



November 8, 2019
Project No. P1874.01.01

Nicholas Green
City Manager
City of John Day
450 East Main Street
John Day, Oregon 97845

Re: Proposal for Focused Site Assessment at Former Oregon Pine Property, Grant County
Tax Lot 13S31E22D

Dear Mr. Green:

Maul Foster & Alongi, Inc. (MFA) appreciates the opportunity to submit this proposal to assess conditions at the former Oregon Pine property located on the above-referenced Grant County tax parcel.

BACKGROUND

The site consists of an approximately 50-acre parcel with a former sawmill that conducted active milling and chipping operations from the 1930s through 2007. Three buildings, part of the former sawmill complex, are present at the site: a former truck shop, former planer shed, and former chipper shed. The site was transacted to the City of John Day in 2018; a Phase I environmental site assessment¹ (ESA) and a Phase II ESA² with a limited soil cleanup were completed at that time. The site is listed on the Oregon Department of Environmental Quality's (DEQ) environmental cleanup site information (ECSI) database as site identification number 2739. The ECSI database indicates that the site obtained two No Further Action determinations from the DEQ, one in 2014 and one in 2018, for various impacted-soil issues associated with the sawmill. The DEQ also lists the site as a current brownfield.

In the future, the site will be incorporated into the City of John Day's Innovation Gateway, an approximately 80-acre amenity integrating community, technology, education, and commerce with a focus on rural innovation and value creation. Reuse at the former Oregon Pine portion of the Innovation Gateway envisions a public pavilion and event space, John Day River restoration and river access, office space, and public works offices and water treatment facility additions. Additional infrastructure improvements and creation of a lake and water garden are also envisioned. This scope of work takes into account these proposed amenities and

¹ Yinger, M. Phase I environmental site assessment. Oregon Pine Lot 300 in section 22 of T.13S., R.31E. John Day, OR 97845. Prepared for the City of John Day. May 11, 2017.

² Yinger, M. Phase II environmental site assessment and cleanup at former Oregon Pine mill site, John Day, Oregon. Prepared for N. Green, city manager, John Day, Oregon. January 4, 2018.

improvements to facilitate understanding of subsurface conditions in the areas of known impacts at the site as well as to assess soil in areas where soil removal may be needed to enable construction of the Innovation Gateway brownfield redevelopment project.

SCOPE OF WORK

Task 1—Focused Site Assessment Work Plan

MFA will review existing data for the site and assess them against the identified reuse to identify data gaps and areas that require additional data collection in order to define the nature and extent of impacts to soil. Because of the types of contamination encountered at the site in the past and the cobbly soils and boulders at the site, groundwater at the site has not been assessed.

MFA will develop a focused site assessment work plan to characterize and fill data gaps associated with the site. The work plan will build on previous investigations and take a tiered approach to characterizing the nature and extent of impacts as well as characterization of soils in infrastructure corridors to evaluate the feasibility of soil reuse as clean fill. This scope of work assumes that a hazardous building material survey is needed to assess the three buildings at the site that will be reused during the redevelopment. The work plan will be designed to provide reuse information to address specific concerns related to soil conditions at the site.

The work plan will identify activities and deliverables consistent with the DEQ requirements and its implementing regulations and will include, at a minimum, the following elements:

- Summary of available information regarding the site and data gaps to be addressed as part of the assessment
- Sampling and analysis plan, including proposed sampling locations and sampling and analytical methods
- A proposed schedule for completion of the assessment

Task 2—Complete Fieldwork

MFA will coordinate with subcontractors, including the subsurface utility locator, driller, natural resources specialist, and analytical laboratory. Prior to field activities, the selected sample locations will be checked for the presence of subsurface utilities by public utility locators (i.e., Underground Utility Notification Center). MFA will coordinate with a private subsurface utility locator to locate subsurface utilities and structures (e.g., pipes) at the site.

MFA will contract with a heavy-equipment operator and/or licensed driller to advance test pits and borings. Investigation locations will be scoped during the work plan development described under Task 1. For the purposes of cost estimation, this proposal assumes

approximately 10 borings or test pits will be advanced and soil samples will be collected from each investigation location.

MFA will collect samples from each of the investigation locations for laboratory analysis. The investigation locations will be finished to generally match the surrounding surface material. Nondedicated sampling equipment will be decontaminated using industry-standard techniques. The downhole drilling/test pitting equipment will be pressure-washed with hot, potable water before and after each use.

