

**PORT OF BROOKINGS HARBOR**  
**Special Commission Meeting**  
**Thursday, October 28, 2021 • 9:00am**  
**Teleconference / Meeting Room** *(limited capacity)*  
**16350 Lower Harbor Road Suite 202, Harbor OR, 97415**

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**Teleconference Call-In Number: 1 (253) 215-8782**

**Meeting ID: 771 205 4017      Passcode: 76242021      (to mute/unmute: \* 6)**

*When calling in, please announce your arrival and state your name when you join the meeting.*

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**TENTATIVE AGENDA**

**1. CALL MEETING TO ORDER**

- Roll Call
- 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. Please email your comments to [portmanager@portofbrookingsharbor.com](mailto:portmanager@portofbrookingsharbor.com) prior to the meeting. \*\*\*Please wait to be called on before speaking\*\*\*)

**4. ACTION ITEMS**

A. FEMA DR-4432/4452 Professional Engineering Service Contract Approval

**5. INFORMATION ITEMS**

A. None

**6. COMMISSIONER COMMENTS**

**7. NEXT REGULAR MEETING DATE** – Wednesday, November 17, 2021 at 2:00pm

**8. ADJOURNMENT**

A request for an interpreter for the hearing impaired, for those who want to participate but do not have access to a telephone, or for other accommodations for persons with disabilities should be made at least 48 hours in advance of the meeting to Port of Brookings Harbor Office at 541-469-2218.

*This Institution is an Equal Opportunity Provider*

# ACTION ITEM – A

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**DATE:** October 28, 2021  
**RE:** FEMA DR-4432/4452 Professional Engineering Service Contract Approval  
**TO:** Honorable Board President and District Board Members  
**ISSUED BY:** Gary Dehlinger, Port Manager

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## OVERVIEW

- The Port solicited proposals for the engineering and permitting on FEMA DR-4432 & DR-4452 projects and received one proposal by the deadline on October 18, 2021.
- The Board awarded the engineering services to EMC Engineers/Scientists on October 20, 2021.
- The agreement is for three years, ending October 28, 2024, with an option to extend the agreement one year at the end of the term.
- Draft contract was reviewed by port legal.

## DOCUMENTS

- Draft EMC Engineers/Scientists, LLC Professional Services Agreement, 15 pages

## COMMISSIONERS ACTIONS

- **Recommended Motion:**  
Motion to approve EMC Engineers/Scientists, LLC Professional Services Agreement for the FEMA DR-4432 and DR-4452 projects.

## **Port of Brookings Harbor Agreement for Professional Services**

This Agreement for Professional Services ("Agreement") is made and entered into this 28th day of October, 2021 by and between the Port of Brookings Harbor, an Oregon special district, herein referred to as "POBH" and EMC Engineers/Scientists, LLC company, herein referred to as "Contractor."

**NOW, THEREFORE**, in consideration of the promises and covenants contained herein, the parties agree as follows:

**1.0. Effective Date and Duration.** This Agreement will become effective upon its execution by the POBH and will expire October 28, 2024, unless otherwise terminated or extended.

**1.01. Option to extend Contract.** POBH will provide an option to extend this contract for one (1) additional year by amendment agreement between parties.

**2.0. Scope of Services.** Contractor's services under this Agreement consist of the following (the "Work"):

**2.01. Services.** Contractor will perform the services detailed in Exhibit A, attached hereto and incorporated herein by this reference.

**2.02. Schedule.** Contractor will perform the Work in accordance with the Project Schedule(s) set forth in Exhibit B, attached here to and incorporated herein by this reference.

**2.03. Documents.** All documents including Drawings and Specifications prepared or furnished by Contractor (or Contractor's independent professional associates and consultants) pursuant to his Agreement are instruments of service in respect of the Project and Contractor and shall retain an ownership and property interest herein whether or not the Project is completed. POBH may make and retain copies for information and reference in connection with the use and occupancy of the Project by POBH and others. However, such documents are not intended or represented to be suitable for reuse by POBH or others on extension of the Project or any other project. Any reuse, without written verification or adaptation by Contractor for the specific purpose intended, will be at POBH's sole risk and without liability or legal exposure to contractor (or Contractor's independent professional associates or consultants), and POBH shall indemnify and hold harmless Contractor (and Contractor's independent professional associates and consultants) from all claims, damages losses and expenses including attorneys' fees arising out of or resulting therefrom. Any such verification or adaptation will entitle Contractor to further compensation at rates to be agreed upon by POBH and Contractor.

