

BACKGROUND:

The NWSA has declared an emergency on Track 2 at North Intermodal (NIM) Yard, located at NWSA South Harbor in Pierce County.

Replace approximately 104 track feet of 112 lbs. rail with 115 lbs. relay rail, ties and all rail appurtenances. Excavate 1 foot below tie and replace ballast, install rail, and tamp rail into proper alignment. All rail connections to be welded under crossing. Demolish asphalt crossing to install rail and pave new crossing once tamping is complete. Disposal of all ballast and soil materials to LRI. All materials and installation to be consistent with the North Lead Rail plan details and specifications.

AGREEMENT:

The NWSA and the Contractor agree as follows:

1.0 CONTRACTOR TO FULLY PERFORM THE WORK

The Contractor shall fully execute and complete the entire Work described in the Contract Documents, except to the extent specifically indicated in the Agreement, the General Conditions of the Contract (as well as any Supplemental, Special or other Conditions included in the project manual), the Drawings, the Specifications, and all modifications issued after execution of the Contract.

2.0 TIME OF COMPLETION

The Contractor shall complete the work within 25 working days from the date of work commencing.

3.0 LIQUIDATED DAMAGES

Provisions for liquidated damages as a reasonable estimate of future loss, as of the date of this Agreement, are included in the Contract Documents. The parties agree that the stated liquidated damages are not penalties individually or cumulatively.

The liquidated damages for failure to complete the work within the time specified shall be \$XXX per calendar day.

Liquidated damages assessed by the Port will be deducted from monies due to the Contractor, or from monies that will become due to the Contractor. The liquidated damages, as specified and calculated herein, shall be levied for each and every calendar day that Substantial Completion and/or Final Completion of the work is delayed beyond the prescribed completion dates, or the completion dates modified by the Port for extensions of the contract time.

4.0 CONTRACT PRICE

The Contractor shall do all work and furnish all tools, materials, and equipment for the work and services contemplated in this **Contract for the not-to-exceed amount of Sixty-Seven Thousand Three Dollars and Twenty-Five Cents (\$67,003.25)**, subject to additions and deductions as provided in the Contract Documents. State and local sales tax is not included in the Contract Price but will be due and paid by the Port with each progress payment.

5.0 INSURANCE AND BONDS

The Contractor shall purchase and maintain insurance and provide bonds as set forth in the Contract Documents.

This Agreement is entered into as of the day and year first written above:

CONTRACTOR

NORTHWEST SEAPORT ALLIANCE

By: 

By: 

Print: Bill Lenhart

Print: Dakota Chamberlain

Title: Regional Manager

Title: Chief Facilities Development Officer

Date: 01/23/17

Execution Date: 1/24/2017

END OF SECTION

PERFORMANCE BOND # _____

CONTRACTOR (NAME AND ADDRESS)

SURETY (NAME AND PRINCIPLE PLACE OF BUSINESS)

OWNER (NAME AND ADDRESS)

AGENT OR BROKER (FOR INFORMATION ONLY)

NORTHWEST SEAPORT ALLIANCE (NWSA)
P.O. BOX 1837
TACOMA, WA 98401-1837

KNOW ALL MEN BY THESE PRESENTS:

That _____ as Principal, hereinafter called Contractor, and _____ as Surety, hereinafter called Surety, are held and firmly bound unto the Northwest Seaport Alliance as Obligee, hereinafter called the NWSA, in the amount of Sixty-Seven Thousand Three Dollars and Twenty-Five Cents (\$67,003.25) for the payment whereof Contractor and Surety bind themselves, their executors, administrators, legal representatives, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS:

Contractor shall execute an agreement with the NWSA for Emergency NIM Track 2 Damage, Project No. 101110.01, Contract No. 070497, a copy of which Contract is by reference made a part hereof (the term "Contract" as used herein to include the aforesaid agreement together with all the Contract Documents, addenda, modifications, all alterations, additions thereto, deletions therefrom and any other document or provision incorporated into the Contract) and is hereinafter referred to as the Contract.

This bond is executed and issued pursuant to the provisions of Chapter 39.08 Revised Code of Washington.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that if Contractor shall promptly and faithfully perform said Contract, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

FURTHER:

- A. Surety hereby waives notice of any alterations, change orders, modifications or extensions of time made by the NWSA.
- B. Surety recognizes that the Contract includes provisions for additions, deletions and modifications to the work or Contract Time and the amounts payable to the Contractor. Subject to the limitations contained in (A) above, Surety agrees that no such addition, deletion, or modification, or any combination thereof, shall avoid or impair Surety's obligation hereunder.
- C. Whenever Contractor has been declared by the NWSA to be in default, and the NWSA has given Surety notice of the NWSA's determination of such default, Surety shall promptly (in no event more than fifteen (15) days following receipt of such notice) advise the NWSA of its intended action to:
 - 1. Remedy the default within fifteen (15) days following its advice to the NWSA as set forth above, or

2. Assume within fifteen (15) days, following its advice to the NWSA as set forth above, completion of the Contract in accordance with the Contract Documents and become entitled to payment of the balance of the Contract Sum, or
 3. Pay the NWSA upon completion of the Contract, in cash, the cost of completion together with all other reasonable costs and expenses incurred by the NWSA as a result of the Contractor's default, including but not limited to, those reasonable costs and expenses incurred by the NWSA in its efforts to mitigate its losses, which may include but are not limited to, attorney's fees and efforts to complete the Work prior to the Surety exercising the options available to it as set forth herein.
- D. If the NWSA shall commence suit and obtain judgment against the Surety for recovery hereunder, then the Surety, in addition to such judgment, shall pay all costs and attorney's fees incurred by the NWSA in enforcement of its rights hereunder. Venue for any action arising out of or in connection with this bond shall be in Pierce County, Washington.
- E. No right or action shall accrue on this bond to or for the use of any person or corporation other than the NWSA of Tacoma.

Signed and Sealed the _____ day of _____, 20____.

IMPORTANT: Surety companies executing bonds must have an A.M. Best Rating of A- FSC of (6) or higher, have an underwriting limitation of not less than the Contract Sum, and be authorized to transact business in the State of Washington.

SURETY

CONTRACTOR

Signature

Signature

Printed Name and Title

Printed Name and Title

Power of Attorney attached.

END OF SECTION

LABOR AND MATERIAL PAYMENT BOND # _____

CONTRACTOR (NAME AND ADDRESS)

SURETY (NAME AND PRINCIPLE PLACE OF BUSINESS)

OWNER (NAME AND ADDRESS)

AGENT OR BROKER (FOR INFORMATION ONLY)

NORTHWEST SEAPORT ALLIANCE

P.O. BOX 1837

TACOMA, WA 98401-1837

KNOW ALL MEN BY THESE PRESENTS:

That _____ as Principal, hereinafter called Contractor, and _____ as Surety, hereinafter called Surety, are held and firmly bound unto the Northwest Seaport Alliance as Obligee, hereinafter called the NWSA, and all others entitled to recovery hereunder, in the amount of Sixty-Seven Thousand Three Dollars and Twenty-Five Cents (\$67,003.25) for the payment whereof Contractor and Surety bind themselves, their executors, administrators, legal representatives, successors and assigns, jointly and severally firmly by these presents.

WHEREAS:

Contractor shall execute an agreement with the NWSA for Emergency NIM Track 2 Damage, Project No. 101110.01, Contract No. 070497, a copy of which Contract is by reference made a part hereof (the term "Contract" as used herein to include the aforesaid agreement together with all the Contract Documents, addenda, modifications, alterations, additions thereto, deletions therefrom and any other documents or provisions incorporated into the Contract) and is hereinafter referred to as the Contract.

This bond is executed pursuant to the provisions of Chapter 39.08 Revised Code of Washington.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that if Contractor shall promptly make payment to all claimants, as hereinafter defined, for all labor and material used or reasonably required for use in the performance of the Contract and shall indemnify and save the NWSA harmless from all cost and damage by reason of Contractor's default, then this obligation shall be null and void; otherwise it shall remain in full force and effect, subject to the following conditions:

- A. The Surety hereby waives notice of any alterations, change orders, modifications or extensions of time made by the NWSA.
- B. Surety recognizes that the Contract includes provisions for additions, deletions and modifications to the Work or Contract Time and the amounts payable to the Contractor. Surety agrees that no such addition, deletion, or modification, or any combination thereof, shall avoid or impair Surety's obligation hereunder.

- C. Surety hereby agrees that every person protected under the provisions of RCW 39.08.010 who has not been paid as provided under the Contract and pursuant to RCW 39.08.010, less any amounts withheld pursuant to statute, and less retainage withheld pursuant to RCW 60.28, after the expiration of a period of thirty (30) days after the date on which the completion of the Contract in accordance with RCW 39.08, may sue on this bond, prosecute the suit to final judgment as may be due claimant, and have execution thereon including recovery of reasonable costs and attorney's fees as provided by RCW 39.08. The NWSA shall not be liable for the payment of any costs or expenses of any such suit.
- D. No suit or action shall be commenced hereunder by any claimant unless claimant shall have given the written notices to the NWSA, and where required, the Contractor, in accordance with RCW 39.08.030.
- E. The amount of this bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder, inclusive of the payment by Surety of claims which may be properly filed in accordance with RCW 39.08 whether or not suit is commenced under and against this bond.
- F. If any Claimant shall commence suit and obtain judgment against the Surety for recovery hereunder, then the Surety, in addition to such judgment and attorney fees as provided by RCW 39.08.030, shall also pay such costs and attorney fees as may be incurred by the NWSA as a result of such suit. Venue for any action arising out of or in connection with this bond shall be in Pierce County, Washington.

Signed and Sealed this _____ day of _____, 20____.

IMPORTANT: Surety companies executing bonds must have an A.M. Best Rating of A- FSC of (6) or higher, have an underwriting limitation of not less than the Contract Sum, and be authorized to transact business in the State of Washington.

SURETY

CONTRACTOR

Signature

Signature

Printed Name and Title

Printed Name and Title

Power of Attorney attached.

END OF SECTION

ARTICLE 1 - THE CONTRACT DOCUMENTS

1.01 GENERAL

- A. Contract Documents form the Contract. The Contract Documents are enumerated in the Agreement between the NWSA and Contractor ("Agreement"). Together, the Contract Documents form the Contract. The Contract represents the entire integrated agreement between the parties and supersedes all prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only in writing and only as set forth in the Contract Documents.
- B. Headings only for convenience. The titles or headings of the sections, divisions, parts, articles, paragraphs, and subparagraphs of the Contract Documents are intended only for convenience.

1.02 DEFINITIONS

- A. "Contractor" means the person or entity contracting to perform the Work under these Contract Documents. The term Contractor includes the Contractor's authorized representative for purposes of identifying obligations and responsibilities under the Contract Documents, including the ability to receive notice and direction from the NWSA.
- B. "Drawings" are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, including plans, elevations, sections, details, and diagrams.
- C. "Engineer" is the NWSA employee generally tasked with administering the Project on the NWSA's behalf and the person with overall responsibility for managing, for the NWSA, the Project scope, budget, and schedule. To the extent empowered, the Engineer may delegate to others at the NWSA (such as a Project Manager or Inspector) the responsibility for performing delegated responsibilities of the Engineer's under this Contract.
- D. "NWSA" means the NWSA of Tacoma. The NWSA will designate in writing a representative (usually the Engineer) who shall have the authority to act on the NWSA's behalf related to the Project. The "NWSA" does not include staff, maintenance or safety workers, or other NWSA employees or consultants that may contact the Contractor or be present at the Project site.
- E. "Project" is identified in the Agreement and is the total construction to be performed by or through the NWSA, of which the Work performed under the Contract Documents may be only a part.
- F. "Specifications" are those portions of the Contract Documents that specify the written requirements for materials, equipment, systems, standards and workmanship for the Work and for the performance of related services.
- G. "Subcontractor" means a person or entity that contracts directly with the Contractor to perform any Work under the Contract Documents. "Subcontractor of any tier" includes Subcontractors as well as any other person or entity, including suppliers, that contracts with a Subcontractor or a lower-tier Subcontractor (also referred to as "Sub-subcontractors") to perform any of the Work.
- H. "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all labor, tools, equipment, materials, services and incidentals necessary to complete all obligations under the Contract Documents. The Work may constitute only a part of the Project, and may interface and need to be coordinated with the work of others.

1.03 INTENT OF THE CONTRACT DOCUMENTS

- A. Intent of Contract Documents. The intent of the Contract Documents is to describe the complete Work and to include all items necessary for the proper execution and completion of the Work by the Contractor.
- B. Contract Documents are complementary. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor is required to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.
- C. No third party contract rights. The Contract Documents shall not create a contractual relationship of any kind (1) between the NWSA and a Subcontractor of any tier (although the NWSA does not waive any third-party beneficiary rights it may otherwise have as to Subcontractors of any tier), (2) between the Contractor and the Engineer or other NWSA employees or consultants, or (3) between any persons or entities other than the NWSA and Contractor.

1.04 CORRELATION OF THE CONTRACT DOCUMENTS

- A. Precedence. In the event of a conflict or discrepancy between or among the Contract Documents, the conflict or discrepancy will be resolved by the following order of precedence: with an addendum or Change Order having precedence over an earlier document, and computed dimensions having precedence over scaled dimensions and large scale drawings take precedence over small scale drawings:
 - 1. The signed Agreement
 - a. Supplemental Conditions
 - b. General Conditions
 - c. Division 01 General Requirements of Specifications
 - d. All other Specifications, including all remaining divisions, material and system schedules and attachments, and Drawings
 - e. All other sections in Division 00 not specifically identified herein by Section.
 - 2. Inconsistency between or among Contract Documents. If there is any inconsistency between the Drawings, schedules, or Specifications, or any attachments, the Contractor will make an inquiry to the Engineer to determine how to proceed, and, unless otherwise directed, the Contractor will provide the better quality or greater quantity of any work or materials, as reasonably interpreted by the NWSA, at no change in the Contract Sum or Contract Time. Thus, if Work is shown on Drawings but not contained in Specifications or schedules, or contained in Specifications or schedules but not shown on the Drawings, the Work as shown or contained will be provided at no change in the Contract Sum or Contract Time, according to Specifications or Drawings to be issued by the NWSA.
- B. Inconsistency with law. 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 in the event of any conflict between such laws, the most stringent requirements govern.
- C. Organization of Contract Documents. The organization of the Specifications and Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of the Work to be performed. The NWSA assumes no responsibility for the division and proper coordination of Work between particular Subcontractors.

