

**PRELIMINARY AGENDA FOR REGULAR MEETING**

**August 7, 2024**

**I. WORKSHOP**

**11:00 AM**

Pearson Airport FAA Discussion

**II. OPEN SESSION**

**12:00 PM**

Pledge of Allegiance

**PUBLIC COMMENT: ITEMS ON THE AGENDA**

Speakers are asked to keep their comments to less than 3 minutes. Please feel free to submit comments in writing to the Chief Executive Officer.

**CONSENT ITEMS**

All matters listed under Consent Items have been distributed to each member of the Commission for review, are considered routine, and will be enacted by the motion of the Commission with no separate discussion. If a separate discussion is desired, that item may be removed from the Consent Items and placed under Action Items by request.

A. Approval of Minutes of the Regular Meeting on July 17, 2024

B. Approval of Checks

**NEW BUSINESS/DISCUSSION ITEMS**

C. Kiva United Energy New Lease- CEO David Ripp

D. Elevate NW/ Hidden River Roasters Assignment and Assumption- CEO David Ripp

E. RKm Hold Harmless- CEO David Ripp

F. Waterfront Soil Removal Contract- Contract Manager Debra Itzen

G. Port of Camas-Washougal Marina Fiber Optic Agreement- CEO David Ripp

H. Mackay Sposito South 35<sup>th</sup> Street Contract- Project Manager Jennifer Taylor

**PUBLIC COMMENT #2:**

Speakers are asked to keep their comments to less than 3 minutes. Please feel free to submit comments in writing to the Chief Executive Officer.

**ACTION ITEMS**

I. Kiva United Energy New Lease

J. RKm Hold Harmless

K. Waterfront Soils Removal Contract

L. Port of Camas-Washougal Marina Fiber Optic Agreement

**STAFF REPORTS & COMMENTS**

**COMMISSIONER REPORTS & DISCUSSION**

**ADJOURN REGULAR MEETING**

**Regular business and meetings that members of the Commission may attend:**

<b><u>Date</u></b>	<b><u>Meeting</u></b>
August 21, 2024	Workshop: RkM Presentation 11 am-12 pm
August 24, 2024	Wheels & Wings

(\*Denotes events in which two (2) or more Commissioners may attend)

Join the meeting on the Conference Call Line: (253) 215-8782

Meeting ID: 829 0393 6339, Password: 154722 or via this video link:

<https://us06web.zoom.us/j/82903936339?pwd=U01pdWY1V0tES3dMZWFkNjJNbUNVZz09>

**MINUTES OF THE REGULAR COMMISSION MEETING**  
**PORT OF CAMAS-WASHOUGAL**  
**July 17, 2024**

By: Mackenzey Thomason, Administrative Assistant

A Regular Meeting of the Commissioners of the Port of Camas-Washougal was held in person and virtually on Wednesday, July 17, 2024, at 12 p.m. An executive session was held before the regular meeting at 11:45 a.m. to discuss proposals made during professional negotiations, it was expected to last 15 minutes. The executive session was not open to the public. A decision was made. The executive session ended at 12 p.m. when the regular meeting began.

**PRESENT:** Commissioner Cassi Marshall, Commissioner Larry Keister, Commissioner John Spencer, Director of Facilities Eric Plantenberg, Director of Finance Krista Cagle, Director of Business & Real Estate Derek Jaeger, Environmental Project Manager Jennifer Taylor, Contract Manager Debra Itzen, Attorney Carolyn Lake, Administrative Assistant Mackenzey Thomason, and members of the press and public. The public has access through a designated Zoom conference call line or video link. Chief Executive Officer David Ripp's absence is excused for a pre-planned vacation.

At 12:00 p.m. following the Pledge of Allegiance, Commissioner Keister called to open the Regular Session public meeting to order. The meeting is being recorded and the chat function has been disabled.

**PUBLIC COMMENT #1 (Items on the Agenda):**

City of Washougal Council Member Ernie Suggs:

Suggs stated summer is here and he was glad to have the partnership with the Port.

**CONSENT ITEMS**

**Minutes & Checks**

Minutes from the Regular Meeting on July 3, 2024, electronic payments, and the issuance of general fund checks 9637- 9673 in the total amount of \$516,884.85 were presented for approval. After a brief discussion, a motion was made by Commissioner Spencer and seconded by Commissioner Marshall, and the consent items were carried unanimously.

**NEW BUSINESS/DISCUSSION ITEMS:**

**American Cruise Lines Lease-Director of Business & Real Estate Derek Jaeger:**

Jaeger stated American Cruise Lines wants to extend their lease for another 2 years for the 2025 and 2026 seasons. Jaeger explained the frequency of docking would be like their current schedule. Jaeger stated CEO Ripp spoke about the lease at the last commission meeting on his behalf but there has been an adjustment since. Jaeger stated he negotiated the lease rate of \$2.75 per foot instead of the original \$2.50 per foot. Jaeger stated the termination language had also changed. Instead of having a 30-day clause, there would be an end-of-season termination clause. Jaeger also stated he spoke with ACL regarding the Green corridor on the Columbia River. Jaeger explained ACL has sustainability practices and is committed to those practices. Jaeger stated he spoke with them regarding shore power in the future as well. Jaeger addressed the public's complaints about the ships being docked at the Port. Jaeger stated Port staff had installed a Purple Air reader on the

A-dock close to the ship to monitor the air quality. Jaeger explained ACL has been extremely responsive to concerns with loud music and their golf cart's noises. Commissioner Marshall stated she liked that American Cruise Lines was receptive to the Port's goals and values, and she hopes they are proactive about them as well. Commission requested that a workshop be held in the near future with American Cruise Lines to allow for some additional questions and concerns to be addressed. Approval will be requested during action items.

**Kiva United Energy New Lease- Director of Business & Real Estate Derek Jaeger:**

Jaeger stated there has been an update since the last commission meeting regarding the Kiva Lease and he would like to pull it from today's agenda to present later.

**CEO Contract- Commission:**

Commissioner Keister stated the process of finding a new Port CEO has been long and energetic. Keister stated that all three final candidates were fantastic, and he is comfortable bringing Lam onto the Port's team. Commissioner Marshall added she is very excited for Lam to get started and to have time to work side by side with current CEO, David Ripp. Approval will be requested during action items.

**Black Pearl Pathway Contract- Contract Manager Debra Itzen:**

Itzen stated the project proposes a concrete pedestrian pathway with lighting on the back side of the Black Pearl to connect to Washougal Waterfront Park. Itzen explained bids were solicited for the project by using the Port's small works roster process. Itzen stated Michael Green Construction is the lowest responsible bidder for \$186,642.09. Commissioner Spencer stated this pathway would make a huge visual difference and make the walk between parks much safer. Approval will be requested during action items.

**PUBLIC COMMENT #2:**

**Bob Martilla of Washougal:**

Martilla asked when the waterfront material project was kicking off. Project Manager Taylor stated the Port is currently under contract and working out a few details, but the work will start very soon.

**Mayor of Washougal David Stuebe:**

Mayor Stuebe stated in the past, there had been complaints about the connecting trails in Washougal to the Port. Stuebe stated he is happy with the partnership with the Port helping to maintain those connected trails and has now gotten compliments. Stuebe also mentioned the City of Washougal would like to be involved in a potential workshop with American Cruise Lines. Stuebe stated he feels that it is important to explain to ACL that the cities would like tourism because of the docked ship. Stuebe also stated he will be driving in the Camas Day's parade next weekend honoring the citizen of the year, Molly Coston.

**City of Washougal Council Member Ernie Suggs:**

Suggs asked why he hadn't seen many advertisements about the Port's summer concert. Cagle replied stating there had been advertisements on the Port's website and social media outlets. Cagle also mentioned there was a concert banner, but it had been taken down in replacement for the Washougal Motocross races this weekend.

**ACTION ITEMS:**

### **American Cruise Lines Lease-**

Commissioner Keister requested formal approval of the American Cruise Lines Lease as presented during discussion items. Upon motion by Commissioner Spencer seconded by Commissioner Marshall and carried unanimously, the American Cruise Lines Lease was approved effective July 17, 2024.

### **CEO Contract-**

Commissioner Keister requested formal approval of the CEO Contract as presented during discussion items. Upon motion by Commissioner Marshall seconded by Commissioner Spencer and carried unanimously, the CEO Contract was approved effective July 17, 2024. Keister explained the contract is regarding the Port's CEO's 5-year term, professional development, salary, and benefits.

### **Black Pearl Pathway Contract-**

Commissioner Keister requested formal approval of the Black Pearl Pathway Contract as presented during discussion items. Upon motion by Commissioner Marshall seconded by Commissioner Spencer and carried unanimously, the Black Pearl Pathway Contract was approved effective July 17, 2024.

## **STAFF REPORTS & COMMENTS**

### **Director of Finance Krista Cagle-**

Cagle stated Lunch with Dave will take place on Thursday, July 25<sup>th</sup> from 11:30 am-1 pm at Excelsior High School. Cagle stated the public can register online on the Port's website for free. Cagle stated the Port's summer concert will be on July 26<sup>th</sup> from 7-9 pm and will feature band, Stone in Love. Cagle explained food vendors would be on site starting at 5 pm. Cagle also mentioned the Port will be at downtown Camas' First Friday event on August 2<sup>nd</sup> from 5-8 pm.

### **Director of Business & Real Estate Derek Jaeger-**

Jaeger stated he is working on half a dozen amendments and leases. Jaeger stated he appreciated Port Attorney Carolyn Lake's help.

### **Director of Facilities Eric Plantenberg-**

Plantenberg stated Immelman Hangars at Grove Field is pouring their foundation this week. Plantenberg also mentioned the Wheels and Wings plane and car show will be on August 24<sup>th</sup> from 11 am-3 pm.

### **Environmental Project Manager Jennifer Taylor-**

Taylor stated the Watershed Alliance organized a Cottonwood beach clean-up and ended up collecting 122 pounds of garbage. Taylor also mentioned Recluse Brew Works hosted a river beach clean-up and that it was nice to see a Port tenant being proactive.

### **Contract Manager Debra Itzen-**

Itzen stated she is busy working on miscellaneous contracts with Taylor. Itzen mentioned some of the contracts she is currently working on include the windows for Buildings 4 and 5 in the industrial park and scheduling painting for Building 5.

## COMMISSIONER REPORTS & DISCUSSION

### Commissioner Spencer

Spencer said congratulations to Trang Lam and welcome to the Port team. Spencer stated he received an email from CEO Ripp regarding FAA-obligated airports. Spencer stated he is interested in bringing in local airport management to ask questions about becoming obligated. Spencer mentioned bringing in Pearson Airport to talk with. Spencer mentioned if Grove Field ends up becoming FAA-obligated, the Port can make sure to only obligate certain areas of the airport. Spencer stated his main takeaway from this information was that not a lot of airports enjoy being FAA-obligated but saw it as an opportunity to move forward and grow.

### Commissioner Marshall

Marshall echoed Spencer's comments and said congrats to Lam and is excited to move forward. Marshall stated she had attended a meeting regarding bike and pedestrian routes in the community. Marshall stated this group will meet again on Monday and will try and focus on what type of partnerships they are looking for. Marshall stated she was contacted by the Department of Ecology, and they would like to set up a time to meet with the Port. Marshall stated there is a new regional manager and there would be no specific agenda for this meeting, they would just want to connect with new leadership and existing leadership. Marshall also mentioned she had met with the Parkersville group and had mentioned to them that the Port was aware of the projects and areas that needed attention in the park.

### Commissioner Keister

Keister said thank you to Lam for her interest in the Port and said thank you for her patience as the commission navigated the hiring process. Keister also said thank you to Jeannie Beckett of the Beckett Group and thanks to Port Attorney Carolyn Lake for her legal advice during the process. Keister stated he is excited to move forward.

The regular meeting adjourned at 12:47 pm.

PORT OF CAMAS-WASHOUGAL COMMISSION

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Commissioners

## Port of Camas-Washougal Staff Report

**DEPARTMENT:**

**FOR THE AGENDA OF:**

**RECOMMENDATION:**

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**SUMMARY:**

**BUDGET IMPACT:**

N/A

Yes, describe:

**SUSTAINABILITY IMPLICATIONS:**

N/A

Yes, describe:

**DEI IMPLICATIONS:**

N/A

Yes, describe:

## LEASE

THIS LEASE is made and entered into this day by and between the PORT OF CAMAS- WASHOUGAL, a municipal corporation organized and existing under the laws of the state of Washington, hereinafter called "**Lessor**", and Kiva United Energy, Inc., a Utah corporation with principal place of business of 10281 South State Street Sandy, Utah 84070 authorized to engage in business and engaging in business in the State of Washington, hereinafter called "**Lessee**".

### WITNESSETH:

**Section 1. PREMISES LEASED:** For and in consideration of the payment by Lessee of the rentals hereinafter specified, and performance by Lessee of the covenants and obligations hereinafter provided to be kept and performed by Lessee, Lessor does hereby lease, demise and let unto Lessee, approximately 19,500 sf of real property which is a portion of tax parcel 71281109 situated within the said Port District in the City of Washougal, Clark County, Washington ("the Premises") for the purposes set forth herein. The Premises are graphically depicted in **Exhibit "A"**, attached hereto and by this reference incorporated as a part hereof.

Lessee shall, in addition, have a right-of-way in common with others over and across private roads and streets giving access to the Premises, which right-of-way shall terminate at such time as such private roads and streets are dedicated to the public.

**Section 2. TERM.** The term of this Lease shall commence on September 1, 2024 ("**Commencement Date**") and shall terminate on March 31, 2026. Upon the commencement of this Lease, the prior lease between Lessor and Lessee shall automatically terminate and this Lease shall be the only lease governing the Premises from and after the Commencement Date of this Lease, provided that any obligations of Lessee that accrued prior to such termination and



any obligations that survive termination of the prior lease shall not be terminated and shall survive such termination.

Lessee shall give Lessor written notice ninety (90) days prior to the expiration of the then current term regarding Lessee's intent to extend the Lease or vacate the premises upon expiration of the then current term. The absence of timely notice from Lessee will be deemed to be notice that Lessee intends to vacate the Premises upon expiration of the then current term.

If Lessee holds over after the expiration or termination of the term with Lessor's consent, such tenancy shall be deemed to be a holdover tenancy on a month-to-month basis. All other terms, covenants, and conditions of the Lease shall remain in effect, except that rent shall be increased by the same percentage as at the beginning of the last lease year. If Lessee holds over after the expiration or termination of the term without Lessor's consent, then such tenancy shall be deemed a holdover tenancy on a month-to-month basis, on the terms, covenants, and conditions of this Lease in effect at the expiration or termination of the term, except that rent shall be increased to 200% of the rent last payable under this Lease. This section does not grant any right to Lessee to holdover, and Lessee is liable to Lessor for any and all damages and expenses of Lessor as a result of any holdover.

**Section 3. POSSESSION:** Lessee shall have the right to possession of the Premises pursuant to this Lease commencing on the Commencement Date of the Lease term.

**Section 4. RENT:** Lessee shall pay to Lessor, without any notice or demand, and without setoff or deduction, in addition to taxes, assessments and other charges required to be paid hereunder by Lessee, rent for the Premises in the following monthly rent:

<b>Date</b>	<b>Monthly Rate</b>	<b>Monthly Rate + 12.84% LHET</b>
9/1/24 to 3/31/25	\$888.12	<b>\$1,002.15</b>
4/1/25 to 3/31/26	\$914.76	<b>\$1,032.22</b>

In addition to the rental amounts specified above, Lessee shall pay to Lessor with each monthly rental payment the Washington State Leasehold Tax on the leased Premises, which tax is currently 12.84% of the monthly rental payment. Rental payments are payable in advance on the 1<sup>st</sup> day of each month during the term of this Lease.

