

**NOTICE TO CONTRACTORS**

**KITTITAS COUNTY CONSERVATION DISTRICT  
ELLENSBURG, WASHINGTON**

**CALL FOR BIDS**

**NOTICE IS HEREBY GIVEN** that sealed bids will be received and publicly opened and read by the Kittitas County Conservation District, 607 East Mountain View Avenue, Ellensburg, Washington at 10:00 A.M. (local time), Wednesday, September 1, 2010 for the following:

**Cherry Creek Irrigation Diversion Modifications**

Bid proposals submitted by mail shall be addressed to:

Kittitas County Conservation District  
607 East Mountain View Avenue  
Ellensburg, Washington 98926

All bid proposals shall be accompanied by a bid proposal deposit in cash, certified check, cashier's check or surety bond in an amount equal to five percent (5%) of the amount of such bid proposal. Should successful bidder fail to enter into a contract within the time stated, the bid proposal deposit shall be forfeited to the Kittitas County Conservation District.

Each contractor invited to bid was given a free copy of the contract and plans for bidding purposes. Extra copies of maps, plans and specifications may be obtained from this office upon payment of the amount of twenty five and no/100 dollars (\$25.00). Said fee may be waived at the discretion of the District Manager of the Kittitas County Conservation District if the request is received from a qualified contractor. Informational copies of maps, plans and specifications are on file for inspection at the Kittitas County Conservation District in Ellensburg, Washington, 607 East Mountain View Avenue, (509) 925-8585.

The award of contract, if awarded, will be made to the lowest responsible bidder deemed responsive by the District, whose bid conforms to the requirements of these specifications, and whose past record of performance on work of similar complexity and magnitude indicates that said bidder is qualified to carry out the obligations of the contract and to complete the work contemplated therein. Specifically, the amount of the bid, as well as the responsiveness and responsibility criteria will be reviewed. There are both required criteria and supplemental criteria established by the Kittitas County Conservation District. Compliance with both required and supplemental responsibility criteria may be requested in writing by the Kittitas County Conservation District and is due within 5 days of the bid

proposal due date. In addition, as a condition of the award the bidder must agree to verify that all subcontractors are also in compliance with the "responsibility" criteria as specified in RCW 36.06.

The Kittitas County Conservation District is accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d to 2000-4 and Title 49, Code of Federal Regulations, Department of Transportation, subtitle A, Office of the Secretary, Part 21, nondiscrimination in federally assisted programs of the Department of Transportation issued pursuant to such Act, hereby notifies all bidders that it will affirmatively insure that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color or national origin in consideration for an award.

The improvement for which bids will be received is described below:

Cherry Creek Irrigation Diversion Modifications

DATED this 9th Day of August, 2010 at Ellensburg, Washington.



District Manager, Kittitas County  
Conservation District

**Publish:** This solicitation for bids shall be advertised in the Ellensburg Daily Record on or about August 9, and August 16, 2010.

**Pre Bid Conference:** A pre bid conference is scheduled for Tuesday August 24, 2010 at 10 a.m. at the Days Inn (Berry Rd Ellensburg, WA 98926).

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## **BIDDING & GENERAL PROJECT DESCRIPTION**

The project provides for the destruction of one diversion and the modification of one diversion that act as fish barriers in Cherry Creek. A series of weirs will check up the water to an acceptable elevation to continue to be used as a source of irrigation. Construction will include weirs within Cherry Creek; earthwork and creek regrading; and installation of mechanical equipment, screens and pipe all in accordance with the Project Plans, Technical Specifications, and the Environmental Permits.

### **1. BID PROCEDURE**

Bids will be received by the Kittitas County Conservation District at the reception desk located as follows:

**Kittitas County Conservation District  
607 E. Mountain View Ave.  
Ellensburg, WA 98926**

Bids shall be received until 10:00 AM on Wednesday, September 1, 2010. Bids will be opened and publicly read at that time.

To be eligible for consideration, sealed bids must include:

- A completed Bid Proposal Tabulation Sheet
- A bid proposal deposit in cash, certified check, cashier's check, or surety bond in an amount equal to five percent (5%) of the amount of such bid proposal.
- A completed Proposal Signature Page
- The Non-Collusion Declaration (page 13)

### **2. MODIFICATION OF BID – LATE BIDS**

No orally, telephonically, electronically submitted bids or modifications to bids shall be accepted. Bids must arrive at the designated place of opening prior to bid opening time. Late bids, for whatever cause, will not be accepted.

### **3. BASIS OF AWARD**

The award of contract, if awarded, will be made to the lowest responsible bidder deemed responsive by the District, whose bid conforms to the requirements of these specifications, and whose past record of performance on work of similar complexity and magnitude indicates that said bidder is qualified to carry out the obligations of the contract and to

complete the work contemplated therein. Specifically, the amount of the bid, as well as the responsiveness and responsibility criteria will be reviewed.

In addition, as a condition of the award the bidder must agree to verify that all subcontractors are also in compliance with the “responsibility” criteria as specified in RCW 36.06.

**A. RESPONSIVENESS CRITERIA**

A bidder’s responsiveness will be determined in part by a review of the completeness of the proposal as well as its compliance with all bid package requirements, whether or not it includes all required information, and whether or not there are any conditions noted in the bid which modify the bid proposal.

**B. RESPONSIBILITY CRITERIA AND APPEALS**

The responsibility of the bidder is evaluated applying required and supplemental criteria.

1) **REQUIRED CRITERIA.** Pursuant to the directives contained in RCW 39.04, proof of compliance with the following criteria must be provided by the bidder for there to be a determination that the bid is acceptable as being a “responsible” bid:

- (a) the bidder must have a certificate of registration in compliance with Chapter 18.27 RCW;
- (b) the bidder must have a current state Unified Business Number;
- (c) the bidder must have industrial insurance coverage for the bidder’s employees working in Washington as required in Title 51, RCW, an Employment Security Department number as required in Title 50 RCW; and a state excise tax registration number as required in Title 82 RCW, unless proof is provided that these items are not required of the bidder, and
- (d) the bidder must not be disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065(3).

2) **SUPPLEMENTAL CRITERIA.** In addition, the determination that a bidder is “responsible” is subject to supplemental criteria which will include consideration of the bidder’s reputation, experience, track record, integrity, and resources. Specifically, the following supplemental criteria must be addressed:

- 1. Document successful and timely completion of one or more projects of similar cost and scope in the previous 5 years.

2. Document successful compliance with requirements of environmental permits (WDFW issued Hydraulic Permits, US Corps of Engineers 404 permits, etc.) for projects of similar scope.
3. Complete and submit the Letter of Responsibility. (page 14-15)

The bidder should be prepared to address all of these items within 5 working days after the bid proposal due date at the written request of the District. In the event a determination is made that the lowest responsive bidder is not “responsible,” or does not meet all the required and supplemental criteria, a written explanation for the reasons for this determination will be sent to the bidder’s address.

The bidder may appeal any adverse determination on the issue of “responsibility.” An appeal must be presented in writing and be received by Kittitas County Conservation District within 14 calendar days of the date noted on the written determination. The bidder appealing this determination may provide additional information at that time. A final determination on the bidder’s appeal will be issued prior to the execution of any contract. The contract may be awarded to another bidder if the appeal is denied.

#### **4. INTERPRETATIONS**

Questions regarding plans and specifications should be addressed to the Technical Representative located at the Kittitas County Conservation District office. Questions requiring written answers (necessitating addenda) received less than forty-eight (48) hours before bids close cannot be answered. All addenda issued during the time of bidding shall be incorporated into the contract.

