

PROJECT:

DATE OF BID OPENING:

CONTRACT

THIS CONTRACT, made and entered into this _____ day of _____, 2019, by and between the **PORT OF BELLINGHAM**, of P.O. Box 1677, Bellingham, Washington, 98227-1677, a municipal corporation, hereinafter referred to as **Owner**, and XXXXXXXXXXXXXXXXXXXXXXXXXX of XXXXXXXXXXXXXXXXXX, hereinafter called the **Contractor**.

WITNESSETH:

1. **Contractor** shall furnish all of the material and perform all of the work and labor for the above named project in accordance with the Contract as defined in the Bid Solicitation and Division 1 of the M 41-10 Standard Specifications for Road, Bridge, and Municipal Construction (the "WSDOT Specifications"). The Bid Solicitation and WSDOT Specifications are fully incorporated herein by reference.
2. **Owner** shall pay **Contractor** per the following schedule:
 - 2.1 **Contractor** shall complete the work heretofore called for as depicted in the Contract, and **Owner**, pursuant to law, reserves the right to hold retainage in accordance with RCW 60.28.
3. **Contractor** agrees to the following anticipated construction schedule.
4. **Contractor** agrees to keep the property free from liens of any kind whatsoever and to defend and hold **Owner** harmless from any claims of third parties for damages suffered by third parties as a result of Contractor's activities in connection with the performance of this Contract.
5. **Prevailing Wage Law.** Before any payment is made of any sum or sums due, **Contractor** and any or all **subcontractors** must file and receive an approved Intent form from the Industrial Statistician, certifying the rate of hourly wage paid each classification of laborer or workman employed by them on such work and further certifying that no laborer or workman employed by them for this work has been paid less than the prevailing wage rate in Whatcom County, which certificate and statement to be so filed will be verified by the oath of the **Contractor** or **subcontractor**, as the case may be, that they have read such statement and certificate subscribed by them, knows the contents thereof, and that the same is true as they verily believe.

In case a dispute arises as to the prevailing wage rates for work of a similar nature and such dispute cannot be adjusted by the parties involved, the matter shall be referred to the Director of the Department of Labor and Industries of the State of Washington for arbitration, and their decision shall be final and conclusive and binding upon all parties involved in the dispute.

Contractor acknowledges their familiarity with R.C.W. 39.12 as the same pertains to payment of prevailing wages and agrees to comply therewith. The Contractor shall be responsible for the compliance with the requirements of Prevailing Wage Law by all firms (including subcontractors, lower tier subcontractors, suppliers, manufacturers and

fabricators) engaged in any part of the work necessary to complete this Contract.

6. **Contractor** agrees to furnish **Owner** all bonds required in the Specifications heretofore mentioned within the timeframe specified in the bid documents and the Notice of Award. To the extent that this provision conflicts with WSDOT Section 1-03.3, this section controls.
7. The **Contractor** shall receive no compensation for delays or hindrances to the work, except when direct and unavoidable extra cost to the **Contractor** is caused by the failure of the **Owner** to provide information or material, if any, which is to be furnished by the **Owner**. When such extra compensation is claimed, a written statement thereof providing specific detail of the basis for the claim shall be presented by the **Contractor** to the Engineer and if found correct by them shall be approved and referred by them to the Port Commission for final approval or disapproval; and the action thereon by the Port Commission shall be final and binding.
8. **Certification of Non-Segregated Facilities** (*for Federally assisted projects*). The Contractor agrees by signature herein below that he is deemed to have signed and agreed to the provisions of certification of non-segregated facilities which is included as an Exhibit to the Bid Solicitation package and made part hereof.
9. **Equal Employment Opportunity Responsibilities.** The Contractor shall fully comply with all applicable state and federal employment and discrimination laws and regulations. Contractor shall assure, by signing this Contract, to fully comply with all equal employment opportunity as required by Executive Order 11246 and 11375, including all regulations promulgated thereto.
10. **Conflict of Interest**
Contractor covenants that it presently has no interest and shall not acquire an interest, directly or indirectly, which would conflict in any manner or degree with its performance under this Contract. Contractor further covenants that in the performance of this Contract, no person having such interest shall be employed by it or any of its sub-contractors.
11. **Indemnification.** To the fullest extent permitted by law and to the extent claims, damages or losses or expenses are not covered by insurance purchased by Contractor, the Contractor shall defend and indemnify the Owner and Owner's employees and Commissioners from any claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of, or resulting from the performance of, the Work, but only to the extent caused by the acts or omissions of the Contractor, a subcontractor or supplier, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable.
 - 11.1 This indemnification obligation shall include, but is not limited to, all claims against the Owner by an employee or former employee of the Contractor or any subcontractor or supplier. For this purpose, the Contractor expressly waives, as respects the Owner only, all immunity and limitation on liability under any industrial insurance Act, including Title 51 RCW, or other workers compensation act, disability act, or other employees benefits of any act of any jurisdiction which would otherwise be applicable in the case of such a claim. **BY INITIALING BELOW THE OWNER AND CONTRACTOR CERTIFY THE WAIVER OF IMMUNITY SPECIFIED BY THIS PROVISION WAS MUTUALLY NEGOTIATED.**

