

**STANDARD SHORT FORM AGREEMENT BETWEEN OWNER AND CONTRACTOR
(Lump Sum Price)**

This Agreement is made this [_____] day of [October], [2016], by and between

OWNER, [Raft Island Improvement Association_____]

and

CONTRACTOR, [_____]

Tax identification number (TIN) [_____] Contractor License No., if applicable [_____]

The Owner and Contractor are collectively the "Parties." Notice to the Parties shall be given at the above addresses.

PROJECT: [Raft Island Road and Drainage Repair Project_]

OWNER'S REPRESENTATIVE: Richard J. Day, RJD & Associates. Mr. Day shall have full authority to act for and on behalf of the Owner in the administration of this Agreement and the Project.

1. **THE WORK** The Contractor shall furnish construction administration and management services and use the Contractor's diligent efforts to perform the Work in an expeditious manner consistent with the Contract Documents. The Contractor shall provide all labor, materials, equipment and services necessary to complete the Work, as described in Part I, Part II and Part III, all of which shall be provided in full accord with and reasonably inferable from the Contract Documents.

2. **PRICE** As full compensation for performance by the Contractor of the Work, the Owner shall pay the Contractor the lump sum price of [_____]no/100] dollars [(\$[_____])]. The lump sum price is hereinafter referred to as the Contract Price, which shall be subject to increase or decrease as provided in this Agreement.

3. **EXHIBITS** The following attached exhibits are made part of this Agreement:

- A. EXHIBIT A: Solicitation and Request for Bids, [5] pages.
- B. EXHIBIT B: The Bid Package Part I, [13] pages.
- C. EXHIBIT C: Bid Package Part II & III, [11] pages.
- D. EXHIBIT D: Progress Schedule, [_____] pages.
- E. Contract Addendum No.
- F. Contract Addendum No.

4. **ETHICS** The Parties shall perform their obligations with integrity, ensuring at a minimum that each: (a) avoids conflicts of interest and promptly discloses any to the other Party; and (b) warrants that it has not and shall not pay nor receive any contingent fees or gratuities to or from the other Party, including its agents, officers, and employees, subcontractors, or others for whom they may be liable, to secure preferential treatment.

5. CONTRACTOR'S RESPONSIBILITIES The Contractor shall be responsible for supervision and coordination of the Work, including the construction means, methods, techniques, sequences, and procedures utilized, unless the Contract Documents give other specific instructions.

5.1. Except for permits and fees that are the responsibility of the Owner pursuant to this Agreement, the Contractor shall obtain and pay for all necessary permits, licenses, and renewals pertaining to the Work. Contractor shall furnish to Owner copies of all permits, licenses, renewals and any other requisite approvals of any governmental body (including those obtained by subcontractors) as such documents are received by Contractor.

5.2. The Contractor shall pay all applicable taxes legally enacted when bids are received or negotiations concluded for the Work provided by the Contractor.

5.3. In the event that the Owner elects to perform work at the Worksite directly or by others retained by the Owner, the Contractor and Owner shall coordinate the activities of all forces at the Worksite and shall agree upon fair and reasonable schedules and operational procedures for Worksite activities. The Owner shall require each separate contractor to cooperate with the Contractor and assist with the coordination of activities and the review of construction schedules and operations. The Contract Price and Contract Time shall be equitably adjusted, as mutually agreed by the Parties, for changes made necessary by the coordination of construction activities, and the construction schedule shall be revised accordingly.

5.4. In order to facilitate its responsibilities for completion of the Work in accordance with and as reasonably inferable from the Contract Documents, prior to commencing the Work, the Contractor shall examine and compare the drawings and specifications with information furnished by the Owner pursuant to section 6.2; relevant field measurements made by the Contractor; and any visible conditions at the Worksite affecting the Work.

5.5. COMPLIANCE WITH LAWS The Contractor shall comply with all laws at its own costs. The Contractor shall be liable to the Owner for all loss, cost, or expense, attributable to any acts or omissions by the Contractor, its employees, subcontractors, and agents for failure to comply with laws, including, fines, penalties, or corrective measures.

5.6. WARRANTY

5.6.1. The Work shall be executed in accordance with the Contract Documents in a workmanlike manner. The Contractor warrants that all materials and equipment shall be new unless otherwise specified, of good quality, in conformance with the Contract Documents, and free from defective workmanship and materials. The Contractor further warrants that the Work will be free from material defects not intrinsic in the design or materials required in the Contract Documents. The Contractor's warranty does not include remedies for defects or damages caused by normal wear and tear during normal usage, use for a purpose for which the Project was not intended, improper or insufficient maintenance, modifications performed by the Owner or others retained by Owner, or abuse.

5.6.2. If, prior to the Date of Substantial Completion and within one year after the date of Substantial Completion of the Work, any portion of the Work is found to be not in conformance with the Contract Documents ("Defective Work"), the Owner shall promptly notify the Contractor in writing. Unless the Owner provides written acceptance of the condition, the Contractor shall promptly correct the Defective Work at its own cost and time and bear the expense of additional services required for correction of any Defective Work for which it is responsible.

5.7. SAFETY The Contractor shall have overall responsibility for safety precautions and programs in the performance of the Work, except that the Contractor's subcontractors shall also be responsible for

the safety of persons or property in the performance of their work, and for compliance with the provisions of laws. The Contractor shall seek to avoid injury, loss or damage to persons or property by taking reasonable steps to protect its employees and other persons at the Worksite; materials and equipment stored at on-site or off-site locations for use in the Work; and property located at the Worksite and adjacent to Work areas, whether or not the property is part of the Work.

5.8. HAZARDOUS MATERIALS A Hazardous Material is any substance or material identified now or in the future as hazardous under any federal, state, or local law or regulation, or any other substance or material which may be considered hazardous or otherwise subject to statutory or regulatory requirement governing handling, disposal, or clean-up. The Contractor shall not be obligated to commence or continue work until any Hazardous Material discovered at the Worksite has been removed, or rendered or determined to be harmless by the Owner as certified by an independent testing laboratory and approved by the appropriate government agency. If the Contractor incurs additional costs or is delayed due to the presence or remediation of Hazardous Material, the Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Time.

