

CONTRACT NO. 1158
This number must appear
on all invoices

PORT OF PORTLAND
PERSONAL SERVICES CONTRACT

For

Energy Savings Performance Contracting Technical Energy Audit Services

Parties: Port of Portland ("Port")
P.O. Box 3529
Portland, Oregon 97208

McKinstry Essention, LLC ("Provider")
5005 3rd Ave S
Seattle, WA 98134

RECITALS

- A. The Port issued Request for Proposals No. 2017-7473 (the "RFP"), inviting proposals from experienced Providers for Energy Savings Performance Contracting Technical Energy Audit Services (the "Services").
- B. Provider submitted a written proposal in response to the RFP and the Port evaluated all proposals submitted in response to the RFP and selected Provider as a supplier of the Services
- C. The Port, on behalf of itself and all states, local governments, school districts, and higher education institutions in the United States of America, and other government agencies and nonprofit organizations (herein "Participating Public Agencies"), competitively solicited and awarded a Personal Services Contract (the "Contract") to the Provider. The Port has designated U.S. Communities Government Purchasing Alliance as the administrative and marketing conduit for the distribution of the Contract to Participating Public Agencies.
- D. The Services expected to be provided under this Contract will be Preliminary and Technical Energy Audit Services in order to determine the feasibility of entering into an Energy Savings Performance Contract to provide for installation and implementation of energy, demand, water, and operational saving measures at Port facilities.

AGREEMENT

1. TERM

The term of this Contract shall commence on December 1, 2017 or the date that this Contract is fully executed by both parties, whichever is later, and shall expire on December 3, 2023, unless sooner terminated under the provisions of this Contract. The Port shall have the option, exercisable sequentially and unilaterally by the Port, in its sole discretion, to extend the term of this Contract for an additional five years. The Port may exercise an option to extend the term by giving Provider written notice no later than fourteen calendar days prior to the then-current expiration date.

Expiration of the Contract term does not excuse Provider's duty to provide all Services relating to work initiated prior to the expiration date, and the completion of those Services shall be subject to the terms of this Contract.

2. SERVICES

2.1 Generally

The nature, scope, and performance specifications of the Services and the required specifications for Provider's performance under this Contract are set forth on the attached Schedule 2.1, General Scope of Services.

2.2 Task Orders

Detailed statements of discrete Services, tasks and the required time of performance for such Services will be set forth by individual Task Orders. Certain Task Order requirements follow:

2.2.1 Form; Content

Task Orders must be in writing and must be agreed upon and executed by the parties before the applicable Services commence. Each Task Order must include, without limitation: (a) a detailed statement of the scope of work; (b) a performance schedule stating applicable dates and time periods; (c) a detailed, line-item budget clearly stating labor and equipment costs (by classifications) and other charges consistent with this Contract's compensation terms; and (d) a list of Provider's staff that will be working on the Task Order work scope. Task Orders must be completed in substantially the form set forth on the attached Schedule 2.2.1. The total compensation under any single Task Order shall not exceed \$250,000 without a written Task Order amendment signed by authorized representatives of both parties.

2.2.2 Execution Process

Task Orders must be signed by all Provider representatives as required on the Task Order form before being sent to the Port's Project Manager for completion, approval, and Port signatures.

2.2.3 Deviations

Provider shall not deviate from a Task Order's scope, budget, or schedule without a written Task Order amendment signed by both parties.

2.3 Federally-Funded Services

A Task Order shall indicate whether the assigned task is to be funded in part by the federal government. If the task is to be funded in part by the federal government, additional contract provisions will apply, as required by the federal government. Those additional contract provisions may include, but not be limited to, a requirement to pay U.S. Department of Labor prevailing wages for Services performed under the Task Order. All additional contract provisions resulting from federal funding will be set forth in Schedule 2.3, as they relate to the Services performed under that Task Order.

2.4 Representations and Warranties

In addition to the other representations and warranties set forth in this Contract, Provider represents and warrants to the Port that: (a) the Services shall be performed in accordance with the same professional skill, care, diligence, standards, and generally accepted professional practices as other professionals performing the same or similar services in the same or similar localities under similar

conditions; (b) Provider has reviewed and is familiar with all federal, state, and local laws, regulations, executive orders, and ordinances applicable to the performance of the Services; (c) Provider will comply with all such laws, regulations, executive orders, and ordinances; and (d) Provider's employees are trained in the proper safety procedures for the performance of the Services.

2.5 Time of Essence

Provider shall at all times perform the Services diligently and without delay and shall punctually fulfill all Contract requirements. Time is of the essence with respect to all dates and time periods in this Contract and in any Task Order.

2.6 Written Reports

Provider's written reports shall be free from defects in factual statements, logic, grammar, syntax, punctuation, and spelling. Such defects undermine the purposes of reports by bringing into question the competence of the authors and reflect adversely on the Port when Provider's reports are made public. Provider shall correct such errors at no cost to the Port. In-text citations must be provided for the sources of facts upon which opinions or analyses presented in written reports are based.

2.7 Deviation from Means and Methods

As between the Port and Provider, Provider shall be solely responsible for the means and methods employed by Provider and its subcontractors, if any, in performing the Services. Notwithstanding the fact that Provider is solely responsible for such means and methods, Provider shall obtain the Port's prior consent before substantially deviating from any means, methods, or procedures which may be set forth in this Contract or otherwise communicated to the Port by Provider as Provider's intended course of action in performing the Services.

2.8 Services Performed by Subcontractors

Provider shall be responsible for the quality of the work performed by any subcontractors employed by Provider to perform any part of the Services, and shall ensure that Provider's subcontractors comply with the terms and conditions of this Contract. For purposes of this Contract, the term "subcontractor" includes but is not limited to a firm with which Provider contracts for services necessary or convenient for Provider's performance of the Services.

2.9 Duty to Inform

Provider shall give the Port prompt written notice if, at any time during the term of this Contract or the performance of the Services, Provider becomes aware of any actual or potential problems, faults, or defects in the Services, any nonconformance with this Contract, or any violation of any federal, state, or local law, rule, or regulation, or Provider has any objection to any decision or order made by the Port. Any delay or failure on the part of the Port to provide a written response to Provider shall constitute neither agreement with nor acquiescence of Provider's statement or claim and shall not constitute a waiver of any of the Port's rights.

3. COMPENSATION

3.1 Rates

The Port shall pay Provider for satisfactorily-completed Services at the rates set forth on the attached Schedule 3.1. If the rates to be charged under a Task Order are not set forth on Schedule 3.1 or a written modification thereto, a Task Order may establish the applicable rates. For Services paid at hourly rates, invoices must itemize hours billed in no greater than 30-minute increments,

rounding to the nearest 30-minute or smaller increment.

3.2 Prohibited Charges

The following charges are not compensable and the Port may reject, without liability, invoices containing such charges as not due or payable: (a) Services that have not been authorized under a valid, active Task Order; and (b) rates that are not reflected in the Contract (as amended) or in a written, fully-executed Task Order. The Port must agree in writing to all rate changes before an invoice is submitted containing the adjusted rate.

3.3 Expenses

The Port will reimburse Provider for all reasonable direct expenses actually incurred and necessary for the performance of Services, in accordance with the expense Reimbursement Guideline set forth on the attached Schedule 3.4 or as may otherwise be reasonably imposed by the Port by notice at any time. Any Provider expense which deviates from the expense reimbursement policies set forth in this Contract will not be reimbursed without prior written approval by the Port Project Manager.

3.4 Annual Rate Adjustments

Provider may request a rate adjustment no more frequently than annually for the ensuing one-year period beginning on an anniversary of the effective date ("Contract Year") to reflect actual increases in Provider's cost to perform the Services. Requests must be in writing and include backup documentation establishing the actual increases in cost. In no event shall the rate adjustment be more than the percentage change during the preceding Contract Year in the Consumer Price Index for All Urban Consumers (CPI-U), U.S. City Average, not seasonally adjusted, all items, published by the U.S. Department of Labor. Any request for a rate adjustment shall be submitted to the Port no less than thirty (30) calendar days prior to the end of the Contract Year, and adjustments shall be effective as of the beginning of the ensuing Contract Year.

3.5 Subcontractor Hourly Rates

3.5.1 Rate Discounts

Provider shall seek discounts from its subcontractors and shall pass through to the Port all discounts allowed to Provider by its subcontractors. The discounts shall be displayed on Provider's invoices and in Provider's reporting under Section 4.3.

3.5.2 Subcontractor Rate Management

If the Port is obligated by this Contract to reimburse Provider for work performed by a subcontractor based upon hourly rates charged by the subcontractor, those hourly rates are subject to all of the provisions of this Section 3.6. If an hourly rate for work performed by a particular individual employed by Provider or by a subcontractor is not specified by this Contract, the hourly rate for that individual shall be no higher than the lowest rate at which any client is charged for similar services by that individual and shall be subject to all other provisions of this Section 3.6. Provider shall ensure that its contracts with subcontractors relating to the Services include provisions implementing the requirements of this Section 3.6, including but not limited to a provision consistent with Section 3.10 establishing the Port's right to audit subcontractor records to resolve any questions regarding subcontractor rates. Provider shall ensure that its subcontractors with separate contracts directly with the Port for work outside the scope of this Contract charge

Provider for work under this Contract at rates no higher than the subcontractors charge the Port under those separate contracts.

