

**CONTRACT NO.**

for

**CONSTRUCTION OF TWO (2) 50' ALUMINUM FIREBOATS**

This Contract, made and entered into this 1st day of February, 2012, by and between Oregon Iron Works, Inc. an Oregon Corporation, hereinafter called Contractor, and the City of Portland, a municipal corporation of the State of Oregon, by and through its duly authorized representatives, hereinafter called City. This Contract may refer to the City and Contractor individually as a "Party" or jointly as the "Parties."

**WITNESSETH:**

ARTICLE I. The Parties hereto mutually covenant and agree to and with each other as follows:

1. **SPECIFICATIONS:** Provide detailed design and Construction of two (2) 50'x16', 40+ knot, 6,000 GPM, NFPA Type III Fast Attack Fireboat in accordance with the SPECIFICATION FOR CONSTRUCTION OF 50 FT ALUMINUM FAST ATTACK FIREBOAT (111064-832-1) referenced herein as the SPEC Attachment A.

2. **EFFECTIVE DATE AND DURATION:** The initial term of this Contract shall begin on February 1, 2012 and shall expire on October 15, 2014 unless terminated sooner as provided herein. The Parties may agree, by mutual consent, to extend this Contract for an additional three (3) year period, taken individually or in multiple years. At least thirty (30) days prior to the expiration of the initial term, or extension, the Parties shall commence discussions if they desire to extend the Contract. The Contractor shall provide a written extension proposal within fifteen (15) calendar days following the City's request for such a proposal. However, nothing binds or requires either Party to extend this Contract. The total term of this Contract shall not exceed five (5) years.

NOTE: The maximum manufacturing and delivery period for each vessel as ordered under this contract shall be within 900 calendar days from date the order is placed for that vessel.

3. **CONSIDERATION:** The City agrees to pay Contractor a sum not to exceed \$5,013,277.00 for receipt and acceptance of the goods. Interim payments shall be made to the Contractor according to the schedule identified in Attachment A.

4. **INVOICING:** The City of Portland is a tax-exempt governmental agency. Prices shall not include federal, state, local, or other taxes designated now or hereafter, unless the City is responsible therefore. The Contractor shall submit billings in a timely fashion. Invoices shall be sent to:

City of Portland  
Portland Fire & Rescue  
1135 SE Powell Blvd. Attn: Logistics Center  
Portland, OR 97202

Contractor is at all times solely responsible for billing accuracy and timeliness; Contractor shall provide invoices for the goods and services to the City in paper form. Invoices will not be processed for payment until receipt of a properly completed invoice and until all invoice items are received and satisfactory performance of Contractor has been attained. Invoice payment terms including any offered prompt payment discounts shall start on the date of the invoice.

5. **INVOICE PAYMENT:** Invoices submitted for payment shall identify the goods and services, the unit price, quantity, extended price, order number and invoice total. Billing details may be agreed upon between the Parties. Invoicing for goods and services shall at all times be in arrears. Invoices for payment shall be provided to the City within ninety (90) days of successful delivery of the billed goods and services.

Revised invoices or billing adjustments shall apply only to goods and services that can be verified by the City. Requests for such adjustments shall be submitted in writing to the City within six (6) months of acceptance of the goods and services, shall reference the original invoice in which the error was made, and contain the level of detail defined in billing detail above. Billing adjustments shall not be submitted to the City in any form other than a paper document. The City shall pay undisputed portions of disputed or incorrect invoices where the City can easily identify the undisputed portion. Failure by the City to pay any portion of or the entire invoiced amount based on Contractor billing errors, goods and services that fail to comply with this Contract, or disputed charges shall not constitute default under this Contract. Payment of an amount less

than the total amount due on all unpaid invoices shall be any particular amount or item, which is subject to any claim of error or dispute between the Parties, without prior written City approval.

ARTICLE II. Shipping of goods and materials shall not commence until all insurance requirements have been met and certificates thereof have been filed with the Chief Procurement Officer or the Auditor.

**6. INSURANCE – PROOF OF COVERAGE:** The insurance requirements are as follows.

Commercial General Liability Insurance – Public Liability and Property Damage

The Contractor shall provide and maintain public liability and property damage insurance in the minimum amount of \$1,000,000 per occurrence that protects the Contractor and the City and its officers, agents and employees from any and all claims, demands, actions and suits for damage to property or personal injury arising from the Contractor's work under this Contract

The insurance shall be without prejudice to coverage otherwise existing, and shall name as additional insureds the City and its officers, agents and employees. Notwithstanding the naming of additional insureds, the insurance shall protect each additional insured in the same manner as though a separate policy had been issued to each, but nothing herein shall operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only one person or interest had been named as insured.

The coverage shall apply as to claims between insureds on the policy. The insurance shall provide that the insurance shall not terminate or be canceled without thirty (30) days written notice first being given to the City Auditor. If the insurance is canceled or terminated prior to completion of the Contract, the Contractor shall provide a new policy with the same terms. The Contractor agrees to maintain continuous, uninterrupted coverage for the duration of the Contract.

