

DRAFT – RFP ATTACHMENT 2

SCAPPOOSE BAY MARINE PARK DUMP STATION INSTALLATION PROJECT AGREEMENT

THIS AGREEMENT (hereinafter referred to as the “Agreement”), effective _____, is made by and between _____ (hereinafter referred to as the “Contractor”), with an address of _____; and the **PORT OF COLUMBIA COUNTY**, a municipal corporation and port district of the State of Oregon, with an address of P.O. Box 190, Columbia City, Oregon 97018 (hereinafter referred to as the “Port”).

NOW, THEREFORE, in consideration of the mutual undertakings and subject to the terms set forth below and intending to be legally bound, the parties agree as follows:

- SERVICES:** The Port wishes to demolish, repair, and construct improvements to a dock at the Multnomah Industrial Park (the “Project”). See **Exhibit 1** (the Port’s Request for Proposals for the Project, dated March 2020), and **Exhibit 2** (Proposal from XXXX, dated XXXX, 2021), attached to and made a part of this Agreement, and collectively hereinafter referred to as the “Services”. This Agreement is for all Services proposed and purchased from Contractor, including labor, equipment, any necessary materials beyond those that may be provided by the Port, any additional permitting, overhead, ancillary costs, bonding, profit, and any other aspect of performance contemplated in this Agreement. It does not include the exclusions, if any, stated in Exhibit 2.
- TIMELINE AND PERFORMANCE:** The Services to be performed shall commence as soon as practicable after contract signing. Contractor agrees to perform and complete all the Services contemplated in this Agreement by XXXX, 2021, unless both Contractor and Port agree either (i) to modify this requirement due to changes in the scope of work as considered in Section 6 below; or (ii) that there have been unforeseen circumstances that have, or will, prevent timely execution of the Services.
- COMPENSATION AND PAYMENT:** See Exhibit 1 for reference. The total cost for the Services is agreed to be \$XXX, subject to additional costs or credits as jointly agreed upon by Contractor and Port, per Section 7. The Port retains the right to calculate and hold back retainage until such time as full performance of all project Services is confirmed by the Port. The Port agrees to provide progress payments as negotiated with the Contractor.
- INDEPENDENT CONTRACTOR:** Contractor shall be fully independent and shall not act as an agent or employee of Port. Contractor shall be solely responsible for its employees and for their compensation, benefits, contributions, and taxes, if any.

Contractor to comply with all applicable regulations of the Oregon Bureau of Labor and Industries (BOLI), as may be required by law.

5. **INSURANCE:** Contractor shall carry Worker's Compensation Insurance as required by applicable law and Commercial General Liability and Automobile Liability Insurance for bodily injury and property damages. Contractor shall procure, and continuously maintain during the term of this Agreement, Commercial General Liability and Automobile Liability Insurance with combined single limits, or their equivalent, of not less than \$2,000,000.00 for each occurrence and a \$4,000,000.00 aggregate for bodily injury and/or property damage. It shall also include contractual liability coverage for the indemnity provided under this Agreement, shall name the Port as an Additional Insured under the liability provisions, and shall be in sufficient form to protect both Contractor and Port against claims of third persons for personal injury, death or property damage arising from the service performed by Contractor pursuant to this Agreement. Contractor is to provide proof of such insurance in the form of a Certificate or similar instrument prior to contract execution.

6. **PUBLIC WORKS CONTRACTS AND CONTRACT SPECIFICATIONS -- REQUIRED CONDITIONS:** Contractor understands and agrees or certifies that:

A. They are registered, licensed and bonded as a specialty or general contractor in the State of Oregon and that such registration license and bond shall remain in full force and effect throughout the entire duration of this contract.

B. 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, or the assignee of the person, in connection with the public works contract as such claim becomes due, the proper officer or officers of the public agency may pay such claim and charge the amount of the payment against funds due or to become due the contractor by reason of the contract, per ORS 279C.515.

C. No person will be employed for more than 10 hours in any one day, or 40 hours in any one week except in cases of necessity, emergency, or where the public policy absolutely requires it, and in such cases the person so employed must be paid at least time and one-half the regular rate of pay for all time worked:

(1) For all overtime in excess of eight hours a day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; or

(2) For all overtime in excess of 10 hours a day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and

(3) For all work performed on Saturday and on any legal holiday specified in ORS 279C.540, and per ORS 279C.520 (1).

D. 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 days per week that the employees may be required to work, per ORS 279C.520 (2).

E. The contractor must promptly, as due, make payment to any person, co-partnership, association or corporation, furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury, to employees of such

contractor, of all sums which the contractor agrees to pay for such services and all moneys and sums which the contractor collected or deducted from the wages of the contractor's employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service, per ORS 279C.530.

F. The contractor is required to have a public works bond filed with the Construction Contractors Board before starting work on the project, unless exempt under ORS 279C.836(4), (7), (8) or (9), and require such a bond in every subcontract unless exempt under the same ORS provisions.

7. **CHANGES:** To be coordinated and negotiated by Port and Contractor before commencement of any work identified as a result. The Contractor is to communicate the additional requirement(s) prior to commencement of any additional work and to provide an estimate of expected time and costs for the expected additional work. Upon receipt, and after review and agreement, the Port will issue a change order authorizing the additional work. Based on the change order, supplemental compensation may be authorized per Section 3. Likewise, should any work specified in Exhibits 1 or 2 be determined not to be necessary or desired in the course of the project, the initiating party will notify the other and a change order will be produced and signed. In that case, a credit to the Port may be authorized per Section 3.

