

Sample Contract



STANDARD FORM OF AGREEMENT BETWEEN PORT CONSTRUCTION SERVICES AND CONTRACTOR ◆ SMALL WORKS ◆ **SWV-**_____ **(Contract Number)**

THIS AGREEMENT is made this _____ day of _____, **2001** between the Port of Seattle (hereinafter "the Port") and the Contractor, _____, located at _____, who, in consideration of the mutual promises contained herein, agree as follows:

1. THE WORK

The Contractor shall perform all the Work required by the Contract Documents for the project entitled "_____".

Description:

2. TIME OF COMMENCEMENT AND COMPLETION

This Contract shall be for _____ **calendar days**, commencing on **(Date)**____, **2001** and terminating no later than **(Date)**____, **2001** (hereinafter the "Completion Date"). Notice to the Contractor for the performance of work shall be provided by the Port Construction Services, Construction Manager (hereinafter referred to as the "Project Manager"). Contractor shall commence with and complete the work within the time period specified for the work project. Time is of the essence for both parties and they mutually agree to see to the performance of their respective work and the work of their subcontractors so that the entire project may be completed in accordance with the contract documents and the schedule of work. Time is of the essence in each and every portion of this Contract and Contractor recognizes that in the event of unexcused delays by Contractor, the Port may incur costs and expenses as well as claims from third parties, all of which may be charged to Contractor.

3. CONTRACT SUM

3.1 Compensation: The Port agrees to pay the Contractor, for the satisfactory performance of the Work, for the sum of **(Written amount in (US) Dollars)**_____ and **No Cents (\$00.00)** under this contract.

Payment shall constitute the total compensation payable to the Contractor for performance of the Work, including all risk, loss, damage, or expense of whatever character arising out of the nature of the Work or the prosecution thereof, and for all

reasonable expenses properly incurred in the event and consequence of a suspension or discontinuance of the Work pursuant to the Contract. The above price does not include Washington State Sales Tax.

- 3.2 Extra Work: The Port need not pay for extra work or materials furnished without prior approval from the Project Manager, and may order such unauthorized work to be removed at no expense to the Port.

4. PAYMENT

- 4.1 **Progress Payments:** Progress payments will be made based on completed work and materials stored once each month, within 30 day of receipt of invoice. Payment for Labor will be at the prevailing wage rates specified in Attachment B. Payment will not be made for off-site storage of material, parking, badging, travel, Project Labor Agreement requirements and incidental costs. All completed work shall be summarized on the invoice. Payment will be made based on the satisfactory performance of the completed work. **Weekly certified payrolls** for each worker must accompany each invoice for payment. A check for payment must be exchanged for a Partial Waiver and Release of Lien. Progress Payments shall not exceed the total CONTRACT SUM (paragraph 3.1), including CONTRACT CHANGES (paragraph 6.26, Changes), less RETAINAGE PERCENTAGE (Paragraph 4.2.)

- 4.2 Retained Percentage: In accordance with Chapter 60.28 of the Revised Code of Washington, the Port will retain five (5) percent of each monthly payment and the Semi-Final Payment. At the Contractor's request, the Port may accept a bond in the amount of five (5) percent of the not-to-exceed Contract sum, which bond shall be made subject to all claims and liens in the same manner and priority as set forth for retained percentages. The amount retained or bond shall not be released prior to thirty days after completion of the Contract and/or receipt of an Affidavit of Wages Paid and Lien Clearance from the Department of Labor and Industries, and Notice of Completion when required from the Department of Revenue, and letter of project acceptance from Project Manager.

A retainage bond submitted by the Contractor and signed by an attorney-in-fact must be accompanied by a certified and effectively dated copy of their power of attorney.

- 4.3 Invoicing: For each payment due, Contractor shall submit two (2) invoices: one (1) for 95% of the amount due plus 100% of the applicable Washington State and local sales taxes; and one (1) for the remaining 5%, which will be retained by the Port. If, however, Contractor elects to provide a retainage bond, then Contractor may submit its invoice for 100% of the amount due.

- 4.4 Invoicing Format: Contractor shall furnish one (1) original and two (2) copies for each invoice, reflecting the Contract Number:

Port of Seattle
Port Construction Services
18000 International Blvd., Suite 1100
SeaTac, WA 98188

- 4.5 Withholding: The Port may withhold any payment **or portion of payment** otherwise due Contractor on account of breach of contract, including but not limited to: (1) defective work not remedied; (2) claims filed; (3) failure of the Contractor to make payments for labor, materials or equipment; (4) damages to the Port or another contractor; (5) unsatisfactory performance of the work by Contractor; or (6) failure to provide required documentation.

A copy of the Statement of Intent to Pay Prevailing Wages and a Partial Waiver and Release of Lien must be received by the Port of Seattle, Port Construction Services before release of any payment.