Automobile Liability

Automobile liability insurance with a combined single limit of not less than \$1,000,000 each occurrence for bodily injury and property damage. The insurance shall include coverage for any damages or injuries arising out of the use of automobiles or other motor vehicles by the Contractor. The insurance shall include coverage for any damages or injuries arising out of the use of automobiles or other motor vehicles by the Contractor.

Workers' Compensation

Prior to the performance of any work under a Contract awarded by the City, the Contractor shall comply with the workers' compensation law, ORS Chapter 656, as it may be amended, and if workers' compensation insurance is required by ORS Chapter 656, the Contractor shall maintain coverage for all subject workers as defined by ORS Chapter 656 and shall maintain a current, valid certificate of workers' compensation insurance on file with the City Auditor for the entire period during which work is performed under the Contract.

Certificate of Insurance

As evidence of the required insurance coverage, Contractor shall furnish acceptable insurance certificates to the City with the return of the signed Contract. The certificates shall specify the City of Portland as additional insured and shall include a 30-day notice of cancellation clause.

Notwithstanding the naming of additional insured, said policy will protect each insured in the same manner as though a separate policy has been issued to each; but nothing herein will operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts.

ARTICLE III. In consideration of the premises, and in accordance with the provisions for acceptance and payment for work set forth in these Standard Terms and Conditions and Special Terms and Conditions, the City and Contractor hereby agrees as follows:

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## STANDARD TERMS AND CONDITIONS

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**7. INDEPENDENT CONTRACTOR STATUS:** The Contractor is engaged as an independent contractor and shall be responsible for any federal, state, and local taxes and fees applicable to payments hereunder. The Contractor, its subcontractors, and their employees are not employees of the City and are not eligible for any benefits through the City including, without limitation, federal social security, health benefits, workers' compensation, unemployment compensation, and retirement benefits.

**8. NO THIRD PARTY BENEFICIARIES:** Contractor and City are the only Parties to this Contract and are the only Parties entitled to enforce its terms. Nothing in this Contract gives, assigns or provides any benefit or right, whether directly, indirectly, or otherwise, to third persons.

9. **SUCCESSORS IN INTEREST:** The provisions of this Contract shall be binding upon and shall inure to the benefit of the Parties hereto, and their respective successors and approved assigns.

10. **SURVIVAL:** The terms, conditions, representations, and all warranties contained in this Contract shall survive the termination or expiration of this Contract.

11. **COMPLIANCE WITH APPLICABLE LAW:** In connection with its activities under this Contract, Contractor shall comply with all applicable federal, state and local laws and regulations. All statutory, charter and ordinance provisions applicable to public contracts in the City of Portland and the State of Oregon shall be followed with respect to this Contract. The following additional conditions apply to this solicitation and any resultant purchase order or contract: Appendix A as attached hereto.

The Contractor must be in compliance with the laws regarding conducting business in the City of Portland before an award may be made and shall be responsible for the following:

**Certification as an EEO Affirmative Action Employer:** The Contractor is certified as an Equal Employment Opportunity Employer as prescribed by Chapter 3.100 of the Code of the City of Portland through 10/31/2012. The certification will be maintained throughout the duration of the Contract.

**Non-Discrimination in Employee Benefits (Equal Benefits):** The Contractor has complied by providing the Equal Benefits Compliance Worksheet/Declaration Form indicating: XXXXX, Option XXXXX.

**Business License:** The Contractor license # 111577 is in compliance with the City of Portland Business License requirements as prescribed by Chapter 7.02 of the Code of the City of Portland and will be maintained throughout the duration of this Contract.

**Wage Rates:** State of Oregon, Bureau of Labor and Industries (BOLI) wage rates are required for all work on contracts that total \$50,000 and above.

The City has determined this Contract is not subject to Prevailing Wage Rates.

12. **GOVERNING LAW / VENUE:** The provisions of this Contract shall be construed in accordance with the provisions of the laws of the State of Oregon without reference to its conflict of laws provisions. Any action or suits involving any question arising under this Contract shall be brought in the appropriate court in Multnomah County, Oregon. By executing this Contract the Contractor agrees to in personam jurisdiction of the Oregon courts.

13. **NONDISCRIMINATION:** Contractor agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Contractor also shall comply with the Americans With Disabilities Act of 1990 (Pub L. No. 101-336) including Title II of that Act, ORS Chapter 659.425, and all regulations and administrative rules established pursuant to those laws.

14. **INDEMNITY:** Contractor shall hold harmless, defend, and indemnify the City of Portland, its officers, employees, and agents, from all claims, demands, suits, actions, losses, damages, liabilities, costs and expenses of whatsoever nature, including all attorney's fees and costs, resulting from or arising out of the activities of Contractor or its officers, employees, subcontractors, or agents including intentional acts, or of its subcontractors, agents or employees under this Contract. Contractor is not responsible for any damages caused by the actions of the City, its officers, employees and agents.

