



**PORT OF BREMERTON  
INVITATION FOR PROPOSAL #02-22-20007**

**Port Terminal & Avian Building Sewer Lift Station Replacement**

**Proposals Due: January 31, 2023 @ 2:00 PM**

# INDEX

- I. NOTICE
- II. PROPOSAL FORM
- III. SCOPE OF WORK
- IV. SAMPLE CONTRACT

**I. NOTICE**  
**PORT OF BREMERTON INVITATION FOR PROPOSAL #02-22-20007**  
**Port Terminal & Avian Building Sewer Lift Station Replacement**

**NOTICE IS HEREBY GIVEN** that the PORT OF BREMERTON is hereby seeking proposals for public works contract work for the construction of the replacement of the Port Terminal & Avian Building Sewer Lift Station pumps and equipment located at 8850 State Hwy 3, Bremerton, WA 98312.

**SCOPE AND NATURE OF WORK:** Construction consists of the replacement of existing pumps and the integrated fittings, the replacement and upgrading to the wiring and control panel, retrofitting to a rated 2-hp explosion-proof grinder pump system and discharge piping, the repair of transducer sewage level sensors, the installation of a stainless-steel pump lift-out rail assemblies and concrete flat top with access hatch, and the installation of control panels with audible and visual alarms in an all-weather enclosure.

For detailed information, visit: <https://www.portofbremerton.org/bids-contracts>

**PROPOSAL SUBMITTAL INFORMATION AND SITE VISIT:** Submit proposals by January 31, 2023 at 2:00 PM in a sealed envelope to: Port of Bremerton, James "Goody" Goodman, 8850 SW State Hwy 3, Bremerton, Washington 98312. For a site visit call 360-813-0814 or e-mail [jamesg@portofbremerton.org](mailto:jamesg@portofbremerton.org).

**CONTRACT ISSUES:** This work is considered a public work contract under RCW Chapter 39. The successful contractor will be required to execute a short form contract with the Port. Among other requirements, Port public works contracts are subject to the following:

- A. **Prevailing Wage Provision:** The workers of all contractors and subcontractors on all Port "public works" as defined by RCW 39.04.010, shall be paid the "prevailing rate of wage" including "usual benefits" and overtime, paid in the locality as those terms are defined by Chapter 39.12 RCW. The contractor is responsible for obtaining and completing all required government forms and submitting same to the proper authorities. In accordance with RCW 39.12.030, applicable prevailing wage rates can be found online at <http://www.lni.wa.gov/TradesLicensing/PrevWage/WageRates/default.asp>.
- B. **Retainage:** By state law, the Port is required to retain five percent (5%) of the total contract amount for 30 days after final acceptance or until required state certificates of release are provided to the Port, whichever date is later.
- C. **Bond Requirements:** The entity submitting the successful proposal will be required to deliver to the Port prior to contract signing a satisfactory performance bond in an amount equal to one hundred percent (100%) of the contract price. On contracts of one hundred fifty thousand dollars (\$150,000) or less, the contractor may, in lieu of the bond, allow the Port to retain ten percent (10%) of the contract amount for up to 30 days following the date of final acceptance or until the retainage mentioned in B. above can be released as provided by law, whichever date is later.
- D. **Insurance.** Contractor agrees to obtain at its own cost and expense, public liability insurance with combined bodily injury and property damage limits in the amount of \$1,000,000 in a form satisfactory to the Port of Bremerton, naming the Port as an additional insured. Such insurance shall not be diminished or rescinded without first giving the Port thirty (30) days written notice.

**NOTE:**

The contract will be awarded to the party submitting the "lowest responsible proposal," subject to any products and/or vendor preferences provided by applicable Washington State laws, taking into consideration the quality of the articles proposed to be supplied, their conformity with specifications, and the purposes for which required. The Port may reject any and all proposals.

In determining "lowest responsible proposal," in addition to price and other factors outlined above, the following elements will be given serious consideration in determining the lowest responsible proposal:

1. The ability, capacity, and skill of the proposer to perform the contract or provide the service required;
2. The character, integrity, reputation, judgment, experience, and efficiency of the proposer;
3. The quality of performance of previous contracts;
4. The previous and existing public works contract law compliance;
5. The convenience and availability of service;
6. Such other information the Port may secure which has a bearing on the decision to award the contract.
7. Satisfactory check on Department of Labor and Industries Employer Account and current UBI Account.

