

GENERAL TERMS & CONDITIONS SMALL PUBLIC WORKS

PART 1 – GENERAL PROVISIONS

1.1 DEFINITIONS

- A. "Architect", "Engineer" or "A/E": A person or entity lawfully entitled to practice architecture or engineering, representing Owner within the limits of its delegated authority.
- B. "Claim": Contractor's exclusive remedy for resolving disputes with Owner regarding the terms of a change order or a request for equitable adjustment, as more fully set forth in Part 8.
- C. "Contract Documents": Advertisement for Bids, Instructions to Bidders, completed Bid Proposal Form(s), these General Conditions, Supplemental Conditions (if applicable), public works Contract, Drawings and Specifications, addenda and modifications thereto.
- D. "Contract Sum": Total amount payable by Owner to Contractor for completion of the Work.
- E. "Contract Time": Number of calendar days stated for achieving Substantial Completion.
- F. "Final Acceptance": Written acceptance from the Owner that the Work has been completed.
- G. "Final Completion": Work is fully and finally complete in accordance with the Contract Documents.
- H. "Notice to Proceed": Written notice from Owner that sets the date for Contract Time to begin.
- I. "Owner": The Port of Longview or its authorized representative with the authority to enter into, administer, and terminate the Work and make related determinations and findings.
- J. "Prior Occupancy": Owner's use of all or parts of the project before Substantial Completion.
- K. "Substantial Completion": Stage in the progress of the Work where Owner has full and unrestricted use and benefit of the facilities, as set forth in Section 6.7. All Work other than incidental corrective or punch list work shall have been completed.
- L. "Work": Construction and services required, including but not limited to labor, materials, supplies, equipment, services, permits, manufacture and fabrication of components, performed, furnished, or provided in accordance with the Contract Documents.

1.2 ORDER OF PRECEDENCE

Conflicts or inconsistencies in the Contract Documents shall be resolved by giving the documents precedence in the following order: signed public works Contract, including any change orders; Modifications to the General Conditions; Supplemental Conditions; General Conditions; Specifications – Division I provisions shall have precedence over other divisions; Drawings – large scale over small scale drawings; signed and completed form of proposal, i.e., bid form(s); Instructions to Bidders; and Advertisement for Bids.

1.3 CONTRACTOR REPRESENTATIONS

Contractor makes the following representations to Owner:

- A. The Contract Sum is reasonable compensation for the Work. Contract Time is adequate for the performance of the Work.
- B. Contractor is financially solvent and thus able to perform the obligations required by the Contract.
- C. Contractor is able to furnish the plant, tools, materials, supplies, equipment and labor required to complete the Work, and has experience and competence to do so.

PART 2 – INSURANCE AND BONDS

2.1 CONTRACTOR'S LIABILITY INSURANCE

The Contractor shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, their agents, representatives, employees or subcontractors.

No Limitation. Contractor's maintenance of insurance as required by the agreement shall not be construed to limit the liability of the Contractor to the coverage provided by such insurance, or otherwise limit the Port's recourse to any remedy available at law or in equity.

A. Minimum Scope of Insurance

Contractor shall obtain insurance of the types described below:

1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form, providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.

2. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 or the equivalent and shall cover liability arising from premises, operations, independent contractors, products-completed operations, stop gap liability, personal injury and advertising injury, and liability assumed under an insured contract. The Port shall be named as an insured under the Contractor's Commercial General Liability insurance policy with respect to the Work performed by the Port.
3. Workers' Compensation coverage as required by the Industrial Insurance laws of the state of Washington.

B. Minimum Amounts of Insurance

Contractor shall maintain the following insurance limits:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
2. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate and a \$2,000,000 products-completed operations aggregate limit.

C. Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability and Commercial General Liability insurance:

1. The Contractor's insurance coverage shall be primary insurance as respects the Port. Any insurance, self-insurance, or insurance pool coverage maintained by the Port shall be excess of the Contractor's insurance and shall not contribute with it.
2. The Contractor's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the Port.

D. Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

E. Verification of Coverage

Contractor shall furnish the Port with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Contractor before commencement of the Work.

F. Subcontractors

Contractor shall ensure that each subcontractor of every tier obtain at a minimum the same insurance coverage and limits as stated herein for the Contractor. Upon request from the Port, the Contractor shall provide evidence of such insurance.

2.2 PAYMENT AND PERFORMANCE BONDS

Payment and performance bonds for 100% of the Contract Sum, including all Change Orders and local and state sales tax, on Port approved forms, shall be furnished by Contractor. No payment or performance bond is required if the Contract Sum is \$150,000 or less and Contractor agrees that Owner may, in lieu of the bond, retain 10% of the Contract Sum for the period allowed by RCW 39.08.010.

The Payment Bond shall cover payments to laborers and mechanics, including payments to Employee Benefit Funds, and payments to subcontractors and material suppliers.

PART 3 – TIME AND SCHEDULE

3.1 PROGRESS AND COMPLETION

Contractor shall diligently prosecute the Work, with adequate forces, so as to achieve Substantial Completion within the Contract Time, and to achieve Final Completion within the time specified in the Contract.

3.2 CONSTRUCTION SCHEDULE

A progress schedule satisfactory to Owner shall be submitted by Contractor within seven (7) calendar days of the Notice to Proceed. Owner may withhold progress payments until a satisfactory schedule has been submitted. Contractor shall update the schedule as required to demonstrate the progress of the Work. If Contractor is not in conformance with the schedule, Contractor shall take such steps as are necessary to bring the actual completion dates of the Work into conformance with the schedule, and notify Owner of Contractor's plans to do so.

3.3 OWNER'S RIGHT TO SUSPEND OR STOP THE WORK

Owner may, at its sole discretion, order Contractor, in writing, to suspend all or any part of the Work for up to 90 days, or for such longer period as mutually agreed. Upon receipt of this notice, Contractor shall immediately suspend the Work and take all reasonable steps to minimize the costs of performance directly attributable to such suspension. Contractor shall be entitled to an equitable adjustment in the Contract Time, or Contract Sum, or both, for any increases in the time or cost of performance directly attributable to the suspension, provided Contractor complies with all requirements set forth in Part 7.

