



**INFORMAL REQUEST FOR PROPOSAL  
No. BB198289IP**

**Geotechnical Drilling and Sampling  
Port of Longview, Washington**

**PROPOSAL DUE DATE AND TIME**

April 09, 2019 (2:00 PM, PT)

**SUBMITTAL LOCATION**

Oregon State University  
Procurement, Contracts and Materials Management  
644 SW 13<sup>th</sup> 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**

[benjamin.baggett@oregonstate.edu](mailto:benjamin.baggett@oregonstate.edu)

## **1.0 GENERAL**

### **1.01 SCHEDULE OF EVENTS**

- Issue Date.....April 01, 2019
- Deadline for Requests for Clarification or Change.....April 05, 2019 (2:00 pm, PT)
- Proposal Due Date and Time.....April 09, 2019 (2:00 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: Ben Baggett  
Title: Procurement Contract Officer  
Telephone: 541-737-2526  
Fax: 541-737-2170  
E-Mail: Benjamin.Baggett@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. "Attachments" 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 geotechnical drilling and sampling at the Port of Longview in the state of Washington. The services will include but not be limited to drilling of blast casings and drilling for exploration for the evaluation of seismic behavior of near-surface soils at the site.

### **2.02 BACKGROUND**

The Port of Longview (“Port”) has allowed access to their property to Oregon State University to perform in-situ testing on the seismic performance of soils to better understand the seismic behavior associated with shallow silts.

### 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 Attachment 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 years experience drilling loose to dense and very soft to hard soils with a high groundwater table using mud-rotary methods.
- b. Five years experience drilling very loose to dense and very soft to hard soils with a high groundwater table using hollow stem auger drilling methods.
- c. Five years experience performing split-spoon sampling, Standard Penetration Testing ("SPT"), and undisturbed soil sampling using Shelby tubes and Osterberg-type piston samplers.
- d. Five years experience installing grouted casings, similar to monitoring wells, inclinometer installations, or similar.

### 4.02 PREFERRED QUALIFICATIONS

OSU will award additional points for Proposers able to meet the preferred qualifications below.

- a. Have experience working directly or indirectly with OSU in the past. This could include any experience working for the School of Civil and Construction Engineering, OSU Facilities, or any OSU Contractors on related work. Please explain detail of work with OSU, including dates and type of work, in the proposal submission.

## **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 (if applicable) qualifications described in section 4.
- Attachment D: Certifications, fully completed.
- Attachment E: References, fully completed.
- Attachment F: Price Sheet, completed
- Attachment G: Proposer Qualifications Responsiveness Checklist, completed and signed

### 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>
Proposer response to satisfy the statement of work	20
References	30
Proposer's preferred qualifications	10
Price of the goods or services	40
<b>Total</b>	<b>100</b>

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 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 03-015.

### 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 Attachments 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 Attachments, 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, Attachments, 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.

**ATTACHMENT 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, OSU competitively solicited for the services outlined in this Contract under Request for Proposal number BB198289IP entitled Geotechnical Drilling and Sampling: Port of Longview and Contractor was selected as the Proposer best able to provide this service; and

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 [insert date], or the date Contractor has completed all services in accordance with the requirements of this Contract, and the services have been accepted by OSU. This contract will automatically be extended for [insert number of renewals both spelled out and (number) format] additional [insert length of renewal terms both spelled out and (number) format] terms based on the current terms and conditions unless OSU, at its sole option, elects not to extend the Contract 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:

#### Scope Item 1: Drilling of Blast Casings

Preferred Schedule: May 2019

Location: Barlow Point, Port of Longview

Coordinates: 46.146755, -123.019974

Map: <https://www.google.com/maps/place/46%C2%B008'48.3%22N+123%C2%B001'11.9%22W/@46.1467569,-123.0210715,323m/data=!3m2!1e3!4b1!4m14!1m7!3m6!1s0x54946ddacf3baa41:0x401be752285ef138!2sBarlow+Point,+Longview,+WA+98632!3b1!8m2!3d46.1498283!4d-123.0250408!3m5!1s0x0:0x0!7e2!8m2!3d46.1467553!4d-123.0199744>

#### Scope of Work:

Drill 12 borings to install 2" and 3" (ID) PVC Casing. Provide sealed end caps to bottom of each casing; provide wingnut-type compression monitoring well caps at top of each casing. Provide 6" of stick-up above the ground upon completion. PVC casing shall be sealed to prevent water and soil intrusion (though water will be needed to fill the casing to counteract buoyancy until the grout is cured). Tolerance: the center of the casings must be installed within 4 inches of the intended location.

Twelve boreholes with PVC casing are required, with 171' lineal feet of drilling to place 2" ID PVC casing, and 102' lineal feet of drilling to place 3" ID PVC. Refer to schedule of blast casings in Table 1 for exact quantities.

