

**PORT OF BROOKINGS HARBOR**  
**Special Commission Meeting**  
**Thursday, March 7, 2019 • 3:00 pm**  
Port Conference Room Suite 202  
16350 Lower Harbor Road, OR 97415

**TENTATIVE AGENDA**

**1. CALL MEETING TO ORDER**

- Pledge of Allegiance
- Roll Call
- Introduction of Guests and Port Staff
- Modifications, Additions, and Changes to the Agenda
- Declaration of Potential Conflicts of Interest

**2. APPROVAL OF AGENDA**

**3. PUBLIC COMMENTS** (Limited to a maximum of three minutes per person. A “Public Comment Request”, located near the entrance, must be completed and turned into the Chair prior to the beginning of the meeting.)

**4. ACTION ITEMS**

- A. Basin 1 Piling Project - Disposal of Old Piles

**5. INFORMATION ITEMS**

- A. None

**6. EXECUTIVE SESSION per ORS 192.660 (2)(h)**

- A. ORS 192.660 (2)(h) To consult with counsel concerning the legal rights and duties of a public body with regard to current litigation or litigation likely to be filed.

ORS 192.660 (6) No executive session may be held for the purpose of taking any final action or making any final decision.

Adjourn out of executive session and reconvene into regular session.

**7. NEXT REGULAR MEETING DATE – March 19, 2019, 6:00pm**

**8. ADJOURNMENT**

## ACTION ITEM – A

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**DATE:** March 7, 2019  
**RE:** Basin 1 Piling Project – Disposal of Old Piles  
**TO:** Board of Commissioners  
**ISSUED BY:** Gary Dehlinger, Port Manager

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### OVERVIEW

- Old piles that were removed by the contractor were 45-foot long. All the piles have a degree of corrosion. Please see attached recommendation letter from Jack Akin / EMC Engineer/Scientist.
- At this time, the Port Staff sees no useful plan to salvage portions of the piles and reuse them in other Port locations.
- FEMA informed the Port if any materials are sold from the project all proceeds must be returned to FEMA to offset the project costs. Or after 7 years from the project closure, the Port could sell the material and take the proceeds. Attached is the OEM HMGP agreement for the project for reference.
- Two nearby steel companies in Oregon were contacted for scrap pricing on the old piles. Port Staff produced four options, please see attached spreadsheet for the estimated quantities and pricing. Port Staff recommends Option 2. Port loading costs should be reimbursable from FEMA.

### DOCUMENTS

- Recommendation Letter from Jack Akin, 1 page
- OEM HMGP Agreement, 22 pages
- Spreadsheet with estimated scrap costs and backup documents, 8 pages

### COMMISSIONERS ACTION

- **Recommended Motion:**  
Motion: Port has no use for the old Basin 1 dock piles and approve to scrap all the old steel piles associated with FEMA PW 319 project to Cascade Metals and Recycling. All proceeds from the scrap metal will be reimbursed to the FEMA PW 319 project as required.



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- Engineers/Scientists, LLC

3/05/19

## Memo 30519-Piles

To: Gary Dehlinger, Port Manager  
Port of Brookings Harbor  
RE: Port Use 45' Steel Piles

The Pile & Dock Project replaced 45' long, 12" diameter steel, uncoated piles, somewhat corroded, with new 60' long, epoxy-coated 12" piles. The replaced piles, under FEMA rules, may be retained for reuse at the Port, scrapped, retained by the contractor (Bergerson), sold or given away. All proceeds collected for sale or scrapping must be returned to FEMA. There are of course pros and cons to each of these options. Metal recyclers in the area vary in prices per pound and some will pick up the piles and some won't. Shipping requires loading and trucking, with some preparation to comply with load length requirements. Locals may be willing to purchase steel piles but not likely to purchase so many of them at one time (there are about 84 of these piles). Meanwhile the Port must store the piles for an unknown period of time. Again, any proceeds must be returned to FEMA.

With respect to the option of re-using the piles in-water at the Port, I advise against it. All wave and surge studies performed by West, OBEC, Galli Group and EMC state that, in the Sport Basin, no less than 12" diameter piles, driven to a point of fixity if possible, and at least to depths of 25' below the mudline, be used for structural support. To achieve greater than 25' piles requires at least 55 -60' piles. OBEC and EMC have further recommended that 18" diameter piles, rather than 12", are preferred for use in the Commercial Basin. These 45' piles could be used for lateral support, fenders or wall stabilizers, but to do so requires cleaning, cutting and coating, and, eventually, driving. In my research about the Port's infrastructural needs, I see no such practical uses for these piles.

Sincerely

Jack (John) Akin, MS, PE, IC, HMS, CAI  
EMC-Engineers/Scientists, LLC



**OREGON MILITARY DEPARTMENT  
OFFICE OF EMERGENCY MANAGEMENT  
HAZARD MITIGATION GRANT PROGRAM  
CFDA # 97.039  
Port of Brookings  
Brookings Harbor – Basin 1 Piling Upgrade  
Not to Exceed \$341,352.00  
Grant No: HMGP-FM-5092-OR-3-R**

This Agreement is made and entered into by and between the State of Oregon, acting by and through the Oregon Military Department, Office of Emergency Management, hereinafter referred to as "OEM," and Port of Brookings, hereinafter referred to as "Subrecipient," and collectively referred to as the "Parties."

1. **Effective Date.** This Agreement shall become effective on the date this Agreement is fully executed and approved as required by applicable law. Reimbursements will be made for Project Costs incurred (as defined in Section 6.a) beginning on February 17, 2016, and shall terminate upon completion and approval of the Project (as defined in Section 4) by federal and state officials, including the completion of close-out and audit. This period shall be known as the Grant Award Period. The Project shall be completed no later than May 18, 2020 (the "Expiration Date"), unless otherwise extended as provided in this Agreement. OEM's obligation to disburse Grant Funds under this Agreement shall end as provided in Section 6.b.iv of this Agreement.
2. **Agreement Documents.** This Agreement consists of this document and the following documents, all of which are attached hereto and incorporated herein by reference:
  - Exhibit A: FEMA Project Description and Budget
  - Exhibit B: Federal Requirements and Certifications
  - Exhibit C: Subcontractor Insurance
  - Exhibit D: Information required by 2 CFR 200.331(a)

In the event of a conflict between two or more of the documents comprising this Agreement, the language in the document with the highest precedence shall control. The precedence of each of the documents comprising this Agreement is as follows, listed from highest precedence to lowest precedence: Exhibit B; this Agreement without Exhibits; Exhibit A; Exhibit C; Exhibit D.

3. **Project Cost, Grant Funds.** The total estimated cost of the Project for the purpose of this Grant Agreement is \$455,136.00. In accordance with the terms and conditions of this Agreement, OEM shall provide Subrecipient an amount not to exceed 75 percent of the Project Costs or \$341,352.00, whichever is less, in Grant Funds for eligible costs described in Section 6 hereof. Grant Funds for this Program are provided by the Federal Emergency Management Agency (FEMA) and are administered by OEM. Subrecipient will commit 25% to the project, known as the non-Federal match. The non-Federal match can be cash, in-kind or a combination of both. For this sub-grant, the non-Federal share contribution shall be 25 percent of the Project Costs, up to \$113,784.00. Subrecipient shall apply any savings, rebates and reductions in cost to reduce the overall cost of the Project. Subrecipient is responsible for any costs in excess of the total Project Cost.

4. **Project.** The Grant Funds shall be used solely for the project described in Exhibit A (the "Project") and shall not be used for any other purpose. No Grant Funds will be disbursed for any changes to the Project unless such changes are approved by OEM by amendment pursuant to Section 11.d hereof.
5. **Reports.** Failure of Subrecipient to submit the required program, financial, or audit reports, or to resolve program, financial, or audit issues may result in the suspension of grant payments, termination of this Agreement, or both.