MFA will also contract with a natural resources subconsultant to delineate any jurisdictional wetland habitat, conduct a habitat assessment, and develop a critical areas report. These assessments will be required by the DEQ and other permitting agencies to support upland and stream restoration work.

Hazardous building materials in the former truck shop, planer shed, and chipper shed will also be assessed to inform abatement prior to reuse. MFA will collect samples of building materials suspected to be asbestos-containing materials (ACM). MFA will employ a portable x-ray fluorescence (XRF) device to evaluate the presence of lead-based paint (LBP) in buildings at the site.

Additionally, MFA will submit up to 5 percent of the XRF-analyzed samples to an analytical testing laboratory for quality assurance. The time needed to collect the samples is assumed to be two working days on site.

Potential ACM and LBP samples will be collected, using industry-standard techniques, from the three buildings mentioned above, and will be tracked under standard chain-of-custody procedures. MFA assumes that destructive sampling will be conducted as part of this survey.

Task 3—Analytical Work and Quality Assurance/Quality Control

The collected samples will be submitted under standard chain-of-custody procedures to accredited analytical laboratories. The exact methods used and sampling protocols followed will be identified during the work plan phase described under Task 1. Sample results will be managed by MFA and tabulated and screened against relevant state and federal cleanup standards.

Task 4—Reporting

MFA will prepare a focused assessment report describing the completed work. MFA will provide documentation of the fieldwork, data validation and quality assurance/quality control, and an evaluation of the analytical results, and will include recommendations, if applicable.

BUDGET

The estimated cost to perform the proposed work is \$64,900 (see attached estimated budget). This cost estimate does not represent a lump sum. MFA bills for time and materials, consistent with the attached schedule of charges. MFA may apply money from one task to another to complete the scope of work.

SCHEDULE

MFA will begin work within seven days of receiving authorization to proceed. This proposal is valid for 90 days.

After you have reviewed this submittal, please indicate your approval of the proposal by signing below and returning the document to us as electronic or hard copy. Please retain a copy for your records.

Sincerely,

Maul Foster & Alongi, Inc.



Seth Otto, AICP, LEED AP
Senior Planner



Ted Wall, PE
Vice President/Principal Engineer

Attachments: Estimated Budget
Schedule of Charges
General Terms and Conditions

The above proposal, including all attachments, has been read and understood and is hereby agreed to and accepted. It is agreed that the attached “Schedule of Charges,” “General Terms and Conditions” (which contains a limitation of liability provision), and Addendum(s), if any, form an express part of the Contract, as evidenced by my signature below:

City of John Day, Oregon

By _____ Date _____

Name _____ Title _____
(please print)

**ESTIMATED BUDGET
FORMER OREGON PINE PROPERTY
CITY OF JOHN DAY, OREGON**

Task	Maul Foster & Alongi, Inc.			Subcontractors	Total
	Hours	Labor	Direct		
1 Prepare Work Plan	59	\$8,640	\$0	\$0	\$8,640
2 Complete Fieldwork	83	\$11,190	\$2,426	\$16,474	\$30,090
3 Analytical Work and QA/QC	40	\$5,720	\$960	\$12,075	\$18,755
4 Reporting	53	\$7,355	\$60	\$0	\$7,415
Total Estimated Cost					\$64,900



SCHEDULE OF CHARGES

PERSONNEL CHARGES

Principal	\$170 – 250/hour
Senior	\$130 – 190/hour
Project	\$120 – 160/hour
Staff	\$100 – 130/hour
GIS and Data Analyst/Technician	\$100 – 135/hour
CADD Operator	\$80 – 95/hour
Administrative Assistant/Copy Editor	\$80 – 90/hour

Depositions and expert witness testimony, including preparation time, will be charged at 200 percent of the above rates.

Travel time will be charged in accordance with the above rates.

OUTSIDE SERVICES

Charges for outside services, equipment, and facilities not furnished directly by Maul Foster & Alongi, Inc. will be billed at cost plus 10 percent. Such charges may include, but shall not be limited to the following:

Printing and photographic reproduction	Rented equipment
Rented vehicles	Shipping charges
Transportation on public carriers	Meals and lodging
Special fees, permits, insurance, etc.	Consumable materials

SUBCONTRACTORS

Charges for subcontractors will be billed at cost plus 15 percent.

DIRECT CHARGES

Vehicle per mile\$0.75

COMPUTER CHARGES

CADD, ArcGIS, Tableau, Alteryx.....\$20.00/hour
EQuIS, EVS, Modeling Applications.....\$30.00/hour

FIELD EQUIPMENT

The rates for field equipment are set forth in the Field Equipment Rate Schedule.