- 12. **Obligation to Report Employees Who Used Early Retirement Factors; Liability for Failure to Report.** The Port is an employer of one or more members of the Washington State Department of Retirement Systems (DRS). As a DRS covered employer, the Port is required to advise DRS of any retiree performing services for the Port who has used the 2008 Early Retirements Factors (ERFs) to retire early and is under age 65. Workers meeting these factors cannot perform services in any capacity for a DRS-covered employer and continue to receive a pension benefit (WAC 415-02-325).

Concurrently with the execution of this Contract and prior to commencing work, Contractor shall verify if any person who will be performing work on this project retired from a DRS employer using ERFs. Contractor must report any such persons to the Port by: (1) completing the DRS Contractor or Third-Party Worker Retirement Status Verification form that can be downloaded by following this link (https://www.portofbellingham.com/DocumentCenter/View/9921/DRS_StatusForm) and (2) emailing it to payroll@portofbellingham.com or mailing it to Port of Bellingham Payroll at 1801 Roeder Ave, Suite 146 – Bellingham, WA 98225.

If Contractor fails to timely report any employee who used ERFs to the Port in accordance with this section, Contractor shall be liable for all assessments issued to the Port by DRS and all legal fees and costs incurred by the Port in connection with such assessment. Contractor agrees that the Port may deduct such amounts from any amounts that may be owed to Contractor. Any additional amounts owed will be paid to the Port within fifteen (15) days of receiving an invoice from the Port.

- 13. **Successors and Assigns.** This Contract shall be binding upon all parties hereto and their respective heirs, executors, administrators, successors, and assigns. The representations and warranties contained herein shall survive the termination of this Contract. No other promises, representations or warranties shall be valid and binding unless they are reduced to writing and signed by the parties hereto. No amendment to this Contract shall be valid unless reduced to writing and signed by the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this CONTRACT in duplicate the day and year first above written.

XXXXXXXXXXXXXXXXXXXXXXXXXX

PORT OF BELLINGHAM

By: _____

By: _____

Print name and Title

Rob Fix, Executive Director
Print Name and Title

Date signed: _____

Date signed: _____

WAGE LAWS COMPLIANCE CERTIFICATION
(RCW 39.04.350)

I, _____,
[PRINT NAME AND TITLE OF PERSON SIGNING THIS FORM]

do certify and declare that the Contractor is in compliance with RCW 39.04.350(1)(g) and that within the three (3) year period immediately preceding the date of this Contract, the Contractor has not been determined by a final and binding citation and notice of assessment issued by the department of labor and industries or through a civil judgement entered by a court of limited or general jurisdiction to have willfully violated, as defined in RCW 49.48.082, any provision of chapter 49.46, chapter 49.48, or chapter 49.52 RCW.

Executed under penalty of perjury under the laws of the State of Washington at

_____ on _____
[PRINT CITY AND STATE WHERE SIGNED] *[PRINT DATE SIGNED]*

[PRINT NAME OF PROJECT]

[PRINT FULL NAME OF COMPANY]

[WA UBI No.]

[SIGNATURE]