**a. Performance and Close-Out Reports.**

- i. Subrecipient agrees to submit performance reports, using a form provided by OEM, on its progress in meeting each of its agreed upon milestones.
- ii. Reports are due to OEM on or before 15 days following the end of each calendar quarter (March 31, June 30, September 30, and December 31).
- iii. Subrecipient may request from OEM prior written approval to extend a performance report requirement past its due date. OEM, in its sole discretion, may approve or reject the request.
- iv. Subrecipient shall submit final close-out report to OEM for review which must include a financial performance report, construction reports (if applicable), invention disclosure (if applicable), Federally-owned property report (if applicable), and final request for reimbursement (if applicable).

**b. Financial Reimbursement Requests.**

- i. To receive reimbursement, Subrecipient must submit a Request for Reimbursement of Funds form (the "RfR form") to OEM which references the appropriate Hazard Mitigation Assistance Project Number, FEMA Project Number, FEMA FIPS Number and DUNS Number, and appropriate documentation as required. Partial payments of funds for costs already incurred may be requested at any time during the Project. Each request must include appropriate supporting documentation of the incurred costs and must be submitted at least quarterly. A final Request must be submitted no later than 30 days following completion of the Project or the Expiration Date, whichever occurs first.
- ii. Reimbursements for expenses will be withheld if performance reports are not submitted by the specified dates or are incomplete.
- iii. Reimbursement rates for travel expenses shall not exceed those allowed by the State of Oregon, however, travel expenses must be a part of the approved budget for the project. Requests for reimbursement for travel must be supported with a detailed statement identifying the person who traveled, the purpose of the travel, the dates, times, and places of travel, and the actual expenses or authorized rates incurred.
- iv. Reimbursements will only be made for actual expenses incurred during the Grant Award Period provided in Section 1. Subrecipient agrees that no grant or, if applicable, match funds may be used for expenses incurred before or after the Grant Award Period.

**6. Disbursement and Recovery of Grant Funds.**

- a. **Disbursement Generally.** OEM shall reimburse eligible costs incurred in carrying out the Project ("Project Costs"), up to the Grant Fund amount provided in Section 3. Reimbursements shall be made by OEM upon approval by OEM of the RfR form. Eligible Project Costs are the reasonable and necessary costs incurred by Subrecipient for the Project that are not excluded from

reimbursement by OEM or FEMA either by this Agreement or by exclusion as a result of financial review or audit.

- b. **Conditions Precedent to Disbursement.** OEM's obligation to disburse Grant Funds to Subrecipient is subject to satisfaction, with respect to each disbursement, of each of the following conditions precedent:
- i. OEM has received funding, appropriations, limitations, allotments or other expenditure authority sufficient to allow OEM, in the exercise of its reasonable administrative discretion, to make the disbursement.
  - ii. Subrecipient is in compliance with the terms of this Agreement including, without limitation, Exhibit B and the requirements incorporated by reference in Exhibit B.
  - iii. Subrecipient's representations and warranties set forth in Section 7 hereof are true and correct on the date of disbursement with the same effect as though made on the date of disbursement.
  - iv. Subrecipient has provided to OEM an RfR in accordance with Section 5.b of this Agreement.
- c. **Recovery of Grant Funds.** Any funds disbursed to Subrecipient under this Agreement that are expended in violation or contravention of one or more of the provisions of this Agreement ("Misexpended Funds") or that remain unexpended on the earlier of termination or expiration of this Agreement ("Unexpended Funds") must be returned to OEM. Subrecipient shall return all Misexpended Funds to OEM promptly after OEM's written demand and no later than 15 days after OEM's written demand. Subrecipient shall return all Unexpended Funds to OEM within 14 days after the earlier of expiration or termination of this Agreement.

The Subrecipient shall be responsible for pursuing recovery of monies paid under this Agreement in providing disaster assistance against any party that might be liable, and further, the Subrecipient shall cooperate in a reasonable manner with the State and the United States in efforts to recover expenditures under this Agreement.

In the event the Subrecipient obtains recovery from a responsible party, the Subrecipient shall first be reimbursed its reasonable costs of litigation from such recovered funds. The Subrecipient shall pay to the state the proportionate Federal share of all project funds recovered in excess of costs of litigation.

7. **Representations and Warranties of Subrecipient.** Subrecipient represents and warrants to OEM as follows:
- a. **Organization and Authority.** Subrecipient is a port and political subdivision of the State of Oregon duly organized under the laws of the State of Oregon and is eligible to receive the Grant Funds. Subrecipient has full power, authority, and legal right to make this Agreement and to incur and perform its obligations hereunder, and the making and performance by Subrecipient of this Agreement (1) have been duly authorized by all necessary action of Subrecipient and (2) do not and will not violate any provision of any applicable law, rule, regulation, or order of any court, regulatory commission, board, or other administrative agency, (3) do not and will not result in the breach of, or constitute a default or require any consent under any other agreement or instrument to which Subrecipient is a party or by which Subrecipient or any of its properties may be bound or affected. No authorization, consent, license, approval of, filing or registration with or notification to any governmental body or regulatory or supervisory authority is required for the execution, delivery or performance by Subrecipient of this Agreement.

- b. **Binding Obligation.** This Agreement has been duly executed and delivered by Subrecipient and constitutes a legal, valid and binding obligation of Subrecipient, enforceable in accordance with its terms subject to the laws of bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights generally.
- c. **No Solicitation.** Subrecipient's officers, employees, and agents shall neither solicit nor accept gratuities, favors, or any item of monetary value from contractors, potential contractors, or parties to subagreements. No member or delegate to the Congress of the United States or State of Oregon employee shall be admitted to any share or part of this Agreement or any benefit arising therefrom.

The warranties set forth in this section are in addition to, and not in lieu of, any other warranties set forth in this Agreement or implied by law.

#### **8. Records Maintenance and Access; Audit.**

- a. **Records, Access to Records and Facilities.** Subrecipient shall make and retain proper and complete books of record and account and maintain all fiscal records related to this Agreement and the Project in accordance with all applicable generally accepted accounting principles, generally accepted governmental auditing standards and state minimum standards for audits of municipal corporations. Subrecipient acknowledges and agrees, and Subrecipient will require its contractors, subcontractors, subrecipients (collectively hereafter "contractors"), successors, transferees, and assignees to acknowledge and agree, to provide OEM, Oregon Secretary of State (Secretary), Office of Inspector General (OIG), Department of Homeland Security (DHS), Federal Emergency Management Agency (FEMA), or any of their authorized representatives, access to records, accounts, documents, information, facilities, and staff. Subrecipient and its contractors must cooperate with any compliance review or complaint investigation by any of the above listed agencies, providing them access to and the right to examine and copy records, accounts, and other documents and sources of information related to the grant and permit access to facilities, personnel, and other individuals and information as may be necessary. The right of access is not limited to the required retention period but shall last as long as the records are retained.

Subrecipient must prepare a Schedule of Expenditures of Federal Awards (SEFA) that includes: Federal grantor name, pass-through entity name, program name, Federal catalog number, identifying number assigned by the pass-through entity and current year expenditures.

- b. **Retention of Records.** Subrecipient shall retain and keep accessible all books, documents, papers, and records that are directly related to this Agreement, the Grant Funds or the Project until the latest of (a) six years following termination, completion or expiration of this Agreement, (b) upon resolution of any litigation or other disputes related to this Agreement, or (c) as required by 2 CFR 200.333. It is the responsibility of Subrecipient to obtain a copy of 2 CFR Part 200 and to apprise itself of all rules and regulations set forth.
- c. **Audits.**
  - i. If Subrecipient expends \$750,000 or more in Federal funds (from all sources) in its fiscal year, Subrecipient shall have a single organization-wide audit conducted in accordance with the provisions of 2 CFR 200 Subpart F. Copies of all audits must be submitted to OEM within 30 days of completion. If Subrecipient expends less than \$750,000 in its fiscal year in Federal

funds, Subrecipient is exempt from Federal audit requirements for that year. Records must be available for review or audit by appropriate officials as provided in Section 8.a. herein.