<b>Table 1. Schedule of drilling and PVC casing to be installed.</b> The six inches of stickup (above the ground surface) required for each casing is not included here.			
<b>Quantity of Casings</b>	<b>OSU Casing Designations</b>	<b>Depth of Casing below Ground Surface (ft)</b>	<b>Inner Diameter of PVC Casing (inches)</b>
6	C1, C2, C5, C6, C9, C10	20	2
2	C3, C8	24	3
2	C4, C7	27	3
1	CX1	27	2
1	CX2	24	2

Drill diameter is up to contractor, but should not be greater than 8 inches and preferably 6 inches. Drill using steel casing or mud-rotary methods to maintain borehole integrity. After drilling to depth, place PVC casing and tremie grout casing into place using cementitious grout.

Entry of soil into the casing, for any reason, either during or following installation, shall be construed as a defect (such an occurrence can only occur if the casings are not sealed to be water tight). Such defects will render the casing unusable. The casing must then be replaced at OSU's discretion at no cost to OSU.



**Deliverables:**

This scope item will be considered complete when the 12 PVC casings have been installed to their target depths and within the location tolerances described above, and be free of defects.

**Water and Spoils:**

Assume no access to water available. Spoils must be gathered and disposed off-site.

**Terrain:**

Assume wet weather work and soft ground conditions. Tracked equipment may be necessary.

**Insurance:**

The Port requires that contractors supply insurance as described below.

**Boring Stability:**

Assume borings will cave in without use of mud-rotary or drill casing. Cave-ins are highly undesirable and will result in a rejection of the work. Rejection of an installation will result in a replacement at no cost to OSU.

**Scope Item 2: Drilling to perform Tube Sampling**

Preferred Schedule: June through October 2019

Location: Same as Scope Item 1

**Scope of Work:**

Drill two mud-rotary borings (one to 10', one to 20') to perform Shelby tube sampling with an Osterberg piston sampler. We will collect 12 tube samples. Based on OSU's experience at the site, full recovery of samples can be challenging (we have had the full range in recovery, from zero to full 24"). Allow time (10 minutes) for the tube to sit prior to extraction. OSU will supply stainless steel Shelby tubes, but standard tubes must be on hand by driller in the event of their necessary use (proposed budget shall not include the cost of these tubes, but additional cost incurred by use of driller's tubes will be paid by OSU if implemented).

**Deliverables:**

This scope item will be considered complete when the two borings to recover tube samples have been completed.

**Water and Spoils:**

Assume no access to water available. Spoils must be gathered and disposed off-site.

**Terrain:**

Assume wet weather work and soft ground conditions. Tracked equipment may be necessary. If conducted in Summer and early Fall months, typical wheel-mounted equipment has been successfully used on this site.

**Insurance:**

The Port requires that contractors supply insurance as described below.

**Boring Stability:**

Assume borings will cave in without use of mud-rotary or drill casing. Cave-ins are highly undesirable and will result in disturbance to samples.

B. KEY PERSONS (RESERVED).

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.

**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: [insert deliverable and fixed amount for that deliverable].

Scope Item 1:

Scope Item 2:

B. BASIS OF PAYMENT FOR SERVICES.

*(Milestone progress payments for completed services)* OSU shall pay Contractor all amounts due for services by OSU at the following milestones after OSU's approval of Contractor's invoice to OSU for those services and only after OSU has determined that Contractor has completed, and OSU has accepted, all services for that milestone as required under this Contract. Scope Item 1 and Scope Item 2 are each separate milestones.

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.**

Permittee shall obtain, at Permittee's expense, and keep in effect during the term of this Agreement, General Liability Insurance, covering liability for personal injury, bodily injury, death, or damage to property. Such coverage shall have minimum limits of \$1,000,000 per occurrence and \$2,000,000 aggregate. As it relates to the Permittee's contractor who will be performing blasting, the General Liability Policy exclusion for the explosion, collapse and underground ("XCU") hazards shall be removed by endorsement.

##### **B. AUTOMOBILE LIABILITY INSURANCE.**

Permittee shall obtain, at Permittee's expense, and keep in effect during the term of this Agreement, Automobile Liability Insurance insuring against liability for bodily injury, death, or damage to property, arising from the use, loading and unloading of Permittee'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, Permittee's 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.

##### **C. 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. The amount of coverage shall be a minimum of \$1,000,000 per occurrence or 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 Longview and OSU reserve the right to require Contractor to modify coverage or provide other protection acceptable to Port of Longview and OSU.

##### **D. 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".

##### **E. WORKERS' COMPENSATION.**

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.

##### **F. ADDITIONAL INSURED.**

All liability insurance coverages maintained under this Agreement, with the exception of Workers' Compensation, shall be endorsed to name Port of Longview, OSU, and their respective employees and agents as additional insureds.

##### **G. 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 Longview or OSU.

**H. 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.

**I. CERTIFICATES OF INSURANCE.**

As evidence of the insurance coverages required by this Agreement, Certificate(s) of Insurance and any applicable endorsements will be provided, upon request. 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.

**J. 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.

**K. SUBCONTRACTORS**

If Permittee enters into subcontracts for any services to be provided by Permittee to Grantor, Permittee shall require that all subcontractors maintain insurance meeting all the requirements noted above.

**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 or intentional misconduct of the Contractor or any of its officers, directors, agents, employees, or subcontractors; (ii) errors or omissions with respect to any professional services; (iii) Contractor's breach of any provision of this Contract; or (iv) 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. 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.

