



**Port of EVERETT**

*Creating Economic Opportunities*

# REQUEST FOR PROPOSALS

## Job Order Contracting (IDIQ) 2024

### RFP # 9-2024-13

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RFP Due Date: May 1, 2024 @ 6:30 p.m. CT  
RFP Submittal: <https://proportal.sourcewell-mn.gov>

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PORT OF EVERETT  
REQUEST FOR PROPOSALS

CONTRACT NAME: JOB ORDER CONTRACTING (IDIQ) 2024  
CONTRACT NO.: 9-2024-43  
PRE-PROPOSAL MTG. APRIL 8, 2024 @ 10:00 AM Pacific Time (12 PM CT)  
RESPONSES DUE: PHASE 1: MAY 1, 2024 @ 4:30 PM PT (6:30 PM CT)

Notice is hereby given that the Port of Everett has issued a Request for Proposals for the above-named contract, with responses due no later than the date and time given above.

The Port of Everett is seeking competitive proposals from qualified firms to perform general construction Work in accordance with the Port's Job Order Contracting program. A JOC is a contract in which the contractor agrees to a fixed period, indefinite quantity delivery order contract which provides for the use of work orders (job orders) not to exceed \$500,000 pre-tax. The Contract Documents include a Construction Task Catalog® containing construction tasks with preset Unit Prices. All Unit Prices are based on local labor, material and equipment prices and are for the direct cost of construction. The Work of this Contract will be set forth in the Detailed Scopes of Work referenced in the individual Job Orders. The Contractor must complete each Detailed Scope of Work for the Job Order Price within the Job Order Completion Time.

An optional pre-proposal meeting will be held via zoom at the date/time listed above. The pre-proposal meeting will be structured in two parts: the first half will cover an overview of the Contract and submittal process; the second half Gordian, the Port's Job Order Contracting consultant will discuss the Construction Task Catalog, Adjustment Factors and the Work Order Process. The Port is partnering with Sourcewell, a public cooperative purchasing agency, in this contract opportunity and will make its excess capacity available to other Washington State Agencies through the cooperative process.

A full copy of the Request for Proposals can be found on the Sourcewell Procurement Portal [<https://proportal.sourcewell-mn.gov>]. Only proposals submitted through the Sourcewell Procurement Portal will be considered. Phase 1 proposals are due no later than May 1, 2024, at 4:30 p.m. Pacific Time (6:30 p.m. Central Time), and late proposals will not be considered.

Published: Everett Herald and Seattle Daily Journal of Commerce

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# STATEMENT OF WORK

## 1. CONTRACT SUMMARY

Job Order Contracting (JOC) is an alternative public works process authorized and governed by RCW 39.10. JOC is a competitively bid, firm-fixed-price, indefinite-quantity contract with a general contractor intended to complete various public works projects throughout the Port.

RCW 39.10.420 states: “Public bodies may use a job order contract for public works projects when a determination is made that the use of job order contracts will benefit the public by providing an effective means of reducing the total lead-time and cost for the construction of public works projects for repair and renovation required at public facilities through the use of unit price books and work orders by eliminating time-consuming, costly aspects of the traditional public works process, which require separate contracting actions for each small project.”

The Port currently utilizes JOC as a project delivery method for various public works projects. Each Project Manager (PM) may use JOC or another procurement method to contract public works projects.

## 2. JOB ORDER CONTRACTING (IDIQ) PROGRAM / COOPERATIVE PURCHASING

- A. Sourcewell: The Port and Sourcewell, a Minnesota service cooperative, have entered into an agreement for the Port to serve as the lead procurement agency for Job Order Contracting in Washington State and for Sourcewell to manage the Port’s contract capacity and provide access the contracts for Washington State public agencies. The contracts awarded through this RFP process may be used by participating Washington State agencies. The Port will reserve a portion of each contract awarded for its own use and will allow Sourcewell to distribute the remaining capacity. The Port has historically provided other public agencies anywhere from \$300,000 to \$1,500,000 of contract capacity to each public agency using the Cooperative Contracting process.
- B. Gordian: Gordian ([www.gordian.com](http://www.gordian.com)) is the Sourcewell & the Port’s consultant tasked with administering the JOC program. Those responsibilities include but are not limited to:
  - establish and maintain the unit pricing for construction tasks that service as a foundation for this Contract (Construction Task Catalog) and technical specifications,
  - provide a dedicated account manager to facilitate the Job Order process, review Scopes of Work and Cost Proposals and serve as a resource to the Port and Contractor.
  - provide Gordian JOC Cloud Software System, a cloud-based software to facilitate the workflow, cost estimating and approval processes.
  - provide training to contractors, administering fee collection, consulting services to Sourcewell and the Port.
  - provide JOC administration services to participating entities.
- C. Contractor: The Awarded Contractor will furnish the management, labor, materials, equipment, and incidental design support needed to perform the Work. Details of the program’s operations can be found throughout this RFP.

### 3. CONTRACT TERM

- A. The initial term of the Contract is two (2) years from date of contract execution. The Contract may be extended for an additional one-year period by the Port with approval from Contractor(s).
- B. All Job Orders issued during the term of this Contract shall be valid and in effect notwithstanding that the Detailed Scope of Work may be performed, Supplemental Job Orders may be executed, payments may be made, and the guarantee period may continue, after contract term has expired provided that the Job Order was executed prior to the expiration date.

### 4. CONTRACT OBJECTIVE & VALUE

- A. The Port intends to award up to three contracts to responsible general contractors to perform Job Order Contracting Services as outlined in these Contract Documents.
- B. Each Contract will be executed for the maximum amount specified in RCW 39.10.440, which is currently \$4,000,000 per contract, per year. Any unused capacity from the previous year may be carried over for one year and added to the immediately following year's limit. The maximum annual volume including unused capacity shall not exceed the limit of two years.
- C. The estimated Annual Value for the Port is \$1,000,000 per contract. The Contractor may be issued Job Orders exceeding the Estimated Annual Value during any year of the Contract. The Contractor is not guaranteed to receive this volume of Job Orders. It is merely an estimate. The Port has no obligation to issue Job Orders more than the Minimum Contract Value.
- D. The Minimum Contract Value for each awarded Contract is \$25,000. The awarded Contractor(s) are each guaranteed to receive the opportunity to perform Job Orders totaling at least \$25,000 during the initial term of the Contract.

### 5. GOALS

- A. Goals:
  - a. To significantly reduce engineering and procurement lead-times on select public works projects.
  - b. To reduce costs and eliminate the need for separate solicitation and contract for each project.
  - c. To partner with up to three general contractors who will work collaboratively with the Port to scope, price, and complete public works projects
- B. Performance: As a measure of the primary goals, we expect to see significant transactional reductions in cost and significant reductions in delays between work identification and work completion for targeted work packages.

### 6. PORT OF EVERETT UNIQUE CONSIDERATIONS

The Port is a municipal corporation focused on economic development, bringing jobs to Snohomish County, and providing a balanced waterfront (working waterfront balanced with recreation and public access). As such, the Port needs to move nimbly to respond to opportunities, client and tenant requests and the job market to remain competitive with the private sector while still following the public works requirements.

Other unique considerations include but is not limited to:

- A. the Port's proximity to salt water and its effects on infrastructure

- B. cargo and cargo handling equipment are heavy, therefore many of the civil structures at the Seaport are airport runway rated, asphalt thickness varies from 4 to 12 inches
- C. projects adjacent to or over navigable waterway may be subject to United States Longshore and Harbor (USL&H) workers compensation coverage
- D. access to the Seaport requires Transportation Worker Identification Credentials (TWIC) issued by Department of Homeland Security (further discussed in the Supplementary Conditions)
- E. performing work adjacent to other contractors on Port leaseholds or for private property owners
- F. performing work while accommodating existing Port operations – whether they are longshoremen off-loading or loading cargo shipside for our commercial cargo customers, or marina slip holders

## 7. ESTABLISHING THE JOC CONSTRUCTION COST

- A. **Unit Prices:** The Gordian Group develops and maintains a Construction Task Catalogue (CTC) which establishes the construction unit prices for this Contract. The CTC prices construction tasks with current (2024) Unit Prices based on local labor, material, and equipment prices; estimated overhead and profit and is intended to cover the direct cost of construction in the Everett area. Prices in the CTC will be updated annually on the anniversary of the contract execution date.
- B. **Adjustment Factors:** The Construction Task Catalog<sup>®</sup> is priced at a net value of 1.0000. The Contractor must review their specific costs against the costs contained in the CTC and bid an Adjustment Factor (also known as a co-efficient). The Adjustment Factors shall be an increase or decrease to the Unit Prices listed in the Construction Task Catalog<sup>®</sup> (e.g., increase to 1.1000 or decrease e.g., 0.9500). The Adjustment Factor will be the basis for the cost evaluation for this proposal.

During the Contract, the Contractor will provide pricing for the work using the Unit Price. The Adjustment Factor will be added to or subtracted from the Unit Prices when calculating the cost of work and will remain firm throughout the contract term. There are three Adjustment Factors for this Contract. When preparing a Job Order Price Proposal, the Contractor shall select the appropriate Adjustment Factor for each task.

The Adjustment Factors are as follows:

- **Normal Working Hours:** Monday through Friday 7:00 am to 6:00 pm except holidays.
- **Other Than Normal Working Hours:** Monday through Friday 6:01 pm to 6:59 am and all-day Saturday, Sunday, and holidays.
- **Non-Pre-priced:** For Non-Pre-Priced Tasks.

The Other than Normal Working Hours Adjustment Factor must be equal to or greater than the Normal Working Hours Adjustment Factor. The Non-Pre-Priced Adjustment Factor must be greater than or equal to 1.0000.

The Construction Task Catalogue Specifications (Section 9) and the Construction Task Catalogue Pricing (Section 10) are incorporated by reference into this document and are uploaded separately to the Sourcwell Procurement Portal under the Documents section. The selected Contractor(s) will be provided access to the pricing and specifications in the Gordian JOC Cloud Software System and will not need to use the pdf files to build price proposals.

## 8. JOC PROCESS OVERVIEW

A detailed description of the JOC process is contained in Section 7 General Conditions, Articles 22-25. Below is an overview of the JOC process. This process may scale depending on the size and complexity of the project.

1. Port will provide Gordian and Contractor with a JOC Intake Form containing a preliminary scope of work, high-level project details and any drawings, specifications, or details available.
2. Port, Gordian, and the Contractor will hold a Joint Scoping Meeting to discuss the project and gather additional information for that specific Job Order.
3. Contractor will finalize the Scope of Work and route through Gordian for review and approval by Gordian and the Port.
4. Contractor will provide a Job Order Cost Proposal based on the approved Scope of Work and the prices in the CTC.
5. Gordian will submit to the Contractor and Port Job Order signature documents based on the approved Scope of Work and Cost Proposal.
6. Port will issue a Notice to Proceed once the signature documents are complete
7. Contractor will perform the work as outlined in the Job Order documents.

Note: The Port reserves the right to cancel a Job Order any time prior to completing the signature documents.

## 9. JOB ORDER CONTRACT REQUIREMENTS

Section 7 General Conditions Articles 22-25 outline additional Job Order Contract Requirements. The Contractor should fully understand these requirements which include but are not limited to:

- A. **Article 22 – JOC Procedure for Ordering Work**
- B. **Article 23 – Construction Task Catalog (CTC) Annual Update**
- C. **Article 24 – JOC Software, Contractor License Fee, and Cooperative Purchasing**
- D. **Article 25 – Compliance with RCW 39.10 – Alternative Public Works**

Note: Unique to Washington State, Contractors must subcontract 90% of the work in each job order.

# CURRENT CONDITIONS

## 1. ABOUT THE PORT

The Port was originally formed by the citizens of Everett in 1918 to create economic opportunities and protect the waterfront for the community. The Port has a long history of providing marine-related services and appropriate public access to the waterfront. The Port strives to bring quality jobs, business, and tourism opportunities to its local and surrounding communities. It is committed to enhancing, restoring, and preserving the overall environmental health of our waterfront through environmental remediation, pollution prevention and resiliency planning.

The Port of Everett operates three lines of business: 1) international shipping terminals; 2) marina facilities; and 3) real estate development. The Port operates eight shipping berths on about 125 acres of land and specializes in high-value and heavy cargoes, such as national security cargoes, forest products, agricultural, energy, and farm equipment. The seaport is a vital link for the aerospace industry, handling all the oversized parts of the Boeing 747, 767 (commercial and military), 777 and 777X airplane production lines.

The Port of Everett runs the largest public marina on the West Coast with more than 2,300 recreational boating slips and a 13-lane public boat launch facility. On the real estate side, the Port owns 3,300 acres of waterfront property, including Jetty Island, and works to return environmentally damaged property to productive use, restoring economic prosperity to the waterfront. The Port's properties also provide numerous public access and recreational opportunities for area residents to enjoy supporting a vibrant, livable, and balanced waterfront that generates economic and recreational opportunities.

Through its operations, the Port supports nearly 40,000 jobs and contributes \$433 million to state and local taxes.

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## VISION

The Port's vision is to create quality jobs and support a healthy and attractive quality of life for District residents and businesses. We do this, in part, by investing in a balanced waterfront that improves the region's economy, commerce, community, environment, recreation and supporting high-functioning infrastructure.

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## MISSION

Enhancing maritime commerce, jobs, and a healthy community

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## CORE VALUES

- Highest ethical standards
- Honor our commitment to our community
- High performers that value the privilege of public service
- Embrace the richness of a diverse community
- Responsible stewards of community resources and the environment
- Dependent and supportive partner



## 2. SOURCEWELL

Sourcewell is a State of Minnesota local government agency and service cooperative created under the laws of the State of Minnesota (Minnesota Statutes Section 123A.21). Sourcewell is partnering with the with the Port of Everett and will administer the piggybacking portion of Port’s excess contract capacity to participating entities within the State of Washington utilizing joint powers authorities in Minnesota Statutes Section 471.59 and in Washington State Statutes RCW 39.34. Participating entities for this specific contract are limited to public agencies within the State of Washington and may include but are not limited to:

- Cities, towns, and counties
- K-12 and higher education
- Tribal governments
- Transits, utility districts, ports, and other special purpose districts
- Other eligible public entities

The Port and Sourcewell have entered into an interlocal agreement to establish an indefinite delivery indefinite quantity job order contracting program for use by Port of Everett to meet its needs as authorized by Chapter 39.10 Revised Code of Washington, Alternative Public Works Contracting Procedures. The Port has partnered with Sourcewell to offer excess contract capacity and administer a cooperative purchasing option (piggybacking) for use by other public agencies as authorized by Chapter 39.34 Revised Code of Washington, Interlocal Cooperation Act. Public agencies accessing contracts will need to execute an interlocal agreement with the Port and register as a Participating Entity with Sourcewell.

## 3. CURRENT CONTRACT

The Port of Everett currently has two Job Order Contracts which expire in Spring of 2024. Contract capacity has been provided to Snohomish County PUD, Community Transit and Whatcom Transportation authority. All three have indicated interest in participating in the resulting contracts from this RFP.

## 4. PORT OF EVERETT - SEAPORT

The Port’ Seaport is undergoing modernization efforts, including electrical and other utility upgrades. Historically, projects at this location have consisted of stormwater upgrades, electrical equipment replacements, HVAC upgrades, lighting upgrades, pavement upgrades, fencing, etc.

## 5. PORT OF EVERETT - MARINA/PROPERTIES

The Port is developing the upland property surrounding the Port’s Marina. Called Waterfront Place, this 65-acre mixed-use development is being built in various phases with a combination of Port investment and private investment. The marina contains three basins which were built over various decades, spanning from the 1960’s through the mid 2000’s. Projects in these areas typically consist of utility work, park spaces, lift station upgrades, civil construction, tenant improvements, etc.

## 6. CURRENT PORT ADDRESSES

The list below provides addresses for the Port's major physical property locations for information only. This is not an exhaustive list of addresses (such as each dock's address, etc.) nor a complete list of facilities included in this contract. Also, new roads and addresses will be added during the contract and as development projects are built out and new properties are acquired. The project address/location will typically be provided for each individual Job Order. All addresses, except for Mount Baker Vicinity, are in Everett, WA 98201.

Description	Physical Address
<b>NORTON TERMINAL</b>	
Warehouse	2600 Federal Ave
General Site	2600 Federal Ave
<b>MOUNT BAKER VICINITY</b>	
	<b>Mukilteo, 98275</b>
Mount Baker Terminal Operations (Building on Pier)	1508 1st St, Mukilteo, WA 98275
<b>SEAPORT TENANTS &amp; FACILITIES</b>	
	<b>Everett, 98201</b>
Seaport Maintenance Facility	3500 Terminal Ave
Seaport Operations Office NORTH entrance	2920 Terminal Ave, Unit A
Seaport Operations Office SOUTH entrance	2920 Terminal Ave, Unit B
Security Building (TWIC Office)	2900 Terminal Ave
Security Gatehouse / Guard Shack	2902 Terminal Ave
<b>PROPERTIES /MARINA</b>	
	<b>Everett, 98201</b>
Marina Village – SM 1	1728 W Marine View Dr,
Marina Village – SM 3	1724 W Marine View Dr, Ste. #135
South Marina Building Crow's Nest Building	1718 W Marine View Dr
Everett Yacht Club / Conference Center	404 14th St (Millwright Loop W)
Milltown Sailing	410 14th St (Millwright Loop W)
Boxcar Park	1200 Millwright Loop W
Weyerhaeuser Building	615 Millwright Loop N (Formerly 13th St)
Waterfront Center, Port Administration	1205 Craftsman Way, Suite 200
Jetty Landing Park	600 10th St
Harbor Marine (shop)	1104 10th Street
Harbor Marine (store)	1032 10th Street
Walter's & Wolfe	1120 10th St.
Port Gardner Yacht Sales	607 11th St
Marina Operations Office	1135 Craftsman Way
Dunlap Industrial Supply	1028 W. Marine View Dr.
PUD's Port Gardner Substation	1210 W. Marine View Dr.
Ameron	1130 W Marine View Dr, Ste. A
Ameron	1130 W Marine View Dr, Ste. B
Union Slough Restoration Site & Public Access	4200 40th Pl NE, Everett 98270
Blue Heron Slough	4625 40th Pl NE, Everett 98201

# PROPOSAL REQUIREMENTS

## 1. RFP PROCESS TIMELINE (SUBJECT TO CHANGE)

The Port reserves the right to alter this schedule at any time. Schedule changes prior to submittal deadline will be changed through addendum.

PROCESS	TIMELINE
RFP Publish Date:	April 3, 2024
Optional Pre-Proposal Conference	April 8, 2024
Written Questions Deadline:	April 24, 2024
Proposal Submittal Due Date/Time:	Phase 1: May 1, 2024 @ 6:30 PM CT (4:30 PT)
Notification of Shortlist	May 14, 2024
Adjustment Factor Submittal (Shortlisted Firms)	May 21 2024 @ 6:30 PM CT (4:30 PT)
Recommendation of Award	June 4, 2024 (Port of Everett Commission)

## 2. PRE-PROPOSAL CONFERENCE

Proposers are encouraged to attend the pre-proposal conference as announced in the advertisement for proposals. This is a non-mandatory meeting; therefore, proposal submission will not be contingent on attendance. This meeting will be held via web conference and will provide a high-level overview of the Port’s JOC program, how to submit a response, and provide an opportunity for Q&A.

After the pre-proposal conference, a representative from Gordian will stay on the line to provide an e-Gordian / Construction Task Catalogue Overview. This overview gives contractors an introduction to the e-Gordian Job Order Contracting platform and the Construction Task catalogue, the pricing foundation of the Port’s contract. This overview is HIGHLY recommended for anyone new to the Gordian/e-Gordian/Construction Task Catalogue platform.

## 3. SUBMITTAL FORMAT

Proposer’s complete response must be submitted through the Sourcwell Procurement Portal no later than the date and time specified in the timeline found in the Proposal Requirements. Any other form of proposal submission, whether electronic, paper, or otherwise, will not be considered by Sourcwell. It is the Proposer's sole responsibility to ensure that the proposal is received on time. To ensure receipt of the latest information and updates via email regarding this solicitation, or if the Proposer has obtained this RFP from a third party, the onus is on the Proposer to create a Sourcwell Procurement Portal Vendor Account and register for this solicitation opportunity.

Within the Procurement Portal, all proposals must be digitally acknowledged by an authorized representative of the Proposer attesting that the information contained in in the proposal is true and accurate. By submitting response, Proposer warrants that the information provided is true, correct, and reliable for purposes of evaluation for potential contract award. The submission of inaccurate, misleading, or false information is grounds for disqualification from a contract award and may subject the Proposer to remedies available by law.

It is recommended that Proposers allow sufficient time to upload the bid and to resolve any issues that may arise. The time and date that a proposal is received by Sourcewell is solely determined by the Sourcewell Procurement Portal web clock. In the event of problems with the Sourcewell Procurement Portal, follow the instructions for technical support posted in the portal. It may take up to 24 hours to respond to certain issues.

Upon successful submission of a proposal, the Portal will automatically generate a confirmation email to the Proposer. If the Proposer does not receive a confirmation email, contact Sourcewell's support provider at [support@bidsandtenders.ca](mailto:support@bidsandtenders.ca).

#### 4. SUBMITTAL REQUIREMENTS

##### A. Contractor Background & Information

Provide the following information regarding your firm in the Sourcewell Procurement Portal:

1. Contractor Name and Headquarter Address. Identify any other offices that would service this contract or any Washington State Entities that may piggyback off this contract.
2. Provide a contact name, phone number and email address for the firm's main point of contact for this proposal. This would be the individual the Port would contact to clarify the proposal, to schedule interviews, etc.
3. Identify how many years you have been operating under this name.
4. Financial:
  - a. Provide your current credit rating & the name of the rating service
  - b. Disclose any judgments, pending or expected litigation or other real or potential financial reversals which might materially affect the viability or stability of the proposing organization; or warrant that no such condition is known to exist.
  - c. Provide any other pertinent information regarding the entity that will assist the evaluation team in formulating an opinion regarding the stability and financial strength of the Contractor.
5. Contract Performance: Describe incidents where the Proposer has had a contract terminated for default during the past five years. If no such incidents exist, Proposer must warrant that no such terminations for default have been experienced by the Proposer in the past five years.
6. Provide your Washington State contractor registration number, UBI and employment security numbers.
7. Provide the following certifications:
  - a. Contractor certifies it is current with their taxes to the Washington State Department of Revenue. If unable to certify, explain.
  - b. Contractor certifies they are current with their taxes to the City of Everett. If unable to certify, provide an explanation
  - c. Contractor certifies that they are not currently debarred or suspended by the federal government. If unable to certify, explain.
  - d. Contractor certifies that no owner, officer, principal, or employee of the Contractor has been convicted of a crime involving bidding of a public works contract within five (5) years from the bid submittal deadline. If unable to certify, submit a list showing the date of conviction, the offense convicted of, the punishment, and a brief statement of the facts underlying the conviction.

- e. Contractor certifies that its standard subcontract form includes the subcontractor responsibility language required by RCW 39.06.020 and the Bidder has an established procedure which it utilizes to validate the responsibility of each subcontractor. In addition, the subcontract shall include a requirement that each of its subcontractors have a document of similar procedure to determine whether the sub-tier subcontractors with whom it contracts are also responsible subcontractors as defined in RCW 39.06.020. If unable to certify, explain.
- f. Contractor certifies that there were no prevailing wage complaints filed against it within five (5) years of the bid submittal date. If unable to certify, the Contractor shall submit a list of prevailing wage complaints filed against it within five (5) years of the proposal submittal date along with an explanation of each complaint and how it was resolved.
- g. Contractor certifies that neither it nor its owners or principals has had any public works contract terminated for cause by a government agency during the five (5) year period immediately preceding the proposal submittal date. If unable to certify, submit a list of each contract terminated, the government agency terminating the contract, and the circumstances involving the termination for cause.
- h. Contractor certifies that there are no lawsuits or arbitrations with judgements entered against it within five (5) years of the bid submittal date. If unable to certify, submit a list of lawsuits and/or arbitrations with judgments entered against the Contractor, owners, or principals within five (5) years of the proposal submittal date along with a written explanation of the circumstances surrounding each lawsuit and/or arbitration.
- i. The Contractor hereby certifies that, within the three-year period immediately preceding the proposal solicitation date, the Contractor is not a “willful” violator, as defined in RCW 49.48.082, of any provision of chapters 49.46, 49.48, or 49.52 RCW, as determined by a final and binding citation and notice of assessment issued by the Department of Labor and Industries or through a civil judgment entered by a court of limited or general jurisdiction.

**B. Project Approach**

- 1. Describe your experience in managing and delivering similar on-call/job order contracting type contracts over the last five years
- 2. List the entities for whom you provided Job Order Contracting, Indefinite Delivery, Indefinite Quantity, or On-Call general construction services within the past five years
- 3. Briefly describe what qualifications your firm possesses that will allow you to be successful in Job Order Contracting.
- 4. Per RCW 39.10.440, 90% of the work issued to the JOC Contractor must be subcontracted. Provide, in specific detail, a description of Proposer’s prior subcontracting experience and ability to manage multiple subcontractors working on multiple project sites simultaneously. Include evidence on past projects of the Proposer’s ability to manage multiple subcontractors
- 5. What are the main challenges when coming to a new organization and community and what strategies will you use that have proven to be effective implementing new contracts in the past?
- 6. Describe how you expect to manage the Port’s contract, the potential for other Washington State entities to piggyback on this RFP while maintaining and expanding services on your existing contracts.
- 7. Please refer to the provided table of Washington Counties Served, in the Procurement Portal to indicate counties within the State of Washington you are willing to perform work. Work in the selected counties will be performed using the awarded CTC and Adjustment Factor(s) proposed. Contractor will have an option to refuse work outside of the Port of Everett .

**C. Project Team**

Provide an organizational chart demonstrating the relationships and hierarchy of the team described above. Identify team members by name, position, and role on this contract. Also identify key back-up personnel. Since the Project Manager and General Field Superintendent are critical to the success of a JOC program, provide a brief resume for these two positions.

**D. Comparable Construction Experience**

The Port is seeking to obtain the services of an experienced construction contractor with work experience like the type of work the Port may procure with JOC. Prime Contracting with public agency procurement is preferred. Within the Procurement Portal, provide project experience in the three (3) categories below:

- Four (4) repair or rehabilitation projects whose final value including change orders is between \$50,000 and \$150,000.
- Four (4) repair or rehabilitation projects whose final value including change orders is between \$150,000 and \$350,000.
- Four (4) repair or rehabilitation projects whose final value including change orders is between \$350,000 and \$500,000.

Additional document uploads containing more information about the project and/or pictures are not required but may be submitted at the Proposer's discretion. **Submit projects that have achieved final acceptance after January 1, 2019.** Contractors with less experience will be considered but will be scored accordingly.

**E. Subcontractor Plan**

Provide Proposer's subcontractor utilization plan. Identify, in specific detail, how the firm will maximize participation of qualified and available subcontractors, local businesses, certified minority, women, small and veteran owned businesses under this Contract. The Plan should also identify how the Proposer will select subcontractors and the basis for such selection. In addition, please include the Proposer's approach and arrangement to subcontracting versus self-performing the work with its own forces as well identification of said types of work the Proposer intends on self-performing.

**F. Exceptions**

Proposers must identify any exceptions to the terms and conditions of the RFP. By submitting a Proposal, the Proposer represents that it has carefully read and agrees to be bound by the Port's Terms and Conditions. Identify any item to which you take exception, propose alternative language, and describe why it is in the Port's best interests to adopt the alternative language. There will not be an opportunity to negotiate terms not identified in this section.

**PHASE 2 – ADJUSTMENT FACTOR**

Proposers shortlisted will be asked to provide their Adjustment Factor to the Construction Task Catalog through Bids and Tenders. For evaluation purposes only, the following work distributions shall be used to determine the Award Criteria Figure:

<b>Adjustment Factor</b>	<b>% Weight (For Evaluation Only)</b>
Normal Working Hours	70%
Other than Normal Working Hours	20%
Non Pre-Priced	10%

# EVALUATION PROCESS

## 1. EVALUATION PROCESS

All Proposals received before the due date and time will be reviewed to determine compliance with the requirements as specified in the RFP. Proposals will be evaluated and ranked by an evaluation team based on the Evaluation Criteria set forth below and an overall assessment of “best value” to the Port.

The Evaluation Criteria reflect a wide range of considerations. While cost is important, other factors are also significant. Consequently, the Port may not select the lowest cost proposals. The objective is to choose the Proposer capable of providing quality services that will help the Port achieve the goals and objectives of the requested services forth in the Scope of Work with a reasonable Adjustment Factor. In addition to the Proposers’ overall technical and functional competence, the Port wishes to form a partnership with a financially stable, well-managed business organization that it can count on for continued support throughout the contract. The Port will select the proposals that, in its sole discretion and absolute, are the most advantageous to the Port.

## 2. RESPONSIVENESS

To be considered responsive, Proposers must complete and submit all the required information on time as specified in the RFP.

## 3. PROPOSAL EVALUATION CRITERIA

### A. PHASE I EVALUATION CRITERIA

PHASE 1 CRITERIA		
ITEM	CRITERIA	AVAIL POINTS
A	Contractor Background, Information, & References	10
B	Project Approach	15
C	Comparable Construction Experience	15
D	Key Personnel	20
E	Subcontractor Plan/Ability to Manage Multiple Subcontractors	10
<b>TOTAL</b>		<b>70</b>

### B. PHASE I EVALUATION PROCESS

All Proposals received will be reviewed to determine compliance with the requirements as specified in the RFP. Proposals (submittals) will be evaluated and ranked by an Evaluation Committee based on the Evaluation Criteria set for the above and an overall assessment of “best value.” It is important that the



Proposals be as clear and complete as possible so that the evaluators can adequately understand all aspects of the Proposal.

**C. PHASE II – ADJUSTMENT FACTOR**

The Evaluation Committee will invite the shortlisted firms to provide an Adjustment Factor.

ITEM	CRITERIA	AVAIL POINTS
A	Proposed Adjustment Factor	30
<b>TOTAL</b>		<b>30</b>

**D. PHASE II EVALUATION PROCESS**

For evaluation purposes only, the following work distributions shall be used to determine the Award Criteria Figure:

Adjustment Factor	% Weight (For Evaluation Only)
Normal Working Hours	70%
Other than Normal Working Hours	20%
Non pre-priced	10%

**4. NEGOTIATION / CLARIFICATION PERIOD**

The Evaluation Team may request the highest ranked Proposers enter a negotiation / clarification period to discuss strengths, weaknesses, and ambiguities in the proposals.

**5. AGREEMENT**

The highest ranked Proposer(s) will be expected to sign an Agreement. By submitting a proposal in response to this RFP, the Proposer expressly accepts the terms and conditions set forth in this RFP. The Port may consider requests to alter the terms and conditions if these requests are made using the Exceptions process in the Submittal Requirements.

**6. DEBRIEF**

Any Proposers not selected may request a debrief once the contract has been awarded. The debrief provides Proposers with useful feedback on areas for continuous improvement and strengths noted in their proposal. It is not an opportunity to challenge the Port’s decision to engage Counsel or provide amended or best-and-final Proposals for reconsideration.

