

PORT OF NEWPORT SPEACIAL COMMISSION MEETING AGENDA

Friday, May 15, 2015, 12:00 p.m.
South Beach Activities Room, 2120 SE Marine Science Drive, Newport, OR 97365

Walter Chuck (Pos. #1), President; Dean Fleck (Pos. #5), Vice President;
Ken Brown (Pos. #4), Secretary/Treasurer; JoAnn Barton (Pos. #3); David Jincks (Pos. #2)

- I. Call to Order 1:00
- II. Changes to the Agenda 1:01
- III. Public Comment 1:02
- IV. New Business..... 1:10
 - A. Resolution Increasing Small Procurement Limit
 - B. South Beach Pay Station
 - C. Bids on Hoist Crane Repair
 - D. South Beach State Marine Board Paving Grant
 - E. NOAA / DSL Gaper Clam Study Contract
 - F. Rogue Engineering
- V. Adjournment 2:00

Regular meetings are scheduled for the fourth Tuesday of every month at 6:00 p.m.

The Port Newport South Beach Marina and RV Park Activity Room is accessible to people with disabilities. A request for an interpreter for the hearing impaired or for other accommodations for persons with disabilities should be made at least 48 hours in advance of the meeting to Port of Newport Administration Office at 541-265-7758.

PORT OF NEWPORT

RESOLUTION NO. 2015-05

A RESOLUTION RAISING THE SMALL PROCUREMENT LIMIT TO \$10,000.00, INCREASING THE LIMIT OF THE AMOUNT OF AN EXEMPTED AMENDED CONTRACT TO \$12,500, AND AUTHORIZING THE PORT CONTRACT OFFICER TO ACT ON BEHALF OF THE PORT

Whereas, pursuant to ORS 279A.060, the Port of Newport Board of Commissioners, as the governing body for the District, was reaffirmed as the local Public Contract Review Board in Resolutions 2005-03 and 2007-07; and

Whereas, the Board of Commissioners established the limit of the small procurement exemption from competitive bidding at \$5,000 in Resolution 2005-03 and limited exempted aggregate amended small procurement contracts at \$6,000 in Resolution 2007-07; and

Whereas, the limit established by the Board of Commissioners in Resolution 2005-03, and restated in Resolution 2007-07 Sections IV(3)(a) and (4)(a), was consistent with the limit imposed by the state legislature in ORS 279B.065; and

Whereas, the Oregon State Legislature provides in ORS 279B.065(1) that an small procurement contract may be amended to exceed \$5,000 only under accordance with rules adopted under ORS 279A.065; and OAR 125-247-0265(2)(a) limits the exempted amended contract price to \$6,000; and

Whereas, the Port of Newport Board of Commissioners, acting in its capacity as the local Public Contract Review Board, adopted such rules in accordance with ORS 279.065(1) in Resolution 2007-07, Finding D, and limited the exempted amended contract price to \$6,000; and

Whereas, the 2013 Oregon State Legislature amended ORS 279B.065 to increase the small procurement limit from \$5,000 to \$10,000, effective January 1, 2014; and OAR 125-247-0265(2)(b) places a \$12,500 limit on exempted amended contracts after January 1, 2014; and

Whereas, the inflationary effect over the years has made the \$5,000 limit and \$6,000 limit unnecessarily restrictive; and

Whereas, there are benefits to the Port of Newport in making its small procurement limits consistent with that of the State of Oregon and in authorizing the Public Contracting Officer as defined in Resolution 2007-07 to enter into small procurement contracts on behalf of the Port of Newport; NOW THEREFORE;

THE PORT OF NEWPORT BOARD OF COMMISSIONERS RESOLVES AS FOLLOWS:

Section 1. The Board of Commissioners of the Port of Newport, in addition to any and all current public contracting rules, hereby exempts from competitive bidding to the fullest extent allowed by law, all small procurements not exceeding \$10,000; and authorizes the Public Contracting Officer to enter into and finalize small procurement contracts on behalf of the Port of Newport; and

Section 2. Hereby repeals Resolution 2005-03 and amends Resolution 2007-07 Sections IV (3)(a) and (4)(a) to exempt all small procurements not exceeding \$10,000 and authorizes the Public Contracting Officer to enter into and finalize small procurement contracts on behalf of the Port of Newport, and

Section 3. Amends Resolution 2007-07, Section IV (6)(d) to exempt from competitive bidding under subsections (3) or (4) of Part IV the aggregate amount of the contract after all amendments 25% of the initial contract price or \$12,500, whichever is greater.