If Contractor fails or refuses to perform its obligations in accordance with the Contract Documents, Owner may order

Contractor, in writing, to stop the Work, until satisfactory corrective action has been taken. Contractor shall not be entitled to an equitable adjustment in the Contract Time or Contract Sum for any increased cost or time of performance attributable to Contractor's failure or refusal to perform.

3.4 DELAY

- A. No default by Owner or Contractor shall occur for any delay or failure of performance, other than the payment of money, if such delay or failure was caused by an act of Force Majeure. Acts of Force Majeure are as follows:
1. Acts of God or the public enemy;
 2. Fire or other casualty for which neither Contractor nor any Subcontractor is responsible;
 3. Quarantine or epidemic;
 4. Strike or defensive lockout;
 5. Unusually severe weather conditions which could not have been reasonably anticipated; and
 6. Unusual delay in receipt of supplies or products which were timely ordered and for which no substitute reasonably acceptable to Owner was available.

For changes in the time of performance directly attributable to an act of Force Majeure, Contractor shall be entitled to an equitable adjustment in the Contract Time, provided it makes a request for equitable adjustment according to Section 7.3. Contractor shall not be entitled to an adjustment in the Contract Sum resulting from an act of Force Majeure.

- B. Contractor shall be entitled to an equitable adjustment in Contract Time, and may be entitled to an equitable adjustment in Contract Sum, if the cost or time of performance is changed due solely to the fault or negligence of Owner. For these equitable adjustments, Contractor must make a request according to Part 7. Contractor shall not be entitled to an adjustment in Contract Time or in the Contract Sum for any delay or failure of performance if caused by Contractor or anyone for whose acts Contractor is responsible.
- C. Contractor shall make all reasonable efforts to prevent and mitigate the effects of any delay.

3.5 LABOR DISPUTES

Contractor shall promptly notify Owner of any actual or potential labor dispute.

3.6 DAMAGES FOR FAILURE TO ACHIEVE TIMELY COMPLETION

- A. It is acknowledged that the Contractor's failure to achieve Substantial Completion of the Work within the

Contract Time provided by the Contract Documents will cause the Owner to incur substantial economic damages and losses of types and in amounts which are impossible to compute and ascertain with certainty as a basis for recovery by the Owner of actual damages, and that liquidated damages represent a fair, reasonable and appropriate estimate thereof. Accordingly, in lieu of actual damages for such delay, the Contractor agrees that liquidated damages may be assessed and recovered by the Owner as against Contractor and its Surety, in the event of delayed completion and without the Owner being required to present any evidence of the amount or character of actual damages sustained by reason thereof.

Therefore, Contractor shall be liable to the Owner for payment of liquidated damages in the amount set forth in the Contract Documents for each day that Substantial Completion is delayed beyond the Contract Time as adjusted for time extensions provided by the Contract Documents. Such liquidated damages are intended to represent estimated actual damages and are not intended as a penalty, and Contractor shall pay them to Owner without limiting Owner's right to terminate this agreement for default as provided elsewhere herein.

- B. If Contractor does not achieve Final Completion within the time set, actual damages may be assessed. Actual damages will be calculated on the related costs attributable to the project from the date when Final Completion should have been achieved in accordance with the Contract Documents.

PART 4 – SPECIFICATIONS, DRAWINGS, AND OTHER DOCUMENTS

4.1 GENERAL

The intent of the specifications and drawings is to describe a complete project to be constructed. Contractor shall perform the Work required in accordance with the drawings, specifications and other provisions of the Contract Documents and shall provide work or materials which are clearly implied by the Contract Documents.

4.2 DISCREPANCIES

Anything mentioned in the specifications and not shown on the drawings, or vice versa, shall be of like effect as if shown or mentioned in both. If Contractor finds a conflict, error, inconsistency, or omission in the Contract Documents, Contractor shall notify Owner in writing before proceeding with the Work. Any questions about the interpretation of the Contract Documents shall be directed to the Owner.

4.3 PROJECT RECORD

Contractor shall maintain a Project Record consisting of Drawings and Specifications, noting actual conditions as

constructed. Contractor shall submit the completed and finalized Project Record to Owner prior to Final Acceptance.

4.4 SUBMITTALS

Contractor shall submit shop drawings to Owner and review them for accuracy and completeness prior to submittal. Where required by law, the shop drawings shall be stamped by an appropriate professional licensed by the State of Washington. No work shall be performed by Contractor until Owner's review has been completed. Review by Owner does not relieve Contractor of responsibility for any errors or omissions in such shop drawings or for compliance with the Contract Documents.

PART 5 – PERFORMANCE

5.1 CONTRACTOR CONTROL & SUPERVISION, LIMITATION OF LIABILITY

- A. Contractor shall supervise and direct the Work, using its best skill and attention. The Work shall be directly supervised by a competent superintendent satisfactory to Owner and who has authority to act for Contractor. Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures, and shall disclose means and methods upon request of the Owner. Contractor's employees shall at all times conduct business in a manner which assures fair, equal and non-discriminatory treatment of all persons. Upon written request of Owner, Contractor shall remove any employee Owner deems incompetent, careless or otherwise objectionable. Contractor shall ensure that its employees and subcontractors comply with the Ethics in Public Service Act, chapter 42.52 RCW.
- B. Nothing contained in this section shall be construed in such a manner that Contractor shall be held liable for any physical loss or damage resulting directly or indirectly from persons, machinery, equipment or property that has not been introduced into or upon the premises of the Owner by Contractor. Contractor shall only be liable for damages or losses arising directly or indirectly out of personnel, machinery, equipment or any other property that has been installed or introduced by Contractor. However, nothing hereunder shall relieve Contractor from any and all liability for the negligent or intentional acts of its officers, employees, agents, contractors or subcontractors in their performance of services provided during the term of this Contract. The parties agree that the damages contemplated in this section shall not be construed nor are they intended to be the exclusive remedies provided to the Owner under the Contract.