**2.04. Information Provided by Others.** POBH shall provide Contractor such information as is available to POBH with respect to the work and Contractor shall be entitled to rely on the accuracy and completeness thereof. POBH recognizes it is not possible for Contractor to insure the accuracy, completeness, and sufficiency of such information if Contractor was not retained to verify the information POBH is providing. Accordingly, POBH agrees, to the fullest extent permitted by law, to indemnify and hold Contractor, its officers, agents and employees harmless from any claim, liability or cost (including reasonable attorney's fees and costs of

defense) for injury or loss arising or allegedly arising from errors, omissions, or inaccuracies in documents or other information provided by POBH to Contractor.

**2.05. Opinions of Cost.** Since Contractor has no control over the cost of labor, materials, equipment or services furnished by others, or over the construction contractors' methods of determining prices, or over competitive bidding or market conditions, Contractor's opinion of probable Total Project Costs and Construction Costs provided for as part of the Work are to be made on the basis of Contractor's experience and qualifications and represent Contractor's best judgment as an experienced and qualified professional engineer, familiar with the construction industry; but Contractor cannot and does not guarantee that proposals, bids, or actual Total Project of Construction Costs will not vary from opinions of probable cost prepared by Contractor.

**3.0. Compensation & Billing.**

**3.01. Compensation.** Contractor will be compensated on a time and materials basis, not to exceed \$250,000 in accordance with **Exhibit C**, attached hereto and incorporated herein by this reference.

**3.02. Invoicing.** Contractor must submit monthly invoices based on work completed. POBH will pay Contractor within 30 days of receipt of invoice. If there is a dispute as to one or more line items on the invoice, POBH will pay the undisputed portion within 30 days of receipt. The parties will exercise good faith and diligence in the resolution of any disputed invoice amounts and POBH will pay promptly upon resolution of the dispute.

**4.0. Licensing and Certification.** Contractor is required to maintain, at its own expense, all license and certifications required by the State of Oregon to perform services under this Agreement.

**5.0. Status of Contractor as Independent Contractor.** Contractor certifies that:

**A.** Contractor acknowledges that for all purposes related to this Agreement, Contractor is and will be deemed to be an independent contractor as defined by ORS 670.600 and not an employee of the POBH, is not entitled to benefits of any kind to which an employee of the POBH is entitled and is solely responsible for all payments and taxes required by law. Furthermore, in the event that Contractor is found by a court of law or any administrative agency to be an employee of the POBH for any purpose, the POBH will be entitled to offset compensation due, or to demand repayment of any amounts paid to Contractor under the terms of this Agreement, to the full extent of any benefits or other remuneration Contractor receives (from the POBH or third party) as a result of said finding and to the full extent of any payments that the POBH is required to make (to Contractor or to a third party) as a result of said finding.

**B.** The undersigned Contractor hereby represents that no employee of the POBH, or any partnership or corporation in which a POBH employee has an interest, has or will receive any remuneration of any description from Contractor, either directly or indirectly, in connection with the letting or performance of this Agreement, except as specifically declared in writing.

- C. If this payment is to be charged against Federal funds, Contractor certifies that he or she is not currently employed by the Federal Government and the amount charged does not exceed his or her normal charge for the type of service provided.
- D. Contractor and its employees, if any, are not active members of the Oregon Public Employees Retirement System and are not employed for a total of 600 hours or more in the calendar year by any public employer participating in the Retirement System.
- E. Contractor is not an officer, employee, or agent of the POBH as those terms are used in ORS 30.265.

**6.0. Early Termination.**

**6.01. Mutual Consent.** This Agreement may be terminated without cause prior to the expiration of the agreed upon term by mutual written consent of the parties.