3.5.3 Allowable Subcontract Administrative Costs

Provider may charge the Port at the hourly rates established by this Contract for time spent supervising subcontractors and administering approved subcontracts, for additional insurance premiums necessitated by approved subcontracts, and for other actual direct costs necessitated by approved subcontracts.

3.6 No Additional Charges, Add-on Fees, or Markups

Provider and subcontractors at all tiers shall be entitled to no additional charges, add-on fees (including communication fees, telephone fees based upon a percentage of labor hours, or safety program fees), or markups on any charges under this Contract, including but not limited to markups on subcontract charges at all tiers for goods, services, direct labor costs, or expenses.

3.7 Double-Charging Not Allowed

Provider may not double-charge by the hour for work that also is included in Provider's calculation of its overhead rate.

3.8 Payment of Claims by the Port

If Provider fails, neglects, or refuses to promptly pay any claim for labor or services furnished to Provider or a subcontractor by any person in connection with this Contract as the claim becomes due; the Port may pay the amount due on the claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due to Provider under this Contract. The Port's payment of a claim under this subsection shall not relieve Provider responsibility for such claim.

3.9 Audit Rights

In addition to the Port's audit rights under Section 13.2 below, the Port may audit the books and records of Provider and Provider's subcontractors pertaining to the Services upon reasonable notice at any time to verify Provider's compliance with this Section 3. If the Port determines that Provider or Provider's subcontractors were not in compliance with this Section 3, Provider shall reimburse the Port for any amounts overpaid by the Port plus interest on the amount of the overpayment at the rate of 1.5 percent per month from the time the Port made the overpayment to the time Provider reimburses the Port for the audit costs and the overpayment.

4. INVOICING, RELATED SUBMISSIONS

4.1 Invoice Submissions

Provider shall invoice the Port no more than frequently than once monthly, and each monthly invoice must be received at the Port no later than twenty (20) calendar days following the last day of the preceding calendar month. Provider shall submit invoices with all backup documentation, including but not limited to all documentation described in Section 4.2 below, to Accounts Payable, Port of Portland, P.O. Box 3529, Portland, Oregon 97208 or via email to portinvoices@portofportland.com.

4.2 Invoice Content; Information to be Included

4.2.1 Sample Invoice

A sample form of invoice intended as a guide for Provider is attached as Schedule 4.2.1 (the "Sample Invoice").

4.2.2 Information to be Included

Each of Provider's invoices shall include:

4.2.2.1 The Port-assigned Contract number and, if applicable, the Port-assigned Task Order number and the Task Order accounting information. Provider shall include content such as original budget amount, charges to date, current invoice amount and remaining budget information.

4.2.2.2 Copies of backup information for direct labor and direct expense costs, including copies of time sheets, equipment rental invoices, telephone charges, and similar expense charges allowed under the Expense Reimbursement Guideline.

4.2.2.3 A separate display of all charges by any subcontractor and copies of the subcontractor's backup documentation, including the subcontractor's summary letter, detailed time sheets, and invoices.

4.2.2.4 All information called for in the Sample Invoice that is not called for in this Section.

4.2.2.5 A statement confirming Provider's timely submission of subcontractor payment information and utilization data as required under Section 4.3.

4.3 Subcontractor Payment and Utilization Reporting

Provider shall report payment information and utilization data for subcontractors that perform any Services, using a Port-designated online reporting system. As of the effective date of this Contract, such system is accessible at: www.portofportland.dbesystem.com. Provider must log in to an account in the system in order to submit reporting information. Reporting information must be submitted at least once monthly, concurrent with Provider's invoice submission, or on such other frequency as the Port Project Manager (or his/her designee) may require. Provider must designate a representative to administer the reporting function.

4.4 Invoices Do Not Modify Contract Terms

Provisions on Provider's invoices that purport to modify or supplement the provisions of this Contract are void.

4.5 No Compensation for Preparation

The Port will not compensate Provider for time spent preparing or submitting invoices or invoice supporting materials.

5. PAYMENT; NO WAIVER

5.1 Payment

The Port will pay Provider all undisputed amounts within thirty (30) days after the Port's receipt of Provider's properly-completed invoice, or any shorter period required by law. The Port is not

obligated to pay an invoice until all required supporting materials are submitted. Upon the Port's request Provider will correct and re-issue invoices submitted to the Port that do not comply with this Contract's invoicing requirements. If corrections are required, the Port will transmit payment to Provider within forty five (45) days after the Port's receipt of Provider's corrected invoice, or any shorter period required by law.

5.2 No Waiver

By making monthly payments or final payment, the Port does not waive any of its rights to recover from Provider any damages to which the Port may be entitled under this Contract or at common law for failure to perform precisely in accordance with this Contract, regardless of whether the basis for the damages is known or unknown to the Port at the time of payment.

6. NO MINIMUM AMOUNT OF WORK GUARANTEED; SEPARATE CONTRACT ENERGY SAVINGS PERFORMANCE PROJECT

The Port does not represent or warrant that Provider will be assigned any particular amount of work under this Contract. Provider acknowledges that the Port has no obligation to issue or enter into any Task Orders.

Should the resulting work demonstrate that energy, demand, water and operational saving measures are determined to be feasible, and if the amount of savings can be reasonably sufficient to cover all costs, as defined by the Port, associated with an Energy Savings Performance Contracting project, the Port and Provider may negotiate a separate contract for those services, to include design, construction (e.g. design/build), install, implement, maintain and measure and verify savings from such energy, water and operating saving measures. The form of the contract shall be negotiated between the parties and shall incorporate all State and local requirements for such work, and may include, without limitation, a requirement to provide performance and payment bonds, to pay prevailing wages, provide certified payroll reports, and provide a public works bond. The general form of the Energy Savings Performance Contract is not specified in this Contract, but may incorporate some or all of the provisions found in the U.S. Department of Energy's Model Energy Savings Performance Contract, found through the following link: <https://www.energy.gov/eere/slsc/downloads/model-energy-savings-performance-contract-schedules-and-exhibits>

7. PROVIDER IS INDEPENDENT CONTRACTOR

Provider is an independent contractor for all purposes and shall be entitled to no compensation other than the compensation expressly provided by this Contract. Neither, Provider nor any partner, director, officer, manager, member, employee, subcontractor, or agents of Provider will be deemed to be an employee of the Port. The Port will not withhold any taxes from any payments made to Provider, and Provider will be solely responsible for paying all applicable taxes arising out of or resulting from the performance of the Services, including but not limited to income, social security, worker's compensation, and employment insurance taxes. Provider represents, warrants, and covenants to the Port that, in the provision of the Services, Provider is customarily engaged in, and will continue to customarily engage in, an independently established business as described in ORS 670.600(3).

8. CONTRACT ADMINISTRATORS AND PROJECT MANAGERS; NOTICES

8.1 Contract Administrators

The Port's Contract Administrator for this Contract is Christine Moody, 503-415-6354, Christine.moody@portofportland.com. Provider's Contract Administrator is Justin Fallstrom, 206-832-8305, justinf@mckinstry.com. Each party shall notify the other of any change in the party's Contract Administrator.

8.2 Project Managers

Each Task Order shall designate a Port Project Manager. Each party shall notify the other of any change in the party's Project Manager.

8.3 Notices

All notices or other correspondence required or permitted by this Contract shall be in writing, and must be directed to both the Contract Administrator and the Project Manager for the party to whom the notices or correspondence is intended at the e-mail addresses set forth above (or any other address that a party may designate by notice to the other party, including a physical or post office box address). Upon the Port's request, copies of Provider's notices or other correspondence required or permitted by this Contract shall also be delivered to a designated recipient in the Port's Contracts and Procurement Department.

9. NO ASSIGNMENT

Provider may not assign any interest or delegate any obligation under this Contract without the Port's prior written consent. Any assignment or transfer attempted in violation of this Section 9 shall be void.

10. SUBCONTRACTING

10.1 Written Consent

Provider may not subcontract any part of the Services without the Port's prior written consent. The Port may give such consent by this Contract or a written modification thereto, by a Task Order or a written modification thereto, or by e-mail from the Port's Project Manager to Provider's Project Manager. Provider must identify proposed subcontractors to the Port by written notice and give the Port a reasonable time within which to object to the use of the identified subcontractor. Provider may not use a subcontractor to which the Port has objected. If the Port has not objected to a subcontractor within ten (10) business days after the Port's receipt of Provider's notification, the Port shall be deemed not to have objected to the proposed subcontractor. The Port shall not be obligated to pay for any Services performed by a subcontractor to which the Port has objected, or by a subcontractor of which the Port was not given written notification and to which the Port would have objected, had Provider given timely notice.

10.2 Port Review of Subcontractor Pricing

Provider shall allow, at the Port's request, the Port to review the pricing arrangement that would be established by any subcontract. The Port may disapprove a pricing arrangement that would result in a price that is not fair and reasonable under the circumstances.

11. CONFIDENTIALITY

11.1 Confidential Information

For purposes of this Contract, "confidential information" means all information related to the Port, the Services, the RFP, or this Contract that is or was received or accessed by Provider, whether before or during the term of this Contract, including but not limited to all communications between the Port and Provider relating to the Port, the Services, the RFP, or this Contract.

11.2 Use Restrictions

Provider will not use confidential information for any purpose without the Port's specific prior written authorization, except that Provider may use confidential information as may be necessary to perform the Services.

