

PROJECT NAME: Orcas Island Airport,
Obstruction Removal,
A.I.P. Project No. 3-53-0023-015- 2017,

CONTRACT

This contract (the "Contract" is made and entered into this 8th day of September 2017 by and between the Port of Orcas, a Washington municipal corporation (the "Port") and Oceanside Construction, Inc., a Washington general contractor, (the "CONTRACTOR") for the construction of the Project noted above.

1. Project. CONTRACTOR, in consideration of the sum to be paid by the OWNER as set forth in the Proposal by CONTRACTOR and of the covenants and agreements herein contained, hereby agrees at his own cost and expense to do all the work and furnish all the materials, tools, labor, and all appliances, machinery and appurtenances for the Project as defined above in full compliance with the Contract Documents referred to herein and in accordance with the schedule therein.

2. Contract Documents. The following "Contract Documents" are hereby referenced and made a part of this Contract.

- a. The Invitation to Bid and Instructions to Bidders
- b. The Proposal of the CONTRACTOR
- c. This Contract
- d. The General Provisions
- f. The FAA Contract Provisions
- g. The Construction Safety and Phasing Plan
- h. The Technical Specifications
- i. The Appendix
- j. The Plans and Specifications

3. Payment. In consideration of the faithful performance of the work herein embraced, as set forth in these Contract Documents, and in accordance with the direction of the Engineer and the OWNER's satisfaction to the extent provided in the contract Documents, the OWNER agrees to pay the CONTRACTOR the amount bid as adjusted in accordance with the proposal as determined by the Contract Documents and specified by the OWNER or as otherwise herein provided, and to make such payments in the manner and times provided in the Contract Documents. The CONTRACTOR agrees to accept as full payment hereunder the amounts computed as determined by the Contract Documents and based on the said proposal.

3.1. Retainage. Pursuant to chapter 60.28 RCW and the General Provisions the OWNER will retain 5% of each and every payment as retainage.

4. Prevailing Wage Law. Before any payment is made of any sum or sums due, CONTRACTOR and any or all subcontractors must file and receive an approved statement from the Industrial Statistician, certifying the rate of hourly wage paid each classification of laborer or workman employed by him on such work and further certifying that no laborer or workman employed by him for this work has been paid less than the prevailing wage rate in San Juan County, which certificate and statement to be so filed will be verified by the oath of the CONTRACTOR or subcontractor, as the case may be, that he has read such statement and certificate subscribed by him, knows the contents thereof, and that the same is true as he verily believes.

4.1. Disputes Regarding Wages. In case a dispute arises as to the prevailing wage rates for work of a similar nature and such dispute cannot be adjusted by the parties involved, the matter shall be referred to arbitration by the Director of the Department of Labor and Industries of the State of Washington, and his decision shall be final and conclusive and binding upon all parties involved in the dispute.

4.2. Washington Prevailing Wage Law. CONTRACTOR acknowledges his familiarity with R.C.W. 39.12 ("Prevailing Wage Law"), as the same pertains to payment of prevailing wages and agrees to comply therewith. The CONTRACTOR shall be responsible for the compliance with the requirements of Prevailing Wage Law by all firms (including subcontractors, lower tier subcontractors, suppliers, manufacturers and fabricators) engaged in any part of the work necessary to complete this Contract.

4.3. Compliance with Davis-Bacon Act. The CONTRACTOR will comply with the wage rates determined under the Davis-Bacon Act (40 U.S.C.A. §§ 276a to 276a-5).

5. Contractor Bonds. CONTRACTOR agrees to furnish OWNER all bonds required in the Contract Documents within ten (10) calendar days of Notice of Award.

6. Delays. The CONTRACTOR shall receive no compensation for delays or hindrances to the work, except when direct and unavoidable extra cost to the CONTRACTOR is caused by the failure of the OWNER to provide information or material, if any, which is to be furnished by the OWNER. When such extra compensation is claimed, a written statement thereof providing specific detail of the basis for the claim shall be presented by the CONTRACTOR to the Engineer. If the Engineer finds the claim to be appropriately documented, it shall be referred to the OWNER for final approval or disapproval; and the action thereon by the OWNER shall be final and binding.