- D. Bid quantities are estimates only. Any “bid quantities” set forth in the Contract Documents are estimates only. The NWSA does not warrant that the actual amount of Work will correspond to any estimates. The basis of payment will be the actual quantities performed in accordance with the Contract Documents.

1.05 OWNERSHIP OF THE CONTRACT DOCUMENTS

- A. NWSA owns all Contract Documents. All Drawings, Specifications, and other Contract Documents furnished to the Contractor are NWSA property, and the NWSA retains all intellectual property rights, including copyrights. The Contract Documents are to be used only with respect to the Project.

ARTICLE 2 - NWSA OF TACOMA

2.01 AUTHORITY OF THE ENGINEER

- A. Engineer will be NWSA's representative. The Engineer or the Engineer's designee will be the NWSA's representative during the Project and will administer the Project on the NWSA's behalf.
- B. Engineer may enforce all obligations. The Engineer has the authority to enforce all requirements imposed on the Contractor by the Contract Documents.
- C. Only Engineer is agent of NWSA. Other than the Engineer, no other NWSA employee or consultant is an agent of the NWSA, and none are authorized to agree on behalf of the NWSA to changes in the Contract Sum or Contract Time, nor to waive provisions of the Contract Documents, nor to direct the Contractor to take actions that change the Contract Sum or Contract Time, nor to accept notice of protests or claims on behalf of the NWSA.

2.02 ADMINISTRATION OF THE CONTRACT

- A. NWSA will administer Contract. The NWSA will provide administration of the Contract through the Engineer or the Engineer's designee. All communications with the NWSA or its consultants related to the Contract will be through the designated representative.
- B. NWSA not responsible for means and methods. The NWSA is not responsible for, and will have no control or charge of, the means, methods, techniques, sequences, or procedures of construction, or for safety precautions or programs incidental thereto, because these are the sole responsibility of the Contractor. If the NWSA makes any suggestion of means, methods, techniques, sequences or procedures, the Contractor will exercise its independent judgment in deciding whether to adopt the suggestion, except as otherwise provided in the Contract Documents.
- C. NWSA not responsible for acts or omissions of Contractor or Subcontractors. The NWSA is not responsible for, and will have no control or charge of, the acts or omissions of the Contractor, Subcontractors of any tier, suppliers, or any of their agents or employees, or any other persons performing a portion of the Work.
- D. NWSA not responsible for the Work. The NWSA is not responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents. The presence of the Engineer or others at the Project site at any time does not relieve the Contractor from its responsibility for non-conforming Work.
- E. NWSA will have access to the Work. The NWSA and its representatives will at all times have access to the Work in progress, and the Contractor will provide proper facilities for such access and for inspection.

2.03 INFORMATION PROVIDED BY THE NWSA

- A. NWSA to furnish information with reasonable promptness. The NWSA shall furnish information and services required of the NWSA by the Contract Documents with reasonable promptness.
- B. Subsurface investigation. The NWSA may have undertaken a limited investigation of the soil and other subsurface conditions at the Project site for design purposes only. The results of these investigations will be available for the convenience of the Contractor, but they are not Contract Documents. There is no warranty or guarantee, express or implied, that the conditions indicated are representative of those existing at the site or that unforeseen developments may not occur. The Contractor is solely responsible for interpreting the information.

2.04 CONTRACTOR REVIEW OF PROJECT INFORMATION

- A. Contractor to familiarize itself with site and conditions of Work. Prior to executing the Contract, the Contractor shall visit the site, become generally familiar with local conditions under which the Work is to be performed, and correlate personal observations with the requirements of the Contract Documents. By signing the Contract, the Contractor confirms that the Contract Sum is reasonable compensation for the Work; that the Contract Time is adequate; that it has carefully examined the Contract Documents and the Project site; and that it has satisfied itself as to the nature, location, and character of the Work, the labor, materials, equipment, and other items required and all other requirements of the Contract Documents. The Contractor's failure fully to acquaint itself with any such condition does not relieve the Contractor from the responsibility for performing the Work in accordance with the Contract Documents, within the Contract Time, and for the Contract Sum.
- B. Contractor to review Contract Documents. Because the Contract Documents are complementary, the Contractor will, before starting each portion of the Work, carefully study and compare the various Drawings, Specifications, and other Contract Documents, as well as all information furnished by the NWSA.
- C. Contractor to confirm field conditions. Before starting each portion of the Work the Contractor shall take field measurements of and verify any existing conditions, including all Work in place, and all general reference points; shall observe any conditions at the site affecting the Contractor; and shall carefully compare field measurements, conditions and other information known to the Contractor with the Contract Documents.

2.05 NWSA'S RIGHT TO REJECT, STOP AND/OR CARRY-OUT THE WORK

- A. NWSA may reject Work. The NWSA has the authority but not the obligation to reject work, materials and equipment that is defective or that otherwise does not conform to the Contract Documents, and to decide questions concerning the Contract Documents. However, the failure to so reject or the presence of the NWSA at the site shall not be construed as assurance that the Work is acceptable or being completed in compliance with the Contract Documents.
- B. NWSA may stop Work. If the Contractor fails to correct Work that does not comply with the requirements of the Contract Documents, or repeatedly or materially fails to properly carry out the Work, the NWSA may issue an order to stop all or a portion of the Work until the cause for the order has been eliminated. The NWSA's right to stop the Work shall not impose a duty on the NWSA to exercise this right for the benefit of the Contractor or any third party.
- C. NWSA may carry-out Work. If the Contractor fails to perform the Work properly, fails to perform any provision of this Contract, or fails to maintain the Progress Schedule, or if the NWSA reasonably concludes that the Work will not be completed in the specified manner or within the Contract Time, then the NWSA may, after three (3) days' written notice to the Contractor and without prejudice to any other remedy the NWSA may have, perform itself or have performed

any or all of the Work and may deduct the cost thereof from any payment then or later due the Contractor.

2.06 SEPARATE CONTRACTORS

- A. NWSA may engage separate contractors or perform work with its own forces. The NWSA may contract with other contractors ("Separate Contractor") in connection with the Project or perform work with its own forces. The Contractor shall coordinate and cooperate with any NWSA forces or Separate Contractors, as applicable. The Contractor shall provide reasonable opportunity for the introduction and storage of materials and the execution of work by others.
- B. Contractor to inspect work of others. If any part of the Contractor's Work depends on the work of the NWSA or any Separate Contractor, the Contractor shall inspect and promptly report to the NWSA, in writing, any defects that impact the Contractor. Failure of the Contractor to so inspect and report defects in writing shall constitute an acceptance by Contractor of the work of the NWSA or Separate Contractor.
- C. Contractor to resolve claims of others. Should the Contractor or any of its Subcontractors of any tier cause damage of any kind, including but not limited to delay, to any Separate Contractor, the Contractor shall promptly and using its best efforts settle or otherwise resolve the dispute with the Separate Contractor. The Contractor shall also promptly remedy damage caused to completed or partially completed construction.

2.07 OFFICERS AND EMPLOYEES OF THE NWSA

- A. No personal liability. Officers, employees, and representatives of the NWSA, including the Commissioners, acting within the scope of their employment, shall not be personally liable to Contractor for any acts or omissions arising out of the Project.

ARTICLE 3 - CONTRACTOR'S RESPONSIBILITIES

3.01 DUTY TO PERFORM THE ENTIRE WORK

- A. Contractor must perform entire Work in accordance with Contract Documents. The Contractor shall perform the entire Work required by the Contract in accordance with the Contract Documents. Unless otherwise specifically provided, the Contractor shall provide and pay for all labor, tools, equipment, materials, electricity, power, water, other utilities, transportation and other facilities necessary for the execution and completion of the Work.
- B. Contractor shall be independent contractor. The Contractor shall be and operate as an independent contractor in the performance of the Work. The Contractor is not authorized to enter into any agreements or undertakings for or on behalf of the NWSA and is not an agent or employee of the NWSA.

3.02 OBSERVED ERRORS, INCONSISTENCIES, OMISSIONS OR VARIANCES IN THE CONTRACT DOCUMENTS

- A. Contractor to notify NWSA of any discrepancy. The Contractor's obligations to review and carefully study the Contract Documents and field conditions are for the purpose of facilitating coordination and construction. If the Contractor at any time observes that the Contract Documents, including Drawings and Specifications, vary from the conditions of the Project site, are in error, or omit any necessary detail, the Contractor shall promptly notify the Engineer in writing through a Request for Information. Any Work done after such observation, until authorized by the Engineer, shall be at Contractor's risk. The Contractor shall also promptly report to the Engineer any observed error, inconsistency, omission, or variance with applicable laws through a Request for Information. If the Contractor fails either to carefully study and compare the Contract Documents, or to promptly report any observed error, inconsistency,

omission, or variance, the Contractor shall assume full responsibility and shall bear all costs, liabilities and damages attributable to the error, inconsistency, omission, or variance.

- B. Requests for Information. The Contractor shall submit Requests for Information concerning the Contract Documents by following the procedure and using such form as the NWSA may require. The Contractor shall minimize Requests for Information by thoroughly studying the Contract Documents and reviewing all Subcontractor requests. The Contractor shall allow adequate time in its planning and scheduling for a response from the NWSA to a Request for Information.
- C. NWSA may provide information to supplement Drawings and Specifications. Minor items of work or detail that are omitted from the Drawings and Specifications but inferable from the information presented and normally provided by accepted good practice shall be provided and/or performed by the Contractor as part of the Contract Sum and within the Contract Time. Similarly, the Engineer may furnish to the Contractor additional Drawings and clarifications, consistent with the Contract Documents, as necessary to detail and illustrate the Work. The Contractor shall conform its Work to such additional Drawings and clarifications at no increase in the Contract Sum or Contract Time.

3.03 SUPERVISION AND RESPONSIBILITY FOR SUBCONTRACTORS

- A. Contractor responsible for Work and workers. The Contractor shall have complete control of the means, methods, techniques, sequences or procedures related to the Work, and for all safety precautions or programs. The Contractor shall have complete control over and responsibility for all personnel performing the Work. The Contractor is also responsible for the acts and omissions of the Contractor's principals, employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors of any tier.
- B. Contractor to supervise the Work. The Contractor shall continuously supervise and direct the Work using competent and skilled personnel and the Contractor's best skill and attention.
- C. Contractor to enforce discipline and good order. The Contractor shall enforce strict discipline and good order among all workers on the Project, and shall not employ any unfit person or anyone not skilled in the work to which they are assigned. Incompetent, careless, or negligent workers shall immediately be removed from the Work. The NWSA may, but is not obligated to, require the Contractor to remove from the Work, at no change in the Contract Sum or Contract Time, anyone whom the NWSA considers objectionable.

3.04 MATERIALS AND EQUIPMENT

- A. Material and equipment to be new. All materials and equipment to be incorporated into the Work shall be new unless specifically provided otherwise in the Contract Documents. The Contractor shall, if required in writing by the NWSA, furnish satisfactory evidence regarding the kind and quality of any materials, identify the source, and warrant compliance with the Contract Documents. The Contractor shall ensure that all materials and equipment are protected, kept dry and stored under cover in a manner to protect such materials and equipment.
- B. Material and equipment shall conform to manufacturer instructions. All materials and equipment shall conform, and shall be applied, installed, used, maintained and conditioned in accordance with, the instructions of the applicable manufacturer, fabricator or processor, unless otherwise specifically provided by the Engineer.

3.05 CONTRACTOR WARRANTIES

- A. Work will be of good quality and performed in workmanlike manner. In addition to any specific warranties set forth in the Contract Documents, the Contractor warrants that the Work, including

all materials and equipment furnished under the Contract, will be of good quality and new, will be performed in a skillful and workmanlike manner and will conform to the requirements of the Contract Documents. Any Work not conforming to this warranty, including unapproved or unauthorized substitutions, shall be considered defective.

- B. Work will be free from defects. The Contractor warrants that the Work will be free from defects for a period of one (1) year from the date of Substantial Completion of the Project.
- C. Contractor to collect and deliver warranties to NWSA. The Contractor shall collect and deliver to the NWSA any written warranties required by the Contract Documents. These warranties shall be obtained and enforced by the Contractor for the benefit of the NWSA without the necessity of separate assignment. These warranties shall extend to the NWSA all rights, claims, benefits and interests that the Contractor may have under express or implied warranties or guarantees against a Subcontractor of any tier, supplier or manufacturer for defective or non-conforming Work. Warranty provisions that purport to limit or alter the NWSA's rights under the Contract Documents or the laws of the State of Washington are null and void.
- D. General requirements. The Contractor is not relieved of its general warranty obligations by the specification of a particular product or procedure in the Contract Documents. Warranties in the Contract Documents shall survive completion, acceptance and final payment.

3.06 REQUIRED WAGES

- A. Contractor will pay required wages. The Contractor shall pay (and shall ensure that all Subcontractors of any tier pay) all prevailing wages and other wages (such as Davis-Bacon Act wages) applicable to the Project. See Specification Section 00 73 46.
- B. The Contractor shall defend (at Contractor's sole cost, with legal counsel approved by NWSA), indemnify and hold the NWSA harmless from all liabilities, obligations, claims, demands, damages, disbursements, lawsuits, losses, fines, penalties, costs and expenses, whether direct or indirect, and including but not limited to attorneys' fees and consultants' fees and other costs and expenses of litigation, from any violation or alleged violation by the Contractor or any Subcontractor of any tier of RCW 39.12 ("Prevailing Wages on Public Works") or Chapter 51 RCW ("Industrial Insurance").

