

Contract Documents for the  
Construction of:

# 'C' Dock Expansion

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**OWNER:** PORT OF HOOD RIVER  
1000 E. Port Marina Drive  
Hood River OR 97031  
Telephone: (541) 386-1645  
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porthr@gorge.net

**MICHAEL McELWEE  
EXECUTIVE DIRECTOR**

**DATE:** December 7, 2009

## **Advertisement: Invitation to Bid**

The Port of Hood River is requesting bids for the "C" Dock Expansion project located at the Port of Hood River Marina at River mile 169.0 along the Columbia River. Related work includes Design Build manufacture and installation of 20 boat slips, served by full utilities and a low freeboard light watercraft dock alternate bid item. The docks shall be secured to existing piling. The contract is for a public work project subject to ORS 279C.800 to 279C.870. This is a prevailing wage job subject to Oregon prevailing wage rates.

A complete solicitation document, including scope of work, sample contract, and design specifications will be available beginning Monday, December 7. Documents may be examined during normal business hours at the Port office located at 1000 E. Port Marina Drive, Hood River, Oregon; or by calling the Port at (541) 386-1645. Documents will also be posted on the website ([www.portofhoodriver.com](http://www.portofhoodriver.com)). 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 received by 2:00 p.m. on the 22nd day of December at the Port office or by mail to 1000 E. Port Marina Drive, Hood River, Oregon 97031. Bids will not be accepted after 2:00 p.m. on December 22. Bids will be publicly opened in the Port office immediately following the bid deadline.

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Section A

**INVITATION TO BID  
GENERAL BIDDING INFORMATION**

**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.

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.

**GENERAL INFORMATION:**

**DESCRIPTION**

Bids are requested for construction of the proposed '**C' Dock Expansion**, a Public Work Project subject to ORS 279C.800 to 279C.870. The work includes design build manufacture and installation of 20 boat slips at the Port of Hood River Marina at River mile 169.0 along the Columbia River. 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, or any supplementals.

**OWNER'S REPRESENTATIVE**

The single contact point for questions regarding the ITB, Forms, Specifications, Plans, bidding process, change, clarification, the award process, protests and/or any other issues that may arise, is Michael McElwee at (541) 386-1645, fax (541) 386-1395 and email porthr@gorge.net.

**ENGINEER**

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3305 SW 87<sup>th</sup>  
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(503) 297-6311  
(503) 297-6053 (fax)  
andrew@flowingsolutions.com

The contact point for requests for brand approval, substitution requests is the Engineer.

**INVITATION TO BID DOCUMENT AVAILABILITY**

A complete solicitation document may **be examined or obtained** during normal working hours at the Port office, 1000 E. Port Marina Drive, Hood River, Oregon after 1:00 p.m. on December 7, 2009 until 5:00 P.M. on December 21, 2009, or by calling the Port Office (541)386-1645.

**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.

## Section A

### **BRAND NAME USAGE:**

Any brand name listed in the specifications without an "or equal" "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 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 Engineer shall determine, in consultation with the Owner's Representative, whether a product is "or equal."

Any brand name listed in the specifications with an "or approved equal" 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.

## Section A

### **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.

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 shall be submitted prior to Closing:

- Bid Form
- Bid Security Requirements
- CCB Registration Requirements; Asbestos Abatement Licensing Requirements, & Joint Venture-Partnership Declaration, (On Bid Form)
- Addenda Acknowledgement; (On Bid Form)
- Residency Information, (On Bid Form)
- Signature of Bidder's Duly Authorized Representative, (On Bid Form)
- Addenda (On Bid 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:

Bid Modification  
ITB Name and Number  
Closing Date  
Closing Time

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:

ITB Name and Number  
Closing Date & Time  
Port of Hood River  
Attn: Michael McElwee  
1000 E. Port Marina Drive  
Hood River, OR 97031

## Section A

### **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 and Number.

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

### **CLOSING & OPENING/FIRST TIER SUBMITTAL**

Bids will be received until 2:00 p.m. on Tuesday, December 22, 2009 where they will be immediately opened publicly and read aloud. Award decisions will not be made at Bid opening.

Bids will not be received after **2:00 p.m on Tuesday, December 22, 2009.**

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 the website. Such postings may not be correct and are not final.

### **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 Selected Alternatives will be considered.

Award will be made to the 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

## Section A

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.

### **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 of the reasons 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 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, adverseley affected or aggreived, 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 will 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.

## Section A

### **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 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.

### **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 (10) percent 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 Bond 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.

### **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 Prevailing Wage

## Section A

Rates for Public Works Contract in Oregon subject the State PWR and are **not** included in these documents but can be found at:

[www.oregon.gov/ODOT/HWY/SPECS/docs/wages/boli/](http://www.oregon.gov/ODOT/HWY/SPECS/docs/wages/boli/)

The work takes place in Hood River County and the Effective Date would be July 1, 2009.