15. **ASSIGNMENT OF ANTI-TRUST RIGHTS:** By entering into a contract, the Contractor, for consideration paid to the Contractor under the Contract, does irrevocably assign to the City of Portland any claim for relief or cause of action which the Contractor now has or which may accrue to the Contractor in the future, including; at the City's option, the right to control any such litigation on such claim for relief or cause of action, by reason of violation of 15 USC SS 1-15 or ORS 646.725 or ORS 646.730, in connection with any goods or services provided to the Contractor by any person, which goods or services are used, in whole or in part, for the purpose of carrying out the Contractor's obligation under this Contract.

In the event the Contractor hires subcontractors to perform any of the Contractor's duties under the Contract, the Contractor shall require the subcontractor to irrevocably assign to the City of Portland, as a third party beneficiary any right, title or interest that has accrued or may accrue to the subcontractor by reasons of any violation of 15 USC SS 1-15, ORS 646.725 or ORS 646.730, including, at the City's option, the rights to control of any litigation arising thereunder, in connection with any goods or services provided to the subcontractor by any person, in whole or in part, for the purpose of carrying out the subcontractor's obligations as agreed to by the Contractor in pursuance of the completion of the Contract.

In connection with this assignment, it is an express obligation of the Contractor that it will take no action which will in any way diminish the value of the rights conveyed or assigned hereunder to the City of Portland. It is an express obligation of the Contractor to advise the City Auditor or the Office of the City Attorney of Portland, Oregon:

A. In advance, of its intention to commence any action on its own behalf regarding such claims for relief or causes of action;

- B. Immediately, upon becoming aware of the fact that an action has been commenced on its own behalf by some other person or persons, of the pendency of such action; and
- C. The date on which it notified the obligor(s) of any such claims for relief or causes of action of the fact of its assignment to the City of Portland.

Furthermore, it is understood or agreed that in the event that any payment under such claim is made to the Contractor, it shall promptly pay over to the City of Portland its proportionate share thereof, if any, assigned to the state hereunder.

**16. SEVERABILITY:** In the event that a court, government agency, or regulatory agency with proper jurisdiction determines that this Contract, or any provision of this Contract, is unlawful, this Contract, or that provision of the Contract to the extent it is unlawful, shall terminate. If a provision of this Contract is terminated but the Parties can legally, commercially, and practicably continue without the terminated provision, the remainder of this Contract shall continue in effect.

**17. FUNDING:** In the event the City, during the adoption of the City's annual budget, reduces, changes, eliminates, or otherwise modifies the funding for any of the projects identified herein, the Contractor agrees to abide by any such decision including revision or termination of services.

**18. ASSIGNMENT AND SUBCONTRACTING:** This Contract or any interest therein shall not be assigned or subcontracted to any other person or entity without the prior written consent of the City of Portland. In the event of transfer without prior written consent, the purported transfer is void and the Contractor remains liable for performance of the Contract. Notwithstanding City approval of a subcontractor, the Contractor shall remain obligated for full performance hereunder, and the City shall incur no obligation other than its obligations to the Contractor hereunder. The Contractor agrees that if subcontractors are employed in the performance of this Contract, the Contractor and its subcontractors are subject to the requirements and sanctions of ORS Chapter 656, Workers' Compensation.

**19. LIENS:** Contractor shall not permit any claim to be filed or prosecuted against the City or any lien against the property purchased in connection with this Contract and agrees to assume responsibility should such lien or claim be filed.

**20. SUSTAINABLE PROCUREMENT:** Pursuant to the City's Sustainable City Principles, which direct City Bureaus to pursue long-term social equity, environmental quality, and economic vitality through innovative and traditional mechanisms, the Contractor is encouraged to incorporate these Principles into their scope of work with the City wherever possible. Therefore in accordance with the Principles and the City's Sustainable Procurement Policy, it is the policy of the City of Portland to encourage the use of products or services that help to minimize the human health and environmental impacts of City operations. "Environmentally preferable" means products or services that have a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose. This comparison may consider raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, or disposal of the product or service.

Packaging should be minimized to the maximum extent possible without compromising product quality. The City encourages packaging that is reusable, recyclable in local recycling programs, is made from recycled materials, and/or is collected by the vendor for reuse/recycling.

**21. FORCE MAJEURE:** Neither City nor Contractor shall be held responsible for performance if its performance is prevented by unforeseeable acts or events beyond the Party's reasonable control including, but not limited to: acts of God; fire, flood, earthquakes or other catastrophes; strikes or other labor unrest; power failures, electrical power surges or current fluctuations; nuclear or other civil or military emergencies; or acts of legislative, judicial, executive, or administrative authorities; or any other circumstances that are not within its reasonable control.

**22. AMENDMENTS:** All changes to this Contract, including changes to the scope of work and Contract amount, must be made by written amendment and approved by the Chief Procurement Officer to be valid. The City's Chief Procurement Officer is authorized to execute amendments to this Contract without the City's further approval, provided such amendments are in writing, signed by both Parties, and approved by the City Attorney's Office. Contractor understands that City employees have no actual or apparent authority to enter into amendments, except as may be specifically granted by the City Council to the Chief Procurement Officer, or to waive the approval of the City Attorney's office.

