# Jefferson County Board of Commissioners Agenda Request

To:

**Board of Commissioners** 

Philip Morley, County Administrator

From:

Monte Reinders, P.E., Public Works Director/County Engineer

Agenda Date:

June 2, 2014

Subject:

Execution of Contract with Seton Construction, Inc.

Oil City Road Emergency Repair, County Project No. X01945

County Road No. 134309

**Statement of Issue:** Execution of Contract with Seton Construction, Inc. of Port Townsend, Washington for the above referenced project.

Analysis/Strategic Goals/Pro's & Con's: Oil City Road at MP 8.8 has experienced severe bank erosion in recent weeks. The road is now at risk of being washed out at this location. Public Works recommends taking immediate action to construct a riprap stockpile along the road adjacent to the bank erosion. Public Works has received quotes from three contractors for making an emergency repair. Public Works recommends award of the emergency repair contract to Seton Construction in the amount of \$72,900.

**Fiscal Impact/Cost Benefit Analysis:** The maximum amount payable is \$72,900. This will be funded at 100% by the County Road Emergency Repair Fund.

**Recommendation:** Public Works recommends that the Board execute all three originals of the Contract with Seton Construction and return two originals to Public Works.

Department Contact: Mark Thurston, P.E., Project Manager, 385-9217.

Reviewed By:

Philip Morley, County Administrator

Date

# CONTRACT JEFFERSON COUNTY, WASHINGTON

day of

. 2014, between the COUNTY OF

THIS AGREEMENT, made and entered into this

contract.

JEFFERSON, acting through the Jefferson County Commissioners and the Director of Public Works under and by virtue of Title 36, RCW, as amended and <u>Seton Construction, Inc.</u> of <u>Port Townsend, WA</u> hereinafter called the Contractor.
WITNESSETH:
That in consideration of the terms and conditions contained herein and attached and made a part of this agreement, the parties hereto covenant and agree as follows:
1. The Contractor agrees to furnish labor and equipment and do certain work, to-wit: That the Contractor herein will undertake the following described work:
Emergency construction of riprap stockpile at Oil City Road (County Road No. 134309) at Milepost 8.8 as directed by the Engineer in accordance with the rates and provisions attached hereto.
for a total sum not to exceed <u>Seventy Two Thousand Nine Hundred Dollars (\$72,900)</u> . Work is to be directed by the County Engineer and his designee(s) and will be in accordance with any relevant plans and specifications developed for the project and specifically transmitted to the Contractor which may include reference to the Washington State Department of Transportation Standard Specifications. No minimum amount of work is guaranteed.
The Contractor shall complete the described work as follows: Work to proceed immediately following verbal authorization by the County Engineer and to be pursued at the direction of the County Engineer and his designee(s) until work is complete or otherwise terminated by the County.
2. The County of Jefferson hereby promises and agrees with the Contractor to employ, and does employ the Contractor to furnish the goods and equipment described and to furnish the same according to the attached specifications and the terms and conditions herein contained, and hereby contracts to pay for the same according to the attached specifications and the schedule of unit or itemized prices hereto attached, at the time and in the manner and upon the condition provided for in this contract. The County further agrees to employ the Contractor to perform any alterations in or additions to the work provided for in this contract that may be ordered and to pay for the same under the terms of this

contract and the attached specifications at the time and in the manner and upon the conditions provided for in this

4. Prior to commencing work, the Contractor shall obtain at its own cost and expense the following insurance from companies licensed in the State with a Best's rating of no less than A: VII. The Contractor shall provide to the County Risk Manager certificates of insurance with original endorsements affecting insurance required by this clause prior to the commencement of work to be performed.

The insurance policies required shall provide that thirty (30) days prior to cancellation, suspension, reduction or material change in the policy, notice of same shall be given to the County Risk Manager by registered mail, return receipt requested, for all of the following stated insurance policies.

If any of the insurance requirements are not complied with at the renewal date of the insurance policy, payments to the Contractor shall be withheld until all such requirements have been met, or at the option of the County, the County may pay the renewal premium and withhold such payments from the moneys due The Contractor.