- 4.6 Final Payment: Final Payments shall not exceed the total CONTRACT SUM (paragraph 3.1), including CONTRACT CHANGES (paragraph 6.26, Changes).
- 4.7 Acceptance of Final Payment: The acceptance of final payment by the Contractor shall constitute a waiver of all claims, of whatever kind or nature, by the Contractor against the Port. A Final Waiver and Release of Lien must be exchanged for Final Payment.
- 4.8 The Contractor is required to make payment to all subcontractors and all suppliers within ten (10) calendar days from the receipt of all progress payments for all the work included in the progress payments. Furthermore, the Contractor shall require all subcontracts issued under this contract to all subcontractors and suppliers at all tiers to also make all due payments within ten (10) calendar days of their receipt of payment. The Contractor must justify to the Port in writing of any intent to withhold payment of monies due to any subcontractor or supplier.

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

5. PORT OF SEATTLE

- 5.1 Instructions: The Port of Seattle shall issue all instructions to the Contractor through the Project Manager.
- 5.2 Interpretations: The Project Manager will, in all instances, be the interpreter of the requirements of the Contract. The Port of Seattle, Port Construction Services Small Works Manager or designated representative will make decisions on all claims by the Contractor, and all such decisions are final.
- 5.3 Acceptance of Work: The Work shall be done to the complete satisfaction of the Project Manager. The Project Manager will decide all questions that may arise concerning the quality and acceptability of materials and equipment furnished and work performed. The Project Manager will have authority to reject Work that, in his/her opinion is not satisfactory, and all such Work shall be repaired or replaced, as directed by the Project Manager, at no expense to the Port. Final acceptance of the Work is contingent upon his/her approval and upon final releases from regulatory agencies where required.
- 5.4 Drawings, Specifications, Instructions: Port Construction Services shall furnish all drawings, specifications or instructions necessary for the proper performance of the Work.
- 5.5 Performance of Contract: The Project Manager is not responsible for and will not have control or charge of the means, methods, techniques, sequences, or procedures of construction, or for safety precautions or programs incidental thereto, these being the sole responsibility of the Contractor. Likewise, the Project Manager shall not be

responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents. The Project Manager will not be responsible for or have any control or charge of the acts or omissions of the Contractor, Subcontractors, Sub-subcontractors, Suppliers, or any of their agents or employees, or any other persons performing Work.

6. CONTRACTOR

- 6.1 **Methods and Procedures:** Contractor shall select the methods and procedures that best accomplish the required Work and shall direct the Work using its best efforts, skills and attention. The Contractor shall be solely responsible for, and shall have full control and charge of construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract, including the work of Subcontractors, Sub-subcontractors, Suppliers, and all other persons performing a portion of the Work. The Contractor is for all purposes an independent contractor and not an agent or employee of the Port.
- 6.2 **Labor, Materials and Equipment:** The Contractor shall provide and pay for all labor, materials, equipment, machinery, transportation and other facilities and services necessary to carry out the Work required by this Contract.
- 6.3 **Permits, Licenses, Inspections:** Unless otherwise specified, the Contractor shall promptly procure and pay for all permits, licenses and governmental inspections which are necessary and incidental to the performance of the Work, and shall give all notices required by such permits and licenses. Any action taken by the Port to assist the Contractor in obtaining permits or licenses shall not relieve the Contractor of its sole responsibility to obtain such permits or licenses.
- 6.4 **Inspection:** The Contractor shall provide the Port and its agents access to the Work in preparation and progress wherever located. The Work may be subject to inspection by various governmental agencies or by consultants or agents of the Port. The Contractor shall cooperate with all such persons and agencies with regard to their inspections. Such inspection shall in no way make such persons or agencies parties to this Contract and shall not constitute an interference with the work or the rights of either the Port or the Contractor. Likewise, any delay in the Work resulting from such inspections shall not be grounds for an extension of time for that Work Project.

The Contractor shall without charge, replace or correct work found not to conform to contract requirements, unless in the public interest the Port consents to accept the work with an appropriate adjustment in contract work.

- 6.5 **Taxes:** Contractor shall pay all sales, consumer, use, and other similar taxes required by law.
- 6.6 **Laws:** Contractor shall comply with all federal, state and local laws, ordinances, and regulations, including but not limited to Seattle-Tacoma International Airport Schedule of Rules and Regulations, which in any manner affect or apply to the performance of this Contract. Copies of applicable Airport Schedule of Rules and Regulations may be obtained from the Project Manager. Said compliance shall include, but not be limited to, the payment of all applicable taxes, royalties, license fees, penalties, and duties. In the event of conflicting requirements between any of the above, the Contractor shall comply with whichever requires the highest standard of construction quality and workmanship. The Contractor shall further defend, indemnify, and save harmless the Port, its Commission, officers, employees and agents, from and against all claims, costs, duties,

penalties, assessments, judgments, liability or damages arising from any violation or any alleged violation of any such laws, ordinances or regulations, including, but not limited to, administrative costs and attorney's fees, whether such violations or alleged violations are committed by the Contractor, its Subcontractors, officers, agents or employees, and whether or not any such violations or alleged violations are contributed to in part by the Port.

