

INVITATION TO BID

Port of Bandon, Oregon

Harbor Office Concrete Improvements

Invitation to Bid. The Port of Bandon (“Port”) requests sealed competitive bids for concrete improvements to a new building measuring approximately (1874) sf., located at the High Dock at the north end of Chicago Avenue in Bandon, Oregon. Bids will be received at the Port office, 390 1st Street SW, Bandon, OR 97411, until 3 p.m. on December 17, 2024. Subcontractor disclosure forms are due by 5 p.m. the same day. Any Bid received after the specified time will not be considered.

Project Description. The Bid will cover the cost of materials and labor to provide concrete improvements to the proposed office building. A Project Description and bid specifications are provided in Attachment A. Complete plans can be reviewed by appointment in the Port office at the above address, or by email request to portmanager@portofbandon.com.

Construction is targeted to begin on or around March 1, 2025 and be completed by the end of April, 2025.

The Project is a public work subject to the payment of Oregon applicable prevailing wages for Region 7, Coos and Curry counties, as established by the Oregon Bureau of Labor and Industries, [BOLI : Which prevailing wage rate applies to this project? : For Employers : State of Oregon](#). The Project is expected to be funded with grant funds from multiple sources including some federal funds. Compliance with grant terms will be required.

Bid Form. Each bidder must submit one (1) copy of the completed Bid Form by the stated deadline to Jeff Griffin, General Manager. The required Bid Form is provided in Attachment B. Competitive Bids will be considered from responsive, responsible bidders as those terms are defined in ORS chapter 279A.010(1)(r) and ORS 279C.365, based upon the competitive bid price provided on the Bid Form and any proposed alternate bids, and subject to the provisions of the Bid Documents.

Bid security in the amount of ten (10) percent of the total bid amount must be submitted with each bid on the form provided.

A first-tier subcontractor disclosure form must be submitted within two (2) hours of the bid deadline for any first-tier subcontractors that:

- (A) Will be furnishing labor or will be furnishing labor and materials in connection with the public improvement contract; and
- (B) Will have a contract value that is equal to or greater than five percent of the total project bid or \$15,000, whichever is greater, or \$350,000 regardless of the percentage of the total project bid.

The first-tier subcontractor disclosure form must be completed and signed and be in substantially the following form:

PROJECT NAME: _____
BID CLOSING: Date: _____ **Time:** _____

List below the name of each subcontractor that will be furnishing labor or will be furnishing labor and materials and that is required to be disclosed, the category of work that the subcontractor will be performing and the dollar value of the subcontract. Enter "NONE" if there are no subcontractors that need to be disclosed. (ATTACH ADDITIONAL SHEETS IF NEEDED.)

NAME	DOLLAR VALUE	CATEGORY OF WORK
1) _____	\$ _____	_____
2) _____	\$ _____	_____
3) _____	\$ _____	_____
4) _____	\$ _____	_____
5) _____	\$ _____	_____

Form submitted by (bidder name): _____
Contact name: _____
Phone no.: _____

Failure to submit this form by the disclosure deadline will result in a nonresponsive bid. A nonresponsive bid will not be considered for award.

Base and Alternate Bids. The scope of work includes Base bid only.

Selection Process. The contract, if any, will be awarded to the lowest responsive, responsible bidder.

Questions. Address any questions about this Invitation to Bid to Port General Manager Jeff Griffin, (541) 347-3206. Any requests for clarifications or objections to this Invitation to Bid shall be submitted in writing to the Port office no later than 3 p.m. on December 9, 2024.

Bid Opening. Bids will be publicly opened immediately following the bid deadline, at the District office, 390 1st Street SW, Bandon, OR 97411. The anticipated award date for the contract, if any, is December 31.

Reservation of Rights. The Port reserves the right to seek additional information from any Bidder to clarify a submitted bid; to reject any Bid not conforming to Oregon's public contracting laws or with the intent and purpose of these documents; and to reject all Bids and

cancel this solicitation when the Port, in its sole discretion, determines it is in the public interest to do so.

Performance and Payment Bonds. Upon execution of the contract, the successful bidder shall be required to provide to the Port separate performance and payment bonds issued by a surety company licensed to do business within the State of Oregon for one-hundred percent (100%) of the contract amount.