5.2 PERMITS, FEES AND NOTICES

Unless otherwise provided in the Contract Documents, Contractor shall pay for and obtain all permits, licenses,

and inspections necessary for execution and completion of the Work.

5.3 PATENTS AND ROYALTIES

Contractor is responsible for and shall pay all royalties and license fees.

5.4 PREVAILING WAGES

- A. The wage rates to be paid all laborers, workers, and mechanics who perform any part of this Contract shall not be less than the prevailing wage rates as required by Chapter 39.12 of the Revised Code of Washington, as amended. This requirement applies to laborers, workers, and mechanics whether they are employed by the Contractor, Subcontractors, Sub-subcontractors, or any other person who performs a portion of the Work contemplated by this Contract.
- B. The State of Washington prevailing wage rates application for this public works project, which is located in Cowlitz County, may be found at the following web address for the Department of Labor & Industries: <https://for-tress.wa.gov/lni/wagelookup/prvWagelookup.aspx>
- C. The applicable effective date for prevailing wages shall be based upon the bid submittal deadline for this project. A copy of the applicable prevailing wage rates are also available for viewing at the office of the Owner, located at:
- Port of Longview
10 Port Way
Longview, WA 98632**
- D. Upon request, the Port will mail a hard copy of the applicable prevailing wages for this project.
- E. In referencing such rates, the Port of Longview does not imply or warrant that the Contractor will find labor available at those rates. It is the Contractor's sole responsibility to determine the wage rates actually paid.
- F. Contractor shall file a Statement of Intent to Pay Prevailing Wages with L&I and send a copy of the approved Statement of Intent to Owner. Copies of the approved Statement of Intent shall be posted on the job site with the address and telephone number of the L&I Industrial Statistician where a complaint or inquiry concerning prevailing wages may be made. Contractor shall pay current L&I fees for filing the Statement of Intent and Affidavit of Wages Paid.
- G. Copies of approved Intents to Pay Prevailing Wages for the Contractor and all subcontractors shall be submitted with the Contractor's first application for payment. When and if additional subcontractors perform work on the project, their approved Intent forms shall be submitted with the Contractor's next application for payment. The Contractor and all subcontractors shall

promptly submit to the Owner certified payroll copies if requested.

- H. In 2019 the Washington State Legislature passed ESSB 5035, adding requirements to the existing prevailing wage laws within RCW 39.12.120. Contractors shall be aware of the requirements and by submitting a bid, Contractor and its Subcontractors agree to comply with all prevailing wage requirements.

5.5 HOURS OF LABOR

Contractor shall comply with all applicable provisions of RCW 49.28.

5.6 NONDISCRIMINATION

Discrimination by Contractor in all phases of employment and contracting is prohibited by federal and State laws, rules and regulations. Contractor shall not discriminate against any employee or applicant for employment and shall ensure that all employees are treated without regard to race, color, age, marital status, sexual orientation, gender or gender identity, political ideology, creed, religion, ancestry, national origin, or the presence of any sensory, mental or physical handicap unless based upon a bona fide occupational qualification.

5.7 SAFETY

Contractor is responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Work. Contractor shall protect the lives and health of employees performing the Work and other persons, including the public, who may be affected by the Work; prevent damage to materials, supplies, and equipment; and prevent damage to other property at the site or adjacent thereto. Contractor shall comply with all laws, ordinances, rules, regulations, and orders of any public body having jurisdiction for the safety of persons or property, or to protect them from damage, injury, or loss; Contractor shall notify owners of adjacent property and utilities when prosecution of the Work may affect them. Contractor shall keep records of and report to Owner all incidents resulting in traumatic injury, death, occupational disease or damage to property, materials, supplies or equipment. If hazardous chemicals are to be utilized on the project site, Contractor shall comply with the provisions of WAC 296-62. Contractor shall promptly notify Owner of all spills or releases of any hazardous substances which are otherwise required to be reported to any regulatory agency and shall pay the cost of cleanup. Contractor shall perform the Work so as to cause a minimum of interruption of vehicular traffic or inconvenience to pedestrians and all arrangements to care for such traffic shall be the Contractor's responsibilities. All expenses in the maintenance of traffic by way of detours shall be borne by Contractor. Nothing in this section shall be construed as imposing any duty upon Owner of control or responsibility over project site safety, or over any other safety conditions relating to employees or

agents of Contractor or any of its subcontractors, or the public.

5.8 OPERATIONS, MATERIAL HANDLING, STORAGE AREAS, AND PROTECTION OF STRUCTURES, EQUIPMENT, VEGETATION, UTILITIES AND IMPROVEMENTS

Contractor shall confine all operations, including storage of materials, to Owner-approved areas. Contractor shall use only established roadways or temporary roadways authorized by Owner. Contractor shall protect and be responsible for any damage or loss to the Work, to the materials and equipment, and to all existing structures, utilities and vegetation until the date of Substantial Completion. Contractor shall also protect and be responsible for any damage or loss to the Work, or to the materials or equipment, after the date of Substantial Completion, to the extent such damages or loss are caused by the acts or omissions of Contractor, or any subcontractor.

5.9 PRIOR NOTICE OF EXCAVATION

Contractor shall provide prior notice of the scheduled commencement of excavation to all owners of potentially affected underground facilities and utilities, through locator services.

5.10 UNFORESEEN PHYSICAL CONDITIONS

If Contractor encounters conditions at the site which are subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents, or unknown physical conditions of an unusual nature which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then Contractor shall give written notice to Owner promptly before conditions are disturbed and in no event later than seven (7) calendar days after the first observance of the conditions. If such conditions cause a change in Contractor's cost of, or time required for, performance of any part of the Work, the Contractor may be entitled to an equitable adjustment in the Contract Time or Contract Sum, or both, provided it makes a request thereof as provided in Part 7.