## BID PROPOSAL TABULATION SHEET

Kittitas County Conservation District CHERRY CREEK IRRIGATION DIVERSION MODIFICATIONS PROJECT					
Item	Description	Units	Quantity	Unit Price	Total Price
1	MOB/DEMOB (5% TOTAL COST)  _____	LS	1	=	=
	Unit Price in Words			\$ _____	\$ _____
2	STAKING AND PROJECT CONTROL  _____	LS	1	=	=
	Unit Price in Words			\$ _____	\$ _____
3	TRAFFIC CONTROL  _____	LS	1	=	=
	Unit Price in Words			\$ _____	\$ _____
4	TESC  _____	LS	1	=	=
	Unit Price in Words			\$ _____	\$ _____
5	CLEARING AND GRUBBING  _____	LS	1	=	=
	Unit Price in Words			\$ _____	\$ _____
6	REMOVAL OF STRUCTURES AND OBSTRUCTIONS  _____	LS	1	=	=
	Unit Price in Words			\$ _____	\$ _____
7	STREAM BYPASS SYSTEMS  _____	LS	1	=	=
	Unit Price in Words			\$ _____	\$ _____
8	DEWATERING  _____	LS	1	=	=
	Unit Price in Words			\$ _____	\$ _____
9	STRUCTURAL EXCAVATION  _____	LS	1	=	=
	Unit Price in Words			\$ _____	\$ _____
10	FISH SCREEN STRUCTURE AND CHANNEL  _____	LS	1	=	=
	Unit Price in Words			\$ _____	\$ _____
11	FISH SCREEN SITE UTILITIES  _____	LS	1	=	=
	Unit Price in Words			\$ _____	\$ _____

*Cherry Creek Irrigation Diversion Modifications  
Bid Proposal Tabulation Sheet*

Kittitas County Conservation District CHERRY CREEK IRRIGATION DIVERSION MODIFICATIONS PROJECT					
Item	Description	Units	Quantity	Unit Price	Total Price
12	INSTALL WDFW FISH SCREEN <hr/> Unit Price in Words	LS	1	= \$ _____	= \$ _____
13	IRRIGATION PUMPS, VALVES & SCREENS <hr/> Unit Price in Words	LS	1	= \$ _____	= \$ _____
14	ROCK WEIRS <hr/> Unit Price in Words	CY	366	= \$ _____	= \$ _____
15	QUARRY SPALLS <hr/> Unit Price in Words	CY	75	= \$ _____	= \$ _____
16	HEAVY LOOSE RIP RAP <hr/> Unit Price in Words	CY	10	= \$ _____	= \$ _____
17	STREAMBED EXCAVATION AND HAUL <hr/> Unit Price in Words	CY	210	= \$ _____	= \$ _____
18	STREAMBED BACKFILL AND RESTORATION <hr/> Unit Price in Words	CY	3042	= \$ _____	= \$ _____
19	TRENCH SAFETY AND SHORING <hr/> Unit Price in Words	LS	1	= \$ _____	= \$ _____
20	6" PVC PIPE <hr/> Unit Price in Words	LF	197	= \$ _____	= \$ _____
21	10" HDPE PIPE <hr/> Unit Price in Words	LF	144	= \$ _____	= \$ _____
22	10" PVC PIPE <hr/> Unit Price in Words	LF	144	= \$ _____	= \$ _____
23	15" PVC PIPE <hr/> Unit Price in Words	LF	166	= \$ _____	= \$ _____

*Cherry Creek Irrigation Diversion Modifications  
Bid Proposal Tabulation Sheet*

24	18" PVC PIPE <hr/> Unit Price in Words	LF	121	= \$	= \$
25	24" PVC PIPE <hr/> Unit Price in Words	LF	1340	= \$	= \$
26	27" PVC PIPE <hr/> Unit Price in Words	LF	146	= \$	= \$
27	6" CANAL GATES <hr/> Unit Price in Words	EA	2	= \$	= \$
28	10" CANAL GATES <hr/> Unit Price in Words	EA	1	= \$	= \$
29	12" CANAL GATES <hr/> Unit Price in Words	EA	2	= \$	= \$
30	15" CANAL GATES <hr/> Unit Price in Words	EA	1	= \$	= \$
31	24" CANAL GATES <hr/> Unit Price in Words	EA	1	= \$	= \$
32	27" CANAL GATES <hr/> Unit Price in Words	EA	1	= \$	= \$
33	PRECAST IRRIGATION INTAKE <hr/> Unit Price in Words	EA	3	= \$	= \$
34	PRECAST IRRIGATION VAULT <hr/> Unit Price in Words	EA	2	= \$	= \$
35	12" FLOW METER AND VAULT <hr/> Unit Price in Words	EA	1	= \$	= \$
36	16" FLOW METER AND VAULT <hr/> Unit Price in Words	EA	1	= \$	= \$
37	24" FLOW METER AND VAULT <hr/> Unit Price in Words	EA	1	= \$	= \$

*Cherry Creek Irrigation Diversion Modifications  
Bid Proposal Tabulation Sheet*

38	ELECTRICAL <hr style="border: none; border-top: 1px solid black; margin: 2px 0;"/>	LS	1		
	Unit Price in Words			= \$ _____	= \$ _____
39	CRUSHED SURFACING <hr style="border: none; border-top: 1px solid black; margin: 2px 0;"/>	CY	15		
	Unit Price in Words			= \$ _____	= \$ _____
40	GRAVEL BACKFILL FOR DRYWELLS <hr style="border: none; border-top: 1px solid black; margin: 2px 0;"/>	CY	33		
	Unit Price in Words			= \$ _____	= \$ _____
41	AS-CONSTRUCTED DRAWINGS <hr style="border: none; border-top: 1px solid black; margin: 2px 0;"/>	LS	1		
	Unit Price in Words			= \$ _____	= \$ _____
42	TESTING, STARTUP AND TRAINING <hr style="border: none; border-top: 1px solid black; margin: 2px 0;"/>	LS	1		
	Unit Price in Words			= \$ _____	= \$ _____
SUBTOTAL (Items 1-42)					\$ _____
Sales Tax @ 8.0%					\$ _____
TOTAL AMOUNT BID					\$ _____



**PROPOSAL BOND**

KNOW ALL MEN BY THESE PRESENTS,

That we, \_\_\_\_\_

Of \_\_\_\_\_

as principal, \_\_\_\_\_

and the \_\_\_\_\_

a corporation duly organized under the laws of the state of \_\_\_\_\_ and authorized to do business in the State of Washington, as surety, are held and firmly bound unto the Kittitas County Conservation District in the full and penal sum of five (5) percent of the total amount of the bid proposal of said principal for the work hereinafter described, for the payment of which, well and truly to be made, we bind our heirs, executors, administrators and assigns, and successors and assigns, firmly by these presents.

The condition of this bond is such, that whereas the principal herein is herewith submitting his or its sealed proposal for the following construction project, to wit:

**Cherry Creek Irrigation Diversion Modifications**

said bid and proposal, by reference thereto, being made a part hereof.

NOW, THEREFORE, If the said proposal bid by said principal be accepted, and the contract be awarded to said principal, and if said principal shall duly make and enter into and execute said contract and shall furnish bond as required by the Kittitas County Conservation District within a period of twenty (20) days from and after said award, exclusive of the day of such award, then this obligation shall be null and void, otherwise it shall remain and be in full force and effect.

IN TESTIMONY WHEREOF, The principal and surety have caused these presents to be signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_

\_\_\_\_\_  
(Principal)

\_\_\_\_\_  
(Surety)

\_\_\_\_\_  
(Attorney-in-fact)

## **NON-COLLUSION DECLARATION**

I, by signing the proposal, hereby declare, under penalty of perjury under the laws of the United States that the following statements are true and correct:

1. That the undersigned persons(s), firm, association, or corporation has (have) not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the project for this proposal is submitted.
2. That by signing the signature page of this proposal, I am deemed to have signed and have agreed to the provisions of this declaration, at the date noted and at the principle place of business of the signing entity or person.

## **NOTICE TO ALL BIDDERS 1-800-424-9071**

To report rigging activities call:

The U.S. Department of Transportation (USDOT) operates the above toll-free “hotline” Monday through Friday, 8:00 a.m. to 5:00 p.m., eastern time. Anyone with knowledge of possible bid rigging, bidder collusion, or other fraudulent activities should use the “hotline” to report such activities.

The “hotline” is part of USDOT’s continuing effort to identify and investigate highway construction contract fraud and abuse and is operated under the direction of the USDOT Inspector General. All information will be treated confidentially and caller anonymity will be respected.