# ADMINISTRATIVE REQUIREMENTS

## 1. PROPOSAL DOCUMENTS

The intent of the Proposal documents is to include all items necessary for the proper execution and completion of work. The Proposal documents are complementary and that which is required by one shall be as binding as if required by all. Work not covered in the Proposal documents will not be required unless it is consistent therewith and is reasonably inferable therefrom as being necessary to produce the intended results. Words and abbreviations which have well-known technical, or trade meaning are used in the Proposal documents in accordance with such recognized meanings.

## 2. COST OF PREPARING PROPOSALS

Neither the Port of Everett nor Sourcewell are liable for any costs incurred by Proposers in the preparation and presentation of Proposals or demonstrations conducted in response to this RFP.

## 3. PROPOSAL OPENING

Proposals will not be publicly opened, but a register of the Proposals received identifying the name of each Proposer shall be prepared and made available to the public immediately following the submittal deadline. No other information regarding the Proposals received will be available to the public until after contract execution.

## 4. PROPOSAL ACCEPTANCE PERIOD

All Proposals submitted shall be good for a minimum of ninety (90) after the Proposal submittal date, unless otherwise stated in this Proposal. The Port may request a Proposer grant an extension of the Proposal effective period.

## 5. SINGLE RESPONSE RECEIVED

If the Port receives a single Proposal, the Port reserves the right to conduct a price or cost analysis on the Proposal and extend the Proposal acceptance period. The Proposer shall promptly provide all cost or pricing data, documentation and explanation requested by the Port to assist in such analysis. By conducting such analysis, the Port shall not be obligated to accept the single Proposal and reserves the right to reject any portion of the Proposal or cancel the RFP for lack of competition.

## 6. PROPOSAL REJECTION

The Port of Everett reserves the right to reject any or all Proposals at any time without penalty.

## 7. CANCELLATION OF RFP OR POSTPONEMENT OF PROPOSAL OPENING

The Port reserves the right to cancel the RFP at any time. The Port may change the date and time for submitting Proposals prior to the date and time established for submittal via addenda.

## 8. ERRORS IN PROPOSAL

The Port of Everett will not be liable for any errors in the Proposals. Proposers will not be allowed to alter Proposal documents after the deadline for Proposal submission.

The Port of Everett reserves the right to make corrections or amendments due to errors identified in Proposals by Port staff or the Proposer. This type of correction or amendment will only be allowed for such errors as typing, transposition, or any other obvious error. Proposers are liable for all errors or omissions contained in their Proposals.

When, after the opening and tabulation of Proposals (if any), a Proposer claims error and requests to be relieved of award, the Proposer will be required to promptly present certified worksheets. The Port will review the worksheets and, if the Port agrees by clear and convincing evidence that an honest mathematically excusable error or critical omission of costs has been made, the Proposer may be relieved of his Proposal.

If a discrepancy exists between the price per unit and extended amount of any Proposal item, the price per unit shall prevail. The total of extensions, corrected, when necessary, will be used by the Port.

## 9. PROPOSER RESPONSIBILITY

When evaluating a Proposal, the following factors may be considered in determining responsibility or whether a proposal is the most advantageous to the Port.

- The ability, capacity and skill of the Proposer to perform the contract or provide the service required;
- The character, integrity, reputation, judgment, experience, and efficiency of the Proposer;
- Whether the Proposer can perform the contract within the time specified;
- The quality of performance of previous public and private contracts or services, including the Proposers' failure to perform satisfactorily or complete any written contract. The Port's termination for default of a previous contract with a Proposer shall be deemed to be such a failure;
- The previous and existing compliance by the Proposer with laws relating to the contract or services;
- Evidence of collusion with any other proposer, in which case colluding proposers will be restricted from submitting further proposals on the subject project and future tenders;
- The Proposer is not qualified for the work or capable to complete the full extent of the Proposal;
- There is uncompleted work with the Port or others, or an outstanding dispute on a previous or current contract that might hinder, negatively affect, or prevent the prompt completion of the work proposed;
- The Proposer, more likely than not, will be unable, financially or otherwise, to perform the work;
- The Proposer, at time of Proposal opening, is not authorized to do business in the State of Washington, or otherwise lacks a necessary license, registration, or permit;
- The Proposer has been convicted of a crime arising from a previous public contract, excepting convictions that have been pardoned, expunged, or annulled;
- The Proposer has been convicted of a crime of moral turpitude or any felony, excepting convictions that have been pardoned, expunged, or annulled. Proposers should affirmatively disclose to the Port all such convictions, especially of management personnel and project team members or the proposer as an entity. Disclosure should be made prior to notice of award or as soon as the Proposer is made aware of such conviction. Failure to make such affirmative disclosure shall be grounds for termination for default subsequent to award or execution of the contract at the Port's discretion;

- Such other information as may be secured having a bearing on the decision to award a contract;
- Any other reason deemed proper by the Port.

#### 10. INCORPORATION OF RFP AND PROPOSAL IN CONTRACT

The RFP, including all attachments and addenda, and all promises, warranties, commitments, and representations in the successful Proposal, as may be amended between the Port and the Proposer, shall be binding, and shall become obligations of the contract between the successful Proposer and the Port.

#### 11. TIMELY EXECUTION OF CONTRACT

The successful Proposer must execute an agreement with the Port within ten (10) business days after receipt of the final form of the contract.

#### 12. NO OBLIGATION TO BUY

The Port of Everett reserves the right to refrain from contracting with any Proposer. The release of this RFP does not compel the Port to make a purchase.

#### 13. NON-ENDORSEMENT

Due to the selection of a Proposer to supply products and/or services to the Port of Everett, the Port is neither endorsing nor suggesting that the Proposer's product is the best or only solution. The Proposer agrees to make no reference to the Port of Everett in any literature, promotional material, brochures, sales presentation or the like without the express written consent of the Port.

#### 14. CLARIFICATIONS BY THE PORT

The Port reserves the right to request clarification of information submitted by the Proposer and additional information from any Proposer.

#### 15. TIME FOR COMPLETION

If a specific time is required for completion or delivery of the contract, it will be stated in the Proposal documents. Date of delivery / completion stated in the Proposal document shall become part of the contract.

#### 16. COVENANT AGAINST GRATUITIES

The Proposer warrants by submitting a proposal that no gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Proposer or any agent or representative of the Proposer, to any officer or employee of the Port with a view toward securing the contract or securing favorable treatment with respect to any determinations concerning the performance of the contract. For breach or violation of this warranty, the Port shall have the right to terminate the contract, either in whole or in part, and any loss or damage sustained by the Port in procuring on the open market any items which Proposer agreed to supply, shall be borne, and paid for by the Proposer.

The rights and remedies of the Port provided in the clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under the contract.

## 17. COLLUSION

By signing this Proposal, the Proposer certifies that they have not, either directly or indirectly, entered into any agreement, participated in any collusion or otherwise taken any action in restraint of free competitive proposing. If the Port determines that collusion has occurred among Proposers, none of the Proposals from the participants of such collusion will be considered. The Port's determination will be final.

## 18. CONFLICT OF INTEREST

The Proposer shall note all relationships that might be a conflict of interest and include such information with their Proposal submittal.

## 19. PUBLIC DISCLOSURE OF PROPOSALS

This procurement is subject to the Washington Public Disclosure Act, RCW 42.56. Proposals submitted under this RFP shall be considered public documents unless the documents are exempt under the public disclosure laws. After the selection process has been concluded and a contract has been signed by both parties, Proposals shall be available for inspection by the public. Additionally, information related to this procurement may be subject to disclosure under laws applicable to Sourcewell.

If a Proposer considers any portion of its Proposal to be protected under the law, the Proposer shall clearly identify such a portion with the words such as "CONFIDENTIAL", "PROPRIETARY" or "BUSINESS SECRET". If the Port determines that the material is not exempt from public disclosure law, the Port will notify the Proposer of the request and allow the Proposer ten (10) Days to take action it deems necessary to protect its interests. If the Proposer does not take such action within said period, the Port will release the portions of the Proposal deemed subject to disclosure. By submitting a Proposal, the Proposer assents to the procedure outlined in this subsection and shall have no claim against the Port on account taken under such procedure.

## 20. PROTEST PROCEDURE

### A. FORM OF PROTEST

In order to be considered, a Protest shall be in writing, addressed to the Procurement and Contracts Manager ("Contracts Manager"), and include:

- The name, address, and phone number of the Bidder protesting, or the authorized representative of the Bidder;
- The Request for Proposal, Number and Title under which the Protest is submitted;
- A detailed description of the specific grounds for protest and any supporting documentation. It is the responsibility of the Protesting Proposer to supplement its Protest with any subsequently discovered documents prior to the Contract Manager's decision;
- The specific ruling or relief requested;
- Evidence that all persons with a financial interest in the procurement have been given notice of the Protest or if such persons are unknown, a statement to that effect; and
- Contain the following statement signed by a responsible party of the Protestor, "I declare under penalty of law for perjury or falsification that the information contained in the Protest is true and correct to my personal knowledge, that this Protest is filed in good faith and without any intent of delaying the

procurement, and that I reasonably believe the Protest to be meritorious.” Such statement shall be subscribed and sworn before a notary public. A Protestor must strictly comply with this requirement.

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**B. DELIVERY METHOD**

Delivery of Protests shall be made during regular Port business hours in a manner requiring a receipt signed by a staff member of the Port of Everett’s office such as United States Postal Service certified first class mail, return receipt request or commercial document courier who obtains a receipt upon delivery. Electronic submission of Protests will not be considered.

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**C. WHO MAY PROTEST**

Any Proposer. Proposer does not include subcontractors, suppliers or any person contracting with, or intending to contract with the Proposer.

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**D. TIME TO PROTEST**

Protests based on specifications must be received seven (7) calendar days prior to the Proposal Due date. Protests must be received by the Port within two business days after the Notice of Intent to Award. In no event shall a Protest be considered if all Proposals are rejected or after award of the Contract.

---

**E. DETERMINATION OF PROTEST**

If the procurement is to be made or awarded by the commission as provided by the Port’s policies existing at the time of the procurement, the commission shall decide the protest. The commission’s decision shall be final and binding.

If the procurement is to be made or awarded without commission action, as provided under the Port’s policies existing at the time of procurement, the Chief Financial Officer or their designee shall decide the protest. A meeting or conference with the protestor will occur only if such designated person determines, in his or her sole discretion, that a meeting or conference with the protestor would materially assist them in making a decision. The Chief Financial Officer or their designee will issue a written decision. The decision shall be final and binding.

The decision will be decided based upon the protest, including documents attached to the protest in the support of the protest and any other information obtained by the Port.

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**F. REMEDIES**

A decision on the protest may include, but is not limited to, upholding or denying the protest, in whole or in part. Remedies may include rejection of one or more Proposals, a call for new Proposals, acceptance of the Proposals in the event the Protest is denied, and such other relief as may be appropriate. No Protestor shall be entitled to damages of any kind whatsoever.

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**G. STRICT COMPLIANCE:**

Strict compliance with these protest procedures is essential in furtherance of the public interest. Any party that fails to comply strictly with these protest procedures is deemed to have waived any claim with respect to alleged irregularities in connection with the Request for Proposals or award of contract.

Failure to comply with the procedures set forth herein may render a Protest untimely or inadequate and may result in rejection by the Port. No person may pursue any judicial or administrative proceedings challenging the solicitation or contract award without first exhausting the procedures specified herein.

**PORT OF EVERETT AGREEMENT  
FOR JOB ORDER CONTRACTING – GENERAL CONSTRUCTION SERVICES  
PROJECT NO.**

THIS AGREEMENT is made and entered into by and between the Port of Everett (hereinafter called PORT) and \_\_\_\_\_ (hereinafter called CONTRACTOR). PORT and CONTRACTOR, a limited liability corporation company, sole proprietor, corporation or partnership, in consideration of the mutual covenants hereinafter set forth, agree as follows:

**ARTICLE 1 - WORK**

CONTRACTOR shall complete indefinite delivery – indefinite quantity public work as specified or indicated in the Contract Documents.

The Work is generally described as follows:

The Work of this Contract will be set forth in the Detailed Scopes of Work Referenced in the individual Job Orders. The Contractor is required to complete each approved Detailed Scope of Work for the Job Order Price within the Job Order Completion Time.

The value of the Job Order Price Proposal shall be calculated by summing the total of the calculation for each pre-priced task (unit price x quantity x adjustment factor) plus the value of all the Non-Pre-Priced tasks.

**ARTICLE 2 – COOPERATIVE PURCHASING**

1. The PORT has entered into an Interagency Agreement with Sourcewell, a State of Minnesota local government agency and service cooperative created under the laws of the State of Minnesota (Minnesota Statutes Section 123A.21) that, among other things, offers indefinite quantity, indefinite delivery construction procurement solutions to government entities. This Interagency Agreement establishes a Job Order Contractor program; participation will be open to public entities located within the State of Washington.
2. The CONTRACTOR may extend its offer to the PORT to other Washington State agencies for the same cost, terms, and conditions, provided that the Washington State agency enters into an Interlocal Agreement with the PORT and is eligible to utilize the Sourcewell purchasing cooperative.
3. The PORT will provide capacity from its Job Order Contract; Sourcewell will provide contract administration and will be the main point of contact for the CONTRACTOR and Washington State Agency.
4. Neither the Port or Sourcewell accepts any responsibility for agreements, contracts or purchase orders issued by other public agencies to the successful party. Each public agency accepts responsibility for compliance with any additional or varying laws and regulations governing purchase by or on behalf of the public agency. The Port accepts no responsibility for the



performance of the successful party in providing services to other public agencies, nor any responsibility for the payment price to the successful party for other public-agency purchases.

**ARTICLE 3 - CONTRACT TIME**

- 3.1 The Base Term of the Agreement will be for two (2) years commencing on the Effective Date.
- 3.2 There is one (1) bilateral, one (1) year Option Term. Both parties must agree to extend the Agreement for the Option Term.
- 3.3 All Job Orders issued during the term of this Agreement shall be valid and in effect, notwithstanding that the Job Order may be performed, payments may be made, and the guarantee period may continue after such period has expired. All terms and conditions of the Contract Documents apply to each Job Order.
- 3.4 The CONTRACTOR shall commence work upon issuance of a Job Order, and shall complete the Detailed Scope of Work for the Job Order Price within the Job Order Completion Time.
- 3.5 Liquidated Damages: PORT and CONTRACTOR recognize that time is of the essence of this Agreement and that PORT will suffer financial loss if the Detailed Scope of Work is not completed within the Job Order Completion Time, plus any extensions thereof allowed in accordance with Article 15 of the General Conditions. They also recognize the delays, expense and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by PORT if the Detailed Scope of Work is not completed on time. Accordingly, instead of requiring any such proof, PORT and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay PORT liquidated damages as outline below and further defined in for each day that expires after the Job Order Completion Time.

**Schedule of Liquidated Damages**

<b>Value of Job Order</b>	<b>Liquidated Damages</b>
\$40 to \$150,000.00	\$500/Day
\$150,000.01to \$350,000.00	\$1,000/Day
\$350,000.01 or Greater	\$1,500/Day

**ARTICLE 4 - CONTRACT PRICE**

- 4.1 PORT shall pay CONTRACTOR for completion of the Detailed Scope of Work in the Job Order in accordance with the Contract Documents.
- 4.2 The Agreement is an indefinite delivery, indefinite quantity contract for general construction work and services. The Minimum Contract Value of Job Orders that the CONTRACTOR is

guaranteed to the opportunity to perform under this Agreement is \$25,000. The Port reserves the right to issue Job Orders, or provide contract capacity to other agencies (cooperative purchasing), up to the maximum amount specified in RCW 39.10.40 of \$4,000,000 per year. The Maximum Contract Value shall not exceed the value set forth in the RCW. Any unused capacity from the previous year may be carried over for one year and added to the immediately following year's limit. The maximum annual volume including unused capacity shall not exceed the limit for two years.

- 4.3 The CONTRACTOR shall perform all Work required, necessary, proper for or incidental to the Detailed Scope of Work called for in each individual Job Order issued pursuant to the Agreement for the Unit Prices set forth in the Construction Task Catalog® and the following Adjustment Factors:
- A. Normal Working Hours (7:00 a.. to 6:00 p.m. Monday to Friday, except for PORT Holidays) Adjustment Factor: **INSERT ADJUSTMENT FACTOR**
  - B. Other Than Normal Working Hours (6:01 p.m. to 6:59 a.m. Monday to Friday, and all-day Saturday, Sunday, and PORT Holidays): Adjustment Factor: **INSERT ADJUSTMENT FACTOR**
  - C. Non-Pre-Priced Adjustment Factor: **INSERT ADJUSTMENT FACTOR**

#### **ARTICLE 5 - PAYMENT PROCEDURES**

CONTRACTOR shall submit Applications for Payment in accordance with the General Conditions. Applications for Payment will be processed by Project Manager as provided in the General Conditions.

- 5.1 Progress Payments. PORT shall make progress payments on account of the Contract Price on the basis of CONTRACTOR's Applications for Payment as recommended by Project Manager, within thirty (30) working days from application for payment. All progress payments will be on the basis of the progress of the Work as established in the General Conditions and the Tasks in the Construction Task Catalog for the Unit Price appearing therein multiplied by the Adjustment Factors listed above in Article 4.
- 5.2 Final Payment: Upon final completion and acceptance of the work in accordance with General Conditions, PORT shall pay the remainder of the Contract Price as recommended by the Project Manager.

#### **ARTICLE 6 - CONTRACTOR'S REPRESENTATIONS**

CONTRACTOR, by submitting a Proposal and entering into this AGREEMENT, makes the following representations:

- 6.1 CONTRACTOR has familiarized itself with the nature and extent of the Contract Documents, and all local conditions and Laws and Regulations that in any manner may affect cost, progress, performance or furnishing of the Work.
- 6.2 CONTRACTOR is fully qualified to perform the Work to be performed hereunder in a competent and professional manner.
- 6.3 CONTRACTOR has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing underground facilities at or contiguous to the site and assumes responsibility for the accurate location of said underground facilities. No additional
- 6.5 CONTRACTOR has given PORT written notice of all conflicts, errors or discrepancies that he has discovered in the Contract Documents and the written resolution thereof by PORT is acceptable to CONTRACTOR.
- 6.6 CERTIFICATION REGARDING SUSPENSION, DEBARMENT, INELIGIBILITY OR VOLUNTARY EXCLUSION
- 6.6.1 Pursuant to 2 CFR 200.213, the Contractor, by signing this agreement, certifies that it is not suspended, debarred, proposed for debarment, declared ineligible or otherwise excluded from contracting with the federal government, or from receiving contracts paid for with federal funds. If the Contractor is unable to certify, they must provide an explanation as to why they cannot prior to signing the agreement. The Contractor shall provide immediate written notice to the Port if at any time the Contractor learns that its certification was erroneous or has become erroneous by reason of changed circumstances, or have received notice that they have been suspended, debarred, proposed for debarment, declared ineligible or otherwise excluded from contracting with the federal government, or from receiving contracts paid for with federal funds. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in 2 CFR 180.
- 6.6.2 The Contractor agrees it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under the applicable Code of Federal Regulations, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction. Pursuant to 2 CFR 180.330, the Contractor is responsible for ensuring that any lower tier covered transaction complies with certification of suspension and debarment requirements. The Contractor agrees that it will include this clause without modification in all lower tier covered transactions.

## ARTICLE 7 - CONTRACT DOCUMENTS

The Contract Documents which comprise the entire agreement between PORT and CONTRACTOR concerning the work consist of the following:

- 7.1 This Agreement (pages 1 to 6, inclusive).
- 7.2 Exhibits to this Agreement.
- a. Performance and Payment Bonds, identified as exhibit A and consisting of \_\_\_ pages.

- b. Insurance Certificate(s) and additional insured endorsements identified as exhibit B and consisting of \_\_\_ pages.
- c. Retainage Bond, identified as Exhibit XX, and consisting of \_\_\_ pages.
- d. Notice-of-Award.
- 7.3 General Conditions (pages 1 to 77, inclusive), incorporated by reference
- 7.4 Federal Grant Supplemental Conditions (pages 1 through 5, inclusive), incorporated by reference
- 7.5 Addenda numbers \_\_\_ to\_\_\_, inclusive, incorporated by reference
- 7.6 CONTRACTOR's Proposal, incorporated by reference
- 7.7 The Construction Task Catalog® Pricing, incorporated by reference
- 7.8 The Job Order Contract Technical Specifications, incorporated by reference
- 7.9 All Job Orders and related documents, including but not limited to: the Detailed Scope of Work with Drawings and Specifications, Price Proposal, Job Order Proposal, Notice to Proceed, submittals, record documents, and all require close-out documentation

There are no Contract Documents other than those listed above in this Article 7. The Contract Documents may only be amended, modified or supplemented as provided in the General Conditions or Supplementary Conditions.

#### **ARTICLE 8 - MISCELLANEOUS**

- 8.1 Terms used in this Agreement which are defined in Article 1 of the General Conditions will have the meanings indicated in the General Conditions.
- 8.2 No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically but without limitation moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.
- 8.3 PORT and CONTRACTOR each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect of all covenants, agreements and obligations contained in the Contract Documents.
- 8.4 Each person signing this agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and bind and obligate such party with respect to all provisions contained in this agreement.
- 8.5 Original signatures transmitted and received via facsimile or other electronic transmission of a scanned document, (e.g., PDF or similar format) are true and valid signatures for all purposes hereunder and shall bind the parties to the same extent as that of an original signature. Any such facsimile or electronic mail transmission shall constitute the final agreement of the parties

and conclusive proof of such agreement. Any such electronic counterpart shall be of sufficient quality to be legible either electronically or when printed as hardcopy. The Port shall determine legibility and acceptability for public record purposes. This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original and all of which shall constitute the same instrument.

Article 9 – AUTHORIZED REPRESENTATIVES

- 9.1 The Port of Everett’s Authorized representative is its Maija Lampinen, Procurement & Contracts Manager.
- 9.2. The Sourcewell Authorized representative is its Chief Procurement Officer.
- 9.3 The Contractor’s Authorized Representative is \_\_\_\_\_ its \_\_\_\_\_. If the Contractor’s Authorized Representative changes at any time during this Contract, Contractor must promptly notify the Port in writing.

IN WITNESS WHEREOF, all portions of the Contract Documents have been signed or identified by PORT and CONTRACTOR.

This Agreement will be effective on \_\_\_\_\_, 2024.

PORT OF EVERETT

CONTRACTOR (Insert CONTRACTOR’s Name)

By \_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

Address for giving notices  
1205 Craftsman Way, Suite 200  
Everett, WA 98201

Address for giving notices

END OF SECTION

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**GENERAL CONDITIONS****ARTICLE 1 DEFINITIONS****1.1 Definition of Terms**

Wherever used in these General Conditions or in the other Contract Documents, the following terms have the meanings indicated which are applicable to both the singular and plural thereof.

Additional Work	Extra or changed Work performed by the CONTRACTOR that may give rise to an adjustment to the Contract Price or Contract Time via executed Supplemental Job Order.
Applicable Laws	All laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and "Community Right-to-Know" laws that are applicable to this Contract.
As-Built Drawings	A neatly and legibly marked set of Drawings by the CONTRACTOR that reflect the manner in which the Work has been performed in the field.
Bonds	Performance/payment bonds, retainage bonds, maintenance bonds, and other instruments of security.
Change Order	A written order to the CONTRACTOR issued by the PORT authorizing an addition, deletion, or revision in the Work, or an adjustment in the Contract Price, the Contract Time, or Contract Documents issued after the Effective Date of the Contract.
Claim	A written demand or assertion by the CONTRACTOR in accordance with 18.4 after denial of a Change Order Proposal seeking, as a matter of right, adjustments of Contract terms, Job Order Price, Job Order Completion Time, or other relief with respect to the terms of the Contract.
Closeout Administrative Requirements	Those administrative requirements that are not necessary for Physical Completion but which the CONTRACTOR must fulfill to complete the Work under the Contract prior to Final Acceptance.
Construction Schedule	The schedule prepared by the CONTRACTOR, using software acceptable to the PORT, and to which the PORT shall always have access, in accordance with the requirements of the Contract Documents and accepted by the PORT setting forth the logical sequence of activities required for the CONTRACTOR's orderly performance and completion of the Work in accordance with the Job Order and specifically to meet the Critical Path and any specified Milestones. The Construction Schedule includes updates – whether by progress schedule(s), recovery schedule(s) or otherwise – required by the Contract.
Contract Documents	The Contract, any addenda or amendments, the CONTRACTOR's Proposal (including documentation accompanying the Proposal and any post bid documentation submitted prior to the Contract execution), Request for Proposal, the General Conditions, any supplemental conditions, all technical specifications, , Job Orders, Change Orders

executed by the PORT and the CONTRACTOR, and all other documents listed in the Contract.

CONTRACTOR	The business entity with whom the PORT has entered the Contract.
Critical Path	Critical Path is the longest, continuous sequence of interrelated activities that begins upon Notice to Proceed and extends to Substantial Completion of the Work. The path represents interrelated activities throughout the network from beginning to end and determines the shortest time possible to complete the Project. These activities are critical because delay to an activity on this particular path will impact Milestones or the Job Order Time.
Day(s)	The term, regardless of whether capitalized, shall mean a calendar day of twenty four hours measured from midnight to the next midnight, unless otherwise designated in the Contract Documents.
Defective	An adjective which, when modifying the word Work, refers to Work that is unsatisfactory, faulty, deficient, deemed unacceptable by the PORT, does not conform to the Contract Documents, does not meet the requirements of any inspection, test or approval referred to in the Contract Documents, or has been damaged prior to Physical Completion.
Design Build	A method of project delivery whereby the CONTRACTOR performs all or a part of the Work consisting of both design and construction services.
Drawings	The drawings which show the character and scope of the Work to be performed and which have been prepared or approved by the PORT and which are referred to in the Job Order.
Effective Date of the Contract	The date indicated in the Contract on which it becomes effective, but if no such date is indicated, it means the date on which the Contract is signed and delivered by the last of the parties to sign and deliver.
Event	Any act, omission, directive, condition, instruction, or determination that the CONTRACTOR believes may entitle it to an adjustment in the Job Order Completion Time or Job Order Price, including, but not limited to, the items set forth in 0.
Field Order	A written statement to the CONTRACTOR issued on or after the date of execution of the Job Order and signed by the PORT ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions or to emergencies. A Field Order will not change the Job Order Price or the Job Order Completion Times but is evidence that the parties expect that the change ordered or documented by a Field Order will be incorporated in a subsequently issued Supplemental Job Order following negotiations by the parties as to its effects, if any, on the Contract Price, or Contract Time, or both.
Final Acceptance	The PORT's formal, written acknowledgement as described in Article 17, reflecting completion and acceptance of the Work and completion of

Closeout Administrative Requirements. Final Acceptance is required by Revised Code of Washington (RCW) Chapter 39.08 , and commences the time for submission of any third-party claims against the performance or payment bonds under RCW Chapter 39.08, and statutory retainage under RCW Chapter 60.28.

Final Payment	The payment for a Job Order to be made to the CONTRACTOR in accordance with Article 17. Final payment is not the payment to the CONTRACTOR for the retainage required by RCW 60.28 following satisfaction of the conditions necessary to release that retainage.
Force Majeure	Acts of God or the public enemy, epidemics, pandemics (including Covid-19), quarantine restrictions, strikes, riot, war or civil disorder, freight embargoes or severe and unusual weather, fire or another casualty for which the CONTRACTOR is not at fault or otherwise responsible and which the CONTRACTOR did not or, in the exercise of reasonable diligence, could not foresee upon executing the Contract, and suspension of Work by the PORT due to an act of Government in accordance with Section 2.4.
General Requirements	Division 1 of the Specifications.
Hazardous Materials	The term "Hazardous Materials" means any hazardous or toxic substances, materials, and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 C.F.R. 172.101) or listed by the Environmental Protection Agency as hazardous substances (40 C.F.R. Part 302) and any amendments thereto, and any substances, materials or wastes that are or become regulated under federal, state, or local law. Hazardous Materials (or substances) shall also include, but not be limited to: regulated substances, petroleum products, pollutants, and all other environmental contamination as defined by, and in all federal, state and/or local laws, rules, regulations, ordinances or statutes now existing or hereinafter enacted relating to air, soil, water, environmental, or health and safety conditions.
Inspector	The PORT’s authorized representative assigned to make inspections and record the progress of the CONTRACTOR’s performance of the Work. An Inspector may or may not be identified by the PORT in writing, but if the CONTRACTOR questions the authority of an Inspector, the PORT shall confirm such authority.
Liquidated Damages	The amount agreed by the Parties and prescribed in the Agreement to be paid to the PORT, or to be deducted from any payments due or to become due the CONTRACTOR, for each Day's delay in completing the whole or any specified portion of the Work beyond the time allowed in the Job Order Documents.
Milestone	A specified milestone date in the Job Order by which the CONTRACTOR is required to complete or attain a designated portion of the Work. A

Milestone may, for example, exist with respect to the end of Job Order Completion Time, a deadline for partial Substantial Completion, a deadline for completion of a portion of the Work that would not constitute Substantial Completion, or partial Substantial Completion, or some other specified occurrence.

Notice of Event	The written notice by the CONTRACTOR to the PORT that an Event has occurred.
Notice to Proceed	A written notice given by the PORT to the CONTRACTOR fixing the date on which the Job Order Completion Time will commence to run and on which the CONTRACTOR shall start to perform its obligation under the Job Order.
Other Work	Work performed related, adjacent, or appurtenant to the Project by either the PORT or by the PORT's Separate Contractors.
Pay Application	The form issued by the PORT will be used by the CONTRACTOR in requesting progress or Final Payment for a Job Order and will include supporting documentation required by the Contract Documents.
Payment Bond	The form of security approved by the PORT, furnished by the CONTRACTOR and its Surety guaranteeing the complete and faithful payment of all labor, material, equipment, and any other services necessary to execute the Work.
Performance Bond	The form of security approved by the PORT, furnished by the CONTRACTOR and its Surety guaranteeing the complete and faithful performance of the construction of the Work as specified in the Contract Documents.
Physical Completion	A Milestone which occurs following Substantial Completion and prior to Final Acceptance as described in Article 17. The time at which all the Work has progressed to the point where (a) the CONTRACTOR has completed all items identified on the Punch List and the items have been accepted by the PORT, (b) the CONTRACTOR has submitted and the PORT has accepted all required As-Built Drawings, (c) the CONTRACTOR has submitted final operating and maintenance documentation, (d) the CONTRACTOR has submitted final Warranty Documentation, (e) the CONTRACTOR has submitted all commissioning reports, and (f) the CONTRACTOR has completed closeout cleaning and fully and satisfactorily demobilized from the Project Site and any other PORT property provided for use under the Contract. Physical Completion does not require completion of the Closeout Administrative Requirements.
Piggyback Agency	Any eligible Washington State public agency accessing CONTRACTOR's services through the authority of RCW 39.34. Piggybacking Agency must execute an Interlocal Agreement directly with PORT and must register as a Participating Entity with Sourcewell. For purposes of these General

Conditions, the term “PORT” is synonymous with “Piggybacking Agency.”