**23. NON-WAIVER:** No waiver, consent, modification, or change of terms of this Contract shall bind either Party unless in writing and signed by both Parties. Such waiver, consent, modification, or change if made, shall be effective only in specific instances and for the specific purposes given. The failure of the City to enforce any provision of this Contract shall not constitute a waiver of that or any other provision.

**24. COORDINATION WITH OTHER CONTRACTORS AND OTHER SERVICES:** The Contractor shall cooperate fully with other contractors and City employees providing systems or support to the City during installation, operation, or maintenance of the goods and services. This includes planning for and integration of the goods and services provided under this Contract with those provided by others. Further, Contractor shall make every reasonable effort to cooperate with City to minimize and/or prevent any degradation of the other computer and telecommunications systems, equipment, or services of the City by the installation, operation, or maintenance of the goods and services. Contractor's failure to cooperate with the City and other contractors may be grounds for termination as provided herein.

25. **ACCESS TO RECORDS:** The Contractor shall maintain professional accounting standards and on a current basis, and the City and its duly authorized representatives shall have access to, the books, documents, papers, and records of the Contractor which are directly pertinent to this Contract for the purpose of making audit, examination, excerpts, and transcripts for a period of three (3) years after final payment. Copies of applicable records shall be made available upon request.

26. **AUDITS:** The City, either directly or through a designated representative, may conduct financial and performance audits of the billings and services specified in this Contract at any time in the course of the Contract and during the three (3) year period established by ACCESS TO RECORDS. Audits shall be conducted in accordance with generally accepted auditing standards.

If an audit discloses that payments to the Contractor were in excess of the amount to which the Contractor was entitled, then the Contractor shall repay the amount of the excess to the City. Under no circumstances will the payment of previous invoices constitute an acceptance of the charges associated with those invoices. If any audit shows performance of services is not efficient in accordance with Government Auditing Standards, or that the program is not effective in accordance with Government Auditing Standards, the City may pursue remedies as provided under EARLY TERMINATION OF CONTRACT and REMEDIES. In addition, the Contractor agrees to abide by the standards of the Office of the Comptroller set forth in May, 2002 Office of Justice Programs (OJP) Financial Guide, including without limitation in accordance with Office of Management and Budget (OMB) Circulars A87, A-102, A-122, A-128, A-133. All financial records, supporting documents, statistical records and all other records pertinent to this Contract shall be retained by the Contractor for a minimum of five (5) years for purposes of State of Oregon or the OJP Financial Guide from the Office of the Controller and apprise itself of all rules and regulations set forth.

27. **EMPLOYEES NOT TO BENEFIT:** No City employee or elected official of the City shall be admitted to any share or part of this Contract or to any benefit that may arise there from; but, this provision shall not be construed to extend to this Contract if made with a corporation for its general benefit.

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## SPECIAL TERMS AND CONDITIONS

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28. **CITY FURNISHED PROPERTY:** No materials, labor or facilities will be furnished by the City unless otherwise provided for within this Contract.

29. **ADDITIONAL PURCHASES** The City reserves the right to purchase additional materials beyond the quantities stated in the bid documents at the same prices submitted by the Contractor. Price increases will be allowed, but shall not exceed the Consumer Price Index (CPI) for the Portland/Vancouver Metropolitan Area based upon the most current CPI available at the time the order is made. Such additional purchases are not guaranteed and will be made at the City's sole discretion.

30. **RIGHT TO CHANGE:** The City reserves the right to order changes to the goods, materials, equipment and services outlined herein. The City and the Contractor shall determine a fair and equitable cost and if required, additional time for such changes. All such changes shall be ordered in writing and agreed to by the Parties.

31. **NOTICE:** Except as otherwise stated in this Contract, any notice or demand to be given under this Contract shall be delivered in person or deposited in United States Certified Mail, Return Receipt Requested. Any notices or other communications shall be addressed as follows:

**CONTRACTOR:**

Oregon Iron Works, Inc.  
9700 SE Lawnfield Road  
Clackamas, Or 97015

**CITY:**

City of Portland  
Portland Fire & Rescue  
1135 SE Powell Blvd.  
Portland, OR 97202

Attn: Robert Beal, CEO

Tim VonSeggern

If either Party changes its address or if a Party's representative changes, the other Party shall be advised of such a change in writing, in accordance with this section.

32. **EARLY TERMINATION OF CONTRACT:** The City and the Contractor, by mutual written agreement, may terminate the Contract at any time. The City, on thirty (30) days written notice to the Contractor, may terminate this Contract for any reason deemed appropriate in its sole discretion. Either the City or the Contractor may terminate this Contract in the event of a material breach of the Contract by the other. Prior to such termination, however, the Party seeking the termination shall give to the other Party written notice of the breach and the Party's intent to terminate. If the Party has not entirely cured

the breach within thirty (30) days of the notice, then the Party giving the notice may terminate the Contract at any time thereafter by giving a written notice of termination.

