

# Port of Port Townsend

# **SAMPLE**

## CONTRACT FOR

### ARTICLE 1: AGREEMENT

The **Port of Port Townsend**, hereinafter referred to as the (PORT), a Municipal Corporation, and \_\_\_\_\_, hereinafter referred to as the (CONTRACTOR), a company organized and existing under the laws of the State of Washington enter into the following agreement:

Whereas: In accordance with RCW 53.08.120, the PORT Commissioners did, on October 13, 2010, declare the stabilization repairs needed to the Quincy Street Dock, in Port Townsend, Washington, to be an emergency, and has requested from

Whereas: The PORT has received a bid, in response to the above request, from the CONTRACTOR dated \_\_\_\_\_, annexed hereto as "Exhibit A", as submitted by

Now Therefore: For and in consideration of mutual benefits and covenants as contained herein, the parties hereby agree as follows:

### ARTICLE 2: SCOPE OF WORK:

The CONTRACTOR shall perform all work and furnish all tools, materials, manpower and equipment for the PORT and all work described in the Contract Documents, hereinafter referred to as the "Work".

The work shall be performed in accordance with the Instructions to Bidders, all Bidder submittals, the Specifications, the Drawings, and all other forms and documents referenced in such documents which are hereby referred to as the Contract Documents and by this reference are made a part of this Contract.

If the work is not completed within the time specified, the CONTRACTOR agrees to pay to the PORT liquidated damages in accordance with the provisions contained in the Contract Documents. The CONTRACTOR shall provide and bear all expense of all

equipment, work, and labor of any sort whatsoever, that may be required for the materials and for constructing and completion of the work provided for in this Contract, except for those noted in the specifications to be furnished by the PORT and installed by CONTRACTOR.

In the event of any conflict between the provisions of this Contract and the incorporated Contract Documents, including Standard Specifications, Supplementary Specifications, and other terms and conditions, the provisions of this Contract shall control. The conflict shall be brought to the attention of the Port.

CONTRACTOR is responsible for locating any underground utilities affected by the work and is deemed to be an excavator in accordance with Chapter 19.122 RCW. CONTRACTOR shall be responsible for compliance with Chapter 19.122 RCW, including utilization of the "one call" locator system before commencing any excavation activities. CONTRACTOR is also responsible for ensuring adequate trench safety and compliance with the Washington Industrial and Health Act requirements of Chapter 42.17 RCW.

CONTRACTOR is solely responsible for compliance with all applicable laws, regulations, and requirements, including and in addition to those specified in this Contract.

#### ARTICLE 3: ASSIGNMENT

CONTRACTOR shall not to assign this Contract except with prior written consent of the PORT.

#### ARTICLE 4: MATERIALS SPECIFICATION:

Materials and equipment for this project shall meet the minimum specifications and be in conformance with laws and regulations as established by all current local, state, and national codes for projects of this type.

#### ARTICLE 5: DRUG-FREE WORKPLACE POLICY:

The PORT has adopted a Drug-Free Workplace Policy that the workplace will be a drug free environment conducive to conducting the PORT's business free from unlawful manufacture, distribution, dispensing, possession or use of controlled substances. This policy applies to PORT Commissioners, PORT employees, and contractors conducting business on PORT property. A copy of the drug Free Workplace Policy will be provided to CONTRACTOR attached hereto.

#### ARTICLE 6: EQUAL OPPORTUNITY POLICY:

All persons or entities performing work for the PORT shall provide equal opportunity to all of its employees and applicants for employment and assure that there is no discrimination on the basis of race, color, region, national origin, sex, age, marital status, or physical disability unless based upon a bona fide occupational qualification. All persons or entities performing services for the PORT must ensure that the foregoing extend to all areas of employment and to all relations with employees including recruitment, selection, placement, compensation, promotion and transfer, training, daily working conditions, awards and benefits, and all other terms and conditions of employment as provided for in state and national laws. CONTRACTOR shall comply with all federal, state, and local laws, regulations, and ordinances pertaining to non-discrimination and equal employment throughout the duration of the Work.