**LETTER OF RESPONSIBILITY**

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

**To: Board of Supervisors of the Kittitas County Conservation District**  
(Party awarding principal contract)

Dear Sirs:

I hereby maintain that I am a responsible bidder as contemplated by the policies of the State of Washington (Chapter 157, Laws of Washington of 1937).

**A.** My permanent place of business is \_\_\_\_\_, which I have maintained for \_\_\_\_\_ years.

**B.** I have adequate plant equipment to do expeditiously and properly the work contemplated for the Kittitas County Conservation District.

Description of work:

The project provides for the destruction of one diversion and the modification of one diversion that act as fish barriers in Cherry Creek. A series of weirs will check up the water to an acceptable elevation to continue to be used as a source of irrigation. Construction will include weirs within Cherry Creek; earthwork and creek regrading; and installation of mechanical equipment, screens and pipe all in accordance with the Project Plans, Technical Specifications, and the Environmental Permits.

**C.** I have the following equipment available for this work:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**D.** I have adequate funds to promptly meet obligations incidental to the work.

Bank Reference: \_\_\_\_\_

**E.** I have had experience in this class of work, having constructed the following improvements:

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I hereby certify that the above is a true and accurate statement.

Very truly yours,

---

Contractor

**PERFORMANCE BOND**

KNOW ALL PERSONS BY THESE PRESENTS: that \_\_\_\_\_ (Name of Contractor) \_\_\_\_\_ (Address of Contractor) a \_\_\_\_\_, (Corporation, Partnership or Individual) hereinafter called PRINCIPAL and \_\_\_\_\_ (Name of Surety) \_\_\_\_\_ (Address of Surety)

hereinafter called SURETY, are held and firmly bound unto KITTITAS COUNTY CONSERVATION DISTRICT, 607 E. Mountain View Ave, Ellensburg, Washington 98926, hereinafter called OWNER in the total aggregate penal sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) in lawful money of the United State, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGAION is such that whereas, the PRINCIPAL entered into a certain contract with the OWNER, dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, a copy of which is hereto attached and made a part hereof for the construction of:

\_\_\_\_\_  
\_\_\_\_\_

NOW, THEREFORE, if the PRINCIPAL shall well truly and faithfully perform its duties, all the undertakings, covenants, terms, conditions, and agreements of said contract during the original term thereof, and any extensions thereof which may be granted by the OWNERS, with or without notice to the SURETY and during the one year guaranty period and if the PRINCIPAL shall satisfy all claims and demands incurred under such contract, and shall fully indemnify and save harmless the OWNER from all costs and damages which it may suffer by reason of failure to do so, and shall reimburse and repay the OWNER all outlay and expense which the OWNER may incur in making good any default, then this obligation shall be void, otherwise to remain in full force and effect.

PROVIDED, FURTHER, that the said SURETY, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to WORK to be performed thereunder or the SPECIFICATIONS accompanying same shall in any way affect its obligation on this BOND, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the WORK or to the SPECIFICATIONS.

PROVIDED, FURTHER, that it is expressly agreed that the BOND shall be deemed amended automatically and immediately, without formal and separate amendments hereto, upon amendment to the Contract not increasing the contract price more than 20 percent, so as to bind the PRINCIPAL and the SURETY to the full and faithful performance of the CONTRACT as so amended. The term "Amendment", whenever used in is BOND, and whether referring to this BOND, the Contract or the Loan Documents shall include any alteration, addition, extension, or modification of any character whatsoever.

PROVIDED, FURTHER, that no final settlement between the OWNER and the PRINCIPAL shall abridge the right of the other beneficiary hereunder, whose claim may be unsatisfied. The OWNER is the only beneficiary hereunder.

WITNESS WHEREOF, this instrument is executed in \_\_\_\_\_ counterparts, each of which shall be deemed an original, this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

*Cherry Creek Irrigation Diversion Modifications  
Performance Bond*

ATTEST:

\_\_\_\_\_  
(Principal) Secretary

(SEAL)

\_\_\_\_\_  
Witness to Principal

\_\_\_\_\_  
Address

ATTEST:

\_\_\_\_\_  
Witness to Surety

\_\_\_\_\_  
Address

\_\_\_\_\_  
Address

\_\_\_\_\_  
Principal

By \_\_\_\_\_ (s)

\_\_\_\_\_  
Address

By \_\_\_\_\_  
Attorney-in-Fact

\_\_\_\_\_  
Address

\_\_\_\_\_  
Address

**PAYMENT BOND**

KNOW ALL PERSONS BY THESE PRESENTS: that \_\_\_\_\_ (Name of Contractor) \_\_\_\_\_ (Address of Contractor) a \_\_\_\_\_ (Corporation, Partnership or Individual), hereinafter called PRINCIPAL and \_\_\_\_\_ (Name of Surety) \_\_\_\_\_ (Address of Surety) hereinafter called SURETY, are held and firmly bound unto KITTITAS COUNTY CONSERVATION DISTRICT, 607 East Mountain View Ave, Ellensburg, Washington 98926, hereinafter called OWNER and unto all persons, firms, and corporations who or which may furnish labor, or who furnish materials to perform as described under the contract and to their successors and assigns in the total aggregate penal sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGAION is such that whereas, the PRINCIPAL entered into a certain contract with the OWNER, dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, a copy of which is hereto attached and made a part hereof for the construction of:

\_\_\_\_\_

\_\_\_\_\_

NOW, THEREFORE, if the PRINCIPAL shall promptly make payment to all persons, firms, and corporations furnishing materials for or performing labor in the prosecution of the WORK provided for in such contract, and any authorized extensions or modification thereof, including all amounts due for material, lubricants, oil gasoline, coal and coke, repairs on machinery, equipment and tools, consumed or used in connection with the construction of such WORK, and for all labor cost incurred in such WORK including that by a SUBCONTRACTOR, and to any mechanic or materialman lienholder whether it acquires its lien by operation of State of Federal law; then this obligation shall be void, otherwise to remain in full force and effect.

PROVIDED, that beneficiaries or claimants hereunder shall be limited to the SUBCONTRACTORS, and persons, firms, and corporations having a direct contract with the PRINCIPAL or its SUBCONTRACTORS.

PROVIDED, FURTHER, that the said SURETY for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the WORK to be performed thereunder or the SPECIFICATIONS accompanying the same shall in any way affect its obligation on this BOND, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of this contract or to the WORK or to the SPECIFICATIONS.

PROVIDED, FURTHER, that no suit or action shall be commenced hereunder by any claimant: (a) Unless claimant, other than one having a direct contract with the PRINCIPAL shall have given written notice to any two of the following: The PRINCIPAL, the OWNER, or the SURETY above named within ninety (90) days after such claimant did or performed the last of the work or labor, or furnished the last of the materials for which said claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished, or for whom the work or labor was done or performed. Such notice shall be served by mailing the same by registered mail or certified mail, postage prepaid, in an envelope addressed to the PRINCIPAL, OWNER, OR SURETY, at any place where an office is regularly maintained for the transaction of business, or served in any manner in which legal process may be a public officer. (b) After the expiration of one (1) year following the date of which PRINCIPAL ceased work on said CONTRACT, is being understood, however, that if any limitation embodied in the BOND is prohibited by any law controlling the construction hereof, such limitation shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.

*Cherry Creek Irrigation Diversion Modifications  
Payment Bond*

PROVIDED, FURTHER, that it is expressly agreed that this BOND shall be deemed amended automatically and immediately, without formal and separate amendments hereto upon amendment to the Contract not increasing the contract price more than 20 percent, so as to bind the PRINCIPAL and the SURETY to the full and faithful performance of the Contract as so amended. The term "Amendment", wherever used in this BOND and whether referring to this BOND, the contract or the load Documents shall include and alteration, addition, extension or modification of any character whatsoever.