All notices shall name the Contractor and identify the agreement by contract number or some other form of identification necessary to inform the County of the particular contract affected.

- A. Workers Compensation and Employers Liability Insurance. The Contractor shall procure and maintain for the life of the contract, Workers Compensation Insurance, including Employers Liability Coverage, in accordance with the laws of the State of Washington.
- B. General Liability(1) with a minimum limit per occurrence of one million dollars (\$1,000,000) and an aggregate of not less than two million dollars (\$2,000,000) for bodily injury, death and property damage unless otherwise specified in the contract specifications. This insurance coverage shall contain no limitations on the scope of the protection provided and indicate on the certificate of insurance the following coverage:
  - 1. Broad Form Property Damage with no employee exclusion;
  - 2. Personal Injury Liability, including extended bodily injury;
  - 3. Broad Form Contractual/Commercial Liability including completed operations (contractors only);
  - 4. Premises Operations Liability (M&C);
  - 5. Independent Contractors and Subcontractors; and
  - 6. Blanket Contractual Liability.
    - (1) Note: The County shall be named as an additional insured party under this policy.
- C. Automobile (2) with a minimum limit per occurrence of \$1,000,000 for bodily injury, death and property damage unless otherwise specified in the contract specifications. This insurance shall indicate on the certificate of insurance the following coverage:
  - 1. Owned automobiles:

1

- 2. Hired automobiles; and,
- 3. Non-owned automobiles.
  - (2) Note: The County shall be named as an additional insured party under this policy.

Any deductibles or self-insured retention shall be declared to and approved by the County prior to the approval of the contract by the County. At the option of the County, the insurer shall reduce or eliminate deductibles or self-insured retention or The Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

The Contractor shall include all subcontractors as insured under its insurance policies or shall furnish separate certificates and endorsements for each subcontractor. All insurance provisions for subcontractors shall be subject to all of the requirements stated herein.

Failure of The Contractor to take out and/or maintain any required insurance shall not relieve The Contractor from any liability under the Agreement, nor shall the insurance requirements be construed to conflict with or otherwise limit the obligations concerning indemnification.

It is agreed by the parties that insurers shall have no right of recovery or subrogation against the County (including its employees and other agents and agencies), it being the intention of the parties that the insurance policies so affected shall protect both parties and be primary coverage for any and all losses covered by the above described insurance. It is further agreed by the parties that insurance companies issuing the policy or policies shall have no recourse against the County (including its employees and other agents and agencies) for payment of any premiums or for assessments under any form of policy. It is further agreed by the parties that any and all deductibles in the above described insurance policies shall be assumed by and be at the sole risk of The Contractor.

It is agreed by the parties that judgments for which the County may be liable, in excess of insured amounts provided herein, or any portion thereof, may be withheld from payment due, or to become due, to The Contractor until such time as The Contractor shall furnish additional security covering such judgment as may be determined by the County.

The County reserves the right to request additional insurance on an individual basis for extra hazardous contracts and specific service agreements.

Any insurance coverage for third party liability claims provided to the County by a "Risk Pool" created pursuant to Ch. 48.62 RCW shall be non-contributory with respect to any policy of insurance the Contractor must provide in order to comply with this Agreement.

If the proof of insurance or certificate of coverage indicating the County is an "additional insured" to a policy obtained by the Contractor refers to an endorsement (by number or name) but does not provide the full text of that endorsement, then it shall be the obligation of the Contractor to obtain the full text of that endorsement and forward that full text to the County within 30 days of the execution of this Agreement.

The County may, upon the Contractor's failure to comply with all provisions of this contract relating to insurance, withhold payment or compensation that would otherwise be due to the Contractor.

5. The Contractor shall comply with all Federal, State, and local laws and ordinances applicable to the work to be done under this Agreement. This Agreement shall be interpreted and construed in accord with the laws of the State of Washington and venue shall be in Jefferson County, WA.

