

**PUBLIC UTILITY DISTRICT NO. 1 OF  
SNOHOMISH COUNTY**

**SMALL WORKS ROSTER CONTRACT NO. \_\_\_\_**

**THIS CONTRACT** ("Contract") is entered into between Public Utility District No. 1 of Snohomish County, a Washington State municipal corporation ("District"), and \_\_\_\_\_ ("Contractor"). The District and Contractor are also referred to herein individually as "Party" and collectively "Parties."

**WHEREAS** the District regularly has public works projects that are eligible under state law to be performed by a contractor from the District's Small Works Roster.

**WHEREAS** Contractor desires to be on the District's Small Works Roster and be available to perform small works roster projects in accordance with the terms and conditions of this Contract.

**1. TERMS, SCHEDULE, BID AND NOTICE TO PROCEED**

**1.1 Term:** The term of this Contract shall be from the date executed through \_\_\_\_\_ unless extended by the Parties or terminated earlier by the District in accordance with Section 5. The parties agree time is of the essence in performing the work.

**1.2 Work Schedule:** The Contractor shall provide initial and progress construction schedules for the Work when required in the Specifications.

**1.3 Notice to Proceed:** Contractor will not perform any work prior to receipt of the District's written Notice to Proceed with the work.

**1.4 Bid Considerations:** The Contractor confirms the bid on which the Contract Price is based considered the Contract Time and included all necessary and foreseeable workforces, equipment, hours and typical delays (weather and work interruptions) to complete the work within the term.

**2. SCOPE OF WORK/SPECIFICATIONS**

**2.1** The scope of work, description of the small works roster project, drawings, written directions, and fees and compensation terms for the work to be performed for each small works roster project under this Contract (collectively the "work") will be set forth in Specifications, which will reference and be incorporated into this Contract.

**2.2** In the case of conflict between the language of the Contract and the Specifications, the language of the Specifications shall govern.

**2.3** Figured dimensions on a drawing shall take precedence over measurements scaled from the drawing, and large-scale drawings take precedence over those of smaller scale. In case of conflict between figured dimensions on a drawing and the dimensions of a specified product, the dimensions of the specified product shall govern. In case of discrepancies, the written directions as contained in the numbered specification document shall have precedence over drawings.

**2.4** If the application of the order of precedence results in an outcome the Contractor believes is unintended or will result in unnecessary risk or expense or which the Contractor questions for other professional reasons the Contractor shall notify the District and ask for confirmation before proceeding with the work.

**3. DEFINITIONS**

Unless otherwise stated in the Contract Documents, words not defined that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such

recognized meanings. The terms listed below are defined and interpreted as follows:

**3.1 Acceptance:** That date that all Work under this Contract, including completion of the close out documentation is formally accepted by the District.

**3.2 Contract Amendment:** Written form describing agreed upon changes to the Work, Contract Price, Contract Time and/or other modifications to the Contract, issued by the District, and signed by the Contractor's authorized representative and approved by the District's Board of Commissioners when required by District Directives, policies or procedures and signed by the District's authorized representative.

**3.3 Change Order:** Agreed upon revision that modifies the Scope of Work, Contract Price, Contract Time and/or other modifications to the work required by the contract documents. Change Orders are implemented with a signed Contract Amendment.

**3.4 Contract Documents:** shall include the Small Works Roster Contract, Special Conditions (if any) and Exhibits to the Small Works Roster Contract, Specifications, drawings, and attachments to the Specifications or Drawings, Contractor's Bid and all amendments, modifications, and addenda issues with respect to the Work or the Contract.

**3.5 Contract Price:** The total moneys payable to the Contractor under the terms and conditions of the Contract Documents. All prices and monetary amounts in the Contract Documents shall be expressed in currency of the United States of America (\$US) unless otherwise noted.

**3.6 Contract Time:** The period of time for completion of the Work, expressed in Days or as a specific completion date, in accordance with the requirements set forth in the Contract Documents.

**3.7 Notice:** When used separate from a defined title means any notice to any party of the Agreement relative to any part of this Contract in writing and considered delivered and the service thereof completed, when posted by certified or registered mail to the said party at their last given address or delivered in person to said party or their authorized representative at such address.

**3.8 Performance Security:** Performance bond, retainage or other amount or security the purpose of which is to ensure Contractor's performance in accordance with the Contract terms.

**3.9 Project:** Is identified in the Agreement and is the total construction to be performed by or through the District, of which the Work performed under the Contract Documents may be only a part. The Project may include construction by others engaged by the District.

**3.10 Project Leader:** District representative in charge of the Project or the Work.

**3.11 Small Works Roster:** Roster created pursuant to Washington law utilized by the District for the purposes of soliciting the Work.

**3.12 Specifications** – are those portions of the Contract Documents that contain the written requirements the construction and services must meet, including the materials, equipment, systems, standards and workmanship for the Work.

**3.13 Statements of Intent to Pay Prevailing Wage:** Form required for compliance with state prevailing wage laws.

**3.14 Subcontractors:** means any person, partnership, firm, or corporation that contracted directly with the Contractor to perform any Work under the Contract Documents. "Subcontractor of any tier" includes Subcontractors as well as any person, partnership, firm or corporation that contracts with a Subcontractor or a lower-tier Subcontractor to perform any of the Work. The definitions of Subcontractor and Subcontractor of any tier are not meant to change or alter the definitions contained in chapter 60.28 RCW, "Lien for Labor, Materials, Taxes on Public Works," chapter 39.12 RCW, "Prevailing Wages on Public Works," or other statutory definitions of a subcontractor for the purposes of such statutes.

**3.15 Work:** the construction and services required by the Contract Documents, whether completed or

partially completed, and includes all labor, tools, equipment, materials, services, and incidentals necessary to complete the obligations of the Contractor under the Contract Documents. The Work may constitute only a part of the Project and may interface and need to be coordinated with activities performed by others for the Project or other purposes.

#### **4. GENERAL**

**4.1 Contract.** The Contract represents the entire and integrated agreement between the District and the Contractor and supersedes all prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only as set forth in the Contract. The intent of the Contract Documents is to include all items necessary for the completion of the work by the Contractor. The Contract Documents should be read together as a whole. Contractor's performance shall be consistent with the Contract Documents including tasks inferable from the Contract Documents as being necessary to produce the indicated results. Neither party shall assign the Contract as a whole without written consent of the other. Contractor also shall not assign to any third party any claims it may have against the District arising under the Contract or otherwise related to the work.

