



**INFORMAL REQUEST FOR PROPOSAL
No. JOE193929IP**

**Blasting
Port of Portland**

PROPOSAL DUE DATE AND TIME
July 31, 2018 (3:00 PM, PT)

SUBMITTAL LOCATION

Oregon State University
Procurement, Contracts and Materials Management
644 SW 13th Avenue
Corvallis, Oregon 97333

OSU Procurement, Contracts and Materials Management Offices are open Monday through Friday 8:00 am-12:00 noon and 1:00 pm-5:00 pm.
Offices are closed during the 12:00 noon-1:00 pm lunch hour.

ELECTRONIC SUBMITTAL ADDRESS

joseph.elwood@oregonstate.edu

1.0 GENERAL

1.01 SCHEDULE OF EVENTS

- Issue Date..... July 17, 2018
- Deadline for Requests for Clarification or Change..... July 27, 2018 (3:00 pm, PT)
- Proposal Due Date and Time..... July 31, 2018 (3:00 pm, PT)

This Schedule of Events is subject to change. Any changes will be made through the issuance of Written Addenda.

1.02 ISSUING OFFICE

The Procurement, Contracts and Materials Management (PCMM) department of Oregon State University ("OSU") is the issuing office and is the sole point of contact for this Request for Proposal. Address all concerns or questions regarding this solicitation to the Administrative Contact identified below.

1.03 ADMINISTRATIVE CONTACT

Name: Joe Elwood
Title: Procurement Manager
Telephone: 541-737-7349
Fax: 541-737-2170
E-Mail: joseph.elwood@oregonstate.edu

1.04 DEFINITIONS

As used in this solicitation, the terms set forth below are defined as follows:

- a. "Addenda" means an addition to, deletion from, a material change in, or general interest explanation of the Request for Proposal.
- b. "Exhibits" means those documents which are attached to and incorporated as part of the Request for Proposal.
- c. "Proposal" means an offer, binding on the Proposer and submitted in response to the Request for Proposal.
- d. "Proposer" means an entity that submits a Proposal in response to the Request for Proposal.
- e. "Proposal Due Date and Time" means the date and time specified in the Request for Proposal as the deadline for submitting Proposals.
- f. "Request for Proposal" (RFP) means the document issued to obtain Written, competitive Proposals to be used as a basis for making an acquisition or entering into a Contract when price will not necessarily be the predominant award criteria.
- g. "Responsible" means an entity that demonstrates their ability to perform satisfactorily under a Contract by meeting the applicable standards of responsibility outlined in OSU Standard 580-061-0130.
- h. "Responsive" means a Proposal that has substantially complied in all material respects with the criteria outlined in the Request for Proposal.
- i. "Written or Writing" means letters, characters, and symbols that are intended to represent or convey particular ideas or meanings and are made in electronic form or inscribed on paper by hand, print, type, or other method of impression.

2.0 INTRODUCTION AND BACKGROUND

2.01 INTRODUCTION

Procurement, Contracts and Materials Management is seeking Responsive Responsible Proposers to submit Proposals for deep blasting at the Port of Portland. The services will include blasting for the evaluation of liquefaction triggering at the project site.

2.02 BACKGROUND

The Port of Portland ("Port") is planning, through Oregon State University, to perform in-situ testing of the seismic performance of deep soils to better understand the liquefaction associated with these silts and sands at these depths, and the resulting settlement effects, to allow the Port to mitigate this uncertainty surrounding these soils and provide a more accurate and targeted effort designed to meet the Port's resiliency goals.

2.03 OREGON STATE UNIVERSITY

Founded in 1868, Oregon State University is a comprehensive, research-extensive, public university located in Corvallis. OSU is one of only two American universities to hold the Land Grant, Sea Grant, Space Grant and Sun Grant designations. OSU is also the only institution to have earned both Carnegie Foundation classifications for Highest Research Activity and Community Engagement, recognition of the depth and quality of OSU's graduate education and research programs.

Through its centers, institutes, Extension offices and Experiment Stations, OSU has a presence in all of Oregon's 36 counties, including its main campus in Corvallis, the Hatfield Marine Sciences Center in Newport and OSU-Cascades Campus in Bend. OSU offers undergraduate, masters and doctoral degrees through 11 academic colleges, the Honors College, Graduate School and online Ecampus, enrolling more than 31,000 students from every county in Oregon, every state in the country and more than 110 nations.

3.0 STATEMENT OF WORK

3.01 SAMPLE CONTRACT

A sample contract containing a statement of work and contractual terms and conditions is included at Exhibit A.

4.0 PROPOSER QUALIFICATIONS

4.01 MINIMUM QUALIFICATIONS

In order to qualify as a Responsive Proposer, the Proposer needs to meet the minimum qualifications below.

- a. Five (5) years of experience detonating explosives in a controlled manner and in accordance with all applicable laws and regulations.
- b. Ability to provide a valid certificate of insurance in compliance with Section 4 'Insurance' of Exhibit A 'Sample Contract' acceptable to OSU Office of Risk within 15 days following Notice of Intent to Award.
- c. Accept the provision 'Limited Waiver of Liability for Blasting' as stated in Exhibit A 'Sample Contract.'

4.02 PREFERRED QUALIFICATIONS (Reserved)

5.0 REQUIRED SUBMITTALS AND EVALUATION

5.01 REQUIRED SUBMITTALS

Proposers must submit the following information:

- Description of how the goods or services offered specifically satisfy the statement of work described in section 3.
- Detailed information about how the Proposer meets the minimum and preferred qualifications described in section 4.
- Exhibit B: Certifications, fully completed.
- Exhibit C: References, fully completed.
- Exhibit D: Price of goods or services requested, completed.
- Exhibit E: Contractor Qualifications Responsiveness Checklist

5.02 EVALUATION

This is a multistage evaluation. OSU will first review all Proposals to determine Responsiveness. Proposals that do not comply with the instructions, that are materially incomplete, that do not meet the minimum requirements, or that are submitted by Proposers who does not meet minimum qualifications may be deemed non-Responsive. Written notice will be sent to Proposers whose Proposal is deemed non-Responsive identifying the reason. The evaluation committee will then perform first stage evaluations on the Written Proposals based on the following evaluation criteria. Points will be given in each criteria and a total score will be determined. The maximum points available for each criterion are identified below.

<u>Evaluation Criteria</u>	<u>Points</u>
References	30
Proposer's qualifications	30
Price of the goods or services	40
Total	100

OSU may award after the first stage evaluation to the highest ranked Proposer without moving on to the second stage evaluation. If OSU decides to move to a second stage evaluation, the highest ranked Proposers from the first stage evaluation will move to the second stage evaluation. Proposers who are included in the second stage evaluation may be requested to provide additional information about their Proposal through interviews, presentations, requests for best and final Proposals or other methods relevant to the goods or services, in order for the evaluation committee to make a final determination. Points awarded in the first stage evaluation will not be carried to the second stage evaluation. If a second stage evaluation of all Proposers does not produce an award that is in OSU's best interest, OSU may return to the first stage evaluation to advance additional Proposers to a second stage evaluation.

5.03 AWARD

Contract will be awarded to the Proposer who, in OSU's opinion, meets the requirements and qualifications of the RFP and whose Proposal is in the best interest of OSU. If a successful Contract cannot be completed after award, OSU may conclude contract negotiations, rescind its award to that Proposer, and return to the most recent RFP evaluation stage to negotiate with another Proposer(s) for award.

5.04 INVESTIGATION OF REFERENCES

OSU reserves the right to investigate and to consider the references and the past performance of any Proposer with respect to such things as its performance or provision of similar goods or services, compliance with specifications and contractual obligations, and its lawful payment of suppliers, subcontractors, and workers. OSU further reserves the right to consider past performance, historical information and facts, whether gained from the Proposal, Proposer interviews, references, OSU or any other source in the evaluation process. OSU may postpone the award or execution of the Contract after the announcement of the notice of intent to award in order to complete its investigation.

6.0 INSTRUCTIONS TO PROPOSERS

6.01 APPLICABLE STATUTES AND RULES

This RFP is subject to the applicable provisions and requirements of the Oregon Revised Statutes, Oregon Administrative Rules, and OSU Policies and Procedures.

6.02 COMMUNICATIONS DURING RFP PROCESS

In order to ensure a fair and competitive environment, direct communication between OSU employees other than the Administrative Contact or other PCMM representative and any party in a position to create an unfair advantage to Proposer or disadvantage to other Proposers with respect to the RFP process or the award of a Contract is strictly prohibited. This restricted period of communication begins on the issue date of the solicitation and for Proposer(s) not selected for award ends with the conclusion of the protest period identified in OSU Standard 580-061-0145(3) and for Proposers(s) selected for award ends with the contract execution. This restriction does not apply to communications to other OSU employees during a Pre-Proposal conference or other situation where the Administrative Contact has expressly authorized direct communications with other staff. A Proposer who intentionally violates this requirement of the RFP process or otherwise deliberately or unintentionally benefits from such a violation by another party may have its Proposal rejected due to failing to comply with all prescribed solicitation procedures. The rules governing rejection of individual solicitation responses and potential appeals of such rejections are at OSU Standard 580-061-0130.

6.03 REQUESTS FOR CLARIFICATION OR CHANGE

Requests for clarification or change of the Request for Proposal must be in Writing and submitted to PCMM at least two (2) days before the Proposal Due Date and Time, unless specified otherwise herein. Such requests for clarification or change must include the reason for the Proposer's request. OSU will consider all timely requests and, if acceptable to OSU, amend the Request for Proposal by issuing an Addendum. Envelopes, e-

mails or faxes containing requests should be clearly marked as a Request for Clarification or Change and include the RFP Number and Title.

6.04 ADDENDA

Only documents issued as Written Addenda by PCMM serve to change the Request for Proposal in any way. No other direction received by the Proposer, written or verbal, serves to change the Request for Proposal. Addenda will be publicized on the OSU procurement website. Proposers are advised to consult the OSU procurement website prior to submitting a Proposal in order to ensure that all relevant Addenda have been incorporated into the Proposal. Proposers are not required to submit Addenda with their Proposal. However, Proposers are responsible for obtaining and incorporating any changes made by Addenda into their Proposal. Failure to do so may make the Proposal non-Responsive, which in turn may cause the Proposal to be rejected.

6.05 PREPARATION AND SIGNATURE

Proposals should be Written and signed in ink by an authorized representative with authority to bind the Proposer. Signature certifies that the Proposer has read, fully understands, and agrees to be bound by the RFP and all Exhibits and Addenda to the RFP.

6.06 PUBLIC RECORD

Upon completion of the Request for Proposal process, information in all Proposals will become subject records under the Oregon Public Records Law. Only those items considered a "trade secret" under ORS 192.50 (2), may be exempt from disclosure. If a Proposal contains what the Proposer considers a "trade secret" the Proposer must mark each sheet of information as such. Only bona fide trade secrets may be exempt and only if public interest does not require disclosure.

6.07 SUBMISSION

Proposals must be received in the PCMM office no later than the Proposal Due Date and Time. Envelopes, faxes, or e-mails containing Proposals should contain the RFP No., RFP Title and the Proposal Due Date and Time. Proposals may be mailed to Oregon State University, Procurement, Contracts, and Materials Management, 644 SW 13th Street, Corvallis, OR 97333-4238, faxed to (541) 737-2170 or e-mailed in PDF format to the Administrative Contact noted above. It is highly recommended that a Proposer confirms receipt of the Proposal with the Administrative Contact noted above.

6.08 PROPOSALS ARE OFFERS

The Proposal is the Proposer's offer to enter into a Contract pursuant to the terms and conditions specified in the RFP, its Exhibits, and Addenda. The offer is binding on the Proposer for one hundred twenty (120) days, unless otherwise specified herein. OSU's award of the Contract constitutes acceptance of the offer and binds the Proposer.