Lessee agrees to pay a late charge, in an amount equal to 7% of the monthly rental payment then due with any rental or leasehold tax payment which is not received in full by Lessor by the tenth day of the month.

**Section 5. LEASE BOND:** Lessor hereby waives its right to require a lease bond or security pursuant to RCW 53.08.085.

**Section 6. TAXES AND UTILITIES:**

Lessee shall pay all taxes, charges and assessments for or related to electricity, water, sewer, garbage disposal, phone, cable, and any and all other utilities and services which shall, during the term of this Lease, be charged or imposed upon the Premises.

Lessee shall pay all taxes, assessments, and other expenses arising from Lessee's possession of the Premises, or operation of Lessee's business on the Premises, or are required because of Lessee's operations to make the property conform to government regulations, or which are imposed upon Lessee or Lessor due to the existence of this Lease. situated thereon.

Lessee shall pay the leasehold tax, as provided in RCW 82.29.A, and all taxes, assessments, and other expenses arising from ownership or operation of the property, or the Lessee's business, or required to make the property conform to government regulations or imposed upon Lessor due to the existence of this Lease.

Lessee shall pay and discharge promptly, as the same becomes due and before delinquency, the taxes, assessments and other charges as described herein. Lessee shall pay, upon demand, the taxes, assessments and other charges on behalf of Lessor, or if this is not permitted by law, Lessee shall reimburse Lessor for the amount of any such tax, assessment and other charge paid by Lessor, provided that Lessee shall have the right to contest any such tax or assessment at its own expense.

**Section 7. LIENS:** Lessee shall keep the Premises free and clear of all liens, including mechanic's, materialmen's, or other liens for work or labor done, and liens for services, materials, appliances and power performed, contributed, furnished or used or to be used in or about the Premises, or in connection with any operations of Lessee, or any alteration, improvement, repair, or addition which Lessee may make, permit, or cause to be made or any work or construction by, for, or permitted by Lessee on or about the Premises. Lessor shall not be responsible for liens caused by Lessee's activities on the Premises.

Nothing in this Lease shall be deemed or construed in any way as constituting the consent or request of Lessor, express or implied, by inference or otherwise, to any contractor, subcontractor, laborer, or material man, for the performance of any labor or the furnishing of any materials for any specific improvement, alteration to, or repair of the Premises or any part thereof, nor as giving Lessee any right, power, or authority to contract for or permit the rendering of any services or the furnishing of any materials that would give rise to the filing of any lien against the Premises or any part thereof.

In the event that any lien, charge, or order for the payment of money described as the responsibility of Lessee in this section 7 is filed against Lessor or any portion of the Premises, Lessee shall, at its own cost and expense, cause the same to be discharged of record or bonded within sixty (60) days after notice from Lessor to Lessee, in the manner

provided in Section 25, of the filing thereof; and Lessee shall indemnify and save harmless Lessor against and from all costs, liabilities, suits, penalties, claims, and demands, including reasonable counsel fees, resulting therefrom.

**Section 8. CONTESTING LIENS AND TAXES:** Lessee may contest any lien set forth in Section 7 or any tax, assessment, or other charge which Lessee shall pay under Section 6, provided that Lessee notifies Lessor, in the manner provided in Section 25, of their intention to do so within sixty (60) days of the filing of such lien or within thirty (30) days of receipt of notice of such tax, assessment, or other charge; and provided further that Lessee posts a bond or other security with Lessor, prior to the contest, in an amount equal to the amount of the contested lien or tax, assessment, or other charge.

Within sixty (60) days of the determination of its validity, Lessee shall satisfy and discharge any remaining lien, or pay and discharge any remaining assessment, or other charge, and all penalties, interest, and costs in connection therewith. Satisfaction and discharge shall not be delayed until execution is had on any judgment rendered, nor shall satisfaction, payment and discharge be delayed until sale is made of the whole or any part of the Premises on account thereof. Any such delay shall be a default of Lessee under this Lease.

In the event of any such contest, Lessee shall protect and indemnify Lessor against all loss, expense, and damage resulting therefrom.

**Section 9. USE OF PREMISES:** Lessee covenants and agrees as follows:

A. To use the Premises actively and continuously throughout the term of this Lease solely for loading and storage of propane for truck delivery. Lessee's use and all equipment utilized by Lessee within the Premises shall fully comply with all local, State, and/or federal requirements and, in addition, Lessee shall have procured in advance all

necessary permits or authorizations for such use from any local, state or federal agency, including, but not limited to, approval for the intended use from the Washougal Fire and Building Department prior to occupancy. Lessee shall not use the Premises for other purposes without Lessor's prior written consent.

B. To use the adjoining yard area for employee and guest parking, and for shipping and receiving of equipment and other goods in the course of Lessee's business, and temporary short-term staging of goods and equipment in connection with such shipping and receiving operations. Lessee may store up to one (1) container on Premises and utilize yard area for temporary parking of delivery vehicles and trucks that are unable to depart until the day following delivery due to health and safety protocol. In addition, Lessee may park up to two vehicles overnight for employee parking. Except as expressly permitted in this Section 9, no equipment or other goods shall be stored in the rear yard area beyond the time reasonably necessary for shipping or receiving operation. Except as expressly permitted in this Section 9, Lessee shall not use any yard area for overnight parking, or storage of any vehicles, campers, boats, or trailers, or containers, sheds, or drums, or any other storage of any other thing whatsoever. Lessee shall at all times keep all yard areas area in good, clean, neat, orderly, and safe condition, free of any debris, and free of any material deemed objectionable by Lessor.

C. Not to use or occupy the Premises, or permit the Premises to be used or occupied, for other than legal purposes, or in a manner which shall violate any certificate of occupancy in force relating to any building or improvement hereafter erected thereon;

D. To conform to and abide by all lawful rules, laws and regulations in connection with the use of said Premises and the operation of Lessee's business thereon, and not to permit said Premises to be used in violation of any lawful rule, law, regulation or other authority; and

E. Not to commit or permit any waste of the leased Premises nor commit or permit the maintenance or commission of any nuisance on the Premises.

**Section 10. NO REPRESENTATION:** Lessee has leased the Premises after an opportunity for examination thereof and of the subsurface conditions beneath the same, and without any representation on the part of Lessor, except that Lessor states that it has no knowledge of any spill of hazardous materials or the presence of any hazardous materials on the leased Premises as of the date of the commencement of the Lease term. As used in this Lease, the term "hazardous substances" or "hazardous materials" means any hazardous or toxic substances, materials or waste, including but not limited to those substances, materials, and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 CFR 172.101) or by the Environmental Protection Agency as hazardous substances (40 CFR Part 302) and amendments thereto, or such substances, materials and wastes as are or become regulated under any applicable local, state or federal law. Subject to Lessor's obligations under this Lease, Lessee assumes the sole responsibility for the condition, operation, maintenance and management of the leased Premises.

**Section 11. IMPROVEMENTS:**

**A. Lessee Improvements.** Lessee shall not make any changes, alterations, or improvements to the leased Premises or surrounding yard area ("**Tenant Improvements**") without the written consent of the Lessor being first obtained, which shall not be unreasonably withheld. All Tenant Improvements shall be performed by Lessee at its cost, and in compliance with all applicable law, including but not limited to all applicable building permit processes. Lessor acknowledges that Lessee has installed tanks on the Premises for Lessee's use. In the event Lessor consents to a proposed Tenant Improvement,

such consent shall include Lessor's written determination as to whether Lessee shall be required to remove said improvement at the expiration or termination of this Lease. In the event no such written determination exists as to any proposed improvement made during the course of the Lease, then at the expiration or other termination of this Lease, all improvements, which shall remain upon the Premises, shall upon Lessor's determination, as determined in its sole and absolute discretion, be either (1) removed and the Premises restored by Lessee at its sole cost and expense, or (2) become the property of Lessor.

All machinery, fixtures, portable buildings and equipment installed by Lessee, and which are adapted only for the special use of Lessee, shall be considered to be trade fixtures and may be removed at the termination of the Lease by Lessee. Lessee shall at its own expense repair all damage caused by the removal of trade fixtures and shall restore the Premises to its same condition as immediately prior to such removal.

**Section 12. REPAIR AND MAINTENANCE:** Lessee shall be responsible for the cost of any repairs made pursuant to this paragraph which are caused by the intentional or negligent acts of its employees, agents or licensees. Lessee shall complete all repairs within 90 days by a Lessor approved contractor or utilize Lessor maintenance staff at the Lessor contract rate. Lessee agrees to reimburse Lessor for said repairs immediately upon demand.

Lessor shall have no liability to Lessee for incidental damages or property damage suffered by Lessee as a result of its failure to maintain or repair those portions of the Premises described above, its only obligation being to maintain or repair such portions of the Premises. Lessee agrees to promptly notify Lessor of the need for exterior or structural repairs.

Except as provided above, Lessee agrees to maintain the Premises and all improvements

in a good state of repair and at the termination of this Lease to return the Premises and all improvements and adjoining yard area to Lessor in as good state and condition as the same are in at the time Lessee commences occupying same, reasonable wear and tear from the normal use thereof and fire or other casualty being excepted. Lessee agrees to keep all adjoining yard areas at all times in good, clean, neat, orderly, and safe condition, free from any debris, and free from any material deemed objectionable by Lessor.

**Section 13. INDEMNITY:** Lessee shall indemnify and save harmless Lessor from and against any and all liability, claims, damage, penalties, or judgments arising from any loss, injury, death or damage to person or property sustained by any person in or about the Premises resulting from the act or omission of Lessee, Lessee's officers, agents, employees, contractors, and sublessees, or of any occupant, visitor, or user of any part of Lessee's Premises. Lessee further covenants and agrees to indemnify and hold Lessor harmless against the claims of all and every person whomsoever arising out of or in any way connected with Lessee's occupation or use of the Premises, except for claims by Lessor's employees or agents for injuries sustained during the course of employment through no fault of Lessee. Lessee shall pay all attorney's fees and other expenses incurred by Lessor in defending any and all suits which may be brought against Lessor or in which Lessor may be impleaded with others upon any of the aforementioned matters, except as may result from the acts set forth in the paragraph immediately below.

Lessor shall indemnify and hold harmless Lessee and its directors, officers, employees, and agents, from and against any and all losses, claims, and damages arising from Lessor's gross negligence or intentional misconduct. Except for the gross negligence or intentional misconduct of Lessor or its agents, or employees, Lessor shall not be



responsible for or liable for, and Lessee, notwithstanding that joint or concurrent liability may be imposed upon Lessor by a statute or court decision, hereby waives all claims against Lessor for any damage or injury to any person or to any property on or about the Premises subject to this Lease, including liability for costs, attorney's fees and reasonable expenses arising out of said claims.

Lessee covenants and agrees to reimburse Lessor for all costs or expenses of repair or replacement of any of Lessor's property damaged or destroyed as a result of Lessee's use or occupation of the Premises or use of Port property or facilities. Lessee further covenants and agrees to carry liability insurance protecting itself and Lessor from all liability arising out of this Section 13. The provisions of this section 13 shall survive the expiration or earlier termination of this Lease.

**Section 14. INSURANCE:**

A. Lessee shall procure at its sole cost and expense and keep in effect from the date of this Lease and at all times until the end of the term either Comprehensive General Liability insurance or Commercial General Liability insurance applying to the use and occupancy of the Premises and the business operated by Lessee (or any other occupant) on the Premises and providing coverage against all Lessee's liabilities pursuant to this Lease. Such coverage shall have a minimum combined single limit of liability of at least One Million Dollars (\$1,000,000.00) and such limit shall be increased from time to time to such amount as may be mutually acceptable to Lessor and Lessee in their reasonable judgment. All such policies shall be written to apply to all bodily injury, property damage, personal injury and other covered loss, however occasioned, occurring during the policy term; shall be endorsed to provide that such coverage shall be primary; and that any insurance maintained by Lessor shall be excess insurance only.

B. Lessee shall furnish Lessor with acceptable evidence that the insurance is in effect and in amounts sufficient to satisfy this Section 14. All insurance policies required by this Section 14 shall provide that they shall not be reduced, canceled or substantially amended or modified as to terms without thirty (30) days advance written notice to Lessor. All insurance policies required to be carried under this Lease shall be with recognized insurance carriers, having an A rating from A. M. Best Company or like or similar rating from an equally recognized rating company, acceptable to Lessor, and shall name Lessor as an additional insured. All such insurance shall provide for severability of interests; shall provide that an act or omission of one of the named insured shall not reduce or avoid coverage to the other named insureds; and shall afford coverage for all claims based on acts, omissions, injury and damage, which claims occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period. Such coverage shall be endorsed to waive the insurer's rights of subrogation against Lessor and Lessee if such waiver can be obtained at reasonable cost.

Lessee shall deliver to Lessor on or before the date on which the term commences, and thereafter at least ten (10) days before the expiration dates of expiring policies, certified copies of its insurance policies, or a certificate evidencing the same issued by the insurer thereunder, showing that all premiums have been paid for the full policy period; and in the event Lessee shall fail to procure such insurance, or to deliver such policies or certificates, Lessor may, at its option and in addition to Lessor's other remedies in the event of a default by Lessee hereunder, procure the same for the account of Lessee, and the cost thereof shall be paid to Lessor within ten (10) days following written demand therefor.

**Section 15. HAZARDOUS SUBSTANCES -LESSEE'S OBLIGATIONS:**

Lessee shall not, without Lessor's prior written consent, keep on or about the leased Premises, for use, disposal, treatment, generation, storage or sale, any substances designated

as, or containing components designated as hazardous, dangerous, toxic or harmful (collectively referred to as "hazardous substances"), and/or which are subject to regulation by any federal, state or local law, regulation, statute or ordinance. With respect to any hazardous substances, Lessee shall:

A. Comply promptly, timely, and completely with all governmental requirements for reporting, keeping and submitting manifests, and obtaining and keeping current identification numbers;

B. Submit to Lessor true and correct copies of all reports, manifests and identification numbers at the same time as they are required to be and/or submitted to the appropriate governmental authorities;

C. Within five (5) days of Lessor's request, submit written reports to Lessor regarding Lessee's use, storage, treatment, transportation, generation, disposal or sale of hazardous substances and provide evidence satisfactory to Lessor of Lessee's compliance with the applicable governmental regulation;

D. Allow Lessor or Lessor's agents or representatives to come on the leased Premises during regular business hours, and after hours with three (3) hours advance notice to Lessee, to check Lessee's compliance with all applicable governmental regulations regarding hazardous substances;

E. Comply with minimum levels, standards or other performance standards or requirements which may be set forth or established for certain hazardous substances (if minimum standards or levels are applicable to hazardous substances present on the Premises, these levels or standards shall be established by an on-site inspection by the appropriate governmental authorities and shall be set forth in an addendum to this Lease);  
and

F. Comply with all governmental rules, regulations and requirements regarding the proper and lawful use, sale, transportation, generation, treatment and disposal of hazardous substances.

Any and all costs incurred by Lessor and associated with Lessor's special or non-routine inspection of Lessee's Premises and Lessor's monitoring of Lessee's compliance with this section, and including Lessor's attorneys' fees and costs, shall be additional rent and shall be due and payable to Lessor immediately upon demand by Lessor. However, Lessor shall solely bear the expense of inspections made on a routine basis, without reasonable cause to believe that Lessee is in violation of this section.

Lessee shall be fully and completely liable to Lessor for any and all cleanup costs and any and all other charges, fees, penalties (civil and criminal) imposed by any governmental authority with respect to Lessee's use, disposal, transportation, generation and/or sale of hazardous substances, in or about the leased Premises.

