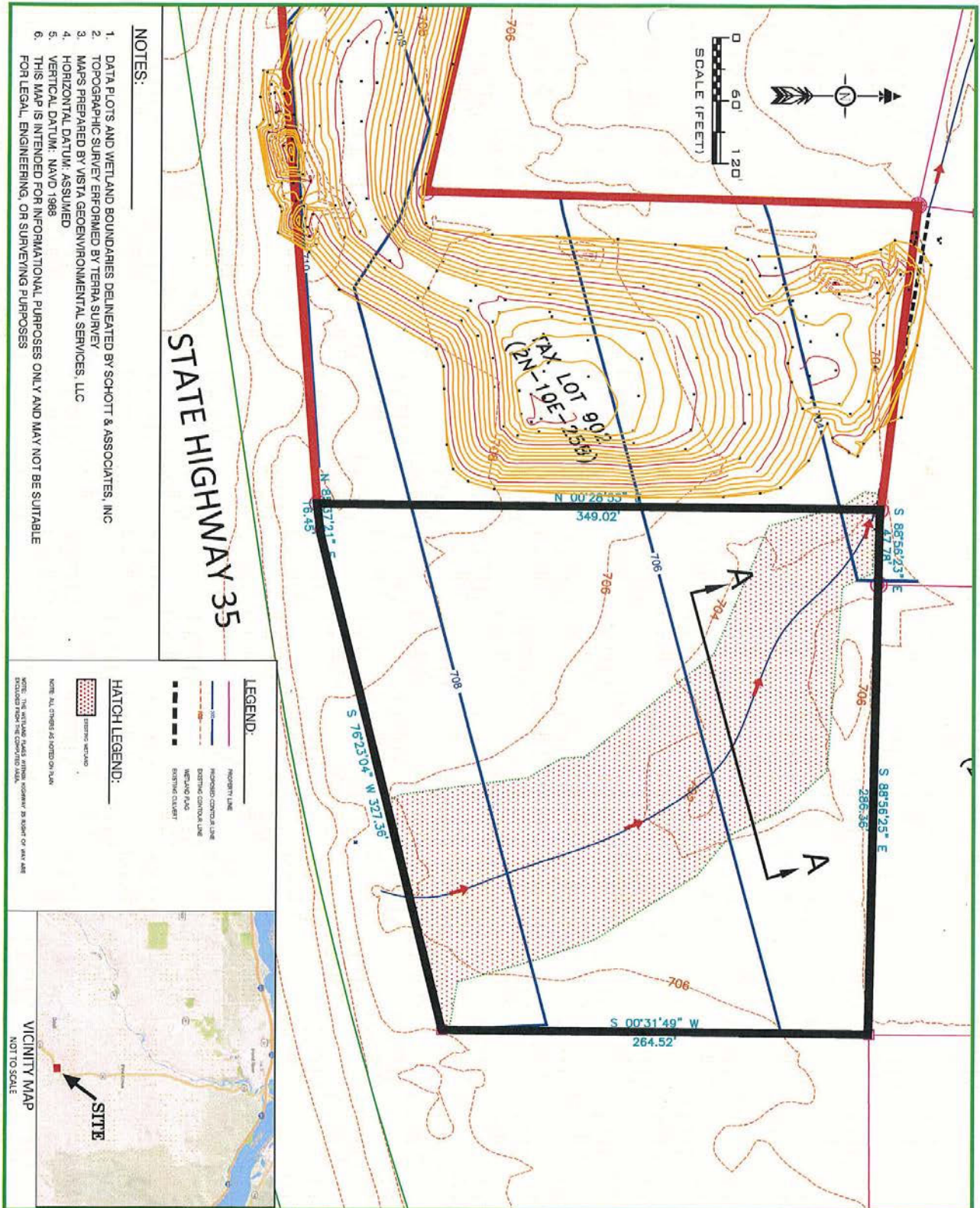
**Project Name: Lower Mill**

**Maps and Drawings for Removal/Fill Permit No. 60720-RF**



Site Vicinity map.  
Lower Mill Site - Port of Hood River  
S&A#2493

Schott & Associates  
P.O. Box 589  
Aurora, OR. 97002  
503.678.6007



- NOTES:**
1. DATA PLOTS AND WETLAND BOUNDARIES DELINEATED BY SCHOTT & ASSOCIATES, INC
  2. TOPOGRAPHIC SURVEY PERFORMED BY TERRA SURVEY
  3. MAPS PREPARED BY VISTA GEOENVIRONMENTAL SERVICES, LLC
  4. HORIZONTAL DATUM: ASSUMED
  5. VERTICAL DATUM: NAVD 1988
  6. THIS MAP IS INTENDED FOR INFORMATIONAL PURPOSES ONLY AND MAY NOT BE SUITABLE FOR LEGAL, ENGINEERING, OR SURVEYING PURPOSES