6.09 RIGHT TO REJECT

OSU may reject, in whole or in part, any Proposal not in compliance with the RFP, Exhibits, and Addenda. OSU may reject all Proposals if it is in the best interest of OSU to do so.

6.10 PROPOSAL PREPARATION COSTS

OSU is not liable for costs incurred by the Proposer during the RFP process.

6.11 AWARDS

OSU reserves the right to make award(s) by individual item, group of items, all or none, or any combination thereof; on a geographical basis and/or on a statewide basis with one (1) or more suppliers. OSU reserves the right to delete any item from the contract when deemed to be in the best interest of OSU.

**EXHIBIT A
SAMPLE CONTRACT**

This Contract is between Oregon State University for its School of Civil and Construction Engineering ("OSU"), and [Contractor's name] ("Contractor").

WHEREAS, Contractor understands the requirements for the services outlined in this Contract, and is willing and able to provide, in accordance with the terms of this Contract, the services;

NOW, THEREFORE, OSU and Contractor agree as follows:

1. CONTRACT TERM AND TERMINATION:

A. CONTRACT TERM.

This Contract is effective on the date of last signature and expires on the later of December 31 2018, or the date Contractor has completed all services in accordance with the requirements of this Contract, and the services have been accepted by OSU. OSU has the option to extend the term of this Contract for three (3) additional three-month (3 + 3 + 3) terms based on the current terms and conditions. OSU may exercise this option to extend by providing written notice to Contractor prior to the expiration of the Contract.

B. TERMINATION.

This Contract may be terminated at any time by mutual consent of both parties or by OSU upon thirty (30) days' written notice. In addition, OSU may terminate this Contract at any time by written notice to Contractor if (a) Federal or state statutes, regulations or guidelines are modified or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this Contract; (b) any license or certificate required by law or regulation to be held by the Contractor to provide the services required by this Contract is for any reason denied, revoked, or not renewed; or (c) OSU fails to receive funding, appropriations, allocations or other expenditure authority as contemplated by OSU's budget and OSU determines, in its assessment and ranking of the policy objectives explicit or implicit in OSU's budget, that it is necessary to terminate the Contract, or (d) if the OSU program for which this Contract was executed is abolished.

OSU may also terminate this Contract at any time by written notice for default (including breach of contract) if (a) Contractor fails to timely provide services or materials called for by this Contract; or (b) Contractor fails to perform any of the other provisions of this Contract, or so fails to pursue the work as to endanger performance of this Contract in accordance with its terms and conditions, and after receipt of written notice from OSU, fails to correct such failures within ten (10) days. Termination of this Contract under this Section or any other section is without prejudice to OSU's other rights and remedies.

C. REMEDIES FOR CONTRACTOR'S DEFAULT.

In the event Contractor is in default (which includes without limitation, incomplete services), OSU may, at its option, pursue any or all of the remedies available to it under this Contract and at law or in equity, including, but not limited to: (a) rejection of the services, (b) requiring Contractor to correct any defects without charge, (c) negotiation with Contractor to sell the services to OSU at a reduced price, (d) termination of the Contract, (e) withholding all moneys due for the services Contractor has failed to deliver within any scheduled completion dates or has performed inadequately or defectively, (f) initiation of an action or proceedings for damages, specific performance, or declaratory or injunctive relief, or (g) exercise of its right of set off. These remedies are cumulative to the extent the remedies are not inconsistent, and OSU may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

2. STATEMENT OF WORK:

A. REQUIRED SERVICES, DELIVERABLES AND DELIVERY SCHEDULE.

Contractor shall provide OSU with the following services during the Term of this Contract:

Location of Experiment:

On the property of the Port of Portland

Approximate GPS Coordinates: 45.575839 N , -122.569458 W

EXPERIMENTS

This work is being conducted to help inform the planning of infrastructure renewal and increase in seismic resilience at the Port of Portland. Two main experiments will be conducted using same overall strategy but at different depths. Thirty (30) individual, sequential charges of various charge weights will be detonated for each experiment using delays of approximately 1,000 milliseconds (“ms”) (actual delay will be specified well ahead of experiment, and will be set to a constant delay between all charges). The precision in the delay should be plus or minus 5%. Precision in the single millisecond range is not needed. **Important: if the use of a 30 second total blast duration requires additional equipment that can substantially add to the cost, then provide two bids: one as requested with the 30 second duration, and one for the same program but using 450 to 500 ms delays (for a duration of less than or equal to 20 seconds).**

The attached schematics shows the general layout of the experimental setup in plan view (Attachment A, Figure 1) and in cross-section or elevation view (Attachment A, Figure 2). Prior to blasting, a sensor package will be installed into the ground so as to center at a depth of 33 and 82 ft. PVC blast casing has been installed to depths of 38 and 88 ft. to house charges and gravel stemming. Although the Polyvinyl chloride (“PVC”) blast casing will be sealed, some water intrusion can be expected given the depth of casing and hydrostatic pressure. Fifteen (15) blast casing will be installed, with five casings on each side of the sensor package. The center five casings (Figure 1) will be re-used, as the deep array will be tested first followed by the shallow array.

For the purpose of scoping, the blast casings are designated with odd numbers on the left and even on the right side each array. For discussion purposes, the designation of Side A will refer to blast casings to the left of the sensor package, and Side B for the five blast casing to the right of the sensor package. Three decks of charges will be placed in each blast casing.

Table 1 and Attachment A, Figure 3, shown below, indicates the detonation sequence assuming the 1,000 ms delay. The first detonation will occur at the “Low” position (L), the deepest position located at the bottom of Blast Casing 1 (BC1). The second detonation will occur at the Low position, located at the bottom of BC 2. The third blast will occur at the “Middle” position (M), located at the second deck of BC1, followed by the M position in BC2. The fifth, and sixth charges will then correspond to the “High” position (H) in BC1 and BC2, respectively, concluding the first six of 30 charges. The next sequence begins immediately at charge position L in BC3, with the same sequence as in BC1 and BC2, but now in BC3 and BC4, and so forth. Table 1 shows the full sequence with an *assumed* delay of 1,000 ms. Charge weights will increase and then decrease as they get closer to each sensor array, as shown in Table 1 and Attachment A, Figure 3.

Table 1. Detonation Sequence.

Charge Position	Blast Casing (BC) #	Delay (ms)	Time (s)	Charge Weight, Equivalent TNT (lbs)
L	1	-	0	0.25
L	2	1000	1	0.25
M	1	1000	2	0.25
M	2	1000	3	0.25
H	1	1000	4	0.25
H	2	1000	5	0.25
L	3	1000	6	0.50
L	4	1000	7	0.50
M	3	1000	8	0.50
M	4	1000	9	0.50
H	3	1000	10	0.50
H	4	1000	11	0.50
L	5	1000	12	1.00
L	6	1000	13	1.00
M	5	1000	14	1.00
M	6	1000	15	1.00
H	5	1000	16	2.00
H	6	1000	17	2.00
L	7	1000	18	4.00
L	8	1000	19	4.00
M	7	1000	20	4.00
M	8	1000	21	4.00
H	7	1000	22	2.00
H	8	1000	23	2.00
L	9	1000	24	1.00
L	10	1000	25	1.00
M	9	1000	26	1.00
M	10	1000	27	1.00
H	9	1000	28	1.00
H	10	1000	29	1.00

Test Blast: Conducted Prior to Experiments

To minimize risk of damage due to blast-induced vibration, a test blast shall be conducted by the Contractor in a single, separate blast casing on site prior to conducting the main experiment. The purpose of this test blast is to allow the observation of ground vibration attenuation as a function of distance to the test site location. Following an assessment of the measured ground vibrations, the experiment will proceed as planned, proceed with modification, or be cancelled outright.

The test blast will not occur in the same “trip” as the experiment, and may be separated in time from the main experiment by up to two weeks or more, although every effort will be made to conclude the experiment within a week of the test blast. The test blast shall include, in a single casing, the following:

- The sequential detonation of 1/4 lb., 1/2 lb, 2 lb, and 4 lb charges at two depths;
- The start depths for each bottom deck are, in order of detonation sequence, 88’ and 38’;
- Delays of approximately 1,000 ms
- The individual charges will be separated by the smaller of the minimum required separation distance or 5’, as deemed appropriate by the licensed blaster.

Figure 3. Detonation Sequence

B. KEY PERSONS.

Contractor and OSU agree that each individual specified below is an individual whose special qualifications and involvement in Contractor's performance of services form part of the basis of agreement between the parties for this Contract and is an individual through whom Contractor shall provide to OSU the expertise, experience, judgment, and personal attention required to perform services ("Key Person"). Each of the following is a Key Person under this Contract:

[List name and title and identify the specific services each Key Person is required to perform under this Contract.]

Neither Contractor nor any Key Person of Contractor shall delegate performance of services any Key Person is required to perform under this Contract to others without first obtaining OSU's written consent. Further, Contractor shall not, without first obtaining OSU's prior written consent, re-assign or transfer any Key Person to other duties or positions so that the Key Person is no longer available to provide OSU with that Key Person's expertise, experience, judgment, and personal attention. If Contractor requests OSU to approve a re-assignment or transfer of a Key Person, OSU shall have the right to interview, review the qualifications of, and approve or disapprove the proposed replacement(s) for the Key Person. Any individual OSU approves as a replacement for a Key Person is deemed a Key Person under this Contract.

C. ACCEPTANCE OF SERVICES.

Services furnished under this Contract are subject to acceptance by OSU. If OSU finds services furnished to be incomplete or not in compliance with the Contract, OSU, at its sole discretion, may either reject the services, require Contractor to correct any defects without charge, or negotiate with Contractor to reduce the price, whichever OSU deems appropriate under the circumstances. If Contractor is unable or refuses to cure any defects within a time deemed reasonable by OSU, OSU may pursue any of the remedies for Contractor's default detailed in that Section above.

D. BUSINESS REVIEWS.

Contractor will participate in Business Reviews as requested by OSU Procurement, Contracts, and Materials Management. Business Reviews will be scheduled by the Contract Administrator in OSU Procurement, Contracts, and Materials Management and will include attendance by OSU representatives, and Contractor's Regional Representatives. The reviews may include discussion of Contract terms and conditions, work performed under the Contract, financial data, proposal of Contract improvements for increased service or lower costs, and any potential changes to the Contract.

E. INSURANCE COVERAGE OPTION.

If Contractor is unable to obtain the insurance required by Section 4.D. herein, the Contractor must accept the coverage provided by the Port of Portland. Contractor will be required to pay a premium of \$12,500 subject to underwriting if exercising accepting the coverage provided by Port of Portland. Should the Contractor obtain the necessary insurance independently, but with greater cost than that offered by the Port of Portland, the bid may become less competitive.

3. COMPENSATION:

The total amount available for payment to Contractor and for authorized reimbursement to Contractor is \$[insert total amount of contract].

A. METHOD OF PAYMENT FOR SERVICES.

(Fixed Price per Milestone) OSU shall pay Contractor the amounts specified for each of the following

milestones that OSU has accepted (cost of insurance, independent of provider, shall be separated from Milestone bid items):

Milestone Delivery Table

Milestone	Amount
Insurance Provisions	
Milestone #1 – Test Blast (1 Day)	
Milestone #2 – Experiments (1 Day)	
Total	

B. BASIS OF PAYMENT FOR SERVICES.

(Milestone progress payments for completed services) OSU shall pay Contractor all amounts due for services completed and accepted by OSU at the following milestones after OSU’s approval of Contractor’s invoice to OSU for those services: Milestone #1 and Milestone #2 as shown in the Milestone Delivery Table above.

C. EXPENSE REIMBURSEMENT.

OSU will not reimburse Contractor for any expenses under this Contract.