**6.02. For Cause by POBH.** The POBH may terminate this Agreement effective upon delivery of written notice to Contractor, or at such later date as may be established by the POBH, under any of the following conditions:

- A. If due to budgetary considerations, the POBH decides to terminate the Agreement;
- B. If any license or certificate required by law or regulation to be held by Contractor, its subcontractors, agents, and employees to provide the services required by this Agreement is for any reason denied, revoked, or not renewed;
- C. If Contractor becomes insolvent, if voluntary or involuntary petition in bankruptcy is filed by or against Contractor, if a receiver or trustee is appointed for Contractor, or if there is an assignment for the benefit of creditors of Contractor; or
- D. If Contractor's performance under this Agreement is not to the satisfaction of the POBH, then POBH shall give written notice and 14 days opportunity to cure the deficiency identified. If the deficiency is not cured within that time, then this Agreement may be terminated upon written notice to Contractor.

**6.03. No Prejudice.** Any such termination of this Agreement under paragraph 6.02 will be without prejudice to any obligations or liabilities of either party already accrued prior to such termination.

**6.04 Remedies Not Exclusive.** The rights and remedies of the POBH provided herein related to defaults (including breach of contract) by Contractor are not exclusive and are in addition to any other rights and remedies provided by law or under this Agreement. If the POBH terminates this Agreement, Contractor will be entitled to receive as full payment for all services rendered and expenses incurred up to the date of termination.

**7.0. Access to Records.** Contractor will grant the POBH access to such books, documents, papers and records of Contractor as are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts.

**8.0. Insurance.** Contractor and its subcontractors must maintain insurance acceptable to the POBH in full force and effect throughout the term of this Agreement. The policy or policies of insurance maintained by the Contractor and its subcontractors must provide at least the following limits and coverages:

**8.01. Coverages.** Contractor and its subcontractors must, at Contractor's or subcontractor's expense, and keep in effect during the term of this Agreement, the following insurance coverage with the following minimum policy limits:

Commercial General Liability	\$1,000,000.00 Each Occurrence Limit BI/PI/PD \$2,000,000.00 General Aggregate
Worker's Compensation	Per Oregon Law (ORS 656.017)
Comprehensive Automobile	\$ 1,000,000.00 Each Occurrence CSL (including coverage for all owned, hired and non-owned vehicles)
Professional Liability / E&O	\$1,000,000.00 Each Occurrence \$2,000,000.00 Aggregate per year

**8.02. Additional Insured Provision.** The POBH, its elected and appointed officers, agents, and employees must be added as additional insureds with respect to this Agreement. All Liability Insurance policies must be endorsed to show this additional coverage.

**8.03. Insurance Carrier Rating.** Coverage provided by the Contractor must be underwritten by an insurance company deemed acceptable by the POBH. The POBH reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating.

**8.04. Certificates of Insurance.** As evidence of the insurance coverage required by the contract, Contractor must furnish a Certificate of Insurance to the POBH. No contract will be effective until the required certificates have been received and approved by the POBH. The certificate will specify and document all of the required insurance provisions within this Agreement. A renewal certificate must be sent to the POBH 10 days prior to coverage expiration.

**8.05. Primary Coverage Clarification.** All parties to this Agreement hereby agree that Contractor's coverage will be primary in the event of a loss.

**8.06. Notice of Cancellation.** Contractor's insurance policies must contain provisions that such policies may not be canceled or their limits of liability reduced without thirty (30) days prior notice to POBH. A copy of each insurance policy, certified as a true copy by an authorized representative of the issuing insurance company, or at the discretion of POBH, in lieu thereof, a certificate in form satisfactory to POBH certifying to the issuance of such insurance shall be forwarded to the POBH Authorized Representative prior to the commencement of work.

**8.07. Effect of Insurance.** The procuring of such required insurance may not be construed to limit Contractor's liability hereunder. Notwithstanding said insurance, Contractor will be obligated for the total amount of any damage, injury, or loss caused by negligence or neglect connected with this Agreement.

**9.0. Method and Place of Giving Notice, Submitting Bills and Making Payments.** All notices, bills and payments must be made in writing and may be given by personal delivery or by mail. Notices, bills and payments sent by mail should be addressed as follows:

**Port of Brookings Harbor**  
Attn: Port Manager  
PO Box 848  
16330 Lower Harbor Rd  
Brookings, OR 97415

**EMC Engineers/Scientists, LLC**  
Attn: Jack Akin  
450 Conestoga Circle  
Jacksonville, OR 97530

and when so addressed, will be deemed given upon deposit in the United States mail, postage prepaid. In all other instances, notices, bills and payments will be deemed given at the time of actual delivery. Changes may be made in the names and addresses of the person to whom notices, bills and payments are to be given by giving written notice pursuant to this paragraph.