7. Certification of Non-Segregated Facilities *(for Federally assisted projects).* The CONTRACTOR agrees by signature herein below that he is deemed to have signed and agreed

to the provisions of certification of non-segregated facilities which is included as an exhibit to the Invitation to Bid and Instructions to Bidders.

8. Equal Employment Opportunity Responsibilities. The CONTRACTOR shall fully comply with all applicable state and federal employment and discrimination laws and regulations.

9. Indemnification by Contractor and Title 51 Waiver. To the fullest extent permitted by law and to the extent claims, damages or losses or expenses are not covered by insurance purchased by CONTRACTOR, the CONTRACTOR shall defend and indemnify the OWNER and OWNER's employees and Commissioners from any claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of, or resulting from the performance of, the Work, but only to the extent caused by the acts or omissions of the CONTRACTOR, a subcontractor or supplier, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable. This indemnification obligation shall include, but is not limited to, all claims against the OWNER by an employee or former employee of the CONTRACTOR or any subcontractor or supplier. For this purpose, the CONTRACTOR expressly waives, as respects the OWNER only, all immunity and limitation on liability under any industrial insurance Act, including Title 51 RCW, or other workers compensation act, disability act, or other employees benefits of any act of any jurisdiction which would otherwise be applicable in the case of a such a claim. **BY INITIALING BELOW THE OWNER AND CONTRACTOR CERTIFY THE WAIVER OF IMMUNITY SPECIFIED BY THIS PROVISION WAS MUTUALLY NEGOTIATED.**


OWNER


CONTRACTOR

10. Time. It is agreed the time limit for substantial completion of the contract, shall be the time as specified in the General Provisions, Section 80-08. In the event that the CONTRACTOR shall fail to complete the work within the time limit or the CONTRACTOR shall fail to complete the work within the time limit or the extended time limit agreed upon, as more particularly set forth in the Contract Documents, liquidated damages shall be paid at the rate as described in the General Provisions. Sundays and legal holidays shall be excluded in determining days in default.

11. Insurance. The CONTRACTOR shall purchase and maintain such insurance as will protect CONTRACTOR and OWNER from claims set forth below which may arise out of or result from the CONTRACTOR's operations under this Contract whether such operations be by himself or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable.

a. Claims under Workers' or Workmen's Compensation, disability benefit and other similar employee benefit acts;

b. Claims for damages because of bodily injury, occupational sickness or disease, or death of his employees;

c. Claims for damages because of bodily injury, sickness or disease, or death of

any person other than his employees;

d. Claims for damages insured by usual personal injury liability coverage which are sustained (i) by any person as a result of an offense directly or indirectly related to the employment of such person by the CONTRACTOR, or (ii) by any other person;

e. Claims for damages, other than to the work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom; and

f. Claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.

11.1. Minimum Limits Required. The minimum limits of insurance coverage shall be as follows:

a. The CONTRACTOR shall comply with Title 51 of the Revised Code of Washington, commonly referred to as the "Workman's Compensation Act," and all amendments thereto.

b. Commercial general liability insurance ("CGLI"), with a Completed Operations Endorsement, with policy limits of not less than One-Million Dollars (\$1,000,000) for each occurrence of bodily injury (including death) and not less than One Million Dollars (\$1,000,000) for each occurrence of property damage and Two Million Dollars (\$2,000,000) general aggregate

11.2. Additional Insured Status. The insurance under section 11.1(b) shall be endorsed to include OWNER and Engineer as additional insureds. Certificates of Insurance and evidence of additional insured status acceptable to the OWNER shall be filed with the OWNER prior to commencement of the work. These certificates shall contain a provision that coverages afforded under the policies will not be canceled until at least thirty days' prior written notice has been given to the OWNER.

