

**1. Definitions**

- A. Contract Documents:** The Agreement, CONTRACTOR's Quote, the Port's Request for Quote, Small Works General Conditions and any Supplemental Conditions (if any).
- B. CONTRACTOR:** The business entity with whom PORT has entered the Agreement.
- C. PORT:** The PORT of Everett. Unless the context clearly requires otherwise, the term PORT includes all the PORT's commissioners, officers, employees and other authorized representatives. The term Port also means the authorized representative of the Port authorized to act upon behalf of the Port.
- D. Work:** The entire completed construction or the various separately identifiable parts thereof required to be furnished under the Contract Documents. Work is the result of performing services, furnishing labor, furnishing and incorporating materials, and providing equipment necessary to prosecute the construction effort as required by the Contract Documents.

**2. Contractor Terms & Conditions**

Any Terms and Conditions submitted by the Contractor in connection with this Project are null and void.

**3. Supervision and Construction Procedures**

CONTRACTOR shall supervise and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. CONTRACTOR shall be solely responsible for the means, methods, techniques, sequences and procedures of construction, and for coordinating all portions of the Work under the Contract, including the work of Subcontractors, Sub-Subcontractors, Suppliers and all other persons performing a portion of the work. CONTRACTOR shall be responsible to see that the finished Work complies accurately and completely with the Contract Documents. Either the CONTRACTOR, in person, or an authorized supervisory representative shall remain on site whenever the Work is underway.

**4. Prevailing Wages**

The wage rates to be paid all laborers, workers, and mechanics who perform any part of this Contract shall be not less than the prevailing wage rates as required by Chapter 39.12 RCW. This requirement applies to laborers, workers, and mechanics whether they are employed by the CONTRACTOR, Subcontractors, Sub-Subcontractors, or any other person who performs a portion of the Work contemplated by the Contract Documents.

**5. Performance and Payment Bonds**

Pursuant to RCW 39.08.010 the Contractor, prior to commencing work, shall furnish a Performance Bond and a Payment Bond in a form acceptable to the Port for the full contract sum including sales tax. The bond shall be executed by a licensed surety (or sureties) listed in the current Authorized Insurance Company List for the State of Washington with an AM Best rating of A-6 or higher. If the Contract Price does not exceed \$150,000 the Contractor may, in lieu of providing a bond, request the Port retain 10% of the Contract amount earned for a period of 45 days following acceptance of the work or until receipt of all necessary releases and settlement of any liens filed under Chapter 60.20 RCW, whichever is later, at which time the Port in the ordinary course of business will make final payment.

**6. Insurance**

- A. CONTRACTOR shall comply with the following conditions and procure and keep in force during the term of this Agreement, at CONTRACTOR's own cost and expense, the policies of insurance with companies authorized to do business in the State of Washington, which are rated at least "A" or better and with a numerical rating of no less than VII, by A.M. Best Company and which are acceptable to the PORT.**
  - 1. Commercial General Liability Insurance on an Occurrence Basis in an amount not less than \$1,000,000 per occurrence and at least \$2,000,000 in the annual aggregate, including but not limited to: Bodily Injury Liability, Property Damage Liability (to include explosion, collapse and underground), Blanket Contractual Liability, Premises/Operations (including off-site operations), Broad Form Property Damage Liability, Products: Completed Operations Liability, Personal Injury Liability, Liability for Property of Others in the Care, Custody and Control of the CONTRACTOR. The PORT shall be named an insured under the CONTRACTOR'S Commercial General Liability insurance policy with respect to the Work performed for the PORT using ISO Additional Insured endorsement CG 20 10 10 01 and Additional Insured-Completed Operations endorsement CG 20 37 10 01 or substitute endorsements providing equivalent coverage.**
    - a. If this project involves work on, near or over water, the Port reserves its right to require a Commercial General Liability (CGL) policy with the CGL Marine exclusion removed or a Marine General Liability policy with coverages as specified in Article.**
    - b. If the Contractor utilizes drone(s) on-site, the Contractor shall provide evidence that the aircraft exclusion has been removed from the Commercial General Liability or shall provide a separate policy covering the use of drones in an amount not less than \$1,000,000 per occurrence.**
  - 2. Comprehensive Automobile Liability in an amount not less than \$1,000,000 per occurrence covering all owned, non-owned, hired, and leased vehicles as well as employee vehicles utilized in performance of the Work or at the Work site shall be provided. Coverage shall be written on ISO form CA 00 01 or a substitute form providing equivalent liability coverage. The insurance policy shall be endorsed to provide contractual liability coverage.**