##### **FEDERAL PROVISIONS**

Work under the contemplated Agreement is federally funded. Owner has received federal funds from DOE. Consultant must administer and monitor all such Subcontracts, or other commitments it enters into under this Agreement in accordance with the applicable federal requirements including but not limited to cost principles and the applicable federal administrative requirements.

Compliance with the following Federal Provisions, will be required:

1. *Equal Employment Opportunity*—Compliance with E.O. 11246, "Equal Employment Opportunity," as amended by E.O. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor" is required.

2. Copeland “Anti-Kickback” Act (18 U.S.C. 874 and 40 U.S.C. 276c) – Consultant’s agreement, subcontracts and sub grants in excess of \$2,000 for construction or repair awarded by recipients and sub recipients shall include a provision for the compliance with the Copeland “Anti-Kickback” Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR part 3, “Architects and Consultants 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 Consultant or sub recipient shall 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 is otherwise entitled. The recipient shall report all suspected or reported violations to the Federal awarding agency.
3. *Davis-Bacon Act, as amended (40 U.S.C. 276a to a-7)*—When required by Federal program legislation, all construction contracts awarded by the recipients and sub recipients of more than \$2000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) and as supplemented by Department of Labor regulations (29 CFR part 5, “Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction”). Under this Act, Consultants shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, Consultants shall be required to pay wages not less than once a week. The recipient shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The recipient shall report all suspected or reported violations to the Federal awarding agency.
4. *Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333)*—Where applicable, all contracts awarded by recipients in excess of \$2000 for construction contracts and in excess of \$2500 for other contracts that involve the employment of mechanics or laborers shall include a provision for compliance with sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), as supplemented by Department of Labor regulations (29 CFR part 5). Under section 102 of the Act, each Consultant shall 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  $1\frac{1}{2}$  times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall 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.
5. *Rights to Inventions Made Under a Contract or Agreement*—Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient 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.
6. *Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.)*, as amended—Contracts and sub grants of amounts in excess of \$100,000 shall contain a provision that requires the recipient to agree to Compliance with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.). Violations shall be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

7. *Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)*— Consultants who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal 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. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.
8. *Debarment and Suspension (E.O.s 12549 and 12689)*— Contract awards that exceed the small purchase threshold and certain other contract awards shall not be made to parties listed on the nonprocurement portion of the General Services Administration's List of parties Excluded from Federal Procurement or Nonprocurement Programs in accordance with E.O.s 12549 and 12689, "Debarment and Suspension." This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and Consultants declared ineligible under statutory or regulatory authority other than E.O. 12549. Consultants with awards that exceed the small purchase threshold shall provide the required certification regarding its exclusion status and that of its principals.
9. Compliance with applicable provisions national policies prohibiting discrimination: Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d, et seq.), as implemented by 10 CFR Part 1040; Executive Order 11246 [3 CFR, 1964 1965 Comp., p. 339], as implemented by Department of Labor regulations at 41 CFR Part 60; Title IX of the Education Amendments of 1972 (20 U.S.C. 1681, et seq.); Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.), as implemented by Department of Health and Human Services regulations at 45 CFR part 90; Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as implemented by Department of Justice regulations at 28 CFR Part 41 ; The Architectural Barriers Act of 1968 (42 U.S.C. 4151, et seq.).
10. Compliance with applicable provisions of the following national policies concerning live organisms: For human subjects, the Common Federal Policy for the Protection of Human Subjects, 10 CFR Part 745; 10 C.F.R. Part 745; 10 C.F.R. Part 600, App. A; Uniform Relocation Assistance and Land Acquisition Policies Act, 42 U.S.C. § 4601 et seq.; 49 C.F.R. Part 24; Trafficking Victims Protection Act of 2000, 22 U.S.C. § 7101 et seq. (see particularly § 7104(g)); 2 C.F.R. Part 175; 10 C.F.R. Part 600, Appendix A; 10 C.F.R. § 602.10(c)
11. Compliance with the following environmental laws and regulations: The Clean Water Act 10 C.F.R. Part 600, Federal Water Pollution Control Act ("Clean Water Act"), 33 U.S.C. § 1251 et seq.; 33 U.S.C. § 1368; Exec. Order No. 11,738, 38 Fed. Reg. 25,161 (Sept. 10, 1973); The Clean Air Act 10 C.F.R. Part 600, Appendix A; Air Pollution Control Act ("Clean Air Act"), 42 U.S.C. § 7401 et seq; The Resource Conservation and Recovery Act (RCRA), 10 C.F.R. §§ 600.116 and 600.149; Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq. (see particularly § 6962), 10 C.F.R. Part 600, App. A; Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. § 4831(b).
12. Compliance with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271, et seq.).
13. Compliance with Protection of Wetlands and Floodplains, 10 C.F.R. Part 1022;
14. Compliance with Flood Disaster Protection Act of 1973, 42 U.S.C. § 4001 et seq.
15. Compliance with Coastal Zone Management Act, 16 U.S.C. § 1451 et seq.; 15 C.F.R. Part 930.
16. Compliance with Coastal Barriers Resource Act, 16 U.S.C. § 3501 et seq.
17. Compliance with the following lobbying laws, regulations, and policies: 10 C.F.R. Part 600, Appendix A; An Act to Prevent Pernicious Political Activities ("Hatch Act" of 1939), 5 U.S.C. §§

1501-1508, 7324-7326; 10 C.F.R. Part 601; 31 U.S.C. § 1352.