Attachment A

PROJECT DESCRIPTION

This project consists of concrete related improvements to the High Dock Harbor Office as described in these attached plans, specifications, and addendum.

ATTACH BID SPECIFICATIONS – Drawings, Project Manual, and Addendum #1

Attachment B

BID FORM

Bidder accepts all terms and conditions herein.

ARTICLE 1 – BID RECIPIENT

1.1 This Bid is submitted to:

Owner: Port of Bandon (“Port”)

Address: 390 1st Street SW, Bandon, OR 97411

Project ID: High Dock Harbor Office Concrete Improvements

1.2 If this Bid is accepted, the undersigned Bidder proposes and agrees to enter into with the Port an Agreement substantially in the form included in Attachment C to this Invitation to Bid and to provide products and services as specified in this Bid Package, for the prices and within the times indicated in this Bid.

1.3 Each bid must identify whether the bidder is a resident bidder, as defined in ORS 279A.120.

ARTICLE 2 – BIDDER’S INFORMATION

2.1 Business entity name: _____

2.2 Business entity address, telephone number, email address:

2.3 CCB License Number (if applicable): _____

2.4 Representative’s name and title: _____

ARTICLE 3 – BIDDER’S ACKNOWLEDGEMENTS

3.1 This Bid will remain subject to acceptance for one hundred eighty (180) days after the Bid Opening, or for such longer period of time that Bidder may agree to in writing upon request of Port.

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3.2 The Port reserves the right to award or not award the contract described herein.

ARTICLE 4 – BIDDER’S REPRESENTATIONS

4.1 The Bidder is ____ /is not ____ a resident bidder, as defined in ORS 279A.120.

4.2 In submitting this Bid, Bidder represents that:

- A. Bidder has carefully studied this Invitation to Bid, the attached Project Manual, Plans/ Drawings and addendum #1 for the proposed facility.
- B. Bidder’s bid is inclusive of any and all costs to be incurred by Bidder to fully complete the Project described herein.
- C. Bidder is familiar with all federal, state and local laws and regulations that may affect cost, progress and performance of the work described herein.
- D. Bidder has given the Port written notice of all conflicts, errors, ambiguities, or discrepancies, if any, that Bidder has discovered in the solicitation documents, and the written resolution thereof by Port is acceptable to Bidder.
- E. Bidder does not require nor request any further examinations, investigations, explorations, tests, studies, or data are necessary in order to submit a bid for performance of the Work at the proposed price(s), within the times required, and in accordance with the other terms and conditions of the Contract Documents.
- F. The Invitation to Bid, Project Description, project plans, and form of contract are generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work for which this Bid is submitted.
- G. Bidder has not been disqualified under ORS 701.227 by the Construction Contractors Board from bidding on public projects.
- H. Bidder meets the standards of responsibility described in ORS 279C.375(3)(b) as follows:
 - [] Has available the appropriate financial, material, equipment, facility and personnel resources and expertise, or has the ability to obtain the resources and expertise, necessary to meet all contractual responsibilities.

- Holds current licenses that businesses or service professionals operating in this state must hold in order to undertake or perform the work specified in the contract.
- Is covered by liability insurance and other insurance in amounts the contracting agency requires in the solicitation documents.
- Qualifies as a carrier-insured employer or a self-insured employer under ORS 656.407 or has elected coverage under ORS 656.128.
- Has made the disclosure required under ORS 279C.370.
- Completed previous contracts of a similar nature with a satisfactory record of performance. For purposes of this subparagraph, a satisfactory record of performance means that to the extent that the costs associated with and time available to perform a previous contract remained within the bidder's control, the bidder stayed within the time and budget allotted for the procurement and otherwise performed the contract in a satisfactory manner. The contracting agency shall document the bidder's record of performance if the contracting agency finds under this subparagraph that the bidder is not responsible.
- Has a satisfactory record of integrity. The contracting agency in evaluating the bidder's record of integrity may consider, among other things, whether the bidder has previous criminal convictions for offenses related to obtaining or attempting to obtain a contract or subcontract or in connection with the bidder's performance of a contract or subcontract. The contracting agency shall document the bidder's record of integrity if the contracting agency finds under this subparagraph that the bidder is not responsible.
- Is legally qualified to contract with the contracting agency.
- Possesses an unexpired certificate that the Oregon Department of Administrative Services issued under ORS 279A.167, if the bidder employs 50 or more full-time workers and submitted a bid for a procurement with an estimated contract price that exceeds \$500,000 in response to an advertisement or solicitation from a state contracting agency.
- Has agreed in the bid or proposal to be bound by the terms and conditions of a community benefit contract, if the public improvement contract is a community benefit contract.