**4.2 Safety.** The Contractor shall be solely and completely responsible for conditions of any work site, including safety of all persons and property, during performance of the work. The Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract, regardless of the site of the work. The Contractor shall maintain all work sites and perform the work in a manner that meets federal, state, and local statutory and common-law requirements for the provision of a safe place to work. The Contractor shall comply with all safety requirements set forth in the Contract. These requirements shall apply continuously and not be limited to working hours. Any review by the District or others of the Contractor's performance, and any participation in the work, shall not be construed to include a review of the adequacy of the Contractor's safety measures in, on or near any site of the work. No action or inaction of the District or any third party shall relieve the Contractor of these responsibilities.

**4.3 Safety Regulations.** The Contractor shall comply with the safety regulations set forth in "Safety Standards for Construction" and "General Safety Standards" and any other requirements published by the Department of Labor and Industries. The Contractor shall also comply with the Federal Occupational Safety and Health Act of 1970 (OSHA), including all revisions, amendments and regulations issued thereunder, and the provisions of the Washington Industrial Safety and Health Act of 1973 (WISHA), including all revisions, amendments and regulations issued thereunder by the Department of Labor and Industries. The WISHA regulations shall apply to all excavation, trenching and ditching operations. In case of conflict between any such requirements, the more stringent regulation or requirement shall apply.

**4.4 Security.** The Contractor shall comply with all security requirements specified in the Contract Documents, including complying with District security protocols such as but not limited to wearing badges and being escorted. The Contractor shall comply with all notices and all requests from the District regarding the safety and protection of site occupants and others. If the District issues identifying vests, signage, badges or other identification the Contractor's personnel shall prominently display, or wear (as appropriate), all identifying materials for the safety of Contractor's personnel and the public.

**4.5 Emergencies.** In an emergency endangering the safety of life, the Work, the Project or of adjoining property, Contractor is permitted to act, at its discretion, to prevent such threatened loss or injury. The Contractor should provide Notice to the District before acting if reasonable and shall notify the District as soon as commercially reasonable after the emergency situation has been stabilized. Contractor is required to act to prevent such threatened loss or injury when authorized or instructed by the District. A Change Order or Contract Amendment shall be issued retroactively in accordance with this Contract if a modification is needed to the Contract as a result of any emergency work performed.

#### **5. EXAMINATION OF CONDITIONS**

**5.1** It is the Contractor's responsibility to examine the worksite and the Specifications for each District project proposal. Contractor agrees that for each proposal submitted to perform work under this Contract, Contractor shall include a sum sufficient to cover all items required by the Specifications and all

conditions, matters, and contingencies which could affect the work or the cost of performing the work. The failure of the Contractor to receive or examine any site condition, form, instrument, addendum, or other documents shall in no way relieve the Contractor from any obligation with respect to its proposal or this Contract.

**5.2** The District shall not be responsible for claims or damages caused by conditions, matters, and contingencies which could reasonably have been determined from inspection of the worksite and examination of the Specifications.

**5.3** It is understood that any information concerning existing utilities or obstructions shown in the Specifications is made available to the Contractor for informational purposes only, and it is not guaranteed to be accurate by the District. Incompleteness or error in this information shall not be cause for any claim for extra payment under this Contract. It shall be the responsibility of the Contractor to determine the actual location and numbers of any existing utilities and obstructions.

**5.4** The Contractor shall protect all existing utilities, structures, landscaping, driveways or other pavement and curbs and similar features at and around the worksite from damage of any kind. Any such damage shall be repaired by the Contractor, to the District's satisfaction, at no extra cost to the District. If the work requires removal of any of the above features, Contractor shall patch, repair or replace the damaged or removed feature to the satisfaction of the District and the owner of the feature.

**5.5 Cultural, Archeological or Human Remains or Wetlands.** If the Contractor encounters cultural, archeological or human remains, or wetlands (collectively "Sensitive Features") not indicated in the Contract including the Specifications, the Contractor shall immediately suspend any operations that would affect the Sensitive Features, protect any found items, and immediately notify the District by telephone and in writing. The Contractor will stop work that would impact the Sensitive Feature but shall continue with all other work that does not affect the Sensitive Feature. The District will inform the Contractor when stopped work can continue. The Contractor may request an adjustment in the Contract Price or term arising from the existence of such Sensitive Feature.

## **6. CONTRACT PERFORMANCE**

**6.1 Work Standard.** All work shall be performed in a skillful and workmanlike manner and in accordance with the Contract and all applicable terms and industry standards required by state statute, the Specifications and this Contract. The Contractor shall promptly correct or otherwise remedy work determined by the District to not conform with the Contract Documents. District's failure to notify the Contractor of non-conforming work shall not relieve the Contractor of the obligation that the work conforms with the Contract Documents. Contractor shall not employ anyone not skilled in the tasks assigned to him or her. At the District's request the Contractor shall replace any employees or agents without increase to the Contract Price or Contract Time: a) whose actions or behaviors disrupt, harm or negatively impact the work, any person or job site safety and security; or b) who lacks the knowledge, skill or judgment to perform the tasks assigned to them.

**6.2 Sequence and Method of Operation.** The Contractor's sequence of operations, method of operations, application of effort, and work force shall at all times during the performance of the work be such as to ensure orderly and expeditious completion of the work.

**6.3 Public Impact.** Contractor will take into consideration noise ordinances, hours of operation, notifications of street closures and other activities that may affect the surrounding community. Contractor will manage any complaints received from the public, taking into account the District's relations with the public, and immediately notify the District of the complaint and any action taken.

**6.4 Electronic Communications.** The parties will establish necessary protocols governing electronic communications (for example email, text, phone calls) during the performance of the work. Any electronic files or information on computer media that are copies of original documents or provided as reference documents are provided for the convenience of the Contractor and for informational purposes only.

