

CONTRACT AGREEMENT FORM

PORT OF KINGSTON

for

Washington Boulevard Park Project

Agreement made effective as of this 29th day of March, 2018, by and between the PORT OF KINGSTON, a Washington Public Port (hereafter called "PORT") and Vet Industrial, Inc., (hereafter called "COMPANY").

SECTION ONE

Contract Documents

The contract documents consist of this Contract, Conditions of the Contract, General Conditions, Special Conditions, and Appendices, and all PORT approved modifications to this contract issued subsequent to the execution of this Agreement. These documents form the contract, and all are as fully a part of the contract as if attached to or set forth herein.

SECTION TWO

Description of Work

The contract provides for the demolition and construction of public park and gazebo per plans and specifications provided in the bid packet.

SECTION THREE

Payment

The PORT agrees to pay COMPANY, an amount not to exceed \$312,436 which includes sales tax. Payments will be allowed when billed by COMPANY, for work that has been completed and approval from the Board of Commissioners. Final payment will be made once final approvals from the Department of Labor and Industries Affidavit of Prevailing Wage Form has been received, and the Department of Revenue approval has been received

SECTION FOUR

General Conditions

- 4.1 PORT shall give all instructions to COMPANY OFFICER of COMPANY, through Jim Pivarnik, Executive Director, its' nominated PORT representative. PORT will provide COMPANY access as is required to PORT's premises to perform the construction and will provide, such necessary storage areas and lay down sites as are required.
- 4.2 PORT will provide COMPANY with any additional information required for compliance with environmental issues.

SECTION FIVE

General Responsibility of Company

COMPANY duties and rights in connection with the above described project are as follows:

- 5.1 **Responsibility for and Supervision of Construction:** COMPANY shall be solely responsible for all construction under this contract, including the techniques, sequences, procedures, and means, and for coordination of all work. COMPANY shall supervise and direct the work, and give it all attention necessary for such proper supervision and direction.
- 5.2 **Discipline and Employment:** COMPANY shall maintain at all times strict discipline among its employees, and COMPANY agrees not to employ for work on the project any person unfit or without sufficient skill to perform the job for which they were employed.
- 5.3 **Labor, Materials, and Equipment:** Except as provided in this Contract, COMPANY shall provide and pay for all labor, materials, and equipment, including tools, construction equipment, and machinery, utilities, including water, transportation, and all other facilities and services necessary for the proper completion of work on the project in accordance with the contract.
- 5.4 **Payment of Taxes:** COMPANY shall pay all taxes and fees required by law in connection with work on the project in accordance with this Agreement including sales, use, and similar taxes.
- 5.5 **Compliance with Construction Laws and Regulations:** COMPANY shall comply with all construction laws and ordinances (including environmental rules and regulations) and the rules and regulations regarding work performance in accordance with Washington State's Public Work and Prevailing Wage legislation, and orders of all public authorities relating to the performance of the work under and pursuant to this Agreement.
- 5.6 **Responsibility for Negligence of Employees and Subcontractors:** COMPANY assumes full responsibility for and will hold the PORT harmless from its acts, negligence, or omissions of all its employees on the project, for those of its subcontractors and their employees, and for those of all other persons doing work under a contract with them.
- 5.7 **Warranty of Fitness of Equipment and Materials:** COMPANY warrants to PORT that all equipment and materials used in the work, and made a part of the structures on such work, or placed permanently in connection with such work, will be new unless otherwise specified in the contract documents, of good quality, free of defects, and in conformity with the contract documents. It is understood and agreed between the parties to this Agreement that all equipment and materials not in conformity will be considered defective.
- 5.8 **Clean-up:** COMPANY agrees to keep the work premises and adjoining properties free of waste material and rubbish caused by its work or that of its subcontractors. COMPANY further agrees to remove all waste material and rubbish on termination of the project, together with all its tools, equipment, machinery, and surplus materials. COMPANY agrees, on terminating its work at the site, to conduct general clean-up operations, including the cleaning of all glass surfaces, and interior floors and walls.
- 5.9 **Safety Precautions and Programs:** COMPANY shall provide for and oversee all safety orders, precautions, and programs necessary to the reasonable safety of the work. In this connection, COMPANY shall take all precautions for the safety of all employees and other persons whom the work might affect, all work and materials incorporated in the project, and all property and improvements on the construction site and adjacent to the construction site, and shall comply with all applicable laws, ordinances, rules, regulations and orders.