- [] Supplied all necessary information in connection with the inquiry concerning responsibility. If a bidder fails to promptly supply information concerning responsibility that the contracting agency requests, the contracting agency shall determine the bidder's responsibility based on available information, or may find that the bidder is not responsible.

The Port may refuse to disclose confidential information furnished by a bidder under this section when the bidder has clearly identified in writing the information the bidder seeks to have treated as confidential and the Port has authority under ORS 192.311 to 192.478 to withhold the identified information from disclosure.

ARTICLE 5 – FURTHER REPRESENTATIONS

5.1 Bidder further represents that:

- A. This Bid is submitted in good faith, is not made in the interest of or on behalf of any undisclosed individual or entity, and is not submitted in conformity with any agreement or rules of any group, association, organization or corporation;
- B. Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid; and
- C. Bidder has not sought by collusion to obtain for itself any advantage over any other Bidder or over Port.

ARTICLE 6 – SUPPLEMENTAL INFORMATION

- 6.1 Attach to the completed Bid Form a brief description of your firm's proposed approach to completing the work described in the Project Description. Include strategies, if any, for containing costs and meeting the project completion date. Include a proposed timeline showing significant project milestones. Describe any strategies for using or promoting sustainable building practices. *[Not to exceed seven (7) pages.]*
- 6.2 Provide names, project descriptions, dates, and contact information for at least three (3) professional references for whom you have provided comparable services within the last five (5) years. Clearly indicate which services, if any, were performed on behalf of a governmental entity. By submitting this information, you agree to allow the Port to contact any or all of the references provided to confirm or supplement the information provided. *[Not to exceed three (3) pages.]*

ARTICLE 7 – BASIS OF BID

Bidder will furnish and deliver materials and perform construction services in accordance with these Documents for the following Bid prices, and Bidder agrees to accept as full payment for such materials and services, based upon the undersigned’s own estimate of all Work, quantities, and costs and including sales, consumer, use, and other taxes, and overhead and profit, in an amount not to exceed the following:

BASE BID

CONSTRUCTION OF CONCRETE IMPROVEMENTS

Item Number	Description	Unit	No. Of Units	Cost per Unit	Total Cost
1	Mobilization*	LS	1		
2	Concrete Forming	LS	1		
3	Concrete Reinforcing	LS	1		
4	Cast-in-Place Concrete	LS	1		
5	Concrete Floor Finishes	LS	1		
Subtotal		LS	1		
General	Bonds	LS	1		
General	Insurance	LS	1		
Total					

*Total Bid amount **Mobilization** shall be no more than 5% of the total bid.

Any work required for the project which is not specifically listed in this Bid shall be considered incidental to the project. (No additional payment will be provided.)

ARTICLE 8 – BID SUBMITTAL

If Bidder is:

An Individual

Name (typed or printed): _____

By: _____
(Individual's signature)

Doing business as: _____

A Partnership

Partnership _____ Name:
_____ (SEAL)

By: _____
(Signature of general partner – attach evidence of authority to sign)

Name (typed or printed): _____

A Corporation

Corporation Name: _____
(SEAL)

State of Incorporation: _____

Type (General Business, Professional, Service, Limited Liability): _____

By: _____
(Signature – attach evidence of authority to sign)

Name (typed or printed): _____

Title: _____
(CORPORATE SEAL)

Attest: _____

(Signature of Corporate Secretary)

Date of Qualification to do business in _____ Oregon is ____/____/____.

A Joint Venture

Name of Joint Venturer: _____

First Joint Venturer Name: _____
(SEAL)

By: _____
(Signature of first joint venture partner – attach evidence of authority to sign)

Name (typed or printed): _____

Title: _____

Second Joint Venturer Name: _____
(SEAL)

By: _____
(Signature of second joint venture partner – attach evidence of authority to sign)

Name (typed or printed): _____

Title: _____

(Each joint venturer must sign. The manner of signing for each individual, partnership, and corporation that is a party to the joint venture should be in the manner indicated above.)