Plans	Representation of the Work by Drawings and engineering and architectural notes in the Job Order.
PORT	The Port of Everett. Unless the context clearly requires otherwise, the term “PORT” includes all the PORT's commissioners, officers, employees, and other authorized representatives.
PORT’s SEPARATE CONTRACTOR	Contractors directly retained by PORT other than CONTRACTOR.
Preconstruction Meeting	A meeting attended by the CONTRACTOR and the PORT before the start of the Work, as described in Section 2.8.
Product Data	The illustrations, standard schedules, performance charts, brochures, diagrams, and other information furnished by the CONTRACTOR to illustrate a material, product, or system for some portion of the Work.
Progress Payment	Periodic payments to the CONTRACTOR of the Contract Price for work completed in accordance with the Contract Documents. Progress Payments are made to the CONTRACTOR as outlined in Article 17.
Project	The planned undertaking to complete the Work as defined in the Job Order. The collective improvements to be constructed by the Contractor pursuant to a Job Order, or a series of related Job Orders.
Project Manager	The authorized representative of the PORT given all the duties and responsibilities and rights and authorities assigned to the PORT in the Job Order.
Project Site	The location(s) where the Work will be performed or constructed by the CONTRACTOR as set forth in the Job Order. The Project Site specifically includes areas identified by the PORT for the CONTRACTOR’s logistics or staging. It does not include any areas separately secured by the CONTRACTOR, a subcontractor of any tier, or Supplier for use in connection with the Work (e.g., the CONTRACTOR’s home office, an off-site fabrication plant, etc.).
Punch List	A list(s) of the physical construction work, or other requirements of the Job Order, that remains to be completed or requires to be corrected after the achievement of Substantial Completion of the Work, which must be satisfactorily completed to attain Physical Completion.
Reference Documents	Drawings, specifications, reports, or other documents that do not specify Work required by the Job Order, but which provide supplemental information that offers insight into the means, methods, techniques, sequences, or procedures of construction that may be necessary to perform or accomplish the Work and which the PORT expects the CONTRACTOR to consider and account for in preparing its



Bid and performing the Work. Reference Documents are not, however, the exclusive source for such information.

Request for Information (RFI)	A document by which the CONTRACTOR requests clarification, verification, or information regarding a portion of the Work.
SDS	Safety Data Sheets, as proscribed by Occupational Safety and Health Administration, the Washington Division of Occupational Safety and Health, 29 CFR 1910.1200 and WAC 296-901-140.
Samples	Physical examples that represent materials, equipment, or workmanship, and establish standards for the performance or furnishing of the Work.
Standard of Care	The standard of care for construction work for the CONTRACTOR, its Subcontractor and any Sub-Subcontractors, as evaluated in comparison to contractors and subcontractors of similar experience, qualification and reputation on projects of similar scope, cost and complexity, providing the highest quality of services, in and around the locality, except that, (i) with respect to any design services provided by the CONTRACTOR, its Subcontractor and any Sub-Subcontractors, such services must be consistent with the professional skill and care ordinarily provided by design professionals practicing in the same or similar locality under the same or similar circumstances, and (ii) with respect to any construction management services provided by the CONTRACTOR, its Subcontractor and any Sub-Subcontractors, such services must be consistent with the professional skill and care ordinarily provided by construction management professionals practicing in the same or similar locality under the same or similar circumstances.
Subcontractor	A business entity having a direct contract with the CONTRACTOR for the performance of a portion of the Work.
Sub-Subcontractor	A Sub-Subcontractor is a business entity having a direct contract with a Subcontractor to perform a portion of the Work. The term "Sub-Subcontractor" means and includes Sub-Subcontractors at all tiers.
Submittals	Written or graphic documents (including electronic) or Samples required by the Job Order and prepared for the Work by the CONTRACTOR, a Subcontractor, or Supplier at any tier, and submitted to the PORT by the CONTRACTOR, including but not limited to, Working Drawings, Product Data, Samples, certificates, schedules of material, or other data required by the Job Order.
Substantial Completion	The time at which Work has progressed to the point where (a) it is sufficiently complete in accordance with the Job Order so that the PORT or its tenants have full, unrestricted, and permanent occupancy and operational use of the Work or a portion thereof, (b) only minor or incidental physical work (Punch List) remains to be completed, (c) all systems and parts of the Work are commissioned and functional, (d)

utilities are connected and operate normally, (e) the CONTRACTOR has provided all occupancy permits and easement releases for that part of the Work so designated, and (f) all training required by the Job Order has been provided by the CONTRACTOR.

Supplementary Conditions	That portion of the Contract Documents that amend or supplement the General Conditions.
Supplier	A vendor, distributor, or materialman which supplies material or equipment used in the performance of the Work.
Surety	The company or association which bonds the CONTRACTOR for the acceptable performance of the Contract and for its payment of all obligations arising out of the Contract.
Underground Facilities	All existing or furnished sewer, drainage, water supply systems, electrical, telephone, fiber optics, gas systems, and any other buried pipes, conduits, wires, vaults, structures, or tunnels.
Type I Condition	Subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Job Order and were not discoverable during the investigation required of the CONTRACTOR if the CONTRACTOR was operating within the Standard of Care.
Type II Condition	Unknown subsurface or otherwise concealed physical conditions of an unusual nature that differ materially from those ordinarily found to exist, and conditions generally recognized as inherent in construction activities of the character provided for in the Job Order and were not discoverable during the investigations required of the CONTRACTOR if the CONTRACTOR was acting within the Standard of Care.
Unit Price Work	The price published in the Construction Task Catalog <sup>®</sup> for a specific construction or construction related work task. Unit Prices for new Pre-Priced Tasks can be established during the course of the Contract and added to the Construction Task Catalog <sup>®</sup> . Each Unit Price is comprised of labor, equipment, and material costs to accomplish that specific Pre-Priced Task
Warranty Documentation	Documentation required by the Contract Documents that pertains to and specifically describes the warranties for the completed Work. The Warranty Documentation may cover such topics as the length of the warranty, the manner of making a claim, and any accepted conditions on such warranty.
Warranty Period	One year after Physical Completion or such longer period as may be prescribed by law or the terms of any applicable special warranty required by the Contract Documents.
Waste Materials	All material from demolition, excavation, dredging, or other source that is unsuitable to, or more than the needs of the Work, or material that is designated for removal and disposal off PORT property.

Work	The entire completed construction or the various separately identifiable parts thereof required to be furnished under the Job Order. Work is the result of performing services, furnishing labor, furnishing and incorporating materials, and providing equipment necessary to prosecute the construction effort as required by the Job Order.
Working Drawings	Shop drawings, erection plans, falsework plans, framework plans, cofferdam plans, stress diagrams, bending diagrams for reinforcing steel, or other diagrams, plans, or data used to illustrate some portion of the Work which the CONTRACTOR is required to submit to the PORT.

### 1.1 JOC Specific Definition of Terms

Adjustment Factor	A competitively bid adjustment to be applied to the unit prices listed in the Construction Task Catalog®. Also known as a 'coefficient'.
Award Criteria Figure	The amount determined on the Price Proposal sheet, which is used for the purposes of determining the lowest proposed price.
Base Term	The initial period of the Contract and does not include any Option Terms.
Construction Task Catalog®	A comprehensive listing of construction related tasks together with a specific unit of measure and a published Unit Price.
Detailed Scope of Work	A document setting forth the Work the CONTRACTOR is obligated to complete for an individual Job Order.
Estimated Annual Value	An estimate of the value of the Job Orders that could be issued to the CONTRACTOR each year.
Job Order	A written order issued by the PORT, such as the signed Job Order Proposal and a Notice to Proceed, requiring the CONTRACTOR to complete the Detailed Scope of Work within the Job Order Completion Time for the Job Order Price.
Job Order Completion Time	The time within which the CONTRACTOR must complete the Detailed Scope of Work.
Job Order Price	The value of the approved Job Order Price Proposal and the amount the CONTRACTOR will be paid for completing a Job Order
Job Order Price Proposal	A price proposal prepared by the CONTRACTOR that includes the Pre-Priced Tasks, Non Pre-Priced Tasks, quantities and appropriate Adjustment Factors required to complete the Detailed Scope of Work.
Job Order Proposal	A set of documents including at least: (1) Job Order Price Proposal; (2) required drawings and sketches; (3) list of anticipated Subcontractors and Materialmen; (4) Construction Schedule; and (5) other requested documents.

Joint Scope Meeting	A site meeting to discuss the Work before the Detailed Scope of Work is finalized.
Maximum Contract Value	The maximum / estimated value of Job Orders that the CONTRACTOR may receive under this Contract.
Minimum Contract Value	The minimum value of Job Orders that the CONTRACTOR is guaranteed the opportunity to perform under this Contract.
Non-Pre-Priced Task	A task that is not set forth in the Construction Task Catalog®
Normal Working Hours	Includes the hours from 7:00 a.m. to 6:00 p.m. Monday through Friday, except for PORT holidays.
Notice to Proceed	A written notice issued by the PORT directing the CONTRACTOR to proceed with construction activities to complete the Job Order.
Option Term	An additional period of time beyond the Contract Term which extends the termination date of the Contract.
Other than Normal Working Hours	Includes the hours of 6:01 p.m. to 6:59 a.m. Monday through Fridays and all Saturday, Sunday and PORT holidays.
Proposal Criteria Figure	The amount determined in the Proposal Criteria Figure Calculation section of the Price Proposal, which is used for the purposes of determining the lowest price.
Pre-Priced Task	A task described in, and for which a Unit Price is set forth in, the Construction Task Catalog®.
Reimbursable Fee	A work task in the Construction Task Catalog used for reimbursable line items rather than applying the Contractor's Adjustment Factor.
Selected Work Area	Selected Counties in the State of Washington Contractors are willing to perform work. Work in the selected counties will be performed using the awarded CTC and Adjustment Factor(s) proposed.
Supplemental Job Order	A secondary Job Order developed after the initial Job Order had been issued for the purpose of changing, deleting, or adding work to the initial Detailed Scope of Work, or changing the Job Order Completion Time.
Technical Specifications	The written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

## ARTICLE 2 PRELIMINARY MATTERS

### 2.1 Before Starting Construction

- 2.1.1. Before undertaking each part of the Work, the CONTRACTOR shall carefully study and compare the documents provided by the Port when developing the Detailed Scope of

Work and check and verify pertinent figures shown thereon and all applicable field measurements. The CONTRACTOR shall promptly report in writing to the PORT any conflict, error, or discrepancy which the CONTRACTOR may discover; however, the CONTRACTOR shall not be liable to the PORT for failure to report any conflict, error, or discrepancy in the Drawings or Specifications, unless the CONTRACTOR had actual knowledge thereof or should reasonably have known thereof.

- 2.1.2. Prior to the execution of a Job Order, the CONTRACTOR shall submit to the PORT for review a Construction Schedule indicating the starting and completion dates of the various stages of the Work including all Submittals.

## 2.2 **Starting the Project Starting work on a Job Order (Notice to Proceed)**

Work shall start on the date set forth in the Notice to Proceed, which shall operate as the date upon which the Job Order Completion Time commences and shall be pursued diligently in accordance with the Construction Schedule found acceptable by the PORT. The Work shall be completed within the time set forth in the Job Order as modified by any Supplementary Job Orders. No Work shall be done at the site prior to the date indicated in the Notice to Proceed.

## 2.3 **Job Order Completion Time**

The Job Order Completion Time will commence on the date indicated in the Notice to Proceed. All time limits stated in the Contract Documents are of the essence of the Job Order. The CONTRACTOR shall begin the Work on the date indicated in the Notice to Proceed and shall diligently prosecute the Work with adequate equipment and forces to bring the Work to completion within the Job Order Completion Time as adjusted by Supplemental Job Orders, for the CONTRACTOR to achieve Substantial Completion and Physical Completion of the Work as more fully set forth in the Job Order.

## 2.4 **Extension of Time**

- 2.4.1. Force Majeure. In event of delay in completion of the Work caused by Force Majeure, the sole and exclusive remedy of the CONTRACTOR will be an equitable extension of Job Order Completion Time allowed for completion.
- 2.4.2. Reasonable Delays. The CONTRACTOR should anticipate that some reasonable delays, including those caused by normal weather patterns, may occur. The CONTRACTOR shall not be entitled to any modification of the Job Order Price, or extension of the Job Order Time, for such reasonable delays.
- 2.4.3. Any extension of a Job Order Completion Time must have the written approval of the PORT in the form of a Supplementary Job Order. Time extensions will be allowed only to the extent that completion of the Work is unreasonably delayed through no fault of the CONTRACTOR, which must in all cases be substantiated by demonstration of an actual impact to the Critical Path on the Construction Schedule.
- 2.4.4. No extension of time shall be allowed for any claimed delay which is caused by or results from concurrent delay or the fault, negligence, or collusion of the CONTRACTOR or its Subcontractors, Suppliers, or any others, or any of their acts or failure to act or to timely perform the Work per the Job Order. Failure to make timely Submittals to the PORT, procure materials or workers, or perform the Work in accordance with the requirements of the Job Order, or to adequately plan for such functions, will not be an adequate reason for an extension of Job Order Completion Time.
- 2.4.5. In no event shall the CONTRACTOR be entitled to loss or damage, including a change in Contract Price for any delay in the CONTRACTOR's prosecution of the Work, even if such delay is caused by the PORT, except to the extent such acts or omissions of the PORT result in a delay to the Project's Critical Path, in which case the CONTRACTOR,

may receive an adjustment to the Job Order Price and/or an extension of Job Order Completion Time. Any request for such cost shall be established and documented by the CONTRACTOR in detail to the satisfaction of the PORT. If the CONTRACTOR fails to fully comply with Article 15, its request for an extension of Job Order Time, or adjustment to the Job Order Price, is waived.

## 2.5 **Preconstruction Meeting**

Prior to the Notice to Proceed, a Preconstruction Meeting will be held for review of the schedules, to establish procedures for handling Submittals, for processing Applications for Payment, and to establish a working understanding among the parties as to the Work. The CONTRACTOR's on-site superintendent and the CONTRACTOR project manager shall attend the Preconstruction Meeting.

## **ARTICLE 3 CONTRACT DOCUMENTS: INTENT, CORRELATION, EXECUTION OF AND OWNERSHIP OF CONTRACT DOCUMENTS**

### 3.1 **Intent**

- 3.1.1. The Contract Documents represent the entire and integrated agreement between the PORT and the CONTRACTOR and supersede all prior discussions, negotiations, representations, or agreements pertaining to the Work, whether written or oral.
- 3.1.2. The Contract Documents may be altered only by Change Order. A Job Order may be altered only by a Supplemental Job Order
- 3.1.3. It is the intent of the Job Order to describe a complete project (or part thereof). The CONTRACTOR shall furnish all labor, materials, equipment, and incidentals necessary to complete all parts of the Work. Compensation for the cost of the complete Work and for full performance of the Job Order shall be considered as included in the Job Order Price.
- 3.1.4. The Contract Documents (which set forth the rights and responsibilities of the PORT and the CONTRACTOR with respect to the Contract) shall be construed in accordance with the laws of the State of Washington.

Words, which have a well known- technical or trade meaning and are used to describe Work, materials, or equipment, shall be interpreted in accordance with such meaning. 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 mean the latest standard specification, manual or code in effect at the time of solicitation of the Job Order, except as may be otherwise specifically stated. However, no provision of any referenced standard specification, manual, or code (whether specifically incorporated by reference in the Contract Documents) shall change the duties and responsibilities of the PORT or the CONTRACTOR, or any of their agents or employees from those set forth in the Contract Documents.

### 3.2 **Correlation of the Contract Documents**

- 3.2.1. Each Contract Document is an essential part of the Contract between the PORT and the CONTRACTOR, and a requirement present in one Contract Document is binding as though it was present in all. The Contract Documents are intended to be complementary and prescribe and provide for all Work required by the Contract Documents.
- 3.2.2. Conditions or Work not covered by the Specifications may be described in other Contract Documents and shall be performed by the CONTRACTOR in accordance therewith and in accordance with the Specifications insofar as applicable.

- 3.2.3. Work required by the Job Order for which a separate price is not provided in the Job Order Price is considered incidental and all costs of the same are deemed to be included in the Job Order Price.
- 3.2.4. To clarify the Work, the PORT may furnish to the CONTRACTOR additional drawings, explanations, and clarifications, consistent with the Drawings, purpose, and intent of the Job Order, as the PORT may deem necessary to detail and illustrate the Work. The CONTRACTOR shall conform its Work to such drawings and explanations. The furnishing of such additional drawings, explanations, or clarifications shall not entitle the CONTRACTOR to an increase in the Job Order Completion Time or Job Order Price.
- 3.2.5. If there are discrepancies between the various Contract Documents, the following order of precedence is applicable:
  - a. Contract, as modified
  - b. Permits
  - c. Job Order and all related documents
  - d. Supplementary Conditions
  - e. General Conditions
  - f. Division 01 General Requirements
  - g. All other specifications, including all remaining divisions, materials and system schedules, and attachments
  - h. Drawings, where details and callouts shall govern over general drawings and computed dimensions shall govern over scaled dimensions
  - i. Specific descriptions shall govern over general descriptions
  - j. All other sections in Division 00 not specifically identified above
- 3.2.6. In the event of a conflict between the Contract Documents and Applicable Laws, or in the event of any conflict between such Applicable Laws, the most stringent requirements of any of the above shall govern and be considered as a part of the Contract.
- 3.2.7. The organization of the Specifications and the arrangement of Drawings shall not control the CONTRACTOR in dividing, allocating, scheduling, sequencing, coordinating, and managing the Work among Subcontractors or in establishing the extent of the Work to be performed by any trade. Such division of Work is the sole responsibility of the CONTRACTOR.

### 3.3 **Ownership and Reuse of the Contract Documents**

The Contract Documents furnished to the CONTRACTOR shall remain PORT property and the PORT shall retain all intellectual property rights, including copyrights in same. They are to be used only with respect to this Project and are not to be used on any other project. Neither the CONTRACTOR nor any Subcontractor, manufacturer, fabricator, Supplier or distributor shall have or acquire any title to or ownership rights in any of the Drawings, Specifications or other documents (or copies of any thereof) prepared by the PORT or by an engineer employed by or retained by the PORT and bearing the seal of such engineer; and, they shall not reuse any of them on extensions of the Project or any other project without written consent of the PORT and specific written verification or adaptation by the PORT's engineer.

### 3.4 **No Warranties by the PORT**

- 3.4.1. No information derived from inspection of records or reports of investigation concerning the Work or conditions (including soil or sub-surface conditions) at the site(s) of the Work made or provided by the PORT will in any way relieve the CONTRACTOR from its responsibility for properly performing its obligations under the

Contract Documents. Such records and reports are provided solely for the convenience of the CONTRACTOR with no warranties whatsoever, express, or implied, by the PORT. Such records and reports are not part of the Contract Documents. The CONTRACTOR shall make its own conclusions and interpretations from the data supplied, information available from other sources, and the CONTRACTOR's own observations.

#### **ARTICLE 4 AVAILABILITY OF LANDS; PHYSICAL CONDITIONS; REFERENCE POINTS**

##### **4.1 Availability of Lands**

The PORT shall furnish, as indicated in the Job Order, the lands upon which the Work is to be performed, rights-of-way for access thereto, and such other lands which are designated- for the use of the CONTRACTOR. Easements for permanent structures or permanent changes in existing facilities will be obtained and paid for by the PORT, unless otherwise provided in the Job Order Documents. If the CONTRACTOR believes that any delay in the PORT's furnishing these lands or easements entitles it to an extension of the Job Order Completion Time, the CONTRACTOR may make a request as provided in Article 15. The CONTRACTOR shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

##### **4.2 Physical Conditions: Investigations and Reports**

###### **4.2.1. Reports of Investigations and Tests**

- a. General: Information and data reflected in the Job Order with respect to underground conditions and facilities at or contiguous to the site is based upon information and data furnished to the PORT by owners of such Underground Facilities or others, and the PORT does not assume responsibility for the accuracy or completeness thereof. The CONTRACTOR, Subcontractors and any Sub-Subcontractors shall always act within the Standard of Care with regards to subsurface conditions in the performance of the Work, including, but not limited to, Work involving shoring, excavation or any other earthwork.
- b. Subsurface Information:
  1. Data on soil and subsurface conditions presented in the specifications are not to be taken as definitive but are based on limited available information and the interpretation and opinions of the investigators; consequently, such data cannot be considered precise or complete, and the PORT makes no warranty or guarantee as to the completeness, accuracy, or precision of the data.
  2. The CONTRACTOR shall familiarize itself with available information on subsurface conditions that could be expected to affect the performance of the Work or its Construction Schedule and cost associated with such performance. Reports of studies and investigations and other data obtained by, or on behalf of, the PORT is available to the CONTRACTOR for its use in developing an understanding of subsurface conditions. The CONTRACTOR shall estimate the effect of known site conditions on the selection of construction equipment and the means, methods, schedule, and costs of performing the Work pursuant to the Contract Documents.
  3. The information presented in the above documents depicts subsurface conditions at the exploration locations at the time of exploration. This information is presented only for the convenience of the CONTRACTOR, and its presentation does not reduce or in any way limit the CONTRACTOR's responsibilities noted elsewhere in this Section 4.2 and in the Contract



Documents. Entering into the Job Order shall be conclusive evidence that the CONTRACTOR has reviewed available information regarding site conditions and is satisfied as to the nature of the Work to be performed, materials to be furnished, and the requirements of the Specifications.

#### 4.3 **Unknown Latent Physical Conditions**

If the CONTRACTOR, a Subcontractor, or a Sub-Subcontractor encounters conditions at the site that constitute a Type I Condition or a Type II Condition, the CONTRACTOR shall follow Article 11 Notice of Event.

### **ARTICLE 5 BONDS**

#### 5.1 **Performance Bond**

- 5.1.1. The CONTRACTOR shall furnish a duly executed Performance Bond upon a form acceptable to the PORT within ten (10) Days following receipt of the Notice of Award. The Bond shall be executed by a licensed surety (or sureties), registered with the Washington State Insurance Commissioner, and the Surety's name shall appear in the current Authorized Insurance Company List for the State of Washington published by the Office of the Insurance Commissioner. The Bond must be approved by the U.S. Department of Treasury as evidenced by a listing in the Federal Register. In addition, the Surety or Sureties must be rated "A-, FSC (6)," or higher by A.M. Best Rating Guide. The penal amount of the Bond shall be in an amount equal to the Contract Price plus Washington State Sales Tax, if applicable, and conditioned upon the faithful performance of the Contract by the CONTRACTOR within the Contract Time.
- 5.1.2. If the Surety on any Bond furnished by the CONTRACTOR is declared bankrupt or becomes insolvent, or its right to do business is terminated in the State of Washington, or it ceases to meet the requirements as stated above, the CONTRACTOR shall within five (5) Days thereafter substitute another Bond and Surety consistent with the requirements of the Contract Documents and this Section 5.1. The PORT reserves the right to approve or reject any substitute Bond and Surety.

#### 5.2 **Payment Bond**

- 5.2.1. The CONTRACTOR shall furnish a duly executed Payment Bond upon a form acceptable to the PORT, within ten (10) Days following receipt of the Notice of Award. The Bond shall be executed by a licensed surety (or sureties), which is registered with the Washington State Insurance Commissioner and the Surety's name shall appear in the current Authorized Insurance Company List in the State of Washington published by the Office of the Insurance Commissioner. The Bond must be approved by the U.S. Department of Treasury as evidenced by a listing in the Federal Register. In addition, the Surety or Sureties must be rated "A-, FSC (6)" or higher by A.M. Best Rating Guide. The penal amount of the Bond shall be in an amount equal to the Contract Price plus Washington State Sales Tax, if applicable, and conditioned upon the payment by the CONTRACTOR to all laborers, mechanics, Subcontractors, Suppliers, and all persons who shall supply for the performance of the Work covered by the Contract.
- 5.2.2. If the Surety on any Bond furnished by the CONTRACTOR is declared bankrupt or becomes insolvent, or its right to do business is terminated in the State of Washington, or it ceases to meet the requirements as stated above, the CONTRACTOR shall within five (5) Days thereafter substitute another Bond and Surety consistent with the requirements of the Contract Documents and this Section 5.2. The PORT reserves the right to approve or reject any substitute Bond and Surety.

- 5.2.3 Bond Rider – The CONTRACTOR shall provide a bond rider for both the Performance and Payment Bonds to any agency piggybacking on the Contract.

## **ARTICLE 6 CONSTRUCTION SCHEDULE**

### **6.1 Preparation of Construction Schedule**

The CONTRACTOR shall prepare and submit for the PORT's information a Construction Schedule prior to execution of the Job Order. The Construction Schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project, be related to the entire Project to the extent required by the Contract Documents and provide for expeditious and practicable execution of the Work.

### **6.2 Critical Path Method**

The Construction Schedule will be detailed in critical path method (CPM) format satisfactory to the PORT that will (i) provide graphic representation of all activities and events that will occur during the performance of the Work, (ii) identify each phase of construction and occupancy, and (iii) identify each phase of construction and orderly completion of the Work in accordance with the requirements of the Job Order.

### **6.3 Monitoring Progress**

The CONTRACTOR shall monitor the progress of the Work for conformance with the requirements of the Construction Schedule and promptly advise the PORT of any delays or potential delays. The Construction Schedule shall be updated regularly and at such intervals as requested by the PORT to reflect actual conditions and the progress of the Work. In the event any progress report indicates any delays, the CONTRACTOR shall propose an affirmative plan to correct the delay, including acceleration, overtime and/or additional labor, if necessary.

### **6.4 Scheduling Software**

The CONTRACTOR's schedules shall be submitted in electronic format if requested by the PORT and utilize scheduling software in a format requested by the PORT. The Construction Schedule cannot be modified without the express written approval of the PORT.

### **6.5 Updates to Construction Schedule**

The Construction Schedule will be provided monthly with each Pay Application. The Construction Schedule shall show in detail and in order the sequence of all significant activities, their descriptions, start and finish dates, durations, dependencies, necessary and required to complete all Work. If Milestone completions are required by the Job Order, then those Milestones shall be clearly defined on the Construction Schedule. The Construction Schedule shall be updated monthly for submittal to and review by the PORT.

### **6.6 Review by PORT**

Review by the PORT of the Construction Schedule shall not constitute an approval of the CONTRACTOR's construction means, methods, sequences, coordination, management, or scheduling related to the Work.

### **6.7 Performance in Accordance with Construction Schedule**

The CONTRACTOR shall perform the Work in general accordance with the most recent Construction Schedule submitted to the PORT. If the CONTRACTOR falls behind schedule for reasons solely attributable to the CONTRACTOR, the CONTRACTOR shall take such steps as may be necessary to improve progress. Such steps may include an increase in the number of construction workers, in the number of shifts and/or overtime operations days of work and/or

otherwise subject to conformance with jurisdiction restrictions, to increase operations and to submit for approval such supplementary schedule or schedules to demonstrate the way the agreed rate of progress will be regained, all without increasing the Contract Price or Contract Time. The CONTRACTOR recognizes the importance to the PORT of completing the Project on schedule. If the CONTRACTOR falls behind schedule for reasons not solely attributable to the CONTRACTOR, the CONTRACTOR must accelerate its forces in a reasonable manner, if so directed by the PORT in writing, but may submit a Notice of Event for direct (not indirect) acceleration costs. Any acceleration costs that are not the result of an express written directive from the PORT are at the CONTRACTOR's expense. Acceleration costs are reimbursable only to the extent the CONTRACTOR is not responsible for the underlying delay or any concurrent delay for which the CONTRACTOR is responsible.

**6.8 Proposed Changes**

The CONTRACTOR shall promptly notify the PORT in writing of any proposed changes in the Construction Schedule due to the occurrence of any event which could delay completing the Project on schedule, stating the cause of the delay, expected duration of the delay, the anticipated effect of the delay on the schedule and the action being taken to correct the delay. Notification of potential delay does not constitute a change in the Job Order Completion Time (which may only be accomplished via the Supplemental Job Order process set forth herein).

**6.9 Failure to Comply**

Failure of the CONTRACTOR to substantially comply with the requirements of this Article 6 may be considered grounds for a determination by the PORT that the CONTRACTOR is failing to prosecute the Work with such diligence as will ensure its completion within the time specified, and to take whatever action the PORT deems necessary and appropriate under Article 18.

**ARTICLE 7 SUBCONTRACTORS AND SUB-SUBCONTRACTORS****7.1 Objection by PORT**

The CONTRACTOR shall not employ any Subcontractor or other person or organization (including those who are to furnish the principal items of materials or equipment), whether initially or as a substitute, against whom the PORT may have reasonable objection. A Subcontractor or other person or organization identified in writing to the PORT by the CONTRACTOR prior to the Notice to Proceed and not objected to in writing by the PORT prior to the Notice of Award will be deemed acceptable to the PORT. Acceptance of any Subcontractor, other person or organization by the PORT shall not constitute a waiver of any right of the PORT to reject Defective Work. If the PORT after due investigation has objection to any Subcontractor other person or organization proposed by the CONTRACTOR, the CONTRACTOR shall submit an acceptable substitute.

**7.2 Contractor Responsible for Subcontractors**

The CONTRACTOR shall be fully responsible for all acts and omissions of its Subcontractors, of persons and organizations directly or indirectly employed by them, and of persons and organizations for whose acts any of them may be liable to the same extent that the CONTRACTOR is responsible for the acts and omissions of persons directly employed by the CONTRACTOR. Nothing in the Contract Documents shall create any contractual relationship between the PORT and any Subcontractor or other person or organization having a direct contract with the CONTRACTOR, nor shall it create any obligation on the part of the PORT to pay or to see to the payment of any moneys due any Subcontractor or other person or organization, except as may otherwise be required by law. The PORT may furnish to any Subcontractor or other person or organization, to the extent practicable, evidence of amounts paid to the CONTRACTOR for completed Work.

**7.3 Third-Party Beneficiary**

Notwithstanding the foregoing in Section 7.2 hereof, the PORT and the CONTRACTOR acknowledge and agree that the PORT is and shall be an express intended third-party beneficiary of each subcontract. Each subcontract shall state that the PORT is and shall be a third-party beneficiary of such subcontract, and that the PORT shall have the right to assert claims directly against the Subcontractor or Sub-Subcontractor for breach of contract, breach of express warranties, breach of implied warranties including warranties of merchantability and of fitness for a particular purpose, negligence and other claims arising out of or related to the Work or the Project. The PORT and the CONTRACTOR acknowledge and agree that the purpose of this Section 7.3 is to enable the PORT, in addition to the CONTRACTOR, to assert claims for damages and indemnification directly against Subcontractors and Sub-Subcontractors that are or may be responsible for breach of the Contract, defects in the Work, and other damages incurred by the PORT arising out of or related to the Work or the Project.

**7.4 Specifications and Drawings**

The divisions and sections of the Specifications and the identifications of any Drawings shall not control the CONTRACTOR in dividing the Work among Subcontractors or delineating the Work to be performed by any specific trade.

**7.5 Performance of Work by Subcontractor**

All Work performed for the CONTRACTOR by a Subcontractor will be pursuant to an appropriate agreement between the CONTRACTOR and the Subcontractor which specifically binds the Subcontractor to the applicable terms and conditions of the Contract Documents or an

individual Job Order for the benefit of the PORT. The PORT reserves the right to obtain copies of any Subcontractor and Supplier agreements at any tier from the CONTRACTOR.