The Contractor shall indemnify and hold the County, and its officers, employees, and agents harmless from and shall process and defend at its own expense, including all costs, attorney fees and expenses relating thereto, all claims, demands, or suits at law or equity arising in whole or in part, directly or indirectly, from the Contractor's negligence or breach of any of its obligations under this Agreement; provided that nothing herein shall require a Contractor to indemnify the County against and hold harmless the County from claims, demands or suits based solely upon the conduct of the County, its officers, employees and agents, and; provided further that if the claims or suits are caused by or result from the concurrent negligence of: (a) the Contractor's agents or employees; and, (b) the County, its officers, employees and agents, this indemnity provision with respect to claims or suits based upon such negligence, and/or the costs to the County of defending such claims and suits, etc., shall be valid and enforceable only to the extent of the Contractor's negligence, or the negligence of the Contractor's agents or employees.

Claims against the County shall include, but not be limited to assertions that the use and transfer of any software, book, document, report, film, tape, or sound reproduction of material of any kind, delivered hereunder, constitutes an infringement of any copyright, patent, trademark, trade name, or otherwise results in an unfair trade practice or an unlawful restraint of competition.

The Contractor specifically assumes potential liability for actions brought against the County by Contractor's employees, including all other persons engaged in the performance of any work or service required of the Contractor under this Agreement and, solely for the purpose of this indemnification and defense, the Contractor specifically waives any immunity under the state industrial insurance law, Title 51 R.C.W. The Contractor recognizes that this waiver was specifically entered into pursuant to provisions of R.C.W. 4.24.115 and was subject of mutual negotiation.

6. The Contractor's relation to the County shall be at all times as an independent Contractor, and nothing herein contained shall be construed to create a relationship of employer-employee or master-servant, and any and all employees of the Contractor or other persons engaged in the performance of any work or service required of the Contractor under this Agreement shall be considered employees of the Contractor only and any claims that may arise on behalf of or against said employees shall be the sole obligation and responsibility of the Contractor.

- 7. The Contractor shall not sublet or assign any of the services covered by this contract without the express written consent of the County or its authorized representative. Assignment does not include printing or other customary reimbursable expenses that may be provided in an agreement.
- 8. Nothing in the foregoing clause shall prevent the County, at its option, from additionally requesting that the Contractor deliver to the County an executed bond as security for the faithful performance of this contract and for payment of all obligations of The Contractor.
- 9. The Contractor will declare management option of the statutory retained percentage on Exhibit B.

₹.

Board of County Commissioners has caused this instrument to be executed by and in the name of said County of Jefferson the day and year first above written. Executed by the Contractor 5/22, 20 14 Contractor: SET ON CONSTRUCTION, FAC. (Please print) By: Kom B. Ster J. SETONCI1650A
State of Washington, Contractor Registration Number COUNTY OF JEFFERSON BOARD OF COMMISSIONERS John Austin, Chair Phil Johnson, Member David W. Sullivan, Member pproved as to form only: David Alvarez Date Deputy Prosecuting Attorne

Monte Reinders P.E.

Public Works Director/County Engineer

IN WITNESS WHEREOF, the Contractor has executed this instrument on the day and year first below written, and the

.

# CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION

The Contractor certifies to the best of its knowledge and belief, that it and its principals:

- (1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- (2) Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (2) of this certification; and
- (4) Have not within a 3-year period preceding this contract had one or more public transactions (Federal, State, or local) terminated for cause or default.

Where the Contractor is unable to certify to any of the statements in this certification, such Contractor shall attach an explanation.

SETON CONSTRUCTION, INC.
Name of Contractor (Please print)
BRUCE B. SETON JR., PRESIDENT  Name and Title of Authorized Representative (Please print)
Name and Title of Authorized Representative (Please print)
Signature of Authorize Representative
Signature of Authorize Representative
I am unable to certify to the above statement. An explanation is attached.