PROVIDED, FURTHER, that no final settlement between the OWNER and the CONTRACTOR shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

WHITNESS WHEREOF, this instrument is executed in \_\_\_\_\_ counterparts, each of which shall be deemed an original, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

ATTEST:

\_\_\_\_\_  
(Principal) Secretary

(SEAL)

\_\_\_\_\_  
Witness to Principal

\_\_\_\_\_  
Address

ATTEST:

\_\_\_\_\_  
Witness to Surety

\_\_\_\_\_  
Address

\_\_\_\_\_  
Address

\_\_\_\_\_  
Principal

By \_\_\_\_\_(s)

\_\_\_\_\_  
Address

By \_\_\_\_\_  
Attorney-in-Fact

\_\_\_\_\_  
Address

\_\_\_\_\_  
Address

NOTE: Date of Bond must not be prior to date of Contract.  
If CONTRACTOR is partnership, all partners should execute BOND.  
IMPORTANT: Surety companies executing BONDS must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the State where the Project is located.

**CONSTRUCTION CONTRACT  
FOR  
CHERRY CREEK IRRIGATION DIVERSION MODIFICATIONS  
CONTRACT # **2010-08-09-01****

THIS AGREEMENT, made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2010,  
between the KITTITAS COUNTY CONSERVATION DISTRICT, under and by virtue of  
Title 47 RCW, as amended, and  
\_\_\_\_\_, a Washington for-profit  
corporation and hereinafter called the Contractor.

Contact Name \_\_\_\_\_  
Address \_\_\_\_\_  
City, State, ZIP \_\_\_\_\_  
Phone \_\_\_\_\_  
FAX \_\_\_\_\_  
Washington State  
Contractor's License No. \_\_\_\_\_  
Washington State UBI No. \_\_\_\_\_  
Federal Tax ID: \_\_\_\_\_

**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:

- I. The Contractor shall do all work and furnish all tools, materials, and equipment for  
the:

**CHERRY CREEK IRRIGATION DIVERSION MODIFICATIONS**

in accordance with and as described in the attached CONTRACT DOCUMENTS  
which are by this reference incorporated herein and made part hereof and, shall perform  
any changes in the work in accord with the CONTRACT DOCUMENTS.

The Contractor will commence the work required by the CONTRACT DOCUMENTS  
within \_\_\_\_ working days after the NOTICE TO PROCEED, and will complete the same  
within \_\_\_\_ working days unless the period for completion is extended otherwise by the  
Plans and Technical Specifications.

The Contractor agrees to perform all of the work described in this CONTRACT and comply with the terms therein for the sum of \$\_\_\_\_\_.

The Contractor shall provide and bear the expense of all equipment, work and labor, of any sort whatsoever that may be required for the transfer of materials and for constructing and completing the work provided for in these CONTRACT DOCUMENTS except those items mentioned herein to be furnished by other parties under separate agreements.

- II. The Kittitas County Conservation District hereby promises and agrees with the Contractor to employ, and does employ the Contractor to provide the materials and to do and cause to be done the above and herein described work and to complete and finish the same in accord with the attached plans and technical 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 at the time and in the manner and upon the conditions provided for in this contract.
- III. The Contractor for himself/herself, and for his/her heirs, executors, administrators, successors, and assigns, does hereby agree to full performance of all covenants required of the Contractor in the contract.
- IV. It is further provided that no liability shall attach to the Kittitas County Conservation District by reason of entering into this contract, except as provided herein.

IN WITNESS WHEREOF, the Contractor has executed this instrument, on the day and year first below written and the Chairman of the Kittitas County Conservation District has caused this instrument to be executed by and in the name of the said State of Washington and the Kittitas County Conservation District the day and year first above written.

This Contract shall be subject to the written approval of Kittitas County Conservation District and shall not be binding until so approved. The Contract may be altered, amended or waived only by a written amendment executed by both parties.

THIS CONTRACT, consisting of the pages and attachments, if any, is executed by the persons signing below who warrant that they have the authority to execute the contract.

Company Name:

---

Signature

---

Title

Date

KITTITAS COUNTY CONSERVATION DISTRICT

---

Signature

Chair, Board of Supervisors

---

Title

Date

## **CONTRACT CLAUSES**

### **1. DEFINITIONS**

As used throughout this contract, the following terms shall have the meaning set forth below:

#### **A. Contracting Officer**

Contracting Officer means a person with authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes certain authorized representatives of the Contracting Officer acting within the limits of their authority as delegated by the Contracting Officer.

#### **B. Owner/Operator & Kittitas County Conservation District**

Thomas Nisbet, Don Jacobs and Sweetgrass Investments have mutually agreed with the Kittitas County Conservation District (hereinafter referred to as the “District”) for installation of the project. The Kittitas County Conservation District Manager is the official spokesperson and Contracting Officer for this project. The Contracting Officer is the person who reviewed the construction plan, made all contractual agreements, obtains all permits and is financially responsible. The Contracting Officer is the sole person who can authorize any changes during construction that incur financial obligations.

#### **C. Project Engineer (PE), Technical Representative (TR) and Construction Observer (CO)**

The Project Engineer (PE) is the person(s) designated by the Contracting Officer as the representative(s) who shall be satisfied that the work is being done in accordance with the Contract Plans and Technical Specifications. The PE has the authority to review the practice during construction and make necessary tests to monitor compliance with the Contract Plans and Technical Specifications. The PE prepares as-built drawings on completion of the project.

Technical Representatives (TR) are appointed by the Contracting Officer and the PE. TR(s) have the authority to reject defective material and/or suspend work that is being done improperly, subject to final decision of the PE. TR(s) are not authorized to accept work, to accept materials, to issue instructions, or to give advice that is contrary to the Contract. Work done or material furnished which does not meet the Contract requirements shall be at the Contractor’s risk and shall not be a basis for a claim even if the TR(s) purport to change the Contract. TR(s) may advise the Contractor of any faulty work or materials or infringements of the terms of the Contract; however, failure of the PE or TR(s) to advise the Contractor does not constitute acceptance or approval.

The Contracting Officer also designates a Construction Observer (CO) to provide daily observation of the status of project construction, as well as facilitating necessary communication between the PE and TR(s) and the Contractor. The CO maintains a job diary, consisting of daily reports that document project status. The daily reports include photos taken from established photo points and at the discretion of the CO. The CO has no authority to give advice, accept or reject materials, accept work or suspend work.

#### **D. Contractor**

The Contractor is the individual or firm that entered into a contractual agreement with the District for the project installation as set forth in the contract plans and specifications. The Contractor shall not make changes to the construction plan without District review and approval. The Contractor shall comply with all applicable permits and conduct the work in a safe manner and ensure construction is in accordance with the requirements as set forth in the Plans and Technical Specifications.

## **2. CONTRACT WORK**

The work consists of furnishing all labor, equipment, and material for the destruction of one diversion and the modification of one diversion that act as fish barriers in Cherry Creek as further described in the following construction document.

This entire construction document sets forth the requirements for this installation as shown on the drawings and described in the construction specifications and material specification. The project shall be constructed at the location and to the lines and grades as shown on the drawings in accordance with the local and state regulations.

This project is considered an environmental conservation project. Portions of this project are funded by groups or agencies whose focus is conservation of natural resources and efforts of the Contractor on this project shall be mindful of these interests.

The Contractor acknowledges its awareness of the following:

- A. Quality and timely completion of the finished project is of high value to the Contracting Agency and the funding groups and agencies, and that time is of the essence to this agreement.
- B. The Contractor is expected to make every effort possible to meet or exceed the requirements of the permits previously obtained, or shall seek modification of such permits if he/she chooses to pursue the work in a manner different from that previously specified. Failure to do so can be grounds for termination of this contract.

The Contractor further acknowledges that it has had ample and adequate opportunity to review the drawings, construction and material specification, and has also inspected the subject location, including lines and grades shown, and based upon its own inspection of the premises, warrants that it can fully perform its obligations in accordance herewith.

## **3. ORDER OF PRECEDENCE-SEALED BIDDING**

Any inconsistency in this solicitation or contract shall be resolved by giving precedence in the following order: (a) Change Orders (b) Addenda; (c) Bid Proposal Tabulation Sheet; (d) Technical Specifications; (e) Plans; (f) Contract Clauses; and (g) other documents, exhibits, and attachments.

On the contract plans, working drawings, and technical specifications, figured dimensions shall take precedence over scaled dimensions.