18. Compliance with the following health and safety laws, regulations, policies, and requirements: The Public Health Service Act 10 C.F.R. Part 600, Appendix A; Title XIV, Public Health Service Act, 42 U.S.C. § 300f et seq; 10 C.F.R. Part 600, Appendix A; Drug Abuse Office and Treatment Act, 42 U.S.C. § 290dd; Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, 42 U.S.C. § 290dd-1; Construction Work Hours and Safety Standards Act, 40 U.S.C. §3701 et seq.; 10 C.F.R. § 602.10(b); NIH Guidelines for Research Involving Recombinant DNA Molecules.
19. Compliance with the following domestic preference laws, regulations, and policies: 10 C.F.R. Part 600, Appendix A; Cargo Preference Act, 46 U.S.C. § 55305; 46 C.F.R. § 381.7; 10 C.F.R. Part 600, Appendix A; International Air Transportation Fair Competitive Practices Act (“Fly America Act”), 49 U.S.C. § 40118.
20. Compliance with the following Scope of Services management laws, regulations, and policies: following Scope of Services management laws, regulations, and policies: 10 C.F.R. Part 600, Appendix A; 31 U.S.C. § 3711; 10 C.F.R. Part 600, Appendix A; Single Audit Act, 31 U.S.C. § 7501 et seq; 10 C.F.R. § 600.31; 10 C.F.R. Part 733; 10 C.F.R. §§ 600.25 & 600.113; 2 C.F.R. Parts 180 & 901 (see particularly Subpart C Responsibilities of Participants” within each section); Paperwork Reduction Act, 44 U.S.C. § 3501 et seq; 2 C.F.R. Part 25.
21. Compliance with the following educational and cultural laws, regulations, and policies: 10 C.F.R. Part 600, Appendix A; Indian Self-Determination and Education Act, 25 U.S.C. § 450 et seq. (see particularly § 450e(b)).
22. Make a good faith effort to comply with the following policies: 10 C.F.R. Part 600, Appendix A; Exec. Order No. 12,138, 44 Fed. Reg. 29,637 (May 18, 1979) (“Creating a National Women’s Business Enterprise Policy and Prescribing Arrangements for Developing, Coordinating and Implementing a National Program for Women’s Business Enterprise”); 10 C.F.R. § 600.306; Metric Conversion Act of 1975, 15 U.S.C. § 205a et seq.; Exec. Order No. 12,770, 56 Fed. Reg. 35,801 (July 29, 1991) (“Metric Usage in Federal Government Programs”)
23. Compliance with applicable provisions of the following, national policies: Nondiscrimination in Federally Assisted Programs, 10 CFR part 1040 (45 FR 40514, June 13, 1980), as proposed to be amended by 46 FR 49546 (October 6, 1981). Nondiscrimination Provisions in Federally Assisted Construction Contracts, Part III of Executive Order 11246 (September 24, 1965), 3 CFR 1964—65 Comp., p. 345.
24. Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended (42 U.S.C. 4581).
25. Drug Abuse Office and Treatment Act of 1972, as amended (21 U.S.C. 1174). Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151 et seq.).
26. National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.), 40 CFR part 1500, as implemented by (45 FR 20694, March 28, 1980).
27. Sec. 306, Clean Air Act, as amended (42 U.S.C. 7606c).
28. Sec. 508, Federal Water Pollution Control Act of 1972 (33 U.S.C. 1251 et seq.); Executive Order 11738, September 12, 1973.
29. Title XIV, Public Health Service Act, as amended (42 U.S.C. 300f—et seq.).
30. Sec. 102(a), Flood Disaster Protection Act of 1973 (Pub. L. 93-234, 87 Stat. 975). 10 CFR part 1022, “Protection of Wetlands and Floodplains.”
31. Uniform Relocation Assistance and Land Acquisition Policies Act of 1970 (42 U.S.C. 4601 et



*seq.*).

32. Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1451 *et seq.*) (15 CFR part 930).
33. Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). Fish and Wildlife Coordination Act (16 U.S.C. 661 *et seq.*).
34. Sec. 106, National Historic Preservation Act of 1966, as amended (16 U.S.C. 470f); Executive Order 11593, "Protection and Enhancement of the Cultural Environment," May 13, 1971, 3 CFR 1971 Comp., p. 154; Archaeological and Historic Preservation Act of 1966 (16 U.S.C. 469 *et seq.*); Protection of Historic and Cultural Properties, 36 CFR part 800.
35. Wild and Scenic Rivers Act of 1968, as amended (16 U.S.C. 1271 *et seq.*). Protection of Human Subjects, 10 CFR part 745.
36. Federal Laboratory Animal Welfare Act (7 U.S.C. 2131 *et seq.*) (9 CFR parts 1, 2, and 3). Lead-Based Paint Prohibition (42 U.S.C. 4831(b)).
37. Sec. 7(b), Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)). Cargo Preference Act of 1954 (46 U.S.C. 1241(b)) (46 CFR §381.7).
38. International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 1517). Executive Order 12138, "Creating a National Women's Business Enterprise Policy and Prescribing Arrangements for Developing, Coordinating, and Implementing a National Program for Women's Business Enterprise," (May 18, 1979) 3 CFR 1979 Comp., p. 393.
39. Sec. 403(b), Power Plant and Industrial Fuel Use Act of 1978, (42 U.S.C. 8373(b)); Executive Order 12185 (December 17, 1979, 3 CFR 1979 Comp., p. 474).
40. Administrative and Fiscal Policy Requirements The Hatch Act (5 U.S.C. 1501-1508).
41. Federal Reports Act, as amended by the Paperwork Reduction Act of 1980, Pub. L. 96-511 (44 U.S.C. 3501 *et seq.*).
42. OMB Circular A-111, Jointly Funded Assistance to State and Local Governments and Nonprofit Organizations—Policies and Procedures.
43. Federal Claims Collection Act of 1966, Pub. L. 89-508, 89 Stat. 309 (31 U.S.C. 951 *et seq.*). OMB Circular A-88, Coordinating Indirect Cost Rates and Audit at Educational Institutions. OMB Circular A-73, Audit of Federal Operations and Programs.
44. Single Audit Act of 1984, Pub. L. 98-502.
45. OMB Circular A-128, Audits of State and Local Governments. [47 FR 44108, Oct. 5, 1982, as amended at 50 FR 42361, Oct. 18, 1985; 51 FR 4297, Feb. 4, 1986]

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.

Contractor agrees to comply with all safety requirements and policies of OSU that may from time to time be applicable to the Test Site and/or the work. Notwithstanding the forgoing, the Parties understand and agree that Contractor shall be solely responsible for the performance of and covenants to perform all work in compliance with the provisions of any Permit and Right of Entry issued for the Test Site.

**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>.

**7. GENERAL TERMS AND CONDITIONS:**

**A. ORDER OF PRECEDENCE.**

In the event of a conflict, all the terms and conditions of this Contract, its attachments, 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: [Contract No.] Contract Administrator  
644 SW 13<sup>th</sup> Street  
Corvallis, OR 97333  
Telephone: (541) 737-4261  
Fax: (541) 737-2170

and:

OSU Departmental Administrator  
[Name]  
[Title]  
[Address]  
[City, State, Zip]  
Telephone: [Phone Number]  
Fax: [Fax Number]

E-mail: [pacs@oregonstate.edu](mailto:pacs@oregonstate.edu)

E-mail: [E-Mail Address]

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. (OPTIONAL CLAUSE) 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. *(OPTIONAL CLAUSE)* ORIGINAL WORKS.

All inventions, discoveries, work of authorship, trade secrets or other tangible or intangible items and intellectual property rights created by Contractor pursuant to this Contract, including derivative works and compilations, together the "Work Product", and whether or not such Work Product is considered a work made for hire or an employment to invent, shall be the exclusive property of OSU. OSU and Contractor agree that such original works of authorship are "work made for hire" of which OSU is the author within the meaning of the United States Copyright Act. Contractor hereby irrevocably assigns to OSU any and all of its rights, title, and interest in all original Work Product created pursuant to this Contract, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. Upon OSU's reasonable request, Contractor shall execute such further documents and instruments necessary to fully vest such rights in OSU. Contractor forever waives any and all rights relating to original Work Product created pursuant to this Contract, including without limitation, any and all rights arising under 17 USC §106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.

In the event that Work Product created by Contractor under this Contract is a derivative work based on Contractor intellectual property, or is a compilation that includes Contractor intellectual property, Contractor hereby grants to OSU an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the pre-existing elements of the Contractor intellectual property employed in the Work Product, and to authorize others to do the same on OSU's behalf.

In the event that Work Product created by Contractor under this Contract is a derivative work based on third party intellectual property, or is a compilation that includes third party intellectual property, Contractor shall secure on OSU's behalf and in the name of OSU an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the pre-existing elements of the third party intellectual property employed in the Work Product, and to authorize others to do the same on OSU's behalf.