DOCUMENT PRODUCTION

The rates for document production are set forth in the Document Production Rate Schedule.

RATE CHANGES

Schedule of Charges and Standard Equipment Rates are subject to change without notice.

BILLING AND PAYMENT

Invoices will be submitted monthly and shall be due and payable upon receipt. Interest at the rate of one and one-half percent (1.5%) per month, but not exceeding the maximum rate allowable by law, shall be payable on any amounts that are due but unpaid within thirty (30) days from receipt of invoice, payment to be applied first to accrued late payment charges and then to the principal unpaid amount.



GENERAL TERMS AND CONDITIONS

ARTICLE 1—PROFESSIONAL RESPONSIBILITY

MFA shall perform the Services specified in this Agreement consistent with the level of care and skill ordinarily exercised by other professional consultants under similar circumstances at the same time the Services are performed; subject, however, to any express limitations established by the CLIENT as to the degree of care and amount of time and expense to be incurred and any other limitations contained in this Agreement. No other representation, warranty or guaranty, express or implied, is included in or intended by this Agreement or any other of MFA's services, proposals, agreements or reports contemplated by this Agreement.

ARTICLE 2—INDEPENDENT CONTRACTOR STATUS; LEGAL RELATIONSHIP

The parties intend that MFA, in performing Services specified in this Agreement, shall act as an independent contractor and shall have control of its work and the manner in which it is performed. MFA shall be free to contract for similar services to be performed for other individuals or entities while it is under contract with CLIENT.

The parties further intend that nothing in this Agreement shall be construed or interpreted as requiring MFA to assume the status of an owner, operator, generator, person who arranges for disposal, transporter or storer, as those terms, or any other similar terms, are used in any federal, state or local statute, regulation, order or ordinance governing the treatment, storage, handling and disposal of any toxic or hazardous substance or waste.

ARTICLE 3—BILLING AND PAYMENT

Invoices will be submitted monthly and shall be due and payable upon receipt. Payment shall be made to Maul Foster & Alongi, Inc. and delivered to:

Maul Foster & Alongi, Inc.
109 East 13th Street
Vancouver, WA 98660

Interest at the rate of one and one-half percent (1.5%) per month, but not exceeding the maximum rate allowable by law, shall be payable on any amounts that are due but unpaid within thirty (30) days from receipt of invoice, payment to be applied first to accrued late payment charges and then to the principal unpaid amount. MFA may, at its option, withhold delivery of reports and any other data pending receipt of payment for services rendered. Remittance will be mailed to MFA at the address noted on such invoices or as MFA may otherwise advise.

ARTICLE 4—LIMITATION OF LIABILITY

CLIENT agrees to limit the liability of MFA, its officers, directors, shareholders, employees, agents and representatives (the "MFA Parties") to CLIENT for all claims and legal proceedings of any type arising out of or relating to the performance of Services under this Agreement (including, but not limited to, MFA's breach of the Agreement, its professional negligence, errors and omissions and other acts) to the greater of \$100,000 or the amount of MFA's Fee. Failure of CLIENT to give written notice to MFA of any claim of negligent act, error or omission within one (1) year of performance shall constitute a waiver of such claim by CLIENT. In no event shall MFA be liable for any direct, special or consequential loss or damages. MFA is solely responsible for performance of this contract, and no affiliated company, director, officer, employee, or agent shall have any legal responsibility hereunder, whether in contract or tort, including negligence.

ARTICLE 5—INDEMNIFICATION

Subject to the limitation of liability above, MFA shall indemnify, defend and hold CLIENT harmless from the proportionate share of any claim, suit, liability, damage, injury, cost or expense, including attorneys fees, or other loss (hereafter collectively called "Loss") arising out of (a) MFA Parties' breach of this Agreement or (b) MFA Parties' willful misconduct or negligence in connection with the performance of the Services under this Agreement.

CLIENT agrees to indemnify, defend and hold harmless MFA Parties from any Loss arising out of (a) CLIENT's breach of the Agreement, or (b) CLIENT's willful misconduct or negligence in connection with performance of the Agreement. To the extent such Loss is caused by MFA's negligence, CLIENT shall indemnify, defend, and hold MFA harmless from the proportional share of the Loss resulting from the acts or negligence of others.

ARTICLE 6—TERM OF AGREEMENT; TERMINATION

The obligations of the parties to indemnify and the limitations on liability set forth in this Agreement shall survive the expiration or termination of this Agreement.