D. INVOICES AND PAYMENT TO CONTRACTOR.

Contractor shall send invoices to OSU for services completed and accepted by OSU. Contractor shall include in each invoice:

- a. The Contract number;
- b. A description of services performed, including the dates services were performed, all deliverables delivered during the period of the invoices, the rate(s) for services performed, and the total cost of services;
- c. Itemization and explanation of all expenses for which Contractor claims reimbursement authorized under this Contract;
- d. The total amount due and the payment remittance address.

Contractor shall send all invoices to OSU’s Department Administrator or to the Department to which the services were provided if a Department Administrator is not specified.

OSU shall pay Contractor for services performed at the prices and rates specified herein. Contractor shall look solely to OSU for payment of all amounts OSU owes to Contractor. Payment of OSU contracts is normally made within 30-45 days following the date the invoice is received. After 45 days, Contractor may assess overdue account charges up to a maximum of two-thirds of one percent (2/3 of 1%) per month or eight percent (8%) per annum on the outstanding balance pursuant to ORS 293.462.

4. INSURANCE:

A. GENERAL LIABILITY INSURANCE.

Contractor shall obtain, at Contractor's expense, and keep in effect during the term of this Contract, Commercial General Liability Insurance, covering liability for personal injury, bodily injury, death, or damage to property, including loss of use thereof, and occurring on or in any way related to the Test Site or occasioned by reason of the work. Such coverage shall have minimum limits of \$2,000,000 per occurrence and \$2,000,000 aggregate per policy year applying separately to the Test Site/Work or \$2,000,000 per occurrence and \$4,000,000 per policy year. Coverage shall include independent contractors, products and completed operations, and contractual liability including tort liability of another assumed in a business contract. Such insurance shall not exclude operations over water, if applicable. If the Contractor will be performing blasting, excavation, core drilling, test well drilling, or soil sampling, then the Commercial General Liability Policy exclusion for the explosion, collapse and

underground (“XCU”) hazards shall be removed by endorsement, and a copy shall be provided to OSU and Port of Portland.

B. PROFESSIONAL LIABILITY INSURANCE (RESERVED)

C. AUTOMOBILE LIABILITY INSURANCE.

Contractor shall obtain, at Contractor’s expense, and keep in effect during the term of this contract, Automobile Liability Insurance insuring against liability for bodily injury, death, or damage to property, including the loss of use thereof, arising from the use, loading and unloading of Contractor’s owned, hired, and non-owned automobiles on and around the Test Site. Coverage limits shall be a minimum of \$1,000,000 combined single limit per occurrence. When applicable, Contractor shall add an Explosives endorsement to cover bodily injury or property damage arising out of the explosive or incendiary properties of such materials while in transport.

D. CONTRACTORS POLLUTION LEGAL LIABILITY

If the Contractor will perform operations such as excavation, core drilling, test well drilling, soil sampling, hazardous building materials sampling, Contractor shall maintain Contractor’s Pollution Legal Liability protecting against liability for sudden and accidental pollution arising from its operations and/or exacerbation of existing pollution. The amount of coverage shall be a minimum of \$1,000,000 per claim and \$1,000,000 aggregate. If the additional insured status of the policy requires suit to be brought against the Named Insured before any protection is afforded to the additional insured, Port of Portland and OSU reserve the right to require Contractor to modify coverage or provide other protection acceptable to Port of Portland and OSU. Should Contractor not carry Contractors Pollution Legal Liability, the Contractor will be enrolled in program similar to an owner controlled insurance program by the Port of Portland exclusively for pollution insurance coverage for which the Contractor will bear the premium.

E. EXCESS/UMBRELLA INSURANCE.

A combination of primary and excess/umbrella liability insurance may be used to meet the required limits of insurance above, as long as the coverage “follows form”.

F. WORKERS’ COMPENSATION.

The Contractor, its subcontractors, if any, 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 workers’ compensation coverage that satisfies Oregon law for all their subject workers, unless such employees are exempt under ORS 656.126. Workers’ Compensation coverage shall be maintained at all times in accordance with statutory limits and Employer’s Liability insurance shall have minimum limits of \$1,000,000 each accident; \$1,000,000 disease-each employee; \$1,000,000 disease-policy limit.

G. PROPERTY INSURANCE.

The Contractor must maintain Property Insurance during the term of the Contract that covers all property used for Contract work and all Contractor-owned property. Contractor shall waive any right of action that it and/or its insurance carrier(s) might have against Port of Portland (including Port of Portland’s commissioners, employees, and agents) and OSU (including OSU’s officers, trustees, employees, and agents) for any loss, cost, damage, or expense (collectively “Loss”) covered by a property insurance policy or policies maintained or required to be maintained pursuant to this Contract. Contractor also waives any right of action it and/or its insurance carrier(s) might have against the Port of Portland (including Port of Portland’s commissioners, employees and agents) and OSU (including OSU’s officers, trustees, employees, and agents) for any Loss to the extent such Loss is a property loss covered under any applicable automobile liability policy or policies required by this Contract. If the Contractor’s applicable insurance policies do not allow the insured to waive the insurer’s rights of recovery prior to a Loss, Contractor shall have such policies endorsed with waivers of subrogation.

H. ADDITIONAL INSURED.

All liability insurance coverages maintained under this Contract, with the exception of Workers' Compensation and Professional Liability, shall be endorsed to name Port of Portland, its commissioners, employees, and agents and OSU, its officers, trustees, employees, and agents as additional insureds in said insurance policies to the full limits of liability purchased by the Contractor even if those limits of liability are in excess of those required by this Contract.

I. PRIMARY COVERAGE.

Insurance carried by Contractor under this Contract shall be the primary coverage and non-contributory to any insurance or self-insurance carried by Port of Portland or OSU.

J. ACCEPTABILITY OF INSURERS.

Such insurance policy is to be issued by an insurance company authorized to do business in the State of Oregon with an A.M. Best rating of at least A-VII, or such other insurance carrier approved in writing, in advance, by OSU.

K. CERTIFICATES OF INSURANCE.

As evidence of the insurance coverages required by this Contract, the Contractor shall furnish Certificate(s) of Insurance and any applicable endorsements to the OSU Contract Administrator. Endorsements shall accompany the certificate(s) and will specify all of the parties who are Additional Insureds. Contractor shall be financially responsible for all deductibles, self-insured retentions and/or self-insurance included hereunder.

L. NOTICE OF CANCELLATION OR CHANGE.

Each insurance policy required by the insurance provisions of this Contract shall provide the required coverage and shall not be suspended, voided or canceled except after thirty (30) days prior written notice has been given to OSU, except when cancellation is for non-payment of premium, then ten (10) days prior notice may be given. Such notice shall be sent directly to OSU. If any insurance company refuses to provide the required notice, the Contractor or its insurance broker shall notify OSU of any cancellation, suspension, non-renewal of any insurance within seven (7) days of receipt of insurers' notification to that effect.

M. SUBCONTRACTORS

If Contractor enters into subcontracts for any services to be provided by Contractor to OSU, Contractor shall require that all subcontractors maintain insurance meeting all the requirements stated in section 4.

5. INDEMNIFICATION:

A. INDEMNITY.

a. Contractor shall indemnify, hold harmless and, not excluding OSU's right to participate, defend OSU and its officers, board members, employees, agents and other representatives from and against all liabilities, claims, actions, damages, losses, or expenses, including without limitation reasonable attorneys' fees and costs, that: (i) are caused or alleged to be caused, in whole or in part, by the negligence, omissions, wrongful acts or willful misconduct of the Contractor or any of its officers, directors, agents, employees, or subcontractors, or (ii) alleging Contractor's services, information or materials supplied by Contractor to OSU under this Contract, or OSU's use of any of the foregoing infringes on any patent, copyright, trade secret, trademark, or other proprietary right of a third party.

B. DEFENSE.

a. Contractor shall have control of the defense with counsel reasonably acceptable to OSU, except that: (i) OSU may join the defense with its own counsel and at its own expense if OSU determines there is a conflict of interest or there is an important government principle at issue, and (ii) OSU's consent is required for any settlement that requires OSU to pay any money, does not release OSU from all liability from the claim, or adversely affects OSU's interest.

6. LIMITED WAIVER OF LIABILITY FOR BLASTING

Port of Portland understands and acknowledges that blasting included within the work constitutes an ultrahazardous activity, and presents risks that cannot be fully mitigated notwithstanding the exercise of due care. Except to the extent such claims arise out of or are related to the willful misconduct, negligent act or omission, or professional malpractice of OSU or OSU's contractors, Port of Portland hereby waives all claims and releases any claims Port of Portland may have directly as a result of blasting undertaken by OSU and OSU's contractors in conjunction with the work. Nothing in this Article is intended to release OSU or OSU's contractors from liability for their own negligence, willful misconduct, or professional malpractice, or from liability to third-parties.

7. LAWS AND POLICIES:

A. APPLICABLE LAW; JURISDICTION AND VENUE.

- a. The laws of the State of Oregon (without giving effect to its conflict of laws principles or laws) govern all matters arising out of or relating to the Contract, including, without limitation, its validity, interpretation, construction, performance or enforcement. Any party bringing a legal action or proceeding against the other party arising out of or relating to this Contract shall bring the legal action or proceeding in the Circuit Court of Oregon for Benton County.
- b. Notwithstanding paragraph (a), if a legal action or proceeding must be brought in a federal forum, the party shall bring the legal action or proceeding in the United States District Court for the District of Oregon. This paragraph does not authorize Contractor to bring a legal action or proceeding against OSU in a federal forum except to the extent Congress has validly abrogated OSU's sovereign immunity. This paragraph is also not a waiver by OSU of any form of immunity, including without limitation sovereign immunity and immunity based on the Eleventh Amendment to the United States Constitution.
- c. Except as set forth in paragraph (b), the parties consent to in personam jurisdiction in the above courts and waive any objection to venue and any objection that the forum is inconvenient.

B. COMPLIANCE WITH APPLICABLE LAWS AND POLICIES.

- a. The parties shall at all times comply with all applicable federal, state and local laws, regulations, executive orders and ordinances pertaining to their respective businesses, products or services, employment obligations, and the subject matter of this Contract. The parties shall at all times comply with all applicable standards and policies of OSU, including without limitation any such laws or regulations regarding employment discrimination. If this Contract is being funded with federal funds, Contractor agrees to comply with all applicable federal contracting statutes, regulations and policies.
- b. 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 Contract: (i) Titles VI and VII of the Civil Rights Act of 1964, as amended; (ii) Paragraphs 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) the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g; (x) the Health Insurance Portability and Accountability Act requirements noted in OAR 125-055-0115; (xi) the Oregon Consumer Identity Theft Protection Act, ORS 646A.600-646A.628; (xii) all regulations and administrative rules established pursuant to the foregoing laws; and (xiii) 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 Contract and required by law to be so incorporated.

C. FEDERALLY REQUIRED PROVISIONS.

- a. ANTI-KICKBACK ACT (40 U.S.C. 3145). Contractor certifies compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each Contractor or Subcontractor must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The Contractor must report all suspected or reported violations to OSU.
- b. BYRD ANTI-LOBBYING AMENDMENT (31 U.S.C. 1352). Contractors that apply or bid for a contract of \$100,000 or more, must file the required certification that it will not and has not used Federally appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Contractor must require any subcontractor who applies or bids for subcontract of \$100,000 or more to provide a similar certification to the next higher tier (Contractor or subcontractor as applicable). Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Contractor or subcontractor must forward any disclosures from tier to tier up to OSU.
- c. CLEAN AIR ACT (42 U.S.C. 7401-7671q.) AND THE FEDERAL WATER POLLUTION CONTROL ACT (33 U.S.C. 1251-1387), AS AMENDED. If this Contract provides for payments in excess of \$150,000, Contractor must comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations shall be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- d. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT (40 U.S.C. 3701-3708). For all contracts awarded in excess of \$100,000 that involve the employment of mechanics or laborers, the Contractor must comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each Contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- e. DEBARMENT AND SUSPENSION EXECUTIVE ORDERS 12549 AND 12689. A contract award (see 2 CFR 180.220) must not be made to parties listed on the government-wide Excluded Parties List System in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” The Excluded Parties List System in SAM contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. Before a contract award of \$25,000 or more is made, verification is required that the intended awarded party is not on the government-wide exclusions in the SAM. Required verification must be made by checking the SAM Exclusions. Compliance with Subpart C of 2 CFR Part 180 by checking that the intended awarded party is not listed on the SAM Exclusions, before making a contract award, will flow down from tier to tier for contract awards of \$25,000 or more. Contractor must include a term or condition similar to this term, in any subsequent lower tier contract awards of \$25,000 or more. Contractor hereby certifies they are not listed on the government-wide exclusions in the SAM.