3. Vessel Liability: If CONTRACTOR or any subcontractor of any tier purposes to use watercraft as a part of this project, the following insurance will be required, unless waived in writing:
    - a. Vessel Protection and Indemnity Insurance (including Masters and members of the crew) with limits of liability not less than \$1,000,000 per occurrence. The Port of Everett shall be named by endorsement as an Additional Insured and a Waiver of Subrogation endorsement shall be provided.
    - b. Vessel Pollution Liability with limits of liability at least equal to the Protection and Indemnity limit of liability. The Port of Everett shall be named by endorsement as an Additional Insured and a Waiver of Subrogation endorsement shall be provided.
    - c. Hull & Machinery coverage equal to the actual cash value of the vessel.
  4. Worker's Compensation as required by Washington law and Employer's Liability Insurance (Stop Gap) with limits not less than \$1,000,000 per occurrence. If the PORT authorizes sublet work, the CONTRACTOR shall require each subcontractor to provide Worker's Compensation Insurance for its employees, unless the CONTRACTOR covers such employees.
  5. USL&H Insurance and Jones Act. This project may have situs and status and may require Workers' Compensation coverage for certain Federal acts (USL&H or Jones Act). Unless otherwise specified in the Request for Quotes, the CONTRACTOR has the sole responsibility for determining if these acts are applicable. If they are applicable, the CONTRACTOR has sole responsibility for procuring the appropriate coverage and providing evidence of such coverage to the PORT. Failure of the CONTRACTOR to procure either USL&H or Jones Act coverage shall at no time create liability on the part of the PORT. The CONTRACTOR shall bear all responsibility and shall indemnify and hold harmless the PORT for all liability, cost and damages.
  6. Contractor Pollution Liability may be required as noted in the Request for Quotes. If required, the following shall apply:
    - A. Minimum limits of liability will not be less than \$1,000,000 per claim or occurrence and \$2,000,000 aggregate per policy period of one year, including but not limited to bodily injury, property damage, cleanup costs and defense including costs and expenses incurred in the investigation, defense, or settlement of claims. The CONTRACTOR shall name the PORT as additional insured with respect to the Contractor Pollution Liability.
    - B. If the Contractor Pollution Liability coverage is written on a claims-made form:

The Retroactive date must be shown, and must be the date of the Agreement or the start of Work.

Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the Work. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the Agreement Date, the Contractor must purchase an extended period coverage for a minimum of five (5) years after the completion of the Work. A copy of the claims reporting requirements must be submitted to the PORT for review.
    - B. The CONTRACTOR'S insurance coverage shall be primary insurance as respect to the PORT. Coverage in the amounts of these minimum limits shall not be construed as to relieve the CONTRACTOR from liability in excess of such limits. The Additional Insured Endorsement shall NOT be limited to the amounts specified by the Contract Documents unless expressly waived in writing by the PORT.
    - C. CONTRACTOR certifies that it is aware of the provisions of Title 51 of the Revised Code of Washington which requires every employer to be insured against liability of Workers' Compensation, or to undertake self-insurance in accordance with the provisions of that Title. CONTRACTOR shall comply with the provisions of Title 51 of the Revised Code of Washington before commencing the performance of the Work. CONTRACTOR shall provide the PORT with evidence of Workers' Compensation Insurance (or evidence of qualified self-insurance) before any Work is commenced.
- 7. Disposal of Waste Materials**
- Waste material is defined as all material from demolition, excavation, dredging, or other source that is unsuitable to, or in excess of the needs of the Work, or material that is designated for removal and disposal off PORT property. Unless otherwise specified, all waste materials shall become the property of the CONTRACTOR and shall be disposed of in accordance with Snohomish County Solid Waste Regulations. The CONTRACTOR is solely responsible for the lawful managing and disposal of waste material and shall indemnify, defend and hold the PORT harmless from all liability, damages, claims, lawsuits, penalties and expenses, whether direct, indirect or consequential (including but not limited to attorney's and consultant's fees and other expenses of litigation or arbitration) arising from or in any way connected with, the demolition, excavation, removal or disposal of materials, except as specified for hazardous materials
- 8. Subcontractors and Sub-Subcontractors**
- All Work performed for CONTRACTOR by a Subcontractor will be pursuant to an appropriate agreement between CONTRACTOR and the Subcontractor which specifically binds the Subcontractor to the applicable terms and conditions of the Contract Documents for the benefit of PORT. In accordance with RCW 39.06.020, the CONTRACTOR must verify responsibility criteria for each first tier subcontractor, and a subcontractor of any tier that hires other subcontractors must verify responsibility criteria for each of its subcontractors.
- 9. Taxes**
- CONTRACTOR shall pay all applicable sales, consumer, use and other similar taxes required to be paid by CONTRACTOR.