### **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.

**Exhibit 1**

**FIRST-TIER SUBCONTRACTOR DISCLOSURE FORM**

Project Name \_\_\_\_\_  
County \_\_\_\_\_  
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 requirement (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>	

<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>	

**Exhibit 2**

**BID 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 \_\_\_\_\_;

Name of the contact person for the partnership/joint venture \_\_\_\_\_;

\_\_\_ c. A limited liability corporation (LLC) or limited liability partnership (LLP) under the laws of the State of \_\_\_\_\_; or

\_\_\_ d. An individual doing business under an assumed name registered under the laws of the State of \_\_\_\_\_.

**4. Addendum or Addenda Acknowledgement**

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

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

**5. Responsibility Inquiry/Contractor References**

(None Required)

**Exhibit 2 (cont.)**

**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.

**Exhibit 2 (cont.)**

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 in 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(    ) \_\_\_\_\_

**Exhibit 3**

**PRICING SUBMITTAL FORM**

**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.

**FOR THE PROJECT** \_\_\_\_\_ **FOR THE SUM OF:**

**\$** \_\_\_\_\_.

**Bid Alternate:** \_\_\_\_\_ **FOR THE SUM OF:**

**\$** \_\_\_\_\_.

**LINE ITEM BID SCHEDULE IS ATTACHED**

The Undersigned agrees, if awarded the Contract, to have substantial completion of this work not later than ninety (90) days from Notice to Proceed.

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 / Typed Name & Title / Date

**Exhibit 3-A**

**LINE ITEM BID SCHEDULE**

Item	Description	Qty	Unit	Unit Cost	Total
1	Mobilization	1	ls		\$
2	Site survey/measurement/shop drawings	1	ls		\$
3	Main concrete dock with grate installed	1382	sf		\$
4	Pile hoops/connections	13	ea		\$
5	Finger dock installed	1359	sf		\$
6	Power centers and pedestals	12	ea		\$
7	Dock lights to low freeboard dock	3	ea		\$
8	Electrical conductors/splices	1	ls		\$
9	Electrical connection to existing upland transformer	1	ls		\$
10	Cable/phone system	1	ls		\$
11	Water System	1	ls		\$
<b>Total Bid</b>					\$
<b>Written Bid Total</b>					

**Alternate A**

Item	Description	Qty	Unit	Unit Cost	Total
A1	Low freeboard dock installed with connection frame	400	sf		
A2	Rack and Roof System	1	ls		\$
A3	Pile hoops/connections	1	ls		\$
<b>Total Bid Alternate A</b>					\$
<b>Written Bid Alternate A Total</b>					

**Exhibit 4**

**BID BOND FORM**

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.

WHEREAS, the condition of the obligation of this bond is that Principal has submitted its proposal or bid to the Obligee in response to Obligee's solicitation document for the project identified as:

\_\_\_\_\_ which proposal or bid is made a part of this bond by reference, and Principal is required to furnish bid security in an amount equal to ten (10%) percent of the total amount of the bid pursuant to the solicitation document and ORS 279C.365(4) for competitive bidding or 279C.400(5) for competitive proposals.

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 \_\_\_\_\_

BY ATTORNEY-IN-FACT:

Signature

\_\_\_\_\_

Official Capacity

\_\_\_\_\_

Name

Attest: \_\_\_\_\_

Corporation Secretary

\_\_\_\_\_

Signature

\_\_\_\_\_

Address

\_\_\_\_\_

City State Zip

\_\_\_\_\_

Phone

Fax

**Exhibit 5**

**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 the above-referenced Solicitation; and

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

**Exhibit 5 (cont.)**

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 hereof.

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 surety if using multiple bonds]*

**BY ATTORNEY-IN-FACT:**

*[Power-of-Attorney must accompany each surety bond]*

\_\_\_\_\_

Name

\_\_\_\_\_

Signature

\_\_\_\_\_

Address

\_\_\_\_\_

City

State

Zip

\_\_\_\_\_

Phone

Fax

**Exhibit 6**

**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 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; and

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

**Exhibit 6 (cont.)**

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 hereof.

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

**Exhibit 7**

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

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

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

\*Indicate the following property liability features:

- |   | <u>Yes</u> | <u>No</u> |
|---|------------|-----------|
| 1. "Broad form" including occurrence and care, custody and control. | ___        | ___       |
| 2. Explosion, collapse and underground damage exclusions            | ___        | ___       |

**Exhibit 7 (cont.)**

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

**Exhibit 8**

**PORT OF HOOD RIVER  
PUBLIC IMPROVEMENT CONTRACT**

This Contract is entered into between the PORT OF HOOD RIVER, an Oregon municipal corporation, (hereinafter called "PORT") and \_\_\_\_\_ (hereinafter called "CONTRACTOR"), shall become effective on \_\_\_\_\_, or the date this Contract has been signed by all the Parties and all of the required Port approvals have been obtained, whichever is later.

