

Klickitat County Port District No. 1

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Contract

2011-03

Lake Pump Discharge Pipe Project

May 11, 2011

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Contract

2011-03 - Lake Pump Discharge Pipe Project

This Contract is between **Klickitat County Port District No. 1**, a Washington municipal corporation (hereinafter "**Port**"), and **REO and Sons**, a Washington sole proprietorship (hereinafter "**Contractor**"), and is effective as of **May 12, 2011**.

WITNESSETH

1. Intent of Contract

Contractor agrees to furnish, at its own expense, all labor, machinery, tools, materials, equipment, etc., including all work incidental to or described or implied as incidental to such items, to Excavate existing 12-inch discharge pipe, replace and bed new 12-inch PVC pipe using 3/4 minus gravel, and restore road/dike to original grade and to accept, in full payment therefore, the price as set forth herein.

2. Compensation

As full compensation for the performance of the obligations of this Contract, Port shall pay Contractor One Thousand Eight Hundred Forty Dollars and 40 Cents (\$1,840.40 USD).

3. Contract Documents

The Contract Documents shall include the following: Contract; Change Orders; Prevailing Wage Law Affidavit; General Conditions, Supplementary Conditions, and General Construction Provisions.

4. Ownership of Drawings

All drawings, specifications, consultants' reports and copies thereof furnished by and to the Port District are its property. They are not to be used on other work and, with the exception of the signed Contract set, are to be returned to Port District at the completion of the work.

5. Correlation of Contract Documents

- a. Conditions or work not covered by the specifications may be described in the Special Provisions and shall be performed by the Contractor in accordance therewith and in accordance with the specifications insofar as applicable, and all costs incurred in the performance thereof are deemed to be included in the contract sum. Work required by the Special Provisions for which a price is not provided shall be considered as incidental to the construction and all costs are deemed to be included in the contract sum.
- b. The Contract Documents are all essential parts of the contract and a requirement occurring in one is binding as though occurring in all. They are intended to be complementary and prescribe and provide for all work required by the contract. Work or material that has not been specifically included in the description of the work, but which is reasonably required to complete the work, shall be furnished by the Contractor as though it had been specifically stated.
- c. In case of discrepancies, technical specifications shall govern over drawings, larger scale drawings shall govern over smaller scale drawings, and Special Provisions shall govern over General Conditions. Where appearing on drawings, computed dimensions shall govern over scaled dimensions.
- d. In the event of conflict between Contract Documents and applicable laws, codes, ordinances, regulations, or orders of any competent authority having jurisdiction over the work or any portion thereof, or in the event of any conflict between such applicable laws, ordinances, regulations, or orders, the most stringent requirements of any of the above shall govern and be considered as a part of this Contract in order to afford the Port the maximum benefits thereof.

6. **Definitions**

- a. The terms "Port of Klickitat", "Port", "Port District" or "the Owner" are all used synonymous with respect to this contract and mean the duly elected body and members thereof having authority over Klickitat County Port District No. 1, a municipal corporation authorized pursuant to the constitution and statutes of the State of Washington.
- b. The term "Contractor" is the individual, partnership, firm, corporation, joint venture, or other entity identified as such in the Port contract. The Contractor is referred to throughout the Contract Documents as if singular in number. The Contractor means the contractor or his or her authorized representatives.
- c. The term "Subcontractor" is a person or entity who has a direct contract with the Contractor to perform any of the work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means the subcontractor or his or her authorized representatives.
- d. A "Sub-Subcontractor" is a person or entity who has a direct or indirect contract with a Subcontractor to perform any of the work at the site. The term "Sub-Subcontractor" is referred to throughout the Contract Documents as if singular in number and means the Sub-Subcontractor or his or her authorized representatives.
- e. The term "Engineer" or "Architect" refers to the engineer or architect or professional firm under contract with the Port District for this specific project, or any designated representative authorized to act in their behalf.
- f. The term "Project" is the total design and construction for which the Contractor is responsible under the Contract Documents, including all labor, materials and equipment used or incorporated in such construction.
- g. The term "Project Manager" refers to the individual designated by the Port District as its representative.
- h. The term "Addendum" or "Addenda" means a written document issued by the Port prior to the opening of the bids. An addendum will modify or interpret the bidding documents indicating corrections, additions, deletions, or specifications by the use of the written word, graphics, or both.
- i. The term "Alternate Bid" means the sum stated in the bid offered by the bidder to be added to or deducted from the base bid for work described as a change in the project. An alternate may change price, time, scope, materials, or methods of construction.
- j. The term "Alternative Bid" means a statement and price submitted by a bidder which accompanies a conforming bid and proposes a different design, procedure, method, product, or material other than that specified and is intended to accomplish the same end result as that required by the contract.
- k. The term "Unit Price" is the amount stated in the bid as the price or cost for a particular unit of work measured as described within the Contract Documents.
- l. The term "Work" shall mean the furnishing of all labor, materials, tools, equipment, supervision, and other incidentals necessary or convenient to the successful completion of the project.
- m. The term "Substantial Completion" shall mean the date upon which the work can legally be used by the owner for its intended purposes.