If a bidder is determined to be non-responsive, the bidder will be notified by the Port in writing (electronic) as to the deficient criteria and allowed two working days to appeal the Port's determination in writing.

Failure to properly complete this form may be cause for rejection of proposal.

**II. PROPOSAL FORM**  
**Port Terminal & Avian Building Sewer Lift Station Replacement**

This proposal is made in accordance with the invitation for proposal authorized by the Port of Bremerton.

LUMP SUM \$ \_\_\_\_\_

(APPLICABLE STATE SALES TAX) \$ \_\_\_\_\_

TOTAL PRICE (FULL PRICE INCLUDING TAX) \$ \_\_\_\_\_

ESTIMATED TIME OF COMPLETION AFTER NOTICE TO PROCEED \_\_\_\_\_ calendar days

**ADDENDA ACKNOWLEDGEMENT:**

Receipt of all Addenda through No. \_\_\_\_\_ is (are) hereby acknowledged.

**RESPONSIBLE BIDDER CERTIFICATION:**

In accordance with RCW 9A.72.085, the undersigned bidder declares under penalty of perjury that said bidder is in compliance with the responsible bidder criteria requirement, and that within the three-year period immediately preceding the date of this bid solicitation, has not received 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, 49.48, or 49.52 RCW.

**PROFESSIONAL REFERENCES:**

Company Name: \_\_\_\_\_ Company Name: \_\_\_\_\_

Contact Name: \_\_\_\_\_ Contact Name: \_\_\_\_\_

Phone: \_\_\_\_\_ Phone: \_\_\_\_\_

PROPOSER/COMPANY NAME \_\_\_\_\_

ADDRESS \_\_\_\_\_

EMAIL \_\_\_\_\_ PHONE \_\_\_\_\_

Contractor License No: \_\_\_\_\_ Contractor UBI No: \_\_\_\_\_

Contractor ESD No: \_\_\_\_\_

I certify (or declare) under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct:	
Signature:	Date:
Print Name and Title	Location or Place Executed: (City, State)

**NOTE:**

The contract will be awarded to the party submitting the "lowest responsible proposal," subject to any products and/or vendor preferences provided by applicable Washington State laws, taking into consideration the quality of the articles proposed to be supplied, their conformity with specifications, and the purposes for which required. The Port may reject any and all proposals.

### III. SCOPE OF WORK

Location Address: 8850 SW State Hwy 3  
Bremerton, WA 98312

Scope: Replacement of a duplex sewage pump system:  
Removal and disposal of existing pumps/wetwell fittings and wiring/control panel.  
(2) Explosion-proof rated 2-hp Barnes grinder pumps and discharge pipe/valving  
(2) Stainless steel Pump Lift-out rail assemblies with break-away fittings  
Transducer sewage level sensors  
Wetwell concrete flat top with access hatch  
Duplex control panel with audible and visual alarms in all-weather enclosure

Area is susceptible to vehicle traffic and will need to be addressed for safety.

Contractor will schedule temporary disconnections of utilities (i.e. water, sewer) and shutoffs with the Port prior to beginning work.

E-mail questions to James "Goody" Goodman at [jamesg@portofbremerton.org](mailto:jamesg@portofbremerton.org) with CC to Ellen Ataie [ellena@portofbremerton.org](mailto:ellena@portofbremerton.org). Responses to questions, if warranted, will be posted online at <https://www.portofbremerton.org/bids-contracts>.



Map:



Access Hatch:



Control Panel:



Electrical Box:





Holes:



## CONSTRUCTION CONTRACT

**THIS CONSTRUCTION CONTRACT** (the "Contract") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between the Port of Bremerton (the "Port"), whose business address is 8850 SW State Highway 3, Bremerton, WA 98312, and the Contractor identified below.

