



# WASHINGTON'S WORKING PORT

**March 15, 2023**

**REQUEST FOR PROPOSALS**

**DUMP TRUCK PURCHASE**

**PROJECT #: MESS 23-013**

**DUE: MARCH 24, 2023 NO LATER THAN 4:00 (PT)**

| CONTACT INFORMATION   |
|---|
| RFP Coordinator: Candi Engebo, Procurement Specialist   |
| Email Responses To: <a href="mailto:cengebo@portoflongview.com">cengebo@portoflongview.com</a> ; <a href="mailto:aammirati@portoflongview.com">aammirati@portoflongview.com</a> |
| Phone: (360) 425-3305, ext. 219   |

# DUMP TRUCK PURCHASE

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**EXHIBIT A** – Port Sample Contract

# DUMP TRUCK PURCHASE

## NOTICE OF REQUEST FOR PROPOSALS

Notice is hereby given that proposals for the Dump Truck Purchase will be received at the Administration Offices of the Port of Longview, 10 International Way, Longview, WA 98632 until March 24, 2023, 4:00 pm. Proposals received after the specified time and date will not be considered.

Solicitation packets are available on the Port of Longview's website by following this address (<http://www.portoflongview.com/Bids.aspx>) and may also be obtained by contacting Candi Engebo, Procurement Specialist at [cengebo@portoflongview.com](mailto:cengebo@portoflongview.com).

Vendors may (a) email a digital version to [cengebo@portoflongview.com](mailto:cengebo@portoflongview.com), copying [aammirati@portoflongview.com](mailto:aammirati@portoflongview.com) **OR** (b) may submit one original hard copy received by the Port of Longview, 10 International Way, Longview, WA 98632. **The file size can be no larger than 20 megabytes to be received by email. VENDORS ARE STRONGLY ENCOURAGED TO CONFIRM RECEIPT OF THE RESPONSE BY THE PORT.**

All proposals submitted shall be considered valid offers for a period of forty-five (45) days from the date of the proposal due date. All responses become property of the Port of Longview and are subject to public disclosure laws per RCW 42.56.

## PROPOSAL CHECKLIST

Attention is especially called to the following forms and documents which must be completed in full as required and submitted collectively as the proposal package; failure to do so may result in the proposal being rejected as not responsive:

### 1. PROPOSAL FORM AND ADDITIONAL DOCUMENTS

Notice to be published: March 15, 2023

**PORT OF LONGVIEW  
GENERAL CONDITIONS**

**1. PROPOSALS**

All proposals received by the Port of Longview (Port) shall be considered valid for a period of forty-five (45) days from the date of the bid due date. The Port, at its sole discretion, reserves the right to reject any and all responses, to waive any informalities or irregularities, and to negotiate modifications to this solicitation and responses in order to align the purchase to best meet the needs of the Port. Vendors are responsible to review the Contract and all other conditions and requirements contained in this Request For Proposals (RFP). Vendors are instructed to price and submit their proposal with the understanding that they are required to comply with all terms and conditions contained herein or otherwise as solely determined and written by the Port. This RFP and the Vendor's response, including all promises, warranties, commitments, and representations made in the successful response (as accepted by the Port) shall be binding and incorporated by reference in the attached Contract with the Vendor. Any mark-ups, crossing out of any condition of the RFP or Contract, or conditions added by the Vendor may result in the proposal being rejected. By submitting a proposal, the Vendor further agrees to execute the Port's Contract enclosed herein without exception.

**2. PROPOSAL FORM**

Vendor shall submit responses on the forms provided. All prices shall be in US Dollars and inclusive of any taxes as appropriate. Proposals must include all costs, including, but not limited to Washington State Sales Tax, training, delivery FOB with ownership passing at the same time to the Port of Longview at the address specified herein, loading, unloading, warranties, complete "ready to use" set-up and all other requirements as specified in the RFP.

**3. NO ADDITIONAL CHARGES**

Unless otherwise specified in this solicitation or as otherwise solely written by the Port in the Contract, no additional charges by the Vendor will be allowed and the Vendor's proposed pricing will be the final price for complete transfer of equipment purchased by the Port as a result of this solicitation.