- 6.7 **Access:** Contractor shall access the work site(s) by routes designated by the Project Manager.
- 6.8 **Moving Material/Equipment:** Contractor shall be responsible for receiving, handling and moving all material and equipment to and from the work site.
- 6.9 **Work Performance:** All Work shall be performed under the continuous supervision of a Supervisor skilled and experienced in the tasks being performed. The Contractor shall at all times enforce strict discipline and good order among all workers on the Work projects, and shall not employ in the Work or the Work site any unfit person or anyone not skilled in the task assigned to him/her. Incompetent, careless, or negligent workers shall be immediately removed from the performance of the Work and the Work Site. Contractor shall be responsible for the acts and omissions of all its employees, agents, and Subcontractors and their agents and employees, and all other persons performing any Work under the Contract.
- 6.10 **Qualification of Workers:** Provide only workmen that are experienced in this type of work and have a good knowledge of the methods, tools and equipment required for the successful prosecution of this type of work.
- 6.11 **Personnel Training/Safety:** Contractor shall provide proper training, protective clothing, and equipment for safe work and safe job site performance. Work shall be performed in accordance with all applicable laws, ordinances, rules and regulations. Work shall be performed using good work practices and shall comply with all applicable laws, ordinances, rules, regulations, and orders of any public authority having jurisdiction for the safety of persons or property or to protect them from damage, injury, or loss.
- 6.12 **Hazardous Work Conditions:** Work in hazardous material areas, hazardous conditions, hazardous material abatement, asbestos abatement and work requiring the handling of hazardous materials shall be performed only by workers with hazardous material training and current applicable certification.
- 6.13 **Traffic Control:** When working upon, or adjacent to, streets and roadways and other traffic areas open for public and/or employee use, provide all signing, barricades and In any and all claims against the Port, its Commission, officers, employees or agents of the Port by any employee of the Contractor, its suppliers, agents, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, other measures required to protect the work and the public. All traffic control and all work within the public right of way shall be conducted in accordance with the applicable provisions of the Manual of Uniform Traffic Control Devices (MUTCD) as published by the Department of Transportation, Washington D.C. The Contractor shall bear all costs for traffic control and public safety and shall secure and pay for any and all required permits.
- 6.14 **Workmanship:** Contractor warrants to the Port that all materials and equipment incorporated in the Work will be new unless otherwise specified, and that all Work will be of good quality, free from faults and defects, and in strict conformance with the Contract. All Work not so conforming to these standards may be considered defective.

- 6.15 **Street Clean-up:** Contractor shall at all times keep the streets and roadways free from accumulation of dirt, soil, dust, oil, waste materials or rubbish caused by its operations.
- 6.16 **Site Clean-Up:** Contractor shall at all times keep the premises free from accumulation of waste materials or rubbish caused by its operations. At the completion of each work project, Contractor shall remove all waste materials and rubbish from and about the work site project, as well as its tools, construction equipment, machinery, and surplus materials, and shall clean all surfaces.
- 6.17 **Work Schedules:** Contractor shall coordinate its work schedule(s) with the Project Manager.
- 6.18 **Port Access:** Contractor shall at all times provide the Port with access to the Work.
- 6.19 **Port Operations:** The Airport and Marine ports are operating facilities that will continue in full operation throughout the term of this Contract. Where Airport or Marine port operations conflict with those of the Contractor, the port operations will take precedence over those of the Contractor. It shall be the sole responsibility of the Contractor to schedule and coordinate its activities with those of the Port to assure minimal disruption of operations.
- 6.20 **Pollution:** The Contractor shall bear sole responsibility for any pollution or contamination which may occur as a result of its operations, including but not limited to soil, air, water, noise, including but not limited to any costs (including attorneys' and consultants' fees), penalties, or other liabilities imposed or sought to be imposed as a result of such pollution.
- 6.21 **Projects in operating Facilities::**
- a. Projects at Sea-Tac International Airport:
 - Airport Security Requirements: Contractor shall comply with the Airport security requirements.
 - Project Labor Agreement
 - b. Projects in Operating Marine Terminals:
 - Port operations will take precedence over those of the Contractor.
 - Terminal 18 Projects: Work on, or adjacent to, Terminal 18 requires a Project Labor Agreement.
- 6.22 **Indemnity:** The Contractor shall defend, indemnify, and hold harmless the Port, its Commission, officers, employees and agents from all liability, claims, damages, losses, and expenses, whether direct, indirect or consequential (including, but not limited to, attorneys' and consultants' fees and other expenses of litigation or arbitration) arising out of the performance of this Contract, where such liability, claim, damage, loss or expense (a) is attributable to bodily injury, sickness, disease or death of any person or damage or destruction to tangible property (other than the Work itself), including the loss of use of such property, and (b) is caused, or alleged to be caused, in whole or in part, by any negligent act or omission of the Contractor, its suppliers, agents, any person directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable. Provided, however, that where such liability, claim, damage, loss or expense arises from the concurrent negligence of (1) the Port, its Commission, officers, employees or agents and (2) the Contractor, its suppliers, agents, or any person directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, it is expressly agreed that the Contractor's obligations of indemnity under this paragraph shall be effective only to the extent of the Contractor's negligence. Such obligations shall not be construed to

negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any person or entity described in this paragraph. This paragraph shall not be construed so as to require the Contractor to defend, indemnify, or hold harmless the Port from such claims, damages, losses or expenses caused by or resulting from the sole negligence of the Port, its Commission, officers, employees, or agents of the Port. the indemnification obligation of subparagraph A above shall not be limited in any way by any limitation on the amount or type of damages, compensation benefits payable by or for the Contractor, its suppliers, agents or other person under applicable workers' or workmen's compensation, benefit, or disability laws (including, but not limited to the Industrial Insurance laws, Title 51 of the Revised Code of Washington), it being clearly agreed and understood by the parties hereto that the Contractor expressly waives any immunity the Contractor might have had under such laws. By executing the Agreement, the Contractor acknowledges that the parties have mutually negotiated the foregoing waiver.

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

- 6.23 **Prevailing Wage Rates:** The prevailing rate of wage to be paid to all workmen, laborers, or mechanics employed in the performance of any part of this contract shall be in accordance with the provisions of Chapter 39.12 RCW, as amended, and the rules and regulations of the Department of Labor and Industries. The rules and regulations of the Department of Labor and Industries and the schedule of prevailing wage rates for the locality or localities where this contract will be performed as determined by the Industries Statistician of the Department of Labor and Industries, are by this reference made a part of this contract as though fully set forth herein.

The Contractor on or before the date of commencement of work shall file a statement under oath with the Director of Labor and Industries certifying the rate of hourly wage paid and to be paid each classification of laborers, workmen, or mechanics employed upon the work by the contractor or subcontractor which shall be not less than the prevailing rate of wage. Such statement and any subsequent statements shall be filed in accordance with the practices and procedures required by the Department of Labor and Industries.

RCW 39.12, as amended, and associated WAC references require a "processing fee" payable to the Department of Labor and Industries for each "Statement of Intent to Pay Prevailing Wages" and for each "Affidavit of Wages Paid" submitted. With each submittal to the Department of Labor and Industries the Contractor shall include the required payment. All costs associated with the payment of the aforementioned fees shall be included in the bid as part of the fixed costs of overhead for this Contract.

In the event the Prevailing Wage Rates are increased or decreased, during the life of this contract, by the Department of Labor and Industries, no change in the Contract Sum will be considered by the Port.

In the event a State of Washington minimum wage rate conflicts with the federal minimum wage rate for the same labor classification, the higher of the two shall govern.

The Director of the Department of Labor and Industries shall arbitrate all disputes of the prevailing rate of wage. (RCW 39.12.060 and WAC 296-127-060).

The Port can not make payments to the contractor until all contractors and subcontractors have submitted a "Statement of Intent to Pay Prevailing Wages (Intent)" that has been approved by L & I. The Intent form is to be filed immediately after the contract is awarded and before work begins (if possible). The Port is liable for those wages that do not meet prevailing rates. (RCW 39.12.020, 040, 042).

Intent forms listing the labor classifications and wages used on the project are required to be posted for the employees' inspection at the job site, for projects over \$10,000. On road construction, sewer line, pipeline, transmission line, street or alley improvement projects, the employer may post this form at the nearest office, gravel crushing plant, concrete, or asphalt batch plant, as long as the employer provides a copy of the Intent to the employee upon request. (RCW39.12.020)

The Port may not release final retainage (usually 5% of the contract) until all contractors and subcontractors have submitted an "Affidavit of Wages Paid (Affidavit)" that has been certified by L & I. (RCW 39.12.040).

- 6.24 **Alternative method:** For public works projects of \$2,500.00 or less, the Port may authorize the contractors to submit their Intent form directly to the Port without approval from L & I. This statement must be retained by the Port for a period not less than three years. Upon final acceptance of the project, the Port may authorize the contractors to submit their Affidavit form directly, and may pay the contractor in full including any retainage. Within 30 days of receipt of the Affidavit form, the Port must submit the Affidavit to L & I for approval. This method makes the Port directly liable to workers for any unpaid prevailing wages. (RCW 39.12.040(2)).

In the event a State of Washington minimum wage rate conflicts with the federal minimum wage rate for the same labor classification, the higher of the two shall govern.