Lessee shall indemnify, defend and save Lessor harmless from any and all of the costs, fees, penalties and charges assessed against or imposed upon Lessor (as well as Lessor's attorneys' fees and costs) as a result of Lessee's use, disposal, transportation, generation and/or sale of hazardous substances.

Upon Lessee's default under this section, in addition to the rights and remedies set forth elsewhere in this Lease, Lessor shall be entitled to the following rights and remedies:

- A. At Lessor's option, to terminate this Lease immediately; and
- B. To recover any and all damage associated with the default, including, but not limited to cleanup costs and charges, civil and criminal penalties and fees, loss of business and sales by Lessor and other lessees of the leased Premises, and any and all damages and claims asserted by third parties and Lessor's attorneys' fees and costs. The provisions of this section shall survive the

expiration or earlier termination of this Lease.

**Section 16. ASSIGNMENT/SUBLETTING:** Lessee shall not assign this Lease nor sublet the whole or any part of the Premises without the prior written consent of Lessor, in its sole and absolute discretion. Any such assignment or sublease shall not relieve Lessee from the responsibility of paying the rentals accruing under this Lease or from keeping and performing all other obligations herein imposed upon and assumed by it. It is understood and agreed that any consent by Lessor to any assignment or subletting by Lessee shall not be considered or construed to be a consent to any subsequent assignment or subletting nor as a waiver of the right of Lessor to refuse to consent to any subsequent assignment or subletting.

**Section 17. QUIET ENJOYMENT:**

A. Lessee, upon paying the rent and all other sums and charges to be paid by it as herein provided, and observing and keeping all covenants, warranties, agreements, and provisions of this Lease on its part to be kept, shall quietly have and enjoy the Premises during the Lease term, subject to the provisions herein, without hindrance by Lessor.

B. Lessor warrants that it has fee simple title to the Premises and the power and authority to execute this Lease and to carry out and perform all covenants to be performed by it hereunder.

**Section 18. ACCESS:** Lessor or Lessor's employees and designees shall have the right to enter upon the Premises on prior written notice to the Lessee at all reasonable times to examine the Premises and to exhibit the Premises to prospective purchasers and prospective lessees, and Lessor shall at all times be provided a key for independent access to the Premises. Any persons other than Lessor or Lessor's employees who need access to

the building will at Lessee's request sign a reasonable non-disclosure agreement before entering the building, except in an emergency.

**Section 19. CURE BY LESSOR:** If Lessee shall default in the performance of any provision under this Lease, Lessor, at its option, may perform the same for the account and at the expense of Lessee. Upon notification to Lessee of the cost thereof to Lessor, Lessee shall promptly reimburse Lessor the amount of that cost, plus interest at the rate of twelve (12%) percent per annum from the date of incurring of such cost to the date of repayment. In the event of such default by Lessee, Lessor may enter upon the Premises for the purpose of causing such provisions to be fulfilled. Such entry shall not be deemed an eviction of Lessee. Lessor's action hereunder shall not be deemed a waiver of Lessee's default. Lessor, at its option, without relinquishing any remedy or right, may separately commence proceedings against Lessee for reimbursement of Lessor and for any other remedies for breach of this Lease.

**Section 20. BANKRUPTCY AND INSOLVENCY:** If, after the commencement of the Lease term:

- A. Lessee then having the title to the leasehold estate created hereunder shall while having such title be adjudicated a bankrupt or adjudged to be insolvent; or
- B. A receiver or trustee shall be appointed for Lessee's property and affairs; or
- C. Lessee shall make an assignment for the benefit of creditors or shall file a petition in bankruptcy or insolvency or for reorganization or shall make application for the appointment of a receiver; or
- D. Any execution or attachment shall be issued against Lessee or any of Lessee's property, whereby the Premises or any buildings or improvements thereon shall be

taken or occupied or attempted to be taken or occupied by someone other than Lessee, except as may herein be permitted, and such adjudication, appointment, assignment, petition, execution, or attachment shall not be set aside, vacated, discharged, or bonded within ninety (90) days after the issuance of the same, then a default hereunder shall be deemed to have occurred so that the provisions of Section 21 hereof shall become effective and Lessor shall have the rights and remedies provided therein. Notwithstanding anything to the contrary hereinabove contained, upon the occurrence of a default pursuant to this Section 21, if the rent due and payable hereunder shall continue to be paid and the other covenants, provisions and agreements of this Lease on Lessee's part to be kept and performed shall continue to be kept and performed, no event of default shall have been deemed to have occurred and the provisions of Section 21 hereof shall not become effective.

**Section 21. DEFAULT:**

A. In the event any one or more of the following events shall have occurred and shall not have been remedied as hereinafter provided:

I. The occurrence of a default of any provision of this Lease without the curing of same as therein provided in this Lease; or

2. The filing of a petition by or against Lessee for adjudication as a bankrupt, or for reorganization or agreement, or for any similar relief, under the Bankruptcy Code as now or hereafter amended; or

3. Lessee's failure to pay any installment of rent when the same shall be due and payable and the continuance of such failure for a period of three (3) days after receipt by Lessee of notice in writing from Lessor, in the manner provided in Section 25; or

4. Lessee's failure to perform any of the other covenants, provisions, and agreements herein contained on Lessee's part to be kept or performed and the continuance of such failure without the curing of same for a period of ten (10) days after receipt by Lessee of notice in writing from Lessor specifying in detail the nature of such failure, or Lessee shall not cure said failure as provided in Paragraph B of this Section 21, then Lessor may, at its option, give to Lessee written notice of election to terminate the Lease term upon a date specified in such notice, which date shall not be less than twenty (20) business days (Saturdays, Sundays and legal holidays excluded) after the date of receipt by Lessee of such notice from Lessor. Upon the date specified in said notice, the term and estate hereby vested in Lessee shall cease and any and all other right, title, and interest of Lessee hereunder shall likewise cease without further notice or lapse of time, as fully and with like effect as if the entire Lease term had elapsed, but Lessee shall continue to be liable to Lessor as provided herein. Simultaneously with the sending of the notice to Lessee, as hereinabove provided, Lessor shall send a copy of such notice to any sublessee of the Premises or portions thereof that Lessor may select, in writing from time to time, and any additional persons or parties having an interest in the Premises that Lessor may select, in writing, from time to time. The curing of any default within the above time limits by any of the aforesaid parties or combination thereof, shall constitute a curing of any default hereunder with like effect as if Lessee had cured the same hereunder.

B. In the event that Lessor gives notice of a default of such a nature that it cannot be cured within the period prescribed in Paragraph A.4 of this Section 22, then such default shall not be deemed to continue, so long as Lessee, after receiving such notice, proceeds to cure the default as soon as reasonably possible and continues to take all steps necessary to complete the same within a period of time which, under all prevailing circumstances, shall be reasonable. No default under Paragraph A4 of this Section 21 shall



be deemed to continue if and so long as Lessee shall be proceeding to cure the same in good faith.

C. In the event that any default of Lessee shall be cured in any manner hereinabove provided, such default shall be deemed never to have occurred and Lessee's right hereunder shall continue unaffected by such default.

D. Upon any termination of the Lease term pursuant to Paragraph A of this Section 21, or at any time thereafter, Lessor may, in addition to and without prejudice to any other rights and remedies Lessor shall have at law or in equity, re-enter the Premises and recover possession thereof and dispossess any or all occupants of the Premises in the manner prescribed by statute relating to summary proceedings, or similar statutes; but Lessee in such case shall remain liable to Lessor as provided herein.

E. In case of any such default, re-entry, termination and/or disposition by summary proceedings:

1. The rent shall become due thereupon and be paid up to the time of such re-entry, termination and/or disposition;

2. Lessor may re-let the Premises or any part thereof, either in the name of Lessor or otherwise, for a term which may, at Lessor's option, be less than or exceed the period which would otherwise have constituted the balance of the term of this Lease and may grant concessions or free rent, but such re-letting shall not be construed as an acceptance of a surrender of the leasehold interest; and

3. Lessee or the representatives of Lessee shall also pay Lessor as liquidated damages for the failure of Lessee to observe and perform Lessee's covenants herein contained any deficiency between the rent hereby collected on account of the Lease

of the Premises for each month of the period which would otherwise have constituted the balance of the Lease term. In computing liquidated damages, there shall be added to the said deficiency such reasonable expenses and counsel fees as Lessor may incur in connection with the default and re-letting. Any suit brought to collect the amount of the deficiency for any month shall not prejudice in any way the rights of Lessor to collect the deficiency for any subsequent month by a similar proceeding.

Lessor, at its option, may make such alterations, repairs, replacements, and/or decorations in the Premises as Lessor, in Lessor's sole judgment, considers advisable and necessary for the purpose of re-letting the Premises; and the making of such alterations, repairs, replacements, and/or decorations shall not operate or be construed to release Lessee from liability hereunder. Lessor agrees to mitigate in good faith all damages and to re-let the Premises in the event of any default specified herein.

**Section 22. WAIVERS:** Failure of Lessor to complain of any act or omission on the part of Lessee, no matter how long the same may continue, or the receipt of rent by Lessor with knowledge of any breach or default of this Lease by Lessee, shall not be deemed to be a waiver by Lessor of any of its rights herein. No waiver by Lessor at any time, express or implied, of any breach of any provision of this Lease shall be deemed a waiver of any subsequent breach of the same or any other provision. Failure of Lessor to insist upon strict performance or to exercise any option herein conferred in any one or more instances in the event of default shall not be construed to be a waiver or relinquishment of any such or any other right herein extended to the Lessor.

**Section 23. GOVERNMENTAL REGULATIONS:** During the Lease term, Lessee shall, at its own cost and expense, promptly observe and comply with all present and future laws, ordinances, requirements, orders, directives, rules and regulations of the

federal, state, county, town, and city governments and of all other governmental authorities affecting the Premises or appurtenances thereto or any part thereof whether the same are in force at the commencement of the Lease term or may in the future be passed, enacted, or directed, and Lessee shall pay all costs, expenses, liabilities, losses, damages, fines, penalties, claims, and demands, including reasonable counsel fees, that may in any manner arise out of or be imposed because of the failure of Lessee to comply with the covenants of this Section 23.

**Section 24. NOTICE OF LITIGATION AND COUNSEL FEES:**

A. Within ten (10) days of Lessee having knowledge of any litigation or other proceeding that shall be commenced against Lessee or against the Premises to secure or recover possession thereof or that may affect the interests of Lessor in the Premises, Lessee shall give written notice thereof to Lessor.

B. In the event any party shall bring suit to compel performance of or to recover for any breach of any covenant, agreement or condition of this Lease, the prevailing party in said action shall be entitled to recover from the other party costs and reasonable attorney's fees.

C. Notwithstanding anything to the contrary hereinabove contained, in the event that Lessor is made a party to litigation against the Lessee, relating to the Premises, or against the Premises commenced by a third party, wherein Lessor is not at fault, Lessee shall pay, upon demand, all of Lessor's counsel fees and costs.

**Section 25. NOTICES:** Every notice, consent or other communication authorized or required by this Lease shall be deemed to be sufficient if in writing, and sent postage prepaid by registered or certified mail, return receipt requested, directed to the other party at the address listed below, or at such other address as the other party may designate by

notice given from time to time in accordance with this section. In the event a party notifies the other in writing of a change of address in accordance with this section, said address shall substitute for the address listed below for all subsequent notices. Notices shall be deemed effective when personally served, or upon first date of delivery or attempted delivery if sent by registered or certified mail:

**Lessor:**

Port of Camas-Washougal 24 So. "A" Street Washougal, WA  
98671

**Lessee:**

Kiva United Energy, Inc., 10281 South State Street. Sandy, Utah.  
84070

**Section 26. RIGHTS CUMULATIVE:** The rights, powers, and remedies of Lessor, as provided herein, shall be deemed to be cumulative, and no one of them shall be exclusive of any other, or of any other right, power, or remedy allowed by law.

**Section 27. TIME OF THE ESSENCE:** Time and punctual and exact performance and observation by Lessor and Lessee of the provisions herein are of the essence of this Lease.

**Section 28. SEVERABILITY:** In the event that any provision of this Lease shall be declared invalid by any court of competent jurisdiction, such provisions shall be severed from this Lease, and such declaration shall not affect the remainder of this Lease. This Lease shall remain in full force and effect for the balance of its Lease term.

**Section 29. INTERPRETATION:** Whenever the singular number is used herein, the same shall include the plural, and vice versa, as the context shall require. The section headings used herein are for reference and convenience only. Upon any sale or assignment of the interest of either Lessor or Lessee herein, their respective successors in interest shall, during the term of this ownership of their respective estates herein, be deemed to be Lessor or Lessee, as the case

may be.

**Section 30. SUCCESSORS:** All of the terms, conditions, covenants and agreements of this Lease shall extend to and be binding upon Lessor, Lessee, and their respective heirs, personal representatives, successors and assigns, and upon any person coming into ownership or possession of any interest in the Premises by operation of law, or otherwise, and shall be construed as covenants running with the land.

**Section 31. ENTIRE AGREEMENT:** This Lease and the License for the adjacent spur track (“License”) constitute and shall be construed as the entire agreement of the parties. No oral statement shall have any force or effect. This Lease shall not be modified or canceled except by writing subscribed by Lessor and Lessee.

**Section 32. AUDITS; RETENTION OF RECORDS:**

**Audits and Inspections:** At any time during normal business hours and as frequently as is deemed necessary, the Lessee shall make available to the Lessor for their examination, all of its records pertaining to matters covered by this Lease and only matters relating to the Lease.

**Retention of Records:** All records in the possession of the Lessee pertaining to this Lease shall be retained for a period of three (3) years after the expiration of the Lease or any extensions thereof. All records shall be retained beyond the three (3) year period if audit findings have not been resolved within that period or if other disputes have not been resolved.

**Section 33. SPUR TRACK LICENSE AGREEMENT:**

The Parties shall execute and fully comply with the terms and conditions of a license to use Railroad Spur Track governing Lessee's use of Lessor's rail access facilities, A copy of the agreed license is attached as **Exhibit "B"**, hereto and incorporated by this reference as a part hereof. (“License”).

**Section 34. OPTIONS TO EXTEND.**

The Lessee shall have the option, upon sixty (60) days prior written notice to the Lessor as provided herein, to extend the term of this Lease for one (1) five (5) year term on the following terms and conditions:

A. No default is existing or continuing in the performance of any of the terms of this Lease.

B. Each extended term shall be on the same terms, covenants and conditions as provided for this Lease, except as modified by this provision.

C. The monthly rental obligation for each year of the option period shall be as follows:

**Fourth 5-year option period (2026-2031).**

a. 04/01/2026-03/31/2027	\$942.20
b. 04/01/2027- 03/31/2028	\$970.47
c. 04/01/2028-03/31/2029	\$999.58
d. 04/01/2029-03/31/2030	\$1029.57
e. 04/01/2030-03/31/2031	\$1060.46

In addition to the rental amounts specified above, Lessee shall pay to Lessor with each monthly rental payment the Washington State Leasehold Tax on the leased Premises, which tax is currently 12.84% of the monthly rental payment.

IN WITNESS WHEREOF, the Port has caused this instrument to be signed by its Chief Executive Officer, or other designee, by authority of the Commission of the Port of Camas Washougal, and this instrument has been signed and executed by Lessee, the day and year first above written.

SIGNATURES APPEAR ON FOLLOWING PAGE

**LESSOR:**

**LESSEE:**

PORT OF CAMAS WASHOUGAL

KIVA UNITED ENERGY, INC

\_\_\_\_\_  
David Ripp  
Its: Chief Executive Officer

\_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Its: Vice President, North America Sales

STATE OF WASHINGTON )  
 ) ss.  
County of \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_, 2024, before me the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared \_\_\_\_\_, to me known to be the \_\_\_\_\_ of \_\_\_\_\_ the entity that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said entity for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said instrument.

