



Port of Woodland

CALL FOR BIDS

(REVISED) RFP # 2-2019

**ROYALTY PURCHASE OF PORT SAND MATERIAL AT
AUSTIN POINT**

RELEASE DATE:

April 5, 2019

DUE DATE AND TIME:

May 17, 2019 @ 12 PM

CALL FOR BIDS

Notice is hereby given that bids will be received by the Port of Woodland, Washington for:
Royalty Purchase of Port Sand Material at Austin Point

By submitting a bid with the Port of Woodland, at 1608 Guild Road Woodland, Washington, 98674 until:

Date: May 17, 2019

Time: 12:00 P.M.

Bids received later than 12:00 P.M., May 17, 2019 will not be considered.

A detailed Call for Bids may be obtained from the office of the Port of Woodland at 1608 Guild Road, Woodland, Washington 98674 or by contacting the Executive Director, Jennifer Wray-Keene at jkeene@portofwoodland.com or calling 360.225.6555.

The Port of Woodland reserves the right to reject any and all bids and to waive irregularities and informalities in the submittal and evaluation process. This Call For Bids does not obligate the Port to pay any costs incurred by respondents in the preparation and submission of a bid. Furthermore, the Call for Bids does not obligate the Port to accept or contract for any expressed or implied services.

Those seeking to submit a bid and wish to visit the site need to schedule that visit with Jennifer Wray-Keene no later than May 1, 2019 by 12:00 P.M.

Dated this 4th Day of April, 2019.

Jennifer Wray-Keene
Executive Director
Port of Woodland

Published:
The Daily News
The Reflector

**PORT OF WOODLAND
CALL FOR BIDS
ROYALTY PURCHASE OF PORT SAND MATERIAL**

I. Introduction

The Port of Woodland is soliciting bids from qualified Applicants to pay a Royalty to the Port of Woodland for the right to remove dredged sand material located at property owned by the Port, referred to as Austin Point.

II. Background Information

The Port of Woodland has received dredge material by way of acting as a sponsor port for the Columbia River Channel Improvement Project. The Port is seeking the removal of 135,000 tons of dredge material at the Austin Point site for 2019. The Port acknowledges there is additional material at the site, which is being maintained for future Port use. The Port of Woodland is seeking to sell the sand at this site wholesale.

The site is being leased currently by West Coast Training and such operations of sand removal are to not interfere with the operations of the training school. A designated area and attached as “Designated Area Map for Dredge Material Operations” is the only permissible area for the successful bidder to remove material from the Austin Point pit.

The Port Commission has set a minimum bid rate of \$5 per ton on the material for 2019. The Commission sets the minimum bid annually as part of the surplus process. **No bids lower than the minimum will be considered for any reason.**

III. State Owned Materials

The sand material to be sold is aquatic material owned by the State of Oregon and permitted for sale by the State subject to the State of Oregon Department of State Lands Approval of Port’s Permit. All operations and activities on the site may be audited by the State of Oregon.

IV. Sale Agreement Required.

The successful Applicant must accept the attached Material Sale Agreement once Applicant’s bid is accepted by the Port. All conditions must be maintained throughout the agreement as per the Material Sale Agreement Section 10.

V. Documents Provided Herein

- Notice of Call for Bids
- Bid Request
- Material Sale Agreement
- Site Maps
- Disposal Maps
- Removal Requirements per OSL and USACE

Appendices 2, 3, 4, 5 and 6 must be included with submittal of the Bid Proposal in Appendix 1.

- Appendix 1 Bid Form

- Appendix 2 Company Information
- Appendix 3 Client References
- Appendix 4 Non-Collusion Certificate
- Appendix 5 Performance Bond
- Appendix 6 Plan of Operations

VI. Preliminary Schedule

Call for Bids Release	March 1, 2019
Proposal Response Due	March 21, 2019 at 12 PM
Proposal Evaluations	March 21, 2019 at 3 PM
Commission Approval on Agreement	March 21, 2019 at 3 PM
Agreement Signed	April 1, 2019

VII. Evaluation Criteria and Process

The Port of Woodland Commissioners will conduct and evaluate the qualifications on the following criteria:

- Experience
- Royalty Proposal
- References
- Reputation
- Plan of Operation
- Credit

VIII. Deadline for Submission of Proposals

An original signed bid must be received by the Port of Woodland prior to 12:00 P.M. on March 21, 2019. All information required for the proposal must be within a sealed envelope and plainly marked as "Request for Bids Dredge Material 01-2019." Bids shall be delivered via mail to:

Port of Woodland
 1608 Guild Road
 Woodland, WA, 98674

Or in person to the Port of Woodland office located at 1608 Guild Road, Woodland, WA. Email and fax proposals will not be accepted.

Any questions regarding this call for bids may be submitted with the subject box "Austin Point Dredge Material Questions":

Jennifer Wray-Keene
 Executive Director
jkeene@portofwoodland.com

IX. Miscellaneous

The Port of Woodland reserves the right to reject any and all bids for failure to meet the requirements herein, to waive any technicalities, and to select the proposal which, in the Port of Woodland's sole judgment, best meets the requirements of the project.

The Call for Bids creates no obligation on the part of the Port to award an agreement or to compensate the proposer for any costs incurred during the bid presentation, right to award an agreement based on bids received without further discussion qualifications during discussions.

The Port further reserves the right to make such investigations as it deems necessary to determine the ability of bids to furnish the required services, and bids shall furnish all such information for this purpose as the Port may request.

Bids must specifically identify any portions of their submittals deemed to contain confidential or proprietary information. Those portions must be readily separable from the balance of the bid. Such designations will not necessarily be conclusive, and bidders may be required to justify why the Port should not, upon written request, disclose such materials.