3.07 STATE AND LOCAL TAXES

- A. Contractor will pay taxes on consumables. The Contractor will pay the retail sales tax on all consumables used during performance of the Work and on all items that are not incorporated into the final Work; this tax shall be included in the Contract Sum.
- B. NWSA will pay taxes on the Contract Sum. The NWSA will pay state and local retail sales tax on the Contract Sum with each progress payment and on final payment for transmittal by the Contractor to the Washington State Department of Revenue or to the applicable local taxing authority. Rule 170: WAC 458-20-170.
- C. Direct all tax questions to the Department of Revenue. The Contractor should direct all questions concerning taxes on any portion of the Work to the State of Washington Department of Revenue or to the local taxing authority.
- D. State Sales Tax - Rule 171: WAC 458-20-171. For work performed related to building, repairing, or improving streets, roads, etc., which are owned by a municipal corporation, or political subdivision of the state, or by the United States, and which are used, primarily, for foot or vehicular traffic, the Contractor shall include Washington State Retail Sales Taxes in the various schedule prices, or other contract amounts, including those that the Contractor pays on the purchase of materials, equipment, or supplies used or consumed in doing the Work.

1. The bid form will indicate which bid items are subject to Rule 171. Any such identification by the NWSA is not binding upon the Department of Revenue.

3.08 PERMITS, LICENSES, FEES, AND ROYALTIES

- A. Contractor to provide and pay for permits unless otherwise specified. Unless otherwise specified, the Contractor shall procure and pay for all permits, licenses, and governmental inspection fees necessary or incidental to the performance of the Work. All costs related to these permits, licenses, and inspections shall be included in the Contract Sum. Any action taken by the NWSA to assist the Contractor in obtaining permits or licenses shall not relieve the Contractor of its sole responsibility to obtain and pay for permits, licenses, and inspections as part of the Contract Sum.
- B. Contractor's obligations when permit must be in NWSA's name. When applicable law or agency requires a permit to be issued to a public agency, the NWSA will support the Contractor's request for the permit and accept the permit in the NWSA's name, if:
 1. The Contractor takes all necessary steps required for the permit to be issued;
 2. The permit applies to Work performed in connection with the Project; and
 3. The Contractor agrees in writing to abide by all requirements of the permit and to defend and hold harmless the NWSA from any liability in connection with the permit.
- C. Contractor to pay royalties. The Contractor shall pay all royalties and license fees required for the Work unless otherwise specified in the Contract Documents.

3.09 SAFETY

- A. Contractor solely responsible for safety. The Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work and the performance of the Contract.
- B. NWSA not responsible for safety. The NWSA may identify safety concerns to the Contractor. However, no action or inaction of the NWSA or any third party relating to safety will: (1) relieve the Contractor of its sole and complete responsibility for safety and sole liability for any consequences; (2) impose any obligation on the NWSA or a third party to inspect or review the Contractor's safety program or precautions; (3) impose any continuing obligation on the NWSA or a third party to ensure the Contractor performs the Work safely; or (4) affect the Contractor's responsibility for the protection of property, workers, and the general public.
- C. Contractor to maintain a safe Work site. The Project site may be occupied during performance of the Work. The safety of these site occupants is of paramount importance to the NWSA. The Contractor shall maintain the Work site and perform the Work in a safe manner and in accordance with the Washington Industrial Safety and Health Act (WISHA) and all other applicable safety laws, rules, and regulations. This requirement shall apply continuously and not be limited to working hours.
- D. Contractor to protect Work site and adjacent property until Final Completion. The Contractor shall continuously protect the Work and adjacent property from damage. At all times until Final Completion, the Contractor shall be responsible for and protect from damage, weather, deterioration, theft, and vandalism the Work and all materials, equipment, tools, and other items incorporated or to be incorporated in the Work, and shall repair any damage, injury or loss.

3.10 CORRECTION OF WORK

- A. Contractor to correct defective Work. The Contractor shall, at no cost to the NWSA, promptly correct Work that is defective or that otherwise fails to conform to the requirements of the

Contract Documents. Such Work shall be corrected, whether before or after Substantial Completion, and even if it was previously inspected or observed by the NWSA.

- B. One-year correction period. The Contractor shall correct all defects in the Work appearing within one (1) year of Substantial Completion or within any longer period prescribed by law or by the Contract Documents. The Contractor shall initiate remedial action within fourteen (14) days of receipt of notice from the NWSA and shall complete remedial work within a reasonable time. Work corrected by the Contractor shall be subject to the provisions of this Section 3.10 for an additional one-year period following the NWSA's acceptance of the corrected Work.
- C. Contractor responsible for defects and failures to correct. The Contractor shall be responsible for any expenses incurred by the NWSA resulting from defects in the Work. If the Contractor refuses or neglects to correct the defects or does not timely accomplish corrections, the NWSA may correct the Work and charge the Contractor the cost of the corrections. If damage or loss of service may result from a delay in correction, the corrections may be made by the NWSA and reimbursed by the Contractor.
- D. NWSA may accept defective work. The NWSA may, at its sole option, elect to retain defective or nonconforming Work. In such a case, the NWSA shall reduce the Contract Sum by a reasonable amount to account for the defect or non-conformance.
- E. No period of limitation established. Nothing contained in this Section 3.10 establishes a period of limitation with respect to any obligations under the Contract Documents or law. The establishment of the one (1) year correction period relates only to the specific obligation of the Contractor to correct defective or non-conforming Work.

3.11 UNCOVERING OF WORK

- A. Contractor to uncover work covered prior to inspection. If any portion of the Work is covered prior to inspection and approval, the Contractor shall, at its expense, uncover or remove the Work for inspection by the NWSA or others, and replace the Work to the standard required by the Contract Documents.
- B. Contractor to uncover work at NWSA's request. After initial inspection and observation, the NWSA may order a reexamination of Work, and the Work must be uncovered by the Contractor. If the uncovered Work complies with the Contract Documents, the NWSA shall pay the cost of reexamination and replacement. If the Work is found not to comply with the Contract Documents, the Contractor shall pay the cost of replacement unless the Contractor demonstrates that it did not cause the defect in the Work.

3.12 RELOCATION OF UTILITIES

- A. Contractor should assume underground utilities are in approximate locations. The Contractor should assume that the locations of any underground or hidden utilities, underground tanks, and plumbing or electrical runs indicated in surveys or the Contract Documents are shown in approximate locations. The accuracy of this information is not guaranteed by the NWSA and shall be verified by the Contractor. The Contractor shall comply with RCW 19.122.030 and utilize a utility locator service to locate utilities on NWSA property. The Contractor shall bear the risk of loss if any of its Work directly or indirectly damages or interrupts any utility service or causes or contributes to damages of any nature.
- B. Utility relocation or removal. Where relocation or removal of utilities is necessary or required, it shall be performed at the Contractor's sole expense, unless the Contract Documents specify otherwise. If a utility owner is identified as being responsible for relocating or removing utilities, the work will be accomplished at the utility owner's convenience, either during or in advance of

construction. Unless otherwise specified, it shall be the Contractor's sole responsibility to coordinate, schedule, and pay for work performed by a utility owner.

- C. Contractor to notify NWSA of unknown utilities. If the Contractor discovers the presence of any unknown utilities, it shall immediately notify the Engineer in writing.

3.13 LABOR

- A. Contractor responsible for labor peace. The Contractor is responsible for labor peace relating to the Work and shall cooperate in maintaining Project-wide labor harmony. The Contractor shall use its best efforts as an experienced contractor to adopt and implement policies and practices designed to avoid work stoppages, slowdowns, disputes or strikes.
- B. Contractor to minimize impact of labor disputes. The Contractor will take all necessary steps to prevent labor disputes from disrupting or otherwise interfering with access to NWSA property. If a labor dispute disrupts the progress of the Work or interferes with access, the Contractor shall promptly and expeditiously take all necessary action to eliminate or minimize the disruption or interference.

3.14 INDEMNIFICATION

- A. Duty to defend, indemnify, and hold harmless. To the fullest extent permitted by law and subject to this Section 3.14, the Contractor shall defend (at the Contractor's sole cost, with legal counsel approved by NWSA), indemnify and hold harmless the NWSA, including its Commission, officers, managers, employees (including the Engineer), any consultants, and the agents and employees, successors and assigns of any of them (the "Indemnified Parties") from and against claims, damages, lawsuits, losses (including loss of use), disbursements, liabilities, obligations, fines, penalties, costs and expenses, whether direct and indirect or consequential, including but not limited to consultants' fees, and attorneys' fees incurred on such claims and in proving the right to indemnification ("Claims"), arising out of or resulting from the acts or omissions of the Contractor, a Subcontractor of any tier, their agents and anyone directly or indirectly employed by any of them or anyone for whose acts they may be liable (individually and collectively, the "Indemnitor").
- B. Duty to defend, indemnify, and hold harmless for sole negligence. The Contractor will fully defend, indemnify, and hold harmless the Indemnified Parties for the sole negligence or willful misconduct of the Indemnitor.
- C. Duty to defend, indemnify, and hold harmless for concurrent negligence. Where Claims arise from the concurrent negligence of (1) the NWSA and (2) the Indemnitor, the Contractor's obligations to indemnify and defend the Indemnified Parties under this Section 3.14 shall be effective only to the extent of the Indemnitor's negligence.
- D. Duty to indemnify not limited by workers' compensation or similar employee benefit acts. In claims against any of the Indemnified Parties by an employee of the Contractor, a Subcontractor of any tier, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Section 3.14 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable under workers' compensation acts, disability benefit acts or other employee benefit acts. After mutual negotiation of the parties, the Contractor waives immunity as to the Indemnified Parties under Title 51 RCW, "Industrial Insurance."
- E. Intellectual property indemnification. The Contractor will be liable for and shall defend (at the Contractor's sole cost, with legal counsel approved by NWSA) indemnify and hold the Indemnified Parties harmless for Claims for infringement by the Contractor of copyrights or patent rights arising out of or relating to the Project.

- F. Labor peace indemnification. If the Contractor fails to satisfy its labor peace obligations under the Contract, the Contractor will be liable for and shall defend (at the Contractor's sole cost, with legal counsel approved by NWSA), indemnify and hold harmless the Indemnified Parties for Claims brought against the NWSA by third parties (including but not limited to lessees, tenants, contractors, customers, licensees and invitees of the NWSA) for injunctive relief or monetary loss.
- G. Joinder. The Contractor agrees to being added by the NWSA as a party to any arbitration or litigation with third parties in which the NWSA alleges indemnification or seeks contribution from the Indemnitor. The Contractor shall cause each of its Subcontractors of any tier to similarly stipulate in their subcontracts; in the event any does not, the Contractor shall be liable in place of such Subcontractor(s) of any tier.
- H. Other. To the extent that any portion of this Section 3.14 is stricken by a court or arbitrator for any reason, all remaining provisions shall retain their vitality and effect. The obligations of the Contractor under this Section 3.14 shall not be construed to negate, abridge, or otherwise reduce any other right or obligations of indemnity which would otherwise exist. To the extent the wording of this Section 3.14 would reduce or eliminate an available insurance coverage, it shall be considered modified to the extent necessary so that the insurance coverage is not affected. This Section 3.14 shall survive completion, acceptance, final payment and termination of the Contract.

3.15 WAIVER OF CONSEQUENTIAL DAMAGES

- A. Mutual waiver of consequential damages. The Contractor and NWSA waive claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes but is not limited to: (1) damages incurred by the NWSA for rental expenses, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and (2) damages incurred by the Contractor for principal and home office overhead and expenses including but not limited to the compensation of personnel stationed there, for losses of financing, business and reputation, for losses on other projects, for loss of profit, and for interest or financing costs. This mutual waiver includes but is not limited to all consequential damages due to either party's termination.
- B. Limitation. Nothing contained in this Section 3.15, however, shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents, to preclude damages specified in the Agreement or to affect the Contractor's obligation to indemnify the NWSA for direct, indirect or consequential damages alleged by a third party.

ARTICLE 4 - SUBCONTRACTORS AND SUPPLIERS

4.01 RESPONSIBILITY FOR ACTIONS OF SUBCONTRACTORS AND SUPPLIERS.

- A. Contractor responsible for Subcontractors. The Contractor is fully responsible to the NWSA for the acts and omissions of its Subcontractors of any tier and all persons either directly or indirectly employed by the Contractor or its Subcontractors.

4.02 AWARD OF CONTRACTS TO SUBCONTRACTORS AND SUPPLIERS

- A. Contractor to provide proposed Subcontractor information. The Contractor, within ten (10) days after the NWSA's notice of award of the Contract, shall provide to the Engineer with the names of the persons or entities proposed to perform each of the principal portions of the Work (i.e., either a Subcontractor listed in a bid or proposal or a Subcontractor performing Work valued at least ten percent (10%) of the Contract Sum) and the proprietary names and the suppliers of

the principal items or systems of materials and equipment proposed for the Work. No progress payment will become due until after this information has been furnished.

- B. NWSA to respond promptly with objections. The NWSA may respond promptly to the Contractor in writing stating (1) whether the NWSA has reasonable objection to any proposed person or entity or (2) whether the NWSA requires additional time for review. If the NWSA makes a reasonable objection, the Contractor shall replace the Subcontractor with no increase to the Contract Sum or Contract Time. Such a replacement shall not relieve the Contractor of its responsibility for the performance of the Work and compliance with all of the requirements of the Contract within the Contract Sum and Contract Time.
- C. Reasonable objection defined. "Reasonable objection" as used in this Section 4.02 includes but is not limited to: (1) a proposed Subcontractor of any tier different from the entity listed with the bid, (2) lack of "responsibility" of the proposed Subcontractor, as defined by Washington law and the Bidding Documents, or lack of qualification or responsibility of the proposed Subcontractor based on the Contract or Bidding Documents, or (3) failure of the Subcontractor to perform satisfactorily in the NWSA's opinion (such as causing a material delay or submitting a claim that the NWSA considers inappropriate) on one or more projects for the NWSA within five (5) years of the bid date.
- D. No substitution allowed without permission. The Contractor shall not substitute a Subcontractor, person, or organization without the Engineer's written consent.