WITNESS my hand and official seal hereto affixed the day and year first above written.

\_\_\_\_\_  
NOTARY PUBLIC in and for the  
State of Washington, residing  
at \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF CLALLAM )

On this \_\_\_\_ day of \_\_\_\_\_, 2024, before me the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared David Ripp to me known to be the Chief Executive Officer of the Port of Camas Washougal, the entity that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said entity for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said instrument.

WITNESS my hand and official seal hereto affixed the day and year first above written.

\_\_\_\_\_  
NOTARY PUBLIC in and for the  
State of Washington, residing  
at \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

# EXHIBIT A

## Graphic Description





# Exhibit A continued (Tax Lot 71281109)

**CLARK COUNTY WASHINGTON**  
**MAPSONLINE**  
Clark County WASHINGTON

Land Records Find Layer Map Sites

Map Sites Find Parcel Search Locate Address Find Lat/Long Print Map Disclaimer Help

Show / Hide

Layers Search Extent Bookmarks

**Parcel Report**

[Zoom To Parcel on Map](#)  
[Property Information Center](#)  
[Property Fact Sheet](#)

**Parcel Information**

Property Identification Number: 71281109

**Property Location Address**  
531 S 28TH ST, WASHOUGAL, WA 98671

**Property Owner**  
PORT OF CAMAS WASHOUGAL

**Owner Mailing Address**  
24 S A ST  
WASHOUGAL WA, 98671

**Most Recent Sale**

Sale Date:  
Document Type:  
Document Number:  
Sale Amount:

**Property Photo**  
Photo Date: 08/24/2005

Leased Premises

0 50 100ft

Esri, HERE, Garmin, USGS, EPA, N...

**EXHIBT B**  
**LICENSE TO USE RAILROAD SPUR TRACK**

THE GRANTOR, the PORT OF CAMAS-WASHOUGAL, a municipal corporation organized and existing under the laws of the State of Washington (hereinafter called the “**Grantor**”), hereby grants to KIVA UNITED ENERGY, INC., a corporation organized under the laws of the State of Utah and licensed to engage in business in the State of Washington, (hereinafter called the **Licensee**”), a license to use the Grantor’s railroad spur track according to the following terms and conditions.

Section 1. DESCRIPTION OF SPUR TRACK. The spur track over which this License is granted is located in the Grantor’s Industrial Park in Washougal, Washington, and is connected to the lines of Burlington-Northern Railroad Company. The spur track lies immediately north of the real estate leased by Grantor to Licensee by Lease dated September 1st, 2024, hereinafter referred to as “the **Lease**,” The licensed portion of said spur track which is adjacent to the real estate described in the Lease is approximately four hundred (400) feet in length and is graphically depicted on **Exhibit A**, which is attached hereto and incorporated herein. In addition to the License to use the spur track which is adjacent to the real estate Premises described in the Lease, Grantor agrees that the Licensee shall have the right to use portions of the railroad spur track serving the Premises in common with others, provided, however, that Grantor reserves and shall have the right to control traffic on any portion of said spur track that is subject to joint use.

Section 2. TERM. The initial term of this License shall be from September 1, 2024 expiring on March 31, 2026, unless sooner terminated as provided in this License.

Section 3. CONSIDERATION. As consideration for the granting of this License, Licensee covenants and agrees to pay Grantor the sum of Two Hundred Dollars per month, payable in advance on the first day of each month during the License Agreement. In addition, the Licensee shall pay to Grantor with each monthly rental payment the Washington State Leasehold Tax, which tax is currently 12.84% of the monthly rental payment, for a combined total of \$225.68 per month.

Licensee agrees to pay a late charge, in an amount equal to seven percent (7%) of the monthly rental payment then due, with any rental or leasehold tax payment which is not received in full by Grantor by the tenth day of the month.

Section 4. MAINTENANCE, REPAIR AND IMPROVEMENTS. Grantor agrees, at its own cost and expense, to maintain the spur track, and to keep the same in good and usable condition and repair, during the term of this License agreement and any extension thereof.

Section 5. RULES AND REGULATIONS. Licensee's use of said railroad spur track shall be subject to all rules and regulations adopted and promulgated by Grantor.

Section 6. RELEASE AND INDEMNITY.

- A. Licensee agrees to pay the Grantor the full amount of loss or damage sustained by Grantor by reason of any damage to or destroying of property of Grantor resulting from Licensee's use of said railroad spur track.
- B. Licensee further agrees to indemnify Grantor from all claims and demands which may be made against it by any person by reason of any loss, damage or injury growing out of or resulting from Licensee's use of the railroad spur track.
- C. Licensee does hereby release Grantor from all claims and demands, present or future, of every nature on account of injury to property of Licensee resulting from Licensee's use of said railroad spur track.
- D. The parties agree that this Section 6 is solely for the protection and benefit of Grantor and its successors and assigns. No other person shall be entitled to claim any benefit from the provisions of this Section.

Section 7. TERMINATION. In the event of any default, as described in Section 21 of the Lease shall have occurred, and shall not have been remedied, as provided by the Lease, or in the event that the Licensee fails to pay any installment of consideration for this License when the same shall be due and payable, as provided in Section 3 of this License, and such failure shall continue for a period of twenty (20) days after receipt by Licensee of notice in writing from the Grantor specifying in detail the nature of such failure; or in the event Licensee fails to perform any of the other covenants, provisions and agreements contained in this License, and such failure shall continue for a period of thirty (30) days after receipt by Licensee of notice in writing from Grantor, specifying in detail the nature of such failure, then Grantor may, at its option, terminate this License agreement in the manner provided in Section 21 of the Lease, with the

same effect, and affording Grantor the same remedies as provided in Section 21 of the Lease.

Notwithstanding anything to the contrary herein, Grantor agrees to maintain the spur track from the area immediately south of the real estate leased by Licensee under the Lease to the Burlington-Northern Railroad Company lines during the term of the Lease and any extensions thereof. This License Agreement may only be canceled upon termination of the Lease or as provided in this Section 7.

Section 8.      OPTION TO EXTEND LICENSE. After the initial term described in Section 2, Licensee shall have the right to extend the terms of this License for one (1) period of five (5) years (2026-2031) on the following terms and conditions:

- A. No default is existing or continuing in the performance of any of the terms of this License.
- B. Each extended term shall be on the same terms and conditions as provided in this License, except as modified by this Section 8.
- C. Licensee shall have exercised the option to extend the Lease as set forth in Section 34 of the Lease.

As consideration during the option periods, Licensee shall pay to Grantor, in advance, a license payment plus Washington State Leasehold Tax (“LET”), which tax is currently 12.84% of the monthly rental payment, for a combined current projected total of \$229.00 per month, which amount may be adjusted in the event the LET rate changes.

IN WITNESS WHEREOF, the parties have executed this License to use railroad spur track, as of the 1st day of September, 2024.

SIGNATURES APPEAR ON NEXT PAGE

Grantor:  
PORT OF CAMAS-WASHOUGAL

By: \_\_\_\_\_  
David Ripp  
Its: Executive Director

Licensee:  
KIVA ENERGY UNITED, INC.

By \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Its: Vice President, North America Sales

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_ day of \_\_\_\_\_, 2024, before me personally appeared \_\_\_\_\_, known to me to be the Executive Director of the Port of Camas-Washougal, the corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

\_\_\_\_\_  
NOTARY PUBLIC in and for the State of  
Washington, residing at \_\_\_\_\_,  
My commission expires \_\_\_\_\_.

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_ day of \_\_\_\_\_, 2024, before me personally appeared \_\_\_\_\_, known to me to be the President of Kiva Energy United, Inc., the corporation that executed the within and Foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed me official seal the day and year first above written.

\_\_\_\_\_  
NOTARY PUBLIC in and for the State of  
\_\_\_\_\_, residing at \_\_\_\_\_.  
My commission expires \_\_\_\_\_.

## Port of Camas-Washougal Staff Report

**DEPARTMENT:** Business Development

**FOR THE AGENDA OF:** 8/7/24

**RECOMMENDATION:** Support approval at the 8/21/24 Commission Meeting

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### SUMMARY:

Background: Hidden River Roasters currently leases Bays 7 & 8 at Bldg. 18 and wishes to move out and transfer the lease to their sub-tenant Elevate NW Electric. Elevate NW and has been a subtenant for the last 3 years and employees 16-17 staff in association with the leased premises.

### BUDGET IMPACT:

N/A

Yes, describe:

There are no changes to the term and rates for the lease. Current term of the lease expires 3/31/27. See lease for rates.

### SUSTAINABILITY IMPLICATIONS:

N/A

Yes, describe:

### DEI IMPLICATIONS:

N/A

Yes, describe:

**ASSIGNMENT AND ASSUMPTION OF LEASE  
AND  
LESSOR’S CONSENT TO ASSIGNMENT**

**THIS ASSIGNMENT & CONSENT (“Assignment”)** is made and entered into as of the \_\_\_ day of \_\_\_\_\_, 2024, and effective as of July 31, 2024 (the “**Effective Date**”), by and among the PORT OF CAMAS WASHOUGAL, a Washington public port district under the laws of the State of Washington, hereinafter called “**Lessor**”, **HIDDEN RIVER ROASTERS, LLC**, a limited liability company authorized to engage in business and engaging in business in the State of Washington with principle offices located at 536 NE 5TH AVE, CAMAS, WA, 98607-2005, UNITED STATES, hereinafter called “**Assignor**,” and **ELEVATE NW ELECTRIC LLC**, a limited Washington state limited liability company authorized to engage in business and engaging in business in the State of Washington with principle offices located at 10800 NE 105TH ST, VANCOUVER, WA, 98662-3406, UNITED STATES, hereinafter called “**Assignee**.”

**W I T N E S S E T H:**

**WHEREAS**, Lessor and Lessee entered into that certain Lease (hereinafter the “**Existing Lease**”) dated March 8, 2022, for a period commencing April 1, 2022 and expiring March 31, 2027, for Lessor’s Industrial Building No. 18, Bays 7 & 8 and the adjoining yard area, located at 4060 South Grant Street, Washougal, Clark County, Washington 98671, as shown on Exhibit “A” attached hereto and incorporated herein by this reference (hereinafter the “**Premises**”); and

**WHEREAS**, effective on or about March 10, 2022, Lessor authorized Assignee as Sub-Lessee to sublease from Assignor as Sub-Lessor;

**WHEREAS**, Assignor now desires to assign the Existing Lease to Assignee, and Assignee desires to accept such assignment and assume all of the Assignor’s obligations under the Existing Lease, all on the terms and conditions set forth in this Assignment and Assumption Agreement and the Existing Lease; and

**WHEREAS**, with the Lessor’s consent, Section 17 of the Lease allows the Assignor to assign the Premises to Assignee, provided that any such assignment shall not relieve the Assignor from the responsibility to pay the rentals accruing under the Lease or from keeping and performing all other obligations imposed on the Assignor in the Existing Lease;

**WHEREAS**, the Existing Lease provides that the Assignor, as Lessee, must obtain the prior written consent of the Lessor to assign the Existing Lease; and

**NOW, THEREFORE**, in consideration of the mutual acts, obligations and covenants of the Parties, one to the other, and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged by the Parties, one to the other, it is mutually understood and agreed as follows:

1. **Defined Terms.** All capitalized terms used but not otherwise defined in this Agreement and all other terms and phrases used herein that are defined in the Existing Lease shall have the meanings ascribed thereto in the Existing Lease. All references to the Lease contained in the Existing Lease shall be deemed to mean and refer to the Existing Lease.
2. **Conditions of Assignment Including EDA Obligations.** Assignee agree to perform the following conditions of such Assignment:
  - a) Assignee shall perform all of the Assignor's duties, responsibilities and obligations as set forth in the Existing Lease;
  - b) Assignee acknowledges that as provided in the Lease at Section 10(F) the Existing Lease Premises was improved with a grant award from the U.S. Department of Commerce, Economic Development Administration ("EDA"), Project No. 070107296 (the "Award"). The Premises must be used in a manner consistent with the authorized general and special purpose of the Award, the EDA recorded Agreement and Mortgage (document number 5349272), and the Award terms and conditions. This includes but is not limited to Lessee not discriminating against any qualified employee or applicant for employment because of race, color, national origin, religion, sex, age, or physical or mental disability.
  - c) Assignee shall employ approximately sixteen (16) staff in accordance with operations at Building 18 on the Premises;
  - d) Assignee shall pay the Rent as required by Section 4 of the Existing Lease to the Lessor; and
  - e) Assignee to post Lease Security in the initial amount of \$5,981.44 no later than the first of September 2024, pursuant to Lease at Paragraph 5, at which time the Port will relinquish the security posted by Assignor, less any appropriate adjustments pursuant to Lease at Paragraph 5.C.
3. **Assignment of the Existing Lease.** Effective as of the Effective Date, Assignor hereby assigns, sets over and transfers to Assignee, its successors and assigns, the Existing Lease and all of Assignor's right, title and interest in, to and under the Existing Lease and in and to the Premises and improvements, fixtures and equipment now located on the Premises, together with all of Assignor's duties, responsibilities and obligations of Lessee arising out of or accruing under the Existing Lease. Assignor hereby certifies to Assignee that (i) all rent and additional rent payable by Assignor to Lessor as of the date of this Agreement has been fully paid, (ii) to the best of Assignor's knowledge, Assignor is not in monetary or material non-monetary default under the Lease as of the date of this Agreement, and (iii) Assignor has no actual knowledge of any event which, with notice or the passage of time or both would constitute such a default by Lessee.
4. **Acceptance of Assignment and Assumption of the Existing Lease.** Effective as of the Effective Date, Assignee hereby accepts the within assignment of the Existing Lease and all of Assignor's right, title and interest in, to and under the Existing Lease and in and to the Premises and the improvements, fixtures and equipment now located



on the Premises, and Assignee hereby assumes and agrees to perform and comply with all of the duties, responsibilities and obligations of Lessee arising out of or accruing under the Existing Lease before, on or after the Effective Date, including, without limitation, all duties, responsibilities and obligations of Lessee relating to Hazardous Substances and Environmental Laws.

**5. Lessor's Consent to Assignment.**

- (a) Lessor hereby consents to the within assignment of the Existing Lease; provided, however, that such consent shall not be construed as a consent by Lessor to, or as permitting, any other or further assignment, licensing or subletting by Assignee/Lessee nor as a waiver of the right of Lessor to refuse to consent to any other or further assignment, licensing or subletting.
- (b) From and after the Effective Date, all references contained in the Existing Lease to "Lessee" shall be deemed to mean and refer to Assignee and its successors and permitted assigns.

**6. Ratification.** The Existing Lease shall remain in full force and effect, and the Existing Lease is ratified and confirmed in all respects.

**7. Notices to Assignee under the Lease.** From and after the Effective Date, all notices and invoices to be given by Lessor to Assignee/ Lessee under the Existing Lease or otherwise shall be given to the Assignee at:

**ELEVATE NW ELECTRIC LLC**  
4060 Grant St, Suite 107  
Washougal, WA 98671

**8. Brokers.** Assignor, Assignee and Lessor each represent and warrant to the others that it has dealt with no broker or finder in connection with this Assignment. Assignor, Assignee and Lessor each hereby agree to indemnify and hold the other Parties harmless from and against any and all claims, liabilities, suits, costs and expenses including, reasonable attorneys' fees and disbursements arising out of any inaccuracy or alleged inaccuracy of its representation above.

**9. Authority.** Lessor and Assignor and Assignee each hereby represents and warrants to the other Parties that it has full right, power and authority to enter into this Agreement and that the person executing this Assignment on behalf of the Lessor, Assignor and Assignee has full right, power and authority to enter into this Assignment and that the person executing this Agreement on behalf of the Lessor, Assignor and Assignee, respectively, is duly authorized to do so.