7. **Minimum Wages on Public Work**

The rules and regulations of the State of Washington, Department of Labor and Industries and the schedule of prevailing wage rates for the locality or localities where this Contract will be performed, as determined by the Industrial Statistician of the Department of Labor and Industries, are by reference made a part of this Contract as though fully set forth herein.

The hourly minimum rate of wage rate to be paid to all workmen, laborers, or mechanics in each trade or occupation required to be employed in the performance of any part of this Contract by either the Contractor, sub-contractor, or other person doing or contracting to do the whole or part of the Work contemplated by the Contractor shall not be less than the prevailing wage rate, all as provided in RCW 39.12, as amended.

Contractor will be held responsible for paying the prevailing wages and should familiarize itself with current wage rates before beginning work. Contractor is responsible for obtaining the current prevailing wage for the locality or localities where this Contract will be performed from the Department of Labor and Industries prior to submitting a bid. The Contractor is also responsible for insuring that all apprentices on the Project are registered with the State Apprenticeship Council.

In addition to the above requirements, the Contractor is advised to obtain a copy of the "Washington State Public Work Act" (Prevailing Wage Law) booklet available from the Department of Labor and Industries.

In case any dispute arises as to what are the prevailing rates of wages for work of a similar nature and such dispute cannot be adjusted by the parties in interest, including labor and management representatives, the matter shall be referred for arbitration to the Director of the Department of Labor and Industries of the State and his or her decision therein shall be final and conclusive and binding on all parties involved in the dispute as provided for by RCW 38.12.060 as amended.

The Contractor, on or before the date of commencement of work, shall file a statement under oath with the Klickitat County Port District No. 1 and with the Director of Labor and Industries certifying the rate of hourly wage to be paid each classification of laborers, workmen or mechanics employed upon the work by the Contractor or Subcontractor which shall be not less than the specified hourly minimum wage rate. Such affidavit, statement and any supplemental statements which may be necessary shall be filed in accordance with the practices and procedures required by the Department of Labor and Industries. The Contractor shall be responsible for paying all fees connected with obtaining the statement of prevailing wages and affidavits.

8. State Sales and Other Taxes

The Revenue Act of 1935, as amended, requires the Port District to pay the Contractor, for transmittal to the State, a retail sales tax on the total charge made for the construction of certain public works projects. Payment for the tax shall not be included in the bid prices for various items of the Contract. The Port will add the applicable percent of tax to the bid price shown. If the sales tax rate is different than that in Klickitat County, Washington, so specify the rate and amount on the proposal sheet.

The Contractor shall pay, as a cost of the Contractor, any and all other United States, State, City and County and other taxes, assessments, or duties lawfully assessed or levied against or with respect to any and all labor, materials, tools and equipment used or to be used in the performance of the Work, including any sales, use or excise taxes with respect thereto.

9. Equal Employment Opportunity

The Contractor and all sub-contractors shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, marital status, creed, or national origin and the presence of any sensory, mental or physical handicap, and to authorize selections or decisions to be made upon such classification. The Contractor shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, age, sex or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, avail-

able to employees and applicants for employment, notices setting forth the policies of nondiscrimination.

The Contractor and all sub-contractors shall, in all solicitations or advertisements for employees placed by them or on their behalf, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, age, sexual orientation or national origin.

10. Superintendent: Supervision

The Contractor shall keep on the work, during its progress, a competent superintendent and any necessary assistants, all satisfactory to the Port. The superintendent shall not be changed except with the consent of the Port, unless the superintendent proves to be unsatisfactory to the Contractor and ceases to be in his or her employ. The superintendent shall represent the Contractor in his or her absence and all directions given to him shall be as binding as if given to the Contractor. Important directions shall be confirmed in writing to the Contractor. Other directions shall be so confirmed on written request in each case. The Contractor shall give efficient supervision to the work, using his or her best skill and attention.

