

DIVISION 0 – BIDDING AND CONTRACT DOCUMENTS
Section 00 72 00 – General Conditions

ARTICLE G-00

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ABBREVIATIONS AND DEFINITIONS OF TERMS

Whenever, in the Contract Documents, or elsewhere in the Project Manual, the following abbreviations, words, and defined terms are used, the meaning will be as follows, which meaning shall be applicable to both the singular and plural forms thereof:

G-01.01 Abbreviations.

AAN	American Association of Nurserymen
AAR	Association of American Railroads
AASHTO	American Association of State Highway & Transportation Officials
ACI	American Concrete Institute
AIA	American Institute of Architects

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AISC	American Institute of Steel Construction
AISE	Association of Iron and Steel Engineers
ANSI	American National Standards Institute
ARA	American Railway Association
AREA	American Railway Engineering Association
ASCE	American Society of Civil Engineers
ASHRAE	American Society of Heating, Refrigeration & Air Conditioning Engineers
ASLA	American Society of Landscape Architects
ASME	American Society of Mechanical Engineers
ASTM	American Society for Testing and Materials
AWPA	American Wood Preservers' Association
AWS	American Welding Society
AWWA	American Water Works Association
AGC	Associated General Contractors of America
CPM	Critical Path Method of Project Scheduling
CRSI	Concrete Reinforcing Steel Institute
FAA	Federal Aviation Administration
FHWA	Federal Highway Administration
IEEE	Institute of Electrical and Electronic Engineers
NBFU	National Board of Fire Underwriters
NEC	National Electrical Code
NEMA	National Electrical Manufacturers' Association
NFPA	National Fire Protection Association
NIOSH	National Institute of Occupational Safety and Health
OFCCP	Office of Federal Contract Compliance Programs
OSHA	Occupational Safety and Health Act
PCA	Portland Cement Association
POLY	Port of Olympia
PSCAA	Puget Sound Clean Air Agency
SAE	Society of Automotive Engineers
SMACNA	Sheet Metal & Air Conditioning Contractors' National Association, Inc.
UBC	Uniform Building Code
UL	Underwriter's Laboratory
WISHA	Washington Industrial Safety & Health Act
WSDOT	Washington State Department of Transportation

G-01.02 Definitions

Addendum	A written or graphic document issued by the Port prior to the opening of bids that clarifies, corrects, or changes a document
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	contained or referenced within the Contract Documents. Addenda will be distributed to planholders of record.
Agreement	A written form executed by the Port and the Contractor that binds the Contractor to perform the Work in accordance with the Contract.
Bid	The offer of a bidder, on the prescribed bid form, properly executed, setting forth the price or prices for the Work to be performed.
Change Order	A written document issued by the Port on or after the date of the execution of the Agreement that authorizes and directs an addition, deletion, or other revision in the Work, or an adjustment in the Contract Time or Contract Sum.
Contract	The Contract is the legal relationship between the Port and the Contractor, and describes the rights, duties and obligations of each as set forth in the Contract Documents.
Contract Bonds	The approved form of security in the form of a Performance Bond and a Payment Bond, furnished by the Contractor and its surety as required by the Contract Documents.
Contract Documents	The Contract Documents consist of the advertisement for bids, instructions to bidders, Agreement, the Plans, Drawings, Specifications, General Conditions, Supplementary Conditions, Addenda, Change Orders, form of bond, insurance certificates, the bid form and any other form indicated by the Port as being part of the Contract Documents. Words and abbreviations which have well-known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings.
Contract Sum	The Contract Sum stated in the Agreement Form as amended by Change Order is the total amount payable by the Port to the Contractor for performance of the Work in accordance with the Contract Documents. The Contract Sum does not include state or local sales tax on the transaction between the Port and the Contractor.
Contract Time	Contract Time is the period of time provided in the Contract Documents for the performance of the Work by the Contractor. Contract Time may be changed only by Change Order.
Contractor	The Contractor is the individual, partnership, firm, corporation, joint venture, or other business entity identified as such in the Agreement which has agreed to perform the Work in accordance with the Contract Documents.
Day	The term day shall mean a calendar day unless otherwise specifically designated.
Drawings	The graphic presentation of the Work, or parts thereof, which indicates the size, form, location, and arrangement of the various elements of the Work.
Engineer	The Director of Engineering of the Port of Olympia's Engineering Department and such agents, as are authorized in writing to act on the Director of Engineering's behalf.
Acceptance	The official act of the Port of Olympia Commission as described in Article G-08.
Final Completion	Occurs when the Engineer determines that all requirements of Article G-08.09 have been completed.
Final Payment	Is the payment to be made to the Contractor in accordance with Article G-08.12.

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Force Account Work	Is Work performed on a reimbursable basis as set forth in Article G-08.06.
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 CFR 172.101) or listed by the Environmental Protection Agency as hazardous substances (40 CFR 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 any and all other environmental contamination as defined by, and in any and 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 Engineer's authorized representative assigned to make inspections of the Contractor's performance of the Work.
Liquidated Damages	The amount of money set forth in the Contract Documents, if any, for failure of Contractor to comply with certain provisions of the Contract Document.
Plans	The concept or mental formulation for the Work. The plans may be represented graphically by drawings, by the written words within the Contract Documents, or both.
Port	The Port of Olympia. The term Port also includes all of the Port's commissioners, officers, employees and other authorized representatives.
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.
Project	The particular work described in the Contract Documents.
Project Manager	The authorized representative of the Director of Engineering, who is located on or near the project site and assigned immediate charge of the on-site engineering and administration of the construction project.
Provide	The all-inclusive actions required to furnish, install, connect, adjust, test, and make ready for use or occupancy.
Punch List	Shall have the meaning set forth in Section G-.08.08.
Samples	Physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.
Schedule of Prices	Means the unit prices set forth in the Contract Documents.
Shop Drawings	Same as "Working Drawings" as defined in these General Conditions.
Specifications	Those portions of the Contract Documents consisting of the written technical descriptions of materials, equipment, construction systems, standards, workmanship and other requirements which govern the quality and performance of the Work.
Subcontractor	A Subcontractor is a business entity that has an agreement with the Contractor to perform a portion of the Work. The term "Subcontractor" means and includes the Subcontractor and its authorized representatives.

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Sub-subcontractor	A Sub-subcontractor is a business entity that has an agreement with a Subcontractor to perform a portion of the Work. The term Sub-subcontractor means and includes the Sub-subcontractors at all tiers.
Substantial Completion	Substantial Completion occurs when the Work as a whole or a designated portion thereof is sufficiently complete, in accordance with the Contract Documents, so that the Port can use or occupy the Work or a designated portion thereof for the use for which the Port intended and the requirements set forth in G-8.08 have been satisfied.
Supplementary Conditions	That portion of the Contract Documents that amends or supplements these General Conditions.
Supplier	A vendor, supplier, distributor, or materialman which supplies material or equipment used in the performance of the Work.
Unit Price Work	Work to be paid for on the basis of unit prices stated in the Schedule of Prices or a Change Order, if any. Such Work to be measured for payment as described within the Contract Documents.
Work	All services, labor, materials, equipment, and incidentals necessary for the complete and successful completion of the work and service required by or reasonably inferable from the Contract Documents, including all materials and equipment to be incorporated in the construction, all as set forth in the Contract Documents.
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 Engineer for approval.
WSDOT Standard Specifications	Refers to the "Standard Specifications for Road, Bridge, and Municipal Construction", most recent publication, by the Washington Department of Transportation.

G-01.03 Titles or Headings

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

ARTICLE G-02

INTENT, CORRELATION, AND EXECUTION OF CONTRACT DOCUMENTS

G-02.01 Intent of the Contract Documents

- A. The intent of the Contract Documents is to prescribe a complete Work. The Contractor shall furnish all labor, materials, equipment, and incidentals necessary and appropriate to complete all parts of the Work. Compensation for the cost of furnishing the foregoing and for full performance of the Work in full conformance with the Contract Documents is included in the Contract Sum.
- B. The Contract Documents which set forth the rights and responsibilities of the Port and the Contractor shall be construed in accordance with the laws of the state of Washington. Exclusive jurisdiction and venue for any action between the Port and the Contractor, arising out of or in connection with the Project, shall be the Superior Court in Thurston County, Washington.
- C. The Contract represents the entire and integrated agreement between the Port and the Contractor. It supersedes all prior discussions, negotiations, representations or agreements pertaining to the Work, whether written or oral.

G-02.02 Correlation of the Contract Documents

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- A. 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. Anything mentioned in the Specifications and not shown in the Drawings, or shown in the Drawings and not mentioned in the Specifications, shall be of like effect as if shown or mentioned in both. Any Work, materials or equipment that has not been specifically included in the Contract Documents but which is reasonably required to produce the intended result shall be provided by the Contractor as though it had been specifically included.
- B. 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. Work required by the Contract Documents for which a separate price is not provided in the Contract Documents shall nevertheless be considered as a part of the Work and all costs of the same are deemed to be included in the Contract Sum.
- C. The drawings listed in the Supplementary Conditions indicate only such details as are necessary to give a comprehensive idea of the Work. The Engineer may furnish to the Contractor such additional drawings and clarifications, consistent with the purpose and intent of the Contract Documents, as the Engineer 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 or clarifications shall not entitle the Contractor to an increase in the Contract Time or Contract Sum.
- D. If there are discrepancies between the various Contract Documents, Specifications shall govern over conditions and Drawings, Drawings shall govern over conditions, larger scale drawings shall govern over smaller scale drawings, Supplementary Conditions shall govern over General Conditions, computed dimensions shall govern over scaled dimensions, and specific descriptions shall govern over general ones.
- E. In the event of a conflict between the Contract Documents and applicable laws, codes, ordinances, regulations or orders of governmental authorities having jurisdiction over the Work or any portion thereof, or in the event of any conflict between such applicable laws, codes, ordinances, regulations, or orders, the most stringent requirements of any of the above shall govern and be considered as a part of this Contract in order to afford the Port the maximum benefits thereof.
- F. The organization of the Specifications and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of the Work to be performed by any trade. The Port assumes no responsibility to act as arbiter in the division and proper coordination of Work between particular Subcontractors or workers.

G-02.03 Ownership 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.

G-02.04 No Warranties by the Port

- A. Any "bid quantities" set forth in the bid form are estimates only, being given only as a basis for the comparison of bids by the Port. The Port does not warrant, expressly or by implication, that the actual amount of Work will correspond to those estimates. The right to increase or decrease the amount of any class or portion of the Work, or to make other changes in the Work, is reserved by the Port in Article G-09. The basis of payment will be the actual quantities performed in accordance with the Contract Documents.
- B. 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 G-03
PORT OF OLYMPIA

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G-03.01 Authority of the Engineer

- A. The Engineer will be the Port's representative and shall administer the Contract Documents, except that Final Acceptance as provided for in Article G-08 shall be accomplished by the Port of Olympia Commission, 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. The Engineer has the authority to enforce all obligations imposed on the Contractor by the Contract Documents.
- B. The Work shall be performed in accordance with the Contract Documents. The Engineer has the authority but not the obligation to reject Work that is defective or does not otherwise conform to the Contract Documents.
- C. The Engineer 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. The Engineer will not be responsible for or have any control or charge of the acts or omissions of the Contractor, Subcontractors, Sub-subcontractors, suppliers, or any of their agents or employees, or any other persons performing a portion of the Work.

G-03.02 Administration of the Contract

- A. Nothing in this Article or elsewhere in the Contract Documents shall be construed as requiring the Engineer, 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 achieve the desired results. Such approval or advice shall neither relieve the Contractor of any of its obligations under the Contract nor create any liability to the Port on account of approval or advice.
- B. The Engineer or Inspectors may call to the attention of the Contractor defective Work or Work that does not conform otherwise to the Contract Documents. However, the failure of the Engineer or inspectors to so inform the Contractor shall not constitute approval or acceptance of such defective or non-conforming Work.
- C. The presence of the Engineer 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 Final Completion of the Work.
- D. Work done or material furnished which at any time is found not to conform to the requirements of the Contract Documents shall be at the Contractor's risk and expense and shall furnish no basis for an increase in the Contract Sum or Contract Time, even though the Engineer or inspector fails to reject such Work or material.

G-03.03 Information Provided by the Port

- A. The Port will furnish the Contractor, without charge, up to three (3) additional copies of Drawings and Specifications, and one (1) electronic copy in .pdf format.

G-03.04 Review of Working Drawings, Product Data, Samples and Other Submittals.

- A. Review by the Engineer of the Contractor's working drawings, product data, or samples shall not relieve the Contractor of full responsibility for the accuracy of dimensions and details. Such review shall likewise not constitute acceptance by the Engineer of the correctness or adequacy of such submittals, nor shall it constitute a representation or warranty by the Engineer that the drawings will satisfy the requirements of the Contract. The Engineer's review of a submittal shall not relieve the Contractor from responsibility for errors or omissions in the submittals.
- B. The Engineer will not review submittals that depend for their review on other submittals not yet submitted, that are not required by the Contract Documents, or that are not submitted by the Contractor.