APPROVED AND ADOPTED BY THE BOARD OF COMMISSIONERS this _____ day of May, 2015.

ATTEST:

Walter Chuck, President

Ken Brown, Secretary

venSTATION

Innovation and excellence

ENTRY/ANNUAL PASSES

CAMPSITE RESERVATION

BOAT/INSPECTION FEES



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- Real Time Payment Authorization & Automated Settlement
- Relational System Database
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PARKS AND RECREATION FEES

- Entry & Annual Pass
- Campsite Fees
- RV Storage & Dump Fees
- Boat Launch Fees
- Inspection Fees
- Electrical Metering

MULTIPLE PAYMENT METHODS

- Coins & Bills
- SmartCards & Value Cards
- Validations: Cards & Remote
- Credit Cards
- Debit Cards
- Electronic Coupons

MULTIPLE VENDING MODES

- Permit Only
- Campsite Reservation with website integration
- Permit & Receipt
- Payment/Credential Gate Access
- Turnstile Access

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For Pay Station Networks

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- Generate instant device status alerts to staff via email and/or text messaging.

PROCESS

- Authorize web or pay station-based credit/debit card sales transactions in real-time on a PCI-Certified payment platform.
- Efficiently process electronic payment refunds.

REPORT

- Quickly view, print, and/or export data from your revenue system using a full suite of report forms.
- Sales reports based on transaction type, location, date, permit value, and/or product type.
- Electronic payment transactions; pending or settled by date of sale or date of settlement.

For Pay Station Networks

- Cash Transactions showing details on bills/coins inserted and change dispensed for each transaction.
- Event reports showing operational history of each device.
- Interim and Final Cash Audit reporting for each device.

CUSTOMIZE

- Electronic coupons providing up to 100% discount for permit purchases.
- Use your web-based mobile device for enforcement, permit issuance and to monitor space occupancy through space sensors.
- Accept alternate electronic payments such as Annual Pass, value or campus cards.

For Pay Station Networks

- Remote validation for pay-by-space settings - add time from web based devices.
- Allow customers to add time using Pay-by-Cell.
- Multiple Custom Permits based on pick selection.



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QUOTATION/PROPOSAL

PACIFIC PARKING SYSTEMS, INC.

216 C Technology Drive
 Irvine, CA 92618
 (800) 663-7008 Toll Free (949) 453-9898 Phone (949) 453-9595 Fax

DATE: 04/28/2015

Vanessa Anderson
 Port of Newport – South Beach Marina & RV Park
 2120 SE Marine Science Drive
 Newport, OR 97365

ESTIMATED DELIVERY
 From receipt
 of order: 4-6 Weeks

TERMS: N30

QUOTE NO: PN2015 F.O.B. Ship Point SHIP VIA Surface Freight FOLLOW UP DATE

QTY	PART NO.	DESCRIPTION	PRICE	UNIT	AMOUNT
1	00-8001-00	venSTATION XC Pay & Display Permit Machine w/Stacking Bill Acceptor, Thermal Printer, Coin Acceptor, Windows Based Software Platform, 110 VAC. Std. Case Color VS Grey.	\$13,895	00	\$13,895 00
1	04-372-02	VS 6" Pedestal Base		388.00	388.00
1	VG164	Roll, Thermal Pay & Display Paper		Included	Included
1	CC-000	Credit Card Reader PCI-DSS Level 1 Certified*		Included	Included
1	MODEM	Modem-Hardwired Ethernet, Cellular Wireless** Or Wi-Fi		Included	Included
1	TRAINING	On-Site Training On Operation, Maintenance, Auditing.		1,000.00	1,000.00
1	LABOR	On-Site Setup, Programming & Place Systems Into Service		1,500.00	1,500.00
			Sub-Total		\$16,783 00
			Freight		\$750 00
			Total		\$17,533 00

NOTE: Additional Options/Fees Not Included Above:

1. \$45.00 Monthly Server Hosting Fees
2. \$495.00 venDIRECT Annual Fee.
3. \$45.00 Per Unit Per Month Optional Cellular Hosting Fee
4. \$1,695.00 Optional Solar Kit
5. \$495.00 venVUE Annual Subscription Fee-Single Seat