**6.5 Work Manager, Supervisor and Personnel.** The Contractor shall supervise and direct the

work using the Contractor's best skill and attention. At all times during the progress of the Contract the Contractor shall be present at the Work site or be represented by someone with the experience and knowledge to act in the Contractor's stead, with the authority to make binding and enforceable decisions in the name of the Contractor. All requirements, instructions and other communications given to the Contractor or the Contractor's representative by the District shall be binding on the Contractor and shall be confirmed in writing upon the Contractor's request. If there is no superintendent on site and the District deems the site representative unqualified, ineffective or lacking authority, the District may shut down the work until the Contractor can provide appropriate on-site representation. The Contractor shall, if requested to do so by the District and without increase to the project amount or project schedule, remove any project manager, supervisor, or other assistant or employee whom the District believes, in its sole discretion, to be incompetent, dishonest, careless, negligent, uncooperative and/or unsatisfactory.

**6.6 Appearance.** The Contractor's personnel and equipment shall at all times present an appropriate workman-like appearance for site and conditions.

**6.7 District Administration of the Contract.**

**6.7.1** The District will provide administration of this Contract. All communications about the work shall be with the District's designated representative.

**6.7.2** The District shall have the authority to reject all work, materials and equipment which do not conform to the Specifications, and to decide questions concerning the Specifications which arise during execution of the work. The District shall have the right to stop the work if the District deems the work will not be completed according to the Contract or within the Contract Time. After three (3) days written notice, and without prejudice to other remedy including but not limited filing a claim against the Performance Security, the District may complete the work with its own staff or through another contractor and may deduct the cost from any payment then due or later due the Contractor.

**6.7.3** The District and its representatives shall at all times have access to the work in progress, and the Contractor shall provide proper facilities for such access and for inspection.

**6.7.4** The District shall not be responsible for and will not have control of the means, methods, techniques, sequences or procedures, or for safety precautions or programs in connection with the work. The District shall not be responsible for the Contractor's failure to carry out the work in accordance with the Specifications. The District shall not be responsible for or have control over the acts or omissions of the Contractor, subcontractors, or any of their agents or employees.

**6.8 Omissions and Discrepancies.**

**6.8.1** In the event Contractor observes any omission, discrepancy, and/or ambiguity as to the nature or extent of the work to be performed in the Contract or Specifications, Contractor shall immediately notify the District in writing of such observations prior to performance of the work. Any work done after such observation, until authorized, shall be at Contractor's risk. All interpretations and explanations of the Specifications or nature of the work given by the District in writing to the Contractor shall be final and binding upon the Contractor.

**6.8.2** Minor items of work or material omitted from the Specifications, but clearly inferable from the information presented and which are called for by accepted industry practice, shall be provided and/or performed by the Contractor as part of the Contractor's work and included within Contractor's original bid.

**6.9 Fees and Permits**

**6.9.1 Fees:** The Contractor shall coordinate and schedule all work, including but not limited to inspections with permitting agencies, utility companies, and other entities with jurisdictional authority for completion of the work. The Contractor shall pay, without reimbursement in excess of the Contract Price, for any fees, licenses, and inspections by such agencies, companies, and other entities necessary for proper execution and completion of the work, and for any utility connection fees.

**6.9.2 Permits:** The Contractor shall apply for and secure all permits required for the Work not

explicitly required by the Contract Documents to be supplied by the District. Payment for permits that the Contractor must secure shall be made by the District directly (as coordinated by the Contractor) or reimbursed by the District at actual cost, without markup or other costs added. After execution of the Contract the Contractor shall pick up and coordinate all permits required for the work. The Contractor shall be responsible for: 1) verifying all permit requirements prior to submitting its Bid for the work; and 2) complying with all permit requirements, and ensuring its subcontractors comply with all permit requirements, during performance of the work.

## **6.10 Materials, Equipment and Supplies.**

**6.10.1** Unless otherwise stipulated, the Contractor shall provide and pay for all labor, water, tools, equipment, materials, light, power, transportation, and other facilities necessary for the proper execution and completion of the work under this Contract. All goods and materials sold to District by Contractor as a part of the work shall be new, free of defects, and title thereto shall be merchantable and free of liens or encumbrances.

**6.10.2** The Contractor shall receive, visually inspect, and accept all District-furnished items, if received in satisfactory condition, subject only to hidden defects, and shall be entitled to damages for such defects only to the extent that such damages are recoverable by the District against the supplier.

**6.10.3 Substitutions.** After the Contract has been executed, the District may consider a written request for the substitution of material or products in place of those specified in the Contract in the sole discretion of the District.

## **6.11 Delays and Extensions of Time.**

**6.11.1** Delay in furnishing of material or equipment by the District shall not constitute a breach of performance by the District so as to relieve the Contractor from strict performance within the time fixed for performance and/or as extended by the District.

**6.11.2** The time for completion stated in the Specifications for the respective project takes into consideration: delay and work interruption caused by such factors as normal weather conditions, soil conditions, underground obstructions, labor disputes, and usual transportation time; and delay and work interruption caused by third parties. If the Contractor is delayed at any time in the progress of the work by any act of the District or its employees; or by changes ordered in the work; or by any cause beyond the Contractor's control; or by delay authorized by the District, then the time for completion of the work shall be extended for such reasonable time as the District may decide. No additional compensation shall be granted because of any such aforementioned delays or interruptions, except delay directly caused by the acts described under Section 5.8.1.

**6.11.3** When it has been determined that the Contractor is entitled to an extension of time, the amount of extension shall be only to compensate for direct delay and shall be based upon the Contractor energetically pursuing completion of the work at a rate not less than that which would have been necessary to complete the basic Contract on time.

## **6.12 Termination of Contract**

**6.12.1 Termination for Convenience.** The District has the right to terminate this Contract at any time and without cause upon written notice to the Contractor. Contractor shall stop performing the work, place no further orders or subcontracts for materials, supplies or labor, cancel all orders and subcontracts to the extent possible, assign to the District all rights, title and interest of the Contractor in all orders and subcontracts related to the work, and take other actions as directed by the District to preserve and protect the work, site and any other property related to the project. Compensation to the Contractor shall be equitably adjusted to compensate the Contractor for the work performed to date of termination. Contractor agrees that in the event of termination there shall be no liability to the District for lost profits, loss of business, or other consequential damages. Contractor's claims resulting from termination shall be limited to payment for the actual work completed, provided that such payment shall never exceed the Contract Price, as modified by any written and appropriately authorized Contract Amendments.