**Appendix 1
Bid Form**

TO: PORT OF WOODLAND

FROM: Contractor Name _____
Contractor Address: _____
Wholesale License: _____
City, State, Zip Code: _____
Telephone: _____
Email: _____

In response to the Port's Bid Request, we offer the following bid:

PLEASE NOTE: THE PORT COMMISSION HAS SET A MINIMUM BID OF \$5.00 PER TON FOR THE MATERIAL. NO BIDS LOWER THAN THE AMOUNT WILL BE CONSIDERED.

FEE STRUCTURE:

- \$_____ Per Ton Payment to Port of Woodland.

The undersigned hereby agrees to comply with all the terms and conditions put forth in the Port of Woodland's Call for Bids.

Signed: _____

Printed Name _____

Title: _____

Dated: _____

APPENDIX 2

COMPANY INFORMATION

GENERAL

Name of Company: _____

Washington State UBI#: _____

Washington State Business License #: _____

Length of time in business under same name: _____

Length of time in business in Clark/Cowlitz County: _____

(Please limit your response to this appendix to no more than 5 pages)

PERSONNEL

List the number of personnel, their qualifications, expertise, and length of service with your company that will be operating equipment for the removal of sand material at the Port of Woodland property. (Attach additional sheets as necessary)

TRUCKING/REMOVAL OPERATIONS

Please list the number of anticipated trucks per day to enter and leave the site, operation hours, use of subcontractors for removal of material and load rates for trucks used (maximum weight). Successful bidder must meet all requirements set forth in the Material Sale Agreement Section 10.

SOFTWARE AND VERIFICATION TECHNIQUES

Please list how your company how your company removes sand material, accurately weighs material per truck load, and your process of tracking sand removal amounts. We also require a sample of load tickets and specifics on your software which would be used for State Audit verification if requested. Any discrepancy in ton will require verification of all tickets and truck logs.

MONTHLY REPORTING

Please see attached required spreadsheet information for monthly documentation. You will be required to provide monthly reports backed by trucking ticketing system and your verification techniques regarding the maximum 15,000 ton of material removal per month and the total 135,000 tons of material removed from the site through contract.

APPENDIX 3

CLIENT REFERENCES

Please Note: Client references relate to other sand/material removal operations in direct relation to that proposed with the Port of Woodland’s dredge material. If related experience is with other governmental agencies (i.e. ports), please list those.

Client Reference #1

Name: _____

Contact Name: _____

Title: _____

Phone Number: _____

Type of Service provided to this company and when: _____

Client Reference #2

Name: _____

Contact Name: _____

Title: _____

Phone Number: _____

Type of Service provided to this company and when: _____

Client Reference #3

Name: _____

Contact Name: _____

Title: _____

Phone Number: _____

Type of Service provided to this company and when: _____

**APPENDIX 4
NON-COLLUSION CERTIFICATE**

STATE OF _____;

COUNTY OF _____;

The undersigned, being duly sworn, deposes and says that the person, firm, association co-partnership or corporation herein named, has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competition in the preparation and submission of a proposal to the Port of Woodland for consideration in the Award of an Agreement for the project described as:

Request for Bids- 2019_01 Austin Point Dredge Material

Name of Firm

By: _____
Authorized Signature

Title: _____

Sworn to before me this _____ day of _____ 2019.

NOTARY PUBLIC

CORPORATE SEAL

**APPENDIX 5
PERFORMANCE BOND FORM**

Note: Purchasers must use this form, not a surety company form, and must attach a power of attorney for surety signatures.

KNOW ALL MEN BY THESE PRESENTS:

WE the undersigned _____, as PRINCIPAL (hereinafter called "PURCHASER") and _____ (hereinafter called "SURETY"), a corporation organized and existing under and by virtue of the laws of the State of _____, duly authorized to do surety business in the State of Washington and named on the current list of approved surety companies acceptable on federal bonds and conforming with the underwriting limitations as published in the Federal Register by the audit staff of the Bureau of Accounts and the U.S. Treasury Department and carrying an "Excellent" (A-) or better rating and being of the appropriate class for the bond amount as determined by the Best's Rating System as SURETY, hereby hold and firmly bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, to pay to the Port of Woodland the amount of: \$250,000 (TWO HUNDRED AND FIFTY THOUSAND DOLLARS) AND NO/100), lawful money of the United States of America.

Whereas, the PURCHASER has been awarded Agreement with the PORT, which Agreement is attached hereto and made a part hereof, for accomplishing the project described as:
Provide all labor, materials, tools, equipment and supervision necessary to perform extracting material from Port of Woodland Property, in accordance with Agreement and all accompanying documents set forth in this Request for Proposals by the Port of Woodland, Woodland, Washington.

NOW, THEREFORE, the condition of this obligation is such that if the PURCHASER shall promptly, truly and faithfully perform all of the undertakings, covenants, terms, conditions and agreements of the aforesaid Agreement, then this obligation shall be null and void; otherwise, it shall remain in full force and effect.

Whenever the PURCHASER shall be declared by the PORT to be in default under the Agreement, the Port having performed its obligation thereunder, the SURETY may promptly remedy the default, or shall promptly complete the Agreement in accordance with its terms and conditions.

PROVIDED, FURTHER, that the said SURETY for value received, hereby stipulates and agrees to all notations, changes, extensions of time, alterations or additions to the terms of the Agreement or the work to be performed thereunder. The same shall be within the scope of the SURETY's undertaking of this bond, and said SURETY does hereby waive notice of any such innovation, change, extension of time, alteration addition to the terms of the Contract or the work to be performed thereunder. Any such innovation, change, extension of time, alteration or addition to the terms of the SURETY hereunder is a like amount, provided that such increase shall not exceed twenty-five percent (25%) of the original amount of the obligation without consent of the SURETY.