**10. Binding Effect.** Lessor, Assignor and Assignee acknowledge that this Assignment shall not be binding upon any Party until the Parties have executed this Assignment and a counterpart is delivered to the others.

- 11. No Waiver.** This Assignment may not be amended, modified, changed or terminated, nor any of its provisions waived, except by an agreement in writing signed by the Party against whom enforcement of any such amendment, modification, change, termination or waiver is sought.
- 12. Governing Law.** This Assignment shall be governed by and in accordance with the laws of the State of Washington. Any litigation brought to enforce or interpret this Assignment shall be filed in the Clark County Superior Court. The substantially prevailing Party in any such litigation shall be entitled to recover its reasonable attorneys' fees, costs and expert witness fees.
- 13. Severability.** If any of the provisions of this Assignment, or the application thereof to any person or circumstance, shall, to any extent, be invalid or unenforceable, the remainder of this Assignment or the application of such provision or provisions to persons or circumstances other than those as to whom or which it is held invalid or unenforceable shall not be affected thereby, and every provision of this Assignment shall be valid and enforceable to the fullest extent permitted by law.
- 14. Effectiveness.** This Assignment may be executed electronically and in counterparts, each of which will be deemed an original, but all of which together will be deemed to be one and the same agreement. Counterparts may be delivered by facsimile, electronic mail or other transmission method, and any counterpart so delivered will be deemed to have been duly and validly delivered and shall be valid and effective for all purposes.
- 15. Headings.** The headings of this Assignment are intended to be for convenience of reference only and shall not define the extent or intent or otherwise affect the meaning of any portion hereof.
- 16. Successors and Assigns.** This Assignment shall be binding upon, and inure to the benefit of the Parties hereto, their respective legal representatives, successors and permitted assigns.

**IN WITNESS WHEREOF**, Lessor, Assignor and Assignee have duly executed this Assignment as of the date first set forth above.

**(Signatures on next page)**

**THE PORT OF CAMAS-WASHOUGAL**

By \_\_\_\_\_  
David Ripp, CEO

Its: \_\_\_\_\_

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

**HIDDEN RIVER ROASTERS, LLC  
Assignor**

By \_\_\_\_\_

Its: \_\_\_\_\_

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

**ELEVATE NW ELECTRIC LLC,  
Assignee**

By \_\_\_\_\_

Its: \_\_\_\_\_

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

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF CLARK )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2024, before me personally appeared **David Ripp**, to me known to be the CEO for the Port of Camas-Washougal, the Washington public port district that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

In WITNESS WHEREOF I have hereto set my hand and affixed my official seal the date and year first written above.

\_\_\_\_\_  
**Notary Public in and for the state of Washington,  
residing at \_\_\_ County.  
My Commission expires \_\_\_\_\_.**

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF CLARK )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2024, before me personally appeared \_\_\_\_\_, to me known to be the **Owner** for **Hidden River Roasters, LLC**, the entity that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

In WITNESS WHEREOF I have hereto set my hand and affixed my official seal the date and year first written above.

\_\_\_\_\_  
**Notary Public in and for the state of Washington,  
residing at \_\_\_ County.  
My Commission expires \_\_\_\_\_.**

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF CLARK )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2024, before me personally appeared \_\_\_\_\_, to me known to be the **Owner** for **Elevate NW Electric, LLC**, the entity that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

In WITNESS WHEREOF I have hereto set my hand and affixed my official seal the date and year first written above.

\_\_\_\_\_  
**Notary Public in and for the state of Washington,  
residing at \_\_\_ County.  
My Commission expires \_\_\_\_\_.**

## Port of Camas-Washougal Staff Report

**DEPARTMENT:** Business Development

**FOR THE AGENDA OF:** 8/7/24

**RECOMMENDATION:** Recommend Approval RKM Hold Harmless Agreement

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**SUMMARY:**

This is to allow RKM to place their job trailer in a portion of the Master Lease area, but not in Phase 1 where the construction will take place.

**BUDGET IMPACT:**

N/A

Yes, describe:

**SUSTAINABILITY IMPLICATIONS:**

N/A

Yes, describe:

**DEI IMPLICATIONS:**

N/A

Yes, describe:

## REVOCABLE NON-EXCLUSIVE LICENSE TO USE

Date: July 24, 2024

Licensor: Port of Camas-Washougal a Washington municipal corporation ("Licensor")

Licensee: RKM Development, Inc.

Licensor hereby grants to Licensee a revocable non-exclusive license (this "License") to use the real property (the "Premises") consisting of the use of the parking lot at the Port's waterfront property in approximately location highlighted in yellow and green shown on Exhibit A to this License and on a nonexclusive basis with Licensor of the parking lot. The Premises are licensed to Licensee for a term (the "Term") beginning August 21, 2024 and terminating July 31, 2027.

Licensor and Licensee agree as follows:

**1. Fee:**

The fee will be \$-0-.

**2. Use: Staging Area**

Licensee may use the Premises in accordance as their staging area and placement of construction modular unit for the waterfront development project with Licensor and no other purpose without Licensor's prior written consent, which consent shall be at Licensor's sole discretion. Licensee shall not do or suffer any waste or damage, disfigurement, or injury to the Premises. Licensee shall comply with all applicable federal, state, and local laws, rules, regulations, and orders, including environmental protection requirements ("Environmental Requirements") regarding hazardous materials ("Hazardous Materials"). Without limiting the foregoing, Licensee shall also comply with all applicable rules and regulations of the Port regarding the Premises and any activity conducted thereon. Licensee shall keep the Premises free of all liens as a result of Licensee's use of the Premises. Licensor shall maintain the Premises in good condition during the Term, and shall clean up and remove all waste and other items from the Premises at or before the end of the Term.

**3. Licensor's Exculpation and Indemnity**

Licensor shall not in any event whatsoever be liable for any injury or damage to any property or to any person happening on, in, or about the Premises or any injury or damage to the Premises or to any property, whether belonging to Licensee or to any other person, from any cause whatsoever, except to the extent caused by the gross negligence or intentional misconduct of Licensor. All items and vehicles used or placed on the Premises and all vehicles used or placed on the Premises, except for items or vehicles used or placed on the Premises by Licensor or users other than Licensor are at the sole risk of Licensee, its employees, agents, representatives, licensees, invitees, and guests, it being expressly agreed and understood that Licensor has no duty to insure any of the same, and that Licensor is not responsible for the protection or security of the same. Licensor shall have no liability whatsoever for any property damage or personal injury which might occur on the Premises as a result of or in connection with Licensee's use of the Premises or access to and from the public street, except to the extent caused by Licensor's gross negligence or intentional misconduct. Licensee hereby agrees to defend, indemnify and hold Licensor and its commissioners, officers, employees, agents, and representatives harmless from and against any and all costs, claims, expenses, actions, liabilities, damages, penalties, judgments, fines, enforcement actions, and causes of action which Licensor may incur in connection with or arising out of the use of the Premises by Licensee or its employees, agents, representatives, sublicensees, licensees, invitees, visitors, and guests, except to the extent caused by the gross negligence or intentional misconduct of Licensor. In case any action or proceeding is brought against Licensor by reason of any such claim, Licensee upon written notice from Licensor shall, at Licensee's expense, resist or defend

such action or proceeding by counsel approved by Licensor in writing, which approval shall not be unreasonably withheld. The provisions of this section survive any termination of this License.

**4. Condemnation**

In the event of any taking of the Premises or part thereof by power of eminent domain or by transfer in lieu thereof, the entire award for such taking shall be the Licensor's and Licensee shall not be entitled to any proceeds of the taking, and Licensee shall have no rights related thereto.

**5. Assignment**

Licensee shall not sell, assign, or in any other manner transfer this License or any interest in this License or the estate of the Licensee under this License, without the prior written consent of Licensor, which consent may be withheld in Licensor's sole discretion.

**6. Termination; Default; Remedies**

This License may be revoked by Licensor upon any default by Licensee under this License or if Licensor reasonably determines Licensee's use will unreasonably interfere with the uses by other parties as described in Section 13, below. Upon an event of default by Licensee then Licensor may summarily evict from the Premises the Licensee and anyone in possession under Licensee and recover any damages due to Licensee's default or exercise any other remedy available under applicable law.

**7. Surrender**

No later than the earlier of final expiration of the Term or upon earlier termination thereof, Licensee shall cause all personal property and vehicles brought or placed on the Premises in connection with Licensee's use of the Premises to be removed from the Premises and shall surrender the Premises to the Licensor in the condition as delivered to Licensee at commencement of the Term. Any personal property or vehicles left on the Premises after the expiration or earlier termination of the License shall be deemed abandoned if Licensee does not remove the same upon final expiration of the Term. The provisions of this section shall survive any termination of this License.

**8. Invalidity of Particular Provisions**

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

**9. No Representations**

Licensee acknowledges that it has examined the Premises and that no representations as to the condition of the Premises have been made by Licensor or any agent or person acting for Licensor.

**10. Notices**

Any notice required or permitted by the terms of this License shall be deemed given if delivered personally to an officer of the party to be notified or sent by United States registered or certified mail, postage prepaid, return-receipt requested, and addressed as follows:

If to Licensor:

Port of Camas-Washougal  
Attn: Executive Director  
24 South A Street  
Washougal WA 98671

with copy to:

Goodstein Law Group PLLC  
Attn: Carolyn A. Lake, Esq.  
501 S G St  
Tacoma WA 98405

If to Licensee:

RKM Development, Inc.  
Att: Roy Kim  
15160 NW Laidlaw Rd., Suite 108  
Portland, OR 97229  
Email: roy@centralbethany.com

with copy to:

Or such other addresses as may be designated by either party by written notice to the other. Every written notice, demand, request, or other written communication shall be deemed to have been given or served upon the earlier of actual receipt or three business days after given in the above manner.

## **11. Environmental Requirements**

Licensee shall not cause or permit any Hazardous Materials to be brought upon, kept, used, stored, handled, treated, generated in or about, or released or disposed of from, the Premises by Licensee or any employee, agent, representative, contractor, licensee, invitee, or guest of Licensee (each, a "Licensee Party"). If Licensee breaches the obligation stated in the preceding sentence, Licensee, to the extent permitted by law, hereby indemnifies and shall defend and hold Licensor, its officers, directors, employees, agents, and contractors harmless from any and all actions (including, without limitation, remedial or enforcement actions of any kind, administrative or judicial proceedings, and orders or judgments arising out of or resulting therefrom), costs, claims, damages (including, without limitation, punitive damages and any other damages), expenses (including, without limitation, attorneys', consultants', and experts' fees, court costs and amounts paid in settlement of any claims or actions), fines, forfeitures or other civil, administrative or criminal penalties, injunctive or other relief (whether or not based upon personal injury, property damage, or contamination of, or adverse effects upon, the environment, water tables or natural resources), liabilities or losses to the extent arising during or after the Term as a result of such contamination. This indemnification of Licensor by Licensee includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, treatment, remedial, removal, or restoration work required by any federal, state or local governmental authority because of Hazardous Materials present in the air, soil, or ground water above, on, or under the Premises. Without limiting the foregoing, if the presence of any Hazardous Materials on the Premises or any adjacent property caused or permitted by Licensee or any Licensee Party results in any contamination of the Premises or any adjacent property, Licensee shall promptly take all actions at its sole expense and in accordance with applicable Environmental Requirements as are necessary to return the Premises or any adjacent property to the condition existing prior to the time of such contamination, provided that Licensor's approval of such action shall first be obtained, which approval shall not unreasonably be withheld so long as such actions would not potentially have any material adverse long-term or short-term effect of the Premises. Licensee's obligations under this Section 12 shall survive the expiration or earlier termination of this License. Notwithstanding anything to the contrary contained in this Section 12, Licensee shall not be responsible for, and the indemnification and hold harmless obligation set forth in this Section 12 shall not apply to, the presence of any Hazardous Materials on the Premises that were not brought upon, kept, used, stored, handled, treated, generated, released or disposed of, or contributed to or exacerbated, by Licensee or a Licensee Party.



**12. Use by Other Parties**

Licensee acknowledges that its use of the Premises is non-exclusive and that Licensor and other persons may be using the Premises during the Term of this License. Licensee's use under this License shall not unreasonably disturb the use and occupancy of the Premises by the above-mentioned parties.

**13. Miscellaneous**

With respect to any dispute relating to this License, the prevailing party shall be entitled to recover from the losing party its reasonable attorneys' fees and all other fees, costs and expenses actually incurred and reasonably necessary in connection therewith including (without limitation) deposition and expert fees and costs incurred in creating exhibits and reports, as determined by the judge or arbitrator at trial or other proceeding, or on any appeal or review, in addition to all other amounts provided by law. This License contains the entire agreement between the parties with respect to this License and, except as otherwise provided, can be changed, modified, amended, or terminated only by an instrument in writing executed by the parties. It is mutually acknowledged and agreed by Licensee and Licensor that there are no verbal agreements, representations, warranties, or other understandings affecting this License. This License shall be governed by, and construed in accordance with, the laws of the State of Washington. Any and all actions and proceedings related to this License shall be filed and held in Clark County, Washington. Subject to the limitations expressly set forth herein, the covenants and agreements contained in this License shall bind and inure to the benefit of Licensor, its successors and assigns, and Licensee, its successors and assigns.

IN WITNESS WHEREOF, Licensee and Licensor have caused this License to be executed by their duly authorized officers.

Licensor:

PORT OF CAMAS-WASHOUGAL, a Washington municipal corporation

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

Name: \_\_\_\_\_

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

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

Licensee:

RKM Development, Inc.

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

Name: \_\_\_\_\_

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

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

EXHIBIT A

Diagram of Premises



## Port of Camas-Washougal Staff Report

**DEPARTMENT:** PROJECTS-CONTRACTS

**FOR THE AGENDA OF:** August 7, 2024

**RECOMMENDATION:** Staff requests approval of the contract with Earth Engineers for the Geo Tech Inspection, Testing and Environmental Sampling and Lab Testing for the Waterfront Soils Removal Project.

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**SUMMARY:** Earth Engineers will provide geotechnical and environmental services during construction to confirm compliance with the work plan and the Department of Ecology site requirements.