**6.12.2 Termination for Cause.** If Contractor is adjudged bankrupt, makes a general assignment for the benefit of creditors, is appointed a receiver on account of the Contractor's insolvency, or if the Contractor should, in the opinion of the District, persistently or materially refuse or fail to supply enough properly skilled workmen or materials for proper completion of the Contract, fail to make prompt payment to subcontractors or suppliers for material or labor, persistently or materially disregard laws, ordinances, or the instructions of the District, or otherwise be guilty of a material violation of any provision of the Contract, then the District may, without prejudice to any other right or remedy, terminate the Contractor after giving the Contractor seven (7) days' written notice.

**6.12.3 Rights on Termination.** District may take possession of the site and the materials and equipment and utilize such materials and equipment to finish the work. In addition, the District may exercise any rights, claims or demands that the Contractor may have against third persons in connection with the Contract, and for such purpose the Contractor does hereby assign, transfer and set over unto the District all such rights, claims and demands. Neither the Contractor nor its surety will be relieved of their obligations under the Contract or the performance and payment bonds by the District's exercise of its rights under this Contract.

### **6.13 Damages**

**6.13.1** In the event that the District becomes liable to the Contractor for damages arising from unreasonable delays caused by acts or omissions of the District which impact the critical path of the Contractor for performance of the work, the Parties, in recognition of the difficulty in calculating the actual costs, expenses and other damages that Contractor will incur due to such delay, agree that Contractor will be entitled to liquidated damages limited to prices established by unit cost bids or the direct costs, whichever is lower, for the actual labor and equipment idled directly as a result of such delay. Further, in the event of such delay, **CONTRACTOR EXPRESSLY WAIVES ALL CLAIMS FOR PAYMENT OF DAMAGES, WHICH INCLUDE OR ARE COMPUTED ON TOTAL COSTS OF JOB PERFORMANCE, OVERHEAD, EXTENDED OVERHEAD, PROFIT, OR SIMILAR METHODS WHICH DO NOT RELATE TO THE LABOR AND EQUIPMENT PRICES STATED IN THE SPECIFICATIONS OR ARE NOT SPECIFIC AS TO THE ACTUAL DIRECT COST OF THE WORK.**

**6.13.2** Contractor agrees, as a material condition of this Contract, that "unreasonable delays" by the District shall not include or in any matter relate to the District's rights and duties pertaining to administration of the scope of work, control of materials, legal relations and responsibility to the public, prosecution and process, or measurement and payment as provided herein.

### **6.14 Changes in the Work.**

**6.14.1** The District may order extra work or make changes in the work by altering, adding to or deducting from the work, and the project price will be adjusted accordingly. All such work or alterations shall be executed under the terms and conditions of this Contract and shall not be considered as a waiver of any such terms and conditions, except that any claim for extension of time caused thereby shall be adjusted appropriately. Except in an emergency endangering life or property, no extra work or change shall be made unless pursuant to a written order by the District, and no claim for an addition to the project price shall be valid unless so ordered. The District may make changes in the way this Contract is administered by giving written notice of such changes to the Contractor.

**6.14.2** The value of any such extra work or change shall be determined in one or more of the following ways:

- A. By estimate and agreement on a lump sum; or
- B. By unit prices named in the Contract, Specifications or subsequently agreed upon by the Parties.

If, for any reason, the value cannot be agreed upon or is not applicable using the above methods, such work will be paid for at the actual, direct cost of labor, including applicable taxes, material, equipment rental and field supervision required, with the addition of a fifteen percent (15%) markup to cover profit, office and field

overhead, use of small tools, insurance, bookkeeping and all other incidental costs. In such cases, the Contractor shall keep and present in such form as the District may direct, a correct accounting of such costs, together with supporting timecards and vouchers. Pending final determination of value, payments on account of changes shall be made on the District's estimate.

**6.14.3** The District may authorize changes in the work using a standard District form. The District shall initiate the process by sending to the Contractor a description of the work on or attached to the District form signed by the District and directing the work to be done. The Contractor shall acknowledge receipt of the form by Contractor's signature and return the original to the District.

**6.14.4** Any Change in the work provided in a District form shall be incorporated into a Contract Amendment to this Contract. Other changes in the work which have been agreed to by the Contractor and the District may be directly issued as a Contract Amendment.

## **6.15 Storm Work.**

**6.15.1** During storms or other exigent circumstances requiring prompt District action in order to restore power following outages caused or expected to be caused by such circumstances, Contractor crews performing work under this Contract, at the time such District action is required, shall be considered available to the District and may be reassigned by the Contractor to other utilities only after release by the District's Project Leader or designated representative.

**6.15.2** During storms or other exigent circumstances requiring prompt District action in order to restore power following outages caused or expected to be caused by such circumstances, if Contractor is not performing work on any small works roster project under this Contract at the time such District action is required, any work performed by Contractor by mutual agreement of the parties to restore power following outages caused or expected to be caused by such circumstances, shall be subject to all applicable terms and conditions of this Contract.

**6.15.3** The District will pay standby time, as specified in the Contractor's Bid, in order to retain assigned crews during the period of time required to obtain a reassignment decision. If no standby time is specified in the Contractor's Bid, or if Contractor is not performing work on any small works roster project at the time of such reassignment, this section shall not apply.

## **7. CONTRACT COMPLETION**

**7.1 Time for Completion.** The work to be performed for each small works roster project as set forth in the applicable Specifications shall not be considered completed by the Contractor until such work has been inspected and accepted by the District. If the inspection(s) discloses any item which is not complete in accordance with the Contract or that does not allow the District to utilize the work or designated portion thereof for its intended use, the Contractor shall complete or correct such item. The Contractor shall then submit a request for another inspection by the District to determine if the work is complete. The Contractor shall pay the costs associated with any further re-reviews. When the work or designated portion thereof has achieved completion, the District will document the date of Completion in writing. Warranties required by the Contract Documents shall commence on the date of completion of the work or designated portion thereof unless otherwise provided in the Contract Documents.