**4. ADDENDA TO RFP**

Any changes, additions or clarifications to the solicitation documents made after advertising and before the submittal deadline will be posted on the Port's website as numbered and dated addenda. All such deletions, additions, clarifications or corrections will be in written or graphic form. All vendors must acknowledge receipt of any addenda on the Proposal Form to ensure that all vendors have submitted a response on the same information.

Any prospective Vendor desiring an explanation or interpretation of the solicitation documents must request the explanation or interpretation via email to [cegebo@portoflongview.com](mailto:cegebo@portoflongview.com) no later than two (2) business days prior to the date and time when responses are due; addenda and clarifications will be posted on the RFP website at <http://www.portoflongview.com/Bids.aspx>. The Vendor agrees that the Port shall not be liable for any claim based on ambiguity of which the vendor knew and did not inform the Port of or of which the vendor should have reasonably known. It is the sole responsibility of the Vendor to visit the website throughout the solicitation process for any changes to the RFP documents issued by the Port; Vendor agrees that the Port shall not be liable for any claim based on the Vendor's failure to monitor the website for changes.

**5. CONFLICT OF INTEREST**

Vendor covenants that it presently has no interest and shall not acquire an interest, directly or indirectly, which would conflict in any manner or degree with its performance. Vendor further covenants that in the performance of this equipment purchase, no person having such interest shall be employed by it or any of its sub-contractors.

**6. TAXES**

All proposals shall include an allocation for the appropriate sales and use taxes.

**7. PAYMENT**

Upon full delivery and acceptance by the Port, payment will be made within thirty (30) days of receipt of Vendor's invoice.

**8. STATUTES, LAWS, CODES, AND REGULATIONS**

Vendor must comply with all applicable statutes, codes, municipal ordinances and regulations.

**9. INSURANCE AND INDEMNIFICATION**

If indicated, Vendor shall at a minimum procure Commercial General Liability Insurance to include Products Liability with a limit of \$1,000,000 and name the Port as an additional insured on a primary and non-contributory basis. Failure by the Port to request the Certificate of Insurance documenting this coverage or the receipt shall not be construed as a waiver of such requirement.

#### **10. CHANGES OR CORRECTIONS TO BID SUBMITTAL**

Prior to the submittal closing date and time, a Vendor may make changes to its proposal, if the change is initialed and dated by the Vendor. No change shall be allowed after the closing date and time.

#### **11. COST OF PREPARING A RESPONSE**

The Port will not be liable for any costs incurred by the Vendor in the preparation and presentation of proposals submitted in response to this RFP including, but not limited to, costs incurred in connection with the Vendor's participation in any demonstrations.

#### **12. DIVERSITY PARTICIPATION**

The Port strongly encourages the participation of minority, women-owned, veteran-owned, and small businesses, and Washington small businesses. No preference will be included in the evaluation of proposals, no minimum level of participation by these businesses shall be required as a condition of receiving an award, and proposals will not be rejected or considered non-responsive on that basis.

#### **13. TITLE VI STATEMENT**

The Port of Longview, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 US. C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all prospective respondents that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

#### **14. DEBARMENT AND SUSPENSION**

By submitting a response to this solicitation, Vendor certifies that neither it, nor its principals are presently debarred, suspended, proposed for debarment, or declared ineligible or voluntarily excluded from participation in this transaction by any Federal department or agency regardless of whether or not Federal funds are used. It further agrees by submitting a response to this solicitation that it will include this clause without modification in all lower tier transactions, solicitations, proposals, agreements, contracts, and subcontracts. Where the Vendor or any lower tier participant is unable to certify to this statement it shall attach an explanation to its response to this solicitation. The Port reserves the right to require Vendor to replace a sub-Vendor or lower tier participant who cannot meet the foregoing certification requirements.

#### **15. PROPRIETARY OR CONFIDENTIAL INFORMATION**

The Vendor's proposal is subject to the Washington State Public Records Act, RCW Chapter 42.56, and may be subject to public inspection. The Port will not disclose any information contained in competing Proposals or the number of Proposals received until after the Contract is awarded. The Port will keep information submitted through this process confidential to the extent allowed by state or federal law.