5.9. MATERIALS BROUGHT TO THE WORKSITE The Contractor shall be responsible for the proper delivery, handling, application, storage, removal, and disposal of all materials and substances brought to the Worksite by the Contractor in accordance with the Contract Documents and used or consumed in the performance of the Work.

5.10. SUBMITTALS The Contractor shall submit to the Owner and Design Professional for review and approval all shop drawings, samples, product data, and similar submittals required by the Contract Documents. Submittals may be submitted in electronic form if required per section 6.5. The Contractor shall be responsible to the Owner for the accuracy and conformity of its submittals to the Contract Documents. The Contractor shall prepare and deliver its submittals to the Owner and Design Professional in a manner consistent with the Schedule of the Work and in such time and sequence so as not to delay the performance of the Work or the work of the Owner and others retained by the Owner. The Contractor submittals shall identify in writing for each submittal all changes, deviations, or substitutions from the requirements of the Contract Documents. The approval of any Contractor submittal shall not be deemed to authorize deviations, substitutions, or changes in the requirements of the Contract Documents unless express written approval is obtained from the Owner specifically authorizing such deviation, substitution, or change. Further, the Owner shall not make any change, deviation, or substitution through the submittal process without specifically identifying and authorizing such deviation to the Contractor. The Owner shall be responsible for review and approval of submittals with reasonable promptness to avoid causing delay. The Contractor shall perform all Work strictly in accordance with approved submittals. The Owner's approval does not relieve the Contractor from responsibility for Defective Work resulting from errors or omissions of any kind on the approved shop drawings.

5.11. WORKSITE CONDITIONS If the conditions at the Worksite are (a) subsurface or other physical conditions which are materially different from those indicated in the Contract Documents, or (b) unusual and unknown physical conditions which are materially different from conditions ordinarily encountered and generally recognized as inherent in the Work provided for in the Contract Documents, the Contractor shall stop Work and give prompt written notice of the condition to the Owner and Design Professional. The Contractor shall not be required to perform any work relating to the unknown condition without the written mutual agreement of the Parties. Any change in the Contract Price or Contract Time as a result of the unknown condition shall be made by Change Order.

5.12. CUTTING, FITTING, AND PATCHING The Contractor shall perform cutting, fitting, and patching necessary to coordinate the various parts of the Work and to prepare its Work for the work of the Owner or others retained by the Owner.

5.13. **CLEANING UP** The Contractor shall regularly remove debris and waste materials at the Worksite resulting from the Work. Prior to discontinuing Work in an area, the Contractor shall clean the area and remove all rubbish and its construction equipment, tools, machinery, waste, and surplus materials. The Contractor shall minimize and confine dust and debris resulting from construction activities. At the completion of the Work, the Contractor shall remove from the Worksite all construction equipment, tools, surplus materials, waste materials, and debris.

6. **OWNER'S RESPONSIBILITIES** Any information or services to be provided by the Owner shall be provided in a timely manner.

6.1. **FINANCIAL INFORMATION** Before commencing the Work and thereafter at the written request of the Contractor, the Owner shall provide the Contractor with evidence of Project financing. Evidence of such financing shall be a condition precedent to the Contractor's commencing or continuing the Work. The Contractor shall be notified prior to any material change in Project financing.

6.2. **WORKSITE INFORMATION** The Owner shall provide at the Owner's expense and with reasonable promptness the following, which the Contractor shall be entitled to rely upon for its accuracy and completeness:

6.2.1. information describing the physical characteristics of the Worksite, including surveys, Worksite evaluations, legal descriptions, data, or drawings depicting existing conditions, subsurface, and environmental studies, reports and investigations;

6.2.2. tests, inspections and other reports dealing with environmental matters, hazardous material and other existing conditions, including structural, mechanical, and chemical tests required by the Contract Documents or by law; and

6.2.3. any other information or services requested in writing by the Contractor that are relevant to the Contractor's performance of the Work and under the Owner's control. The information required by this subsection shall be provided in reasonable detail. Legal descriptions shall include easements, title restrictions, boundaries, and zoning restrictions. Worksite descriptions shall include existing buildings and other construction and all other pertinent Worksite conditions. Adjacent property descriptions shall include structures, streets, sidewalks, alleys, and other features relevant to the Work. Utility details shall include available services, lines at the Worksite and adjacent thereto, and connection points. The information shall include public and private information, subsurface information, grades, contours, and elevations, drainage data, exact locations and dimensions, and benchmarks that can be used by the Contractor in laying out the Work.

6.3. **MECHANICS AND CONSTRUCTION LIEN INFORMATION** Within seven (7) days after receiving the Contractor's written request, the Owner shall provide the Contractor with the information necessary to give notice of or enforce mechanics lien rights and, where applicable, stop notices. This information shall include the Owner's interest in the real property on which the Project is located and the record legal title.

6.4. **BUILDING PERMIT, FEES, AND APPROVALS** Except for those required of the Contractor pursuant to this Agreement, the Owner shall secure and pay for all other permits, approvals, easements, assessments, and fees required for the development, construction, use, or occupancy of permanent structures or for permanent changes in existing facilities, including the building permit.

6.5. **DOCUMENTS IN ELECTRONIC FORM** If the Owner requires that the Owner, Design Professional, and Contractor exchange documents and data in electronic or digital form, prior to any such exchange, the Owner, Design Professional, and Contractor shall agree on a written protocol governing all exchanges.

7. SUBCONTRACTS Work not performed by the Contractor with its own forces shall be performed by subcontractors. The Contractor agrees to bind every subcontractor and material supplier (and require every subcontractor to so bind its subcontractors and material suppliers) to all the provisions of this Agreement and the Contract Documents as they apply to the subcontractor's and material supplier's portions of the Work. Contractor shall furnish to Owner all first-tier subcontracts and/or purchase orders valued in excess of \$50,000 with subcontractors, materialmen, laborers or any other person for performance of work on or the delivery of materials to the Project, as each is signed by all parties thereto.