4.03 SUBCONTRACTOR AND SUPPLIER RELATIONS

- A. Contractor to schedule, supervise, and coordinate Subcontractors. The Contractor shall schedule, supervise and coordinate the operations of all Subcontractors of any tier, including suppliers. The Contractor shall ensure that appropriate Subcontractors coordinate the Work of lower-tier Subcontractors.
- B. Subcontractors to be bound to Contract Documents. By appropriate agreement, the Contractor shall require each Subcontractor and supplier to be bound to the terms of the Contract Documents and to assume toward the Contractor, to the extent of their Work, all of the obligations that the Contractor assumes toward the NWSA under the Contract Documents. Each subcontract shall preserve and protect the rights of the NWSA and shall allow to the Subcontractor, unless specifically provided in the subcontract, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the NWSA. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with lower-tier Subcontractors.
- C. Contractor to correct deficiencies in Subcontractor performance. When a portion of the Work subcontracted by the Contractor is not being prosecuted in accordance with the Contract Documents, or if such subcontracted Work is otherwise being performed in an unsatisfactory manner in the NWSA's opinion, the Contractor shall, on its own initiative or upon the written request of the NWSA, take immediate steps to correct the deficiency or remove the non-performing party from the Project. The Contractor shall replace inadequately performing Subcontractors upon request of the NWSA at no change in the Contract Sum or Contract Time.
- D. Contractor to provide subcontracts. Upon request, the Contractor will provide the NWSA copies of written agreements between the Contractor and any Subcontractor.

ARTICLE 5 - WORKFORCE AND NON-DISCRIMINATION REQUIREMENTS

5.01 COMPLIANCE WITH NON-DISCRIMINATION LAWS

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

5.02 SMALL BUSINESS ENTERPRISE PARTICIPATION.

- A. Small business participation encouraged. The NWSA's policy is to encourage the Contractor to solicit and document participation, and to provide and promote the maximum lawful, practicable opportunity for increased participation, by small business enterprises.

ARTICLE 6 - CONTRACT TIME AND COMPLETION

6.01 CONTRACT TIME

- A. Contract Time is measured from Contract execution. Unless otherwise provided in the Agreement, the Contract Time is the period of time, including authorized adjustments, specified in the Contract Documents from the date the Contract is executed to the date Substantial Completion of the Work is achieved.
- B. Commencement of the Work. The Contractor shall begin Work in accordance with the notice of award and the notice to proceed and shall complete all Work within the Contract Time. When the Contractor's signed Agreement, required insurance certificate with endorsements, bonds and other submittals required by the notice of award have been accepted by the NWSA, the NWSA will execute the Contract and, following receipt of other required pre-work submittals, will issue a notice to proceed to allow the Contractor to mobilize and commence physical Work at the Project site, as further described in these contract documents. No Work at the Project site may commence until the NWSA issues a notice to proceed.
- C. Contractor shall achieve specified completion dates. The Contractor shall achieve Substantial Completion within the Contract Time and shall achieve Final Completion within the time period thereafter stated in the Contract Documents.
- D. Time is of the essence. Time limits stated in the Contract Documents, including any interim milestones, are of the essence of the Contract. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

6.02 PROGRESS AND COMPLETION

- A. Contractor to maintain schedule. The Contractor's sequence and method of operations, application of effort, and work force shall at all times be created and implemented to ensure the orderly, expeditious, and timely completion of the Work and performance of the Contract. The Contractor shall furnish sufficient forces and shall work such hours, including extra shifts, overtime operations and weekend and holiday work as may be necessary to ensure completion of the Work within the Contract Time and the approved Progress Schedule.
- B. Contractor to take necessary steps to meet schedule. If the Contractor fails substantially to perform in a timely manner in accordance with the Contract Documents and, through the fault of the Contractor or Subcontractor(s) of any tier, fails to meet the Progress Schedule, the Contractor shall take such steps as may be necessary to immediately improve its progress by increasing the number of workers, shifts, overtime operations or days of work, or by other means and methods, all without additional cost to the NWSA. If the Contractor believes that any action or inaction of the NWSA constitutes acceleration, the Contractor shall immediately notify the NWSA in writing and shall not accelerate the Work until the NWSA either directs the acceleration in writing or denies the constructive acceleration.
- C. Liquidated damages not exclusive. Any provisions in the Contract Documents for liquidated damages shall not preclude other damages due to breaches of Contract of the Contractor.

6.03 SUBSTANTIAL COMPLETION

- A. Substantial Completion defined. Substantial Completion is the stage in the progress of the Work, or portion or phase thereof, when the Work or designated portion is sufficiently complete

in accordance with the Contract Documents so that the NWSA can fully occupy or utilize the Work, or the designated portion thereof, for its intended use, all requirements in the Contract Documents for Substantial Completion have been achieved, and all required documentation has been properly submitted to the NWSA in accordance with the Contract Documents. All Work other than incidental corrective or punch list Work and final cleaning must be completed. The fact that the NWSA may occupy the Work or a designated portion thereof does not indicate that Substantial Completion has occurred or that the Work is acceptable in whole or in part.

- B. Work not Substantially Complete unless Final Completion attainable. The Work is not Substantially Complete unless the NWSA reasonably judges that the Work can achieve Final Completion within the period of time specified in the Contract Documents.
- C. Notice of Substantial Completion. When the Work or designated portion has achieved Substantial Completion, the NWSA will provide a notice to establish the date of Substantial Completion. The notice shall establish responsibilities of the NWSA and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all remaining Work. If the notice of Substantial Completion does not so state, all responsibility for the foregoing items shall remain with the Contractor until Final Completion.

6.04 COMPLETION OF PUNCH LIST

- A. Contractor shall complete punch list items prior to Final Completion. The Contractor shall cause punch list items to be completed prior to Final Completion. If, after Substantial Completion, the Contractor does not expeditiously proceed to correct punch list items or if the NWSA considers that the punch list items are unlikely to be completed prior to the date established for Final Completion (or such other period of time as is specified in the Contract Documents), the NWSA may, upon seven (7) days' written notice to the Contractor, take over and perform some or all of the punch list items. The NWSA may also take over and complete any portion of the Work at any time following Substantial Completion and deduct the actual cost of performing the Work (including direct and indirect costs) from the Contract Sum. The NWSA's rights under this Section 6.04 are not obligations and shall not relieve the Contractor of its responsibilities under any other provisions of the Contract Documents.

6.05 FINAL COMPLETION

- A. Final Completion. Upon receipt of written notice from the Contractor that all punch list items and other Contract requirements are completed, the Contractor will notify the NWSA, and the NWSA will perform a final inspection. If the NWSA determines that some or all of the punch list items have not been addressed, the Contractor shall be responsible to the NWSA for all costs, including re-inspection fees, for any subsequent reviews to determine completion of the punch list. When the NWSA determines that all punch list items have been satisfactorily addressed, that the Work is acceptable under the Contract Documents and that the Work has fully been performed, the NWSA will promptly notify the Contractor of Final Completion.
- B. Contractor responsible for costs if Final Completion is not timely achieved. In addition to any liquidated damages, the Contractor is liable for, and the NWSA may deduct from any amounts due the Contractor, all costs incurred by the NWSA for services performed after the contractual date of Final Completion, whether or not those services would have been performed prior to that date had Final Completion been timely achieved.
- C. Final Completion submittals. The NWSA is not obligated to accept the Project as complete until the Contractor has submitted all required submittals to the NWSA.
- D. Contractor responsible for the Work until Final Completion. The Contractor shall assume the sole risk of loss and responsibility for all Work under the Contract, and all materials to be

incorporated in the Work, whether in storage or at the Project site, until Final Completion. Damage from any cause to either permanent or temporary Work, utilities, materials, equipment, existing structures, the site, or other property owned by the NWSA or others, shall be repaired by the Contractor to the reasonable satisfaction of the NWSA at no change in the Contract Sum.

6.06 FINAL ACCEPTANCE

- A. Final Acceptance. Final Acceptance is the formal action of the NWSA accepting the Project as complete. Public notification of Final Acceptance will be posted on the NWSA's external website (<<http://www.portoftacoma.com/final-acceptance>>).
- B. Final Acceptance not an acceptance of defective Work. Final Acceptance shall not constitute acceptance by the NWSA of unauthorized or defective Work, and the NWSA shall not be prevented from requiring the Contractor to remove, replace, repair, or dispose of unauthorized or defective Work or recovering damages due to the same.
- C. Completion of Work under RCW 60.28. Pursuant to RCW 60.28, "Lien for Labor, Materials, Taxes on Public Works," completion of the Contract Work shall occur upon Final Acceptance.

6.07 NWSA'S RIGHT TO USE THE PREMISES

- A. NWSA has right to use and occupy Work. The NWSA reserves the right to occupy or use any part of the Work before or after Substantial Completion of some or all of the Work without relieving the Contractor of any of its obligations under the Contract. Such occupancy or use shall not constitute acceptance by the NWSA of any of the Work, and shall not cause any insurance to be canceled or lapse.
- B. No compensation due if NWSA elects to use and occupy Work. No additional compensation shall be due to the Contractor as a result of the NWSA's use or occupancy of the Work or a designated portion.

ARTICLE 7 - PAYMENT

7.01 ALL PAYMENTS SUBJECT TO APPLICABLE LAWS AND SCHEDULE OF VALUES

- A. Payment of the Contract Sum. The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the NWSA to the Contractor for performance of the Work under the Contract Documents. Payments made to the Contractor are subject to all laws applicable to the NWSA and the Contractor. Payment of the Contract Sum constitutes 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 or prosecution of the Work. The NWSA is not obligated to pay for extra work or materials furnished without prior written approval of the NWSA.
- B. Schedule of Values. All payments will be based upon an approved Schedule of Values. Prior to submitting its first Application for Payment, the Contractor shall submit a Schedule of Values to the NWSA allocating the entire Contract Sum to the various portions of the Work. The Schedule of Values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the NWSA may require. This schedule, unless objected to by the NWSA, shall be used as a basis for reviewing the Contractor's applications for payment.

7.02 APPLICATIONS FOR PAYMENT

- A. Applications for Payment. Progress payments will be made monthly for Work duly certified, approved by the Engineer, and performed (based on the Schedule of Values and actual quantities of Work performed) during the calendar month preceding the Application for

Payment. These amounts are paid in trust to the Contractor for distribution to Subcontractors to the extent and in accordance with the approved Application for Payment.

7.03 PROGRESS PAYMENTS

- A. Progress payments. Following receipt of a complete Application for Payment, the Engineer will either authorize payment or indicate in writing to the Contractor the specific reasons why the payment request is being denied, in whole or in part, and the remedial action the Contractor must take to receive the withheld amount. After a complete Application for Payment has been received and approved by the NWSA, payment will be made within thirty (30) days. Any payments made by, or through, or following receipt of payment from third parties will be made in accordance with the third party's policies and procedures.
- B. NWSA may withhold payment. The NWSA may withhold payment in whole or in part as provided in the Contract Documents or to the extent reasonably necessary to protect the NWSA from loss or potential loss for which the Contractor is responsible, including loss resulting from the Contractor's acts and omissions.

7.04 PAYMENT BY CONTRACTOR TO SUBCONTRACTORS

- A. Payment to Subcontractors. With each Application for Payment, the Contractor shall provide a list of Subcontractors to be paid by the Contractor. No payment request shall include amounts the Contractor does not intend to pay to a Subcontractor because of a dispute or other reason. If, however, after submitting an Application for Payment but before paying a Subcontractor, the Contractor discovers that part or all of a payment otherwise due to the Subcontractor is subject to withholding from the Subcontractor under the subcontract (such as for unsatisfactory performance or non-payment of lower-tier Subcontractors), the Contractor may withhold the amount as allowed under the subcontract, but it shall give the Subcontractor and the NWSA written notice of the remedial actions that must be taken and pay the Subcontractor within eight (8) working days after the Subcontractor satisfactorily completes the remedial action identified in the notice.
- B. Payment certification to be provided upon request. The Contractor shall provide with each Application for Payment a certification signed by Contractor attesting that all payments by the Contractor to Subcontractors from the last Application for Payment were made within ten (10) days of the Contractor's receipt of payment. The certification will also attest that the Contractor will make payment to Subcontractors for the current Application for Payment within ten (10) days of receipt of payment from the NWSA.

7.05 FINAL PAYMENT

- A. Final payment. Final applications for payment are due within seven (7) days following Final Completion. Final payment of the unpaid balance of the Contract Sum, except retainage, will be made following Final Completion and within thirty (30) days of the Contractor's submission of an approved final Application for Payment.
- B. Releases required for final payment. The final payment shall not become due until the Contractor delivers to the NWSA a complete release of all liens arising out of the Contract, as well as an affidavit stating that, to the best of Contractor's knowledge, its release includes all labor and materials for which a lien could be filed. If a Subcontractor of any tier refuses to furnish a release or waiver required by the NWSA, the NWSA may (a) retain in the fund, account, or escrow funds in such amount as to defray the cost of foreclosing the liens of such claims and to pay attorneys' fees, the total of which shall be no less than 150% of the claimed amount, or (b) accept a bond from the Contractor, satisfactory to the NWSA, to indemnify the NWSA against the lien. If any such lien remains unsatisfied after all payments from the

retainage are made, the Contractor shall refund to the NWSA all moneys that the NWSA may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

- C. Contractor to hold NWSA harmless from liens. The Contractor shall defend (at the Contractor's sole cost, with legal counsel approved by NWSA), indemnify, and hold harmless the NWSA from any liens, claims, demands, lawsuits, losses, damages, disbursements, liabilities, obligations, fines, penalties, costs and expenses, whether direct, indirect, including but not limited to attorneys' fees and consultants' fees and other costs and expenses, except to the extent a lien has been filed because of the failure of the NWSA to make a contractually required payment.