PRICES VALID FOR 30 DAYS FROM DATE OF QUOTE

PRICING DOES NOT INCLUDE ANY APPLICABLE SALES TAXES



VenTek International
 1260 Holm Road, Suite A
 Petaluma, CA 94954
 707-773-3373
 Victoria Iacovetto

Automated Revenue Collection & Management
Port of NewPort - South Beach Marina & RV park
2120 SE Marine Science Drive
 Vanessa Anderson 541-867-3321

RELEASE DATE: 4/30/2015

Thank you for Choosing VenTek
 Quote Valid for 90 days

Automated Revenue Collection Equipment		QTY/UNITS	SUB QTY	Price	Total
E1	venSTATION Pay and Display Includes 1 year Warranty Power Configuration: AC Connectivity: Cellular / CDMA Payment Mode: Credit Card Coin Acceptance Bill Acceptance	1	1	\$15,496.00	\$15,496.00

TOTAL EQUIPMENT PRICING \$15,496.00 \$15,496.00

Installation, Training and Shipping		QTY/UNITS	SUB QTY	Price	Total
I1	Installation & Training -	1			\$1,900.00
SH1	Shipping Estimate - Actual costs will be billed upon shipment	1		\$300.00	\$200.00
SH2	Inside Delivery or Lift Gate - \$130 each	Lot		\$130.00	

INSTALLATION, SHIPPING AND TRAINING \$2,100.00

venSTATION Multi-Space Meter \$15,496.00
Installation, Training & Shipping \$2,100.00
Total Equipment, Installation Training and Shipping \$17,596.00

Common Pay Station Optional Features		QTY/UNITS	SUB QTY	Price	Total
O1	Solar Power Charging System	per unit	1	\$995	
O2	Hybrid Power Switching Module (Primary - AC, Secondary - Solar)	per unit	1	\$295	
O3	Bill Acceptance	per unit	1	\$1,760.00	
O4	Coin Acceptance	per unit	1	\$1,400.00	
O5	Pay-by-License - Alpha Numeric Key Pad	per unit	1	\$495.00	
O6	EMV Smart Card Support	per unit	1	\$2,995	
O7	Light Bar	per unit	1	\$600	

Notes:

- 1 Payment Gateway Switching Service - As a Level 1 PCI Service Provider VenTek offers a Secure Electronic gateway operating on its certified, fully-managed, Direct Transaction Processing System ("TPS"). Payment Gateway Switching Service allow VenTek's customers to establish a direct connection between the VenTek System and their Payment Card Processor. VenTek warrants that its TPS product will remain PCI-compliant for the duration of service delivery and that our pricing will be lower than comparable transaction gateway products. Includes Cyber Insurance coverage with client named as an Additional Insured.
- 1a 'Per Use' Transaction Gateway Switching Services are billed monthly in arrears. Annual transaction volume estimated @ 100,000 transactions
- 1b 'Flat Fee' Transaction Gateway Software Subscription Service is billed annually in advance.
- 2 VenVUE System Management, venSTATION Data Hosting and CDMA Cellular Connectivity are billed Annually
- 3 ADA Compliant for height, control and reach
- 4 (1) year factory warranty included
- 5 Installation includes securing the unit to a prepared surface, connecting the existing electrical inside the unit, installing software, network programming and configuration, and installation of all parts and peripherals necessary for unit operation.
- 5a Onsite Training is conducted during and/or after installation
- 5b venVUE System Management training conducted remotely via WebEx
- 5c Installation Quote does not include Site Prep: Concrete or Conduit Work, pulling electrical or communication cables or removal of existing equipment
- 6 All funds due are in U.S. dollars. Terms Net 30 from date of delivery. 1.25% finance charge (15% per annum) applied to balances over 30 days past

Northwest Parking Equipment Company
 13500 Lake City Way NE
 Suite 208
 Seattle, Washington 98125
 (bus) (206) 363-5265
 (fax) (206) 367-6578

PROPOSAL

Submitted to:

Mr. Chris Urbach	Date: April 28, 2015
Port of Newport	
600 SE Bay Blvd.	
Newport, OR 97365	

Customer P.O. No.

--

Delivery Site:

Same as above unless specified.
Is a forklift available?