G-03.05 Port's Right to Carry Out Other Work

The Port reserves the right at all times to perform or cause to be performed other and additional work on or near the site of the Project. Should such other or additional work or Port operations be either underway or subsequently undertaken at or near the Project, the Contractor shall coordinate its activities with those of all other work forces and conduct its activities to avoid or minimize any conflict between the operations of the Contractor and those persons performing the other or additional work or operations.

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G-03.06 Officers and Employees of the Port Have No Personal Liability.

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

G-03.07 Service of Notices on the Contractor

Any written notice required under the Contract Documents to be given to the Contractor may, at the option of the Port, be served on the Contractor by personal service, electronic or facsimile transmission, or private courier delivery of the notice to the last address provided in writing to the Engineer. For the purpose of measuring time in determining the parties' rights and obligations with respect to notice given pursuant to the Contract Documents (other than that given by the personal service) is conclusively presumed to be received by the Contractor on the next business day following the Port's electronic or facsimile transmittal or delivering it to the private courier.

ARTICLE G-04

CONTRACTOR'S RESPONSIBILITIES

G-04.01 Examination of the Site of Work and Contract Documents

- A. By executing the Contract, the Contractor represents that it has carefully examined and investigated the site(s) of the Work, including material site(s), and the Contract Documents. The submission of its Bid 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.
- B. The Contractor shall determine from careful examination of the Contract Documents and the site of the Work, the methods, materials, labor, and equipment required to perform the Work in full, and the Contractor shall reflect the same in its Bid.

G-04.02 Error, Inconsistency, Omission or Variance in the Contract Documents

The Contractor shall carefully study and compare the Contract Documents and shall promptly report to the Engineer any error, inconsistency, omission, or variance from applicable laws, statutes, codes, ordinances, or regulations which is discovered. If the Contractor promptly reports such discovery prior to commencement of any portion of the Work affected by any such error, inconsistency, omission, or variance, the Contractor shall not be liable to the Port for damage resulting from such error, inconsistency, omission, or variance. If, however, the Contractor fails either to carefully study and compare the Contract Documents, or to promptly report the discovery of any error, inconsistency omission, or variance known or believed by the Contractor to exist, the Contractor shall assume full responsibility therefore and shall bear all costs, liabilities and damages attributable to such error, inconsistency, omission, or variance.

G-04.03 Supervision and Construction Procedures

- A. The Contractor shall supervise and direct the Work using its best efforts, skills and attention. The Contractor shall be solely responsible for, and shall have full control and charge of construction means, methods, techniques, sequences, and procedures, 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 is for all purposes an independent contractor and not an agent or employee of the Port.
- B. The Contractor may not assign any portion of this Contract without the Port's prior written consent.
- C. 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.
- D. The Contractor shall keep a competent resident superintendent at the site of the Work continuously during its progress. Within ten (10) days after receipt of the Notice of Award, the Contractor shall designate in writing who such superintendent shall be. The superintendent shall not be replaced without prior written notice to the Port. The superintendent shall be experienced, capable of understanding and familiar with the Work, and able to properly supervise performance of the Work. The superintendent shall be the Contractor's representative and shall have authority to act on

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behalf of and bind the Contractor with respect to this Contract, except that the Contractor may indicate, in writing, limits on the authority of the superintendent. Communications or notices directed or given to the superintendent shall be as binding as if given to the Contractor.

- E. All Work shall be performed under the continuous supervision of competent and skilled personnel experienced in the tasks being performed. All workers shall have sufficient skill and experience to perform properly the work assigned to them. Workers engaged in special work or skilled work shall have sufficient experience in such work and in the operation of the equipment required to perform the work satisfactorily.
- F. The Contractor shall at all times enforce strict discipline and good order among all workers on the Project. Incompetent, careless, or negligent workers shall be immediately removed from the performance of the Work by the Contractor.
- G. The Contractor shall, at all times, employ sufficient labor and equipment for prosecuting the work to full completion in the manner and time required by the contract, plans and specifications.
- H. Any person employed by the Contractor or by any subcontractor who violates any operational regulations and, in the opinion of the Engineer, does not perform his work in a proper and skillful manner or is intemperate or disorderly shall, at the written request of the Engineer, be removed forthwith by the Contractor or subcontractor employing such person, and shall not be employed again in any portion of the work without approval of the Engineer.
- I. Should the Contractor fail to remove such persons or person, or fail to furnish suitable and sufficient personnel for the proper prosecution of the work, the Engineer may suspend the work by written notice until compliance with such orders.
- J. All equipment that is proposed to be used on the work shall be of sufficient size and in such mechanical condition as to meet requirements of the work and to produce a satisfactory quality of work. Equipment used on any portion of the work shall be such that no injury to previously completed work, adjacent property, or existing airport facilities will result from its use.
- K. When the methods and equipment to be used by the Contractor in accomplishing the work are not prescribed in the contract, the Contractor is free to use any methods or equipment that will accomplish the work in conformity with the requirements of the contract, plans, and specifications.
- L. When the contract specifies the use of certain methods and equipment, such methods and equipment shall be used unless others are authorized by the Engineer. If the Contractor desires to use a method or type of equipment other than specified in the contract, he may request authority from the Engineer to do so. The request shall be in writing and shall include a full description of the methods and equipment proposed and of the reasons for desiring to make the change. If approval is given, it will be on the condition that the Contractor will be fully responsible for producing work in conformity with contract requirements. If, after trial use of the substituted methods or equipment, the Engineer determines that the work produced does not meet contract requirements, the Contractor shall discontinue the use of the substitute method or equipment and shall complete the remaining work with the specified methods and equipment. The Contractor shall remove any deficient work and replace it with work of specified quality, or take such other corrective action as the Engineer may direct. No change will be made in basis of payment for the contract items involved nor in contract time as a result of authorizing a change in methods or equipment under this subsection.

G-04.04 Contractor to Provide all Labor, Materials, and Equipment

In accordance with the Contract Documents, the Contractor shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for the proper execution of the Work to completion, whether the same are temporary or permanent and whether or not incorporated or to be incorporated into the Work.

G-04.05 Prevailing Wage Rates to be Paid

- A. The wage rates to be paid all laborers, workers, and mechanics who perform any part of this Contract shall be not less than the prevailing wage rates as required by Chapter 39.12 R.C.W. 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 Contract Documents.
- B. The prevailing wage rates as provided to the Port by the Industrial Statistician of the Washington State Department of Labor and Industries is available for download at URL <http://www.lni.wa.gov/TradesLicensing/PrevWage/WageRates/>. A copy of the prevailing wage

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rates is available for viewing at the Port of Olympia offices or may be requested by contacting the Port's contract administrator. 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 it will actually have to pay. These rates shall remain in effect for the duration throughout Contractor's performance of the Work.

- C. Pursuant to Chapter 39.04 RCW: The Contractor or subcontractor directly contracting for "Off-Site, Prefabricated, Non-Standard, Project Specific Items" shall identify and report information required on the affidavit of wages paid form filed with the Department of Labor and Industries. The Contractor shall include language in its subcontracts requiring subcontractors and lower-tier subcontractors to comply with the reporting requirements for "Off-Site, Prefabricated, Non-Standard, Project Specific Item" on the affidavit of wages paid.
- D. The Contractor or subcontractor shall comply with the reporting requirements and instructions on the affidavit of wages paid form, and shall report the following information on the affidavit of wages paid form submitted to the Department of Labor and Industries in order to comply with the reporting requirements for use of "Off-Site, Prefabricated, Non-Standard, Project Specific" items:
 - a) The estimated cost of the public works project;
 - b) The name of the awarding agency and the project title;
 - c) The contract value of the off-site, prefabricated, nonstandard, project specific items produced outside of Washington State, including labor and materials; and
 - d) The name, address, and federal employer identification number of the contractor that produced the off-site, prefabricated, nonstandard, project specific items.
- E. In case any dispute arises as to what are the prevailing rates of wages for work of a similar nature and such dispute cannot be resolved by the parties in interest, including labor and management representatives, the matter shall be referred for arbitration to the Director of the Department of Labor and Industries and the Director's decision therein shall be final and conclusive and binding on all parties involved in the dispute, as provided for by R.C.W. 39.12.060.
- F. The Contractor shall, pursuant to R.C.W. 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 the Work. Such Statements require the approval of, and the Affidavits the certification of, the Industrial Statistician of the Department of Labor and Industries before such Statements or Affidavits are submitted to the Port. The Department of Labor and Industries charges a fee for such approval and certification, which fee shall be paid by the Contractor. Any change in the fee will not be grounds for revision in Contract Sum.
- G. If a State of Washington minimum wage rate conflicts with an applicable federal minimum wage rate for the same labor classification, the higher of the two shall govern.

G-04.06 Materials and Equipment to be New

All materials and equipment required to be incorporated into the Work shall be new, unless specifically provided otherwise in the Contract Documents. All such materials and equipment shall be applied, installed, connected, erected, used, cleaned, maintained and conditioned in accordance with the instructions of the applicable manufacturer, fabricator or processor, unless specifically provided otherwise in the Contract Documents. Upon the request of the Engineer, the Contractor shall furnish satisfactory evidence as to the kind, quality, and manufacturer of materials and equipment.

G-04.07 Substitutions of Materials or Equipment

The product, equipment, materials, or methods described or noted within the Contract Documents are to establish a standard of quality, function, appearance, dimension, and shall be deemed to be followed by the words "or equal". By proposing a substitute, Contractor represents that the proposed substitution has equal attributes in all material respects to that specified and no such substitutions shall be allowed if the Port rejects in its sole discretion such product, equipment, materials, or methods offered in the substitution.

G-04.08 Disposal of Demolished or Excavated Materials

- A. All materials to be demolished or excavated or dredged, and which are to be disposed of off of Port property shall become the property of the Contractor upon their severance, demolition or excavation, and shall be tested as required by the Port prior to removal from Port property, except as otherwise provided in the Contract Documents. The Contractor is solely responsible for the lawful disposal of all demolished or excavated materials (whether disposed of on or off Port property), and shall indemnify and hold the Port harmless from all liability, claims, damages, lawsuits, penalties, and expenses, whether direct, indirect, or consequential (including but not

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limited to attorney's and consultant's fees and other expenses of litigation or arbitration) arising out of or connected in any way with the demolition, excavation, dredging or disposal of materials.

- B. Prior to offsite disposal, Contractor shall provide, for the Engineer's approval, the name and location of the disposal sites and copies of permits or other documentation demonstrating that the disposal sites are approved by appropriate regulatory jurisdictions to receive such materials. Under no circumstances shall soil be placed as fill in adjoining waterways or on Tribal Trust land.
- C. With respect to hazardous wastes or hazardous substances which originate at the site and are not brought onto the site by the Contractor, the Contractor shall not have liability as an owner, operator, generator or discharge of such hazardous wastes or hazardous substances under the Comprehensive Environmental Response Compensation and Liability Act (42 U.S.C. section 9601 et seq.), or the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Section 6901 et seq.), or WAC 173-303 Dangerous Waste Regulations, or, WAC 173-340 The Model Toxics Control Act (MTCA) Cleanup Regulations. Contractor shall, however, have liability for performing this Contract, and such liability shall include the responsibility to fully and completely comply with all applicable federal, state and local laws, statutes, standards, rules, regulations, orders or permits that apply to the Work.
- D. After Final Completion of the Work by Contractor in accordance with the Contract Documents, subject to its continuing obligations under the Contract Documents (including, without limitation, its obligations under the representations, warranties and guaranties with respect to the Work performed), Contractor shall not be responsible for the performance of any further remedial action, removal actions or cleanup of hazardous waste or hazardous substances at the site that the Port may be ordered, directed or required to perform by any governmental authority after the date of Final Completion, unless such remedial action, removal action or cleanup is necessary because of the Contractor's failure to perform this Contract, any negligence in the performance of the Work, or any willful misconduct in connection with the performance of the Work.
- E. Nothing in this paragraph shall limit or restrict the liability or responsibility of the Contractor (or any of its subcontractors, consultants, employees or agents) in the event of any failure to perform or comply with the terms of the Contract Documents, any negligence in the performance of the Work, nor shall this paragraph in any way limit or restrict the Contractor's responsibilities under the Contract Documents and applicable law in connection with the handling, transport, storage or disposal of hazardous waste or hazardous substances and/or the arranging therefore.