7.06 RETAINAGE

- A. Retainage to be withheld. In accordance with RCW 60.28, a sum equal to five percent (5%) of each approved Application for Payment shall be retained. Prior to submitting its first Application for Payment, the Contractor shall exercise one of the options listed below:
1. Retained percentages will be retained by the NWSA in a fund; or
 2. Deposited by the NWSA in an interest-bearing account in a bank, mutual savings bank or savings and loan association; or
 3. Placed in escrow with a bank or trust company; or
 4. If the Contractor provides a bond in place of retainage, it shall be in an amount equal to 5% of the Contract Sum plus Change Orders. The retainage bond shall be based on the form furnished in Section 00 61 23 or otherwise acceptable to the NWSA and duly completed and signed by a licensed surety or sureties registered with the Washington State Insurance Commissioner and on the currently authorized insurance list published by the Washington State Insurance Commissioner. The surety or sureties must be rated at least A minus, FSC(6), or higher by A.M. Best Rating Guide and be authorized by the Federal Department of the Treasury. Attorneys-in-fact who sign the retainage bond must file with each bond a certified and effective Power of Attorney statement.
- B. Contractor may withhold retainage from Subcontractors. The Contractor or a Subcontractor may withhold not more than five percent (5%) retainage from the monies earned by any Subcontractor or lower-tier Subcontractor, provided that the Contractor pays interest to the Subcontractor at the same interest rate it receives from its reserved funds. If requested by the NWSA, the Contractor shall specify the amount of retainage and interest due a Subcontractor.
- C. Release of retainage. Retainage will be withheld and applied by the NWSA in a manner required by RCW 60.28 and released in accordance with the Contract Documents and statutory requirements. Release of the retainage will be processed in the ordinary course of business within sixty (60) days following Final Acceptance of the Work by the NWSA provided that no notice of lien has been given as provided in RCW 60.28, that no claims have been brought to the attention of the NWSA, that the NWSA has no claims under this Contract, and that release of retention has been duly authorized by the State. The following items must also be obtained prior to release of retainage: pursuant to RCW 60.28, a certificate from the Department of Revenue; pursuant to RCW 50.24, a certificate from the Department of Employment Security; and appropriate information from the Department of Labor and Industries including approved affidavits of wages paid for the Contractor and each subcontractor.

7.07 DISPUTED AMOUNTS

- A. Disputed amounts. If the Contractor believes it is entitled to payment for Work performed during the prior calendar month in addition to the agreed-upon amount, the Contractor may submit to the NWSA along with the approved Application for Payment, a separate written

payment request specifying the exact additional amount claimed to be due, the category in the Schedule of Values to which the payment would apply, the specific Work for which additional payment is sought, and an explanation of why the Contractor believes additional payment is due.

7.08 EFFECT OF PAYMENT

- A. Payment does not relieve Contractor of obligations. Payment to the Contractor of progress payments or final payment does not 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 a payment does not constitute a waiver of the NWSA's right to reject defective or non-conforming Work, materials, or equipment (even though they are covered by the payment), nor is it a waiver of any other rights of the NWSA.
- B. Acceptance of final payment waives claims. Acceptance of final payment by the Contractor, a Subcontractor of any tier or a supplier shall constitute a waiver of claims except those previously made in writing and identified as unsettled in Contractor's final Application for Payment.
- C. Execution of Change Order waives claims. The execution of a Change Order shall constitute a waiver of claims by the Contractor arising out of the Work to be performed or deleted pursuant to the Change Order, except as specifically described in the Change Order.

7.09 LIENS

- A. Contractor to discharge liens. The Contractor shall promptly pay (and secure the discharge of any liens asserted by) all persons properly furnishing labor, equipment, materials or other items in connection with the performance of the Work (including, but not limited to, any Subcontractors of any tier).

ARTICLE 8 - CHANGES IN THE WORK

8.01 CHANGES IN THE WORK

- A. Changes in the Work authorized. Without invalidating the Contract and without notice to the Contractor's surety, the NWSA may authorize changes in the Work after execution of the Contract, including changes in the Contract Sum or Contract Time. Changes shall occur solely by Change Order, Unilateral Change Directive, or Minor Change in Work. All changes in the Work are effective immediately and the Contractor shall proceed promptly to perform the change, unless otherwise provided in the Change Order or Directive.
- B. Changes in the Work Defined.
 - 1. A Change Order is a written instrument signed by the NWSA and Contractor stating their agreement to a change in the Work and the adjustment, if any, in the Contract Sum and/or Contract Time.
 - 2. A Unilateral Change Directive is a written instrument issued by the NWSA to transmit new or revised Drawings, issue additions or modifications to the Contract, furnish other direction and documents adjustment, if any, to the Contract Sum and/or Contract Time. A Unilateral Change Directive is signed only by the NWSA, without requiring the consent or signature of the Contractor.
 - 3. A Minor Change in the Work is a written order from the NWSA directing a change that does not involve an adjustment to the Contract Sum or the Contract Time.
- C. Request for Proposal: At any time, the NWSA may issue a Proposal Request directing the Contractor to propose a change to the Contract Sum and/or Contract Time, if any, based on a

proposed change in the Work. The Contractor shall submit a responsive Change Order proposal as soon as possible and no later than fourteen (14) days after receipt in which the Contractor specifies in good faith the extent to which the Contract Sum and/or Contract Time would change. All cost components shall be limited to the manner described in Section 8.02(B). If the Contractor fails to timely respond to a Proposal Request, the NWSA may issue the change as a Unilateral Change Directive.

1. Fixed price method is default for Contractor Change Order proposal. When the NWSA has requested that the Contractor submit a Change Order proposal, the NWSA may specify the basis on which the Contract Sum will be adjusted by the Contractor. The Engineer's preference, unless otherwise indicated, is for changes in the Work to be priced using Lump Sums or Unit Prices or on a time and material (Force Account) basis if unit pricing or lump sums cannot be negotiated or determined. In all instances, however, proposed changes shall include a not-to-exceed price for the change and shall be itemized for evaluation purposes in accordance with Section 8.02(B), as requested by the Engineer.
 2. The NWSA may accept or reject the Contractor's Change Order proposal, request further documentation, or negotiate acceptable terms with the Contractor. If The NWSA and Contractor reach agreement on the terms of any change in the Work, including any adjustment in the Contract Sum or Contract Time, such agreement shall be incorporated in a Change Order.
 3. The Change Order shall constitute full payment and final settlement of all claims for time and for direct, indirect, and consequential costs, including costs of delays, inconvenience, disruption of schedule, or loss of efficiency or productivity, related to any Work either covered or affected by the Change Order, or related to the events giving rise to the request for equitable adjustment. The NWSA may reject a proposal, in which case the NWSA may either not effectuate the change or issue a Unilateral Change Directive. The NWSA will not make payment to the Contractor for any work until that work has been incorporated into an executed Change Order.
- D. Unforeseen Conditions: If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or any soils reports made available by the NWSA to the Contractor or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall immediately provide oral notice to the Engineer before conditions are disturbed, followed within 24 hours by an initial written notice. The Contractor shall submit a detailed proposal no later than seven (7) days following discovery of differing site conditions. The Engineer will promptly investigate these conditions and, if the Engineer determines that they differ materially and cause an increase or decrease in the Contractor's cost or time required for, performance of any part of the Work, will establish a change in the Contract Sum or Contract Time, or both, consistent with the requirements of the Contract Documents. If the Contractor disputes the Engineer's determination, the Contractor may proceed as provided in the dispute resolution procedure (Article 11). No increase to the Contract Sum or the Contract Time shall be allowed if the Contractor does not comply with the contractual requirements or if the Contractor knew or reasonably should have known of the concealed conditions prior to executing the Contract.
- E. Proceed Immediately: Pending agreement on the terms of the Change Order or upon determination of a differing site condition as defined in 8.01(D), the Engineer may direct Contractor to proceed immediately with the change in the Work. Contractor shall not proceed with any change in the Work until it has obtained the Engineer's written approval and documentation of the following:

1. The scope of work
 2. An agreed upon maximum not-to-exceed amount
 3. The method of final cost determination
 4. Estimated time to complete the changed work.
 5. As a change in the Work is performed, unless the parties have signed a written Change Order to establish the cost of the change, the Contractor shall maintain an itemized accounting of all costs related to the change based on the categories in Section 8.02(B) and provide such data to the NWSA upon request. This includes, without limitation, invoices, including freight and express bills, and other support for all material, equipment, Subcontractor, and other charges related to the change and, for material furnished from the Contractor's own inventory, a sworn affidavit certifying the actual cost of such material. Failure to provide data to the NWSA within seven (7) days of a request constitutes a waiver of any claim. The NWSA may furnish any material or equipment to the Contractor that it deems advisable, and the Contractor shall have no claim for any costs or fee on such material or equipment.
- F. Procedure for Unilateral Change Directive. Whether or not the NWSA has rejected a Contractor's proposal, the NWSA may issue a Unilateral Change Directive and the Contractor shall promptly proceed with the specified Work. If the Contractor disagrees with a Unilateral Change Directive, the Contractor shall advise the NWSA in writing through a Change Order proposal within seven (7) days of receipt. The Contractor's Change Order proposal shall reasonably specify the reasons for any disagreement and the adjustment it proposes. Without this timely Change Order proposal, the Contractor shall conclusively be deemed to have accepted the NWSA's proposal.
- G. Payment pending final determination of Force Account work. Pending final determination of the total cost of Force Account Work, and provided that the Work to be performed under Force Account is complete and any reservations of rights have been signed by the NWSA, the Contractor may request payment for amounts not in dispute in the next Application for Payment accompanied by documentation indicating the parties' agreement. Work done on a Force Account basis must be approved in writing on a daily basis by the Engineer or the Engineer's designee and invoices shall be submitted with an Application for Payment within sixty (60) days of performance of the Work.

8.02 CHANGES IN THE CONTRACT SUM

- A. NWSA to Decide How Changes are Measured. The NWSA may elect, in its sole discretion, how changes in the Work will be measured for payment. Change in the Work may be priced on a lump sum basis, through Unit Prices, as Force Account, or by another method documented in the executed Change Order, Unilateral Change Directive or Minor Change in the Work.
- B. Determination of Cost of Change. The total cost of any change in the Work, including a claim under Article 11, shall not exceed the prevailing cost for the Work in the locality of the Project. In all circumstances, the change in the Work shall be limited to the reasonable, actual cost of the following components:
1. Direct labor costs: These are the actual labor costs determined by the number of additional craft hours at their normal hourly rate necessary to perform a change in the Work. The hourly cost of labor will be based upon the following:
 - a. Basic wages and fringe benefits: The hourly wage (without markup or labor burden) and fringe benefits paid by the Contractor as established by the Washington Department of Labor and Industries or contributed to labor trust funds as itemized

fringe benefits, whichever is applicable, not to exceed that specified in the applicable "Intent to Pay Prevailing Wage," for the laborers, apprentices, journeymen, and foremen performing or directly supervising the change in the Work on site. These wages do not include the cost of Contractor's project manager or superintendent or above, and the premium portion of overtime wages is not included unless pre-approved in writing by the NWSA. Costs paid or incurred by the Contractor for vacations, per diem, subsistence, housing, travel, bonuses, stock options, or discretionary payments to employees are not separately reimbursable. The Contractor shall provide to the NWSA copies of payroll records, including certified payroll statements for itself and Subcontractors of any tier, upon the NWSA's request.

- b. Workers' insurance: Direct contributions to the State of Washington as industrial insurance; medical aid; and supplemental pension by class and rates established by the Washington Department of Labor and Industries.
 - c. Federal insurance: Direct contributions required by the Federal Insurance Compensation Act (FICA); Federal Unemployment Tax Act (FUTA); and State Unemployment Compensation Act (SUCA).
2. Direct material costs: This is an itemization, including material invoices, of the quantity and actual cost of additional materials necessary to perform the change in the Work. The cost will be the net cost after all discounts or rebates, freight costs, express charges, or special delivery costs, when applicable. No lump sum costs will be allowed unless approved in advance by the NWSA.
 3. Construction equipment usage costs: This is an itemization of the actual length of time that construction equipment necessary and appropriate for the Work is used solely on the changed Work times the applicable rental cost as established by the lower of the local prevailing rates published in www.equipmentwatch.com, as modified by the AGC/WSDOT agreement, or the actual rate paid to an unrelated third party. If more than one rate is applicable, the lowest available rate will be utilized. Rates and quantities of equipment rented that exceed the local fair market rental costs shall be subject to the NWSA's prior written approval. Total rental charges for equipment or tools shall not exceed 75% of the fair market purchase value of the equipment or the tool. Actual, reasonable mobilization costs are permitted if the equipment is brought to the site solely for the change in the Work. Mobilization and standby costs shall not be charged for equipment already present on the site.

The rates in effect at the time of the performance of the changed Work are the maximum rates allowable for equipment of modern design and in good working condition and include full compensation for furnishing all fuel, oil, lubrication, repairs, maintenance, and insurance. No gas surcharges are payable. Equipment not of modern design and/or not in good working condition will have lower rates. Hourly, weekly, and/or monthly rates, as appropriate, will be applied to yield the lowest total cost.

4. Subcontractor costs: These are payments the Contractor makes to Subcontractors for changed Work performed by Subcontractors. The Subcontractors' cost of changed Work shall be determined in the same manner as prescribed in this Section 8.02 and, among other things, shall not include consultant costs, attorneys' fees, or claim preparation expenses.
5. Service provider costs: These are payments the Contractor makes to service providers for changed Work performed by service providers. The service providers' cost of changed Work shall be determined in the same manner as prescribed in this Section 8.02.