**BUDGET IMPACT:** \$164,165.00 This amount is included in the 2024 Capital Budget.

**SUSTAINABILITY IMPLICATIONS (please describe):** None

**DEI IMPLICATIONS (please describe):** None



**EARTH  
ENGINEERS**  
An RMA Company

2411 Southeast 8<sup>th</sup> Avenue • Camas • WA 98607

Phone: 360-567-1806

[www.earth-engineers.com](http://www.earth-engineers.com)

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July 28, 2024

**Revised August 1, 2024**

Port of Camas-Washougal  
24 South A Street  
Washougal, Washington 98671  
Attention: Jennifer Taylor

Phone: 360-335-3685  
E-mail: [jennifer@portcw.com](mailto:jennifer@portcw.com)

**Subject: Proposal for Geotechnical Inspection and Testing and Environmental Sampling  
and Lab Testing  
Soil Overexcavation and Structural Backfill  
Waterfront Soils Removal Project  
54 South 2<sup>nd</sup> Street  
Washougal, Clark County, Washington  
EE Proposal No. 10-242112-P-R1**

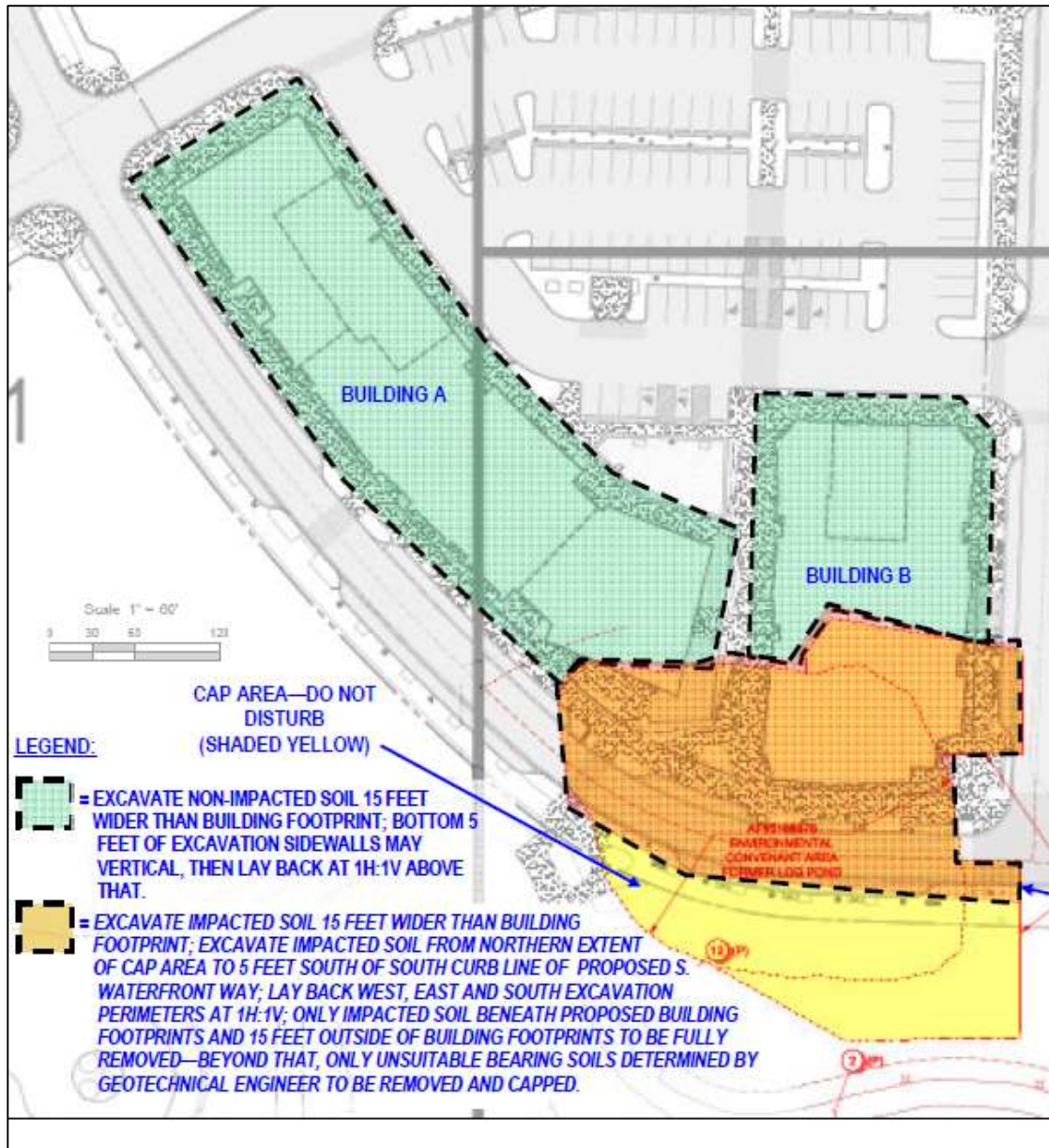
Dear Ms. Taylor:

As requested, Earth Engineers (EE), an RMA Company is pleased to submit our **revised** proposal to provide geotechnical and environmental services during construction. **Our proposal has been revised to include subcontracted environmental lab testing of soil samples. Proposal revision additions are notated in bold, italics font.** This proposal outlines our project understanding, proposed scope of services, schedule, fees, and General Conditions that will apply.

## **PROJECT UNDERSTANDING**

Our understanding of the project is based on our extensive involvement to date as the Geotechnical Engineer of Record during the design phase of the Hyas Point mixed-use project. The next step is to remove and replace the existing contaminated soil with structural fill in accordance with the Work Plan issued by Earth Engineers on April 4, 0224 (reference EE Report No. 10-24035-1-R2 dated April 4, 2024).

See Figure 1 below for the site plan, which indicates the locations of the overexcavation work. Only the orange shaded area and the green shaded within Building B are to be overexcavated as part of this scope of work. The orange shaded area indicates the portion of the overexcavation area that is environmentally contaminated. The green shaded area indicates geotechnically unacceptable soil (i.e. old fill and organics) that is not anticipated to be environmentally contaminated.



**Figure 1:** Site Plan showing the overexcavation areas, which are limited to the orange shaded area and the green shaded area of Building B.

### SCOPE OF SERVICES AND BUDGET ESTIMATE

Geotechnical **and environmental** services will be provided by the Earth Engineers office located less than 1 mile from the project site. Given our close proximity, no mileage will be charged and travel time will be minimal. We understand the contractor will be working four 10-hour days (Monday through Thursday).

We propose to provide the following geotechnical special inspection and testing services **and environmental sampling and lab testing services** to confirm the construction complies with the Earth Engineers Work Plan referenced above:

- Attend pre-construction meeting.
- Attend weekly construction meetings.
- Review contractor's submittals and RFI's.
- Excavation of soils (continuous).
- Stability of temporary excavations (periodic).
- Environmental soil sampling **and ship samples to subcontracted environmental lab for testing** (periodic).
- Placement of demarcation geotextile (periodic).
- Structural backfill (continuous).
- Placement of soil cap, if required (periodic).
- Final summary report.

As outlined in Attachment A, **for the construction inspection services** we estimate a budget of **\$69,522.50**. Ultimately, this is only an estimate and our actual charges may be more or less. **As outlined in Attachment B, for environmental lab testing services, we estimate a budget of \$94,642.50**. We will not exceed the **total** budget estimate **of \$164,165.00** without first obtaining written authorization.

It should be noted that our estimate is not based on a detailed construction schedule. Once a detailed construction schedule is available, it should be provided to us so that we can update our budget estimate.

***It should also be noted that the environmental lab testing budget assumes a 50 percent contingency for re-sampling re-testing initially failed areas. This is only an estimate and the actual amount of re-sampling and re-testing could be more or less than 50 percent.***

***To reduce the Port's cost, we have voluntarily reduced our subcontract lab markup from 10% to 6%.***

#### **WRITTEN NOTICE TO PROCEED**

Your written notice to proceed with the work proposed herein is required. Notice to proceed and acceptance of our General Conditions can be made by signing and returning a copy to our office. For questions, please contact Troy Hull at 360-567-806 (office) or 360-903-2784 (cell).

Sincerely,  
**Earth Engineers**



Troy Hull, P.E.  
Regional Vice President

Attachments: Proposal Acceptance  
General Conditions  
Attachment A – **Construction Inspection** Cost Estimate  
**Attachment B – Environmental Lab Testing Cost Estimate**

## Proposal Acceptance

**Project: Geotechnical Inspection and Testing and Environmental Sampling and Lab Testing  
Soil Overexcavation and Structural Backfill  
Waterfront Soils Removal Project  
54 South 2<sup>nd</sup> Street  
Washougal, Clark County, Washington**

**Estimated budget: \$164,165.00**

By signing below, you hereby authorize Earth Engineers, an RMA Company to proceed with services outlined in this proposal or requested by you and agree that all services and anything arising out of or in any way related to this proposal will be governed by Earth Engineers, an RMA Company's General Conditions which are attached hereto and are incorporated herein by reference. This authorization to proceed constitutes an agreement between you and Earth Engineers, an RMA Company and is made in consideration of the mutual promises and covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged.

Authorized by:

Client Name: Port of Camas-Washougal

Mailing Address: 24 South A Street Washougal, WA 98671

Telephone: 360-335-3685

E-mail: jennifer@portcw.com

Signed By (print): David Ripp

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

Title: CEO

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

## GENERAL CONDITIONS

**AGREEMENT.** This agreement is made by and between Earth Engineers, an RMA Company ("RMA") and the party that accepted RMA's proposal or requested that RMA perform Services ("Client"). RMA shall include said company, its engineers, employees, insurers, or authorized representative. This "Agreement" includes RMA's proposal and any exhibits or attachments noted in the proposal or incorporated by reference including but not limited to these General Conditions. Requesting Services from RMA shall constitute acceptance of the terms of these General Conditions.

**1. SCOPE OF SERVICES.** Services means the service(s) performed by RMA for Client or at Client's direction. RMA's findings, opinions, and recommendations are based upon data and information obtained by and furnished to RMA at the time of the Services. RMA may rely upon information provided by the Client or third parties. Client may request additional work or changes beyond the scope of Services described in RMA's Proposal. If any alteration or addition of Services are requested by the Client, RMA may provide a written notification detailing the additional scope of work, time extension and associated fees for Client's review. Client shall provide written acceptance of such. If Client does not follow these procedures, but instead directs, authorizes, or permits RMA to perform the changed or additional work, the Services are changed accordingly and RMA will be paid for this work according to its written notification or current fee schedule.

**2. DELAYS.** RMA shall be entitled to an equitable adjustment to the project schedule and compensation to compensate RMA for any increase in time or costs necessary to perform the Services under this Agreement due to any cause beyond its reasonable control. All promises of services time are approximations by RMA and are subject to the Client and contractor's schedules, weather conditions, travel conditions, disputes with workmen or parties, accidents, strikes, natural disasters, health emergencies, discovery of hazardous materials, differing or unforeseeable site conditions or project conditions, acts of governmental agencies or authorities, or other causes. In no event shall RMA be responsible for any damage or expense due to delays from any cause, other than to the extent the damage or expense is directly caused by RMA's own proven negligence after having been warned in writing by the Client of the damage or expense which may result from the delay.

**3. RMA RESPONSIBILITIES.** Services performed by RMA under this Agreement will be conducted in a manner consistent with the level of care and skill ordinarily exercised by members of the same profession currently providing the same or similar services under similar circumstances in the same locality and in accordance with applicable standards in effect at the time the Services are performed. RMA MAKES NO OTHER REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED. Testing or inspection services may require the destruction of a sample or sample location. Client understands that, in the normal course of performing the Services, some damage may occur, and understands that RMA is not responsible for the correction of any such damage or for replacing samples. Client acknowledges that opinions, data, interpretations and recommendations prepared by RMA are based on limited data and recognizes that subsurface conditions or other actual conditions may vary from those encountered at the location where inspections, tests, borings, surveys, or explorations are made by RMA and may vary from those depicted on logs of discrete borings, test pits, or other exploratory services. There is an inherent risk that samples or observations may not be representative of materials or locations not sampled or seen and

that conditions may change over time. Variations between inspected or tested discrete locations may occur and the risk of such occurrence is understood and accepted by Client. Client is responsible for notifying the appropriate party or professional regarding the correction of any deviations or deficiencies noted by RMA and RMA accepts no liability in connection therewith. RMA shall not be responsible for the interpretation by others of information developed by RMA and makes no guarantee that RMA's recommendations are properly implemented by any party. RMA shall not be held liable for problems that may occur if RMA's recommendations are not followed.

**4. SUBSURFACE EXPLORATIONS.** Client understands RMA's layout of boring and test locations is approximate and that RMA may deviate a reasonable distance from those locations. Client acknowledges that it is impossible for RMA to know the exact composition of a site's subsurface, even after conducting a comprehensive exploratory program. There is a risk that drilling and sampling may result in contamination of certain subsurface areas. Client waives any claim against, and agrees to defend, indemnify and save RMA harmless from any claim or liability for injury or loss which may arise as a result of subsurface contamination caused by drilling, sampling, or monitoring well installation. Client also agrees to adequately compensate RMA for any time spent and expenses incurred in defense of any such claim.

**5. CLIENT PARTICIPATION.** Client will make available to RMA all information in its possession regarding existing and proposed conditions at the site. Such information shall include, but not be limited to engineering reports, plot plans, topographic surveys, hydrographic data, soil data including borings, field and laboratory tests and written reports. Client shall immediately transmit to RMA any new information concerning site condition which becomes available, and any change in plans or specifications concerning the project. RMA shall not be liable for any inaccurate or incorrect advice, judgment or decision which is based on any inaccurate information furnished by Client and Client shall indemnify RMA against claims, demands, or liability arising out of, or contributed to, by such inaccurate information. In the event Client, the project owner, or other party makes any changes in the plans and specifications, Client agrees to hold RMA harmless from any liability arising out of such changes, and Client assumes full responsibility unless Client has given RMA prior notice and has received RMA's written consent for such changes. RMA does not assume responsibility for any conditions at the Client's site(s) that may present a danger, either potential or real, to health, safety, or the environment. Client hereby agrees that it is the Client's responsibility to notify any and all appropriate federal, state, or local authorities, as required by law, of the existence of any such potential or real danger and otherwise to disclose to all appropriate or affected individuals or entities, in a timely manner, any information that may be necessary to prevent any danger to health, safety, or the environment. Client assumes sole responsibility for determining whether the quantity and the nature of services ordered by Client is adequate and sufficient for Client's intended purpose.

**6. THIRD PARTIES** To the fullest extent permitted by law and to the extent not resulting from RMA's proven negligence, Client agrees to defend, indemnify and hold RMA harmless from any claims, demands, suits, losses, charges, expense (including attorney fees and costs at trial and appeal), and/or allegations of responsibility by any and all third parties including but not limited to, contractors, subcontractors, agents, employees, assignees transferees, successors, invitees, neighbors, and the public relating in any way to this Agreement, the services, or the project.



It is expressly understood and agreed that the enforcement of these terms and conditions shall be reserved to the Client and RMA. Nothing contained in this Agreement shall give or allow any claim or right of action whatsoever by any third person. It is the express intent of the Client and RMA that any such person or entity, other than Client or RMA, receiving services or benefits under this Agreement shall be deemed an incidental beneficiary. Neither party may assign this Agreement or any right or obligation hereunder without the prior written consent of the other party, which shall not be unreasonably withheld or delayed; provided, however, that no consent shall be necessary in the event of an assignment to a successor entity resulting from a merger, acquisition or consolidation by or of RMA or an assignment to an affiliate or subsidiary of RMA.

**7. SAMPLE DISPOSAL.** Samples are consumed in testing or disposed of upon completion of tests or upon report completion (unless stated otherwise in the Services). Client acknowledges that contaminated drill cuttings, sample spoils, wash water, and other materials may be produced as a result of encountering hazardous materials at the site. In such event, Client shall be responsible for their proper transportation and disposal. RMA may be able to arrange for the transportation and disposal of hazardous materials at Client's request. In no event shall RMA be required to sign a hazardous waste manifest or take title to any hazardous materials. Contaminated samples delivered to or taken to RMA's laboratory for testing shall remain the property of Client and Client is responsible for ultimate disposal of any samples which are found to be contaminated. On request, Client shall retrieve contaminated samples from RMA's laboratory and dispose of them in an approved manner.

**8. DISCOVERY OF UNANTICIPATED HAZARDOUS MATERIALS.** Client shall furnish to RMA all documents and information known or available to Client that relate to the identity, location, quantity, nature, or characteristic of any hazardous waste, toxic, radioactive, or contaminated materials prior to commencement of the Services. Client warrants that it has made reasonable efforts to disclose known or suspected hazardous materials on or near the project site. Client agrees that the discovery of such unanticipated hazardous materials constitutes a changed condition which may require either a re- negotiation of the scope of RMA's Services or termination of such Services or this Agreement. Client recognizes that the discovery of hazardous materials may necessitate immediate protective measures to safeguard the public health and safety and agrees to compensate RMA for measures that in RMA's professional opinion are justified to preserve and protect the health and safety of site personnel and the public. Client agrees to compensate RMA for any equipment decontamination or other costs incident to the discovery of unanticipated hazardous materials. Client agrees that in the event of the discovery of hazardous materials at the site it will report such discovery to the proper authorities as required by federal, state, and local regulations. Client also agrees to inform the project site owner in the event that hazardous materials are encountered at the site. Notwithstanding any other provision of the agreement, Client waives any claim against RMA, and to the maximum extent permitted by law, agrees to defend, indemnify, and save RMA harmless from any claim, liability and/or defense costs for injury or loss arising from the presence of hazardous materials on the project site.