5.11 CONSTRUCTION WASTE DIVERSION

Contractor shall record all demolition and construction waste diversion throughout the project on a form and in a format to be approved by Owner.

5.12 MATERIAL AND EQUIPMENT

All equipment, material, and articles incorporated into the Work shall be new and of the most suitable grade for the purpose intended.

5.13 TEMPORARY UTILITIES

Contractor shall arrange and pay for all utilities necessary to complete the Work.

5.14 TESTS AND INSPECTION

Unless otherwise provided in the Contract Documents, Contractor shall maintain an adequate testing and inspection program, and perform such tests and inspections as are necessary or required to ensure that the Work conforms to the requirements of the Contract Documents. Contractor shall bear all costs of the inspections and testing. Contractor shall give Owner timely notice of testing and inspection.

5.15 CORRECTION OF NONCONFORMING WORK

It is the responsibility of Contractor to promptly correct, at its sole expense, and without change in the Contract Time or Contract Sum, Work found by Owner not to conform to the requirements of the Contract Documents. This obligation extends for one year after Substantial Completion or for one year after the commencement of any system warranties, or for one year from the date of repair or replacement of the nonconforming work.

5.16 CLEAN UP

Contractor shall at all times keep the project site, including hauling routes, infrastructures, utilities, and storage areas, free from accumulations of waste materials. Upon completing the Work, Contractor shall leave the project site in a clean, neat and orderly condition satisfactory to Owner.

5.17 ACCESS TO WORK

Contractor shall provide Owner and A/E access to the Work at all reasonable times.

5.18 OTHER CONTRACTS

Owner may undertake or award other contracts for additional work at or near the project site and/or may incorporate its own labor for portions of the Work. Contractor shall reasonably cooperate with the other contractors and/or Port labor with Owner to facilitate the completion of such additional work.

5.19 SUBCONTRACTORS AND SUPPLIERS

Within seven (7) calendar days after receiving the Notice to Proceed, and before submitting its first payment application, Contractor shall provide Owner a written list of the names, addresses and telephone numbers of all subcontractors and suppliers. Contractor shall not utilize any subcontractor or supplier to whom the Owner has a reasonable objection. Contractor shall require each subcontractor, so far as applicable to the Work to be performed by the subcontractor, to be bound to Contractor, and to assume toward Contractor all the obligations and responsibilities which Contractor assumes toward Owner in accordance with the Contract Documents. Contractor shall schedule, supervise, and coordinate the operations of all

subcontractors. In no event shall subcontracting of any of the Work relieve Contractor from its responsibility for the performance of the Work in accordance with the Contract Documents.

5.20 WARRANTY OF CONSTRUCTION

Contractor warrants that all Work conforms to the requirements of the Contract Documents and is free of any defect in equipment, material, or design furnished, or workmanship performed by Contractor. The Contractor shall provide a material, labor and equipment guarantee for the Work performed for a period of one year from the Final Completion date. All repairs during the warranty period shall be made at no cost to the Owner. Contractor shall comply with all Prevailing Wage requirements for repairs made during the warranty period.

Contractor shall obtain and provide to Owner all warranties for equipment, materials and systems that would be given in normal commercial practice, executed for the benefit of the Owner prior to Final Completion.

5.21 INDEMNIFICATION

Contractor shall defend, indemnify, and hold Owner and A/E harmless from and against all claims, demands, losses, damages or costs, including but not limited to damages arising out of bodily injury or death to persons and damage to property, caused by or resulting from the sole negligence of Contractor or any of its subcontractors; the concurrent negligence of Contractor, or any subcontractor, but only to the extent of the negligence of Contractor or such subcontractor; and the use of any design, process, or equipment which constitutes an infringement of any U.S. patent presently issued, or violates any other proprietary interest, including copyright, trademark, and trade secret or other intellectual property right. In any action against Owner and any other entity indemnified in accordance with this section by any employee of Contractor, its subcontractors, sub-subcontractors, agents, or anyone directly or indirectly employed by any of them, the indemnification obligation of this section shall be to the actual damages arising out of Owner's negligent acts or omissions as limited by the statutory provisions contained within RCW Title 51 (Industrial Insurance Act), along with applicable agency administrative regulations (WAC) implementing the Industrial Insurance Act, or any other employee benefit acts.

PART 6 – PAYMENTS AND COMPLETION

6.1 CONTRACT SUM

Owner shall pay Contractor the Contract Sum for performance of the Work. The Contract Sum shall include all taxes imposed by law and properly chargeable to the project, including sales tax.

6.2 SCHEDULE OF VALUES

Before submitting its first application for payment, Contractor shall submit to Owner for approval a schedule of values which shall include a breakdown allocating the total Contract Sum to each principle category of work, including appropriate amounts for demobilization, record drawings, O&M manuals, and any other requirements for Project closeout, and which shall be used by Owner as the basis for progress payments. Payment for Work shall be made only for and in accordance with those items included in the schedule of values.

6.3 APPLICATION FOR PAYMENT

At monthly intervals, Contractor shall submit to Owner an itemized application for payment for Work completed in accordance with the Contract Documents. Contractor may request payment for materials delivered to the project site and suitably stored. Payment will not be made for materials stored off site.

6.4 PROGRESS PAYMENTS

Owner shall make progress payments, in such amounts as Owner determines are properly due, within 30 days after receipt of a properly executed application for payment. Owner shall notify Contractor in accordance with RCW 39.76 if the application for payment does not comply with the requirements of the Contract Documents. From each progress payment Owner shall retain 5% in accordance with RCW 60.28.011.

6.5 PAYMENTS WITHHELD

Owner may withhold or nullify the whole or part of any payment, for reasons including but not limited to:

- A. Work not in accordance with the Contract Documents or failure to otherwise perform in accordance with the Contract Documents; or
- B. Reasonable evidence that the Work required by the Contract Documents cannot be completed for the unpaid balance of the Contract Sum; or
- C. Work by Owner to correct defective Work or complete the Work; or
- D. Cost or liability that may accrue to Owner as the result of Contractor's fault or negligent acts or omissions.