Submitted on _____, 2024.

BID BOND FORM

Herewith find deposit in the form of a __cashier's check/___letter of credit in the amount of \$_____, which amount is not less than ten percent (10%) of the total bid.

Signature_____

BID BOND

Name of Firm: _____

We, _____ as Principal, and _____, as Surety, are held and firmly bound unto the Port of Bandon, an Oregon Special District, in the penal sum of ten percent (10%) of the amount of Bid, for the payment of which we jointly and severally bind ourselves and our legal representatives and successors.

The conditions of the obligation are that if the Port of Bandon shall make timely award to the Principal according to the terms of the bid documents; and the Principal shall within ten (10) days after notice of the award, exclusive of the day of notice, enter into the contract with the Port of Bandon and furnish the contractor's performance and payment bonds with Surety satisfactory to the Port of Bandon, each in an amount equal to one hundred percent (100%) of the amount of the bid proposed, then this obligation shall be null and void. Otherwise, if the Principal fails to enter into the contract and furnish the contractor's bond within ten (10) days, after notice of the award, exclusive of the day of notice, the amount of the bid deposit shall be forfeited to the Port of Bandon; but in no event will the Surety's liability exceed this bond's face amount.

SIGNED AND SEALED THIS _____ DAY OF _____, YEAR _____

SURETY

PRINCIPAL

Signature

Signature

Printed Name

Printed Name

Title

Title

Attachment C

FORM OF AGREEMENT (SAMPLE)

Port of Bandon, Oregon

1. **CONTRACTOR OBLIGATIONS.** Contractor agrees to perform and complete the work described in the Bid Documents in accordance with the work requirements of this contract and attached exhibits. Contractor shall furnish all labor, supervision and equipment for the work to be performed under the Contract.
2. **WORK.** Contractor shall manufacture and deliver docks as described in the Invitation to Bid and attached specifications.
3. **ACCEPTANCE CRITERIA AND PROCESS.** The Port shall inspect and either accept or reject each deliverable within thirty (30) calendar days from the date Contractor delivers the deliverable to The Port. If the Port does not provide written notice of acceptance or rejection of the deliverable to Contractor within thirty (30) calendar days following the date of delivery, the Port is deemed to have accepted the deliverable. If the Port rejects the deliverable, then the Port's written notice of rejection shall, at a minimum, itemize the apparent defects and include:
 - A. A description of nonconformance between the deliverable and the Contract requirements and specifications for that deliverable, including warranties;
 - B. A description of any other nonconformance of the deliverable (including late delivery); and
 - C. A statement indicating whether Contractor may cure the nonconformance and if so, the manner and time period in which Contractor shall cure.

Contractor's failure to deliver the deliverables in accordance with the requirements of this Contract is a material breach of this Contract.

4. **CONTRACTOR'S DUTIES, REPRESENTATIONS, AND WARRANTIES.**

- 4.1 Contractor represents and warrants to Port that:

- 4.1.1 Contractor has the power and authority to enter into and perform this Agreement;
- 4.1.2 This Agreement, when executed and delivered, will be a valid and binding obligation of Contractor enforceable in accordance with its terms;
- 4.1.3 Contractor will, at all times during the term of this Contract, be qualified to do business in the State of Oregon, professionally competent and duly licensed to perform the Work;
- 4.1.4 Contractor is not in violation of, charged with nor, to the best of Contractor's knowledge, under any investigation with respect to violation of, any provision of any federal, state or local law, ordinance or regulation or any other requirement or order of any governmental

or regulatory body or court or arbitrator applicable to provision of the Work, and Contractor's provision of the Work shall not violate any such law, ordinance, regulation or order.