This obligation shall continue to bind the PURCHASER and the SURETY until one (1) year after the date of Final Completion of the Agreement, notwithstanding successive payments hereunder, until the full amount of the obligation is exhausted.

No right of action shall accrue on this bond to or for the benefit of any person other than the Port of Woodland, its successors, or assigns.

If more than one SURETY is on this bond, each SURETY hereby agrees that it is jointly and severally liable for all obligations of this bond.

IN WITNESS WHEREOF, we have set our hands and seals:

PURCHASER

SURETY

BY:

BY:

TITLE:

TITLE:

DATE:

DATE:

APPENDIX 6

MATERIAL SALE AGREEMENT

THIS MATERIAL SALE AGREEMENT ("Agreement") is entered into effective on April 1, 2019 ("Effective Date") by and between the PORT OF WOODLAND, a corporation organized and existing under the constitution and laws of the State of Washington, through its Port Office whose address is 1608 Guild Road, Woodland, Washington, 98674-9493, ("PORT"), and _____, whose address is _____ ("PURCHASER").

1. **PROPERTY.** As used in this agreement, the term "Property" means the following-described real property located in the Port District of Woodland, Washington:

Austin Point Disposal Site lying in Section 2, Township 4 North, Range 1 West, and Section 35, Township 5 North, Range 1 West, Willamette Meridian, Cowlitz County, Washington, west of the Dike Road right of way and east of the ordinary high water line of the Columbia River.

The Property is depicted on the map attached hereto as Exhibit "A".

2. **PERMITTED USE OF PROPERTY.** Subject to the terms and conditions of this Agreement, the Port of Woodland hereby agrees to allow Purchaser to enter upon the Property for the sole and limited purpose of removal of dredged sand (hereinafter "Material"). Purchaser's operations shall be limited to removal and transporting Material and for no other purpose. Material removal is authorized on the Property only and shall be limited to no more than One Hundred and Thirty-Five Thousand tons (100,000 cubic yards), unless otherwise agreed to in writing by the parties.
 - a. The conversion factor between weight and volume shall be 1.35 tons per cubic yard of Material, and thus a cubic yard shall be defined as Material weighing 1.35 tons.
 - b. No Material removal is authorized in any excluded area depicted in Exhibit "A".
 - c. Purchaser shall not cause or permit:
 - i. Damage to natural resources,
 - ii. Waste,
 - iii. Deposit of any material, including fill, rock, earth, ballast, wood waste, refuse, garbage, waste matter, pollutants of any type, or other matter, except as expressly provided in this agreement.
 - iv. Placement of material at the Property other than dredge material.
3. **INSPECTION.** Purchaser hereby warrants to Port that Purchaser has had the opportunity to fully inspect the Property and Materials thereon. Purchaser further warrants to Port that Purchaser enters into this Agreement based solely upon Purchaser's judgment with respect to the Property and any Material thereon without any reliance upon any representation of Port whatsoever. Purchaser expressly agrees the Property and Material available under this Agreement are provided "AS IS."
4. **NO WARRANTIES.** Port makes no representations or warranties of any kind and hereby DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO IMPLIED

WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE with respect to any Material to which this Agreement applies. By way of example and without limiting the foregoing disclaimer, the FOLLOWING SPECIFIC MATTERS ARE NOT WARRANTED and are EXCLUDED from this Agreement:

- A. The MERCHANTABILITY of any Materials to which this Agreement applies.
 - B. The CONDITION of the Materials, Property and Disposal Sites. The Property, Disposal Sites, and any Materials are provided "AS IS." Port makes no representations of any kind regarding the suitability of the Property or any Materials for Purchaser's intended use, including, but not limited to whether Purchaser's intended use of the Property, or any Materials thereon complies with governmental laws and regulations; whether access to the Property exists for Purchaser's intended use; and whether hazardous substances exist on the Property.
 - C. The VOLUME, QUALITY, OR GRADE of any Materials on the Property. Any descriptions of the Materials made by Port are intended only for administrative and identification purposes.
 - D. The CORRECTNESS OF ANY PRE-PROPOSAL OR OTHER DOCUMENTS PREPARED BY OR FOR PORT related to the sale of any Materials. All such documents have been prepared for Port's administrative purposes only.
5. **NON-EXCLUSIVE USE.** The Purchaser's sale of "Material" is not to be exclusive to only Purchaser. Purchaser must sell "Material" to any willing and able customer.
 6. **TERM.** The term of this Agreement shall commence on the Effective Date herein and shall terminate at midnight December 31, 2019 without notice, unless sooner terminated as provided herein (the "Term").
 7. **MATERIAL PAYMENT.** Purchaser shall pay \$##### (###Dollars and ##/100) per ton to the Port of Woodland for each ton of Material removed from the Property.
 - A. Payments.
 1. Purchaser shall pay to Port one-half (1/2) of the purchase price of 135,000 tons of Material to be removed on or before the Effective Date of this Agreement.
 2. Purchaser shall pay to Port one-quarter (1/4) of the purchase price of the Material to be removed on or before May 5, 2019.
 3. Purchase shall pay the remaining purchase price of the Material to be removed on or before June 5, 2019.
 4. Purchaser shall pay a late fee of \$1,000.00 (ONE THOUSAND DOLLARS AND NO/100) per day for each day any Material payment received after its due date. After any failure to pay a Material payment by the due date specified, Purchaser shall be denied entry to the Property, and the gate to the Property shall be locked, until the payment due and late fees are paid in full.
 - B. Reports. Purchaser shall provide Port monthly written summary statements of Material removed, including who the Material was sold to, individual truck volume and date of removal for each truck.

