

GENERAL CONDITIONS

FOR SMALL WORKS CONSTRUCTION CONTRACT LESS THAN $40K

# ARTICLE G-01 – Unused

# ARTICLE G-02 – Unused

# ARTICLE G-03 OWNER REMEDIES

## G-03.01 General

1. The Contract shall not be assigned in whole or in part by the Contractor without the prior consent of the Port.
2. PORT’S RIGHT TO STOP THE WORK FOR CONTRACTOR NON-PERFORMANCE. If the Contractor fails to perform the Work in accordance with the Contract Documents, fails to correct Non-Conforming Work, or fails to comply with any requirement of the Contract, the Port may order, in writing, that the Contractor stop all or any portion of the Work until the cause for such order is corrected. In such case, the Contractor shall not be entitled to any damages or relief from liability, on account of such order to stop work.
3. PORT'S RIGHT TO SUSPEND WORK. The Port may suspend all or any part of the Work for such period of time as it may determine to be appropriate for the convenience of the Port. The Contractor shall resume the suspended Work when so directed by the Port.

## G-03.02 No Waiver of Port's Rights

Neither the inspection, measurement, estimate, certificate, substantial completion, physical completion, final acceptance, nor any payment for the whole or any part of the Work, nor any extension of time, nor any possession or use of the Work taken or made by the Port, shall operate as a waiver by the Port of any provision of the Contract or of any rights, remedies, or damages herein provided for, or bar recovery of any money wrongfully or erroneously paid to the Contractor.

## G-03.08 Termination for Default

1. The Port may terminate the Contract following written notice to the Contractor and its Surety for a material breach of the Contract.
2. The Port shall give written notice to the Contractor and its Surety indicating that the Contractor is in breach of the Contract and that the Contractor is to satisfactorily remedy the breach within ten (10) days after the notice is sent. In case of an emergency such as potential damage to life or property as determined by the Port, the response time to remedy the breach after the notice may be shortened. If the remedy does not take place to the satisfaction of the Port within the identified period, the Port may, by serving written notice to the Contractor and Surety either:

# Transfer the performance of the Work from the Contractor to the Surety; or

1. Terminate the Contract and at the Port’s option prosecute the Work to completion by Contract or otherwise. Any extra costs or damages to the Port shall be deducted from any money due or coming due to the Contractor under the Contract.
2. If the Port elects to pursue one remedy, it will not bar the Port from pursuing other remedies on the same or subsequent breaches.

## G-03.09 Termination for Convenience

1. Upon ten (10) days’ written notice to the Contractor, the Port may, at its convenience and without cause, terminate all or part of the Contract.
2. If the Port terminates the Contract or any portion thereof for convenience, Contractor shall be entitled to be paid for the Contract Work executed in conformance with the Contract and completed prior to the date of the termination set forth in the Port’s notice together with the reasonable cost of terminating any agreements for the supply of materials and/or equipment specially ordered for the Work prior to the date of termination. The Contractor will not be entitled to any additional compensation whatsoever.

# ARTICLE G-04 CONTRACTOR'S RESPONSIBILITIES

## G-04.01 Use of Project Site Not Exclusive

1. Unless specifically identified otherwise, the Contractor may not have exclusive access to or use of the Project Site or other work areas, and shall be required to cooperate with and coordinate its use of facilities and areas, including the Project Site, concurrently with others.

## G-04.02 damage

If the Contractor wrongfully causes damage to the property of the Port or to other work of the Port or its contractors or tenants, the Contractor shall promptly remedy and be wholly responsible for such damage.

## G-04.03 Permits, Licenses, Fees, and Notices

* + 1. The Contractor shall procure and pay for all permits, licenses and all governmental inspection fees which are necessary or incidental to the performance of the Work and shall give all notices required by such permits and licenses. Any action taken by the Port to assist the Contractor in obtaining permits or licenses shall not relieve the Contractor of its sole responsibility to obtain permits or licenses.