6.6 RETAINAGE AND BOND CLAIM RIGHTS

RCW 53.08.135 and RCW 39.08, concerning payment and performance bonds and RCW 60.28 concerning retainage, are hereby made a part of the Contract Documents by reference as though fully set forth herein.

6.7 SUBSTANTIAL COMPLETION

Substantial Completion shall not have been achieved if all systems and parts are not functional, if utilities are not connected and operating normally, if all required occupancy

permits have not been issued, or if the Work is not accessible by normal vehicular and pedestrian traffic routes. The date Substantial Completion is achieved shall be established in writing by Owner.

6.8 PRIOR OCCUPANCY

Owner may, with prior written notice to Contractor, take Prior Occupancy of the Work at any time prior to Substantial Completion. Owner shall be responsible for loss of or damage to the Work resulting from its Prior Occupancy.

6.9 FINAL COMPLETION, ACCEPTANCE AND PAYMENT

The date Final Completion is achieved shall be established by Owner in writing in the Final Acceptance notice. Prior to Final Acceptance, Contractor shall submit to Owner a written notice of any outstanding disputes or claims between Contractor and any of its subcontractors, including the amounts and other details thereof. Neither Final Acceptance, nor final payment, shall release Contractor or its sureties from any obligations of these Contract Documents or the public works bond, or constitute a waiver of any claims by Owner arising from Contractor's failure to perform the Work in accordance with the Contract Documents. Acceptance of final payment by Contractor, or any subcontractor, shall constitute a waiver and release to Owner of all claims by Contractor, or any subcontractor, for an increase in the Contract Sum or the Contract Time, and for every act or omission of Owner relating to or arising out of the Work, except for those claims made in accordance with the procedures, including the time limits, set forth in Part 8.

PART 7— CHANGES

7.1 CHANGE IN THE WORK

The Owner may make changes in the Work, which shall be done by change order to the Contract Documents. If any change in the Work ordered by Owner causes an increase or decrease in the Contract Sum or the Contract Time, an equitable adjustment shall be made as provided in Sections 7.2 or 7.3. Contractor shall not proceed with any change in the Work without Owner's approval. A Change Order shall be issued which shall constitute full payment and final settlement of all claims for time and for direct, indirect, and consequential costs, including costs of delays, inconvenience, disruption of schedule, or loss of efficiency or productivity, related to the Work covered by the Change Order.

7.2 CHANGE IN CONTRACT SUM

The Contract Sum shall only be changed by a Change Order. If the cost of Contractor's performance is changed due to the fault or negligence of Owner, or anyone for whose acts Owner is responsible, Contractor shall be entitled to make a request for an equitable adjustment in the Contract Sum. If the Contractor's changed cost of performance is due to the fault or negligence of Contractor, or

anyone for whose acts Contractor is responsible, or if the change is concurrently caused by Contractor and Owner, or if the change is caused by an act of Force Majeure, then no change in the Contract Sum shall be allowed.

Upon the occurrence of an event giving rise to a request for equitable adjustment in the Contract Sum, Contractor shall, within seven (7) calendar days of the occurrence, provide written notice to Owner, and begin to keep and maintain complete, accurate and specific daily records of such occurrence. "Occurrence" means when Contractor knew, or in its diligent prosecution of the Work should have known, of the event giving rise to the request. The written notice shall describe the event, the potential impacts, and to the extent possible the amount of the adjustment in the Contract Sum requested. Contractor shall not be entitled to any adjustment in the Contract Sum for any occurrence of events or costs that occurred more than seven (7) calendar days before Contractor's written notice to Owner. Failure to properly give such written notice shall, to the extent Owner's interests are prejudiced, constitute a waiver of Contractor's right to an equitable adjustment.

Within thirty (30) days of the occurrence of the event, or such other time as Owner agrees in writing, Contractor shall submit additional supporting data for its request for equitable adjustment. Such data shall include at a minimum the itemized amount requested; the facts, circumstances, and analysis that confirms that Contractor suffered the damages claimed, that the damages relate to the event about which notice was provided, and that the Contract Documents provide entitlement to an equitable adjustment; and documentation sufficiently detailed to permit an informed analysis of the request by Owner. If Contractor requests a change in the Contract Time as a result of the same event, then both requests for change in the Contract Sum and Contract Time shall be submitted together and Contractor shall demonstrate the impact to the critical path. Pending final resolution of any request, Contractor shall proceed diligently with performance of the Work.

Unless otherwise directed by Owner, Contractor shall use the fixed price method for determining the value of the Work or of a request for an equitable adjustment.

Contractor shall submit a complete itemization of the following costs:

- A. Craft Labor Costs: Determined by multiplying the craft hours needed to perform the change in the Work by the hourly labor costs. The hourly labor costs shall be based on:
 1. Basic Wages and Benefits. Hourly rates and benefits as stated on the L&I approved Statement of Intent to Pay Prevailing Wages. Direct supervision shall be a reasonable percentage not to exceed 15% of the cost of direct labor. No supervision markup shall be allowed if a working

supervisor's hours are included in the breakdown.

2. Worker's Insurance. Direct contributions to the State for industrial insurance, medical aid, and supplemental pension by the class and rates established by L&I.
 3. Federal Insurance. Direct contributions required by the Federal Insurance Compensation Act; Federal Unemployment Tax Act; and the State Unemployment Compensation Act.
 4. Safety. Cost incurred due to WISHA, which shall not exceed 2% of the sum of the amounts calculated in 1, 2 and 3 above.
 5. Travel Allowance. Travel allowance and/or subsistence, if applicable, not exceeding those allowances established by regional labor union agreements, which are itemized and identified separately.
- B. Material Costs: Material costs shall be developed from actual known costs, supplier quotations or standard industry pricing guides and shall consider all available discounts. Freight costs, express charges, or special delivery charges shall be itemized.
 - C. Equipment Costs: Itemization of the type of equipment and the estimated or actual length of time the equipment appropriate for the Work is or will be used on the change in the Work. Costs will be allowed for equipment only if used solely for the changed Work, or for additional rental costs actually incurred by the Contractor. Equipment charges shall be developed from the current edition of one of the following sources:
 1. AGC-WSDOT Equipment Rental Agreement, most recent edition.
 2. NECA for equipment used on electrical work.
 3. Mechanical Contractors Association of America for equipment used on mechanical work.