G-04.09 Warranties

- A. All Work will be of good quality, free from fault or defect, and in strict accordance with the requirements of the Contract Documents. Any Work not conforming to the foregoing warranty, including unapproved or unauthorized substitutions, shall be considered defective.
- B. All Subcontractors', Sub-subcontractors', manufacturers', and Suppliers' warranties, 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 Engineer or required by the Contract Documents, the Contractor shall require that Subcontractors, Sub-subcontractors, manufacturers, and Suppliers execute separate warranties in writing directly to the Port. Warranty provisions which purport to limit or alter the Port's rights under the Contract Documents are null and void.
- C. 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 liens, claims, security interests or encumbrances. The Contractor further warrants that no Work, materials, or equipment covered by a request for a progress payment or final payment will have been acquired by the Contractor, or by any other person performing Work at the project site 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.

G-04.10 State and Local Taxes

- A. All or a portion of the labor and materials furnished under this Contract may be subject to retail sales taxes and other state and local taxes which taxes are payable by the Contractor.
- B. All questions concerning applicable taxes on any portion of the Work should be directed by the Contractor to the State of Washington Department of Revenue or to the local taxing authority.

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- C. State and local retail sales taxes applicable to the transaction between the Port and Contractor for sales to the Port of tangible personal property or charges to the Port for labor or services which constitute a retail sale under Section 82.04.050 of the Revised Code of Washington will be added to the Contract Sum. The Port will add retail sales tax to each progress payment for the Contractor to forward to the taxing authority.

G-04.11 Permits, Licenses, Fees and Notices

- A. Unless otherwise specified, the Contractor shall procure and pay for all permits, licenses, and all governmental inspection fees which are necessary or incidental to the performance of the Work, and shall give all notices required by 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.
- B. Where applicable law, regulations, ordinances or agency policy prohibits 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:
 - 1. The Contractor takes all necessary action leading to the issuance of the permit;
 - 2. The permit is determined to be in the public interest;
 - 3. The permit applies only to Work performed in connection with this project;
 - 4. The Contractor agrees in writing, in a form approved by the Port, to abide by all requirements of the permit, and to defend and hold harmless the Port from any liability in connection with Work prosecuted under the permit; and
 - 5. The Contractor agrees, in writing, to indemnify, defend, and hold the Port harmless from all expenses incurred in connection with such permit.
- C. All costs incurred in connection with permits and licenses shall be considered incidental to the Contract and included in the Contract Sum; no increase in the Contract Time or Contract Sum will be made. 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 paragraph G-07.03.
- D. The Contractor shall assume all costs and liabilities arising from the use of patented devices, materials, or processes used on or in performance of the Work.

G-04.12 Utilities and Similar Facilities

- A. Where removal or relocation of utilities is necessary to accommodate construction, such removal or relocation shall be performed at the Contractor's sole expense unless it is specified in the Contract Documents that it will be performed by the utility owner or others.
- B. Where the utility owner is identified as being responsible for removing or relocating utilities, such Work will be accomplished at the utility owner's convenience, either during or in advance of construction. If the Contractor discovers the presence of any utilities at the Project site, it shall immediately so notify the Engineer in writing. Unless otherwise specified, it shall be the Contractor's sole responsibility to coordinate, schedule, and pay for Work performed by the utilities.
- C. The right is reserved to the Port and the utility owner to enter upon the Project site from time to time to make such changes as are necessary for the relocation of the utilities or to make necessary connections or repairs. The Contractor shall cooperate with the forces engaged in such Work and shall conduct its operations in such a manner as to avoid unnecessary delay or hindrance to the Work being performed by such other forces. Whenever necessary, the Contractor shall make timely arrangements with the utility owner for the coordination of the Work.
- D. When the Contractor wishes to have any rearrangement made to any utility or other improvement for the Contractor's convenience in order to facilitate the construction operation, which rearrangement is in addition to or different from the rearrangement indicated in the Contract Documents, the Contractor shall (after obtaining the Port's written approval of the proposed rearrangement) make whatever arrangements are necessary with the owners of such utility or other improvements for such proposed rearrangement and the Contractor shall bear all expenses in connection therewith.
- E. All costs incurred as a result of performance of the Contractor's obligations under this paragraph G-04.12 shall be considered incidental to the Contract and included in the Contract Sum; no increase

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in the Contract Sum or Contract Time will be granted. Loss of time, if any, suffered by the Contractor due to unreasonable delays in removal or relocation of any utilities by others may be considered in relation to a request by the Contractor for an adjustment to the Contract Time in accordance with paragraph G-07.03.

- F. If any known underground utility not identified in the Contract Documents or located by the Port must be relocated to accommodate the Project or adversely affects the performance of the Work, the Contractor shall adhere to the requirements of paragraph G-04.30. The Engineer will either arrange for the relocation of such utility, if necessary, or provide written authorization for the Contractor to do such Work. If the Contractor performs such Work with authorization from the Engineer, at the Port's option the Contractor will be paid for the Work by unit prices, if applicable, a price previously agreed to by the Engineer and the Contractor, or on a Force Account basis.
- G. R.C.W. 19.122.030 requires that the Contractor "call before you dig" not less than two business days and not more than ten business days before beginning excavation and to mark the proposed excavation area as required by the statute. If the Contractor intends to work at multiple sites or at a large project, the Contractor must take reasonable steps to confer with utility owner(s) to enable them to locate underground facilities reasonably in advance of the start of excavation for each phase of the work. The number to call in the Puget Sound region is 1-800-424-5555. The Contractor shall comply with this law and, in addition, shall utilize a locator service to locate utilities on Port property.

G-04.13 Contractor to Comply with All Laws

The Contractor shall at all times comply with all federal, state and local laws, ordinances, and regulations. Such compliance shall include, but is not limited to, the payment of all applicable taxes, royalties, license fees, penalties, and duties.

G-04.14 Safety

- A. The Contractor assumes full responsibility for and shall comply with all safety laws, regulations, ordinances and governmental orders with respect to the performance of the Work and shall be responsible for employing adequate safety measures and taking all other actions reasonably necessary to protect the life, health and safety of the public and to protect adjacent and Port-owned property in connection with the performance of the Work. The Contractor shall perform the Work in a manner to offer the least possible obstruction and inconvenience to the Port, its tenants, public and abutting property owners.

The Contractor shall have the sole responsibility for the safety, efficiency and adequacy of the Contractor's plant, appliances and methods, and for any damage or injury resulting from their failure, or improper maintenance, use, or operation. The Contractor shall be solely and completely responsible for the conditions of the Project site, including safety of all persons and property in performance of the Work. This requirement shall apply continuously, and not be limited to normal working hours. The required or implied duty of the Engineer to conduct construction review of the Contractor's performance does not, and shall not, be intended to include review and adequacy of the Contractor's safety measures in, on, or near the Project site.

- B. In carrying out its obligations set forth in G-04.14A, Contractor shall consider establishing and supervising the following as part of its safety program:
 - 1. a safe and healthy working environment;
 - 2. an accident prevention program; and
 - 3. training programs to improve the skill and competency of all employees in the field of occupational safety and health.

The Washington State Department of Labor and Industries shall be the sole and paramount administrative agency responsible for the administration of the provisions of the Washington Industrial Safety and Health Act of 1973 (WISHA).

- C. The Contractor shall comply with the Federal Occupational Safety and Health Act of 1970 (OSHA), including all revisions and amendments thereto; the provisions of the Washington Industrial Safety Act of 1973 (WISHA); and the requirements of the following chapters of the Washington Administrative Code:
 - 1. Chapter 296-24 WAC General Safety and Health Standards.
 - 2. Chapter 296-62 WAC Occupational Health Standards.

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3. Chapter 296-155 WAC Safety Standards for Construction Work.
- D. In addition, the Contractor shall comply with the following requirements when they are applicable:
1. Chapter 296-44 WAC Safety Standards - Electrical Construction Code.
 2. Chapter 296-45 WAC Safety Standards - Electrical Workers.
 3. Local Building and Construction Codes.
- In cases of conflict between different safety regulations, the more stringent regulation shall apply.
- E. The Contractor shall maintain at the Project site office, or other well-known place at the Project site, all articles necessary for providing first aid to the injured. The Contractor shall establish, publish and make known to all employees, procedures for ensuring immediate removal to a hospital, or doctor's care, persons, including employees, who may have been injured on the Project site. Employees should not be permitted to work on the Project site before the Contractor has established and made known procedures for removal of injured persons to a hospital or a doctor's care.

G-04.15 Disruptions Caused by Labor or Other Disputes

- A. Definition: The term "dispute" as used in this paragraph includes labor-related and nonlabor-related disputes, whether or not 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.
- B. 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 Subcontractors, 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, including but not limited to: (a) utilizing all reasonable means to prevent all unlawful conduct or picketing, or to restrict all lawful picketing or other activities to a single entrance to Port property; (b) posting notices or signs which advise interested persons and labor organizations that a particular entrance to Port property is for the employees or "primary" or, as the case may be, "neutral" employers; (c) policing entrances to assure that only authorized personnel may use the same; (d) notifying all interested labor organizations of the "primary" or "neutral" status of particular entrances; (e) upon the request of the Port, altering or rerouting the access to the site(s) of the Work; and (f) in the event any such picketing or activity is unlawful or has a secondary impact upon the employees of neutral employers, tenants or their suppliers or Contractors, promptly and expeditiously taking appropriate action to seek recourse through the appropriate governmental agency or state or federal courts to limit the location of such picketing so as to reduce the impact thereof upon neutral employers.

The Port will cooperate with the Contractor to accomplish the foregoing actions and will render its assistance where appropriate; however, the Port shall have the right, without providing additional compensation to the Contractor, to direct the Contractor to modify any of the foregoing actions which the Contractor has taken or plans to take, or to overrule such actions, to designate the entrances to be used as "primary" or "neutral" entrances, and to take appropriate legal action in order to protect the interests of the Port and those of its tenants and other Contractors. The foregoing actions to be taken by the Contractor are the Contractor's primary responsibility. Neither the failure of the Port to request that the Contractor take a specific action nor the exercise by the Port of its rights under this paragraph shall modify or constitute a defense to or waiver of the obligations imposed upon the Contractor in this paragraph.

Failure to take the action described above or to comply with the directives of the Port shall be considered a material breach of the Contract Documents.

- C. If and to the extent that the Contractor fails to satisfy the obligations imposed on it by subparagraph B of this paragraph, the Contractor shall be liable for and defend, indemnify and hold harmless the Port, Commission, Engineer, and all other officers, employees, and agents of the Port from all liability, claims, damages, losses, and expenses (including but not limited to, attorneys' and consultants' fees and other expenses of litigation or arbitration) brought against the Port by a third party (including, but not limited to, lessees, tenants, contractors, customers, licensees and invitees

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of the Port) for injunctive relief or for monetary losses caused by loss of use, lost revenue, or interference with the activities of the Port or such third party.

- D. The Contractor shall pay all attorneys' fees and expenses incurred by the Port in establishing and enforcing the Port's rights under this paragraph, whether or not suit was instituted.

G-04.16 Progress Schedule

- A. Promptly after the award of the Contract, the Contractor shall prepare a Progress Schedule in a form satisfactory to the Engineer. Within ten days after issuance of the notice of award, the Contractor shall submit six (6) copies of the Progress Schedule to the Port. Failure of the Contractor to submit a proposed Progress Schedule in a form satisfactory to the Engineer within the allowed time will not constitute grounds for an extension of the Contract Time.
- B. Unless otherwise specified, the Progress Schedule shall consist of a network analysis of the Critical Path Method (CPM) in arrow diagram form showing an activity description, cost, activity precedence, and duration (in calendar days) for all significant design, manufacturing, construction, and installation activities. An activity list shall be included with each copy of the Progress Schedule.
- C. Within ten (10) days after its receipt by the Port, two (2) copies of the Progress Schedule will be returned to the Contractor. These copies will be returned with comments, if any, following review by the Port. Review by the Port of the proposed Progress Schedule shall not constitute an approval of the Contractor's construction means, methods, sequences, or schedule.
- D. The Progress Schedule shall outline the proposed operations, the interrelations of the various operations, and the order of performance in sufficient detail that progress of the Work can be evaluated accurately at any time during the performance of the Work. If abbreviations are used in the make-up of the Progress Schedule, a legend shall be provided to define all abbreviations.
- E. If milestone completions are required by the Contract Documents, then those milestones shall be clearly defined on the Progress Schedule.
- F. Should it become evident that the Contractor may fail to meet the scheduled dates as shown; the Engineer may require the Contractor to submit a recovery schedule demonstrating its proposed plan to make up lag in scheduled progress and to ensure completion of the work within the Contract Time. The Contractor may be required at Contractor's own expense to submit a revised Progress Schedule and to increase Contractor's work force and working hours (second and third shifts) as required to bring the actual completion dates of the activities into conformance with the Progress Schedule. Further, Contractor shall submit a revised Progress Schedule at no cost to the Port when, in the opinion of the Engineer, Contractor's sequence of Work varies significantly from that shown on the Progress Schedule. The Port reserves the right to withhold progress payments until such time as an approved modified Progress Schedule in a form satisfactory to the Engineer has been provided by the Contractor.
- G. Failure of the Contractor to substantially comply with the requirements of this Paragraph 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 G-10.