### CONTRACTOR

Contractor's Name	
Authorized Representative	
Address	
Telephone Number	
Facsimile Number	
Registration Number	
Washington UBI Number	
Federal Identification Number	

### WITNESSETH:

That for and in consideration of the terms and conditions contained herein and the Contract Documents made part of this Contract, the parties hereto agree as follows:

1. Scope of Work: For and in consideration of the Contract Sum noted below, subject to the terms and conditions contained herein, the attachments hereto, and the documents referenced herein, the Contractor agrees to perform the following work (the "Work") in a timely and workmanlike manner consistent with industry standards and applicable codes, including supplying all necessary supervision, materials, equipment, supplies, and skilled and sufficient workforce and to fully, completely, and faithfully comply with all the terms and conditions of this Contract:

[Summary of Scope of Work], per the Contract Documents below (if any).

Contractor shall ensure that each subcontract incorporates this Contract and is subject to its terms and conditions.

2. Contract Documents: The Contract Documents include:

- i. This Contract;
- ii. The Invitation to Bid [#XX-XX-XXXXX] and all appendices, attachments, and/or specifications attached thereto, if any (the "Bid Documents");
- iii. General Conditions, if any;
- iv. Any additional drawings and/or specifications provided by the Port;
- v. Any Change Orders executed by and between the Port and Contractor after execution of this Contract; and
- vi. The Contractor's bid proposal dated [XX-XX-XXXX], if any ("Contractor's Proposal").

Any conflicting provisions in the Contract Documents shall be interpreted harmoniously if possible or, in the event they cannot be reconciled, then they shall be interpreted in the manner most favorable to the Port, and the interpretation shall be governed in the following priority:

- i. This Contract;
- ii. General Conditions;
- iii. Any Change Orders executed by and between the Port and Contractor after execution of this Contract;
- iv. Any additional drawings and/or specifications provided by the Port;
- v. The Bid Documents; and
- vi. The Contractor's Proposal.

3. Contract Sum: The Port shall pay the Contractor the lump sum amount of \_\_\_\_\_ (\$\_\_\_\_\_), inclusive of all applicable taxes, for the Work completed in conformance with this Contract (the "Contract Sum").

4. Contract Time: The Work shall commence after the Port issues a Notice to Proceed, and the Work shall receive final completion no later than \_\_\_\_\_ calendar days after Contractor's receipt of the Notice to Proceed (the "Contract Time").

5. Payment: On or before the first (1<sup>st</sup>) day of each month, Contractor shall submit a detailed monthly pay request, in a form reasonably acceptable to the Port, for all Work completed during the immediately preceding month. The requested payment shall be in an amount proportionate to the percentage of the Work completed, as reasonably determined by the Port. The Port may request partial lien releases for all partial payments and a final lien release for the final payment

to each subcontractor as a condition of issuing payment. The Port shall remit payment within thirty (30) days after approval of the pay request, pursuant to the terms below:

- a. In the case of a dispute as to the amount owed, the Port will pay only the undisputed amount until the dispute is resolved. The Contractor will not be relieved of performance herein in the case of a partial payment based upon a dispute and must continue to perform the Work pursuant to this Contract pending resolution of the dispute.
- b. In cases of single payment, the Port shall make payment only after all appropriate releases are submitted and the retention period has expired.
- c. The Port shall retain five (5) percent of the moneys earned by the contractor as required by RCW 60.28, and pay the retainage as provided therein.
- d. Before final payment, Contractor shall furnish to the Port the following:
  - i. An affidavit that payroll, bills for materials and equipment, and other indebtedness connected with the work for which the Port or Port's property might be responsible or encumbered (less amounts withheld by Port) have been paid or otherwise satisfied.
  - ii. State Department of Labor & Industry - "Affidavit of Wages Paid on Public Works Contract" for Contractor and each Subcontractor (RCW 39.12.040).
  - iii. State Department of Labor and Industry - "Letter releasing the Port from Industrial Insurance Contribution Liability" (RCW 51.12.050).
  - iv. State Employment Security Department - "Certificate of Payment contributions, penalties and Interest on Public Works Contracts" (RCW 50.24.130).
  - v. {"As-Built" drawings showing red-ink deviations and changes from the Construction Drawings.}
  - vi. A complete set of maintenance and operation manuals for equipment items installed, if applicable.
  - vii. Any other close-out documents reasonably requested by the Port or required by law.