**WITNESSETH:**

**WHEREAS**, CONTRACTOR, having examined the project site and become familiar and satisfied with conditions, has submitted an acceptable bid for the following described scope of work:

\_\_\_\_\_

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

**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, attached hereto and incorporated herein, and in accordance with the Contract Documents, which consist of the following:

- A) Invitation to Bid
- B) Bidding Instructions
- C) First-Tier Subcontractor Disclosure Form
- D) Bid Form/Bid Schedule
- E) Bid Bond
- F) Performance Bond
- G) Payment Bond
- H) Certificate of Insurance
- I) General Conditions of Public Works Contracts
- J) Notice of Intent to Award
- K) Notice to Proceed
- L) Prevailing Wage Rates
- M) DRAWINGS prepared for/or issued by Port

**Exhibit 8 (cont.)**

- N) SPECIFICATIONS prepared for/or issued by Port
- O) All affidavits and certifications submitted by CONTRACTOR as part of CONTRACTOR's Bid Documents, which affidavits and certifications CONTRACTOR agrees will remain effective throughout the term of this Contract.

**Contract Price:**

Subject to the provisions of all Contract documents and in consideration of the faithful performance of the terms and conditions thereof in the manner and at the times provided in the General Conditions. The Contract price by the CONTRACTOR, the PORT agrees to pay CONTRACTOR \_\_\_\_\_, includes the following items:\_\_\_\_\_.

**Contract Dates:**

Project Start Date: 10 calendar days from issuance of Notice to Proceed.

Substantial Completion: \_\_\_\_\_Days after Notice to Proceed.

Final Completion: \_\_\_\_\_Days after Notice to Proceed.

**Liquidated damages**

If the CONTRACTOR fails to complete this project within the time specified or within any extension of time agreed to by both parties in writing, CONTRACTOR shall pay liquidated damages of \_\_\_\_\_, 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 \_\_\_\_\_, 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 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

**Exhibit 8 (cont.)**

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 \_\_\_\_\_.

\_\_\_\_\_

**CONTRACTOR**

**By** \_\_\_\_\_

**Its** \_\_\_\_\_

**PORT OF HOOD RIVER**

**By** \_\_\_\_\_

**Its** \_\_\_\_\_

**Exhibit 9**

**NOTICE OF INTENT TO AWARD**

**RE:**

**Date:**

**Project No.**

**Owner: Port of Hood River**

**Address:**

1000 E. Port Marina Drive  
Hood River OR 97031

**TO:**

You are hereby notified that your BID submitted by you for the above-described work in response to its Invitation to Bid, dated \_\_\_\_\_ has been accepted for this work in the amount of \_\_\_\_\_ based upon the base bid price of \_\_\_\_\_ contained in your BID.

You are required to return and acknowledge a copy of this NOTICE OF INTENT AWARD to the OWNER.

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

Print Name: Michael McElwee

Title: Executive Director

**PORT OF HOOD RIVER**

**ACCEPTANCE OF NOTICE**

Receipt of the above NOTICE OF INTENT AWARD is hereby acknowledged.

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

This the \_\_\_\_\_ day of \_\_\_\_\_, 2009.

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

Title: \_\_\_\_\_

\* All bidders will receive a copy of the Notice of Intent to Award within 7 days \*

**Exhibit 10**

**NOTICE TO PROCEED**

**RE:**

**Date:**

**Project No.:**

**Owner: Port of Hood River**

**Address:**

1000 E. Port Marina Drive  
Hood River OR 97031

**TO:**

**You are hereby notified that the contract time under the above contract will commence to run on \_\_\_\_\_ . By this date you are to start performing your obligations under the Contract.**

**The date of substantial completion of all WORK is \_\_\_\_\_, 20\_\_.**

**Or: You are to complete the WORK within \_\_\_\_\_ consecutive calendar days thereafter. The date of completion of all WORK is therefore:**

\_\_\_\_\_.

**PORT OF HOOD RIVER**

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

**Its: \_\_\_\_\_**

## Section B

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

#### SECTION A General Provisions

##### **DEFINITION OF TERMS**

**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 for 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.

## Section B

**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.

## Section B

**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 Supplemental General Conditions;
3. The Port of Hood River Public Improvement Contract;
4. The General Conditions;
5. The Plans and Specifications;
6. The Solicitation Document and any addenda thereto;
7. 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

### **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

## Section B

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**

Contractor shall obtain and pay for all 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 statutes, 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 statutes, 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.