**LEGEND:**

- PROPOSED LINE
- EXISTING CENTRAL LINE
- EXISTING CENTRAL LINE
- EXISTING ROAD
- EXISTING CENTERLINE

**HATCH LEGEND:**

- WETLAND

NOTE: ALL OTHERS AS NOTED ON PLAN

NOTE: THE HATCHED AREA ABOVE INDICATES A ROAD OR HIGHWAY EXISTING UNDER THE CONTRACT AREA.



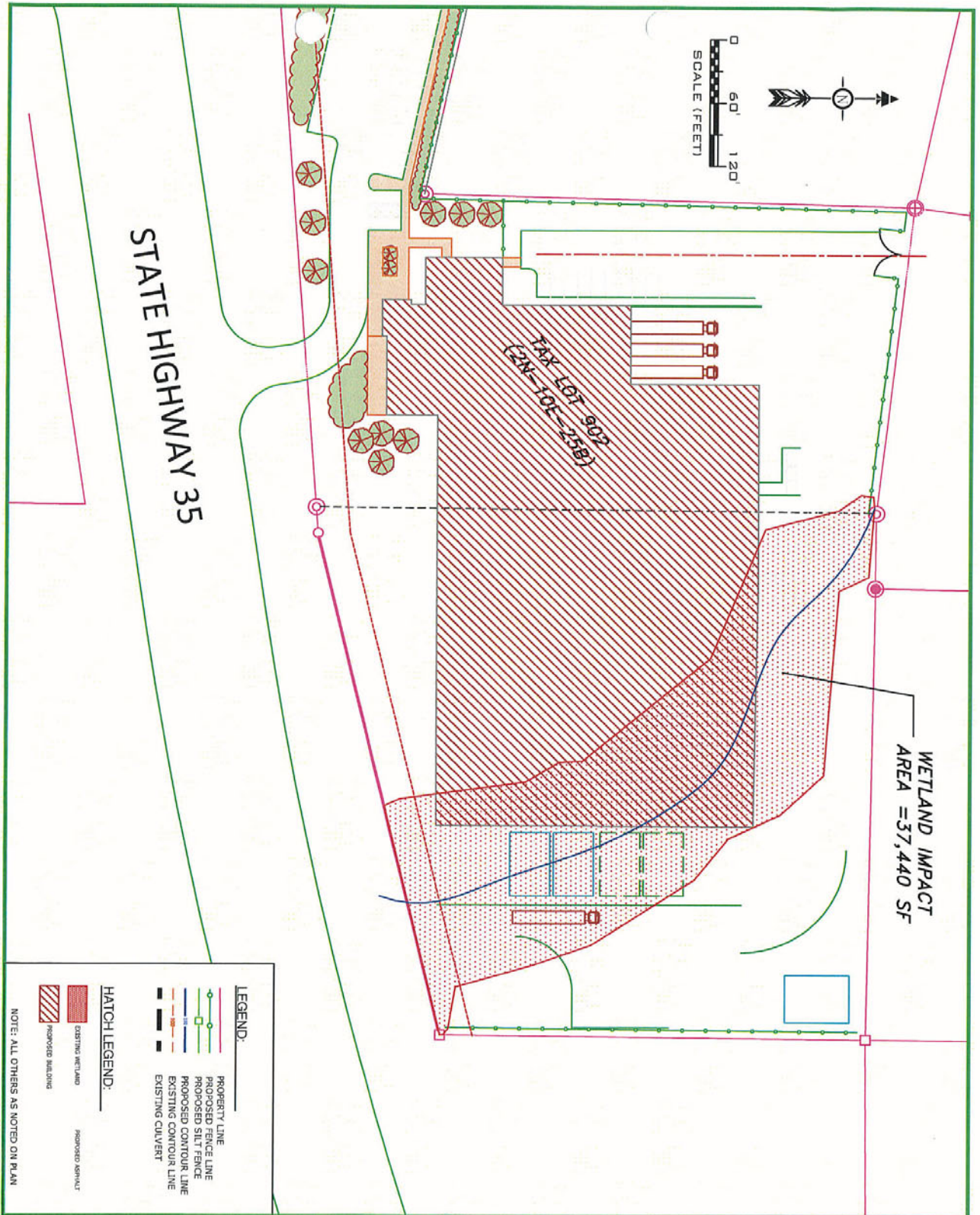
**EXISTING & PROPOSED GRADING**

Project Number: 60720-RF  
Date: 02/22/2018  
Drawing Number: C1

**PORT OF HOOD RIVER**  
LOWER HANEL MILL  
HOOD RIVER COUNTY, ODELL

**VISTA** GEOENVIRONMENTAL SERVICES  
489 N 8TH STREET - SUITE 201  
HOOD RIVER, OREGON 97031  
(541) 386-6480





**LEGEND:**

- PROPERTY LINE
- - - PROPOSED FENCE LINE
- PROPOSED SILT FENCE
- PROPOSED CONTOUR LINE
- - - EXISTING CONTOUR LINE
- EXISTING CULVERT

**HATCH LEGEND:**

- [Red Hatched Box] EXISTING WETLAND
- [Blue Dotted Box] PROPOSED WETLAND
- [Red Hatched Box] PROPOSED BUILDING
- [Red Hatched Box] PROPOSED ASPHALT