**9. SITE CONDITIONS.** Client shall secure all necessary approvals, notices, permits, licenses, and consents from all owners, lessees, contractors, and other possessors of the Project, necessary to commence and complete the Services, and will

provide RMA access to the project site for all equipment and personnel necessary for the performance of the Services. RMA shall be allowed free access to the site. Client understands and agrees that RMA shall only be responsible for losses which directly result from RMA's negligence. Client is responsible for the accuracy of locations for all subterranean structures and utilities. Client waives any claim against RMA, and agrees to defend, indemnify, and hold RMA harmless from any claim or liability for injury or loss of any party, including costs of defense, arising from damage done to subterranean structures and utilities not identified or accurately located. In addition, Client agrees to compensate RMA for any time spent or expenses incurred by RMA in defense of any such claim.

**10. ENVIRONMENTAL LIABILITY.** Neither this Agreement nor the providing of services will operate to make RMA an owner, operator, generator, transporter, treater, storer, or arranger for disposal or treatment within the meaning of the Resource Conservation Recovery Act, Comprehensive Environmental Response Compensation and Liability Act, or within the meaning of any other law governing the handling, treatment, storage, or disposal of hazardous materials. Client will indemnify, defend and hold RMA harmless from and against any and all losses, damages, costs and expenses, including attorney's fees, from third party claims, demands and causes of action arising or claimed to arise from violations by Client of any and all environmental laws, rules and regulations relating to the existence, generation of, current or future ownership, storage, transport or disposal of pre-existing hazardous substances and wastes, but this indemnity shall not cover such loss, damage, cost or expense to the extent caused by RMA's proven negligence in performing the Services under this Agreement. For purposes of this Agreement, a pre-existing hazardous substance is any hazardous substance or hazardous waste having been generated by Client or existing on Client's premises prior to the date of this Agreement.

**11. OWNERSHIP AND LEGAL USE OF DOCUMENTS.** All notes, data, reports, original final reproducible drawings, plans, specifications, calculations, and studies memoranda assembled or prepared by RMA are instruments of service with respect to the subject project, and RMA shall retain an ownership and property interest therein, whether or not the project is completed. The Client may make and retain copies for information and reference in connection with the subject project; however, such documents are not intended or represented to be suitable for re-use by the Client or others. Any modification, changes, or reuse without written verification or adaptation by RMA for the specific purpose intended will be at the Client's sole risk and without liability or legal exposure to RMA, and the Client agrees to indemnify and hold harmless RMA against any and all costs, expenses, fees, losses, claims, demands, liabilities, suits, actions, and damages whatsoever arising out of or resulting therefrom.

**12. ALLOCATION OF RISK AND LIMITATION OF LIABILITY.** The parties have evaluated the respective risks and remedies under this Agreement and agree to allocate the risks and restrict the remedies to reflect that evaluation. Notwithstanding any other provision to the contrary in this Agreement and to the fullest extent permitted by law, Client agrees to restrict its remedies under this Agreement against RMA, its parents, affiliates and subsidiaries ("RMA Covered Parties"), so that the total aggregate liability of RMA Covered Parties shall not exceed \$50,000 or the actual paid compensation for the services performed by RMA under this Agreement, whichever is greater. This restriction of remedies shall apply to all suits, claims, actions, losses, costs (including attorney

fees) and damages of any nature arising from or related to this Agreement without regard to the legal theory under which such liability is imposed. Claims must be brought within one calendar year from performance of the Services.

**13. LIABILITY FOR OTHERS.** RMA shall not be responsible for supervising or overseeing the Client's contractors or for their means and methods, procedures, performance, or site safety. RMA shall not be responsible for the acts or omissions of the Client, owner, architect, architect's other consultants, contractor, subcontractors, other third parties or their respective agents, employees, assigns, successors, or any other persons ("Others"). RMA shall have no authority to control Others regarding their work or their safety practices. RMA does not control or guarantee the work of Others. RMA has no duty to inspect or correct health and safety deficiencies of Others. RMA will not be responsible for the failure of Others to perform in accordance with their undertakings and the providing of RMA's services shall not relieve Others of their responsibilities to the Client or Others. RMA reserves the right to report to the Client any unsafe conditions observed at the Project without altering the foregoing.

**14. CONSEQUENTIAL DAMAGES WAIVER.** Notwithstanding anything to the contrary in this agreement and to the fullest extent permitted by law, Client and RMA waive against each other any and all claims for or entitlement to special, incidental, indirect, consequential, delay, punitive, or similar losses or damages arising out of, resulting from, or in any way related to the project or this Agreement.

**15. INSURANCE.** RMA will maintain the following insurance coverages and amounts: (1) Workers Compensation insurance as required by law, (2) Employer's Liability insurance with coverage of \$1,000,000 per each accident/employee, (3) Commercial General Liability insurance with coverage of \$1,000,000 per occurrence/aggregate, (4) Automobile Liability insurance with coverage of \$1,000,000 combined single limit, and (5) If RMA is providing professional services, Professional Liability insurance with coverage of \$1,000,000 per claim/aggregate. Client shall name RMA as additional insured on its Builder's Risk policy. Client shall require any general contractors working on the project site to include RMA in any indemnity that the Client requires such contractors to provide to the Client and as an additional insured under any such contractor's general liability insurance policy. Client shall provide RMA with a certificate of insurance evidencing the required insurance.

**16. RESOLUTION OF DISPUTES.** Client shall not be entitled to assert a Claim against RMA based on any theory of professional negligence unless and until Client has obtained the written opinion from an independent and reputable Professional Engineer (P.E.), licensed architect (A.I.A.), or Registered Geologist (R.G.) that RMA has violated the standard of care applicable to RMA's performance of the Services. Such party shall be currently practicing in the same discipline as RMA and be licensed in the state where the project is located. This written opinion shall specify the acts or omissions that the independent engineer, architect, or geologist contends are not in conformance with the standard of care for professional services performed by local consultants under similar circumstances; and state in detail the basis for their independent opinion that such acts or omissions do not conform to that standard of care. Client shall provide this opinion to RMA and the parties shall endeavor to resolve the dispute within 30 days. This Agreement shall be governed by and construed in accordance with the laws of the state where the RMA office originating the work or proposal is located. Exclusive of lien

claims, any legal action or proceeding brought to enforce or otherwise arising out of or relating to this Agreement shall be brought in the county where the RMA office originating the work or proposal is located. Each party waives its right to a jury trial in any court action arising between the parties, whether under this Agreement or otherwise related to the work being performed under this Agreement.

**17. COMPENSATION AND PAYMENT TERMS.** Client agrees that an invoice amount is due when received unless otherwise agreed. A service charge of one and one-half percent (1½%) per month (but not exceeding the maximum allowable by law) will be added to any account not paid within 30 days after the invoice date. In the event that any portion of the account remains unpaid 30 days after the invoice date, RMA may immediately discontinue Services on any and all projects for Client, or withhold any final report or instrument of service, or demand prepayment of fees at RMA's option. Client shall pay all costs incurred by RMA in collecting any delinquent amount, including staff time, court costs and attorney fees. Failure to make payment within sixty (60) days of invoice shall constitute a release of RMA from any and all claims which Client may have, either in tort or contract, and whether known or unknown at the time. Should Services based on a fee schedule be performed beyond the end of the calendar year, RMA's current fee schedule shall apply unless otherwise negotiated in advance.

**18. TERMINATION.** This Agreement may be terminated without cause by either party upon thirty (30) days written notice, and at any time by either party if the other party defaults in the performance of any material provision of this Agreement and such default continues for a period of seven (7) days after written notice thereof. In the event of termination, RMA will be paid for Services performed through the date of termination, plus reasonable termination expenses, including the cost of completing analyses, demobilization, records and reports necessary to document job status at the time of termination.

**19. ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement between the parties and shall supersede other prior agreements and representations. No amendments to this Agreement shall be valid unless made in writing and signed by the parties. If Client uses its standard business forms all pre-printed terms and conditions contained in or on such forms shall be deemed stricken and null and void. If the terms and conditions of this Agreement conflict with the terms and conditions of any other agreement or document this Agreement shall govern and control over any such conflict. The invalidity or unenforceability of any portion(s) of this Agreement shall in no way affect the validity or enforceability of any other portion(s) hereof. Any invalid or unenforceable portion shall be severed from the Agreement and the balance of the Agreement shall be construed and enforced as if the Agreement did not contain a particular portion held to be invalid or unenforceable. This Agreement may be executed in several counterparts, each of which shall be deemed an original having identical legal effect. The titles, captions and headings of this Agreement are included for ease of reference only and will be disregarded in interpreting or construing this Agreement. RMA shall not be bound by any language incorporating by reference any contract or term of any contract unless the term or terms incorporated by reference are specifically furnished to RMA and are expressly agreed to in a writing signed by RMA.

**ATTACHMENT A - COST ESTIMATE SUMMARY  
 GEOTECHNICAL INSPECTION AND TESTING AND ENVIRONMENTAL SAMPLING  
 WATERFRONT SOILS REMOVAL PROJECT  
 54 SOUTH 2ND STREET  
 WASHOUGAL, WASHINGTON**

**PRECONSTRUCTION MEETING**

One site visit

Principal Geotechnical Engineer	1.5	Hours @ \$ 210.00 .....	\$	315.00
Principal Engineering Geologist	1.5	Hours @ \$ 210.00 .....	\$	315.00
Lead Inspector	1.5	Hours @ \$ 145.00 .....	\$	217.50
		<b>Subtotal:</b>	<b>\$</b>	<b>847.50</b>

**OVEREXCAVATION AND BACKFILL**

Assumed: 45 days, continuous inspection, 10 hours per day (including report prep)

Geotechnical Inspector	450	Hours @ \$ 120.00 .....	\$	54,000.00
PID meter	45	Days @ \$ 80.00 .....	\$	3,600.00
Proctor Lab Test	3	Each @ \$ 305.00 .....	\$	915.00
Nuclear Density Gauge Equipment	22	Days @ \$ 80.00 .....	\$	1,760.00
		<b>Subtotal:</b>	<b>\$</b>	<b>60,275.00</b>

**PROJECT MANAGEMENT (SCHEDULING, REPORT REVIEW, REPORT DISTRIBUTION, ETC.)**

Environmental Project Manager	40	Hours @ \$ 210.00 .....	\$	8,400.00
Geotechnical Project Manager	15	Hours @ \$ 210.00 .....	\$	3,150.00
		<b>Subtotal:</b>	<b>\$</b>	<b>8,400.00</b>

**Estimated Total\*:**           **\$**           **69,522.50**

Cost Estimate Notes:

1. Excludes surveying.
2. Inspections have a 3 hour minimum.
3. Work schedule is 10 hours per day, Monday through Thursday. Assumes no weekend, holiday or OT work.  
 (OT is more than 40 hours per week)

Waterfront Soils Removal  
Port of Camas-Washougal

Attachment B: Environmental Lab Testing Cost Estimate

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Analytical Methods for Sidewall and Base Confirmation Sampling/ per sample (Pace National Laboratories)

	Pace, 3 day reporting (note these are 2-day pricing to account for overnight shipment)
RRO/NWTPH-Dx	172
VOCs	238
Lead by EPA 6020B	80
Mercury by EPA 6020B	100
PCBs by EPA 8082	225
cPAHs by 8270 SIM	280
	<hr/> 1095

The revised Work Plan specifies one sidewall sample for every 40 lineal feet. Given the aerial extent of excavation identified in the Ground Disturbance Plan, length of sidewall is approximately 700 lineal feet = 18 sidewall confirmation samples.

The revised Work Plan specifies one excavation base sample for every 625 square feet. Given the aerial extent of excavation identified in the Ground Disturbance Plan, the excavation base area is 20,000 square feet = 32 excavation base confirmation samples.

Accordingly, 50 samples is estimated for designated excavation extents.

Pace 3-day reporting with 50 confirmation samples @ \$1095/sample = \$54,750

Pace Nation Laboratories' estimate includes some misc. costs amounting to approximately \$1,000 for 50 samples.

Base Lab Cost Estimate for 50 samples = (\$54,750 + \$1,000) x EEI 6% markup = **\$59,095**

Budget for Earth Engineers to ship samples to Pace = **\$4,000**

Recommend a 50% lab contingency for areas that need to be resampled and analyzed. Accordingly, the 50% contingency consists of an additional 25 samples at locations initially not meeting the cleanup requirements.

With 50% contingency for resampling = **\$94,642.50**

**Lab Statement Concerning the Ability to Meet Rush Analysis (Pace)**

"We are currently able to meet 2 business day rush from sample receipt at the lab, but occasionally we need an extra day for re-preps/re-analysis."

## Port of Camas-Washougal Staff Report

**DEPARTMENT:** Marina

**FOR THE AGENDA OF:** August 7, 2024

**RECOMMENDATION:** Approval for the Port of Camas-Washougal Marina Fiber Optic Agreement between the Port and Noctel.

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**SUMMARY:** NocTel is working with the Port of Camas-Washougal to install fiber optic cable into the marina. This will allow us to properly repair/upgrade our network and existing camera system, as well as install more security cameras. This will also allow for future conversations on installing tenant Wi-Fi. NocTel will be able to provide a separate internet connection into the marina allowing for tenant Wi-Fi access to be completely separated from the Port-CW network. This is the first phase of fiber installation into our infrastructure

**BUDGET IMPACT:** Minimal and part of the Maintenance Budget

**SUSTAINABILITY IMPLICATIONS (please describe):** N/A

**DEI IMPLICATIONS (please describe):** Better security and future potential Wi-Fi for marina tenants

## **Port of Camas Washougal Marina Fiber Optic Agreement**

NocTel Fiber wishes to install and maintain fiber optic cables throughout the Port of Camas-Washougal (Port) Marina, and the Port concurs. This document serves as an agreement between the two parties (Agreement).

### **NocTel agrees to:**

- Install a fiber optic patch cabinet, denoted as a Square labeled "rA" on Exhibit A.
- Install fiber optic cables to each point, denoted as a Triangle on Exhibit A.
- Work with Port on future fiber optic related projects, to include but not be limited to expanding the Port's fiber network into the marina boat launch parking lot, the waterfront park, the breakwater, and Grove Field Airport.
- Provide Port with access to one pair of fiber optic cable at each point, denoted as a Triangle on Exhibit A, for the Port's internal / non-public network use (e.g., cameras, access control, etc.). The intent of the dedicated fiber cables is to allow the Port to run cameras and Wi-Fi at the dedicated locations selected by the Port.
- Install additional fiber to allow NocTel to provide internet access to the Port once available sufficient for the Port to establish and use a separate internet service for Marina Wi-Fi and the Port's Air B&B vessel, in a manner that allows public connections for the Port's Marina Wi-Fi and the Port's Air B&B boat to be provided separate from the Port's internal network.
- Provide for the Port's purchase of fiber optic Internet access at mutually agreeable rates at any splice point once NocTel's distribution cable to the Marina has been installed.

### **The Port agrees to:**

- Provide power for NocTel's network equipment (e.g., access points, switches) as needed to serve the Port's internal non-public network and NocTel's public network.
- Allow NocTel to use existing conduits and handholes as needed.
- Provide NocTel staff physical 24/7 access to maintain infrastructure.

### **Cost:**

- No cost to either party within the scope of the work listed above.