#### 7.6 **Verification of Responsibility Criteria**

In accordance with RCW 39.06.020 as it stands now or may be amended, the CONTRACTOR must verify responsibility criteria for each Subcontractor and Sub-Subcontractor and must verify responsibility criteria for each of its subcontractors. Verification shall include that each Subcontractor and Sub-Subcontractor meets the responsibility criteria as listed below and possesses an electrical contractor license, if required by RCW 19.28, an elevator contractor license, if required by RCW 70.87 or a plumbing contractor license, if required by chapter RCW 18.106. This verification requirement, as well as the responsibility criteria, must be included in every public works contract and subcontract of every tier.

- 7.6.1. Have a certificate of registration in compliance with RCW Chapter 18.27;
- 7.6.2. Have a current state unified business identifier (UBI) number;
- 7.6.3. If applicable, have industrial insurance coverage for the Subcontractor's or Sub-Subcontractor's employees working in Washington as required in Title 51 RCW;
- 7.6.4. If applicable, have an employment security department number as required in RCW Title 50;
- 7.6.5. If applicable, have a state excise tax registration number as required in RCW Title 82;
- 7.6.6. Not be disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065(3);
- 7.6.7. Require that all Subcontractors and Sub-Subcontractors maintain the same level of insurance as required of the CONTRACTOR herein, provided that (i) lines of insurance not applicable to Work performed by the Subcontractor or Sub-Subcontractor shall not be required, and (ii) the limits applicable to the Subcontractor or Sub-Subcontractor may be at a reduced amount, subject to the written approval of the PORT;
- 7.6.8. Require that all Subcontractors and Sub-Subcontractors provide at least the same warranty as required of the CONTRACTOR herein and the CONTRACTOR shall not agree to waive any implied warranties, including, but not limited to, the implied warranty of merchantability and the implied warranty of fitness for a particular purpose;
- 7.6.9. Require all Subcontractors and Sub-Subcontractors to indemnify the CONTRACTOR and the PORT in the same manner that CONTRACTOR must indemnify the PORT;
- 7.6.10. Require all applicable Subcontractors and Sub-Subcontractors to be joined and included in all Claims certification and resolution procedures and dispute resolution procedures, including arbitration, as described herein;
- 7.6.11. Require all Subcontractors and Sub-Subcontractors to meet the requirements of Section 7.3 hereof;
- 7.6.12. Require that any claims by Subcontractors and Sub-Subcontractor be in the same form, with the same level of detail and backup, as required of the CONTRACTOR herein;
- 7.6.13. Include default, suspension, and termination for cause and convenience clauses that mirror such respective clauses in these General Conditions; and
- 7.6.14. Not include any liability limitation and/or waiver of consequential damages clauses, unless approved in advance by the PORT in writing.

**ARTICLE 8 THE CONTRACTOR'S RESPONSIBILITIES****8.1 Examination of the Site of Work and Contract Documents**

- 8.1.1. By executing the Job Order, the CONTRACTOR represents and acknowledges that it has carefully examined and investigated the site(s) of the Work, including material site(s). The submission of its Job Order shall be conclusive evidence that the CONTRACTOR represents and acknowledges that it has made such examinations and investigations and is satisfied as to the conditions to be encountered in the performance of the Work, including the character, quantity, quality, and scope of the Work, safety precautions to be undertaken, the quantities and qualities of materials to be supplied, the character of soils and subsurface materials, and equipment and labor to be used, the requirements of all Contract Documents, and how all such requirements correlate to the conditions at the site(s) of the Work.
- 8.1.2. The CONTRACTOR shall provide any work or materials, the provision of which is clearly implied and is within the scope of the Job Order, even if the Job Order does not mention them specifically.

**8.2 Error, Inconsistency, Omission, or Variance in the Contract Documents**

Throughout the duration of the Contract, the CONTRACTOR shall, in accordance with the Standard of Care, carefully study and compare the Job Order Documents and shall at once report to the PORT any error, inconsistency, omission, or variance from Applicable Laws which the CONTRACTOR discovers. If the CONTRACTOR fails to promptly report any error, inconsistency, omission, or variance in the Contract Documents that the CONTRACTOR discovers, or in the exercise of reasonable study and inspection should have discovered, the CONTRACTOR shall assume full responsibility therefore and shall bear all costs, liabilities, and damages attributable to such error, inconsistency, omission, or variance.

**8.3 Supervision and Construction Procedures**

- 8.3.1. The CONTRACTOR shall supervise and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Job Order. The CONTRACTOR shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction, and for coordinating all portions of the Work under the Contract, including the work of Subcontractors, Sub-Subcontractors, Suppliers, and all other persons performing a portion of the Work. The CONTRACTOR shall be responsible to see that the finished Work complies accurately and completely with the Contract Documents.
- a. Either the CONTRACTOR, in person, or an authorized representative shall remain on site whenever the Work is underway.
  - b. If the CONTRACTOR project manager or superintendent repeatedly fails to follow the PORT's written or oral orders, directions, instructions, or determinations, the CONTRACTOR shall, upon the written request of the PORT, immediately remove such CONTRACTOR project manager or superintendent and name a replacement in writing.
  - c. At the PORT's written request, the CONTRACTOR shall immediately remove and replace any incompetent, careless, or negligent employee.
  - d. Non-compliance with the PORT's request to remove and replace personnel at any level shall be grounds for terminating the Contract under the terms of Article 18.

The CONTRACTOR shall ensure the CONTRACTOR project manager or superintendent frequently visits the site of Work. Such personnel shall not be replaced without written notice to the PORT except under

extraordinary circumstances. The PORT reserves the right to approve or disapprove replacement personnel.

- 8.3.2. In addition, Subcontractors shall keep competent supervision at the site of the Work continuously during its progress. Such personnel shall not be replaced without written notice to the PORT except under extraordinary circumstances. The PORT reserves the right to approve or disapprove replacement personnel.
- 8.3.3. The superintendent will be the CONTRACTOR's representative at the site and shall have authority to act on behalf of the CONTRACTOR. All communications given to the superintendent shall be as binding as if given to the CONTRACTOR.
- 8.3.4. The CONTRACTOR shall be fully responsible to the PORT for the acts or omissions of its employees, agents, Subcontractors, Sub-Subcontractors, Suppliers, and their agents and employees, and all other persons who are to perform any of the Work.
- 8.3.5. By entering into the Job Order, the CONTRACTOR, its Subcontractors, and any Sub-Subcontractors shall be held to the Standard of Care in performing the Work described herein and in the Job Order.

#### 8.4 **Labor, Materials, and Equipment**

- 8.4.1. The CONTRACTOR shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Job Order. The CONTRACTOR shall always maintain good discipline, take reasonable care and order at the Project Site.
- 8.4.2. All materials and equipment shall be of good quality and new, except as otherwise provided in the Job Order. If required by the PORT, the CONTRACTOR shall furnish satisfactory evidence (including reports, shop drawings, or required tests) as to the kind and quality of materials and equipment.
- 8.4.3. All materials and equipment shall be applied, installed, connected, erected, used, cleaned, and conditioned in accordance with the instructions of the applicable manufacturer, fabricator, Supplier, or distributor, except as otherwise provided in the Job Order.

#### 8.5 **Prevailing Wages**

- 8.5.1. The wage rates to be paid all laborers, workers, and mechanics who perform any part of the Work shall be not less than the prevailing wage rates as required by RCW Chapter 39.12. 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 the Job Order.
- 8.5.2. The prevailing wage rates as provided by the Washington State Department of Labor & Industries are incorporated in the Contract Documents by reference. In referencing such rates, the PORT 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 most current wage rates applicable. Prevailing wages for all work performed pursuant to each Job Order must be the rates in effect at the time the individual Job Order is issued.
- 8.5.3. The CONTRACTOR shall, pursuant to RCW 39.12.040, file with the PORT a "Statement of Intent to Pay Prevailing Wages" and an "Affidavit of Wages Paid" for itself and all Subcontractors and Sub-Subcontractors in performance of each Job Order. Such Statements or Affidavits require the approval, and the certification of the Department of Labor & Industries before such Statements or Affidavits are submitted to the PORT.

Any fees for such approval and certification shall be paid by the CONTRACTOR. Any change in the fee will not be grounds for revision in Job Order Price.

- 8.5.4. The PORT will not make any payments on a specific Job Order until the CONTRACTOR and all Subcontractors and Sub-Subcontractors performing work during the period for which payment is being requested have approved Statements of Intent to Pay Prevailing Wages on file with the Department of Labor & Industries.
- 8.5.5. The CONTRACTOR, by signing the Pay Application, confirms that the prevailing wages, for the CONTRACTOR's employees and all Subcontractors and Sub-Subcontractors have been paid in accordance with the pre-filed statement or statements on file with the Department of Labor and Industries and the PORT.
- 8.5.6. The Affidavit of Wages Paid is filed after all the Work is completed. The PORT will not issue Final Acceptance until the CONTRACTOR and all Subcontractors and Sub-Subcontractors Affidavits of Wages paid are approved by the Department of Labor & Industries.
- 8.5.7. Consistent with the CONTRACTOR'S indemnification obligations set forth in Article 10, the CONTRACTOR shall defend, reimburse, indemnify and hold the PORT harmless the PORT from, for, and against all liability, claims, damages, losses, lawsuits, penalties, and expenses, whether direct, indirect or consequential (including but not limited to attorney's and consultant's fees and other expenses of litigation or arbitration), arising from or in any way connected with the CONTRACTOR'S failure to comply with the terms of this Section 8.5 or failure to ensure that prevailing wages are paid in accordance with all Applicable Laws, including without limitations the requirements of the Washington Department of Labor and Industries.

## 8.6 Disposal of Waste Materials

- 8.6.1. Unless otherwise specified, all Waste Materials shall become the property of the CONTRACTOR and shall be disposed of in accordance with all Applicable Laws, including Solid Waste Regulations for the county in which the work is being performed.
- 8.6.2. The CONTRACTOR is solely responsible for the lawful managing and disposal of Waste Material and shall indemnify, reimburse, defend and hold the PORT harmless from, for, and against all liability, damages, claims, lawsuits, penalties and expenses, whether direct, indirect or consequential (including but not limited to attorney's and consultant's fees and other expenses of litigation or arbitration) arising from or in any way connected with, the demolition, excavation, removal, or disposal of Waste Materials, except as specified for Hazardous Materials.
- 8.6.3. The value of Waste Materials, if any, shall be reflected in the total Job Order Price.
- 8.6.4. Should the CONTRACTOR, during the Work, encounter site materials that it believes may be hazardous, potentially hazardous, infectious, toxic, or dangerous, it shall immediately notify the PORT. Waste materials containing substances classified as hazardous, potentially hazardous, infectious, toxic, or dangerous under applicable local, state or federal regulations, shall be disposed of in strict compliance with all regulations, the Contract Documents, and as directed by the PORT.
- 8.6.5. The PORT will retain title to all hazardous waste presently on-site encountered during demolition, removal, and excavation. The PORT will be shown as the hazardous waste generator and will sign all hazardous waste shipment manifests for non-contractor generated hazardous wastes. Nothing contained within these Contract Documents shall be construed or interpreted as requiring the CONTRACTOR to assume the status of owner or generator of hazardous waste substances for non-contractor generated



hazardous wastes. This does not include Hazardous Materials generated by or introduced by the CONTRACTOR, such as used motor oils, lubricants, cleaners, or other similar materials.

- 8.6.6. The CONTRACTOR shall follow Department of Ecology, Environmental Protection Agency, and all other regulations and Applicable Laws regarding handling, reporting or disposal of all Waste Materials and Hazardous Materials.

### 8.7 **Patent Fees and Royalties**

The CONTRACTOR shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If an invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work, and if to the actual knowledge of the PORT its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by the PORT in the Contract Documents. The CONTRACTOR shall indemnify, reimburse, defend, and hold harmless the PORT and anyone directly or indirectly employed by either of them from, for, and against all claims, damages, losses and expenses (including attorneys' fees) arising out of any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product or device not specified in the Contract Documents.

### 8.8 **Permits**

Unless otherwise provided in the Job Order the CONTRACTOR shall obtain and pay for all construction permits and licenses. The PORT shall assist the CONTRACTOR, when necessary, in obtaining such permits and licenses. Any action taken by the PORT to assist the CONTRACTOR in obtaining permits or licenses shall not relieve the CONTRACTOR of its sole responsibility to obtain permits or licenses. The CONTRACTOR shall pay all governmental charges and inspection fees necessary for the prosecution of the Work, which are applicable at the time of opening of bidding. The CONTRACTOR shall pay all charges from utility service companies for connections to the Work. The CONTRACTOR shall comply with all conditions of these permits. Copies of all permits must be posted at the CONTRACTOR's project field office.

- 8.8.1. Where Applicable Laws prohibit the issuance of a necessary temporary operational or other permit to entities other than a public agency, the PORT will support the CONTRACTOR's request for such permit and will accept the permit in the PORT's name, but only if:
- a. The CONTRACTOR takes all necessary action leading to the issuance of the permit;
  - b. The permit is determined to be in the public interest;
  - c. The permit applies only to Work performed in connection with this Project;
  - d. The CONTRACTOR agrees in writing, in a form approved by the PORT, to abide by all requirements of the permit, and to indemnify, defend, and hold harmless the PORT from any liability in connection with Work prosecuted under the permit; and
  - e. The CONTRACTOR agrees, in writing, to indemnify, defend, and hold the PORT harmless from all expenses incurred in connection with such permit.

All costs incurred in connection with permits and licenses will be treated as a reimbursable task to be paid a markup of 10%. The contractor will submit a copy of the receipt for payment of such fees. The 10% markup will cover all costs over and above the filing and permit fees, including expeditor fees. Loss of time, if any, suffered by the CONTRACTOR due to unreasonable delays in obtaining permits or licenses

may be considered in relation to a request by the CONTRACTOR for an adjustment to the Contract Time in accordance with Article 11 and Article 15.

The CONTRACTOR is responsible for notifying appropriate agencies in writing at the start of construction.

The CONTRACTOR is responsible for ensuring that all necessary inspections have been completed and the permits secured by the CONTRACTOR are closed out prior to Physical Completion.

#### **8.9 Laws and Regulations**

8.9.1. The CONTRACTOR shall give all notices and comply with any laws, ordinances, rules, or regulations applicable to the Work.

8.9.2. If the CONTRACTOR observes that Port provided Specifications or Drawings are at variance with any Applicable Laws to the Work, the CONTRACTOR shall give the PORT prompt written notice. If the CONTRACTOR performs any Work knowing or having reason to know that it is contrary to such Applicable Laws, and without such notice to the PORT, the CONTRACTOR shall bear all costs arising therefrom.

#### **8.10 Taxes**

The CONTRACTOR shall pay all applicable sales, consumer, use and other similar taxes required to be paid by the CONTRACTOR in accordance with the laws of the State of Washington. Some piggyback agencies may be exempt from various taxes and those agencies shall be responsible for identifying which taxes their work is exempt from.

#### **8.11 Use of Premises**

8.11.1. The CONTRACTOR shall confine construction equipment, the storage of materials and equipment, and the operations of workers to areas permitted by law, ordinances, permits or the requirements of the Job Order, and shall not unreasonably encumber the premises with construction equipment or other materials or equipment.

8.11.2. During the progress of the Work, the CONTRACTOR shall keep the premises free from accumulations of Waste Materials, rubbish and other debris resulting from the Work. At the completion of the Work, and as a condition precedent to Substantial Completion, Physical Completion and Final Acceptance, the CONTRACTOR shall remove all Waste Materials, rubbish, debris, tools, appliances, construction equipment, machinery, and surplus materials from the premises. The CONTRACTOR shall leave the site clean and ready for occupancy by the PORT. The CONTRACTOR shall restore to their original condition those portions of the site not designated for alteration by the Contract Documents.

8.11.3. The CONTRACTOR shall not impose any structural loads, nor permit any part of any existing PORT structure to be subject to any such loads, in any manner that will endanger the PORT structure, nor shall the CONTRACTOR subject any part of the Work or adjacent property to stresses or forces that will endanger it. In the event that such damage occurs, the CONTRACTOR shall indemnify the PORT subject to the terms of the Contract Documents.

#### **8.12 Project Site Documents**

8.12.1. The CONTRACTOR shall keep one marked up copy of all Specifications, Drawings, Addenda, Change Orders, Submittals, Shop Drawings, and Samples at the site, in good order and annotated to show all changes made during the construction process. These

shall be available to the PORT for examination and shall be delivered to the PORT at Physical Completion.

- 8.12.2. The Contract Drawings shall be marked to truly record all changes made during construction defining the "as-built" conditions. The location of all existing or new underground piping, valves and utilities, and obstructions as located during the Work, shall be appropriately marked on the ground until the CONTRACTOR incorporates the actual field location dimensions and coordinates into the Project's record drawings. The Project's As-Built drawings shall be updated on a regular basis and before elements of the Work are covered or hidden from view. After the completion of the Work or portions of the Work and before requesting final inspection, the record copy of the Drawings shall be given to the PORT.

**8.13 Safety and Protection**

- 8.13.1. The CONTRACTOR shall be responsible for all safety and protection in connection with the Work.
- 8.13.2. The CONTRACTOR shall be responsible for providing adequate safeguards, safety devices, protective equipment, and other needed actions to protect the life, health, and safety of the public and to protect property in connection with the performance of the Work covered by the Contract.
- 8.13.3. Until Physical Completion has been achieved, the CONTRACTOR shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:
- a. All employees involved with the Work and any other persons who may be affected thereby,
  - b. All the Work and all materials or equipment to be incorporated therein, whether in storage on or off the site, and
  - c. Other property at the site or adjacent thereto, including vegetation, walks, pavements, roadways, structures, equipment, facilities, and utilities not designated for removal, relocation, or replacement in the course of construction.
- 8.13.4. The CONTRACTOR shall comply with all Applicable Laws for the safety of persons or property or to protect them from damage, injury or loss; and shall erect and maintain all necessary safeguards for such safety and protection.
- 8.13.5. The CONTRACTOR shall notify owners of adjacent property and utilities when prosecution of the Work may affect them.
- 8.13.6. All damage, injury or loss to any property referred to in Subsection 8.13.3 caused, directly or indirectly, in whole or in part, by the CONTRACTOR, any Subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be responsible, shall be immediately remedied by the CONTRACTOR.
- 8.13.7. The CONTRACTOR shall designate a responsible member of its organization at the site whose duty shall be the prevention of accidents. This person shall be the CONTRACTOR's superintendent unless otherwise designated in writing by the CONTRACTOR to the PORT.
- 8.13.8. The CONTRACTOR's responsibility for safety and protection shall apply continuously and shall not be limited to the CONTRACTOR's normal working hours. the CONTRACTOR's duties and responsibilities for the safety and protection of the Work shall continue until the Work has achieved Physical Completion.

**8.14 Emergencies**

In emergencies affecting the safety or protection of persons, the Work, property at the site, or property adjacent thereto, the CONTRACTOR, without special instruction or authorization from the PORT, is obligated to act to prevent threatened damage, injury, or loss. The CONTRACTOR shall give the PORT immediate written notice of any emergencies affecting the safety or protection of persons, the Work, property at the site, or property adjacent thereto, and any significant changes in the Work or deviations from the Contract Documents caused thereby.

**8.15 Submittals**

- 8.15.1. The CONTRACTOR shall provide to the PORT all Submittals required by the Job Order accompanied by a "submittal transmittal" form. Such Submittals shall be given to the PORT in a complete and final form at least thirty (30) Days prior to the CONTRACTOR's need for a response or such other longer time that may be needed to allow time for detailed review by the PORT. The CONTRACTOR shall allow for sufficient time for the possibility of rejection of the Submittal, needed revisions, and resubmittal review time.
- 8.15.2. By preparing and providing Submittals to the PORT, the CONTRACTOR represents that it has determined and verified all materials, field measurements, and related field construction criteria are in accordance with the Job Order, and that the CONTRACTOR has checked and coordinated the information contained within the Submittal with the requirements of the Work and the Job Order.
- 8.15.3. At the time of submission of each Submittal, the CONTRACTOR shall in writing call the PORT's attention to any deviations that the Submittals or Samples may have from the requirements of the Job Order.
- 8.15.4. The PORT's review of any Submittal shall be only for conformance with the design intent of the Project and for general compliance with the information given in the Job Order and shall not extend to means, methods, sequences, techniques, or procedures of construction, or to safety precautions or programs incident thereto. Review by the PORT of the CONTRACTOR's Submittals shall not relieve the CONTRACTOR of responsibility for the accuracy of dimensions and details. Such review shall likewise not constitute acceptance by the PORT of the correctness or adequacy of such Submittals, nor shall it constitute a representation or warranty by the PORT that the Submittals will satisfy the requirements of the Contract Documents. The review of a specific item shall not indicate approval of an assembly in which the item functions. The PORT's review of a Submittal shall not relieve the CONTRACTOR from responsibility for errors or omissions in the Submittals.
- 8.15.5. Any Work delayed because of a rejected Submittal is deemed to be entirely the CONTRACTOR's risk and shall not be the basis for a Notice of Event by the CONTRACTOR for additional compensation or an extension of Job Order Completion Time.
- 8.15.6. No portion of the Work requiring a Submittal shall be commenced until the Submittal has been reviewed and returned as set forth in this Subsection 8.15.6 and as supplemented in the General Requirements. All portions of the Work involving Submittals shall be performed in accordance with the returned Submittals.

**8.16 Utilities and Similar Facilities**

- 8.16.1. The CONTRACTOR shall protect all private and public utilities from damage resulting from the Work. Among others, these utilities include but are not limited to telephone,

fiber optics, telemetry, and power lines; pipelines, gas lines, sanitary sewer, drainage, and water lines; railroad tracks and equipment; and lighting and signage systems. All costs required to protect public and private utilities shall be at the CONTRACTOR's expense, except as provided otherwise in this Section 8.16.

- 8.16.2. RCW 19.122 relates to underground utilities. In accordance with this RCW section, the CONTRACTOR shall call the One-Number Locator Service for field location of utilities. If no locator service is available for the area, notice shall be provided individually to those owners of utilities known to, or suspected of, having Underground Facilities within the area of the proposed excavation.
  - 8.16.3. If the Work requires removing or relocating a utility, the PORT will assign the task to the CONTRACTOR or the utility owner. When the task is assigned to the CONTRACTOR, it shall be performed in accordance with the Contract Documents. New utility construction shall be performed per the appropriate Contract requirements.
  - 8.16.4. To ease or streamline the Work for its own convenience, the CONTRACTOR may desire to ask utility owners to move, remove, or alter their equipment in ways other than those listed in the Contract Documents. The CONTRACTOR shall make the arrangements and pay all costs that arise from work performed by the utility owner at the CONTRACTOR's request. Two weeks prior to implementing any such utility work, the CONTRACTOR shall submit plans and details to the PORT for review describing the scope and schedule for all work performed by the utility owner at the request of the CONTRACTOR.
  - 8.16.5. In some cases, the Plans or Specifications may not show all Underground Facilities. If the Work requires these to be moved or protected, the PORT will assign the task to others or request a Supplemental Job Order from the CONTRACTOR.
  - 8.16.6. Any authorized agent of the PORT may enter the Project Site to repair, rearrange, alter, or connect their equipment. The CONTRACTOR shall cooperate with such effort and shall avoid creating delays or hindrances to those doing the work of an authorized agent of the PORT and shall coordinate work schedules as needed.
- 8.17 **Disruptions Caused by Labor or Other Disputes**
- 8.17.1. Definition: The term "dispute" as used in this Section includes labor-related and non-labor-related disputes, whether the persons or other entities involved in the dispute have an employment relationship with either the CONTRACTOR or the PORT. Examples of such disputes include, but are not limited to, informational or other picketing, and all other forms of concerted or non-concerted activity.
  - 8.17.2. Required CONTRACTOR Actions: The CONTRACTOR will take all reasonable steps to prevent all disputes arising from the presence of or the performance of the Work by the CONTRACTOR, its Subcontractor, Sub-Subcontractors or Suppliers, from disrupting the Project or otherwise interfering with access to PORT property by the PORT, its agents, employees, tenants, or employees thereof, or other contractors engaged on or near the site of the Work. If such dispute disrupts the progress of the Work or interferes with access to PORT property, the CONTRACTOR shall promptly and expeditiously take all reasonable action to eliminate or minimize such disruption or interference

**8.18 Cutting, Fitting and Patching of Work**

- 8.18.1. The CONTRACTOR shall be responsible for all cutting, fitting, patching or such other altering as may be required to complete the Work, or to make its several parts fit together properly.
- 8.18.2. The CONTRACTOR shall not damage or endanger any portion of the Work, Other Work, or that of the PORT's Separate Contractors by cutting, fitting, patching, or other altering of any work, or by excavation. The CONTRACTOR shall not alter any of the work of the PORT or any separate contractor without written authorization from the PORT.

**8.19 Inspection of the Work**

The PORT or Inspector shall have the right, but not the obligation, to inspect the Work, and to reject and refuse all labor and materials or methods of application, or any part thereof, which does not comply in kind, quality, or material with the requirements of the Job Order. Any labor or material rejected, as not conforming to the Job Order, shall be promptly corrected by the CONTRACTOR as set forth in Section 8.21 hereof.

**8.20 Uncovering of Work**

- 8.20.1. If a portion of the Work is covered contrary to the PORT's request or to requirements specifically expressed in the Job Order, it must, if requested in writing by the PORT, be uncovered for the PORT's examination and be replaced at the CONTRACTOR's expense without change in the Job Order Completion Time.
- 8.20.2. If a portion of the Work has been covered that the PORT has not specifically requested to examine prior to its being covered, the PORT may request to see such Work and it shall be uncovered by the CONTRACTOR. If such Work is in accordance with the Job Order, costs of uncovering and replacement shall, by appropriate Supplemental Job Order, be at the PORT's expense. If such Work is not in accordance with the Job Order, such costs and the cost of correction shall be at the CONTRACTOR's expense unless the condition was caused by the PORT in which event the PORT shall be responsible for payment of such costs.

**8.21 Correction of Work**

- 8.21.1. The CONTRACTOR shall, at no additional expense to the PORT, promptly correct all Work which is Defective or otherwise fails to conform to the requirements of the Job Order Upon notice from the PORT of Defective or non-conforming Work, the CONTRACTOR shall within seven (7) Days replace the Defective Work or provide a written plan satisfactory to the PORT indicating the corrective action, including the schedule to perform the corrective work. Such Work shall be corrected even though it was previously inspected by the PORT, payment for it was included in a Progress Payment, whether or not it was completed, and whether or not it was observed before or after the date of Substantial Completion.
- 8.21.2. If the CONTRACTOR refuses or neglects to correct the defects as the PORT may direct, then the PORT may (i) obtain, use, and employ materials, labor, tools and implements to do the same and the expense thereof shall be deducted from moneys which may otherwise be then due or thereafter may become due to the CONTRACTOR; or (ii) terminate the Contract.
- 8.21.3. The PORT may, at its sole option, elect to accept Defective or nonconforming Work. In such case, the PORT shall reduce the Job Order Price in a reasonable amount to account for such defect or non-conformance.

**8.22 Responsibility for Work**

8.22.1. All Work performed under the Job Order and all materials to be incorporated in the Work, whether in storage or on the Project Site and whether under the care, custody and control of the CONTRACTOR, Subcontractor, Supplier, manufacturer, or Sub-Subcontractor, shall be at the sole risk and responsibility of the CONTRACTOR until Physical Completion of the entire Project, except as may be limited by the PORT in writing for the period following Substantial Completion of the Work. Damage from any cause to either permanent or temporary Work, utilities, materials, equipment, existing structures, the Project Site, and other property owned by the PORT or others, shall be repaired by the CONTRACTOR to the satisfaction of the PORT at no additional cost to the PORT. At no time during the performance of the Work pursuant to the Job Order shall the CONTRACTOR direct PORT staff or PORT agents to assist in the execution of the Work.

**8.23 Hazardous Materials**

8.23.1. The CONTRACTOR shall exchange Hazardous Materials information to prevent injury or illness to PORT or CONTRACTOR personnel in compliance with WAC 296-155-180 and WAC 296-901-140.

8.23.2. The CONTRACTOR will take the following precautions to lessen the possibility of exposure:

- a. Notify all Subcontractors and/or Suppliers of any Hazardous Materials the PORT may have on site.
- b. Notify the PORT and all Subcontractors of any Hazardous Materials brought onto the PORT by the CONTRACTOR or its Suppliers.
- c. Visibly label any Hazardous Materials brought on site as to contents, hazard warning, name, and address of manufacturer.
- d. Provide the PORT the following written information prior to commencement of Work:
  1. A list of Hazardous Materials to be used during the construction phase of the Work, along with the SDS's.
  2. A list of any Hazardous Materials that have been incorporated into the Project and will remain on site, along with the SDS's.

8.23.3. The CONTRACTOR shall not cause or permit any "Hazardous Materials" (as defined herein) to be brought upon, kept, or used in or about the job site except to the extent such Hazardous Materials are necessary for the prosecution of the Work or are required pursuant to the Job Order. Removal of such Hazardous Materials shall be undertaken within twenty-four (24) hours following the PORT's demand for such removal. Such removal shall be undertaken by the CONTRACTOR at its sole cost and expense and shall be performed in accordance with all Applicable Laws.

8.23.4. Any damage to the Work, the job site or any adjacent property resulting from the improper use, or any discharge or release, of Hazardous Materials shall be remedied by the CONTRACTOR at its sole cost and expense, and in compliance with all Applicable Laws. The CONTRACTOR shall immediately notify the PORT of any release or discharge of any Hazardous Materials on the job site. The CONTRACTOR shall be responsible for making all disclosures required under Applicable Laws.

8.23.5. The CONTRACTOR shall not clean or service any tools, equipment, vehicles, materials, or other items in such a manner as to cause a violation of any laws or regulations

relating to Hazardous Materials. All residue and waste materials resulting from any such cleaning or servicing shall be collected and moved from the job site in accordance with all Applicable Laws and regulations.

- 8.23.6. The CONTRACTOR shall immediately notify the PORT of any citations, orders, or warnings issued to or received by the CONTRACTOR, or of which the CONTRACTOR otherwise becomes aware, which relate to any Hazardous Materials, safety, or regulatory compliance on the job site. Without limiting any other indemnification provisions pursuant to law or specified in the Contract Documents, the CONTRACTOR shall indemnify, reimburse, defend at the CONTRACTOR's sole cost, with legal counsel approved by the PORT, and hold the PORT harmless from, for, and against any and all such claims, demands, losses, damages, disbursements, liabilities, obligations, fines, penalties, costs and expenses in removing or remediating the effect of any Hazardous Materials on, under, from, or about the job site, arising out of or relating to, directly or indirectly, the CONTRACTOR's failure to comply with any of the requirements of this Subsection 8.23.6.
- 8.23.7. If the identification and removal of Hazardous Materials is within the CONTRACTOR's scope of Work as provided in the Job Order:
- a. The CONTRACTOR is responsible for bearing the cost for the removal of Hazardous Materials that the CONTRACTOR has located and identified during any preconstruction phase and which costs and associated time have been included in the Job Order Price and Job Order Completion Time. The CONTRACTOR shall be granted no additional Job Order Completion Time or increase in Job Order Price for the removal of such Hazardous Materials.
  - b. The CONTRACTOR is responsible for bearing the cost of any Hazardous Materials that the CONTRACTOR should have been able to locate and identify during any preconstruction phase if acting within the Standard of Care but did not so locate. The CONTRACTOR shall be granted no additional Contract Time or increase in Contract Price for the removal of such Hazardous Materials.
  - c. To pay for the cost of removal of Hazardous Materials that the CONTRACTOR would be unable to locate and identify during the preconstruction phase even if acting within the Standard of Care, Owner and the CONTRACTOR shall agree to an allowance that shall be added to the Job Order Price. Job Order Completion Time shall be extended appropriately for the removal of such Hazardous Material. If the allowance is exhausted, or an extension of the Job Order Completion Time is warranted due to resulting delays to the Project's critical path arising from such Hazardous Materials, the parties will execute a Supplemental Job Order reimbursing the CONTRACTOR for such costs and extending the Job Order Completion Time, in accordance with Article 10.
- 8.23.8. The CONTRACTOR is responsible for compliance with any requirements included in the Job Order regarding Hazardous Materials. If the CONTRACTOR encounters Hazardous Materials not the responsibility of the CONTRACTOR or addressed in the Job Order, the CONTRACTOR shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the PORT in writing. The PORT will, within five (5) Days of the stoppage, retain a qualified professional to verify the presence or absence of Hazardous Materials and, if needed, the PORT's consultant will propose a plan to the PORT to remediate/remove such Hazardous Materials.