If the Contractor, in the course of the work, finds any discrepancy between the drawings and the physical conditions of the locality, or any errors or omissions in the drawings or in the layout as given by points and instructions, it shall be his or her duty to immediately inform the Port District, in writing, and the Port District shall promptly verify the same. Any work done after such discovery, until authorized, will be done at the Contractor's risk.

11. Materials, Appliances, and Employees

Unless otherwise stipulated, the Contractor shall provide and pay for all materials, labor, water, tools, equipment, light, power, transportation and other facilities necessary for the execution and completion of the work.

The Contractor shall at all times enforce strict discipline and good order among his or her employees and shall not employ on the work any unfit person or anyone not skilled in the work assigned to him.

12. Examination of Site of Work

- a. By executing the contract, the Contractor represents that he or she has carefully examined the site of the proposed work; permits, plans, specifications, addenda, and contract. The Contractor represents and acknowledges that he or she has made such examinations and has investigated and is satisfied as to the conditions to be encountered; the character, quantity, quality, and scope of work; the quantities and qualities of materials to be supplied and equipment and labor to be used; and the general requirements of the project.
- b. The Contractor shall determine, from careful examination of the Contract Documents and site of the work, the methods, materials, labor, and equipment required to perform the work in full. If in the performance of the work, methods, materials, labor, or equipment are required beyond those anticipated by the Contractor, the Contractor will not be entitled to additional compensation.
- c. No information derived from inspection of records or reports of investigation concerning the project, will in any way relieve the Contractor from his or her obligations under the contract. Such reports shall be provided as a convenience to the Contractor without any warranty whatsoever by the Port District. The Contractor shall make his or her own conclusions and interpretations from the data supplied and from information available from other sources.

- d. No verbal agreement or conversation with any officer, agent or employee of the Port District, the Engineer or their representatives, either before or after the execution of this Contract, shall affect or modify any of the terms or obligations herein contained.

13. Surveys, Permits, and Regulations

Permits and licenses of a temporary nature necessary for the performance of the work shall be secured and paid for by the Contractor. The Owner shall obtain all permits required by the Corps of Engineers, Shoreline Management Act, SEPA, or other state or federal agency permits. The Contractor shall give all notices and comply with all laws, ordinances, rules, regulations and lawful orders of public authorities relating to the Project.

14. Cleaning Up

The Contractor shall, upon completion of the work, remove from the Port District's property and from all public and private property, at his or her own expense, all temporary structures, rubbish and waste materials resulting from his or her operations.

15. Tools

Contractor assumes all responsibility for protection against loss of all tools, equipment, materials and supplies usual to the completion of this contract.

16. Warranty

The Contractor warrants to the Port District that materials and equipment incorporated into the Work will be new unless otherwise specified, and that the Work will be of good quality, free from faults and defects, and in conformance with the Contract Documents. Work not conforming to these requirements shall be corrected in accordance with the Inspection and Correction of the Work provisions below.

17. Construction Means and Methods

The Contractor shall be responsible for and shall coordinate all construction means, methods, techniques, sequences and procedures.

18. Port District's Status

The Port District, or its designated representatives, shall have general supervision of the work. It has authority to direct the architect or engineer to order the Contractor to stop the work whenever such stoppage may be necessary to insure the proper execution of the Contract. It shall also have the authority to reject any work and materials which do not conform to the Contract, and to decide questions which arise in the execution of the work.

19. Port District's Decisions

The Port District, or its designated representatives, shall, within a reasonable time after the Contractor's presentation to the Port District, make decisions in writing on all matters relating to the execution of the work or the interpretation of the Contract Documents.

20. Owner's Duty to Inform Contractor

If the Port District observes or otherwise becomes aware of a fault or defect in the Work or non-conformity with the Contract Documents, the Port District shall give prompt written notice to the Contractor.

21. Time Limits

The time limits stated in the Contract documents are of the essence. The work shall be commenced immediately upon signature of the contract unless otherwise agreed and Substantial Completion shall be achieved within three (3) days of the start of work.

22. Construction Schedule

Contractor agrees to complete the Work within **one (1) calendar week** from date of this Contract. The Port District will make payments to the Contractor as set forth herein.