The Data Quest Rental Rate (*Blue Book*) shall be used as a basis for establishing rental rates of equipment not listed in the above sources. The maximum rate for standby equipment shall not exceed 50% of the applicable rate.
 - D. Allowance for small tools, expendables and consumable supplies: Small tools are tools which cost \$250 or less and are furnished by the performing contractor. The maximum rate for small tools shall not exceed 3% of direct labor costs for Contractor and 5% of direct labor costs for Subcontractors. Expendables and consumable supplies must be itemized.
 - E. Subcontractor Costs: Payments Contractor makes to Subcontractors for changed Work performed by

Subcontractors of any tier. Subcontractors' cost of Work shall be calculated and itemized as prescribed herein for Contractor.

- F. Allowance for Overhead: This allowance shall compensate Contractor for all non-craft labor, temporary construction facilities, field engineering, schedule updating, as-built drawings, home office cost, B&O taxes, office engineering, estimating costs, additional overhead because of extended time and any other cost incidental to the change in the Work. This allowance shall be strictly limited in all cases to an amount not to exceed the following:
1. For Contractor, for any Work actually performed by Contractor's own forces, 16% of the first \$50,000 of the cost, and 4% of the remaining cost, if any.
 2. For each Subcontractor (including lower-tier subcontractors), for any Work actually performed by its own forces, 16% of the first \$50,000 of the cost, and 4% of the remaining cost, if any.
 3. For Contractor, for any Work performed by its Subcontractor(s), 6% of the first \$50,000 of the amount due each Subcontractor, and 4% of the remaining amount if any.
 4. For each Subcontractor, for any Work performed by its Subcontractor(s) of any lower tier, 4% of the first \$50,000 of the amount due the sub-Subcontractor and 2% of the remaining amount if any.
 5. The cost to which overhead and profit is to be applied shall be determined in accordance with subsections A-E above.
- G. Allowance for Profit: This is an amount to be added to the cost of any change in Contract Sum, but not to the cost of change in Contract Time for which contractor has been compensated pursuant to the conditions set forth in Section 7.3. It shall be limited to a reasonable amount, mutually acceptable, or if none can be agreed upon, to an amount not to exceed the rates below:
1. For Contractor or Subcontractor of any tier for work performed by their forces, 6% of the cost developed in accordance with subsections A-D above.
 2. For Contractor or Subcontractor of any tier for work performed by a subcontractor of a lower tier, 4% of the Subcontractor cost developed in accordance with subsections A-I.
- H. Insurance or Bond Premium. The costs of any change or additional premium of Contractor's liability insurance and public works bonds arising directly from the changed Work. The costs of any change in insurance

or bond premium shall be added after overhead and profit are calculated in accordance with subsections F and G above.

- I. If Owner allows costs to be determined on a time-and-materials basis, Contractor shall submit such costs for any change in the Work, supported by labor detailed on daily time sheets and invoices for materials.

7.3 CHANGE IN CONTRACT TIME

The Contract Time shall only be changed by a duly executed Change Order. No adjustment in the Contract Time shall be allowed to the extent Contractor's changed time of performance is due to the fault or negligence of Contractor, or anyone for whose acts Contractor is responsible.

Upon the occurrence of an event giving rise to a request for equitable adjustment in the Contract Time, Contractor shall, within seven (7) calendar days of the occurrence, provide written notice to Owner, and begin to keep and maintain complete, accurate and specific daily records of such event. Contractor shall not be entitled to any adjustment in the Contract Time for any events that occurred more than seven (7) calendar days before Contractor's written notice to Owner. Failure to properly give such written notice shall, to the extent Owner's interests are prejudiced, constitute a waiver of Contractor's right to an equitable adjustment.

Within thirty (30) days of the occurrence of the event, or such other time as Owner agrees in writing, Contractor shall submit additional supporting data for its request for equitable adjustment showing the amount of delay claimed; specific facts, circumstances, and analysis that Contractor suffered the delay claimed, that the delay claimed was actually a result of the event about which notice was provided, that the Contract Documents provide entitlement to an equitable adjustment; and documentation sufficiently detailed to permit an informed analysis of the request by Owner. Any request for an adjustment in the Contract Time shall demonstrate the impact on the critical path of the schedule. Pending final resolution of any request, Contractor shall proceed diligently with performance of the Work.

Contractor may request compensation for the cost of a change in Contract Time, subject to the following conditions:

- A. The change in Contract Time shall solely be caused by the fault or negligence of Owner;
- B. Compensation under this paragraph is limited to changes in Contract Time for which Contractor is not entitled to be compensated under Section 7.2;
- C. Contractor shall provide proper written notice and supporting data;

- D. Contractor shall establish the extent of the change in Contract Time; and
- E. The daily cost of any change in Contract Time shall be limited to the items below, less funds that may have been paid pursuant to a change in the Contract Sum that contributed to this change in Contract Time:
 - 1. cost of nonproductive field supervision or labor extended because of the delay;
 - 2. cost of weekly meetings or similar indirect activities extended because of the delay;
 - 3. cost of temporary facilities or equipment rental extended because of the delay;
 - 4. cost of insurance extended because of the delay; and
 - 5. general and administrative overhead in an amount to be agreed upon, but not to exceed 3% of Contract Sum divided by the Contract Time for each day of the delay.
- G. If an adjustment in the Contract Time is sought, the specific dates for which it is sought; the specific reasons Contractor believes an extension in the Contract Time should be granted; and Contractor's analysis of its Progress Schedule to demonstrate the reason for the extension in Contract Time;
- H. If an adjustment in the Contract Sum is sought, the exact amount sought and a breakdown of that amount into the categories set forth in and in the detail required by Section 7.2; and
- I. A statement certifying, under penalty of perjury, that the Claim is made in good faith, that the supporting cost and pricing data are true and accurate to the best of Contractor's knowledge and belief, that the Claim is fully supported by the accompanying data, and that the amount requested accurately reflects the adjustment in the Contract Sum or Contract Time for which Contractor believes Owner is liable.