- f. ENERGY POLICY AND CONSERVATION ACT. Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201).
 - g. EQUAL EMPLOYMENT OPPORTUNITY. Contractor must comply with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."
 - h. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT. If this Contract is for the performance of experimental, developmental, or research work, the Federal Government and OSU have rights in any resulting invention in accordance with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.
- D. PUBLIC RECORDS LAW NOTICE.
OSU advises Contractor that information OSU receives may be subject to public inspection under Oregon Public Records Law (ORS 192.410-192.505).
- E. SAFETY AND HEALTH REQUIREMENTS/HAZARD COMMUNICATION.
Services supplied under this Contract shall comply with all federal Occupational Safety and Health Administration (OSHA) requirements and with all Oregon safety and health requirements, including those of the State of Oregon Workers' Compensation Division. Contractor shall notify OSU prior to using products containing hazardous chemicals to which OSU employees may be exposed. Products containing hazardous chemicals are those products defined by Oregon Administrative Rules, Chapter 437. Upon OSU's request, Contractor shall immediately provide Material Safety Data Sheets, as required by OAR ch. 437, for the products subject to this provision.
- F. FIREARMS POLICY.
OSU has adopted a policy that prohibits Contractor and Contractor's employees, agents, and subcontractors from possessing firearms on OSU property.
- G. PARKING.
Contractors doing business on the OSU campus may be required to have a permit to park if utilizing restricted street parking or parking lots. Contractor parking permits may be obtained through OSU's Office of Transit & Parking Services.
- H. SEXUAL HARASSMENT POLICY.
OSU has policies that prohibit sexual harassment of members of the OSU community and in keeping with those policies Contractor and Contractor's employees, agents, and subcontractors are prohibited from engaging in sexual harassment of members of the OSU community.
- I. SMOKING POLICY.
OSU has a policy that prohibits Contractor and Contractor's employees, agents, subcontractors from smoking on the OSU campus or other OSU owned property. The smoking prohibition includes all indoor and outdoor spaces.
- J. WEBSITE ACCESSIBILITY.
If Contractor is designing or developing web page(s) for OSU under this Contract, Contractor shall design and develop (as applicable) the web page(s) in conformance with OSU's Policy on Information Technology Accessibility available at <http://oregonstate.edu/accessibility/ITpolicy>.

8. GENERAL TERMS AND CONDITIONS:

A. ORDER OF PRECEDENCE.

In the event of a conflict, all the terms and conditions of this Contract, its exhibits, and any amendments thereto supersede all terms and conditions on any forms used by the Contractor.

B. NO THIRD PARTY BENEFICIARY.

OSU and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly, or otherwise, to third parties

C. ASSIGNMENT/SUBCONTRACT/DELEGATION.

Contractor shall not assign, subcontract, delegate or otherwise transfer any of its rights or obligations under this Contract, without the prior written approval of OSU. Any assignment of rights or delegation of duties is prohibited under this Section, whether by merger, consolidation, dissolution, operation of law or any other manner. Any purported assignment of rights or delegation of duties in violation of this Section is void. OSU's consent to delegation does not relieve Contractor of any of its performance obligations.

D. WAIVER.

No waiver of an obligation under this Contract is effective unless it is in writing and signed by the party granting the waiver. No failure or delay in exercising any right or remedy, or in requiring the satisfaction of any condition under this Contract operates as a waiver or estoppel of any right, remedy or condition.

E. ACCESS TO RECORDS AND AUDIT.

Contractor shall maintain accurate books, records, documents, and other evidence (collectively, "Records") following accounting procedures and practices sufficient to reflect properly all costs of whatever nature claimed to have been incurred and anticipated to be incurred in the performance of this Contract. Contractor shall permit OSU and the federal government and their respective duly authorized representatives to have access to the Records that are directly pertinent to this Contract for the purpose of conducting an audit, or other examination, or for creating excerpts or transcripts. Contractor shall maintain Records for OSU's review for at least six years beyond the term of the Contract. Contractor shall promptly remedy any discrepancies involving deviation from the terms of this Contract and shall promptly reimburse OSU for any commitments or expenditures found by OSU to have been in excess of amounts authorized by OSU under this Contract.

OSU shall have the right to an independent third-party audit of the Contractor's records associated with or related to the goods or services provided for under this Contract. OSU may request an independent third-party audit no more than one time per calendar year. OSU will determine the time-period that will be the subject of the audit. However, the entire term of the Contract, including the original term and any subsequent renewals or extensions, may be the subject of the independent third-party audit at any time. Contractor shall bear the full cost of such independent third-party audit.

F. GOVERNMENT EMPLOYMENT STATUS.

Contractor certifies that either (a) it is not currently employed by OSU or the federal government; or (b) if Contractor is so employed, Contractor has fully disclosed to OSU in writing such employment status, is in full compliance with any statutes, regulation, and OSU or the federal government policies regarding employee contracting, and agrees to indemnify and hold harmless OSU for any failure by Contractor to comply with such statutes, regulations, or policies.

G. INDEPENDENT CONTRACTOR STATUS.

The services to be rendered under this Contract are those of an independent contractor. OSU reserves the right (a) to determine and modify the delivery schedule for the services and (b) to evaluate the quality of the services; however, OSU may not 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 services. Contractor is not an officer, employee or agent of OSU as those terms are used in ORS 30.265. Contractor has no authority to act on behalf of OSU and shall not purport to make any representation, contract, or commitment on behalf of OSU.

H. NOTICE.

- a. A party giving or making any notice, request, demand or other communication (each a "Notice") pursuant to this Contract shall give the Notice in writing and use one of the following methods of delivery: personal delivery, United States Postal Service Registered or Certified Mail (return receipt requested and postage prepaid), overnight courier (with all fees prepaid), facsimile or e-mail to the other party's address as listed on the signature page of this Contract. Notice to OSU is to be delivered to the Contract Administrator and Departmental Administrator except where this Contract expressly directs or permits delivery of Notice to a different Department.
- b. Notice is effective: (i) if given by facsimile, upon receipt by the sending party of an appropriate facsimile confirmation; (ii) if given by e-mail, by confirmation of receipt by return e-mail, which is not satisfied by an automatically-generated message that the recipient is out of the office or otherwise unavailable; or (iii) if given by any other means, when delivered at the address specified in this Section.

OSU Contract Administrator
OSU PCMM
ATTN: 191781
Contract Administrator
644 SW 13th Street
Corvallis, OR 97333
Telephone: (541) 737-4261
Fax: (541) 737-2170
E-mail: pacs@oregonstate.edu

and: OSU Departmental Administrator
Armin W. Stuedlein, PhD, P.E. (WA)
Associate Professor, Geotech Eng.
101 Kearney Hall
Corvallis, OR 97331
Telephone: 541-737-3111
E-mail: armin.stuedlein@oregonstate.edu

CONTRACTOR Contract Administrator
[Name]
[Title]
[Address]
[City, State, Zip]
Telephone: [Phone Number]
Fax: [Fax Number]
E-mail: [E-Mail Address]

I. OSU NAME AND TRADEMARK.

Contractor shall not identify this Contract, nor use OSU's names, trademarks, service marks, or other proprietary marks in any of Contractor's marketing material, advertising, press releases, publicity matters or other promotional materials without the prior written consent of OSU, which consent may be withheld in OSU's sole discretion.

J. RECYCLED PRODUCTS.

Contractors will use recycled products, as defined in ORS 279A.010(1)(ii), to the maximum extent economically feasible in the performance of the Contract.

K. SALES AND USE TAXES.

OSU shall pay all applicable sales, excise, or use taxes in connection with this Contract. Invoices shall separately identify all such taxes and shall include either Contractor's sales tax or use tax permit number. Contractor shall be responsible for all other taxes, including taxes based upon Contractor's income. Contractor shall indemnify, defend, and hold harmless OSU from and against any interest, penalties, or other charges resulting from the non-payment or late payment of taxes or other charges for which Contractor failed to invoice OSU or which Contractor otherwise failed to pay in a timely manner.

L. FORCE MAJEURE.

Neither party is responsible for delay caused by an act or event that prevents the party from performing its obligations under this Contract where such cause is beyond the party's reasonable control and the nonperforming party has been unable to avoid or overcome the act or event by the exercise of due diligence. Such acts or events include without limitation fire, riot, acts of nature, terrorist acts, or other acts of political sabotage or war. Contractor shall make all reasonable efforts to remove or eliminate such a cause of delay and shall, upon cessation of the cause, diligently pursue performance of its obligations under this Contract. However, if delay due to a force majeure event continues for an unreasonable time, as determined by OSU, then OSU is entitled to terminate the Contract.

M. MWESB REPORTING.

Upon request by OSU, Contractor is required to provide a report on the dollar volume of products provided under the Contract which are purchased by the Contractor from firms which are defined as follows:

Disabled Veteran Enterprise means a business that is at least 51% owned by one or more disabled veterans. A disabled veteran is a veteran of the military, naval, or air service of the United States with a service connected disability who is a resident of the State of Oregon. To qualify as a veteran with a service connected disability, the person must be currently declared by the United States Veterans Administration to be 10% or more disabled as a result of service in the armed forces. The business must be licensed and registered in the state of Oregon.

Disadvantaged Business Enterprise (DBE) is a small business with average annual gross receipts less than \$17,420,000. The business must be owned and controlled by one or more socially and economically disadvantaged individual(s). The one or more socially and economically disadvantaged individual(s) must have made a contribution of capital to the business, which is commensurate with their ownership interest. Socially and economically disadvantaged individual(s) are people who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as members of a group without regard to their individual qualities. The business must be independent. The business must be licensed and registered in the state of Oregon.

Emerging Small Business, (defined in ORS 200.005), is a licensed and registered business located in Oregon for which the average annual gross receipts for the three previous tax years do not exceed \$3,266,219 for construction and \$1,088,740 for non-construction businesses. The business must have fewer than 29 employees.

Minority Business Enterprise, (defined in ORS 200.005), is a business which is at least 51% owned by one or more minority individuals or, in the case of any publicly owned business, at least 51% of the stock of which is owned by minority individuals. Minority individuals are Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, and Asian-Indian Americans. The business must be licensed and registered in the state of Oregon.

Women Business Enterprise, (defined in ORS 200.005), is a business which is at least 51% owned by one or more women. The woman or women must have managerial and operational control over all aspects of the business. The one or more women owner(s) must have made a real and substantial contribution of capital or expertise to the business, which is commensurate with their ownership interest. The business must be licensed and registered in the state of Oregon.

This report shall be in consolidated form showing all such purchases under the Contract. This report will be provided on an annual basis to OSU. This report will provide a cumulative figure that shows year to date amounts for each supplier ownership category.

N. EXECUTION AND COUNTERPARTS.

This Contract may be executed by facsimile or PDF and in two or more counterparts, each of which

shall be deemed an original and all of which together shall constitute one instrument.