SECTION SIX

Insurance, Bonding, And Indemnification

- 6.1 Insurance: The COMPANY shall purchase and maintain such insurance as will protect COMPANY and the PORT from claims set forth below which may arise out of or result from the COMPANY's execution of the work, whether such execution be by COMPANY or by any subcontractor or by anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable. Such insurance shall cover:
- 6.1.1 Claims under worker's compensation, disability benefit and other similar employee benefit acts.
 - 6.1.2 Claims for damages due to bodily injury, occupational sickness or diseases, or death of COMPANY's employees.
 - 6.1.3 Claims for damages due to bodily injury, sickness or disease of death or any person other than COMPANY's employees.
 - 6.1.4 Claims for damages insured by usual personal injury liability coverage which are sustained by any person as a result of an act directly or indirectly related to the employment of such person by the COMPANY, or by any other person.
 - 6.1.5 Claims for damages to property belonging to the Port, its tenants or third persons because of injury to or destruction of tangible property, including loss of use resulting therefrom.
 - 6.1.6 Claims under the United States Longshoreman and Harbors Act, Jones Act, and other similar Acts as applicable.
- 6.2 Certificates of Insurance acceptable to the PORT shall be filed with the PORT prior to commencement of the work. These certificates shall contain a provision that coverage afforded under the policies will not be cancelled unless at least fifteen (15) days' prior written notice has been given to the PORT. See Paragraph 14, Special Conditions.
- 6.3 The COMPANY shall procure and maintain at COMPANY's expense, during the contract time, liability insurance as hereinafter specified. This list is in amplification of the Terms and Conditions of section 9.1 and not in limitation thereof.
- 6.3.1 COMPANY General Public Liability and Property Damage Insurance, including vehicle coverage, issued to the COMPANY and protecting COMPANY from all claims for personal injury, including death, and all claims for destruction of or damage to property, arising out of or in connection with any operations under the Contract Documents, whether such operations be by COMPANY or by any subcontractor under COMPANY or anyone directly or indirectly employed by the COMPANY or by a subcontractor under them. Insurance shall be written with a limit of liability of not less than one-million (\$1,000,000) dollars for all property damage sustained by any one person in any one accident and a limit of liability of not less than two-million (\$2,000,000.00) dollars aggregate for any such damage sustained by two or more persons in any one accident.
 - 6.3.2 The COMPANY shall acquire and maintain, if applicable, fire and extended coverage insurance upon the Project to the full insurance value thereof for the benefit of the Port, the COMPANY, and Subcontractors, as their interest may appear. This provision shall in no way release the COMPANY or COMPANY's surety from obligations under the Contract Documents to fully complete the Project.
 - 6.3.3 The COMPANY shall procure and maintain at COMPANY's own expense, during the contract, time in accordance with the provisions of the laws of the state in which the Work is performed, Worker's compensation Insurance, including occupational disease provisions, for all of COMPANY's employees at the site of the project. In case any Work is sublet, the COMPANY shall require such Subcontractor similarly to provide worker's compensation insurance, including occupational disease provisions for all

the latter's employees unless such employees are covered by the protection afforded by the COMPANY. In case any class of employees engaged in Hazardous Work under this contract at the site of this project is not protected under the worker's compensation statute, the COMPANY shall provide adequate and suitable insurance for the protection of COMPANY's employees not otherwise protected.