8. CONTRACT TIME

8.1. DATE OF COMMENCEMENT The Date of Commencement is the Agreement date on page one, unless otherwise set forth below:

May 1, 2017 Date of Commencement

8.2. TIME Substantial Completion of the Work shall be achieved in [Sixty] ([60]) calendar days from the Date of Commencement. The Work shall be considered substantially complete with paving, shouldering and speed humps complete. Workable calendar days shall be adjusted subject to weather and other adjustments as provided for in the Contract Documents. Time is of the essence for this Agreement.

8.3. LIQUIDATED DAMAGES If the work is not Substantially Complete as required in Paragraph 8.2, above, then Owner may retain as liquidated damages (and not as a penalty) the sum of One Hundred Fifty Dollars (\$150) for each and every calendar day after the required date of Substantial Completion until actual Substantial Completion.

9. SCHEDULE OF THE WORK Before submitting the first application for payment, the Contractor shall submit, for review by the Owner's Representative, a Schedule of the Work that shall show the dates on which the Contractor plans to begin and to complete various parts of the Work, including dates on which information and approvals are required from the Owner.

9.1. The Owner may request the Contractor to make reasonable changes in the sequence at any time during the performance of the Work in order to facilitate impacts to homeowners. To the extent such changes increase the Contractor's time and costs, the Contract Price and Contract Time shall be equitably adjusted.

10. DELAYS AND EXTENSIONS OF TIME

10.1. If the Contractor is delayed at any time in the commencement or progress of the Work by any cause beyond the control of the Contractor, the Contractor shall be entitled to an equitable extension of the Contract Time. Examples of causes beyond the control of the Contractor include, but are not limited to, the following: acts or omissions of the Owner, the Design Professional, or others; changes in the Work or the sequencing of the Work ordered by the Owner or arising from decisions of the Owner that impact the time of performance of the Work; transportation delays not reasonably foreseeable; labor disputes not involving the Contractor; general labor disputes impacting the Project but not specifically related to the Worksite; fire; terrorism, epidemics, adverse governmental actions, unavoidable accidents or circumstances; adverse weather conditions; encountering Hazardous Materials; concealed or unknown conditions; and delay authorized by the Owner pending dispute resolution. The Contractor shall process any requests for equitable extensions of Contract Time in accordance with the provisions of article 12.

10.2. In addition, if the Contractor incurs additional costs as a result of a delay that is caused by acts or omissions of the Owner, the Owner's Representative, or others, changes in the Work or the

sequencing of the Work ordered by the Owner, or arising from decisions of the Owner that impact the time of performance of the Work, encountering Hazardous Materials, concealed or unknown conditions, or delay authorized by the Owner pending dispute resolution, the Contractor shall be entitled to an equitable adjustment in the Contract Price subject to article 12.

10.3. In the event delays to the Work are encountered for any reason, the Contractor shall provide prompt written notice to the Owner of the cause of such delays after the Contractor first recognizes the delay. The Owner and Contractor agree to undertake reasonable steps to mitigate the effect of such delays.

10.4. NOTICE OF DELAY CLAIMS If the Contractor requests an equitable extension of the Contract Time or an equitable adjustment in the Contract Price as a result of a delay, the Contractor shall give the Owner written notice of the claim. If the Contractor causes delay in the completion of the Work, the Owner shall be entitled to recover its additional costs, subject to the mutual waiver of consequential damages herein.

11. ALLOWANCES All allowances stated in the Contract Documents shall be included in the Contract Price. While the Owner may direct the amounts of, and particular material suppliers or subcontractors for, specific allowance items, if the Contractor reasonably objects to a material supplier or subcontractor, it shall not be required to contract with them. The Owner shall select allowance items in a timely manner so as not to delay the Work. Allowances shall include the costs of materials and equipment delivered to the Worksite less applicable trade discounts and including requisite taxes, unloading and handling at the Worksite, and labor and installation, unless specifically stated otherwise. The Contractor's overhead and profit for the allowances shall be included in the Contract Price, but not in the allowances. The Contract Price shall be adjusted by Change Order to reflect the actual costs when they are greater than or less than the allowances.

12. CHANGES

12.1. The Contractor may request or the Owner may order changes in the Work or the timing or sequencing of performance of the Work that impacts the Contract Price or the Contract Time. All such changes in the Work that affect the Contract Time or Contract Price shall be formalized in a Change Order.

12.2. The Owner and Contractor shall negotiate in good faith an appropriate adjustment to the Contract Price or the Contract Time and shall conclude these negotiations as expeditiously as possible. Acceptance of the Change Order and any adjustment in the Contract Price or Contract Time shall not be unreasonably withheld.

12.3. INTERIM DIRECTED CHANGE

12.3.1. The Contractor shall not be obligated to perform changes in the Work that impact the Contract Price or the Contract Time until a Change Order has been executed or a written Interim Directed Change has been issued. The Owner may issue a written Interim Directed Change directing a change in the Work prior to reaching agreement with the Contractor on the adjustment, if any, in the Contract Price or the Contract Time.

12.3.2. The Owner and the Contractor shall negotiate expeditiously and in good faith for appropriate adjustments, as applicable, to the Contract Price or the Contract Time arising out of an Interim Directed Change. As the changed work is performed, the Contractor shall submit its costs for such work with its application for payment. If there is a dispute as to the cost of the Work, the Owner shall pay the Contractor fifty percent (50%) of its estimated cost to perform the work. In such event, the Parties reserve their rights as to the disputed amount, submitted to the requirements of article 20.

12.3.3. When the Owner and the Contractor agree upon the adjustment in the Contract Price or the Contract Time, for a change in the Work directed by an Interim Directed Change, such agreement shall be the subject of a Change Order.