11.3 Confidentiality

Provider will not disclose confidential information to any person without the Port's specific prior written authorization, except that Provider may disclose confidential information: (a) on a need-to-know basis, to Provider's own staff and to the staff of any Port-approved subcontractors, who are directly involved with the performance of the Services and who are informed by Provider of the confidential nature of the confidential information and the obligations of Provider under this Contract; or (b) in accordance with a judicial or other governmental order, but only if Provider promptly notifies the Port of the order and complies with any applicable protective or similar order.

11.4 Sharing Information

Provider shall not share any information relating to the Services with any third party (such as a corporation or other business entity, service provider, governmental entity, or person) other than Provider's approved subcontractors. If information relating to the Services needs to be shared with another party, Provider shall provide that information to the Port for forwarding by the Port. The Port may authorize deviation from the foregoing requirements on a case-by-case basis, but Provider shall not deviate from those requirements without the Port's prior written authorization. Provider shall not communicate with representatives of any of the news media regarding Services; any such communications shall be exclusively by the Port. Provider shall refer any public records requests received by Provider or a subcontractor to the Port for response.

11.5 Subcontractors and Employees

Provider shall make diligent efforts and shall take all reasonably necessary steps to ensure that the confidentiality required by this Contract is protected by Provider's subcontractors and the employees of Provider and Provider's subcontractors.

11.6 Notification

Provider will: (a) promptly notify the Port of any unauthorized use or disclosure of confidential information, or any other breach of this Section 11; and (b) assist the Port in every reasonable way to retrieve any confidential information that was used or disclosed by Provider or any of Provider's staff or the staff of any subcontractor without the Port's specific prior written authorization and to mitigate the harm caused by the unauthorized use or disclosure.

11.7 Exceptions

Provider will not breach Section 11.2 or Section 11.3 by using or disclosing Confidential Information if Provider demonstrates that the information used or disclosed is generally available to the public other than as a result of a disclosure by Provider or any of Provider's staff or the staff of any subcontractor.

11.8 Return of Confidential Information

Upon the Port's request, or upon the expiration or termination of this Contract, Provider will promptly return to the Port all materials furnished by the Port containing confidential information, together with all copies and summaries of confidential information in the possession or under the control of Provider.

12. INTELLECTUAL PROPERTY; OWNERSHIP OF WORK; ELECTRONIC VERSION

12.1 Definition

For the purposes of this Section 12, a "Work" includes, but is not limited to, any document, drawing, paper, computer program, data, photograph, or image created by Provider or Provider's employees, subcontractors, or agents in connection with the Services.

12.2 Work Made for Hire; Assignment of Intellectual Property Rights

If Provider is required by this Contract to deliver a particular Work to the Port, the Work shall be deemed to be specially ordered and commissioned for use by the Port, and a work made for hire for copyright purposes to the extent it qualifies as such under applicable law. Whether or not the Work qualifies as a work made for hire, Provider assigns to the Port Provider's entire interest in the Work, including but not limited to all copyrights, trade secret rights, and other intellectual and proprietary rights in the Work. If Provider has any rights to the Work that cannot be assigned to the Port, Provider waives any right to assert such rights. At the request of the Port, Provider will sign such documents and take such actions that the Port deems reasonably necessary to perfect, protect, and evidence the Port's rights in the Work. Provider shall have a nonexclusive license to use the Work for purposes consistent with the Port's mission and operations.

12.3 Formats for Work

If Provider is required by this Contract to deliver a particular Work to the Port, Provider shall simultaneously deliver a copy of the Work in an electronic format acceptable to the Port. Provider shall verify the acceptable format prior to delivery. The data record layout of incoming data shall be dictated solely by the Port in order to meet Port requirements for standard data exchange. The Port reserves the right to change the data record layouts at any time. As of January 2016, the following are considered acceptable data record layout formats when doing business with the Port; however, it is Provider's responsibility to verify the specific requirements of the format required for a specific work product:

- The Port typically operates within one release of the most current Microsoft Office version. As of June 2017, the Port is running Office 2016; upgrades and implementation of service packs occur regularly, however, and Provider should verify appropriate format prior to submission, and should be prepared to have those formats change over the course of this Contact.

- When documents are drawings or aerial photos, the acceptable formats are adobe acrobat (.pdf), graphical formats (.jpg or .tif), or AutoCAD 2015 (.dwg). AutoCAD data must meet the Port CAD and BIM Standards. Exact version compatibility and acceptable versions should be verified with the Port prior to delivery.
- Tabled data is acceptable when delivered in MS Excel spreadsheet format (.xlsx).
- Data targeted for import purposes must conform to the specific database requirements pertaining to the particular data and system in question.
- Spatial or GIS data must meet the Port GIS Data Standards. These standards are updated frequently to meet local, regional, national and FAA requirements. Specific requirements for deliverables will be specified per contracted work and/or should be verified prior to delivery.
- Project schedules are accepted in MS Project format (.mpp). Verify current version in use with Port staff; in some instances, the Port may require project schedules in formats used by other project management solutions.

12.4 Inspection

The Port shall have the right, upon request, to inspect and copy any Work whatsoever, including but not limited to design documentation estimates, field notes, calculations, drafts, and Provider's internal notes and communications. The Port shall have a perpetual, nonexclusive, royalty-free license to copy and otherwise use any such Work for Port purposes. Provider shall provide access to any computer software or hardware in Provider's possession or under Provider's control that may be necessary to see or use a Work, provided that Provider may charge a reasonable fee for the use of the software or hardware if the use occurs more than five (5) years after the expiration or termination of this Contract.

12.5 Indemnification – Intellectual Property

Provider will indemnify, defend (using legal counsel acceptable to the Port), reimburse, and hold harmless the Port and the Port's commissioners, officers, employees, and agents for, from, and against all claims, damages, losses, liabilities, costs, and expenses of any nature whatsoever, including without limitation reasonable attorney's fees, accountant fees, paralegal fees, expert witness fees, and penalties resulting from, arising out of, or in any way connected with any claim that the Services or the Work infringes any copyright, patent, or trademark, constitutes a misappropriation of any trade secret, or violates any other intellectual or proprietary right of any person, but not to the extent that the claim results from or arises out of: (a) the Port's combination of the Services or the Work with any service or product not provided by Provider, where the infringement, misappropriation, or violation would not have occurred but for the combination; or (b) the Port's modification of the Services or the Work, where the infringement, misappropriation, or violation would not have occurred but for the modification.

12.6 Pre-Existing Intellectual Property

Nothing in this Section 12 shall be deemed to give the Port an ownership interest in any intellectual property or proprietary rights of Provider that were in existence prior to the effective date of this Contract ("Pre-Existing Intellectual Property Rights"); provided however that Provider grants to the Port a perpetual, royalty-free, worldwide, transferable license to use all Pre-Existing Intellectual Property Rights that are included in any Work.

13. RECORDS

13.1 Retention

Provider shall retain all books, documents, papers, and records that are directly pertinent to this Contract for at least three (3) years after the Port makes final payment on this Contract and all other pending matters are closed.

13.2 Audit

If requested by the Port, Provider shall produce any of those books, documents, papers, or records at Portland, Oregon or shall reimburse the Port for the cost of transportation, food, and lodging for the Port's employees or agents to inspect them at a site more than one hundred (100) air miles from Portland, Oregon and shall allow the Port, or any authorized representatives of the Port, to audit, examine, copy, take excerpts from, or transcribe any books, documents, papers, or records that are subject to the foregoing retention requirement. Records subject to audit under this subsection shall also include those records necessary to evaluate and verify direct and indirect costs as they may apply to costs associated with this Contract. In situations where Provider's records have been generated from computerized data, Provider shall provide extracts of data files on a computer data exchange format acceptable to the Port.

13.3 No Destruction of Records

Notwithstanding the other provisions of this Section 13, Provider must make any Provider records that would otherwise be destroyed in accordance with Provider's record retention schedule within the time period set forth above in Section 13.1 available to the Port at the end of Provider's applicable retention period.

14. INSURANCE

14.1 Liability Insurance

14.1.1 Commercial General Liability Insurance

Provider shall maintain occurrence-form commercial general liability insurance protecting Provider against liability for personal injury, bodily injury (including death), and property damage arising in the course of or in any way related to Provider's operations, in an amount not less than \$1,000,000 per occurrence.

14.1.2 Automobile Liability

If automobiles are used in the performance of this Contract, Provider shall maintain automobile liability insurance covering the use, loading, and unloading of all such owned, hired, and non-owned automobiles in an amount not less than \$1,000,000 per accident. If Services will involve operation of Provider's vehicles within the airfield boundaries of the Portland International Airport, then the amount of automobile liability insurance shall be not less than \$5,000,000.00 per occurrence and the automobile policy shall be endorsed to cover driving on the airfield.

14.2 Workers' Compensation; Employers' Liability

Provider shall maintain workers' compensation insurance and no less than \$1,000,000 employers' liability insurance coverage for all Provider's employees who are subject to Oregon's workers' compensation statute (and/or Provider's domicile state, if different), either as a carrier-insured

employer or as a self-insured employer as provided by ORS 656.407. If Provider's domicile state is a monopolistic state, employers' stop gap liability insurance may be substituted for employers' liability coverage.

14.3 Professional Liability/Errors and Omissions

Provider shall maintain professional liability (errors and omissions) insurance for the protection of Provider and Provider's partners, directors, officers, managers, members, employees, subcontractors, and agents under this Contract, insuring against losses arising out of or resulting from their negligent professional acts, omissions, activities or services, in an amount not less than \$1,000,000 per claim. Provider shall maintain in force such coverage for not less than three (3) years following completion of the Services.