## G-04.04 Safety

* + 1. The Contractor assumes full responsibility for and shall comply with all safety laws, regulations, ordinances and governmental orders with respect to the performance of this Contract. The Contractor shall so conduct all operations under this Contract as to offer the least possible obstruction and inconvenience to the Port, its tenants, abutting property owners, and the public. In addition to the obligation imposed by this Subparagraph, the Contractor shall be responsible for employing adequate safety measures and taking all other actions reasonably necessary to protect the life, health and safety of the public and to protect adjacent and Port-owned property in connection with the performance of the Work. The Contractor shall have the sole responsibility for the safety, efficiency and adequacy of the Contractor's plant, equipment and methods, and for any damage or injury resulting from their failure, or improper maintenance, use, or operation. The Contractor shall be solely and completely responsible for the conditions of the Project Site, including safety of all persons and property in performance of the Work. This requirement shall apply continuously, and not be limited to normal working hours. Any commitment or obligation of the Port to conduct construction review of the Contractor's performance does not, and shall not, be intended to include review and adequacy of the Contractor's safety measures in, on, or near the Project Site.
    2. The Contractor shall establish and supervise:
       1. A safe and healthy working environment;
       2. An accident prevention program; and
       3. Training programs to improve the skill and competency of all employees in the field of occupational safety and health.
    3. The Contractor shall maintain at the Project Site office, or other well-known place at the Project Site, all articles necessary for providing first aid to the injured. The Contractor shall establish, publish and make known to all employees, procedures for ensuring immediate removal to a hospital, or doctor's care, persons, including employees, who may have been injured on the Project Site. Employees may not be permitted to work on the Project Site before the Contractor has established and made known procedures for removal of injured persons to a hospital or a doctor's care.
    4. Asbestos Containing Materials (ACM): Upon encountering or exposing ACM not included in the scope of work, the Contractor shall immediately notify the Port and shall not further disturb or manipulate the ACM until and unless given direction by the Port.

## G-04.06 Inspection of the Work

* + 1. It is the Contractor's responsibility to provide materials, supplies, equipment and workmanship that conform to the Contract Documents. Unless specifically provided otherwise in the Contract, the Contractor shall be responsible for demonstrating and documenting that the materials or equipment to be incorporated into the Work comply with the Contract.
    2. The Work may be subject to inspection by various governmental agencies, utility owners or by consultants or agents of the Port. The Contractor shall cooperate and make the Project Site available for all such persons or agencies with regard to their inspections, including providing access for inspection by way of safe and proper facilities (i.e., lifts, scaffolding, boats, including operators). Such inspection shall in no way make such agencies or persons parties to this Contract and shall not constitute an interference with the Work or the rights of either the Port or the Contractor. In its scheduling and planning the Contractor shall allow sufficient time for such inspections.

## G-04.07 Correction of Work

* + 1. The Contractor shall, at no additional expense to the Port, correct all Non-Conforming Work. Upon notice from the Port of Non-Conforming Work, the Contractor shall within a designated time period identified by the Port correct or replace the Non-Conforming Work or provide a written plan satisfactory to the Port indicating corrective action to be taken. Such Work shall be corrected even though it was previously inspected by the Port, payment for it was included in a Progress Payment, whether or not it was completed, whether or not it was observed before or after the Physical Completion Date stated in the Work Authorization, and whether or not it occurred or manifested itself before or after the Physical Completion Date stated in the Work Authorization. If the Contractor fails to correct Non-Conforming Work within the time designated by the Port, the Port may correct it as provided for in Paragraph 3.03(C).
    2. Notwithstanding the foregoing, if the Port determines that Non-Conforming Work does not constitute a dangerous or unsuitable condition, the Port may, at its sole discretion, waive the right to require correction and elect to accept such Work. In such case, the Port shall reduce the Contract Sum in a reasonable amount to account for such Non-Conforming Work.

## G-04.08 **Cleanup**

At all times, and as requested by the Port or required by the Contract Documents, the Contractor shall clean up and remove all refuse resulting from the Work in order that the Project Site remains free from an accumulation of construction debris. Upon failure to do so within 24 hours after request by the Port, such cleanup work may be done by the Port and the cost thereof back charged to the Contractor and deducted from the Contract Sum.

## G-04.09 Audits and Retention of Records

For a period of not less than six (6) years after the date of Final Acceptance or termination of the Contract, the Contractor must maintain and preserve and the Port or its designee shall have the right to inspect, audit or copy all project records for the evaluation and determination of any issue related to the Contract or to the Contractor’s performance thereunder.