The CONTRACTOR will, in all solicitations or advertisements for employees placed by or on behalf of the CONTRACTOR, state that all qualified applicants will receive consideration or employment without regard to race, creed, color, sex or national origin.

The CONTRACTOR will send to each labor union or representative or worker with which CONTRACTOR has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the said labor union or workers' representative of the contractor's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The CONTRACTOR will include the provisions of the foregoing paragraphs in every subcontract exceeding \$10,000.00 so that such provisions will be binding upon each such subcontractor or vendor. The CONTRACTOR will take such action with respect to any subcontract or purchase order as the Director may direct as a means of enforcing such provisions, including sanctions for noncompliance; PROVIDED, however, that in the event the CONTRACTOR or vendor as a result of such direction by the contracting agency, the CONTRACTOR may request the State of Washington to enter into such litigation to protect its interest.

#### ARTICLE 7: PREVAILING WAGES:

The PORT is committed to comply with the Washington Public Works Act, Chapter 39.12 RCW entitled "Prevailing Wages on Public Works", and Chapter 49.28 RCW entitled "Hours of Labor". It shall be the PORT's intention that the prevailing rate of wages be paid on all public works projects, regardless of the contract amounts. The responsibilities for adherence to the Public Works Act are specified in the Statement of Intent, Prevailing Wages in Public Works document. All contractors to the PORT will be required to comply with the responsibilities outlined therein. CONTRACTOR must pay all fees and obtain all forms and provide such information related to paying prevailing wages, applicable to this project, including STATEMENT OF INTENT TO PAY PREVAILING WAGES and AFFIDAVIT OF WAGES PAID forms.

A Statement of Intent to Pay Prevailing Wages and current prevailing wage rates for the Work must be posted on the Work site. At the conclusion of the Contract, the

CONTRACTOR and its subcontractors shall submit Affidavits of Wages Paid to the Department of Labor and Industries for certification by the director. Final payment on the Contract shall be withheld until certification from the director has been received by the PORT that the prevailing wage requirements of the statute have been satisfied. The CONTRACTOR certifies that it has not been cited for two violations within the last five (5) years, and is not prohibited from bidding on public works contracts. The CONTRACTOR further certifies that it will use no subcontractor who is prohibited.

#### ARTICLE 8: BONDING:

CONTRACTOR shall provide and maintain in force for the term of the Contract, a 100% Performance/Material and Labor Payment bond for the amount of the Contract Price plus Washington State Sales Tax. The Surety providing the bond shall be licensed to conduct business in the State of Washington. These bonds are to be submitted to the PORT no later than (14) calendar days after the execution of this Contract.

At CONTRACTOR'S option, these bonds do not have to be provided if the payment retainage clause as described in Article 20 is elected to be followed.

#### ARTICLE 9: INSURANCE:

The CONTRACTOR shall provide Comprehensive General Liability, Property Damage, and Contractor's Pollution Liability ("CPL") insurance, and shall provide that the PORT be named as an insured. The policy or policies shall provide coverage to the PORT on an occurrence basis for the duration of the Work. The PORT will not accept any certificate of insurance or accord form certificate as a substitute for an actual policy of coverage. Any exclusions, exemptions, exceptions, or other policy coverage limitations of the policy, including any identifying particular activities or actions of the PORT, must first be reviewed by and written acceptance provided by the PORT before commencement of the Work. The failure to provide insurance coverage acceptable to the PORT shall be deemed to constitute non-acceptance of the Contract by the CONTRACTOR. The PORT reserves the right to then award the Contract to the next acceptable bidder.

CONTRACTOR shall have Comprehensive General Liability coverage, of no less than \$1,000,000.00 combined single limit per occurrence. Said policy shall be in effect for the duration of the Contract period.

CONTRACTOR shall provide CPL coverage, of no less than \$1,000,000.00 per occurrence and \$1,000,000.00 aggregate. CPL insurance shall be on a true occurrence form without a sunset clause or, if claims made, shall have a retroactive date before the date of notice to proceed and shall remain in force for one year after project completion.