6. Payment and Performance Bond: The Contractor shall secure, at its sole cost and expense, a payment and performance bond from a surety company acceptable to the Port admitted and licensed in the State of Washington, which bond shall in the full amount of the Contract Sum, plus sales tax, pursuant to RCW 39.08 (the "Contractor's Bond"). The Contractor's Bond shall be substantially in the form attached hereto as Exhibit A. Within five (10) days of entering into this Contract, the Contractor shall deliver two (2) copies of the bond to the Port. THE PORT MAY WITHHOLD PAYMENT TO THE CONTRACTOR UNTIL SUCH CONTRACTOR'S BOND

IS RECEIVED AND/OR TERMINATE THIS CONTRACT IF CONTRACTOR FAILS TO TIMELY PROVIDE THE CONTRACTOR'S BOND.

6.1 Alternative to Contractor's Bond: In the event the Contract Sum is less than \$150,000, and upon written request from the Contractor prior to the first payment under this Contract, in lieu of the Contractor's Bond the Port will retain ten percent (10%) of the Contract Sum from each payment for a period of thirty (30) 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 RCW, whichever is later pursuant to RCW 39.08.010(3).

7. Employment and Wage Law Compliance: The Contractor shall pay prevailing wages as required and shall comply with Chapters 39.12 and 49.28 RCW, and all other applicable laws. The workers of all contractors and subcontractors on all Port "public works" as defined by RCW 39.04.010 shall be paid the "prevailing rate of wage" including "usual benefits" and overtime, paid in the locality as those terms are defined by Chapter 39.12 RCW. The contractor is responsible for obtaining and completing all required government forms and submitting same to the proper authorities. In accordance with RCW 39.12.030, applicable prevailing wage rates can be found at <http://www.lni.wa.gov/TradesLicensing/PrevWage/WageRates/default.asp>. Any dispute in connection with this contract which the parties cannot resolve among themselves shall be referred to the director of Washington State Department of Labor & Industries for arbitration, and the director's decision shall be final, conclusive and binding on all parties to the dispute.

8. Insurance:

8.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the State of Washington and reasonably acceptable to the Port, an occurrence-based Commercial General Liability Insurance policy, which shall provide bodily injury and property damage liability on the Contractor's operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by subcontractors of any tier or by anyone directly or indirectly employed by any of them including owned, non-owned and hired vehicles, or by anyone for whose acts any of them may be liable.

8.2 The insurance will name the Port, its consultants and employees, and any required governmental agencies as additional named insureds by way of a policy endorsement for Work performed under this Contract and the policy shall be designated primary for both defense and indemnity. Such limits of liability insurance shall not be less than the following:

- a) \$1,000,000.00 per occurrence for bodily injury liability including sickness, disease or death, and \$2,000,000.00 bodily injury liability for all occurrences (other than automobiles);
- b) \$1,000,000.00 for property damage liability (other than automobiles) because of damage to or destruction of property of others including loss of use

thereof caused by one occurrence, and \$1,000,000.00 property damage liability for all occurrences;

c) As an alternate to subparagraphs a) and b) above, the Contractor may insure for \$1,000,000.00 Combined Single Limit protection for both bodily injury and property damage liability per occurrence and \$2,000,000.00 general aggregate stop loss;

d) \$1,000,000.00 per accident for bodily injury liability including sickness, disease or destruction of property of others, including loss of use thereof arising out of the operation of automobiles; and;

e) \$1,000,000.00 for claims for damages insured by personal injury liability covered (included and defined in the Commercial General Liability Insurance Policy) which are sustained: (1) by a person as a result of an offense directly or indirectly related to employment of such person by the Contractor, or; (2) by another person.

8.3 In addition, the Contractor shall purchase and maintain insurance for claims under workers' compensation (industrial insurance), disability benefit, and other similar employee benefit acts in the State statutory amount, and Employer's Liability with coverage of at least \$250,000.00/\$500,000.00.

8.4 Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment.