- ii. Audit costs for audits not required in accordance with 2 CFR Part 200, Subpart F are unallowable. If Subrecipient did not expend \$750,000 or more in Federal funds in its fiscal year, but contracted with a certified public accountant to perform an audit, costs for performance of that audit shall not be charged to the grant.
- iii. Subrecipient shall save, protect and hold harmless OEM from the cost of any audits or special investigations performed by the Secretary or any federal agency with respect to the funds expended under this Agreement. Subrecipient acknowledges and agrees that any audit costs incurred by Subrecipient as a result of allegations of fraud, waste or abuse are ineligible for reimbursement under this or any other agreement between Subrecipient and the State of Oregon.

**9. Subrecipient Procurements; Property and Equipment Management and Records; Subcontractor Indemnity and Insurance**

- a. **Subagreements.** Subrecipient may enter into agreements (hereafter "subagreements") for performance of the Project. Subrecipient shall use its own procurement procedures and regulations, provided that the procurement conforms to applicable Federal and State law (including without limitation ORS chapters 279A, 279B, 279C, and that for contracts for more than \$150,000, the contract shall address administrative, contractual or legal remedies for violation or breach of contract terms and provide for sanctions and penalties as appropriate, and for contracts for more than \$10,000 address termination for cause or for convenience including the manner in which termination will be effected and the basis for settlement).
  - i. Subrecipient shall provide to OEM copies of all Requests for Proposals (RFPs) or other solicitations for procurements anticipated to be for \$100,000 or more and to provide to OEM, upon request by OEM, such documents for procurements for less than \$100,000. Subrecipient shall include with its RFR a list of all procurements issued during the period covered by the report.
  - ii. All subagreements, whether negotiated or competitively bid and without regard to dollar value, shall be conducted in a manner that encourages fair and open competition to the maximum practical extent possible. All sole-source procurements in excess of \$100,000 must receive prior written approval from OEM in addition to any other approvals required by law applicable to Subrecipient. Justification for sole-source procurement in excess of \$100,000 should include a description of the program and what is being contracted for, an explanation of why it is necessary to contract noncompetitively, time constraints and any other pertinent information. Interagency agreements between units of government are excluded from this provision.
  - iii. Subrecipient shall be alert to organizational conflicts of interest or non-competitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. Contractors that develop or draft specifications, requirements, statements of work, or RFPs for a proposed procurement shall be excluded from bidding or submitting a proposal to compete for the award of such procurement. Any request for exemption must be submitted in writing to OEM.
  - iv. Subrecipient agrees that, to the extent it uses contractors, such contractors shall use small, minority, women-owned or disadvantaged business concerns and contractors or subcontractors to the extent practicable.



- v. In the event that Subrecipient subcontracts for engineering services, Subrecipient shall require that the engineering firm be covered by errors and omissions insurance in an amount not less than the amount of the firm's contract. If the firm is unable to obtain errors and omissions insurance, the firm shall post a bond with Subrecipient for the benefit of Subrecipient of not less than the amount of its subcontract. Such insurance or bond shall remain in effect for the entire term of the subcontract. The subcontract shall provide that the subcontract shall terminate immediately upon cancellation or lapse of the bond or insurance and shall require the subcontractor to notify Subrecipient immediately upon any change in insurance coverage or cancellation or lapse of the bond.
- b. **Purchases and Management of Property and Equipment; Records.** Subrecipient agrees to comply with all applicable federal requirements referenced in Exhibit B, Section II.C.1 to this Agreement and procedures for managing and maintaining records of all purchases of property and equipment will, at a minimum, meet the following requirements:
- i. All property and equipment purchased under this Agreement, whether by Subrecipient or a contractor, will be conducted in a manner providing full and open competition and in accordance with all applicable procurement requirements, including without limitation ORS chapters 279A, 279B, 279C, and purchases shall be recorded and maintained in Subrecipient's property or equipment inventory system.
  - ii. Subrecipient's property and equipment records shall include: a description of the property or equipment; the manufacturer's serial number, model number, or other identification number; the source of the property or equipment, including the Catalog of Federal Domestic Assistance (CFDA) number; name of person or entity holding title to the property or equipment; the acquisition date; cost and percentage of Federal participation in the cost; the location, use and condition of the property or equipment; and any ultimate disposition data including the date of disposal and sale price of the property or equipment.  

For acquisition projects, Subrecipient shall retain real estate transaction and property tracking records indefinitely to enable FEMA to track the use of real property acquired with grant funds and ensure that the property is maintained for open space in perpetuity (see 44 CFR Part 80).
  - iii. A physical inventory of the property and equipment must be taken and the results reconciled with the property and equipment records at least once every two years.
  - iv. Subrecipient must develop a control system to ensure adequate safeguards to prevent loss, damage, or theft of the property and equipment. Subrecipient shall investigate any loss, damage, or theft and shall provide the results of the investigation to OEM upon request.
  - v. Subrecipient must develop, or require its contractors to develop, adequate maintenance procedures to keep the property and equipment in good condition.
  - vi. If Subrecipient is authorized to sell the property or equipment, proper sales procedures must be established to ensure the highest possible return.
  - vii. Subrecipient agrees to comply with 2 CFR 200.313 when original or replacement equipment acquired with Grant Funds is no longer needed for the original project or program or for other activities currently or previously supported by a Federal agency.
  - viii. Subrecipient shall require its contractors to use property and equipment management requirements that meet or exceed the requirements provided herein applicable to all property and equipment purchased with Grant Funds.

ix. Subrecipient shall retain, and shall require its contractors to retain, the records described in this Section 9.b. for a period of six years from the date of the disposition or replacement or transfer at the discretion of OEM. Title to all property and equipment purchased with Grant Funds shall vest in Subrecipient if Subrecipient provides written certification to OEM that it will use the property and equipment for purposes consistent with this Agreement.

- c. **Subagreement indemnity; insurance.** Subrecipient's subagreement(s) shall require the other party to such subagreements(s) that is not a unit of local government as defined in ORS 190.003, if any, to indemnify, defend, save and hold harmless OEM and its officers, employees and agents from and against any and all claims, actions, liabilities, damages, losses, or expenses, including attorneys' fees, arising from a tort, as now or hereafter defined in ORS 30.260, caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of the other party to Subrecipient's subagreement or any of such party's officers, agents, employees or subcontractors ("Claims"). It is the specific intention of the Parties that OEM shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of OEM, be indemnified by the other party to Subrecipient's subagreement(s) from and against any and all Claims.

Any such indemnification shall also provide that neither Subrecipient's contractor(s) nor any attorney engaged by Subrecipient's contractor(s) shall defend any claim in the name of OEM or any agency of the State of Oregon (collectively "State"), nor purport to act as legal representative of the State or any of its agencies, without the prior written consent of the Oregon Attorney General. The State may, at any time at its election, assume its own defense and settlement in the event that it determines that Subrecipient's contractor is prohibited from defending State or that Subrecipient's contractor is not adequately defending State's interests, or that an important governmental principle is at issue or that it is in the best interests of State to do so. State reserves all rights to pursue claims it may have against Subrecipient's contractor if State elects to assume its own defense.

Subrecipient shall require the other party, or parties, to each of its subagreements that are not units of local government as defined in ORS 190.003 to obtain and maintain insurance of the types and in the amounts provided in Exhibit C to this Agreement.