**8.24 Clean Up**

- 8.24.1. At all times, and as may specifically be requested by the PORT, the CONTRACTOR shall clean up and remove all refuse resulting from the Work in order that the Project Site remains free from an accumulation of construction debris. Upon failure to do so within 24 hours after request by the PORT, such clean-up Work may be done by the PORT and the cost thereof shall be charged to the CONTRACTOR and deducted from moneys which may otherwise be then due or thereafter may become due to the CONTRACTOR.
- 8.24.2. Upon Substantial Completion of the Work and before Physical Completion, the CONTRACTOR shall clean the entire Work premises occupied or used in connection with the Work of all rubbish, surplus and discarded materials, false work, temporary structures, equipment, and debris. The entire Work premises shall be left in a clean, neat, and presentable condition. The CONTRACTOR shall not remove warning, regulatory, or guide signs prior to Physical Completion except as requested in writing by the PORT.

**8.25 Protection of Work During Suspension**

In preparation for and during any suspension of Work as provided in Section 18.1, the CONTRACTOR shall implement temporary controls to prevent damage to, or deterioration of, the Work. The CONTRACTOR shall be responsible to ensure the Project Site is left and maintained in an operationally safe condition acceptable to the PORT. The CONTRACTOR shall verify weekly, or as required by the PORT, temporary controls and safety measures are maintained throughout the suspension. Except as provided elsewhere in the Job Order, the CONTRACTOR shall be responsible for all damage or deterioration to the Work during the period of suspension and shall, at its sole expense, correct or restore the Work to a condition acceptable to the PORT prior to resuming Work. A suspension of Work shall not relieve the CONTRACTOR of any of its responsibilities under the Job Order.

**8.26 Survey**

- 8.26.1. If the PORT is required by the Job Order to set points and elevations or otherwise perform on-site measurements, the CONTRACTOR shall provide sufficient space and safe facilities to enable the PORT to do so. The CONTRACTOR is responsible for detailed dimensions and elevations measured from stakes and marks established by the PORT.
- 8.26.2. All Work performed shall be in conformance with the lines, grades and dimensions indicated on the Drawings or as staked by the PORT. If a discrepancy is noted between the Drawings and staking, the CONTRACTOR shall provide the PORT oral and written notice promptly and in no event, more than 24 hours after discovery. Where tolerances are stated, the Work performed shall be within those tolerances. The PORT will determine if the Work conforms to such lines, grades and dimensions, and the PORT determination shall be final.
- 8.26.3. All controls set by the PORT or others shall be carefully preserved by the CONTRACTOR. Any cost to reset controls due to the CONTRACTOR's means and methods or negligence shall be the responsibility of the CONTRACTOR.

**8.27 Archeological Items**

If resources of potential archeological significance are encountered during construction or excavation, the following steps shall be taken:

- a. The CONTRACTOR will immediately stop work in the vicinity of the find and notify the PORT.

- b. The PORT shall arrange for 24-hour security.
- c. If the find includes human remains, the PORT shall immediately notify the following:
  1. Law Enforcement
  2. The Project Manager
  3. The County Medical Examiner in which the work is being performed
- d. The County Medical Examiner shall determine if the human remains are of archeological significance. The resources shall not be moved unless the resources are determined to have no archeological significance.
- e. The Medical Examiner's determinations will be transmitted by the PORT to:
  1. State Office of Archaeology and Historic Preservation
  2. Tulalip Tribes (if Port of Everett)
  3. Other Interested Parties of Record
- f. All public inquiries and press releases shall be coordinated through the PORT's Communications Department.
- g. The PORT and the CONTRACTOR shall work with a professional archaeologist to resume construction as soon as possible without compromising the archeological find.

#### 8.28 **Gratuities**

The CONTRACTOR shall not extend any loan, gratuity, or gift of money or services in any form whatsoever to any employee or officer of the PORT or PORT consultant, nor shall the CONTRACTOR rent or purchase any equipment, materials, or services from any employee or officer of the PORT or PORT consultant.

#### 8.29 **Continuing the Work**

The CONTRACTOR shall carry on the Work and maintain the Construction Schedule during all disputes or disagreements with the PORT. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as the CONTRACTOR and the PORT may otherwise agree in writing.

#### 8.30 **Responsibility for Damage**

- 8.30.1. The CONTRACTOR shall bear sole responsibility for any pollution or damages which arise from or relate to its operations on or around the project site, including but not limited to soil, air, water, noise, or other pollution, as well as any and all costs (including attorneys' and consultants' fees, penalties, or other liabilities) incurred by or claimed against the PORT because of such pollution.
- 8.30.2. The CONTRACTOR shall protect from damage all private, public, and PORT owned facilities, property, and utilities, including but not limited to communication lines, power lines, sewer and water lines, railroad tracks and appurtenances, traffic lighting and signal systems, and other facilities.
- 8.30.3. The CONTRACTOR shall be responsible to protect the Work from weather damage, or other causes, and must correct any defects arising from or discovered in the Work until Physical Completion of the Work.
- 8.30.4. The CONTRACTOR shall, at no expense to the PORT, provide and install safeguards to protect public and private property. If the CONTRACTOR damages or destroys public or private property during the prosecution of the Work, the CONTRACTOR shall immediately repair, restore, or replace such damaged or destroyed property at the

CONTRACTOR's expense. Should the CONTRACTOR refuse or not respond promptly to a written request to repair, restore, or replace damaged or destroyed property, the PORT may have such property repaired, restored, or replaced by other means at the CONTRACTOR's expense.

## **ARTICLE 9 WARRANTIES**

### **9.1 Quality of Work**

All Work will be of good quality, free from fault or defect, and in strict accordance with the requirements of the Contract Documents and the individual Job Order. Any Work not conforming to the foregoing warranty, including unapproved or unauthorized substitutions, shall be considered Defective.

### **9.2 General Warranty**

9.2.1. If, within the Warranty Period, any of the Work is found to be Defective or otherwise not in conformance with the Contract Documents or individual Job Order, the CONTRACTOR shall, at its sole cost, promptly correct such defect or non-conforming Work after receipt of written notice from the PORT. This does not exclude any remedies the PORT may have elsewhere in the Contract Documents, or, as may be allowed by law. The obligation of this Section 9.2 shall survive termination of the Contract.

9.2.2. Work corrected by the CONTRACTOR under Section 8.21 shall also be subject to the provisions of this Article for a one-year period, or such longer period in accordance with the Contract Documents, from the date the PORT accepts the corrected Work.

9.2.3. Nothing contained in this section shall be construed to establish a period of limitation (whether legal, equitable, or otherwise) with respect to any other obligation imposed on the CONTRACTOR by the Contract Documents, including, but not limited to, the obligation imposed by Section 8.21 and Section 8.22.

9.2.4. The establishment of the warranty time period after the date of Physical Completion required by the Contract Documents relates only to the specific obligation of the CONTRACTOR to correct Defective or non-conforming Work, and bears no relationship to the time within which the CONTRACTOR's obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the CONTRACTOR's liability with respect to obligations imposed on it by the Contract Documents or as otherwise may exist in law.

### **9.3 Enforcement by CONTRACTOR**

All Subcontractors', Sub-Subcontractors', manufacturers', and Suppliers' warranties and guarantees, expressed or implied, respecting any part of the Work and all materials used therein shall be obtained and enforced by the CONTRACTOR for the benefit of the PORT without the necessity of separate transfer or assignment thereof. When directed by the PORT or required by the Contract Documents, the CONTRACTOR shall require that Subcontractors, Sub-Subcontractors, manufacturers, and Suppliers execute separate warranties and guarantees in writing directly to the PORT. Warranty provisions which support to limit or alter the PORT's rights under the Contract Documents are null and void.

### **9.4 Title to Work**

The CONTRACTOR warrants that title to all Work, materials, and equipment covered by a request for a Progress Payment or Final Payment will pass to the PORT either by incorporation in

the construction or upon the receipt of payment by the CONTRACTOR, whichever occurs first, free, and clear of all claims, security interests or encumbrances. The CONTRACTOR further warrants that no Work, materials, or equipment covered by a Pay Application will have been acquired by the CONTRACTOR, or by any other person performing Work or furnishing materials and equipment for the Project, which Work, materials, or equipment are subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller of the same or is otherwise imposed by the CONTRACTOR or other person.

## **ARTICLE 10 INDEMNIFICATION**

### **10.1 Indemnity**

To the fullest extent permitted by law and subject to this Section 10.1, the CONTRACTOR shall indemnify, reimburse, defend, and hold harmless the PORT and its agents from, for, and against all liability, claims, damages, losses, and expenses, whether direct, indirect, or consequential (including, but not limited to, attorneys' and consultants' fees and other expenses of litigation or arbitration) arising out of the performance of the Work, which is caused, or alleged to be caused, in whole or in part, by any act or omission of the CONTRACTOR (which for the purposes of this Section 10.1 shall include the CONTRACTOR and all of its Subcontractors, Sub-Subcontractors, Suppliers, agents, any other person directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable); provided, however, that where such liability, claim, damage, loss or expense arises from the concurrent negligence of (1) the PORT or its agents, and (2) the CONTRACTOR, it is expressly agreed that the CONTRACTOR's obligations of indemnity under this Section shall be effective only to the extent of the CONTRACTOR's negligence. Such obligations shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any person or entity described in this Section. This Section 10.1 shall not be construed to require the CONTRACTOR to defend, reimburse, indemnify, or hold harmless the PORT from such claims, damages, losses, or expenses caused by or resulting from the sole negligence of the PORT or its agents.

### **10.2 No Limitation**

In any and all claims against the PORT or its agents, the indemnification obligation of Section 10.1 above shall not be limited in any way to the extent of insurance coverage described in Article 21 or by any limitation on the amount or type of damages, compensation benefits payable by or for the CONTRACTOR under applicable Workers' Compensation, benefit, or disability laws (including, but not limited to, the Industrial Insurance laws, RCW Title 51). The CONTRACTOR expressly waives any immunity the CONTRACTOR might have had under such laws with respect to the indemnities set forth in these General Conditions, and, by agreeing to enter into the Contract, the CONTRACTOR expressly acknowledges that the foregoing waiver has been mutually negotiated by the parties.

### **10.3 Acknowledgement**

By entering into and executing the Contract, the PORT and the CONTRACTOR acknowledge that this Article 10, including the waivers set forth therein, was mutually agreed by the parties.

### **10.4 Attorney's Fees**

The CONTRACTOR shall pay all attorney's fees and expenses incurred by the PORT in establishing and enforcing the PORT's rights under this Section, whether or not suit was instituted.

**ARTICLE 11 NOTICE OF EVENT****11.1 Notice**

The intent of this Article 11 is to ensure that the PORT receives a Notice of Event prior to the CONTRACTOR incurring alleged additional time or cost for any Event that may entitle CONTRACTOR to an adjustment of the Job Order Price or an extension of Job Order Completion Time.

**11.2 Event**

An Event includes, but is not limited to:

- 11.2.1. Discovery of unexpected hazardous, potentially hazardous, infectious, toxic or dangerous materials;
- 11.2.2. Discovery of any item of potential archeological significance;
- 11.2.3. Discovery of differing site conditions (Type I and/or Type II), including, without limitation, unidentified: (1) mis-located utilities, (2) subsurface or latent physical conditions at the site; and/or (3) unknown physical conditions of an unusual nature.

**11.3 Occurrence**

An Event is deemed to occur upon the earlier of (1) the act, omission, directive, condition, instruction, or determination that constitutes the Event or (2) the time the CONTRACTOR discovered, or, if acting in accordance with the Standard of Care, should have discovered, the act, omission, directive, condition, instruction or determination that constitutes the Event.

**11.4 Discovery of Event**

The CONTRACTOR shall give the PORT immediate written notice of an Event, but in no event later than three (3) Days of when the CONTRACTOR discovered or, in the exercise of reasonable diligence and inspection consistent with the Standard of Care, should have discovered the Event.

**11.5 Change Order Proposal**

Within seven (7) Days of a written Notice of Event, unless the PORT issues written notice authorizing the CONTRACTOR additional time, the CONTRACTOR shall provide a Change Order Proposal describing the rationale and detailing the cost basis and schedule impacts of the change in accordance with Article 15. Oral or email notice alone by the CONTRACTOR to the PORT regarding such condition shall not be adequate to avoid the absolute and unconditional waiver of its rights under Section 11.6.

**11.6 Waiver of Rights**

If such notice is not given prior to the condition being disturbed or other action being taken by the CONTRACTOR which may result in an increase in the Job Order Completion Time or the Job Order Price, or such condition is disturbed before the PORT directs the CONTRACTOR to proceed with the Work despite the condition, or such notice is not given in accordance with the Contract Documents and this Section 11, the CONTRACTOR will be deemed to have expressly waived its rights for any adjustment to the Job Order Price or Job Order Completion Time on account of any additional or different work including labor, material and equipment required because of such condition.

**11.7 Adjustment to Contract Price**

Provided the CONTRACTOR complies with the notice provisions of this Article 11, if the PORT determines that the alleged conditions do exist and cause a material change either in the CONTRACTOR's costs or time required to perform the Contract, the PORT will make an equitable

adjustment to the Job Order Price, to account for the performance of the Work involved, and the additional Job Order Completion Time, if any, required to perform such work. If the PORT and the CONTRACTOR agree on such adjustment, the same shall be set forth in a Supplemental Job Order to be executed by the parties.

#### 11.8 Denial by PORT

If the PORT determines that the CONTRACTOR's request does not warrant a Supplemental Job Order, the CONTRACTOR shall diligently pursue the Work in accordance with the PORT's direction while retaining the right to protest the PORT's decision in accordance with 18.4.

#### 11.9 Reimbursement to PORT

The PORT has the right to recover its analysis/administration cost of processing and evaluation of a Change Order Proposal for the portion of the Change Order Proposal that is determined to be unfounded or unsupported. The cost of reimbursement will be the percentage of the original Change Order Proposal that is determined to be unsupported times the cost of analysis/administration.

### ARTICLE 12 OTHER WORK AND WORK BY OTHERS

#### 12.1 Other Work

- 12.1.1. The PORT reserves the right at all times to perform or cause to be performed Other Work. Should such Other Work or PORT operations be either underway or subsequently undertaken at or near the Project Site, the CONTRACTOR shall coordinate its activities with those of all other work forces, including the PORT's Separate Contractors, and conduct its activities to avoid or minimize any conflict between the operations of the CONTRACTOR and those persons performing the Other Work.
- 12.1.2. The PORT may self-perform Other Work or have Other Work performed by the PORT's Separate Contractors. The CONTRACTOR shall afford the PORT and the PORT's Separate Contractors reasonable opportunity for the introduction and storage of materials and equipment and the execution of the Other Work, and shall properly connect and coordinate its Work with these parties and the Other Work.
- 12.1.3. If any part of the CONTRACTOR's Work depends on proper execution or results upon the work of the PORT, a utility service company, or the PORT's Separate Contractors, the CONTRACTOR shall inspect and report to the PORT in writing any known or discovered defects or deficiencies in the Other Work that render it unsuitable for such proper execution and results within seven (7) Days from when the CONTRACTOR knew or discovered or reasonably should have known or discovered. The CONTRACTOR's failure to report any such defects or deficiencies in the Other Work shall constitute an acceptance of the Other Work as fit and proper for integration with the CONTRACTOR's Work, except for latent or non-apparent defects and deficiencies in the Other Work.
- 12.1.4. The CONTRACTOR shall do all cutting, fitting, and patching of its Work that may be required to make its several parts come together properly and integrate with the Other Work. The CONTRACTOR shall not endanger any of the Other Work by cutting, excavating, or otherwise altering the Other Work and will only cut or alter the Other Work with the written consent of the PORT and the parties responsible for the Other Work so affected.
- 12.1.5. If the performance of Other Work by the PORT, a utility service company, or the PORT's Separate Contractors was not noted in the Contract Documents, written notice thereof

shall be given to the CONTRACTOR prior to starting any of the Other Work. The PORT shall coordinate and schedule Other Work not noted in the Contract Documents to avoid interference or conflict with ongoing or scheduled work by the CONTRACTOR.

## **ARTICLE 13 THE PORT'S RESPONSIBILITIES**

### **13.1 Authority of the PORT Project Manager**

- 13.1.1. The PORT Project Manager shall administer the Job Order and has the authority to enforce all obligations imposed on the CONTRACTOR by the Contract Documents.
- 13.1.2. The Work shall be performed in accordance with the Job Order. The PORT Project Manager has the authority but not the obligation to reject Work that is Defective or does not otherwise conform to the Contract Documents or individual Job Order.
- 13.1.3. The PORT Project Manager is not responsible for and will not have control or charge of the means, methods, techniques, sequences, or procedures of construction, or for safety precautions or programs incidental thereto, these being the sole responsibility of the CONTRACTOR. Likewise, the PORT Project Manager shall not be responsible for the CONTRACTOR's failure to carry out the Work in accordance with the Job Order. The PORT Project Manager will not be responsible for or have any control or charge of the acts or omissions of the CONTRACTOR, Subcontractor, Sub-Subcontractor, Suppliers, or any of their agents or employees, or any other persons performing a portion of the Work.
- 13.1.4. The PORT may issue communications to the CONTRACTOR through the PORT Project Manager. In case of termination of the employment of the PORT Project Manager, the PORT shall appoint a new PORT Project Manager or other authorized representative.

### **13.2 Administration of the Contract**

- 13.2.1. Nothing in this Article 13 or elsewhere in the Contract Documents shall be construed as requiring the PORT Project Manager, Inspector, consultant, or other representative of the PORT to direct or advise the CONTRACTOR as to the method or manner of performing the Work. No approval or advice given by the PORT as to the method or manner of performing the Work or procuring materials to be furnished shall constitute a representation or warranty by the PORT that the result of such method or manner will conform to the Contract Documents or individual Job Order or achieve the desired results. Such approval or advice shall neither relieve the CONTRACTOR of any of its obligations under the Contract Documents nor create any liability to the PORT or the PORT Project Manager because of the approval or advice.
- 13.2.2. The PORT Project Manager or Inspectors may call to the attention of the CONTRACTOR Defective Work or Work that does not conform otherwise to the Contract Documents or individual Job Order. However, failure of the PORT Project Manager or Inspectors to so inform the CONTRACTOR shall not constitute approval or acceptance of such Defective or non-conforming Work.
- 13.2.3. The presence of the PORT Project Manager or Inspector during the progress of any construction does not relieve the CONTRACTOR from responsibility for defects in the Work, nor does it bind the PORT in determining Physical Completion or Final Acceptance of the Work.
- 13.2.4. Work done or material furnished which at any time is found not to conform to the requirements of the Contract Documents or individual Job Order shall be at the

CONTRACTOR's risk and expense and shall furnish no basis for an increase in the Job Order Price or Job Order Completion Time, even though the PORT Project Manager or Inspector fails to reject such Work or material.

**13.3 Officers and Employees of the PORT Have No Personal Liability**

Neither the PORT Commissioners, the PORT Project Manager, Inspector, nor any other officer, employee, or agent of the PORT, acting within the scope of their employment, shall be personally liable to the CONTRACTOR for any of their acts or omissions arising out of the Project.

**ARTICLE 14 THE PORT PROJECT MANAGER'S STATUS DURING CONSTRUCTION**

**14.1 The PORT's Representative**

The PORT Project Manager will be the PORT's representative during the construction period of the Job Order unless the PORT assigns a different representative. The PORT Project Manager or other representative will be identified to the CONTRACTOR prior to commencement of the Work. The Work shall be done to the complete satisfaction of the PORT. The PORT will decide all questions which may arise concerning the quality and acceptability of materials and equipment furnished and Work performed, the rate of progress of the Work, and interpretation of Contract Documents. By entering into a Job Order, the CONTRACTOR expressly agrees and acknowledges that the PORT Project Manager (or other representative designated in writing) is the PORT's representative during the construction period, with the authority to act in the limited capacity as described in this Contract. The PORT's representative, whether the PORT Project Manager or other designated representative, it not necessarily a professional engineer as contemplated in RCW 18.43 or required to be licensed by the Washington Department of Labor and Industries and is not to be considered or regarded as such unless so directed in writing by the PORT.

**Not Used**

**14.2 Rejecting Defective Work**

The PORT Project Manager shall have authority to disapprove or reject Work which is Defective or does not conform to the requirements of the Contract Documents or individual Job Order and shall also have authority to require special inspection or testing of the Work, whether or not the Work is fabricated, installed, or completed.

**14.3 PORT Observation of Work**

If so designated by the PORT, an Inspector may be on-site to observe the Work, but an Inspector does not have the authority to direct the CONTRACTOR, make interpretations of the Contract Documents or individual Job Order, or bind the PORT by his/her representations.

**14.4 Limitations on the PORT Project Manager's Responsibilities**

Neither the PORT Project Manager's authority to act under this Article 14 or elsewhere in the Contract Documents nor any decision made by the PORT Project Manager in good faith either to exercise or not exercise such authority shall give rise to any duty or responsibility of the PORT Project Manager to the CONTRACTOR or to any Subcontractor, any manufacturer, fabricator, Supplier or distributor, or any of their agents or employees or any other person performing any of the Work. Whenever in the Contract Documents the terms "as ordered," "as directed," "as required," "as allowed" or terms of like effect or import are used, or the adjectives "reasonable," "suitable," "acceptable," "proper," or "satisfactory" or adjectives of like effect or import are used to describe requirement, direction, review or judgment of the PORT Project Manager as to the Work, it is intended that such requirement, direction, review or judgment will be solely to evaluate the Work for compliance with the Contract Documents unless there is a



specific statement indicating otherwise. The use of any such term or adjective never indicates that the PORT Project Manager shall have authority to supervise or direct performance of the Work or authority to undertake responsibility contrary to the provisions of this Article 14.

## **ARTICLE 15 CHANGES IN THE WORK**

### **15.1 Changes in the Work**

15.1.1. Without invalidating the Contract and without notice to the CONTRACTOR's Surety, the PORT may, at any time, order additions, deletions, or revisions in the Work; these will be authorized by Field Orders or Supplemental Job Orders.

15.1.2. Change Order Proposals:

- a. If the CONTRACTOR believes that completion of the provisions of a Field Order justifies a change in the Job Order Price or an extension of the Job Order Completion Time, the CONTRACTOR shall submit to the PORT its estimated cost and schedule impact for completion of the change. The CONTRACTOR shall include with its Change Order Proposal such information necessary to substantiate the request for a change in the Job Order Price or an extension of the Job Order Completion Time in accordance with Article 11 and this Article 15. An extension of the Job Order Completion Time will only be granted if the CONTRACTOR can demonstrate to the satisfaction of the PORT an impact on the Project's Critical Path. If the PORT rejects the CONTRACTOR's request for a change in the Job Order Price, the PORT may require further substantiating materials or information from the CONTRACTOR, may withdraw the Field Order, or the PORT may require the Work to be completed and the CONTRACTOR submit a Claim in accordance with 18.4.
- b. The CONTRACTOR may submit a Change Order Proposal to reflect modifications to the Work resulting from unforeseen site conditions. The Change Order Proposal shall detail the cost and schedule impacts arising from an Event. If the PORT determines that such unforeseen site conditions require a modification of the Work, the PORT authorize a Supplemental Job Order incorporating such modifications as necessary to proceed with and complete the Work. The CONTRACTOR shall be responsible for reallocation of its work force when work cannot be continued in an area due to unforeseen conditions. In no event will the PORT reimburse the CONTRACTOR for charges caused by delays, changes, or Additional Work scope unless prior written authorization is provided by the PORT and the CONTRACTOR receives a signed Supplemental Job Order for the changed or Additional Work scope. If the PORT determines the unforeseen site conditions do not require a modification of the Work requiring a change in Job Order Price or Job Order Completion Time, no Change Order will be issued.

15.1.3. All such Work shall be executed under the applicable conditions of the Contract Documents and the individual Job Order.

15.1.4. Additional Work performed by the CONTRACTOR without prior written authorization from the PORT in the form of a Supplemental Job Order shall be performed at the sole risk of the CONTRACTOR and shall constitute an absolute and unconditional waiver by the CONTRACTOR of any increase in the Job Order Price or an extension of the Job Order Completion Time as a result of such Additional Work.

15.1.5. WAIVER OF CLAIMS PRIOR TO CHANGE ORDER. Unless the Supplemental Job Order expressly states otherwise, Supplemental Job Orders fully executed by the parties shall constitute a full and final settlement, absolute and unconditional waiver, and an accord and satisfaction of all effects of the changes reflected in the subject Supplemental Job Order and shall be deemed to compensate the CONTRACTOR fully for such changes. Accordingly, unless otherwise expressly stated in such Supplemental Job Order, the CONTRACTOR expressly waives and releases any and all right to make a claim or demand or to take any action or proceeding against the PORT for any consequences arising out of, relating to, or resulting from such changes reflected in the subject Supplemental Job Order, including but not limited to unjust enrichment, breach of contract, changes in Job Order Completion Time or Job Order Price, claims for loss of productivity or inefficiency, or cumulative impact.

15.1.5.1 If the CONTRACTOR disagrees with any part of the Change Order issued by the PORT, including the adjustment (if any) to the Contract Price and extension (if any) to the Contract Time, the CONTRACTOR shall, within seven (7) Days of its issuance by the PORT, submit a properly documented Notice of Event in accordance with Article 11 and shall thereafter comply with the applicable provisions of Article 11. Failure to comply with Article 11 shall constitute an absolute and unconditional waiver by the CONTRACTOR of any disagreement with the terms and conditions of the Change Order and shall forever bar the CONTRACTOR from any adjustment to the Contract Price or extension of Contract Time, whether by Change Order Proposal or Claim, related in any way to the Work described in the Change Order.

15.1.5.2 When a CONTRACTOR elects to exercise its right to protest the terms of a Change Order as described above, the CONTRACTOR may bill for the undisputed part of the Change Order in the next regular Pay Application cycle based on the progress of any Work at issue in the Change Order. Provided the CONTRACTOR has filed a timely and properly documented Notice of Event protesting the remaining parts of the Change Order, the CONTRACTOR's receipt of payment on the undisputed compensation for the Change Order shall not constitute a waiver by the CONTRACTOR of its rights or remedies to obtain an adjustment to the Contract Price or an extension of Contract Time in accordance with Article 11 for the disputed part of the Change Order.

## **ARTICLE 16 WARRANTY AND GUARANTEE; TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK**

### **16.1 Warranty and Guarantee**

As provided in this Article 16 and in accordance with Article 6, the CONTRACTOR warrants and guarantees to the PORT that all Work will be in accordance with the Contract Documents and will not be Defective. Prompt notice of all defects shall be given to the CONTRACTOR. All Defective Work, whether or not in place, may be rejected, corrected, or accepted as provided in this Article 16.

### **16.2 Access to Work**

The PORT, the PORT Project Manager, other representatives of the PORT, testing agencies, and governmental agencies with jurisdictional interests will have access to the Work at reasonable

times for their observation, inspection, and testing. The CONTRACTOR shall provide proper and safe conditions for such access.

### 16.3 Tests and Inspections

- 16.3.1. The CONTRACTOR shall give the PORT timely notice of readiness of the Work for all required inspections, tests, or approvals.
- 16.3.2. Unless otherwise specified, if any Applicable Laws require any Work, or part thereof, to specifically be inspected, tested, or approved, the CONTRACTOR shall assume full responsibility therefore, pay all costs in connection therewith, and furnish the PORT the required certificates of inspection, testing, or approval. The CONTRACTOR shall also be responsible for and shall pay all costs in connection with any inspection or testing required in connection with the PORT's acceptance of a manufacturer, fabricator, Supplier or distributor of materials or equipment proposed to be incorporated in the Work, or of materials or equipment submitted for approval prior to the CONTRACTOR's purchase thereof for incorporation in the Work.
- 16.3.3. The cost of re-inspections required due to correction of Defective Work, or work that does not comply fully with the Contract Documents and individual Job Order, shall be deducted from the monies owed the CONTRACTOR.
- 16.3.4. The CONTRACTOR shall be responsible for all costs associated with cancellation of any inspection unless the CONTRACTOR has provided twenty-four (24) hour notice to the PORT.
- 16.3.5. The cost of all other inspections, tests, and approvals required by the Contract Documents shall be paid by the PORT (unless otherwise specified).
- 16.3.6. All inspections, tests, or approvals other than those required by Applicable Laws shall be performed by organizations acceptable to the PORT.
- 16.3.7. If any Work that is to be inspected, tested, or approved is covered without written concurrence of the PORT, it must, at the request of the PORT, be uncovered for observation. Such uncovering shall be at the CONTRACTOR's expense, unless the CONTRACTOR gave the PORT a minimum of forty-eight (48) hours' notice, not including weekends and holidays, of the CONTRACTOR's intention to cover such Work and the PORT did not respond to such notice.
- 16.3.8. Neither observations by the PORT Project Manager or Inspector nor inspections, tests, or approvals by others shall relieve the CONTRACTOR from its obligations to perform the Work in accordance with the Contract Documents or individual Job Order.

### 16.4 The PORT May Stop the Work

- 16.4.1. If the CONTRACTOR fails to perform the Work in accordance with the Contract Documents or individual Job Order, fails to correct Defective Work as required by the Contract Documents, or fails to comply with any other directive issued by the PORT, the PORT may order, in writing, that the CONTRACTOR stop all or any portion of the Work until the cause for such order is eliminated.
- 16.4.2. In the event of such an order to stop Work, the CONTRACTOR shall not be entitled to any increase in the Job Order Time or Job Order Price, nor to any damages or relief from liability, because of such order to stop Work.

### 16.5 Correction or Removal of Defective Work

If required by the PORT, the CONTRACTOR shall promptly, without cost to the PORT and as specified by the PORT, either correct any Defective Work, whether or not fabricated, installed,

or completed, or, if the Work has been rejected by the PORT, remove it from the site and replace it with non-Defective Work.

**16.6 Acceptance of Defective Work**

Instead of requiring correction or removal and replacement of Defective Work, the PORT may accept the Work. In such case, if acceptance occurs prior to the PORT's recommendation of Final Payment, a Supplemental Job Order shall be issued incorporating the necessary revisions in the Contract Documents, including appropriate reduction in the Contract Price; or, if the acceptance occurs after such recommendation, an appropriate amount shall be paid by the CONTRACTOR to the PORT.