**10.0. Compliance with Public Contract Laws.** Contractor will observe all applicable state and local laws pertaining to public contracts. ORS Chapter 279 requires every public contract to contain certain provisions. Pursuant to ORS 279, the following provisions are part of this contract, as applicable, including without limitation the following:

**10.01. Compliance with Tax Laws.** Contractor represents and warrants that Contractor has complied with the tax laws of this state or a political subdivision of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317 and 318. Contractor covenants to continue to comply with the tax laws of this state or a political subdivision of this state during the term of this Agreement. Contractor understands that Contractor's failure to comply with the tax laws of this state or a political subdivision of this state before execution of this Agreement or during the term of this Agreement is a default for which POBH may terminate this Agreement and seek damages and other relief available under the terms of this Agreement or under applicable law.

**10.02. Compliance with Payment Provisions.** Contractor is required to:

- (a) Make payment promptly, as due, to all persons supplying to Contractor labor or material for the performance of the work provided for in this Agreement.
- (b) Pay all contributions or amounts due the Industrial Accident Fund from the Contractor or subcontractor incurred in the performance of this Agreement.
- (c) Not permit any lien or claim to be filed or prosecuted against the state or a county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished.
- (d) Pay to the Department of Revenue all sums withheld from employees under ORS 316.167.

**10.03. Compliance with Wage and Hour Laws.** ORS 279B.235 is hereby incorporated by reference as though set forth in full. Contractor agrees to abide by ORS 279B.235, as applicable.

**10.04. Payment for Medical Care / Workers Compensation.** Contractor 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 the contractor, of all sums that the Contractor agrees to pay for the services and all moneys and sums that the Contractor collected or deducted from the wages of employees under any law, contract or agreement for the purpose of providing or paying for the services.

**10.05. Other Applicable Laws.** Without limiting the foregoing, Contractor expressly agrees to comply with: (i) Titles VI and VII of the Civil Rights Act of 1964, as amended; (ii) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Americans with Disabilities Act of 1990, as amended; (iv) Executive Order 11246, as amended; (v) the Health Insurance Portability and Accountability Act of 1996; (vi) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (vii) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; (viii) ORS Chapter 659, as amended; (ix) all regulations and administrative rules established pursuant to the foregoing laws; and (x) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. A condition or clause required by law to be in this contract shall be considered included by these references.

**11.0. Required Provisions for Federal Grants.** Because the services performed hereunder may be funded in whole or in part with FEMA disaster relief funds, the following provisions apply to this Agreement:

**11.01. Acknowledgment of Federal Aid.** This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the Agreement. Contractor will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.

**11.02. Clean Air Act.** Contractor agrees to comply with all applicable standards, orders or regulations passed pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401. Contractor agrees to report each violation to the POBH and understands and agrees that the POBH will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency (FEWMA), and the appropriate Environmental Protection Agency Regional Office. Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance provided by FEMA.

**11.03. Federal Water Pollution Control Act.** Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 *et seq.* Contractor agrees to report each violation to the POBH and understands and agrees that the POBH will, in turn reports each violation as required to assure notification to the Federal Emergency Manage Agency (FEMA) and the appropriate Environmental Protection Agency Regional Office. Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance provided by FEMA.

**11.04. Debarment and Suspension.** This Agreement is a covered transaction for purposes of 2 C.F.R. Part 180 and 2 C.F.R. Part 3000. As such, Contractor is required to verify that none of Contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935). Contractor must comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 30000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into. This certification is a material representation of fact relied upon by the POBH. If it is later determined that Contractor did not comply with 2 C.F.R. Part

180, subpart C and 2 C.F.R. Part 3000, subpart C, in addition to remedies available to POBH, the federal government may pursue available remedies, including but not limited to suspension and/or debarment.

**11.05. Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352.** Contractors who apply or bid for an award of more than \$100,000 shall file the required certification. Each tier certifies to the tier above that it will not and has not used federally appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of a Member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the federal awarding agency. The proscribed form of certification is attached hereto as **Exhibit D**.