## 10. Termination

- a. **Termination by OEM.** OEM may terminate this Agreement effective upon delivery of written notice of termination to Subrecipient, or at such later date as may be established by OEM in such written notice, if:
- i. Subrecipient fails to perform the Project within the time specified herein or any extension thereof or commencement, continuation or timely completion of the Project by Subrecipient is, for any reason, rendered improbable, impossible, or illegal; or
  - ii. OEM fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow OEM, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement; or
  - iii. Federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that the Project is no longer allowable or no longer eligible for funding under this Agreement;
  - iv. The Project would not produce results commensurate with the further expenditure of funds; or

- v. Subrecipient takes any action pertaining to this Agreement without the approval of OEM and which under the provisions of this Agreement would have required the approval of OEM.
  - vi. OEM determines there is a material misrepresentation, error or inaccuracy in Subrecipient's application.
- b. **Termination by Subrecipient.** Subrecipient may terminate this Agreement effective upon delivery of written notice of termination to OEM, or at such later date as may be established by Subrecipient in such written notice, if:
- i. The requisite local funding to continue the Project becomes unavailable to Subrecipient; or
  - ii. Federal or state laws, rules, regulations or guidelines are modified or interpreted in such a way that the Project is no longer allowable or no longer eligible for funding under this Agreement.
- c. **Termination by Either Party.** Either Party may terminate this Agreement upon at least thirty days' notice to the other Party.
- d. **Effect of Termination.** In the event of termination of this Agreement, each party shall be liable only for Project Costs and allowable expenses incurred by the other party, prior to the effective date of termination, and Subrecipient will return all Federal funds paid to Subrecipient for the Project which have not been expended or irrevocably committed to eligible activities.

## 11. General Provisions

- a. **Indemnity.** Subrecipient shall, as required by ORS 401.178(2), indemnify, defend, save, and hold harmless the United States and its agencies, officers, employees, agents, and members, and the State of Oregon and its agencies, officers, employees, agents, and members, from and against all claims, damages, losses, expenses, suits, or actions of any nature arising out of or resulting from the activities of Subrecipient, its agencies, officers, employees, agents, members, contractors, or subcontractors under this Agreement. If legal limitations apply to the indemnification ability of Subrecipient, this indemnification shall be for the maximum amount of funds available for expenditure, including any available contingency funds, funds available under ORS 30.260 to 30.300 or other available non-appropriated funds. If requested by OEM, Subrecipient shall purchase commercial insurance covering this indemnification.
- b. **Dispute Resolution.** The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation. Each party shall bear its own costs incurred under this Section 11.b.
- c. **Responsibility for Grant Funds.** Subrecipient shall assume sole liability for that Subrecipient's breach of the conditions of this Agreement, and shall, upon Subrecipient's breach of conditions that requires OEM to return funds to the FEMA, hold harmless and indemnify OEM for an amount equal to the funds received under this Agreement; or if legal limitations apply to the indemnification ability of Subrecipient, the indemnification amount shall be the maximum amount of funds available for expenditure, including any available contingency funds or other available non-appropriated funds, up to the amount received under this Agreement.
- d. **Amendments.** This Agreement may be amended or extended only by a written instrument signed by both Parties and approved as required by applicable law.

- e. **Duplicate Payment.** Subrecipient is not entitled to compensation or any other form of duplicate, overlapping or multiple payments for the same work performed under this Agreement from any agency of the State of Oregon or the United States of America or any other party, organization or individual.
- f. **No Third Party Beneficiaries.** OEM and Subrecipient are the only Parties to this Agreement and are the only Parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly or indirectly, to a third person unless such a third person is individually identified by name herein and expressly described as an intended beneficiary of the terms of this Agreement.

Subrecipient acknowledges and agrees that the Federal Government, absent express written consent by the Federal Government, is not a party to this Agreement and shall not be subject to any obligations or liabilities to Subrecipient, contractor or any other party (whether or not a party to the Agreement) pertaining to any matter resulting from this Agreement.

- g. **Notices.** Except as otherwise expressly provided in this Section, any communications between the parties hereto or notice to be given hereunder shall be given in writing by personal delivery, facsimile, email or mailing the same by registered or certified mail, postage prepaid to the persons identified in the signature blocks or to such other persons, addresses or numbers as either party may hereafter indicate pursuant to this Section. Any communication or notice so addressed and sent by registered or certified mail shall be deemed delivered upon receipt or refusal of receipt. Any communication or notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine. Any communication or notice by personal delivery shall be deemed to be given when actually delivered. Any communication by email shall be deemed to be given when the recipient of the email acknowledges receipt of the email. The parties also may communicate by telephone, regular mail or other means, but such communications shall not be deemed Notices under this Section unless receipt by the other party is expressly acknowledged in writing by the receiving party.
- h. **Governing Law, Consent to Jurisdiction.** This Agreement shall be governed by, enforced under and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between OEM (or any other agency or department of the State of Oregon) and Subrecipient that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County in the State of Oregon. In no event shall this section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. Each party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.
- i. **Compliance with Law.** Subrecipient shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Agreement or to the implementation of the Project, including without limitation as described in Exhibit B. Without limiting the generality of the foregoing, Subrecipient expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and

administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

- j. Insurance; Workers' Compensation.** All employers, including Subrecipient, that employ subject workers who provide services in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Employer's liability insurance with coverage limits of not less than \$500,000 must be included. Subrecipient shall ensure that each of its subrecipient(s), contractor(s), and subcontractor(s) complies with these requirements.

The Subrecipient will comply with the insurance requirements of the Stafford Act, as amended, and obtain and maintain any other insurance as may be reasonable, adequate, and necessary to protect against further loss to any property which was replaced, restored, repaired or constructed with this assistance.

- k. Independent Contractor.** Subrecipient shall perform the Project as an independent contractor and not as an agent or employee of OEM. Subrecipient has no right or authority to incur or create any obligation for or legally bind OEM in any way. OEM cannot and will not control the means or manner by which Subrecipient performs the Project, except as specifically set forth in this Agreement. Subrecipient is responsible for determining the appropriate means and manner of performing the Project. Subrecipient acknowledges and agrees that Subrecipient is not an "officer", "employee", or "agent" of OEM, as those terms are used in ORS 30.265, and shall not make representations to third parties to the contrary.
- l. Headings.** The section headings in this Agreement are included for convenience only, do not give full notice of the terms of any portion of this Agreement, and are not relevant to the interpretation of any provision of this Agreement.
- m. Severability.** If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if this Agreement did not contain the particular term or provision held to be invalid.
- n. Counterparts.** This Agreement may be executed in two or more counterparts (by facsimile or otherwise), each of which is an original and all of which together are deemed one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart.
- o. Integration and Waiver.** This Agreement, including all Exhibits and referenced documents, constitutes the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. The delay or failure of either Party to enforce any provision of this Agreement shall not constitute a waiver by that Party of that or any other provision. Subrecipient, by the signature below of its authorized representative, hereby acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

**THE PARTIES**, by execution of this Agreement, hereby acknowledge that each Party has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

**Port of Brookings**

By   
Gary Dehlinger, Port Manager

Date 12-5-2018

**APPROVED AS TO LEGAL SUFFICIENCY**  
(If required for Subrecipient)

By   
Subrecipient's Legal Counsel

Date 12-05-2018

**Subrecipient Program Contact:**  
Travis Webster, Harbormaster  
Port of Brookings Harbor  
16330 Lower Harbor Road  
PO Box 848  
Harbor, OR 97415  
541-469-2218  
travis@portofbrookingsharbor.com

**Subrecipient Fiscal Contact:**  
Kim Boom, Budget Director  
Port of Brookings Harbor  
16330 Lower Harbor Road  
PO Box 848  
Harbor, OR 97415  
541-469-2218  
accounts@portofbrookingsharbor.com

**Office of Emergency Management**

By   
Clint Fells  
Mitigation and Recovery Services Section Manager

Date 12/17/18

**APPROVED AS TO FORM**

By Sam Zeigler via email  
Senior Assistant Attorney General

Date November 29, 2018

**OEM Program Contact:**  
Angie Lane  
State Hazard Mitigation Officer  
Oregon Military Department  
Office of Emergency Management  
PO Box 14370  
Salem, OR 97309-5062  
503-378-4660  
Angie.lane@state.or.us

**OEM Fiscal Contact:**  
Nicole Hanson  
Grants Program Accountant  
Oregon Military Department  
Office of Emergency Management  
PO Box 14370  
Salem, OR 97309-5062  
503-378-3849  
Nicole.l.hanson@state.or.us

**RECEIVED**

DEC 26 2018

PM  HM TW  
MA DS FO KB

**EXHIBIT A**

**Attached Budget and Project Description**

## EXHIBIT B

### Federal Requirements and Certifications

**I. General.** Subrecipient agrees to comply with all federal requirements applicable to this Agreement, including, without limitation, financial management and procurement requirements and maintain accounting and financial records in accordance with Generally Accepted Accounting Principles (GAAP) and financial, administrative, and audit requirements as set forth in the most recent versions of the Code of Federal Regulations (CFR), Department of Homeland Security (DHS) program legislation, and DHS/Federal Emergency Management Agency (FEMA) regulations.