If the insurance is written with stipulated amounts deductible under the terms of the policy, the CONTRACTOR shall pay the difference attributable to deductions in any payments made by the insurance carrier on claims paid by the insurance.

The PORT assumes no risk of loss by fire or any other casualty to any portion of the Work or equipment, whether completed, in process of construction or installation or stored on or off the premises, or at premises during the term of the Contract for any portion of the construction. The monthly payments to the CONTRACTOR shall not be construed as creating an insurable interest by or for the PORT, or as relieving the CONTRACTOR or the CONTRACTOR'S sureties of responsibility for loss by fire or other casualty occurring prior to final acceptance of the Work. It is understood that the Work under this Contract is to be done at the CONTRACTOR'S risk, and that the CONTRACTOR is familiar with the conditions, and other contingencies likely to affect the Work, and that the CONTRACTOR is to assume the responsibility and risk of any loss or damage to materials or work which may arise from any cause whatsoever until same shall be promptly repaired, replaced, or rebuilt by the CONTRACTOR after any loss or damage and the Work finally accepted by the PORT.

Unless otherwise provided, the CONTRACTOR shall purchase and maintain All Risk Insurance for public liability and property damage and physical loss or damage including, without duplication of coverage, theft, vandalism, and malicious mischief upon the building structures, and other features of the site subject to fire, theft, vandalism and malicious mischief. The insurance shall provide coverage for the PORT, the CONTRACTOR, and all Subcontractors performing Work on projects under the Contract or authorized by the PORT, as well as provide coverage for the PORT for the limits specified. The property insurance shall be written on the completed value form.

Property Insurance provided by the CONTRACTOR shall include a limit equal to the completed value of 115 percent of the cost of replacement at the time of Contract.

The insurance shall include the interests of the PORT, CONTRACTOR, Subcontractors and Sub-subcontractors as their interests may appear. Loss shall be adjusted with the PORT and made payable to the PORT as trustee for the insured, as their interest may appear.

The coverage provided shall protect against claims for personal injuries, including accidental death, as well as claims for property damages that may arise from any act or omission of the PORT, the CONTRACTOR, Subcontractor, or by anyone directly or indirectly employed by any of the parties involved.

Certificates of insurance will be provided to the PORT prior to starting actual Work at the site. All insurance policies and certificates shall reference the: 1) project name, 2) project location, and 3) shall provide that the PORT, its elected and appointed officials, its employees and agents are named as additional insured in respect to the Work and obligations to be performed by the CONTRACTOR.

#### ARTICLE 10: INDEMNIFICATION:

CONTRACTOR shall indemnify, defend and hold the PORT harmless from and against any and all liability, damages, actions, or claims for personal injury and/or property damages made by any employee or agent of CONTRACTOR or by any third party arising from the performance of this contract. Such indemnification shall include attorney fees incurred by the PORT in responding to any such claim.

The PORT agrees to indemnify, defend, and hold CONTRACTOR harmless from any and all liabilities, damages, or actions, including attorney fees arising from the PORT's negligence or misconduct, or from its contractors, subcontractors, or any party for whom the PORT is legally liable, and arising from the project that is the subject of this agreement.

#### ARTICLE 11: SAFETY:

CONTRACTOR shall take necessary precautions for the safety of his employees on the Work, and shall comply with all applicable provisions of federal, state and municipal safety laws to prevent accidents or injury to persons on, about or adjacent to the Project site. CONTRACTOR shall perform whatever work is necessary for safety and be solely and completely responsible for conditions of the job site, including the safety of all persons and property during the contract period. This requirement applies continuously and is not limited to normal working hours.

#### ARTICLE 12: ENVIRONMENTAL CONTROLS

##### *Clean-up.*

CONTRACTOR shall at all times keep the Work site, staging areas, and CONTRACTOR's facilities free from the accumulation of waste materials or rubbish caused by his operations. Upon completion of the Work, CONTRACTOR shall remove all waste material and rubbish from and around the Project as well as all tools, construction equipment, machinery and surplus materials to present a clean and neat appearance in conformance with the present condition of the site.

The PORT reserves the right to have waste material, refuse, debris, and/or rubbish removed and the expense of removal and disposal charged to the CONTRACTOR.