After Contractor has submitted a fully-documented Claim that complies with all the provisions of this Part 8, Owner shall respond in writing with a decision to Contractor within sixty (60) calendar days from the date the Claim is received or such additional time as Owner provides in writing to Contractor. In reviewing Contractor's Claim, Owner may visit the Project site, request additional information, or perform an audit of Contractor's books and records as provided in Section 8.3. Contractor shall proceed with performance of the Work pending final resolution of any Claim. Owner's written decision on the Claim shall be final and conclusive as to all matters set forth in the Claim unless Contractor follows the Dispute Resolution procedures in Section 8.2.

PART 8 — CLAIMS AND DISPUTE RESOLUTION

8.1 CLAIMS PROCEDURE

If the parties fail to reach agreement on the terms of any Change Order, Contractor's only remedy shall be to file a Claim with Owner as provided in this section. Contractor must file any Claim prior to the date of Final Acceptance. Any Claim not brought within this time period shall be conclusively deemed to have been waived by the Contractor. The Claim shall be deemed to cover all changes in cost and time (including direct, indirect, impact, and consequential) to which Contractor may be entitled.

A Claim submitted by Contractor shall be fully substantiated and documented and contain at a minimum the following information:

- A. A detailed factual statement of the Claim for additional compensation and time, if any, providing all necessary dates, locations, and items of Work affected by the Claim;
- B. The date on which facts arose which gave rise to the Claim;
- C. The names of individuals knowledgeable about the Claim;
- D. The specific provisions of the Contract Documents which support the Claim;
- E. The identification of any documents and the substance of any oral communications that support the Claim;
- F. Copies of any identified documents, other than the Contract Documents, that support the Claim;

8.2 DISPUTE RESOLUTION

If Contractor disagrees with Owner's decision on the Claim, Contractor shall provide Owner a written demand for arbitration no later than thirty (30) calendar days after the date of Owner's decision on the Claim. Failure to demand arbitration within said 30-day period shall result in Owner's decision being final and binding upon Contractor and its Subcontractors. Contractor shall file the demand for arbitration with the American Arbitration Association (AAA) in Seattle with a copy provided to Owner. The parties shall mediate under the Voluntary Construction Mediation Rules of the AAA before agreeing to an arbitration date. Disputes involving \$50,000 or less shall be conducted in accordance with the AAA's Northwest Region Expedited Commercial Arbitration Rules.

All Claims arising out of the Work, except claims by Owner against Contractor for latent defects, shall be resolved by arbitration. No independent legal action relating to or arising from the Work, except for claims for latent defects, shall be maintained.

Claims between Owner and Contractor, Contractor and its Subcontractors, Contractor and A/E and Owner and A/E, upon demand by Owner, shall be submitted in the same arbitration or mediation.

If the parties resolve the Claim prior to arbitration award, the terms of the resolution shall be incorporated in a Change Order. The Change Order shall constitute full payment and final settlement of the Claim, including all claims for time and for direct, indirect, or consequential costs, including costs of delays, inconvenience, disruption of schedule, or loss of efficiency or productivity.

8.3 CLAIMS AUDITS

All Claims filed by Contractor shall be subject to audit. Failure of Contractor, or Subcontractors of any tier, to maintain and retain sufficient records to allow Owner to verify all or a portion of the Claim or to permit Owner access to the books and records of Contractor, or Subcontractors of any tier, shall constitute a waiver of the Claim and shall bar any recovery. The records should include: daily time sheets and supervisor's daily reports; collective bargaining agreements; insurance, welfare and benefits records; payroll registers; earning records; payroll tax forms; material invoices, requisitions, and delivery confirmations; material cost distribution worksheet; equipment records; vendors', rental agencies', Subcontractors', and agents' invoices; contracts between Contractor and each of its Subcontractors, and all lower-tier Subcontractor contracts and supplier contracts; subcontractors' and agents' payment certificates; cancelled checks (payroll and vendor); job cost report, including monthly totals; job payroll ledger; planned resource loading schedules and summaries; general ledger; cash disbursements journal; financial statements for all years reflecting the operations on the Work and if deemed appropriate by Owner, additional financial statements for 3 years preceding execution of the Work; depreciation records on all company equipment whether these records are maintained by the company involved, its accountant, or others; all source documents if a source other than depreciation records is used to develop costs for Contractor's internal purposes in establishing the actual cost of owning and operating equipment; all non-privileged documents which relate to each and every Claim together with all documents which support the amount of any adjustment in Contract Sum or Contract Time sought by each Claim; work sheets or software used to prepare the Claim establishing the cost components for items of the Claim including but not limited to labor, benefits and insurance, materials, equipment, Subcontractors, all documents which establish the time periods, individuals involved, the hours for the individuals, and the rates for the individuals; and work sheets, software and all other documents used by Contractor to prepare its bid. Contractor and all Subcontractors shall make a good faith effort to cooperate with Owner's auditors.

PART 9 — TERMINATION OF THE WORK

9.1 TERMINATION BY OWNER FOR CAUSE

Owner may, upon written notice to Contractor and to its surety, terminate (without prejudice to any right or remedy of Owner) the Contract for cause upon the occurrence of any one or more of the following events:

- A. Contractor fails to prosecute the Work or any portion thereof with sufficient diligence to ensure Substantial Completion of the Work within the Contract Time;
- B. Contractor is adjudged bankrupt, makes a general assignment for the benefit of its creditors, or a receiver is appointed on account of its insolvency;
- C. Contractor fails in a material way to replace or correct Work not in conformance with the Contract Documents;
- D. Contractor repeatedly fails to supply skilled workers or proper materials or equipment;
- E. Contractor repeatedly fails to make prompt payment due to Subcontractors or for labor;
- F. Contractor materially disregards or fails to comply with laws, ordinances, rules, regulations, or orders of any public authority having jurisdiction; or
- G. Contractor is otherwise in material breach of any provision of the Contract Documents.