G-04.17 On-Site Documents

- A. The Contractor shall maintain at the Project site, in good order for ready reference by the Engineer, one complete record copy of the Contract Documents, including the Addenda, Change Orders, and all working drawings, Progress Schedule, and other approved submittals.
- B. The Contract record drawings shall be marked to truly record all changes made during construction, i.e., 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 record drawings shall be updated on a weekly 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 Engineer.

G-04.18 Working Drawings, Product Data, Samples, and other Submittals

- A. The Contractor shall review and submit all working drawings, product data, samples and other items required by the Contract Documents to be submitted to the Port accompanied by a "shop

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drawing transmittal" form. Such submittals shall be given to the Port in a complete and final form at least 30 days prior to any Contractor need for review response or such other longer time that may be needed to allow time for detailed review by the Port or others. The Contractor shall take into account sufficient time for the possibility of rejection of the submittal, needed revisions, and resubmittal review time.

- B. By submitting working drawings, product data, and samples, the Contractor represents that it has determined and verified all materials, field measurements, and related field construction criteria are in accordance with the Contract Documents, and that the Contractor has checked and coordinated the information contained within the submittal with the requirements of the Work and the Contract Documents. The costs incurred by the Port to review resubmitted working drawings, product data, and samples may be offset from any monies due the Contractor when the Contractor has failed to comply with this Subparagraph.
- C. Review by the Port of the Contractor's working drawings, product data, or samples 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 drawings 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.
- D. Any Work delayed by reason of a properly rejected submittal is deemed to be entirely the Contractor's risk, and shall not be the basis for a claim by the Contractor for additional compensation or an extension of Contract Time. Drawings marked "subject to change" or the like will not be reviewed. The Port is not required to review submittals that depend for their review on other submittals not yet submitted. See paragraph G-03.04.
- E. When resubmitting a submittal, the Contractor shall direct specific attention, in writing or on the resubmittal itself, to all revisions it has made.
- F. No portion of the Work requiring submittal of a working drawing, product data, or sample shall be commenced until the submittal has been approved by the Port as provided in paragraph G-03.04. All portions of the Work involving submittals shall be performed in accordance with the approved submittals.

G-04.19 Cutting, Fitting, and Patching of Work

- A. 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.
- B. The Contractor shall not damage or endanger any portion of the Work, other work of the Port, or that of any separate contractor's 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.

G-04.20 Inspection of the Work

The Engineer or Engineer's authorized representative 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, that does not comply in kind, quality or material with the requirements of the Contract Documents. Any labor or material rejected, as not conforming to the Contract Documents shall be promptly removed, and labor and materials, which do so conform, shall be furnished and delivered in place thereof.

G-04.21 Uncovering of Work

- A. If any portion of the Work should be covered prior to inspection called for by law or as required by the Contract Documents, the Contractor shall, upon request of the Engineer, uncover or remove the Work for inspection by the Engineer or other governmental representatives, and replace the Work to the standard required by the Contract Documents, all at the Contractor's expense.
- B. If any other portion of the Work has been covered or completed, the Contractor shall, upon the request of the Engineer, remove or uncover such Work for the Engineer's observation. The Contractor shall subsequently restore that portion of the Work to the standard required by the Contract Documents.

G-04.22 Correction of Work

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- A. 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 Contract Documents. 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.
- B. If, within one year after Substantial Completion of the Work (except as otherwise may be provided pursuant to subparagraph C of paragraph G-08.08), or within such longer period of time as may be prescribed by law or by the terms of any applicable additional warranty required by the Contract Documents, any of the Work is found to be defective or otherwise not in conformance with the Contract Documents, the Contractor shall, at its cost, promptly correct such defective or non-conforming Work after receipt of written notice from the Port to do so. The obligation of this subparagraph shall survive termination of the Contract.
- C. If the Contractor refuses or neglects to correct the defects as the Engineer may direct, then the Port may 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 Contract, or the Port may terminate this Contract as provided in paragraph G-10.06.
- D. Work corrected by the Contractor shall also be subject to the provisions of this paragraph to the same extent as Work originally performed and for an additional one-year period. Such one-year time period shall commence upon the acceptance by the Port of the corrected Work.
- E. Nothing contained in this paragraph G-04.22 shall be construed to establish a period of limitation with respect to any other obligation imposed on the Contractor by the Contract Documents or law, including the obligations imposed by paragraph G-04.09. The establishment of the time period of one year after the date of Final Completion or such longer period of time as may be prescribed by law or by the terms of any warranty 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.
- F. The Port may, at its sole option, elect to retain defective or nonconforming Work. In such case, the Port shall reduce the Contract Sum in a reasonable amount to account for such defect or non-conformance.

G-04.23 Responsibility for Work

All Work performed under the Contract 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, Subcontractors, or Sub-subcontractors, shall be at the sole risk of loss and responsibility of the Contractor until Final Completion of the entire Project, except as may be limited by the Engineer in writing for the period following Substantial Completion of the Work or designated portion thereof as provided in subparagraph G-08.08B. 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 Engineer at no additional cost to the Port. At no time during the execution of this Contract shall the Contractor direct Port staff or Port agents to assist in the execution of the Work.

G-04.24 Hazardous Materials

The Contractor shall exchange Hazardous Materials information to prevent injury or illness to Port or Contractor personnel, to comply with WISHA WAC 296-62-054.

- 1. The Port has available to the Contractor the following:
 - a. A list of all known Hazardous Materials in use at the Port. Information on each can be obtained by reviewing the Material Safety Data Sheets (MSDS).
 - b. Precautions to be taken to lessen the possibility of exposure.
- 2. The Contractor will:
 - a. Notify all subcontractors and/or suppliers of any Hazardous Materials the Port may have on site.

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- b. Label any Hazardous Materials brought on site as to contents, hazard warning, name and address of manufacturer.
- c. Provide 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 MSDS's.
 - 2) A list of any Hazardous Materials that have been incorporated into the project and will remain on site, along with the MSDS's.
- 3. 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 Contract Documents. Removal of such Hazardous Materials shall be undertaken within twenty-four (24) hours following Port's demand for such removal. Such removal shall be undertaken by Contractor at its sole cost and expense, and shall be performed in accordance with all applicable laws. 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 Contractor at its sole cost and expense, and in compliance with all applicable laws. Contractor shall immediately notify Port of any release or discharge of any Hazardous Materials on the job site. Contractor shall be responsible for making any and all disclosures required under applicable "Community Right-to-Know" laws. 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. Contractor shall immediately notify Port of any citations, orders or warnings issued to or received by Contractor, or of which Contractor otherwise becomes aware, which relate to any Hazardous Materials on the job site. Without limiting any other indemnification provisions pursuant to law or specified in this Contract, Contractor shall indemnify, defend (at Contractor's sole cost, with legal counsel approved by Port) and hold Port harmless from 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, Contractor's failure to comply with any of the requirements of this Subparagraph G-04.24.3.

G-04.25 Clean-up

- A. At all times, and as may specifically be requested by the Engineer, 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 Engineer, such clean-up Work may be done by the Port and the cost thereof shall be charged to the Contractor and deducted from the Contract Sum.
- B. Upon completion of the Work and before final inspection, 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 Final Completion except as requested by the Engineer.

G-04.26 Protection of Work During Suspension

In preparation for and during any suspension of Work as provided in paragraph G-10.03, the Contractor shall take every precaution to prevent damage to, or deterioration of, the Work. Except as provided elsewhere in the Contract Documents, 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 Engineer prior to resuming Work. A suspension of Work shall not relieve the Contractor of any of its responsibilities under the Contract Documents.

G-04.27 Survey

The Port will set one benchmark using the proper elevation datum and will establish one line of reference in the vicinity of the project. All construction survey shall be accomplished by the Contractor.

G-04.28 Archeological Items

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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 Engineer.
- B. 24-Hour security will be arranged.
- C. The Engineer shall immediately notify the following:
 - 1. Port Security
 - 2. Thurston County Medical Examiner
- D. The Thurston 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 Engineer to:
 - 1. State Office of Archaeology and Historic Preservation
 - 2. All Tribal interests
- F. The press will not be notified prior to notification of Tribal groups.
- G. The Port and its Contractor shall work with a professional archaeologist to resume construction as soon as possible without compromising the archeological find.

G-04.29 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.

G-04.30 Notice and Detailed Breakdown of Claim

- A. Notice. If unforeseen conditions or changes in the Work arise for which the Contractor believes an equitable adjustment in time or money or any other adjustment in Contract Time or Contract Sum is or will be due, the Contractor shall give the Port immediate oral notice followed by written notice within seven (7) days of such event, which notice in all events must be given and the Engineer's direction received prior to performing the Work which Contractor believes entitles it to such adjustments. Such notice must identify in detail the basis for the claim. The date such written notice is received by the Port shall define the start of time for any purpose regarding the claim.
- B. Detailed Breakdown. Within 30 calendar days of the Port's receipt of written notice above, the Contractor shall provide the Port with a written breakdown of all of the elements and sub elements of the claim detailing the increase in the Contract time or Contract Sum being sought.
- C. A request for an equitable adjustment Contract Sum shall be based on written notice delivered to the Port within 7 Days of the occurrence of the event giving rise to the request. For purposes of this part, "occurrence" means when Contractor knew, or in its diligent prosecution of the Work should have known, of the event giving rise to the request.
- D. Failure to give such written notice shall, to the extent Port's interests are prejudiced, constitute a waiver of contractor's right to an equitable adjustment.

G-04.31 Prerequisite to Suit

No legal action against the Port may be filed on account of a claim or other liability arising, out of or related to the Project unless:

- A. the requirements of paragraph G-04.30 have been complied with, and
- B. the procedures of paragraph G-09.05 have been exhausted, and
- C. the lawsuit is filed and served on the Port within 180 days of the date of Substantial Completion. The Contractor's failure to strictly comply with all requirements of this section shall be a complete bar to any claims, suit or cause of action against the Port.

G-04.32 Responsibility for Damage

- A. The Contractor shall bear sole responsibility for any pollution which may occur as a result of its operations, including but not limited to soil, air, water, noise, light, or other pollution, including but

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not limited to any costs (including attorneys' and consultants' fees), penalties, or other liabilities imposed or sought to be imposed as a result of such pollution.

- B. The Contractor shall protect from damage all private, public, and Port-owned utilities, including but not limited to communication lines, power lines, sewer and water lines, railroad tracks and appurtenances, traffic lighting and signal systems, and similar facilities.
- C. The Contractor shall be responsible for damage to the Work caused by winds, storms, or other causes, and must make good any defects arising from or discovered in the Work until Final Completion of the Work.

G-04.33 Indemnification

- A. The Contractor shall defend, indemnify and hold the Port, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or in connection with the performance of this Agreement, except for injuries and damages caused by the sole negligence of the Port.
- B. Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Contractor and the Port, its officers, officials, employees, and volunteers, the Contractor's liability hereunder shall be only to the extent of the Contractor's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Contractor's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.
- C. The Contractor shall pay all attorney's fees and expenses incurred by the Port in establishing and enforcing the Port's rights under this paragraph, whether or not suit was instituted.

ARTICLE G-05

SUBCONTRACTORS AND SUPPLIERS

G-05.01 Contractor is Responsible for Actions of Subcontractors and Suppliers.

The Contractor is fully responsible for the acts and omissions of all Subcontractors, Sub-subcontractors, Suppliers, and all other persons performing a portion of the Work.

G-05.02 Award of Contracts to Subcontractors and Suppliers

- A. The Contractor shall, if required by the Contract Documents, submit to the Engineer in writing the identity of subcontractors and suppliers proposed to furnish materials or equipment specifically designed for this Project. This list shall be provided to the Port not more than 10 days after Notice of Award. The Engineer will respond to the Contractor within 10 days in writing stating whether or not the Port has an objection to any such proposed subcontractor or supplier. Failure of the Engineer to respond shall constitute notice of no objection. If at any time during the performance of the Work the Contractor wishes to make a substitution for a proposed subcontractor or supplier, the Contractor shall first give the notice required above, and the Port may object to such proposed substitution within 10 days of being so notified.
- B. The Contractor shall not enter into a contract with a proposed subcontractor or a supplier of specifically designed equipment to whom the Port has made reasonable objection pursuant to subparagraph A of this paragraph. Likewise, the Contractor will not be required by the Port to contract with an entity to whom the Contractor has a reasonable objection.
- C. The award of a subcontract or contract for the supplying of materials or equipment by the Contractor does not create a contract between the Port and the Subcontractor or Supplier. Except as otherwise set forth by statute, Subcontractors and Suppliers shall have no rights whatsoever against the Port by reason of their contract with the Contractor. The foregoing provision shall apply with equal force to Subcontractors, Sub-subcontractors, Suppliers, and all other persons otherwise engaged to do any portion of the Work.
- D. When a portion of the Work, which has been subcontracted by the Contractor, is not being prosecuted in accordance with the Contract Documents, the Contractor shall, on the written request of Engineer, take immediate steps to correct the deficiency or remove the Subcontractor, or Sub-subcontractor, from the Project. In the event of removal, the removed Subcontractor, or Sub-subcontractor, shall not be further employed in the Work.