**10. Submittals**

The CONTRACTOR shall provide to the PORT all Submittals required by the Contract Documents accompanied by a "submittal transmittal" form. Such Submittals shall be given to the ENGINEER in a timely manner. The CONTRACTOR shall take into account sufficient time for the possibility of rejection of the Submittal, needed revisions, and resubmittal review time. A unique number, sequentially assigned, shall be noted on the transmittal form.

**11. Utilities and Similar Facilities**

The CONTRACTOR shall protect all private and public utilities from damage resulting from the Work. In accordance with RCW 19.122, the CONTRACTOR shall call the One-Number Locator Service for field location of utilities. If no locator service is available for the area, notice shall be provided individually to those owners of utilities known to, or suspected of, having underground facilities within the area of the proposed excavation.

**12. Warranties**

All Work will be of good quality, free from fault or defect, and in strict accordance with the requirements of the Contract Documents. Any Work not conforming to the foregoing warranty, including unapproved or unauthorized substitutions, shall be considered defective. If, within one year after completion of the Work or such longer period as may be prescribed by law or the terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be defective or otherwise not in conformance with the Contract Documents, the CONTRACTOR shall, at its sole cost, promptly correct such defect or non-conforming Work after receipt of written notice from the PORT. All Subcontractors', Sub-Subcontractors', manufacturers', and Suppliers' warranties and guarantees, expressed or implied, respecting any part of the Work and all materials used therein shall be obtained and enforced by the CONTRACTOR for the benefit of the PORT without the necessity of separate transfer or assignment thereof. This section shall be in addition to those warranties imposed by law.

**13. Hazardous Materials**

The CONTRACTOR shall exchange hazardous materials information to prevent injury or illness to PORT or CONTRACTOR personnel in compliance with WISHA WAC 296-155-180. The CONTRACTOR will take precautions to lessen the possibility of exposure. CONTRACTOR shall not cause or permit any hazardous materials to be brought upon, kept or used in or about the job site except to the extent such hazardous materials are necessary for the prosecution of the Work or are required pursuant to the Contract Documents.

**14. Clean Up**

At all times the CONTRACTOR shall clean up and remove all refuse resulting from the Work in order that the Project Site remains free from an accumulation of construction debris

**15. Archeological Items**

If resources of potential archeological significance are encountered during construction or excavation, the CONTRACTOR will immediately stop work in the vicinity of the find and notify the PORT.