# CONTRACTOR'S DECLARATION OF OPTION FOR MANAGEMENT OF

### STATUTORY RETAINED PERCENTAGE

	ereby elect to have the retained nal acceptance of the work.	percentage of this contract	held in a fund by the Owner until (30) days
	Date 5/22/14	Signed Bush B.	Set of
	reby elect to have the Owner deporithdrawal until after final acceptan		f this contract in an interest bearing account, not
	Date	Signed	
C. I he percentage a	•	st the retained percentage of	this contract from time to time as such retained
hereby des	signate	as th	ne repository for the escrow of said funds.
percentage i	• •	- ·	ees incurred as a result of placing said retained r shall not be liable in any way for any costs or
	Date	Signed	

# OIL CITY ROAD MP 8.8 RIPRAP STOCKPILE CONSTRUCTION SETON CONSTRUCTION PAY RATE SCHEDULE

Item No.	Item Description	Unit	Price per Unit
1	MOBILIZATION	L.S.	\$9,000.00
2	3 & 4 MAN RIPRAP (F.O.B. OIL CITY RD MP 8.8)	TON	\$25.00
3	HEAVY LOOSE RIPRAP (F.O.B. OIL CITY RD MP 8.8)	TON	\$22.00
4	LIGHT LOOSE RIPRAP (F.O.B. OIL CITY RD MP 8.8)	TON	\$20.00
5	QUARRY SPALLS (F.O.B. OIL CITY RD MP 8.8)	TON	\$20.00
6	CRUSHED SURFACING (F.O.B. OIL CITY RD MP 8.8)	TON	\$30.00
7	330 CLASS EXCAVATOR	HR.	\$185.00
8	DEERE 240 EXCAVATOR	HR	\$175.00
9	PERFORMANCE AND PAYMENT BOND	L.S.	\$2,500.00

#### **OIL CITY ROAD WASHOUT EMERGENCY REPAIR MP 8.8**

#### **TERMS**

- Jefferson County is seeking quotes for the above listed work if it should become
  necessary in the next 60 days. Currently, the road has not washed out and the County
  has not secured funding for a repair. There is no guarantee that the County will
  undertake this work.
- Mobilization includes transporting a Class 330 Excavator to and from the site and staging trucks for the repair. If other equipment is needed, mobilization will be paid at hourly rates established with the Engineer prior to move.
- 3. All products are quoted F.O.B. at the site located at Milepost 8.8 Oil City Road. Truck time will not be tracked. If products are required that do not have prices quoted, a price will be established with the Engineer prior to use.
- 4. Include applicable sales and use tax in unit prices above. By virtue of WAC 458-20-171, retail sales tax does not apply to charges made in the repair of county roads. On such projects, the Contractor shall pay sales/use tax on materials and supplies used or consumed in the performance of the work.
- 5. Hourly operated equipment rates (Class 330 Excavator) shall include operators, fuel, maintenance, and all costs incidental to furnishing and operating the equipment including overhead, profit, insurance, B&O tax, etc.
- 6. No payment will be made for equipment staged (parked) at the site for which no operator is available.
- 7. Quotes based on working Monday through Friday 10 hour days (50-hour week).
- 8. Rock products may be locally sourced without meeting WSDOT degradation and LA Wear specifications. Rock shall be sound and reasonably free of defects. All products will be accepted visually.
- 9. Due to the uncertainty in the actual quantities that may be required at this site, it is understood that the above prices shall not be subject to renegotiation due to differing quantities unless the Contractor is required to perform additional work which could not have been foreseen at the time the quote was prepared. An example would be additional blasting/preparation at a quarry to generate more rock. The Contractor shall inform the Engineer immediately if circumstances exist which could result in a request to renegotiate any prices.
- 10. If scales are not available at the quarry, plan to run each truck with a representative load over another scale one time each day.



# PERFORMANCE BOND

Bond No. 2178843

#### CONTRACTOR:

(Name, legal status and address) Seton Construction, Inc. 4640 S. Discovery Rd Port Townsend, WA 98368

# SURETY:

North American Specialty Insurance Company 475 N. Martingale Road, Suite 850 Schaumburg, IL 60173

#### OWNER:

(Name, legal status and address) Jefferson County Engineer **Public Works Department** 623 Sheridan Street Port Townsend, WA 98368

#### CONSTRUCTION CONTRACT

Date: 06/02/2014

Amount: \$72,900.00

Description: Oil City Road Washout Emergency Repair, Jefferson County, WA

(Name and location)

This document has important legal . consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

This document combines two separate bonds, a Performance Bond and a Payment Bond, into one form. This is not a single combined Performance and Payment Bond.