ARTICLE 7—TIME OF PERFORMANCE/FORCE MAJEURE

MFA makes no warranties regarding the time of completion of Services, and shall not be in default of performance under this Agreement where such performance is prevented, suspended or delayed by any cause beyond MFA's control.

Neither party will hold the other responsible for damages for delays in performance caused by acts of God or other events beyond the control of the other party and which could not have been reasonably foreseen or prevented. If such events occur, it is agreed that both parties will use their best efforts to overcome all difficulties arising and to resume as soon as reasonably possible performance of Services under this Agreement. Delays within the scope of this provision will extend the contract completion date for specified services commensurately or will, at the option of either party, make this Agreement subject to termination or to renegotiation.

ARTICLE 8—SUSPENSION OF SERVICES

CLIENT may suspend further performances of Services by MFA by ten (10) days prior written notice. If payment of invoices by CLIENT is not maintained on a thirty (30) day current basis, MFA may suspend further performance until such payment is restored to a current basis. Suspensions for any reason exceeding thirty (30) days will, at the option of MFA, make this Agreement subject to termination or renegotiation.

All suspensions will extend the contract completion date for specified services commensurately, and MFA will be paid for services performed to the suspension date plus suspension charges. Suspension charges are defined as those charges relating to costs incurred which are directly attributable to suspension of services, including, but not limited to, personnel rescheduling, equipment rescheduling, and/or reassignment adjustments.

ARTICLE 9—CHANGED CONDITIONS

If, during the course of the performance of the Services under this Agreement, conditions or circumstances develop or are discovered which were not contemplated by MFA at the commencement of this Agreement, and which materially affect MFA's ability to perform the Services or which would materially increase the costs to MFA of performing the Services, then MFA shall notify the CLIENT in writing of the newly discovered conditions or circumstances, and CLIENT and MFA shall renegotiate in good faith the terms and conditions of this Agreement. If amended terms and conditions cannot be agreed upon within thirty (30) days after the mailing of such notice, MFA may terminate the Agreement and be compensated as set forth in the section of this Agreement entitled TERM OF AGREEMENT; TERMINATION.

ARTICLE 10—INSURANCE

MFA agrees to use its best efforts to maintain Professional Liability, Commercial General Liability, Automobile Liability, statutory Worker's Compensation and Employers' Liability insurance coverage during the period of performance of services hereunder in the following minimum amounts:

	<u>LIMITS OF LIABILITY</u>
A. Worker's Compensation Employer's Liability	Statutory \$1,000,000
B. Commercial General Liability (including Contractual Liability) Bodily Injury Property Damage	\$1,000,000 combined single limits for each occurrence or aggregate

LIMITS OF LIABILITY

- | | | |
|----|--|--|
| C. | Comprehensive Automobile Liability
(Owned, Hired, and Non-owned Vehicles)
Bodily Injury
Property Damage | \$1,000,000 combined single limits for each
occurrence or aggregate |
| D. | Professional Liability: | \$1,000,000 combined single limits for each
occurrence or aggregate |

At CLIENT’s request, insurance certificates will be provided by MFA to evidence such coverages.

ARTICLE 11—HAZARDOUS OR UNSAFE CONDITIONS

CLIENT has fully informed MFA of the type, quantity, and location of any hazardous, toxic, or dangerous materials or unsafe or unhealthy conditions which CLIENT knows or has reason to suspect exists at all real property where the Services are to be performed (the “Project Site”). CLIENT shall immediately inform MFA when it becomes aware of any new information as to the foregoing which may affect the project, such as information to constitute a CHANGED CONDITION subject to the provisions of Article 9 of this Agreement.

MFA shall not be responsible for the health and safety of any persons other than the MFA Parties, nor shall have any responsibility for the operations, procedures or practices of persons or entities other than the MFA Parties.

ARTICLE 12—RIGHT OF ENTRY AND UNAVOIDABLE DAMAGES

Client agrees to grant or arrange for right of entry when deemed necessary by MFA to perform the Services at the Project Site, whether or not the Project Site is owned by CLIENT. CLIENT recognizes that the use of investigative equipment and practices may unavoidably alter conditions or affect the environment at the Project Site. While MFA will take all reasonable precautions to minimize damage to the Project Site, the cost of repairing any such damage shall be borne by CLIENT, and it is understood that the correction of such damage is not part of the Services or the Fee contemplated by this Agreement.