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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 under 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.

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### **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 three (3) 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.

### **WAVIER**

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 wavier of such obligations of Contractor.

Contract 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

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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 arise 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**

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. 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

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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.

### **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

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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.

### **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 twenty-five percent (25%) 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 fourteen (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 twenty-five percent (25%) 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 fourteen (14) days after the first-tier Subcontractor files the required certified statement the Contractor shall pay 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.

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### **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 twelve (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 ten (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 (3) times the discount rate on ninety (90) day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve district that

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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 percent (30%). 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:

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 or forty (40) hours 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 (1-½) 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 (5) 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 (4) consecutive days Monday through Friday; and
- (c) For all Work performed on Saturday and on any legal holidays specified in ORS 279C.540.

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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.

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- (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 requests pertaining to that Change Order are barred. The thirty (30) day time limit applies to claims of Subcontractors, supplier, or manufacturers that may be affected by the Change Order.

If Port's Authorized Representative denies the Contractors request for additional compensation or an extension of contract time, the Contractor may proceed to file a claim with\_\_\_\_\_.

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. Contract agrees to submit its final payment application within ninety (90) days after Substantial Completion, unless written Port grants 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.

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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 ten (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

## Section B

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

## Section B

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

#### **SCHEDULE OF VALUES**

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

#### **APPLICATIONS FOR PAYMENT**

Port shall make progress payments on the Contract monthly as Work progresses. Payments shall be based upon estimates of Work completed and the Schedule of Values. The Port's Authorized Representative shall approve all payments. A progress payment shall not be considered acceptance or approval of any Work or waiver of any defects therein. Port shall pay to Contractor interest on the progress payment, not including retainage, due the Contractor. The interest shall commence thirty (30) days after the receipt of invoice from the Contractor or fifteen (15) days after the payment is approved by the Port's Authorized Representative, whichever is the earlier date. The rate of interest shall equal three (3) times the discount rate on ninety (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 Contractor 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 (30) percent. 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

## Section B

Subcontractors. Contractor shall include, in its application for payment, a schedule of the percentages of the various parts of the Work completed, based on the Schedule of Values which shall aggregate to the payment application total, and shall include, on the face of each copy thereof, a certificate in substantially the following form:

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

Signed:

\_\_\_\_\_ "

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

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

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

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

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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 50 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 (97-1/2%) 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:

## Section B

- (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 form 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 (1-1/2%) 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.

## Section B

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 canceled 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 not enter upon private property without first obtaining permission from the property owners 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 owners 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.

## Section B

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 appeal, 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*.

### **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.

### **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 Port and 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;
- (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.

## Section B

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 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 number) 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; and
- (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 resent 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

## Section B

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.

**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 Contractors 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 maybe 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.

**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.

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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.

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

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

## **SECTION H** Schedule of Work

### **CONTRACT PERIOD**

Time is of the essence on this contract. The Contractor shall at all times carry on the Work diligently, without delay and punctually fulfill all requirements herein. Contractor shall commence work within fifteen (15) 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.

## **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

## Section B

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 (1) 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 (1) 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 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 TERMINATE WORK**

The Port and the Port's Authorized Agent 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; or
- (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.

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### **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, may 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.

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### **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 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.

#### **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, manufacturers, installers 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 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 statutes 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

## Section B

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, the following contain lists of 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:

AGENCIES HAVING ORDINANCES OR REGULATIONS RELATING TO ENVIRONMENTAL POLLUTION AND  
THE PRESERVATION OF NATURAL RESOURCES

**(SEE NEXT PAGE)**

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### AGENCIES HAVING ORDINANCES OR REGULATIONS RELATING TO ENVIRONMENTAL POLLUTION AND THE PRESERVATION OF NATURAL RESOURCES

#### **FEDERAL AGENCIES:**

- Department of Agriculture
- Forest Service
- Soil Conservation Service
- Coast Guard
- Department of Defense
- Army Corps of Engineers
- Department of Energy
- Federal Energy Regulatory Commission
- Environmental Protection Agency
- Department of Health and Human Services
- Department of Housing and Urban Development
- Solar Energy and Energy Conservation Bank
- Department of Interior
- Bureau of Land Management
- Bureau of Indian Affairs
- Bureau of Mines
- Bureau of Reclamation
- Geological Survey
- Minerals Management Service
- U.S. Fish & Wildlife Service
- Department of Labor
- Mine Safety and Health Administration
- Occupational Safety and Health Administration
- Department of Transportation
- Federal Highway Administration