6.25 **Disruptions Caused by Labor or Other Disputes:**

- a. For Projects that **are not** subject to the terms and conditions of the Port of Seattle Project Labor Agreement:

Contractor will take all reasonable steps to prevent all disputes arising from the presence of or the performance of the Work by the Contractor, Subcontractors, Sub-subcontractors, suppliers, or other persons performing any of the Work from disrupting the work projects or otherwise interfering with access to Port property by the Port, its agents, employees, tenants or employees thereof, or other contractors engaged on or near the site of the work projects.

If such a dispute disrupts the progress of the Work or interferes with access to Port property, the Contractor shall promptly and expeditiously take all reasonable action to eliminate or minimize such disruption or interference, including but not limited to: (a) utilizing all reasonable means to prevent all unlawful conduct or picketing, or to restrict all lawful picketing or other activities to a single entrance to Port property; (b) posting notices or signs which advise interested persons and labor organizations that a particular entrance to Port property is for the employees of "primary" or, as the case may be, "neutral" employers; (c) policing entrances to assure that only authorized personnel may use the same; (d) notifying all interested labor organizations of the "primary" or "neutral"

status of particular entrances; (e) upon the request of the Port, altering or rerouting the access to the work projects; and (f) in the event any such picketing or activity is unlawful or has a secondary impact upon the employees of neutral employers, tenants or their suppliers or contractors, promptly and expeditiously taking appropriate action to seek recourse through the appropriate governmental agency or state or federal courts to limit the location of such picketing so as to reduce the impact thereof upon neutral employers.

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

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

Contractor shall reimburse the Port for all expenses incurred by the Port, including but not limited to the costs incurred by the Port in relocating access to Port property, for taking other actions required to maintain the uninterrupted progress of work on this or other projects (including additional costs of administering this or other affected contracts), and the uninterrupted operations of Port facilities.

Contractor shall be liable for and defend, indemnify and hold harmless the Port, its Commission, officers, employees, and agents of the Port from all liability, claims, damages, losses, and expenses (including, but not limited to, attorneys' and consultants' fees and other expenses of litigation or arbitration) brought against the Port by a third party (including, but not limited to, lessees, tenants, contractors, customers, licensees and invitees of the Port) for injunctive relief or for monetary losses caused by loss of use, lost revenue, or interference with the activities of the Port or such third party.

The term "dispute" as used in this paragraph includes labor related and non-labor related disputes, whether or not the persons or other entities involved in the dispute have an employment relationship with either the Contractor or the Port. Examples of such disputes include, but are not limited to, informational or other picketing, and all other forms of concerted or non-concerted activity.

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

- b. For Projects that *are* subject to the terms and conditions of the Port of Seattle Project Labor Agreement:

In accordance with ARTICLE VII- there shall be no strikes, sympathy strikes, picketing, work stoppages, slowdowns or other disruptive activity for any reason. All conditions of

the agreement shall be considered binding, as duly executed by signature of the LETTER OF ASSENT.

6.26 Changes:

- a. The Project Manager, at any time, by written order indicated to be a change order, make changes in the work within the general scope of the contract, including changes --
 - 1) in the specifications (including drawings, documents and designs);
 - 2) the method or manner of performance of the work;
 - 3) the port furnished facilities, equipment, material, services or site;
 - 4) directing acceleration or delay in the performance of the work.
- b. Any other written or oral order (which as used in this paragraph, includes direction, instruction, interpretation or determination) from the Project Manager that causes a change shall be treated as a change order under this clause; Provided , that the Contractor gives the Project Manager written notice stating
 - 1) the date, circumstance and sources of the order and
 - 2) that the Contractor regards this change as a changer order.
- c. Except as stated in this clause, no order, statement, or conduct of the Project Manager shall be treated as a change under this clause or entitle the Contractor to an equitable adjustment.
- d. If any change under this clause causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work under this contract whether or not changed by such order, the Project Manager shall make an equitable adjustment and modify the contract in writing. However, except for an adjustment based on errors and omissions, no adjustments for any change under paragraph (b) of this clause shall be made for any costs incurred more than 20 days before the Contractor gives written notice as required. In the case of errors and omissions for which the Port is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the Contractor in attempting to comply with the errors and omissions.
- e. The Contractor must assert its right to an adjustment under this clause within 30 days after (1) receipt of a written change order under paragraph (a) of this clause or (2) the furnishing of a written change order under paragraph (b) of this clause, by submitting to the Project Manager a written statement describing the general nature and amount of the proposal, unless this period is extended by the Port. The statement of proposal for adjustment may be included in the notice under paragraph (b) above.
- f. No proposal by the Contractor for an equitable adjustment shall be allowed if asserted after final payment under this contract.

6.27 Extra Work and Damages: All claims for extra work or damages of any kind whatsoever relating to this contract shall be limited to prices established by the units and lump sum bids herein and/or direct costs as provided under the force account provisions. By acceptance of this contract for the work herein, Contractor waives all claims for payment of damages which include or are computed on total costs of job performance, extended overhead, or other similar methods which do not relate to the prices stated herein or are not specific as to the actual, direct costs of contract work as defined in the force account provisions.