**7.2 Occupancy or Use.** The District may, upon written notice to the Contractor, take possession of, operate, occupy, or use any completed or partially completed portion of the work at any stage, and the Contractor shall cooperate with such occupancy and use. Unless otherwise agreed in writing, such possession, use or operation shall not be deemed an acceptance of any portion of the work or accelerate the time for any payment to the Contractor under the Contract.

**7.3 Clean Up.** The Contractor shall keep the work site reasonably clear and clean during the progress of the work. Before any project shall be considered complete, the Contractor shall clean out ditches that may have been filled during the work, remove surplus materials and trash, and otherwise leave the job in a neat, orderly, and workmanlike condition. If the Contractor fails, in the opinion of the District, to clean up appropriately, the District may do so, and the cost thereof shall be charged to the Contractor.



## 8. CONTRACT PAYMENT AND CONTRACT RETAINAGE

**8.1 Contract Payment.** The Contractor shall submit invoices showing the District's contract number, purchase order number and project leader, along with any supporting documentation required in the Specifications or elsewhere in this Contract including but not limited to state-approved Statements of Intent to Pay Prevailing Wage, release of liens, proof of quantities used, receipts and work orders. Except as otherwise provided below, payment shall be made within thirty (30) days after receipt and approval of the invoice by the District.

**8.2 Contract Retainage.** The Contractor represents that Contractor is familiar with and shall comply with the provisions of chapter 60.28 of the Revised Code of Washington. Pursuant to state law, the District shall retain a sum equal to 5% of all monies earned by the Contractor on each small works roster project as a trust fund for the protection and payment of any person or persons, mechanic, subcontractor or materialman who shall perform any labor upon the work, all persons who shall supply those persons or subcontractors with provisions and supplies for carrying on the work, and the state with respect to taxes imposed pursuant to RCW Title 82 which may be due from Contractor. Retained funds shall be held until the later of the following: (1) Sixty (60) days following acceptance of the work, or (2) until the District's receipt of the required releases from the Department of Revenue, Department of Labor and Industries and the Employment Security Department, as well as the District's receipt of the Contractor's Affidavit (see Exhibit B attached hereto) certifying compliance with certain requirements set forth elsewhere herein. Prior to submitting its first payment request, the Contractor shall exercise, in writing, one of the following retainage options:

**8.2.1** Retained in a fund by the District; or

**8.2.2** Deposited by the District in an interest-bearing account in a bank, mutual savings bank or savings and loan association; or

**8.2.3** Placed in escrow with a bank or trust company; or

**8.2.4** The Contractor may provide a bond in place of retainage, which shall be in accordance with chapter 60.28 RCW and in an amount equal to 5% of the Contract Price plus Contract Amendment(s). The minimum requirements for the bond are that it must be on a form acceptable to the District and signed by a surety registered by the Washington State Insurance Commissioner and on the currently authorized insurance list published by the Washington State Insurance Commissioner; additional requirements as established by the District may be applied.

**8.3 Title Conveys with Payment.** The Contractor warrants that title to all work covered by a payment application will pass to the District no later than the time of payment, but the Contractor shall remain responsible for all work until accepted by the District. The Contractor further warrants that upon submittal of a payment application all work for which payments have been received from the District shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests, or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials, and equipment relating to the work.

**8.4 Withholding Payment.** The District may withhold payment in whole or in part, to the extent reasonably necessary to protect the District from loss for which the Contractor is responsible, including loss resulting from acts and omissions such as but not limited to defective work; third party claims; failure of Contractor to pay subcontractors; reasonable evidence the work cannot be completed for the unpaid balance of the Contract Price; damage to property; delays and unsatisfactory work; failure to submit required documentation.

**8.5 Statements of Prevailing Wage Intent:** Pursuant to chapter 39.12 RCW, "Prevailing Wages on Public Works," the Contractor will not receive any payment until the Contractor and all Subcontractors of any tier for whom payment is sought have submitted state-approved "Statements of Intent to Pay Prevailing Wage" to the District. Each statement must have the approval of the Industrial Statistician of the Department of Labor and Industries before it is submitted to the District. The statement must include

all information required by the Department of Labor and Industries. The Contractor agrees to provide each Subcontractor of any tier with a schedule of applicable prevailing wage rates. The Contractor and the respective Subcontractors of any tier shall pay all fees required by the Department of Labor and Industries, including fees for the approval of the "Statement of Intent to Pay Prevailing Wages." Approved copies of the "Statement of Intent to Pay Prevailing Wages" must be posted where workers can easily read them.

## **9. INSURANCE CERTIFICATE AND PERFORMANCE SECURITY**

### **9.1 Insurance**

**9.1.1** Prior to the commencement of any work under this Contract, and at all times during the term of this Contract, Contractor shall obtain and maintain continuously, at its own expense, all insurance required in this Section and such insurance shall be primary with respect to any insurance carried by the District. Contractor shall have no right to call upon or seek contribution from any insurance carried by the District, and Contractor hereby waives all rights to subrogation thereunder.

**9.1.2** Within ten (10) days of execution of this Contract, and annually thereafter while the Contract is in effect, the Contractor shall furnish the District with up-to-date Certificate(s) of Insurance and Additional Insured Endorsements evidencing Contractor's general and automobile liability insurance including the following:

Commercial General Liability Insurance—written on an occurrence form, to include Bodily Injury/Property Damage, Premises/Operations Liability, Products/Completed Operations, Personal/Advertising Injury, Contractual Liability, with minimum limits of \$2,000,000 Each Occurrence. If the Commercial General Liability policy has a sublimit applicable to Fire Damage Legal Liability, a limit greater than or equal to \$200,000 is required.

Business Automobile Liability Insurance, including coverage for owned, non-owned, leased or hired vehicles used by or for Contractor in any capacity in condition with the carrying out this Contract providing: Bodily Injury and Property Damage, including loss of use thereof, with minimum limits of \$1,000,000 Combined Single Limit (each accident).

Workers Compensation Insurance which complies with all applicable Workers Compensation Statutes in the State of Washington and any other state in which the Contractor operates in. In the case of any work sublet, the Contractor shall require the subcontractor similarly to comply with all applicable Workers Compensation Statutes. Regarding Workers Compensation insurance in the State of Washington, Contractor shall secure its liability for industrial injury to its employees in accordance with the provisions of Title 51 of the Revised Code of Washington. Stop Gap or Employers Liability with minimum limits of \$1,000,000 per accident/disease are required. This requirement can be satisfied by a Commercial General Liability policy endorsement. If Workers Compensation insurance is not through the Washington State Department of Labor and Industries, minimum limits of \$1,000,000 per accident/disease are required, together with a reciprocal agreement.