NOTE: ALL OTHERS AS NOTED ON PLAN

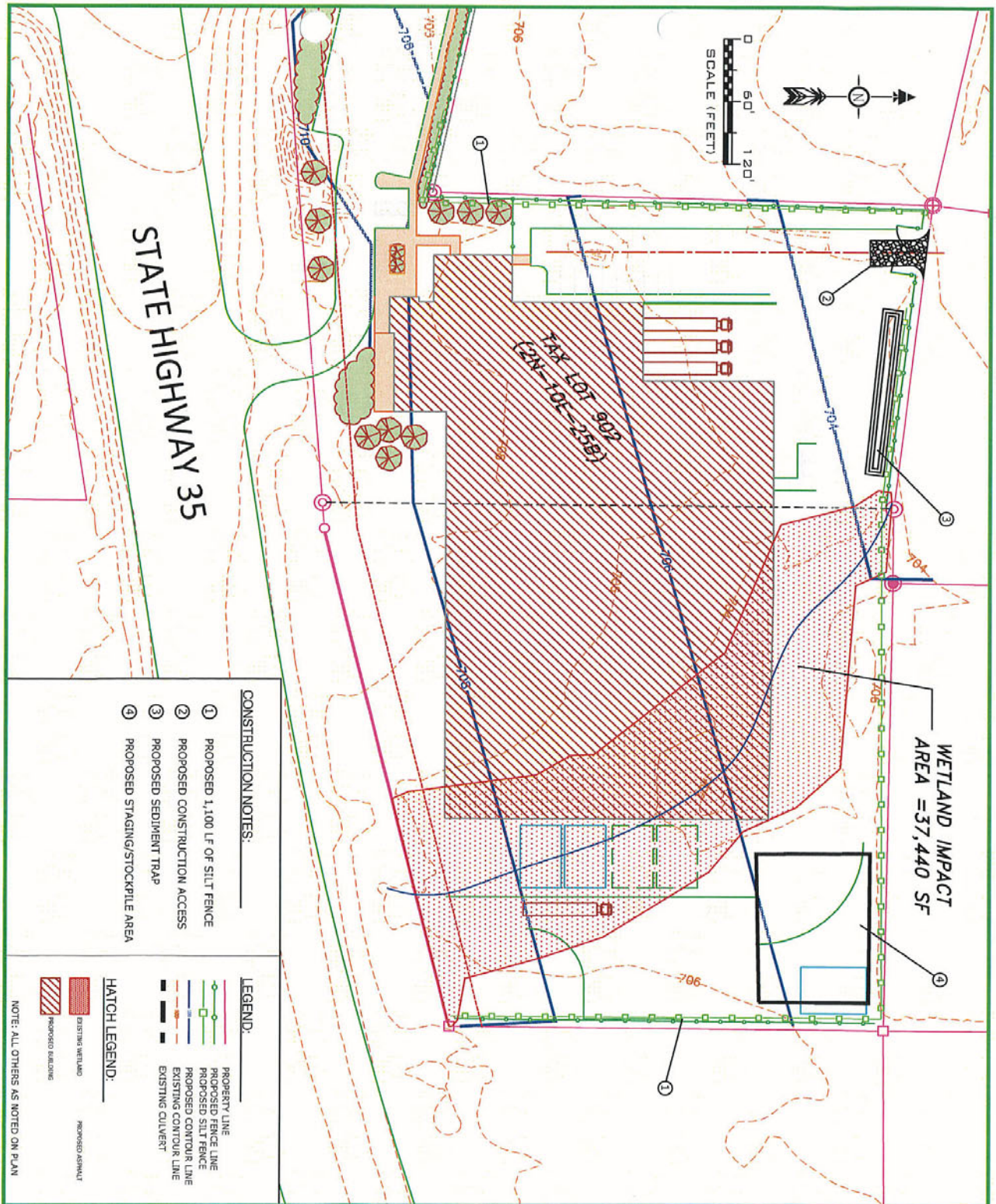
**2017 PROPOSED DEVELOPMENT**

Project Number: 60720-RF  
 Date: 03/02/2018  
 Drawing Number: C3

**PORT OF HOOD RIVER**  
 LOWER HANEL MILL  
 HOOD RIVER COUNTY, ODELL

**VISTA** GEOENVIRONMENTAL SERVICES  
 489 N 8TH STREET - SUITE 201  
 HOOD RIVER, OREGON 97031  
 (541) 386-6480





- CONSTRUCTION NOTES:**
- ① PROPOSED 1,100 LF OF SILT FENCE
  - ② PROPOSED CONSTRUCTION ACCESS
  - ③ PROPOSED SEDIMENT TRAP
  - ④ PROPOSED STAGING/STOCKPILE AREA

- LEGEND:**
- PROPERTY LINE
  - PROPOSED FENCE LINE
  - PROPOSED SILT FENCE
  - PROPOSED CONTOUR LINE
  - EXISTING CONTOUR LINE
  - EXISTING CULVERT
- HATCH LEGEND:**
- EXISTING WETLAND
  - PROPOSED WETLAND
  - EXISTING RIPARIAN
  - PROPOSED RIPARIAN
- NOTE: ALL OTHERS AS NOTED ON PLAN