8.5 Before commencing Work, the Contractor shall furnish the Port with Certificates of Insurance as evidence of all insurance required by the Contract Documents. No Progress Payment will be due until all such Certificates are furnished. All policies and certificates must be signed copies. Furthermore, the policies of insurance required herein (except for Workers' Compensation Insurance) shall: (i) be written as a primary policy; (ii) expressly provide that such insurance may not be materially changed, amended or canceled with respect to Lessor except upon forty-five (45) days' prior written notice from the insurance company to Lessor; (iii) contain an express waiver of any right of subrogation by the insurance company against the Port and its elected officials, employees or agents; (iv) expressly provide that the defense and indemnification of the Port as an "additional insured" will not be effected by any act or omission by Contractor which might otherwise result in a forfeiture of said insurance; (v) contain a separation of insureds provision such that the policy applies separately to each insured that is subject of a claim or suit; (vi) not contain a cross-claim, cross-suit, or other exclusion that eliminates coverage by one insured against another; and (vii) provide for coverage for damage to the Port's property caused by the Contractor.

## 9. Change Orders:

9.1 The Port may, without invalidating the Contract, order in writing extra Work or make changes to the Work by altering, adding to, or deducting from the Work, and the



Contract Sum and Contract Time shall be adjusted accordingly. All such Work shall be executed under the conditions hereof, and of the Contract Documents, except that any claims for extension of time caused thereby must be agreed upon at the time of ordering such change. Contractor shall make no claims for extras unless the same shall be agreed upon in writing by the Port and signed by the Port prior to the performance of any such extra Work. No change order is valid and binding on the Port unless and until it has been signed by the Port. **NO ORAL INSTRUCTIONS AUTHORIZING A CHANGE IN THE WORK, ADJUSTMENT IN THE CONTRACT SUM, OR ADJUSTMENT IN THE CONTRACT TIME SHALL BE VALID OR BINDING ON THE PORT.**

9.2 In case of any dispute over adjustment of the Contract Sum or the Contract Time, Contractor shall proceed with the Work and deliver to the Port a Statement of Claim setting forth in detail the entitlement and quantum basis for Contractor's claim with supporting data within ten (10) days of the event giving rise to the Statement of Claim. Contractor waives all rights to an increase the Contract Price or extension of time if it fails to provide timely Statement of Claim as required in this Paragraph. The Port does not waive the requirement for timely written Statement of Claim, unless the Port's waiver is unequivocal, explicit, and in writing. The dispute shall be resolved in accordance with the procedures set forth in the Contract.

9.3 Contractor acknowledges that, unless expressly stated otherwise within a written change order, any change in the Contract Sum and/or Contract Time effected through a written change order shall constitute full accord and satisfaction for all costs incurred, labor performed, material and equipment furnished, and any delay, acceleration, or loss of efficiency associated with the change in the Work.

10. Liquidated Damages: The parties agree that time is of the essence of this Contract and that the Port will suffer financial loss if the Work is not completed within the Contract Time set forth above, plus any extensions allowed due to change orders. They also recognize the delays, expense, and difficulties involved in providing the actual loss suffered by the Port if the Work is not completed on time. Accordingly, instead of requiring any such proof, Port and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay the Port \$\_\_\_\_\_ for each calendar day that expires after the time set forth above for completion of the Work.

11. Non-Compliance:

11.1 If the Contractor fails to comply with the terms and conditions of this Contract, the Port will give the Contractor three (3) days' written notice to cure such default. If Contractor fails to correct said default after receipt of written notice from the Port to commence and continue correction of such default or neglect with diligence and promptness, the Port may terminate this Contract in writing and, thereafter, obtain another contractor to perform the Work. Any such costs incurred by the Port shall be charged against the Contractor.

11.2 In addition to the termination rights set forth in Paragraph 11.1, the Port may terminate the Work for its convenience at any time and for any reason or no reason at all. In the event the Port terminates the Contract for convenience, the Port shall give the

Contractor written notice of its intent to terminate as soon as possible and, in any event, at least five (5) working days prior to the date of termination. Upon receipt of the Port's written notice of intent to terminate, the Contractor shall immediately begin taking such steps as are necessary to cancel material and equipment orders, and other subcontracts, in such manner as to minimize cancellation costs. After receipt of a notice of termination for convenience, the Contractor shall submit to the Port a request for costs associated with the termination, which shall be prepared in accordance with the procedures in this Contract. In the event that the Port terminates the Contract for convenience, payment shall be made in accordance with the terms of this Contract for the actual Work performed.