**11.06. Prohibition on Contracting for Covered Telecommunications Equipment or Services.**

(a) *Definitions.* As used in this clause, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy 405-143-1, Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services (Interim), as used in this clause—

(b) *Prohibitions.*

(1) Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug. 13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.

(2) Unless an exception in paragraph (c) of this clause applies, Contractor and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Emergency Management Agency to:

(i) Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;

(ii) Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;

(iii) Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or

(iv) Provide, as part of its performance of this contract, subcontract, or other contractual instrument, any equipment, system, or service that

uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

*(c) Exceptions.*

- (1) This clause does not prohibit Contractor from providing –
  - (i) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or
  - (ii) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any use data or packets that such equipment transmits or otherwise handles.
- (2) By necessary implication and regulation, the prohibitions also do not apply to:
  - (i) Covered telecommunications equipment or services that:
    1. Are not used as a substantial or essential component of any system; and
    2. Are not used as critical technology of any system.
  - (ii) Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

*(d) Reporting requirement.*

- (1) In the event Contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or Contractor is notified of such by a subcontractor at any tier or by any other source, Contractor shall report the information in paragraph (d)(2) of this clause to the recipient or subrecipient, unless elsewhere in this contract are established procedures for reporting the information.
- (2) Contractor shall report the following information pursuant to paragraph (d)(1) of this clause:
  - (i) Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.
  - (ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, Contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

- (e) *Subcontracts.* Contractor shall insert the substance of this clause, including this paragraph (e), in all subcontracts and other contractual instruments.

**11.07. Domestic Preference for Procurements.** As appropriate, and to the extent consistent with law, Contractor should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. This includes, but is not limited to iron, aluminum, steel, cement, and other manufactured products. For purposes of this clause:

- “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
- “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

**11.08. Audits.** In compliance with section 1225 of the Disaster Recovery Reform Act of 2018, the POBH and Contractor acknowledge and agree that no language in this Agreement is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

**11.09. Federal Government Not A Party.** The federal government is not a party this Agreement and is not subject to any obligations or liabilities to the POBH, Contractor, or any other party pertaining to any matter resulting from the Agreement.

**11.10. False Claims.** Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to Contractor’s actions pertaining to this Agreement.

**11.11. Subcontracts.** If subcontracts are to be let, the prime contractor is required to take all necessary steps identified in 2 C.F.R. § 200.321(b)(1)-(5) to ensure that small and minority businesses, women’s business enterprises, and labor surplus area firms are used when possible.

**11.12. License and Delivery of Works Subject to Copyright and Data Rights.** Contractor grants to POBH, a paid-up, royalty-free, nonexclusive, irrevocable, worldwide license in data first produced in the performance of this Agreement to reproduce, publish, or otherwise use, including prepare derivative works, distribute copies to the public, and perform publicly and display publicly such data. For data required by the Agreement but not first produced in the performance of this Agreement, Contractor will identify such data and grant to the POBH or acquires on its behalf a license of the same scope as for data first produced in the performance of this Agreement. Data, as used herein, shall include any work subject to copy right under 17 U.S.C. § 102, for example, any written reports or literary works, software and/or source code, music, choreography, pictures or images, graphics, sculptures, videos, motion pictures or other audiovisual works, sound and/or video recordings, and architectural works. Upon or before the completion of this Agreement, Contractor will deliver to the POBH data first produced in the performance of this Agreement and data required by the

Agreement but not first produced in the performance of this Agreement in formats acceptably by the POBH.

**12.0. Indemnification.** Contractor agrees to indemnify, defend and hold harmless the POBH and its officers, agents and employees against all liability, loss and costs arising from actions, suits, claims or demands attributable to the acts or omissions of Contractor, and Contractor's officers, agents and employees, in performance of this Agreement, except as specifically provided otherwise in this Agreement.

**13.0. Nonwaiver.** The failure of the POBH to insist upon or enforce strict performance by Contractor of any of the terms of this Agreement or to exercise any rights hereunder may not be construed as a waiver or relinquishment to any extent of its right to assert or rely upon such terms or rights on any future occasion.

**14.0. Assignment.** The Contractor must not assign this Agreement, in whole or in part, or any right or obligation hereunder, without the prior written approval of the POBH Board of Commissioners.