- Water Resources Council

#### **STATE AGENCIES:**

- Department of Administrative Services
- Department of Agriculture
- Soil and Water Conservation Commission
- Columbia River Gorge Commission
- Department of Energy
- Department of Environmental Quality
- Department of Fish and Wildlife
- Department of Forestry
- Department of Geology and Mineral Industries
- Department of Human Resources
- Department of Consumer and Business Services
- Land Conservation and Development Commission
- Department of Parks and Recreation
- Division of State Lands
- Department of Water Resources

#### **LOCAL AGENCIES:**

- City Council of Hood River
- Hood River County Courts
- Board of County Commissioners
- Design Commissions
- Historical Preservation Commissions
- Planning Commissions

## Section C

### SECTION 03500 – DESIGN BUILD SYSTEM

#### PART 1 - GENERAL

##### 1.1 SUMMARY

- A. This section includes the qualifications of the float/dock manufacturer and bidder design requirements.
- B. The dock and low freeboard dock have specific performance requirements and are subject to design conditions. The combination of these will be accommodated by the bidder design.
- C. This section includes specifications for the construction of floats, docks, pile connection system and utilities. Location and orientation of the floats is as shown on the drawings.
- D. The Contractor shall furnish all tools, equipment, materials, and supplies and shall perform all labor, supervision, fabrication, assembly, and installation of a float system.
- E. The Contractor shall examine the job site before preparing the shop drawings to verify all physical conditions and surroundings.
- F. Contractor shall notify engineer of existing pile dimensional discrepancies and provide suggested configuration changes prior to preparing shop drawings.
- G. The Owner will be allowed access to all sites where materials pertaining to this contract are manufactured or constructed for purposes of inspection.
- H. Materials delivered and stored at either the manufacturing facility, staging area, or job site shall be properly stored on dunnage or by other appropriate means to prevent direct contact with the ground and unnecessary damage.
- I. Marina shall remain open and serviceable during project. Contractor shall be issued up to 3 gate keys for access. Contractor (sub-contractors) shall not prop gate open as it is alarmed for closure.
- J. The manufacturing facility shall be designed to provide the proper environment and physical conditions necessary for float construction. If necessary, the facility shall provide adequate work space, equipment, level casting surfaces, and protection from direct sunlight, wind, moisture, and freezing. Floats shall be cast in an all weather environment that includes an enclosed casting building.
- K. Floats shall be designed to float level under dead loads only. Exceptions: The maximum list of the float surface shall not exceed 1% in any direction (transverse or longitudinal).
- L. Utility conduits and pull boxes are required to provide for the utilities. Utilities including wiring, pedestals, lighting and miscellaneous hardware are to be provided

## Section C

based on slip requirements and in location indicated on Plans. Pull-boxes shall be adjacent to required utility connections to facilitate installation and maintenance.

- M. Float Identification - All floats are to be clearly identified on one side and one end between the bottom of the waler and the water line with the date of manufacture, specific float type, and job number.

### 1.2 MATERIALS

- A. The dock system may be constructed from concrete encapsulated foam floatation and utilize concrete, wood, steel or aluminum wailer systems. Low freeboard dock shall be constructed of wood, or metal framed. Dock systems other than described in plans may be investigated as part of value engineering after contracting.
- B. Dock decking materials shall be medium broom finish concrete. Polypropylene fibers shall be added to deck concrete to prevent spall due to repetitive freeze/thaw cycles at site.
- C. Low freeboard deck may include clear cedar decking, recycled wood and composites, Epay, Ironwood. Carpet is not acceptable.
- D. Exposed polystyrene bead floatation foam is not acceptable. All foam MUST be fully encapsulated and compliant with OSMB regulations.
- E. Pressure treated wood shall not be in contact with water. Wood shall be ACZA treated, .6 pcf prior to milling/cutting/drilling. Wood shall be sealed with clear penetrating sealant prior to installation. Submit sealant product for acceptance by engineer.
- F. Miscellaneous dock hardware includes bump rails, hoop rollers & rub strips, fasteners, non-skid coatings, anchoring hardware, cleats and other components typically required in marina.

### 1.3 SUBMITTALS

- A. Prior to fabrication or construction, the Contractor shall furnish sufficient information to describe his floatation system, and shall submit complete shop drawings and calculations for approval by the Engineer at least 20 days prior to fabrication or ordering. Drawings and calculations shall be affixed with the appropriate stamps and signatures of a professional engineer, licensed in the State of Oregon, maintaining professional liability insurance with a minimum policy limit of \$1,000,000. Shop drawings shall show the layout of the floats, connection to existing piling and guides, details of all connections, and structural waler sizing.
- B. Concrete Mix Design: At least 10 days prior to fabrication, submit concrete mix design with all concrete additives proposed to Engineer for approval. If concrete supplier, aggregate source, or any additives change at any time, submit a new concrete design to engineer for approval.