- 4.1.5 Contractor's performance under this Agreement creates no potential or actual conflict of interest, as defined by ORS Chapter 244, for either Contractor or any Contractor personnel that will perform the Work under this Agreement.
 - 4.2 Contractor represents and warrants to Port that Contractor has the skill and knowledge possessed by well-informed members of its trade or profession and Contractor will apply that skill and knowledge with care and diligence so Contractor and Contractor's employees and any authorized subcontractors perform the Work described in this Agreement in accordance with the standards prevalent in Contractor's profession.
 - 4.3 Contractor guarantees all materials and workmanship and agrees to replace at Contractor's sole cost and expense, and to the satisfaction of the Port, any or all materials adjudged defective or improperly installed, and to indemnify the Port against liability, loss or damage arising from such defects or improper installation during a period of one year from Final Acceptance.
 - 4.4 Contractor shall take all reasonable precautions necessary to secure and protect the Work and the Work site during the performance of this Agreement, and to eliminate or prevent access to dangerous conditions. Contractor assumes full responsibility for the condition and safety of the Work site until Final Acceptance by the Port.
5. COMPLIANCE WITH LAWS. Both parties agree to comply, and assist one another in complying with, all applicable federal, state and local laws and regulations, including, but not limited to, the following:
- 5.1 Prevailing wages. The contractor and any subcontractors shall comply with all applicable laws requiring the payment of prevailing wages, ORS 279C.800 et seq.
 - 5.2 Prompt Payment. Pursuant to ORS 279C.515, if the Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the contractor or a subcontractor by any person in connection with the public improvement contract as the claim becomes due, the Port may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due the Contractor by reason of this Agreement.
 - 5.2.1 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 project within 30 days after receipt of payment from the contracting agency or a contractor, the contractor or first-tier subcontractor shall owe the person the amount due plus interest charges commencing at the end of the 10-day period that payment is due under ORS 279C.580(4) and ending upon final payment, unless payment is subject to a good faith dispute as defined in ORS

279C.580. The rate of interest charged to the contractor or first-tier subcontractor on the amount due shall equal three times the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve Port that includes Oregon on the date that is 30 days after the date when payment was received from the contracting agency or from the Contractor, but the rate of interest may not exceed 30 percent. The amount of interest may not be waived.

- 5.2.2 If the Contractor or a subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the public improvement 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.
- 5.3 Medical Payments. Pursuant to ORS 279C.530, the Contractor shall promptly, as due, make payment to any person, copartnership, association or corporation furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of the contractor, of all sums that the contractor agrees to pay for the services and all moneys and sums that the contractor collected or deducted from the wages of employees under any law, contract or agreement for the purpose of providing or paying for the services.
- 5.4 Worker's Compensation. Pursuant to ORS 279C.530(2), the Contractor attests that it is either a subject employer required to comply with ORS 656.017 (worker's compensation), or an employer that is exempt under ORS 656.126. If Contractor employs subject Workers who provide Work under this Agreement in the State of Oregon, Contractor shall comply with ORS 656.017 and provide the required Worker's Compensation coverage, unless such employers are exempt under ORS 656.126. Contractor shall ensure that each of its subcontractors complies with these requirements.
- 5.5 Hours of Work. Pursuant to ORS 279C.520, Contractor shall ensure that no person is employed for more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency or when the public policy absolutely requires it, and in such cases, except in cases of contracts for personal services as defined in ORS 279C.100, the employee shall be paid at least time and a half pay:

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

Each employer performing work under this Agreement must give written notice to employees who work on the project of the number of hours per day and days per week that the employees may be required to work. Such notice must be given either at the time of hire or before

commencement of work on the contract, or by posting a notice in a location frequented by employees.

- 5.6 Other Laws. Without limiting the generality of the foregoing, Contractor expressly agrees to comply with the following laws, regulations and executive orders to the extent they are applicable to the Agreement: (i) Titles VI and VII of the Civil Rights Act of 1964, as amended; (ii) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Americans with Disabilities Act of 1990, as amended; (iv) Executive Order 11246, as amended; (v) the Health Insurance Portability and Accountability Act of 1996; (vi) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (vii) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; (viii) ORS Chapter 659, as amended; (ix) all regulations and administrative rules established pursuant to the foregoing laws; and (x) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Agreement and required by law to be so incorporated.
- 5.7 Recycled Products. As required by ORS 279A.125, in the performance of this Agreement, Contractor shall use, to the maximum extent economically feasible, recycled products.
- 5.8 Tax Laws. Contractor shall comply with the tax laws of the state or a political subdivision of the state, including ORS 305.620 and ORS chapters 316, 317 and 318.
- 5.9 Separate Performance and Payment Bonds. Upon execution of this Agreement, contractor shall provide to the Port separate performance and payment bonds issued by a surety company licensed to do business within the State of Oregon for one-hundred percent (100%) of the contract amount.