6.28 Nondiscrimination: Contractor covenants and agrees that in all matters pertaining to the performance of duties on the Port's premises, Contractor shall at all times conduct business in a manner which assures fair, equal and non-discriminatory treatment of all persons without respect to race, color, religion, sex or national origin, and in particular:

1) Contractor shall maintain open hiring and employment practices and shall welcome applications for employment in all positions from qualified individuals who are members of minorities; 2) Contractor shall comply strictly with all requirements of applicable federal, state or local laws and regulations issued pursuant thereto relating to the establishment of non-discriminatory practices and assuring the service of all patrons or customers without discrimination as to any person's race, color, religion, sex or national origin; and 3) Contractor shall acquaint itself with and shall comply with the Port's Affirmative Action Resolution No. 2818, as amended.

6.29 **Force Account Work:** Whenever work, materials, or equipment are to be paid for on a force account basis, the amount of such payment shall be determined as follows and documented as stated herein:

- a. **Labor:** For all labor, including such foreman supervision (but excluding the superintendent and project manager) as may be necessary for the particular operation, the contractor may be paid an amount equal to the sum of the following: prevailing wage rate, industrial insurance and medical premium.
- b. **Overhead and Fee:** The contractor shall be reimbursed in an amount not greater than twenty percent (20%) of the labor amount as stated on paragraph a above. Such payment shall be deemed adequate to cover contractor overhead, profit, permits, bonds, all insurance (except as stated under paragraph a above), and all other costs incurred in supplying such labor, including supervision.
- c. **Materials:** For all materials furnished by the Contractor, payment shall be made in the amount of the actual invoice cost for such material, including freight and express charges and applicable taxes less all offered or available discounts and rebates. To the above amount a determined cost shall be added a sum not greater than fifteen percent (15%) for overhead, fee, bonds, insurance and all other costs associated with supplying such materials. The contractor shall furnish to the Port valid copies of supplier invoices.
- d. **Equipment:** For all equipment furnished by the Contractor, payment shall be made in the amount of the actual invoice cost for such rental or rental rate as established in the "AGC-Washington State Department of Transportation Equipment Rental Agreement", including freight and express charges and applicable taxes less all offered or available discounts and rebates. To the above amount a determined cost shall be added a sum not greater than fifteen percent (15%) for overhead, fee, bonds, insurance and all other costs associated with supplying such materials. The contractor shall furnish to the Port valid copies of rental invoices.
- e. **Port Provided Material or Equipment.** The Port reserves the right to furnish materials or equipment to the Contractor as it deems advisable and the contractor shall have no claim for any costs, overhead or fee on such material or equipment.
- f. **Sub Contractors:** The provisions of sub paragraphs a through e as applicable to the Contractor shall also be applied in the same manner to Sub Contractors at each tier.
- g. **Contractor Mark up of Sub Contractor Work:** When work is provided on a force account by Sub Contractors, the Contractor shall be allowed an additional mark up not greater than ten (10%) less the sub contractors mark up for permits, bonds, overhead and profit.

- h. **Labor, Equipment and Material (LEM) Logs** : All labor, equipment and material use shall be logged and documented daily. Labor, equipment and material (LEM) logs shall be authorized by the Port of Seattle Resident Engineer or his representative. LEM logs shall be approved and endorsed by a company officer and submitted with the request for payment. Labor, equipment and material logs shall include:
1. Statement of work performed and work progress, including subcontracting
 2. Hindrances, delays and obstructions
 3. Changes of Scope and Directives from Port representatives
 4. Labor hours, each person, identified by craft. Overtime shall be identified and authorized by the Resident Engineer or his representative.
 5. Equipment used, including duration in hours
 6. Material received on site, Equipment rented
 7. Foreman name, signature and date

7. SUBCONTRACTING

- 7.1 If the Port requests, the Contractor shall provide proof that the subcontractor has the experience, ability, and equipment the work requires. The Contractor shall require each subcontractor to comply with the contract specifications and to furnish all certificates and statements required by the contract. Along with the request to sublet, the Contractor shall submit the names of any contracting firms the subcontractor proposes to use as lower tier subcontractors. Collectively, these lower tier subcontractors shall not do work that exceeds 25 percent of the total amount subcontracted to a subcontractor. When a subcontractor is responsible for construction of a specific structure or structures, the following work may be performed by lower tier subcontractors without being subject to the 25 percent limitation:

1. Furnishing and driving of piling, or
2. Furnishing and installing concrete reinforcing and post-tensioning steel.

Except for the 25 percent limit, lower tier subcontractors shall meet the same requirements as subcontractors. The Port will approve the request only if satisfied with the proposed subcontractor's record, equipment, experience, and ability. Approval to subcontract shall not:

1. Relieve the Contractor of any responsibility to carry out the contract,
2. Relieve the Contractor of any obligations or liability under the contract and the Contractor's bond,
3. Create any contract between the Contracting Agency and the subcontractor, or
4. Convey to the subcontractor any rights against the Contracting Agency.