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- C. If steel is used, metal fabrications shall conform with the latest edition of AISC Specification for the Design, Fabrication and Erection of Structural Steel for Buildings. All steel shall be galvanized.
- D. Welding shall be by operators qualified by tests as prescribed by the AWS in Standard Qualification Procedure for performance of the type of work required. Welding shall occur before galvanizing.
- E. Weld all shop connections unless noted otherwise. All welds shall be minimum 3/16 inch fillet and sealed for galvanizing.
- F. Submit three copies of samples and three copies of printed material. One copy of all submittals will be returned to the Contractor.
- G. The Contractor shall submit for approval by the Engineer, all items the Contractor intends on using for the construction of this project, as well as any alternate materials.
- H. Contractor shall submit floatation calculations detailing dead loads and required adjustments to ensure dock system floats level.
- I. Engineer shall conduct initial review and approval of first production run at Manufacturing Facility. Contractor shall provide notice of timing. Intermediate Manufacturing Facility review shall be at discretion of Engineer.
- J. Grating shall be grey in color and medium grit. Acceptable products include pultruded fiberglass T-bar or "mini-mesh" style or aluminum t-bar coated with Slip-not. Maximum opening is 1/2". Deck grate shall be flush with surrounding deck and attached per manufacture requirements. Deck shall be of sufficient depth to avoid visible deflection under foot traffic. Proposed Sample shall be submitted prior to shop drawings for final approval.

### 1.4 PERFORMANCE CRITERIA

- A. The floatation system shall provide sufficient floatation to support a live load of 25 lb/s.f., with a minimum freeboard of not less than eight (8) inches. Freeboard under dead load only shall not be less than fifteen (15) inches or exceed twenty (20) inches.
- B. Dead loads shall consist of the floats, framing, waler system, attachment steel, miscellaneous connection devices including pile attachment hardware, luminaries, utilities, boxes, fire protection, and all other permanently attached equipment.
- C. Connection to existing dock system shall match flush and may not meet minimum freeboard requirements in this location. It is acceptable for new dock to 'lift' old section to accomplish this.
- D. Upon final installation docks may be trimmed using weights securely attached under the frame system or otherwise ballasted to meet freeboard requirements. If floatation is added to trim freeboard, it must be encapsulated and securely bolted to the frame or attached by approved method. Unsecured float under floatation is not acceptable.

## Section C

- E. Overall float dimensions shall be as shown on the plans. Dock shall comply with ADAAG guidelines, Chapter 15.2. Toe protection is not required.
- F. Grating is required per NMFS requirements. Walking docks shall have 40% grated surface, allowing light to penetrate to water below.
- G. Floats may have exterior pile pockets/hoops as shown on drawings. Pockets or hoops shall have HDPE rub strips or rollers on all sides.
- H. Walking surface on transition plates shall be level and flush with respect to the adjacent floats. Transition plates shall be, Slip-not coated.
- I. The manufacturer must have an ongoing quality assurance program approved by a qualified independent source. At the option of the Owner, the manufacturer shall submit a copy of their operational quality assurance program and shall not proceed with manufacturing any floats until the Owner has approved this quality assurance program.
- J. Manufacturer - The Dock manufacturer/licensee shall have a minimum of three (3) consecutive years experience in the design and manufacturing of floats as their primary business.
- K. Manufacturer shall submit detailed shop drawings of the ramp floats and low freeboard floats for review and approval by the Owner prior to manufacturing. Owner specifically reserves the right to approve, require substitutions or disapprove design, materials or method of fabrication of docks.
- L. Triangular frames shall be provided between finger and walkway regardless of structural requirements. These may be decked with slip-resistant polymer, or grating.
- M. Potable water system shall be provided and includes hose bib at every slip with backflow protection. Contractor shall provide low point drains at the end of each major run as well as high point air flush connection.
- N. Cable and phone service shall be routed from each pedestal to utility franchise provider connection point at top of gangway.

## PART 2 - MATERIALS

### 2.1 FORM MATERIALS

- A. Floats shall be cast in forms with a smooth true surface. Float forms shall have a tolerance of not more than 1/8 inch from the dimensions shown on the shop drawings.
- B. Forms shall be designed in such a way to prevent unsightly finished surfaces, or definite lines that could result in crack planes. Any rough edges, form marks, or defects shall be cleaned, ground smooth, or patched. Repairs are subject to Owner's Representatives approval.
- C. Concrete shall be vibrated internally, and/or externally to assure a smooth dense finish. The placement will be such that the concrete float is monolithic with no cold joints in any part of the finished float.