ARTICLE 13—SUBCONTRACTORS

MFA may, in its sole discretion, subcontract for the services of others without obtaining CLIENT’s consent where MFA deems it necessary or desirable to have others perform certain services. If MFA, in its sole discretion, deems it necessary or desirable to obtain Client’s advance concurrence as to any proposed subcontract, MFA may make a written request to CLIENT to review the qualifications and suggested scope of work to be performed by such proposed subcontractor and CLIENT shall either grant or deny such concurrence within a reasonable time after receipt of such request.

ARTICLE 14—OWNERSHIP AND REUSE OF DOCUMENTS

All documents furnished by MFA pursuant to this Agreement are instruments of MFA’s services. MFA may retain an ownership and property interest therein, and MFA shall, in its sole discretion, have the right to dispose of or retain all such documents. Such documents are not intended or represented to be suitable for reuse by CLIENT or others. Any such reuse without specific written verification and adaptation by MFA for the specific purpose intended will be at the reuser’s sole risk and without liability or legal exposure to MFA. Any transfer of electronic data hereunder is solely for Client’s convenience “as is” without warranty as to contents, and is not the project deliverable unless specifically agreed to the contrary. MFA disclaims all warranties express or implied with regard to any electronic data provided hereunder, including any warranties of merchantability or fitness for a particular purpose.

ARTICLE 15—NO THIRD PARTY BENEFICIARIES

There are no third party beneficiaries of this Agreement, and no third party shall be entitled to rely upon any work performed or reports prepared by MFA hereunder for any purpose whatsoever. CLIENT shall indemnify and hold MFA harmless against any liability to any third party for any Loss arising out of or relating to the reliance by any such third party on any work performed or reports issued by MFA hereunder.

ARTICLE 16—DESIGNS AND DISCOVERIES

In the course of providing Services to CLIENT, MFA may utilize or develop designs, ideas, discoveries, inventions, or improvements of these (collectively “Ideas”), made by the MFA Parties. CLIENT agrees that MFA’s utilization or development

of such Ideas does not grant CLIENT any right in the form or ownership or license to such Ideas. All Ideas utilized or developed while providing CLIENT Services shall be deemed to be property of MFA.

ARTICLE 17—LAWS AND REGULATIONS

Both parties will be entitled to regard all applicable laws, rules, regulations and orders issued by any federal, state, regional or local regulatory body as valid and may act in accordance therewith until such time as the same may be modified or superseded by such regulatory body or invalidated by final judgment in a court of competent jurisdiction, unless prior to such final judicial determination, the effectiveness of such law, rule or regulation has been stayed by an appropriate judicial or administrative body having jurisdiction.

In the event there are changes in existing laws, codes, regulations, orders or ordinances, or the interpretation thereof, following the performance of professional services, CLIENT agrees to defend, indemnify and hold MFA harmless from any and all claims, including claims for fines or penalties imposed, resulting from or alleged to have resulted from noncompliance with or nonincorporation of such changes in professional services prior to the effectiveness of such changes.

ARTICLE 18—ASSIGNMENT

Neither party to this Agreement may delegate, assign, or otherwise transfer its rights and interests or duties and obligations under this Agreement without prior written consent of the other party.

ARTICLE 19—ATTORNEYS' FEES AND COSTS

If any action or proceeding is commenced to enforce or interpret any of the terms or conditions of this Agreement or the performance thereof, including the collection of any payments due hereunder, the prevailing party will be entitled to recover all reasonable attorneys' fees, costs and expenses, including staff time at current billing rates, court costs, and other claim-related expenses.

If MFA is requested to respond to any mandatory orders for the production of documents or witnesses on CLIENT's behalf regarding work performed by MFA, CLIENT agrees to pay all costs and expenses incurred by MFA not reimbursed by others in responding to such order, including attorney's fees, staff time at current billing rates and reproduction expenses.

ARTICLE 20—GOVERNING LAW

This Agreement shall be subject to, interpreted and enforced according to the laws of the State from which MFA's services are procured.

ARTICLE 21—SEVERABILITY

Any provision of this Agreement held in violation of any law will be deemed stricken and all remaining provisions shall continue valid and binding upon the parties. The parties will attempt in good faith to replace any invalid or unenforceable provision(s) of this Agreement with provisions which are valid and enforceable and which come as close as possible to expressing the intention of the original provisions.

ARTICLE 22—ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between CLIENT and MFA. It supersedes any and all prior written or oral agreements, negotiations, or proposals, or contemporaneous communications with respect to the subject matter hereof, and has not been induced by any representations, statements, or agreements other than those herein expressed. No amendment to this Agreement hereafter made between the parties will be binding on either party unless reduced to writing and signed by authorized representatives of both parties.