6 INDEMNITIES.

- 6.1 General Indemnity. Contractor shall defend, save, hold harmless, and indemnify Port , its officers, employees and agents, from and against all third-party claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever, for personal injury, including death, damage to real property and damage to tangible personal property resulting from, arising out of, or relating to the intentional, reckless or negligent acts or omissions of Contractor or its officers, employees, subcontractors, or agents under this Agreement; provided that Contractor shall have no obligation to indemnify Port from and against any claims, suits, actions, losses, damages, liabilities, costs and expenses attributable solely to the acts or omissions of Port , its officers, employees or agents.
- 6.2 Control of Defense and Settlement. Contractor's obligation to indemnify Port as set forth in Sections 6.1 and 6.2 is conditioned upon Port providing to Contractor prompt notification of any claim or potential claim of which Port becomes aware that may be the subject of those Sections. Contractor shall have control of the defense and settlement of any claim that is subject

to Section 6.1 or Section 6.2; however, neither Contractor nor any attorney engaged by Contractor shall defend the claim in the name of the Port , nor purport to act as legal representative of the Port , without the approval of the Port , nor shall Contractor settle any claim on behalf of the Port without the approval of the Port . The Port may, at its election and expense, assume its own defense and settlement in the event that the Port determines that Contractor is prohibited from defending the Port , is not adequately defending the Port 's interests, or that an important governmental principle is at issue and the Port desires to assume its own defense.

6.3 Damages to Port Property and Employees. Contractor shall be liable for all claims, suits, actions, losses, damages, liabilities, costs and expenses for personal injury, including death, damage to real property and damage to tangible personal property of the Port or any of its employees resulting from, arising out of, or relating to the intentional, reckless or negligent acts or omissions of Contractor or its officers, employees, subcontractors, or agents under this Agreement.

6.4 Delays. Contractor shall indemnify the Port for any and all loss and damages resulting from delays in completion of the Work when such delay is caused or attributable to default in the proper performance by Contractor.

7 EVENTS OF DEFAULT.

7.1 Default by Contractor. Contractor shall be in default under this Agreement if:

7.1.1 Contractor institutes or has instituted against it insolvency, receivership or bankruptcy proceedings which are not dismissed within 60 days of their commencement, makes an assignment for the benefit of creditors, or ceases doing business on a regular basis; or

7.1.2 Contractor no longer holds a license or certificate that is required for Contractor to perform the Work and Contractor has not obtained such license or certificate within thirty (30) business days after delivery of Port 's notice or such longer period as Port may specify in such notice; or

7.1.3 Contractor commits any material breach or default of any covenant, warranty, obligation or certification under this Agreement, fails to perform the Work in conformance with the specifications and warranties provided herein, or clearly manifests an intent not to perform future obligations under this Agreement, and such breach or default is not cured, or such manifestation of an intent not to perform is not corrected by reasonable written assurances of performance within thirty (30) business days after delivery of Port 's notice or such longer period as Port may specify in such notice.

7.2 Default by Port. The Port shall be in default under this Agreement if:

7.2.1 The Port fails to pay Contractor any amount pursuant to the terms of this Agreement, and Port fails to cure such failure within thirty (30) business days after delivery of Contractor's notice or such longer period as Contractor may specify in such notice; or

7.2.2 The Port commits any material breach or default of any covenant, warranty, or obligation under this Agreement, fails to perform its commitments hereunder within the time specified or any extension thereof, and Port fails to cure such failure within thirty (30) business days after delivery of Contractor's notice or such longer period as Contractor may specify in such notice.

8. REMEDIES FOR DEFAULT.

8.1 Port's Remedies. In the event Contractor is in default under Section 7.1, Port may, at its option, pursue any or all of the remedies available to it under this Agreement and at law or in equity, which include, without limitation:

8.1.1 Termination of this Agreement under Section 9;

8.1.2 Withholding all monies due for Work that Contractor is obligated but has failed to perform within thirty (30) days after Port has notified Contractor of the nature of Contractor's default;

8.1.3 Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief;

8.1.4 Exercise of its right of setoff.

These remedies are cumulative to the extent the remedies are not inconsistent, and Port may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever. If it is determined for any reason that Contractor was not in default under Section 7.1, the rights and obligations of the parties shall be the same as if this Agreement was terminated pursuant Section 9.

