

# PORT OF PORT ORFORD SLOPE STABILITY ASSESSMENT ENGINEERING SERVICES CONTRACT

This Contract is by and between the Port of Port Orford ("Port") and \_\_\_\_\_ ("Engineer") for the performance of engineering services for Port.

## A. RECITALS

Port is in need of retaining the services of a qualified Engineer developing a slope stability assessment for the Port. On \_\_\_\_\_, the Port awarded this Contract to \_\_\_\_\_, based upon its proposal dated \_\_\_\_\_.

## B. CONTRACT EXHIBITS

The following exhibits are hereby incorporated by reference into this Contract:

- Exhibit A – Scope of Work and Schedule of Rates and Charges
- Exhibit B – Oregon Engineer Public Contracting Code Requirements
- Exhibit C – Port's Request for Proposals for Engineering Services
- Exhibit D – Engineer's Proposal

In the event of a conflict between this Contract and its Exhibits, the terms of this Contract shall prevail, followed by Exhibit B, then Exhibits A, C and D, in that order.

## C. CONTRACT

### 1. Term

This Contract shall commence upon execution, and continue through final completion of Project, but no later than \_\_\_\_\_, 2026.

### 2. Scope of Work

Engineer shall provide all services and deliver all materials as specified in the attached Exhibits, which are hereby incorporated into this Contract by this reference, and as may be described by future addenda to this Contract.

### 3. Compensation

3.1 Compensation. Engineer will be paid by Port on a time and materials basis, for work actually completed and invoiced as described in this section. Engineer shall complete its scope of work as defined in Exhibit A for up to a total not to exceed amount, including reimbursable expenses, of \_\_\_\_\_ (\$275,000.00). This maximum contract amount shall function as a limit on Port contract payments. Engineer will not be entitled to receive as payment from Port the difference between amounts invoiced for work completed above the maximum amount and the maximum Contract amount provided in this section, if any.

3.2 Invoices. Payments shall be based upon monthly invoices which Engineer shall submit to the Port, detailing the previous months' fees, costs and percentage of the Project completed at that time. Upon request, Engineer will provide the Port representative with documents, records, and draft plans evidencing the progress made on the Project to date. Engineer shall send invoices to Port's representative at Port's address set forth in

Section 5. In the event of non-payment due to a fee dispute between the parties, Engineer shall continue to provide Contract services to Port.

### 3.3 Payments.

- a. Port will review Engineer's invoice and within ten (10) days of receipt notify Engineer in writing if there is a disagreement or dispute with the invoice. If there are no such disputes with the invoice, Port shall pay the invoice amount in full within thirty (30) days of invoice date.
- b. If Port fails to make any payment due Engineer for services and expenses within thirty (30) days of the date on Engineer's invoice therefore, late fees will be added to amounts due Engineer at the rate of 1.0 percent per month from original invoice date. Invoices in dispute are not subject to such late fees until such time as they are no longer in dispute. In addition, Engineer may, after giving seven (7) days written notice to Port, suspend services under this Contract until Engineer has been paid in full all amounts due for services, expenses, and charges, except any invoices in dispute.

3.4 Reimbursable Expenses. Reimbursable expenses shall be itemized and include expenses incurred in the interest of the Project for: 1) Long distance communications; 2) Reproductions, presentations and work session handouts or other materials; 3) Postage and handling of documents; and 4) Expense of overtime work requiring higher than regular rates, if authorized by Port.

## 4. **Engineer Is an Independent Contractor**

- 4.1 Engineer shall be an independent contractor for all purposes and shall be entitled to no compensation other than the compensation provided for under this Contract. While Port reserves the right to set various schedules and evaluate the quality of Engineer's completed work, Port cannot and will not control the means and manner of Engineer's performance. Engineer is responsible for determining the appropriate means and manner of performing work.
- 4.2 Engineer is responsible for all federal and state taxes applicable to compensation and payment paid to Engineer under the Contract and will not have any amounts withheld by Port to cover Engineer's tax obligations.
- 4.3 Engineer is not eligible for any Port fringe benefit plans.