6. Markup: This is the maximum total amount for overhead, profit and other costs, including office, home office and site overhead (including purchasing, project manager, superintendent, project engineer, estimator, and their vehicles and clerical assistants), taxes (except for sales tax on the Contract Sum), warranty, safety costs, printing and copying, layout and control, quality control/assurance, small or hand tools (a tool that costs \$500 or less and is normally furnished by the performing contractor), preparation of as-built drawings, impact on unchanged Work, Change Order and/or claim preparation, and delay and impact costs of any kind (cumulative, ripple, or otherwise), added to the total cost to the NWSA of any Change Order work. No markup shall be due, however, for direct settlements of Subcontractor claims by the NWSA after Substantial Completion. The markup shall be limited in all cases to the following schedule:
- a. Direct labor costs -- 20% markup on the direct cost of labor for the party (Contractor or Subcontractor) providing labor related to the change in the Work;
 - b. Direct material costs -- 20% markup on the direct cost of material for the party (Contractor or Subcontractor) providing material related to the change in the Work;
 - c. Construction equipment usage costs -- 10% markup on the direct cost of equipment for the party (Contractor or Subcontractor) providing equipment related to the change in the Work;
 - d. Contractor markup on Subcontractor costs -- 10% markup for the Contractor on the direct cost (excluding markup) of a change in the Work performed by Subcontractors (and for Subcontractors, for a change in the Work performed by lower-tier Subcontractors); and
 - e. Service provider costs -- 5% markup for the Contractor on the direct cost (excluding markup) of a change in the Work performed by service providers.

The total summed markup of the Contractor and all Subcontractors of any tier shall not exceed 30% of the direct costs of the change in the Work. If the markup would otherwise exceed 30%, the Contractor shall proportionately reduce the markup for the Contractor and all Subcontractors of any tier.

7. Cost of change in insurance or bond premium. This is defined as:
- a. Contractor's liability insurance: The actual cost (expressed as a percentage submitted with the certificate of insurance provided under the Contract Documents and subject to audit) of the Contractor's liability insurance arising directly from the changed Work; and
 - b. Public works bond: The actual cost (expressed as a percentage submitted under the Contract Documents and subject to audit) of the Contractor's performance and payment bond arising directly from the changed Work.

Upon request, the Contractor shall provide the NWSA with supporting documentation from its insurer or surety of any associated cost incurred. The cost of the insurance or bond premium together shall not exceed 2.0% of the cost of the changed Work.

8. Unit Prices. If Unit Prices are specified in the Contract Documents or established by agreement of the parties for certain Work, the NWSA may apply them to the changed Work. Unit Prices shall include pre-agreed rates for material quantities and shall include reimbursement for all direct and indirect costs of the Work, including overhead, profit, bond, and insurance costs arising out of or related to the Unit Priced item. Quantities must be supported by field measurement statements signed by the NWSA, and the NWSA shall

have access as necessary for quantity measurement. The NWSA shall not be responsible for not-to-exceed limit(s) without its prior written approval.

8.03 CHANGES IN THE CONTRACT TIME

- A. Extension of the Contract Time. If the Contractor is delayed at any time in the commencement or progress of the Work by events for which the NWSA is responsible, by unanticipated abnormal weather (subject to Section 8.03(E) below), or by other causes not the fault or responsibility of the Contractor that the NWSA determines may justify a delay in the Contract Time, then the Contract Time shall be extended by Change Order for such reasonable time as the NWSA may determine. In no event, however, shall the Contractor be entitled to any extension of time absent proof of (1) delay to an activity on the critical path of the Project, or (2) delay transforming an activity to the critical path, so as to actually delay the anticipated date of Substantial Completion.
- B. Allocation of responsibility for delay not caused by NWSA or Contractor. If a delay was not caused by the NWSA, the Contractor, or anyone acting on behalf of any of them, the Contractor is entitled only to an increase in the Contract Time but not an increase in the Contract Sum.
- C. Allocation of responsibility for delay caused by NWSA. If a delay was caused by the NWSA or someone acting on behalf of the NWSA and affected the critical path, the Contractor shall be entitled to a change in the Contract Time and Contract Sum in accordance with Section 8.02. The Contractor shall not recover damages, an equitable adjustment or an increase in the Contract Sum or Contract Time from the NWSA, however, where the Contractor could reasonably have avoided the delay. The NWSA is not obligated directly or indirectly for damages for any delay suffered by a Subcontractor of any tier that does not increase the Contract Time.
- D. Allocation of responsibility for delay caused by Contractor. If a delay was caused by the Contractor, a Subcontractor of any tier, or anyone acting on behalf of any of them, the Contractor is not entitled to an increase in the Contract Time or in the Contract Sum.
- E. Adverse weather. If adverse weather is identified as the basis for a claim for additional time, the claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not reasonably have been anticipated and had an adverse effect on the critical path of construction, and that the Work was on schedule (or not behind schedule through the fault of the Contractor) at the time the adverse weather conditions occurred. Neither the Contract Time nor the Contract Sum will be adjusted for normal inclement weather. For a claim based on adverse weather, the Contractor shall be eligible only for a change in the Contract Time (but not a change in the Contract Sum) if the Contractor can substantiate that there was significantly greater than normal inclement weather considering the full term of the Contract Time.
- F. Damages for delay. In the event the Contractor (including any Subcontractors of any tier) is held to be entitled to damages from the NWSA for delay beyond the amount permitted in Section 8.02(B), the total combined damages to the Contractor and any Subcontractors of any tier for each day of delay shall be limited to the same daily liquidated damage rate specified in the Contract Documents due the NWSA for the Contractor's delay in achieving Substantial Completion. By submitting a bid on the Work and executing the Contract, the Contractor represents that these liquidated damages are a reasonable estimate of its loss.
- G. Limitation on damages. The Contractor shall not be entitled to damages arising out of loss of efficiency; morale, fatigue, attitude, or labor rhythm; constructive acceleration; home office overhead; expectant under run; trade stacking; reassignment of workers; rescheduling of Work, concurrent operations; dilution of supervision; learning curve; beneficial or joint occupancy;

logistics; ripple; season change; extended or increased overhead or general conditions; profit upon damages for delay; impact damages including cumulative impacts; or similar damages. Any effect that such alleged costs may have upon the Contractor or its Subcontractors of any tier is fully compensated through the markup on Change Orders paid through Section 8.02(B) and any liquidated damages paid hereunder.

8.04 RESERVATION OF RIGHTS

- A. Reservations of rights void unless signed by NWSA. Reservations of rights will be deemed waived and are void unless any reserved rights are described in detail and are signed by the Contractor and the NWSA.
- B. Procedure for unsigned reservations of rights. If the Contractor adds a reservation of rights not signed by the NWSA to any Change Order, Unilateral Change Directive, Change Order proposal, Application for Payment or any other document, all amounts and all Work therein shall be considered disputed and not payable until costs are re-negotiated or the reservation is withdrawn or changed in a manner satisfactory to and signed by the NWSA. If the NWSA makes payment based on a document that contains a reservation of rights not signed by the NWSA, and if the Contractor cashes such payment, then the reservation of rights shall be deemed waived, withdrawn and of no effect.

8.05 UNIT PRICES

- A. Adjustment to Unit Prices. If Unit Prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed (less than eighty percent (80%) or more than one hundred and twenty percent (120%) of the quantity estimated) so that application of a Unit Price would be substantially unfair, the applicable Unit Price but not the Contract Time shall be adjusted if the NWSA prospectively approves a Change Order revising the Unit Price.
- B. Procedure to change Unit Prices. The Contractor or NWSA may request a Change Order revising a Unit Price by submitting information to support the change. A proposed change to a Unit Price will be evaluated by the NWSA based on the change in cost resulting solely from the change in quantity, any change in production rate or method as compared to the original plan, and the share, if any, of fixed expenses properly chargeable to the item. If the NWSA and Contractor agree on the change, a Change Order will be executed. If the parties cannot agree, the Contractor shall comply with the dispute resolution procedures (Article 11).

ARTICLE 9 - SUSPENSION AND TERMINATION OF CONTRACT

9.01 NWSA'S RIGHT TO SUSPEND WORK

- A. NWSA may suspend the Work. The NWSA may at any time suspend the Work, or any part thereof, by giving notice to the Contractor. The Work shall be resumed by the Contractor as soon as possible, but no later than fourteen (14) days after the date fixed in a notice to resume the Work. The NWSA shall reimburse the Contractor for appropriate and reasonable expenses consistent with Section 8.02 incurred by the Contractor as a result of the suspension, except where a suspension is the result of the Contractor repeatedly or materially failing to carry out or correct the Work in accordance with the Contract Documents, and the Contractor shall take all necessary steps to minimize expenses.
- B. Contractor obligations. During any suspension of Work, the Contractor shall take every precaution to prevent damage to, or deterioration of, the Work. 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 NWSA prior to resuming Work.

9.02 TERMINATION OF CONTRACT FOR CAUSE BY THE NWSA

- A. NWSA may terminate for cause. If the Contractor is adjudged bankrupt or makes a general assignment for the benefit of the Contractor's creditors, if a receiver is appointed due to the Contractor's insolvency, or if the Contractor, in the opinion of the NWSA, persistently or materially refuses or fails to supply enough properly skilled workmen or materials for proper completion of the Contract, fails to make prompt payment to Subcontractors or suppliers for material or labor, disregards laws, ordinances, or the instructions of the NWSA, fails to prosecute the Work continuously with promptness and diligence, or otherwise materially violates any provision of the Contract, then the NWSA, without prejudice to any other right or remedy, may terminate the Contractor after giving the Contractor seven (7) days' written notice (during which period the Contractor shall have the right to cure).
- B. Procedure following termination for cause. Following a termination for cause, the NWSA may take possession of the Project site and all materials and equipment, and utilize such materials and equipment to finish the Work. The NWSA may also exclude the Contractor from the Project site(s). If the NWSA elects to complete all or a portion of the Work, it may do so as it sees fit. The NWSA shall not be required to accept the lowest bid for completion of the Work and may choose to complete all or a portion of the Work using its own work force. If the NWSA elects to complete all or a portion of the Work, the Contractor shall not be entitled to any further payment until the Work is finished. If the expense of finishing the Work, including compensation for additional managerial and administrative services of the NWSA, exceeds the unpaid balance of the Contract Sum, the excess shall be paid by the Contractor.
- C. NWSA's remedies following termination for cause. The NWSA may exercise any rights, claims or demands that the Contractor may have against third persons in connection with the Contract, and for this purpose the Contractor assigns and transfers to the NWSA all such rights, claims and demands.
- D. Inadequate termination for cause converted to termination for convenience. If, after the Contractor has been terminated for cause, it is determined that inadequate "cause" for such termination exists, then the termination shall be considered a termination for convenience pursuant to Section 9.03.

9.03 TERMINATION OF CONTRACT FOR CONVENIENCE BY THE NWSA

- A. NWSA may terminate for convenience. The NWSA may, at any time (without prejudice to any right or remedy of the NWSA), terminate all or any portion of the Contract for the NWSA's convenience and without cause. The Contractor shall be entitled to receive payment consistent with the Contract Documents only for Work properly executed through the date of termination, and costs necessarily incurred by reason of the termination (such as the cost of settling and paying claims arising out of the termination under subcontracts or orders), along with a fee of one percent (1%) of the Contract Sum not yet earned on the whole or part of the Work. The total amount to be paid to the Contractor shall not exceed the Contract Sum as reduced by the amount of payments otherwise made. The NWSA shall have title to all Work performed through the date of termination.

9.04 TERMINATION OF CONTRACT BY THE CONTRACTOR

- A. Contractor may terminate for cause. The Contractor may terminate the Contract if the Work is stopped for a period of sixty (60) consecutive days through no act or fault of the Contractor or a Subcontractor of any tier, for either of the following reasons:
 - 1. Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped; or

2. An act of government, such as a declaration of national emergency that requires all Work to be stopped.
- B. Procedure for Contractor termination. If one of the reasons described in Section 9.04A exists, the Contractor may, upon seven (7) days' written notice to the NWSA (during which period the NWSA has the opportunity to cure), terminate the Contract and recover from the NWSA payment for Work executed through the date of termination in accordance with the Contract Documents and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead and profit on Work executed and direct costs incurred by reason of such termination. The total recovery of the Contractor shall not exceed the unpaid balance of the Contract Sum.
- C. Contractor may stop the Work for failure of NWSA to pay undisputed amounts. The Contractor may stop Work under the Contract if the NWSA does not pay undisputed amounts due and owing to the Contractor within fifteen (15) days of the date established in the Contract Documents. If the NWSA fails to pay undisputed amounts, the Contractor may, upon fifteen (15) additional days' written notice to the NWSA, during which the NWSA can cure, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately, and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up.

9.05 SUBCONTRACT ASSIGNMENT UPON TERMINATION

- A. Subcontracts assigned upon termination. Each subcontract is hereby assigned by the Contractor to the NWSA provided that:
1. The NWSA requests that the subcontract be assigned;
 2. The assignment is effective only after termination by the NWSA and only for those subcontracts that the NWSA accepts in writing; and
 - a. The assignment is subject to the prior rights of the surety, if any, under any bond issued in accordance with the Contract Documents.

When the NWSA accepts the assignment of a subcontract, the NWSA assumes the Contractor's rights and obligations under the subcontract, but only for events and payment obligations that arise after the date of the assignment.