**16.7 The PORT May Correct Defective Work**

16.7.1. If the CONTRACTOR fails within a reasonable time after written notice of the PORT to proceed to correct and to correct Defective Work or to remove and replace rejected Work as required by the PORT in accordance with Section 16.5, or if the CONTRACTOR fails to perform the Work in accordance with the Contract Documents or individual Job Order including any requirements of the Construction Schedule, the PORT may, after seven (7) Days' written notice to the CONTRACTOR, correct and remedy any such deficiency or Defective Work. In exercising its rights under this Section 16.7, the PORT shall proceed expeditiously.

16.7.2. To the extent necessary to complete corrective and remedial action, the PORT may exclude the CONTRACTOR from all or part of the site, take possession of all or part of the Work, and suspend the CONTRACTOR's services related thereto, take possession of the CONTRACTOR's tools, appliances, construction equipment and machinery at the site and incorporate in the Work all materials and equipment stored at the site or for which the PORT has paid the CONTRACTOR but which are stored elsewhere. The CONTRACTOR shall allow the PORT, the PORT's representatives, agents, and employees such access to the site as may be necessary to enable the PORT to exercise its rights under this Section 16.7.

16.7.3. All direct and indirect costs of the PORT in exercising such rights pursuant to this Section 16.7 shall be charged against the CONTRACTOR in an amount verified by the PORT, and a Supplemental Job Order shall be issued incorporating the necessary revisions in the Contract Documents or individual Job Order and a reduction in the Job Order Price. Such direct and indirect costs shall include, in particular but without limitation, compensation for additional professional services required and all costs of repair and replacement of work of others destroyed or damaged by correction, removal, or replacement of the CONTRACTOR's Defective Work. The CONTRACTOR shall not be allowed an extension of the Contract Time because of any delay in performance of the Work attributable to the exercise by the PORT of the PORT's rights hereunder.

**ARTICLE 17 PAYMENTS TO THE CONTRACTOR AND COMPLETION**

**17.1 All Payments Subject to Applicable Laws**

All payments made to the CONTRACTOR under the Contract are subject to all laws applicable to the PORT in general and to the Contract. Without limiting the generality of the foregoing, the law does not permit the PORT to make any payments to the CONTRACTOR under the Contract

until proper and approved Statements of Intent to Pay Prevailing Wages have been filed with the PORT, as required by Section 8.5 and RCW 39.12.040.

#### 17.2 **Scope of Payment**

The CONTRACTOR shall be compensated for performing the Work, including any changes made by Supplemental Job Order, as provided for in these General Conditions. Payment of the Job Order Price shall constitute the full compensation to the CONTRACTOR for performance of the Work, including all risk, loss, damage, expense of whatever character arising out of the nature of the Work or the prosecution thereof, and for all reasonable expenses properly incurred, including in the event of suspension or termination. The PORT will not pay for work performed or furnished beyond line and grades established by the PORT, or extra work or materials furnished without prior written approval of the PORT. The PORT may order such unauthorized work to be removed at no expense to the PORT.

#### 17.3 **Not Used**

#### 17.4 **Progress Pay Application**

17.4.1. The CONTRACTOR shall submit to the PORT for review a Pay Application monthly, filled out and signed by the CONTRACTOR covering the Work completed as of the last Day of the preceding calendar month. The closeout date for each progress payment period shall be the last Day of the month, unless otherwise mutually agreed upon by the parties.

17.4.2. The Pay Application shall be accompanied by such supporting documentation as is required by the Contract Documents and as the PORT may require. Documentation for unit price items, such as weigh tickets, load tickets, or other similar documentation, shall be accompanied by a chronological tabular list of such tickets.

17.4.3. If payment is requested based on materials and equipment not incorporated in the Work but delivered and suitably stored at the site, the Pay Application shall be made based on the vendor's invoice or based on the CONTRACTOR's actual costs.

17.4.4. Each subsequent Pay Application shall include an affidavit of the CONTRACTOR stating that all previous Progress Payments received because of the Work have been applied to discharge in full all of parties' obligations reflected in prior Pay Applications.

17.4.5. With each Pay Application the CONTRACTOR shall also submit Claim Waivers and Releases in the form(s) acceptable to the PORT as follows:

- a. for Progress Payment, executed conditional/unconditional Interim Claim Waiver and Release documents from the CONTRACTOR;
- b. for Progress Payment, executed conditional/unconditional Interim Claim Waiver and Release documents from Subcontractors, Sub-Subcontractors and Suppliers of every tier who performed work or delivered materials or equipment covered by the current Pay Application and who are still performing work or delivering materials or equipment in connection with the Project; and
- c. executed conditional/unconditional Final Claim Waiver and Release documents from Subcontractors and suppliers of every tier who completed their work or delivery of materials or equipment during the period covered by the previous Application for Payment, and also from the CONTRACTOR upon Final Payment.

#### 17.5 **Retainage**

17.5.1. Retained amounts will be handled in accordance with RCW 60.28 and with the instructions provided by the CONTRACTOR.

- 17.5.2. If the CONTRACTOR chooses to have the PORT withhold five percent (5%) from Progress Payments, such retainage will be expressed on a percentage of the Work completed to date, including materials and equipment stored on the Project Site but not yet incorporated into the Work.
- 17.5.3. Early release of certain retainage shall be allowed only if, and to the extent, specified in RCW 60.28.011(3).

#### 17.6 **The CONTRACTOR's Warranty of Title**

The CONTRACTOR warrants and guarantees that title to all Work, materials and equipment covered by any Pay Application, whether incorporated in the Project or not, will pass to the PORT at the time of payment free and clear of all security interests, encumbrances, or claims. In addition, for material and equipment not incorporated in the Work but delivered and suitably stored at the site, the CONTRACTOR shall, if required by the PORT, applicable insurance.

#### 17.7 **Review of Pay Applications**

- 17.7.1. The PORT Project Manager will, within ten (10) Days after receipt of each Progress Pay Application, either indicate in writing a recommendation of payment and present the Application to the PORT or return the Pay Application to the CONTRACTOR indicating in writing the PORT Project Manager's reasons for refusing to recommend payment. In the latter case, the CONTRACTOR may make the necessary corrections and resubmit the Pay Application. The PORT shall, within thirty (30) Days of presentation of an approved Pay Application, pay the CONTRACTOR the amount recommended.
- 17.7.2. The PORT Project Manager's recommendation of any payment requested in a Pay Application will constitute a representation by the PORT Project Manager to the PORT, based on the PORT Project Manager's on-site observations of the Work in progress and on the PORT Project Manager's review of the Pay Application and the accompanying data and schedules, that the Work has progressed to the point indicated and that, to the best of the PORT Project Manager's knowledge, information, and belief:
  - a. the quality of the Work is in accordance with the Contract Documents and individual Job Order, subject to an evaluation of the Work as a functioning Project upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents and any qualifications stated in the recommendation; and
  - b. that the CONTRACTOR is entitled to payment of the amount recommended.
- 17.7.3. The PORT Project Manager may refuse to recommend the whole or any part of any payment if, in the PORT Project Manager's opinion, it would be incorrect to make such representations to the PORT. The PORT Project Manager may also refuse to recommend any such payment, or, because of subsequently discovered evidence or the results of subsequent inspections or tests, nullify and such payment previously recommended to such extent as may be necessary in the PORT Project Manager's opinion to protect the PORT from loss because:
  - a. the Work is Defective, or completed Work has been damaged requiring correction or replacement,
  - b. written claims have been made against the PORT or filed, submitted, or threatened in connection with the Work,
  - c. the Job Order Price has been reduced because of Supplemental Job Orders,
  - d. the PORT has been required to correct Defective Work or complete the Work in accordance with Section 16.7,

- e. of the CONTRACTOR's unsatisfactory prosecution of the Work in accordance with the Contract Documents,
  - f. the CONTRACTOR's failure to make payment to Subcontractor, or for labor, materials or equipment, or
  - g. of quantity adjustment or correction.
- 17.7.4. If the PORT Project Manager withholds its recommendation for payment under Subsection 17.7.3.f, the PORT may, at its sole option, and after providing the CONTRACTOR with at least five (5) Days' advance written notice, issue joint checks to the CONTRACTOR and to any Subcontractor or material or equipment suppliers to whom the CONTRACTOR failed to make payment for Work properly performed or material or equipment suitably delivered. Any payment made by joint check between the PORT, the CONTRACTOR and any Subcontractor or material or equipment supplier shall be deemed an accommodation only and does not create any contractual relationship between OWNER and any Subcontractor or other entities not having a direct contractual relationship with the PORT.
- 17.7.5. The PORT Project Manager's review and approval of any Pay Application, and any recommendations made to the PORT related thereto, along with any responses from or payments made by the PORT, are made subject to, without waiving, and expressly reserving any and all rights, remedies, and entitlements under the Contract Documents or Applicable Laws related to the Work and the CONTRACTOR's performance under the CONTRACT.
- 17.8 Substantial Completion**
- 17.8.1. When the CONTRACTOR considers the entire Work ready for its intended use the CONTRACTOR shall, in writing to the PORT, certify that the entire Work is substantially complete and request that the PORT issue a Certificate of Substantial Completion.
- 17.8.2. Within a reasonable time thereafter, the CONTRACTOR and the PORT shall inspect the Work to determine the status of completion. If the PORT does not consider the Work substantially complete, the PORT will notify the CONTRACTOR in writing giving their reasons therefore. If the PORT considers the Work substantially complete, the PORT will prepare and deliver a Certificate of Substantial Completion which shall fix the date of Substantial Completion. A Punch List of items to be completed or corrected before achieving Physical Completion shall be attached to the certificate.
- 17.8.3. The PORT will identify a division of responsibilities pending Physical Completion between the PORT and the CONTRACTOR with respect to security, operation, safety, maintenance, utilities, and insurance for that part of the Work. The division of responsibilities shall become binding upon the PORT and the CONTRACTOR and will be incorporated into the Certificate of Substantial Completion unless the PORT and the CONTRACTOR shall have otherwise agreed in writing.
- 17.8.4. Documentation required prior to Substantial Completion shall include but is not necessarily limited to:
- a. Submittals required by the Contract Documents or individual Job Order, unless otherwise noted;
  - b. Draft commissioning reports (if any);
  - c. Verification that all utilities are operational;
  - d. Certificate of Occupancy and related approvals by any authority with jurisdiction for same;

- e. Verification that all third-party inspections have been conducted and Work has passed inspection.

17.8.5. The PORT shall have the right to exclude the CONTRACTOR from the Work after the date of Substantial Completion, but the PORT shall allow the CONTRACTOR reasonable access to complete or correct items on the Punch List.

## 17.9 Partial Utilization

17.9.1. Use by the PORT of completed portions of the Work may be accomplished prior to Substantial Completion of all the Work subject to the following:

- a. The PORT at any time may request the CONTRACTOR in writing to permit the PORT to use any part of the Work which the PORT believes to be substantially complete, and which may be so used without significant interference with construction of the other parts of the Work.
  1. If the CONTRACTOR agrees, the CONTRACTOR will certify to the PORT that said part of the Work is substantially complete and request the PORT to issue a Certificate of Substantial Completion for that part of the Work. Within a reasonable time thereafter the CONTRACTOR and the PORT shall inspect that part of the Work to determine its status of completion.
  2. If the PORT does not consider that part of the Work to be substantially complete, the PORT will notify the CONTRACTOR in writing giving his/her reasons the Work is considered not substantially complete.
  3. If the PORT considers that part of the Work to be substantially complete, the PORT will execute and deliver to the CONTRACTOR a Certificate of partial Substantial Completion, fixing the date of Substantial Completion as to that part of the Work, attaching thereto a Punch List to be completed or corrected before Final Payment. The PORT shall identify the division of responsibilities pending Physical Completion between the PORT and the CONTRACTOR with respect to security, operation, safety, maintenance, utilities and insurance for that part of the Work. The division of responsibilities shall become binding upon the PORT and the CONTRACTOR and will be incorporated into the Certificate of partial Substantial Completion as to that part of the Work unless the PORT and the CONTRACTOR shall have otherwise agreed in writing.
  4. The PORT shall have the right to exclude the CONTRACTOR from any part of the Work which the PORT has so certified to be substantially complete, but the PORT shall allow the CONTRACTOR reasonable access to complete or correct items on the Punch List.

17.9.2. In lieu of the issuance of a Certificate of partial Substantial Completion, the PORT may take over operation of a facility constituting part of the Work, whether or not it is substantially complete, if such facility is functionally and separately usable; provided that prior to any such takeover, the PORT and the CONTRACTOR have agreed as to the division of responsibilities between the PORT and the CONTRACTOR for security, operation, safety, maintenance, correction period, heat, utilities and insurance with respect to such facility.

## 17.10 Physical Completion

17.10.1. Upon written notice from the CONTRACTOR that the physical Work is complete, the PORT will make a final inspection with the CONTRACTOR, and will notify the



CONTRACTOR in writing of all items this inspection reveals that the Work is incomplete or Defective. The CONTRACTOR shall immediately take such measures as are necessary to remedy such deficiencies. Physical Completion shall include completion of all Punch List items, final inspection, and PORT approval.

- 17.10.2. Documentation to be provided to the PORT required to achieve Physical Completion, shall include but not be limited to:
- a. Verification that the Punch List work has been completed and accepted by the PORT;
  - b. Project Site Documents as defined in Section 8.12;
  - c. Operations and Maintenance Manuals;
  - d. All Warranty Documentation, including Maintenance Bonds if any;
  - e. Final Commissioning Report;
  - f. Verification that all training has been completed;
  - g. A spare parts inventory that confirms delivery receipt by the PORT; and
  - h. Other documentation required by the Contract Documents.

#### 17.11 Final Payment

- 17.11.1. The CONTRACTOR may make application for Final Payment following the procedure for Progress Payments after the CONTRACTOR has obtained Physical Completion. Submittal of the Final Application for Payment shall constitute an absolute and unconditional waiver of any Claims of the CONTRACTOR except those Claims previously made by the CONTRACTOR in accordance with 18.4 and identified in writing by the CONTRACTOR as still unsettled at the time of submittal of the Final Application for Payment. The Final Application for Payment shall be accompanied by all documentation called for in the Contract Documents and individual Job Order and such other data and schedules as the PORT may reasonably require including but not limited to the following:
- a. Complete and legally effective releases or waivers (satisfactory to the PORT) of all Claims arising out of or filed in connection with the Work. In lieu thereof, and as approved by the PORT, the CONTRACTOR may furnish receipts or releases in full; an affidavit of the CONTRACTOR that the releases and receipts include all labor, services, material and equipment, and that all payrolls, material and equipment bills, and other indebtedness connected with the Work for which the PORT or its property might in any way be responsible, have been paid or otherwise satisfied; and consent of the Surety, if any, to Final Payment. If any Subcontractor, manufacturer, fabricator, Supplier or distributor fails to furnish a release or receipt in full, the CONTRACTOR may furnish a Bond or other collateral satisfactory to the PORT to indemnify the PORT against any Claim;
  - b. Affidavits of wages paid;
  - c. All Certified Payroll reports (if needed);
  - d. Affidavit that all Subcontractors and materialmen have been paid; and
  - e. Other documents as required by the Contract Documents.
- 17.11.2. After issuance of Physical Completion, the PORT will, within ten (10) Days after receipt of the final Pay Application, indicate in writing his/her recommendation of payment and present the Application to the PORT for payment. Thereupon the PORT will give written notice to the PORT and the CONTRACTOR that the Work is acceptable subject to the provisions of this Section 17.11. Otherwise, the PORT will return the Pay

Application to the CONTRACTOR, indicating in writing the reasons for refusing to recommend Final Payment, in which case the CONTRACTOR shall make the necessary corrections and resubmit the Pay Application. If the Pay Application and accompanying documentation are appropriate as to form and substance, the PORT shall, within thirty (30) Days after receipt thereof, pay the CONTRACTOR the amount recommended by the PORT.

- 17.11.3. If the PORT withholds its recommendation for payment due to the CONTRACTOR's failure to make payment to Subcontractor, or for labor, materials or equipment, the PORT may, at its sole option, and after providing the CONTRACTOR with at least five (5) Days' advance written notice, issue joint checks to the CONTRACTOR and to any Subcontractor or material or equipment suppliers to whom the CONTRACTOR failed to make payment for Work properly performed or material or equipment suitably delivered. Any payment made by joint check between the PORT, the CONTRACTOR and any Subcontractor or material or equipment supplier shall be deemed an accommodation only and does not create any contractual relationship between OWNER and any Subcontractor or other entities not having a direct contractual relationship with the PORT.

**17.12 The CONTRACTOR's Continuing Obligation**

The CONTRACTOR's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. Neither recommendation of any progress or Final Payment by the PORT, nor the issuance of a Certificate of Substantial Completion or a Certificate of Physical Completion, nor any payment by the PORT to the CONTRACTOR under the Contract Documents, nor any use or occupancy of the Work or any part thereof by the PORT, nor any act of acceptance by the PORT nor any failure to do so, nor any correction of Defective Work by the PORT shall constitute an acceptance of Work not in accordance with the Contract Documents and individual Job Order or a release of the CONTRACTOR's obligation to have performed the Work in accordance with the Contract Documents.

**17.13 Final Acceptance**

- 17.13.1. Following issuance of the Notice of Physical Completion and the completion of all Closeout Administrative Requirements, the PORT will formally accept the Project. Once the PORT determines that the CONTRACTOR has fulfilled these requirements, the PORT will issue a formal Certificate of Final Acceptance. The PORT Commission will formally accept the Project, unless the authority to grant Final Acceptance of the Work has been delegated to a PORT official, in which case Final Acceptance shall be accomplished by such official.
- 17.13.2. Documentation required for Closeout Administrative Requirements include but is not limited to:
- a. Verification of Final Pay Application payment;
  - b. Verification that all PORT provided items, such as key fobs, pad locks, keys, other property of the PORT provided for the CONTRACTOR's use, etc. have been returned; and
  - c. Receipt of All Grant Required Documentation by the PORT (Buy American Certificates, etc.).

**ARTICLE 18 SUSPENSION OF WORK AND TERMINATION****18.1 Suspension the Work**

- 18.1.1. The PORT may, at any time and without cause, suspend the Work or any portion thereof by notice in writing to the CONTRACTOR and the PORT which shall fix the date on which Work shall be resumed. The CONTRACTOR shall resume the Work on the date so fixed. The CONTRACTOR will be allowed an increase in the Job Order Price, or an extension of the Job Order Completion Time, or both, directly attributable to any PORT directed suspension, and substantiated, in accordance with Article 15.
- 18.1.2. Should the suspension be requested in writing by the CONTRACTOR, the CONTRACTOR shall provide a detailed Submittal for the basis for the request.
- a. If the PORT agrees with the suspension, the length of the suspension shall be mutually agreed to by the PORT and the CONTRACTOR.
  - b. The CONTRACTOR shall not be entitled to an adjustment of Job Order Completion Time or Job Order Price.
  - c. The CONTRACTOR will be responsible for the following:
    1. Safety;
    2. Site controls, including but not limited to, protection and prevention of damage to the Work including materials and equipment delivered to the construction site and not yet incorporated into the Work and PORT property, traffic controls, Temporary Erosion and Sedimentation Control (TESC), water quality, ensuring the site does not impede PORT operations;
    3. Maintenance of roadways and all utilities; and
    4. Any costs associated with the suspension of Work.

**18.2 Termination for Default**

- 18.2.1. The PORT may terminate the Contract following written notice to the CONTRACTOR and its Surety:
- a. If the CONTRACTOR disregards the authority of the PORT.
  - b. If the CONTRACTOR refuses or fails to prosecute the Work with such diligence to ensure completion in accordance with the Contract Documents.
  - c. If the CONTRACTOR is bankrupt, insolvent, or its financial condition impairs its ability to perform, or if it makes a general assignment for the benefit of creditors, if a trustee or receiver is appointed for the CONTRACTOR or for any of the CONTRACTOR's property, if the CONTRACTOR files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or similar laws, and the CONTRACTOR or its successor in interest does not provide adequate assurance of future performance in accordance with the Contract within ten (10) Days of receipt of a request for assurance from the PORT.
  - d. If the CONTRACTOR repeatedly fails to supply sufficient skilled workmen or suitable materials or equipment.
  - e. If the CONTRACTOR repeatedly fails to make prompt payments to Subcontractor or for labor, materials or equipment.
  - f. If the CONTRACTOR disregards Applicable Laws, including any orders of any public body having jurisdiction over the CONTRACTOR, the Work or the Project Site.
  - g. If the CONTRACTOR performs Work which deviates from the Contract Document and neglects or refuses to correct rejected Work.



expenses and damages for the completed Work. If the total expenses and damages are less than the unpaid balance due to the CONTRACTOR for Work completed prior to termination, the excess will be paid by the PORT to the CONTRACTOR. If the total expenses and damages exceed the unpaid balance of Work completed prior to termination, the CONTRACTOR and the Surety shall be jointly and severally liable to the PORT and shall pay the difference to the PORT.

- 18.2.7. In the event the PORT terminates the Contract, the termination shall not affect any rights of the PORT against the CONTRACTOR. The rights and remedies of the PORT under this Section 18.2 are in addition to any other rights and remedies provided by law or under the Contract Documents. Any retention or payment of monies to the CONTRACTOR by the PORT will not release the CONTRACTOR from liability. The terms and conditions of the Contract Documents shall remain in full force and effect until completion of the termination proceedings. Warranties, extended warranties, for Work completed, or partially completed, shall continue as though a termination had not occurred.
- 18.2.8. A termination for default by the PORT under this Section 18.2 that is adjudged unlawful or without sufficient cause shall be treated as a termination for convenience pursuant to Section 18.3 hereof.

### 18.3 Termination for Convenience

- 18.3.1. Upon seven (7) Days' written notice to the CONTRACTOR, the PORT may, at its convenience and without cause, terminate all or part of the Contract.

### 18.4 CLAIMS

#### 18.4.1. Time for Filing Claims

- a. Denial of a Supplemental Job Order is a mandatory condition precedent to filing a Claim under the Contract.
- b. Unless otherwise agreed in writing by the PORT, the fully documented Claim shall be received by the PORT within twenty (20) Days after the denial of a Supplemental Job Order Proposal.
- c. Failure to comply with the time requirements set for filing the Claim shall constitute acceptance by the CONTRACTOR, on behalf of itself and its Subcontractors and Suppliers, of the PORT's denial of a Supplemental Job Order. Such acceptance shall be considered a complete, full and final settlement and an accord and satisfaction of all costs, damages, and satisfaction, settlement, and release of all Claims related to or arising from the Supplemental Job Order. The CONTRACTOR expressly waives and releases any and all right to make a claim or demand or to take any action or proceeding against the PORT for any consequences arising out of, relating to, or resulting from the denial of such Change Order Proposal, including but not limited to unjust enrichment, breach of contract, changes in Contract Time or Contract Price, impact claims, claims for loss of productivity or inefficiency, or cumulative impact.

### 18.5 Claim Submission

- a. At all times during the Claim process, the CONTRACTOR agrees to continue to perform the Work with due diligence, unless a stop work order under Section 16.4 has been issued by the PORT. Both parties have a duty to take all reasonable steps

necessary to mitigate losses resulting from the Claim whether those losses are their own or another party's losses.

- b. Every Claim must be submitted by the CONTRACTOR in writing. At a minimum a fully documented Claim must contain the following information:
    1. 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;
    2. The date on which facts arose which gave rise to the Claim;
    3. The name of each employee of the PORT knowledgeable about the Claim;
    4. The specific provisions of the Contract Documents or individual Job Order which support the Claim;
    5. The identification of any documents and the substance of any oral communications that support the Claim;
    6. Copies of any identified documents, other than the Contract Documents or the individual job order, that support the Claim;
    7. If an adjustment in the Job Order Completion Time is sought, the specific Days and dates for which it is sought; the specific reasons the CONTRACTOR believes an extension in the Job Order Completion Time should be granted; and the CONTRACTOR's analysis of its Construction Schedule's Critical Path to demonstrate the reason for the extension in Contract Time;
  - c. If an adjustment in the Job Order Price is sought, the exact amount sought and a breakdown of that amount into the categories set forth per Article 15;
  - d. A notarized statement certifying, under penalty of perjury, that the Claim is made in good faith, that the supporting cost and pricing data, except for Blue Book equipment rates, have been incurred, are true and accurate to the best of the CONTRACTOR's knowledge and believe, that the Claim is fully supported by the accompanying data, and that the amount requested accurately reflects the adjustment in the Job Order Price or Job Order Completion Time for which the CONTRACTOR believes the PORT is liable. The individual signing such certification shall be a duly authorized representative of the CONTRACTOR who has necessary and appropriate authority and responsibility to commit the CONTRACTOR to the truthfulness of the certification;
  - e. A statement that the Claim covers all direct, indirect, consequential changes in cost and in time, and otherwise to which the CONTRACTOR and subcontractors and Suppliers of any tier is entitled.
- 18.5.2. If the CONTRACTOR claims that there has been a change that has caused an impact to the Critical Path, it shall provide a time impact analysis indicating all activities represented or affected by the change, with activity numbers, durations, predecessor and successor activities, resources and cost. The CONTRACTOR shall be responsible for preparing a Construction Schedule update, in a form satisfactory to the PORT, which compares the proposed new Construction Schedule to the original Construction Schedule (including any prior updates). The Construction Schedule update shall demonstrate to the PORT's reasonable satisfaction that the event or circumstance: (1) had a specific impact on the Critical Path, and except in cases of concurrent delay, was the sole cause of such impact, and (2) could not have been avoided by re-sequencing of the Work or other reasonable alternatives. If a request for additional Contract Time,

combined with previous requests for additional Contract Time, equals 20 percent or more of the Contract Time set forth in the original Construction Schedule, the CONTRACTOR shall provide, together with this request, a written consent of the Surety if the PORT requests such consent.

- 18.5.3. The PORT has the right to recover its analysis/administration cost of processing and evaluating a Claim for that portion of the Claim that is determined to be unfounded or unsupported. The cost of reimbursement will be the percentage of the original Claim that is determined to be unsupported multiplied by the cost of analysis/administration.
- 18.5.4. If the CONTRACTOR is submitting a Claim asserted on behalf of Subcontractor, Sub-Subcontractor, or Supplier, the CONTRACTOR shall specifically review and verify all Claim documentation provided by the Subcontractor, Sub-Subcontractor, or Supplier, to ensure that it fully complies with requirements of the Contract Documents generally and Subsection 18.5b of the General Conditions specifically.

## 18.6 Decision

Within ten (10) Days of receipt of the CONTRACTOR's documentation, the PORT will issue one of the following findings and provide them in writing to the CONTRACTOR: (1) request additional supporting data from the CONTRACTOR, (2) approve the Claim entirely, (3) reject the Claim entirely, (4) approve the Claim in part and reject the Claim in part, or (4) suggest a compromise. The PORT will approve a Supplemental Job Order for the resolved portions of the Claim. If the CONTRACTOR does not agree with the findings of the PORT, then the CONTRACTOR may, within seven (7) Days of the date of the PORT's written findings, demand in writing that parties arrange for a meeting to resolve any disputes per the process set forth in Section 19.4 hereof. Failure by the CONTRACTOR to make such a written demand within the seven (7) Day period shall constitute an absolute and unconditional waiver, release and bar of any such Claim and shall result in the PORT's findings being final and binding upon the CONTRACTOR.

18.6.1. Pre-Mediation Conference

18.6.2. Representatives of the PORT and shall meet, confer, and set a schedule for resolving any remaining disputes. Following such conference, the PORT will make findings and provide them to the CONTRACTOR. If the CONTRACTOR does not agree with the findings of the PORT, the CONTRACTOR must submit a written rebuttal addressing each point of disagreement, and citing the specific documentation supporting its opinion. This rebuttal must be received by the PORT within thirty (30) days of the conference or the Claim will be deemed abandoned. Within thirty (30) days of receipt of the CONTRACTOR's rebuttal, the PORT will (1) request a further meeting, (2) issue revised findings, or (3) re-affirm its previous findings.

18.6.3. The CONTRACTOR may not proceed to mediation (Section 19.5 hereof) unless the pre-mediation conference has taken place as set forth in this Section 19.4.

18.6.4. If the CONTRACTOR does not agree with the findings of the PORT subsequent to the pre-mediation conference, then the CONTRACTOR may file for mediation. Such filing shall be within thirty (30) Days of the date of the PORT's written findings. Mediation shall be scheduled within ninety (90) Days of the date of the CONTRACTOR's filing for mediation. Failure by the CONTRACTOR to file for mediation within the thirty (30) Day period shall constitute an absolute and unconditional waiver, release and bar of any such Claim and shall result in the PORT's findings being final and binding upon the CONTRACTOR.

**18.7 Mediation**

- 18.7.1. Any Claim remaining unresolved following the pre-mediation process set forth in Section 18.6.1 hereof shall be subject to mediation as a condition precedent to arbitration or the institution of legal or equitable proceedings by either party.
- 18.7.2. Request for mediation shall be filed in writing with the other party to the Contract. The request may be made concurrently with the filing of a demand for arbitration or the institution of legal or equitable proceedings but, in such event, mediation shall proceed in advance of arbitration or legal or equitable proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.
- 18.7.3. If the parties cannot agree on the choice of a mediator, the parties shall apply to the local state court to appoint a mediator. The mediator shall not also serve as an arbitrator.
- 18.7.4. The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Written and signed agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

**18.8 Arbitration**

- 18.8.1. The parties mutually agree that, except as set forth in Section 18.9 hereof, any Claims subject to, but not resolved by, mediation shall be resolved through arbitration, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Contract. The arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded. A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation.
- 18.8.2. The parties shall agree on the method for arbitrator selection. For disputes with \$350,000 and under at issue (not including WSST, attorney fees, or legal costs), a single arbitrator shall be selected. For disputes with over \$350,000, but not exceeding \$1,000,000, at issue (not including WSST, attorney fees, and legal costs), a panel of three arbitrators shall be selected. If the parties cannot agree on the choice of arbitrator(s) or the method of selection, the parties shall apply to the local state court to appoint the arbitrator(s).
- 18.8.3. The parties shall participate in discovery to the same extent allowed by the Federal Rules of Civil Procedure (FRCP) as may be amended by local rules of the nearest United States District Court in the state where the Project is located. Discovery shall not be more limited because the matter is being arbitrated. Despite any contrary rules or practices in arbitrator forums or through arbitration service providers (such as AAA or JAMS), Owner and the CONTRACTOR agree that, with respect to discovery matters (including but not limited to issuing document-only subpoenas and compelling the production of documents from third parties outside of a hearing), the arbitrator or panel shall be empowered in the same manner, and to the same extent, as a federal



district court judge. The parties shall ensure that this authority of the arbitrator or panel is passed down to all Subcontractors, Sub-Subcontractors and suppliers.

18.8.4. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

18.8.5. This agreement to arbitrate shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

## 18.9 **Litigation**

18.9.1. The parties mutually agree that any Claims in excess of \$1,000,000 and not resolved by mediation shall be resolved through litigation (unless the parties mutually agree to resolve the claim through binding arbitration, in which case the parties shall follow Section 18.8 hereof).