- C. Daily Records. Purchaser shall maintain accurate daily records of Material removed from the Property by truck count. These records shall be made by or under direct supervision of a qualified individual. Accurate daily records shall include at a minimum, the name of the driver, truck identification, truck volume, date and extraction area. These records may be requested to be presented to Port at any time.
 - D. No Refunds. Purchaser shall not be entitled to any refunds of the purchase price paid if a total of 135,000 tons of Material is not removed by December 31, 2019.
 - E. Overage. If Purchaser's records reveal that more than 135,000 tons of Material has been removed from the Property, Port shall have the option of requiring Material to be brought onto the property
8. **RECORDS**. Throughout the Term of this Agreement and thereafter until all payment obligations are finally satisfied, Purchaser shall keep and maintain all detailed records of its operation on the Property and detailed records related to the amount of Material removed from the Property by Purchaser including but not limited to truck or loader counts. These records are subject to verification by field checks and inspection of Purchaser's books by the Port of Woodland or its designee at any time during normal business hours and in the presence of Purchaser's designated representative. Such checks and inspections by the Port of Woodland shall be performed in such a fashion as not to unduly interfere with Purchaser's authorized uses of the Property. All records maintained by Purchaser shall be kept in accordance with generally accepted accounting principles.
9. **PLAN OF OPERATIONS**. Purchaser has provided the Port of Woodland with Purchaser's Plan of Operations, attached hereto as Exhibit B. The operating plan shall be approved by the Port of Woodland prior to initiation of any operations on the Property by the Purchaser. The Port of Woodland is required to submit the Plan of Operations into the Department of Natural Resources (DNR) for final approval and contingent on the Port's permit. The Plan must be submitted ten (10) business days in advance of commencement of Material excavation. Any proposed substantial departure in Purchaser's operations from the proposed plan attached hereto shall be submitted in writing to the Port of Woodland for review and approval. The proposed plan of operations shall include, at a minimum the following information:
- a. A summary of activities to be performed on the Property, including excavation areas of Property and site improvements such as loading ramps, slope face stabilization, and access road improvements, and the means of compliance requirements and limitation upon excavation, including as set forth in Paragraph 9F below.
 - b. Detailed description of method of Material extraction/removal, transportation, and volume determination.
 - c. Detailed description of method of Property reclamation.
 - d. Quantities of Material expected to be extracted and removed from Property.
 - e. Drawings generally to scale showing: areas from which Materials are to be extracted and removed and which areas are to be reclaimed, roads, areas of site rehabilitation, and other relevant operating information.
 - f. List of equipment to be used.
 - g. Method(s) of waste disposal.
 - h. Method of controlling and suppressing brush and other fires.
 - i. Method for maintaining air and water quality.
 - j. Method for maintaining dust control.

- k. Method for maintaining traffic safety.
- l. Hours of operation for project.
- m. Method for protecting Property from vandalism and trespassing.
- n. Description of how excavation will comply with the Corps of Engineers method for removal of Material as well as Department of Natural Resources Plan of Operation requirements.
- o. Any other information Port of Woodland determines may be relevant to Purchaser's use of Property.

The plan of operations approved by the Port of Woodland shall be complied with by Purchaser unless amended in writing by the parties. The Port of Woodland's approval is not a warranty that the plan is economic, safe, or meets the requirements of all or any applicable laws or regulatory authorizations. The Port of Woodland may require the filing of amendments to the plan of operations if warranted to ensure the compliance by Purchaser with the requirements of this Agreement. Any changes to the Plan of Operation must be in writing and presented at least seven (7) business days prior to any changes being implemented.

10. OPERATING REQUIREMENTS

- A. Hours. Purchaser's hours of operations shall be limited to 7 AM to 5 PM Monday through Friday.
- B. Trucks. No truck staging will be allowed prior to the opening of the Property. No truck parking shall be allowed on public roads prior to opening the Property. All trucks shall be driven at posted speeds on public roads.
- C. Maximum Material Removal. Purchaser may not remove more than 15,000 tons of Material in any calendar month during the term of this Agreement, nor more than 135,000 total tons of Material during the term of this Agreement.
- D. Berm Maintenance and Restoration. The original berm on the Property constructed by the Corps of Engineers as a dike is not to be removed and its integrity is not to be altered. The Purchaser shall restore the berm to the United States Corps of Engineers' specifications immediately after 135,000 tons of Material are removed.
- E. Supervision. Purchaser shall maintain adequate supervision of the Property and its operations on the Property at all times during the terms of this Agreement, to ensure that the provisions of this Agreement and applicable federal, state, and local laws, regulations and ordinances governing the operations conducted on the Property are enforced.
- F. No Unauthorized Use. Purchaser shall maintain the Property secure from unauthorized use at all times during the Terms of this Agreement.
- G. Material Extraction. Material extraction shall at all times be carried out adhering to sound engineering, environmental principles and practices, and the Corps of Engineers preferred methods of Material removal or another method approved by the Corps of Engineers. Loosened slope faces shall be scaled back at all times and all highwalls of other hazards shall be remedied immediately to provide safe working conditions.

Purchaser shall maintain normal drainage patterns and shall avoid any ponding of water on the Property.