# ARTICLE G-05 CHANGES AND CLAIMS

## G-05.01 The Port May Make Changes

1. Without invalidating the Contract and without notice to the Surety, the Port may by Change Order make changes to the Contract or the Work, which changes include but are not limited to the following:
   1. Increases or decreases in quantities of Work;
   2. Deletion or alteration of any portion of the Work;
   3. Changes in any commercial term provided in the Contract;
   4. Changes in design or specifications; and
   5. Addition of new Work.
2. All such changes must be authorized and directed in a written Change Order. The Change Order shall provide for any increase or decrease in the time or not-to-exceed amount to complete Work caused by such change and such increase or decrease may at the Port’s option be stated on a Lump Sum basis, a Not-to-Exceed basis, or otherwise.
3. In the event Contractor identified direction, actions or potential actions by the Port that may impact the scope of work, compensation, schedule, Contractor is obligated to provide written notice to the Port within seven (7) days of the event identifying all possible impacts. The Port will review Contractor’s request.
4. If the Port concurs, the direction or action requires a change to the Agreement; the PORT will execute the change order prior to the work being performed.
5. If the Port determines the direction or action does not require execution of a change order, the PORT will issue a written determination that a change is not required and Contractor shall perform the work.
6. If Contractor believes there is entitlement for time or money for the work performed, Contractor shall be obligated to notify the Port, in writing, within seven (7) days of the Port’s written determination that the work identified does not require additional time and/or compensation.

## G-05.02 Litigation, Venue, CHOice of LAw

Any legal proceedings arising out of or relating to the performance of this Agreement will be governed by Washington law and must be filed in the King County Superior Court of Washington and service of process must be completed on the Port within 180 days of the date of Final Acceptance or the completion of mediation, whichever is later. The Contractor’s failure to strictly comply with all requirements of this Paragraph shall be a complete bar to any lawsuit.

**ARTICLE G-06 – Unused**

# ARTICLE G-07 PAYMENTS, COMPLETION AND FINAL ACCEPTANCE

## G-07.01 All Payments Subject to Applicable Laws

1. All payments made to the Contractor under this Contract are subject to all laws applicable to the Port. The law does not permit the Port to make any payments to the Contractor under this Contract until approved Statements of Intent to Pay Prevailing Wages have been filed with the Port, as required by RCW 39.12.040.
2. The Port will retain five percent (5%), or ten percent (10%) if elected by Contractor in lieu of performance and payment bonds, of all earned payment as required by Section RCW 60.28.011. Moneys will be retained in a fund by the Port, unless Contractor requests otherwise in accordance with RCW 60.28.011(4).

## G-07.02 Invoice Payments

1. The Contractor must request payment by submitting an invoice either monthly or within thirty (30) days upon completion of the Work. Payment shall be based upon the actual quantities of Work performed as verified and agreed by the Port and according to the appropriate Schedule of Unit Prices or Schedule of Prices.
2. Invoices must be accompanied by an itemized accounting of the labor, material and equipment costs for the work, all subcontractor work where applicable, and mark-ups. Each invoice shall have backup documentation that supports the itemized accounting.

Each invoice must include:

1. Contract number.
2. Quantity and type of Work as shown on the Schedule of Unit Prices.
3. 5% retainage withheld on the subtotal.
4. Payments will be made within thirty (30) days after a properly submitted invoice. The Port will review Contractor’s request for payments and identify any significant issues affecting payment within fourteen (14) days of submission.
5. All payments will be made by Direct Deposit. Contractor shall submit, as a pre-award submittal, the Port of Seattle “Direct Deposit (ACH) Enrollment Form and Agreement” to establish the electronic payment path.
6. The Contractor shall promptly submit all Subcontractor or Supplier invoices as part of its monthly payment requests. The Contractor is likewise required to make payment to all Subcontractors and Suppliers for all Work included within the payment within ten (10) days from the receipt of the payment. 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) days of their receipt of payment. The Contractor must justify to the Port in writing any intent to withhold payment due to any Subcontractor or supplier.

## G-07.03 Final Acceptance

Following the completion of all the closeout administrative requirements, the Port will formally accept the Contract. Once the Port determines that the Contractor has fulfilled these requirements, the Port will issue a final completion letter with a final acceptance date and Notice of Public Works Contract Completion.