QUANTITY	DESCRIPTION OF ITEM	AMOUNT
1	VenTek PND XC venSTATION-AC powered equipped with battery backup with bill acceptance, coin acceptance, credit/debit card acceptance, and inclusive of CDMA wireless kit.	13,500.00
1	venSTATION 6" pedestal mount with bolts	388.00
1	Onsite setup of components, server setup, rate table customization/programming, and training to staff on the operation and maintenance of the Pay Station as well as our Web-based venVIEW remote software	595.00
	Applicable Online fees apply and average \$170.00 per month and include annual PCI Compliance.	

SHIPPING CHARGES
 TOTAL

265.00
\$14,748.00

OTHERS TO SUPPLY: Pedestal and machine installation and ac power hookup. Merchant Account information required also.
WARRANTY: One year onsite parts & labor.

In the event that legal action must be taken to collect any and/or all of the contract price, Northwest Parking Equipment Company shall be entitled to reasonable attorneys' fees, court costs and preparation time. Preparation time will be calculated at Northwest Parking Equipment Company's shop rate and is in addition to attorneys' fees and late charges. Unless otherwise stated on invoices, all invoices will be payable, in full, thirty (30) days from invoice date. In addition, a 1.5% late charge per month will be assessed on all past due accounts. Northwest Parking Equipment Company's performance under this agreement is contingent upon strikes, accidents, delays of carriers and other delays unavoidable or beyond the reasonable control of Northwest Parking Equipment Company.

ACCEPTANCE

PAYMENT TERMS: Zero deposit with order.
 \$14,748.00 due within 30 days of shipment.

The above prices, descriptions, and conditions are satisfactory and are hereby accepted. You are authorized to proceed with the items specified by this proposal in accordance with the terms herein.

ACCEPTED:

 [Company Name]
 By: _____

 Date

NORTHWEST PARKING EQUIPMENT COMPANY

Roy Whipple, Jr.

 Roy Whipple, Jr.,
 President
April 28, 2015

 Date

Estimate
Port of Newport
Dock Hoist #4 Bearing Replacement

Pick up crane and haul both pieces to my shop. Port will disconnect crane, remove boom and load onto trailer.

Install Flanges and gussets to the Mast & Base to fit Rotek Bearing at my shop.

Scale & Prime New Steel

Deliver and assemble crane with new Rotek Bearing.
Port will provide crane and/or forklift to assist in assembly.

Parts: 1 - AB-17P1DG Rotek Bearing -	\$1721.00
2 - 2" Plate Flange & 40 gussets -	620.00
Nuts, bolts, & locks, misc. fittings -	100.00
Labor - 100hrs. X 75.00 -	7500.00
	<hr/>
	\$9941.00

Dan Lais Equipment Surgery
1395 S. E. 18th Street
Toledo, Oregon 97391
Shop: 541-875-2458
Cell: 541-270-6223



Yaquina Boat Equipment, Inc.
508 Butler Bridge Road
Toledo, Or. 97391
 Phone:(541) 336-5593
 www.yaquinaboat.com

Quote

Date	Quote No.
5/13/2015	25374

Name / Address
Port of Newport 600 SE Bay Blvd Newport, OR 97365

Project	Rep	Terms	Ship Date	FOB
	Doug	Net 30 Days	6/12/2015	Toledo, OR

Qty	Item	U/M	Description	Amount
1	Special Order		<p>Dock Crane Hoist #4 Repair Services:</p> <ul style="list-style-type: none"> • Pick up top portion of small jib hoist at the commercial dock. The port will disconnect and load hoist onto our flat bed truck. • Attach new flange and gussets to crane base in place at commercial dock. • Attach new flange and gussets to jib at Yaquina's Boat shop. • Deliver and assemble crane with new Rotek turret bearing with special order alloy fasteners. The Port personnel will provide crane service at the commercial dock for assembly. • Blast and prime all new steel at YBE's Shop. • Torque down bolts to specification after bedding compound has cured. • Quoted amount is contingent upon structural integrity of existing hoist. <p>NOTE!!! This quote has been modified to reflect the removal of new 12" extra heavy pipe and labor that has been done on a previous date. Also, the price of bearing has increased by \$395.00</p>	12,300.00