- H. Limit Dust and Degradation. Purchaser shall maintain the Property in a neat and orderly condition and shall take all prudent measures to prevent degradation or destruction of the Property or surrounding area. Purchaser shall take all reasonable steps to minimize blowing dust, such as reclaiming areas the use of which are complete, continuously watering disturbed or bare areas open to excavation, and other appropriate steps as required to avoid blowing dust.
- I. Property Restoration. The Parties agree that upon completion of Purchaser's operations the Property shall be left in a condition consistent with future use of the Property. Therefore:; (i) Purchaser shall leave no pits or depressions or uneven topography and shall smooth the contours of the excavated areas. Purchaser shall also ensure that no ponding, soil washing or erosion occurs and that existing water drainage patterns are maintained; (ii) Purchaser shall reestablish all preexisting roads and access roads; (iii) Purchaser shall obtain Port of Woodland approval prior to bringing additional material onto the Property, if necessary, for reclamation purposes; (iv) and berm and other property reclamation shall be compliant with all federal, state and local codes, regulations and statutes and other applicable statutes and regulations that may be enacted by an entity with jurisdiction over the operation conducted on the Property during the term. Purchaser's responsibility to reclaim the Property shall include all areas of developed, excavated or otherwise disturbed by Purchaser. Purchaser's responsibility to reclaim the Property under the terms of this Agreement shall survive termination of this Agreement. It is the intent of this agreement that Purchaser shall reclaim all disturbed areas as soon as Purchaser's use of the area is concluded.
- J. Violations. Any violation of the Operating Requirements of this Section 11 shall be penalized by the following process: 1 First violation- written warning, 2) Second Violation: Fine of \$5,000, and 3) Third Violation: Purchaser shall forfeit all rights to the Materials remaining on the Property, and there shall be no refund of the purchased price paid by Purchaser.

11. **DEFAULT, REMEDIES AND TERMINATION.** The failure of Purchaser to comply with any term or condition of this Agreement or the failure of Purchaser to conform its conduct to the standards imposed by this Agreement and all applicable statutes, regulations, ordinances, rules and codes, shall be deemed a default under this Agreement, unless otherwise provided herein, the Port of Woodland shall provide Purchaser with ten (10) days written notice of default and the opportunity to cure. If, after ten (10) day notice period has expired, the Purchaser has failed to cure the default, the Port of Woodland may, at its sole option, terminate this Agreement. In addition, the Port of Woodland shall be entitled to any and all remedies provided by law or equity to which the Port of Woodland may resort cumulatively or in the alternative. Termination of this Agreement shall not operate to relieve Purchaser from the payment of any sum due to the Port of Woodland, from any claim or damage previously accrued or then accruing against Purchaser, or for reclamation of the Property to the satisfaction of the Port of Woodland as required herein.

12. **ASSIGNMENT, SUCCESSORS IN INTEREST.** The rights and obligations granted and assumed by Purchaser hereunder may not be assigned, delegated or otherwise transferred.

13. **INDEMNIFICATION.** Purchaser shall perform all of its obligations and carry on all of its operation and activities entirely at its own risk and responsibility. Purchaser shall indemnify, defend and hold harmless the Port of Woodland, its Commission, officers, agents and employees harmless from and against any and all loss, expense, damage, claim, demand, judgment, fee, charge, lien, liability, action, cause of action or proceedings of any kind whatsoever whether arising on account of damage to or loss of property, or personal injury, emotional distress or death arising directly or indirectly in connection with the performance, activities or operations of Purchaser hereunder, whether the same arises before or after completion of Purchaser's operations or expiration of this Agreement, except for injury resulting from the Port of Woodland gross negligence or intentional injury. This indemnification shall survive any termination or expiration of this agreement. In the event any part of this agrees to provide to the Port of Woodland with the maximum indemnification allowed by law.

14. **PERFORMANCE BOND.**

- A. Purchaser shall secure a bond in an amount of at least \$250,000.00 (TWO HUNDRED FIFTY THOUSAND DOLLARS AND NO/100) from a qualified broker licensed to do business in the State of Washington for the benefit of the Port of Woodland providing for Purchaser's full performance under the terms of this Agreement. The surety company shall be subject to approval by the Port of Woodland. The bond shall be maintained in full force and effect until this Agreement is terminated and the Port of Woodland is satisfied that Purchaser has met all its obligations under the terms and conditions of this Agreement.
- B. Purchaser remains liable for any deficiencies for any amounts owed to the Port of Woodland that remains after application of the performance bond.
- C. The bond shall not be cancelled without occurrence to the Port of Woodland.

15. **INSURANCE.** Without limiting Purchaser's indemnification, it is agreed that Purchaser shall purchase, at its own expense, and maintain in force at all times during the Term of this Agreement, and thereafter while any obligations of Purchaser under this Agreement remain to be performed, the policies of insurance specified below. Where specific limits are shown, it is understood that they shall be the minimum acceptable limits. If Purchaser's policy contains higher limits, the Port of Woodland shall be entitled to coverage to the extent of such higher limits. Certificates of Insurance must be furnished to the Port of Woodland upon signing this Agreement and must be provided for a 30-day prior notice to the Port of Woodland of cancellation, nonrenewal or material change of the policies. Failure to furnish satisfactory evidence of insurance or the lapse of a policy is a material breach and grounds for termination of this Agreement. Each Workers' Compensation Insurance policy shall be endorsed with a waiver of subrogation in favor of the Port of Woodland. All other insurance policies required by this Agreement shall be endorsed to provide that such insurance shall apply as primary insurance and that any insurance or self-insurance carried by the Port of Woodland will be excess only and will not contribute with the insurance required by this Agreement; shall be endorsed to name Port of Woodland as an additional insured; and shall provide for a waiver of subrogation in favor of the Port of Woodland. All endorsements shall reference this Agreement. All insurance shall be on an occurrence and not a "claims made" basis.

- A. **Workers' Compensation Insurance.** Purchaser shall provide and maintain, for all employees of the Purchaser engaged in work under this Agreement, Workers' Compensation Insurance and Employer's Liability Insurance in accordance with the laws of the State of Washington.

The Purchaser shall be responsible for Workers' Compensation Insurance for any subcontractor who directly or indirectly provides services under this Agreement. This coverage must include statutory coverage for states in which employees are engaging in work and employer's liability protection not less than \$500,000.00 (FIVE HUNDRED THOUSAND DOLLARS AND NO/100) per occurrence. Where applicable, coverage for all federal acts (i.e. U.S.L. & H and Jones and Harbor Acts) must also be included.