23. Delays and Extensions of Time

If the Contractor is delayed at any time in the progress of the work by any act or neglect of the Port District, the Engineer/Architect, or of their respective employees, or by any other Contractor employed by the Port District, or by changes ordered in the work, or by strikes, lockouts, fire, unusual delay in transportation, unavoidable casualties or any causes beyond the Contractor's control, or by delay pending arbitration, or by any similar cause, then the time of completion shall be extended for such reasonable time as may be mutually agreed upon.

24. Liquidated Damages

The Contractor agrees that the Work shall be prosecuted regularly, diligently and without interruption at such rate of progress as will ensure full completion thereof within the time specified under the Contract. It is expressly understood and agreed, by and between the Contractor and the Port District, that the time allowed for the completion of the work described herein is a reasonable time for the completion of same, taking into consideration the nature of this Contract, the average climate range and usual industrial conditions prevailing in the locality of the Project. Since time is of the essence, the Contractor and the Port District understand and agree that a breach of the Contract as to completion on time will cause damage to the Port District, but further agree that such damages cannot be accurately measured or that ascertainment will be difficult. Therefore, the parties agree that for each and every calendar day the Work or any portion thereof shall remain uncompleted after the expiration of the time limit set under the contractor's proposal, or as extended by the Port District, the Contractor does hereby agree to pay the Port District the amount of two hundred dollars (\$200.00) per day, not as penalty but as liquidated damages for such breach of contract as hereinafter set forth.

This provision does not exclude the recovery of damages by the Port District for breach by the Contractor of any other provisions of the Contract Document.

Substantial Completion shall mean the date defined in the Definitions provision above.

25. Progress Payments

There are no progress payments under this contract.

26. Final Acceptance and Payment

Final acceptance of the Work will be made only after all Work provided for in the contract has been completed and accepted by the Port District.

Final payment constituting the entire amount due shall be paid by the Port District to the Contractor upon the Port's receipt of the Contractor's application for payment when the Work has been completed and the Contract fully performed except for those responsibilities of the Contractor which survive final payment, as described in the Contract and in these provisions. The procedures for making the final payment are described below and in the Contract attached hereto.

The making of the final payment shall constitute a waiver of all claims by the Port District for performance of the Work, except for the following:

- a. Claims arising from unsettled liens or claims,
- b. Claims for faulty work or defective materials appearing after final payment,
- c. Claims for failure of the work to comply with requirements of the Contract Documents, or
- d. Claims for breach of the guarantees and warranties provided under the Contract.

Acceptance of the final payment by the contractor shall constitute a waiver of all claims by the Contractor, except those previously made and identified by the Contractor in writing as unsettled at the time of its application for final payment.

27. Payments Withheld

The Port District may withhold or, on account of subsequently discovered evidence, nullify the whole or a part of any payment to such extent as may be necessary to protect itself from loss on account of:

- a. Defective work not remedied.
- b. Claims filed or reasonable evidence indicating probable filing of claims.
- c. Failure of the Contractor to make payments properly to subcontractors or for material or labor.
- d. A reasonable doubt that the Contract can be completed for the balance then unpaid.
- e. Damage to another contractor.

28. No Work Relating to Hazardous Substances

The Contractor shall not be required to perform without consent any work related to hazardous substances. For purposes of this provision, "hazardous substances" means any dangerous or extremely hazardous waste as defined in RCW 70.105.010 (5) and (6), or any dangerous or extremely hazardous waste as designated by rule under Chapter 70.105 RCW; any hazardous substance as defined in RCW 70.105.010 (14) or any hazardous substance as defined by rule under Chapter 70.105 RCW; any substance that, on the date of this contract, is a hazardous substance under Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act, 42 USC SS9601(14); petroleum or petroleum products; asbestos; PCB's; and any substance or category of substances, including solid waste, decomposition products, determined by the Director of the Department of Ecology by rule to present a threat to human health or the environment if released into the environment.

In the event the Contractor encounters on the site material reasonably believed to be a hazardous substance which has not been rendered harmless, the Contractor shall immediately stop Work in the area affected and report the condition to the Port District in writing. If the material is confirmed to be hazardous substances and it has not been rendered harmless, the Work in the affected area shall not thereafter be resumed except by written agreement of the Contractor and the Port District. In the event the materials are found not to be hazardous substance(s), or when the hazardous substances has been rendered harmless, or adequate measures have been undertaken to protect worker health and safety, and the environment, and upon execution of a written agreement between the Contractor and the Port District, the work in the affected area shall resume.