Any information in the proposal that the Vendor desires to claim as proprietary and exempt from disclosure under the provisions of Chapter 42.56 RCW, or other state or federal law that provides for the nondisclosure of your document, must be clearly designated. The information must be clearly identified and the particular exemption from disclosure upon which the exemption from disclosure upon which the Vendor is making the claim must be cited. Each page containing the information claimed to be exempt from disclosure must be clearly identified by the words "Proprietary Information" printed on the lower right hand corner of the page. Making the entire proposal exempt from disclosure or as Proprietary Information will not be honored.

If a public records request is made for the information that the Vendor has marked as "Proprietary Information," the Port will notify the Vendor of the request and of the date that the records will be released to the requester unless the Vendor obtains a court order enjoining that disclosure. If the Vendor fails to obtain the court order enjoining disclosure, the Port will release the requested information on the date specified. If a Vendor obtains a court order from a court of competent jurisdiction enjoining disclosure pursuant to Chapter 45.56 RCW, or other state or federal law that provides for nondisclosure, the Port shall maintain the confidentiality of the Vendor's information per the court order.

#### **16. EVALUATION PROCESS**

The Port will evaluate each piece of equipment proposed and award the purchase to the Vendor with best valued equipment that meets the Port's intended use and the following criteria as determined by and weighted by the Port: (a) lead time for delivery, (b) age, wear, hours & condition, (c) price & budget availability, (d) specifications, (e) maintenance records, (f) parts interchangeability with existing fleet, (g) local availability of certified service and repair mechanics, (h) warranty, (i) any conditions in addition to this solicitation proposed by the Vendor, and (j) any other information available to the Port that the Port determines is necessary to purchase equipment that best meets the needs of Port operations.

**The Port will update the status of this purchase on the Port's website upon execution of a contract for the purchase of equipment from this solicitation.**

- a. To automatically receive email/text notifications when updates are published on the Port's website, follow this link and instructions <https://portoflongview.org/list.aspx?Mode=Subscribe#bids>.
- b. Remember to "Sign Out" to save your changes AFTER making your selection, illustrated below.

Home > Notify Me



### Notify Me®

- 1. Type your email address in the box and select Sign In.
- 2. If you want to receive text messages enter your phone number and select Save.
- 3. To subscribe or unsubscribe click  and/or  next to the lists to which you wish to subscribe/unsubscribe.

### Your Profile Information

[Sign Out](#)



#### Email Address

aammirati@portoflongview.com



I prefer to receive HTML emails when available

# DUMP TRUCK PURCHASE

## SPECIAL PROVISIONS

The Port of Longview is seeking to purchase **one (1) Dump Truck** for maintenance operations. Please respond to this Request For Proposals as follows:

1. Vendor may submit one or multiple units utilizing the Proposal Form and any additional attachments as needed to present as many equipment options available to the Port. Additional materials, pictures, etc., should be provided as well for each unit, however, for clarity of comparison, please include the Proposal Form in the front of such equipment. Used equipment proposals should be accompanied by any maintenance records and any other information about the condition, including any and all known deficiencies.
2. All prices must include Washington State Sales Tax; complete “ready to use” set-up, and delivery of the equipment (including unloading) FOB with ownership passing at same to the Port of Longview at Mechanics Shop - 10 Port Way, Longview, Washington.
3. Prices must include all costs associated with up to four (4) hours of training from a factory representative and/or certified mechanic concurrent with the delivery of the equipment or shortly thereafter.
4. **The Port will consider both NEW and USED equipment.** Vendors proposing USED equipment and warranty as indicated on the Proposal Form, shall include a written copy with their response to this solicitation. Vendors proposing NEW equipment shall include a minimum of one year warranty against defects following transfer of ownership, as established, in writing, by the Port of Longview.