Your Business Is Appreciated

Total \$12,300.00



600 S.E. BAY BOULEVARD NEWPORT, OREGON 97365 PHONE (541) 265-7758 FAX (541) 265-4235 www.portofnewport.com

**MARINE TAXONOMIC SERVICES, LTD. AND PORT OF NEWPORT
SCOPE OF WORK
AND
EXTENSION OF CONTRACT FOR SERVICES**

This service agreement covers the diving operations of the Yaquina Bay Gaper Clam Dredge Survey at the NOAA site and Sally's Bend site. For the purposes of this agreement, "diving operations" is the scope of work as follows:

MTS will provide a vessel and capable dive team for conducting subtidal surveys of gaper clams in the Port of Newport in Newport, Oregon. The areas of work are determined by Oregon Department of Fish and Wildlife (ODFW) but generally include 28 locations near the NOAA Marine Operations Pier and 20 locations at the reference area located approximately 1 nautical mile east of the pier at Sally's Bend.

MTS is responsible for provided the following staff and equipment to perform the surveys.

- Two or more SCUBA divers
- A dive vessel operator
- A dive tender/safety diver on each day of dive (person shall double as assistant to agency staff topside)
- A dive vessel
- SCUBA gear to support dive operations
- Diver communications equipment
- A diver operated Venturi suction dredge

MTS will be responsible for ensuring the dive vessel and dredge equipment necessary to excavate the sampling holes at each sampling site is in a safe and ready condition. Moreover, MTS will be responsible for ensuring that the dive vessel and sampling equipment are mobilized to Newport, Oregon and will work with ODFW staff to set up the sampling equipment on the ODFW supplied support vessel. The MTS vessel will be suitable for providing space for two divers, dive equipment, and a vessel operator. The sampling equipment for which MTS is responsible consists of a diver operated Venturi dredge. The dredge operates by pumping water through a suction head. The pump is maintained on the support vessel and draws water from the bay. That water is pumped to the suction head that is operated by the diver. As water passes through the dredge it creates a Venturi effect that creates a suction. The suction is used to extract sediments and push them into a mesh bag as water exits the dredge. Clams are maintained in the bag while water and sediments pass through. ODFW will provide all other staff and equipment required for sampling. The Port of Newport assumes no liability in diving operations. MTS will maintain a commercial General Liability and Marine Liability policy and Workers Compensation coverage as stated in Section 8.04 (E) below.

The Port of Newport agrees to pay Marine Taxonomic Services, Ltd. (MTS) a total of \$8,460 dollars per yearly diving event for the completion of diving operations associated with the Yaquina Bay Gaper Clam Dredge Survey. The Port agrees to pay Seth Jones a \$2,500 deposit

upon execution of this agreement, with the balance of \$5960 to be paid within five (5) work days of completion of the contract work. It is anticipated that all work can be accomplished within two (2) days. If for any reason additional time is needed, MTS shall immediately notify the Port of any anticipated costs. This agreement may be renewed annually for a period of 4 years (2015 thru 2018). This timeline corresponds with the requirement the Port has with DSL relating to the mitigation and monitoring plan for the gaper clam habitat in the area of the NOAA MOC-P pier.

Diving operations conducted at the NOAA site and Sally's Bend are scheduled to be completed before August 1st of each year through 2018. A reassessment of deadline dates will be conducted if unforeseen conditions occur, including but not limited to mechanical failure, unsafe driving conditions, weather, natural disasters, NOAA restrictions, or in the event that ODFW does not effectively provide boat support or experiences mechanical failure. The Port of Newport will not be held responsible for final payment until the survey is completed.

Kevin Greenwood, General Manager, Port of Newport

Date

Seth Jones, President, Marine Taxonomic Services, Ltd.

Date



600 S.E. BAY BOULEVARD NEWPORT, OREGON 97365 PHONE (541) 265-7758 FAX (541) 265-4235 www.portofnewport.com

CONTRACT

THIS AGREEMENT is by and between **Port of Newport** ("Owner") and Seth Jones, dba Marine Taxonomic Services, Ltd. (MTS) ("Contractor").