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- E. The Contractor shall make available to each Subcontractor, Sub-subcontractor and Supplier, prior to execution of contracts by the same, a copy of the Contract Documents to which the Subcontractor, Sub-subcontractor, or Supplier is to be bound.
- F. The Port reserves the right to obtain copies of any Subcontractor, Sub-Subcontractor and Supplier agreements at any tier from the Contractor.

G-05.03 Subcontractor and Supplier Relations

By an appropriate agreement, the Contractor shall require that each Subcontractor and Supplier, to the extent of the Work to be performed by that Subcontractor or Supplier, be bound to the Contractor to perform such portion of the Work according to the terms of the Contract Documents and to assume toward the Contractor all of the obligations which the Contractor assumes toward the Port under the Contract Documents. Such agreement shall preserve and protect the rights of the Port with respect to the Work to be performed by the Subcontractor or Supplier so that the Contracting thereof by the Contractor to others will not prejudice the Port's right to have the Work performed in accordance with the Contract Documents. The Contractor shall require each Subcontractor and Supplier to enter into similar agreements with all Sub-subcontractors and Suppliers, so that this requirement shall be applicable to Sub-subcontractors and Suppliers at all tiers.

Each subcontract agreement for a portion of the Work is hereby assigned by the Contractor to the Port provided that:

1. The assignment is effective only after termination by the Port for cause pursuant to section G-10.06 and only for those subcontracts which the Port accepts by notifying the Subcontractor or Supplier in writing; and
2. After the assignment is effective, the Port will assume all future duties and obligations toward the Subcontractor or Supplier which Contractor assumed in the subcontract agreement.
3. The assignment is subject to the prior rights of the surety, if any, under any bond in accordance with the Contract Documents.

ARTICLE G-06

NON-DISCRIMINATION

G-06.01 Comply with all laws

The Contractor shall fully comply with all applicable laws, regulations, and ordinances pertaining to non-discrimination.

G-06.02 Minority Business Enterprise/Women Business Enterprise Participation.

- A. The policy of the Port of Olympia is to provide and promote the maximum lawful, practicable opportunity for increased participation by Minority and Women's Business Enterprises in contracting and procurement processes with the Port.
- B. Definitions for the minority groups protected by the Civil Rights Act of 1964 and women will be those used by the State of Washington, Office of Minority and Women Business Enterprises.

ARTICLE G-07

TIME

G-07.01 Contract Time

- A. The Contract Time is that period of time allotted in the Contract Documents, as adjusted by Change Orders, for Contractor to achieve Substantial and/or Final Completion of the Work as more fully set forth in the Contract Documents.
- B. The Contract Time starts as set forth in the Supplementary Conditions.
- C. Substantial Completion occurs when the Port can use or occupy the Work for the use for which it is intended, and when all documentation required to operate the facility constructed has been properly submitted to the Port in accordance with the Contract Documents. Such documentation shall include but is not necessarily limited to:
 1. Maintenance and Operations manuals;
 2. Warranties;

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3. Submittals required by the Specifications; and
 4. Occupancy permits and related approvals by any authority with jurisdiction for same.
- D. Final Completion occurs when all requirements of the Contract Documents have been properly and completely fulfilled including but not limited to:
1. Completion of, reinspection and Port approval of all Punch List items;
 2. Submittal of final invoice and approval by the Engineer;
 3. Submittal of list of all subcontractors and MWBE suppliers used on the project and the amount paid to each;
 4. Submittal of all properly completed as-built record drawings; and
 5. Submittal of any other documents required by the Contract Documents.
- E. Acceptance is the formal action of the Port Commission accepting the Work as complete. Acceptance is required for contracts greater than \$300,000.

G-07.02 Progress and Completion

- A. All time limits stated in the Contract Documents are of the essence of this Contract.
- B. The Contractor shall begin the Work as set forth in the Supplementary Conditions and shall diligently prosecute the Work with adequate equipment and forces in order to bring the Work to completion within the Contract Time.

G-07.03 Extension of Time

- A. 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 compensation, damages, or extension of the Contract Time for such reasonable delays.
- B. Excusable Delays. For Excusable Delays the sole and exclusive remedy of the Contractor will be an equitable extension of time allowed for completion. The Contract Time may be extended without compensation by the Port for a period equivalent to the time that the Contractor was delayed in the Work by one or more of the following causes, beyond the control of the Port and the Contractor, occurring during the performance of the Work:
 1. Fire or other casualty for which the Contractor is not at fault or otherwise responsible;
 2. Strike, riot, war, or civil disorder;
 3. Suspension of Work due to unusual and severe weather;
 4. Delay cause by another contractor in the performance of a contract with the Port;
 5. Suspension of Work due to other unsuitable conditions in accordance with paragraph G-10.03.
- C. Unreasonable Delays. Extensions of Contract Time, if any, shall be determined by the Engineer. 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 impact to the critical path on the Progress Schedule. Any extension of the Contract Time by the Port will be set forth in a Change Order, which shall specify the calendar days by which the Contract Time is to be increased.
- D. 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, Sub-Subcontractors, Suppliers, or any others, or any of their acts or failure to act or to timely perform the Work according to the Contract. Failure to make timely submittals to the Port, procure materials or workmen or perform the Work in accordance with the requirements of the Contract Documents or to adequately plan for such functions will not be an adequate reason for an extension of Contract Time.
- E. In no event shall the Contractor be entitled to loss or damage, including a change in Contract Sum 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 Contract Sum. Any request for

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such cost shall be established and documented by the Contractor in detail to the satisfaction of the Engineer in accordance with Paragraph G-09.03, Compensation for Changes.

- F. If the Contractor fails to fully comply with paragraph G-04.30, its claim for an extension of Contract Time or adjustment to the Contract Sum on account of such claimed delay is waived.

ARTICLE G-08

PAYMENTS, COMPLETION AND ACCEPTANCE

G-08.01 All Payments Subject to Applicable Laws

- A. All payments made to the Contractor are subject to all laws applicable to the Port.
- B. The Port shall not make any payments to the Contractor under this Contract until approved Statements of Intent to Pay Prevailing Wages have been filed with the Port as required by paragraph G-04.05 and R.C.W. 39.12.040. By submitting an invoice, Contractor certifies that wages have been paid in accordance with the approved Statements of Intent.

G-08.02 Scope of Payment

- A. The Contractor shall be compensated as provided for in the Contract Documents for performing all of the Work in accordance with the Contract Documents, including changes made to the Work by Change Order. Payment of the Contract Sum shall constitute the full compensation to the Contractor for performance of the Work, including all risk, loss, damages, or expense of whatever character arising out of the nature of the Work or the prosecution thereof, and for all reasonable expenses properly incurred in the event and consequence of a suspension or discontinuance of the Work pursuant to the Contract Documents.
- B. The Port need not pay for work done beyond lines and grades established by the Engineer, or extra work or materials furnished without prior written approval of the Engineer. The Port may order such unauthorized work to be removed at no expense to the Port.

G-08.03 Retained Percentage (Retainage)

In accordance with Chapter 60.28 R.C.W., the Port will retain five (5) percent of each monthly progress payment. For purposes of Chapter 60.28 R.C.W. "completion" shall mean Final Completion.

G-08.04 Progress Payments

- A. Progress payments will be made following the Contractor's request therefore once each month during the Contract Time; payment shall be based upon invoices approved by the Engineer.
- B. Within eight days after receipt of the progress payment invoice, the Engineer will review the request and either approve the request, or indicate in writing to the Contractor specific reasons why part or all of the payment is being withheld and what remedial action the Contractor must take to receive the withheld amount. If the Engineer recommends payment the Port will, within thirty days of receipt of the Contractor's properly completed invoice, pay the Contractor's progress payment subject to retention requirements.
- C. If the Engineer does not concur with the invoice, the Contractor may make the changes necessary to obtain the Engineer's concurrence and resubmit the progress payment request. If the Engineer recommends payment, the Port will, within thirty days after the Contractor satisfactorily completes the remedial actions identified in the Engineer's rejection of the payment request, pay the Contractor's progress payment.
- D. Payment shall be based upon the actual quantities of Work performed according to the Contract Documents. Quantities will be determined as percentages of each scheduled activity for lump sum Contracts. Where the Contract provides for unit prices, quantities will be determined by the actual measurement of completed units in accordance with the Contract Documents.
- E. Payment requests shall be accompanied by a complete revised construction schedule in accordance with Article 04.16.
- F. The Contractor is required to make payment to all Subcontractors and all Suppliers within ten (10) calendar days from the receipt of all progress payments for all the Work included in the progress payments. Furthermore, the Contractor shall require all subcontracts issued under this contract to all Subcontractors and Suppliers at all tiers to also make all due payments within ten (10) calendar days of their receipt of payment. The Contractor must justify to the Port in writing any intent to withhold payment of monies due to any Subcontractor or Supplier within the same ten (10) calendar days.

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- G. The Contractor shall supply with each payment request the Port's form of certification signed by a corporate or company officer. This certification shall attest that all payments by the Contractor due to Subcontractors or Suppliers from the last payment estimate have been made within the ten (10) calendar days payment period. The certification shall attest that the Contractor will make payment within ten (10) calendar days of all obligations due from the current payment estimate. The Contractor is required to receive the same certification from all Subcontractors and Suppliers at all tiers. No progress payments will be processed until the Contractor's certification is received.

G-08.05 Payment for Stored Materials

- A. On-site Materials: At the Engineer's sole option, a progress payment may include payment for permanent materials or equipment to be incorporated into the Work if approved in advance by the Engineer and properly stored and safeguarded on the site.
- B. Off-site Materials: At the Engineer's sole option, a progress payment may also include payment for permanent prefabricated materials or specifically designed equipment to be incorporated into the Work if approved in advance by the Engineer and properly stored, even though off-site. The maximum allowable payment for such off-site material will be eighty-five percent of the invoice price for the material.
- C. Any payment for materials or equipment stored on or off the site but not yet incorporated into the Work shall be based upon the cost of the materials or equipment as determined by the Port considering invoices to the Contractor, bills of sale, or by such other means satisfactory to the Engineer and which will establish the Port's title to such materials or equipment and otherwise protect the Port's interest. This shall include provisions for insurance and transportation to the site in the case of materials and equipment stored off the site.

G-08.06 Payment for Work Done on a Force Account Basis

- A. Whenever, under the terms of the Contract, work, materials, or equipment are to be paid for on a Force Account basis, the amount of such payment shall be certified in writing on a daily basis by agreement of Contractor and the Engineer. Claims for Work done on a Force Account basis may be submitted for payment at any time subsequent to the performance of the Force Account Work; however, all such claims must be made before Final Completion, or they are waived. Payment for Force Account Work shall be determined as follows:

1. Labor:

For all labor, including such foreman supervision (but excluding the superintendent and project manager) as may be necessary upon any particular operation, the Contractor shall be paid an amount equal to the sum of the following:

a. Weighted Wage Rate

The agreed weighted wage rate for all labor used shall include and be restricted to the current certified basic wage plus fringe benefits made the obligation of the Contractor by a collective bargaining agreement or other employment agreement, and benefits paid on an account of such labor by the Contractor pursuant to the:

- 1) Federal Insurance Compensation Act (FICA);
- 2) Federal Unemployment Tax Act (FUTA); and
- 3) State Unemployment Compensation Act (SUCA).

b. Travel Allowance and/or Subsistence

The Contractor shall be reimbursed the actual costs of travel and subsistence allowances paid to laborers engaged upon the Work when such allowances are required by the terms of employment for such laborers.

c. Industrial Insurance and Medical Aid Premiums

The Contractor shall receive reimbursement for industrial insurance premiums as may be required under State or federal statutes, and medical aid premiums which become an obligation of the Contractor and are chargeable to the labor performed on the Work to be paid for on a Force Account basis. The rate of compensation for the above premiums shall be a composite rate based upon the full premium for Industrial Insurance and one-half the premium for medical aid,

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which premiums are prescribed by the regulatory body for the Contractor, Subcontractor, Sub-subcontractor, or other person actually performing the Force Account Work. This composite rate may be adjusted upon request to conform with adjustment prescribed by the regulatory body.

d. Overhead and Fee

The Contractor shall be reimbursed in an amount equal to Fifteen percent (15%) of the sum of the items listed in subparagraphs a, b, and c above for the Contractor's overhead and fee, bonds, all insurance (except as specified in subparagraph c above), and all other costs incurred in supplying such labor.