## Section C

- D. Form coating shall be non-staining type that will not leave residual matter on surface of concrete or adversely affect proper bonding of subsequent coatings, caulking, grout, or adhesive applied to concrete surfaces.
- E. Where form liner is used, use form release agent or coating as recommended by manufacturer of the form liner.
- F. Coating containing mineral oils or other nondrying ingredients will not be permitted.
- G. Acceptable products:
  - 1. Nox-crete form coating - Nox-Crete Company.
  - 2. Arcal - Arcal Chemical Corporation.
  - 3. Synthex - Industrial Synthetics Company.
  - 4. QC Release - Burke Company

### 2.2 WOOD

- A. WCLIB Requirements - All lumber, unless otherwise noted, shall be Douglas Fir, S4S, and shall meet all requirements as noted in the "Standard Grading and Dressing Rules No. 16" of the WCLIB.
- B. APA Standards - Plywood shall bear the D.F.P.A. grade trademark of the APA. Softwood plywood shall be manufactured in accordance with Product Standard PS1-65; hardwood plywood shall be manufactured in accordance with Product Standard PS51-71.
- C. Protection - Lumber and millwork shall be protected from damage and dampness during and after deliver to the site.

### 2.3 CONCRETE REINFORCEMENT

- A. Manufacture shall integrate concrete reinforcement in their docks consistent with their proprietary design and in a manner sufficient to prevent cracking and surface defects. At minimum, steel shall be Grade 60.
- B. Reinforcing steel shall either be galvanized or epoxy coated. Field cuts shall be hand coated with appropriate material.
- C. All reinforcement shall be new and clean, free from dirt, oil, paint, grease, loose mill scale, and loose or thick rust when placed.
- D. Tie wire shall be 16-gauge minimum conforming to ASTM A-82.

### 2.4 CONCRETE MIX DESIGN

- A. Concrete shall be supplied by a ready-mix or precast concrete products firm regularly engaged in the business.

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- B. Prior to the manufacturing of any floatation units, the concrete mix design shall be approved by the Engineer.
- C. Concrete shall have a minimum twenty-eight (28) day compressive strength of 4000 psi, per ASTM C-94. Floats made of concrete with less than specified strength may be rejected by the Owner.
- D. The mix shall contain a minimum of 564 pounds (six sacks) of Portland Cement per cubic yard, either Type I or Type II modified, and low alkali. Type III cement may be used if the Tri-Calcium Aluminate of the cement is certified by the manufacturer to be between five (5) and eight (8) percent, and alkali content ( $\text{Na}_2\text{O}$ ) and ( $\text{K}_2\text{O}$ ) is less than 0.6 percent.
- E. Concrete for the top surface of the floatation units shall contain polypropylene fibrous reinforcement at a rate recommended by its supplier.
- F. The theoretical concrete unit weight shall not be more than 120 pounds per cubic foot for light weight, or 150 pounds per cubic foot for standard weight concrete.
- G. Coarse and fine aggregates shall conform to ASTM C-33-86, ASTM C-330 lightweight aggregates for structural concrete.
- H. All concrete shall be air-entrained from four (4) to seven (7) percent and shall be tested in accordance with ASTM C-138, C-173, or C-231.
- I. Water/cement ratio shall not exceed 0.45 for lightweight concrete.
- J. Slump range shall be three (3) inches to six (6) inches when tested in accordance with ASTM C-143-78.
- K. Admixtures:
  - 1. Air-entraining, ASTM C 260, such as but not limited to "Protex," "Darex," "MB-VR," "Castle-VR," or "ADZ-Air."
  - 2. Water reducing agent, ASTM C 494, Type A.
  - 3. Use of other admixtures is subject to approval by the Owner.

### 2.5 STEEL

- A. All metal hardware shall be ASTM A-36 steel.
- B. Galvanizing - All bolts, pins, rails, angles, and other miscellaneous metals shall be hot dip galvanized after fabrication in accordance with ASTM A-123. Weight of zinc coating to conform to requirements specified under "Weight of Coating" in ASTM A-123.
- C. Bolts, nuts, and washers shall conform to ASTM A 307, Grade A, galvanized.
- D. Steel pipe shall be schedule 40 weight.

### 2.6 UTILITY BOXES

## Section C

- A. Applied Plastic Utility Pull Boxes, cast into floats, minimum size 18"x24", located every 30 ft minimum and at appropriate junctions and connections.
- 2.7 Electrical System - All installation shall meet applicable sections of the NEC 555 and local amendments. All electrical substations with circuit breaker panels contained in stainless steel enclosures. Low level lights shall be integral to new power centers installed at every power center and operated by centralized photo-electric cells. Additional low level 'light only' power centers are required along marginal walk to low level float.
- A. Power Stations
    1. 30 ft Slips - 1 ea – single 30 AMP/115V Midwest Dockmaster with meter
    2. 35' Slips – 1 ea – single 30 AMP/115V Midwest Dockmaster with meter
  - B. Conductors – Shall be sized for 50A service at 35 ft and end tie location, however 30A service connectors will be provided based on power feed limitations at this time.
  - C. Temporary connection to shore shall be made with Industrial Grade Type G-GC Round EPDM insulated continuous cable. Cable shall be secured along wailer of existing floats.
- 2.8 Galvanized Iron Cleats – includes 4 each 12" heavy duty cleats per slip, 3 each on every finger side and 1 each per boat on the walkway. 15" cleats located every 10 ft along large vessel side tie.