**33. SUSPENSION OF THE WORK:** The City may at any time give notice in writing, by electronic mail, or by facsimile to the Contractor to suspend this Contract. The notice of suspension shall specify the date of suspension and the estimated duration of the suspension. In no event shall the Contractor be entitled to any lost or prospective profits or any incidental or consequential damages because of suspension.

**34. PAYMENT ON EARLY TERMINATION:** In the event of termination under EARLY TERMINATION OF CONTRACT hereof, the City shall pay the Contractor for goods and services in accordance with the Contract prior to the termination date and delivered to City provided that such goods and services conform to Contract specifications and are of use to the City. In the event of termination under EARLY TERMINATION OF CONTRACT hereof, by the City due to a breach by the Contractor, then the City shall pay the Contractor for goods delivered and services performed in accordance with the Contract prior to the termination date subject to set off of excess costs, as provided for in Remedies. In the event of early termination all of the Contractor's work product shall become and remain property of the City. Under no circumstances shall the City be subject to early termination penalties for recurring charges for goods or services that the City cancels during the term of this Contract.

**35. REMEDIES:** In the event of termination under EARLY TERMINATION OF CONTRACT by the City due to a breach by the Contractor, then the City may purchase goods and services outstanding from another contractor and the Contractor shall be liable for additional re-procurement costs incurred by the City. The City also shall be entitled to any other equitable and legal remedies that are available. Except as expressly contained in this Contract, the remedies for a breach of this Contract shall not be exclusive, or construed as a limitation on any other equitable and legal remedies that are available, including without limitation rights or remedies that are or may become available under its records according to ORS Chapter 72.7010 to 72.7250.

**36. PERMITS AND LICENSES:** The Contractor shall be required to have or obtain, at their expense, any and all permits and licenses required by the City and/or County, state and Federal (except FCC radio licenses), pertaining to the materials and services to be provided.

**37. INTELLECTUAL PROPERTY:** The City requires the following regarding copyrighting and patent pending on work products pertaining to this Contract:

a. Copyright: All work products of the Contractor which result from this Contract are the exclusive property of the City. If this Contract results in a copyright, the City of Portland reserves a royalty-free, nonexclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for governmental purposes, the work or the copyright to any work developed under this Contract and any rights of copyright to which the Contractor or its sub-vendor, purchases ownership with grant support.

b. Patent: If this Contract results in the production of patentable items, patent rights, processes, or inventions, the Contractor or any of its sub-vendors shall immediately notify the City. The City will provide the Contractor with further instruction on whether protection on the item will be sought and how the rights in the item will be allocated and administered in order to protect the public interest, in accordance with federal guidelines.

**38. SPECIFICATIONS:** This Contract authorizes the Contractor to provide and the City to procure those goods, materials, equipment and services, and establishes the terms and conditions for the City to obtain said goods, materials, equipment and services from the Contractor. Goods, materials, equipment and services to be provided under this Contract are described in the Attachments hereto. The Contractor shall provide to the City those goods, materials, equipment and services described in the attachments in accordance with the prices shown herein. Payment shall be made only in accordance with the payment schedule identified herein.

**39. WARRANTY:** The Contractor shall guarantee its equipment provided in response to the City's RFP to the extent required by the SPECIFICATION FOR CONSTRUCTION OF 50FT ALUMINUM FAST ATTACK FIREBOAT, Section 013-WARRANTY. The Contractor shall agree to repair and/or immediately replace without charge (including freight inbound and outbound) to City Users any product or part thereof, which proves to be defective or fails within the warranty period as specified

**40. PROPRIETARY AND CONFIDENTIAL INFORMATION:** The Oregon Public Records Law, ORS 192.410 et seq. strictly governs the City's treatment of requests for public records pertinent to this Contract.

Contractor agrees to hold in confidence any and all information of the City's it receives while performing any of the contemplated function of the Contract and shall not disclose any such information to third parties.

**41. NEWS RELEASES AND PUBLIC ANNOUNCEMENTS:** The Contractor shall not use in its external advertising, marketing programs, or other promotional efforts, any data, pictures or other representatives of the City, except with prior specific written authorization from the City.

Contractor shall not issue any news release or public announcement pertaining to this Contract or the project without prior written approval of the City, which may be withheld in the City's sole discretion. A minimum of three (3) business days notice is required for a response to a request for such approval. If approval is not issued within the three (3) business day period, the request shall be deemed denied.

**42. INTERGOVERNMENTAL CO-OPERATIVE PURCHASING:** The Contractor having submitted a proposal agrees to extend identical prices and services under the same terms and conditions to all public agencies. Quantities stated in this bid reflect the City of Portland usage only.

A public agency wishing to purchase items will execute its own contract with the awarded Contractor for its requirements. The Contractor shall provide quarterly usage reporting of the City of Portland and that of other public agencies. The Contractor, by written notification, may decline to extend the prices and terms of this Contract to any and/or all other public agencies.

**43. UNIFORM COMMERCIAL CODE:** The provisions of this Contract are not to be construed as exclusive remedies or as a limitation upon rights or remedies that may be or may become available under ORS Chapter 71-83 (Uniform Commercial Code).