2. Materials

a. For all materials furnished by the Contractor for the Work, payment shall be made in the amount of the actual invoice cost for such materials, including actual freight and express charges and applicable taxes less all offered or available discounts and rebates, notwithstanding the fact that they may not have been taken by the Contractor. To the above-determined cost shall be added a sum equal to fifteen percent (15%) for overhead, fee, bonds, insurance, and all other costs incurred in supplying such materials.

b. The Contractor shall furnish to the Port, as support for all charges for materials, valid copies of supplier invoices, including freight and express bills. As to such materials as may be furnished from the Contractor's own inventory for which an invoice is not available, the Contractor shall furnish a sworn affidavit certifying its actual cost of such materials.

c. If, in the opinion of the Engineer, the Contractor's cost of such materials furnished is excessive or if the Contractor does not furnish satisfactory evidence of its costs, the Port reserves the right to establish the cost of all or part of such materials at the lowest current wholesale prices less all applicable discounts and exemptions at which said materials are available in the quantities required to be furnished pursuant to the Contract Documents.

d. The Port reserves the right to furnish such materials to the Contractor as it deems advisable, and the Contractor shall have no claim for any costs, overhead, or fee on such materials.

3. Equipment

a. For any machine-power tools or equipment, except small tools, which the Engineer deems necessary for the Contractor to use, payment shall be made in accordance with the rates stated in the "AGC-Washington State Department of Transportation Equipment Rental Agreement", in effect at the time such tools or equipment were used, subject to reduction under subparagraph b below.

b. The rates stated in the "AGC Washington State Department of Transportation Equipment Rental Agreement," are the maximum rates allowable for equipment of modern design and in good working condition, and include and are full compensation for overhead, fee, bonds, and for furnishing all fuel, oil, lubrication, repairs, maintenance, insurance, and all other costs incidental to the furnishing of such tools and equipment, except for the labor to operate the same. The stated compensation for use of tools or equipment not of modern design or not in good working conditions shall be reasonably reduced as determined by the Engineer. If equipment is required for which a rental rate is not included in the current schedule, an agreed rental rate shall be established for that equipment based upon the same elements of costs used in establishing the current schedule or rental rates. Such rates must be approved by the Engineer prior to use of the equipment on the Force Account work.

c. A current "AGC-Washington State Department of Transportation Equipment Rental Agreement" is maintained at each district office of the Department of Transportation and at each of the offices of the Associated General Contractors of America.

d. If the necessary equipment is not already at the site of the project and it is not anticipated that it would be required for the performance of other Work under the

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terms of the Contract, the Contractor will be paid in accordance with the terms and conditions specified in the then current "AGC-Washington State Department of Transportation Equipment Rental Agreement".

e. Overhead and Fee

The Contractor shall be reimbursed in an amount equal to Fifteen percent (15%) of the sum of the items listed in subparagraphs a. thru d. above for the Contractor's overhead and fee, bonds, all insurance, and all other costs incurred in supplying such labor.

4. Subcontractors

When Work is performed on a Force Account basis by Subcontractors, the Contractor will be allowed an additional markup based on the following schedule:

a. First \$10,000.00 of Work done on each Change Order by Subcontractors (less Subcontractor markups for overhead and fee) the Contractor will be allowed ten percent (10%) supplemental markup.

b. All Work in excess of \$10,000.00 done by Subcontractors on each Change Order (less Subcontractor markups for overhead and fee) the Contractor will be allowed a five percent (5%) supplemental markup.

The ten percent supplemental markup shall apply to the first \$10,000.00 accumulated total of all Force Account Work performed by all subcontractors on any single change order.

5. Sub-subcontractors

a. The provisions of this subparagraph as applicable to the Contractor shall also be applied in the same manner to Subcontractors at each tier.

b. The payment provided for in subparagraph A.1 through A.5 of this paragraph shall constitute full compensation for all Work done on a Force Account basis, for all delays related in any way to the change requiring the Work done on Force Account basis or which may result from the performance of such changed Work. Such payment shall cover all costs of labor, materials, equipment, overhead, fee, damages, if any, and all other costs or expenses, of whatever kind or type, which are occasioned either directly or indirectly, including payments required under the Social Security Act, State Unemployment Compensation Act, occupational tax, and any other federal or state insurance policies, and for the use of small tools and equipment for which no rental is allowed.

6. No compensation for Work performed on a Force Account basis shall be paid unless the Engineer provided prior written direction to the Contractor to perform the Work on such a basis. No Work shall be considered to be Force Account work which can be measured and paid for at the unit price in the Schedule of Prices.

G-08.07 Payment for Changes

Compensation for Changes in the Work as provided in a Change Order will be made in accordance with the payment provisions of the Contract Documents.

G-08.08 Substantial Completion

A. A portion of the Work will be considered for Substantial Completion prior to completion of the entire Work only if such portion is specifically so designated in the Contract Documents or the Engineer determines that it is in the best interest of the Port.

B. When the Work, or a designated portion thereof, is considered by the Contractor to be substantially complete and the Contractor has submitted the documents required by subparagraph G-07.01C, the Contractor may request that the Engineer schedule an inspection. With the request the Contractor shall provide a preliminary list of items to be completed or corrected in order to make the Work comply with the Contract Documents. The Engineer will review the list and determine whether the Work is ready for inspection. The Engineer will perform the inspection together with the Contractor. The preliminary list, as revised during the inspection, is referred to as the Punch List. The Engineer may revise the Punch list at any time prior to Final Completion when items needing completion or correction are discovered.

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- C. When Substantial Completion of the Work or designated portion thereof has been achieved, the Engineer will advise the Contractor in writing of the date Substantial Completion for the Work or such designated portion thereof was achieved. Such writing will state whether the Port shall thereupon assume responsibility for security, maintenance, heat, utilities, risk of loss, and insurance with respect to the Work or designated portion thereof determined to be substantially complete. If such writing does not so state, all responsibility for the foregoing items shall remain with the Contractor until the date of the Final Completion as provided for in paragraph G-08.09 below. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise indicated by the Engineer in the notice of Substantial Completion. The Engineer will review the Punch List with the Contractor and establish a time limit for the completion of the items on the Punch list.
- D. The failure of the Contractor or the Engineer to include any items on the Punch List does not alter the Contractor's responsibility to complete all Work in accordance with the Contract Documents, nor shall such failure be any indication that the Engineer considers any items not included on the Punch List to be complete.

G-08.09 Final Completion

When the Contractor has completed all items on the approved Punch List or otherwise considers the Work to be fully completed in accordance with the Contract Documents and the Contractor has submitted the documents required by subparagraph G-07.01D, the Contractor shall so notify the Engineer and request a final inspection. The Engineer will perform such inspection. If the Engineer finds the Work not to be complete, the Engineer will so advise the Contractor and provide the Contractor with a revised Punch List of items to be completed or corrected, and then a re-inspection will be scheduled. When the Engineer finds that the Work is complete in accordance with the Contract Documents, the Engineer will so advise the Contractor in writing by sending a notice of Final Completion.

G-08.10 Completion of Punch List

If the Contractor does not expeditiously proceed with correctional completion of Punch List items identified in the final Inspection, the Port may, in its sole discretion, remove such items from the scope of Work by Change Order. In such instance, the Port may choose to (1) have the Work performed by another contractor with the cost of such work to be deducted from the amount due the Contractor or claimed against the retained percentage, or (2) accept a credit for the uncompleted work to be deleted by change order, with the amount of the credit to be negotiated between the parties. The rights provided the Port under this paragraph shall not relieve the Contractor of its responsibilities as required under any other provisions of the Contract Documents.

G-08.11 Acceptance

Acceptance shall be by formal action of the Port of Olympia Commission. Acceptance shall not constitute acceptance of unauthorized or defective Work, material or equipment. The Port shall not be barred by Acceptance from requiring the Contractor to remove, replace, repair, or dispose of unauthorized or defective Work, material, or equipment or from recovering damages for the same.

G-08.12 Final Payment

- A. The Final Payment shall be the release to the Contractor of the retained percentage. The Final Payment will be made only upon receipt of:
 - 1. Certificate of Releases from Washington State Departments of Labor and Industries, Revenue, and Unemployment Security; and
 - 2. Approved Affidavits of Wages Paid for the Contractor and all Subcontractors (at all tiers).No monies will be released to the Contractor prior to forty-five (45) days after Final Completion, and until such time as all properly filed liens have been removed.
- B. The making of the Final Payment shall not relieve the Contractor from claims arising from: liens, faulty or defective work appearing or discovery after completion of the Work, failure of the Work to comply with the requirements of the Contract Documents, or from the terms of special warranties required by the Contract Documents.
- C. The Contractor's and all Subcontractors' (at all tiers) original accounting records, certified payrolls, and all other relevant records pertaining to the Work or submitted as a claim for additional compensation, additional time or any combination thereof, shall be open to inspection and audit by representatives of the Port for a period of not less than three (3) years after the date of Final Completion, and the Contractor shall retain such records for that period. The Port shall have the

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right to seek reimbursement of any amount it determines was overpaid to the Contractor. Where payment for equipment, materials, labor or other incidentals thereto is based on the cost to parties other than the Contractor, the Contractor expressly guarantees that the records of such other parties shall be open to inspection and audit by representatives of the Port on the same terms and conditions as the records of the Contractor. If an audit is to be commenced more than sixty (60) days after Final Completion of the Contract, the Contractor will be given a reasonable notice of the time when such audit is to begin. 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 records to be maintained in accordance with this subparagraph.

G-08.13 Payments Do Not Relieve Contractor From Responsibility For Work

Payment to the Contractor of progress payments or the Final Payment does not in any way relieve the Contractor from its responsibility for the Work or its responsibility to repair, replace, or otherwise make good defective Work, materials or equipment. Likewise, the making of such payment does not constitute a waiver of the Port's right to reject defective or non-conforming Work, materials, or equipment (even though the same is covered by the payment), nor is it a waiver of any other rights of the Port.

ARTICLE G-09

CHANGES IN THE WORK

G-09.01 The Port May Make Changes

Without invalidating the Contract and without notice to the Contractor's surety, and at any time during the progress of the Work, the Port may make changes in the Work, which changes include but are not limited to the following:

- A. increases or decreases in quantities of Work;
- B. deletion or alteration of any portion of the Work;
- C. changes in design or Specifications; and
- D. addition of new Work.

All such changes in the Work shall be authorized by Change Order, which order shall provide for any increase or decrease in the Contract Time or Contract Sum caused by such change. The Contract Sum and Contract Time may be changed only by Change Order. Contractor shall be deemed to have waived any claim for a change in Contract Time or Contract Term if Contractor fails to strictly comply with the provisions of paragraph 04.30.

G-09.02 Request for Proposal

In connection with a possible or proposed change, the Port may request that the Contractor submit a proposal or provide other information to the Port. The Contractor will submit such proposal or other information in a form and within the time period requested by the Port. The Contractor's proposal shall include detailed price calculations for the proposed change, which shall specify the cost of all labor, material, equipment, and Subcontractor quotations. The Contractor's proposal shall also show as a separate item the proposed amount for markup, contingency, overhead, and fee, the total of which shall not exceed the applicable percentage as would be allowed for Work performed on a force account basis pursuant to paragraph G-08.06. A request by the Port to the Contractor for a proposal shall not constitute authorization for the Contractor to proceed with any such proposed change in the Work, nor shall such request justify any delay in the performance of existing Work.

G-09.03 Compensation for Changes

- A. General. Change Order Work under this Contract may be measured for payment at the Port's sole discretion, as unit price work or as a lump sum item or as Force Account Work. "Unit price work", includes Work for which a unit price is established in the Contract's Schedule of Prices or by Change Order, but excludes items of Work listed either in such schedule or a Change Order as "lump sum" items. "Bid Quantity", means the total quantity of an item of unit price work which is listed in the Schedule of Prices.
- B. Changes in the quantity of unit price Work. Where the nature of the changed Work does not differ materially from Work which is unit price Work, the change shall be measured and paid for (or credited) at the established unit prices, subject to the following exceptions:
 - 1. Where quantity is less than 80%. If the quantity of an item or unit price Work actually performed or to be performed is less than 80 percent of the bid quantity for that item, the

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Contractor or the Port may request a Change Order revising the unit price for the item. Such request shall be accompanied by evidence to support the requested revision. The proposed revision will be evaluated by the Port considering such factors as the changes, if any, to the Contractor of the item, and the share, if any, of fixed expenses properly chargeable to the change in quantity of that item. If the Port and the Contractor agree on the change, a Change Order will be executed. If the parties cannot agree, the Port may nevertheless issue the Change Order pursuant to paragraph G-09.04, and the Contractor will have the rights provided in paragraph G-09.05.