18.9.2. Litigation shall take place in in the Superior Court of Snohomish County, Washington.

18.9.3. The outcome shall be decided by the judge only (bench trial). Both parties expressly waive their right to a jury trial. If another involved party will not consent to a bench trial, the PORT, in its sole discretion, has the option to elect a consolidated jury trial. It is understood that the purpose of this paragraph is to allow the PORT to determine the best means of achieving a single consolidated proceeding that will minimize duplicative processes and minimize the risk of inconsistent results, in the following order of preference: (1) a consolidated bench trial of all significant parties, if possible; or (2) alternatively, and as a last resort, a consolidated jury trial of all significant parties.

18.9.4. All rights of appeal are fully preserved unless the parties agree otherwise under a separate written document.

18.9.5. For convenience of the parties to the Contract, it is mutually agreed that any cause of action which the CONTRACTOR has against the PORT arising from the Contract shall be filed with the Superior Court of Snohomish County, or by filing a demand for arbitration, within one (1) year from the date of Final Acceptance. The parties understand and agree that the CONTRACTOR's failure to file an action against the PORT within the time provided, or failure to strictly comply with all requirements of this 18.4, shall be a complete bar to constitute an absolute and unconditional waiver, release and bar of any such cause of action.

**ARTICLE 19 MISCELLANEOUS****19.1 Legal Fees**

Should any suit, action or arbitration be commenced in connection with any dispute arising out of the Contract, the prevailing party shall be entitled to recover its costs and disbursements, investigation costs and fees, expert witness costs and fees, and attorneys' costs and fees, as the court or arbitrator may adjudge reasonable, incurred in connection with such dispute before trial or arbitration, at trial or arbitration, upon any motion for reconsideration, upon any appeal or petition for review, and upon any collection efforts or proceedings.

**19.2 General**

The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto, and, in particular but without limitation, the warranties, guarantees and obligations imposed upon the CONTRACTOR by Article 5 and Article 18 and all of the rights and remedies available to the PORT thereunder, shall be in addition to, and shall not be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by law or contract, by special warranty or guarantee or by other provisions of the Contract Documents or individual Job Order, and the provisions of this Article 19 shall be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right and remedy to which they apply. All representations, warranties and guarantees made in the Contract Documents or individual Job Order shall survive Final Payment and termination or completion of the Contract.

**19.3 Computation of Time**

When any period of time is referred to in the Contract Documents by Days, it shall be computed to exclude the first Day and include the last Day of such period. If the last Day of any such period falls on a Saturday or Sunday or on a Day made a legal holiday by the law of the applicable jurisdiction, such Day shall be omitted from the computation.

**19.4 Governing Law**

The Contract Documents shall be governed by the laws of State of Washington. The sole venue and jurisdiction for any claim, cause of action, suit, proceeding, or any other remedy arising out of or in connection with the Contract shall be in Snohomish County, Everett, Washington. Any legal proceeding against the PORT shall be commenced within one (1) year of Final Acceptance of the Job Order in question.

**19.5 Non-Discrimination**

19.5.1. The PORT is strongly committed to providing a business environment free from discrimination and unlawful harassment including but not limited to, discrimination and harassment on the basis of religion, age, sex, marital status, race, color, creed, national origin, political affiliation, military status, status as an honorably discharged veteran, a disabled veteran or Vietnam era veteran, sexual orientation, any real or perceived sensory, mental or physical disability, or because of the participation or lack of participation in union activities, or inclusion in any other legally protected group.

19.5.2. The CONTRACTOR shall fully comply with all Applicable Laws pertaining to non-discrimination, including, but not limited to, PORT policies prohibiting conduct in violation of 42 U.S.C. 1983. Such PORT policies are incorporated herein by reference.

**19.6 Title and Headings**

The titles or headings of the sections, divisions, parts, articles, paragraphs, or subparagraphs of these General Conditions, any Supplementary Conditions and any other Contract Documents are intended only for convenience of reference and shall not be considered as having any bearing on the interpretation of the text.

**19.7 Amendments**

The Contract Documents may be amended only by a written instrument duly executed by the parties or their respective successors or assigns.

**19.8 Non-Waiver**

The PORT's oral communications and conduct, including, without limitation, any failure to enforce any of the terms, covenants, conditions or other provisions of the Contract Documents at any time (including any agreement by the PORT to accept nonconforming Work under Subsection 8.21.3), shall not in any way limit or waive the PORT's right thereafter to enforce or compel strict compliance with every term, covenant, condition or other provision, any course of dealing or custom of the trade notwithstanding. Furthermore, if the PORT makes and implements any interpretation of the Contract Documents without documenting such interpretation by an instrument in writing signed by both parties, such interpretation and implementation thereof will not be binding in the event of any future disputes. The consent by one party to any act by the other party requiring such consent shall not be deemed to render unnecessary the obtaining of consent to any subsequent act for which consent is required, regardless of whether similar to the act for which consent is given.

**19.9 Independent Contractor**

The CONTRACTOR is an independent contractor, and nothing contained in the Contract Documents shall be construed as constituting any relationship with the PORT other than that of an independent contractor. In no event shall the relationship between the PORT and the CONTRACTOR be construed as creating any relationship whatsoever between the PORT and any of the CONTRACTOR's employees. Neither the CONTRACTOR nor any of its employees is or shall be deemed to be an employee of the PORT. Except as otherwise specified in the Contract Documents, the CONTRACTOR has sole authority and responsibility to employ, discharge and otherwise control its employees and has complete and sole responsibility as a principal for its agents, for all Subcontractors, Sub-Subcontractors and for all other persons that the CONTRACTOR or any Subcontractor or Sub-Subcontractor hires or engages to perform or assist in performing the Work.

**19.10 Successors and Assigns**

The Contract Documents shall be binding upon and inure to the benefit of the PORT and the CONTRACTOR and their permitted successors, assigns and legal representatives.

**19.11 Interpretation of Contract Documents**

In the Contract Documents, where appropriate: the singular includes the plural and vice versa; references to statutes or regulations include statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation referred to; the words "including," "included," "includes," and "include" are deemed to be followed by the words "without limitation;" unless the context requires otherwise, in phrases involving performance by a party, the word "shall" indicates a requirement imposed on the party; unless otherwise indicated, references to sections, appendices and exhibits are to the document which contains such references; words such as "herein," "hereof," and "hereunder" refer to the entire document in which they are

contained and not to any particular provision or section; words not otherwise defined that have well-known technical or construction industry meanings are used in accordance with such recognized meanings; references to either party include their respective permitted successors and assigns; and words of any gender used herein include each other gender where appropriate. Unless otherwise specified, lists contained in the Contract Documents defining the Project or the Work shall not be deemed all-inclusive.

**19.12 Review by the CONTRACTOR**

The CONTRACTOR acknowledges and agrees that it had the opportunity and obligation, prior to the Proposal Date, to review the Contract Documents and to bring to the PORT's attention any conflicts or ambiguities contained therein. CONTRACTOR further acknowledges and agrees that it has independently reviewed the Contract Documents with legal counsel, and that it has the requisite experience and sophistication to understand, interpret and agree to the particular language of the Contract Documents. Accordingly, in the event of an ambiguity in or dispute regarding the interpretation of the Contract Documents, the Contract Documents shall not be construed against the party that prepared them, and instead other rules of interpretation shall be used. The PORT's answers to any questions posed during the bid process for the Project shall in no event be deemed part of the Contract Documents and shall not be relevant in interpreting the Contract Documents except as they may clarify provisions otherwise considered ambiguous.

**19.13 Further Assurances**

The CONTRACTOR shall promptly execute and deliver to the PORT all such instruments and other documents and assurances as are reasonably requested by the PORT to further evidence the obligations of the CONTRACTOR hereunder, including assurances regarding assignments of subcontracts and supply agreements contained herein

**19.14 Survival**

The CONTRACTOR's representations and warranties, the dispute resolution provisions contained in 18.4, and all other provisions which by their inherent character should survive termination of the Contract, shall survive the termination of the Contract.

**19.15 Severability**

If any clause, provision, section or part of the Contract Documents is ruled invalid by an arbitrator or court of competent jurisdiction, then the invalidity or unenforceability of any such clause, provision, section or part shall not affect the validity or enforceability of the balance of the Contract, which shall be construed and enforced as if the Contract Documents did not contain such invalid or unenforceable clause, provision, section or part.

**19.16 Entire Contract**

The Contract Documents contain the entire understanding of the parties with respect to the subject matter hereof and supersede all prior agreements, understandings, statements, representations and negotiations between the parties with respect to its subject matter.

**19.17 Counterparts**

The Contract Documents may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**ARTICLE 20 – INSURANCE****20.1 CONTRACTOR's Liability Insurance**

CONTRACTOR shall purchase and maintain such commercial general liability and other insurance as will provide protection from claims set forth below which may arise out of or result from CONTRACTOR's performance of the Work and CONTRACTOR's other obligations under the Contract Documents, whether such performance is by CONTRACTOR, by any Subcontractor, by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable.

1. Commercial General Liability Insurance on an Occurrence Basis in an amount not less than \$2,000,000 per occurrence and at least \$3,000,000 in the annual aggregate, including but not limited to: Bodily Injury Liability, Property Damage Liability (to include explosion, collapse and underground), Blanket Contractual Liability, Premises/Operations (including off-site operations), Broad Form Property Damage Liability, Products: Completed Operations Liability, Personal Injury Liability, Liability for Property of Others in the Care, Custody and Control of the CONTRACTOR.
  - i. Commercial General Liability insurance shall be written on Insurance Services Office ("ISO") occurrence form at least as broad as CG 00 01 and shall cover liability arising from premises, operations, stop gap liability, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract. The Commercial General Liability insurance shall be endorsed to provide the Aggregate per Project Endorsement ISO form CG 25 03 11 85 or substitute endorsement at least as broad providing equivalent coverage. There shall be no endorsement or modification of the Commercial General Liability insurance for liability arising from explosion, collapse or underground property damage.
  - ii. The PORT shall be named an insured under the CONTRACTOR'S Commercial General Liability insurance policy with respect to the Work performed for the PORT using ISO Additional Insured endorsement CG 20 10 10 01 and Additional Insured-Completed Operations endorsement CG 20 37 10 01 or substitute endorsements providing at least as broad coverage.
  - iii. If this project involves work on, near or over water, the Port reserves its right to require a Commercial General Liability (CGL) policy with the CGL Marine exclusion removed or a Marine General Liability policy with coverages as specified in Article. In addition, the policy shall include the appropriate marine liability coverages as required by this project.
  - iv. If the Contractor utilizes drone(s) on-site, the Contractor shall provide evidence that the aircraft exclusion has been removed from the Commercial General Liability or shall provide a separate policy covering the use of drones in an amount not less than \$1,000,000 per occurrence.
2. Comprehensive Automobile Liability in an amount not less than \$1,000,000 per occurrence including but not limited to: Bodily Injury Liability, Property Damage Liability, Personal Injury Liability, Owned and Non-Owned Auto Liability, Hired and Borrowed Auto Liability
  - i. Automobile Liability insurance covering all owned, non-owned, hired, and leased vehicles as well as employee vehicles utilized in performance of the Work or at the Work site shall be provided. Coverage shall be primary with respect to the PORT and shall be written on ISO form CA 00 01 or a substitute form

providing equivalent liability coverage. The insurance policy shall be endorsed to provide contractual liability coverage.

3. Vessel Liability: If CONTRACTOR or any subcontractor of any tier purposes to use watercraft as a part of this project, the following insurance will be required, unless waived in writing:
  - i. Vessel Protection and Indemnity Insurance (including Masters and members of the crew) with limits of liability not less than \$1,000,000 per occurrence. The Port of Everett shall be named by endorsement as an Additional Insured and a Waiver of Subrogation endorsement shall be provided.
  - ii. Vessel Pollution Liability with limits of liability at least equal to the Protection and Indemnity limit of liability. The Port of Everett shall be named by endorsement as an Additional Insured and a Waiver of Subrogation endorsement shall be provided.
  - iii. Hull & Machinery coverage equal to the actual cash value of the vessel.
4. Worker's Compensation as required by Washington law and Employer's Liability Insurance (Stop Gap) with limits not less than \$1,000,000 per occurrence. If the PORT authorizes sublet work, the CONTRACTOR shall require each subcontractor to provide Worker's Compensation Insurance for its employees, unless the CONTRACTOR covers such employees.
5. USL&H Insurance and Jones Act. Some work orders may have situs and status and may require Workers' Compensation coverage for certain Federal acts (USL&H or Jones Act). The CONTRACTOR has the sole responsibility for determining if these acts are applicable. If they are applicable, the CONTRACTOR has sole responsibility for procuring the appropriate coverage and providing evidence of such coverage to the PORT. Failure of the CONTRACTOR to procure either USL&H or Jones Act coverage shall at no time create liability on the part of the PORT. The CONTRACTOR shall bear all responsibility and shall indemnify and hold harmless the PORT for all liability, cost and damages. USL&H insurance will be reimbursed on a work order by work order basis.
6. Contractor Pollution Liability will be required for this contract. Minimum limits of liability will not be less than \$1,000,00 per claim or occurrence and \$2,000,000 aggregate per policy period of one year, including but not limited to bodily injury, property damage, cleanup costs and defense including costs and expenses incurred in the investigation, defense, or settlement of claims. The CONTRACTOR shall name the PORT as additional insured with respect to the Contractor Pollution Liability. If the Contractor Pollution Liability coverage is written on a claims-made form:
  - i. The retroactive date must be shown and must be the date of the agreement or the start of work. Insurance must be maintained, and evidence of insurance must be provided for at least five (5) years after completion of the work.
  - ii. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the agreement date, the contractor must purchase an extended period coverage for a minimum of five (5) years after the completion of the work.
  - iii. A copy of the claims reporting requirements must be submitted to the port for review.
7. Hazardous Waste: The contractor hauling hazardous waste shall provide MCS 90 and CA 9948 Endorsement- coverage in the amounts of these minimum limits shall not be construed as to relieve the contractor from liability in excess of such limits. The

- additional insured endorsement shall not be limited to the amounts specified by the contract documents unless expressly waived in writing by the Port.
8. Contractor shall comply with the following conditions and procure and keep in force during the term of this agreement, at Contractor's own cost and expense, the policies of insurance with companies authorized to do business in the State of Washington, which are rated at least "a" or better and with a numerical rating of no less than vii, by AM Best company and which are acceptable to the port.
  9. The Contractor's insurance coverage shall be primary insurance as respect to the Port. Any insurance, self-insurance or other coverage maintained by the port shall be for the protection of the port and excess to the contractor's insurance and shall not contribute with it. The above liability policies shall be endorsed to contain a provision that the policy shall not be canceled or materially changed without 30 days' prior written notice by certified mail, return receipt requested, has been given to the port. No cancellation provision in any insurance policy shall be construed in derogation of the continuous duty of the contractor to furnish the required insurance during the term of this agreement.
  10. Upon written request by the port, the insurer or his/her agent will furnish, prior to or during any work being performed, a copy of any policy cited above, certified to be a true and complete copy of the original.
  11. Within 10 days of notice of award and prior to execution of the contract, contractor shall provide the port with a certificate of insurance acceptable to the port evidencing the above-required insurance and naming the Port of Everett, its officers, employees and agents as additional insureds on the commercial general liability insurance policy and the business automobile liability insurance policy with respect to the operations performed and services provided under this agreement and that such insurance shall apply as primary insurance on behalf of such additional insureds. The Port shall be named as an additional insured by endorsement using iso form cg 2010 or equivalent. Receipt by the Port of any certificate showing less coverage than required is not a waiver of the contractor's obligations to fulfill the requirements.
  12. Contractor's insurance for other losses. The contractor shall assume full responsibility for all loss or damage from any cause whatsoever to any tools, contractor's employee-owned tools, machinery, equipment, or motor vehicles owned or rented by the contractor, or the contractor's agents, suppliers, or subcontractors as well as to any temporary structures, scaffolding, and protective fences.
  13. contractor certifies that it is aware of the provisions of title 51 of the revised code of Washington which requires every employer to be insured against liability of workers' compensation, or to undertake self-insurance in accordance with the provisions of that title. contractor shall comply with the provisions of title 51 of the revised code of Washington before commencing the performance of the work. The Contractor shall provide the port with evidence of workers' compensation insurance (or evidence of qualified self-insurance) before any work is commenced.
  14. In case of the breach of any provision of this article, the Port may, at its option and with no obligation to do so, provide and maintain at the expense of contractor, such types of insurance in the name of the contractor, and with such insurers, as the Port may deem proper, and may deduct the cost of providing and maintaining such insurance from any sums which may be found or become due to contractor under this agreement or may demand contractor to promptly reimburse the Port for such cost.
  15. If the Contractor is required to make corrections to the work after final acceptance, the contractor shall obtain, at its own expense, prior to the commencement of any

corrective work, insurance coverage as required by the Contract Documents, which coverage shall be maintained until the corrections to the work have been completed and accepted by the Port.

#### 20.2 Acceptance of Insurance

If the PORT has any objection to the coverage afforded by or other provisions of the insurance required to be purchased and maintained by CONTRACTOR in accordance with Article 5.3 based on its not complying with the Contract Documents, PORT will notify CONTRACTOR in writing thereof within ten (10) days of the date of delivery of such certificates to PORT.

### ARTICLE 21 PORT OF EVERETT SPECIFIC TERMS & CONDITIONS

#### 21.1 TWIC Requirements at the Marine Terminal Facilities

- A. Work for this project will be performed in a restricted area of the Port. In accordance with Department of Homeland Security federal requirements, Transportation Worker Identification Credentials (TWIC) will be required for all personnel of the Contractor, subcontractors, suppliers, and other persons that need to access this restricted area. The ability of the Contractor to meet and maintain TWIC compliance will be a condition of the contract. Failure to meet or maintain TWIC compliance for the duration of the project will result in non-award or cancellation of the contract.
- B. TWIC cardholders will be required to have their TWIC cards with them and available at all times. Federal regulations allow persons without a TWIC card to enter the restricted area only with an approved TWIC-cardholding escort. TWIC escorts must be approved by the Facility Security Officer, must hold a valid TWIC card, must be trained for this facility, and may only escort up to five (5) individuals. The Contractor will be responsible for ensuring TWIC compliance by its employees, subcontractors, suppliers, and any other persons the Contractor contracts with for this project. The Port of Everett will not provide escort for non-TWIC cardholders.
- C. Contractors should allow between 2 - 12 weeks after application at an enrollment center for the security threat assessment and issuance of TWIC. TWIC processing time is dependent on Department of Homeland Security backlog.
- D. Procedure for TWIC Issuance
  1. Pre-enroll at <https://universalenroll.dhs.gov> to enter all of the applicants basic information and make an appointment at an enrollment center to complete the process (although appointments are not required).
  2. Applicants must then visit an enrollment center where they will pay the enrollment fee and complete the TWIC application process. The applicant must bring identity verification documents to enrollment and, in case of aliens, immigration documents that verify their immigration status, so that the documents can be scanned into the electronic enrollment record.

#### 21.2 Construction Schedule

Contractor shall describe in the Construction Schedule any vessel or barge movements during the course of construction and provide an estimated number of trips per day.



**21.3 Seaport Rail Protection & Access**

The Contractor shall ensure that the railroad tracks on the Seaport are protected from any tracked equipment. In addition, no equipment is to be parked, or left, in the yellow striped areas at any time.

**21.4 Use of Name & Logo**

All uses of any logo or name of the Port of Everett publicly for publicity, promotion or otherwise must have prior written approval by Port before any use. All requests for approval pursuant to this Section must be submitted to Public Affairs, at the following e-mail address: [publicaffairs@portofeverett.com](mailto:publicaffairs@portofeverett.com) at least five (5) business days prior to the date on which a response is needed.

**ARTICLE 22 JOC PROCEDURE FOR ORDERING WORK****22.1 Applicability**

These Article 22 procedures will apply for any Piggybacking Agency accessing the services of CONTRACTOR under its agreement with the Port. Prior to any piggybacking, an agency may enter into an Interlocal Agreement with the Port and register with Sourcewell as a Participating Entity.

**22.2 Initiation of a Job Order.**

As the need exists, the PORT will notify Gordian and the CONTRACTOR that a potential project exists, schedule a Joint Scope Meeting and submit a JOC Intake Form.

A. The CONTRACTOR shall attend the Joint Scope Meeting and discuss, at a minimum:

1. the general scope of the work;
2. alternatives for performing the work and value engineering;
3. access to the site and protocol for admission;
4. hours of operation;
5. staging area;
6. requirements for catalog cuts, technical data, samples and shop drawings;
7. requirements for professional services, sketches, drawings, and specifications;
8. construction duration;
9. liquidated damages;
10. the presence of hazardous materials;
11. date on which the Job Order Proposal is due.

B. Upon completion of the joint scoping process, the CONTRACTOR will prepare a draft Detailed Scope of Work referencing any sketches, drawings, photographs, and specifications required to document accurately the work to be accomplished. The PORT shall review the Detailed Scope of Work and request any required changes or modifications. When an acceptable Detailed Scope of Work has been prepared, the PORT will authorize the CONTRACTOR to prepare a Job Order Proposal. The Detailed Scope of Work, unless modified by both the CONTRACTOR and the PORT, will be the basis on which the CONTRACTOR will develop its Job Order Proposal and the PORT will evaluate the same. The CONTRACTOR does not have the right to refuse to perform any task or any work in connection with a particular Project.

**22.3 Preparation of the Price Proposal.**

22.3.1. The CONTRACTOR Job Order Proposal shall include, at a minimum:

- a. Job Order Price Proposal;
- b. Required drawings or sketches;
- c. List of anticipated Subcontractors and Materialmen;

- d. Construction schedule;
  - e. Requested submittals
  - f. Other requested documents.
- 22.3.2. The Job Order Price shall be the value of the approved Job Order Price Proposal. The value of the Job Order Price Proposal shall be calculated by summing the total of the calculations for each Pre-priced Tasks (Unit Price x quantity x Adjustment Factor) plus the value of all Non Pre-priced Tasks only when a task is not included in the CTC.
- 22.3.3. The CONTRACTOR will prepare Price Proposals in accordance with the following:
- a. Pre-priced Task: A task described in, and for which a unit price is set forth in, the Construction Task Catalog®.
  - b. Non Pre-priced Task: A task that is not set forth in the Construction Task Catalog. No more than twenty (20%) of the dollar value of a work order may consist of items of work not contained in the CTC.
  - c. Information submitted in support of Non Pre-priced Tasks shall include, but not be limited to, the following:
    - 1) Catalog cuts, specifications, technical data, drawings, or other information as required to evaluate the task.
    - 2) If the CONTRACTOR will perform Work with its own forces, and the task is not an already Pre-priced task in the CTC, it shall submit three independent quotes for all material to be installed and shall, to the extent possible, use Pre-priced Tasks for labor and equipment from the Construction Task Catalog®. If the work is to be subcontracted, the CONTRACTOR must submit three independent quotes from subcontractors. The CONTRACTOR shall not submit a quote or bid from any supplier or subcontractor that the CONTRACTOR is not prepared to use. The PORT may require additional quotes and bids if the suppliers or subcontractors are not acceptable or if the prices are not reasonable. The PORT may also, at its discretion, accept less than three quotes.
    - 3) The final price submitted for Non-Pre-priced Tasks shall be according to the following formula:

**For Non Pre-priced Tasks Performed with CONTRACTOR's Own Forces:**

A = The hourly rate for each trade classification not in the Construction Task Catalog® multiplied by the quantity;

B = The rate for each piece of Equipment not in the Construction Task Catalog® multiplied by the quantity;

C = Lowest of three independent quotes for all materials.

**Total for a Non Pre-priced Tasks performed with CONTRACTOR's Own Forces =**  
 $(A+B+C) \times \text{Non Pre-Priced Task Adjustment Factor}$

**For Non Pre-priced Tasks Performed by Subcontractors:**

If the Non Pre-priced Task is to be subcontracted, the CONTRACTOR must submit three independent quotes for the work.

D = Lowest of three Subcontractor Quotes

**Total Cost for Non Pre-priced Tasks performed by Subcontractors =**  $D \times \text{Non Pre-Priced Task Adjustment Factor}$

- 4) After a Non Pre-priced Task is used on three separate Job Orders, the Unit Price for such task will be established, following approval by the PORT, and fixed as a permanent Non Pre-priced Task which will no longer require price justification.

- 5) The PORT's determination as to whether a task is a Pre-priced Task or a Non Pre-priced Task shall be final, binding and conclusive as to the CONTRACTOR.
- 22.3.4. If the CONTRACTOR is required to pay a fee to obtain a building permit or any other permit fee to the City, State or some other governmental or regulatory agency, then the amount of such fee paid by the CONTRACTOR for which a receipt is obtained shall be treated as a Reimbursable Task.
- 22.3.5. The CONTRACTOR shall provide incidental engineering and architectural services required in connection with a particular Job Order including drawings and information required for filing.
- 22.3.6. The CONTRACTOR'S Job Order Proposal shall be submitted by the date requested by the PORT. All incomplete Job Order Proposals shall be rejected. The time allowed for preparation of the CONTRACTOR'S Job Order Proposal will depend on the complexity and urgency of the Job Order but should average between seven and fourteen days. On complex Job Orders, such as Job Orders requiring incidental engineering/architectural drawings and approvals and permits, allowance will be made to provide adequate time for preparation and submittal of the necessary documents.
- 22.3.7. In emergency situations and minor maintenance and repair Job Orders requiring immediate completion, the Job Order Proposal may be required quickly and the due date will be so indicated as described below, the CONTRACTOR may be directed to begin work immediately with the paperwork to follow.
- 22.3.8. By submitting a Job Order Proposal to the PORT, the CONTRACTOR agrees to accomplish the Detailed Scope of Work at the price submitted. It is the CONTRACTOR responsibility to include the necessary tasks and quantities in the Price Proposal and apply the appropriate Adjustment Factor(s) prior to delivering it to the PORT.
- 22.4 Review of the Job Order Proposal and Issuance of the Job Order
- 22.4.1. The PORT will evaluate the entire Job Order Price Proposal to determine the reasonableness of approach, including the appropriateness of the tasks and quantities proposed.
- 22.4.2. The CONTRACTOR may choose the means and methods of construction; subject however, to the PORT's right to reject any means and methods proposed by the CONTRACTOR that:
- Will constitute or create a hazard to the work, or to persons or property; or
  - Will not produce finished Work in accordance with the terms of the Contract; or
  - Unnecessarily increases the price of the Job Order when alternative means and methods are available.
  - If the CONTRACTOR uses means and methods in the field that differ significantly from those outlined in the Job Order Proposal, the PORT may request a refund of the difference between the higher cost task listed in the proposal and the task actually performed (e.g., Proposal of an excavator but use of a ditch witch).
- 22.4.3. The PORT reserves the right to reject a Job Order Proposal or cancel a Project for any reason. The PORT also reserves the right not to issue a Job Order if it is determined to be in the best interests of the PORT. The PORT may perform such work by other means. The CONTRACTOR shall not recover any costs arising out of or related to the development of the Job Order including but not limited to the costs to attend the Joint Scope Meeting, review the Detailed Scope of Work, prepare a Job Order Proposal

(including incidental architectural and engineering services), subcontractor costs, and the costs to review the Job Order Proposal with the PORT.

- 22.4.4. By submitting a Job Order Proposal to the PORT, the CONTRACTOR agrees to accomplish the Detailed Scope of Work at the lump sum price submitted. It is the CONTRACTOR's responsibility to include the necessary Pre-priced Tasks and Non Pre-Priced Tasks and quantities in the Job Order Price Proposal prior to delivering it to the PORT.
- 22.4.5. Each Job Order shall reference the Detailed Scope of Work, set forth the Job Order Price and the Job Order Completion Time. All clauses of this Agreement shall be applicable to each Job Order. The Job Order, signed by the PORT and delivered to the CONTRACTOR constitutes the PORT's acceptance of the CONTRACTOR'S Job Order Proposal. A signed copy of the Job Order will be provided to the CONTRACTOR.

In the event that immediate response is necessary, the CONTRACTOR shall be required to follow alternative procedures as established by the PORT. The CONTRACTOR shall begin work as directed notwithstanding the absence of a fully developed Request for Proposal, Detailed Scope of Work, or Job Order. The CONTRACTOR shall be compensated for such work as if the work had been ordered under the standard procedures plus an immediate response mobilization equal to the amount specified in the table below. When calculating the increase to the Job Order Price according to the table below, the PORT shall apply whichever number results in the higher dollar amount

<u>Job Order Price</u>	<u>Increase</u>
\$1.00 to \$15,000.00	\$1,000
\$15,000.01 to \$25,000	10%
\$25,000.01 to \$50,000.00	8% or \$2,500
\$50,000.01 to \$100,000.00	6% or \$4,000
\$100,000.01 to \$250,000.00	4% or \$6,000
>\$250,000.01	2% or \$10,000

**ARTICLE 23 CONSTRUCTION TASK CATALOG (CTC) ANNUAL UPDATE**

23.1 Construction Task Catalog (CTC) Update

The Construction Task Catalog issued with this solicitation will be in effect for the first year of the contract. On the anniversary of this contract a new Construction Task Catalog will be furnished to address the escalation or de-escalation of costs of materials and services. The new Construction Task Catalog will be effective for the 12-month period after the anniversary date. The Construction Task Catalog that accompanies each anniversary shall only apply to Purchase Orders issued after the effective date of that specific renewal term and shall have no impact on Purchase Orders issued prior to the effective date of that specific renewal term.

23.2 Adjustment Factors

The Adjustment Factors submitted with the Contractor's Proposal shall be used for the full term of the Contract. On the annual anniversary of the Contract, Port shall issue the Contractor a new Construction Task Catalog. The Contractor shall use the Construction Task Catalog in effect on the date the Proposal is due. However, the Contractor cannot delay the issuance of a Proposal

to take advantage of a scheduled update of the Construction Task Catalog. In that event the Contractor shall use the Construction Task Catalog that would have been in effect without delay.

## **ARTICLE 24 JOC SOFTWARE, CONTRACTOR LICENSE FEE, AND COOPERATIVE PURCHASING**

### **24.1 Job Order Contracting Software and System License**

24.1.1 JOC Software: The Port selected The Gordian Group's (Gordian) Job Order Contracting (JOC) System for their JOC program. The Gordian JOC Solution™ includes Gordian's proprietary JOC Software Applications, construction cost data, and Construction Task Catalog®, which shall be used by the Contractor solely for the purpose of fulfilling its obligations under this Contract, including the preparation and submission of Job Order Proposals, subcontractor lists, and other requirements specified by Owner. Contractor's use, in whole or in part, of Gordian's JOC Applications, Construction Task Catalog® and other proprietary materials provided by Gordian for any purpose other than to execute work under this Contract for the Owner is strictly prohibited unless otherwise approved in writing by Gordian. The Contractor hereby agrees to abide by the terms of the following JOC System License.

24.1.2 JOC System License: Gordian hereby grants to the Contractor for the term of this Contract, a non-exclusive right, non-transferable, privilege, and license to Gordian's proprietary JOC System (comprised of the JOC software applications and support documentation, the CTC, construction cost data, Technical Specifications, training materials, marketing materials and any other proprietary materials provided to Contractor by Gordian (collectively referred to as "Proprietary Information"). The Proprietary Information will be used for the sole purpose of executing Contractor's responsibilities to the City and the Participating Public Agency s under this Contract ("Limited Purpose"). In the event this Contract expires or terminates as provided herein, or the Gordian's contract with the Port expires or terminates, this JOC System License will terminate, and the Contractor will return all Proprietary Information in its possession to Gordian.