14.4 Additional Insured

All liability insurance coverages Provider maintains under this Contract, with the exception of Workers' Compensation and Professional Liability, shall name the Port, its commissioners, employees, and agents as additional insureds.

14.5 Certificates

14.5.1 Certificates Required

Prior to full execution of this Contract, Provider must furnish the Port with: (i) certificates referencing this Contract (by number, if known), coverage dates, amount, and type of insurance required by this Contract, using substantially the form attached as Schedule 14.5.1; and (ii) a copy of the endorsement or policy provision providing additional insured status under applicable liability policies.

14.5.2 Certificate Management; Notice Requirement

When the period during which Services will be performed exceeds the coverage period stated on a certificate, prior to the certificate expiration date Provider or its insurer must furnish updated certificates demonstrating continuous coverage. Provider or its insurer must give the Port not less than thirty (30) days' written notice before cancellation, non-renewal, or material change of any policy (except ten (10) days for non-payment of premium).

14.6 Primary Coverage

The coverage provided by insurance required under this Contract shall be primary with respect to Provider's operations and the Services, and neither Provider nor any insurer of Provider shall seek contribution from any insurance or self-insurance carried by the Port.

15. INDEMNIFICATION; DAMAGE TO PORT PROPERTY; LIMITATION OF LIABILITY

15.1 Indemnity for Professional Services

Provider shall indemnify, defend (using legal counsel acceptable to the Port), reimburse, and hold harmless the Port and the Port's commissioners, officers, employees, and agents for, from, and against all claims, damages, losses, liabilities, costs, and expenses of any nature whatsoever,

including without limitation reasonable attorney fees, accountant fees, paralegal fees, expert witness fees, escrow fees, environmental costs, and penalties (collectively "Claims") to the extent such Claims result from, arise out of, or are in any way connected with any negligent professional acts, omissions, activities, or services of Provider or Provider's partners, directors, officers, managers, members, employees, subcontractors, or agents under this Contract.

15.2 General Indemnity

Except with respect to professional acts, omissions, activities, and services (which are governed by Section 15.1), Provider shall indemnify, defend (using legal counsel acceptable to the Port), reimburse, and hold harmless the Port and the Port's commissioners, officers, employees, and agents for, from, and against all Claims resulting from, arising out of, or in any way connected with any acts, omissions, activities, or services of Provider or Provider's partners, directors, officers, managers, members, employees, subcontractors, invitees, or agents under this Contract.

15.3 Damage to Port Property

Provider shall fully compensate the Port for harm to the Port's real or personal property, other than harm arising from Provider's professional services, caused by the acts or omissions, negligent or not, of Provider or Provider's partners, directors, officers, managers, members, employees, subcontractors, invitees, or agents in relation to this Contract.

15.4 Limitation of Liability

Provider shall not be responsible for the acts, omissions, or negligence of the Port or the Port's commissioners, officers, employees and agents, or their part or share thereof.

16. CONFLICT OF INTEREST

16.1 Generally

Except as otherwise provided in this Section 16, neither Provider nor any shareholder, member, or other owner of Provider shall engage in any activity, or accept any employment, interest, or contribution that would, or would reasonably appear to, compromise Provider's professional judgment with respect to the Services. A "conflict of interest" or "conflict" arises for the purposes of this Contract if Provider advises or otherwise provides services to another who has interests that are or are likely to become adverse to the interests of the Port. Provider represents and warrants that Provider has disclosed to the Port in writing all known conflicts in existence at the time this Contract is executed. Provider shall immediately give the Port a written description of any conflict that arises or becomes known after this Contract is executed. Provider shall make a diligent effort to avoid undertaking work for others that might result in a conflict and to otherwise avoid conflicts.

16.2 Failure to Perform

The parties agree that Provider's failure to perform an obligation set forth under this Section 16 is a material breach of this Contract.

16.3 Waiver; Unwaived Conflicts

The Port may waive a conflict of interest in accordance with the attached Schedule 16.3. In any conflict of interest which the Port has not waived, including but not limited to unknown conflicts

due to Provider's failure to disclose the conflict to the Port, and conflicts which the Port has declined to waive, Provider shall not provide technical opinions or other expert testimony for the party giving rise to the conflict at a mediation, arbitration, administrative proceeding, or lawsuit involving the circumstances giving rise to the conflict.

17. BREACH OF CONTRACT

17.1 Cure; Remedies

Provider must cure any breach of this Contract within the shortest reasonable time after Provider first has actual notice of the breach or the Port notifies Provider of the breach, whichever is earlier. If Provider fails to cure a breach in accordance with this subsection, or if a breach is not capable of being cured, or if Provider willfully or persistently breaches this Contract, the Port may exercise one or more of the following remedies:

17.1.1 Termination of Contract

The Port may terminate any part of this Contract affected by the breach upon written notice to Provider. If the breach is material, or if Provider willfully or persistently breaches this Contract, the Port may declare Provider in default and terminate this Contract upon written notice to Provider.

17.1.2 Substitute Services

The Port may obtain substitute services for any part of this Contract that the Port terminates.

17.1.3 Damages

The Port may recover from Provider all damages incurred by the Port resulting from or arising out of any breach, including but not limited to the amount by which the price for any substitute services exceeds the price for the terminated Services.

17.1.4 Suspension of Services

Pending a decision to terminate all or part of this Contract under Section 17.1.1, the Port may order Provider to suspend all or part of the Services.

17.2 Compensation after Termination or Suspension

If the Port terminates all or part of this Contract in accordance with Section 17.1.1, then subject to Section 17.4, Provider will be entitled to compensation only for Services rendered prior to the date of termination; provided however that Provider will not be entitled to compensation for any Services that are suspended in accordance with Section 17.1.4, except to the extent that the Port orders Provider to resume such Services and Provider actually resumes and performs such Services. If the Port suspends all or part of the Services in accordance with Section 17.1.4 and later orders Provider to resume such Services, the Port will have no liability to Provider resulting from or arising out of the suspension.

17.3 Recovery of Amounts Due for Breach

To recover any amounts Provider owes to the Port due to Provider's breach of this Contract, the Port may withhold such amounts from any Port payments to Provider, including but not limited to payments made under this Contract or under any other agreement between the parties. Provider's

default under this Contract will be, at the Port's option, a default under any other agreement between the parties.

17.4 Contractual Remedies Not Exclusive

The remedies specified in this Section 17 are not exclusive. The Port will have all remedies available to the Port under this Contract, at law, and in equity. All available remedies are cumulative and may be exercised singularly or concurrently.

17.5 Equitable Relief

Provider acknowledges that the remedies available at law to the Port for a breach by Provider of certain provisions of this Contract, including but not limited to Section 11, will, by their nature, be inadequate. Accordingly, and in addition to any other remedies available to the Port at law or in equity, the Port may obtain injunctive relief or other equitable relief to restrain a breach or threatened breach of such provisions or to specifically enforce such provisions, without proving that any monetary damages have been sustained.

18. TERMINATION FOR CONVENIENCE

The Port may terminate all or part of this Contract at any time for its own convenience by written notice to Provider. Upon termination under this Section 18, Provider shall be entitled to compensation only for Services rendered prior to actual notice of the termination or the receipt of the written notice of termination, whichever is earlier; provided however that the Port may specify a future effective termination date, in which case Provider shall be entitled to compensation for Services rendered prior to such effective termination date.

19. SECURITY REQUIREMENTS

19.1 Portland International Airport

At all times during the performance of Services at the Portland International Airport ("PDX"), Provider will comply with all applicable rules and regulations governing airport security (collectively, "Airport Security Rules and Regulations"), including without limitation the security badging, access control, and keys/locks requirements set forth in the PDX Rules (available at www2.portofportland.com or from the Port Project Manager upon request), and all applicable regulations promulgated by the Transportation Security Administration ("TSA") and the Federal Aviation Administration ("FAA").

19.2 Other Port Locations

At all times during the performance of Services at other locations, including without limitation the Port's marine terminals and headquarters offices ("HQ"), Provider will comply with all applicable security requirements for such premises. Such requirements may include, without limitation, the Port's Marine Terminal Security Guidelines; HQ policies, procedures, guidelines and standards; and any other security rules maintained by the Port, its tenant in possession of the premises, or other governing authorities. As more fully described in the Port's Marine Terminal Security Guidelines, all personnel requiring unescorted access to secure areas of Port marine terminals 2,4,5, and 6 must possess a Transportation Worker Identification Credential ("TWIC") issued by

the Transportation Security Administration (“TSA”). Enrollment is available online at www.tsa.gov/twic.

19.3 Ensuring Compliance

Provider will ensure that its partners, directors, officers, managers, members, employees, subcontractors, invitees, agents, and Providers comply with all security requirements applicable to the Services. Provider must obtain and review copies of applicable security requirements from the Port before commencing Services.

19.4 Security Badges

Provider warrants and will ensure that any person providing Services that receives a security badge meets all applicable requirements for having a security badge. When badgeholders leave Provider’s employment or no longer provide Services (“a Separation”), Provider will ensure that any security badges, access control devices, or keys provided by the Port are returned promptly to the Port Security Badging Office, obtain a receipt for the return of such items and submit a copy of the receipt to the Port Project Manager. Any unreturned badge or access device fees due in accordance with applicable Port rules, including without limitation the PDX Rules, may be deducted from any payment due under this Contract. Further, within 24 hours from any Separation, Provider must notify the Port Project Manager of such Separation, to enable the Port to promptly terminate the badgeholder’s access privileges.