**THE PORT IS ALSO INTERESTED IN EXTENDED WARRANTIES. VENDORS ARE INSTRUCTED TO PROPOSE ANY AND ALL EXTENDED WARRANTY OPTIONS AVAILABLE TO THE PORT.**

5. Vendors must make a representative available to show each proposed piece of equipment for inspection and demonstration purposes as part of the evaluation process.
6. The selected equipment must come with certification as operable, and all service documentation detailing all or recent calibrations, tune-ups, repairs, warranties (if applicable), etc.
7. Once a piece of equipment is selected and a contract issued, delivery must be within the number of days specified in the Vendor’s response.

# DUMP TRUCK PURCHASE

## SPECIFICATIONS

Vendors are strongly encouraged to propose multiple dump trucks that closely meet the following specifications:

|                      |  |
|----------------------|--|
| <b>Condition</b>     | Good condition for all components. <u>Must be street/road legal.</u> Minor Scrapes or dents may be determined acceptable by the Port or be repaired prior to sale. |
| <b>Brand</b>         | None specified   |
| <b>Fuel*</b>         | All types  |
| <b>EPA Rating</b>    | For Diesel - Tier III or above   |
| <b>Engine</b>        | Diesel   |
| <b>Transmission</b>  | Automatic Transmission or Auto-Shift Equivalent Preferred but not required   |
| <b>Capacity</b>      | 12 Yard Hauling Capacity or Equivalent   |
| <b>Tailgate</b>      | Air Actuated Lift Gate Release or Equivalent   |
| <b>Maximum Miles</b> | 350,000 miles  |

\* The Port is interested in evaluating various Alternative Fuel Vehicles (AFV's) such as electric, hybrid electric, biofuel, etc.; Vendors are encouraged to also include such options as well.



# ATTACHMENT A – PROPOSAL FORM

1. Having carefully examined the solicitation documents for the Dump Truck Purchase, the undersigned proposes to furnish the following. **All prices must include WSST, delivery, and all other costs associated with the Purchase in accordance with this solicitation; no additional charges by the Vendor will be allowed.**

| Description of Item | New or Used | # Of Hours or Miles | Delivery (# of days) | Warranty (yes/no) | Total Price Dollars/Cents (including 7.8% WSST) |
|---------------------|-------------|---------------------|----------------------|-------------------|---|
|                     |             |                     |                      |                   |   |
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|                     |             |                     |                      |                   |   |

2. **WITHDRAWAL** - The above proposal will not be withdrawn within forty-five (45) days after the actual date of the opening hereof.
3. **EQUIPMENT PURCHASE CONTRACT** - If the undersigned is notified of acceptance of this proposal within forty-five (45) days of the time and date when responses are due, they agree to execute the Port’s Contract for the above stated sum above and shall deliver all products within the number of days specified above upon contract execution.
4. **SIGNING AUTHORITY** – By signing below, the undersigned hereby acknowledges that they are authorized and duly bound to execute this Proposal Form on behalf of the Vendor named here below. The signing party further certifies that the Vendor represented has visited the Port’s website before the due date and time to familiarize themselves with all changes made to the solicitation documents via Addendum.
5. **VENDOR VERIFICATION** - The Vendor is instructed to provide the following registration and identification numbers.  
**WASHINGTON UNIFIED BUSINESS IDENTIFIER (UBI) NO.**    or indicate other State and business registration number.  
*(insert number here)* \_\_\_\_\_
6. **NON-COLLUSION DECLARATION** - Vendor (as signed below), under penalty of perjury under the laws of the State of Washington, do state and affirm that the proposal submitted to the Port of Longview is genuine and not a sham or collusive proposal, or made in the interest or on behalf of any person not herein named; and further states that the said Vendor has not directly or indirectly induced or solicited any Vendor to put in a sham proposal or any other person or corporation to refrain from responding to this solicitation; and that said Vendor has not in any manner sought by collusion to secure an advantage over any other Vendor or Vendors.
7. **ADDENDA** - Receipt of Addenda(s) numbered \_\_\_\_\_ is hereby acknowledged.