8.2 Contractor's Remedies. In the event Port terminates this Agreement as set forth in Section 9.1, or in the event Port is in default under Section 7.2 and whether or not Contractor elects to exercise its right to terminate the Agreement under Section 9.3, Contractor's sole monetary remedy shall be a claim for the unpaid invoices; the hours worked but not yet billed with respect to each phase of work, up to the not-to-exceed amount set forth in the Statement of Work; authorized expenses incurred, less previous amounts paid and any claims which Port has against Contractor. If previous amounts paid to Contractor exceed the amount due to Contractor under this Section, Contractor shall pay any excess to Port upon written demand.

9. TERMINATION.

- 9.1 Port 's Right to Terminate. Port may, at its sole discretion, terminate this Agreement, as follows:
- 9.1.1 For its convenience upon thirty (30) days' prior written notice to Contractor; or
 - 9.1.2 If Port fails to receive funding, appropriations, limitations or other expenditure authority at levels sufficient to pay for Contractor's services; or
 - 9.1.3. If federal or state laws, regulations, or guidelines are modified or interpreted in such a way that the performance of the Work under this Agreement is prohibited or Port is prohibited from paying for such Work from the planned funding source.
- 9.2 Port 's Right to Terminate for Cause. In addition to any other rights and remedies Port may have under this Agreement, Port may terminate this Agreement, in whole or in part, immediately upon Contractor's default under Section 7.1.
- 9.3 Contractor's Right to Terminate for Cause. Contractor may terminate this Agreement upon Port 's default under Section 7.2.

10. INDEPENDENT CONTRACTOR STATUS.

- 10.1 Performance of Work. Contractor shall perform all Work as an independent contractor. Although Port reserves the right to evaluate the quality of the completed performance, Port cannot and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the Work.
- 10.2 Declaration and Certification. Contractor by execution of this Agreement declares and certifies that, in the event that Contractor or its personnel are either employed by or performing services for the federal government, that no rules or regulations of the Port for which Contractor or its personnel work or are employed prohibit Contractor or its personnel from providing the Work under this Agreement. Contractor also declares and certifies by execution of this Agreement that it is not an "officer," "employee," or "agent" of Port , as those terms are used in ORS 30.265.
- 10.3 Responsible for Taxes. Contractor shall be responsible for all federal and state taxes applicable to compensation and other payments paid to Contractor under this Agreement and, unless Contractor is subject to backup withholding, Port will not withhold from such compensation and payments any amount to cover Contractor's federal or state tax obligations. Contractor is not eligible for any social security, unemployment insurance, or workers' compensation benefits from compensation or payments paid to Contractor under this Agreement, except as a self-employed individual.

11. DISPUTE RESOLUTION.

- 11.1 Litigation. Any claim, action, suit, or proceeding (collectively, “Claim”) between Port and Contractor that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Coos County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States Port Court for the Port of Oregon. In no event shall this section be construed as a waiver by the Port of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. CONTRACTOR BY EXECUTION OF THIS CONTRACT HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF THE COURTS REFERENCED IN THIS SECTION.
- 11.2 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to conflict of laws principles.
- 11.3 Attorneys’ Fees. In any suit or action instituted to enforce compliance with any of the terms of this Agreement, the prevailing party shall be entitled to recover from the other party such attorney fees, costs and expenses as the court may adjudge reasonable in such suit or action, or any appeal therefrom.

12. MISCELLANEOUS PROVISIONS.

- 12.1 Order of Precedence. This Agreement consists of the following documents that are listed in descending order of precedence: (a) the terms and conditions of this Agreement, less its Exhibits; (b) the Statement of Work, including specifications; (c) the terms of payment; (d) the Solicitation Document; and (d) the Bid. In the event of a conflict between the terms of this Agreement and the terms provided in the Bid, the Agreement terms shall prevail.
- 12.2 Subcontracts and Assignment. Contractor shall not enter into any subcontracts for any of the Work required by this Agreement or assign or transfer any of its interest in this Agreement without Port ’s prior written consent. Port ’s consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Agreement. Pursuant to ORS 279A.110, the Contractor shall not discriminate against minority- or woman-owned or emerging small business enterprises in the awarding of subcontracts.
- 12.3 Successors and Assigns. The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns, if any.
- 12.4 No Third-Party Beneficiaries. Port and Contractor are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement 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 Agreement.