#### II. Specific Requirements and Certifications

- A. Debarment, Suspension, Ineligibility and Voluntary Exclusion.** Subrecipient certifies by accepting funds under this Agreement that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, nor voluntarily excluded from participation in this transaction by any Federal department or agency (2 CFR 200.213).
- B. Standard Assurances and Certifications Regarding Lobbying.** Subrecipient is required to comply with 2 CFR 200.450 and the authorities cited therein, including 31 USC § 1352 and *New Restrictions on Lobbying* 44 CFR Part 18.
- C. Compliance with Applicable Law.** Subrecipient agrees to comply with all applicable laws, regulations, program guidance, and guidelines of the State of Oregon, the Federal Government and OEM in the performance of this Agreement, including but not limited to:
1. Administrative Requirements set forth in 2 CFR Part 200, including without limitation:
    - a. Using Grant Funds only in accordance with applicable cost principles described in 2 CFR Subpart E, including that costs allocable to this Grant may not be charged to other Federal awards to overcome fund deficiencies, to avoid restrictions imposed by federal statutes, regulations or the terms of federal awards or other reasons;
    - b. Subrecipient must establish a Conflict of Interest policy applicable to any procurement contract or sub-awards made under this Agreement in accordance with 2 CFR 200.112. Conflicts of Interest must be disclosed in writing to the OEM within 5 calendar days of discovery including any information regarding measures to eliminate, neutralize, mitigate or otherwise resolve the conflict of interest.
  2. USA Patriot Act of 2001, which amends 18 USC §§ 175-175c.
  3. Section 6 of the Hotel and Motel Fire Safety Act of 1990, 15 USC 2225(a).
  4. 31 USC 3729, prohibiting recipients of federal payments from submitting a false claim for payment. See 38 USC 3801-3812 detailing administrative remedies for false claims and statements made.
  5. 10 USC §§ 2409 and 2324 and 41 USC §§ 4712, 4304 and 4310 requiring compliance with whistleblower protections, as applicable.
  6. No supplanting. Grant Funds under this Agreement shall not replace funds that have been budgeted for the same purposes through non-Federal sources. Subrecipient may be required to



demonstrate and document that a reduction in non-Federal resources occurred for reasons other than receipt or expected receipt of Federal funds.

**D. Non-discrimination and Civil Rights Compliance, Equal Employment Opportunity Program, and Services to Limited English Proficient (LEP) Persons.**

1. **Non-discrimination and Civil Rights Compliance.** Subrecipient, and all its contractors and subcontractors, assures compliance with all applicable nondiscrimination laws, including but not limited to:
  - a. Title VI of the Civil Rights Act of 1964, 42 USC § 2000d et seq., as amended, and related nondiscrimination regulations in 6 CFR Part 21 and 44 CFR Part 7.
  - b. Title VIII of the Civil Rights Act of 1968, 42 USC § 3601, as amended, and implementing regulations at 6 CFR Part 21 and 44 CFR Part 7.
  - c. Titles I, II, and III of the Americans with Disabilities Act of 1990, as amended, 42 USC §§ 12101 – 12213.
  - d. Age Discrimination Act of 1975, 42 USC § 6101 et seq.
  - e. Title IX of the Education Amendments of 1972, as amended, 20 USC § 1681 et seq.
  - f. Section 504 of the Rehabilitation Act of 1973, as amended, 29 USC § 794, as amended.
  - g. If, during the past three years, Subrecipient has been accused of discrimination on the grounds of race, color, national origin (including limited English proficiency), sex, age, disability, religion, or familial status, Subrecipient must provide a letter certifying that all documentation of such proceedings, pending or completed, including outcome and copies of settlement agreements will be made available to OEM upon request. In the event any court or administrative agency makes a finding of discrimination on grounds of race, color, national origin (including limited English proficiency), sex, age, disability, religion, or familial status against Subrecipient, or Subrecipient settles a case or matter alleging such discrimination, Subrecipient must forward a letter to OEM summarizing the finding and making a copy of the complaint and findings available to OEM.
2. **Equal Employment Opportunity Program.** Subrecipient, and any of its contractors and subcontractors, certifies that an equal employment opportunity program will be in effect on or before the effective date of this Agreement. Subrecipient must maintain a current copy on file.
3. **Services to Limited English Proficient (LEP) Persons.** Subrecipient, and any of its contractors and subcontractors agrees to comply with the requirements Title VI of the Civil Rights Act of 1964 and Executive Order 13166, improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin and resulting agency guidance, national origin discrimination includes discrimination on the basis of LEP. To ensure compliance with Title VI, Subrecipient must take reasonable steps to ensure that LEP persons have meaningful access to your programs. Meaningful access may entail providing language assistance services, including oral and written translation, where necessary. Subrecipient is encouraged to consider the need for language services for LEP persons served or encountered both in developing budgets and in conducting programs and activities. For assistance additional information regarding LEP obligations, please see <http://www.lep.gov>.

**E. Environmental and Historic Preservation.**

1. Subrecipient shall comply with all applicable Federal, State, and local environmental and historic preservation (EHP) requirements and shall provide any information requested by FEMA to ensure compliance with applicable environmental and historic preservation laws including but not limited to:
  - a. National Environmental Policy Act of 1969, as amended, 42 USC § 4321, and related FEMA regulations, 44 CFR Part 10.
  - b. National Historic Preservation Act, 16 USC § 470 et seq.
  - c. Endangered Species Act, 16 USC § 1531 et seq.
  - d. Executive Orders on Floodplains (11988), Wetlands (11990) and Environmental Justice (12898).

Failure of Subrecipient to meet Federal, State, and local EHP requirements and obtain applicable permits may jeopardize Federal funding.

2. Subrecipient shall not undertake any project without prior EHP approval by FEMA, including but not limited to communications towers, physical security enhancements, new construction, and modifications to buildings, structures, and objects that are 50 years old or greater. Subrecipient must comply with all conditions placed on the project as the result of the EHP review. Any change to the approved project scope of work will require re-evaluation for compliance with these EHP requirements. If ground disturbing activities occur during project implementation, Subrecipient must ensure monitoring of ground disturbance and if any potential archeological resources are discovered, Subrecipient will immediately cease construction in that area and notify FEMA and the appropriate State Historic Preservation Office. Any construction activities that have been initiated without the necessary EHP review and approval will result in a non-compliance finding and will not be eligible for FEMA funding.
3. For any of Subrecipient's or its contractors' or subcontractors' existing programs or activities that will be funded by these grant funds, Subrecipient, upon specific request from the U.S. DHS, agrees to cooperate with the U.S. DHS in any preparation by the U.S. DHS of a national or program environmental assessment of that funded program or activity.

