

**PUBLIC WORKS CONTRACT AGREEMENT**  
**2014 OKANOGAN COUNTY EMERGENCY WATERSHED PROTECTION**  
**EXEMPTION UNDER RCW 39.04.280**

\_\_\_\_\_, (“Contractor”), and Okanogan Conservation District (“District”) enter into this contract agreement effective \_\_\_\_\_.

The Contractor and the District agree as follows:

1. The Work.

- 1.1 The Contractor agrees to fully and timely perform the following described work (“Work”), fulfilling all of the Contractor’s obligations, in strict compliance with all terms and conditions of this Contract Agreement:

1.2 Performance and Payment Bond/Retainage Option

The Contractor may choose one of the following options (please check and initial choice):

- 1) \_\_\_\_\_ Provide performance and payment bond executed as surety by a corporation authorized to issue surety bonds in the state of Washington, with a surety satisfactory to the District, for 100% of the contract price. The entire cost of the performance and payment is included in the contract price below specified. Five percent (5%) retainage will be held on all payments made until receipt of all releases necessary from Department of Revenue and Labor and Industries and settlement of any liens filed under RCW chapter 60.28. (Contractor's initials \_\_\_\_\_)
- 2) \_\_\_\_\_ Agree to retainage by the District of 50% of the contract value for a period of 30 days after final acceptance of the work, or until receipt of all necessary releases from DOR and LNI and settlement of any liens filed under RCW chapter 60.28, whichever is later. (Contractor's initials \_\_\_\_\_)

2. Time of Performance

2.1 The Contractor understands and acknowledges that this Work is performed under the emergency exemption under RCW 39.04.280. The Contractor shall perform and complete the Work in strict compliance with the following schedule:

2.1.1 Start date: \_\_\_\_\_.

2.1.2 Completion Date: \_\_\_\_\_.

2.2 If during the Work any acts of the District, any acts of a public enemy, fire, or unforeseeable causes, beyond the Contractor's control, delay The Contractor, The Contractor shall file with the District a written request for an extension of the time within which to complete the Work. The Contractor's written request must contain a detailed statement of both each basis for its request and the amount of time requested. The District will extend the time for completing the Work for the number of days lost as a result of unavoidable delay if, in the judgment of the District, the facts justify an extension. The Contractor waives all claims of any nature whatsoever for any delay that occurred more than five (5) business days before the Contractor delivered to the District written notice of the delay that meets the requirements of this paragraph. The Contractor shall neither be entitled to, nor shall it receive any extensions of time for avoidable delays. Avoidable delays include any delays that in the opinion of the District, The Contractor

could have avoided by the exercise of care, prudence, foresight and diligence. Delays in performance of parts of the Work, which may in themselves be unavoidable, but which do not necessary prevent or delay performance of other parts of the Work or the completion of the whole Work within the time specified, shall not entitle the Contractor to any time extensions.

2.3 Liquidated damages. N/A

3. Compensation.

3.1 As full compensation for full, proper and timely performance of all of the Contractor's obligations, the District will pay the Contractor \$\_\_\_\_\_ . This price includes Washington state and local sales and use taxes.

3.2 Payment shall be made as follows:

Lump sum payment after final completion (see notes on retainage in section 1.2).

3.3 The District may withhold payment from the Contractor if the Contractor's performance of its contract obligations is not satisfactory, or if the Contractor's Payment Request does not comply with the requirements of this Agreement. The Contractor's Payment Request shall be deemed not to comply if: (a) proper documentation of the amounts that the Contractor claims in the Payment Request is not filed with the District; (b) the extent of completion or amount of labor/materials listed in the Contractor's Payment Request exceeds the extent of completion or amount of labor/materials actually made on or provided for the Work; (c) the Contractor has not provided a properly filled out Progress Payment Request; (d) the Contractor has not supplied a completed Certificate of Insurance; (f) if Prevailing Wage rate applies, the Contractor has not filed (and delivered to the District) a copy of statements of intent/affidavits of wages paid for the Contractor and each subcontractor; (g) the Contractor has not supplied any other release or document that state law requires.

3.5 The District may set off from any payment otherwise due amounts sufficient to pay claims of the District against the Contractor.

4. Contractor's Representations

Contractor warrants and represents to the District:

- 4.1 The Contractor is licensed and registered to the extent required by the laws of the state of Washington and has all permits, licenses, and authorizations necessary to perform the Work.
- 4.2 The Contractor has investigated and fully informed itself about all conditions that may in any way affect performance or cost of the Work. The Contractor's signing this Contract Agreement constitutes conclusive evidence on which the District may rely, that the Contractor has made all examinations and investigations and that it understands all requirements for the performance of the Work.