24.1.3 Contractor acknowledges that Gordian will retain exclusive ownership of all proprietary rights to the Proprietary Information, including all U.S. and international intellectual property and other rights such as patents, trademarks, copyrights, and trade secrets. Contractor will have no right or interest in any portion of the Proprietary Information except the right to use the Proprietary Information for the Limited Purpose set forth herein. Except in furtherance of the Limited Purpose, Contractor must not distribute, disclose, copy, reproduce, display, publish, transmit, assign, sublicense, transfer, provide access to, use or sell, directly or indirectly (including in electronic form), any portion of the Proprietary Information.

24.1.4 Contractor acknowledges and agrees to respect the copyrights, trademarks, trade secrets, and other proprietary rights of Gordian in the Proprietary Information during and after the term of this Contract and must at all times maintain complete confidentiality with regard to the Proprietary Information provided to Contractor, subject to federal, state and local laws related to public disclosure. Contractor further acknowledges that a breach of any of the terms of this Contract by Contractor will result in irreparable harm to Gordian for which monetary damages would be an inadequate remedy, and Gordian will be entitled to injunctive relief (without the necessity of posting a bond) as well as all other monetary remedies available at law or in equity. In the event that it becomes necessary for either party to this JOC System License to enforce the provisions of this Contract or to obtain redress for the breach or violation of any of its provisions, whether by litigation, arbitration or other proceedings, the

prevailing party will be entitled to recover from the other party all costs and expenses associated with such proceedings, including reasonable attorney's fees.

24.1.5 In the event of a conflict in terms and conditions between this JOC System License and any other terms and conditions of this Contract or any Order, Purchase Order or similar purchasing document (Purchase Order) issued by the Port, this JOC System License will take precedence.

24.1.6 The Contractor shall be required to execute Gordian's System License and Fee Agreement and pay a 7.5% Administrative Fee on all Purchase Orders issued to obtain access to the Gordian JOC Solution™. The License Fee is to be included in the Contractor's Adjustment Factors.

## 24.2 Cooperative Purchasing

24.1.7 RCW 39.34 allows cooperative purchasing between public agencies (political subdivisions) in the State of Washington. The successful party shall have the option of extending its offer to the Port to other agencies for the same cost, terms and conditions.

24.1.8 The Port does not accept any responsibility for agreements, contracts or purchase orders issued by other public agencies to the successful party. Each public agency accepts responsibility for compliance with any additional or varying laws and regulations governing purchase by or on behalf of the public agency. The Port accepts no responsibility for the performance of the successful party in providing services to other public agencies, nor any responsibility for the payment price to the successful party for other public-agency purchases. Public agencies accessing excess contract capacity will need to execute an Interlocal Agreement with the Port, and will need to register as a Participating Entity with Sourcewell before accessing contracts.

24.1.9 **Cooperative Purchasing.** With Port of Everett Commissioners' approval, other public agencies may utilize the Contractor's services and the Port's contract capacity through an Interlocal Agreement with the Port of Everett. The Interlocal Agreement will identify the contract capacity extended to the public agency and will incorporate the terms, conditions and price book of the original contract as established from this RFP. Public agencies will also need to register with Sourcewell as a Participating Entity.

24.1.9.1 Once the Interlocal Agreement and registration with Sourcewell is in place, the Contractor and the participating public agency shall work directly together to manage that agencies JOC program. The Contractor's participation in the other agencies JOC program shall not impact the Contractor's obligation to the Port of Everett.

24.1.9.2 The Proposer can approve or decline extending the prices and terms of this solicitation to other public agencies.

24.1.9.3 The CONTRACTOR acknowledges that The Gordian Group, Inc. will administer cooperative purchases through this Contract and that the PORT has no obligation to administer purchases by Entities

24.1.9.4 The PORT and the Consultant authorize the CONTRACTOR the use of the PORT's and Consultant's names, logos, trademarks, and the PORT's and Consultant provided materials solely for the presentation and promotion of the availability and use of this Contract by Entities. The CONTRACTOR authorizes the PORT and the Consultant the use of the CONTRACTOR's name, logos, trademarks, and CONTRACTOR provided materials in the presentation and promotion of the availability and use of this Contract by Entities.

24.1.10 The PORT and the Consultant shall not be liable or responsible for any obligation, including, but not limited to, payments due under a Job Order, Purchase Order or similar purchasing document issued to the CONTRACTOR by the Entity (“Purchase Order”).

24.1.11 If the contract is utilized the Contractor agrees to pay a 7.5% Administrative Fee. Unless otherwise agreed with Gordian, Contractor shall make progress payments for the License Fee in proportion to the percentage of construction completed to be invoiced at milestones reasonably established by Gordian. Contractor shall pay all Gordian invoices within thirty (30) days of date of invoice and payment will be sent as specified by Gordian. Administrative Fee not paid by the specified deadline shall bear an interest rate of 1.5% per month until paid.

24.1.12 The Contractor shall keep Gordian reasonably informed of the construction status of each active construction project, which shall include responding to Gordian inquiries regarding construction status within 5 days. Additionally, the Contractor shall:

- Within two business days of receipt of a Job Order or Purchase Order from a Member, the Contractor must provide notification to Gordian by forwarding a copy of the Job Order or Purchase Order to Gordian.
- Within two business days of receiving initial payment from a Member, the Contractor must provide notification to Gordian of the initial payment by forwarding a copy of the submitted invoice to Gordian.

24.1.13 The Consultant and Contractor shall mutually utilize Gordian’s management software to track utilization, Fees, and payments. Gordian’s management software may include, but not limited to, ezIQC®, eGordian®, or Gordian Cloud. The Contractor shall have no claim or right to any portion of the Fees. Failure to pay Fees in a timely manner shall be considered a material breach of this Contract and, at Port’s sole discretion, may be deemed grounds for termination of this Contract.

24.1.14 Remittance of Administrative Fees: The CONTRACTOR shall remit Administrative Fees as follows:

<b>Payments Made Payable to:</b>	The Gordian Group, Inc.
<b>Mail Checks to:</b>	The Gordian Group, Inc.
	PO Box 74008498
	Chicago, IL 60674-8498

24.1.15 The PORT and the Consultant may request records from the CONTRACTOR for all cooperative purchasing through this Contract and payment of all License Fees. The CONTRACTOR hereby agrees and authorizes PORT and/or Entity to provide a copy of each Job Order issued to the Consultant. If discrepancies exist between cooperative purchasing activity and Administrative Fees paid, the PORT or the Consultant will provide written notification to the CONTRACTOR of discrepancies and allow the CONTRACTOR ten (10) days from the date of notification to resolve the discrepancy. In the event the CONTRACTOR does not resolve the discrepancy to the satisfaction of the PORT and/or the Consultant, the PORT and/or the Consultant reserve the right to engage a third party to conduct an independent audit of the CONTRACTOR’s records and, in the event CONTRACTOR is not in compliance with this Contract, CONTRACTOR shall reimburse the appropriate party for the cost and expense related to such audit.

**ARTICLE 25 COMPLIANCE WITH RCW 39.10 -ALTERNATIVE PUBLIC WORKS****25.1 Maximum Job Order Value**

The maximum dollar amount for an individual Job Order is five hundred thousand dollars (\$500,000) excluding Washington State sales and use tax. All Job Orders for the same project (original plus any Supplemental Job Orders) shall be treated as a single Job Order for the purpose of the \$500,000 limit.

**25.2 Adjustment Factors and Construction Task Catalog**

The CONTRACTOR is paid for the Job Order based upon fixed prices based on The Gordian Group's Construction Task Catalog<sup>®</sup> agreed to in the initial contract plus a fixed percentage multiplier (Adjustment Factor). Everything that is to be included in the CONTRACTOR's Adjustment Factors is listed and identified in these solicitation documents and the Construction Task Catalog<sup>®</sup> under Construction Task Catalog<sup>®</sup> Section and "Using the Construction Task Catalog<sup>®</sup>," pages 00-1 through 00-7.

**25.3 Prevailing Wage Rates to Be Paid**

- A. Prior to making any payment, the PORT must receive from CONTRACTOR a Labor and Industries approved copy of the "Statement of Intent to Pay Prevailing Wages" form from all subcontractors and lower tier subcontractors working on the project during the period in which payment is being requested; and, from CONTRACTOR, if self-performed. Prior to the final acceptance of a Job Order, the Port must receive a Labor and Industries certified copy of the "Affidavit of Wages Paid" form from all subcontractors and lower tiers subcontractors; and, from CONTRACTOR, if self-performed.
- B. It is the CONTRACTOR's sole responsibility to ensure that the approved Intents and certified Affidavits are filed from all subcontractors and lower-tiers and submit to the Port for each Job Order.
- C. Prevailing wages for all work performed pursuant to each work order must be the rates in effect at the time the individual work order is issued.

**25.4 Executed OMWBE Plan**

Per RCW 39.10.450, a public body may issue no Job Orders under a Job Order Contract until it has approved, in consultation with the office of minority and women's business enterprises or the equivalent local agency, a plan prepared by the CONTRACTOR that equitably spreads certified women and minority business enterprise subcontracting opportunities, to the extent permitted by the Washington state civil rights act, RCW 49.60.400, among the various subcontract disciplines. The Contractor shall provide that plan to the Port within 30 days of contract execution, unless otherwise approved.

**25.5 Subcontracting**

At least ninety percent (90%) of work contained in a Job Order Contract must be subcontracted to entities other than the CONTRACTOR. The CONTRACTOR must distribute contracts as equitably as possible among qualified and available subcontractors including minority and woman-owned subcontractors to the extent permitted by law as demonstrated on the subcontractor and supplier project submission, and shall limit subcontractor bonding requirements to the greatest extent possible

**25.6 Retainage**

Per RCW 39.10.450, for purposes of chapters 39.08, 39.12, 39.76, and 60.28 RCW, each Work Order issued shall be treated as a separate contract. Therefore, retainage in the amount of 5% will be held from each Work Order in accordance with Washington state law.



## 25.7 Audits And Retention of Records

- A. The Port shall have the right to inspect, audit and/or copy Project Records for the determination of anything that is of consequence to the agreement between the Port and CONTRACTOR and CONTRACTOR's performance there under, specifically including but not limited to any claims brought by the CONTRACTOR or any Subcontractor or Supplier.
- B. For the above-referenced purpose, all of the Project Records related to this Contract shall be open to inspection, audit, and/or copying by the Port:
  - i. During the Contract Time;
  - ii. For a period of not less than six (6) years after the date of Final Acceptance or termination of the Contract; and
  - iii. If any Claim, audit, or litigation arising out of, in connection with, or related to this Contract is initiated, all documents and records shall be resolved or completed, whichever occurs later.
- C. The CONTRACTOR shall retain the Project Records related to this Contract for the periods required above. The CONTRACTOR shall also ensure that the wage, payroll and cost records of all Subcontractors and Suppliers at all tiers shall be retained and open to similar inspection or audit for the periods required above by incorporating the provisions of this Audit section into any agreements with Subcontractors or Suppliers related to this Contract.
- D. The CONTRACTOR, its Subcontractors and Suppliers shall make a good faith effort to cooperate with the Port when the Port gives notice of its need to inspect or audit Project Records. Cooperation shall include assistance as may be reasonably required in the course of inspection or audit, including access to personnel with knowledge of the contents of the records being inspected or audited so that the information in the records is properly understood by the persons performing the inspection or audit. Cooperation shall also include establishing a specific mutually agreeable timetable for making the records available for inspection by the Port and its designee. Unless otherwise agreed, if the CONTRACTOR, its Subcontractors and Suppliers cannot make at least some of the relevant records available for inspection within fourteen (14) days of the Port's written request, cooperation will necessarily entail providing the Port with a reasonable explanation for the delay in production of records. Failure to cooperate may impact future responsibility determinations.
- E. The CONTRACTOR agrees that no Claim shall be made against the Port for the Work described herein unless the CONTRACTOR makes available to the Port all documents and records. Failure to maintain and retain sufficient records to allow the Port to verify all costs or damages or failure to permit the Port or its designee access to the books and records shall constitute a waiver of the rights of the CONTRACTOR, Subcontractor, and Supplier to claim or be compensated for any damages, additional time or money under this Contract and shall bar any recovery there under.
- F. Inspection, audit, and/or copying of Project Records may be performed by the Port at any time with not less than fourteen (14) days written notice; provided however, if an audit is to be commenced more than sixty (60) days after Final Acceptance of the Contract, the CONTRACTOR will be given thirty (30) days' notice of the time when the audit or inspection is to begin.
- G. The CONTRACTOR and its Subcontractors and Suppliers shall provide adequate facilities, acceptable to the Port, for inspection, auditing, and/or copying during normal business hours.
- H. No additional compensation will be provided to the CONTRACTOR, its Subcontractors, or Suppliers for time or money spent in complying with the requirements of this Audit

section. If the CONTRACTOR is formally dissolved, assigns or otherwise divests itself of its legal capacity under this Contract, then it shall immediately notify the Port and preserve such records, at its expense, as directed by the Port.

- I. This Audit Section shall survive for six (6) years after the termination or expiration of this Contract, or conclusion of all Claims, audits or litigation, whichever occurs later.
- J. At a minimum the following documents shall be considered Project Records and made available for inspection, auditing and copying.

#### 25.8 Public Notice Requirements

The CONTRACTOR shall publish notification of intent to perform public works projects at the beginning of each contract year in a statewide publication and in a legal newspaper of general circulation in every county in which the public works projects are anticipated, per RCW 39.10.440. In addition, the Contractor is encouraged to publish their notification on business association websites, OMBWE and other locations to ensure the broadest reach possible.

#### 25.9 Public Inspection of Certain Records-Protection of Trade Secrets

All proceedings, records, contracts, and other public records relating to alternative public works transactions (except as provided in subsections (2) and (3) of RCW 39.10.470) shall be open to the inspection of any interested person, firm, or corporation in accordance with chapter 42.56 RCW.

#### 25.10 Beyond Typical Travel

A reimbursable task for beyond typical travel may be used for work that is requested to be done outside of the list of Washington Counties Serviced provided by the Contractor in their Proposal "Selected Work Area". Determinations for beyond typical travel will be made at the inception of the project with approval from the public agency. Approved beyond typical Travel and will be reimbursed to the contractor as a reimbursable line item in the Job Order. At the end of the project the contractor must provide proof of expenses to validate the reimbursable charge. Modifications to the reimbursable charge may be negotiated and approved by the owner at the end of the project. Any agreed upon modification will be issued via a Supplemental Job Order.

#### 25.11 Apprenticeship

Any work order over three hundred fifty thousand dollars, excluding Washington state sales and use tax, and including over six hundred single trade hours shall utilize a state registered apprenticeship program for that single trade in accordance with RCW 39.04.320. This requirement may be adjusted by the PORT as outlined in RCW 39.10.450.

To continue to invest in the sustainability of the construction trades, the Contractor and all subcontractors are encouraged to utilize apprentices whenever practicable. The Contractor shall report on apprenticeship utilization in a manner and frequency agreed upon by both the Port and Contractor.

# Federal Grant Terms & Conditions

## 1. Federal funding

The Contractor is notified that some job orders may be federally funded. For those job orders, the Contractor must comply with the terms and conditions below and any grant specific terms and conditions attached to the specific job order.

## 2. Access to Records and Reports

In accordance with CFR 200.336, the Contractor agrees to provide the Port, applicable federal agencies, the Comptroller General of the United States, the State of Washington, or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.

## 3. Termination of Contract.

Port reserves the right to terminate this Agreement at any time by sending written notice of termination to Contractor (“Notice”). The Notice shall specify a termination date (“Termination Date”) at least fourteen (14) days after the date the Notice is issued. The Notice shall be effective (“Notice Date”) upon the earlier of either actual receipt by Contractor or three business days after issuance of the Notice. Upon the Notice Date, Contractor shall immediately commence to end the Work in a reasonable and orderly manner. Unless terminated for Contractor’s material breach, the Contractor shall be paid or reimbursed for (a) all hours worked and Eligible Expenses incurred up to the Notice Date, less any payments previously made and (b) those hours worked and Eligible Expenses incurred after the Notice Date, but prior to the Termination Date, that were reasonable necessary to terminate the Work in an orderly manner. The Notice shall be sent by express mail (such as Federal Express), by the United States Mail to Contractor’s address provided herein, postage prepaid, certified or registered mail, return receipt requested, or by hand delivery. The Port does not by this section waive, release or forego any legal remedy for any violation, breach or non-performance of any of the provisions of this Agreement. At its sole option, Port may deduct from the final payment due the Contractor (a) any damages, expenses or costs arising out of any such violations, breaches, or non-performance and (b) any other back charges or credits.

## 4. Recycled Products

To the extent practicable and economically feasible, the Contractor shall provide a competitive preference for products and services that conserve natural resources and protect the environment and are energy efficient. Examples of such products may include, but are not limited to, products described in U.S. Environmental Protection Agency (U.S. EPA) guidelines at 40 C.F.R. Parts 247-253, implementing section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962. The Contractor shall include this provision in all of its subcontracts, with the requirement that it shall flow down to all subcontracts regardless of tier.

## 5. Contract Work Hours and Safety Standards Act

a) Overtime Requirements: No contractor or subcontractor contracting for any part of the Work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

- b) Violation; Liability for Unpaid Wages; Liquidated Damages: In the event of any violation of the clause set forth in paragraph (A) of this provision, the Contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (A) of this provision, in the sum of \$ 10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in subparagraph (A) of this provision.
- c) Withholding for Unpaid Wages and Liquidated Damages: The Port shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (B) of this provision.
- d) Compliance with OSHA: The Contractor agrees to comply with section 107 of the Contract Work Hours and Safety Standards Act, 40 U.S.C. 333, and applicable Department of Labor regulations, "Safety and Health Regulations for Construction" 29 CFR 1926. Among other things, the Contractor agrees that it will not require any laborer or mechanic to work in unsanitary, hazardous, or dangerous surroundings or working conditions.
- e) Subcontracts: The Contractor or subcontractor shall insert in any subcontracts the paragraphs set forth in this provision 12, Contract Work Hours and Safety Standards Act, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this provision.

The term "subcontract" under this section is considered to refer to a person who agrees to perform any part of the labor or material requirements of a contract for construction, alteration or repair. A person who undertakes to perform a portion of a contract involving the furnishing of supplies or materials will be considered a "subcontractor" under this provision if the work in question involves the performance of construction work and is to be performed (1) directly on or near the construction site, or (2) by the employer for the specific project on a customized basis. Thus, a supplier of materials, which will become an integral part of the construction is a "subcontractor" if the supplier fabricates or assembles the goods or materials in question specifically for the construction project and the work involved may be said to be construction activity.

If the goods or materials in question are ordinarily sold to other customers from regular inventory, the supplier is not a "subcontractor." The requirements of this section do not apply to contracts or subcontracts for the purchase of supplies or materials or articles normally available on the open market.

6. [Clean Air Act \(42 U.S.C. 7401-7671q.\) and the Federal Water Pollution Control Act \(33 U.S.C. 1251-1387\)](#), as amended—Applies to contracts in excess of \$150,000.

The Contractor comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

All contracts must comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201).

7. [Certification Regarding Debarment, Suspension and other Responsibility Matters – Primary Covered Transactions](#)

2 C.F.R. Parts 180 and 1200

These assurances and certifications are applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, Contractor contracts or any other covered transaction \ estimated to cost \$25,000 or more – as defined in 2 C.F.R. Parts 180 and 1200.

By entering into the agreement, the Contractor is providing the assurances and certifications for First Tier Participants and Lower Tier Participants, as set out below.

a. Instructions for Certification – First Tier Participants:

- i) The prospective first tier participant is providing the certification set out below.
- ii) The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.
- iii) The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.
- iv) The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this Bid is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- v) The terms “covered transaction,” “civil judgment,” “debarred,” “suspended,” “ineligible,” “participant,” “person,” “principal,” and “voluntarily excluded,” as used in this clause, are defined in 2 C.F.R. Parts 180 and 1200. “First Tier Covered Transactions” refers to any covered transaction between a Recipient or subrecipient of Federal funds and a participant (such as the prime or general contract). “Lower Tier Covered Transactions” refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). “First Tier Participant” refers to the participant who has entered into a covered transaction with a Recipient or subrecipient of Federal funds (such as the prime or general contractor). “Lower Tier Participant” refers to any participant who has entered

into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

- vi) The prospective first tier participant agrees by submitting this Bid that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
- vii) The prospective first tier participant further agrees by submitting this Bid that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.
- viii) A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (<https://www.sam.gov/>), which is compiled by the GSA.
- ix) Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- x) Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

#### 8. Anti-Lobbying Amendment

Contractors who apply or bid on a solicitation valued at \$100,000 or more shall file the certification required by 31 USC 1352, " Additionally, the Contractor shall require each subcontractor and each lower tier subcontractor exceeding \$100,000 to certify to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the Contractor to be submitted to the Port.

#### 9. Open and Fair Opportunities

During the term of this Agreement, the Contractor shall not create barriers to open and fair opportunities to participate in Port contracts or to obtain or compete for contracts and subcontracts as sources of supplies, equipment, construction and services. During the performance of this Agreement, neither the Contractor nor any party subcontracting under the authority of this Agreement shall discriminate nor tolerate harassment on the basis of race, color, sex, religion, nationality, creed, marital status, sexual orientation,

age, or the presence of any sensory, mental, or physical disability in the employment or application for employment or in the administration or delivery of services or any other benefits under this Agreement.

The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 C.F.R. Part 21.

The selected Contractor shall comply fully with all applicable federal, state and local laws, ordinances, executive orders and regulations that prohibit such discrimination including RCW Chapter 49.60. The Contractor further agrees to comply with all applicable civil rights statues and implementing regulations including, but not limited to the following:

- a) Nondiscrimination in Federal Programs: The selected Contractor agrees to comply with the provision of, 41 CFR, Parts 60 et seq., which prohibits discrimination on the basis of race, color, creed, national origin, sex, or age, and prohibits discrimination in employment or business opportunity.
- b) Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
- c) Information and Reports: The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the federal agency to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the federal agency, as appropriate, and will set forth what efforts it has made to obtain the information.
- d) Incorporation of Provisions: The contractor will include the provisions of paragraphs this section every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Port may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

#### 10. Davis Bacon

Certain work orders may also be subject to Davis Bacon Rates and shall be indicated by the agency when developing the Job Order. No claim for additional compensation will be allowed that is based upon lack of knowledge or error in interpretation of these requirements by the Contractor. The applicable Washington State Prevailing Wages will be the prevailing wage rate for the County in which the work is

done, effective on the date the signature date of the Job Order. The higher of the two wage rates will prevail.

- (A) The contractor and subcontractors shall pay each laborer or mechanic on the project on a weekly basis. The contractor shall submit weekly for each week in which any contract work is performed a Certified Payroll Report. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR part 5. This information may be submitted in any form desired; however, Optional Form WH-347 is available for this purpose and may be downloaded from the United States Department of Labor Wage and Hour Division at <http://www.dol.gov/whd/forms/wh347instr.htm>. The prime contractor is responsible to ensure the submission of certified payrolls by all subcontractors.
- (B) Compliance with Copeland Act Requirements: The contractor shall comply with 29 CFR part 3, which requires statements of wages paid and prohibits kickbacks, incorporated by reference in this contract.

#### 11. Contracting with Small and Minority Business, Women’s Business Enterprises, and Labor Surplus Area Firms

The prime contractor shall be required to take the affirmative steps listed in 2 CFR 200.321, if subcontracting work, to assure that minority businesses, women’s business enterprises, and labor surplus area firms are used whenever possible.

#### 12. Domestic Preference (2 CFR 200.322)

(a) to the greatest extent practicable, this procurement contains a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.

(b) For purposes of this section:

- (1) “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
- (2) “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

#### 13. John D McCain National Defense Authorization Act

Contractor agrees to comply with the requirements of Section 889 of the John D McCain National Defense Authorization Act for Fiscal Year 2019, Pub L 115-232 and 2 CFR 200.216 which places a prohibition on Certain Telecommunication and Video Surveillance Services or Equipment (AUGUST 2020) for non-U.S. organizations implemented the statutory prohibition 889(b)(1) that prohibits the use of award funds, including direct and indirect costs, cost-share and program income, to procure covered telecommunication and video surveillance services or equipment.

#### 14. Equal Employment Opportunity

During the performance of this contract, the contractor agrees as follows:

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer;



recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: *Provided*, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

## 15. Termination of Contract.

A. Termination for Convenience: The Port may terminate this contract, in whole or in part, at any time and for any reason by giving thirty (30) calendar days written termination notice to Contractor. Termination charges shall not apply unless they are subsequently agreed upon by both parties. Where termination charges are applicable, both parties agree to negotiate in good faith and to limit the extent of negotiations to valid documented expenses incurred by Contractor prior to date of termination. Should

the parties not agree to a satisfactory settlement, the matter may be subjected to mediation and/or legal proceedings.

- B. Termination for Breach and/or Default: Except in the case of delay or failure resulting from circumstances beyond the control and without the fault or negligence of the Contractor of the Contractor's Contractors or subcontractors, the Port shall be entitled, by written or oral notice, to cancel and/or terminate this contract in its entirety or in part for breach and/or for default of any of the terms herein and to have all other rights against Contractor by reason of the Contractor's breach as provided by law.
- C. Notice: Written notice of termination will be sent to Contractor ("Notice"). The Notice shall specify a termination date ("Termination Date") as outlined above. The Notice shall be effective ("Notice Date") upon the earlier of either actual receipt by Contractor or three business days after issuance of the Notice. Upon the Notice Date, Contractor shall immediately commence to end the Work in a reasonable and orderly manner. Unless terminated for Contractor's material breach, the Contractor shall be paid or reimbursed for (a) all hours worked and Eligible Expenses incurred up to the Notice Date, less any payments previously made and (b) those hours worked and eligible expenses incurred after the Notice Date, but prior to the Termination Date, that were reasonably necessary to terminate the Work in an orderly manner. The Notice shall be sent by express mail (such as Federal Express), by the United States Mail to Contractor's address provided herein, postage prepaid, certified, or registered mail, return receipt requested, or by hand delivery. The Port does not by this section waive, release, or forego any legal remedy for any violation, breach or non-performance of any of the provisions of this Agreement. At its sole option, Port may deduct from the final payment due the Contractor (a) any damages, expenses or costs arising out of any such violations, breaches, or non-performance and (b) any other back charges or credits.

**ATTACHMENT C - LOBBYING CERTIFICATE – USE IF CONTRACT EXCEEDS \$100,000**

The undersigned (Contractor) certifies to the best of its knowledge or belief that it complies with 49 CFR Part 20 New Restrictions on Lobbying:

- 1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- 2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form – LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions, [as amended by “Government wide Guidance for New Restrictions on Lobbying,” 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*)]
- 3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, title 31, U.S. Code (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[Note: Pursuant to 31 U.S.C. Section 1352 (c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to amend a required certification or disclosure form shall be subject to civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

The Contractor certifies or affirms that truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.* and 49 CFR Part 20 apply to this certification and disclosure, if any.

Contractor: \_\_\_\_\_  
(Type or Print Company Name)

By: \_\_\_\_\_  
(Signature) (Title)

Print Name: \_\_\_\_\_

NOTE: CONTRACTORS ARE REQUIRED, PURSUANT TO FEDERAL LAW, TO INCLUDE THE ABOVE LANGUAGE IN SUBCONTRACTS OVER \$100,000, AND TO OBTAIN THIS CERTIFICATE FROM EACH SUBCONTRACTOR BEING PAID \$100,000 OR MORE UNDER THIS CONTRACT.



## ADDENDUM NO. 1

April 18, 2024

RFP: Job Order Contracting (IDIQ) 2024  
RFP NO.: 9-2024-43

This Addendum forms a part of the Contract Documents and modifies the original Proposal Documents released April 3, 2024, as noted below.

This Addendum **does not** change the proposal due date and time.

1. Section 3 – Proposal Requirements, 4. Submittal Requirements, A. Contractor Background & Information. Add the following:
  8. Provide a “Letter of Bond-ability” issued by a surety licensed in the State of Washington demonstrating that the surety will provide bonds to the Contractor of up to \$4,000,000.
2. 2024 Job Order Contracting General Conditions:

Article 5 Bonds: Delete Article 5.1.1 and replace with:

“The CONTRACTOR shall furnish a duly executed Performance Bond upon a form acceptable to the PORT within ten (10) Days following receipt of the Notice of Award. The Bond shall be executed by a licensed surety (or sureties), registered with the Washington State Insurance Commissioner, and the Surety’s name shall appear in the current Authorized Insurance Company List for the State of Washington published by the Office of the Insurance Commissioner. The Bond must be approved by the U.S. Department of Treasury as evidenced by a listing in the Federal Register. In addition, the Surety or Sureties must be rated “A-, FSC (6),” or higher by A.M. Best Rating Guide. The penal amount of the Bond shall be in the amount of \$2,000,000 and conditioned upon the faithful performance of the Contract by the CONTRACTOR within the Contract Time. The Port reserves the right to request the Contractor increase the bond at any point throughout the contract term.”

Article 5 Bonds: Delete Article 5.2.1 and replace with:

“The CONTRACTOR shall furnish a duly executed Payment Bond upon a form acceptable to the PORT, within ten (10) Days following receipt of the Notice of Award. The Bond shall be executed by a licensed surety (or sureties), which is registered with the Washington State Insurance Commissioner and the Surety’s name shall appear in the current Authorized Insurance Company List in the State of Washington published by the Office of the Insurance Commissioner. The Bond must be approved by the U.S. Department of Treasury as evidenced by a listing in the Federal Register. In addition, the Surety or Sureties must be rated “A-, FSC (6)” or higher by A.M. Best Rating Guide. The penal amount of the Bond shall be in the amount of \$2,000,000 and conditioned upon the payment by the CONTRACTOR to all laborers, mechanics, Subcontractors, Suppliers, and all persons who shall supply for the performance of the Work covered by the Contract. The Port reserves the right to request the Contractor increase the bond at any point throughout the contract term.”

Prepared by: Original Signatures on File  
Maija Lampinen



**ADDENDUM NO. 2**

April 25, 2024

RFP: Job Order Contracting (IDIQ) 2024  
RFP NO.: 9-2024-43

This Addendum forms a part of the Contract Documents and modifies the original Proposal Documents released April 3, 2024, as noted below.

This Addendum **does not** change the proposal due date and time and is being issued as a Q&A Document.

**Q1: It appears the bid documents and current addendum do not include the pricing sheet. Please provide the status of when that sheet will be available**

A1: The pricing sheet will be released as Phase 2 for shortlisted firms and should be released around May 13, 2024.

**Q2: Please provide more information about the 7.5% administrative fee. On p102 of the RFP it states: 'The Contractor shall be required to execute Gordian's System License and Fee Agreement and pay a 7.5% Administrative Fee on all Purchase Orders issued to obtain access to the Gordian JOC SolutionTM. The License Fee is to be included in the Contractor's Adjustment Factors.' Please clarify; does this fee apply to all Work Orders, regardless of agency? Or is the 7.5% administrative fee only applied when other agencies than the Port of Everett are utilizing this contract?**

A2: It is 7.5% across the board, regardless of the agency.

Prepared by: Original Signatures on File  
Maija Lampinen