2. Where quantity is more than 120%. If the quantity of an item of unit price Work actually performed or to be performed is more than 120 percent of the bid quantity for that item, the Contractor or the Port may request a change order revising the unit price for that portion of the Work which exceeds 120 percent of the bid quantity. Such request shall be accompanied by evidence to support the requested revision. The proposed revision will be evaluated considering such factors as the change in actual cost, if any, to the Contractor of that portion of the Work exceeding 120 percent of the bid quantity, and the share, if any, of fixed expenses properly chargeable to that portion of change in quantity which exceeds 120 percent of the bid quantity. If the Port and Contractor agree on the change, a change order shall be executed. If the parties cannot agree, the Port may nevertheless issue a change order pursuant to paragraph G-09.04 and the Contractor will have the rights provided in paragraph G-09.05.

C. Changes to Work Other than Unit Price Work

1. **Additional Work.** If no unit price has been established for Work added to the Contract by the Port, the Port and the Contractor will attempt to reach agreement as to the increase or decrease, if any, in the Contract Sum and the Contract Time caused by such change. The Engineer may require, prior to approval of such change order, that the Contractor submit a proposal detailing the information identified in paragraph G-09.02. If the Port and Contractor agree, on the change, a Change Order will be executed. If the parties cannot so agree, the Port may nevertheless issue a Change Order pursuant to paragraph G-09.04 and the Contractor will have the rights provided in paragraph G-09.05.
2. **Deleted Work.** If the Port elects to delete all or a portion of the Work, the Engineer shall so advise the Contractor in writing, and the Contract Sum shall be decreased in an amount determined as follows:
 - a. By an amount agreed upon by the Port and the Contractor. This amount may either be submitted by the Contractor or determined by itemizing the elements of Work deleted (labor, material, and equipment) and the amount of markup, contingency, overhead, and fee used by the Contractor in preparation of the original bid, less any costs properly expended to date in connection with the performance of the deleted Work. If the Contractor cannot document the above amount to the satisfaction of the Engineer, the amount allowed for markup, contingency, overhead, and fee shall be determined in the same manner as if the deleted Work was to be performed on a Force Account basis pursuant to paragraph G-08.06.
 - b. Acceptable materials ordered by the Contractor or delivered prior to the date the Contractor was notified to delete the Work may, at the Port's option, be purchased from the Contractor at the Contractor's actual cost and thereupon become the property of the Port, or the Port will reimburse the Contractor for its actual costs connected with returning such materials to the suppliers.
 - c. No amount will be paid to the Contractor for any anticipated or estimated fee, which the Contractor could or would have earned if the deleted Work had been performed.

G-09.04 Issuance of Change Order

- A. If the Port and the Contractor are unable to reach agreement concerning the adjustment, if any, in the Contract Sum or Contract Time caused by a change, the Port may nevertheless issue a Change Order implementing the change in the Work and directing the Contractor to perform the Work as changed. The Change Order may embody such terms as the Port deems appropriate, and the Contractor shall diligently prosecute the Work in the most efficient, economical, and workmanlike manner, consistent with the best interests of the Port. Unless otherwise stated in the Change Order the Contractor shall perform the changed Work on a Force Account basis pursuant

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to paragraph G-08.06. The Contractor shall be entitled to a change in the Contract Sum, or Contract Time to the extent directly caused by the change in Work.

G-09.05 Procedure for Protest by the Contractor

- A. If the Contractor accepts the terms of a change order by the Contractor's endorsement thereon, or by failure to protest as provided in this paragraph, payment by the Port in accordance with the terms of the Change Order shall constitute full compensation, including but not limited to that for labor, material, equipment, overhead, fee (including profit), and damages (direct or indirect) or any other claim for damages of any kind or nature, if any, and for all changes to the Work and to the Contract Time.
- B. If the Contractor disagrees with any of the terms of a Change Order issued by the Port, the Contractor shall give immediate oral notice of protest to the Engineer prior to performing the Work and shall submit a written protest to the Engineer within ten (10) calendar days of the Contractor's receipt of the Change Order. The protest shall identify the point of disagreement, those portions of the Contract Documents believed to be applicable, and an estimate of quantities and costs involved in the change. When protest of a Change Order relates to compensation, the Contractor shall keep full and complete records of the cost of such changed Work and shall permit the Port to have access to those records as requested by the Port to enable the Port to evaluate the merits of the protest.
- C. A protest shall not relieve the Contractor of its obligation to proceed without delay with the Work as directed in the Change Order. No adjustment to the Contract Sum or Contract Time will be made on account of Work performed preceding the Contractor giving oral notice of protest to the Engineer (to be followed by written protest as required in subparagraph B of this paragraph).
- D. Within 30 calendar days of the Port's receipt of written notice above, the Contractor shall provide the Port with the following details:
 - 1. A detailed factual statement of the claim for a change in Contract Sum and Contract 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 or agent or consultant of Port, knowledgeable about the claim;
 - 4. The specific provisions of the Contract Documents 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, that support the claim;
 - 7. If an adjustment in the Contract Time is sought, the specific days and dates for which it is sought; the specific reasons Contractor believes an extension in the Contract Time should be granted; and Contractor's analysis of its progress schedule to demonstrate the reason for the extension in Contract Time (time impact analysis);
 - 8. If an adjustment in the Contract Sum is sought, the exact amount sought and a breakdown of that amount into the categories set forth in article, G-09.02;
 - 9. A statement certifying, under penalty of perjury, that the claim is made in good faith, that the supporting cost and pricing data are true and accurate to the best of Contractor's knowledge and belief, that the claim is fully supported by the accompanying data, and that the amount requested accurately reflects the adjustment in the Contract Sum or Contract Time for which Contractor believes the Port is liable. The individual signing such certification shall be a duly authorized representative of the Contractor who has the necessary and appropriate authority and responsibility to commit the Contractor to the truthfulness of the certification; and
 - 10. A statement that the claim covers all changes in cost and in time (direct, indirect, impact, consequential, and otherwise) to which the Contractor (and Subcontractors and Suppliers of any tier) is entitled..
- E. The Port shall be entitled to recover its costs incurred for analysis/administration of processing and evaluating a claim to the extent a portion of the claim that is determined to be not recoverable from

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the Port. The cost of reimbursement will be the percentage of the original claim that is determined to be not recoverable times the cost of analysis/administration.

F. Dispute Resolution Process

1. Level I. Within seven (7) days of receipt of the Contractor's documentation, the senior site representative of the Contractor and the Project Manager shall meet, confer, and set a schedule for resolving the claim.
2. Level II. Within seven (7) days of the close of the Level I meetings, the general manager (or equivalent) of the Contractor and the Engineer for the Port, (none of whom attended the Level I meeting) shall be jointly briefed by both the Port and Contractor Level I representatives on the results of the Level I meetings, their respective positions, and remaining areas of disagreement. The Port and Contractor Level II representatives shall then establish a schedule for resolving the claim. The Port shall have the right to request additional information from the Contractor and its Subcontractors, Suppliers, etc. at any time prior to or during the Level II meeting. If an adjustment to the Level II meeting schedule is necessary to accommodate such requests for additional information, such adjustment shall be as mutually agreed by the representatives. If agreement on the schedule cannot be reached, the Level II meetings shall be terminated and the matter referred to the following Level III.
3. Level III: Within seven (7) days of the close of the Level II meeting, the owner or corporate officer of the Contractor (who did not attend the Level I or II meetings) and the Port's Executive Director (who did not attend the Level I or II meetings) shall be jointly briefed by both the Port and Contractor Level II representatives on the results of the Level II meetings, their respective positions, and remaining areas of disagreement. The Port and Contractor Level III representatives shall then establish a schedule for resolving the claim. The Port shall have the right to request additional information from the Contractor and its Subcontractors, Suppliers, etc. at any time prior to or during the Level III meeting. If an adjustment to the Level III meeting schedule is necessary to accommodate such requests for additional information, such adjustment shall be as mutually agreed by the representatives. If agreement on the schedule cannot be reached, the Level III meetings shall be terminated and the matter referred to the next level in this Dispute Resolution Process.
4. The terms of the resolution of all claims concluded in Level I, II or III meetings shall be documented in writing and signed by each party.
5. Dispute Review Board. When a Dispute Review Board is required by Supplemental Conditions, and the claim is not resolved within seven (7) days of completion of the Level III meeting, the claim shall be submitted to the Dispute Review Board as provided for in the Supplementary Conditions.
6. Mediation. If the claim is not resolved in the Level III meeting and no Dispute Review Board is required, the Contractor may bring no claim against the Port in litigation unless the claim is first subject to non-binding mediation or non-binding arbitration as mutually agreed by the Port and Contractor. If no agreement is reached, then Port has the sole right to determine which method is utilized. Mediation shall be conducted before a single mediator under the Voluntary Construction Mediation Rules of the American Arbitration Association. The parties shall schedule mediation sessions at the earliest possible date(s), subject to the schedule of the selected (or appointed) mediator. The parties shall cooperate with the mediator and assure timely and full access to such personnel and documents as the mediator may request. The costs of mediation and/or arbitration shall be equally divided between the parties. Payment to the mediator shall be by the Port who, after payment, shall deduct 50% of the cost (less 50% of any costs that may have been paid directly by the Contractor) from monies due the Contractor.

G. Litigation. The Contractor may bring no litigation on claims unless such claims have been properly raised and considered in the procedures above. All unresolved claims of the Contractor shall be waived and released unless the Contractor has strictly complied with the time limits of the Contract Documents, and a lawsuit is served and filed within the limits stated in Paragraph G-04.31. This requirement cannot be waived except by an explicit written waiver signed by the Port.

H. Claims Audits. All claims filed against Port shall be subject to audit at any time following the filing of the claim. Failure of Contractor, or Subcontractors of any tier, to maintain and retain sufficient records to allow the Port to verify all or a portion of the claim or to permit the Port access to the

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books and records of the Contractor, or Subcontractors of any tier, shall constitute a waiver of the claim and shall bar any recovery. The audit may be performed by employees of Port or a representative of the Port. The Contractor, and its Subcontractors, shall provide adequate facilities acceptable to the Port for the audit during normal business hours. The Contractor, and all Subcontractors, shall make a good-faith effort to cooperate with the Port's auditors.

- I. Joinder. At Port's sole discretion, Port may require all claims or controversies arising out of this Contract may be consolidated in mediation between Port and Contractor and its Subcontractors or Sub-subcontractors.

G-09.06 Changed Conditions

- A. In the event Contractor encounters: (a) subsurface or latent physical conditions at the site differing materially from those indicated in the Contract Documents, (b) unknown physical conditions of an unusual nature at the site differing materially from those ordinarily encountered and generally recognized as inherent in the Work of the character provided for in the Contract Documents, and such conditions cause an increase in Contractor's cost or time of performance, Contractor may be entitled to an equitable adjustment in Contract Time. The Contractor shall notify the Engineer promptly orally and in writing in accordance with G04.30 of such changed conditions or other conditions for which an equitable adjustment in Contract Sum or Contract Time is desired. If such notice is not given prior to the condition being disturbed (or other action being taken by the Contractor which may result in a claim for an increase in the Contract Time or the Contract Sum), or such condition is disturbed before the Port directs the Contractor to proceed with the Work despite the condition, the Contractor will be deemed to have waived any claim for extra compensation or extension of the Contract Time on account of any additional or different work (including labor, material and equipment) required because of such condition. Oral notice alone by the Contractor to the Port regarding such condition shall not be adequate to avoid such waiver.
- B. If the Engineer determines that conditions exist which entitle the Contractor to equitable adjustment in the Contract Sum to account for the performance of the work involved, and the additional Contract Time, if any, required to perform such work, Engineer will determine such adjustment. If the Port and the Contractor agree on such adjustment, the same shall be set forth in a Change Order to be executed by the parties. If the parties are unable to so agree, the Port may nevertheless issue a Change Order directing the Contractor to perform the changed Work pursuant to paragraphs G-09.03, and G-09.04.
- C. If the Engineer determines that the Contractor's request does not warrant an equitable adjustment in the Contract Sum and/or Contract Time, the Contractor shall diligently pursue the Work in accordance with the Engineer's direction while retaining the right to protest the Engineer's decision in accordance with paragraph G-09.05.

ARTICLE G-10

PORT OF OLYMPIA'S RIGHTS AND REMEDIES, AND TERMINATION OF CONTRACT

G-10.01 General

- A. The rights and remedies of the Port set forth in the Contract Documents are cumulative and in addition to and not in limitation of any rights and remedies otherwise available to the Port under law. The pursuit of any remedy by the Port shall not be construed to bar the Port from the pursuit of any other remedy in the event of similar, different, or subsequent breaches of this Contract.
- B. The rights reserved or possessed by the Port to take any action with respect to the Project shall not give rise to any duty on the part of the Port to exercise any such right for the benefit of the Contractor, Subcontractor, Sub-subcontractor, Supplier, or any other person.