VENDOR - \_\_\_\_\_  
 SIGNED - \_\_\_\_\_  
 \_\_\_\_\_  
**Print name and title**

ADDRESS - \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

TELEPHONE - \_\_\_\_\_

DATE - \_\_\_\_\_

**NOTE: PLEASE PUT NAME OF PROJECT ON ENVELOPE CONTAINING PROPOSAL DOCUMENTS.**

# EXHIBITS

EXHIBIT A – Sample Contract

## EXHIBIT A - EQUIPMENT PURCHASE CONTRACT

THIS CONTRACT, made and entered into on \_\_\_\_\_, by and between the **PORT OF LONGVIEW**, of 10 International Way, Longview, WA 98632, a municipal corporation, hereinafter referred to as the **PORT**, and \_\_\_\_\_ of \_\_\_\_\_, hereinafter called the **VENDOR**.

### WITNESSETH:

1. **VENDOR** agrees to sell and the Port agrees to purchase xxxxxxxxxxxxxx (Equipment) in accordance with the Port of Longview XXXXXXXXXX RFP issued XXXXXXXX and the Vendor's response (Attachment A), both incorporated fully into this Contract by reference. In the event of a conflict between any provision of the Port of Longview's Equipment Purchase Contract and Attachment A, the Port of Longview's provisions shall prevail. This expenditure is limited to a total of **\$0.00**. The Equipment delivery dates will be no more than xxx days from the date this Contract is fully executed.
2. **ACCEPTANCE:** This Contract is expressly limited to the terms and conditions stated herein. All additional or different terms proposed by Vendor are objected to and are hereby rejected, unless otherwise agreed to in writing by the Port. These terms and conditions supersede all conflicting or additional terms pre-printed on any order, quote, invoice, or otherwise set forth on any release, acknowledgement, confirmation, requisition, work order, shipping instruction, specification and similar document or communication.
3. **CHANGES:** No alteration by Vendor of the terms, conditions, delivery, price, quality, quantities, or specifications of Equipment will be effective without the prior written consent of the Port.
4. **AUDIT AND ACCESS TO RECORDS:** The Vendor shall maintain books, ledgers, records, documents or other evidence relating to the costs and/or performance of the Contract ("records") on a generally recognized accounting basis and to such extent and in such detail as will properly reflect and fully support all fees, costs and charges.  
With regard to the records, Vendor shall do and require its employees, agents and sub-Vendors to do the following:
  - a. Make such records open to inspection or audit by representatives of the Port during the term of this Contract and for a period of not less than three years after the expiration of this Contract.
  - b. Retain such records for a period of not less than three years after the expiration of this Contract; provided, however, if any litigation, claim, or audit arising out of, in connection with, or related to this Contract is initiated, such records shall be retained until the later of (i) resolution or completion of litigation, claim or audit; or (ii) six years after the date of termination of this Contract.
  - c. Provide adequate facilities reasonably acceptable to representatives of the Port conducting the audit so that such representatives can perform the audit during normal business hours.
  - d. Make a good faith effort to cooperate with representatives of the Port conducting the audit. Cooperation shall include assistance as may be reasonably required in the course of inspection or audit, including access to personnel with knowledge of the contents of the records being inspected or audited so that the information in the records is properly understood by the persons performing the inspection or audit. Cooperation shall also include establishing a specific mutually agreeable timetable for making the records available for inspection by the Port's representatives. If the Vendor cannot make at least some of the relevant records available for inspection within seven (7) days of the Port's written request, cooperation will necessarily entail providing the Port with a reasonable explanation for the delay in production of records.
5. **DELIVERY: TIME IS OF THE ESSENCE AND THIS CONTRACT IS SUBJECT TO CANCELLATION BY THE PORT FOR VENDOR'S FAILURE TO DELIVER ON TIME.** No payments will be made prior to full delivery. For any exception to the delivery date specified in this Contract, Vendor shall give prior written notification and obtain written approval therefore from the Port. The acceptance by the Port of later performance with or without objection or reservation shall neither waive the Port's right to claim damages for such breach nor constitute a waiver of the requirements for the timely performance of any obligation remaining to be performed by Vendor.
6. **RISK OF LOSS:** Regardless of the FOB Point specified, Vendor agrees to bear all risk of loss, injury or destruction of Equipment ordered herein which occur prior to full system acceptance by the Port, and such loss, injury, or destruction shall not release Vendor from any obligation hereunder.
7. **FORCE MAJEURE:** Vendor will not be responsible for delays in delivery due to acts of God, fire, strikes, epidemics, war, riot, delay in transportation or railcar transport shortages PROVIDED VENDOR NOTIFIES THE PORT, IMMEDIATELY IN WRITING OF SUCH PENDING OR ACTUAL DELAY. Normally, in the event of any such delays (acts of God, etc.) the date of delivery will be extended for a period equal to the time lost due to the reason for delay.
8. **REJECTION:** Equipment purchased with this Contract are subject to approval by the Port. Rejection of Equipment, resulting because of nonconformity to the terms, conditions, and specifications of this Contract, whether held by the Port or returned, will be a Vendor's risk and expense.
9. **PAYMENT:** Vendor shall invoice only for Equipment that has been delivered. Unless otherwise agreed to, payment shall be net 30 days following acceptance of Equipment, and a correctly completed invoice, which is later. The determination of a correctly completed invoice as at the sole discretion of the Port.
10. **TAXES:** Unless otherwise indicated in this Contract, the Port agrees to pay all applicable State of Washington sales or use tax. The Port is exempt from Federal excise taxes and an exemption certificate will be furnished upon request. The price for Equipment hereunder shall include all other applicable federal, state and local taxes, except those for which an exemption may be claimed by the Port.