5. Insurance

- 5.1 The Contractor shall, at its own expense, carry and maintain insurance as provided below with reliable insurance companies satisfactory to the District and authorized to do business in the State of Washington. Such insurance shall be in force before the Contractor begins Work, and it shall remain in force until at least one year after the District accepts the Work in its entirety as complete. The Contractor and its subcontractors shall maintain in force at least the following insurance:
  - (a) Workers Compensation Insurance. Workers' Compensation insurance that meets all requirements of the laws of the State of Washington, and/or the United States for all employees of the Contractor or its subcontractors whose activities are subject to the protection afforded by such.
  - (b) Employer's Liability Coverage (stop gap). If Workers' Compensation does not cover any employee engaged in the Work, employer's liability coverage with limits of no less than \$ 1 million dollars per accident.
  - (c) General Liability Insurance. Commercial General Liability insurance covering all operations by or on behalf of the Contractor and its subcontractors, on an occurrence basis, against claims for personal injury (including bodily injury and death) and property damage (including loss of use). Such insurance shall provide coverage for:
    - (1) Premises and operations;
    - (2) Products and completed operations (which shall remain in effect for a period of at least one year following the completion date);
    - (3) Contractual liability;

- (4) Personal injury liability (with deletion of the exclusion for liability assumed under contract);

Such insurance shall have a \$1 million dollar minimum limit per occurrence for bodily injury, personal injury and property damage combined.

5.2 All insurance policies, except Workers' Compensation, shall:

5.1.1. Name the District, its officers and employees as additional insureds.

5.1.2. Provide that the insurance shall be primary and not excess to or contributing with any insurance or self-insurance maintained by the District.

5.3 Before the Contractor begins Work, it shall furnish to the District, certificates confirming required coverages with limits no less than those that this Contract Agreement requires.

5.4 The Contractor shall defend, indemnify and hold the District harmless from any failure by it or its subcontractors to secure and maintain any insurance that this Contract Agreement requires.

## 6. Acts of Default/Termination for Default

6.1 Any of the following events constitute an act of default by the Contractor and a material breach of the contract: (a) The Contractor abandons the Work; (b) the Contractor fails to supply sufficiently skilled workers, suitable materials or suitable equipment or performs Work of a quality below that which the Contract Documents require; (c) The Contractor fails to maintain the Work schedule; (d) The Contractor violates laws, regulations or orders of any public body having jurisdiction; (e) The Contractor otherwise fails to comply with the provisions of this Contract Agreement; (f) The Contractor ceases or is unable to pay its debts as they mature or authorizes or takes any action under bankruptcy or reorganization, readjustment of debt, insolvency, liquidation or similar laws or institutes or has instituted against it proceedings under any such laws.

6.2 If the Contractor fails to remedy any of the above acts of default within ten (10) calendar days after the District transmits to it written notice of the default, the District may, without limiting any other remedy available to it, either withhold any amounts otherwise due under the contract and/or terminate the Contractor's right to proceed with all or any portion of the Work. The District shall also have the right, but not the obligation, to complete the Work by whatever method that the District deems expedient including employing another contractor or contractors under any contract(s)

that the District deems advisable. To complete the Work, the District shall have the right to take possession of and to use any or all of the materials, plants, tools, equipment, supplies and property that the Contractor furnished for the Work. The Contractor shall not remove any materials, tools, equipment or supplies from their location at the time of termination without the prior written consent of the District.

- 6.3 The expense of completing the Work, together with a reasonable charge for awarding and administering any contract(s) and the damages caused by the delays thus occasioned in completing the Work will be charged to Contractor. The District will deduct the amounts described in the preceding sentence from any amounts which may be due or may become due to the Contractor. In case the expenses exceed the amounts due or to become due, the Contractor shall, on notice from the District, promptly pay to the District the amount of the excess. The District shall not be required to obtain the lowest figures for contract completion, but may make those expenditures which in its sole discretion it deems best to accomplish timely, quality completion.
- 6.4 The District's termination of the Contractor shall not affect any rights of the District against the Contractor then existing or that may thereafter accrue. Any retention or payment by the District due to the Contractor shall not release the Contractor from liability.