**F. Procurement of recovered materials.** Subrecipient must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Recovery and Conservation Act and in accordance with Environmental Protection Agency guidelines at 40 CFR Part 247.

**G. SAFECOM.** If the Grant Funds are for emergency communication equipment and related activities, Subrecipient must comply with SAFECOM Guidance for Emergency Communication Grants, including provisions on technical standards that ensure and enhance interoperable communications.

**H. Drug-Free Workplace Requirements.** Subrecipient agrees to comply with the requirements of the Drug-Free Workplace Act of 1988, 41 USC § 701 et seq., as amended, and implementing regulations at 2 CFR Part 3001 which require that all organizations receiving grants (or subgrants) from any Federal agency agree to maintain a drug-free workplace. Subrecipient must notify this

office if an employee of Subrecipient is convicted of violating a criminal drug statute. Failure to comply with these requirements may be cause for debarment.

- I. **Human Trafficking (2 CFR Part 175).** Subrecipient must comply with requirements of Section 106(g) of the Trafficking Victims Protection Act of 2000, 22 USC § 7104, as amended and 2 CFR § 175.15.
- J. **Fly America Act of 1974.** Subrecipient agrees to comply with the requirements of the Preference for U.S. Flag Air Carriers: (air carriers holding certificates under 49 USC § 41102) for international air transportation of people and property to the extent that such service is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974, as amended, (49 USC § 40118) and the interpretative guidelines issued by the Comptroller General of the United States in the March 31, 1981, amendment to the Comptroller General Decision B138942.
- K. **Activities Conducted Abroad.** Subrecipient agrees to comply with the requirements that project activities carried on outside the United States are coordinated as necessary with appropriate government authorities and that appropriate licenses, permits, or approvals are obtained.
- L. **Acknowledgement of Federal Funding from DHS.** Subrecipient agrees to comply with requirements to acknowledge Federal funding when issuing statements, press releases, requests for proposals, bid invitations, and other documents describing projects or programs funded in whole or in part with Federal funds.
- M. **Copyright.** Subrecipient shall affix the applicable copyright notices of 17 USC § 401 or 402 and an acknowledgement of Government sponsorship (including Subgrant number) to any work first produced under an award unless the work includes any information that is otherwise controlled by the Government (e.g., classified information or other information subject to national security or export control laws or regulations). For any scientific, technical, or other copyright work based on or containing data first produced under this Agreement, including those works published in academic, technical or professional journals, symposia proceedings, or similar works, Subrecipient grants the Government a royalty-free, nonexclusive and irrevocable license to reproduce, display, distribute copies, perform, disseminate, or prepare derivative works, and to authorize others to do so, for Government purposes in all such copyrighted works.
- N. **Patents and Intellectual Property Rights.** Unless otherwise provided by law, Subrecipient is subject to the Bayh-Dole Act, 35 USC § 200 et seq., as amended, including requirements governing the development, reporting and disposition of rights to inventions and patents resulting from financial assistance awards, 37 CFR Part 401, and the standard patent rights clause in 37 CFR § 401.14.
- O. **Use of DHS Seal, Logo and Flags.** Subrecipient agrees to obtain DHS's approval prior to using the DHS seal(s), logos, crests or reproductions of flags or likenesses of DHS agency officials, including use of the United States Coast Guard seal, logo, crests or reproductions of flags or likenesses of Coast Guard officials.
- P. **Personally Identifiable Information (PII).** Subrecipient, if it collects PII, is required to have a publically available privacy policy that described what PII they collect, how they use it, whether they share it with third parties and how individuals may have their PII corrected where appropriate.

**Q. Federal Debt Status.** Subrecipient shall be non-delinquent in its repayment of any federal debt. Examples of relevant debt include delinquent payroll and other taxes, audit disallowances, benefit overpayments and any amounts due under Section 11.c of this Agreement. See OMB Circular A-129 for additional information and guidance.

**R. Construction Contracts.**

1. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."
2. When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction").
3. Contracts awarded by Subrecipient in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5).
4. Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387).

**S. Funding Agreements.** If the Federal award meets the definition of "funding agreement" under 37 CFR § 401.2 (a) and Subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," Subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

**T. Executive Compensation.** Within thirty (30) days of the Effective Date of this Agreement, Subrecipient agrees to report to OEM the names and compensation of each of the Subrecipient's five most highly compensated executives for the completed fiscal year preceding this Agreement if in the preceding fiscal year Subrecipient received: (i) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards) and (ii) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards) and (iii) the public does not have access to information about the compensation of the executives

through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986.

- U. **Animal Welfare Act.** All recipients of financial assistance will comply with the requirements of the *Animal Welfare Act*, as amended (7 U.S.C. § 2131 *et seq.*), which requires that minimum standards of care and treatment be provided for vertebrate animals bred for commercial sale, used in research, transported commercially, or exhibited to the public. Recipients must establish appropriate policies and procedures for the humane care and use of animals based on the *Guide for the Care and Use of Laboratory Animals* and comply with the *Public Health Service Policy and Government Principles Regarding the Care and Use of Animals*.
- V. **Clean Air Act of 1970 and Clean Water Act of 1977.** All recipients of financial assistance will comply with the requirements of 42 U.S.C. § 7401 *et seq.* and Executive Order 11738, which provides for the protection and enhancement of the quality of the nation's air resources to promote public health and welfare and for restoring and maintaining the chemical, physical, and biological integrity of the nation's waters is considered research for other purposes.
- W. **Protection of Human Subjects.** All recipients of financial assistance will comply with the requirements of the Federal regulations at 45 CFR Part 46, which requires that recipients comply with applicable provisions/law for the protection of human subjects for purposes of research. Recipients must also comply with the requirements in DHS Management Directive 026-04, *Protection of Human Subjects*, prior to implementing any work with human subjects. For purposes of 45 CFR Part 46, research means a systematic investigation, including research, development, testing, and evaluation, designed to develop or contribute to general knowledge. Activities that meet this definition constitute research for purposes of this policy, whether or not they are conducted or supported under a program that is considered research for other purposes. The regulations specify additional protections for research involving human fetuses, pregnant women, and neonates (Subpart B); prisoners (Subpart C); and children (Subpart D). The use of autopsy materials is governed by applicable State and local law.
- X. **Environmental Policy Act (NEPA) of 1969.** All recipients of financial assistance will comply with the requirements of the *National Environmental Policy Act (NEPA)*, as amended, 42 U.S.C. § 4331 *et seq.*, which establishes national policy goals and procedures to protect and enhance the environment, including protection against natural disasters. To comply with NEPA for its grant-supported activities, DHS requires the environmental aspects of construction grants (and certain non-construction projects as specified by the Component and awarding office) to be reviewed and evaluated before final action on the application.
- Y. **National Flood Insurance Act of 1968.** All recipients of financial assistance will comply with the requirements of Section 1366, 42 U.S.C. 4104c of the *National Flood Insurance Act of 1968*, as amended by the National Flood Insurance Reform Act of 1994, P.L. 103-325; the Bunning-Bereuter-Blumenauer Flood Insurance Reform Act of 2004, P.L. 108-264; and the Biggert-Waters Flood Insurance Reform Act, P.L. 112-141,
- Z. **Flood Disaster Protection Act of 1973.** All recipients of financial assistance will comply with the requirements of the *Flood Disaster Protection Act of 1973*, as amended (42 U.S.C. § 4001 *et seq.*), which provides that no Federal financial

assistance to acquire, modernize, or construct property may be provided in identified flood-prone communities in the United States, unless the community participates in the National Flood Insurance Program and flood insurance is purchased within one year of the identification. The flood insurance purchase requirement applies to both public and private applicants for DHS support. Lists of flood-prone areas that are eligible for flood insurance are published in the *Federal Register* by FEMA. 45 CFR Part 46.