#### **BOND**

Date: 06/02/2014

(Not earlier than Construction Contract Date)

Amount: \$72,900.00

See Section 16 X None Modifications to this Bond:

CONTRACTOR AS PRINCIPAL (Corporate Seal)

SURETY

(Corporate Seal)

Company: Seton Construction, Inc.

Company: North American Specialty Insurance Company

BRUCE B. SETON, JR.

Name

Signaturè (Joanne Reinkensmeyer, Attorney-in-Fact

and Title: PRESIDENT

and Title:

(Any additional signatures appear on the last page of this Performance Bond.)

(FOR INFORMATION ONLY - Name, address and telephone)

AGENT or BROKER:

Hentschell & Associates, Inc. 621 Pacific Ave. Suite 400

Tacoma, WA 98402 (253)272-1151

OWNER'S REPRESENTATIVE:

(Architect, Engineer or other party:)

N/A

- 1. The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.
- 2. If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this bond, except when applicable to participate in a conference as provided in Section 3.
- 3. If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond shall arise after
  - .1 the Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Contractor and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Section 3.1 shall be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default;
  - .2 the Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and
  - .3 the Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.
  - 4. Failure on the part of the Owner to comply with the notice requirement in Section 3.1 shall not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.
  - 5. When the Owner has satisfied the conditions of Section 3, the Surety shall promptly and at the Surety's expense take one of the following actions:
    - 5.1 Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;
    - 5.2 Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;
    - 5.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Section 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or
    - 5.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:
      - .1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or
      - .2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.
  - 6. If the Surety does not proceed as provided in Section 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Section 5.4, and the Owner refuses the payment or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

- 7. If the Surety elects to act under Section 5.1, 5.2 or 5.3, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication, for
  - .1 the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;
  - additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Section 5; and
  - .3 liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.
  - 8. If the Surety elects to act under Section 5.1, 5.3 or 5.4, the Surety's liability is limited to the amount of this Bond.
- 9. The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors and assigns.
- 10. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.
- 11. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.
- 12. Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears.
- 13. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

#### 14. Definitions

- 14.1 Balance of the Contract Price. The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.
- 14.2 Construction Contract. The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.
- 14.3 Contractor Default. Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.
- 14.4 Owner Default. Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.
- 14.5 Contract Documents. All the documents that comprise the agreement between the Owner and Contractor.
- 15. If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

(Space is provided below for additional signatu CONTRACTOR AS PRINCIPAL	han those appearing on the cover page.)  SURETY	(Corporate Seal)
Company:	Company:	
Signature: Name and Title:	 Signature:Name and Title:	<del></del>
Address	Address	

16. Modifications to this bond are as follows:



# PAYMENT BOND

Bond No. 2178843

#### CONTRACTOR:

(Name, legal status and address) Seton Construction, Inc. 4640 S. Discovery Rd Port Townsend, WA 98368

#### OWNER:

(Name, legal status and address) Jefferson County Engineer Public Works Department 623 Sheridan Street Port Townsend, WA 98368

#### CONSTRUCTION CONTRACT

Date: 06/02/2014

Amount: \$72,900.00

Description: Oil City Road Washout Emergency Repair, Jefferson County, WA

(Name and location)

SURETY:

North American Specialty Insurance Company 475 N. Martingale Road, Suite 850 Schaumburg, IL 60173

> This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

This document combines two separate bonds, a Performance Bond and a Payment Bond, into one form. This is not a single combined Performance and Payment Bond.

#### **BOND**

Date: 06/02/2014

(Not earlier than Construction Contract Date)

Amount: \$72,900.0

Modifications to this Bond:

X None

See Section 18

CONTRACTOR AS PRINCIPAL

(Corporate Seal)

SURETY

(Corporate Seal)

Company: Seton Construction, Inc.