ARTICLE 10 - BONDS

10.01 CONTRACTOR PERFORMANCE AND PAYMENT BONDS

- A. Contractor to furnish performance and payment bonds. Within ten (10) days following its receipt of a notice of award, and as part of the Contract Sum, the Contractor shall secure and furnish duly executed performance and payment bonds using the forms furnished by the NWSA. The bonds shall be executed by a surety (or sureties) reasonably acceptable to the NWSA, admitted and licensed in the State of Washington, registered with the Washington State Insurance Commissioner, and possessing an A.M. Best rating of "A minus, FSC (6)" or better and be authorized by the U.S. Department of the Treasury. Pursuant to RCW 39.08, the bonds shall be in an amount equal to the Contract Sum, and shall be conditioned only upon the faithful performance of the Contract by the Contractor within the Contract Time and upon the payment by the Contractor of all taxes, fees, and penalties to the State of Washington and all laborers, Subcontractors, and suppliers, and others who supply provisions, equipment, or supplies for the performance of the Work covered by this Contract. The bonds shall be signed by the person or persons legally authorized to bind the Contractor.

- B. NWSA may notify surety. If the NWSA makes or receives a claim against the Contractor, the NWSA may, but is not obligated to, notify the Contractor's surety of the nature and amount of the claim. If the claim relates to a possibility of a Contractor's default, the NWSA may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

ARTICLE 11 - DISPUTE RESOLUTION

11.01 NOTICE OF PROTEST AND CLAIM

- A. Dispute resolution procedure mandatory. All claims, direct or indirect, arising out of, or relating to, the Contract Documents or the breach thereof, shall be decided exclusively by the following alternative dispute resolution procedure unless the parties mutually agree otherwise. If the NWSA and Contractor agree to a partnering process to assist in the resolution of disputes, the partnering process shall occur prior to, and not be in place of, the mandatory dispute resolution procedures set forth below.
- B. Notice of protest defined. Except for claims requiring notice before proceeding with the affected Work as otherwise described in the Contract Documents, the Contractor shall provide immediate oral notice of protest to the Engineer prior to performing any disputed Work and shall submit a written notice of protest to the NWSA within seven (7) days of the occurrence of the event giving rise to the protest that includes a clear description of the event(s). The protest shall identify any point of disagreement, those portions of the Contract Documents believed to be applicable, and an estimate of quantities and costs involved. When a protest relates to cost, the Contractor shall keep full and complete records and shall permit the NWSA to have access to those records at any time as requested by the NWSA.
- C. Claim defined. A claim is a demand by one of the parties seeking adjustment or interpretation of the Contract terms, payment of money, extension of time or other relief with respect to the terms of the Contract Documents. The term "claim" also includes all disputes and matters in question between the NWSA and Contractor arising out of or relating to the Contract Documents. Claims must be initiated in writing and include a detailed factual statement and clear description of the claim providing all necessary dates, locations and items of Work, the date or dates on which the events occurred that give rise to the claim, the names of employees or representatives knowledgeable about the claim, the specific provisions of the Contract Documents that support the claim, any documents or oral communications that support the claim, any proposed change in the Contract Sum (showing all components and calculations) and/or Contract Time (showing cause and analysis of the resultant delay in the critical path), and all other data supporting the claim. Claims shall also be submitted with a statement certifying, under penalty of perjury, that the claim as submitted 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, and that the amount requested accurately reflects the adjustment in the Contract Sum or Contract Time for which Contractor believes the NWSA is liable. A claim shall be deemed to include all changes, direct and indirect, in cost and in time to which the Contractor and Subcontractors of any tier are entitled and may not contain reservations of rights without the NWSA's written approval; any unapproved reservations of rights shall be without effect.
- D. Claim procedure. The Contractor shall submit a written claim within thirty (30) days of providing written notice of protest. The Contractor may delay submitting supporting data by an additional thirty (30) days if it notifies the NWSA in its claim that substantial data must be assembled. Any claim of a Subcontractor of any tier may be brought only through, and after review by and concurrence of, the Contractor.
- E. Failure to comply with notice of protest and claim requirements waives claims. Any notice of protest by the Contractor and any claim of the Contractor, whether under the Contract or

otherwise, must be made pursuant to and in strict accordance with the applicable provisions of the Contract. Failure to properly and timely submit a notice of protest or to timely submit a claim shall waive the claim. No act, omission, or knowledge, actual or constructive, of the NWSA shall waive the requirement for timely written notice of protest and a timely written claim unless the NWSA and the Contractor sign an explicit, unequivocal written waiver approved by the NWSA. The Contractor expressly acknowledges and agrees that the Contractor's failure to timely submit required notices of protest and/or timely submit claims has a substantial impact upon and prejudices the NWSA. For the purpose of calculating time periods, an "event giving rise to a claim," among other things, is not a Request for Information but rather is a response that the Contractor believes would change the Contract Sum and/or Contract Time.

- F. False claims. The Contractor shall not make any fraudulent misrepresentations, concealments, errors, omissions, or inducements to the NWSA in the formation or performance of the Contract. If the Contractor or a Subcontractor of any tier submits a false or frivolous claim to the NWSA, which for purposes of this Section 11.01(F) is defined as a claim based in whole or in part on a materially incorrect fact, statement, representation, assertion, or record, the NWSA shall be entitled to collect from the Contractor by offset or otherwise (without prejudice to any right or remedy of the NWSA) any and all costs and expenses, including investigation and consultant costs, incurred by the NWSA in investigating, responding to, and defending against the false or frivolous claim.
- G. Compliance with lien and retainage statutes required. If a claim relates to or is the subject of a lien or retainage claim, the party asserting the claim may proceed in accordance with applicable law to comply with the notice and filing deadlines prior to resolution of the claim by mediation or by litigation.
- H. Performance required pending claim resolution. Pending final resolution of a claim, the Contractor shall continue to perform the Contract and maintain the Progress Schedule, and the NWSA shall continue to make payments of undisputed amounts due in accordance with the Contract Documents.

11.02 MEDIATION

- A. Claims must be subject to mediation. At any time following the NWSA's receipt of a written claim, the NWSA may require that an officer of the Contractor and the NWSA's designee (all with authority to settle) meet, confer, and attempt to resolve a claim. If the claim is not resolved during this meeting, the claim shall be subject to mandatory mediation as a condition precedent to the initiation of litigation. This requirement can be waived only by an explicit, written waiver signed by the NWSA and the Contractor.
- B. Mediation procedure. A request for mediation shall be filed in writing with the other party to the Contract, and the parties shall promptly attempt to agree upon a mediator. If the parties have not reached agreement within thirty (30) days of the request, either party may file the request with the American Arbitration Association or such other alternative dispute resolution service to which the parties mutually agree, with a copy to the other party, and the mediation shall be administered by the American Arbitration Association (or other agreed service). The parties to the mediation shall share the mediator's fee and any filing fees equally. The mediation shall be held in Pierce County, Washington unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof. Unless the NWSA and the Contractor mutually agree in writing otherwise, all claims shall be considered at a mediation session that shall occur prior to Final Completion.

11.03 LITIGATION

- A. Claims not resolved by mediation are subject to litigation. Claims not resolved through mediation shall be resolved by litigation unless the parties mutually agree otherwise. The venue for any litigation shall be Pierce County, Washington. The Contractor may bring no litigation on claims unless such claims have been properly raised and considered in the procedures of this Article 11. The Contractor must demonstrate in any litigation that it complied with all requirements of this Article.
- B. Litigation must be commenced promptly. All unresolved claims of the Contractor shall be waived and released unless the Contractor has complied with the requirements of the Contract Documents, and litigation is served and filed within 180 days of the date of Substantial Completion approved in writing by the NWSA or termination of the Contract. The pendency of mediation (the time period between receipt by the non-requesting party of a written mediation request and the date of mediation) shall toll these deadlines until the earlier of the mediator providing written notice to the parties of impasse or thirty (30) days after the date of the mediation session.
- C. NWSA not responsible for attorneys' fees. Neither the Contractor nor a Subcontractor of any tier, whether claiming under a bond or lien statute or otherwise, shall be entitled to attorneys' fees directly or indirectly from the NWSA (but may recover attorneys' fees from the bond or statutory retainage fund itself to the extent allowable under law).
- D. NWSA may join Contractor in dispute. The NWSA may join the Contractor as a party to any litigation or arbitration involving the alleged fault, responsibility, or breach of contract of the Contractor or Subcontractor of any tier.

ARTICLE 12 - MISCELLANEOUS

12.01 GENERAL

- A. Rights and remedies are cumulative. The rights and remedies of the NWSA 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 NWSA. The pursuit of any remedy by the NWSA shall not be construed to bar the NWSA from the pursuit of any other remedy in the event of similar, different, or subsequent breaches of this Contract. All such rights of the NWSA shall survive completion of the Project or termination of the Contractor.
- B. Reserved rights do not give rise to duty. The rights reserved or possessed by the NWSA to take any action shall not give rise to a duty for the NWSA to exercise any such right.

12.02 WAIVER

- A. Waiver must be in writing and authorized by NWSA. Waiver of any provisions of the Contract Documents must be in writing and authorized by the NWSA. No other waiver is valid on behalf of the NWSA.
- B. Inaction or delay not a waiver. No action, delay in acting, or failure to act by the NWSA shall constitute a waiver of any right or remedy of the NWSA, or constitute an approval or acquiescence of any breach or defect in the Work. Nor shall any delay or failure of the NWSA to act waive or otherwise prejudice the right of the NWSA to enforce a right or remedy at any subsequent time.
- C. Claim negotiation not a waiver. The fact that the NWSA and the Contractor may consider, discuss, or negotiate a claim that has or may have been defective or untimely under the Contract shall not constitute a waiver of the provisions of the Contract Documents unless the NWSA and the Contractor sign an explicit, unequivocal waiver.

12.03 GOVERNING LAW

- A. Washington law governs. This Contract and the rights and duties of the parties hereunder shall be governed by the internal laws of the State of Washington, without regard to its conflict of law principles.

12.04 COMPLIANCE WITH LAW

- A. Contractor to comply with applicable laws. The Contractor shall at all times comply with all applicable Federal, State and local laws, ordinances, and regulations. This compliance shall include, but is not limited to, the payment of all applicable taxes, royalties, license fees, penalties, and duties.
- B. Contractor to provide required notices. The Contractor shall give notices required by all applicable Federal, State, and local laws, ordinances and regulations bearing on the Work.
- C. Contractor to confine operations at site to permitted areas. The Contractor shall confine operations at the Project site to areas permitted by applicable laws, ordinances, permits, rules and regulations, and lawful orders of public authorities and the Contract Documents.

12.05 ASSIGNMENT

- A. Assignment. The NWSA and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to the other party and to the partners, successors, assigns and legal representatives of such other party. The Contractor may not assign, transfer, or novate all or any portion of the Contract, including but not limited to any claim or right to the Contract Sum, without the NWSA's prior written consent. If the Contractor attempts to make an assignment, transfer, or novation without the NWSA's consent, the assignment shall be of no effect, and Contractor shall nevertheless remain legally responsible for all obligations under the Contract. The Contractor also shall not assign or transfer to any third party any claims it may have against the NWSA arising under the Contract or otherwise related to the Project.

12.06 TIME LIMIT ON CAUSES OF ACTION

- A. Time limit on causes of action. The NWSA and Contractor shall commence all causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the dispute resolution procedure set forth in Article 11 of these General Conditions, within the time period specified by applicable law, and within the time limits identified in the Contract Documents. The Contractor waives all claims and causes of action not commenced in accordance with this Section 12.06.

12.07 SERVICE OF NOTICE

- A. Notice. Written notice under the Contract Documents by either the Contractor or NWSA may be served on the other party by personal service, electronic or facsimile transmission, or delivery service to the last address provided in writing to the other party. For the purpose of measuring time, notice shall be deemed to be received by the other party on the next business day following the sender's electronic or facsimile transmittal or delivery by delivery service.

12.08 RECORDS

- A. Contractor and Subcontractors to maintain records and cooperate with NWSA audit. The Contractor and Subcontractors of any tier shall maintain books, ledgers, records, documents, estimates, bids, correspondence, logs, schedules, emails, and other tangible and electronic data and evidence relating or pertaining to costs and/or performance of the Contract ("records") to such extent and in such detail as will properly reflect and fully support compliance with the Contract Documents and with all costs, charges and other amounts of whatever nature. The

Contractor shall preserve these records for a period of six (6) years following the date of Final Acceptance under the Contract. Within seven (7) days of the NWSA's request, both during the Project and for six (6) years following Final Acceptance, the Contractor and Subcontractors of any tier shall make available at their office during normal business hours all records for inspection, audit and reproduction (including electronic reproduction) by the NWSA or its representatives; failure to fully comply with this requirement shall constitute a material breach of contract and a waiver of all claims by the Contractor and Subcontractors of any tier.

- B. Rights under RCW 42.56. The Contractor agrees, on behalf of itself and Subcontractors of any tier, that any rights under Chapter 42.56 RCW will commence at Final Acceptance, and that the invocation of such rights at any time by the Contractor or a Subcontractor of any tier, or their respective representatives, shall initiate an equivalent right to disclosures from the Contractor and Subcontractors of any tier for the benefit of the NWSA.