## G-07.04 Release of Retainage

1. Promptly following Final Acceptance, the Port will prepare the Notice of Completion of Public Works Contract and submit it to the relevant Washington State agencies.
2. Release of the retainage will be made no sooner than sixty (60) days after issuing the Notice of Completion of a Public Works Contract provided the following conditions are met:
   1. On Contracts totaling more than $35,000, a release has been obtained from the Washington State Department of Revenue (RCW 60.28.051);
   2. Receipt of a certificate of Payment of Contributions Penalties and Interest on Public Works Contract from the Washington State Employment Security Department;
   3. Receipt of a certificate from Washington State Department of Labor and Industries showing the Contractor is current with payments of industrial insurance and medical aid premiums;
   4. All claims, as provided by law, filed against the retainage have been resolved. In the event claims are filed and provided the conditions of 1 through 3 above are met, the Contractor will be paid such retained percentage less an amount sufficient to pay any such claims together with a sum determined by the Port sufficient to pay the cost of foreclosing on claims and to cover attorney’s fees.
3. It is the responsibility and a condition of this Contract that Contractor promptly notifies all Subcontractors and Suppliers of the commencement of the period and of the final day for submitting any liens. As a further condition of this Contract the Contractor is required to place within all subcontracts a clause that states that this shall be done. The Contractor shall by letter inform the Port of the compliance with this provision. Failure of the Contractor to comply with this provision may be used by the Port as a basis to withhold retainage to ensure payment to uninformed Subcontractors. Failure to comply will also be made a matter of record for future determinations of bidder responsibility

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# ARTICLE G-08 INDEMNIFICATION, WARRANTIES, BONDS AND INSURANCE

## G-8.01 Indemnification

1. In addition to any other duty to defend or indemnify set forth in the Contract, the Contractor shall defend, indemnify and hold harmless the Port and its employees, agents, and commissioners (collectively, the “Indemnified Parties”) 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; provided, however, that where such liability, claim, damage, loss or expense arises from the concurrent negligence of (1) the Indemnified Parties and (2) the Contractor, it is expressly agreed that the Contractor's obligations of defense and indemnity under this Paragraph shall be effective only to the extent of the Contractor's negligence. This Paragraph shall not be construed so as to require the Contractor to defend, indemnify, or hold harmless the Indemnified Parties from such claims, damages, losses or expenses caused by or resulting from the sole negligence of the Indemnified Parties.
2. In any and all claims against the Indemnified Parties by any employee of the Contractor, 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 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). The Contractor expressly waives (as to the Indemnified Parties only) any immunity the Contractor might have had under such laws, and, by agreeing to enter this Contract, acknowledges that the foregoing waiver has been mutually negotiated by the parties.

## G-8.02 Warranties

* + 1. Good Workmanship and New Materials. The Contractor warrants to the Port that all workmanship, materials and equipment furnished under this Contract will be new unless otherwise specified, and that all Work will be of good quality, free from fault or defect and in conformance with the Contract Documents.
    2. Title. The Contractor warrants that title to all Work, materials and equipment covered by a request for a Progress Payment or Final Payment will pass to the Port upon the receipt of payment by the Contractor free and clear of all liens, claims, security interests or encumbrances. Passage of title shall not, however, (1) relieve Contractor from any of its obligations and responsibilities for the Work, equipment or materials, (2) waive any rights of the Port to require full compliance by Contractor with the Contract requirements, or (3) constitute acceptance of the Work, equipment or materials.
    3. One-Year General Warranty.
       1. If, within one year after the applicable Warranty Start Date (or such longer period of time as may be prescribed by law or the terms of any applicable special warranty required by the Contract Documents), the Work or any specific portion thereof is found to be Non-Conforming Work, the Contractor shall correct such Non-Conforming Work within the time designated by the Port.
       2. Work corrected by the Contractor under this subparagraph shall also be subject to the provisions of this subparagraph for a one-year period from the date the Port accepts the corrected Work.
       3. Nothing contained in this subparagraph shall be construed to establish a period of limitation (whether legal, equitable or otherwise) with respect to any other obligation imposed on the Contractor by the Contract Documents.
    4. Enforcement. All Subcontractors', Sub-subcontractors', Manufacturers', and Suppliers' warranties and guarantees, express or implied, respecting any part of the Work and all materials used therein shall be obtained and enforced by the Contractor for the benefit of the Port without the necessity of separate transfer or assignment thereof.
    5. Cumulative. The obligations and remedies described in G-8.02 are in addition to the obligations and remedies described elsewhere in the Contract.