- B. Comprehensive (Commercial) General Liability Insurance. With coverage limits not less than \$2,000,000 (TWO MILLION DOLLARS AND NO/100) single limit per occurrence and \$4,000,000 (FOUR MILLION DOLLARS AND NO/100) annual aggregate where generally applicable including premises-operations, independent contractors, products/compelled operations, broad form property damage, blanket contractual, and personal injury endorsements.
- C. Comprehensive Automobile Liability Insurance. Coverage all owned, hired, and non-owned vehicles with coverage limits not less than \$2,000,000 (TWO MILLION DOLLARS AND NO/100) combined single limit per occurrence bodily injury and property damage.

16. HAZARDOUS MATERIAL AND FUEL

- A. As used in this Permit, the Term "Hazardous Material" means any substance that now or in the future becomes regulated or defined under any federal, state, or local statute, ordinance, rule, regulation, or other law relating to human health, environmental protection, contamination, pollution, or cleanup.
 - a. "Release or threatened release of Hazardous Substance" means a release or threatened release as defined under any law described in 15A. under "Hazardous Material."
 - b. "Utmost Care" means such a degree of care as would be exercised by a very careful, prudent, and component person under the same or similar circumstances; the standard of care applicable under the Washington State Model Toxics Control Act ("MTCA"), Chapter 70.105 RCW, as amended.
 - c. "Licensee and affiliates" when used in this section means the Port of Woodland and Purchaser including contractors, agents, employees, guests, invitees, affiliates or other person the Property with the Port or Purchaser's permission.
- B. Purchaser, its agents, employees, contractors, or invitees, may not cause or permit any Hazardous Material, except as noted in subpart C of this paragraph, to be brought upon, kept, used, or permitted in or about the Property or adjoining property owned by the Port of Woodland. If (i) Purchaser, its agents, employees, contractors or invitees, breach these obligations, or (ii) Purchaser, its agents, employees, contractors, or invitees, results in injury, illness, or contamination of the Property, or (iii) contamination of the Property or adjoining property owned by the Port of Woodland, by Hazardous Material otherwise occurs by the acts of Purchaser, its agents, employees, contractors, or invitees, then Purchaser shall indemnify, defend, and hold the Port of Woodland, its Commission, officers, agents, and employees harmless from any and all claims, judgments, damages, penalties, fees, costs, liabilities, or losses (including, without limitation, diminution of usable space or of any amenity of the Property, and sums paid in settlement of claims, attorney's fees, consultant fees, and expert fees) which arise during or after the period in which this permit is in effect as a result of such contamination so long as the acts or omissions occur during the term,

extensions or holdover period of the Permit. This indemnification of the Port of Woodland by Purchaser includes, with limitation, costs incurred in connection with defense, enforcement, or substantiation of any provisions of this Permit, any investigation of site conditions or any clean-up, remedial, removal, or restoration work required by any federal, state or local government agency or political subdivision because of Hazardous Materials present in the soil or groundwater on or under the Property and adjoining Property or adjoining property owned by the Port of Woodland which was caused or negligently permitted by Purchaser results in any contamination of the Property or adjoining property owned by the Port of Woodland, Purchaser shall promptly take actions at its sole expense as are necessary to return the property to the condition existing prior to the introduction of any Hazardous Material to the Property or the adjoining property. The Port of Woodland's approval of such remedial actions shall first be obtained, but approval shall not be unreasonably withheld so long as actions would not potentially have any material adverse long-term or short-term effect on the Property or the adjoining property owned by the Port of Woodland.

- C. Purchaser, its agents, employees, contractors, or invitees may bring, keep, and use fuel, oil, grease, and other materials that are necessary for the operation and maintenance of its equipment used in its Operations on the Property and for transportation to and from the Property, in a fuel storage containment area, and stored in containers.
- D. The obligations arising under this paragraph shall survive expiration or earlier termination of this Permit.
- E. Nothing in this paragraph is intended to relieve Purchaser, its agents, employees, contractors, or invitees from any responsibility imposed by any government agency dealing with Hazardous Materials.
- F. Any fuel, oil or grease spill in excess of legal amounts (5 gallons) on the Property shall be immediately reported to the Port of Woodland and the Department of Ecology.

17. **NOTICES.** All payments and notices shall be either hand delivered or sent, postage prepaid, through US Mail or other nationally recognized mail or courier service, the parties at the addresses shown below. All notices shall be deemed given three (3) days after deposit in the mail. Fax and email notification is acceptable and deemed given same day if it is faxed or emailed with a scanned copy of original signature, if the original letter/document is mailed or sent by courier service on the same day as the fax or email to the recipient.

PORT OF WOODLAND
1608 Guild Road
Woodland, WA 98674-9493

PURCHASER

18. **NOTICE OF COMMENCEMENT OF OPERATIONS.** Purchaser shall notify the Port of Woodland prior to commencing operations on the Property.

19. **REGULATIONS AND PERMITS.** Purchaser shall obtain and maintain in force all permits and licenses necessary for the conduct of its authorized use of the Property. Purchaser shall, at its own expense, comply with all laws, order, ordinances and regulations of federal, state or local authorities now or hereafter in effect during the Term and with any lawful direction of any public officer in the conduct of its business on the Property.