29. Liability Coverage Requirements

The Contractor shall, through the life of this Contract, carry and maintain at Contractor's expense, the following insurance:

- a. Statutory Worker's Compensation Insurance covering Contractor's employees as required by law. Such insurance shall be extended to include United States Long Shoreman and Harborworkers Act coverage when applicable and be extended to provide "All-States" coverage. The Contractor shall obtain evidence of equivalent coverage from all subcontractors.
- b. Commercial General Liability Insurance to include Contractual and Products/Completed Operations Liability. Such insurance shall be extended to provide coverage for explosion/collapse/underground hazards and Contingent Employers ("Stop-Gap") Liability. Such insurance shall provide Bodily Injury and Property Damage Liability coverage on an occurrence basis with a Combine Single Limit of not less than \$1,000,000 any occurrence.

- c. Commercial Automobile Liability Insurance providing Bodily Injury and Property Damage Liability coverage with a Combined Single Limit of not less than \$1,000,000 any one occurrence.

Maintenance of these insurance coverages during the performance of the work is essential to the Port District.

30. Claims

A claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of the terms of the Contract Documents, payment of money, extension of time or other relief with respect to the terms of the Contract Documents.

Claims by the Contractor must be made by written notice within 21 calendar days after the occurrence of the event giving rise to such claim, or within 21 days after the Contractor recognizes the conditions giving rise to the claim.

Pending resolution of a claim, including arbitration, the Contractor shall proceed diligently with the performance of the Work in accordance with the current Construction Schedule.

31. Change Orders

A Change Order is a written order signed by the Port District and the Contractor, and issued after execution of the Contract, authorizing a change in the Work and/or adjustment in the date of Substantial Completion. The amount of the Contract and the date of Substantial Completion can be changed only by Change order.

The Port District, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, and the amount of the Contract shall be adjusted accordingly. Such changes in the Work shall be authorized by Change order.

If the Port and the Contractor cannot agree on the cost and time impacts of a Change Order, the Contractor shall in any event promptly proceed with the Work involved. The Contractor shall keep and present to the Port District an itemized account of the reasonable expenditures (including overhead and profit) and savings of those performing the Work attributable to the change, including the cost of revisions to the Contract.

If the Port District requests the Contractor to submit a proposal for a change in the Work and then elects not to proceed with the change, a Change Order may be issued to reimburse the contractor for its reasonable costs incurred for proposed revisions to the Contract.

32. Inspection of Work

The Port District and its representatives shall, at all times, have access to the work wherever it is in preparation or progress and the Contractor shall provide proper facilities for such access and for inspection.

If the Port District's instructions, laws, ordinances or any public authority, require any work to be specially tested or approved, the Contractor shall give the Port District timely notice of its readiness for inspection and, if the inspection is by another authority than the Port District, or its representatives, of the date fixed for such inspection. Inspections by the Port shall be promptly made and, where practicable, at the source of supply. If any work should be covered up without approval or consent of the Port District it must, if required by the Port District, be uncovered for examination at the Contractor's expense.

Re-examination of questioned work may be ordered by the Port District or its representatives and, if so ordered, the work must be uncovered by the Contractor. If such work be found in accordance with the Contract, the Port District shall pay the cost of re-examination and replacement. If such work be found not in accordance with the Contract, the Contractor shall pay such cost unless he or she shall show that the defect in the work was caused by others employed by the Port District and, in that event, the Port District shall pay such cost.

33. Correction of Non-conforming Work

The contractor shall promptly correct work rejected by the Port Director or known by the Contractor to be defective or failing to conform to the Contract, whether observed before or after Substantial Completion and whether or not fabricated, installed or completed, and shall correct Work found to be defective or non-conforming within a period of one year from the date of Substantial Completion of the Work or designated portion thereof, or within such longer period provided by any applicable special or extended warranty.

Nothing contained in this provision shall be construed to establish a period limitation with respect to other obligations of the Contractor under this Contract. The paragraph immediately above relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than correction of the Work.

34. Owner's Right to Stop or Correct Work

If the Contractor fails to correct defective work as required, or persistently fails to carry out the Work in accordance with the Contract, the Port District may, in writing, order the Contractor to stop the Work, or any portion of it, until the cause for such order has been eliminated. However, the Port's right to stop the Work shall not give rise to a duty on the part of the Port to exercise the right for the benefit of the Contractor or any other persons or entities.