12.09 STATUTES

- A. Contractor to comply with Washington statutes. The Contractor shall abide by the provisions of all applicable statutes, regulations, and other laws. Although a number of statutes are referenced in the Contract Documents, these references are not meant to be and are not a complete list.
1. Pursuant to RCW 39.06, "Registration, Licensing of Contractors," the Contractor shall be registered and licensed as required by the laws of the State of Washington, including but not limited to RCW 18.27, "Registration of Contractors," and shall satisfy all State of Washington bonding and insurance requirements. The Contractor shall also have a current state unified business identifier number; have industrial insurance coverage for the Contractor's employees working in Washington as required by Title 51 RCW; have an employment security department number as required by Title 50 RCW; have a state excise tax registration number as required in Title 82 RCW, and; not be disqualified from bidding on any public works contract under RCW 39.06.010 (unregistered or unlicensed contractors) or RCW 39.12.065(3) (prevailing wage violations).
 2. The Contractor shall comply with all applicable provisions of RCW 49.28, "Hours of Labor."
 3. The Contractor shall comply with pertinent statutory provisions relating to public works of RCW 49.60, "Discrimination."
 4. The Contractor shall comply with pertinent statutory provisions relating to public works of RCW 70.92, "Provisions in Buildings for Aged and Handicapped Persons," and the Americans with Disabilities Act.
 5. Pursuant to RCW 50.24, "Contributions by Employers," in general and RCW 50.24.130 in particular, the Contractor shall pay contributions for wages for personal services performed under this Contract or arrange for an acceptable bond.
 6. The Contractor shall comply with pertinent provisions of RCW 49.17, "Washington Industrial Safety and Health Act," and Chapter 296-155 WAC, "Safety Standards for Construction Work."
 7. Pursuant to RCW 49.70, "Worker and Community Right to Know Act," and WAC 296-62-054 et seq., the Contractor shall provide to the NWSA and have copies available at the Project site, a workplace survey or material safety data sheets for all "hazardous" chemicals under the control or use of Contractor or any Subcontractor of any tier.
 8. All products and materials incorporated into the Project as part of the Work shall be certified as "asbestos-free" and "lead-free" by United States standards, and shall also be free of all hazardous materials or substances. At the completion of the Project, the

Contractor shall submit certifications of asbestos-free and of lead-free materials certifying that all materials and products incorporated into the Work meet the requirements of this Section, and shall also certify that materials and products incorporated into the Work are free of hazardous materials and substances.

END OF SECTION

PART 1 - GENERAL

1.01 RELATED WORK DESCRIBED ELSEWHERE

- A. The provisions and intent of the Contract, including the General and Supplemental Conditions apply to this work as if specified in this section. Work related to this section is described throughout these Specifications.

1.02 SUBMITTAL REQUIREMENTS

- A. Evidence of the required insurance within 10 days of the issued Notice of Award to the Contractor.
- B. Updated evidence of insurance as required until final completion.

1.03 CONTRACTOR LIABILITY INSURANCE

- A. The Contractor shall secure and maintain until Final Completion, at its sole cost and expense, the following insurance in carriers reasonably acceptable to the NWSA, licensed in the State of Washington, registered with the Washington State Insurance Commissioner, and possessing an A.M. Best rating of "A-, FSC (6)" or better.
- B. The NWSA will be included as an additional insured(s) for both ongoing and completed operations by endorsement to the policy using ISO Form CG 20 10 11 85 or forms CG 20 10 03 97 and CG 20 37 10 01 (or equivalent coverage endorsements). The inclusion of the Port and the NWSA as an additional insured(s) shall not create premium liability for the NWSA.

Also, by endorsement to the policy, there shall be:

- 1. An express waiver of subrogation in favor of the NWSA;
 - 2. A cross liabilities clause,
 - 3. An endorsement stating that the Contractor's policy is primary and not contributory with any insurance carried by the NWSA.
- C. If the Contractor, Supplier or Subcontractor's will perform any work requiring the use of a licensed professional per RCW 18 the Contractor shall provide evidence to the NWSA of professional liability insurance in amounts not less than \$1,000,000.
 - D. This insurance shall cover all of the Contractors' operations of whatever nature connected in any way with the Contract, including any operations performed by the Contractor's Subcontractors of any tier. **It is the obligation of the Contractor to ensure that all Subcontractors (at whatever level) carry a similar program that provides the identified types of coverage, limits of liability, inclusion of the NWSA as additional insured(s), waiver of subrogation and cross liabilities clause.** The NWSA reserves the right to reject any insurance policy as to company, form, or substance. Contractor's failure to provide or the NWSA's acceptance of the Contractor's certificate of insurance does not waive the Contractor's obligation to comply with the insurance requirements of the Contract as specifically described below:
 - 1. Commercial General Liability Insurance on an Occurrence Form Basis including but not limited to:
 - a. Bodily Injury Liability;
 - b. Property Damage Liability;
 - c. Contractual Liability;

- d. Products - Completed Operations Liability;
 - e. Personal Injury Liability;
 - f. By endorsement to the policy, not exclude work within fifty feet of any railroad track.
2. Comprehensive Automobile Liability including but not limited to:
 - a. Bodily Injury Liability;
 - b. Property Damage Liability;
 - c. Personal Injury Liability;
 - d. Owned and Non-Owned Automobile Liability; and
 - e. Hired and Borrowed Automobile Liability.
 3. Railroad protective liability issued in name of the railroad and in the limits required by the railroad.
 4. Contractor's Pollution Liability (CPL) covering claims for bodily injury, property damage and cleanup costs and environmental damages from pollution conditions arising from the performance of covered operations.
 - a. If the Work involves remediation or abatement of regulated waste to include but not limited to: asbestos containing materials, lead containing products, mercury, PCB, underground storage tanks or other hazardous materials or substances, the CPL policy shall not exclude such coverage or a specific policy covering such exposure shall be required from the Contractor and all Subcontractors performing such Work.
 - b. If the Work involves transporting regulated materials or substances or waste, a separate policy or endorsement to the CPL policy specifically providing coverage for liability and cleanup arising from an upset of collision during transportation of hazardous materials or substances shall be required from the Contractor and all Subcontractors performing such Work.
 - c. It is preferred that CPL insurance shall be on a true occurrence form without a sunset clause. However, if CPL insurance is provided on a Claims Made basis, the policy shall have a retroactive date prior to the start of this project and this insurance shall be kept in force for at least three years after the final completion of this project. Alternatively, the contractor at its option may provide evidence of extended reporting period of not less than three (3) years in its place. The Contractor shall be responsible for providing the Port with certificates of insurance each year evidencing this coverage.
 - d. The NWSA shall be named as an Additional Insured(s) on the CPL policy.
- E. Except where indicated above, the limits of all insurance required to be provided by the Contractor shall be not less than \$2,000,000 for each occurrence. However, coverage in the amounts of these minimum limits shall not be construed as to relieve the Contractor from liability in excess of such limits. The Additional Insured endorsement shall NOT be limited to the amounts specified by this contract unless expressly waived in writing by the Port.
 - F. Contractor shall certify that its operations are covered by the Washington State Worker's Compensation Fund. The Contractor shall provide its Account Number or, if self-insured, its Certificate of Qualification Number. The Contractor shall also provide evidence of Stop-Gap Employers' Liability Insurance.
 - G. The Contractor shall furnish within ten (10) days following issuance of the Notice of Award a certificate of insurance satisfactory to the NWSA evidencing that insurance in the types and

minimum amounts required by the Contract Documents has been secured. The Certificate of Insurance shall be signed by an authorized representative of the insurer together with a copy of the endorsement, which shows that the NWSA is named as additional insured.

- H. Contractor shall provide at least forty-five (45) days prior written notice to the Port of any termination or material change or ten (10) days' notice in the case of non-payment of premium(s).
- I. If the Contractor is required to make corrections to the Work after Final Completion, the Contractor shall obtain at its own expense, prior to the commencement of any corrective work, insurance coverage as required by the Contract Documents, which coverage shall be maintained until the corrections to the Work have been completed and accepted by the NWSA.

1.04 BUILDER'S RISK INSURANCE

- A. Until Final Completion of the Work, the construction Work is at the risk of the Contractor and no partial payment shall constitute acceptance of the Work or relieve the Contractor of responsibility of completing the Work under the Contract.

PART 2 - PRODUCTS - NOT USED

PART 3 - PRODUCTS - NOT USED

END OF SECTION

PART 1 - GENERAL

1.01 PREVAILING AND OTHER REQUIRED WAGES

- A. The Contractor shall pay (and shall ensure that all Subcontractors of any tier pay) all prevailing wages and other wages (such as Davis-Bacon Act wages) applicable to the Project.
- B. Pursuant to RCW 39.12, "Prevailing Wages on Public Works," no worker, laborer, or mechanic employed in the performance of any part of the Work shall be paid less than the "prevailing rate of wage" in effect as of the date that bids are due.
 - 1. Based on the declaration of emergency date for this project, the applicable effective date for prevailing wages for this project is September 1, 2016.
- C. The State of Washington prevailing wage rates applicable for this public works project, which is located in Pierce County, may be found at the following website address of the Department of Labor and Industries:

<https://fortress.wa.gov/lni/wagelookup/prvWagelookup.aspx>

- D. The schedule of the prevailing wage rates is made a part of the Contract Documents by reference as though fully set forth herein; and a copy of the applicable prevailing wage rates are also available for viewing at the NWSA Administration Building, located at One Sitcum Plaza, Tacoma, WA 98421 (253-383-5841). Upon request to the Procurement Department at procurement@portoftacoma.com, the NWSA will email or mail a hard copy of the applicable Journey Level prevailing wages for this project.
- E. Questions relating to prevailing wage data should be addressed to the Industrial Statistician.

Mailing Address: Washington State Department of Labor and Industries
Prevailing Wage Office
P.O. Box 44540
Olympia, WA 98504

Telephone: (360) 902-5335

Facsimile: (360) 902-5300

- 1. If there is any discrepancy between the attached or provided schedule of prevailing wage rates and the published rates applicable under WAC 296-127-011, or if no schedule is attached, the applicable published rates shall apply with no increase in the Contract Sum. It is the Contractor's responsibility to ensure that the correct prevailing wage rates are paid.
- F. Statement to Pay Prevailing Wages
 - 1. Prior to any payment being made by the NWSA under this Contract, the Contractor, and each Subcontractor of any tier, shall file a Statement of Intent to Pay Prevailing Wages under oath with the NWSA and certified by the Director of Labor and Industries.
 - 2. The statement shall include the hourly wage rate to be paid to each classification of workers entitled to prevailing wages, which shall not be less than the prevailing rate of wage, and the estimated number of workers in each classification employed on the Project by the Contractor or a Subcontractor of any tier, as well as the Contractor's contractor registration number and other information required by the Director of Labor and Industries.

3. The statement, and any supplemental statements, shall be filed in accordance with the requirements of the Department of Labor and Industries. No progress payment shall be made until the NWSA receives such certified statement.
- G. The Contractor shall post in a location readily visible to workers at the Project site (1) a copy of the Statement of Intent to Pay Prevailing Wages approved by the Industrial Statistician of the Department of Labor and Industries and (2) the address and telephone number of the Industrial Statistician of the Department of Labor and Industries to whom a complaint or inquiry concerning prevailing wages may be directed.
- H. If a State of Washington prevailing wage rate conflicts with another applicable wage rate (such as Davis-Bacon Act wage rate) for the same labor classification, the higher of the two shall govern.
- I. Pursuant to RCW 39.12.060, if any dispute arises concerning the appropriate prevailing wage rate for work of a similar nature, and the dispute cannot be adjusted 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 his or her decision shall be final and conclusive and binding on all parties involved in the dispute.
- J. Immediately following the end of all work completed under this Contract, the Contractor, and each Subcontractor of any tier, shall file an approved Affidavit of Wages Paid with the L&I.
- K. The Contractor shall defend (at the Contractor's sole cost, with legal counsel approved by NWSA), indemnify and hold the NWSA harmless from all liabilities, obligations, claims, demands, damages, disbursements, lawsuits, losses, fines, penalties, costs and expenses, whether direct, indirect, including but not limited to attorneys' fees and consultants' fees and other costs and expenses, from any violation or alleged violation by the Contractor or any Subcontractor of any tier of RCW 39.12 ("Prevailing Wages on Public Works") or Chapter 51 RCW ("Industrial Insurance"), including but not limited to RCW 51.12.050.

PART 2 - PRODUCTS - NOT USED

PART 3 - EXECUTION - NOT USED

END OF SECTION

PART 1 - GENERAL

1.01 REQUIREMENTS APPLICABLE NWSA-WIDE

- A. The Contractor shall submit prior to the start of work a list of emergency contact numbers for itself and subcontractors, suppliers and manufacturer representatives. Each person on the project site shall have a valid identification card that is tamper proof with laminated photo identification such as one of the following:
 - 1. State-issued Driver's license (also required if driving a vehicle)
 - 2. Card issued by a governmental agency
 - 3. Passport
 - 4. Identification card issued by the Port of Tacoma
 - 5. Pacific Maritime Association card, or
 - 6. Labor organization identification card
- B. Identification cards shall be visible while on the work site or easily displayed when requested.

1.02 TRANSPORTATION WORKER IDENTIFICATION CARD (TWIC) SUMMARY

- A. TWIC is required for all personnel needing unescorted access to secure and restricted areas of Port/NWSA facilities subject to 33 CFR 105, including truckers, surveyors, construction personnel, and delivery personnel. Secure areas are those areas with security measures for access control in accordance with a Coast Guard approved security plan; restricted areas are those areas within a secure area that require increased limited access and a higher degree of security protection. New terminals under construction prior to terminal operations may not be designated secure areas. Construction on existing maritime transportation facilities and punchlist or other type of work requirements on facilities that have been certified under 33 CFR will require a TWIC.
- B. Contractors should allow for application and enrollment for the security threat assessment and issuance of TWIC when submitting a bid.

1.03 ESCORTING

- A. To access restricted NWSA facilities, all un-credentialed individuals must be accompanied by a person who has been issued a TWIC and trained as an escort.
- B. For more information, refer to the Port Security website at:
<http://www.portoftacoma.com/Page.aspx?cid=3597>

1.04 ELIGIBILITY FOR TWIC

- A. Refer to the Transportation Worker Identification Credential website at:
<https://twicprogram.tsa.dhs.gov/TWICWebApp> for information on eligibility and applying for TWIC.

1.05 1.06 TWIC USE AND DISPLAY

- A. Each worker granted unescorted access to secure areas of a facility or vessel must present their cards to authorized personnel, who will compare the holder to his or her photo, inspect security features on the TWIC and evaluate the card for signs of tampering. The Coast Guard will verify TWIC's when conducting vessel and facility inspections and during spot checks using hand-held scanners, ensuring credentials are valid.

PART 2 - PRODUCTS - NOT USED

PART 3 - EXECUTION - NOT USED

END OF SECTION