This order of precedence shall not apply when work is required by one part of the contract but omitted from another part or parts of the contract. The work required in one part must be furnished even if not mentioned in other parts of the contract.

#### **4. TYPE OF CONTRACT**

The District contemplates award of a FIRM FIXED PRICE contract resulting from this solicitation.

#### **5. BID GUARANTEE**

A bid deposit of at least 5% of the total bid shall accompany the bid. The deposit may be by cash, certified check, cashier's check, or a proposal bond (surety bond).

#### **6. PERFORMANCE AND PAYMENT BONDS -- CONSTRUCTION**

- A. Definitions. As used in this clause—Original contract price means the award price of the contract; or, for requirements contracts, the price payable for the estimated total quantity. Original contract price does not include the price of any options exercised at the time of contract award.
- B. Amount of required bonds. The successful offeror shall furnish performance and payment bonds to the Contracting Officer as follows:
- (1) Performance bonds (provided). The penal amount of performance bonds at the time of contract award shall be 100 percent of the original contract price.
  - (2) Payment bonds (provided). The penal amount of the payment bonds at the time of contract award shall be 100 percent of the original contract price.
  - (3) Additional bond protection.
    - i. The District may require additional performance and payment bond protection if the contract price is increased. The increased protection generally will equal 100 percent of the increase in contract price.
    - ii. The District may secure the additional protection by directing the Contractor to increase the penal amount of the existing bond or obtain an additional bond.
- C. Furnishing executed bonds. The Contractor shall furnish all executed bonds, including any necessary reinsurance agreements, to the Contracting Officer, at the time of contract execution by the Contractor, or otherwise specified by the Contracting Officer, but in any event, before starting work.
- D. Surety or other security for bonds. The bonds shall be in the form of firm commitment, supported by corporate sureties whose names appear on the list contained in Treasury Department Circular 570, individual sureties, or by other acceptable security such as postal money order, Certified check, cashier's check, irrevocable letter of credit, or, in accordance with Treasury Department regulations, certain bonds or notes of the United States. Treasury Circular 570 is published in the federal Register or may be obtained from the U.S. Department

of Treasury, Financial Management Service, Surety Bond Branch, 401 14<sup>th</sup> Street, NW 2<sup>nd</sup> floor, West Wing, Washington, DC 20227.

- E. Notice of subcontractor waiver of protection (40 U.S.C. 27b(c)). Any waiver of the right to sue on the payment bond is void unless it is in writing, signed by the person whose right is waived, and executed after such person has first furnished labor or material for use in performance of the contract.
- F. On contracts of \$35,000 or less, the district may, where 50 percent of the contract amount is retained for a period of 30 days after date of final acceptance (providing all necessary releases from the department of revenue and the department of labor and industries and settlement of any liens filed under chapter 60.28 RCW have been received) dispense with the requirements of the Performance and Payment bonds, as permitted by state law

## **7. PAYMENTS UNDER FIXED—PRICE CONSTRUCTION CONTRACTS**

- A. Payment of price. The District shall pay the Contractor the contract price as provided in this contract. The basis of payment will be the actual quantities of work performed according to the contract and as specified for payment.
- B. Progress payments. The District shall make progress payments monthly as the work proceeds, or at more frequent intervals as determined by the Contracting Officer, on estimates of work accomplished which meets the standards of quality established under the contract, as approved by the Contracting officer.

(1) The Contractor's request for progress payments shall include the following substantiation:

- i. An itemization of the amounts requested, related to the various elements of work required by the contract covered by the payment requested.
  - ii. A listing of the amount included for work performed by each subcontractor under the contract.
  - iii. A listing of the total amount of each subcontract.
  - iv. A listing of the amounts previously paid each such subcontractor under the contract.
  - v. Additional supporting data in a form and detail required by the Contracting Officer.
- C. Failure to perform any of the obligations under the contract by the Contractor may be decreed by the District to be adequate reason for withholding any payments until compliance is achieved.
- D. The Contractor shall receive payment from progress payments approximately twenty (20) to forty (40) days after submittal of progress payment request, or as determined necessary by the Contracting Officer.
- E. Payment to the Contractor of partial estimates, final estimates, and retained percentages shall be subject to controlling laws.

## **8. INVOICE SUBMITTAL**

Original to:

**Kittitas County Conservation District  
607 E Mountain View Ave  
Ellensburg, WA 98926**

## **9. RETAINAGE**

A. As required by RCW 60.28.011 the KCCD will withhold 5% of the funds due the contractor for construction of this project until completion and/or acceptance of the contract. Such retainage shall be used as a trust fund for the protection and payment (1) to the State with respect to taxes imposed pursuant to Title 82, RCW, and (2) the claims of any person arising under the Contract. Monies retained under the provisions of RCW 60.28 shall, at the option of the Contractor, be:

1. Retained in a fund by the District, or
2. Deposited by the District in an escrow (interest-bearing) account in a bank, mutual savings bank or savings and loan association (interest on monies so retained shall be paid to the Contractor). Deposits are to be in the name of the District and are not to be allowed to be withdrawn without the District's written authorization. The District will issue a check representing the sum of the monies reserved payable to the back or trust company. Such check shall be converted into bonds and securities chosen by the Contractor as the interest accrues.

At the time the Contract is executed the Contractor shall designate the option desired. The Contractor in choosing option (2) agrees to assume full responsibility to pay all costs which may accrue from escrow services, brokerage charges or both, and further agrees to assume all risks in connection with the investment of the retained percentages in securities. The District may also at its option accept a bond in lieu of retainage.

B. Release of the retainage will occur 60 days following the completion date (pursuant to RCW 39.12 and RCW 60.28) provided the following conditions are met:

1. On contracts totaling more than \$35,000, a release has been obtained from the Washington State Department of Revenue.
2. Affidavits of Wages Paid for the Contractor and all Subcontractors are on file with the KCCD (RCW 39.12.040).
3. A certificate of payment of Contributions Penalties and Interest on Public Works Contract is received from the Washington State Employment Security Department.
4. Washington State Department of Labor and Industries shows the Contractor is current with payments of industrial insurance and medical aid premiums.
5. All claims, as provided by law, filed against retainage have been resolved. In the event claims are filed and provided the conditions of 1, 2, 3, and 4 are met, the Contractor will be paid such retained percentage less an amount sufficient to pay any such claims together with a sum determined by the KCCD sufficient to pay the cost of foreclosing on claims to cover attorney's fees.

## **10. INSURANCE – WORK ON A DISTRICT PROJECT**

- A. The Contractor shall, at its own expense, provide and maintain during the entire performance of this contract, at least \$1,000,000.00 commercial general liability and property damage, and \$1,000,000 in automobile liability. The Contractor shall also provide and maintain any other type of insurance required in the Schedule or elsewhere in the contract. The policy shall name as additionally insured the owner(s) and the Kittitas County Conservation District, its agents, employees, officers and assigns.
- B. Before commencing work under this contract, the Contractor shall notify the Contracting Officer in writing that the required insurance has been obtained. The policies evidencing required insurance shall contain an endorsement to the effect that any cancellation or any material change adversely affecting the District's interest shall not be effective (1) for such period as the laws of the State in which this contract is to be performed, or (2) until 30 days after the insurer or the Contractor gives written notice to the Contracting Officer, whichever period is longer.
- C. The Contractor shall insert the substance of this clause, including the paragraph (c), in subcontracts under this contract that require work on a District project and shall require subcontractors to provide and maintain the insurance required in the Schedule or elsewhere in the contract. The Contractor shall maintain a copy of all subcontractors' proofs of required insurance, and shall make copies available to the Contracting Officer upon request.