Company: North American Specialty Insurance Company

Signature:

Name and Title:

President

Signature

toanne Reinkensmever. Name

Attorney-in-Fact

and Title:

(Any additional signatures appear on the last page of this Payment Bond.)

(FOR INFORMATION ONLY - Name, address and telephone)

AGENT or BROKER:

Hentschell & Associates, Inc. 621 Pacific Ave. Suite 400

Tacoma, WA 98402 (253)272-1151

OWNER'S REPRESENTATIVE:

(Architect, Engineer or other party:)

- 1. The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.
- 2. If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.
- 3. If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Section 13) of claims, demands, liens or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety.
- 4. When the Owner has satisfied the conditions in Section 3, the Surety shall promptly and at the Surety's expense defend, indemnify and hold harmless the Owner against a duly tendered claim, demand, lien or suit.
- 5. The Surety's obligations to a Claimant under this Bond shall arise after the following:
  - 5.1 Claimants, who do not have a direct contract with the Contractor,
    - .1 have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
    - .2 have sent a Claim to the Surety (at the address described in Section 13).
  - 5.2 Claimants, who are employed by or have a direct contract with the Contractor, have sent a Claim to the Surety (at the address described in Section 13).
- 6. If a notice of non-payment required by section 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Section 5.1.1.
- 7. When a Claimant has satisfied the conditions of Sections 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:
  - 7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and
  - 7.2 Pay or arrange for payment of any undisputed amounts.
  - 7.3 The Surety's failure to discharge its obligations under Section 7.1 or Section 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Section 7.1 or Section 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.
- 8. The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Section 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.
- 9. Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.
- 10. The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to, or give notice on behalf of, Claimants or otherwise have any obligations to Claimants under this Bond.

- 11. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.
- 12. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Section 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.
- 13. Notice and Claims to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.
- 14. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.
- 15. Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.

#### 16. Definitions

- 16.1 Claim. A written statement by the Claimant including at a minimum:
  - .1 the name of the Claimant;
  - .2 the name of the person for whom the labor was done, or materials or equipment furnished;
  - .3 a copy of the agreement or purchase order pursuant to which labor, materials or equipment was furnished for use in the performance of the Construction Contract;
  - .4 a brief description of the labor, materials or equipment furnished;
  - the date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract:
  - .6 the total amount earned by the Claimant for labor, materials or equipment furnished as of the date of the Claim;
  - .7 the total amount of previous payments received by the Claimant; and
  - .8 the total amount due and unpaid to the Claimant for labor, materials or equipment furnished as of the date of the Claim.
- 16.2 Claimant. An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.
- 16.3 Construction Contract. The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.
- 16.4 Owner Default. Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.
- 16.5 Contract Documents. All the documents that comprise the agreement between the Owner and Contractor.

17.	If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.							
18.	Modifications to this bond are as follows:	lows:						
	is provided below for additional signatures of a FRACTOR AS PRINCIPAL	dded parties, other than those (Corporate Seal) SUR		(Corporate Seal)				
Comp			pany:	(co.porate com)				
_	ure:		ature:	<del></del>				
Name Addre	and Title:	Nam Addı	e and Title:					
, iddi C	טט	/ Iddi						