11.3 In the event the Port terminates this Contract for cause but such determination is later determined by a court of law or other binding dispute resolution process that the termination was without cause, such termination shall be deemed a termination for convenience and Contractor shall be compensated as set forth in Paragraph 11.2.

12. Indemnification: To the fullest extent permitted by law, Contractor agrees to defend, indemnify, and hold harmless the Port and its officers, agents, and employees from and against claims, damages, losses and expenses, including but not limited to attorneys' fees and costs, consulting fees, expert fees, and expenses, arising out of or resulting from performance of the Work. Contractor's indemnity and defense obligations do not extend to liability resulting from the sole negligence of the Port and their agents. Contractor's duty to indemnify and defend the Port for liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the concurrent negligence of (a) the Port and their agents; and (b) Contractor or its agents, employees, and subcontractors and suppliers of any tier, shall apply only to the extent of the negligence of Contractor, its agents, employees, and subcontractors and suppliers of any tier.

**FOR PURPOSES OF THE FOREGOING INDEMNIFICATION PROVISION, AND ONLY TO THE EXTENT OF CLAIMS AGAINST CONTRACTOR BY THE PORT UNDER SUCH INDEMNIFICATION PROVISION, CONTRACTOR SPECIFICALLY WAIVES ANY IMMUNITY IT MAY BE GRANTED UNDER THE WASHINGTON STATE INDUSTRIAL INSURANCE ACT, TITLE 51 RCW, THE UNITED STATES LONGSHORE AND HARBOR WORKERS COMPENSATION ACT, 33 USC §901-950, OR ANY OTHER SIMILAR WORKERS' COMPENSATION SCHEMES. THE INDEMNIFICATION OBLIGATION UNDER THIS CONTRACT SHALL NOT BE LIMITED IN ANY WAY BY ANY LIMITATION ON THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE TO OR FOR ANY THIRD PARTY UNDER WORKERS' COMPENSATION ACTS, DISABILITY BENEFIT ACTS, OR OTHER EMPLOYEE BENEFIT ACTS. THE FOREGOING PROVISION WAS SPECIFICALLY NEGOTIATED AND AGREED UPON BY THE PARTIES HERETO**

\_\_\_\_\_  
Contractor

\_\_\_\_\_  
Port of Bremerton

13. Warranty: For a period of one (1) year from the date of final acceptance, the Contractor warrants that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents, will be

performed in a skillful and workmanlike manner in compliance with all applicable codes, and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. If required by the Port, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. The Contractor shall not be relieved of its general warranty obligations by the specification of a particular product in the Contract Documents. During the warranty period the Contractor shall repair or replace any substandard or defective Work at no cost to the Port. The warranty provided in this Paragraph is non-exclusive and shall not replace any other warranty or contractual obligations of the Contractor. The Port expressly reserves all other remedies available to it at law or equity.

14. Job Safety/Housekeeping: Contractor and its lower-tier subcontractors shall take all reasonably necessary safety precautions pertaining to its Work and its Work performance, including, but not limited to, compliance with applicable laws, ordinances, regulations, and orders issued by a public authority, whether federal, state, local, or other, OSHA/WISHA, and any safety measures requested by Port. Contractor shall at all times be responsible for providing a safe jobsite and be responsible for the Work performance and safety of all employees, personnel, equipment and materials within Contractor's or its lower-tier subcontractor's care, custody or control. Contractor and its lower-tier subcontractors shall furnish all required safety equipment for its Work and ensure all of their employees and lower-tier subcontractors' employees have and wear personal protective equipment in compliance with applicable OSHA/WISHA requirements and Port's safety rules, as provided in writing to Contractor. Contractor shall promptly provide Port with written notice of any safety hazard(s) or violation(s) found on the jobsite. Contractor agrees to defend, indemnify and hold Port harmless from all WISHA and/or OSHA claims, demands, proceedings, violations, penalties, assessments, or fines that arise out of or relate to Contractor's or its subcontractors' failure to comply with any safety-related laws, ordinances, rules, regulations, orders or its obligations hereunder. Port may charge against the sums otherwise owing to Contractor the amount of the fine and/or fees, costs and expenses incurred by Port in the defense of the claim's citation and/or fine arising from or related to the Contractor's above-referenced failure.