### **Term:**

- 10 years beginning on the date of this fully executed agreement.
- Extendable by mutual agreement for additional terms.

Agreed upon this July 10, 2024:

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David Ripp, CEO  
Port of Camas-Washougal

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Cory Schruth, President  
NocTel Communications, Inc.

**Exhibit A**

**Proposed fiber optic installation diagram**



**Port of Camas-Washougal  
South 35<sup>th</sup> Street Pavement Analysis  
Staff Report**

**Department:** Projects

**Date:** July 30, 2024

**Staff Recommendation:** Approval of the Design Engineering Contract with Mackay Sposito for \$54,590.

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**Summary:**

Mackay Sposito will conduct field work, engineering design and develop a bid package to rehabilitate the aged roadway surface of 35<sup>th</sup> Street.

**Budget Impact:**

This contract is included in the 2024 Capital Budget. The pavement rehabilitation construction project is included in the 2025 Capital Budget.

**Sustainability Implications:**

None

**Diversity Equity and Inclusion Implications:**

None



**July 8, 2024**

Jennifer Taylor  
Port of Camas-Washougal  
24 South A Street  
Washougal, WA 98671  
jennifer@portcw.com

**Re: #24-206 Proposal for S 35<sup>th</sup> Street Pavement Analysis**

Dear Jennifer,

In accordance with your request, we are pleased to submit this proposal for the Professional Civil Engineering services needed to assess the condition of existing pavements and recommend the associated improvements on S 35<sup>th</sup> St. We have prepared a scope of work to perform the necessary field work (alongside a geotechnical consultant), prepare a pavement analysis report, prepare a bid package for the construction work, and other associated tasks.

The attached Exhibit "A", Scope of Work, lists the specific tasks included in this proposal and Exhibit "B" lists our estimated fee budgets associated with each task. If this proposal is acceptable to you, please let us know and we will forward our standard contract along with our terms and agreements via DocuSign, for your signature.

We appreciate the opportunity to provide this proposal for your consideration. Please feel free to call me with any questions or concerns.

Sincerely,

**Mackay Sposito**



**Taylor Wilson, PE**  
Project Manager

Cc: Erin Toman, Land Development Services Manager  
Jason Irving, Senior Engineer/Principal  
Peter Tuck, Senior Engineer/Principal

(EXHIBIT “A”)  
**PROPOSED SCOPE OF WORK**  
S 35th Street Pavement Analysis

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**Task 1.0 Project Management**

- 1.1 Provide overall Project Management and Facilitation;
- 1.2 Coordinate, schedule, and attend team meetings to discuss project budget, scope, and schedule;
- 1.3 Coordinate and communicate with Owner, Architect, Agency, and Sub-Consultants, as necessary;
- 1.4 Track overall budget/approval with Agency;
- 1.5 Prepare monthly invoices;

**Task 2.0 Survey**

- 2.1 Topographic Survey for design for limits identified during site visit (as needed), including the following:
  - 2.1.1 Existing improvements/hard features;
  - 2.1.2 Stormwater structures (catch basins, culverts, manholes, etc);
  - 2.1.3 Spot elevations sufficient to produce contours at 1' intervals;
  - 2.1.4 Public Utility locates;
- 2.2 Draft a topographic survey base file in AutoCAD;
- 2.3 Obtaining a high resolution, recent aerial image to be used for areas outside of survey limits;

**Task 3.0 Pavement Analysis Report**

- 3.1 Perform field work to visually inspect and identify areas needing repairs (up to 2 site visits);
- 3.2 Coordinate with geotechnical consultant on field testing and findings;
- 3.3 Research for original plans and other design information on Truman Street;
- 3.4 Prepare a Pavement Analysis Report including:
  - 3.4.1 Summary of existing pavement conditions;
  - 3.4.2 Summary of pavement repair options;
  - 3.4.3 Identification of areas in need of repair as well as identify probable reason for failure;
  - 3.4.4 Identification of drainage issues;
  - 3.4.5 Proposed method of repair for each location;
  - 3.4.6 High-level cost estimate for total pavement repair;

**Task 4.0 Final Civil Engineering Design**

- 4.1 Prepare Final Civil Engineering Plans;
  - 4.1.1 Preparation of Final Engineering Plans to be reviewed by City of Washougal;
    - 4.1.1.1 Prepare an Existing Conditions Plan;
    - 4.1.1.2 Prepare Final Street Plans;
    - 4.1.1.3 Prepare Final Erosion Control Plans;
    - 4.1.1.4 Prepare Final Storm Drainage Plan, if needed;
    - 4.1.1.5 Prepare a Final Storm Water Technical Information Report/Memo, if needed;
    - 4.1.1.6 Preparation of Traffic Signing and Striping Plans;
  - 4.1.2 Processing plans for Final Approval;

- 4.1.2.1 Street, Erosion Control, and Stormwater plans with City of Washougal;
- 4.1.3 Coordination with consultant team, if needed;
- 4.1.4 Review, QA/QC;
- 4.1.5 Preparation of a Stormwater Pollution Prevention Plan (SWPPP);
- 4.2 Prepare Final Engineering Specifications;
- 4.3 Prepare Final Engineering Construction Cost Estimate;

**Task 5.0 Geotechnical Investigation and Testing (Central Geotechnical Services)**

Please refer to Exhibit "C" for the geotechnical investigation scope of work.

(EXHIBIT “B”)  
**PROPOSED FEE BUDGET**  
S 35<sup>th</sup> Street Pavement Analysis

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- 1. Task 1.0 Project Management .....\$5,000.00
  - 2. Task 2.0 Survey ..... \$4,000.00
  - 3. Task 3.0 Pavement Analysis Report ..... \$6,000.00
  - 4. Task 4.0 Final Civil Engineering Design ..... \$21,000.00
  - 5. Task 5.0 Geotechnical Investigation and Testing (Central Geotechnical Services) .... \$18,590.00\*

\*including 10% markup for subconsultants

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**TOTAL ESTIMATED BUDGET FOR SERVICES (Not to Exceed): ..... \$54,590.00**

Jurisdictional application fees, including, but not limited to, fees for engineering review, permits, applications, and inspections, etc. are not included and shall be paid by the Client at the time of each submittal.

MacKay Sposito will bill you on an hourly basis in accordance with our current Hourly Rate Schedule.

We will bill our services on a time and materials basis. We will not work outside this scope or exceed this fee without your prior authorization.

You will be invoiced monthly for our services and reimbursable expenses as the work progresses.

Should this project go on hold for a period exceeding 90 days, MSi reserves the right to reevaluate the remaining scope and budget and update accordingly.

Should it be determined that additional services are required to be provided outside of this scope, you will be contacted immediately and written authorization to proceed will be requested. Additionally, any items or services requested of MSi but not specifically listed in the following scope of services shall be considered additional services.

**Schedule:**

At the time of this proposal, MacKay Sposito can begin work within 3 weeks of the Notice to Proceed. However, the fieldwork will also be dependent on the availability of the geotechnical consultant.

### **Assumptions**

- Changes or revisions to the scope of work after engineering design has started may require additions or revisions to this scope and fee; acknowledgement of “extras” by client are necessary prior to commencing work;
- This scope assumes that the improvements on S 35<sup>th</sup> St will end just north of the existing railroad crossing and no work will take place within the railroad area.
- This scope assumes that all work related to S 35<sup>th</sup> St will be completed separately from the similar scope to be performed for Trumans St. If the projects are performed simultaneously, this may result in cost savings.
- Construction Administration has not been included in the scope of this proposal but can be provided if requested;
- MacKay Sposito will be responsible for preparing the final civil plans incorporating up to three (3) rounds of City review comments and revisions. Additional rounds of revisions and/or significant changes to the layout or design will require additional services;
- This proposal assumes no issues with submittals, processing, or agency staff review time. The project is assumed to have a continuous design effort. Any unforeseen issues, which cause delay or place the project on hold may result in additional fees;
- This scope assumes a total of four (4) one-hour meetings throughout the course of this project;
- Civil design will be in accordance with the established City of Washougal standards;
- Civil specifications will be included on the drawings rather than in a separate document; CSI (Construction Specifications Institute) specification development is not included in this scope of work;
- Civil specifications shall not include special provisions for Division I items;
- An archaeological study being required as part of the improvements is not anticipated and has not been incorporated into this proposal;
- Complications that arise during drainage study may result in additional scope and fee;
- Construction Management is not included in this scope, but can be provided separately if requested;
- A licensed surveyor will be required to obtain as-built information and all storm facilities will be constructed with pipes accessible for obtaining the required as-built information;
- MacKay Sposito shall not be responsible for changes to the documents required by the jurisdiction based upon rules, regulations, codes, or requirements of the jurisdiction that are not written regulations or correspondence from the jurisdiction. Changes required due to unwritten rules, regulations, codes, or requirements by the jurisdiction shall be considered additional services that are not part of this contract;
- Construction staking services have not been included in the scope of work for this proposal, but can be provided upon request;
- Preparation of any easements or legal descriptions shall be performed by the project surveyor;

### **Additional Sub-Consultants That Will Be Required:**

- Geotechnical Consultant;

### **Excluded Services and Services Provided by Others:**

- Preparation and processing of any Variance Requests, Modifications, or major deviations from code;
- Boundary Line Adjustments;
- Environmental Services;
- Archaeological Services;
- Arborist Services;
- Lighting/Electrical design;
- Design of fencing, retaining walls, or sound walls;

- Off-site Improvements;
- Design of electrical, telecommunications, gas, or cable television services;
- Dry Utility Plan; \*
- Construction Staking; \*
- Construction Management; \*

\*Cost to be provided separately, upon request.

(EXHIBIT "C")  
Geotechnical Subconsultant Proposal  
S 35<sup>th</sup> St Pavement Analysis

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## SCOPE OF SERVICES

The purpose of our services is to complete pavement investigations to evaluate pavement capacity and rehabilitation options for the proposed S 35<sup>th</sup> Street project. We will provide pavement design recommendations based on our analysis and local pavement design standards. Our proposed scope of services is written based on our experience in the area and our understanding of the project and includes the following:

- Complete a generalized distress survey of the road sections. Provide a qualitative review and summary of pavement conditions.
- Provide traffic control and traffic control plans when required. It is assumed permitting requirements and fees will be handled by Port personnel.
- Explore subsurface conditions in the proposed sections by completing up to two (2) pavement borings to depths of up to five feet below ground surface (BGS) in S 35<sup>th</sup> Street.
- Perform dynamic cone penetrometer tests in each exploration.
- Maintain a detailed log of the explorations. Obtain samples of the pavement, base, and subgrade materials encountered and perform laboratory testing including moisture content, Atterberg limits, and material passing a U.S. Standard No. 200 sieve.
- Patch pavement borings with polymer modified asphalt patch.
- Obtain 48-hour traffic classification tube counts at one location through our subcontractor.
- Complete ground penetrating radar (GPR) testing in the outside wheel track of the main travel lanes.
- Complete falling weight deflectometer (FWD) testing in the outside wheel track of the main travel lanes.
- Estimate pavement thickness from a review of subsurface explorations and GPR results.
- Back calculate the existing pavement structural capacity based on FWD testing, subsurface explorations, and GPR data.
- Provide a report summarizing field investigation findings.
- Discuss the results of our analysis and recommendations with the project team.
- Develop recommended pavement reconstruction and/or rehabilitation construction options.
- Provide a geotechnical report summarizing our findings and recommendations.

Our geotechnical work will be directly supervised by a geotechnical engineer licensed in the state of Washington. Our engineer will apply their professional seal to the document.

## ASSUMPTIONS

In preparing this proposal, we have made the following assumptions with respect to the geotechnical investigation:

- We will be provided right-of-entry or access to the exploration locations. Confirmation of site access will be provided prior to our arrival on site and will be coordinated by others.
- Surface disturbance that will result from exploration activities is acceptable to the site owner and is understood by the project team. We can discuss this item further with the project team, the site owner, or the prospective owner if requested.
- Explorations will be extended to the depths described above or to refusal in dense material. Contingency costs for specialized drilling into dense material, if dense gravel or rock are encountered, are not included in this scope of work or cost estimate.



- Infiltration testing is not included.
- Contaminated soils will not be encountered during our exploration and sampling. If contaminated or suspected contamination is encountered (based on field screening), we will stop drilling operations, notify you and discuss how to proceed.
- Permitting fees will be waived.

### **SCHEDULE, TERMS, AND FEES**

We are prepared to schedule subcontractors immediately following authorization to proceed. Drilling subcontractor schedules are approximately 6 to 8 weeks out at present. We anticipate our fieldwork will take 1 day to complete, and our report will be available approximately 4 to 5 weeks after completing the explorations. We have assumed the field explorations can be completed during standard business days and hours (Monday through Friday, 8 a.m. to 5 p.m.). We will provide a verbal summary of our findings as the information becomes available to us and upon request.

Our scope of services will be provided on a time and materials basis with a not to exceed **\$16,900** in accordance with the General Conditions that are attached to and part of this proposal. Services requested and authorized in addition to the preceding scope of services will be provided in accordance with the attached Schedule of Charges.



SCHEDULE OF FEES - 2024

CONSULTING SERVICES		
	Billed	Rate
Senior Principal	Hourly	\$284
Principal Engineer	Hourly	\$248
Principal Engineering Geologist	Hourly	\$238
Senior Associate Engineer	Hourly	\$227
Associate Engineer	Hourly	\$217
Project Manager II	Hourly	\$201
Project Manager I	Hourly	\$185
Engineering/Geological Staff III	Hourly	\$159
Engineering/Geological Staff II	Hourly	\$138
Engineering/Geological Staff I	Hourly	\$111
Senior Technician	Hourly	\$127
Field Technician II	Hourly	\$117
Field Technician I	Hourly	\$101
Senior Administrative Assistant	Hourly	\$106
Administrative Assistant	Hourly	\$95
Office Support	Hourly	\$90
Equipment / Other Services		
	Billed	Rate
Falling Weight Deflectometer	Daily	\$2,150
Ground Penetrating Radar, Vehicle Mounted	Daily	\$1,550
Global Positioning System (differential)	Daily	\$115
Dynamic Cone Penetrometer	Daily	\$120
Hand Auger	Daily	\$38
Drone Flight Services	Hourly	\$245
Drone Hardware & Flight Fee	Daily	\$160
Nuclear Densometer	Daily	\$85
Lab: #200 Wash	Each	\$140
Lab: Atterberg Limits	Each	\$250
Lab: In-Situ Dry Density and Moisture Content	Each	\$55
Lab: Moisture Content	Each	\$40
Lab: Proctor Moisture-Density	Each	\$380
Lab: Sieve Analysis ¾ inch to 2-inch max	Each	\$380
Lab: Sieve Analysis < ¾ inch max	Each	\$330
Lab: Sieve Analysis > 2-inch max	Each	\$560
Lab: Soil Classification	Each	\$45
Lab: Consolidation - two rebounds	Each	\$750
Lab: Specific Gravity of Coarse Aggregate	Each	\$155
Specialty Software	Each	\$250
Vehicle Usage, per mile (or \$75/day), whichever is greater (per mile subject to change based on current IRS Rate)	Mile	\$0.67

- Daily Fees for Drone, Nuclear Densometer and CGS Vehicles are only billed once daily per site per day.
- Construction observation incurs overtime outside of normal hours (M-F 7am - 5pm) and any time over eight hours/day.
- Staff time spent in depositions, trial preparation, and court of testimony will be billed at 2 times the listed rates.
- Construction observation incurs holiday overtime (two times standard rates) on holidays.
- Rushed laboratory testing (turnaround less than two days) will be invoiced at 1.5 times the indicated amount.
- Outside services will incur a management fee of cost +15%
- Administrative costs are at a rate of 15% of the total estimated site and laboratory costs.