In addition, if the Contractor should neglect to prosecute the Work properly or to correct faulty Work, or fail to perform any provision of this Contract, the Port, after three (3) days written notice to the Contractor, may without prejudice to any other remedy it may have, make good such deficiencies by its own Work or by contracting with others to provide such Work and may deduct the cost thereof from the payment then or thereafter due the Contractor.

35. Arbitration

Unless otherwise provided in this Agreement, all claims, counterclaims, disputes and other matters in question between the Port District and the Contractor arising out of or relating to this Agreement, or the breach thereof, shall be decided by private arbitration in lieu of litigation. The arbitration and the arbitrator's decision shall be binding and non-appealable. If the Port District and the Contractor cannot choose a mutually agreeable arbitrator, either party may petition the Klickitat County Superior Court to assign an arbitrator to hear and decide the matter.

Unless otherwise agreed in writing, during any arbitration or court proceedings, Contractor shall diligently carry on the work and maintain its progress, and Port shall continue to make payments to the Contractor, all in accordance with this Contract.

36. Presence and Use of Hazardous Substances

The Contractor or any of its subcontractors, shall not, without Port District's prior written consent, keep on or around the premises, common areas or buildings for use, disposal, treatment, generation, or storage any substances designated as, or containing components designated as hazardous, extra 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 substances designated as, or containing components designated as hazardous, extra 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.

- a. Cleanup costs, default and indemnification - Contractor shall be fully and completely liable to the Port for any and all cleanup and monitoring costs and any and all other charges, fees, penalties (civil and criminal) imposed by any governmental authority with respect to Contractor's use, disposal, transportation, storage, or generation of Hazardous Substances, in or about the Port's premises, or the common areas.
- b. Common areas - Contractor shall indemnify, defend and hold the Port harmless from any and all of the costs, fees, penalties and charges assessed against or imposed upon the Port (as well as the Port's attorney's fees and costs) as a result of Contractor's use, disposal, transportation, storage, generation and/or sale of Hazardous Substances.
- c. Upon Contractor's default under this Article, in addition to the rights and remedies set forth elsewhere in this document, the Port shall be entitled to the following rights and remedies:
 1. At the Port's option, to terminate this Contract immediately; and
 2. To recover from the Contractor 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 the Port, and any and all damages and claims asserted by third parties and the Port's attorney's fees and costs.

37. List of Subcontractors and Suppliers

The successful bidder shall supply the names and addresses of all subcontractors and all major material suppliers when required to do so by the Port District and shall provide such information as the Port District reasonably requests concerning progress and final payments for materials, equipment and services used on the Project. This requirement is in addition to that required by RCW 39.30.060.

38. Governing Law

This Contract shall be governed by the laws of the State of Washington.

39. Attorney Fees

If a suit, action, interpleader or arbitration is commenced to enforce, interpret, or apply the provisions of this Contract, then the Port District is entitled to its reasonable attorney fees incurred at the trial court level, in any appellate proceeding, or in any arbitration. The amount of such reasonable attorney fees shall be determined by the court or arbitrator in the proceeding.

40. Work by the Port District or its Contractors

The Port District reserves the right to perform work on the Project site and to award contracts to other contractors for other work on the site. The Contractor shall afford the Port's separate contractors reasonable opportunity for introduction and storage of their materials and equipment for execution of their work. The Contractor shall coordinate its work with the work of the separate contractors. Costs caused by defective or ill-timed work shall be borne by the party responsible.

41. Successors and Assigns

This Contract shall be binding on successors, assigns and legal representatives of and the persons in privity of contract with the Port District and the Contractor. Neither party shall assign, sublet or transfer any interest in this Contract without the written consent of the other party and the surety on the Contractor's bonds.

42. Owner's Right to Terminate Contract

If the Contractor should be adjudged bankrupt, or if he or she should make a general assignment for the benefit of his or her creditors, or if a receiver should be appointed on account of his or her insolvency, or if he or she should persistently or repeatedly refuse or should fail, except in cases

for which extension of time is provided, to supply enough properly skilled workers or proper materials, or if he or she should fail to make prompt payment to subcontractors or for material or labor, or persistently disregard laws, ordinances or the instructions of the Port District, or otherwise be guilty of a substantial violation of any provision of the Contract, then the Port District may, without prejudice to any other right or remedy and after giving the Contractor seven (7) days written notice, terminate the employment of the Contractor and take possession of the premises and of all materials, tools and appliances thereon and finish the work by whatever method it may deem expedient. In such case, the Contractor shall not be entitled to receive any further payment until the work is finished. If the unpaid balance of the Contract Price shall exceed the expense of finishing the work, such excess shall be paid to the Contractor. If such expense shall exceed such unpaid balance, the Contractor shall pay the difference to the Port District. The expense incurred by the Port District as herein provided, and the damage incurred through the Contractor's default, shall be verified by a complete record of such expense.