11.3. Miscellaneous Insurance Provisions. Nothing contained in these insurance requirements is to be construed as limiting the extent of the CONTRACTOR's responsibility for payment of damages resulting from his operations under this Contract. In case of the breach of any provision of this article, the OWNER, at his option, may take out and maintain at the expense of the CONTRACTOR such insurance as the OWNER may deem proper and may deduct the cost of such insurance from any monies which may be due or become due the CONTRACTOR under this Contract. The CONTRACTOR shall not commence work under this Contract until he has obtained all the insurance required hereunder and such insurance has been reviewed by the OWNER, nor shall the CONTRACTOR allow any subcontractor to commence work on his subcontract until all similar insurance required for that portion of the work has been so obtained. Review of the insurance by the OWNER shall not relieve or decrease the liability of the CONTRACTOR hereunder.

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

13. Notices. 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 deposited in the United States mail and sent by registered or certified mail, return receipt requested, postage prepaid to:

OWNER: Port of Orcas
ATTN: Airport Manager
P.O. Box 53
Eastsound, Washington 98245-0053

CONTRACTOR: Oceanside Construction, Inc.
2123 E Bakerview Rd.
Bellingham, WA 98226

or to such other address as the foregoing parties 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. Facsimile transmission of any signed original document, and retransmission of any signed facsimile transmission shall be the same as delivery of an original document.

14. Amendment. No modification, termination or amendment of this Contract may be made except by written agreement signed by all parties, except as provided herein.

15. Waiver. No failure by either party to insist upon the strict performance of any covenant, duty, agreement, 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, agreement, term or condition.

16. 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.

17. 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.

18. 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.

19. Attorney Fees. The prevailing party in any action concerning this Contract shall be awarded their reasonable attorney fees and costs

20. Governing Law, Jurisdiction and Venue. This Contract, and the right of the parties hereto, shall be governed by and construed in accordance with the laws of the State of Washington, and the parties agree that in any such action, venue shall lie exclusively in San Juan County, Washington and not in the federal courts of any jurisdiction.

21. Time of Performance. Time is specifically declared to be of the essence of this Contract and of all acts required to be done and performed by the parties hereto.

22. No Third-Party Beneficiaries. There are no third-party beneficiaries to this Contract.

23. Counterparts and Authority. This Contract may be signed in counterparts. Each person signing below represents and warrants that they have complete authority to execute this Contract.

24. Facsimile or Electronic PDF File Transmission. This Contract and all subsequent notices or modifications may be executed by the parties and transmitted by facsimile or electronic transmission of a PDF file and, if so executed and transmitted this and all subsequent notices or modifications will be for all purposes as effective as if the parties had delivered an executed original.

25. Entire Agreement. The entire agreement between the parties hereto is contained in this Contract and this Contract supersedes all their previous understandings and agreements, written and oral, with respect to this transaction. This Contract may be amended only by written instrument executed by the parties after the date hereof

IN WITNESS WHEREOF, the parties hereto have executed this CONTRACT in duplicate the day and year first above written.

OCEANSIDE CONSTRUCTION, INC.

By: 

JOSEPH BALDWIN, PRESIDENT
Print name and Title

Date signed: SEPT 8th 2017

PORT OF ORCAS

By: 

ANTHONY G. SIMPSON, AIRPORT MANAGER
Print Name and Title

Date signed: SEPT 12, 2017

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20. Governing Law, Jurisdiction and Venue. This Contract, and the right of the parties hereto, shall be governed by and construed in accordance with the laws of the State of Washington, and the parties agree that in any such action, venue shall lie exclusively in San Juan County, Washington and not in the federal courts of any jurisdiction.

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OCEANSIDE CONSTRUCTION, INC.

By: 
JOSEPH BALDWIN, PRESIDENT
Print name and Title

Date signed: SEPT 8TH 2017

PORT OF ORCAS

By: _____

Print Name and Title

Date signed: _____

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