## 5. **Notices**

All notices provided for hereunder shall be in writing and shall be deemed to be duly served on the date of delivery if delivered in person, when receipt of transmission is generated by the transmitting facsimile machine if delivered by facsimile transmission, on the day after deposit if delivered by overnight courier, or three days after deposit if delivered by placing in the U.S. mail,

first-class, postage prepaid. Any notice delivered by facsimile transmission shall be followed by a hard copy. All notices shall be addressed as follows:

Port: Catherine Scobby  
Port Administrator  
Port of Port Orford  
PO Box 490  
300 Dock Rd  
Port Orford, OR 97465  
(541) 332-7121

Engineer: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**6. Indemnification**

Engineer shall indemnify, hold harmless, and defend Port and its representatives, officers, directors, and employees from, for, and against any loss, claim, or tort brought by third parties, including legal fees and costs of defending actions or suits resulting directly or indirectly from the negligent performance, omission, or fault of Engineer, and its employees, representatives, and Subconsultants. If the loss or claim is caused by the joint concurrent negligence or other fault of Port and Engineer, the loss or claim shall be borne by each in proportion to the degree of negligence or other fault attributable to each.

Notwithstanding the foregoing, the Engineer has no duty to defend Port against a claim for professional negligence relating to the professional services Engineer provided under this Contract, except to the extent that the Engineer's liability or fault is determined by adjudication or alternative dispute resolution or otherwise resolved by settlement agreement, and subject to the proportionate fault limitation, above.

Engineer's obligations under this Section 6 shall survive the expiration or earlier termination of this Contract.

**7. Insurance Requirements**

7.1 During the term of this Contract, Engineer shall maintain, at its own expense, the following types of insurance in the following amounts:

- a. Occurrence form commercial general liability insurance, including coverage for premises operations, independent contractors, protected products, completed operations, contractual liability, personal injury, and broad form for property damage (including coverage for explosion, collapse, and underground hazards):

- \$2,000,000 – each occurrence (bodily injury)
  - \$4,000,000 – general aggregate
  - \$1,000,000 – property damage, contractual, etc.
  - \$2,000,000 – umbrella liability coverage

Coverage shall also include contractual liability coverage for the indemnity provided under this Contract. (Proof of coverage will be attached to this Contract).

- b. Workers' Compensation and employer's liability insurance per ORS Chapter 656. The employer's liability limit shall not be less than \$1,000,000 per occurrence. (Proof of coverage will be attached to this Contract).
  - c. Errors and Omissions insurance covering Engineer's liability arising out of negligent acts, errors or omissions in its performance of work or services under this Contract. Such policy will have a combined single limit of not less than \$2,000,000 per each claim, incident or occurrence for the term of the Project. Such policy will be on a claims made basis and will have an extended claims reporting period of six (6) years after final completion. (Proof of coverage will be attached to this Contract).
  - d. The limits required in this Section 7.1 may be met with a combination of underlying and umbrella coverage.
- 7.2 Except as required in 7.1(c) above, if any of the above required insurance is arranged on a "claims made" basis, "tail" coverage will be required at final completion or termination of this Contract for a duration of two (2) years.
- 7.3 Policies shall provide that Port, its Commission, officers, representatives, employees, and agents will be included as an additional insured with respect to the coverages required in Section 7.1(a) and a waiver of subrogation against them shall be obtained for all coverages.
- 7.4 All coverages under Section 7.1 shall be primary over any insurance Port may carry on its own.
- 7.5 Port shall be solely responsible for any loss, damage or destruction to its own property, equipment, and materials used in conjunction with the work or services under this Contract if the loss, damage or destruction is due to the Port's negligence or fault.
- 7.6 All policies of insurance shall be issued by good, responsible companies with a rating acceptable to the Port and that are qualified to do business in the State of Oregon.
- 7.7 Engineer shall furnish Port with certificates of insurance evidencing all required coverages prior to commencing any work or services under this Contract. If requested by Port, Engineer shall furnish Port with executed copies of such policies of insurance. Engineer shall furnish Port with at least 30 days' written notice of cancellation of, or any modification to, the required insurance coverages. Failure to maintain any required insurance coverages in the minimum required amounts shall constitute a material breach of this Contract and shall be grounds for immediate termination of this Contract.