**16. Gratuities**

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

**17. Indemnification**

To the fullest extent permitted by law and subject to this Article, the CONTRACTOR shall defend, indemnify and hold harmless the PORT and its agents from all liability, claims, damages, losses and expenses, whether direct, indirect or consequential (including, but not limited to, attorneys' and consultants' fees and other expenses of litigation or arbitration) arising out of the performance of the Work, which is caused, or alleged to be caused, in whole or in part, by any negligent act or omission of the CONTRACTOR (which for the purposes of this Article shall include the CONTRACTOR and all of its Subcontractors, Sub-Subcontractors, Suppliers, agents, any other person directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable); provided, however, that where such liability, claim, damage, loss or expense arises from the concurrent negligence of (1) the PORT or its agents, and (2) the CONTRACTOR, it is expressly agreed that the CONTRACTOR's obligations of indemnity under this paragraph shall be effective only to the extent of the CONTRACTOR's negligence. Such obligations shall not be construed to negate, abridge or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any person or entity described in this paragraph. This Article shall not be construed to require the CONTRACTOR to defend, indemnify, or hold harmless the Port from such claims, damages, losses or expenses caused by or resulting from the sole negligence of the PORT or its agents. In any and all claims against the PORT or its agents, the indemnification obligation of this Article above shall not be limited in any way to the extent of insurance coverage described in the Contract Documents, or by any limitation on the amount or type of damages, compensation benefits payable by or for the CONTRACTOR under applicable workers' compensation, benefit, or disability laws (including, but not limited to the Industrial Insurance laws, Title 51 of the Revised Code of Washington). The CONTRACTOR expressly waives any immunity the CONTRACTOR might have had under such laws with respect to the indemnities set forth in these General Conditions, and, by agreeing to enter this Contract, acknowledges that the foregoing waiver has been mutually negotiated by the parties. The CONTRACTOR shall pay all

attorney's fees and expenses incurred by the PORT in establishing and enforcing the PORT's rights under this paragraph, whether or not suit was instituted.

#### 18. Changes in the Work

Additional Work performed without authorization of a Change Order will not entitle CONTRACTOR to an increase in the Contract Price or an extension of the Contract Time. If the CONTRACTOR believes it is entitled to a change in Contract Price or Contract Time, it shall notify the appropriate PORT representative immediately and follow up with a Change Order Proposal.

- A. **CONTRACT PRICE:** The Contract Price may only be changed by a Change Order executed by the PORT and CONTRACTOR. The value of any Work covered by a Change Order shall be determined in one of the following ways:
  - 1. Where the work involved is covered by unit prices or a Schedule of Rates contained in the Contract Documents, by application of the unit prices or Schedule of Rates to the quantities involved.
  - 2. By mutual acceptance of a lump sum.
- B. **Cost of Work:** The term Cost of Work means the sum of all costs necessarily incurred and paid by CONTRACTOR in the proper performance of the Work. Except as otherwise agreed to by the PORT, such costs shall be in amounts no higher than those prevailing in the locality of the project. Cost of Work includes: payroll of employees employed on the Work, materials, supplies, CONTRACTOR owned equipment, third party rental equipment and subcontractors. Cost of Work does not include profit, payroll of CONTRACTOR's officers, executives, professional employees, and other personnel employed for general administration of the Work, home and branch office expenses, capital expenses, premiums for bonds and insurance, and other overhead expenses.
- C. **CONTRACTOR'S Fee:** The CONTRACTOR's Fee allowed to CONTRACTOR for items included in the Cost of Work shall be determined as follows:
  - 1. mutually acceptable fixed fee; or if none can be agreed upon,
  - 2. a fee based on the following percentages of the various portions of the Cost of the Work:
    - a. Labor, materials and supplies, and CONTRACTOR owned equipment, the CONTRACTOR's Fee shall be twenty percent (20%)
    - b. Third party rental equipment, the CONTRACTOR's Fee shall be fifteen percent (15%).
    - c. Subcontractors, the CONTRACTOR's Fee shall be five percent (5%); the maximum allowable to the Subcontractor of any tier as a fee for overhead and profit shall be fifteen percent (15%), and
    - d. Overhead and Profit: no fee shall be paid.
- D. **CONTRACT TIME:** The Contract Time may only be changed by a Change Order. Any request for an extension in the Contract Time shall be based on written notice delivered to PORT within seven (7) days of any event that may have caused time loss. Any change in the Contract Time approved by the PORT shall be incorporated in a Change Order.
- E. **CONTRACTOR'S WAIVE.** UPON PAYMENT OF A CHANGE ORDER, CONTRACTOR WAIVES ANY CLAIM FOR INCREASED CONTRACT PRICE, OR INCREASED TIME FOR PERFORMANCE THAT OTHERWISE MIGHT HAVE ARISEN UNDER THIS AGREEMENT.