11. **WARRANTIES:** Vendor warrants that Equipment furnished under this Contract conform to the specifications herein, are merchantable, of good workmanship, free from defect, are fit for the intended purpose for which such Equipment are ordinarily employed. Vendor further warrants that no violation of any federal, state or local law, statute, rule, regulation, ordinance or order will result from the manufacture, production, sale, or shipment of the Equipment. Vendor's warranties (any more favorable warranties, service policies, or similar undertakings of Vendor) shall survive delivery, inspection, and acceptance of the Equipment. Unless otherwise specified herein, all NEW Equipment shall be warranted against defects or faulty workmanship by the Vendor for a minimum of one (1) year following acceptance of the Equipment by the Port. Warranty shall include all costs incurred, including shipping, for repair or replacement except that which is damaged by misuse or abuse. This warranty shall in no way affect normal extended or manufacturer's warranty exceeding this one (1) year period.
12. **LIENS, CLAIMS, AND ENCUMBRANCES:** Vendor warrants and represents that all Equipment delivered are free and clear of all liens, claims, or encumbrances of any kind.
13. **INDEMNIFICATION AND HOLD HARMLESS:**
  - a. Vendor shall defend, indemnify, and hold harmless the Port, its Commissioners, officers, employees, and agents (hereafter, collectively, the "Port") from all liability, claims, damages, losses, and expenses (including, but not limited to attorneys' and consultants' fees and other expenses of litigation or arbitration) arising out of or related to the fulfillment of this Contract (including, without limitation, product liability claims by persons who may subsequently purchase Equipment from the Port, claims for patent, trademark, copyright, trade or franchising infringement, and from all claims arising from Vendors failure to comply with paragraphs 18, 19, 20 and 21 of this Contract); Provided, however, if and to the extent that this Contract is construed to be relative to the construction, alteration, repair, addition to, subtraction from, improvement to, or maintenance of, any building, road, railroad, excavation, or other structure, project, development, or improvement attached to real estate, including moving or demolition in connection therewith, and therefore subject to Section 4.24.115 of the Revised Code of Washington, it is agreed that where such liability, claim, damage, loss or expense arises from the concurrent negligence of (i) the Port, and (ii) Vendor, its agents, or its employees, it is expressly agreed that Vendor's obligations of indemnity under this paragraph shall be effective only to the extent of Vendor's negligence. Such obligations shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any person or entity described in this paragraph. This paragraph shall not be construed so as to require Vendor to defend, indemnify, or hold harmless the Port from such claims, damages, losses or expenses caused by or resulting from the sole negligence of the Port.
  - b. In any and all claims against the Port, by any employee of Vendor, its agent, anyone directly or indirectly employed by either of them, or anyone for whose acts any of them may be liable, the indemnification obligation of subparagraph "a" above shall not be limited in any way by any limitation on the amount or type of damages, compensation benefits payable by or for Vendor, or other person under applicable industrial insurance laws (including, but not limited to Title 51 of the Revised Code of Washington), it being clearly agreed and understood by the parties hereto that Vendor expressly waives any immunity Vendor might have had under such laws. By executing the Contract Vendor acknowledges that the foregoing waiver has been mutually negotiated by the parties.