**44. OREGON HAZARD COMMUNICATION RULES:** The Contractor must comply with all provisions of OAR 437, Subsection H: Hazardous Materials. Inquiries concerning compliance should be directed to any office of the Accident Prevention Division or the Workers' Compensation Department central office in Salem

Material Safety Data Sheets (MSDS) shall be provided along with delivery of the product to each Bureau or Division that receives merchandise. The City does not have a centralized Hazard Communication Rules program and supplying MSDS's to one location does not qualify as compliance.

The City reserves the right to refuse and withhold payment for shipments that are not properly labeled or for which an MSDS has not been provided. Noncompliance with OAR 437 is violation of this Contract and justifiable cause for cancellation.

**45. ENTIRE CONTRACT:** This Contract and its Attachments represent the entire Contract between the Parties. This Contract is a final, complete exclusive statement of the terms thereof, and supersedes and terminates any prior Contract, understanding, or representation between the Parties with respect thereto, whether written or oral.

**ARTICLE IV.** This Contract may be signed in two (2) or more counterparts, each of which shall be deemed an original, and which, when taken together, shall constitute one and the same agreement. It is understood and agreed by the Parties hereto that:

1. Any reference in this Contract to the scope of work or specifications is intended as a convenience to the Parties in administration of the Contract. Therefore, in the absence of an express statement to the contrary herein, any restatement or partial restatement in this Contract of any provision of the scope of work or specifications is not intended, nor shall be construed to change, alter, modify, amend, or delete the requirements of the scope of work or specifications.

2. All statutory, charter and ordinance provisions applicable to public contracts in the City of Portland and State of Oregon shall be followed with respect to this Contract.

3. The Contractor certifies that no officer, agent or employee of the City who has a pecuniary interest in this Agreement has participated in preparation of the proposal or resulting Agreement, that the proposal was made in good faith without fraud, collusion, or connection of any kind with any other Offeror of the same proposals, and that the Offeror is competing solely in its own behalf without connection with, or obligation to any undisclosed person or firm.

4. The City and Contractor may conduct this transaction, including any Contract amendments, by electronic means, including the use of electronic signatures.

IN WITNESS WHEREOF, Contractor and City have caused this Contract to be executed by their duly authorized representative(s), all on the day and year first above written.

**OREGON IRON WORKS, INC.**

by \_\_\_\_\_

Robert Beal, CEO

Date \_\_\_\_\_

APPROVED AS TO FORM  
Approved as to form: AS TO FORM

City Attorney

**CITY ATTORNEY**

**Address:** 9700 SE Lawnfield Road

Clackamas, OR 97015

**Telephone No:** 503-652-6300

**Fax No:** 503-653-5870

**Email:** bealr@oregoniron.com

**CITY OF PORTLAND**

by

Chief Procurement Officer

Date

INITIALS: cek

DATE: 01/31/12



## ATTACHMENT A

**1. SCOPE OF WORK:** Portland Fire & Rescue (PF&R) is entering into a contract with a qualified shipyard with demonstrated experience in detailed design and construction of high speed aluminum vessels. (PF&R) proposes to engage the contractor for the following services: Detailed design and Construction of two (2) 50'x16', 40+ knot, 6,000 GPM, NFPA Type III Fast Attack Fireboat in accordance with the SPECIFICATION FOR CONSTRUCTION OF 50 FT ALUMINUM FAST ATTACK FIREBOAT (111064-832-1) referenced herein as the SPEC.

**2. TECHNICAL SERVICES AND SCHEDULE:**

The successful Contractor will perform the tasks and services and provide the equipment as identified in the SPECIFICATION FOR CONSTRUCTION OF 50 FT ALUMINUM FAST ATTACK FIREBOAT (111064-832-1), Attachment B for these vessels. The Contractor shall be expected to work closely with designated City of Portland PF&R personnel to accomplish the goals, perform the tasks and services, account for the inspections, and provide the equipment and training as indicated.

The selected contractor will perform the tasks listed in the SPEC for this project. The contractor shall be expected to work closely with designated City of Portland PF&R bureau personnel to accomplish the goals and perform the tasks as listed below:

Acceptance of Phase I – Pre-Production Engineering & Detail Design	
Fully Executed Purchase Order for Main Engines, Water Jets, Fire Pumps - Hull 1	
Fully Executed Purchase Order for Main Engines, Water Jets, Fire Pumps - Hull 2	
Completion of Major Aluminum Work (Hull & Superstructure) - Hull 1	10%
Completion of Major Aluminum Work (Hull & Superstructure) - Hull 2	10%
Acceptance of Preliminary Alignment of Propulsion & Pumping Equipment – Hull 1	5%
Acceptance of Preliminary Alignment of Propulsion & Pumping Equipment – Hull 2	5%
Acceptance of Test & Trials - Hull 1	5%
Acceptance of Test & Trials - Hull 2	5%
Delivery - Hull 1	5%
Delivery - Hull 2	5%
Final Payment/Contract Fully Fulfilled	10%
<b>TOTAL</b>	<b>100%</b>