7. Wage Rates

- 7.1 Both federal and state prevailing wages apply. The Contractor shall pay its employees no less frequently than once per week and pay the higher of the state or federal rate, including fringes and zone pay, to all its employees and job classes. The Contractor will also provide certified payrolls weekly to the District. The Contractor shall comply with and require each of its subcontractors to comply with all applicable State of Washington laws and regulations governing the payment of prevailing wage (RCW 39.12) (WAC 296-127). No individual who performs Work that the Contract documents cover, for which applicable law requires payment of prevailing wage, shall be paid less than the prevailing wage rate set by the Industrial Statistician of the Department of Labor and Industries.
- 7.2 As a precondition to any payment, if applicable law requires payment of prevailing wage, the Contractor shall file with the District "Statements of Intent to Pay Prevailing Wages" of the Contractor and each of its subcontractors, which statements comply with the requirements of RCW 39.12.040 and have been approved by the Industrial Statistician of the Department of Labor & Industries. As a precondition to final payment, if payment of prevailing wage is required, the Contractor shall file with the

District "Affidavits of Wages Paid" of the Contractor and each of its subcontractors, which statements the Industrial Statistician of the Department of Labor & Industries has certified. The Contractor may initiate the process of obtaining a "Statement of Intent to Pay Prevailing Wages" and an "Affidavit of Wages Paid" online at [www.lni.wa.gov/prevailing](http://www.lni.wa.gov/prevailing) wage.

7.3 The Industrial Statistician of the Department of Labor & Industries has prepared a schedule of applicable published prevailing wage rates. Schedules of applicable published prevailing wage rates are available for review online at [www.lni.wa.gov/tradeslicensing/prevwage](http://www.lni.wa.gov/tradeslicensing/prevwage) or at the offices of the Department of Labor & Industries, ESAC Division, P.O. Box 44540, Olympia, Washington, 98504-4540 (360-902-5335), and are hereby incorporated by reference into this Agreement as if fully set forth herein. All fees and costs associated with the submittal and approval of any "Statement of Intent to Pay Prevailing Wages" and "Affidavit of Wages Paid" shall be the exclusive responsibility of the Contractor and are included in the price specified in § 3.1 above.

7.4 If any dispute arises about what constitutes the prevailing rate of wage for work, and the parties (including labor and management representatives) cannot resolve the dispute, the matter shall be referred for arbitration to the Director of the Department of Labor and Industries of the state of Washington, whose decision shall be final, conclusive and binding upon the parties.

8. Performance by the Contractor/Warranty

8.1 All Work, workmanship, materials, items and components that the Contractor supplies shall be of good quality, free from faults and defects in workmanship and material. All materials, components, and items shall be new and without flaws or defects of any type and well-suited for the purpose intended.

8.2 In addition to the foregoing, the Contractor warrants that: (i) all Work is in all respects of good quality, free from all faults and defects in workmanship and material; (ii) all Work strictly complies with the requirements of this Contract Agreement; and (iii) all materials, equipment, and other items incorporated into the Work or consumed in the performance/supply of the Work are of good quality and of a grade well suited for the purpose intended. This warranty extends for one year after final completion of all Work. The Contractor shall bear responsibility for all costs involved in correcting and remedying any non-compliance with this warranty (including without limited to, the removal, replacement and reinstallation of items

necessary to gain access). The District's warranty rights and remedies are in addition to and do not in any way limit any other District rights or remedies or the Contractor obligations that this Contract Agreement otherwise provides.

9. Safety

The Contractor acts as an independent the Contractor. It bears full responsibility for and shall maintain complete control over all its employees and subcontractors and suppliers of any tier and their employees. The Contractor shall perform the Work in an orderly and workmanlike manner and enforce strict discipline among its employees, subcontractors and suppliers of any tier and their employees. The Contractor shall be solely responsible for establishing, maintaining, and supervising all safety programs and safety precautions that relate to the Work. The Contractor, at its cost and expense, shall protect all its own employees, employees of subcontractors, District employees and all other persons from risk of death, injury or bodily harm arising out of or in any way connected with the Work. The Contractor shall strictly comply with all safety orders, rules, regulations, codes, or requirements of all federal, state and local governmental agencies exercising jurisdiction over safety relating to the Work, including, but not limited to, federal OSHA and state WISHA regulations, and shall comply fully with all applicable safety requirements, policies, rules, regulations, codes, and laws. The Contractor shall effectively carry out the safety, sanitary and medical requirements required by law, or appropriate to perform the Work properly and to protect the safety and health of all persons.