## G-8.03 Performance Bond AND Payment Bond

* + 1. The Contractor shall furnish (and maintain throughout the term of the Contract) duly executed Payment and Performance Bonds upon a form furnished by the Port prior to Notice to Proceed. The bond shall be executed by a surety or sureties who are acceptable to the Port and must appear on the Treasury Department’s most current list (Circular 570 as amended), have an underwriting limitation of not less than the Contract total, and be authorized to transact business in the State of Washington. In addition, the surety or sureties must be rated “A-, FSC (6)”, or higher by A.M. Best Rating Guide. The penal amount of the bonds shall be in an amount equal to the Contract Sum and conditioned upon (a) the payment by the Contractor to all laborers, mechanics, Subcontractors, materialmen and all persons who shall supply the Contractor, Subcontractors or Sub-Subcontractors with provisions, equipment, or supplies for the performance of the Work covered by this Contract and (b) the faithful performance of the Contract by the Contractor within the time to perform the Work.
    2. On contracts of one hundred fifty thousand dollars ($150,000) or less, at the option of the Contractor, the Port may, in lieu of the bond, retain ten percent of the contract amount for a period of thirty days after date of final acceptance, or until receipt of all necessary releases from the department of revenue, the employment security department, and the department of labor and industries and settlement of any liens filed under chapter [60.28](http://app.leg.wa.gov/RCW/default.aspx?cite=60.28) RCW, whichever is later.

## G-8.04 Contractor Liability Insurance

A. Prior to Notice to Proceed, the Contractor at Contractor’s own expense shall satisfy the insurance required in this section. All insurance is to be kept in force for the life of this Contract and until the work is completed.

* + - 1. Insurance shall be procured from primary and excess insurance carriers, whether admitted or on surplus lines basis, that have a A.M. Best’s rating of no less than ”A Minus FSC VI” or higher.
      2. The Contractor shall submit to the Port a Certificate of Insurance and all Additional Insured Endorsements (where specified below) and any Waivers of Subrogation (where specified below); and primary and non-contributory endorsements (where specified below) which shows that it has obtained the required coverage(s).
         1. Certificates of Insurance shall list each deductible or retention in excess of $25,000 for each line of required insurance coverage.
         2. The required insurance shall cover all of the Contractors’ operations of whatever nature connected in any way with this Contract, including any operations under subcontract. It is the obligation of the Contractor to ensure that all Subcontractors (at whatever level) carry a similar program which provides the identified types of coverage and limits of liability.
         3. Contractor is solely responsible for all deductibles or self-insured retentions under any required policy of insurance, including any deductibles that are triggered by claims that the Port may submit to Contractor’s insurance carrier as an additional insured on any policy. This deductible responsibility extends to deductibles that are owed on any policy of insurance following termination of the Contract if the event or cause of loss occurred during the term of the Contract.
         4. Contractor shall provide evidence of insurance including certificates of insurance, endorsements and waivers, where required, annually up until the Contract is closed out or on a more frequent basis if requested by the Port.
         5. Any insurance deductible or retention that equals or exceeds $1 million is considered a form of self-insurance which requires written approval from the Port.
         6. Cancellation/Non-Renewal - Insurance is to remain current throughout the term of the Contract. The Contractor shall provide a certificate of insurance and all applicable endorsements annually within ten (10) days of each insurance renewal. Allowing the insurance to lapse, or the failure to maintain required insurance is a material breach of this contract.
         7. Contractor may meet required insurance limits for commercial general liability and automobile liability insurance through a combination of primary and umbrella or excess insurance. Excess and coverage insurance must include the specific components of the underlying required coverage identified below. Any insurance the Port carries will apply strictly on an excess and noncontributory basis over any applicable insurance the Contractor carries.

B. Contractor shall procure and maintain insurance in the following minimum form and limits

* + - 1. Commercial General Liability insurance on ISO Form CG 00 01 10 01 (or equivalent) for third party property damage, bodily injury, personal and advertising injury, and medical payments in an amount which is not less than **$2 million per occurrence**. If the policy contains an annual general aggregate limit, this limit shall be no less than **$4 million per year**. The insurance shall cover liability arising from premises, operations, independent Contractors, products completed operations, personal and advertising injury, and liability assumed under an insured contract. The Contractor’s insurance shall be **primary and non-contributory** with respect to any insurance the Port carries and apply separately to each insured. **The Port shall be named as an additional insured** for all work arising out of Contractors Work, including “on-going” and “completed operations” using ISO Endorsement Form CG 20 26 11 85 or an equivalent endorsement approved by the Port.
         1. Specific endorsements are needed as follows, and to be submitted with/in addition to the certificate of insurance as follows:

Additional Insured

Primary and Non- contributory

Waiver of Subrogation

* + - * 1. Completed operations coverage shall continue for 1 (one ) years beyond project completion and include the Port as an additional insured. The additional insured coverage shall remain as primary insurance with respect to any other insurance or self-insurance the Port may carry. Evidence of coverage shall be provided by means of a Certificate of Insurance and additional insured endorsement during this time frame.
      1. Automobile Liability Insurance. Contractor shall provide business automobile insurance for all owned, non-owned, hired, leased, borrowed, or rented vehicles, including trailers, in an amount not less than **$1 million per occurrence** on a combined single limit basis.
         1. The Port shall be included on the policy form as an insured; or an additional insured endorsement shall be provided.
         2. Where applicable and as required by the Motor Carrier Act of 1980 (which requires evidence of mandatory liability insurance coverage for transportation of hazardous materials), attach a copy of an MCS-90 Endorsement to the commercial auto liability policy for all operations in which the Contractor is to remove and transport any hazardous or other regulated material onto or off the project site.
      2. Contractor's Pollution Liability. Contractor shall provide this coverage, with the Port named as an additional insured on the policy, with limits of not less than  
         $1 million per occurrence. The coverage shall extend to sudden and accidental incidents, claims, damages, and losses, including defense costs that arise from the operations of the Contractor as it relates to the services to be performed under this contract and that occur on or after the notice to proceed (NTP) and extending to include all claims occurring during the project, including claims from incidents occurring during the project period but reported after project completion, for up to 60 days following the end of the project.
         1. The policy shall cover incidents, claims, damages, and losses, at the project site, including clean-up and remediation as well as third party bodily injury, third party property damage, and clean-up/remediation, both on and off the project site.
         2. The Contractor shall have the discretion to determine which of its sub-contractors, if any, shall purchase this coverage, and to what limit if applicable.
      3. Employers Liability Insurance (Washington Stop Gap Liability). The Contractor shall provide Washington State Stop Gap employers’ liability insurance. This shall be in an amount of $1 million per accident and $1 million per disease using ISO CG 04 42 11 03 or equivalent. This coverage may be provided by endorsing the primary commercial general liability policy. An endorsement evidencing this coverage must be submitted to the Port, along with the other insurance documentation.
      4. Contractor is fully responsible for complying with the Revised Code of Washington, Title 51 Industrial Insurance for Contractor and all subcontractors.
      5. Waiver of Subrogation. Without affecting any other rights or remedies, Contractor (for itself and on behalf of anyone claiming through or under it by way of subrogation or otherwise) hereby waives any rights it may have against the Port, its officers, agents and employees (whether in contract or in tort) on account of any loss or damage occasioned to Contractor arising out of or incident to the perils required to be insured against within the Contract. Accordingly, Contractor shall cause each insurance policy required by Contract to further contain a waiver of subrogation clause. The effect of such release and waiver of the right to recover damages shall not be limited by the amount of insurance carried or required or by any deductibles applicable thereto.
      6. Contractor is fully responsible for ascertaining whether any federal industrial insurance laws apply to this agreement such as from the Federal Employers’ Liability Act, the Jones Act, or the United States Longshore and Harbor Workers Compensation Act. Contractor shall comply with all required workers compensation requirements whether through purchase of commercial insurance or as a qualified self-insurer relative to federal industrial insurance laws.

ARTICLE G-09  
LEGAL REQUIREMENTS

## G-9.01 Excavated Archeology Items

1. If resources of potential archeological significance are encountered during construction or excavation, the Contractor shall immediately stop work, secure the Project Site in the vicinity of the find and notify the Port. Further instructions will be provided by the Port. Pending those instructions, the Contractor shall arrange 24-hour security to protect the find. The Contractor shall not notify the media and shall direct any media inquiries to the Port. The Port and Contractor shall work with a professional archaeologist to resume construction as soon as possible without compromising the archeological find. This will be done in accordance with the treatment plan and mitigation activities outlined in the Archeological Assessment to be done and provided by the Port.

## G-9.02 Gratuities

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

## G-9.03 Comply With All Non-Discrimination Laws

1. During the performance of this Contract, the Contractor, for itself, its assignees, and successors in interest agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:
   * + 1. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin) and 49 CFR part 21;
       2. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
       3. Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
       4. The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
       5. Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
       6. The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
       7. Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
       8. The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
       9. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
       10. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
       11. Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq.).