12.4. COST OR CREDIT DETERMINATION

12.4.1. An increase or decrease in the Contract Price or the Contract Time resulting from a change in the Work shall be determined by one or more of the following methods:

12.4.1.1. unit prices set forth in this Agreement or as subsequently agreed;

12.4.1.2. a mutually accepted, itemized lump sum;

12.4.1.3. costs calculated on a basis agreed upon by the Owner and Contractor's established costs plus [10]% overhead and [15]% profit; or

12.4.1.4. by the method provided here: [WSDOT Standard Force Account w/markup rates_____].

12.4.1.5. If a cost or credit determination cannot be agreed to above, the cost of the change in the Work shall be determined by the reasonable actual expense incurred or savings realized in the performance of the Work resulting from the change. If there is a net increase in the Contract Price, the Contractor's overhead and profit shall be adjusted accordingly. In case of a net decrease in the Contract Price, the Contractor's overhead and profit shall not be adjusted unless ten percent (10%) or more of the Project is deleted. The Contractor shall maintain a documented itemized accounting evidencing the expenses and savings.

12.5. UNIT PRICES If unit prices are included in the Contract Documents or are subsequently agreed to by the Parties, but the character or quantity of such unit price items as originally contemplated is so different in a proposed Change Order that the original unit prices will cause substantial inequity to the Owner or Contractor, such unit prices shall be equitably adjusted.

12.6. PERFORMANCE OF CHANGED WORK The Contractor shall not be obligated to perform Changed Work until a written Change Order has been mutually agreed to by the Owner and Contractor, and is approved by the U.S. Department of Agriculture, Rural Development.

13. PAYMENT

13.1. SCHEDULE OF VALUES The Category Unit Pricing shall constitute the schedule of values apportioned to the various functions of the Work. Each line item contained in the schedule of values has an assigned monetary price such that the total of all Categories in the breakdown shall equal the Contract Price.

13.2. PROGRESS PAYMENTS The Contractor shall submit to the Owner and the U.S. Dept. of Agriculture, Rural Development, a monthly application for payment no later than the [last] day of the calendar month for the preceding thirty (30) days. The Contractor's applications for payment shall be itemized and supported by the Contractor's schedule of values and any other substantiating data as required by this Agreement. Payment applications shall include payment requests on account of properly authorized Change Orders. Contractor shall have obtained and attached to each application for payment, executed acknowledgements of payments of all sums due and releases of mechanic's and materialmen's liens. These acknowledgements of payments must be in a form satisfactory to Owner, and be from any party having lien rights. These acknowledgments of payment and releases of liens shall cover all work, labor, equipment, materials done, supplied, performed or furnished prior to such application for payment. Upon approval of the application for payment by Owner and U.S. Dept.

of Agriculture, Rural Development, the Owner shall pay the amount otherwise due on any payment application, less any amounts as set forth below, no later than thirty (30) days after the Contractor has submitted a complete and accurate payment application. The Owner may deduct, from any progress payment, such amounts as may be retained pursuant to section 13.3.

13.3. RETAINAGE From each progress payment made prior to Substantial Completion the Owner may retain [ten] percent ([10] %) of the amount otherwise due after deduction of any amounts as provided in section 13.4. After the Work is fifty percent (50%) complete to Owner's satisfaction, the Owner shall withhold no additional retainage and shall pay the Contractor the full amount due on subsequent progress payments. Provided that Owner shall continue to withhold 10% of all payments made on account of approved change orders for the duration of the Project.

13.4. ADJUSTMENT OF CONTRACTOR'S PAYMENT APPLICATION The Owner may adjust or reject a payment application or nullify a previously approved payment application, in whole or in part, as may reasonably be necessary to protect Owner from loss or damage based upon the following, to the extent that Contractor is responsible for such under this Agreement:

13.4.1. the Contractor's repeated failure to perform the Work as required by the Contract Documents;

13.4.2. loss or damage arising out of or relating to this Agreement and caused by the Contractor to the Owner or to others retained by the Owner to whom the Owner may be liable;

13.4.3. the Contractor's failure to properly pay subcontractors for labor, materials, or equipment furnished in connection with the Work following receipt of such payment from the Owner;

13.4.4. Defective Work not corrected in a timely fashion;

13.4.5. reasonable evidence of delay in performance of the Work such that the Work will not be completed within the Contract Time;

13.4.6. reasonable evidence demonstrating that the unpaid balance of the Contract Price is insufficient to fund the cost to complete the Work; and

13.4.7. uninsured third-party claims involving the Contractor or reasonable evidence demonstrating that third-party claims are likely to be filed unless and until the Contractor furnishes the Owner with adequate security in the form of a surety bond, letter of credit, or other collateral or commitment which are sufficient to discharge such claims if established.

No later than seven (7) days after receipt of an application for payment, the Owner shall give written notice to the Contractor disapproving or nullifying it or a portion of it, specifying the reasons for the disapproval or nullification. When the above reasons for disapproving or nullifying an application for payment are removed, payment shall be made for the amounts previously withheld.

13.5. PAYMENT DELAY If for any reason not the fault of the Contractor, the Contractor does not receive a progress payment from the Owner within seven (7) days after the time such payment is due, the Contractor, upon giving seven (7) days' written notice to the Owner, and without prejudice to and in addition to any other legal remedies, may stop Work until payment of the full amount owing to the Contractor has been received. The Contract Price and Contract Time shall be equitably adjusted by Change Order for reasonable cost and delay resulting from shutdown, delay, and start-up.

13.6. SUBSTANTIAL COMPLETION When Substantial Completion of the Work or a designated portion thereof is achieved, the Contractor shall prepare a Certificate of Substantial Completion that

shall establish the date of Substantial Completion, and the respective responsibilities of the Owner and Contractor for interim items such as security, maintenance, utilities, insurance, and damage to the Work, and fixing the time for completion of all items on the list accompanying the Certificate. The Certificate of Substantial Completion shall be submitted by the Contractor to the Owner for written acceptance of responsibilities assigned in the Certificate. Unless otherwise provided in the Certificate of Substantial Completion, warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or a designated portion.