The Contracting Agency will not consider as subcontracting: (1) purchase of sand, gravel, crushed stone, crushed slag, batched concrete aggregates, ready mix concrete, off-site fabricated structural steel, other off-site fabricated items, and any other materials supplied by established and recognized commercial plants; or (2) delivery of these materials to the work site in vehicles owned or operated by such plants or by recognized independent or commercial hauling companies. However, the Washington State Department of Labor and Industries may determine that RCW 39.12 applies to the employees of such firms identified in 1 and 2 above in accordance with WAC 296-127.

8. SEPARATE CONTRACTS

- 8.1 The Port reserves the right at all times to perform or cause to be performed other and additional work on or near the site of Contractor's Work. The Contractor shall

coordinate its Work with those of all other work forces and conduct its activities so that the operation of the Contractor and those persons performing the other or additional work suffer the least interference and delay.

8.2 The Port reserves the right to award other contracts, during the life of this contract, for other work projects.

9. DELAYS and INTERFERENCE

9.1 Contractor agrees that the Port shall not be responsible for any delays or interference from any source whatsoever, except unreasonable delays by the Port as provided hereinafter. The Contractor shall consider the costs for all interference and delays from other sources, including but not limited to, weather, soil conditions, water conditions, underground obstructions, causes beyond the Contractor's control but which it could have reasonably foreseen and provided against, delays of third parties, particularly public and private utilities, as incidental to the contract. The Contractor shall increase contract prices and bid items to compensate for all expected costs resulting from the aforementioned delays and interference

9.2 If the Contractor is delayed at any time in the progress of any work project by changes ordered in the Work, by labor disputes, fire, flood, unusual delay in transportation, unavoidable casualties, or by any other cause which the Project Manager may determine justifies the delay, a work project completion date shall be extended for such reasonable time as the Project Manager may determine. An extension of time shall be the sole and exclusive remedy to the Contractor for any consequences of any delay provided hereunder, and the Contractor shall not be entitled to any additional compensation for said delays.

10. INSURANCE

10.1 Contractor shall, at its own expense, enroll in the Port of Seattle Owner Controlled Insurance Program and obtain and keep in force insurance as follows until completion of the Contract and final acceptance by the Project Manager. The Contractor shall furnish within five (5) calendar days of executing the Contract and prior to any work, evidence in the form of a certificate (or copy of the policies, at Port discretion) satisfactory to the Port certifying that insurance in the following kinds and minimum amounts have been secured.

TYPE OF POLICY		
Comprehensive General Liability	Public Liability	Property Damage
Each Person	\$1,000,000.00	
Each Accident	\$1,000,000.00	\$1,000,000.00

10.2 Comprehensive General Liability shall include Contractual liability, products and completed operations liability, personal injury liability and/or broad form comprehensive general liability endorsement. Comprehensive automobile liability shall include coverage for owned and non-owned automobiles. The coverage provided shall protect against claims for Bodily injury, including illness, disease, and death; and Property Damage caused by an occurrence arising out of or in consequence of the performance of this service by the Contractor or Subcontractor or anyone employed by either.

- 10.3 The Port shall be named as an additional insured. Certificate of Insurance shall be so noted on a copy of the policy endorsement attached to the certificate.
- 10.4 The policy(ies) shall include a provision requiring forty-five (45) days' written notice be given to the Port prior to termination of or any material change to the policy(ies) as relates to this Contract. The language of all policies provided by the Contractor is subject to the Port's approval.
- 10.5 The limits of all insurance required to be provided by the Contractor shall be no less than the minimum amounts specified. However, coverage in the amounts of these minimum limits shall not be construed as to relieve the Contractor from liability in excess of such limited.
- 10.6 Failure to Provide Insurance: Failure to provide proof of insurance will result in cancellation of the Contract.
- 10.7 Other Insurance: The Contractor shall certify that its operations are covered by Washington State Workmen's Compensation Fund, including account numbers. If self-insured, Contractor shall provide proof of insurance including certificate of qualification number.

11. CHANGES

- 11.1 Wage Escalation: If any law, regulation or ruling by any governmental authority having jurisdiction of the subject matter is adopted which alters the hours of service, rates of pay or working conditions herein, the Contractor may, upon written notice to the Port, request adjustment of the rates for service provided. Any such rate changes must be authorized by written Change Order from the Port.