G-10.02 No Waiver of Port's Rights

- A. No action, delay in acting, or failure to act by the Port shall constitute a waiver of any right or remedy of the Port or be held to reduce any amount owed to the Port by the Contractor. Nor shall such action, delay, or failure to act constitute an approval or acquiescence in any breach or defect in Work, materials, or equipment. Likewise, delay or failure of the Port to act upon or enforce any provision of this Contract shall not constitute a waiver of such provision or otherwise prejudice the right of the Port to enforce such provision at any subsequent time. No provision of this Contract shall be held to be waived, modified, or deleted except as expressly stated in a Change Order.
- B. The Port shall not be precluded or estopped by any measurement, estimate, or certificate made either before or after the Substantial Completion or Final Completion of the Work and payment therefore from showing the true amount and character of the Work performed and materials

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furnished by the Contractor, or from showing that any such measurement, estimate or certificate is untrue or was incorrectly made, or that the Work or materials do not conform in fact to the requirements of the Contract Documents. Notwithstanding any such measurement, estimate, certificate, or payment in accordance therewith, the Port shall not be precluded or estopped from recovering from the Contractor and its sureties such damages as the Port may sustain by reason of the Contractor's failure to perform the Work in accordance with the Contract Documents or to otherwise comply with the requirements of the Contract Documents.

- C. Neither the final inspection, Final Completion, Acceptance, nor any payment for the whole any part of the Work, nor any extension of time, nor any possession or use of the Work taken or made by the Port, shall operate as a waiver by the Port of any provision of the Contract Documents or of any rights, remedies, or damages herein provided for, or bar recovery of any money wrongfully or erroneously paid to the Contractor.

G-10.03 Port's Right to Suspend Work for Unsuitable Weather and Other Conditions

- A. The Engineer may direct that all or any part of the Work be suspended for such time period as the Engineer deems proper because of unsuitable weather or other conditions beyond the control of the Port and the Contractor, which prevents satisfactory performance of the Work. The Contractor shall immediately comply with the directive to suspend Work. The Contractor shall resume the suspended Work when so directed by the Engineer.
- B. Such suspension of Work by the Engineer shall not be grounds for a claim by the Contractor for an increase in the Contract Sum, however, Contract Time may be adjusted in accordance with paragraph G-07.03 unless the Engineer concludes that the Contractor could have performed the suspended Work if the Contractor had diligently prosecuted the Work prior to such suspension.

G-10.04 Port's Right to Stop the Work

- A. If the Contractor fails to perform the Work in accordance with the Contract Documents, fails to correct defective work as required by paragraph G-04.22, 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.
- B. In the event of an order to stop Work, the Contractor shall not be entitled to any increase in the Contract Time or Contract Sum, nor to any damages or relief from liability, on account of such order to stop Work.
- C. Upon ten days' written notice to the Contractor, the Port may suspend the Work for its convenience and without cause. In the event such suspension causes a change in Contractor's cost or time of performance of the Work, Contractor shall be entitled to make a claim for a change in Contract Time and Contract Price as set forth in Article G-09.

G-10.05 Port's Right to Withhold Payment

The Port has the right to withhold making all or part of any payment otherwise due the Contractor if and so long as the Contractor is in breach of any of its obligations under this Contract.

G-10.06 Termination of Contract for Cause

- A. The Port may terminate the Contract as to all or any portion of the Work remaining to be performed upon seven (7) days' written notice to the Contractor and Contractor's surety, and to complete the Work by whatever method the Port may deem expedient, and recover the costs thereof from the Contractor in the event the Contractor:
 - 1. Refuses or fails to supply sufficient, properly skilled workers or materials of the proper quality or quantity;
 - 2. Refuses or fails to make prompt payment to Subcontractors, or for labor or materials;
 - 3. Fails to prosecute the Work continuously to completion with promptness and diligence;
 - 4. Fails to perform any of its obligations under the Contract; or
 - 5. Becomes insolvent or is declared bankrupt or commits any acts of bankruptcy or insolvency or makes an assignment for the benefit of Contractor's creditors.
- B. Upon termination of the Contract under this paragraph, the Port may exclude the Contractor from the Project site(s), take possession of the Work and all materials and equipment stored on or off

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site for which payment has been made pursuant to paragraph G-08.05, and complete the Work if and as it sees fit.

- C. If the Port elects not to complete the Work, the Contractor shall not thereby be released from any liability it may have to the Port for damages on account of the breach of its obligations under this Contract.
- D. If the Port elects to complete all or a portion of the Work, it may do so as it sees fit. The Port shall not be obligated to the Contractor to accept the lowest bid for completion of the Work. The Port may choose to complete all or a portion of the Work using its own work force. The cost of such Work shall be deducted from the amount due the Contractor or claimed against the retained percentage. In any event, if the costs to the Port (including all administrative costs) exceed the unpaid portion of the Contract Sum applicable thereto, the Contractor is liable for and shall pay the difference to the Port.
- E. The rights provided by this paragraph shall survive the termination of this Contract, as shall all other rights to damages or other remedies against the Contractor.

G-10.07 Termination for Convenience

Upon ten days' written notice to the Contractor, the Port may terminate the Contract at its convenience and without cause. In such case, the Contractor shall be paid for all Work performed and reasonable expenses properly incurred in connection with the termination. No amount will be paid to the Contractor for any anticipated or estimated fee or profit for Work not performed which the Contractor could or would or may have earned if the Contract had not been terminated. Title to all Work performed at the time of termination shall be transferred to the Port upon payment therefore.

G-10.08 Damages for Unexcused Delays by the Contractor

- A. The Contractor recognizes that any unexcused delay by the Contractor in the prosecution and completion of the Work will cause inconvenience and expense to the Port, its lessees, and other users of Port facilities. It is further acknowledged by the Contractor that unexcused delays in the prosecution and completion of the Work may obstruct water, or other traffic, interfere with and delay business and commerce, or expose the Port to possible claims of direct and consequential damages from third parties. Additionally, such delays may cause the Port to incur substantially increased costs of administration, engineering, supervision, and inspection in connection with the completion of the Work.
- B. In certain circumstances, it is recognized that it will be impracticable and extremely difficult to ascertain and determine the actual damages, as generally described above, which will be suffered by the Port as a result of an unexcused delay by the Contractor. In such circumstances, where specifically provided for in the Supplementary Conditions, the Contractor shall be liable to the Port for liquidated damages in the amount set forth in the Supplementary Conditions, for each calendar day following the Substantial Completion date that Contractor achieves Substantial Completion and for each day following the Final Completion date that Contractor achieves Final Completion. Neither this subsection nor any amounts specified in the Supplementary Conditions as liquidated damages shall be considered to be a penalty, it being the express agreement of the Contractor and the Port that the liquidated damages provided shall be a reasonable approximation of actual damages to be suffered by the Port for late performance.
- C. Any deduction or payment of liquidated damages shall not in any way release the Contractor from any further or other obligation and liability with respect to Contractor's obligation to achieve Final Completion.
- D. If the Supplementary Conditions do not provide for liquidated damages as provided in subparagraph B of this paragraph, the Contractor shall be subject to liability for the actual damages (including but not limited to the items set forth in subparagraph A of this paragraph) suffered by the Port as a result of delay in completing the Work.

G-10.09 Port's Right to Use the Premises

- A. The Port reserves the right to use any part of the Work before completion of the entire Work without relieving the Contractor of any of its obligations under the Contract. Such use shall not constitute acceptance by the Port of any of the Work.
- B. No additional compensation will be paid to the Contractor for costs incurred by it as a result of the Port's use or occupancy of the Work or a designated portion thereof following its Substantial Completion, or for additional safety measures including warning device costs, made necessary to protect the Contractor's operations, the public, or Port employees.

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G-10.10 Prevailing Party to be Awarded Litigation Expenses

In any action between the Port and the Contractor concerning the rights and obligations imposed on them by this Contract, the prevailing party in such action, upon a finding by a court having jurisdiction, shall be entitled to recover from the other party its expenses of litigation (including reasonable attorneys' fees, expert consultants' fees, and other expenses related to the action). The cost of publicly employed counsel of the Port shall be recoverable by the Port under this paragraph, and the fees of such counsel shall be established based on the prevailing rate for attorneys in private practice of comparable qualifications and experience.

SECTION G-11

BONDS AND INSURANCE

G-11.01 Performance Bond

- A. The Contractor shall furnish a duly executed performance bond upon a form acceptable to the Port, within ten calendar 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 for the state of Washington published by the Office of the Insurance Commissioner, and 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 Sum plus Washington State Sales Tax, if applicable, and conditioned upon the faithful performance of the Contract by the Contractor within the Contract Time.
- B. If the Contract Sum does not exceed \$25,000 the Contractor may, in lieu of providing a bond, request the Port to retain 50% of the Contract amount earned for a period of 45 days following Final Completion of the Work or until receipt of all necessary releases and settlement of any liens filed under Chapter 60.28 R.C.W., whichever is later, at which time the Port will make Final Payment.

G-11.02 Payment Bond

- A. The Contractor shall also furnish a duly executed payment bond upon a form acceptable to the Port, within ten calendar 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, and 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 Sum plus Washington State Sales Tax, if applicable, and conditioned upon the payment by the Contractor to all laborers, mechanics, Subcontractors, and Suppliers, and all persons who shall supply the Contractor, subcontractors or sub-subcontractors with provisions, equipment, or supplies for the performance of the Work covered by this Contract.
- B. If the Contract Sum does not exceed \$25,000 the Contractor may, in lieu of providing a bond, request the Port to retain 50% of the Contract amount earned for a period of 45 days following Final Completion of the Work or until receipt of all necessary releases and settlement of any liens filed under Chapter 60.20 R.C.W., whichever is later, at which time the Port will make Final Payment.

G-11.03 Failure to Provide Bonds

- A. Failure to timely provide performance and payment bonds will result in cancellation of the Contract award and forfeiture of the bid guaranty to the Port.
- B. The Port may, from time to time, require the Contractor's surety or sureties to appear and qualify themselves upon the bonds. If such surety or sureties shall refuse or fail to so appear and qualify, or if the Port determines that such surety or sureties are insufficient to fulfill the terms and conditions of the bonds, then the Port shall require the Contractor to furnish additional surety or sureties as may be necessary to fulfill the terms and conditions of the bonds. Payments may be withheld on the Contract until sufficient surety, as required, is furnished.
- C. If the Contract Sum is increased by Change Order, the Contractor agrees to provide the Port with such additional performance and payment bonds as required to assure performance of any

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additional Work and payment for the labor and materials incidental to such Work. Change Orders may be issued without notice to sureties. Compensation for additional bonding, where required by a Change Order, shall be included in the 15% markup allowed the Contractor for all Change Orders.

G-11.04 Insurance

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

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

A. Minimum Scope of Insurance

Contractor shall obtain insurance of the types described below:

1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form, providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.
2. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 or the equivalent and shall cover liability arising from premises, operations, independent contractors, products-completed operations, stop gap liability, personal injury and advertising injury, and liability assumed under an insured contract. The Port shall be named as an insured under the Contractor's Commercial General Liability insurance policy with respect to the work performed for the Port.
3. Workers' Compensation coverage as required by the Industrial Insurance laws of the state of Washington.

B. Minimum Amounts of Insurance

Contractor shall maintain the following insurance limits:

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

C. Other Insurance Provisions

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

1. The Contractor's insurance coverage shall be primary insurance as respects the Port. Any Insurance, self-insurance, or insurance pool coverage maintained by the Port shall be excess of the Contractor's insurance and shall not contribute with it.
2. The Contractor's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the Port.
3. The Contractor shall procure and maintain any other insurance applicable to this contract as may be required by local, state, or federal law.
4. 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 equipment/boom borrowed from the Port, or motor vehicles owned or rented by the Contractor, or the Contractor's agents, suppliers or Contractors as well as to any temporary structures, scaffolding and protective fences.

D. Acceptability of Insurers

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

E. Verification of Coverage

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

F. Subcontractors

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

ARTICLE G-12

INDEX TO GENERAL CONDITIONS

Numbers refer to the paragraph number only. No reference is made to the topic as it may occur within the alphabetical outline.

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1. Submit Project Superintendent's name and phone number within 10 days of award.
2. File "Statement of Intent to Pay Prevailing Wages" for prime and all subcontractors.
3. Furnish progress schedule within 10 days of award.
4. Submit Prime Contractor's manning table and use of subcontractor's plan.
5. Provide Payment and Performance Bonds within 10 days after award.
6. Provide Certificate of Insurance within 10 days after award.

END OF SECTION