13.6.1. Upon acceptance by the Owner of the Certificate of Substantial Completion, the Owner shall pay to the Contractor the remaining retainage held by the Owner for the Work described in the Certificate of Substantial Completion less a sum equal to one hundred fifty percent (150%) of the estimated cost of completing or correcting remaining items on that part of the Work, as agreed to by the Owner and Contractor as necessary to achieve final completion. Uncompleted items shall be completed by the Contractor in a mutually agreed timeframe. The Owner shall pay the Contractor monthly the amount retained for unfinished items as each item is completed.

13.7. FINAL COMPLETION When final completion has been achieved, the Contractor shall prepare for the Owner's acceptance a final application for payment stating that to the best of Contractor's knowledge, and based on the Owner's inspections, the Work has reached final completion in accordance with the Contract Documents.

13.7.1. Final payment of the balance of the Contract Price shall be made to the Contractor within thirty (30) days after the Contractor has submitted to the Owner a complete and accurate application for final payment and the following submissions:

13.7.1.1. an affidavit declaring any indebtedness connected with the Work, e.g. invoices for materials or equipment, to have been paid, satisfied, or to be paid with the proceeds of final payment, so as not to encumber the Owner's property;

13.7.1.2. as-built drawings, manuals, copies of warranties, and all other close-out documents required by the Contract Documents;

13.7.1.3. release of any liens, conditioned on final payment being received;

13.7.1.4. consent of any surety, if applicable; and

13.7.1.5. a report of any accidents or injuries experienced by the Contractor or its subcontractors at the Worksite.

13.8. Claims not reserved by the Owner in writing with the making of final payment shall be waived except for claims relating to liens or similar encumbrances, warranties, Defective Work, and latent defects. Unless the Contractor provides written identification of unsettled claims known to the Contractor at the time of making application for final payment, acceptance of final payment constitutes a waiver of such claims.

13.9. LATE PAYMENT Payments due but unpaid shall bear interest from the date payment is due at the statutory rate at the place of the Project.

13.10. RECORDS. Owner, or any of its duly authorized representatives (including any entity providing construction financing), shall have access to any books, documents, papers, and records of the Contractor, which are pertinent to this Agreement, for purposes of making audits, examinations, excerpts and transcriptions. Contractor shall maintain all required records for three years after final payment is made and all other pending matters are closed.

14. INDEMNITY

14.1. To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Owner's officers, directors, members, consultants, agents, and employees, the Design Professional, and any party providing construction financing, including but not limited to the Northwest Farm Credit Services, FLCA (the Indemnitees) from all claims for bodily injury and property damage, other than to the Work itself and other property insured under section 15.3, including reasonable attorneys' fees, costs, and expenses, that may arise from the performance of the Work but only to the extent caused by the negligent acts or omissions of the Contractor, subcontractors or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable. The Contractor shall be entitled to reimbursement of any defense costs paid above the Contractor's percentage of liability for the underlying claim to the extent provided in the section immediately below.

14.2. To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, its officers, directors, or members, subcontractors, or anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable from all claims for bodily injury and property damage, other than property insured under section 15.3, including reasonable attorneys' fees, costs, and expenses, that may arise from the performance of work by the Owner, Design Professional, or others retained by the Owner, but only to the extent caused by the negligent acts or omissions of the Owner, the Design Professional, or others retained by the Owner. The Owner shall be entitled to reimbursement of any defense costs paid above the Owner's percentage of liability for the underlying claim to the extent provided in the section immediately above.

14.3. NO LIMITATION ON LIABILITY In any and all claims against the Indemnitees by any employee of the Contractor, anyone directly or indirectly employed by the Contractor or anyone for whose acts the Contractor may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Contractor under Workers' Compensation acts, disability benefit acts, or other employment benefit acts.

15. INSURANCE

15.1. Before commencing the Work and as a condition precedent to payment, the Contractor shall procure and maintain in force Workers' Compensation Insurance, Employers' Liability Insurance, Business Automobile Liability Insurance, and Commercial General Liability Insurance (CGL). The CGL policy shall include coverage for liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, contractual liability, and broad form property damage. The Contractor shall maintain completed operations liability insurance for one year after Substantial Completion, or as required by the Contract Documents, whichever is longer. If requested, the Contractor shall provide the Owner with certificates of the insurance coverage required. The Contractor's Employers' Liability, Business Automobile Liability, and CGL policies, as required in this article, shall be written with at least the following limits of liability:

15.1.1. Employers' Liability Insurance:

- a. \$[1M_] bodily injury by accident per accident;
- b. \$[1M_] bodily injury by disease policy limit
- c. \$[1M_] bodily injury by disease per employee.

15.1.2. Business Automobile Liability Insurance:

- a. \$[1M_] per accident.

15.1.3. CGL Insurance:

- a. \$[3M_] per occurrence;
- b. \$[3M_] general aggregate;
- c. \$[3M_] products/completed operations aggregate;
- d. \$[3M_] personal and advertising injury limit.

15.2. Employers' Liability, Business Automobile Liability, and CGL coverage required in the subsection above may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by excess or umbrella liability policies. The Contractor shall maintain in effect all insurance coverage required in the section immediately above with insurance companies lawfully authorized to do business in the jurisdiction in which the Project is located. If the Contractor fails to obtain or maintain any insurance coverage required under this Agreement, the Owner may purchase such coverage and charge the expense to the Contractor, or terminate this Agreement. To the extent commercially available to the Contractor from its current insurance company, insurance policies required under section 15.1 shall contain a provision that the insurance company or its designee must give the Owner written notice transmitted in paper or electronic format: (a) 30 days before coverage is nonrenewed by the insurance company and (b) within 10 business days after cancelation of coverage by the insurance company. Prior to commencing the Work and upon renewal or replacement of the insurance policies, the Contractor shall furnish the Owner with certificates of insurance until one year after Substantial Completion or longer if required by the Contract Documents. In addition, if any insurance policy required under section 15.1 is not to be immediately replaced without lapse in coverage when it expires, exhausts its limits, or is to be cancelled, the Contractor shall give Owner prompt written notice upon actual or constructive knowledge of such condition.