8. **PORT RESPONSIBILITIES:** The Port agrees to: (i) provide Contractor all available material, data, and information pertaining to the Project or the Services; (ii) convey and discuss such material, data and information with Contractor; (iii) ensure cooperation of Port employees; and (iv) assist in a liaison capacity with any tenants currently leasing or renting any facilities, buildings or other structures that may be impacted by the Services.

9. **INDEMNIFICATION:**

A. Contractor agrees to indemnify, hold harmless, and defend Port, including its Commissioners, officers, and employees, (using legal counsel acceptable and approved by Port) for, from and against any and all costs, claims, actions, liabilities or expenses (including, without limitation, all costs, demands, charges, suits, judgments, fines, penalties, liabilities, debts, attorneys' fees and causes of action), of whatsoever nature of character, including without limitation, claims, losses and expenses for property damage, bodily injury or death, which may be imposed upon or claimed against or incurred by the Port and which arise from any of the following, except and to the extent resulting from the Port's gross negligence or willful misconduct: (a) any act, omission or negligence of the Contractor or the Contractor's partners, officers, directors, agents, employees, invitees or Subcontractors; (b) any use, occupation, management or control of Port property by the Contractor or the Contractor's employees, agents, subcontractors, or suppliers, whether or not due to the Contractor's own act or omission and whether or not occurring on Port property; (c) any condition created on Port property by the Contractor or the Contractor's employees, agents, Subcontractors, or suppliers, and any accident, injury or damage arising from the condition; (d) any breach, violation or nonperformance of any of the Contractor's obligations under this Contract; or (e) any damage caused by the Contractor

or the Contractor's employees, agents, subcontractors, or suppliers on or to Port property.

B. Waiver of Subrogation: Each party waives any right of action that it and/or its insurance carrier(s) might have against the other party (or its commissioners, employees and agents) for any loss, cost, damage, or expense (collectively, "Loss") covered by any property insurance policy or policies maintained or required to be maintained pursuant to this Agreement. If any party's applicable insurance policies do not allow the insured to waive the insurer's rights of recovery prior to a Loss, such party shall cause such policies to be endorsed to allow the waivers of subrogation required by this Section.

10. SITE ACCESS: The Port shall provide unimpeded and timely access to any site necessary for the successful and timely completion of Services per this Agreement.

11. SAFETY AND ENVIRONMENTAL: It is the responsibility of the Contractor to furnish safety devices and safeguards to its employees and any other workers under its direct supervision. Furthermore, the Contractor shall adopt and use safe practices, methods, operations and processes while performing the Services under this contract. The Contractor is liable for all fines, including any from the State of Oregon, and including fines and costs incurred by the Port due to labor and industry violations directly attributable to the Contractor.

12. 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 Contractor and Port shall be construed as if this Agreement did not contain the particular term or provision held invalid.

13. GOVERNING LAW: This agreement shall be governed by, interpreted under and construed and enforced in accordance with the laws of the State of Oregon. Any litigation arising out of this agreement shall be brought in Columbia County, Oregon, with the substantially prevailing party entitled to its legal fees and costs including but not limited to those incurred in negotiation, mediation, arbitration, litigation and appeal.

14. FORCE MAJEURE: Neither party shall be liable for any delay or inability to perform caused by: act of God; extremely adverse weather conditions, strikes or labor troubles, hostilities, war or government action; act of terrorism; riot or civil commotion; fire or explosion; and/or any other similar or dissimilar circumstances which arises and is not within the direct control of a party.

15. LIMITATION OF LIABILITY: This agreement is not a personal contract, nor shall it otherwise be construed such as to deprive either party from the benefit of any statute or law entitling it to limitation or exoneration from liability.

16. COUNTERPARTS: This agreement may be executed in counterparts each of which shall be deemed an original, and all of which, taken together, shall constitute but one and

the same instrument. A facsimile or PDF electronically sent signature hereto shall be deemed equivalent to an original.

17. **TERMINATION FOR CONVENIENCE:** The Port, may, without cause and at any time, terminate this Agreement, in whole or in part, by written notice to the Contractor. In the event of such termination, the Contractor shall be entitled to payment for work performed and demobilization. Contractor will not be entitled to any other costs, damages, or allowances for overhead or profit on work not performed or provided.

18. **LIENS:** The Contractor agrees that if any lien is filed or if a claim of any nature is asserted against the Port on account of any obligation of the Contractor, the Contractor shall, within five (5) business days thereafter, at its own cost and expense, cause such lien or claim to be satisfied or discharged. The Contractor’s failure to do so shall constitute a default hereunder.

19. **ATTORNEYS FEES:** If any suit, action, or arbitration is instituted to interpret or enforce the terms of this Agreement, the prevailing party shall be entitled to recover from the other party such sums as a court may adjudge reasonable as attorneys' fees at trial, on appeal, or on any petition for review, and in any proceedings in bankruptcy or arbitration, in addition to all other sums provided by law.

20. **ENTIRE AGREEMENT:** This Agreement, with its Exhibits, constitutes the entire Agreement between Contractor and Port for the Services as defined in section 1, above. All understandings and agreements between Contractor and Port and representations by either party concerning this Agreement are contained within this Agreement. No waiver, consent, modification, amendment or change in the terms of this Agreement shall bind either party unless in writing and signed by both parties. Any written waiver, consent, modification, amendment or change only in the specific instance and for the specific purpose given.

IN WITNESS hereof, Contractor and Port, having caused their respective duly authorized representatives to sign this Agreement, Contractor and Port hereby acknowledge that they have read this Agreement, understand it, and agree to be bound by its terms and conditions.

XXXX

PORT OF COLUMBIA COUNTY

By: _____

By: _____

Date Signed: _____

Date Signed: _____

Name: _____

Name: _____

Title: _____

Title: _____