##### *Contaminants.*

Paints, solvents, and other construction materials shall be handled with care to prevent entry of contaminants into storm drains, surface waters, or soils. CONTRACTOR shall monitor soils, groundwater, and waste materials by instructing workers in observing and reporting questionable materials and odors, such as refuse, oily sheen or color on soils or water, and oil or chemical odors. If hazardous or contaminated materials are encountered, the CONTRACTOR shall stop all work in that area and notify the PORT immediately. The PORT shall in turn notify the various governmental and regulatory agencies concerning the presence of potentially dangerous materials. Depending on the

type of problem identified, the PORT may suspend work, move operations, or terminate the Contract.

*Air Pollution Control.*

CONTRACTOR shall not discharge smoke, dust, or other contaminants into the atmosphere that violate the regulations of any legally constituted authority. CONTRACTOR shall minimize dust nuisance by cleaning, sweeping, or other means.

*Noise Control.*

Construction involving noisy operations shall be in compliance with local noise ordinances. The CONTRACTOR shall comply with all local controls and noise level rules, regulations and ordinances, which apply to any Work performed pursuant to the Contract.

*Vegetation Protection.*

CONTRACTOR shall carefully protect the vegetation in all areas within the site as designated in the plans and all areas outside of the boundaries of the project site from damage and construction activities.

*Water Control.*

CONTRACTOR shall conform to the regulations and requirements of legally authorized surface water management agencies. Operations shall be conducted in such a manner as to prevent sediment from reaching existing sewers, storm drains, creeks, or streams. Erosion control measures including silt fences, filter fabric, sedimentation ponds, placement of hay bales along peripheries, temporary detention ponds, and terraced slopes shall be employed as appropriate and shall be in place prior to any clearing or grading activity.

*Oil Spill Prevention and Control.*

CONTRACTOR shall be responsible for prevention, containment, and cleanup of spilt oil, fuel and other petroleum products used in the Contractor's operations. All such prevention, containment and cleanup costs shall be borne by the Contractor. In the event of any oil or product discharges into public waters, or onto land with a potential for entry into public waters, CONTRACTOR shall immediately notify the following agencies at their listed 24-hour response numbers:

|                                  |              |
|----------------------------------|--------------|
| WDOE, Southwest Regional Office: | 360-470-6300 |
| U.S. Coast Guard:                | 360-286-5540 |

**ARTICLE 13: WARRANTIES AND COMPLETION:**

CONTRACTOR warrants to the PORT that all materials and equipment furnished under this agreement will be new, unless otherwise specified, and that all Work will be of good quality, free from improper workmanship and defective materials and in conformance with the Drawings and Specifications. CONTRACTOR agrees to promptly repair, replace and correct all Work performed by it under this Agreement which proves to be damaged

or defective in material and workmanship within a period of one year from the Date of Substantial Completion.

Upon completion of the Work and before final inspection, the CONTRACTOR shall clean the entire premises occupied or used in connection with the Work of all rubbish, surplus and discarded materials, false work, temporary structures, equipment, and debris. The entire Work premises shall be left in a clean, neat, and presentable condition. CONTRACTOR shall not remove warning, regulatory, or guide signs prior to Final Completion except as requested by the Engineer.

#### ARTICLE 14: PERMITS:

CONTRACTOR agrees to pay for any and all license fees necessary for providing the services required to fulfill the terms of this agreement.

CONTRACTOR shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities bearing on performance of the Work.

It is not CONTRACTOR'S responsibility to ascertain that the drawings are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations. However, the CONTRACTOR shall inspect the drawings and if CONTRACTOR observes that portions of the drawings are at variance therewith, CONTRACTOR shall promptly notify the PORT in writing, and necessary changes shall be accomplished by appropriate Modification.

If CONTRACTOR performs Work knowing it to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without such notice to the PORT, CONTRACTOR shall assume full responsibility for such Work and shall bear the attributable costs.