15.2.1. To the extent of the limits of the Contractor's CGL insurance specified in section 15.1, the Contractor shall indemnify and hold harmless the Owner against any and all liability, claims, demands, damages, losses, and expenses, including attorneys' fees, in connection with or arising out of any damage or alleged damage to any of the Owner's existing adjacent property that may arise from the performance of the Work, to the extent caused by the negligent acts or omissions of the Contractor, subcontractor, or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable.

15.3. OWNER'S INSURANCE The Owner may procure and maintain insurance against loss of use of the Owner's property caused by fire or other casualty loss. The Owner shall either self-insure or obtain and maintain its own liability insurance for protection against claims arising out of the performance of this Agreement, including without limitation, loss of use and claims, losses and expenses arising out of the Owner's errors or omissions.

15.4. ADDITIONAL LIABILITY COVERAGE Owner [] shall/ [] shall not (indicate one) require Contractor to purchase and maintain liability coverage, primary to Owner's coverage in the section immediately above.

15.4.1. If required by section immediately above, the additional liability coverage required of the Contractor shall be:

- 1. [] ADDITIONAL INSURED. The Owner shall be named as an additional insured on Contractor's CGL insurance specified, for operations and completed operations, but only with respect to liability for bodily injury, property damage or personal and advertising

injury to the extent caused by the negligent acts or omissions of the Contractor, or those acting on the Contractor's behalf, in the performance of the Contractor's Work for the Owner at the Worksite.

2. .OCP. The Contractor shall provide an Owners' and Contractors' Protective Liability Insurance ("OCP") policy with limits equal to the limits on CGL insurance specified, or limits as otherwise required by the Owner. Any documented additional cost in the form of a surcharge associated with procuring the additional liability coverage in accordance with this subsection shall be paid by the Owner directly, or the costs may be reimbursed by the Owner to the Contractor by increasing the Contract Price to correspond to the actual cost required to purchase and maintain the additional liability coverage. Before commencing the Work, the Contractor shall provide either a copy of the OCP policy, or a certificate and endorsement evidencing that the Owner has been named as an additional insured, as applicable.

16. BONDS Performance and Payment Bonds are/ are not required of the Contractor. Such bonds shall be issued by a surety admitted in the state in which the Project is located and must be acceptable to the Owner. The Owner's acceptance shall not be withheld without reasonable cause. The penal sum of the Payment Bond shall equal the penal sum of the Performance Bond, both of which should be in an amount equal to 100 percent of the amount of this construction contract as set forth in Paragraph 2, above.

16.1. The bonds required under Paragraph 16 shall be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on the Federal Bonds and as Acceptable Reinsuring Companies as published in Circular 570 (amended) by the Financial Management Services, Surety Bond Branch, U.S. Department of Treasury. All bonds signed by an agent must be accompanied by a certified copy of the agent's authority to act.

16.2. If the surety on any bond furnished by Contractor is declared bankrupt or becomes insolvent or its right to do business in the State of Washington is terminated or it ceases to meet the requirements of Paragraph 16 and 16.1, above, Contractor shall promptly notify Owner and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the requirements of Paragraph 16 and 16.1

17. LIMITED MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES Except for (a) losses covered by insurance required by the Contract Documents, or (b) specific items of damages excluded from this waiver as mutually agreed upon by the Parties and identified below, the Parties agree to waive all claims against each other for any consequential damages that may arise out of or relate to this Agreement.

17.1. The provisions of this section shall also apply to the termination of this Agreement and shall survive such termination. The Owner and the Contractor shall require similar waivers in contracts with subcontractors and others retained for the project.

18. RISK OF LOSS Except to the extent a loss is covered by applicable insurance, risk of loss or damage to the Work shall be upon the Contractor until the Date of Substantial Completion, unless otherwise agreed to by the Parties.

19. NOTICE TO CURE AND TERMINATION

19.1. NOTICE TO CURE A DEFAULT If the Contractor persistently fails to supply enough qualified workers, proper materials, or equipment to maintain the approved Schedule of the Work in accordance with article 9, or fails to make prompt payment to its workers, subcontractors, or material suppliers, disregards law or orders of any public authority having jurisdiction, or is otherwise guilty of a material breach of a provision of this Agreement, the Contractor may be deemed in default. If the Contractor

fails within seven (7) business days after written notification to commence and continue satisfactory correction of such default with diligence and promptness, then the Owner shall give the Contractor a second written notice to correct the default within a three (3) business day period. If the Contractor fails to promptly commence and continue satisfactory correction of the default following receipt of such second notice, the Owner, without prejudice to any other rights or remedies, shall have the right to take reasonable steps it deems necessary to correct deficiencies and charge the cost to the Contractor, who shall be liable for such payments including reasonable overhead, profit, and attorneys' fees.

19.2. TERMINATION BY OWNER If, within seven (7) days of receipt of a notice to cure pursuant to section immediately above, the Contractor fails to commence and satisfactorily continue correction of the default set forth in the notice to cure, the Owner may notify the Contractor that it intends to terminate this Agreement for default absent appropriate corrective action within fourteen (14) additional days. After the expiration of the additional fourteen (14) day period, the Owner may terminate this Agreement by written notice absent appropriate corrective action. Termination for default is in addition to any other remedies available to the Owner. If the Owner's costs arising out of the Contractor's failure to cure, including the cost of completing the Work and reasonable attorney fees, exceed the unpaid Contract Price, the Contractor shall be liable to the Owner for such excess costs. If the Owner's costs are less than the unpaid Contract Price, the Owner shall pay the difference to the Contractor. In the event the Owner exercises its rights under this section, upon the request of the Contractor, the Owner shall furnish to Contractor a detailed accounting of the costs incurred by the Owner.

19.2.1. The Owner shall make reasonable efforts to mitigate damages arising from the Contractor default and shall promptly invoice the Contractor for all amounts due.