  - c. Vendor shall pay all attorneys' fees and expenses incurred by the Port in establishing and enforcing the Port's right under this Contract, whether or not suit was instituted.
14. **TERMINATION/CANCELLATION:**
  - a. **TERMINATION FOR CONVENIENCE:** The Port may terminate this Contract, in whole or in part, for the Port's convenience at any time and for any reason by giving a written termination notice to Vendor and the Port's payment to Vendor of termination charges computed in the following manner: (i) a sum computed and substantiated in accordance with standard accounting practices for those reasonable costs incurred by Vendor prior to the date of termination, for orderly phase out of performance as requested by the Port in order to minimize the costs of the termination; and (ii) a reasonable profit for such work performed; HOWEVER THE PORT SHALL NOT BE LIABLE TO VENDOR FOR ANY ANTICIPATED PROFITS ON THE TERMINATED PORTION OF THE CONTRACT, OR CLAIMS OF UNABSORBED OVERHEAD OR OTHER FIXED COSTS. IN NO EVENT SHALL THE PORT BECOME LIABLE TO PAY ANY SUM IN EXCESS OF THE PRICE OF THIS CONTRACT FOR THE TERMINATED EQUIPMENT. NOR SHALL THE PORT BE OBLIGATED TO PAY ANY PENALTY IF VENDOR IS IN DEFAULT UNDER THIS CONTRACT.
  - b. **CANCELLATION FOR BREACH:** Except in the case of delay or failure resulting from circumstances beyond the control and without the fault or negligence of Vendor or its Vendors, services, or sub-Vendors, the Port shall be entitled, by written or oral notice the Vendor, to cancel the whole or any part of this Contract for breach of any of the terms of this Contract, to automatically collect any payments made by the Port to the Vendor, and to have all other rights against Vendor by reason of Vendor's breach as provided by law.
  - c. A breach shall mean any one or more of the following events (i) Vendor fails to make delivery of Equipment by the date required or by such later date as may be agreed to in a written amendment to the Contract signed by the Port; (ii) Vendor breaches any warranty, or fails to perform or comply with any term or Contract; (iii) Vendor makes any general assignment for the benefit of creditors; (iv) in the Port's sole opinion, Vendor becomes insolvent or in an unsound financial condition so as to endanger performance hereunder; (v) Vendor becomes the subject of any proceeding under any law relating to bankruptcy, insolvency or reorganization or relief from debtors; or (vi) any receiver, trustee or similar official is appointed for Vendor or any of Vendor property.
  - d. If it be found that Vendor was not in breach, and the Port files notice with the Vendor indicating that it wishes to continue with the cancellation of this Contract, the rights and obligations of the parties shall be the same as if a Notice of Termination had been issued pursuant to subparagraph 14.a.
15. **REMEDIES:** Any decisions by the Port to pursue any remedy provided for in paragraph 14.a and 14.b herein shall not be construed to bar the Port from the pursuit of any other remedy provided by law or equity in the case of similar, different or subsequent breaches of this Contract.