O. SURVIVAL.

The terms and conditions of this Contract that by their sense and context are intended to survive termination or expiration hereof shall so survive.

P. SEVERABILITY.

If any provision of this Contract is determined to be invalid, illegal or unenforceable, the remaining provisions of this Contract remain in full force and effect if the essential terms and conditions of this Contract for both parties remain valid, legal and enforceable.

Q. MERGER.

This Contract, including all documents referred to herein and attached hereto, constitutes the entire agreement between the parties and supersedes all prior representations, understanding and agreements between the parties. It is the complete and exclusive expression of the parties' agreement on the matters contained in this Contract. No amendment, consent, or waiver of terms of this Contract shall bind either party unless it is in writing and signed by authorized representatives of each of the parties. Any such amendment, consent, or waiver is effective only in the specific instance and for the specific purpose given.

9. CERTIFICATIONS AND SIGNATURES:

This Contract must be signed by an authorized representative of Contractor. The undersigned certifies under penalty of perjury both individually and on behalf of Contractor that:

- A. The undersigned is a duly authorized representative of Contractor, has been authorized by Contractor to make all representations, attestations, and certifications contained in this Contract and to execute this Contract on behalf of Contractor and that this Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms;
- B. Contractor is not a contributing member of the Public Employees' Retirement System and will be responsible for any federal or state taxes applicable to payment under this Contract. Contractor will not, by virtue of this Contract, be eligible for federal Social Security, employment insurance, workers' compensation or the Public Employees' Retirement System, except as a self-employed individual.
- C. Pursuant to OSU Standard 580-061-0030 Contractor has not discriminated against Minority, Women or Emerging Small Business Enterprises in obtaining any required subcontracts;

Each of the parties has caused its duly authorized representative to execute this Contract on the date set forth in its respective signature block below.

CONTRACTOR:

Signature: _____

Date: _____

By: _____

Title: _____

OSU:

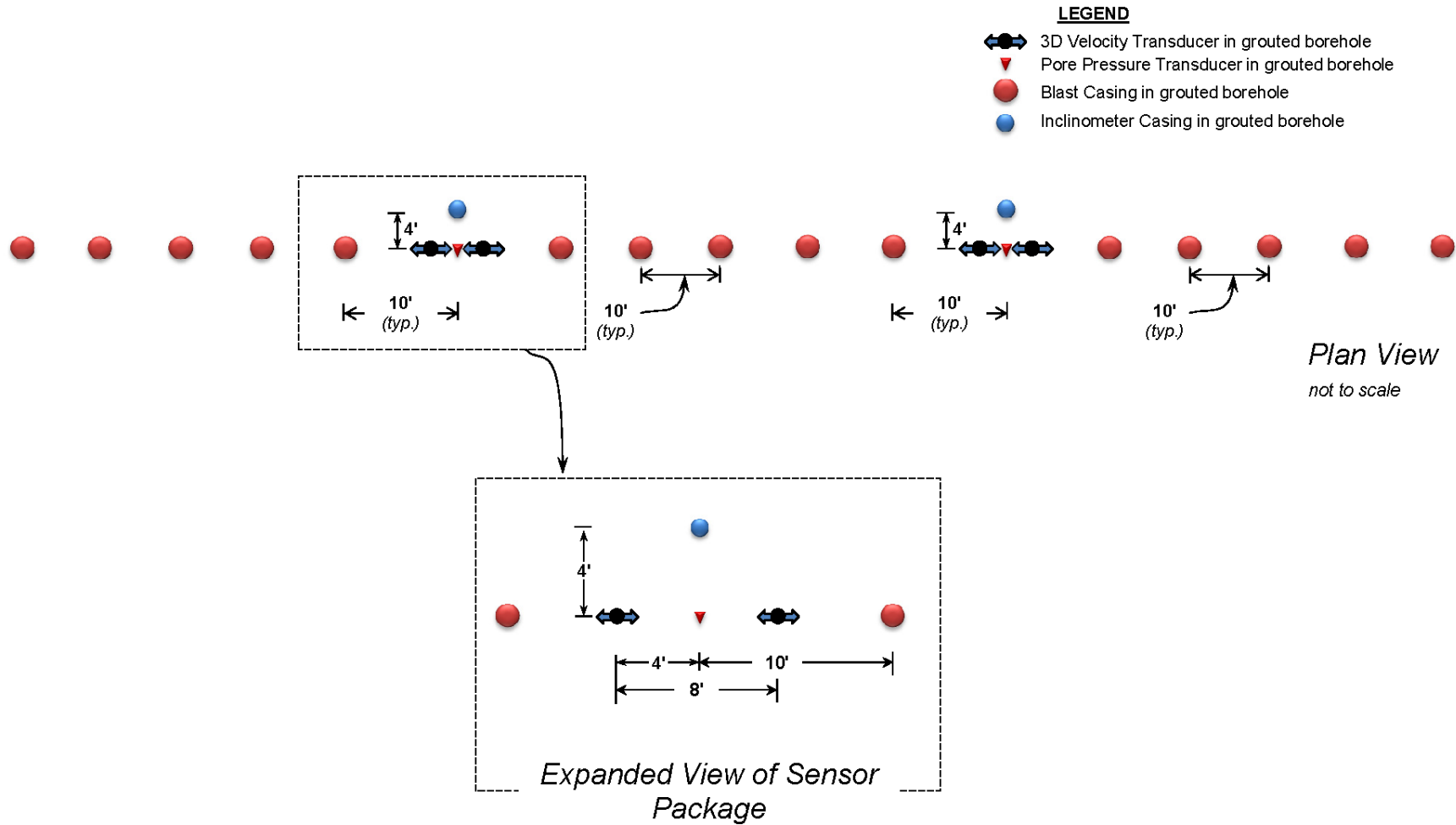
Signature: _____

Date: _____

By: _____

Title: _____




Attachment A – (Figure 1) – Blast Casing Drawings

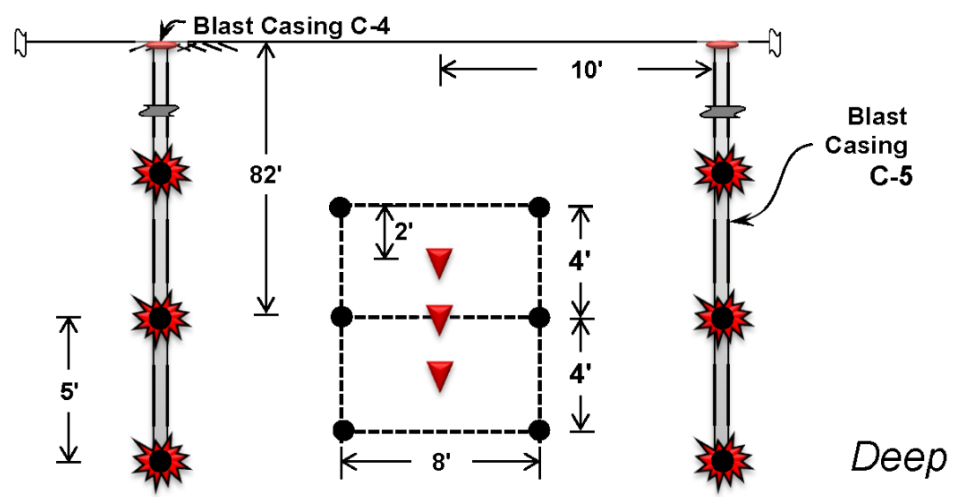
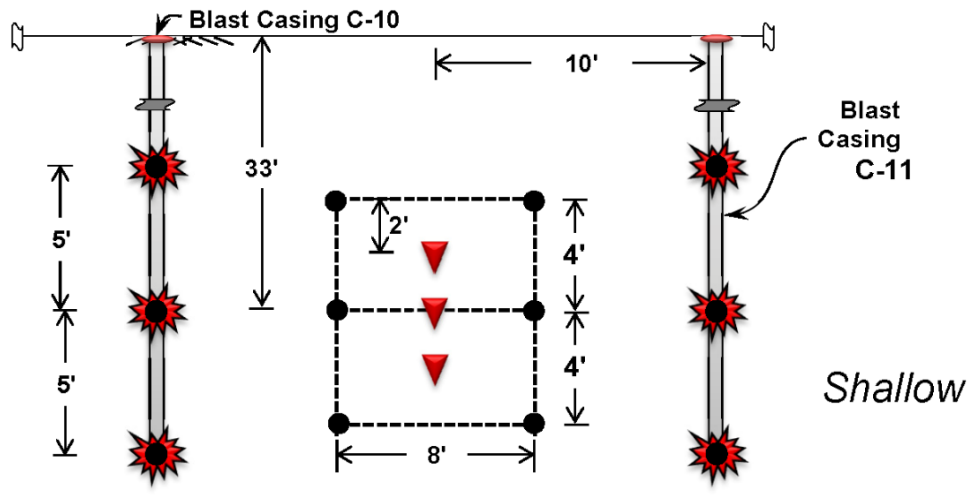
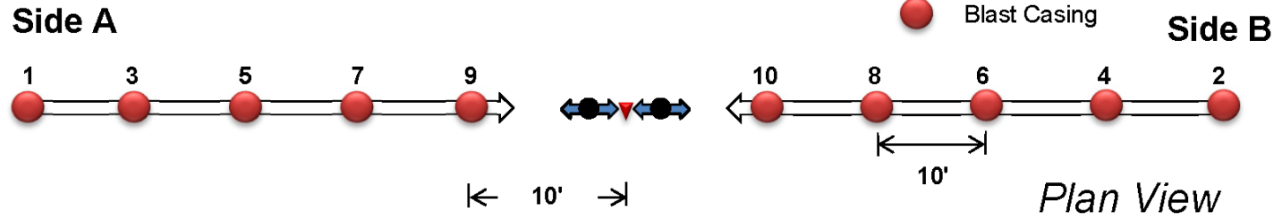