19.3. TERMINATION BY CONTRACTOR Upon seven (7) days' written notice to the Owner, the Contractor may terminate this Agreement if the Work has been stopped for a thirty (30) day period through no fault of the Contractor for any of the following reasons: (a) under court order or order of other governmental authorities having jurisdiction; (b) as a result of the declaration of a national emergency or other governmental act during which, through no act or fault of the Contractor, materials are not available.

19.3.1. In addition, upon fourteen (14) days' written notice to Owner, Contractor may terminate the Agreement if the Owner does any of the following: (a) fails to furnish reasonable evidence that sufficient funds are available and committed for the entire cost of the Project in accordance with section 6.1; (b) assigns this Agreement over the Contractor's reasonable objection; (c) fails to pay the Contractor in accordance with this Agreement and the Contractor has complied with the notice provisions of section 13.5; or (d) otherwise materially breaches this Agreement.

19.3.2. Upon termination by the Contractor pursuant to this Agreement, the Contractor shall be entitled to recover from the Owner payment for all Work executed and for any proven loss, cost, or expense in connection with the Work, including all demobilization costs plus reasonable overhead and profit.

19.4. OBLIGATIONS ARISING BEFORE TERMINATION Even after termination the provisions of this Agreement still apply to any Work performed, payments made, events occurring, costs charged or incurred, or obligations arising before the termination date.

20. CLAIMS AND DISPUTE RESOLUTION

20.1. CLAIMS FOR ADDITIONAL COST OR TIME Except as provided in sections 10.3 and 10.4 for any claim for an increase in the Contract Price or the Contract Time, the Contractor shall give the Owner written notice of the claim within fourteen (14) days after the occurrence giving rise to the claim

or within fourteen (14) days after the Contractor first recognizes the condition giving rise to the claim, whichever is later. Except in an emergency, notice shall be given before proceeding with the Work. Any change in the Contract Price or the Contract Time resulting from such claim shall be authorized by Change Order.

20.2. WORK CONTINUANCE AND PAYMENT Unless otherwise agreed in writing, the Contractor shall continue the Work and maintain the Schedule of the Work during any dispute resolution proceedings. If the Contractor continues to perform, the Owner shall continue to make payments in accordance with the Agreement.

20.3. DISPUTE MITIGATION THROUGH DIRECT DISCUSSIONS If a dispute arises out of or relates to this Agreement or its breach, the Parties shall endeavor to settle the dispute through direct discussions. Within five (5) business days, the Parties' representatives, who shall possess the necessary authority to resolve such matter and who shall record the date of first discussions shall conduct direct discussions and make a good faith effort to resolve such dispute.

20.4. MEDIATION Disputes between the Owner and Contractor not resolved by direct discussion shall be submitted to mediation pursuant to the Construction Industry Mediation Rules of the American Arbitration Association (AAA). The Parties shall select the mediator within fifteen (15) days of the request for mediation. Engaging in mediation is a condition precedent to any form of binding dispute resolution.

20.5. BINDING DISPUTE RESOLUTION If neither direct discussions nor mediation successfully resolve the dispute, the Parties shall submit the matter to the binding dispute resolution procedure selected below:

Arbitration using the current Construction Industry Arbitration Rules of the AAA, or the Parties may mutually agree to select another set of arbitration rules. The administration of the arbitration shall be as mutually agreed by the Parties.

Litigation in either the state or federal court having jurisdiction of the matter in the location of the Project.

20.6. COST OF DISPUTE RESOLUTION The costs of any binding dispute resolution procedures, including witness fees, expert fees and reasonable attorneys' fees shall be borne by the non-prevailing Party, as determined by the adjudicator of the dispute.

20.7. VENUE The venue of any binding dispute resolution procedure shall be the location of the Project, unless the Parties agree on a mutually convenient location.

21. MISCELLANEOUS

21.1. EXTENT OF AGREEMENT Except as expressly provided, this Agreement is for the exclusive benefit of the Parties and not for the benefit of any third party. This Agreement represents the entire and integrated agreement between the Parties, and supersedes all prior negotiations, representations, or agreements, either written or oral.

21.2. ASSIGNMENT Except as to the assignment of proceeds, neither Party shall assign its interest in this Agreement, in whole or in part, without the written consent of the other Party. The terms and conditions of this Agreement shall be binding upon both Parties, their partners, successors, assigns, and legal representatives.

21.3. GOVERNING LAW This Agreement shall be governed by the law in effect at the location of the Project.

EXHIBIT A
Solicitation and Request for Bids

EXHIBIT B
Bid Package Part I

EXHIBIT C
Bid Package Part II & III

EXHIBIT D
Progress Schedule

CONTRACT ADDENDUM NO. 1: U.S. DEPT. OF AGRICULTURE, RURAL DEVELOPMENT SPECIAL CONTRACT PROVISIONS

As a condition of it agreeing to provide construction financing for the Project, the U.S. Dept. of Agriculture, Rural Development, requires that the following special contract provisions be incorporated into the Agreement, and by their signatures below, the parties agree that the following provisions shall be incorporated in, and be a part of, the parties' Agreement.

1. EQUAL OPPORTUNITY REQUIREMENTS

1.1. Contractor shall comply with Executive Order 11246, "Equal Employment Opportunity," as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR Part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

1.2. Contractor's compliance with Executive Order 11246 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative active obligations required by the Standard Federal Equal Employment Opportunity Construction Contract Specifications, as set forth in 41 CFR Part 60-4 and its efforts to meet the goals established for the geographical area where the Agreement is to be performed. The hours of minority and female employment and training must be substantially uniform throughout the length of the Agreement, and in each trade, and Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting Contractor's goals shall be a violation of the Agreement, the Executive Order, and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

1.3. Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the Agreement. The notification shall list the name, address, and telephone number of the subcontractor; employer identification number; estimated dollar amount of subcontract; estimated starting and completion dates for the subcontract; and the geographical area in which the Agreement is to be performed.