All Work shall be carried on with due regard for the safety of the public, and Contractor shall maintain strict compliance with the appropriate provisions relating to control of traffic and pedestrians through work areas as set forth in the Manual on Uniform Traffic and Control Devices (current edition) as adopted by the Washington State Department of Highways. Property and streets adjacent to the Project site shall be kept free and clear at all times from accumulations of mud, dirt, gravel, rock, and other matter. Contractor will be responsible for daily and final clean up and disposal of refuse, waste, and debris produced by its operation. Refuse shall not be permitted to accumulate to the extent that it interferes with free access to the Project site. Should the Port determine Contractor is not fulfilling its obligation in this regard, the Port reserves the right to take such action as may be necessary, and to charge Contractor with any costs that may be incurred in such remedial action.

15. Permits. Unless specified otherwise in the Contract Documents, the Contractor shall obtain and pay for all required permits, including the General Building Permit and any associated plan check fees, etc. The Contractor is to provide and pay for any required plan development and engineering, etc. required to obtain the needed permits. The Contractor shall pay for any and all inspections necessary for execution and completion of the Work.

16. Compliance with Laws: Contractor shall comply with all applicable laws in performing the Work, including, but not limited to, all federal, state, and local laws, regulations, codes, and standards that are applicable at the time Contractor performs Work.

17. Taxes and Temporary Functions: Contractor shall pay any and all federal, state, and municipal taxes, including sales taxes, if any, for which Contractor may be liable in carrying out this Contract. Contractor shall be responsible for all temporary functions associated with its Work, including, but not limited to, lighting, wiring, protection, hoisting, scaffolding, rigging, flagmen, drinking water, storage, ventilation, and heat.

18. Dispute Resolution: This Contract has been and shall be construed as having been made and delivered within the State of Washington and shall be governed by the laws of the State of Washington. Any action at law, suit in equity, or judicial proceeding for the enforcement of this Contract or any provisions thereof shall be instituted and maintained only in the Superior Court in and for Kitsap County. In the event that any party commences litigation against the other party relating to the performance, enforcement, or breach of this Contract, the substantially prevailing party in such action shall be entitled to all costs, including attorneys' fees and costs, and any such fees or costs incurred on appeal. Both parties waive their right to a jury trial.

19. Non-Discrimination: The Contractor agrees that it shall not discriminate against any person on the grounds of race, color, religion, national origin, sex, age, marital status, political affiliation or belief, or the presence of any sensory, mental or physical handicap in violation of any applicable federal, state or local law, code or regulation. In the event that the Contractor violates this provision, the Port may terminate this Contract immediately.

20. Independent Contractor: Contractor is an independent contractor and not an agent or employee of the Port.

21. Amendment: No modification, termination, or amendment of this Contract may be made except by written Contract signed by all parties.

22. Waiver: No failure by the Port to insist upon the strict performance of any covenant, duty, Contract, or condition of this Contract or to exercise any right or remedy consequent upon a breach thereof, shall constitute a waiver of any such breach or any other covenant, Contract, term or condition. Any waiver by the Port must be expressly made in writing and signed by the Port.

23. Captions: The captions of this Contract are for convenience and reference only and in no way define, limit, or describe the scope or intent of this Contract.

24. Survivability: All covenants, promises, and performance which are not fully performed as of the date of termination shall survive termination as binding obligations.

25. Severability: In case any one or more of the provisions contained in this Contract shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Contract shall

be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

26. Neutral Authorship: Each of the provisions of this Contract has been reviewed and negotiated, and represents the combined work product of all parties hereto. No presumption or other rules of construction which would interpret the provisions of this Contract, in favor of or against the party preparing the same, shall be applicable in connection with the construction or interpretation of any of the provisions of this Contract.