- 6.4 The COMPANY's insurance policy shall cover not less than the losses due to fire, explosion, hail, lightning, vandalism, malicious mischief, wind, collapse, riot, aircraft, maritime navigation and smoke during the contract time, and until the work is accepted by the PORT. The policy shall name as the insured the COMPANY, and the PORT.
- 6.5 Bonding: The COMPANY shall, within ten (10) calendar days after the receipt of the Notice to Award, furnish the PORT with a Performance Bond and a Payment Bond in penal sums equal to the amount of the contract price, conditioned upon the performance by the COMPANY of all undertakings, covenants, terms, conditions and agreements of the Contract Documents and upon the prompt payment by the COMPANY to all persons supplying labor and materials in the execution of the work provided by the Contract Documents. Such bonds shall be executed by the COMPANY and a corporate bonding company licensed to transact such business in the state in which the work is to be performed and named on the current list of "surety companies acceptable on federal bonds", as published in the Treasury Department Circular Number 570. The expense of these bonds shall be borne by the COMPANY. If a surety company is not acceptable on federal bonds or bonding becomes unavailable, the COMPANY shall substitute an acceptable bond (or bonds) in such form and sum and signed by such other surety or sureties as may be satisfactory to the PORT. The premiums on such bond shall be paid by the COMPANY. No payments shall be deemed due nor shall be made until the new surety or sureties shall have furnished an acceptable bond to the PORT.
- 6.6 Indemnification: The COMPANY will indemnify and hold harmless the PORT, their agents and employees from and against all claims, damages, losses and expenses, including attorney's fees, arising out of or resulting from the performance of the work, provided that any such claims, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, including the loss of use resulting therefrom; and from all environmental claims and causes of action which are caused in whole or in part by any negligent or willful act or omission of the COMPANY and subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. In any and all claims against the PORT or the Engineer, or any of their agents or employees, by any employee of the COMPANY, and subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount of type of damages, compensation or benefits payable by or for the COMPANY or any subcontractor under worker's compensation acts, disability benefits acts or other employee benefit acts.

SECTION SEVEN

Changes in Work and Changes in Contract Price

The PORT may at any time, as the need arises, order changes within the scope of the work without invalidating the Agreement. If such changes increase or decrease the amount due under the Contract Documents, or in the time required

for performance of the work, an equitable adjustment shall be authorized by change order. The contract price may be changed only by a change order. All change orders must be received in writing and approved by the Board of Commissioners before proceeding. The value of any work covered by a change order or of any claim for increase or decrease in the contract price shall be determined by one or more of the following methods in the order of precedence listed below:

- A. An agreed upon lump sum;
- B. The actual cost for labor, direct overhead, materials, supplies, equipment and other services necessary to complete the work. In addition, there shall be added an amount to be agreed upon but not to exceed fifteen (15%) percent of the actual cost of the work to cover the cost of the general overhead and profit.

SECTION EIGHT

Suspension of Work, Termination and Delay

The PORT may suspend the work or any portion thereof for a period of not more than ninety (90) calendar days, or such further time as agreed upon by the COMPANY, by written notice to the COMPANY which notice shall fix the date on which work shall be resumed. The COMPANY shall resume the work on the date so fixed. The COMPANY will be allowed an increase in the contract price or an extension of the contract time, or both, directly attributable to any suspension. If the COMPANY is adjudged bankrupt or insolvent, or if COMPANY makes a general assignment for the benefit of COMPANY's creditors, or if a trustee or receiver is appointed for the COMPANY or for any of COMPANY's property, or if COMPANY files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or applicable laws, or if COMPANY repeatedly fails to supply sufficient skilled workmen or suitable materials or equipment, or if COMPANY repeatedly fails to make prompt payments to subcontractors or for labor, materials or equipment, or if COMPANY disregards laws, ordinances, rules, permit conditions, regulations or orders of any public body having jurisdiction over the Work, or if COMPANY otherwise violates any provision of the Contract Documents, then the PORT may, without prejudice to any other right or remedy and after giving the COMPANY and COMPANY's surety a minimum of ten (10) calendar days from delivery of a written notice, terminate the services of the COMPANY and take possession of the project and of all materials, equipment, tools, construction equipment and machinery thereon owned by the COMPANY, and finish the work by whatever method COMPANY deemed expedient. In such case, the COMPANY shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the contract price exceeds the direct and indirect costs of completing the project, including compensation for additional professional services, such excess shall be paid to the COMPANY. If such costs exceed such unpaid balance the COMPANY will pay the difference to the PORT. Such costs incurred by the PORT will be determined and incorporated in a change order. Where the COMPANY's services have been so terminated by the PORT, said termination shall not affect any right of the PORT against the COMPANY than existing or which may thereafter accrue. Any retention or payment of monies by the PORT due the COMPANY will not release the COMPANY from compliance with the Contract Documents. After ten (10) calendar days from delivery of written notice to the COMPANY and the PORT may, without cause and without prejudice to any other right or remedy, elect to abandon the project and terminate the contract. In such case the COMPANY shall be paid for all work executed and any expense sustained plus reasonable profit. If, through no act or fault of the COMPANY, the work is suspended for a period of more than ninety (90) calendar days by the PORT or under an order of court or other public authority, the COMPANY may, after ten (10) calendar days from delivery of a written notice to the PORT terminate the contract and recover from the PORT, payment for all work executed and all expenses sustained.