- 12.5 Funds Available and Authorized. Port believes it has sufficient funds currently available and authorized for expenditure to finance the costs of this Agreement within Port 's budgetary appropriation or limitation. Contractor understands and agrees that Port 's payment of amounts under this Agreement is contingent on Port receiving 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 Agreement.
- 12.6 Records Maintenance; Access. Contractor shall maintain all financial records and other records relating to its performance under this Agreement in accordance with generally accepted accounting principles and in such a manner as to clearly document Contractor's performance. Contractor acknowledges and agrees that Port , the departments and agencies of the State of Oregon, and the federal government and their duly authorized representatives shall have reasonable access, at their own cost and expense and only following reasonable notice to Contractor, to such records, in paper or electronic form, to perform examinations and audits and make excerpts and transcripts. Contractor shall retain and keep accessible all such records for a minimum of three (3) years, or such longer period as may be required by applicable law, following termination of this Agreement, or until the conclusion of any audit, controversy, or litigation arising out of or related to this Agreement, whichever date is later.
- 12.7 Foreign Contractor. If Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State, Corporation Division, all information required by those agencies relative to this Agreement. Contractor shall demonstrate its legal capacity to perform the Work under this Agreement in the State of Oregon before entering into this Agreement.
- 12.8 Time Is of the Essence. Contractor agrees that time is of the essence under this Agreement.
- 12.9 Force Majeure. Neither Port nor Contractor shall be liable to the other for any failure or delay of performance of any obligations hereunder when such failure or delay shall have been wholly or principally caused by acts or events beyond its reasonable control, including without limitation acts of God, acts of civil or military authority, fires, floods, earthquakes or other natural disasters, war, riots or strikes. Contractor shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement.
- 12.10 Notices. Except as otherwise expressly provided in this Agreement, any notices to be given under this Agreement shall be given in writing by personal delivery of, facsimile transmission of, or mailing the same, postage prepaid, to Contractor at the address or number, and to Port at the address or number, or to such other addresses or numbers as either party may hereafter indicate pursuant to this Section. Any notice so addressed and

mailed shall be deemed to be given five (5) calendar days after mailing. Any notice delivered by facsimile shall be deemed to be given when the transmitting machine generates receipt of the transmission. To be effective against Port , such facsimile transmission must be confirmed by telephone notice to the Port Authorized Representative. Any communication or notice by personal delivery shall be deemed to be given when actually received by the appropriate Authorized Representative. Any other notice or communication made or required under this Agreement may be made by electronic mail, which shall be deemed made on the date and at the time such communication is received by the recipient.

- 12.11 Severability. If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if this Agreement did not contain the particular term or provision held to be invalid.
- 12.12 Counterparts. This Agreement may be executed in several counterparts, all of which when taken together shall constitute one contract binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.
- 12.13 Amendments. This Agreement may be amended, modified, or supplemented only by a written amendment signed by Port and Contractor. Any amendment that provides for additional goods or services may only provide for goods or services directly related to the Scope of Work described in the Solicitation Document, and no amendment shall be effective until all requisite signatures and approvals are obtained.
- 12.14 Waiver. The failure of either party to enforce any provision of this Agreement or the waiver of any violation or nonperformance of this Agreement in one instance shall not constitute a waiver by the party of that or any other provision nor shall it be deemed to be a waiver of any subsequent violation or nonperformance. No waiver, consent, modification, or change of terms of this Agreement 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.
- 12.15 Headings. The headings in this Agreement are included only for convenience and shall not control or affect the meaning or construction of this Agreement.
- 12.16 Integration. This Agreement and attached Exhibits constitute the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements or representations, oral or written, not specified herein regarding this Agreement.

CONTRACTOR: BY EXECUTION OF THIS CONTRACT, HEREBY ACKNOWLEDGES THAT CONTRACTOR HAS READ THIS CONTRACT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

CONTRACTOR: YOU WILL NOT BE PAID FOR SERVICES RENDERED BEFORE NECESSARY PORT APPROVALS.

PORT OF BANDON

CONTRACTOR

Port Manager

Chief Executive Officer

Date

Date