Attachment A – (Figure 2) – Elevation View

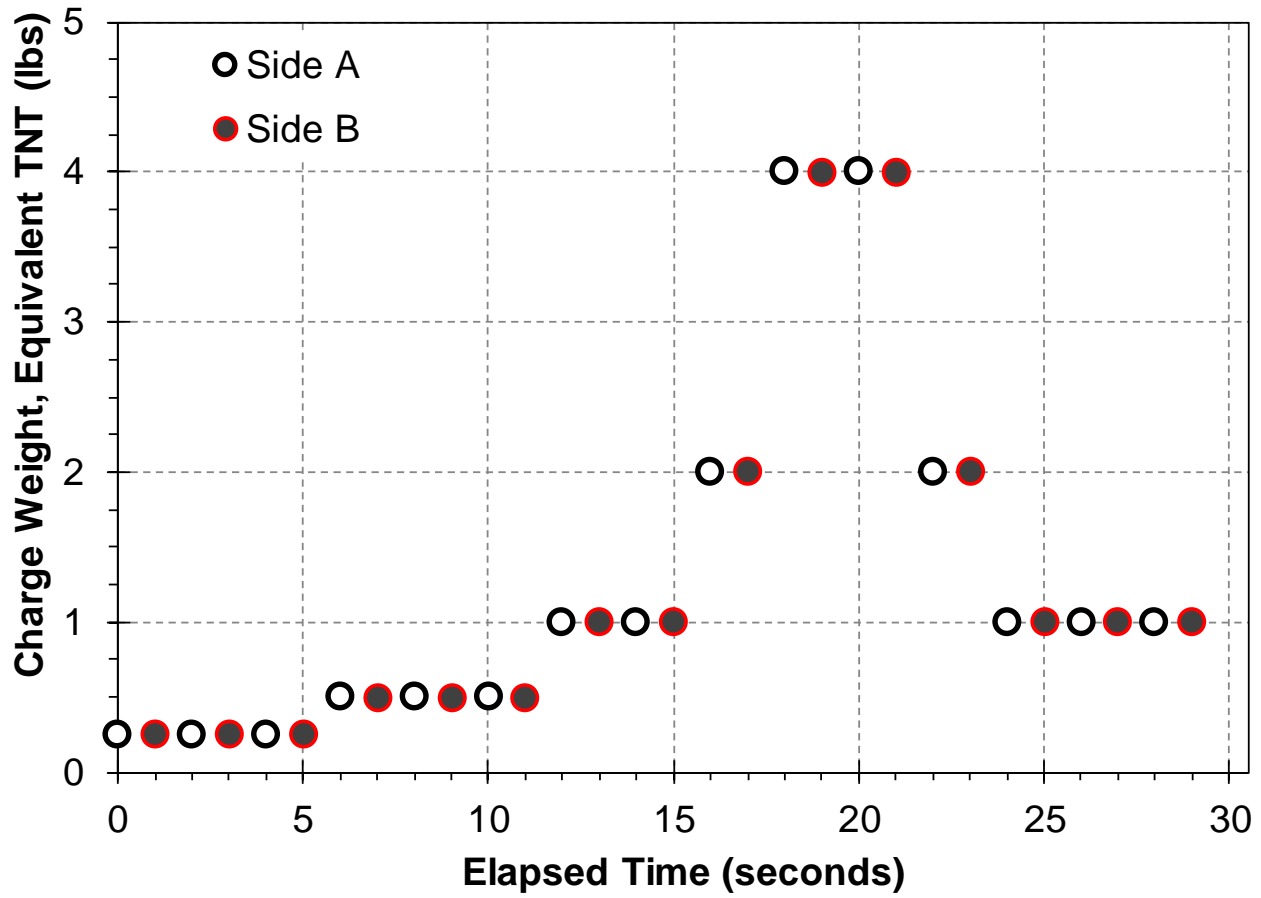
not to scale

LEGEND

-  3D Velocity Transducer
-  Pore Pressure Transducer
-  Blast Casing



Attachment A – (Figure 3) – Timing and Charge Weight for each “Experiment”



Attachment B – Aerial View of the Test Site



Attachment C – Port of Portland Right of Way Permit (Sample)



Permit Number: _____

PERMIT AND RIGHT OF ENTRY

[[COMPANY]] ("Permittee")
[[ADDRESS]]
[[CITY, STATE, ZIP]]
Attention: _____
Phone: (____) ____-____
E mail: _____

THE PORT OF PORTLAND ("Port")
P.O. Box 3529
Portland, OR 97208
Attention: _____
Phone: (503) 415-____
E mail: _____

RECITALS

- A. The Port of Portland ("Port") is the owner of certain real property located in _____ in the City of [[PORTLAND or TROUTDALE or HILLSBORO]], County of [[MULTNOMAH or WASHINGTON]], Oregon, as described in Section **Error! Reference source not found.** and in **Exhibit A**, attached hereto.
- B. Permittee desires access to a portion of such real property for the purpose of _____.

PERMIT

NOW, THEREFORE, in consideration of the promises and covenants contained in this Permit and Right of Entry ("Permit") and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows.

RECITALS

The Recitals above are true and are incorporated into and are a part of this Permit.

TERM

The term of this Permit shall commence and be binding upon the Port and Permittee as of [[TIME]] on [[DAY]] ("Effective Date") and end at [[TIME]] on [[DAY]], unless otherwise terminated pursuant to the terms of this Permit.

PREMISES

The Port hereby grants to Permittee the nonexclusive right to enter upon and use the Premises in accordance with the terms and conditions set forth below. The "Premises" shall consist of _____, as shown on **Exhibit A**.

PERMITTED USE

This Permit authorizes Permittee and Permittee's employees, officers, members, partners, directors, agents, contractors, subcontractors, consultants, customers, licensees, or invitees ("Permittee's Representatives") to enter upon the Premises to conduct construction activities as described in the Work Scope (as defined in Section **Error! Reference source not found.**), subject to the limitations and conditions described in this Permit ("Permitted Use"). Permittee shall use the Premises solely for the Permitted Use and for no other use. Permittee shall not interfere with the operations or the use of property adjacent to the Premises or other Port owned property. Permittee shall not use, handle, or store any Hazardous Substances (as defined in Section **Error! Reference**

source not found.) on the Premises other than fuel or petroleum products to be used for the purpose of powering vehicles or equipment, that are fully contained in Permittee's vehicles and/or equipment.

Conditions

The following conditions shall apply to Permittee's use of the Premises.

Access to Premises; Port Contact for On Site Questions

Permittee shall use _____ as shown on **Exhibit A** as the ingress and egress route for access to and from the Premises. Permittee shall contact _____ at (503) 415-_____, with any questions pertaining to access or any other on site issues.

Utilities

The Port provides no utility service to the Premises, and Permittee understands that no electricity, yard lighting, water or any other service will be available to Permittee.

Security Services/Limitation of Liability

The Port provides no security services for the Premises. Permittee agrees that it is using the Premises at its own risk, and the Port shall have no liability to Permittee and Permittee shall have no claim against the Port for any damage, theft, vandalism or injury caused by the condition of the Premises, or by lack of security services or acts or omissions of other people.

Contractor and Scope of Work

Prior to entering the Premises, Permittee shall obtain the Port's approval of Permittee's scope of work for the Permitted Uses under this Permit ("Work Scope"), attached hereto as **Exhibit B**. The Work Scope shall include a schedule for the planned work and a map showing the location of all proposed surface and subsurface improvement. Concurrently with the Work Scope, Permittee will also notify the Port of the name(s) of Permittee's contractors that will complete the Permitted Uses based on the Work Scope, as well as providing written assurances from Permittee's contractors that they will not create a potential conflict with respect to other work performed by any contractors for the Port.

Work Activity and Equipment

Permittee acknowledges that the Premises contain natural resources, wildlife habitats, and may be adjacent to waterways. In order to protect such resources, Permittee shall not drive, park, or otherwise operate vehicles outside of paved or other improved surfaces. Unless otherwise authorized by this Permit, Permittee shall not store any vehicles or equipment on the Premises.

Prohibited Uses

No washing, fueling, repair, maintenance, or modifications of vehicles or other equipment, or other activities other than the Permitted Uses are permitted on the Premises. In addition, no soil, fill material or debris may be removed or placed on the Premises without the prior written consent of the Port.

CONSIDERATION

There will be no monetary consideration for this Permit, however the Port acknowledges the receipt and sufficiency of value accorded the Port by the Permitted Use in the form of _____.

OR

In consideration for this Permit, Permittee agrees to pay the Port the amount of _____ DOLLARS AND _____ CENTS (\$_____._____) per [[MONTH, WEEK, DAY]].

Payments; No Offset

Permittee shall pay consideration due to the Port on or before the first (1st) day of each calendar month. Payment due under this Permit shall be made without offset, abatement or deduction, to the Port at the following address or such other place as the Port may designate:

The Port of Portland
P.O. Box 5095
Portland, OR 97208 5095

Late Payments

Delinquent Payment

If Permittee is delinquent in paying to the Port any consideration owed to the Port under this Permit, Permittee shall pay to the Port its then prevailing Delinquency Charge (as defined in Section **Error! Reference source not found.**), assessed on the delinquent amount. The Delinquency Charge shall accrue from the date such amount is due until it is paid in full.

Delinquency Charge

All consideration not paid by Permittee when due shall bear a delinquency charge of eighteen percent (18%) per annum ("Delinquency Charge") or the maximum rate of interest allowed by law, whichever is less, from the date such consideration is due until it is paid in full. The Delinquency Charge is subject to periodic change, at the Port's sole discretion, but in no case shall such change be inconsistent with Port policy and practice with respect to the amount of the Delinquency Charge imposed on other similar permittees of the Port. No change shall occur, however, without at least thirty (30) calendar days prior written notice to Permittee. Imposition of a Delinquency Charge shall not constitute a waiver of any other remedies available to the Port due to Permittee's failure to timely pay amounts due.

Returned Checks

If Permittee's check for payment of consideration due under this Permit is returned to the Port for any reason, the payment shall be considered not to have been made and shall be delinquent. In addition to the Delinquency Charge, the Port may charge Permittee a returned check fee of FIFTY DOLLARS AND NO CENTS (\$50.00) per returned check, which Permittee agrees is a reasonable fee for the additional administrative time and expense incurred by the Port in having to deal with the returned check. The Delinquency Charge shall continue to accrue until the returned check fee is paid, the check can be cashed, and the Port receives all amounts due. Imposition of a Delinquency Charge shall not constitute a waiver of any other remedies available to the Port due to Permittee's failure to timely pay a returned check fee.

NO LIENS

Permittee agrees to pay, when due, all amounts for labor, services, materials, supplies, utilities, furnishings, machinery, or equipment which have been provided to the Premises or ordered with Permittee's consent. Permittee shall not suffer or permit any liens to attach to all or any part of the Premises by reason of any work, labor, services, or materials done for, or supplied to, or claimed to have been done for or supplied to Permittee. If any lien is filed against the Premises, Permittee shall cause the lien to be discharged of record within thirty (30) calendar days after the date of filing of the same, by payment, deposit or bond. Failure to remove the lien or furnish cash or bond acceptable to the Port within thirty (30) calendar days shall constitute a default under this Permit and the Port shall automatically have the right, but not the obligation, to pay the lien off with no notice to Permittee and Permittee shall immediately reimburse the Port for any amounts so paid to remove any such lien.

ENVIRONMENTAL MANAGEMENT AND COMPLIANCE

Definitions

For the purposes of this Permit, the following definitions shall apply.

Best Management Practices

"Best Management Practices" shall mean: (a) those environmental or operational standards or guidelines that establish common and accepted practices appropriate for Permittee's operations on the Premises; and (b) standards or guidelines as stated by pertinent trade associations, professional associations or regulatory agencies.

Environmental Costs

"Environmental Costs" shall mean damages, fines, costs and fees arising from: (a) any violation of or noncompliance with applicable Environmental Law (as defined in Section **Error! Reference source not found.**); or (b) any violation of the environmental provisions of this Permit. Environmental Costs shall also include the costs of: (a) immediate response, complete remediation and restoration actions; (ii) Natural Resources Damage (as defined in Section **Error! Reference source not found.**); (iii) self-help pursuant to Section **Error! Reference source not found.**; (iv) oversight and participation of governmental agencies, including natural resource trustees; (v) reasonable and documented fees of project managers, attorneys, legal assistants, engineers, consultants, accountants, and experts, whether or not employees of the damaged party and whether or not taxable as costs, incurred prior to, at, or after any administrative or judicial proceeding, including appeals and other forms of judicial review; and (vi) diminution in value, loss or restriction on use of the Premises including, but not limited to, costs resulting from dealing with residual Hazardous Substances (as defined in Section **Error! Reference source not found.**).

Environmental Law

"Environmental Law" shall mean any and all federal, State of Oregon, regional and local laws, regulations, rules, permit terms, codes, ordinances, and legally enforceable guidance documents, now or hereafter in effect, as the same may be amended from time to time, and applicable decisional law, which govern materials, substances, regulated wastes, emissions, pollutants, water, storm water, groundwater, wellfield and wellhead protection, cultural resources protection, animals or plants, noise, or products and relate to the protection of health, safety or the environment, or natural resources including land, sediments, water, storm water and ground water.

Hazardous Substance

"Hazardous Substance" shall mean any and all substances, contaminants, pollutants, materials, or products defined or designated as hazardous, toxic, radioactive, dangerous or regulated wastes or materials or any other similar term in or under any applicable Environmental Law. Hazardous Substance shall also include, but not be limited to, fuels, petroleum and petroleum derived products.