**AA. Coastal Wetlands Planning, Protection, and Restoration Act of 1990.** All recipients of financial assistance will comply with the requirements of Executive Order 11990, which provides that federally funded construction and improvements minimize the destruction, loss, or degradation of wetlands. The Executive Order provides that, in furtherance of Section 101(b)(3) of NEPA (42 U.S.C. § 4331(b)(3)), Federal agencies, to the extent permitted by law, must avoid undertaking or assisting with new construction located in wetlands unless the head of the agency finds that there is no practicable alternative to such construction, and that the proposed action includes all practicable measures to minimize harm to wetlands that may result from such use. In making this finding, the head of the agency may take into account economic, environmental, and other pertinent factors. The public disclosure requirement described above also pertains to early public review of any plans or proposals for new construction in wetlands. This is codified at 44 CFR Part 9.

## EXHIBIT C

### Subagreement Insurance Requirements

#### GENERAL.

Subrecipient shall require in its first tier subagreements with entities that are not units of local government as defined in ORS 190.003, if any, to: i) obtain insurance specified under TYPES AND AMOUNTS and meeting the requirements under ADDITIONAL INSURED, "TAIL" COVERAGE, NOTICE OF CANCELLATION OR CHANGE, and CERTIFICATES OF INSURANCE before performance under the subagreement commences, and ii) maintain the insurance in full force throughout the duration of the subagreement. The insurance must be provided by insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to State. Subrecipient shall not authorize work to begin under subagreements until the insurance is in full force. Thereafter, Subrecipient shall monitor continued compliance with the insurance requirements on an annual or more frequent basis. Subrecipient shall incorporate appropriate provisions in the subagreement permitting it to enforce compliance with the insurance requirements and shall take all reasonable steps to enforce such compliance. In no event shall Subrecipient permit work under a subagreement when Subrecipient is aware that the contractor is not in compliance with the insurance requirements. As used in this section, "first tier" means a subagreement in which Subrecipient is a Party.

#### TYPES AND AMOUNTS.

i. **WORKERS COMPENSATION.** Insurance in compliance with ORS 656.017, which requires all employers that employ subject workers, as defined in ORS 656.027, to provide workers' compensation coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Employers liability insurance with coverage limits of not less than \$500,000 must be included.

ii. **COMMERCIAL GENERAL LIABILITY.**

Commercial General Liability Insurance covering bodily injury, death, and property damage in a form and with coverages that are satisfactory to State. This insurance shall include personal injury liability, products and completed operations. Coverage shall be written on an occurrence form basis, with not less than the following amounts as determined by OEM:

**Bodily Injury, Death and Property Damage:**

\$500,000 per occurrence (for all claimants for claims arising out of a single accident or occurrence).

iii. **AUTOMOBILE Liability Insurance: Automobile Liability.**

Automobile Liability Insurance covering all owned, non-owned and hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance (with separate

limits for "Commercial General Liability" and "Automobile Liability"). Automobile Liability Insurance must be in not less than the following amounts as determined by OEM:

**Bodily Injury, Death and Property Damage:**

\$500,000 per occurrence (for all claimants for claims arising out of a single accident or occurrence).

**ADDITIONAL INSURED.** The Commercial General Liability Insurance and Automobile Liability insurance must include OEM, its officers, employees and agents as Additional Insureds but only with respect to the contractor's activities to be performed under the Subcontract. Coverage must be primary and non-contributory with any other insurance and self-insurance.

**"TAIL" COVERAGE.** If any of the required insurance policies is on a "claims made" basis, such as professional liability insurance, the contractor shall maintain either "tail" coverage or continuous "claims made" liability coverage, provided the effective date of the continuous "claims made" coverage is on or before the effective date of the Subcontract, for a minimum of 24 months following the later of: (i) the contractor's completion and Subrecipient's acceptance of all Services required under the Subcontract or, (ii) the expiration of all warranty periods provided under the Subcontract. Notwithstanding the foregoing 24-month requirement, if the contractor elects to maintain "tail" coverage and if the maximum time period "tail" coverage reasonably available in the marketplace is less than the 24-month period described above, then the contractor may request and OEM may grant approval of the maximum "tail" coverage period reasonably available in the marketplace. If OEM approval is granted, the contractor shall maintain "tail" coverage for the maximum time period that "tail" coverage is reasonably available in the marketplace.

**NOTICE OF CANCELLATION OR CHANGE.** The contractor or its insurer must provide 30 days' written notice to Subrecipient before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).

**CERTIFICATE(S) OF INSURANCE.** Subrecipient shall obtain from the contractor a certificate(s) of insurance for all required insurance before the contractor performs under the Subcontract. The certificate(s) or an attached endorsement must specify: i) all entities and individuals who are endorsed on the policy as Additional Insured and ii) for insurance on a "claims made" basis, the extended reporting period applicable to "tail" or continuous "claims made" coverage.



## EXHIBIT D

### Information required by 2 CFR 200.331(a)

- I. Federal Award Identification: HMGP-OR-DR-4258-7-R
  - (i) Sub-recipient name (which must match registered name in DUNS): Port of Brookings
  - (ii) Sub-recipient's DUNS number: 052042553
  - (iii) Federal Award Identification Number (FAIN): HMGP-OR-DR-4258-7-R
  - (iv) Federal Award Date: October 19, 2018
  - (v) Sub-award Period of Performance: February 17, 2016 through May 18, 2020 (to allow for eligible and budgeted pre-award costs)
  - (vi) Total Amount of Federal Funds Obligated by this Agreement: \$341,352.00
  - (vii) Total Amount of Federal Funds Obligated to the Subrecipient by the pass-through entity including this agreement: \$688,360.50
  - (viii) Total Amount of Federal Award committed to the subrecipient by the pass-through entity: \$341,352.00
  - (ix) Federal award project description: Brookings Harbor-Basin 1 Piling Upgrade
  - (x) Name of Federal awarding agency: U.S. Department of Homeland Security, Federal Emergency Management Agency (FEMA)
    - (a) Name of Pass-through entity: Oregon Military Department, Office of Emergency Management
    - (b) Contact information for awarding official of the pass-through entity: Andrew Phelps, Director, P O Box 14370, Salem, OR 97309-5062
  - (xi) CFDA Number and Name: 97.039 Hazard Mitigation Grant Program  
Amount: \$341,352.00
  - (xii) Is Award R&D? No
  - (xiii) Indirect cost rate for the Federal award: 0%
2. Subrecipient's indirect cost rate: 0%

**PORT OF BROOKINGS HARBOR  
PW 319 Basin 1 Piling Project  
Estimated Scrap Costs**

3/5/2019

Pile Length	Pile Weight per Foot	# of Pile	Estimated Total Weight	Steel Companies	Schnitzer Steel - White City Price per Ton	Subtotal	Port Delivery Cost	Port Handling Cost	Schnitzer Total
45	65.5	81	119.37		\$ 115.00	\$ 14,349.41	\$ 4,960.00	\$ 1,452.50	\$ 7,936.91
33	65.5	5	5.40						
			124.78						
<b>Port Cuts and Delivers Steel - 124 miles away</b>									
			<b>Option - 1</b>						
<b>Steel Company Picks Up Steel / Port Loads Steel on Trucks</b>									
			<b>Option - 2</b>	Cascade Metal & Recycling - Grants Pass Price per Ton	\$ 70.00	\$ 8,734.43	\$ -	\$ -	Cascade Metal Total
				Don Roemer					\$ 8,734.43
				541-479-8017					
<b>Port Cuts and Delivers Steel - 97 miles away</b>									
			<b>Option - 3</b>	Port Delivery to Cascade Metal & Recycling Price per Ton	\$ 105.00	\$ 13,101.64	\$ 3,892.00	\$ 1,452.50	Port Final Total
									\$ 7,757.14
<b>Port Stores Steel in Boat Yard Until Use is Found</b>									
			<b>Option - 4</b>	Port Keeps Steel for Future Use					