### NAS SURETY GROUP

# NORTH AMERICAN SPECIALTY INSURANCE COMPANY WASHINGTON INTERNATIONAL INSURANCE COMPANY

# GENERAL POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS. THAT North American Specialty Insurance Company, a corporation duly organized and existing under laws of the State of New Hampshire, and having its principal office in the City of Manchester, New Hampshire, and Washington International Insurance Company, a corporation organized and existing under the laws of the State of New Hampshire and having its principal office in the City of Schaumburg, Illinois, each does hereby make, constitute and appoint:
THOMAS P. HENTSCHELL, BRADLEY A. ROBERTS, JULIE A. CRAKER,
KAREN A. INGRAM, KAREN J. SMITH and JOANNE REINKENSMEYER
JOINTLY OR SEVERALLY
Its true and lawful Attorney(s)-in-Fact, to make, execute, seal and deliver, for and on its behalf and as its act and deed, bonds or other writings obligatory in the nature of a bond on behalf of each of said Companies, as surety, on contracts of suretyship as are or may be required or permitted by law, regulation, contract or otherwise, provided that no bond or undertaking or contract or suretyship executed under this authority shall exceed the
amount of: FIFTY MILLION (\$50,000,000.00) DOLLARS
This Power of Attorney is granted and is signed by facsimile under and by the authority of the following Resolutions adopted by the Boards of Directors of both North American Specialty Insurance Company and Washington International Insurance Company at meetings duly called and held on the 9th of May, 2012:
"RESOLVED, that any two of the Presidents, any Managing Director, any Senior Vice President, any Vice President, any Assistant Vice President, the Secretary or any Assistant Secretary be, and each or any of them hereby is authorized to execute a Power of Attorney qualifying the attorney named in the given Power of Attorney to execute on behalf of the Company bonds, undertakings and all contracts of surety, and that each or any of them hereby is authorized to attest to the execution of any such Power of Attorney and to attach therein the seal of the Company; and it is
FURTHER RESOLVED, that the signature of such officers and the seal of the Company may be affixed to any such Power of Attorney or to any certificate relating thereto by facsimile, and any such Power of Attorney or certificate bearing such facsimile signatures or facsimile seal shall be binding upon the Company when so affixed and in the future with regard to any bond, undertaking or contract of surety to which it is attached."
By Steven P. Anderson, Senior Vice President of Washington International Insurance Company  & Senior Vice President of North American Specialty Insurance Company  By David M. Layman, Vice President of Washington International Insurance Company  & Vice President of North American Specialty Insurance Company
IN WITNESS WHEREOF, North American Specialty Insurance Company and Washington International Insurance Company have caused their official seals to be hereunto affixed, and these presents to be signed by their authorized officers this 20th day of, 2012.
North American Specialty Insurance Company Washington International Insurance Company
State of Illinois County of Cook ss:
On this 20th day of June , 2012, before me, a Notary Public personally appeared Steven P. Anderson. Senior Vice President of Washington International Insurance Company and Senior Vice President of North American Specialty Insurance Company and David M. Layman. Vice President of Washington International Insurance Company and Vice President of North American Specialty Insurance Company, personally known to me, who being by me duly sworn, acknowledged that they signed the above Power of Attorney as officers of and acknowledged said instrument to be the voluntary act and deed of their respective companies.
OFFICIAL SEAL"  DONNA D. SKLENS  Notary Public, State of Illinois My Commission Expires 10/06/2015  Donna D. Sklens, Notary Public
I. <u>Jeffrey Goldberg</u> , the duly elected <u>Assistant Secretary</u> of North American Specialty Insurance Company and Washington International Insurance Company, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney given by said North American Specialty Insurance Company and Washington International Insurance Company, which is still in full force and effect.
IN WITNESS WHEREOF, I have set my hand and affixed the seals of the Companies this 2Nd ay of June .2014.
Jeffrey Goldberg, Vice President & Assistant Secretary of Washington International Insurance Company & North American Specialty Insurance Company



