



P.O. Box 889, Friday Harbor, WA 98250 * 360-378-2688 * fax 360-378-6114 * <http://www.portfridayharbor.org>
Commissioners: Graham Black * Victoria Compton * Barbara Marrett

IOSA HEADQUARTERS SITE PREP AND SEPTIC INSTALLATION INVITATION TO BID

PROJECT DESCRIPTION:

All labor and materials to:

1. Clear and grub for a 60' x 60' pad centered on the 50' x 50' new building site.
2. Create a compacted, level subbase for a 60' x 60' pad. Fill in lifts no deeper than 1' and compact to 95% with vibratory roller. Pad will have a 1' ditch around the high side and be drained to native surfaces lower than the pad subgrade. Pad cut and fill side slopes will be no steeper than 3 to 1.
3. Install and compact a 9" deep aggregate cap on the 60' x 60' subgrade
4. Create new 50' x 20' driveway pad in front new building site with a 2% slope away from building.
5. Create 16' wide driveway connection to the exiting driveway on the western edge of the site. Maintain access to the existing shop building and create no driving surfaces with a grade in excess of 10%.
6. Cap all new driving surfaces with 6" of compacted aggregate.
7. Remove all vegetation and trees cleared from the excavated areas from the site.
8. Supply and install the septic system and curtain drain per attached permit.

DRAWINGS AND SPECIFICATIONS:

Located on the Port's website www.portfridayharbor.org.

PROJECT TIME:

Project can start October 1, 2022 and must be completed by January 31, 2023.

INSTRUCTIONS TO BIDDERS

The bidders attention is especially called to the following forms which must be executed in full and **submitted WITH THE BID**.

- Bid Form: Show the lump sum price for project and for each alternate (if any). Be sure to sign it.



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- Statement of Qualifications and Mandatory License Information.

The following forms will be executed **AFTER the contract is awarded**:

- Small Works Contract: This contract to be executed by the successful bidder and the Port. Small Works Contracts amounts range between \$40,000 - \$300,000
- Performance and Payment Bond: To be executed by the successful bidder and their surety company within 10 days
- Retainage Bond: This is the Contractor's option in lieu of 5% retainage on each contract payment. If no bond the 5% retainage will be withheld.
- Insurance Certificate naming the Port as additionally insurance.
- Intent to Pay Prevailing Wage Form (subcontractors must complete as well)
- Weekly Certified Payroll Reports (subcontractors must complete as well)

Bids should be submitted to bids@portfh.org

Each bid proposal shall be properly addressed to the Port. The name and address of the Contractor and the name of the project for which the bid is submitted.

Proposals must be received by the Port before the time deadline fixed for the opening of bid proposals, **FRIDAY, SEPTEMBER 30, 2022, by 3:00 PM**. It is the sole responsibility of the bidder to see that their bid is received by the Port on time. Any bid proposal received after the scheduled closing time for receipt of bids will be returned to the bidder unopened.

SUBMITTALS REQUIRED FOR BIDS:

- Completed bid form with lump sum price for project
- List similar projects complete within the last three years
- Mandatory License Information
- Completed bid bond form or cashier check in the amount of 5% of project.



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**IOSA HEADQUARTERS SITE PREP AND SEPTIC BID FORM – Due by Friday September 30, 2022,
by 3:00 PM**

Date: _____

Contractor Name: _____

Contractor Address: _____

Contractor Phone number: _____

Contractor License number: _____

Amount of Bid \$ _____

WA State Sales Tax 8.5% \$ _____

TOTAL BID \$ _____

Please list similar projects that you have complete within the last three years.

Signature: _____



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**PORT OF FRIDAY HARBOR CONSTRUCTION CONTRACT
22-0XX
IOSA HEADQUARTERS SITE PREP AND SEPTIC INSTALLATION**

THIS CONSTRUCTION CONTRACT (the “Contract”) is entered into this XXth day of September 2022, by and between the Port of Friday Harbor (the “Port”), whose business address is PO Box 889, Friday Harbor, WA 98250, and the Contractor identified below.

CONTRACTOR

| | |
|-------------------------------|--|
| Contractor's Name | |
| Authorized Representative | |
| Address | |
| Telephone Number | |
| E-mail | |
| 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 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 (the “Work”):



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5. Create 16' wide driveway connection to the exiting driveway on the western edge of the site. Maintain access to the existing shop building and create no driving surfaces with a grade in excess of 10%.
6. Cap all new driving surfaces with 6" of compacted aggregate.
7. Remove all vegetation and trees cleared from the excavated areas from the site.
8. Supply and install the septic system and curtain drain per attached permit.