20. **TAXES AND ASSESSMENTS.** Purchaser shall be responsible for the payment of any and all taxes and assessments, including but not limited to resources, and property taxes levied upon the Material, improvements, and/or the Property, as a result of Purchaser's activities, and shall cause said taxes and assessments to be paid prior to the delinquency date. The Port of Woodland shall not be responsible for payment of any special assessments or special assessments for provisions of utilities to Property for Purchaser's activities.
21. **LIENS.** Purchaser shall be solely responsible for paying for all labor performed upon the Material furnished to the Property at the request of Purchaser. Purchaser shall keep the Property free and clear of any and all mechanic's, labor or materialmen's liens arising from the performance of labor upon of the furnishing materials to the Property. To the extent lawfully required, Purchaser shall post and record notices of the non-responsible for the benefit of the Port of Woodland pursuant to Washington Statutes.
22. **UTILITIES.** Purchaser shall be responsible for any pay, prior to the delinquency date, all charges for utilities supplied to the Property for Purchaser's activities. The Port of Woodland shall not be responsible for constructing or maintaining any utilities needed to service the Property for Purchaser's activities and further makes no representation or warranty as to availability of such services.
23. **IMPROVEMENTS.** Purchaser shall be solely responsible for the construction and maintenance of all improvements necessary for the extraction of Material from the Property, including but not limited to: access roads, parking areas, and any other improvements approved by the Port of Woodland as part of Purchaser's plan of operations described in Paragraph 8 herein (hereinafter "Improvements"). Any additional improvements or other modifications to the plan of operations shall require approval of the Port of Woodland and is not intended to indicate that the Port of Woodland approves the design, safety features, specifications, code compliance, etc. of the plan. Purchaser shall be solely responsible for ensuring that all the improvements are constructed to code, meet and all permitting requirements and are maintained in a safe well-groomed manner.
24. **ACCESS.** Access to and within the Property shall be the responsibility of the Purchaser. The Purchaser will not construct or maintain access roads to or within the Property or acquire access easements. Before construction of any road on or across the Property, Purchaser shall obtain from the Port of Woodland written approval of the proposed location and the construction standards of the road. Purchaser shall be responsible for obtaining necessary permits for road construction to or within the Property.
25. **PROPERTY REPORTS AND DATA.** Purchaser shall provide the Port of Woodland with copies of all geological, geophysical and engineering data, maps, logs of drill holes, results of sampling and similar data and any other reports concerning the Property secured by Purchaser.
26. **CONDITION AT TERMINATION.** Prior to termination of this Agreement, Purchaser shall remove all of Purchaser's debris, trade fixtures, equipment, personal property and improvements, with the exception of utility systems, roads and building pads, that if approved by the Port of Woodland, may be left in place provided that their removal is not otherwise required by a governmental agency with jurisdiction over the Property. Purchaser's removal thereof shall be

made in a manner which does not leave the Property in a dangerous or unsafe condition. All injuries to the Property which result from removal of Purchaser's debris, trade fixtures, equipment, person property and improvements shall be completely remedied by Purchaser at its sole cost and expense. Purchaser shall comply with the Port of Woodland's reasonable requirements concerning the resultant appearance of the Property. In the event Purchaser does not remove all debris, trade fixtures, equipment, personal property and improvements from the Property and repair any damage to the Property caused by Purchaser, the Port of Woodland may: (1) remove or cause to have removed all Purchaser's debris, trade fixtures, equipment, personal property and improvements; (2) apply the performance bond to offset removal costs and costs to repair any damage to the Property caused by Purchaser; and (3) bill Purchaser for any and all costs associated with the removal and report over and above those offset by the performance bond; (4) Purchaser's debris, trade fixtures, equipment, personal property and improvements or any thereof shall become the property of the Port of Woodland, if the Port of Woodland so elects in writing and gives notice thereof to Purchaser. Purchaser agrees to defend and indemnify the Port of Woodland's rights conferred by this provision.

27. **FIRE SUPPRESSION.** Purchaser shall take all prudent or necessary precautions for the prevention of wild fires and is responsible for the suppression, and must bear the suppression costs, of all destructive or uncontrolled fires occurring in or outside the Property resulting from any Purchaser's operations under this Agreement.

28. **GENERAL ADMINISTRATIVE APPEAL.**

- A. Protest to Director. Purchaser may protest to the executive Director of the Port of Woodland and request reconsideration of the Port of Woodland's decision stated in this letter. If Purchaser wishes to make a protest it must: (1) notify the Executive Director of the Port of Woodland, in writing, at: Port of Woodland, Attn: Executive Director, PO Box 87, Woodland WA 9874 within ten (10) business days from the date of this letter, and (2) explain in detail all the reasons for the protest and the form of relief requested. The Executive Director shall issue a written determination generally within fourteen (14) business days after the protest has been filed.
- B. Appeal to Commission. An Appeal of the decision of the Executive Director from the protest and request for reconsideration may be filed within the Port of Woodland's Executive Director's decision is sent to the protester. The Commission, at their sole discretion, appoint an independent hearing officer to hear the appeal and recommend a decision. The hearing officer shall prescribe such further appeal procedures, as he or she deems appropriate. The decision of the Commission shall be issued generally with thirty days (30) after receipt of the appeal.
- C. Other Procedures. To the extent any further or more specific procedures appear in the discretion of the Port of Woodland, to be necessary or appropriate, the Port of Woodland may specify such procedures as appeal consistent with the minimum process required by law, if any. In the event the Executive Director or Port Commission are unavailable or disqualified from participating in any process under this petition for reconsideration or protest, the Port of Woodland may appoint such person as it deems appropriate to fulfill that function.

29. **COST OF SUSTAINING AN ACTION.** In the event either the Port of Woodland or Purchaser brings legal action against the other, claiming a breach or default of this Agreement, the losing party in such litigation shall pay to the prevailing party the cost of sustaining such action, including reasonable attorney's fees as may be fixed by the court.