#### ARTICLE 15: SUBCONTRACTORS:

All portions of the Work that CONTRACTOR does not perform with CONTRACTOR's own forces shall be performed under subcontracts. No contractual relationship shall exist between the PORT and any Subcontractor, nor are subcontractors intended or incidental third-party beneficiaries to this Contract. CONTRACTOR shall be responsible for the management of the Subcontractors in the performance of their Work and shall require subcontractors and sub-subcontractors to comply with the requirements of this Contract and all Contract Documents.

#### ARTICLE 16: CHANGES IN THE PROJECT:

The PORT reserves the right to make, at any time during the Work, such changes in quantities and such alterations in the works as are necessary to satisfactorily complete

the project. Such changes in quantities and alterations shall not invalidate the contract nor release the surety, and the CONTRACTOR agrees to perform the Work as altered.

The PORT will issue a written change order for any changes unless the remainder of this section provides otherwise. If the alterations or changes in quantities significantly change the character of the Work under the contract, whether or not changed by any such different quantities or alterations, an adjustment, excluding loss of anticipated profits will be made to the Contract. The basis for the adjustment shall be agreed upon prior to the performance of the Work. If a basis cannot be agreed upon, then an adjustment will be made either for or against the CONTRACTOR in such amount as the PORT may determine to be fair and equitable.

The CONTRACTOR shall proceed with the Work upon receiving a written change order approved by the PORT, or an oral order from the PORT before actually receiving the written change order.

The CONTRACTOR may protest the change order as provided below, if the CONTRACTOR is in disagreement with anything required in a change order, another written order, or an oral order from the PORT, including any direction, instruction, interpretation, or determination by the PORT or its Architect, the CONTRACTOR shall, immediately give a signed written notice of protest to the PORT before doing the work, and supplement the written protest within 15 calendar days with a written statement.

If the protest is continuing, the information required above shall be supplemented as requested by the PORT. In addition, the CONTRACTOR shall provide the PORT, before final payment, a written statement of the actual adjustment requested. Throughout any protested work, the CONTRACTOR shall keep complete records of extra costs and time incurred. The CONTRACTOR shall permit the PORT access to these and any other records needed for evaluating the protest as determined by the PORT. The PORT will evaluate all protests provided the procedures in this section are followed. If the PORT determines that a protest is valid, the PORT will adjust payment for work or time. No adjustment will be made for an invalid protest.

In spite of any protest, the CONTRACTOR shall proceed promptly with the Work as the PORT orders.

The CONTRACTOR accepts all requirements of a change order by; endorsing it, writing a separate acceptance, or not protesting in the way this section provides.

A change order that is not protested as provided in this section shall be full payment and final settlement of all claims for contract time and for all costs of any kind, including costs of delays, related to any work either covered or affected by the change. By not protesting as this section provides, the CONTRACTOR also waives any additional entitlement and accepts from the PORT any written or oral order (including directions, instructions, interpretations, and determinations). By failing to follow the procedures of this section, the CONTRACTOR completely waives any claims for protested work.

## ARTICLE 17: TERMINATION OF CONTRACT

The PORT may terminate the Contract upon written notice to the CONTRACTOR whenever the CONTRACTOR is deemed to be in default or violates the provisions of the Contract by failing, neglecting, or refusing to proceed according to and in full compliance with the Contract Documents. Upon termination, the PORT may exclude the CONTRACTOR from the site and shall take possession of the Work and all of the materials and equipment for which the PORT has paid any amount on to the CONTRACTOR. The CONTRACTOR shall be entitled to payment for portions of the Work satisfactorily completed prior to termination, less costs incurred by the PORT as a result of the CONTRACTOR's default.

The PORT shall have the right to terminate this Contract for any reason whatsoever by notice in writing to the CONTRACTOR. Upon receipt of such notice, the CONTRACTOR shall immediately discontinue the Work unless the notice specifies otherwise. Upon such termination, CONTRACTOR shall be paid in ordinary course of business for all Work satisfactorily completed to the date of termination.