19.5 Authorized Personnel

Provider shall provide to the Port a list of names and contact information for all authorized individuals who will enter on Port premises to perform any Services. Provider shall keep the list current and shall not direct any individual to perform Services on Port premises without first informing the Port and updating the authorization list.

19.6 Security Violations

A violation of any security requirements applicable under this Section 19 will be considered an act or omission for purposes of the indemnification provisions in Section 15, and is a per se material breach of this Contract.

20. STATUTORILY – REQUIRED PROVISIONS

20.1 Payment for Labor or Material

As a condition of this Contract, Provider shall make payment promptly, as due, to all persons supplying to Provider labor or material for the performance of the work provided for in this Contract. [Required by ORS 279B.220 (1)]

20.2 Hours of Labor; Pay Equity; Employee Discussions of Rate of Pay or Benefits

20.2.1 Hours of Labor

Provider shall pay employees performing work under this Contract at least time and a half for all overtime worked in excess of 40 hours in any one week, except for employees under a personal services public contract who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. 201 to 209 from receiving overtime. [Required by ORS 279B.235 (3)]

20.2.2 Pay Equity

Provider shall comply with the prohibition set forth in ORS 652.220. Such compliance is a material element of the Contract and a failure to comply is a breach that entitles the Port to terminate the Contract for cause [Required by ORS 279B.235(1)(b)]

20.2.3 Employee Discussions of Rate of Pay or Benefits

Provider shall not prohibit any of Provider's employees from discussing the employee's rate of wage, salary, benefits or other compensation with another employee or another person and shall not retaliate against an employee who discusses the employee's rate of wage, salary, benefits, or other compensation with another employee or another person. [Required by ORS 279B.235(1)(c)]

20.3 Contributions to the Industrial Accident Fund

As a condition of this Contract, Provider shall pay all contributions or amounts due the Industrial Accident Fund from Provider or any subcontractor of Provider incurred in the performance of this Contract. [Required by ORS 279B.220 (2)]

20.4 Income Tax Withholding

As a condition of this Contract, Provider shall pay to the Oregon Department of Revenue all sums withheld from employees under ORS 316.167. [Required by ORS 279B.220 (4)]

20.5 Worker's Compensation

All subject employers performing Services under this Contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126. [Required by ORS 279B.230 (2)]

20.6 Medical Care for Employees

As a condition of this Contract, Provider shall promptly, as due, make payment to any person, copartnership, association or corporation, furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of Provider, of all sums that Provider agrees to pay for such services and all moneys and sums that Provider collected or deducted from the wages of employees under any law, contract or agreement for the purpose of providing or paying for such services. [Required by ORS 279B.230 (1)]

20.7 Liens and Claims Prohibited

As a condition of this Contract, Provider shall not permit any lien or claim to be filed or prosecuted against the Port, the state, or a county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished. [Required by ORS 279B.220 (3)]

20.8 Compliance with Tax Laws

20.8.1 Representation and Warranty

Provider represents and warrants that Provider has complied with the tax laws of the State of Oregon or a political subdivision of the State of Oregon, including but not limited to ORS 305.620 and ORS chapters 316, 317 and 318.

20.8.2 Covenant

Provider covenants that Provider will continue to comply with the tax laws of the State of Oregon or a political subdivision of the State of Oregon during the term of this Contract.

20.8.3 Failure to Comply

Provider's failure to comply with the tax laws of the State of Oregon or a political subdivision of the State of Oregon before Provider executed this Contract or during the term of this Contract will be a default for which the Port may terminate the Contract and seek damages and other relief available under the terms of this Contract and under applicable law. [Required by ORS 279B.045]

21. MISCELLANEOUS PROVISIONS

21.1 Governing Law; Venue

ORS 15.320 provides that Oregon law applies to this Contract. Even if ORS 15.320 is determined to be inapplicable or invalid, the parties agree that this Contract is governed by Oregon law, without giving effect to any conflict-of-law principle that would result in the laws of any other jurisdiction governing this Contract. Any action, suit, or proceeding arising out of the subject matter of this Contract will be litigated in courts located in Multnomah County, Oregon. Each party consents and submits to the jurisdiction of any local, state, or federal court located in Multnomah County, Oregon.

21.2 Counterparts, Execution, Electronic Signatures

This Contract may be executed in counterparts. This Contract may be executed using: (i) original signatures; (ii) facsimile signatures; or (iii) only with the Port's prior approval, Electronic Signatures (as defined in the Electronic Signatures in Global and National Commerce Act) that can be authenticated. Under ORS 84.014, Contractor's consent is not required for this Contract to be executed using Electronic Signatures. Even if ORS 84.014 is determined to be inapplicable or invalid, Contractor grants such consent.

21.3 Dispute Resolution

The parties shall negotiate to resolve any disputes that may arise in connection with this Contract. If a dispute cannot be resolved by negotiation, the parties shall attempt to resolve the dispute through mediation. If mediation is unsuccessful, the parties may pursue whatever remedies may be available to them under the circumstances. Venue for actions or proceedings arising out of this Contract will be in courts located in Multnomah County, Oregon. Each party consents and submits to the jurisdiction of any local, state, or federal court located in Multnomah County, Oregon.

However, nothing in this subsection precludes the parties from agreeing to binding or nonbinding arbitration.

21.4 Attorney's Fees

If any arbitration, action, suit, or proceeding is instituted to interpret, enforce, or rescind this Contract, or otherwise in connection with the subject matter of this Contract, including but not limited to any proceeding brought under the United States Bankruptcy Code, the prevailing party on a claim will be entitled to recover with respect to the claim, in addition to any other relief awarded, the prevailing party's reasonable attorney's fees and other fees, costs, and expenses of every kind incurred in connection with the arbitration, action, suit, or proceeding, any appeal or petition for review, the collection of any award, or the enforcement of any order, as determined by the arbitrator or court.

21.5 Binding Effect

This Contract shall bind the parties and their respective successors, executors, administrators, and permitted assignees.

21.6 Provider Identification Number

Provider shall furnish to the Port Provider's employer identification number, as designated by the Internal Revenue Service, or, if the Internal Revenue Service has designated no employer identification number, Provider's Social Security number.

21.7 No Waiver of Legal Rights

No waiver will be binding on a party unless it is in writing and signed by the party making the waiver. A waiver by a party of any breach of a provision by the other shall not be deemed to be a waiver of any other provision or any subsequent breach of the same provision.

21.8 Modification

Except as expressly provided in Section 1, this Contract may be modified only by a written amendment signed by both parties. No oral modification shall be effective.

21.9 Integration

This Contract and any Task Orders issued hereunder contain the entire agreement between the parties regarding the subject matter of this Contract, and supersede all prior written or oral discussions, negotiations, or agreements between the parties regarding the subject matter of this Contract and such Task Orders.

21.10 Severability

If a provision of this Contract is determined to be unenforceable in any respect, the enforceability of the provision in any other respect and of the remaining provisions of this Contract will not be impaired.

21.11 Government Powers

Nothing in this Contract shall be deemed to limit the Port's exercise of its governmental rights and powers.

21.12 Attachments; Order of Precedence

Any schedules and other attachments referenced in this Contract are part of this Contract. Any conflict between provisions stated within the body of this Contract and provisions stated within any attachment thereto shall be resolved in favor of the provisions stated within the body of this Contract.

21.13 Force Majeure

Except for the obligation to make payment for the Services, any delay in or failure of performance by either party to this Contract shall not constitute a default under this Contract nor give rise to any claim for damage, cost, or expense if and to the extent such delay or failure is caused by an act of God, flood, fire, earthquake or explosion, war, invasion, hostilities, terrorist threats or acts, riot or other civil unrest, government order or law, actions, embargoes or blockades, national or regional emergency, or other similar event beyond the control of the delayed or non-performing party. Notwithstanding the foregoing, a party that is delayed in or prevented from performing for any reason shall promptly notify the other party in writing of the reason for the non-performance and the anticipated extent of any delay or non-performance and shall take diligent steps to minimize the adverse impact of the delay or non-performance.

21.14 Approvals and Consents

Except as otherwise expressly provided in this Contract, whenever this Contract provides for the approval or consent of one of the parties hereto, including but not limited to acceptance, approval, belief, change, completion, consent, decision, designation, determination, direction, discretion, estimation, finding, prescription, request, requirement, review, satisfaction, selection, specification, or suspension, such party will not unreasonably withhold, delay, or condition its approval or consent.

21.15 Survival

All provisions of this Contract, including but not limited to the provisions of Section 11, Section 12, and Section 15, shall survive the expiration or termination of this Contract to the extent necessary to fully effectuate the intended purpose of the provision.

21.16 Permissive Cooperative Procurement Allowed

Other public contracting agencies may establish contracts or price agreements under the terms, conditions and prices of this Contract through the U.S. Communities Government Purchasing Alliance. Provider agrees to extend the terms, conditions and prices of this Contract to any purchasing contracting agency, as that term is defined at ORS 279A.200(1)(h). Contracts or price agreements between Provider and other purchasing contracting agencies are entirely independent of and have no effect on this Contract.