Hazardous Substance Release

"Hazardous Substance Release" shall mean the threatened or actual spilling, discharge, deposit, injection, dumping, emitting, releasing, leaking, placing, migrating, leaching, and seeping of any Hazardous Substance into the air or into or on any land, sediment, or waters.

Natural Resources Damage

"Natural Resources Damage" shall mean the injury to, destruction of, or loss of natural resources resulting from a Hazardous Substance Release. The measure of damage is: (a) the cost of restoring injured natural resources to their baseline condition; (b) the compensation for the interim loss of injured natural resources pending recovery; and (c) the reasonable cost of a damage assessment. "Natural Resources" shall include land, fish, wildlife, biota, air, water, groundwater, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States, any state, an Indian tribe, or a local government.

General Environmental Obligations of Permittee

Permittee shall manage and conduct all of its activities on or relating to the Premises: (a) in compliance with applicable Environmental Law and the environmental provisions of this Permit; (b) in cooperation with the Port in the Port's efforts to comply with Environmental Law; and (c) in adherence with Best Management Practices applicable to Permittee's use of the Premises including, but not limited to, Best Management Practices used for erosion prevention and sediment control. Permittee shall be responsible for ascertaining which Environmental Laws govern its activities on or relating to the Premises and shall be responsible for maintaining a current understanding of such Environmental Laws throughout the term of this Permit. In addition, Permittee shall manage and, as appropriate, secure the Premises and Permittee's occupation or use of the Premises so as to prevent any violation of Environmental Law by any party on or relating to the Premises. Upon request from the Port, Permittee will promptly provide the Port with any permits, plans or submittals required by any regulatory agencies related to Permittee's occupation or operations on the Premises.

Use of Hazardous Substances

Permittee must obtain the Port's prior written approval to use, handle or store any Hazardous Substances on the Premises other than fuel or petroleum products fully contained in Permittee or Permittee's Representatives' vehicles.

Permittee's Liability

Hazardous Substance Releases

Except as provided in Section **Error! Reference source not found.**, Permittee shall be responsible for all response to, remediation and restoration of Hazardous Substance Releases and associated Environmental Costs on or from the Premises, on other properties, in the air or in adjacent or nearby surface waters and ground water which result from or occur in connection with Permittee's occupancy, possession or use of the Premises and which either occurs during the term of this Permit or continues after the termination of this Permit.

Excluded Hazardous Substance Releases

Notwithstanding anything to the contrary in this Permit, it is the Port's and Permittee's intent not to have this permit cover sources of Hazardous Substance Releases that may exist in the vicinity of the Premises that fall within 42 USC 9607(q) or equivalent Oregon law.

Permittee's Liability for Environmental Costs

Permittee shall be responsible for all Environmental Costs arising under this Permit or arising from the acts or omissions of Permittee on or adjacent to the Premises. Any Environmental Costs for which Permittee is obligated under this Permit shall be paid by Permittee within thirty (30) calendar days after the date of written notice or invoice from the Port or from the agency assessing such Environmental Costs directly against Permittee. Any Environmental Costs not paid when due shall be subject to an additional Delinquency Charge from the date due until paid in full.

Pre-Existing Hazardous Substance Release Revealed by Permitted Activities

In the event that the activities of Permittee on the Premises reveal a pre-existing Hazardous Substance Release on the Premises, Permittee shall immediately suspend operations, notify the Port, and secure the Premises. Permittee releases the Port and waives any claim against the Port arising therefrom, including without limitation any damages or costs, for delay or otherwise, arising from any Port efforts to remove, remediate, or otherwise address such pre-existing Hazardous Substance Release.

Limitation of Permittee's Liability

Permittee shall have no responsibility for Hazardous Substance Releases or associated Environmental Costs caused by the Port or the agents, employees, contractors or other tenants of the Port after the Effective Date.

Environmental Inspection

The Port reserves the right, at any time and from time to time, after notice to Permittee, to inspect the Premises concerning environmental compliance.

Environmental Response and Notice

In the event of a violation of Environmental Law, a violation of an environmental provision of this Permit, a Hazardous Substance Release, threat of or reasonable suspicion of the same, or other environmental incident of any kind that occurs on the Premises, Permittee shall promptly notify the Port and shall immediately undertake and diligently pursue all acts necessary or appropriate to cure or correct the violation or investigate, contain and stop the Hazardous Substance Release, and shall restore the Premises or other affected property or water to its pre-existing condition. If notice to the Port must be given on the weekend or after 5:00 p.m. on any day, Permittee shall notify the Port by calling the Port's emergency telephone number: (503) 460-4000 [[AVIATION]] (503) 240-2230 [[MARINE]].

Report to the Port

Within thirty (30) calendar days following completion of any investigatory, containment, remediation or removal action required by this Permit, Permittee shall provide the Port with a written report outlining, in detail, what has been done and the results thereof, and copies of all regulatory correspondence.

Port's Approval Rights

Except in the case of an emergency or an agency order requiring immediate action, Permittee shall give the Port reasonable advance notice before beginning any investigatory, remediation or removal procedures. The Port shall have the right to approve or disapprove the proposed investigatory, remediation and removal procedures and the company(ies) and/or individuals conducting such procedures which are required by this Permit or by Environmental Law, whether on the Premises or on any affected property or water. Permittee shall not initiate any risk assessment based remediation or closure without the prior written consent of the Port, which consent may be withheld or conditioned in the Port's sole discretion. The Port will have the right to require Permittee to request oversight from DEQ of any investigatory, containment, remediation and removal activities and/or require Permittee to seek a statement from DEQ of "No Further Action."

Port's Right of Self-Help

Except in the event of an emergency or a governmental agency order requiring immediate action, when significant notice cannot be given, the Port shall have the right, upon giving Permittee twenty-four (24) hours written notice, stating the obligations in issue, to perform Permittee's obligations arising under Section **Error! Reference source not found.** and Environmental Law, and charge Permittee the resulting Environmental Costs and the Delinquency Charge from the date any Environmental Costs were incurred into by the Port. The Port may not commence performance on behalf of Permittee under this Section if, within the notice period, Permittee promptly notifies the Port, then begins, and continually and diligently pursues to completion the performance of the obligations set forth in the Port's notice.

INDEMNITY; REIMBURSEMENT FOR DAMAGE

Permittee agrees to defend (using legal counsel acceptable to the Port), indemnify, and hold harmless the Port from and against, and reimburse the Port for, any and all actual or alleged claims, damages, expenses, costs, including Environmental Costs, fees (including, but not limited to, attorney, accountant, paralegal, expert, and escrow fees), fines, and/or penalties (collectively "Costs") which may be imposed upon or claimed against or incurred by the Port and which, in whole or in part, directly or indirectly, arise from or are in any way connected with any of the following, unless exclusively resulting from the Port's gross negligence or willful misconduct: (a) any act, omission or negligence of Permittee; (b) any use, occupation, management or control of the Premises by Permittee, whether or not due to Permittee's own act or omission and whether or not occurring on the Premises; (c) any breach, violation or nonperformance of any of Permittee's obligations under this Permit; and (d) any

damage caused by Permittee on or to the Premises. This indemnification shall require Permittee to reimburse the Port for any diminution in value of or lost revenue from the Premises, or other nearby Port property, caused by Hazardous Substance Releases for which Permittee is responsible pursuant to Section **Error! Reference source not found.**, including damages for loss of or restriction on use of the Premises, or any other property, including without limitation damages arising from any adverse impact on the leasing or sale of the Premises or any property in or near the Premises, whether owned by the Port or other parties. The indemnity and reimbursement agreements set forth in this Section shall survive the expiration or earlier termination of this Permit and be fully enforceable thereafter. For the purposes of this Section, Permittee shall be deemed to include Permittee and Permittee's Representatives.

NO BENEFIT TO THIRD PARTIES

The Port and Permittee are the only parties to this Permit and as such are the only parties entitled to enforce its terms. Nothing in this Permit gives or shall be construed to give or provide any benefit, direct, indirect, or otherwise to third parties unless third persons are expressly described as intended to be beneficiaries of its terms.

INSURANCE

In addition to any special insurance requirements Permittee shall maintain commercial general and automobile liability insurance policies insuring Permittee against liability for damages because of personal injury, bodily injury, death, or property damage (including loss of use thereof), and occurring on or in any way related to this Permit or occasioned by reason of operations of Permittee on or from the Premises, including loss of use thereof. The insurance required by this Section shall include coverage for independent contractors and broad form contractual liability and shall have limits of not less than _____ DOLLARS AND NO CENTS (\$____.00) per occurrence. The coverage provided by this policy shall be primary and shall not seek any contribution from any insurance or self-insurance carried by the Port.

Required Insurance

At all times during this Permit, Permittee and its contractor(s) shall provide and maintain the following types of coverage.

General Liability Insurance

Permittee and Permittee's contractors shall maintain occurrence form commercial general liability insurance covering liability for personal injury, bodily injury, death, or damage to property, including loss of use thereof, and occurring on or in any way related to the Premises or occasioned by reason of the operations of Permittee. Such coverage shall name the Port as an additional insured, shall be in an amount of not less than ONE MILLION DOLLARS AND NO CENTS (\$1,000,000.00) per occurrence, and shall include coverage for sudden and accidental pollution liability, independent contractors, products completed operations, and contractual liability (including the tort liability of another assumed in a business contract). Such insurance shall not exclude operations over water, if applicable. If subject to an aggregate limit, such aggregate shall not be less the ONE MILLION DOLLARS AND NO CENTS (\$1,000,000.00) per policy year applying separately to the Premises or TWO MILLION DOLLARS AND NO CENTS (\$2,000,000.00) per policy year.

Automobile Liability Insurance

Permittee and Permittee's contractors shall maintain an automobile liability policy insuring against liability for bodily injury, death, or damage to property, including the loss of use thereof, arising from the use, loading and unloading of Permittee's and such contractors' owned, hired, and non owned automobiles on and around the Premises. Coverage shall be in an amount of not less than ONE MILLION DOLLARS AND NO CENTS (\$1,000,000.00) per accident.

Explosion, Collapse, and Underground Hazards

If Permittee or Permittee's contractors perform operations such as excavation, core drilling, test well drilling, or soil sampling then the commercial general liability policy exclusion for the explosion, collapse and underground ("XCU") hazards shall be removed by endorsement, and a copy shall be provided to the Port.

Contractors Pollution Legal Liability

If Permittee or Permittee's contractors perform operations such as excavation, core drilling, test well drilling, soil sampling, hazardous building materials sampling, Permittee or Permittee's contractors shall maintain contractors pollution legal liability protecting against liability for sudden and accidental pollution arising from its operations and/or exacerbation of existing pollution. The amount of coverage shall be not less than TWO MILLION DOLLARS AND NO CENTS (\$2,000,000.00) per occurrence, and the Port shall be designated as an additional insured. If the additional insured status of the policy requires suit to be brought against the Named Insured before any protection is afforded to the additional insured, the Port reserves the right to require Permittee's contractor to modify coverage or provide other protection acceptable to the Port.

Workers' Compensation Insurance

Permittee and Permittee's contractors shall maintain workers' compensation and employer's liability insurance for all of Permittee's and Permittee's contractors' employees subject to the Workers' Compensation Act of Oregon (or other state if applicable). The amount of employer's liability coverage shall not be less than ONE MILLION DOLLARS AND NO CENTS (\$1,000,000.00) per accident, and ONE MILLION DOLLARS AND NO CENTS (\$1,000,000.00) per employee for disease. In lieu of such insurance, Permittee may maintain a self-insurance program meeting the requirements of the State of Oregon and a policy of excess workers' compensation and employer's liability insurance.