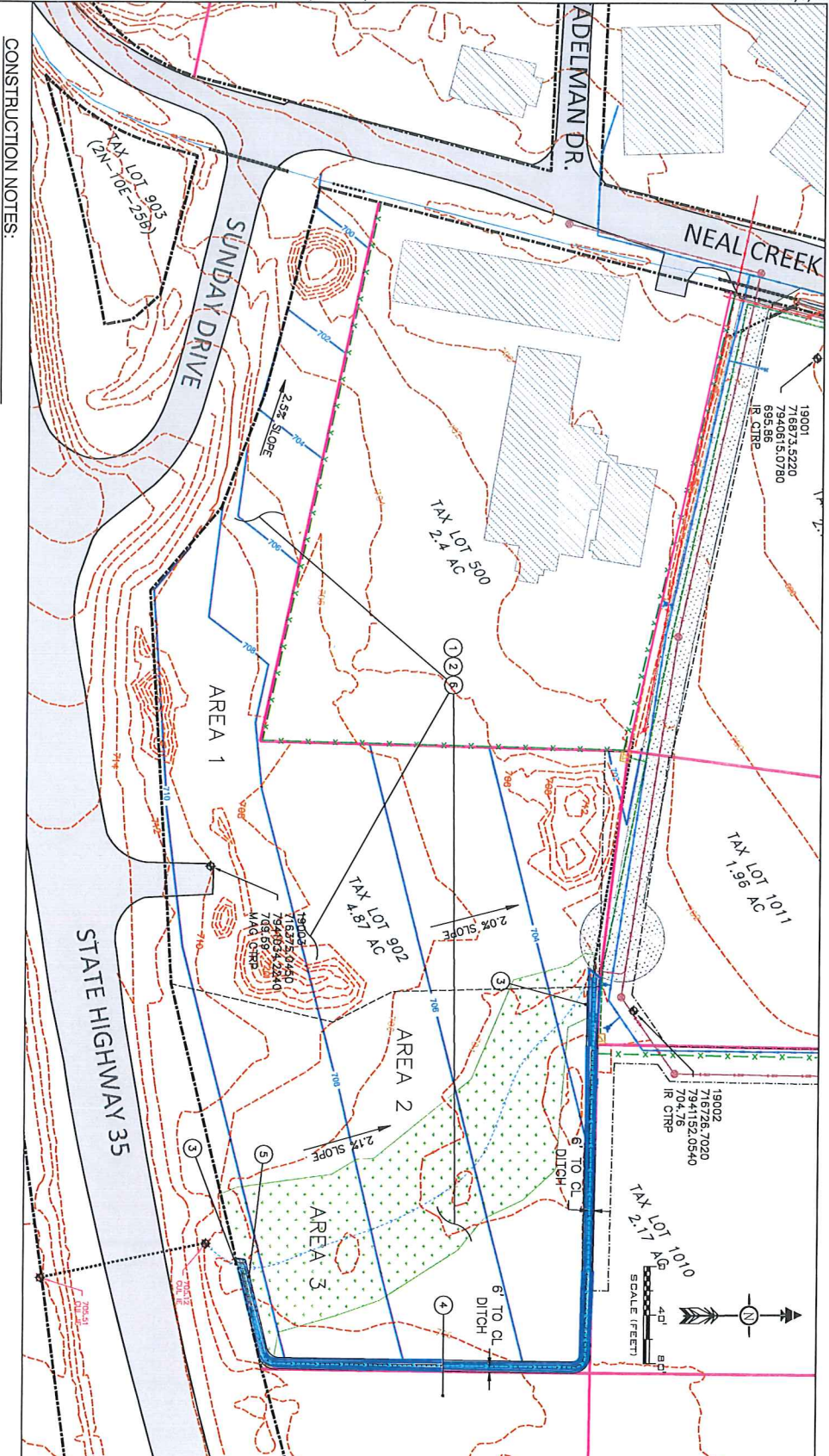
2017  
**EROSION CONTROL**

Project Number: 00707215  
 Date: 02/02/2015  
 Drawing Number: C4

**PORT OF HOOD RIVER**  
 LOWER HANEL MILL  
 HOOD RIVER COUNTY, ODELL

**VISTA** GEOENVIRONMENTAL SERVICES  
 489 N 8TH STREET - SUITE 201  
 HOOD RIVER, OREGON 97031  
 (541) 386-6480





- CONSTRUCTION NOTES:**
- ① COMPLETE CLEARING AND GRUBBING PRIOR TO BEGINNING EARTHWORK ACTIVITIES.
  - ② GRADE SITE TO PROPOSED CONTOUR ELEVATIONS.
  - ③ INTERCEPT EXISTING FLOW LINE AND REDIRECT IT INTO PROPOSED NEW DRAINAGE DITCH.
  - ④ CONSTRUCT DRAINAGE DITCH @ 0.6% SLOPE (SEE DETAIL B ON SHEET C7).
  - ⑤ INSTALL 600 SF OF RIP-RAP MATERIAL - CLASS 50 AT BOTTOM OF DRAINAGE DITCH.
  - ⑥ AFTER FINAL GRADING IS COMPLETE, ENTIRE AREA MUST BE SEEDED PER SECTION 01030 OF THE ACCOMPANYING SPECIAL PROVISIONS DOCUMENT.

<b>C4</b>	PORT OF HOOD RIVER LOWER HANEL MILL 3335 NEAL CREEK ROAD ODELL, OREGON 97031	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th>REV</th> <th>DATE</th> <th>REVISION DESCRIPTION</th> <th>DES</th> <th>DRN</th> <th>APP</th> </tr> </thead> <tbody> <tr><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td></tr> </tbody> </table>	REV	DATE	REVISION DESCRIPTION	DES	DRN	APP																																																							<p style="font-size: x-small;">                 489 N 8TH STREET - SUITE 201                  HOOD RIVER, OREGON 97031                  (541) 386-6480             </p>	PROJECT NO. 19-025
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DRAWING NO. C4	GRADING & DRAINAGE PLAN	DATE: 08/02/2019																																																														

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