21.17 Acknowledgment

By executing this Contract, Provider acknowledges that it has: (a) carefully reviewed the entire Contract and all documents related to the Services that the Port has provided; (b) reviewed or is otherwise familiar with all laws and regulations that are relevant to the Services; and (c) not relied upon any representation by the Port or its employees or representatives other than those expressly set forth in this Contract.

21.18 Authority

The individuals signing below warrant that they have full authority to execute this Contract on behalf of the party for whom they sign.

Provider:

McKinstry Essention, LLC

By: 

Print name: Mark Jonson

As its: Vice President

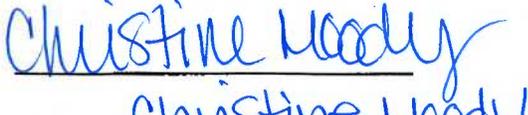
Date signed: 12/5/17

Phone: 206-832-8450

Email: markj@mckinstry.com

Port:

Port of Portland

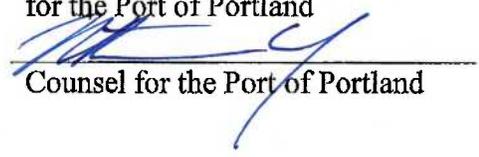
By: 

Print name: Christine Moody

As its: C&P Manager

Date signed: 12/28/17

Approved as to legal sufficiency
for the Port of Portland


Counsel for the Port of Portland

SCHEDULE 2.1

General Scope of Services

DEFINITIONS:

Owner: For purposes of this Contract, Owner is the Port of Portland. For purposes of any Contract initiated through the U.S. Communities Government Purchasing Alliance, Owner shall be the Public Agency entering into their own Contract with Provider.

ESCO: For purposes of this General Scope of Services, ESCO is Provider named in this Contract.

2.1 Scope of Services

The ESCO will provide auditing services and may provide a comprehensive array of services required to deliver a guaranteed energy savings project. Each project may consist of any or all of the following phases:

2.1.1 Preliminary Energy Audit

The Preliminary Energy Audit shall consist of exploring opportunities for an organization to improve energy performance and realize cost savings. This feasibility study shall conclude in a written report delivered to the Owner.

- a. The written report shall contain, at a minimum, an analysis of energy operating costs to identify potential cost savings.
- b. The Preliminary Energy Audit and project scope development shall be conducted by ESCO at no cost to the Owner.

2.1.2 Technical Energy Audit

The Investment-Grade Technical Energy Audit (TEA) should identify energy conservation opportunities at various facilities and include a corresponding Project Development Plan (PDP). The PDP shall detail essential services and improvements that will reduce energy consumption in facilities including, without limitation, an upgrade in capital energy-related equipment; improved building operations; fuel cost savings and improved demand management; and assistance in meeting environmental management responsibilities. This phase shall conclude with a written report and technical drawings, including but not limited to:

- a. Established energy baseline (derived from actual energy measurements taken in the year preceding the implementation).
- b. Total equipment and construction costs.
- c. Any grants, incentives, rebates or other discounts.
- d. Projected savings by energy conservation measure by year for the term of the financing.
- e. Maintenance support services cost per year for the term of the financing.
- f. Measurement and verification support services per year for the term of the financing.
- g. Financing assumptions, such as estimated interest rates and inflation rates.
- h. Any capital avoidance calculations with yearly savings per year for the term of the financing.

- i. Financing term payments per year for the term of the financing.
- j. Program cash flow comparisons per year for the financing term.
- k. Net present value analysis with estimated discount rate.

The TEA shall be signed and stamped/sealed by a professional engineer licensed to practice in the state where the facility is located.

2.1.3 Construction Services

As provided for in Section 6 of this Contract, Owner and ESCO may negotiate a separate contract for additional services, to include design, construction (e.g. design/build), install, implement, maintain and measure and verify savings from such energy, water and operating saving measures. The form of the contract shall be negotiated between the parties and shall incorporate all state and local requirements for such work, and may include, without limitation, a requirement to provide performance and payment bonds, to pay prevailing wages, provide certified payroll reports, and provide a public works bond.

2.1.4 Implementation of the Energy Savings Performance Contract

Implementation and execution of the full project shall follow the TEA, should the Owner elect to move forward. As a part of this phase the ESCO shall:

- a. Provide a documented guarantee clearly communicating the energy and operational savings process that defines responsibilities of both the ESCO and the Owner.
- b. Provide monitoring, measurement and verification of energy and cost avoidance throughout the contract period. This may require measurements to be recorded during an initial study phase.
- c. Provide a documented payment by the ESCO if energy savings and operational savings are not met on an annual basis.
- d. Schedule the preventative maintenance and service, up to and including full replacement, for all work installed, throughout the contract period.
- e. Supervise and direct all phases of the work, using its best skill and attention. The ESCO shall be solely responsible for all feasibility studies, design and construction means, methods, techniques, sequences, measurements and verification and procedures and for coordinating all portions of work inclusive of a construction services contract if utilized.
- f. Supply warranties for equipment included in each project along with operation and maintenance manuals to the Owner.
- g. Provide a bond/insurance policy guaranteeing the agreed upon yearly energy consumption savings.

2.1.5. Measurement and Verification

A typical Measurement and Verification Plan (M&V) will include, as a minimum, information on the overall project level and energy conservation measures specific items. The M&V plan will be developed during discussions between the ESCO and the Owner, however the plan should contain these essential elements:

- a. Project savings from the energy performance contract.
- b. Details of baseline conditions and data collected.

- c. Determine what items will be verified.
- d. Details of engineer analysis.
- e. Schedule for all M & V activities.
- f. Reports to include how energy and cost savings will be calculated.
- g. A risk and responsibility matrix:
 - Include in this section the minimum and maximum maintenance required to ensure the guarantee.
 - Assign preventative maintenance responsibilities between ESCO and Owner.

SCHEDULE 2.2.1

Task Order Form

PROJECT TITLE

Date: Requisition No.

Contract No. This Task Order is executed in accordance with and is subject to the terms and conditions of the contract between the parties which is identified by the number to the left.

Task Order No. Amendment No.

Project Start Date: Project End Date:

Provider: Provider Proj. Lead:

Port Facility: Provider Email:

Port Project Mgr. The Provider Project Lead is the Provider's primary individual contact for this Project. The Provider Project Lead is responsible for supervising Provider's work under this Task Order.

Project Understanding:

This Task Order requires an attached detailed statement of Services, schedule of performance, fee schedule showing hours and contract rates, and list of subcontractors the Port has approved to perform Services under this Task Order.

Task Order Costs			Previous Amend	
Original Task Order		\$0.00	1	\$0.00
Total All Previous Amendments (not to exceed 20% of Original Task Order)	#DIV/0!	\$0.00	2	\$0.00
Total as Previously Amended		\$0.00	3	\$0.00
Total of this Amendment		\$0.00	4	\$0.00
New Not-to-Exceed Total		\$0.00	5	\$0.00

Forward one electronic copy of the signed Task Order form, along with the statement of services, schedule, and fee schedule showing estimated hours and rates to the Port's Project Manager.

PORT OF PORTLAND

PROVIDER

Port Project Manager

Date

Provider Project Lead
Date

Port Buyer

Date

Provider Authorized Signatory (if different from above)
Date

Charging Information: _____

- Federally-Funded Services. If checked, this Task Order includes federally-funded Services as provided in the Contract. Attach the additional contract provisions described therein as an addendum to this Task Order.
- Public Improvement Contracting Requirements. If checked, this Task Order is subject to public improvement contracting requirements as provided in the Contract. Attach the additional contract provisions described therein as an addendum to this Task Order.
- Public Works Contracting Requirements. If checked, this Task Order is subject to public works contracting requirements as provided in the Contract. Attach the additional contract provisions described therein as an addendum to this Task Order.

SCHEDULE 2.3

Additional Provisions for Federally-Funded Services

**SUPPLEMENTARY CONDITIONS FOR FEDERALLY ASSISTED CONTRACTS
UNDER THE FAA AIRPORT IMPROVEMENT PROGRAM (AIP)
PERSONAL SERVICES CONTRACTS AND EQUIPMENT CONTRACTS**

THE FOLLOWING PROVISIONS APPLY TO ALL CONTRACTS:

1. ACCESS TO RECORDS AND REPORTS
[2 CFR 200.333; 2 CFR 200.336; FAA ORDER 5100.38]
 - A. The Provider shall maintain an acceptable cost accounting system. The Provider agrees to provide the Port, the FAA, and the Comptroller General of the United States or any of their duly authorized representatives, access to any books, documents, papers, and records of the Provider which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts and transcriptions. The Provider agrees to maintain all books, records and reports required under this contract for a period of not less than three years after final payment is made and all pending matters are closed.
2. BUY AMERICAN PREFERENCE
[49 USC 50101]
 - A. Consistent with the Certificate of Buy American Compliance submitted with the Provider's bid, the Provider agrees to comply with 49 USC § 50101, which provides that federal funds may not be obligated unless all steel and manufactured goods used in AIP-funded projects are produced in the United States, unless the Federal Aviation Administration (FAA) has issued a waiver for the product; the product is listed as an Excepted Article, Material Or Supply in Federal Acquisition Regulation subpart 25.108; or is included in the FAA Nationwide Buy American Waivers Issued list.
 - B. A bidder or offeror must complete and submit the Buy America certification included herein with their bid or offer. The Port will reject as nonresponsive any bid or offer that does not include a completed Certificate of Buy American Compliance.
3. GENERAL CIVIL RIGHTS PROVISIONS
[49 USC 47123]
 - A. The Provider agrees that it will comply with pertinent statutes, executive orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from federal assistance.
 - B. This provision binds the Provider and subtier contractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

4. COMPLIANCE WITH NONDISCRIMINATION REQUIREMENTS
[49 USC 47123; FAA ORDER 1400.11]

- A. Title VI Solicitation Notice: The Port, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.
- B. During the performance of this contract, the Provider, for itself, its assignees, and successors in interest (hereinafter referred to as “the Provider”) agrees as follows:
1. Compliance with Regulations
 - a. The Provider (hereinafter includes consultants) shall comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
 2. Nondiscrimination
 - a. The Provider, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Provider shall not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
 3. Solicitations for Subcontracts, Including Procurements of Materials and Equipment
 - a. In all solicitations, either by competitive bidding, or negotiation made by the Provider for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or Provider shall be notified by the Provider of the Provider’s obligations under this contract and the Nondiscrimination Acts and Authorities relative to nondiscrimination on the grounds of race, color, or national origin.
 4. Information and Reports
 - a. The Provider shall provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Port or the FAA to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a Provider is in the exclusive possession of

another who fails or refuses to furnish the information, the Provider shall so certify to the Port or the FAA, as appropriate, and shall set forth what efforts it has made to obtain the information.