**9.1.3 Contractor is required to carry** insurance that will protect against all claims for personal injury and property damage arising during the course of the performance of this Contract. All policy coverages must be written on an occurrence basis. Unless otherwise agreed, insurance policies shall be obtained and maintained with companies rated A- or better by Best's Key Rating Guide. The above policy limits are minimums; the District reserves the right to change these insurance requirements dependent on the nature of the work to be performed. Specific insurance requirements, if different than the above, shall be as set forth in the Specifications. In such case, Contractor shall provide the District with an additional certificate(s) and relevant endorsement(s) evidencing such revised insurance limits and/or additional coverages prior to commencement of work on any small works roster project.

**9.1.4** All insurance policies and certificates shall be endorsed to include the District, its directors, officers, elected officials, employees and agents as additional insureds. The insurance policy shall not be subject to cancellation or to a reduction in the required limits of liability or amounts of insurance until notice from Contractor has been mailed to the District stating the date when such cancellation or reduction shall be effective, which date shall not be less than thirty (30) written calendar days after such notice.

**9.1.5** Nothing contained in these insurance requirements is to be construed as limiting the extent of the Contractor's responsibility for payment of damages resulting from operations under this Contract.

## **9.2 Performance Security**

Prior to commencement of work on any small works roster project, the Contractor agrees to furnish the District with a performance security of not less than 100% of the total project price, including tax, or such other amount as the District deems necessary, conditioned that the Contractor shall faithfully perform all the provisions of this Contract and the Specifications hereto, and pay all labor, mechanics, subcontractors and materialmen, and all persons who shall supply such person or persons, or subcontractors with provisions and supplies for carrying on the work, and any required Department of Revenue, Employment Security Department, and industrial insurance premiums. The security shall consist of a certified or cashier's check payable to the District, an irrevocable letter of credit, or a performance bond (in the form provided by the District) issued by a surety company acceptable to the District, admitted and licensed in the State of Washington, possessing an A.M. Best rating of "A minus" or better and a financial rating of no less than "VIII," covering the faithful performance of the Contract and payment of obligations arising under the Contract Documents, each in the full amount of the Contract Price, pursuant to chapter 39.08 RCW, "Contractor's Bond." THE DISTRICT MAY DECLINE TO ENTER INTO THE CONTRACT IF THE REQUESTED EVIDENCE OF BONDABILITY IS NOT RECEIVED. THE CONTRACTOR SHALL NOT PROCEED WITH THE WORK AND SHALL NOT BE ENTITLED TO ANY PROGRESS PAYMENT UNTIL SUCH BONDS ARE RECEIVED. The Contractor shall be responsible for any delay in the Contract Time because of failure to submit acceptable bonds.

Any Contractor who fails to honor a quotation and furnish the required performance security within ten (10) days of being notified that he/she is the successful bidder, shall, in addition to other available remedies, be subject to payment to the District of liquidated damages in an amount equal to 5% of the quotation amount. The District reserves the right to strike from the small works roster any Contractor who fails to so honor a bid. The District also reserves the right to require quotation security from any Contractor deemed necessary.

## **10. INDEPENDENT CONTRACTOR**

**10.1** It is understood that the Contractor shall perform all work under this Contract and the applicable Specifications as an Independent Contractor and shall not in any manner be considered as an agent or employee of the District. Contractor shall have complete control over and responsibility for all personnel and subcontractors performing the work. The Contractor is not an agent or employee of the District and may not enter into any agreements or make commitments on behalf of the District.

**10.2** Nothing contained in the Specifications shall create any contractual relation between any subcontractor or other third party and the District.

## **11. APPLICABLE LAWS, RULES AND REGULATIONS**

**11.1 Prevailing Wages.** The Contractor shall comply with chapter 39.12 Revised Code of Washington. Contractor shall pay the prevailing wage rates for each small works roster project as determined by the Washington State Department of Labor and Industries, and to comply with all applicable rules and regulations regarding prevailing wages and working conditions, including the furnishing of all required statements and certificates. It is the Contractor's responsibility to review the prevailing wage rates and to verify with the Washington State Department of Labor and Industries the appropriate level of prevailing wages that must be paid for labor on all small works roster projects. No worker, laborer, or mechanic employed in the performance of any part of the work shall be paid less than the "prevailing rate of wage" (in effect as of the date the Bid for this Contract was due) as determined by the Industrial Statistician of the Washington State Department of Labor and Industries. The schedule of the prevailing wage rates for the county or counties where the Contract will be performed can be obtained from the link listed in Exhibit A. The schedule of the prevailing wage rates for the county or counties in which the work is performed is made a part of the Contract Documents by reference as though fully set forth herein; if the schedule is not attached, then the applicable prevailing wages under chapter 39.12 RCW are determined as of the bid submission date for the county or counties in which the Work is located and are available at the District's office and will be mailed upon request. The Contractor shall keep a paper copy at the Work site. The Contractor shall provide its

Subcontractors with a schedule of the applicable prevailing wage rates. Questions relating to prevailing wage data should be addressed to the Industrial Statistician.

**11.1.1** If required by law, the Contractor shall also post in a location readily visible to workers at the work site a copy of the Statement of Intent to Pay Prevailing Wages approved by the Industrial Statistician and the address and telephone number of the Industrial Statistician where a complaint or inquiry concerning prevailing wages may be made.

**11.1.2** If required by law, prior to any payment being made on behalf of the District under the Contract, the Contractor and each Subcontractor of any tier shall file a Statement of Intent to Pay Prevailing Wages with the Department of Labor and Industries and submit a copy to the District certified by the Director of Labor and Industries. Each statement shall be filed in accordance with the requirements of the Department of Labor and Industries. No progress payment shall be due until the District receives these statements.