## **8. Workers' Compensation**

- 8.1 Engineer, its Subconsultants, if any, and all employers working under this Contract are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide workers' compensation coverage for all subject workers.
- 8.2 Engineer warrants that all persons engaged in Contract work and subject to the Oregon Workers' Compensation Law are covered by a workers' compensation plan or insurance policy that fully complies with Oregon law. Engineer shall indemnify Port for any liability incurred by Port as a result of Engineer's breach of the warranty under this paragraph.

## **9. Hours of Employment**

Engineer shall comply with all applicable state and federal laws regarding employment.

## **10. Assignment**

- 10.1 Port Assignment. Engineer agrees to be bound by and continue performing under this Contract in the event it is assigned by Port.
- 10.2 Engineer may not assign any of its responsibilities under this Contract without Port's prior written consent, which consent may be withheld in Port's sole discretion. Engineer may not subcontract for performance of any of its responsibilities under this Contract without Port's prior written consent, which consent shall not be unreasonably withheld. Engineer's assigning or subcontracting of any of its responsibilities under the Contract without Port's consent shall constitute a material breach of this Contract. Regardless of any assignment or subcontract, Engineer shall remain liable for all of its obligations under this Contract.

## **11. Labor and Material**

Engineer shall provide and pay for all labor, materials, equipment, tools, water, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of all Contract work, all at no cost to Port other than the compensation provided in this Contract.

## **12. Ownership of Work and Documents**

- 12.1 Ownership of Work, Unauthorized Use of Work. All work performed by Engineer and compensated by Port pursuant to this Contract shall be the property of Port upon full compensation for that work performed or document produced to Engineer, and it is agreed by the parties that such documents are works made for hire. Engineer hereby conveys, transfers and grants to Port all rights of reproduction and the copyright to all such documents. However, in the event Port reuses or modifies any engineering documents furnished to Port by Engineer, without Engineer's involvement or consent, then Engineer shall not be responsible for the materials.
- 12.2 Intellectual Property.
- a. The interest in any intellectual property, including but not limited to copyrights and patents of any type, arising from the performance of this Contract shall vest in Port, except for work exempted by Section 12.2.b below. Upon request, Engineer shall execute any assignment or other documents necessary to give effect to this Section. Engineer will retain a nonexclusive right to use intellectual property vested in Port as part of this Contract.
  - b. Engineer shall retain all intellectual property rights (including but not limited to copyrights and/or patents of any type) for work completed by Engineer prior to execution of this Contract, or completed for other clients or outside of the scope of this Contract. This includes but is not limited to design elements developed on previous projects, as well as standard contract documents, standard specifications, design standards manuals, standard details or other standard documents, details or drawings developed prior to execution of or outside the scope of this Contract.
  - c. Port will retain a nonexclusive right to utilize documents and materials provided to Port by Engineer which are excluded under Section 12.2.b, but shall not profit from such use, and shall not provide these documents or materials for use by other jurisdictions without authorization from Engineer.

## **13. Termination or Suspension for Convenience**

- 13.1 This Contract may be terminated or suspended by mutual consent of the parties upon written notice.

- 13.2 In addition, Port may terminate or suspend all or part of this Contract upon determining that such action is in the best interest of Port by giving seven (7) days' prior written notice, without waiving any claims or remedies it may have against Engineer.
- 13.3 Upon termination under this Section, Engineer shall be entitled to payment in accordance with the terms of this Contract for Contract work completed and accepted before termination less previous amounts paid and any claim(s) Port has against Engineer. Pursuant to this Section, Engineer shall submit an itemized invoice for all unreimbursed Contract work completed before termination and any previously approved Contract closeout costs actually incurred by Engineer. Port shall not be liable for any costs invoiced later than thirty (30) days after termination unless Engineer can show good cause beyond its control for the delay.