#### 19. Tests and Inspections

CONTRACTOR shall be responsible for all tests and inspections associated with permitting. The Port shall be responsible for special testing. The CONTRACTOR shall give PORT timely notice of readiness of the Work for all required inspections, tests or approvals. Neither observations by PORT or Inspector nor inspections, tests or approvals by others shall relieve CONTRACTOR from its obligations to perform the Work in accordance with the Contract Documents.

#### 20. PORT May Stop the Work

If the CONTRACTOR fails to perform the Work in accordance with the Contract Documents, fails to correct defective Work as required by the Contract Documents, or fails to comply with any other directive issued by the PORT, the PORT may order, in writing, that the CONTRACTOR stop all or any portion of the Work until the cause for such order is eliminated. In the event of such an order to stop Work, the CONTRACTOR shall not be entitled to any increase in the Contract Time or Contract Price, nor to any damages or relief from liability, because such order to stop Work.

#### 21. Correction or Removal of Defective Work

If required by PORT, CONTRACTOR shall promptly, without cost to PORT and as specified by PORT, either correct any defective Work, whether or not fabricated, installed or completed, or, if the Work has been rejected by PORT, remove it from the site and replace it with non-defective Work.

#### 22. Invoices

- A. CONTRACTOR shall submit to Project for review a single Pay Application for all Work completed or a monthly Progress Pay Application, filled out and signed by CONTRACTOR covering the Work completed as of the last day of the preceding calendar month. The closeout date for each progress payment period shall be the last day of the month, unless otherwise mutually agreed upon. If a single pay application is submitted, the Port will not release payment until the project closeout documentation has been received. Payment terms are Net 30.
- B. The Pay Application shall be accompanied by such supporting documentation as is required by the Contract Documents and as PORT may require. Documentation for unit price items, such as weigh tickets, load tickets, or other similar documentation, shall be accompanied by a chronological tabular list of such tickets.

- C. For Not to Exceed Amount contracts, the Port shall pay the Contractor a sum equal to the number of hours actually worked multiplied by the rate identified herein for the staff performing the Work, subject to the maximum stated in the Contract Documents.
- D. CONTRACTOR warrants and guarantees that title to all Work, materials and equipment covered by any Pay Application, whether incorporated in the Project or not, will pass to PORT at the time of payment free and clear of all liens, claims, security interests and encumbrances hereafter in these General Conditions referred to as "Liens".
- E. Retained amounts, if any, will be handled in accordance with RCW 60.28 and with the instructions provided by the CONTRACTOR.

### 23. Project Closeout

- A. When CONTRACTOR considers the entire Work ready for its intended use CONTRACTOR shall notify the PORT in writing and certify that the entire Work is substantially complete. The PORT shall inspect the work and identify any punchlist items.
- B. The following items are required to close out the project:
  - 1. Verification that the Contractor has completed the punchlist items
  - 2. Verification that all third-party inspections have been conducted and Work has passed inspection
  - 3. Operations and Maintenance Manuals, Warranty documentation, Maintenance Bonds (if any)
  - 4. Affidavits of wages paid & affidavit that all subcontractors and materialmen have been paid
  - 5. Verification that all property of the PORT provided for CONTRACTOR's use have been returned
  - 6. Other documents as required by the Contract Documents
- C. Once the items listed above have been received, the Port will release the final Pay Application payment less retainage (if any).
- D. Once the final payment has been made, the Port will issue final acceptance.

### 24. Suspend the Work

PORT may, at any time and without cause, suspend the Work or any portion thereof by notice in writing to CONTRACTOR and PORT which shall fix the date on which Work shall be resumed. CONTRACTOR shall resume the Work on the date so fixed. CONTRACTOR will be allowed an increase in the Contract Price, or an extension of the Contract Time, or both, directly attributable to any PORT directed suspension, and substantiated, is in accordance with the change order provisions of these General Conditions.