43. Contractor's Right to Stop Work or Terminate Contract

If the work should be stopped under an order of any court, or other public authority, for a period of three (3) months, through no act or fault of the Contractor or of anyone employed by him, or if the Port should fail to make payment when due, or if the Port should fail to pay the Contractor within ten (10) days of its maturity and presentation, any sum awarded by arbitrators, then the Contractor may, upon ten (10) days written notice to the Port, stop work or terminate this contract and recover from the Port payment for all work executed.

44. Removal of Equipment

In the case of termination of this Contract before completion for any cause whatsoever, the Contractor, if notified to do so by the Port, shall promptly remove any part or all of his or her equipment and supplies from the property of the Port, failing which the Port shall have the right to remove such equipment and supplies at the expense of the Contractor.

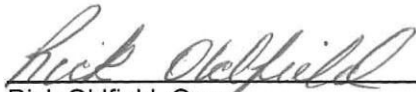
45. Partial Invalidity

If for any reason any provision of the Contract is void or unenforceable, the remaining provisions thereof shall nevertheless remain valid. The void or unenforceable provision shall be replaced by the parties by another provision of a similar economic result. The parties accordingly agree to replace such provisions with the least possible delay by means of a suitable amendment to the Contract whereby any changes in the economic circumstances shall be reflected in the parties' obligations.

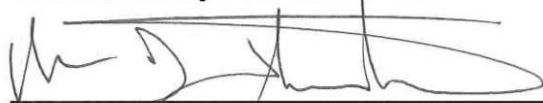
The signatures below acknowledge agreement to the entire Contract and have the authority to sign for their respective entities.

IN WITNESS WHEREOF, the parties have caused this Contract to be executed on May 11, 2011.

REO and Sons


Rick Oldfield, Owner

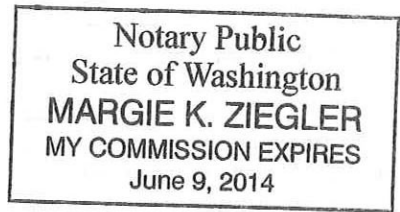
Klickitat County Port District No. 1


Marc Thornsbury, Executive Director

STATE OF Washington)
) ss
County of Klickitat)

On this 17 day of May, 2011, before me the undersigned, a Notary Public in and for the State of Washington, personally appeared **Rick Oldfield**, personally known to me to be the Owner of **REO and Sons**, who executed this instrument, and acknowledged to me that s/he signed the same freely and voluntarily on behalf of the sole proprietorship for the uses and purposes therein expressed, and on oath stated that s/he was authorized to execute the instrument on behalf of the sole proprietorship.

IN WITNESS WHEREOF, I have hereunder set my hand and affixed my seal the day and year last written above.

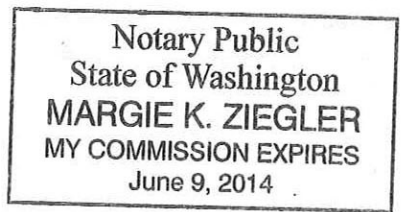


Margie K. Ziegler
Notary Public in and for the State of Washington
My Commission Expires: June 9, 2014

STATE OF WASHINGTON)
) ss
County of Klickitat)

On this 17 day of May, 2011, before me the undersigned, a Notary Public in and for the State of Washington, personally appeared **Marc Thornsbury**, personally known to me to be the Executive Director of **Klickitat County Port District No. 1**, who executed this instrument, and acknowledged to me that s/he signed the same freely and voluntarily on behalf of the municipal corporation for the uses and purposes therein expressed, and on oath stated that s/he was authorized to execute the instrument on behalf of the municipal corporation.

IN WITNESS WHEREOF, I have hereunder set my hand and affixed my seal the day and year last written above.



Margie K. Ziegler
Notary Public in and for the State of Washington
My Commission Expires: June 9, 2014