#### **14. Termination or Suspension for Cause**

Port may terminate this Contract effective upon delivery of written notice to Engineer, or at such later date as may be established by Port, under any of the following conditions:

- 14.1 Port may terminate or suspend this Contract effective upon delivery of written notice to Engineer, or at such later date as may be established by Port, under any of the following conditions:
- a. If Port funding is not obtained and continued at levels sufficient to allow for purchases of the indicated quantity of services. The Contract may be modified to accommodate a reduction in funds.
  - b. If federal or state regulations or guidelines are modified, changed, or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this Contract or are no longer eligible for the funding proposed for payments authorized by this Contract.
  - c. If any license or certificate required by law or regulation to be held by Engineer to provide the services required by this Contract is for any reason denied, revoked, or not renewed.

#### **15. Termination for Default**

- 15.1 If the Port fails to perform in the manner called for in this Contract or if the Port fails to comply with any other provisions of the Contract, the Engineer may terminate this Contract for default after giving the Port the notice and opportunity to cure required by this Section. Prior to termination for default, Engineer must give Port written notice of the breach and of Engineer's intent to terminate. If Port has not entirely cured the breach within fifteen (15) days of the date of the notice, then Engineer may terminate the Contract at any time thereafter by giving a written notice of termination.
- 15.2 If Engineer fails to perform in the manner called for in this Contract or if Engineer fails to comply with any other provisions of the Contract, Port may terminate this Contract for default. Termination shall be effected by serving a notice of termination on Engineer setting forth the manner in which Engineer is in default. Engineer shall be paid the Contract price only for services performed in accordance with the manner of performance as set forth in this Contract. Upon termination under Section 15.1, Engineer shall be entitled to payment in accordance with the terms under Section 13.3.

## **16. Remedies**

In the event of breach of this Contract the parties shall have the following remedies:

- 16.1 Any suspension of performance under Sections 13 or 14 of this Contract constitutes a temporary stoppage of performance of the Contract and does not constitute a termination of the Contract under those Sections. In the event that the condition(s) causing the suspension are rectified and suspension is no longer required, the Parties will take all actions necessary to reactivate performance of the Contract within seven (7) calendar days from written notice to resume. In the event that the Port determines that the conditions causing suspension of the Contract are not likely to be rectified in a reasonable amount of time, the Port retains the right to terminate this Contract, pursuant to Sections 13 or 14. In the event of a suspension of performance pursuant to Sections 13 or 14, Engineer agrees to remain contractually obligated to perform the Services under this Contract for the same compensation set forth in Section 3, "Compensation," of this Contract until Project completion. If the Contract is reactivated and Engineer is required to perform under this Contract beyond this date or such other time period agreed to by the Parties, the Parties may negotiate updated hourly rates for Engineer and any Consultants and amend this Contract accordingly.
- 16.2 If terminated under paragraph 15 by Port due to a breach by Engineer, Port may complete the work either itself, by agreement with another contractor, or by a combination thereof. If the cost of completing the work exceeds the remaining unpaid balance of the total compensation provided under this Contract, then Engineer shall pay to Port the amount of the reasonable excess.
- 16.3 In addition to the above remedies for a breach by Engineer, Port also shall be entitled to any other equitable and legal remedies that are available.
- 16.4 If Port breaches this Contract, Engineer's remedy shall be limited to termination of the Contract and receipt of Contract payments to which Engineer is entitled.
- 16.5 Port shall not be liable for any indirect, incidental, consequential, or special damages under the Contract or any damages arising solely from terminating the Contract in accordance with its terms.
- 16.6 Upon receiving a notice of termination, and except as otherwise directed in writing by Port, Engineer shall immediately cease all activities related to the services and work under this Contract. As directed by Port, Engineer shall, upon termination, deliver to Port all then existing work product that, if the Contract had been completed, would be required to be delivered to Port.

## **17. Nondiscrimination**

During the term of this Contract, Engineer shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, or national origin.

## **18. Governing Law; Jurisdiction; Venue**

This Contract shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively "Claim") between Port and Engineer that arises from or relates to this Contract which results in litigation shall be brought and conducted solely and exclusively within the Circuit Court of Curry 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 District Court for the District of Oregon. ENGINEER BY EXECUTION OF THIS CONTRACT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID

COURTS. Nothing herein shall be construed as a waiver of Port's protections under the Oregon Tort Claims Act.