5. Sanctions for Noncompliance

- a. In the event of a Provider's noncompliance with the nondiscrimination provisions of this contract, the Port of Portland (Port) will impose such contract sanctions as it or the FAA may determine to be appropriate, including, but not limited to:
 - 1) Withholding payments to the Provider under the contract until the Provider complies; and/or
 - 2) Cancelling, terminating, or suspending a contract, in whole or in part.

6. Incorporation of Provisions

- a. The Provider shall include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Provider shall take action with respect to any subcontract or procurement as the Port or the FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Provider becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Provider may request the Port to enter into any litigation to protect the interests of the Port. In addition, the Provider may request the United States to enter into the litigation to protect the interests of the United States.

5. DISADVANTAGED BUSINESS ENTERPRISES [49 CFR PART 26]

[49 CFR PART 26]

- A. The Provider or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Provider shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the Provider to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the Port deems appropriate.
- B. The prime Provider agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 10 days from the receipt of each payment the prime Provider receives from the Port. The prime Provider agrees further to return retainage payments to each subcontractor within 10 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Port. This clause applies to both DBE and non-DBE subcontractors.

- C. The requirements of 49 CFR Part 26 apply to this contract. It is the policy of the Port to practice nondiscrimination based on race, color, sex or national origin in the award or performance of this contract. The Port encourages participation by all firms qualifying under this solicitation regardless of business size or ownership.
6. ENERGY CONSERVATION REQUIREMENTS
[2 CFR 200, APPENDIX II(H).]
- A. The Provider and subcontractor agree to comply with mandatory standards and policies relating to energy efficiency as contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201 et seq.).
7. FEDERAL FAIR LABOR STANDARDS ACT
[29 USC § 201, ET SEQ.]
- A. All contracts and subcontracts that result from this solicitation incorporate by reference the provisions of 29 CFR part 201, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part time workers.
- B. The Provider has full responsibility to monitor compliance to the referenced statute or regulation. The Provider shall address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.
8. FEDERAL OCCUPATIONAL SAFETY AND HEALTH ACT
[20 CFR PART 1910]
- A. All contracts and subcontracts that result from this solicitation incorporate by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. Provider must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The Provider retains full responsibility to monitor its compliance and their subcontractor's compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (20 CFR Part 1910). Provider shall address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.
9. TRADE RESTRICTION CERTIFICATION
[49 USC § 50104; 49 CFR PART 30]
- A. By submission of a bid, the bidder certifies that with respect to this solicitation and any resultant contract, the bidder:
1. Is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms as published by the Office of the United States Trade Representative (U.S.T.R.);
 2. Has not knowingly entered into any contract or subcontract for this project with a person that is a citizen or national of a foreign country included on the list of countries that discriminate against U.S. firms as published by the U.S.T.R.;

3. Has not entered into any subcontract for any product to be used on the Federal on the project that is produced in a foreign country included on the list of countries that discriminate against U.S. firms published by the U.S.T.R.
- B. This certification concerns a matter within the jurisdiction of an agency of the United States of America and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code, Section 1001.
 - C. The Provider shall provide immediate written notice to the Port if the Provider learns that its certification or that of a subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances. The Provider shall require subcontractors to provide written notice to the Provider if at any time it learns that its certification was erroneous by reason of changed circumstances.
 - D. Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR 30.17, no contract shall be awarded to a Provider or subcontractor:
 1. Who is owned or controlled by one or more citizens or nationals of a foreign country included on the list of countries that discriminate against U.S. firms published by the U.S.T.R. or
 2. Whose subcontractors are owned or controlled by one or more citizens or nationals of a foreign country on such U.S.T.R. list or
 3. Who incorporates in the public works project any product of a foreign country on such U.S.T.R. list;
- A. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this provision. The knowledge and information of a Provider is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
 - B. The bidder agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification without modification in all lower tier subcontracts. The Provider may rely on the certification of a prospective subcontractor that it is not a firm from a foreign country included on the list of countries that discriminate against U.S. firms as published by U.S.T.R., unless the Provider has knowledge that the certification is erroneous.
 - C. This certification is a material representation of fact upon which reliance was placed when making the award. If it is later determined that the Provider or subcontractor knowingly rendered an erroneous certification, the FAA may direct, through the Port, cancellation of the contract or subcontract for default at no cost to the Port or the FAA.

10. VETERAN'S PREFERENCE

[49 USC 47112(C)]

- A. In the employment of labor (excluding executive, administrative, and supervisory positions), the Provider and all sub-tier contractors shall give preference to covered veterans as defined within Title 49 United States Code Section 47112. Covered veterans include Vietnam-era veterans, Persian Gulf veterans, Afghanistan-Iraq war veterans, disabled veterans, and small business concerns (as defined by 15 U.S.C. 632) owned and controlled by disabled veterans. This preference only applies when there are covered veterans readily available and qualified to perform the work to which the employment relates.

11. CERTIFICATION REGARDING LOBBYING

[31 U.S.C. § 1352 – BYRD ANTI-LOBBYING AMENDMENT; 2 CFR PART 200, APPENDIX II(J); 49 CFR PART 20, APPENDIX A]

- A. The bidder or offeror certifies, to the best of his or her knowledge and belief, that:
1. No federal appropriated funds have been paid or will be paid, by or on behalf of the bidder or offeror, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
 2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
 3. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.
- B. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

THE FOLLOWING ADDITIONAL PROVISIONS APPLY TO CONTRACTS EXCEEDING \$150,000:

12. BREACH OF CONTRACT TERMS

[49 CFR 18.36(I)(1)]

- A. Any violation or breach of terms of this contract on the part of the Provider or its subcontractors may result in the suspension or termination of this contract or such other action that may be necessary to enforce the rights of the parties of this agreement.
- B. The Port will provide the Provider written notice that describes the nature of the breach and corrective actions the Provider must undertake in order to avoid termination of the contract. Port reserves the right to withhold payments to Provider until such time the Provider corrects the breach or the Port elects to terminate the contract. The Port's notice will identify a specific date by which the Provider must correct the breach. The Port may proceed with termination of the contract if the Provider fails to correct the breach by deadline indicated in the Port's notice.
- C. The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder are in addition to, and not a limitation of, any duties, obligations, rights and remedies otherwise imposed or available by law.

13. CLEAN AIR AND WATER POLLUTION CONTROL

[2 CFR § 200, APPENDIX II(G)]

- A. The Provider agrees to comply with all applicable standards, orders, and regulations issued pursuant to the Clean Air Act (42 U.S.C. § 740-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. § 1251-1387). The Provider agrees to report any violation to the Port immediately upon discovery. The Port assumes responsibility for notifying the Environmental Protection Agency (EPA) and the Federal Aviation Administration.
- B. The Provider must include this requirement in all subcontracts that exceed \$150,000.

SCHEDULE 3.4

Travel Expense Reimbursement Guidelines

Providers shall be reimbursed for travel expenses necessarily incurred for the performance of their contract only. Travel must be approved in advance by the Port's representative. Travel expenses are not reimbursable if the provider's normal place of business is located in the Portland metropolitan area, unless the provider is required to travel outside the Portland metropolitan area in service of the Port's requirements. Necessary expenses will be approved and paid according to the following guidelines:

1. Expense Report

All providers shall report and submit billable expenses with actual receipts weekly or as agreed.

2. Mileage

Mileage in a private vehicle, during the course and scope of contractually required duties and driving over the most direct and usually traveled route, will be reimbursed at the most current rate in accordance with the most current Internal Revenue Service guideline.

3. Air Travel

Every effort should be made to take advantage of lower fares by booking travel eight to fourteen (8-14) days in advance whenever possible. Booking a trip on short notice (less than seven (7) days) is the most costly option in air travel. Coach class is the standard for air travel on all trips throughout the continental USA, Canada, and Mexico.

4. Ground Transportation

Cars should be rented only when local transportation is not available or feasible (e.g. MAX, shuttle service, taxi) or when the cost of local transportation exceeds the cost of renting a car.