27. Notice: All notices, demands, requests, consents and approvals which may, or are required to be given by any party to any other party hereunder, shall be in writing and shall be deemed to have been duly given if delivered personally, sent by facsimile, sent by a nationally recognized overnight delivery service, or if mailed or deposited in the United States mail and sent by registered or certified mail, return receipt requested, postage prepaid to the address provided in this Contract or to such other address as either party hereto may from time-to-time designate in writing and deliver in a like manner. All notices shall be deemed complete upon actual receipt or refusal to accept delivery. Electronic transmission of any signed original document, and retransmission of any signed electronic transmission shall be the same as delivery of an original document.

28. Entire Contract: This Contract represents the final understanding of the parties. The entire agreement between the parties hereto is contained in this Contract and the exhibits hereto; and this Contract supersedes all of their previous understandings and agreements, written and oral, with respect to this transaction.

This Contract is entered into as of the day and year first written above.

**PORT OF BREMERTON**

**CONTRACTOR**

\_\_\_\_\_

\_\_\_\_\_

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

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

Title: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT A**  
**[CONTRACTOR'S BOND FORM]**

KNOW ALL MEN BY THESE PRESENTS: That whereas the PORT OF BREMERTON has awarded to \_\_\_\_\_ (Contractor) hereinafter designated as the "Principal", a Contract for \_\_\_\_\_ **[Project Name/Description]** all as hereto attached and made a part hereof, and whereas said Principal is required under the terms of said Contract to furnish a bond for the faithful payment and performance of said Contract:

NOW, THEREFORE, we the Principal and \_\_\_\_\_ a corporation, organized and existing under and by virtue of the laws of the State of \_\_\_\_\_, duly authorized to do business in the State of Washington, as Surety, are held and firmly bound unto PORT OF BREMERTON a municipal corporation of the State of Washington in the sum of: \_\_\_\_\_ Dollars (\$\_\_\_\_\_), lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents. Principal and Surety agree to be bound by the laws of the State of Washington and subject to the jurisdiction of the State of Washington.

THE CONDITION OF THIS OBLIGATION IS SUCH that it shall remain in full force and effect until the above bonded Principal, his or its heirs, executors, administrators, successors, or assigns:

- (i) shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and agreements in the said Contract;
- (ii) shall faithfully perform all the provisions of such Contract and shall also well and truly perform and fulfill all the undertakings, covenants, terms, and conditions and agreements of any and all duly authorized modifications of said Contract that may hereafter be made, at the time and in the manner therein specified;
- (iii) shall pay all laborers, mechanics, subcontractors, and materialmen, and all parties who shall supply such person or persons, or subcontractors, with provisions and supplies for the carrying on of such Work, on his, her, or their part;
- (iv) shall defend, indemnify and save harmless the PORT OF BREMERTON, its officers and agents as required by said Contract; and
- (v) shall further defend, save harmless and indemnify said PORT OF BREMERTON, from any defect or defects in any of the workmanship or materials furnished by the Principal entering into any part of the Work or designated equipment covered by said Contract, which shall develop or be discovered within one (1) year after the final acceptance of such Work at which time this obligation shall become null and void.

Notwithstanding anything else herein, the liability hereunder for defects in materials and workmanship for a period of one (1) year after the acceptance of the Work shall not exceed the sum of \_\_\_\_\_ (100% of the Contract sum) \_\_\_\_\_ Dollars (\$\_\_\_\_\_).

Surety, for value received, hereby further stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the Work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligation on this bond. Surety hereby waives notice of any change, extension of time, alterations or additions to the terms of the Contract or the Work or to the specifications, provided that said changes, extensions, alterations and additions shall not increase the Surety's obligations under this bond by more than ten percent (10%) of the Contract price without written consent of the Surety.

PROVIDED, FURTHER, that no final settlement between the Port and the Contractor shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.



IN WITNESS WHEREOF, the said Principal and the said Surety have caused this bond and one (1) counterpart thereof to be signed and sealed by their duly authorized officers this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Principal

TWO WITNESSES:

\_\_\_\_\_

By \_\_\_\_\_  
Title \_\_\_\_\_

Attest: (If Corporation)  
Corporate Seal

By \_\_\_\_\_  
Title \_\_\_\_\_

\_\_\_\_\_  
Surety

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

Name of Surety's agent and its local office address is:

Name \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

SAMPLE