SECTION NINE

Resolution of Dispute

If a dispute arises concerning the provisions of this Contract or the performance by the parties, the parties agree to select a mediator provided through the Dispute Resolution Center of Kitsap County, with the parties paying equally the charges

by such mediator. If good faith negotiations do not resolve the issue, then the parties will proceed in accordance with the Local Mandatory Arbitration Rules of the State of Washington and of the Superior Court of the State of Washington for Kitsap County; provided, however, that the jurisdictional limit and any limitation on the nature of remedy are hereby waived. The parties agree that any such arbitrator's decision shall be binding. In the event of any dispute between the parties the costs and attorney's fees of the prevailing party will be paid by the other party.

SECTION TEN

Governing Law

This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Washington.

SECTION ELEVEN

No Waiver

The failure of either party to this Agreement to insist upon the performance of any of the terms and conditions of this Agreement, or the waiver of any breach of any of the terms and conditions of this Agreement, shall not be construed as thereafter waiving any such terms and conditions, but the name shall continue and remain in full force and effect as if no such forbearance or waiver had occurred.

SECTION TWELVE

Entire Agreement

This Agreement shall constitute the entire agreement between the parties and any prior understanding or representation of any kind preceding the date of this Agreement shall not be binding upon either party except to the extent incorporated in this Agreement.

SECTION THIRTEEN

Modification of Agreement

Any modification of this Agreement or additional obligation assumed by either party in connection with this Agreement shall be binding only if evidenced in writing signed by each party or an authorized representative of each party. No oral modifications will be effective or binding.

SECTION FOURTEEN

Notices

All notices under this Agreement shall be deemed sufficiently given when sent by any of the following methods: (1) personal delivery; or (2) certified mail, postage prepaid when sent to the following:

PORT OF KINGSTON

Attn: Jim Pivarnik

P.O. Box 559

Kingston, WA 98346

COMPANY

Vet Industrial, Inc

1234 Charleston Beach Road. Suite B

Bremerton WA 98312

SECTION FIFTEEN
Paragraph Headings

The titles to the paragraphs of this Agreement are solely for the convenience of the parties and shall not be used to explain, modify, simplify, or aid in the interpretation of the provisions of this Agreement.

SECTION SIXTEEN
Default

In the event COMPANY ceases performance or fails to perform in accordance with the terms and conditions of this agreement, PORT reserves the right to complete the project either through third party contractors or in-house labor. If the cost of completing or performing the contract exceeds the bid price submitted by COMPANY, COMPANY shall be responsible to the PORT for such excess amount. If the cost of completing or performing the contract is less than the bid price submitted by COMPANY, PORT shall pay the difference to COMPANY.

SECTION SEVENTEEN
Timely Performance & Liquidated Damages

Time is of the essence in the performance of this contract. The parties agree that COMPANY will begin the contract by May 11, 2018 or date agreed to in writing by PORT and complete all work for the Washington Boulevard Park Project for the PORT by September 1, 2018. COMPANY will forfeit five-hundred (\$500.00) dollars for every twenty-four (24) hour period beyond September 1, 2018 by which completion is delayed, except through the fault of PORT or due to adverse weather, strikes, or forces of nature that could legitimately delay performance.

IN WITNESS, each party to this Agreement has caused it to be executed at Kingston, Washington, on this _____ day of _____, 2018, by:

COMPANY:

Signature: _____

Print Name: _____

Title: _____

PORT OF KINGSTON:

By: _____

Jim Pivarnik, Executive Director