## G-9.04 Comply With Port Policy

1. The Port has a comprehensive policy regarding equal employment opportunities for minority and women's business enterprises and affirmative action. Pursuant to such policy, the Contractor is required to take certain specific actions, including providing the Port with reports and affidavits in connection with its performance of this Contract. It is the basic policy of the Port of Seattle to provide equal opportunity to users of all Port services and facilities and all contracting entities. Specifically, the Port will not tolerate discrimination against any persons on grounds of age, race, color, national origin/ancestry, ethnicity, religion, disability, Family Medical Leave Act (FMLA) use, pregnancy, sex/gender, sexual orientation, whistle-blower status, marital status, workers’ compensation use, transgender status, political beliefs, or any other protected status, as guaranteed by local, state and federal laws. Port's policy and the specific obligations to be performed by the Contractor are set forth in the Contract.

## G-9.05 Prevailing Wage Rate to Be Paid

* + 1. Contractor to pay Prevailing Wages: Contractor shall pay the prevailing rate of wages to all workers, laborers, or mechanics employed in the performance of any part of the Work in accordance with RCW 39.12 and the rules and regulations of the Department of Labor and Industries. The schedule of prevailing wage rates for the locality or localities of the Work, is determined by the Industrial Statistician of the Department of Labor and Industries. It is the Contractor’s responsibility to verify the applicable prevailing wage rate.
    2. The most current Prevailing Wage Rates can be obtained from the State of Washington Department of Labor and Industries’ website at: <http://lni.wa.gov/TradesLicensing/PrevWage/WageRates/default.asp>. The Prevailing Wage Rates effective date shall be the same as the bid opening date of this project. The project is located in King County. A copy of the applicable wage rates is available for viewing in the Port of Seattle, Central Procurement Construction Office; or Port of Seattle will mail a hard copy of the applicable wage rates upon request; (206) 787-3110.
    3. Statement of Intent to Pay Prevailing Wages: Before payment is made by the Owner to the Contractor for any work performed by the Contractor and subcontractors whose work is included in the application for payment, the Contractor shall submit, or shall have previously submitted to the Owner for the Project, a Statement of Intent to Pay Prevailing Wages, approved by the Department of Labor and Industries, certifying the rate of hourly wage paid and to be paid each classification of laborers, workers, or mechanics employed upon the Work by Contractor and Subcontractors. Such rates of hourly wage shall not be less than the prevailing wage rate.
    4. Affidavit of Wages Paid: Prior to release of retainage, the Contractor shall submit to the Owner an Affidavit of Wages Paid, approved by the Department of Labor and Industries, for the Contractor and every subcontractor, of any tier, that performed Work.
    5. Disputes: Disputes regarding prevailing wage rates shall be referred for arbitration to the Director of the Department of Labor and Industries. The arbitration decision shall be final and conclusive and binding on all parties involved in the dispute as provided for by RCW 39.12.060.
    6. Post Statements of Intent at job site: Each Application for Payment submitted by Contractor shall state that prevailing wages have been paid in accordance with the prefiled statement(s) of intent, as approved. Copies of the approved intent statement(s) shall be posted on the job site with the address and telephone number of the Industrial Statistician of the Department of Labor and Industries where a complaint or inquiry concerning prevailing wages may be made.
    7. Contractor to pay for Statements of Intent and Affidavits: In compliance with chapter 296-127 WAC, Contractor shall pay to the Department of Labor and Industries the currently established fee(s) for each statement of intent and/or affidavit of wages paid submitted to the Department of Labor and Industries for certification.
    8. Certified Payrolls: Consistent with WAC 296-127-320, the Contractor and any subcontractor shall submit a certified copy of payroll records if requested.
    9. On work funded in whole or in part by Federal monies current Federal wage determination rates are included in the Contract Documents. If a State of Washington minimum wage rate conflicts with a Federal minimum wage rate for the same labor classification, the higher of the two shall govern.
    10. All workers delivering fill, sand, gravel, crushed rock, transit/concrete mix, asphalt or other similar materials and all workers removing any materials from the construction site as required by the specifications are subject to the provisions of RCW chapter 39.12 and are entitled to the appropriate Prevailing Wage Rate. For purposes of this contract, such materials are for specified future use and per WAC 296-127-018, delivery and pick-up of the above listed materials constitutes incorporation.
    11. The Contractor is required to include this provision in all sub-contracts and shall require that it be placed in all sub-sub contracts at any tier.