## **11. MATERIAL AND WORKMANSHIP**

- A. All equipment, material, and articles incorporated into the work covered by this contract shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in this contract. References in the specifications to equipment, material, articles, or patented processes by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. The Contractor may, at its option, use any equipment, material, article, or process that, in the judgment of the Contracting Officer, is equal to that named in specifications, unless otherwise specifically provided in this contract. The materials named in the Plans and Technical Specifications are to be utilized from owners stock subject to final inspections by Contractor and Contracting Officer.
- B. The Contractor shall obtain the Contracting Officer's approval of the machinery and mechanical and other equipment to be incorporated into the work. When requesting approval, the Contractor shall furnish to the Contracting Officer the name of the manufacturer, the model number, and other information concerning the performance, capacity, nature, and rating of the machinery and mechanical and other equipment. When required by this contract or by the Contracting Officer, the contractor shall also obtain the Contracting Officer's approval of the material or articles which the Contractor contemplates incorporating into the work. When requesting approval, the Contractor shall provide full information concerning the material or articles. When directed to do so, the Contractor shall submit samples for approval at the Contractor's expense, with all shipping charges prepaid. Machinery, equipment, material, and articles that do not have the required approval shall be installed or used at the risk of subsequent rejection.

- C. All work under this contract shall be performed in a skillful and workmanlike manner. The Contracting Officer may require, in writing, that the Contractor remove from the work any employee the Contracting Officer deems incompetent, careless, or otherwise objectionable.

## **12. SUPERINTENDENCE BY THE CONTRACTOR**

At all times during performance of this contract and until the work is completed and accepted, the Contractor shall directly superintend the work or assign and have on the worksite a competent superintendent who is satisfactory to the Contracting Officer and has authority to act for the Contractor. At all times, the Contractor shall keep at the work site a set of the plans, specifications, special provisions, addenda, and environmental permits.

## **13. PRECONSTRUCTION CONFERENCE**

If the Contracting Officer decides to conduct a preconstruction conference, the successful offeror will be notified and will be required to attend. The Contracting Officer's notification will include specific details regarding the date, time, and location of the conference, any need for attendance by subcontractors, and information regarding the items to be discussed.

## **14. COMMENCEMENT, PROSECUTION, AND COMPLETION OF WORK**

- A. The Contractor shall be required to (a) commence work under this contract on or about October 18, 2010, (b) prosecute the work diligently, and (c) complete the entire work ready for use by 6 PM (local time) December 31, 2010. The time stated for completion shall include final cleanup of the premises.
- B. Voluntary shutdown or slowing of operations by the Contractor shall not relieve the Contractor of the responsibility to complete the work within the time(s) specified in the contract.

## **15. SCHEDULES FOR CONSTRUCTION CONTRACTS**

- A. The Contractor shall, within five working days after the work commences on the contract or another period of time determined by the contracting officer, prepare and submit to the Contracting Officer for approval three copies of a practicable schedule showing the order in which the Contractor proposes to perform the work, and the dates on which the Contractor contemplates starting and completing the several salient features of the work (including acquiring materials, plant, and equipment). The schedule shall be in the form of a progress chart of suitable scale to indicate appropriately the percentage of work scheduled for completion by any given date during the period. If the Contractor fails to submit a schedule within the time prescribed, the Contracting Officer may withhold approval of progress payments until the Contractor submits the required schedule.
- B. The Contractor shall enter the actual progress on the chart as directed by the Contracting Officer, and upon doing so shall immediately deliver three copies of the annotated schedule to the Contracting Officer. If, in the opinion of the Contracting Officer, the Contractor falls behind the approved schedule, the Contractor shall take steps necessary to improve its progress, including those that may be required by the Contracting Officer, without additional cost to the District. In this circumstance, the Contracting Officer may require the Contractor to increase the number of shifts, overtime operations, days of work, and/or the amount of construction plant, and to submit for approval any supplementary schedule or schedules in chart form as the

Contracting Officer deems necessary to demonstrate how the approved rate of progress will be regained.

- C. Failure of the Contractor to comply with the requirements of the Contracting Officer under this clause shall be ground for a determination by the Contracting Officer that the Contractor is not prosecuting the work with sufficient diligence to ensure completion within the time specified in the contract. Upon making this determination, the Contracting Officer may terminate the Contractor's right to proceed with the work, or any separable part of it, in accordance with the default terms of this contract.

## **16. INSPECTIONS**

Inspections will be required periodically during construction to verify compliance with the plans and specifications.

- A. The Contractor must give the PE or TR timely notice of their readiness for an inspection.
- B. The Contractor will work to consolidate inspections as is practicable in order to reduce the overall number of site visits required by the PE or TR.
- C. The Contractor must provide all materials for testing at its own expense.
- D. Failure of the PE or TR to observe a deficiency does not relieve the Contractor of obligation for performance.
- E. Work covered prior to required inspections must be uncovered for inspections and then recovered at the Contractor's expense.
- F. Extra inspections required as the result of a deficiency noted by the PE or TR must be paid for by the Contractor.

## **17. ACCEPTANCE**

Acceptance of the project will be preformed on an "on-going" basis by the PE during construction as well as after the work has been completed. If deficiencies are found, the PE will notify the Contractor, verbally or in writing of the corrective action necessary in order to accept the project.

## **18. FINAL ACCEPTANCE**

The Contractor must perform all the obligations under the contract before a completion date and final acceptance can occur. Failure of the Contractor to perform all the obligations under the contract shall not bar the District from unilaterally accepting the contract. Progress estimates or payments shall not be construed as acceptance of any work under the contract.

The Contractor agrees that neither completion nor final acceptance shall relieve the Contractor of the responsibility to indemnify, defend and protect the District against any claim or loss resulting from the failure of the Contractor (or the subcontractors or lower tier subcontractors) to pay all

laborers, mechanics, subcontractors, material persons, or any other person who provides labor, supplies or provisions for carrying out the work or for any payments required for unemployment compensation or for industrial insurance and medical aide as required by state law.

Final acceptance shall not constitute acceptance of any unauthorized or defective work or material. The District shall not be barred from requiring the Contractor to remove, replace, repair, or dispose of any unauthorized or defective work or material or from recovering damages for any such work or material.

## **19. TIME EXTENSIONS**

Time extensions for contract changes will depend upon the extent, if any, by which the changes cause delay in the completion of the various elements of construction. The change order granting the time extension may provide that the contract completion date will be extended only for those specific elements related to the changed work and that the remaining contract completion dates for all other portions of the work will not be altered. The change order also may provide an equitable readjustment of liquidated damages under the new completion schedule.

## **20. VARIATION IN ESTIMATED QUANTITY**

If the quantity of a unit-priced item in this contract is an estimated quantity and the actual quantity, of the unit priced item varies more than 15 percent above or below the estimated quantity, an equitable adjustment in the contract price shall be made upon demand of either party. The equitable adjustment in the contract price shall be based upon any increase or decrease in costs due solely to the variation above 115 percent or below 85 percent of the estimated quantity. If the quantity is such as to cause an increase in the time necessary for completion, the Contractor may request, in writing, an extension in time, to be received by the Contracting Officer within 10 days from the beginning of the delay, or within such further period as may be granted by the Contracting Officer before the date of final settlement of the contract. Upon the receipt of a written request for an extension, the Contracting Officer shall ascertain the facts and make an adjustment for extending the completion date as, in the judgment of the Contracting Officer, is justified.

## **21. DIFFERING SITE CONDITIONS**

- A. The Contractor shall promptly, and before the conditions are disturbed, give a written notice to the Contracting Officer of;
  - (1) Subsurface or latent physical conditions at the site which differ materially from those indicated in this contract, or
  - (2) Unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the contract.
- B. The Contracting Officer shall investigate the site conditions promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performing any part of the work under this contract, whether or

not changed as a result of the conditions, an equitable adjustment shall be made under this clause and the contract modified in writing accordingly.

- C. No request by the Contractor for an equitable adjustment to the contract under this clause shall be allowed, unless the contractor has given the written notice required; provided, that the time prescribed in (a) above for giving written notice may be extended by the Contracting Officer.
- D. No request by the Contractor for an equitable adjustment to the contract for differing site conditions shall be allowed if made after final payment under this contract.