Upon termination, Owner may at its option:

1. Take possession of the Project site and take possession of or use all materials, equipment, tools, and machinery thereon owned by Contractor to maintain the orderly progress of, and to finish, the Work; or
2. Finish the Work by whatever other reasonable method it deems expedient.

Owner's rights and duties upon termination are subject to the prior rights and duties of the surety, if any, obligated under any bond provided.

Termination of the Work for cause shall not relieve Contractor or its surety of any responsibilities for Work performed. When the Work is terminated for cause, Contractor shall take the actions in Section 9.2 and shall not be entitled to receive further payment until the Work is accepted.

If the unpaid balance of the Contract Sum exceeds the cost of finishing the Work, including compensation for A/E's services and expenses made necessary thereby and any other extra costs or damages incurred by Owner in completing the Work, or as a result of Contractor's actions, such excess shall be paid to Contractor. If such costs exceed the unpaid balance, Contractor shall pay the difference to Owner. These obligations for payment shall survive termination.

Neither party shall be entitled to consequential damages from the other in the event of a claim or claims for breach hereunder.

If the Work is terminated for cause and it is later determined that none of the events listed herein exist, then such termination shall be deemed a termination for convenience pursuant to Section 9.2.

9.2 TERMINATION BY OWNER FOR CONVENIENCE

Owner may, upon written notice, terminate (without prejudice to any right or remedy of Owner) the Work, or any part of it, for the convenience of Owner.

If Owner terminates the Work or any portion for convenience, Contractor shall be entitled to make a request for an equitable adjustment for its reasonable direct costs incurred prior to the effective date of the termination, plus a reasonable allowance for overhead and profit on Work performed prior to termination, plus the reasonable administrative costs of the termination, but shall not be entitled to any other costs or damages whatsoever, provided however, the total sum payable upon termination shall not exceed the Contract Sum reduced by prior payments. Contractor shall be required to make its request in accordance with the provisions of Part 7.

If Owner terminates the Work or any portion for convenience, the Contract Time shall be adjusted as determined by Owner.

9.3 TERMINATION PROCEDURES

Unless Owner directs otherwise, after Contractor receives a written notice of termination for either cause or convenience, Contractor shall promptly:

- A. Stop performing Work on the date specified in the notice of termination;
- B. Place no further orders or subcontracts for materials, equipment, services or facilities, except as may be necessary for completion of such portion of the Work as is not terminated.
- C. Cancel all orders and subcontracts, upon terms acceptable to Owner, to the extent that they relate to the performance of Work terminated; assign to Owner all of the right, title, and interest of Contractor in all orders and subcontracts;
- D. Take such action as may be necessary or as directed by Owner to preserve and protect the Work, Project site, and any other property related to this Project in the possession of Contractor in which Owner has an interest; and
- E. Continue performance only to the extent not terminated.

PART 10 — MISCELLANEOUS PROVISIONS

10.1 GOVERNING LAW

The Contract Documents and the rights of the parties shall be governed by the laws of the State of Washington. The parties agree that proper venue for any action arising hereunder shall only lie in the Superior Courts in and for Cowlitz County Washington unless otherwise agreed to by the parties.

10.2 ASSIGNMENT

Contractor shall not assign the Work without written consent of the Owner, which consent shall not be unreasonably withheld.

10.3 MEANING OF WORDS

Unless otherwise defined, words used in the Contract Documents shall have their well-known technical or construction-industry meanings. Reference to standard specifications, manuals, or codes of any technical society, organization, or association, or to the code of any governmental authority, whether such reference be specific or by implication, shall be to the latest standard specification, manual, or code in effect of the date for submission of bids, except as may be otherwise specifically stated. Wherever in the drawing and specifications an article, device or piece of equipment is referred to in the singular, such reference shall apply to as many such articles as are shown on the drawings, or required to complete the installation.

10.4 RIGHTS AND REMEDIES

No action or failure to act by Owner shall constitute a waiver of a right or duty afforded it under the Contract Documents, nor shall such action or failure to act constitute acquiescence in a breach therein, except as may be specifically agreed in writing.

10.5 TIME COMPUTATIONS

When computing any period of time, the day of the event from which the period of time begins shall not be counted. The last day is counted unless it falls on a weekend or legal holiday, in which event the period runs until the end of the next day that is not a weekend or holiday. When the period of time allowed is less than seven (7) days, intermediate Saturdays, Sundays, and legal holidays are excluded from the computation.

10.6 RECORDS RETENTION

The wage, payroll and cost records of Contractor and its Subcontractors, and all records subject to audit, shall be retained for a period of not less than six (6) years after the date of Final Acceptance.

10.7 THIRD-PARTY AGREEMENTS

The Contract Documents shall not be construed to create a contractual relationship of any kind between A/E and

Contractor; Owner and any Subcontractor; or any persons other than Owner and Contractor.

10.8 TRANSPORTATION WORKER IDENTIFICATION CREDENTIAL (TWIC)

Bidders are reminded that access to the secured areas of the Port is governed by the Federal Transportation Workers Identification Credential (TWIC) regulations. The successful Bidder's personnel, subcontractors, and suppliers requiring access to the Port's secured areas must have a

current TWIC or be escorted by Port approved escorts. In the event that the Port incurs costs associated with providing Port approved escort services for the Bidder's personnel, subcontractors or supplies, those costs will be billed to the Bidder at a rate of \$360.00 per 10-hour shift, or any portion of an 8-hour shift, for one escort per five personnel working in the same vicinity.

END OF GENERAL CONDITIONS