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Option 1

~~Snitzer~~ steel - White City  
Schnitzer 124 miles

- paying \$115.00 per ton / we delete  
\$14,317.50

- Options for trucking - 2 options

piles are

45' long

Cut to 22.5'

- BC Fisheries  
25ft max

- Hanks Hauling LLC  
25' Max

BC per mile \$2.00

Hanks Hauling \$2.50

Both 25k  
Capacity

83 cuts @ 2 cuts per hr = 41.5 hrs

41.5 hrs x \$35 ph = \$1452.50

\$2.00 per load  
10 loads - 249 miles per load  
\$4960.00 @ \$496.00 per load

Cost to cut AND ship

We load

\$6,412

To Port

\$7905.50

Option 2

Cascade Metal Recycling

Grants pass 97.3 miles

will pay \$70.00 per ton  
and Haul away. No cuts  
we load.

$$124.5 \text{ tons} \times \$70.00 = \$8715$$

Option 3

If we deliver \$105.00 per  
124.5 tons @ 105 per ton  
Total income \$13,072.50

Costs:

cut piles \$1452.50

10 loads @ 194.6 miles per load

@ \$2.00 per mile. \$3,892

Cost total \$5344.50

To Port \$7,728.00

Back to [web results for trucking near me](#)

## Search Results

B C Fishing Transport  
Trucking company  
Harbor, OR  
(541) 412-7368

- will get back to me w/ pricing.  
He has a trailer he can haul 25ft  
@ 25,000lbs per load.  
Is also checking pricing to Rent Flat  
Bed,

[WEBSITE](#)

[DIRECTIONS](#)

West Coast Carriers  
Trucking company  
Brookings, OR

No Answer or machine

[DIRECTIONS](#)

Alto Brothers Trucking  
Trucking company  
Brookings, OR  
(541) 469-6054

No Answer or machine

[DIRECTIONS](#)

John D Rapraeger Inc  
Trucking company  
Brookings, OR  
(541) 469-6640

Line disconnected

[DIRECTIONS](#)

Darrow Trucking  
Trucking company  
Crescent City, CA  
(707) 464-3253

No truck right now

[DIRECTIONS](#)

Holt Transportation  
Trucking company  
Crescent City, CA  
(707) 465-8310

No Answer or machine

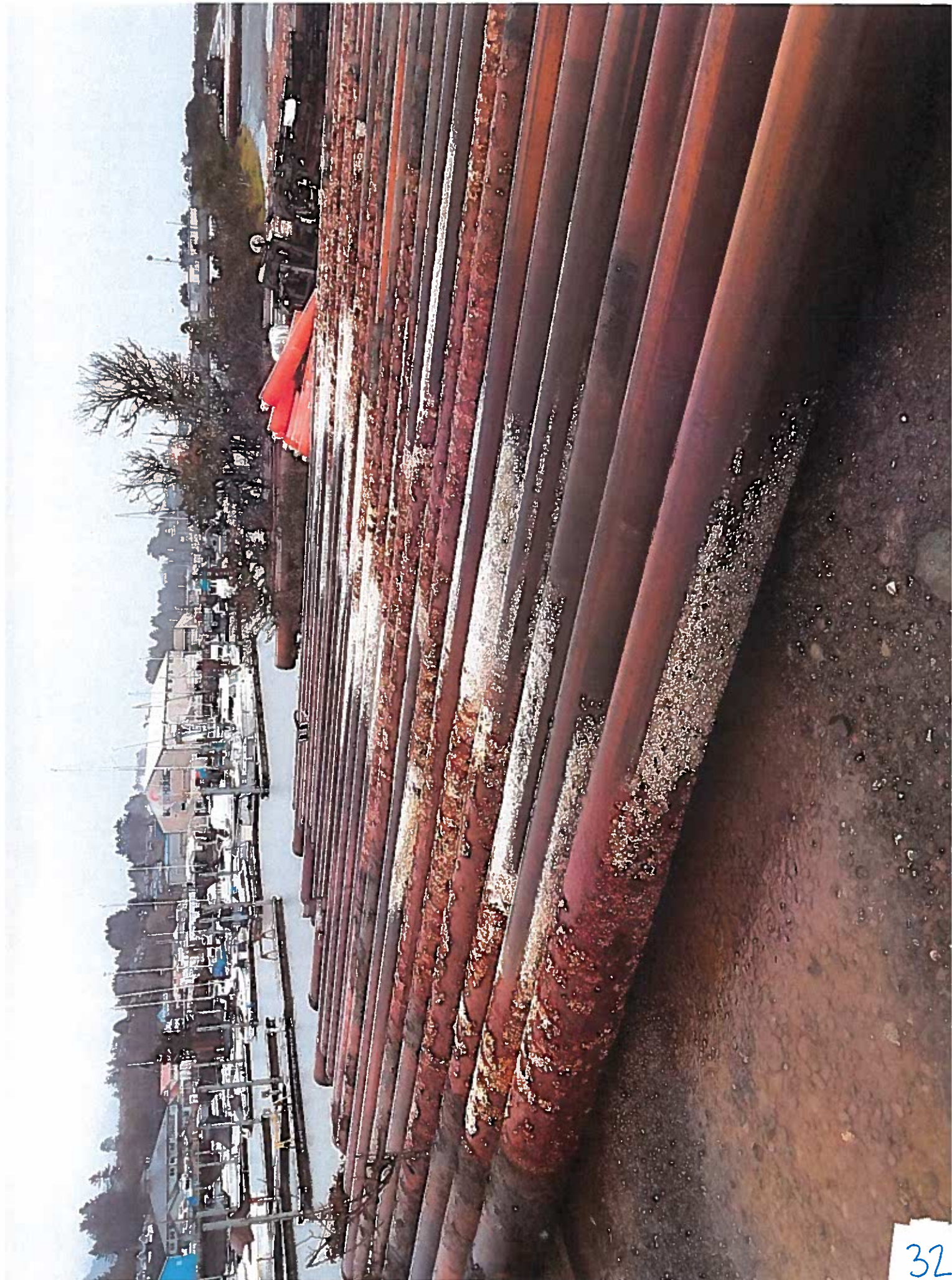
[DIRECTIONS](#)

Hank's Hauling Llc  
Trucking company  
Smith River, CA  
(707) 954-0778

Have to cut to 25 ft lengths.  
\$ 2.50 per mile.

DIRECTIONS







3/4/2019

Port Office Mail - steel pilings at Brookings Harbor



Travis Webster <travis@portofbrookingsharbor.com>

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## steel pilings at Brookings Harbor

2 messages

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**Don Roemer** <droemer@cascademetal.com>  
To: [travis@portofbrookingsharbor.com](mailto:travis@portofbrookingsharbor.com)

Mon, Mar 4, 2019 at 2:25 PM

Travis,

Pick up price is \$70.00 per ton, includes trucking.

Delivered price to Cascade Metal Recycling, [2207 NE Industry Dr., Grants Pass, Or. 97526](#), \$105.00 per ton.

Don Roemer

Cascade Metal Recycling

(541) 479-8017

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**Travis Webster** <travis@portofbrookingsharbor.com>  
To: **Don Roemer** <droemer@cascademetal.com>

Mon, Mar 4, 2019 at 2:28 PM

Thank you for the quote. I will be in touch.

Thanks

Travis Webster

[Quoted text hidden]

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Travis Webster - Harbormaster

Port of Brookings Harbor

cell: 541-291-7380

## **Executive Session**

**This executive session of the Port of Brookings Harbor Board of Directors is called pursuant to ORS 192.660 (2)(h) to consult with counsel concerning the legal rights and duties of a public body with regard to current litigation or litigation likely to be filed.**

**Any member of the media that is here may remain. However, the Board will require that any information derived from this meeting may not be disclosed pursuant to ORS 192.660(4).**