**11.1.3** Disputes regarding what the prevailing wages are will be resolved in accordance with RCW 39.12.060.

**11.1.4** The Contractor shall defend, indemnify and hold the District harmless, including attorneys' fees, from any violation or alleged violation by the Contractor or any Subcontractor of any tier of chapter 39.12 RCW "Prevailing Wages on Public Works" or Title 51 RCW "Industrial Insurance", including but not limited to RCW 51.12.050.

**11.2 Taxes & Assessments.** The Contractor shall pay all taxes, assessments and payments of every kind required to be paid by the State of Washington, or the federal government, in connection with the performance of the Work.

**11.3 Debarment Certification.** The Contractor certifies that the Contractor is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this Contract by any Federal department or agency. If requested, the Contractor shall complete a Certification regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion form. Any such form completed by the Contractor for this Contract shall be incorporated into this Contract by reference. The Contractor shall immediately provide written notice to the District if at any time the Contractor learns that it has become debarred, suspended, proposed for debarment, declared ineligible or is voluntarily excluded from participating in this Contract by any Federal department or agency; or if at any time the Contractor learns that its Certification was erroneous when submitted or had become erroneous by reason of changed circumstances.

**11.4 Federal Flow Down Provisions.** To the extent that the Specifications for a particular small works roster project to be awarded to the Contractor under this Contract indicate that Federal funds will be utilized with respect to such project, the Contractor shall not award any subcontract relating to such project to any party which is debarred, suspended or otherwise excluded from or ineligible for participation (as more fully described in Subsection 10.3 above) in any Federal assistance programs, except with the express written consent of the District. In addition, the Specifications for any such project may include additional provisions requiring the Contractor to comply with specified provisions of the Federal Acquisition Regulations (FAR) or other Federal laws or regulations with respect to such project, which provisions will be incorporated by reference into this Contract. Contractor hereby agrees to include all such FAR or other provisions in any subcontracts entered into with respect to such project.

## **11.5 Other Rules and Regulations**

**11.5.1** The Contractor shall give all notices and comply with all laws, ordinances, rules and regulations of any governing authority bearing on the conduct of the work as drawn and specified. If the Contractor performs any work contrary to such laws, ordinances, rules or regulations, the Contractor shall bear all costs arising therefrom. The parties hereby incorporate 41 C.F.R. 60-1.4(a)(7); 29 C.F.R. Part 471, Appendix A to Subpart A; 41 C.F.R. 60-300.5(a)11; and 41 C.F.R. 60-741.5(a)6; if applicable. **The Contractor and any subcontractor shall abide by the requirements of 41 C.F.R. 60-300.5(a) and 41 C.F.R. 60-741.5(a). These regulations prohibit discrimination against qualified protected veterans, and qualified individuals on the basis of disability, respectively, and require affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified**

**protected veterans and qualified individuals with disabilities, respectively.**

**11.5.2** The Contractor shall be solely responsible for ensuring that all work under this Contract is carried out in accordance with the Washington Industrial Safety and Health Act (WISHA) and all other applicable safety laws, rules, and regulations.

**11.5.3 Health Directives.** The Contractor must comply with health directives issued by any governmental authority with apparent jurisdiction, including the District.

**11.5.4 Contractor Bears Cost Of Noncompliance:** If the Contractor performs any work contrary to laws, ordinances, rules or regulations applicable to the work or the Contractor's business, the Contractor shall bear all related costs.

**11.5.5 Contractor to Maintain Records:** The Contractor and its subcontractors shall maintain books, ledgers, records, documents, estimates, bids, correspondence, logs, schedules, emails, and other tangible and electronic data and evidence relating or pertaining to the costs and/or performance of the Contract ("**Records**") to such extent and in such detail as will properly reflect and fully support compliance with the requirements of the Contract Documents and with all costs, charges, and other amounts of whatever nature. The Contractor shall preserve such Records for a period of three (3) years following the date of acceptance under the Contract. Within seven (7) days of the District's request, the Contractor agrees to make available all records for inspection, audit, and reproduction (including electronic reproduction) by the District or its representatives at the office of the Contractor during normal business hours.

**11.5.6 Public Records Act.** The Contractor agrees, on behalf of itself and Subcontractors of any tier, that any rights under the Public Records Act, chapter 42.56 RCW, will commence at acceptance of the Work, and that the invocation of such rights at any time by the Contractor or a Subcontractor of any tier, or their respective representatives, shall initiate an equivalent right to disclosures from the Contractor and Subcontractors of any tier for the benefit of the District.

## **12. CONTRACTOR REPRESENTATIONS AND WARRANTIES**

**12.1** The Contractor represents, guarantees and warrants that Contractor is a registered Contractor in the State of Washington as provided by law, and that prior to the execution of this Contract, Contractor shall furnish the District with satisfactory evidence of Contractor's registration.

**12.2** The Contractor warrants that materials and equipment furnished under the Contract will be of good quality and new, unless otherwise required or explicitly permitted by the Contract Documents. The Contractor further warrants that the work will be performed in a skillful and workmanlike manner, will be free from defects, and will conform to the requirements of the Contract Documents. The Contractor agrees to warrant all work performed on small works roster projects under this Contract, for a period of one (1) year, against defects in such work. Such warranty shall run from the date of acceptance of the work by the District.

**12.3** The Contractor shall be responsible for correcting all defects in the work appearing within one (1) year after acceptance of the work by the District or any longer other warranty period set forth in the Contract Documents. The Contractor shall work to remedy such defects within seven (7) days of receipt of notice from the District and shall complete such work within a reasonable time. If the Contractor does not complete the corrections within the time specified, the work may be corrected by the District at the Contractor's expense. In emergencies where damage may result from delay or where loss of service may result, such corrections may be made by the District at the Contractor's expense.

## **13. CONTRACTOR INDEMNIFICATIONS**

**13.1** The Contractor agrees to defend, indemnify, release and hold harmless the District, its commissioners, officers, agents and employees and others engaged by the District, and the agents and employees, successors and assigns of any of them (collectively, the "**Indemnified Parties**") from and against any and all claims, losses, damages, and expenses, including attorneys' fees, arising out of or in connection with acts or work done by the Contractor, its subcontractors, supplier and others engaged by or invited onto the work site (collectively, the "**Contractor Parties**") under this Contract, to the extent that any such claim, loss, damage or expense is attributable to any (i) failure of the Contractor or Contractor Parties duly to perform

or observe any term, provision, covenant, Contract or conditions hereunder to be performed by or on behalf of the Contractor or (ii) any negligent or wrongful act or omission of the Contractor or Contractor Parties.