## ARTICLE 18: CONTRACT TIME:

Upon receipt of the required documents the PORT shall issue a Notice to Proceed authorizing CONTRACTOR to commence with the scope of Work of this Contract. CONTRACTOR shall start within 10 days after the date of written Notice to Proceed, and shall substantially complete his portion of the Work by . The Date of Substantial Completion shall be when the PORT determines that the scope of Work of this agreement is completed in accordance with the Contract Documents and has passed applicable building inspections on CONTRACTOR's scope of Work.

Warranties called for by the Contract shall commence on the Date of Substantial Completion of the Project. This date shall be established by a Certificate of Substantial Completion signed by the PORT.

## ARTICLE 19: CONTRACT PRICE:

The "Not to Exceed" Contract price for the Project is plus Washington State Sales Tax. The Not to Exceed Sum is based upon laws, codes, and regulations in existence at the date of its establishment and upon criteria as set forth in this agreement.

## ARTICLE 20: MEASUREMENT AND PAYMENT:

If CONTRACTOR elects to provide a performance/material and labor payment bond as per Article 8, then the retainage held shall be five percent (5%) of the amount due and payable, as per Chapter 60.28 RCW. Otherwise, CONTRACTOR agrees to have fifty

percent (50%) retainage held by the PORT of the full amount due and payable until such time as the contract is fully completed and satisfies all required final inspections, including Department of Revenue, and Department of Labor and Industries certifications.

The CONTRACTOR shall provide monthly statements which shall indicate the Percentage of completion of each portion of the Work as of the end of the period, covered by the statement.

Statements received by the 10th day of the month and approved by the PORT will be processed for payment the same month.

The PORT'S representative shall determine the amounts owing to the CONTRACTOR based on observations at the site and on evaluations of CONTRACTOR'S statements and shall issue to the PORT certification for payment.

All progress payments shall be subject to withholding of the retained percentage as provided in Article 20. Washington State Sales Tax shall be included on each statement submitted by the CONTRACTOR.

CONTRACTOR guarantees that title to all Work, materials and equipment covered by an Application for Payment will pass to the PORT upon receipt of such payment by the CONTRACTOR, free and clear of all liens, claims, security interests or encumbrances.

#### ARTICLE 21: CONTRACTOR RECORDS:

CONTRACTOR shall maintain an acceptable cost accounting system. CONTRACTOR agrees to make all books and records available to the PORT for inspection, review, photocopying and audit in the event of a Contract related dispute, claim, modification or other Contract related action at reasonable times and at places designated by the PORT. CONTRACTOR agrees to maintain all books, records, and reports required under this Contract for a period of not less than three years after final payment is made and all pending matters are closed.

#### ARTICLE 22: DISPUTE RESOLUTION:

Venue for all claims, disputes, and matters of question arising out of or relating to this Agreement, or the breach thereof, shall be decided in the Superior Court of Jefferson County, State of Washington. In the event suit is brought to enforce the provisions of this Contract, the prevailing party shall be entitled to recover reasonable attorney fees to be fixed by the court together with such party's actual reasonable costs.

ARTICLE 23: NON-COLLUSION

No Commissioner or employee of the PORT who exercises any functions or responsibilities in the review or approval of the services to be provided by CONTRACTOR, will participate in any decision which affects CONTRACTORS directly or indirectly.

CONTRACTOR covenants that their employees, presently have no interest and shall not acquire an interest which would conflict in any manner or degree with its performance under this Contract.

ARTICLE 24: AUTHORIZED REPRESENTATIVES

For purpose of notification, all notices to be delivered, or amendments thereto, the authorized representative shall be:

**Port**  
Donald Taylor  
Director of Finance  
Port of Port Townsend  
P. O. Box 1180  
Port Townsend, WA 98368  
Phone: 360-385-0656

**Contractor**

ARTICLE 25: GENERAL PROVISIONS:

This document represents the entire agreement between the parties and any amendments thereto or changes thereto must be made in writing or agreed to by both parties and appended to this contract.

Dated this

Port of Port Townsend

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\_\_\_\_\_  
By: Larry C. Crockett  
Its: Executive Director

\_\_\_\_\_  
By:  
Its:

Approved as to Form:

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Carolyn Lake, Goodstein Law Group, Port Attorney