**15.0. Severability.** In the event any provision or portion of this Agreement is held to be unenforceable or invalid by any court of competent jurisdiction, the remainder of this Agreement will remain in full force and effect and will in no way be affected or invalidated thereby.

**16.0. Amendment.** No consent, modification, or change of terms of this Agreement may bind either party unless in writing and signed by both parties. Such waiver, consent, modification, or change if made, will be effective only in specific instances and for the specific purpose given.

**17.0. Attorney's Fees.** In case suit or action is instituted to enforce the provisions of this Agreement, the parties agree that the prevailing party will be entitled to an award of reasonable attorney's fees and court costs including attorney's fees and court costs on appeal.

**18.0. Governing Law.** The provisions of this Agreement will be construed in accordance with the provisions of the laws of the State of Oregon. Any action or suits involving any questions arising under this Agreement must be brought in the Circuit Court of Curry County or the U. S. District Court in Medford.

**19.0. Complete Agreement.** This Agreement and the attached exhibits, constitute the entire agreement between the parties. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement.

**20.0. Acknowledgment.** Contractor, by the signature of its authorized representative, hereby acknowledges that he has read this Agreement, understands it and agrees to be bound by its terms and conditions.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date herein above first written.

**PORT OF BROOKINGS HARBOR  
BOARD OF COMMISSIONERS**

**CONTRACTOR: EMC Engineers/Scientists, LLC**

\_\_\_\_\_  
By: Joe Speir, Board Vice-President

By: \_\_\_\_\_  
Name: Jack Akin  
Its: Owner

ATTEST: \_\_\_\_\_  
Sharon Hartung, Secretary/Treasurer

DRAFT

# EXHIBIT – A

## SCOPE OF WORK

### Scope of Work Requirements

The scope of work project includes the FEMA Slope Repair and Dredging Project (FEMA DR-4432 & DR-4452) to be completed by end of 2024, and other tasks as determined by the Port Manager or Board of Commissioners.

The Proposer shall provide engineering services generally include and not limited to the following:

- Surveying
- Environmental Assessment
- Confirmation of basin flows and pipe size
- Water Quality Treatment Approach/Facility Evaluation and Design
- Preliminary Design
- Joint Permit Application, DSL and Corps Permitting; Local & County Permitting
- Dredging
- Temporary, Permanent Easement Descriptions
- 100% Design Drawings and Specifications
- Operating & Maintenance Manuals (if any)
- Cost Estimates & Graphics
- Meetings – Board of Commissioner Meetings
- RFP and Contractor Selection
- Construction Inspection and Preparing Conforming to Construction Record Drawings

### Project Management

Contractor shall include Project Management as one of the work tasks. The following Project Management description is the minimum project management requirements and may be expanded upon by the Contractor:

The Contractor shall act as a manager of the Contractor's team, including any sub. The Contractor shall manage and coordinate all components of the Project and take a proactive role in keeping all tasks on schedule and budget and ensure timely completion of the Project(s). Contractor shall give prior notice to Port, and obtain acceptance from same, before performing work outside the contract work scope and thereby contract budget amount.

The Contractor shall ensure full coordination with Port staff and be responsive to any email and telephone discussions, in addition to the minimum meetings as listed under various tasks in the scope of work. The Contractor shall be in contact with the Port frequently enough to ensure a timely review of deliverables. The Contractor is expected to work with all stakeholders in a responsible manner.

Submit a summary report of work completed by sub-tasks for the invoice period with each invoice. Indicate each individual's time spent on each sub-task for the invoice period. Alert the Port if any issues or concerns may affect the progress and/or cost of the project.