O. 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.

P. 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.

Q. 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.

R. 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.

**8. 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:**

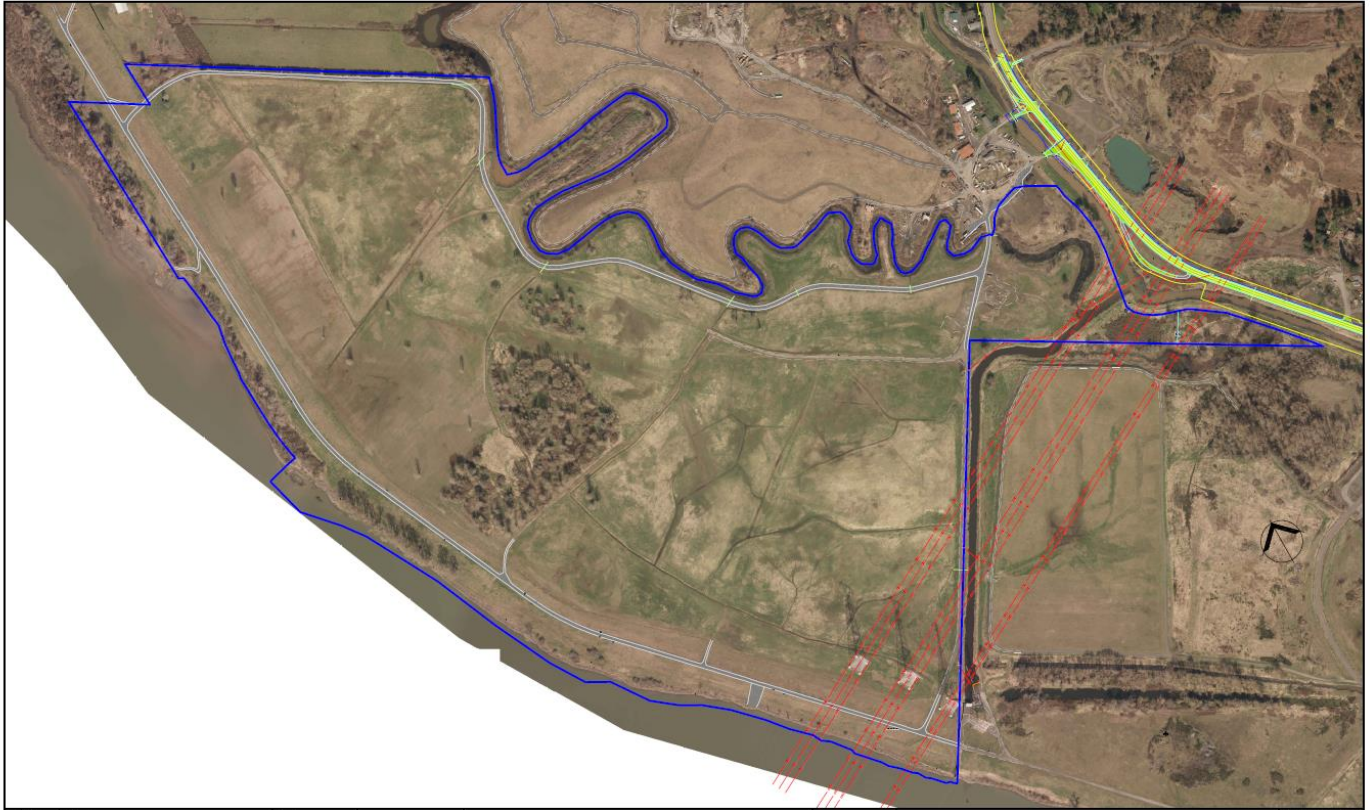
Signature: \_\_\_\_\_

Date: \_\_\_\_\_

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

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

**ATTACHMENT B  
TEST SITE IMAGE**



REV	DATE	REVISION	SCALE	0	1"		<b>WASHINGTON'S WORKING PORT</b>	<b>BARLOW POINT SITE MAP</b>	DRAWING NO.:	REV:
---	---	---	FILE NAME						<b>G1</b>	--
---	---	---	PROJECT NO.:	IF THIS SCALE IS NOT TO SARASON DESIGN, ADJUST ACCORDINGLY.				FEET NO.:		
---	---	---	DATE					<b>1</b>	OF 1	

**ATTACHMENT C**  
**Port of Longview Right of Way Permit (Sample)**

<b>OREGON STATE UNIVERSITY (“Permittee”)</b> A312 Ker Administration Building Corvallis, OR 97331-2140 Attention: Phone: Email:	<b>PORT OF LONGVIEW (“Port”)</b> 10 Port Way Longview, WA 98632 Attn: Phone: Email:
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**RECITALS**

1. The Port is the owner of certain real property located at 4691 Mt. Solo Road (“Barlow Point”), in the City of Longview, WA 98632, as described in Section 3 and in Exhibit A, attached hereto (“Premises”).
2. The Port and Permittee desire to enter into a Permit and Right of Entry (“Permit”) for the use of the Premises for the purpose of conducting research into the Cascadia Subduction Zone and the earthquake threat to the Pacific Northwest.
3. The Port believes that use of the Premises for conducting a study will assist in the larger mission of understanding the seismic risk facing Washington and the Pacific Northwest.

**PERMIT**

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

**1. RECITALS**

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

**2. TERM**

The term of this Permit shall commence and be binding upon the Port and Permittee effective xx/xx/2019 (“Effective Date”) and terminated on xx/xx/2019, unless otherwise terminated pursuant to the terms of this Permit.

**3. 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 is shown on Exhibit A, attached hereto.

**4. PERMITTED USE**

This Permit authorizes Permittee and Permittee’s employees, officers, members, partners, directors, agents, contractors, subcontractors, consultants, customers, licenses, or invitees (“Permittee’s Representatives”) to enter upon the Premises to conduct research activities as described in the Scope of Work (as defined in Section 5.4), 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 8.1.4) 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.