In addition to the above noted SPECIFICATION FOR CONSTRUCTION OF 50 FT ALUMINUM FAST ATTACK FIREBOAT (111064-832-1), the following will be considered a part of this requirement for the procurement of each vessel:

- a. **FINAL INSPECTION** For each vessel, the successful bidder shall provide for one (1) final inspection for two (2) PF&R representatives when the vessel is complete and ready for PF&R to conduct a final in-factory inspection and test. PF&R shall not accept any vessel with any deficiencies noted at the final inspection that are not corrected.
- b. **FACTORY RE-INSPECTION** An additional, in-factory final all-expense paid (air travel, meals, hotel, etc.) re-inspection shall be provided by the bidder for one (1) PF&R representative if two (2) major specification deficiencies are detected during the scheduled, final vessel inspection. Major specification deficiencies include those which restrict or impede vessel drivability or operational capability as specified, or deficiencies which will not allow the inspection process to be completed. These expenses are in addition to those required in Appendix A of the SPEC.
- c. **DELIVERY** The vessel shall be delivered from the point of manufacture to PF&R in the water at the dock at Fire Station 6, 3660 NW Front Avenue, Portland OR 97210. A qualified delivery person representing the Contractor shall deliver the vessel.
- d. **TRAINING** All training is to be delivered according to the SPEC832/3.

**3. DELIVERABLES AND SCHEDULE**

Deliverables shall be considered those tangible resulting work products which are to be delivered to PF&R such as reports, draft documents, data, interim findings, drawings, schematics, training, meeting presentations, final drawings, and reports. Deliverables and schedule for this project shall include:

- a. Construction Schedule – SPEC Section 813
  - b. Working Plans – SPEC Section 007
  - c. Contractors Weight Estimate – SPEC Sections 007 & 833
  - d. Speed/Power Predictions – SPEC Section 245
  - e. Welding Certificates, Procedures and Sample Weldments – SPEC Section 109
  - f. "As-Built" Drawings – SPEC Section 007
  - g. Test & Trials Reports – SPEC Section 982
  - h. Vessel Certificates/Documents – SPEC Section 009
  - i. Delivery of Two (2) Vessels
  - j. Technical Manuals & Training – SPEC Section 832
  - k. Other items described in the SPEC.

All deliverables and resulting work products from this contract will become the property of the City of Portland.

**4. WORK PERFORMED BY THE CITY:** Bureau staff shall make available sufficient hours of staff personnel as is required to meet with the Contractor and provide such information as required. PF&R has assigned a project manager who will oversee the work and provide support as needed.

The City shall be responsible for implementing and maintaining usual, customary and appropriate internal accounting procedures and controls, internal controls and other appropriate procedures and controls for the City. These controls will include information technology, proprietary information, and trade secret safeguards if appropriate to City work.

**5. TIME IS OF THE ESSENCE:** Contractor shall make every reasonable effort to meet established delivery dates and other deadlines. Circumstances that may delay the delivery of goods and services from established delivery dates and other deadlines, including excusable delays and force majeure events, shall be reported to the City immediately upon discovery. The City and Contractor shall mutually agree upon any schedule or pricing change due to excusable delays or force majeure events in writing. In the event Contractor does not meet the established delivery dates or other deadlines and Contractor has failed to cure such breach within fifteen (15) days of written notice by the City, the City may obtain the undelivered goods and/or non-performed service from another source, and no recurring charges, one-time charges, or termination charges or other penalties shall be due the Contractor. In addition, the City will be entitled to reasonable compensation as stated under REMEDIES.

**5. CONSIDERATION:** Unit price payments shall be made to the Contractor by the City on a monthly basis for the total product delivered to the City's specified location and accepted by the City. Acceptance occurs when the City authorizes payment of the invoice. Unit prices shall be exclusive of any sales, purchaser, or consumer tax. Tax exemption certificates will be furnished to the Contractor upon request.

**6. DELIVERY:** All equipment shall be FOB delivered to the City of Portland, PF&R. Bid price shall be inclusive of all shipping and delivery costs. Time is of the essence. Deliveries of equipment, supplies, and/or services must be made no later than the time stated in the Contract or within 900 days from date of order.

Should installation or assembly be required, offered prices shall include all costs associated with delivery, assembly, setup, and proper disposal of packaging material. The offer price shall be exclusive of any sales, purchaser, or consumer tax. Tax exemption certificates will be furnished to the successful Offeror, upon request.

**10. PRICES AND PRICE CHANGES** Initial Contract prices shall be as established herein. Unit prices shall remain firm through the first year of the Contract. At the end of the one-year period following the date of acceptance, price changes may be allowed herein. The Contractor agrees to provide pricing for all products for which the Contractor is an authorized distributor for the duration of this Contract if and when requested by the City. Following the end of the one year period referenced above, the City and Contractor acknowledge that prices for goods and services furnished by Contractor under this Contract may need to be adjusted during the term of the Contract due to changes in the Contractor's prices, rate plans, or product offerings. Such price changes shall be documented in writing between the Contractor and City's Purchasing Agent as amendments.