## **22. LAYOUT OF WORK**

The Contractor shall lay out its work from District established base lines and bench marks indicated on the drawings, and shall be responsible for all measurements in connection with the layout. The Contractor shall furnish, at its own expense, all stakes, templates, platforms, equipment, tools, materials, and labor required to lay out any part of the work. The Contractor shall be responsible for executing the work to the lines and grades that may be established or indicated by the Contracting Officer. The Contractor shall also be responsible for maintaining and preserving all stakes and other marks established by the Contracting Officer until authorized to remove them. If such marks are destroyed by the Contractor or through its negligence before their removal is authorized, the Contracting Officer may replace them and deduct the expense of the replacement from any amounts due or to become due to the Contractor.

## **23. SPECIFICATIONS AND DRAWINGS FOR CONSTRUCTION**

- A. The Contractor shall keep on the work site a copy of the Plans (drawings) and Technical Specifications and shall at all times give the Contracting Officer access thereto. Anything mentioned in the Technical Specifications and not shown on the Plans, or shown on the Plans and not mentioned in the Technical Specifications, shall be of like effect as if shown or mentioned in both. In case of difference between Plans and Technical Specifications, the Technical Specifications shall govern. In case of discrepancy in the figures, in the drawings, or in the specifications, the matter shall be promptly submitted to the Contracting Officer, who shall promptly make a determination in writing. Any adjustment by the Contractor without such a determination shall be at its own risk and expense. The Contracting Officer shall furnish from time to time such detailed drawings and other information as considered necessary, unless otherwise provided.
- B. Wherever in the Technical Specifications or upon the Plans the words “directed”, “required”, “ordered”, “designated”, “prescribed”, or words of like import are used it shall be understood that the “direction”, “requirement”, “order”, “designation”, or “prescription”, of the Contracting Officer is intended and similarly the words “approved”, “acceptable”, “satisfactory”, or words of like import shall mean “approved by”, or “acceptable to”, or “satisfactory to” the Contracting Officer, unless otherwise expressly stated.
- C. Where “as shown”, “as indicated”, “as detailed”, or words of similar import are used, it shall be understood that the reference is made to the drawings accompanying this contract unless stated otherwise. The word “provided” as used herein shall be understood to mean “provide complete in place,” that is “furnished and installed”.

- D. Shop drawings mean drawings, submitted to the District by the Contractor, subcontractor, or any lower tier subcontractor pursuant to a construction contract, showing in detail (1) the proposed fabrication and assembly of structural elements, and (2) the installation (i.e., fit, and attachment details) of materials or equipment. It includes drawings, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, and similar materials furnished by the contractor to explain in detail specific portions of the work required by the contract. The District may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under this contract.
- E. If this drawing requires shop drawings, the Contractor shall coordinate all such drawings, and review them for accuracy, completeness, and compliance with contract requirements and shall indicate its approval thereon as evidence of such coordination and review. Shop drawings submitted to the Contracting Officer without evidence of the Contractor's approval may be returned for resubmission. The Contracting Officer will indicate an approval or disapproval of the shop drawings and if not approved as submitted shall indicate the District's reasons therefore. Any work done before such approval shall be at the Contractor's risk. Approval by the Contracting Officer shall not relieve the Contractor from responsibility for any errors and omissions in such drawings, nor from responsibility for complying with the requirements of this contract, except with respect to variations described and approved in accordance with (F) below.
- F. If shop drawings show variations from the contract requirements, the Contractor shall describe such variations in writing, separate from the drawings, at the time of submission. If the Contracting Officer approves any such variation, the Contracting Officer shall issue an appropriate contract modification, except that, if the variation is minor or does not involve a change in price or in time of performance, a modification need not be issued.
- G. The Contractor shall submit to the Contracting Officer for approval three copies (unless otherwise indicated) of all shop drawings as called for under the various headings of these specifications. Three sets (unless otherwise indicated) of all shop drawings, will be retained by the Contracting Officer and one set will be returned to the Contractor.

## **24. WARRANTY OF CONSTRUCTION**

- A. In addition to any other warranties in this contract, the Contractor warrants, except as provided in paragraph (I) of this clause, that work performed under this contract conforms to the contract requirements and is free of any defect in equipment, material, or design furnished, or workmanship performed by the Contractor or any subcontractor or supplier at any tier.
- B. This warranty shall continue for a period of 1 year from the date of final acceptance of the work.
- C. The Contractor shall remedy at the Contractor's expense any failure to conform, or any defect. In addition, the Contractor shall remedy at the Contractor's expense any damage to real or personal property, when that damage is the result of—
  - (1) The Contractor's failure to conform to contract requirements; or
  - (2) Any defect of equipment, material, workmanship, or design furnished.

- D. The Contractor shall restore any work damaged in fulfilling the terms and conditions of this clause. The Contractor's warranty with respect to work repaired will run for 1 year from the date of repair or replacement.
- E. The Contracting Officer shall notify the Contractor, in writing, within a reasonable time after the discovery of any failure, defect, or damage.
- F. If the Contractor fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, the District shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage at the Contractor's expense.
- G. With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this contract, the Contractor shall—
  - (1) Obtain all warranties that would be given in normal commercial practice;
  - (2) Require all warranties to be executed, in writing, for the benefit of the District and the owner(s), if directed by the Contracting Officer; and
  - (3) Enforce all warranties for the benefit of the District and the owner(s), if directed by the Contracting Officer.
- H. In the event the Contractor's warranty under paragraph (b) of this clause has expired, the District may bring suit at its expense to enforce a subcontractor's, manufacturer's, or supplier's warranty.
- I. Unless a defect is caused by the negligence of the Contractor or subcontractor or supplier at any tier, the Contractor shall not be liable for the repair of any defects of material or design furnished by the District nor for the repair of any damage that results from any defect in District furnished material or design.
- J. This warranty shall not limit the District's rights under the Inspection and Acceptance clause of the contract with respect to latent defects, gross mistakes, or fraud.

## **25. OTHER CONTRACTS**

The District may undertake or award other contracts for additional work at or near the site of the work under this contract. The contractor shall fully cooperate with the other contractors and with District employees and shall carefully adapt scheduling and performing the work under this contract to accommodate the additional work, heeding any direction that may be provided by the Contracting Officer. The Contractor shall not commit or permit any act that will interfere with the performance of work by any other contractor or by District employees.

## **26. PROTECTION OF EXISTING VEGETATION, STRUCTURES, EQUIPMENT, UTILITIES, AND IMPROVEMENTS**

- A. The Contractor shall preserve and protect all structures, equipment, and vegetation (such as trees, shrubs, and grass) on or adjacent to the work site, which is not to be removed and which does not unreasonably interfere with the work required under this contract. The Contractor shall only remove trees when specifically authorized to do so, and shall avoid damaging

vegetation that will remain in place. If any limbs or branches of trees are broken during contract performance, or by the careless operation of equipment, or by workmen, the Contractor shall trim those limbs or branches with a clean cut and paint the cut with a tree-pruning compound as directed by the Contracting Officer.

B. The Contractor shall protect from damage all existing improvements and utilities

- (1) At or near the work site, and
- (2) On adjacent property, the locations of which are made known to or should be known by the Contractor. The Contractor shall repair any damage to those facilities, including those that are on adjacent property, resulting from failure to comply with the requirements of this contract or failure to exercise reasonable care in performing the work. If the Contractor fails or refuses to repair the damage promptly, the Contracting Officer may have the necessary work performed and charge the cost to the Contractor.

## **27. CLEANING UP**

The Contractor shall at all times keep the work area, including storage areas, free from accumulations of waste materials. Before completing the work, the Contractor shall remove from the work and premises any rubbish, tools, scaffolding, equipment, and materials that are not the property of the District. Upon completing the work, the Contractor shall leave the work area in a clean, neat, and orderly condition satisfactory to the Contracting Officer.

## **28. EASEMENTS AND AUTHORIZATIONS**

The Contractor shall obtain any permits that are necessary. The Contractor shall also secure any temporary construction access and staging areas easements that may be necessary in addition to those permanent easements described herein.

## **29. ENVIRONMENTAL PERMITS**

The District has obtained, or will be responsible for timely procurement of, those project permits that are identified herein as applicable for the construction and/or operation of the project facility. These documents are attached and incorporated herein and Contractor acknowledges receipt and review thereof.

The Contractor shall obtain any permits that may become necessary in addition to those described herein and as are necessitated by approved work differing from that for which the original project permits were obtained.