### 25. Termination for Default

The PORT may terminate the Agreement following written notice to the CONTRACTOR and its Surety if CONTRACTOR refuses or fails to prosecute the Work with such diligence to ensure completion in accordance with the Contract Documents or violates any material way any provisions or requirements of the Contract Documents. Notice to Cure: The PORT shall give written notice to the CONTRACTOR and its Surety indicating that the CONTRACTOR is in breach of the Contract and that the CONTRACTOR shall remedy the breach to the PORT's satisfaction within ten (10) days after the notice is sent. If the Contractor fails to cure, the Port may terminate the agreement and the Contractor will not be entitled to receive further payments on the Contract except for Work properly executed through the date of termination.

### 26. Termination for Convenience

Upon ten (10) days' written notice to the CONTRACTOR, the PORT may, at its convenience and without cause, terminate all or part of the Agreement. If the PORT terminates the Agreement or any portion thereof for convenience, the CONTRACTOR shall be entitled to receive payment consistent with the Contract Documents only for Work properly executed through the date of termination, and costs necessarily incurred by reason of the termination (such as the costs of settling and paying claims arising out of the termination under subcontracts or orders. The PORT shall have title to all Work performed through the date of termination.

### 27. Use of Name & Logo

All uses of any logo or name of the Port of Everett publicly for publicity, promotion or otherwise must have prior written approval by Port before any use. All requests for approval pursuant to this Section must be submitted to Public Affairs, at the following e-mail address: [publicaffairs@portofeverett.com](mailto:publicaffairs@portofeverett.com) at least five (5) business days prior to the date on which a response is needed.

### 28. Claim Resolution

- A. A CONTRACTOR may submit a Claim if they disagree with the denial of a Change Order Proposal. The Claim must be submitted within seven (7) days of denial of a Change Order Proposal. Every Claim must be submitted by the CONTRACTOR in writing and contain all facts which give rise to the claim, copies of identified documents that support the Claim, the remedy requested, a notarized statement certifying, under penalty of perjury, that the Claim is made in good faith, that the supporting cost and pricing data, except for Blue Book equipment rates, have been incurred, are true and accurate to the best of CONTRACTOR's knowledge and believe, that the Claim is fully supported by the accompanying data, and that the amount requested accurately reflects the adjustment in the Contract Price or Contract Time for which CONTRACTOR believes the PORT is liable, a statement that the Claim covers all direct, indirect, consequential changes in cost and in time, and otherwise to which the CONTRACTOR and Subcontractors and Suppliers of any tier is entitled. The basis of CONTRACTOR's Claim must set forth Contractor's damages, through such means as schedule analysis, cause/effect analysis, impact analysis, and the like, and provide documentation that clearly points to the PORT as the responsible party for the impact. The parties shall enter the Claim resolution process in good faith. At all times during the Claim the CONTRACTOR agrees to continue to perform the Work with due diligence, unless a stop

work order has been issued by the PORT. Both parties have a duty to take all reasonable steps necessary to mitigate losses resulting from the Claim whether those losses are their own or another party's losses.