12. TERMINATION OF CONTRACT

- 12.1 Termination for Convenience of the Port: The Port may terminate this Contract at any time and for any reason. In the event of such termination, the Contractor shall be paid, as total and complete compensation for the Work performed to date of termination, that portion of the Contract Sum which equals that portion of the Work performed up to the effective date of termination. In the event of termination for convenience of the Port, the Port shall be released and discharged from all claims by the Contractor against the Port in connection with the termination. The Port shall not be held liable for damages or loss of anticipated profits on account of such termination.
- 12.2 Termination for Cause: If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents or fails to perform any provision of the Contract, the Port may, after seven (7) days' written notice to the Contractor, and without prejudice to any other remedy it may have, make good such deficiencies and may deduct the cost thereof from any payment then or thereafter due the Contractor (as computed in the manner provided in paragraph 1.14 A above) or, at its option, may terminate the Contract and take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever method the Port may deem expedient. If the expense of completion of the Work performed hereunder exceeds any unpaid balance properly due the contractor, then the Contractor shall pay the difference to the Port.
- 12.3 Termination Due to Suspension: The Port may, in its sole discretion and upon written notice to the Contractor, suspend the Work, in whole or in part, for a period of up to ninety (90) consecutive calendar days. In the event the Contractor is required by the Port to suspend all or part of the Work for more than ninety (90) consecutive calendar days, the Contractor may, upon seven (7) days' written notice, terminate the Contract. Upon

termination, the Contractor will be paid, as total and complete compensation for the work performed to the date of termination. The Port shall not be held liable for damages or loss of anticipated profits on account of such termination.

13. DEFAULT/REMEDY

- 13.1 Any decisions by the Port to pursue any remedy provided for herein shall not bar the Port from the pursuit of any other remedy provided by law or equity in the case of similar, different or subsequent breaches of this Contract.

14. CONTRACT DOCUMENTS

- 14.1 The complete contract includes these parts: the contract form, bidder's completed proposal form, contract plans, contract provisions, addenda, various certifications and affidavits, supplemental agreements, change orders, and subsurface boring logs (if any). These parts complement each other in describing a complete work. Any requirement in one part binds as if stated in all parts. The Contractor shall provide any work or materials clearly implied in the contract even if the contract does not mention it specifically.

Any inconsistency in the parts of the contract shall be resolved by following this order of precedence (e.g., 1 presiding over 2, 3, 4, and 4, 2 presiding over 3, and 4, and so forth):

1. Addenda,
2. Proposal Form,
3. Special Provisions,
4. Contract Plans,
5. Bid Manual dated _____, 2001

On the contract plans, and working drawings, figured dimensions shall take precedence over scaled dimensions. This order of precedence shall not apply when work is required by one part of the contract but omitted from another part or parts of the contract. The work required in one part must be furnished even if not mentioned in other parts of the contract. If any part of the contract requires work that does not include a description for how the work is to be performed, the work shall be performed in accordance with standard trade practice(s). For purposes of the contract, a standard trade practice is one having such regularity of observance in the trade as to justify an expectation that it will be observed by the Contractor in doing the work. In case of any ambiguity or dispute over interpreting the contract, the Port's decision will be final.

15. MISCELLANEOUS

- 15.1 **Governing Law/Venue:** The laws of the State of Washington shall govern disputes concerning this Contract and the venue of any action relating hereto shall be in the Superior Court for the County of King, State of Washington.
- 15.2 **Assignment:** This Agreement shall not be assigned by the Contractor without the prior written consent of the Port.
- 15.3 **Attorney Fees:** In any action between the Port and the Contractor concerning the rights and obligations imposed on them by this Contract, the prevailing party in such action, upon a finding by a court having jurisdiction, shall be entitled to recover from the other party its expenses of litigation (including reasonable attorneys' fees, expert consultants' fees, and other expenses related to the action). The cost of publicly employed counsel of the Port shall be recoverable by the Port under this paragraph, and the fees of such counsel shall be established based on the prevailing rate for attorneys in private practice of comparable qualifications and experience.

- 15.4 Entire Agreement: This Contract sets forth the entire and integrated agreement between the parties hereto, and supersedes all prior negotiations, representations, or agreements, either written or oral, including the bidding documents.
- 15.5 By execution of the Contract, the Contractor represents that it has visited the general site of the Work and familiarized itself with conditions under which the Work is to be performed; the Contractor has further satisfied itself that the Contract Documents fully indicate the extent and requirements of all Work to be performed hereunder.

IN WITNESS WHEREOF, the parties hereto have signed this Agreement in duplicate. One counterpart each has been delivered to the Port and Contractor. The Port and Contractor have signed all portions of the Contract Documents.

Executed this _____ day of _____, 2001.

PORT CONSTRUCTION SERVICES:

CONTRACTOR:

By: _____
Larry McFadden
Title: General Manager _____

By: _____
Title: _____

ADDRESS FOR GIVING NOTICE:

ADDRESS FOR GIVING NOTICE:

PORT OF SEATTLE
Port Construction Services
18000 International Blvd., Suite 1100
SeaTac, WA 98188

Washington State Contractor's Registration No: _____
Expiration Date: _____
Work men's Compensation Qualification No: _____