## Sample Exhibit B - Project Services and Schedule FEMA DR-4432 and DR-4452

Expected Dates	Sub Project Descriptions
Completed	Completion of all preliminary designs and drawings, presentations, approval and revisions per Port Board and Management and management, and submission to FEMA, with budgets including 406 Mitigation
10/1/2021 to 11/1/2021	Receipt of FEMA budget and scope of work approval
11/1/2021 to 2/1/2022	Bathymetric survey, sediment sampling, characterization and permitting of identified areas as required by USACE prior to dredging
11/1/2021 to 2/1/2022	Submission of Joint Permit Application to USACE/ODSL, and to FEMA
1/1/2021 to 9/1/2022	Purchase of dredge, electric generator and piping
3/1/2021 to 5/1/2022	Completion of construction drawings
5/1/2022 to 7/1/2022	RFP to select project contractor
5/1/2022 to 7/1/2022	Project permitting from local agencies (Curry County & districts)
7/1/2022 to 9/1/2022	Grading and construction of the sediment storage area in the Commercial area
5/1/2022 to 6/1/2022	Receipt of USACE/ODSL approval
10/1/2022 to 3/1/2023	Dredging for the base of the west wall
10/1/2022 to 3/1/2023	Placement of the sediment onto the Kite Field to create a retaining wall for hydraulic dredged sediment
10/1/2022 to 3/1/2023	Wall construction along the west side of Basin 2
10/1/2022 to 3/1/2023	Extension of that wall along the Boat Yard embankment
10/1/2022 to 3/1/2023	Hydraulic dredging of specific areas under docks and other areas in Basin 2 while disposing of the sediment into the RV/Kite Field RV Park area
4/1/2023 to 9/1/2023	Grading of the Kite Field area, the placement of stormwater piping and catch basins into the Kite Field area, the asphalt paving of the parking spaces and road in Kite Field area
4/1/2023 to 9/1/2023	Grading, stormwater system construction and paving of the Boat Yard
10/1/2023 to 3/1/2024	Hydraulic dredging of the Port Basins
4/1/2023 to 9/1/2024	Grading, stormwater system and road construction and paving of the Commercial area
10/1/2024 to 3/1/2025	Hydraulic dredging of the Port Basins (if needed)

# EXHIBIT – C

## COMPENSATION

### RFP SECTION 4.5.2.d) COST PROPOSAL

If EMC is selected, work would be invoiced on an hourly basis, at \$100/hr., for all hours used, including travel.

It is anticipated that approximately \$120,000 in engineering, permitting, survey, CAD, bathymetric and sediment characterization will be required to complete this project, already in-progress, in 2022, 2023 and 2024. Depending on POBH priorities, contractor availability and regulatory constraints, these tasks are expected to almost entirely be completed in 2022.

If projects proceed as the schedules provided in Section 4.5.2. e) EMC predicts (see RFP Section 4.5.2.e., **Expected Date Subproject Descriptions (month/year)**, Page 3), an additional budget of about \$50,000 (9-10 hrs./week) for 2022 project management. This work, in our experience, is considered part of the on-Site construction work, rather than as part of the engineering/permitting budget, and is generally funded by FEMA as such.

Given the scale and scope of this 4432/4452 project, it is likely that the need for project management from EMC will require about 7-8 hrs./week for the remaining years of the project.

Overall, as shown in the Repairs and Mitigation Spreadsheets on 4.5.2.e), Pages 4 and 5, about \$130,000 is included in the total repairs/mitigation budget.

This estimate does not include any time that the POBH elects to participate, at its own discretion, towards the successful coordination of the project.

The requirement for engineering design should reduce significantly after 2022, unless project revisions become necessary. If so, FEMA/OEM has generally allowed, in our experience, an increase in engineering/permitting funding. The assumption is supported by generally accepted protocol, because FEMA is generally comfortable with an engineering budget of about 8% of total project costs (in this case, or about \$315,000), though, if reasonably presented, FEMA has approved as much as 12% of the total project budget.

So the total budget presented in this RFP, for engineering and project management services, is \$250,000 for the RFP scope of work (\$120,000 for engineering, permitting, survey, CAD, bathymetric and sediment characterization; \$45,500 for project management during repairs construction, and 84,500 for project management during mitigation construction).

It is advisable, once the Port selects the engineering firm for this 4432/4452 project, that details of the resulting contract be communicated to FEMA/OEM.

**EXHIBIT D**

**44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING**

**Certification for Contracts, Grants, Loans and Cooperative Agreements**

The undersigned certifies, to the best of his or her knowledge and belief, that:

No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, 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 any employee a Member or 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.

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.

The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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.C. 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.

Contractor certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

**Contractor:** \_\_\_\_\_

**Dated:** \_\_\_\_\_

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

*Signature*

**Print Name:** \_\_\_\_\_

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