**5. CONDITIONS**

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

**5.1. Access to Premises; Port Contact for On Site Questions**

Permittee shall use the driveway located at 4691 Mt. Solo Road as shown on Exhibit A as the ingress and egress route for access to and from the Premises. Permittee shall contact Randy Sundberg at (360) 431-9058, with any questions pertaining to access or any other on-site issues.

**5.2. Utilities**



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

### **5.3. 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.

### **5.4. Contractor and Scope of Work**

Permittee's scope of work for the Permitted Uses under this Permit shall be the Scope of Work identified in Exhibit B, attached hereto. The Scope of Work shall include a schedule for the planned work and a map showing the location of all proposed surface and subsurface work. Concurrently with the Scope of Work, Permittee will also notify the Port of the name(s) of Permittee's Representatives that will complete the Permitted Uses based on the Scope of Work, as well as providing written assurances from Permittee's Representatives that they will not create a potential conflict with respect to other work performed by any contractors for the Port, or tenants of adjacent Port-owned properties.

### **5.5. 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, except as otherwise specifically authorized in writing by the Port. Unless otherwise specifically authorized by the Scope of Work, Permittee shall not store any vehicles or equipment on the Premises.

### **5.6. Notice Required for Certain Activities**

If applicable, Permittee shall, not less than seven (7) days prior to commencing any activities that have the potential to impact any tenant on property adjacent to the Premises, specifically including but not limited to blasting, shall provide written notice to the Port. The notice provided under this Section 5.6 shall specify the nature of the activity, the time the activity is anticipated to commence, and the anticipated duration of the activity. Permittee shall comply with the Port's instructions and adjust the time and duration of the activity as reasonably requested by the Port in order to minimize impacts to adjacent properties.

### **5.7. 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.

## **6. CONSIDERATION**

No permit fee is required under the terms of this Permit. Consideration shall be in the form of the study reports and research provided to the Port

## **7. 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.

## **8. ENVIRONMENTAL MANAGEMENT AND COMPLIANCE**

### **8.1. Definitions**

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

**8.1.1.** "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.

**8.1.2.** "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 8.1.3); or (b) any violation of the environmental provisions of this Permit. Environmental Costs shall also include the costs of: (i) immediate response, complete remediation and restoration actions; (ii) Natural Resources Damage (as defined in Section 8.1.6); (iii) self-help pursuant to Section 8.9; (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 8.1.4)

- 8.1.3. "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.
- 8.1.4. "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.
- 8.1.5. "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.
- 8.1.6. "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.

## 8.2. 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.

## 8.3. 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.

## 8.4. Permittee's Liability

### 8.4.1. Hazardous Substance Releases

Except as provided in Section 8.4.4, 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.

### 8.4.2. 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 Washington law.

### 8.4.3. 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.

### 8.4.4. 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.

#### **8.4.5. 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.

#### **8.5. 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.

#### **8.6. 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:

#### **8.7. 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.

#### **8.8. 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 Washington State Department of Ecology (Ecology) of any investigatory, containment, remediation and removal activities and/or require Permittee to seek a statement from Ecology of "No Further Action."

#### **8.9. 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 8 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.

### **9. INDEMNITY; REIMBURSEMENT FOR DAMAGE**

Subject to the limitations of the Washington Tort Claims Act, Permittee agrees to defend (using legal counsel acceptable to the Port), indemnify, and hold harmless, within the limits of and subject to the restrictions in the Tort Claims Act, 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 or Permittee's Representatives; (b) any use, occupation, management or control of the Premises by Permittee or Permittee's Representatives, 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 or Permittee's Representatives 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 8, 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.

## 10. 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 constructed 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.

## 11. INSURANCE

At all times during this Permit, Permittee and its contractor(s) shall provide and maintain the following types of coverage set out below in this Article 11.

- 11.1. **General Liability Insurance.** Permittee shall obtain, at Permittee's expense, and keep in effect during the term of this Agreement, General Liability Insurance, covering liability for personal injury, bodily injury, death, or damage to property. Such coverage shall have minimum limits of \$1,000,000 per occurrence and \$2,000,000 aggregate. As it relates to the Permittee's contractor who will be performing blasting, the General Liability Policy exclusion for the explosion, collapse and underground ("XCU") hazards shall be removed by endorsement.
- 11.2. **Automobile Liability Insurance.** Permittee shall obtain, at Permittee's expense, and keep in effect during the term of this Agreement, Automobile Liability Insurance insuring against liability for bodily injury, death, or damage to property, arising from the use, loading and unloading of Permittee'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, Permittee's 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.
- 11.3. **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".
- 11.4. **Workers' Compensation.** 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.
- 11.5. **Additional Insured.** All liability insurance coverages maintained under this Agreement, with the exception of Workers' Compensation, shall be endorsed to name Port of Longview, its employees and agents as additional insureds.
- 11.6. **Certificates of Insurance.** As evidence of the insurance coverages required by this Agreement, Certificate(s) of Insurance and any applicable endorsements will be provided, upon request. 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.
- 11.7. **Subcontractors.** If Permittee enters into subcontracts for any services to be provided by Permittee to Grantor, Permittee shall require that all subcontractors maintain insurance meeting all the requirements noted above.

## 12. 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 restore the Premises as required in Section 13. 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.