30. **GENERAL PROVISIONS.**

- A. **Modification.** This Agreement may be modified only by a document in writing, executed by both the Port of Woodland and Purchaser. No approval of a Plan of Operations shall constitute an amendment of this Agreement, unless the Plan of Operations approval specifically and expressly states it constitutes an amendment to this Agreement.
- B. **Waiver.** The failure of either Party to exercise any provision hereunder shall not constitute a waiver of the right to exercise that provision.
- C. **Time.** Both parties agree that time is of the essence and that time specifications contained herein shall be strictly construed.
- D. **Authorship.** In the event of ambiguity, this Agreement shall be deemed to have been prepared equally by both parties and shall be construed accordingly.
- E. **Authority.** Both parties represent and warrant that they have the authority to enter into this Agreement.
- F. **Relationship.** This Agreement shall in no way be construed so as to create a joint venture, agency, employment or partnership relationship between the Port of Woodland and the Purchaser.
- G. **Severability.** If any provision of this Agreement or any application thereof shall be invalid or unenforceable, the remainder of this Agreement and any other application of such provision shall not be affected thereby.
- H. **Paragraph Heading.** The descriptive paragraph headings are for convenience and reference only. The words contained therein shall not be used to help to expand, modify, amplify or aid in the interpretation, construction or meaning of this Agreement.
- I. **Governing Law.** This Agreement shall be interpreted and construed in accordance with, and governed and enforced in all respects by the laws of the State of Washington. All legal proceedings arising as a result of this Agreement shall be brought only in the Washington Superior Court, Washington.
- J. **Incident Reports.** During the Term of this Agreement and without prior demand by the Port of Woodland, all incidents that take place on the Property resulting in property damage or emergency response, including police, medical, and fire shall be reported, in detail, to the Port of Woodland within forty-eight (48) hours of said occurrence.
- K. **Drainage.** Purchaser's activities shall be conducted so as to minimize disturbance of drainage systems, changing course or character of water bodies, seeps or marshes, if any, and to minimize disturbance or damage to the Property resulting from Purchaser's activities.
- L. **Survey.** Discrepancies, conflicts in boundary lines, encroachments, and any facts which a correct survey and inspection of the Property would disclose under this Agreement are not the responsibility of the Port of Woodland. All survey monuments and accessories, such as witness corners, reference monuments and bearing trees shall be protected from

disturbance. Any damage or destroyed monuments or markers shall be re-established in accordance with accepted survey practices at the Purchaser's sole expense.

- M. Inspection. The Port of Woodland may enter upon the Property at all reasonable times for the purpose of the inspection to determine whether Purchaser is complying with its obligations under this Agreement. Purchaser shall facilitate such inspection in every reasonable way; provided however, that the Port of Woodland shall enter so as not to unreasonably disrupt Purchaser's occupancy and use of the Property.
- N. Disclaimer of Warranty. The Port of Woodland makes not warranty, either express or implied, not assumes any liability whatsoever, regarding the physical, social, economic or environmental aspect of the Property, to include, without limitation, the quality, quantity or fitness of the Material on the Property. The Port of Woodland shall not be liable for any damages related to Purchaser's use of the Material for any purpose. Purchaser understands and agrees that the Port of Woodland is making no warranties or representations of any kind concerning the Property or the Material and accepts the property and associated Material in an "as is" condition, regardless of defects, either patent or latent.
- O. Entire Agreement. This Agreement constitutes the entire Agreement and understanding between the parties with respect to the subject matter hereof. In the event of conflicts between this Agreement and any approved Plan of Operations, the terms of this Agreement shall control, unless the Plan of Operation approval specifically and expressly states it constitutes an amendment to this Agreement.
- P. Survival. The obligations of Purchaser under this Agreement arising or accruing before the expiration or termination of this Agreement shall survive such expiration or termination.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective on the day and year of the last signed below.

PORT OF WOODLAND

Paul Cline, President

Dale Boon, Secretary

Robert Wile, Commissioner

PURCHASER

EXHIBIT A

Austin Point Map

Successful bidder will access the site via the Austin Point north access gate and temporary road. The material for removal is located on the north end of the area and is highlighted on the map. Access beyond the area is not permitted.



Appendix B

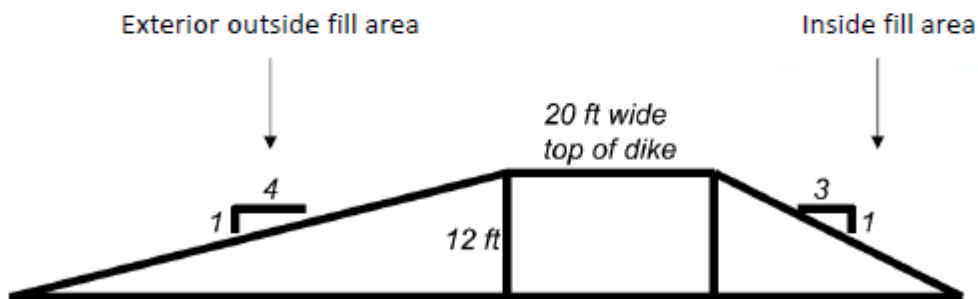
Dredge Material Berm Replacement Requirements PER USACE

U.S. Army Corps of Engineers Portland District

Requirements for material removal from a dredged material placement site

These operational procedures will allow for additional future placement:

1. Removal should be as level as possible. For instance: instead of removing 10 feet from half of the site, remove 5 feet from the entire site.
2. If there is a difference in elevation it should be sloped from the back (farthest from the river) to the front (closest to the river).
3. Existing perimeter dredged material containment berms should be left in place or reconstructed to the following dimensions:



Appendix C

Sample Monthly Spreadsheet to Port of Material

An Excel spreadsheet will be provided to the successful bidder. **This is the Report Sample.**

Month	Quantity Removed	To Date Total Removed	Balance of Material	# of Trucks
		0	135,000 tons	
April 1-30		0	#VALUE!	
May 1-31		0	#VALUE!	
June 1-30		0	#VALUE!	
July 1-31		0	#VALUE!	
August 1-31		0	#VALUE!	
September 1-30		0	#VALUE!	
October 1-31		0	#VALUE!	
November 1-30		0	#VALUE!	
December 1-31		0	#VALUE!	
TOTAL	0			