Owner and Contractor, in consideration of the mutual covenants hereinafter set forth, agree as follows:

ARTICLE 1 – WORK

1.01 Contractor shall complete all Work as specified or indicated in the attached Scope of Work (SOW).

ARTICLE 2 - THE PROJECT

2.01 The Project for which the Work included in the SOW is generally described as follows:

DIVING OPERATIONS OF THE YAQUINA BAY GAPER CLAM DREDGE SURVEY AT THE NOAA PIER SITE AND AT SALLY'S BEND. CONTRACTOR WILL COLLECT SAMPLES FOR THE CLAM SURVEY AND DELIVER THE SAMPLES TO OREGON DEPARTMENT OF FISH & WILDLIFE (ODFW).

ARTICLE 3 – CONTRACT TIMES

Time is of the essence.

3.01 Days to Achieve Substantial Completion and Final Payment

A. The work will be completed within three (3) days after the date when the Contract Times commence, and completed and ready for final payment in accordance with the SOW within seven (7) days after the survey is complete.

ARTICLE 4 - CONTRACT PRICE

4.01 Total contract price is \$8460 renewable per year for a five year period. Owner shall pay Contractor a deposit of \$2,500 upon signing of this agreement.

ARTICLE 5 - PAYMENT PROCEDURES

5.01 Project Payment

A. The Port of Newport will retain \$5,960 of the contract price. Final payment will be paid to the contractor within five (5) work days of successful completion of the project and Port receives acknowledgement from ODFW that all work is complete.

ARTICLE 6- CONTRACTOR'S REPRESENTATIONS

6.01 In order to induce Owner to enter into this Agreement Contractor makes the following representations:

- A. Contractor has visited the Sites and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- B. Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.
- C. Contractor has carefully studied all subsurface conditions at or contiguous to the Site and all physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (including Submerged Facilities) which have been identified, more specifically, the NOAA pier structure.
- D. Contractor has obtained and carefully studied, or assumes responsibility for doing so, conducting all additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including any specific means, methods, techniques, sequences, and procedures of the survey expressly required by the SOW, and the dive team meets or exceeds the standards set forth in OSHA 29 CFR, Part 1910, Subpart T, Appendix B.
- E. Contractor does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price; however, the Contractor reserves the right to reassess deadline dates if unforeseen conditions occur, including but not limited to mechanical failure, unsafe driving conditions, weather, natural disasters, NOAA restrictions, or in the event that ODFW does not effectively provide boat support or experiences mechanical failure.
- F. The SOW is generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 7 - CONTRACT DOCUMENTS

7.01 Contents

- A. This agreement consists of the following:
 - 1. This Agreement.
 - 2. Scope of Work
- B. The documents listed in Paragraph 8.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no other Documents other than those listed above in this Article 7.
- D. The Scope of Work may only be amended, modified, or supplemented by agreement of both parties.

ARTICLE 8 – MISCELLANEOUS

8.01 Assignment of Contract

- A. No assignment by a party hereto of any rights under or interests in the Contract will

be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this agreement.

8.02 Successors and Assigns

A. Owner and Contractor each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations herein contained.

8.03 Severability

A. Any provisions of this agreement held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that this agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

8.04 Termination

A. The Port of Newport reserves the right to terminate this contract for convenience.

8.05 Other Provisions

A. Tax Compliance. By its signature on this Contract. CONTRACTOR hereby certifies that it is not in violation of any Oregon tax law. For the purpose of this certification. "Oregon tax laws" includes but may not be limited to ORS Chapter 118, 119, 314, 316, 317, 318, 320, 321 and 323 and Sections 10 to 20 Chapter 533, Oregon Laws 1981, as amended by Chapter 16, Oregon Laws 1982 (first special session): the Homeowner's and Renters Property Tax Relief Program under ORS 310.630 to 310.690: and any local tax laws administered by the Oregon Department of Revenue under ORS 305.620.

B. Access to Records: For not less than three (3) years after the Contract Expiration Date, the OWNER, the State of Oregon, the federal government and their duly authorized representatives shall have access to the books, documents, papers and records of the CONTRACTOR which are directly pertinent to this Contract if any part thereof becomes the subject of or is involved in litigation. CONTRACTOR shall retain all pertinent records for not less than three years or until all litigation is resolved, whichever is longer. Full access will be provided to the OWNER in preparation for and during litigation.

C. Funds Available and Authorized: OWNER has funding available at the time of entering into this Contract and sufficient funds are available and authorized for expenditure to finance costs of this Contract.