### PART 3 - EXECUTION

#### 3.1 DECK FINISH (CONCRETE)

- A. The float deck surface shall be trowel finished with a steel trowel and a slip-resistant broom finish applied transversely to the walking surface.
- B. Contractor shall establish finishing methods and procedures to insure an even and consistent broomed or screed finish on all deck surfaces. Final texture and finish pattern shall be approved by Engineer during first production runs.
- C. All top edges shall have a  $\frac{3}{8}$  inch tooled radius.
- D. Outside, top edges, and corner shall be filed smooth.
- E. Deck shall have minor camber to provide positive drain of water.

#### 3.2 CRACKS (CONCRETE)

- A. Cracks located below the structural deck that do not indicate migration to the deck surface may be repaired with the approval of the Engineer.

## Section C

- B. Cracks which are open or which exceed two (2) feet in length shall be V-cut out and patched with a non-shrink patching compound approved by the Owner.
- C. Excessive cracking in a single floatation unit shall be cause for rejecting that unit. Any frequently recurring pattern of cracking shall be considered indicative of inadequate design or improper handling. It shall be corrected by replacement and appropriate changes in design or procedures.
- D. Fill small holes, depressions, and air or rock pockets in all surfaces with non-shrinking Portland Cement based patching material while concrete is still green and within one day of form removal. Patch shall match the color, finish, and texture of surrounding surface.
- E. Patching will not be allowed on any component with holes, chips, or exposed reinforcement totaling more than 18 cubic inches or with any defects more than 2 inches deep. Those components will be rejected and must be replaced at Contractor's expense.

### 3.3 CURING, HANDLING AND STORAGE (CONCRETE)

- A. Sufficient reinforcing shall be installed to prevent damage during handling and final loading.
- B. Except as otherwise approved, floats shall be cured for a minimum of fourteen (14) days before transporting or assembling.
- C. The Contractor shall select his own method of curing and be responsible for the result, except that all curing shall be under cover and with complete protection from direct sunlight, wind, and freezing.
- D. Contractor shall take care in establishing handling methods to avoid damage to floats during form removal, storage, assembly, and installation.
- E. Storage of floatation units shall be on level surfaces, and it shall be the responsibility of the Contractor to determine how high to stack units to avoid damage. Care shall be taken to avoid damage caused by over stacking.
- F. Floats shall be protected against damage from any cause.
- G. Any damaged units shall be rejected and removed from the assigned job.

### 3.4 QUALITY CONTROL TESTING (CONCRETE)

- A. All concrete testing shall be done under the guidance by certified personnel. Certification shall be in accordance with the National Ready Mix Concrete Association guidelines or equivalent. The Contractor will be responsible for completing the following tests on concrete. Sampling shall be in accordance with AASHTO T-141 or ASTM C 172.
- B. Slump of Portland Cement Concrete, AASHTO T-119 or ASTM C 143: 1 for each truck delivery or batch.
- C. Air content of freshly mixed concrete, AASHTO T-152 or ASTM C 231: 1 for each truck delivery or batch.

## Section C

- D. Compressive strength of cylindrical concrete specimens, AASHTO T-23 and AASHTO T-22 or ASTM C 39: 4 cylinders for each batch, daily or 2 cylinders per 20 cy placed, whichever is greater. Test results will be submitted for the seven (7) day and twenty-eight (28) day compressive strengths.

### 3.5 TESTS AND CERTIFICATION OF CONCRETE

- A. A concrete batch ticket for each load shall record and attest to the source, day, time and batch, size of load and quality of individual constituents in the load. These shall be completed and furnished to the Engineer.

### PART 4 - WARANTEE

- 4.1 Float Manufacturer shall Warantee that the individual concrete units or modules will be free of defects in materials and workmanship for a period of five (5) years from date of shipment, and that all other dock components (including, but not limited to, walers, weldments, filler slabs, hardware, and fiberglass components) will be free of defects in materials and workmanship for a period of one (1) year from the date of shipment. If within the warranty period the materials are found to be defective, the owner will provide written notice of such defects within ten (10) days from the date the defects are discovered.

END OF SECTION 03500