The Contractor shall submit any proposed pricing revisions in writing to the Project Manager for consideration at least thirty (30) days before the proposed effective date. All proposed price adjustments shall be calculated consistent with the methodology used to calculate the prices set forth in the Contractor's original proposal, the Contractor shall certify this in its request for price adjustments. Price adjustments shall become effective thirty (30) days from the date of last signature on the contract amendment document or as otherwise stated therein. Except that no increase in price adjustments shall become effective prior to a date one year following the date of acceptance. Price adjustments will only become effective by fully executed amendments, following receipt by the Project Manager of the requested price adjustment.

**11. ESCALATION/DE-ESCALATION CLAUSE** No upward price adjustment of any sort will be allowed during the first year of the contract period. The City may consider pricing revisions proposed by Contractor after the first year, however, the Contractor shall propose such revised pricing at least thirty (30) days prior to the desired effective date for consideration by the City. Any proposed price increases must be fully documented and justified by Contractor (i.e., proof of manufacturer material costs). Acceptance of Contractor's proposed price revisions shall be at the City's sole discretion.

Pricing offered in this RFP may be adjusted up or down on a cent-for-cent basis via pass-through from the manufacturer after the initial order, supported by submission of copies of the manufacturer's price change notices, and corresponding to changes in the Contractor's wholesale posted/or book price, and in effect to all similar classes of customers at the time of delivery. Additionally, all price reductions shall be passed on, in total, as of the effective date. The City of Portland shall have the option of accepting the price increase or canceling the balance of the contract.

Notwithstanding the above, all manufacturer price reductions shall be passed on to the City as of the manufacturer's effective date. All decreases will be passed on to the City as of the effective date, not at the end of the first year

period. Notification shall be in writing and will be confirmed in writing by the City of Portland. Acceptance of Contractor's proposed price revisions shall be at the City's sole discretion.

Price changes shall be documented in writing between Contractor and City's Purchasing Agent as contract amendments. All proposed price adjustments shall be calculated consistent with the methodology used to calculate the prices as set forth herein.

# ATTACHMENT B

## SPECIFICATIONS

### SPECIFICATION FOR CONSTRUCTION OF 50 FT ALUMINUM FAST ATTACK FIREBOAT

DOCUMENT NO. 111064-832-1  
Revision C, January 3, 2012

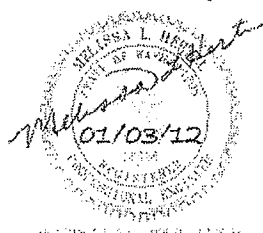


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# ATTACHMENT C

## CONSIDERATION

### 1. PHASE I -- PRE-PRODUCTION ENGINEERING AND DETAIL DESIGN OF FIREBOAT

	(Base) MTU 8V2000 M84 w/FF450S Jets
The CONTRACTOR fixed price for Phase I:	<u>\$346,975</u>

### 2. PHASE II -- PRODUCTION OF FIREBOAT

The CONTRACTOR fixed price for Phase II:

	(Base) MTU 8V2000 M84 w/FF450S Jets
General/Hull/Services, Sections 000/100/800/900 (except delivery)	\$ <u>1,738,614</u>
Main Propulsion, Section 200	\$ <u>1,325,864</u>
Electrical/Electronics, Sections 300/400	\$ <u>177,490</u>
Auxiliary Systems, Section 500	\$ <u>879,502</u>
Outfit & Furnishings, Section 600	\$ <u>399,432</u>
Performance Bond	\$ <u>N/A</u>
Tax	\$ <u>N/A</u>
Delivery to location defined in Section 003	\$ <u>0</u>
Prompt Payment Discount (See RFP)	\$ <u>N/A</u>
Construction Oversight Support The CONTRACTOR shall provide a fixed price for travel/accommodation costs as described in SECTION A-010:	\$ <u>0</u>
<b>TOTAL, Phase II:</b>	\$ <u>4,520,902</u>

3. **TOTAL VESSEL BID PRICE:**

	(Base) MTU 8V2000 M84 w/FF450S Jets
<b>TOTAL Price (Phase I + Phase II)</b>	<b>\$ 4,867,877</b>

4. **OPTIONAL ITEMS**

The CONTRACTOR fixed price for the following optional items:

	(Base) MTU 8V2000 M84 w/FF450S Jets
Interceptor System Replace Rolls-Royce Interceptor System w/Humphree, SECTION 114/2:	
Extended Warranty Extended warranty on the propulsion engines, SECTION 233:	\$ 115,000
Spare Parts Provide additional spare parts for water jets, SECTION 246:	\$ 15,600
Control System Replace Rolls-Royce Controls System w/Hamilton, SECTION 252/1:	
Propulsion Indicators and Alarms Replace MTU system w/Cat MPD system, SECTION 252/1:	
Generator Add Onan Generator to electrical system, SECTIONS 310/3 & 982/3:	\$ 14,800
<b>TOTAL, Optional Items:</b>	<b>\$ 145,400</b>
<b>TOTAL Price (Phase I + Phase II+Optional)</b>	<b>\$ 5,013,277</b>

