

Port of Port Townsend

CONTRACT FOR

XXXXXX AT XXXXX FOR THE PORT OF PORT TOWNSEND, WITHIN THE XXXXX PROPERTIES

ARTICLE 1: AGREEMENT

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

Whereas: In accordance with RCW 53.08.135, the PORT has requested bids via its Small Works Roster, for XXXXX within the Port's Boat Haven Properties in Port Townsend, Washington, and

Whereas: The PORT has received a bid, in response to the above request, from the CONTRACTOR, dated XXXXX, annexed hereto as Exhibit "A", as submitted by XXXX(contractor);

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 perform all work described, as per attached Contract Documents.

In the event of any conflict between the provisions of this Contract and 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.

ARTICLE 3: 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 4: 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 5: 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 insure 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 hereby agrees to abide by applicable regulations during the course of this agreement.

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 he 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 6: 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 7: 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 Agreement.

At CONTRACTOR'S option, these bonds do not have to be provided if the payment retainage clause as described in Article 17 is elected to be followed.

ARTICLE 8: INSURANCE

The CONTRACTOR shall provide Comprehensive General Liability 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.

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.

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 9: 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's 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 10: SAFETY

CONTRACTOR shall at all times keep the premises free from the accumulation of waste materials or rubbish caused by his operations. At the completion of the Work, he shall remove all of his waste material and rubbish from and around the Project as well as all his tools, construction equipment, machinery and surplus materials.

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.

ARTICLE 11: 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 correct all Work performed by it under this Agreement which proves to be defective in material and workmanship within a period of one year from the Date of Substantial Completion.

ARTICLE 12: 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, if CONTRACTOR observes that portions of the drawings are at variance therewith, they 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 13: SUBCONTRACTORS

All portions of the Work that CONTRACTOR does not perform with his own forces shall be performed under subcontracts. No contractual relationship shall exist between the PORT and any Subcontractor. CONTRACTOR shall be responsible for the management of the Subcontractors in the performance of their Work.

ARTICLE 14: 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 15: 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. 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 his scope of work.

Warranties called for by the Agreement 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 16: CONTRACT PRICE

The Contract Price for the Project is XXXXXXX and 00/100 dollars (\$XXXXX), plus Washington State Sales Tax. The contract price 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 17: MEASUREMENT AND PAYMENT

If CONTRACTOR elects to provide a performance/material and labor payment bond as per Article 7, 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 and releases.

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 17. 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 18: CONTRACTOR RECORDS

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.

ARTICLE 19: 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 Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees to be fixed by the court together with such party's actual reasonable costs.

ARTICLE 20: 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 Agreement.

ARTICLE 21: AUTHORIZED REPRESENTATIVES

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

Port	Contractor
Amy J. Khile	XXX.
Director of Finance & Administration	XXX
Port of Port Townsend	XXX
P. O. Box 1180	XXX
Port Townsend, WA 98368	Phone: XXX-XXX-XXXX
Phone: 360-385-0656	

ARTICLE 22: 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 XXth day of XXX, 2014.

Port of Port Townsend XXXXX.

By: Larry C. Crockett
Its: Executive Director

By: XXXX

Approved as to Form:

Port Attorney