**19. Compliance with Laws and Regulations**

Engineer shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the services under this Contract. Without limiting the generality of the foregoing, Engineer expressly agrees to comply with: (i) ORS 659A.142; (ii) all regulations and administrative rules established pursuant to the foregoing laws; and (iii) Port's performance under this Contract is conditioned upon Engineer's compliance with all applicable provisions of the Oregon Public Contracting Code, as more particularly set forth in Exhibit B and incorporated herein by this reference. Engineer, its subconsultants, and all employers providing work, labor, or materials under this Contract are subject employers under the Oregon workers' compensation law and shall comply with ORS 656.017, which requires them to provide Oregon workers' compensation coverage that satisfies Oregon law for all their subject workers. Engineer shall adhere to all safety standards and regulations established by Port for work performed on its premises or under its auspices.

**20. Experience, Capabilities and Resources**

By execution of this Contract, Engineer agrees that:

- 20.1 Engineer is an experienced engineering firm having the skill, legal capacity, and professional ability necessary to perform all the services required under this Contract and to design or administer any work within the scope and complexity contemplated by this Contract.
- 20.2 Engineer has the capabilities and resources necessary to perform the obligations of this Contract.
- 20.3 Engineer is familiar with all current laws, rules, and regulations which are applicable to the design and construction of work which may fall within the scope of this Contract, and that all drawings, specifications, and other documents prepared by Engineer shall be prepared in accordance with the standard of care of other professionals performing similar services under similar conditions and in an effort to accurately reflect and incorporate all such laws, rules, and regulations.
- 20.4 Port selected Engineer for award of this Contract because of the special qualifications of Engineer's key personnel identified in Exhibit D (Key Personnel). Engineer must obtain Port's consent prior to replacing any Key Personnel assigned to perform or support the work specified in this Contract. In the event Engineer requests that Port approve a reassignment or transfer of the Key Personnel, Port shall have the right to interview, review the qualifications of, and approve or disapprove the proposed replacement(s).

**21. Drawings, Specifications and Other Documents**

Engineer hereby agrees that it will, in a manner consistent with its standard of care defined in above in Section 20, prepare all drawings, specifications, and other documents pursuant to this Contract so that they are complete and that any project, if constructed in accordance with the intent established by such drawings, specifications, and other documents, shall be structurally sound and a complete and properly functioning facility. As used in this Section 21:

- 1) "structurally sound" means that the facility has been designed and engineered to meet the minimum code standard required of this Project by the authority having jurisdiction; and

- 2) "complete and properly functioning facility" means that the facility has been designed, utilizing the Standard of Care, to meet industry standards for similar facilities in a similar location.

## **22. Errors and Omissions**

Engineer shall be responsible for correcting any errors or omissions in the drawings, specifications, and/or other documents which deviate from the standard of care set forth in Section 21. Engineer shall correct at no additional cost to Port any and all such errors and omissions in the drawings, specifications, and other documents prepared by Engineer or its subconsultants. Engineer further agrees to assist Port in resolving problems relating to any project designs or specified materials. Engineer's warranties and obligations under Sections 6, and 20-22 of this Contract shall survive the expiration or earlier termination of this Contract.

## **23. Contract Performance**

Engineer shall at all times carry on the services diligently, without delay and punctually fulfill all requirements herein. Engineer shall not be liable for delays that are beyond Engineer's control. Contract expiration shall not extinguish, prejudice, or limit either party's right to enforce this Contract with respect to any breach of Engineer's warranties or a default or defect in performance by Engineer that has not been cured. Engineer agrees that time is of the essence under this Contract.

## **24. Access to Records**

For not less than five (5) years after the Contract expiration and for the purpose of making audit, examination, excerpts, and transcripts, Port, and its duly authorized representatives shall have access to Engineer's books, documents, papers, and records that are pertinent to this Contract. If, for any reason, any part of this Contract, or any resulting construction contract(s) is involved in litigation, Engineer shall retain all pertinent records for not less than five (5) years or until all litigation is resolved, whichever is longer. Engineer shall provide full access to these records to Port, and its duly authorized representatives in preparation for and during litigation.