2. ENVIRONMENTAL CONSIDERATIONS

2.1. State Energy Conservation Plan. Contractor shall comply with the Energy Policy and Conservation Act (P.L. 94-163). Mandatory standards and policies relating to energy efficiency, contained in any applicable State Energy Conservation Plan, shall be utilized.

2.2. Violating Facilities. Contractor shall comply with all applicable standards, orders or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations 40 CFR Part 15, which prohibit the awarding of non-exempt federal contracts, grants, or loans to facilities included on EPA's list of violating facilities. The Contractor will report violations to the EPA.

2.3. Environmental Requirements and Mitigation Measures. The following requirements must be adhered to during Project construction:

2.3.1 Equipment must meet current State of Washington regulations for noise. Noise producing equipment will be located in enclosures with acoustic panels designed to reduce noise.

2.3.2 Construction activities will be scheduled to reduce traffic, dust and noise impacts in residential areas.

2.3.3 Contractor and Owner shall obtain any necessary permits from local and other governmental agencies as required under the Contract Documents.

2.3.4 Contractor to use Construction Best Management Practices (BMP) for temporary erosion and sedimentation controls during construction of Project.

2.3.5 Work in public right-of-ways shall have all necessary permits.

2.4. Unanticipated Discovery Plan – Historic Preservation. Any excavation or other earth moving activity by the Contractor that uncovers cultural resources including historical or archaeological artifacts, human or cultural items, or fossil or other paleontological materials, shall be immediately reported as follows:

2.4.1 If earth disturbing activities during Project construction uncover cultural materials (i.e., structural remains, historic artifacts, or prehistoric artifacts), all work shall cease at the affected location and the Washington State Archaeologist at the Department of Archaeology and Historic Preservation (DAHP), RD State Environmental Coordinator (SEC), and the History/Archaeology offices and cultural resource programs of the the Indian Tribes identified in Paragraph 2.4.4, below, shall be notified immediately:

2.4.2 If earth disturbing activities during any area of the Project uncover human remains, all work shall cease at the affected location immediately in accordance with the Native American Graves Protection and Repatriation Act of 1990 (NAGPRA) and Washington State Statute RCW 27.44. The area around the discovery shall be secured and the Pierce County Coroner and the RD SEC shall be notified immediately. The RD SEC shall notify the State Archaeologist at the DAHP and the Indian Tribes identified in Paragraph 2.4.4 below.

2.4.3 Construction shall be halted or shifted to a new location pending the notification process and further instructions issued by the agency after consultation with the State Historic Preservation Officer, applicable Indian Tribes, and other appropriate authorities.

2.4.4. For purpose of the notification process required by Paragraphs 2.4.1 and 2.4.2, the following Indian Tribes shall receive the requisite notices:

Confederated Tribes and Bands of the Yakima Nation;
Confederated Tribes of the Colville Reservation;
Cowlitz Indian Tribe;
Muckleshoot Indian Tribe of the Muckleshoot Reservation;
Nisqually Indian Tribe of the Nisqually Reservation;
Puyallup Tribe of the Puyallup Reservation; and
Squaxin Island Tribe.

3. MISC. FORMS AND OTHER REQUIREMENTS

3.1 The following forms must be executed by the appropriate contractor(s) and subcontractor(s) and returned to the USDA RD before any payments can be made. To obtain electronic copies of the forms/documents, please visit the National Office web site, WEP – Engineering/Utilities at <http://www.rurdev.usda.gov/UWP-eng-bulletins.html>

3.2.1 Signed Compliance Statement (RD 400-6). Refer to specific equal opportunity requirements set forth in RUS Bulletin 1780, Section 1780.75 Contract Provisions, (d) Equal employment opportunity;

3.2.2 Signed Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions (AD-1048).

3.2.3 Signed RD Instruction 1940-Q, Exhibit A-1, Certification for Contracts, Grants, and Loans.

3.2 A Temporary Construction sign will be erected by the Contractor before the first pay request is submitted. The format shall be as provided at the USDA RD National Office Web site, and may be modified to include other significant funding partners.

See: National Office web site, WEP – Engineering/Utilities at <http://www.rurdev.usda.gov/UWP-eng-bulletins.html>

END OF ADDENDUM NO. 2

Owner: Raft Island Improvement Assoc.

Contractor:

By: _____

By: _____

Date: _____

Date: _____

CONTRACT ADDENDUM NO. 2: U.S. DEPT. OF AGRICULTURE, RURAL DEVELOPMENT CONTRACT APPROVAL

1. The Owner and the Contractor will furnish the Owner's attorney such evidence as required so that the Owner's attorney can complete and execute the "Certificate of Owner's Attorney" (see below) before the Owner submits the executed Contract Documents to the Agency for approval.
2. Concurrence by the Agency in the award of the Contract is required before it is effective and the "Agency Concurrence" (see below), shall be attached and made a part of the Agreement.
3. Neither the Agency nor any of its departments, entities or employees is a party to this Contract.
4. The Project is financed in whole or in part by USDA Rural Utilities Service pursuant to the Consolidated Farm and Rural Development Act (7 USC Section 1921 et seq.). The Rural Utilities Service programs are administered through the USDA Rural Development offices, therefore the Agency for these documents is USDA Rural Development.

Certificate of Owner's Attorney

I, the undersigned, _____, the duly authorized and acting legal representative of Raft Island Improvement Association (Owner), do hereby certify as follows:

I have examined the attached contract and the manner of execution thereof, and I am of the opinion that said agreement constitutes a legally binding and enforceable contract under the laws of the State of Washington. I further certify that said document has been executed by the proper parties thereto acting through their duly authorized representatives. I have been advise by said representatives that they have the full power and authority to execute the contract on behalf of the respective parties named thereon and to thereby bind the parties to the terms, conditions and obligations therein.

By:
Date:

Agency Concurrence

As lender or insurer of funds to defray the costs of this Contract, and without liability for any payments thereunder, the Agency hereby concurs in the award of this Contract to _____.

Agency:
By:
Title:
Date:

This Contract shall not be effective unless and until concurred in by the Agency.

4842-9975-4517, v. 1