5. Lodging Guidelines

A single room with private bath in a business class hotel is the Port standard. There are several hotels in close proximity to the Port headquarters building/Portland International Airport that should be acceptable.

6. Meal Expenses

Providers will be reimbursed for personal meal expenses incurred based on reasonable meal expenses. The meal expenses include tips and non-alcoholic beverages.

When a provider is eligible for meal reimbursement but has one or more meals paid for by another party, the related meal expense amount must be subtracted out of the provider's meal claim for the day.

7. Personal phone calls while traveling

Providers will be reimbursed for personal telephone calls charged to the provider while traveling on the Port's business up to two calls per day, provided that they are kept within reasonable time limits.

8. Reimbursable and Non-reimbursable Expenses:

Although not an all-inclusive list, the following is a partial list of expenses that are frequently considered reimbursable and non-reimbursable:

Reimbursable Expenses	Non-Reimbursable Expenses
<ol style="list-style-type: none">1. Taxis2. Parking3. Tolls4. Telephone5. Laundry, dry cleaning, and valet services for trips exceeding 5 consecutive days6. Reasonable tips7. Room service8. Currency conversion9. Business telegrams, telexes, and fax service10. Air freight, Federal Express, express mail, and postage fees11. Reasonable gym fees, when traveling three or more days consecutively within a work week	<ol style="list-style-type: none">1. Child and pet care2. Country club dues3. Personal entertainment4. Luggage5. Parking or traffic fines or tickets6. Haircuts7. Kennel fees8. Movies (including in-flight and hotel in-house)9. Car washes10. Expenses for travel companions/family members11. Laundry, dry cleaning, and valet services for trips less than six consecutive days12. Loss/theft of personal funds or property13. Medical bills14. Non-compulsory insurance coverage, optional travel or baggage insurance

SCHEDULE 4.2.1
Sample Invoice

Bill To: Port of Portland Accounts Payable Department PO Box 3529 Portland, OR 97208 (Portinvoices@portofportland.com)	Date	Invoice #
--	-------------	------------------

Billing Period	
-----------------------	--

Contract #	
Task Order# (if applicable)	
Port Location	
Work Description	
Port Project Manager	
Port Environmental Project Manager (if applicable)	
Provider Project Lead	

Direct Labor

Name/Title	Rate	Hours	Amount
DIRECT LABOR TOTAL			

Direct Costs

Description	Cost/Qty	Rate	Amount
DIRECT COSTS TOTAL			

AMOUNT DUE THIS INVOICE	
--------------------------------	--

Total Authorized Budget for this Task Order	
Remaining Authorized Budget for this Task Order	
Applicable Discount	
INVOICE TOTAL	

Additional Information

Requirements	Notes
1. Billing Period	Monthly
2. Port Contract Number	This is the Port-assigned number from the Contract
3. Port Task Order Number	Should be listed on Task Order/contact Port Env. P.M.
4. Port Location	Location where work was done (Marine, PDX, Portwide, etc.)
5. Work Description	As described on Task Order
6. Port Project Manager	
7. Port Environmental Project Manager	Even if this is the same as the Port Project Manager
8. Provider Project Lead	
9. Direct Labor	On each subtask listed on the Task Order, include name, title, labor rate, total hours, and total charge for each individual working on each subtask. Also, attach copies of the individual's time sheets which list hours worked and detailed descriptions of work accomplished per hour.
10. Direct Costs	All administrative charges (e.g., photocopies, mileage, telephone) and outside services <u>must be separated out</u> . List separately laboratory charges; list all outside service Providers, work performed, and their charges. Include copies of each subcontractor's invoice(s), time sheets which list hours and detailed descriptions of work accomplished per hour, and subcontractor's summary letters.
11. Amount Due This Invoice	Total labor and costs for the work for the month
12. Total Authorized Budget for This Work	Based on Contract or approved Task Orders
13. Remaining Authorized Budget for This Work	Based on Contract or approved Task Orders (this is a cumulative balance based on all work).
14. Applicable Discount	If applicable, apply discount for labor hour charges on this line.
15. Invoice Total	#12 less #15, above.
16. Final invoice for the Contract or each Task Order shall include the words "Final Invoice"	

Important

- Invoices must represent services for one Task Order only; do not include multiple Task Order numbers on one invoice.
- This sample invoice is for reference only; Provider's invoice format does not have to be an exact replicate. However, all applicable information must be included each month in a clear and concise manner.

SCHEDULE 14.5.1

Sample Insurance Certificate

CERTIFICATE OF LIABILITY INSURANCE						DATE (mm/dd/yyyy) ** Enter date.
PRODUCER ** Sample ** Insert broker name and address.		THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.				
INSURED ** SAMPLE ** Insert vendor name and address.		INSURERS AFFORDING COVERAGE		NAIC #		
		INSURER A ** SAMPLE ** Enter insurer name		** Enter NAIC		
		INSURER B ** SAMPLE ** Enter insurer name		** Enter NAIC		
		INSURER C ** SAMPLE ** Enter insurer name		** Enter NAIC		
		INSURER D ** SAMPLE ** Enter insurer name		** Enter NAIC		
		INSURER E ** SAMPLE ** Enter insurer name		** Enter NAIC		
COVERAGES						
THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.						
RER LTR	ADDL INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (mm/dd/yyyy)	POLICY EXPIRATION DATE (mm/dd/yyyy)	LIMITS
A	<input checked="" type="checkbox"/>	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> _____ <input type="checkbox"/> _____ GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC	** Enter policy no.	** Enter effective date.	** Enter expiration date.	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$1,000,000 PRODUCTS - COMPOP AGG \$ \$
A	<input checked="" type="checkbox"/>	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS <input type="checkbox"/> _____	** Enter policy no.	** Enter effective date.	** Enter expiration date.	COMBINED SINGLE LIMIT (Each accident) \$1,000,000 (\$5,000,000 if driving on air-fel'd) BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
A	<input type="checkbox"/>	GARAGE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> _____	** Enter policy no. (if required)	** Enter effective date.	** Enter expiration date.	AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY. EA AGG \$ AGG \$
A	<input type="checkbox"/>	EXCESS/UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input type="checkbox"/> RETENTION \$	** Enter policy no. (if required)	** Enter effective date.	** Enter expiration date.	EACH OCCURRENCE \$ AGGREGATE \$ \$ \$
B	<input checked="" type="checkbox"/>	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? ** NO ** If yes, describe under SPECIAL PROVISIONS below	** Enter policy no.	** Enter effective date.	** Enter expiration date.	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE - EA EMPLOYEE \$1,000,000 E.L. DISEASE - POLICY LIMIT \$1,000,000
A	<input checked="" type="checkbox"/>	OTHER a. Professional liability/E&O (if req'd) b. Cyber liability (if req'd)	a. ** Enter policy no. b. ** Enter policy no.	a. ** Enter date b. ** Enter date	a. ** Enter date b. ** Enter date	a. Each occurrence a. \$1,000,000 b. Each occurrence b. \$5,000,000
DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS ** SAMPLE ** Part of Portland Contract No. _____ Contract description: _____ The Part of Portland, Its Commissioners, officers, employees, and agents are included as additional insureds where required by such contract with respect to all liability insurance coverages required under such contract.						
CERTIFICATE HOLDER				CANCELLATION		
Port of Portland PO Box 3529 Portland OR 97208				SHOULD ANY OF THE ABOVE-DESCRIBED POLICIES BE CANCELLED BEFORE ITS STATED EXPIRATION DATE, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. IN ADDITION, THE INSURER AFFORDING COVERAGE WILL USE BEST EFFORTS TO MAIL 30 DAYS' WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED AT LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.		

SCHEDULE 16.3

Conflict of Interest -- Waivers

1. Generally

The Port may conditionally or unconditionally waive a conflict of interest for purposes of Section 16 but has the sole discretion to refuse to waive a conflict. A conflict waiver by the Port is effective only if given in writing and signed by the Chief Officer of the Port department for which the Services are being performed under this Contract. The conflict waiver shall be strictly construed to cover the narrow circumstances identified and disclosed, and shall not be extended without obtaining the Port's consent in writing. If the Port declines to waive a conflict, Provider must eliminate the cause of the conflict. The Port's failure to respond within thirty (30) calendar days after written notification by Provider of a conflict shall create a rebuttable presumption that the Port declines to waive the conflict.

2. Port Waiver of Conflict

If the Port waives a conflict of interest for purposes of Section 16 Provider will:

- (a) Ensure that any waiver conditions are satisfied;
- (b) Obtain conflict waivers from all others with interests that are or are likely to become adverse to the interests of the Port; and
- (c) Remind Provider's directors, officers, managers, members, employees, subcontractors, and agents, engaged in work both for the Port and for another with interests in conflict with the Port's to be especially mindful of the obligations under this Contract, including but not limited to confidentiality requirements and any conditions of the Port's waiver.

3. Other Parties

A conflict waiver from another party must:

- (a) Be written and signed by an authorized representative of the entity granting the waiver;
- (b) Describe the Services that Provider has performed or shall perform for the Port;
- (c) Acknowledge and consent to Provider performing such Services;
- (d) Acknowledge that Provider's directors, officers, managers, members, employees, subcontractors, and agents performing work for the Port may be called upon to provide factual testimony and technical opinions on behalf of the Port in mediations, arbitrations, administrative proceedings, and lawsuits; and

Waive the right to object to that testimony based on a conflict.