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 5/22/2014

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to

	ne terms and conditions of the policy, ertificate holder in lieu of such endors			licies may require an e	ndorse	ment. A sta	tement on th	nis certificate does not c	onfer r	rights to the
PRODUCER				CONTACT Trina Maher						
Kuresman Insurance					NAME: TFINA MANOF PHONE (AJC. No. Ext): (360) 692-6131 [AJC. No]: (360) 692-6187					
9321 Bayshore Dr. NW					E-MAIL	cc.trinam(	kuresman	ins.com		
STE 111					ADDRE			RDING COVERAGE		NAIC#
Si	lverdale WA 98	383	-835	0	INCURE.			west Insurance (	7	NAIC #
	JRED						LY NOI CIT	west insulance (	-0-	
	ton Construction, Inc.				INSURE		<del></del>	<del> </del>		-
	40 Discovery Rd				INSURE				$\overline{}$	
40	TO DISCOVELY NG				INSURER D:					<del></del>
De	rt Townsend WA 98	260		:	INSURE					
			· A T.F. A	NUMBER:CL1310103	INSURE	RF:	<del></del>	DEVICION NUMBER		
	VERAGES CER HIS IS TO CERTIFY THAT THE POLICIES			<del></del>		M ISSUED TO		REVISION NUMBER:	HE DO	LICY REDIOD
C 11	IDICATED. NOTWITHSTANDING ANY RE ERTIFICATE MAY BE ISSUED OR MAY XCLUSIONS AND CONDITIONS OF SUCH	QUIR PERT	EMENT AIN, TH CIES. L	T, TERM OR CONDITION HE INSURANCE AFFORD IMITS SHOWN MAY HAVE	OF AN	Y CONTRACT THE POLICIE REDUCED BY	OR OTHER S DESCRIBE PAID CLAIMS	DOCUMENT WITH RESPE D HEREIN IS SUBJECT T S.	CT TO	WHICH THIS
LTR		INSR	WVD	POLICY NUMBER		POLICY EFF (MM/DD/YYYY)	(MM/DD/YYYY)	LIMIT		
	GENERAL LIABILITY							EACH OCCURRENCE DAMAGE TO RENTED	\$	1,000,000
_	X COMMERCIAL GENERAL LIABILITY					10/20/2012	10/20/2014	PREMISES (Ea occurrence)	\$	100,000
A	CLAIMS-MADE X OCCUR	Х	C	10 16-16-02		10/30/2013	10/30/2014	MED EXP (Any one person)	\$	5,000
	X LOGGERS BROAD FORM							PERSONAL & ADV INJURY	\$	1,000,000
			1					GENERAL AGGREGATE	\$	2,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER: POLICY X PRO-							PRODUCTS - COMP/OP AGG	\$	2,000,000
	AUTOMOBILE LIABILITY							COMBINED SINGLE LIMIT (Ea accident)		1,000,000
	X ANY AUTO	ļ						BODILY INJURY (Per person)	\$	170007500
A	ALL OWNED SCHEDULED AUTOS  X HIRED AUTOS  X AUTOS  X AUTOS		cı	10 16-16-02		10/30/2013	10/30/2014	BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)	\$	
			ŀ		-		ŀ	Undernsured motorist	s	1,000,000
	X UMBRELLA LIAB OCCUR							EACH OCCURRENCE	5	2,000,000
А	EXCESS LIAB CLAIMS-MADE						j	AGGREGATE	5	
	DED RETENTION \$		CI	10 16-16-02		10/30/2013	10/30/2014		5	
À	WORKERS COMPENSATION					<u></u>		WC STATU- OTH- TORY LIMITS ER		
	AND EMPLOYERS' LIABILITY  ANY PROPRIETOR/PARTNER/EXECUTIVE	N/A			10/30			E.L. EACH ACCIDENT	\$	
	OFFICER/MEMBER EXCLUDED? (Mandatory in NH)		CI	10 16-16-02		10/30/2013	10/30/2014	E.L. DISEASE - EA EMPLOYEE		
	If yes, describe under DESCRIPTION OF OPERATIONS below			210.16.16.00					s	
A	CONTRACTORS EQ RENTAL	*				10/30/2013	10/30/2014		•	2202 202
••	CONTRACTORS BY RENTAL		[	10 16-16-02		20, 30, 2013	10, 30, 2014	\$1,000 DED		\$300,000
DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, If more space is required) OIL CITY ROAD WASHOUT EMERGENCY REPAIR MP 8.8  CERTIFICATE HOLDER IS LISTED AS ADDITIONAL INSURED PER CG8416.										
CE	RTIFICATE HOLDER				CANC	ELLATION				
JEFFERSON COUNTY DEPARTMENT OF PUBLIC WOR 623 SHERIDAN STREET				SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.						
	PORT TOWNSEND, WA 98368				AUTHORIZED REPRESENTATIVE					

ACORD 25 (2010/05)

INS025 (201005) 01

© 1988-2010 ACORD CORPORATION. All rights reserved.

much m. mil

Mark Maberry/MWM