D. Indemnity: CONTRACTOR shall defend, save, and hold harmless the OWNER, its officers, agents, engineers, attorneys and employees from all losses, expenses (including but not limited to all fees and charges as it relates to the attached SOW, and all court or arbitration or other dispute resolution costs and claims, suits, or related actions of whatsoever nature, including intentional acts resulting from or arising out of the activities of CONTRACTOR or its subcontractors, agents, or employees under this Contract and attachments.

E. Insurance:

(1) MTS shall secure and maintain Commercial General Liability and Marine Liability insurance with limits of not less than \$1,700,000 per Occurrence with a \$2,000,000 Aggregate. Those limits can be achieved with any combination of Commercial General Liability, Marine Liability, and Excess Liability. MTS shall name the Port of Newport as an Additional Insured and provide a Certificate of Insurance to the Port with a 30 day written Notice of Cancellation, prior to the commencement of any work specified by this contract.

(2) MTS shall secure and maintain at its own expense, automobile and Workers Compensation coverage, if applicable, which complies with the statutory requirements of the State of Oregon; and forward a Certificate of Insurance, evidencing that coverage to the Port with a 30 day written Notice of Cancellation, prior to the commencement of any work specified by this contract.

(3) In the result of any early cancellation of any of the above required insurance policies results in a savings, any refund is to be credited back to the Owner. Any refund shall be sent directly to the Owner's address as indicated below.

F. (1) Compliance with Applicable Law: CONTRACTOR certifies that it will comply with all federal, state and local laws, ordinances, and regulations applicable to this Contract, including, but not limited to all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. (2) Without in any manner limiting the applicability of the foregoing. CONTRACTOR agrees, as a condition of entering into this contract, that the provisions of ORS 279C.345 as well as ORS 279C.505-279C.530. ORS Chapter 656. and ORS 279C.840 apply to CONTRACTOR's performance under this Contract.

G. Waiver: The terms of this Contract shall not be waived, altered, modified, supplemented or amended, in any manner whatsoever, except by written instrument. Such waiver, alteration, modification, supplementation or amendment, if made, shall be effective only in the specific instance and for the specific purpose given. and shall be valid and binding only if it is signed by all parties to this Contract. The failure of the OWNER to enforce any provision of this contract shall not constitute a waiver by the OWNER of that or any other provision.

H. Governing Law and Venue: This Contract shall be governed by and construed in accordance with the laws of the State of Oregon. Any litigation between the OWNER and the CONTRACTOR arising out of or related to this Contract shall be brought and maintained solely and exclusively in the Circuit Court of Lincoln County, Oregon, provided, if any litigation arising under this Contract must be brought in a federal forum. It shall be brought and maintained solely and exclusively in the United States District Court for the District of Oregon in Eugene, Oregon. CONTRACTOR hereby consents to the personal jurisdiction of all courts within the State of Oregon should any litigation be brought to enforce the terms of this Contract. The prevailing party shall be entitled to reasonable attorney fees, costs and disbursements at trial and upon appeal should any dispute over the terms and conditions of this contract result in mediation or arbitration. Any attorney's fees and costs incurred in such mediation or arbitration shall be paid by the party incurring such fees and costs.

I. Merger: This Agreement, which includes all Contract Documents as defined herein, constitutes the entire agreement between the parties. There are no understandings, agreements, or representations, oral or written, regarding this Contract, except as specified or referenced herein. CONTRACTOR, by the signature below of its authorized representative, hereby acknowledges that it has read this contract, understands it and agrees to be bound by its terms and conditions.

J. Execution in Counterparts: This Contract may be executed in counterparts, each of which shall be an original, and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement in two copies. One counterpart each has been delivered to Owner and Contractor. All portions of the Contract Documents have been signed, initialed, or identified by Owner and Contractor.

This Agreement is dated _____

OWNER: **Port of Newport**

Attest: _____
Kevin Greenwood, General Manager

CONTRACTOR: **Marine Taxonomic Services, Ltd.**

Attest: _____
Seth Jones, President

Address for giving notices:

**Port of Newport
600 SE Bay Boulevard
Newport, OR 97365**

**Marine Taxonomic Services, Ltd.
920 Rancheros Drive, Suite F-1
San Marcos, CA 92069**

L:\Leases Licenses SUP\Agreements\MTS 2015 Contract