PORT'S RIGHT TO TERMINATE

Notwithstanding any provision contained herein, the Port may terminate this Permit at any time, in writing, for Permittee's Default. As used herein, "Default" shall mean the violation of any provision of this Permit by Permittee. Upon notice of termination, Permittee shall immediately leave the Premises. Unless waived by the Port, Permittee shall restore the Premises as required in Section **Error! Reference source not found.** Any notice to terminate may be included in a notice of failure of compliance. Each right and remedy in this Permit will be cumulative and will be in addition to every other right or remedy in this Permit or existing at law or in equity, including, without limitation, suits for injunctive relief and specific performance. The exercise or beginning of the exercise by the Port of any such rights or remedies will not preclude the simultaneous or later exercise by the Port of any other such rights or remedies. All such rights and remedies are nonexclusive. If Permittee holds over after this Permit terminates, Permittee shall be deemed a tenant at sufferance, at the Port's sole discretion. In the event the Port deems Permittee a tenant at sufferance, the Port shall be entitled to evict Permittee. Permittee's obligations and liability to the Port shall survive termination.

Curing Permittee's Default

If Permittee fails to perform any of Permittee's obligations under this Permit, the Port, without waiving such failure, may (but shall not be obligated to) perform the same at the expense of Permittee, without notice in a case of emergency, and in any other cases, only if such failure continues after the expiration of thirty (30) calendar days from the date the Port gives Permittee notice of the failure. The Port shall not be liable to Permittee for any claim for damages resulting from such action by the Port. Permittee agrees to reimburse the Port, upon demand, for any amounts including Environmental Costs the Port may incur in complying with the terms of this Permit on behalf of Permittee. Any amounts to be so reimbursed shall bear interest as a Delinquency Charge from the date of expenditure until paid.

DUTIES UPON TERMINATION

Upon the expiration or earlier termination of this Permit, Permittee shall restore the Premises to their condition at the commencement of this Permit, to applicable codes, standards of the Port and any requirements of the

jurisdiction in which the Premises are located, unless otherwise directed by the Port. In addition, Permittee shall remove any and all of Permittee's property including, but not limited to, fencing, equipment, materials, supplies and debris from the Premises; repair any damage to the Premises caused by Permittee's use thereof and return all keys, if applicable, to the Port. Permittee's obligations and liability to the Port shall survive termination. Any items of Permittee's property which remain on the Premises after the expiration or earlier termination of this Permit may be deemed abandoned, at the Port's option. The Port shall have the option of removing and disposing of any or all such abandoned property and recovering the cost thereof, plus interest from the date of expenditure as a Delinquency Charge, from Permittee upon demand.

ASSIGNMENT OF INTEREST OR RIGHTS

Permittee shall not, in any manner, directly or indirectly, by operation of law or otherwise, sublease, assign, transfer or encumber any of Permittee's rights granted by this Permit. Any attempted assignment or transfer shall be void.

general provisions

Attorney Fees; Venue

If a suit, action, or other proceeding of any nature whatsoever (including any proceeding under the U.S. Bankruptcy Code), is instituted in connection with any controversy arising out of this Permit or to interpret or enforce any rights or obligations hereunder, the prevailing party shall be entitled to recover attorney, paralegal, accountant, and other expert fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith, as determined by the court or body at any hearing, at trial or on any appeal or any petition for review, in addition to all other amounts provided by law. If the Port is required to seek legal assistance to enforce any term of this Permit, such fees shall include all of the above fees, whether or not a proceeding is initiated. Payment of all such fees shall also apply to any administrative proceeding, trial, and/or any appeal or petition for review. Whenever this Permit requires Permittee to defend the Port, it is agreed that such defense shall be by legal counsel reasonably acceptable to the Port, understanding that defense may be supplied through an insurance carrier. Venue for any suit, action or other proceeding shall be in the Circuit Courts of the state of Oregon, or the federal courts, located in Portland, Oregon.

Compliance With Law

Permittee shall comply with all applicable state, federal, and local laws, including but not limited to, Environmental Law, City of [[OR INSERT OTHER CITY]] zoning ordinances and laws, rules, regulations, and policies concerning equal opportunity, nondiscrimination, workers' compensation, and minimum and prevailing wage requirements.

Counterparts

This Permit may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

Entire Agreement

This Permit represents the entire agreement between the parties with respect to the subject matter of this Permit, and supersedes all prior agreements, written or oral with respect to the subject matter of this Permit. No amendment to this Permit shall be effective unless in writing and signed by the parties hereto.

Exhibits Incorporated by Reference

Any and all exhibits attached hereto are incorporated by reference in this Lease for all purposes.

Governing Law; Venue

This Permit shall be governed and construed according to the laws of the State of Oregon, without regard to its choice of law provisions. Venue for any suit, action or other proceeding shall be in the [[MULTNOMAH or WASHINGTON]] County Circuit Court of the State of Oregon, or the federal courts, located in Portland, Oregon.

Installation or Construction of Improvements

No improvements shall be constructed on the Premises without the Port's prior written consent.

Limitation on Port Liability

The Port shall have no liability to Permittee for, and Permittee hereby releases the Port from, any loss, damage or injury suffered by Permittee on account of theft or any act or omission of any third party, including other tenants or users of Port property. In addition, in all events whether relating to the foregoing sentence or otherwise, the Port shall only be liable to Permittee for the Port's own willful misconduct or gross negligence, and then only to the extent of actual and not consequential, special, or punitive damages. Permittee hereby waives any other rights or remedies to which it might otherwise be entitled pursuant to applicable statutory or common law.

Notices

All notices required under this Permit shall be deemed to be properly served if sent by certified mail, return receipt requested, or delivered by hand to the last address furnished by the parties hereto. Until hereafter changed by the parties by notice in writing, notices shall be sent to the following addresses:

to Permittee:

[[NAME OF COMPANY]]

[[ADDRESS]]

Attention: _____

to the Port:

The Port of Portland

P.O. Box 3529

Portland, OR 97208

Attention: _____

The date of service of such notice by mail is agreed to be three (3) calendar days after the date such notice is deposited in a post office of the United States Postal Service, postage prepaid, return receipt requested, certified mail or, if delivered by hand, then the actual date of hand delivery.

Partial Invalidity

If any provision of this Permit is held to be invalid or unenforceable, the remainder of this Permit, or the application of such provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each provision of this Permit shall be valid and enforceable to the fullest extent permitted by law.

Survival

Any covenant or condition (including, but not limited to, indemnification and reimbursement agreements), set forth in this Permit, the full performance of which is not specifically required prior to the expiration or earlier termination of this Permit, and any covenant or condition which by its terms or nature is to survive, shall survive the expiration or earlier termination of this Permit and shall remain fully enforceable thereafter.

Time of the Essence

Time is of the essence in the performance of and adherence to each and every covenant and condition of this Permit.

Warranty of Authority

The individuals executing this Permit warrant that they have full authority to execute this Permit on behalf of the Port and Permittee respectively.

Warranties; Guarantees

Permittee acknowledges that it has inspected the Premises and has found them to be completely acceptable and safe for Permittee's intended use. The Port makes no warranty, guarantee, or averment of any nature whatsoever concerning the physical condition of the Premises or the suitability of the Premises for Permittee's intended uses, and it is agreed that the Port will not be responsible for and Permittee hereby releases the Port, its commissioners, directors, officers, employees, agents and contractors from any loss, damage or costs which may be incurred by Permittee by reason of any such physical condition. Permittee shall be responsible for securing the Premises as necessary or appropriate for Permittee's use of the Premises.

IN WITNESS HEREOF, the parties have subscribed their names hereto effective as of the Effective Date.

COMPANY NAME

THE PORT OF PORTLAND

By: _____

By: _____

Print Name: _____

Print Name: _____

As Its: _____

As Its: _____

Date: _____

Date: _____

APPROVED FOR LEGAL SUFFICIENCY
FOR THE PORT:

By: _____
Counsel for Port of Portland

**EXHIBIT B
CERTIFICATIONS**

By signature on this certification the undersigned certifies that they are authorized to act on behalf of the Proposer and that under penalty of perjury the undersigned will comply with the following:

SECTION I. OREGON TAX LAWS

The undersigned hereby certifies under penalty of perjury that the Proposer, to the best of the undersigned's knowledge, is not in violation of any tax laws described in ORS 305.380(4).

SECTION II. AFFIRMATIVE ACTION

The undersigned hereby certifies that they have not discriminated against Minority, Women or Emerging Small Business Enterprises in obtaining any required subcontracts, pursuant to OAR 580-061-0030 (3).

SECTION III. COMPLIANCE WITH SOLICITATION

The undersigned agrees and certifies that they:

1. Have read, fully understands and agrees to be bound by the Request for Proposal and all Exhibits and Addenda to the Request for Proposal; and
2. Are an authorized representative of the Proposer, that the information provided is true and accurate, and that providing incorrect or incomplete information may be cause for rejection of the Proposal or Contract termination; and
3. Will furnish the designated item(s) and/or service(s) in accordance with the Request for Proposal and the Contract; and
4. Has provided a correct Federal Employer Identification Number or Social Security Number with Proposal.

SECTION IV. PERMISSIVE COOPERATIVE PROCUREMENTS (RESERVED)

Authorized Signature: _____ Date: _____

Name (Type or Print): _____ Telephone:(_____) _____

Title: _____ Fax:(_____) _____

FEIN ID# or SSN# (required): _____ Email: _____

Company: _____

Address, City, State, Zip: _____

Construction Contractors Board (CCB) License Number (if applicable): _____

Business Designation (check one):

- Corporation Partnership LLC Sole Proprietorship Non-Profit

**EXHIBIT C
REFERENCES**

REFERENCE 1

COMPANY: _____ CONTACT NAME: _____
ADDRESS: _____ PHONE NUMBER: _____
CITY, STATE ZIP: _____ FAX NUMBER: _____
WEBSITE: _____ E-MAIL: _____
GOODS OR SERVICES PROVIDED: _____

REFERENCE 2

COMPANY: _____ CONTACT NAME: _____
ADDRESS: _____ PHONE NUMBER: _____
CITY, STATE ZIP: _____ FAX NUMBER: _____
WEBSITE: _____ E-MAIL: _____
GOODS OR SERVICES PROVIDED: _____

REFERENCE 3

COMPANY: _____ CONTACT NAME: _____
ADDRESS: _____ PHONE NUMBER: _____
CITY, STATE ZIP: _____ FAX NUMBER: _____
WEBSITE: _____ E-MAIL: _____
GOODS OR SERVICES PROVIDED: _____

**EXHIBIT D
Pricing Sheet**

Per Section 2: Statement of Work, report two separate bids should substantial costs be saved by reducing the duration of the experiment to 20 seconds.

Bid 1: Work as described with 30 second blast duration.

MILESTONE	AMOUNT
Insurance Provisions	
Milestone #1 – Test Blast (1 Day)	
Milestone #2 – Experiments (1 Day)	
Total	

Bid 2 (Optional): Work as described with +/-20 second blast duration.

MILESTONE	AMOUNT
Insurance Provisions	
Milestone #1 – Test Blast (1 Day)	
Milestone #2 – Experiments (1 Day)	
Total	

EXHIBIT E
Contractor Qualifications Responsiveness Checklist

In order to qualify as a Responsive Proposer, the Proposer needs to meet the minimum qualifications below. Please complete by marking 'Yes' or 'No' and returning with the required submittals per Section 4.01 'Minimum Qualifications.'

<u>Requirement</u>	<u>Yes or No</u>
Five (5) years of experience detonating explosives in a controlled manner and in accordance with all applicable laws and regulations	
Ability to provide a valid certificate of insurance in compliance with Section 4 'Insurance' of Exhibit A 'Sample Contract' acceptable to OSU Office of Risk within 15 days following Notice of Intent to Award.	
Accept the provision 'Limited Waiver of Liability for Blasting' as stated in Exhibit A 'Sample Contract.'	

Please sign below attesting to the information provided above and return with submittals per Section 4.01.

Contractor Signature: _____

Date: _____