**B. Dispute Resolution Process**

1. **Level I.** Within seven (7) days of receipt of the CONTRACTOR's documentation, the CONTRACTOR's PORT and the PORT shall meet, confer, and set a schedule for resolving the claim. The PORT shall have the right to request additional information from the CONTRACTOR and its Subcontractors, Suppliers, etc., at any time prior to or during the Level I meeting. If the CONTRACTOR does not agree with the findings of the Level I meeting, CONTRACTOR must submit a written rebuttal addressing each point of disagreement, and citing the specific documentation supporting its opinion. This rebuttal must be received by the PORT within 30 days of the Level I findings or the claim will be deemed abandoned. The terms of the resolution of all claims concluded in Level I meetings shall be documented in writing and signed by each party.
2. **Level II.** If an agreement cannot be reached in Level I, and upon receipt of the rebuttal, within 30 days, the PORT's and CONTRACTOR's executive representatives shall meet, confer, and set a schedule to reach resolution of the claim. The PORT shall have the right to request additional information from the CONTRACTOR and its Subcontractors, Suppliers, etc., at any time prior to or during the Level II meeting. If an adjustment to the Level II meeting schedule is necessary to accommodate such requests for additional information, such adjustment shall be as mutually agreed by the representatives. If the CONTRACTOR does not agree with the findings of the Level II meeting, CONTRACTOR must submit a written rebuttal addressing each point of disagreement, and sighting the specific documentation supporting its opinion within 30 days of the Level II findings or the Claim will be deemed abandoned. This rebuttal can include arguments from the Level I rebuttal but must also include additional arguments not covered in the Level I rebuttal. After reviewing the rebuttal if agreement still cannot be reached the CONTRACTOR may proceed Mediation
3. **Mediation.** If the Claim is not resolved in the Level II meeting, the CONTRACTOR may bring no Claim against the PORT in litigation unless the Claim is first subject to non-binding mediation. Mediation shall be conducted before a single mediator under the Voluntary Construction Mediation Rules of the American Arbitration Association. The parties shall schedule mediation sessions at the earliest possible date(s), subject to the schedule of the selected (or appointed) mediator. The parties shall cooperate with the mediator and assure timely and full access to such personnel and documents as the mediator may request. The costs of mediation shall be equally divided between the parties.
4. **Litigation and contractor's waiver:** in the event contractor fails to adhere to the requirements set forth in this section, such failure shall constitute either an implied or knowing, intentional and voluntary waiver of any claim, cause of action, or lawsuit, directly or indirectly, that is the subject of the dispute.
5. **Contractor's waiver of statute of limitations.** Contractor shall file suit not later than one year of final acceptance concerning any claim that may be unresolved by the process set for the in this section.

**29. Giving Notice**

Whenever any provision of the Contract Documents requires the giving of written notice it shall be deemed to have been validly given if delivered in person or via email to the individual for whom it is intended, or if delivered at or sent by registered or certified mail, postage prepaid, to the last business address on file with giver of the notice.

**30. Computation of Time**

When any period of time is referred to in the Contract Documents by Days, it shall be computed as a calendar day to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day shall be omitted from the computation.

**31. Governing Law, Venue and Jurisdiction.**

The Contract Documents shall be governed by the laws of State of Washington. The sole venue and jurisdiction for any claim, cause of action, suit, proceeding, or any other remedy arising out of or in connection with this Contract shall be Snohomish County Superior Court, Everett, Washington. Any legal proceeding against the PORT shall be perfected within one (1) year of Final Acceptance.

**32. Non-Discrimination**

The PORT is strongly committed to providing a business environment free from discrimination and unlawful harassment including but not limited to, discrimination and harassment on the basis of religion, age, sex, marital status, race, color, creed, national origin, political affiliation, military status, status as an honorably discharged veteran, a disabled veteran or Vietnam era veteran, sexual orientation, any real or perceived sensory, mental or physical disability, or because of the participation or lack of participation in union activities, or inclusion in any other legally protected group. The CONTRACTOR shall fully comply with all federal, state and local laws, regulations and ordinances pertaining to non-discrimination, including but not limited to Port policies prohibiting conduct in violation of 42 USC 1983. Such Port policies are incorporated herein by reference.

**33. Certification Regarding Suspension, Debarment, Ineligibility or Voluntary Exclusion**

- a. Pursuant to 2 CFR 200.213, the Contractor, by signing this agreement, certifies that it is not suspended, debarred, proposed for debarment, declared ineligible or otherwise excluded from contracting with the federal government, or from receiving contracts paid for with federal funds. If the Contractor is unable to certify, they must provide an explanation as to why they cannot prior to signing the agreement. The Contractor shall provide immediate written notice to the Port if at any time the Contractor learns that its certification was erroneous or has become erroneous by reason of changed circumstances, or have received notice that

they have been suspended, debarred, proposed for debarment, declared ineligible or otherwise excluded from contracting with the federal government, or from receiving contracts paid for with federal funds. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in 2 CFR 180.

- b. The Contractor agrees it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under the applicable Code of Federal Regulations, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction. Pursuant to 2 CFR 180.330, the Contractor is responsible for ensuring that any lower tier covered transaction complies with certification of suspension and debarment requirements. The Contractor agrees that it will include this clause without modification in all lower tier covered transactions.