## G-9.06 Comply with All Laws

1. The Contractor shall at all times comply with all federal, state and local laws, ordinances and regulations, including but not limited to those environmental laws and other laws listed in the Contract Documents and other laws referred to herein, which in any manner apply to the performance of this Contract. Such compliance shall include, but is not limited to, the payment of all applicable taxes, royalties, license fees, penalties and duties.

## G-9.07 Disposal of Waste Materials

* + 1. Waste material is defined as all material from demolition, excavation, dredging, or other source that is unsuitable to, or in excess of the needs of the work, or material that is designated for removal and disposal from the Port property. Hazardous material is waste material containing substances classified as hazardous, potentially hazardous, infectious, toxic or dangerous under applicable Local, State or Federal law.
    2. Both waste material and hazardous materials shall be disposed of in strict compliance with all laws, regulations and the Contract Documents.
    3. All waste material shall become the property of the Contractor. The Contractor is solely responsible for the lawful managing and disposal of waste material and shall indemnify, defend and hold the Port harmless from all liability, damages, claims, lawsuits, penalties and expenses, whether direct, indirect or consequential (including but not limited to attorney's and consultant's fees and other expenses of litigation or arbitration) arising from or in any way connected with, the demolition, excavation, removal or disposal of waste materials.
    4. The value of waste materials, if any, shall be credited to the Port in the total Contract Sum.
    5. Contractor is responsible for disposal of hazardous materials generated by the Contractor, such as used motor oils, lubricants, cleaners, etc. according to the Contract Documents and according to local, State, and Federal law.
    6. If the Contractor, during the course of the Work, unexpectedly encounters materials that it believes may be hazardous material, it shall immediately stop work on this activity and notify the Port.
    7. The Port of Seattle will retain title to all hazardous material that is on the Project Site as of the Contract Execution Date and encountered during demolition, removal, and excavation. The Port of Seattle will be identified as the hazardous waste generator and will sign all hazardous waste shipment manifests for non-contractor generated hazardous wastes. Nothing contained within these Contract Documents shall be construed or interpreted as requiring Contractor to assume the status of Owner or generator of hazardous waste substances for non-contractor generated hazardous wastes.

## G-9.08 State and Local Taxes

1. All or a portion of the labor and materials furnished under this Contract may be subject to retail sales taxes and other state and local taxes, which taxes are payable by the Contractor. State Sales Tax - Rule 170: WAC 458-20-170, and its related rules, applies to the constructing and repairing of new or existing buildings, or other structures, upon real property. For work performed in such cases, the Port will automatically add this sales tax to each payment to the Contractor and the Contractor shall timely remit this sales tax to the Washington State Department of Revenue. The Contractor shall not include the retail sales tax in the Schedule of Prices.

## G-9.09 Utilities and Similar Facilities

* + 1. In connection with any underground and utility Work, the Contractor shall strictly comply with Chapter 19.122 of the Revised Code of Washington. Washington State law, RCW 19.122, requires anyone planning to excavate to know what is below the ground surface before they dig. Any cost or scheduling impact resulting from the Contractor’s failure to comply with these statutory provisions shall be borne by the Contractor.
       1. The Port of Seattle is now a member of the One Call system.  Two business days before commencing any excavation, the Contractor shall call 811 or 1-800-424-5555 to provide notice of the scheduled start of excavation.  On busy days (M-W) hold time can be lengthy.  Entering your locate request online, via ITIC, eliminates the hold time.  To learn more about ITIC visit [www.callbeforeyoudig.org](http://www.callbeforeyoudig.org).
       2. If utility locating is needed for design or other purposes, where no digging is involved, then please only fill out the POS-811 form and email to [posutility@portseattle.org](mailto:posutility@portseattle.org).  Do not call 811 if you will not be digging 12” or deeper.
    2. Contractor shall not commence any excavations until existing utilities have been staked or marked by the utility owner. The Port will provide utility locates for Port-owned utilities. The Contractor may encounter underground utilities adjacent to their work operations. It shall be the Contractor's responsibility to protect these utilities from damage. If the Contractor discovers the presence of any unknown/unidentified utilities at the Project Site, the Contractor shall provide the Port oral or written notice promptly (and in no event more than 24 hours after discovery).

End of Document