### 12.1. 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.

## 1. 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.

## **2. 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 the Permittee's rights granted by this Permit. Any attempted assignment or transfer shall be void.

## **3. GENERAL PROVISIONS**

### **15.1. Attorney Fees**

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 bylaw. 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.

### **15.2. Compliance with Law**

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

### **15.3. Counterparts**

This Permit may be executed in counterparts, each of which shall be deemed an original and together shall constitute one instrument, it being understood that all parties need not sign the same counterparts. Copies of signature sent by electronic transmission in "portable document format" (".pdf") form, facsimile or otherwise shall be treated as original signatures for all purposes.

### **15.4. Entire Agreement**

This Permit, including all exhibits, 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.

### **15.5. Exhibits Incorporated by Reference**

Any and all exhibits included hereto are incorporated by reference in this Agreement for all purposes.

### **15.6. Governing Law; Venue**

This Permit shall be governed and constructed according to laws of the State of Washington, without regard to its choice of law provisions. Venue for any suit, action or other proceeding shall be in the Cowlitz County Superior Court of the State of Washington.

### **15.7. Installation or Construction of Improvements**

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

### **15.8. Limitation of 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.

### **15.9. Notice**

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:

to the Port:

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 Services, postage prepaid, return receipt requested, certified mail or, if delivered by hand, then the actual date of hand delivery.

**15.10. 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.

**15.11. Permit Subject to Agreements with the United States**

This Permit shall be subject to the provisions of any existing or future agreements between the Port and the United States relative to the operation or maintenance of the Port, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development of the Port.

**15.12. Permit Subject to Port Priority**

Permittee's right to use the Premises for the purposes as set forth in this Permit shall be secondary to and subordinate to the needs of the Port. Permittee acknowledges that any interference with the use of the Premises will be caused by Port operations. Permittee hereby waives any and all rights or remedies against the Port arising out of any noise, vibration, fumes, debris, and other interference that is caused by the operation of the Port. The Port specifically reserves for itself, and for the public, a right of use of the Premises.

**15.13. Port's Obligation to Operate the Port, Terminate Permit Early**

Permittee acknowledges the Port's responsibility to the public to prudently operate, maintain and develop the Port's facilities. In executing this responsibility, the Port shall have the right to undertake developments, renewals, and replacements which the Port deems prudent or necessary. Such right shall include the right of the Port to terminate this Permit early in the event that Permittee's possession of the Premises conflicts with, limits or interferes with proposed Port development, renewal, replacement or expansion of Port properties or operation of the Port, subject to the notice requirements contained in Section 15.9.

**15.14. 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.

**15.15. 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.

**15.16. 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.

**15.17. 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.

*[Signature Page Follows]*

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

**PORT OF LONGVIEW**

**PERMITTEE**

\_\_\_\_\_  
Name, Title  
Chief Executive Officer

\_\_\_\_\_  
Name, Title

ATTEST:

ATTEST:

\_\_\_\_\_  
Port of Longview, Executive Assistant

\_\_\_\_\_  
Name, Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**ATTACHMENT D  
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 Attachments 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**

If Proposer is awarded a contract from this Request for Proposal, Proposer hereby (check one)

- agrees
- disagrees

to offer the resulting contractual terms and prices to other public institutions.

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



**ATTACHMENT E  
REFERENCES**

**REFERENCE 1**

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

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**REFERENCE 2**

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

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**REFERENCE 3**

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

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**ATTACHMENT F  
PRICING SHEET**

The following pricing sheet is a required submittal. Proposer may use another format, provided all necessary pricing information is included.

**Scope Item 1**

**Using Attachment D 'Price Sheet' or the equivalent, provide a quote:** assuming spoils must be hauled away and disposed.

**Scope Item 2**

**Using Attachment D 'Price Sheet' or the equivalent, provide two quotes:** assuming spoils must be hauled away and disposed.

Example Pricing Submittal Sheet

<u>Scope Item</u>	<u># of Units</u>	<u>Units (per day, per hr., etc.)</u>	<u>Total (Fixed Price)</u>
Scope Item #1			
Soil Disposal			
Travel			
Permitting			
Total (Item 1)			
Scope Item #2			
Soil Disposal			
Travel			
Permitting			
Total (Item 2)			
Total (Items 1 and 2)			

**ATTACHMENT 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.'

<b><u>Requirement</u></b>	<b><u>Yes or No</u></b>
Contractor meets the following requirement: Five years experience drilling very loose to dense and very soft to hard soils with a high groundwater table using mud-rotary methods.	
Contractor meets the following requirement: Five years experience drilling very loose to dense and very soft to hard soils with a high groundwater table using hollow stem auger drilling methods.	
Contractor meets the following requirement: Five years experience performing split-spoon sampling, Standard Penetration Testing ("SPT"), and undisturbed soil sampling using Shelby tubes and Osterberg-type piston samplers.	
Contractor meets the following requirement: Five years experience installing grouted casings, similar to monitoring wells, inclinometer installations, downhole suspension logging installations, or similar. If similar, please describe:	

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

Proposer Signature: \_\_\_\_\_

Date: \_\_\_\_\_