## **25. Representations and Warranties**

25.1 Engineer represents and warrants to Port that:

25.1.1 Engineer has the power and authority to enter into and perform this Contract;

25.1.2 When executed and delivered, this Contract shall be a valid and binding obligation of Engineer enforceable in accordance with its terms;

25.1.3 Engineer shall, at all times during the term of this Contract, be duly licensed to perform the services, and if there is no licensing requirement for the profession or services, be duly qualified and competent; and

25.1.4 The services under this Contract shall be performed in accordance with the professional skill, care and standards of other professionals performing similar services under similar conditions.

25.2 The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.

**26. Conflicts of Interest.**

Engineer agrees not to accept or perform any work for clients other than Port on projects located within the Port without Port's prior written approval, which may be granted or withheld in Port's sole discretion.

**27. Port Obligations**

- 27.1 Port shall provide full information in a timely manner regarding requirements for and limitations on projects and work tasks. With regard to subcontractor liens, Port shall furnish to Engineer, within fifteen (15) days after receipt of a written request, information necessary and relevant for Engineer to evaluate, give notice of, or enforce lien.
- 27.2 Port shall establish and update, if necessary, overall project budgets, including Architecture/Engineering and construction costs.
- 27.3 Port shall furnish the services of consultants, including geotechnical architects/engineers, when such services are requested by Engineer, reasonably required by the scope of a project, and agreed to by Port.
- 27.4 Port shall furnish all testing as required by law or the Contract documents.
- 27.5 Port shall furnish all legal accounting, auditing and insurance services as necessary for projects to meet the Port's needs and interests, after Engineer has performed requisite project management and oversight duties.
- 27.6 Port shall provide prompt written notice to Engineer if Port becomes aware of any fault or defect in a project, including any errors, omissions or inconsistencies in Engineer's design or performance under the Contract.
- 27.7 Port shall pay Engineer in accordance with Section 3 and Exhibit A of this Contract, upon receipt of Engineer's submission of monthly invoices, and satisfactory progress and performance made in accordance with the scope of work. Payments shall reflect work completed, or progress made on a project to date, on a pro rata basis.
- 27.8 Port shall report the total amount of all payments to Engineer, including any expenses, in accordance with federal Internal Revenue Service and State of Oregon Department of Revenue regulations.
- 27.9 Port shall guarantee access to, and make all provisions for Engineer to enter upon public and private property necessary for performance of the Scope of Work over which Port exercises control.
- 27.10 Extra work or work on contingency tasks is not permitted unless authorized by the Port in writing. Failure of Engineer to secure written authorization for extra work shall constitute a waiver of all rights to an adjustment in the Contract price or Contract time.

**28. Arbitration**

- 28.1 All claims, disputes, and other matters in question between the Port and Engineer arising out of, or relating to this Contract, including rescission, reformation, enforcement, or the breach thereof except for claims which may have been waived by the making or acceptance of final payment, may be decided by binding arbitration in Port's sole discretion, in accordance with Uniform Oregon Arbitration Act ORS 36.600 et seq. and any additional rules mutually agreed to by both parties. If the parties cannot agree on rules within ten (10) days after the notice of demand, the presiding judge of the Curry County Circuit Court will establish rules to govern the arbitration. The Port shall have the

sole discretion as to whether or not dispute will be decided by arbitration rather than through the court process.