16. **WAIVER:** Failure at any time of the Port to enforce any provision of this Contract shall not constitute a waiver of such provision or prejudice the right of the Port to enforce such provision at any subsequent time. No term or condition of this Contract shall be held to be waived, modified or deleted except by a written instrument signed by the parties hereto.
17. **PARTIAL INVALIDITY:** If any provision of this Contract is or becomes void or unenforceable by force or operation of law, all other provisions hereof shall remain valid and enforceable.
18. **COMPLIANCE WITH ALL LAWS:** Vendor shall comply with all applicable federal, state and local laws, statutes, rules, regulations ordinances, and orders.
19. **NON-DISCRIMINATION:** During the performance of providing Equipment related to this Contract, the Vendor and its sub-Vendors, if used, shall not discriminate on the basis of race, color, sex, sexual orientation, religion, national origin, creed, marital status, age or the presence of any sensory, mental or physical handicaps in employment or application for employment or in the administration or delivery of Equipment or any other benefits under the Contract except to the extent permitted by bona fide occupation qualifications.
20. **HAZARDOUS MATERIALS:** If this Contract covers goods which include hazardous chemicals, Vendor shall, at the time of product delivery, provide the Port with copies of Material Safety Data Sheets ("MSDS") for such chemicals. These sheets shall be in the form then required by applicable law or regulation (see WAC 296-62-05413). This requirement shall be in addition to whatever other requirements are imposed by law or regulation.
21. **PUBLIC DISCLOSURE:** As a public agency, the Port is subject to public disclosure laws. Vendor agrees that pursuant to the Washington State Public Records Act, Chapter 42.56 of the Revised Code of Washington, the Port may be required to disclose information provided by Vendor. The Port shall promptly notify Vendor of any requests for public disclosure of documents and information pursuant to the law. Vendor shall be responsible for and bear the costs of taking legal action to prevent disclosure of such documents and information. In no event shall the Port be liable to Vendor for disclosure of Vendor's documents and information it deems disclosable under the law.
22. **GOVERNING LAW/VENUE:** The laws of the State of Washington shall govern disputes concerning this Contract and the venue of any action relating hereto shall be in the Superior Court for the County of Cowlitz, State of Washington.
23. **ANTITRUST ASSIGNMENT CLAUSE:** Vendor and the Port recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the Port. Vendor therefore hereby assigns to the Port any and all claims for such overcharges as to Equipment purchased in connection with this Contract, except as to overcharges which result from antitrust violations commencing after the price is established under this Contract and which are not passed on to the Port under an escalation clause.
24. **SUBCONTRACTING/ASSIGNMENT:** Vendor shall not subcontract or assign its obligations under this Contract without the prior written consent of the Port.
25. **ERRORS:** In case of error in calculating or typing, the quoted unit price will be used as basis for correction of this Contract.
26. **FREIGHT:** Unless otherwise specified, prices are F.O.B. destination, with freight prepaid and included.
27. **CONFLICT AND SEVERABILITY:** In the event of conflict between this Contract and applicable laws, code, ordinances or regulations, the most stringent or legally binding requirement shall govern and be considered a part of this Contract to afford the Port of Longview maximum benefits. Any provision of this document found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remainder of the document. In case of conflict between Terms, the Terms in the Port of Longview Contract shall take precedence.
28. **INSURANCE:** If indicated, Vendor shall at a minimum procure Commercial General Liability Insurance to include products liability with a limit of \$1,000,000 and name the Port as an additional insured on a primary and non-contributory basis. Failure by the Port to request the Certificate of Insurance documenting this coverage or the receipt shall not be construed as a waiver of such requirement.
29. **ENTIRE CONTRACT:** This Contract constitutes the entire understanding between the Port and Vendor with respect to the purchase and sale of Equipment and supersedes all previous negotiations, commitments and writings with respect thereto. This Contract may be executed in counterparts, which may be transmitted via email or other electronic transmittal, each of which shall constitute an original, and all of which will be deemed a single document. Signature of an email or other electronic transmittal copy of this Contract, and transmission of a signature page by email or other electronic transmittal, shall bind the signing party to the same degree as delivery of a signed original.

IN WITNESS WHEREOF, the parties hereto have agreed and entered this CONTRACT the day and year first above written upon execution of the parties below.

**PORT OF LONGVIEW**

**XXXXXXXXXXXX**

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

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

Dan Stahl, Chief Executive Officer  
Print name and Title

\_\_\_\_\_  
Print Name and Title

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

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