Work location 532 Shelter Road – Airport Property

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 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, 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:



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- i. Any Change Orders executed by and between the Port and Contractor after execution of this Contract;
- ii. This Contract;
- iii. General Conditions;
- 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 amount of **XXXX, (\$XXX,XXX.XX)**, 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 **April 1, 2022**, after Contractor's receipt of the Notice to Proceed (the "Contract Time").

5. Payment: On or before the first (1st) 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 percent (5%) 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:



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- 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. If applicable, State Department of Labor and Industry - "Letter releasing the Port from Industrial Insurance Contribution Liability" (RCW 51.12.050).
- iv. If applicable, State Employment Security Department - "Certificate of Payment contributions, penalties and Interest on Public Works Contracts" (RCW 50.24.130).
- v. If applicable, State Department of Revenue "Certificate of Payment" letter pursuant to Chapter 60.28 RCW.
- vi. "As-Built" drawings showing red-ink deviations and changes from the Construction Drawings.
- vii. A complete set of maintenance and operation manuals for equipment items installed.
- viii. 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 be 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 (5) 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 One Hundred Fifty Thousand Dollars (\$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



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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.

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 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) One Million Dollars (\$1,000,000.00) per occurrence for bodily injury liability including sickness, disease or death, and Two Million Dollars (\$2,000,000.00) bodily injury liability for all occurrences (other than automobiles);
- b) One Million Dollars (\$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 One Million Dollars (\$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 One Million Dollars (\$1,000,000.00) Combined Single Limit protection for both bodily injury and property damage liability per occurrence and Two Million Dollars (\$2,000,000.00) general aggregate stop loss;
- d) One Million Dollars (\$1,000,000.00) per accident for bodily injury liability including sickness, disease to or destruction of property of others, including loss of use thereof arising out of the operation of automobiles; and;



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e) One Million Dollars (\$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 Two Hundred Fifty Thousand/Five Hundred Thousand Dollars (\$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 the Port except upon forty-five (45) days' prior written notice from the insurance company to the Port; (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 and Claims:

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



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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. CONTRACTOR MUST OBTAIN A WRITTEN CHANGE ORDER PRIOR TO PROCEEDING WITH ANY CHANGE IN THE WORK. IF CONTRACTOR FAILS TO OBTAIN A WRITTEN CHANGE ORDER SIGNED BY THE PORT'S AUTHORIZED REPRESENTATIVE PRIOR TO COMMENCING A CHANGE IN THE WORK, THE CONTRACTOR WAIVES ANY AND ALL RIGHT TO AN ADJUSTMENT IN THE CONTRACT TIME OR CONTRACT SUM RELATED TO SUCH CHANGED WORK.**

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 OF THE CONTRACT SUM 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 **One Hundred Dollars (\$100)** for each day that expires after the time set forth above for completion of the Work. The parties agree that such amount represents a reasonable forecast of the actual damages the Port will suffer by failure of the Contractor to complete the Work within the agreed upon time and is not an arbitrary penalty. The execution of this Agreement constitutes acknowledgement by the Contractor that the Contractor has ascertained and agrees that the Port will actually suffer damages in the above amount.



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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 and Contractor shall not be entitled to any payment on Work not 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 the Port and its officers, agents, and employees harmless 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.



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THIS INDEMNIFICATION OBLIGATION SHALL INCLUDE, BUT IS NOT LIMITED TO, ALL CLAIMS AGAINST THE PORT BY AN EMPLOYEE OR FORMER EMPLOYEE OF THE CONTRACTOR OR ANY SUBCONTRACTOR. FOR PURPOSES OF THE FOREGOING INDEMNIFICATION PROVISION, AND ONLY TO THE EXTENT OF CLAIMS AGAINST CONTRACTOR BY THE PORT UNDER SUCH INDEMNIFICATION PROVISION, THE 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 (Initial)**

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-



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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 claims, citations, and/or fines 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 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



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Contract or any provisions thereof shall be instituted and maintained only in the Superior Court in and for San Juan 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. Amendment: No modification, termination, or amendment of this Contract may be made except by written Contract signed by all parties.

21. 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.

22. 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.

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

24. 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.

25. 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.

26. 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



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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.

27. 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 FRIDAY HARBOR

CONTRACTOR

By: Todd Nicholson
Its: Executive Director_____

By: _____
Its: _____

SAMPLE