- 28.2 A claim by Engineer arising out of, or relating to this Contract must be made in writing and delivered to the Port Manager not less than 30 days after the date of the occurrence giving rise to the claim. Failure to file a claim with the Port Manager within 30 days of the date of the occurrence that gave rise to the claim shall constitute a waiver of the claim. A claim filed with the Port Manager will be considered by the Commission as the Commission's next regularly scheduled meeting. At that meeting the Commission will render a written decision approving or denying the claim. If the claim is denied by the Commission, the Engineer may file a written request for arbitration with the Port Manager. No demand for arbitration shall be effective until the Commission has rendered a written decision denying the underlying claim. No demand for arbitration shall be made later than thirty (30) days after the date on which the Commission has rendered a written decision on the underlying claim. The failure to demand arbitration within said 30 days shall result in the Commission's decision being binding upon the Port and Engineer.
- 28.3 Notice of demand for arbitration shall be filed in writing with the other party to the Contract. The demand for arbitration shall be made within the 30-day period specified above. The Port, if not the party demanding arbitration, has the option of allowing the matter to proceed with binding arbitration or by written notice within five (5) days after receipt of a demand for arbitration, to reject arbitration and require the Engineer to proceed through the courts for relief. If arbitration is allowed, the parties agree that the award rendered by the arbitrators will be final, judgment may be entered upon it in any court having jurisdiction thereof, and the award will not be subject to modifications or appeal except to the extent permitted by Oregon law.

**29. Joinder**

Notwithstanding any contrary language in other documents or agreements related to services provided by Engineer pursuant to this Contract, including contracts for construction services, either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact arising out of or related to this Contract and whose presence is required if complete relief is to be accorded. This paragraph applies to any and all claims, disputes, and other matters arising out of, or relating to this Contract, including but not limited those claims, disputes, and other matters subject to litigation or arbitration.

**30. Attorney Fees**

If any suit, action or arbitration is brought either directly or indirectly to rescind, reform, interpret or enforce the terms of this Contract, the prevailing party shall recover and the losing party hereby agrees to pay reasonable attorney's fees incurred in such proceeding, in both the trial and appellate courts, as well as the applicable costs and disbursements. Further, if it becomes necessary for Port to retain the services of an attorney to enforce any provision of this Contract without initiating litigation, Engineer agrees to pay Port's attorney's fees so incurred. Such costs and fees shall bear interest at the maximum legal rate from the date incurred until the date paid by the losing party.

**31. Successors and Assigns; Subconsultants and Assignments**

The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and assigns.

**32. Limitation of Liabilities**

Port shall not be liable for (i) any indirect, incidental, consequential, or special damages under the Contract or (ii) any damages of any sort arising solely from the termination of this Contract in

accordance with its terms. Engineer shall not be liable for any consequential damages under this Contract.

**33. Foreign Contractor**

If Engineer is not domiciled in or registered to do business in the State of Oregon, Engineer shall promptly provide to the Oregon Department of Revenue and the Corporations Division of the Oregon Secretary of State all information required by those agencies relative to this Contract. Engineer shall demonstrate its legal capacity to perform the work under this Contract in the State of Oregon prior to entering into this Contract.

**34. Confidentiality**

Engineer shall maintain the confidentiality of any of Port's information that has been marked as confidential, unless withholding such information would violate the law, create the risk of significant harm to the public, or prevent Engineer from establishing a claim or defense in an adjudicatory proceeding. Engineer shall require similar agreements from Port's and/or Engineer's subconsultants to maintain the confidentiality of information of Port.

**35. Force Majeure**

Engineer shall not be deemed in default hereof nor liable for damages arising from its failure to perform its duties or obligations hereunder if such is due to causes beyond its reasonable control, including, but not limited to, acts of God, acts of civil or military authorities, fires, floods, windstorms, earthquakes, strikes or other labor disturbances, civil commotion or war.

**36. Waivers**

No waiver by Port of any provision of this Contract shall be deemed to be a waiver of any other provision hereof or of any subsequent breach by Engineer of the same or any other provision. Port's consent to or approval of any act by Engineer requiring Port's consent or approval shall not be deemed to render unnecessary the obtaining of Port's consent to or approval of any subsequent act by Engineer, whether or not similar to the act so consented to or approved.

**37. Severability**

Any provision of this Contract which shall prove to be invalid, void or illegal shall in no way affect, impair or invalidate any other provision hereof, and such remaining provisions shall remain in full force and effect.

**38. Headings**

The captions contained in this Contract are for convenience only and shall not be considered in the construction or interpretation of any provision hereof.