**13.2** In the event that the Contractor and the District are both negligent, then Contractor's liability for indemnification and defense of the District shall be limited to its contributory negligence for any resulting suits, actions, claims, liability, damages, judgments, costs and expenses (including reasonable attorneys' fees and disbursements) that can be apportioned to the Contractor, its employees, and/or agents.

**13.3** The Contractor's indemnification obligation under this Section 13 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor of any tier under workers' compensation acts, disability benefit acts or other employee benefit acts. After mutual negotiation of the parties, the Contractor waives immunity as to the Indemnified Parties under Title 51 RCW, "Industrial Insurance." **CONTRACTOR ACKNOWLEDGES THAT THIS WAIVER HAS BEEN MUTUALLY NEGOTIATED BY THE PARTIES.**

**13.4** Nothing contained in this section of this Contract shall be construed to create a liability or a right of indemnification in any third party.

**13.5** The provisions of this section shall survive the expiration or termination of this Contract with respect to any event occurring prior to such expiration or termination.

## **14. CLAIMS**

**14.1 Sole Remedy.** The Contractor's sole remedy for claims, disputes and other matters in question, direct or indirect, arising out of or relating to the Contract or breach thereof, excluding mechanics liens, is the dispute resolution procedure set forth below. Mechanic's liens may proceed in accordance with applicable law.

**14.2 Submitting a Claim: Information Required:** The Contractor shall submit a written claim that includes a clear description of the claim and any proposed change in the Contract Price (showing all components and detailed breakdown/calculations) and/or Contract Time (showing cause and analysis of the resultant delay in the critical path). Claims shall also include dates, names of individuals with knowledge of the claim or events/activities leading to the claim, identification of relevant contract provisions and the time (contract extension) or money sought. If a claim form has not been provided by the District, include in the claim the Contract Name, Contract Number and the District representative name and telephone number.

**14.3 Negligent or False Claims:** The Contractor shall not make any negligent, frivolous or fraudulent claims. The District will be entitled to collect any and all costs and expenses, including investigation and consultant costs, incurred by the District in investigating, responding to, and defending against such false or frivolous claim.

**14.4 Process:** After the District receives and investigates the claim, the parties will attempt to resolve the claim at the project level. If the Contractor disagrees with the determination, the Contractor shall send a written Notice to the District detailing the specific portions of the decision with which it disagrees and requesting that the claim be escalated to the Upper Management/Owner Level within five (5) business days of receiving the District's determination. Or if no decision can be reached in thirty (30) days, either party may provide notice to the other party that they want to escalate the matter within fourteen (14) days of the expiration of the 30-day period. If management cannot agree on a resolution in thirty (30) days, either party may within fourteen (14) days provide notice to the other party to initiate a mediation. The parties shall agree upon a mediation service and a mediator and will split the cost of the mediation. If the claim cannot be resolved through mediation, each party shall be entitled to pursue any legal process available to them.

## **15. LIQUIDATED DAMAGES**

**15.1** For each and every calendar day that work under this Contract and any specified portions thereof are not completed after the time for completion (project completion date) fixed in the District's written Notice To Proceed for the respective small works roster project, the Contractor shall pay the District, not as a penalty, but as liquidated damages, such amount as is specified in the Contract Documents.

**15.2** Any monies due the Contractor, or to become due the Contractor, at or after the project

completion date, may be retained by the District as may be necessary to pay said liquidated damages, and if such amounts are not sufficient to pay the liquidated damages, the Contractor shall immediately pay any deficiency to the District. Such deductions or amounts retained by the District shall not release the Contractor to any degree whatsoever from further obligation and liability with respect to completing all work in accordance with the Specifications and this Contract.

**16. MISCELLANEOUS PROVISIONS**

**16.1 Non-Waiver.** The failure of either Party to insist upon or enforce strict performance by the other Party of any provision of this Contract, or to exercise any right under this Contract, shall not be construed as a waiver or relinquishment to any extent of the first Party's right to assert or rely upon any such provision or right in that or any other instance; rather, the same shall be and remain in full force and effect.

**16.2 Fair Meaning.** The terms of this Contract shall be given their fair meaning and shall not be construed in favor of or against either Party hereto because of authorship. This Contract shall be deemed to have been drafted by all Parties.

**16.3 Severability.**

**16.3.1** If a court of competent jurisdiction holds any part, term or provision of this Contract to be illegal, or invalid in whole or in part, the validity of the remaining provisions shall not be affected, and the Parties' rights and obligations shall be construed and enforced as if the Contract did not contain the particular provision held to be invalid.

**16.3.2** If any provision of this Contract is in direct conflict with any statutory provision of the State of Washington, that provision which may conflict shall be deemed inoperative and null and void insofar as it may conflict and shall be deemed modified to conform to such statutory provision.

**16.4 Attorney's Fees.** Each Party shall be responsible for their own attorney's fees in the event of a dispute arising out of this Contract.

**16.5 Governing Law and Venue.** This Contract shall be governed by the laws of the State of Washington (without regard to any conflicts of law principles applied in that State), with venue for any disputes in Snohomish County, Washington; provided that venue for any matter that is within the jurisdiction of the Federal Court shall be in the United States District Court for the Western District of Washington at Seattle, Washington. Each Party hereby irrevocably waives, to the fullest extent it may effectively do so, the defense of an inconvenient forum to the maintenance of proceedings in such courts.

**16.6 Authority to Bind Parties and Enter Into Contract.** The undersigned represent that they have full authority to enter into this Contract and to bind the Parties for and on behalf of the legal entities set forth below.

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**PUBLIC UTILITY DISTRICT  
NO. 1 OF SNOHOMISH COUNTY**

**CONTRACTOR**

By: \_\_\_\_\_  
Clark Langstraat

By: \_\_\_\_\_

Title: Manager, Contracts & Purchasing

Name: \_\_\_\_\_

Date: \_\_\_\_\_

Title: \_\_\_\_\_

Contractor UBI #: \_\_\_\_\_

Date: \_\_\_\_\_