10. Laws and Regulations

10.1 The Contractor shall keep itself fully informed about all laws, ordinances and regulations in any manner affecting those engaged or employed on the Work, or the materials used in the Work or in any way affecting the conduct of the Work, and of all orders and decrees of bodies or tribunals exercising any jurisdiction or authority over any aspect of the Work.

10.2 The provisions of any agreement between the District and any entity providing funding for the Work are hereby incorporated herein by reference. The Contractor shall comply with any such provisions that apply to the Contractor's Work.

11. Indemnity

11.1 **TO THE FULLEST EXTENT PERMITTED BY LAW, THE CONTRACTOR SPECIFICALLY AND EXPRESSLY AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS THE DISTRICT,** and its employees from and against all suits, actions, proceedings, claims,



demands, judgments, damages, penalties, fines, and expenses (including, but not limited to reasonable attorney fees), whether arising before or after final completion of the Work arising out of or due to:

- (a) Any act, omission, fault, strict liability or negligence of the Contractor or its subcontractors or suppliers in connection with or incident to performance of the Work;
- (b) Any injury to or death of any person or persons (including any employee(s) of subcontractors) or damage to any property or environment in connection with or incident to the Contractor's or subcontractor's performance of the Work;
- (c) Any claims of subcontractors, material or equipment suppliers, service providers, (or persons or entities supplying labor, materials or equipment or services, through subcontractors or material or equipment suppliers) and any retainage or bond claims arising out of or in connection with the Contractor's performance of the Work;
- (d) Any failure of the Contractor or its subcontractors to comply with all applicable laws, ordinances, rules, regulations, orders, licenses, permits or other requirements of any governmental authority;
- (e) Any correction by the District of defective, deficient or non-conforming work;
- (f) Any failure of the Contractor or any subcontractors or suppliers to secure all licenses and permits or to pay all taxes; or

11.2 The Contractor's obligation to indemnify the District against suits, actions, proceedings, claims, demands, judgments, damages, penalties, fines and expenses arising from bodily injury to person(s) or damage to property caused by or resulting from the concurrent negligence of the District, its agents or employees, and the Contractor, its agents or employees, in situations where the Work consists of construction, alteration, repair, addition to, subtraction from, improvement to or maintenance of any building, road, excavation or other structure, project, development or improvement attached to real estate, including moving and demolition in connection therewith, shall be valid and enforceable only to the extent of the negligence of the Contractor, its agents, subcontractors, suppliers, and employees. Furthermore, in the situations described in this paragraph 11.2, the Contractor shall not be obligated to indemnify the District for the sole negligence of the District, its agents or employees.

11.3 **ONLY AS TO CLAIMS FOR INDEMNITY BY THE DISTRICT, THE CONTRACTOR SPECIFICALLY AND EXPRESSLY WAIVES ANY IMMUNITY UNDER INDUSTRIAL INSURANCE, RCW 51.**

11.4 **THE CONTRACTOR ACKNOWLEDGES THAT BY ENTERING INTO ITS CONTRACT WITH THE DISTRICT, IT HAS MUTUALLY NEGOTIATED THESE INDEMNITY PROVISIONS.**

12. Additional Provisions

12.1 The Contractor shall comply with all applicable federal, state, tribal (if applicable) and local laws, regulations and codes. The law of the state of Washington shall govern this Contract Agreement and all questions relating to it. The substantially prevailing party in any legal action shall be entitled to recover all costs of suit including but not limited to reasonable attorney fees.

12.2 No waiver or modification of any provision of this Contract Agreement shall be valid and binding on the District unless a writing, signed by the District, expressly spells out that waiver or modification. The waiver shall neither be, nor be construed to be a waiver of any past or future default or breach, nor a modification of any of the terms and conditions of this Contract Agreement, except to the extent expressly stated in the written, signed waiver.

12.3 If any provision of this Contract Agreement is held to be invalid, the other provisions shall remain in full force and effect.

12.4 This Contract Agreement constitutes the entire Agreement between the Contractor and the District. Any understanding or representation of any kind preceding the date of this Contract Agreement shall not be binding on either party except to the extent expressly incorporated into this Contract Agreement. Any modification of this Agreement or additional obligation assumed by either party shall be binding only if in writing and signed by an authorized representative of each party.

**"DISTRICT"**

**OKANOGAN CONSERVATION DISTRICT**

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**"CONTRACTOR"**

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WA State Contractor Registration No. \_\_\_\_\_

UBI No. \_\_\_\_\_

Dated: \_\_\_\_\_