**39. Survival**

All rights and obligations shall cease upon termination or expiration of this Contract except for the rights and obligations set forth in Section 6, "Indemnification"; Section 12, "Ownership of Work Documents"; Section 13, "Termination or Suspension for Convenience"; Section 14, "Termination or Suspension for Cause"; Section 15, "Termination for Default"; Section 18, "Governing Law; Jurisdiction; Venue"; Section 20, "Experience, Capabilities and Resources"; Section 21, "Drawings, Specifications and Other Documents"; Section 22, "Errors and Omissions"; Section 24, "Access to Records"; Section 32, "Limitation of Liabilities"; Section 34, "Confidentiality"; and Section 39, "Survival."

**40. Integration and Modification**

This Contract, including the attached exhibits referenced in Section B, contains the entire agreement between the parties regarding the matters referenced herein and supersedes all prior written or oral discussions or agreements regarding the matters addressed by this Contract. Any modifications or amendments to this Contract will only be effective when made in writing and signed by authorized parties for each party to this Contract.

**41. Authority**

The representatives signing on behalf of the parties certify that they are duly authorized by the party for which they sign to enter into this Contract.

PORT OF PORT ORFORD

\_\_\_\_\_

By: \_\_\_\_\_  
Catherine Scobby,  
Port Manager  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Authorized Signature  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**Exhibit A**

**Scope of Work and Engineer's Schedule of Rates and Charges**

## **Exhibit B**

### **Oregon Public Contracting Requirements**

#### **PUBLIC CONTRACTING CODE REQUIREMENTS For ORS 279C Personal Service Contract**

1. Contractor shall pay promptly, as due, all persons supplying labor or materials for the performance of the Work provided for in the contract, and shall be responsible for such payment of all persons supplying such labor or material to any Subcontractor.
2. Contractor shall promptly pay all contributions or amounts due the Industrial Accident Fund from such Contractor or Subcontractor incurred in the performance of the Contract, and shall be responsible that all sums due the State Unemployment Compensation Fund from Contractor or any Subcontractor in connection with the performance of the Contract shall promptly be paid.
3. Contractor shall not permit any lien or claim to be filed or prosecuted against the Port on account of any labor or material furnished and agrees to assume responsibility for satisfaction of any such lien so filed or prosecuted.
4. Contractor and any Subcontractor shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
5. Contractor shall employ no person for more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency, or where public policy absolutely requires it, and in such cases, Contractor shall pay the employee at least time and one-half pay for: 1) all overtime in 10 hours in any one day or in excess of 40 hours in any one week, whichever is greater, except for individuals under personal service contracts who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. 201 to 209 from receiving overtime; or 2) work performed on the legal holidays specified in a collective bargaining agreement or in ORS 279C.540(1)(b)(B) to (G).
6. Pursuant to ORS 279C.520(2), the Contractor must give notice to employees who work on this contract in writing, 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, of the number of hours per day and the days per week that the employees may be required to work.
7. Contractor shall ensure Owner's compliance with all applicable provisions of ORS 279C.527 and OAR Chapter 330 Division 135 regarding green energy technology requirements for new or major renovations of public buildings costing over \$5,000,000.
8. Pursuant to ORS 279C.530(2), all employers, including Contractor, that employ subject workers who work under this contract 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.
9. All sums due the State Unemployment Compensation Fund from the Contractor or any Subcontractor in connection with the performance of the contract shall be promptly so paid.
10. Contractor certifies that it has not discriminated against minorities, women or emerging small business enterprises or a business enterprise that is controlled by or that employs a veteran as defined in ORS 408.225 in obtaining any required subcontractors.

11. Contractor certifies its compliance with the Oregon tax laws, in accordance with ORS 305.385.
12. In the performance of this Contract, the Contractor shall use, to the maximum extent economically feasible, recycled paper, materials, and supplies, and shall compost or mulch yard waste material at an approved site, if feasible and cost effective.
13. Pursuant to Port's Public Contracting Rule 137-049-0880, the Port may, at reasonable times and places, have access to and an opportunity to inspect, examine, copy, and audit the records relating to the Contract.
14. The following notice is applicable to Work involving excavation. "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 the rules by calling the center at (503) 232-1987."

**Exhibit C**

**Port's Request for Proposals for Engineering Services**

**Exhibit D**

**Engineer's Proposal**