The Contractor shall notify the District at least 48 hours prior to the start of any earth-moving activities or construction on any and all portions of the project in order to provide proper notice to the permitting agencies.

## **30. MODIFICATION PROPOSALS – PRICE BREAKDOWN**

A. The Contractor shall furnish a price breakdown, itemized as required and within the time specified by the Contracting Officer, with any proposal for a contract modification.

B. The price breakdown –

- (1) Must include sufficient detail to permit an analysis of profit, and of all costs for –
  - i. Material;
  - ii. Labor;
  - iii. Equipment;
  - iv. Subcontracts; and
  - v. Overhead; and
- (2) Must cover all work involved in the modification, whether the work was deleted, added, or changed.

C. The Contractor shall provide similar price breakdowns to support any amounts claimed for subcontracts.

D. The Contractor's proposal shall include a justification for any time extension proposed.

**31. LIQUIDATED DAMAGES- CONSTRUCTION**

If the Contractor fails to complete the work within the time specified in the contract, the Contractor shall pay liquidated damages. Since it is not possible to determine at this time, the amount of financial damages the District will suffer if the contract work is not completed on time, it is mutually agreed that the District will withhold from the Contractor as liquidated damages a sum not to exceed \$200.00 per chargeable calendar day up until such time as the work is substantially complete. Said sum includes costs to the District solely for contract administration.

**32. ACCIDENT PREVENTION**

A. The Contractor shall provide and maintain work environments and procedures which will-

- (1) Safeguard all persons, property, materials, supplies, and equipment exposed to the Contractor operations and activities.

B. For these purposes on contracts for construction or dismantling, demolition, or removal of improvements, the Contractor shall-

- (1) Comply with standards issued by the Secretary of Labor at 29 CFR Part 1926 and 29 CFR Part 1910; and
- (2) Ensure that any additional measures the Contracting Officer determines to be reasonably necessary for the purposes are taken.

C. Whenever the Contracting Officer becomes aware of any noncompliance with these requirements or any condition, which poses a serious or imminent danger to the health or safety of any persons, the Contracting Officer shall notify the contractor orally, with written confirmation, and request immediate initiation of corrective action. This notice, when

delivered to the Contractor or the Contractor's representative at the work site, shall be deemed sufficient notice of the noncompliance and that corrective action is required. After receiving the notice, the Contractor shall immediately take corrective action. If the Contractor fails or refuses to promptly take corrective action, The Contracting Officer may issue an order stopping all of part of the work until satisfactory corrective action has been taken. The Contractor shall not be entitled to any equitable adjustment of the contract price or extension of the performance time on any stop work order issued under this clause.

### **32. TEMPORARY FACILITIES**

The Contractor shall provide all sanitary facilities, power, telephone, job office, and any other temporary facilities required to do the job.

### **33. HOURS OF WORK**

This project is located in the proximity of residences. For this reason, the working hours for this project shall be limited to daylight hours between 7:00 am and 6:00 pm., Monday through Friday, exclusive of state and federal holidays. Working hours shall be considered hours where any of the following are occurring: Contractor's workers are present; equipment is fueled, repaired, or running; materials and supplies are being delivered. Any exceptions to this requirement must be agreed to in writing by the parties to this agreement.

### **34. ACCESS RESTRICTIONS; BEST MANAGEMENT PRACTICES**

- A. GENERAL - Permission to enter on private land while the work is being performed has been obtained from the owner(s).

The District may suspend all or any part of the work if it is determined that the ground, stream, crop, farm or conditions render the site unsuitable for construction. At all times, Contractor shall use Best Management Practices in performing its obligations hereunder.

- B. STREAM PERMITS - The District will obtain all required hydraulic permits for this work. Contractor has the responsibility to review, understand and comply with all conditions of the approved permits.
- C. DESIGNATED ACCESS - The Contractor will maintain the access for the project. The Contractor is expected to not purposefully damage the access. The Contractor has responsibility for checking maximum allowable load on all roads, bridges, and culverts and to maintain and restore all roads, bridges, and culverts to their pre-existing conditions. Snow plowing, snow removal, and access road maintenance are the Contractor's responsibility.
- D. GATES and FENCES - Gates will be closed and fences shall be left in place, or if necessary, removed and replaced to their original condition as approved by the PE. The Contractor shall maintain any temporary fencing to prevent pedestrians from entering the worksite and to preserve livestock, crops, or property when working through or adjacent to private property. The Contractor is liable for all damages resulting from not complying with this requirement.
- E. CAMPING - Camping will not be allowed on private property without prior written consent of

the owner(s).

- F. FIRE PREVENTION - It will be the responsibility of the Contractor to obtain any necessary permits and comply with all fire regulations and fire precaution schedules.

### **35. ARCHAEOLOGICAL OR HISTORICAL OBJECTS**

In the event that archaeological or historic materials are discovered during project activities, the Contractor shall stop work in the immediate vicinity of the materials, secure the area, and notify the Contracting Officer. The Contracting Officer may consult with a professional archeologist to evaluate the materials and, if deemed necessary, salvage the materials. The Contracting Officer may require the Contractor to suspend work in the vicinity of the discovery until salvage is accomplished. If the Contracting Officer finds that the suspension of work in the vicinity of the discovery increases or decreases the cost or time required for performance of any part of the work under this contract, the Contracting Officer will make an adjustment in payment or the time required for the performance of the work.

In addition to the actions detailed in the previous paragraph, if at any time during the project human or unknown bone is uncovered, the Contractor must immediately notify the appropriate authorities including law enforcement and coroner as is required by law when human remains are discovered.

### **36. PREVAILING WAGES**

- A. Contractor and every sub-contractor shall pay the prevailing rate of wages to all workers, laborers, or mechanics employed in the performance of any part of the work in accordance with the Federal Davis-Bacon Act (40 U.S.C., sec. 276a-7) and/or Washington State Public Works Act (Chapter 39.12 RCW). For projects where both the state prevailing wage law and the federal Davis-Bacon and related Acts apply, contractors must pay the higher of the state or the federal wage rates, on a classification by classification basis.
- B. The schedule of prevailing wage rates for the locality or localities of the work is determined by the Industrial Statistician of the Department of Labor and Industries. A schedule of the anticipated rates for trades is included in this specification. If for some reason a schedule is not included in this document, the District will provide such schedule upon request. It is the Contractor's responsibility to verify the applicable prevailing wage rates and include other trades as needed.
- C. Before commencing the work, Contractor shall file a statement under oath with Contracting Agency and with the Director of Labor and Industries certifying the rate of hourly wage paid and to be paid each classification of laborers, workers, or mechanics employed upon the work by Contractor and Subcontractors. Such rates of hourly wage shall not be less than the prevailing wage rate.
- D. Disputes regarding prevailing wage rates shall be referred for arbitration to the Director of the Department of Labor and Industries. The arbitration decision shall be final and conclusive and binding on all parties involved in the dispute as provided for by RCW 39.12.060.
- E. Each Application for Payment submitted by Contractor shall state that prevailing wages have been paid in accordance with the prefiled statement(s) of intent, as approved. Copies of the approved intent statement(s) shall be posted on the job site with the address and telephone

number of the Industrial Statistician of the Department of Labor and Industries where a complaint or inquiry concerning prevailing wages may be made.

- F. In compliance with chapter 296-127 WAC, Contractor shall pay to the Department of Labor and Industries the currently established fee(s) for each statement of intent and/or affidavit of wages paid submitted to the Department of Labor and Industries for certification.

**37. CONTRACTOR’S CONTINUING AGREEMENT TO VERIFY  
FULFILLMENT OF “RESPONSIBILITY” CRITERIA BY CONTRACTOR  
AND SUBCONTRACTORS.**

At the time of execution of this contract, Contractor was required, pursuant to the directives contained in RCW 39.04, to provide proof of compliance with the following criteria:

- (a) the bidder must have a certificate of registration in compliance with Chapter 18.27 RCW;
- (b) the bidder must have a current state Unified Business Number;
- (c) the bidder must have industrial insurance coverage for the bidder’s employees working in Washington as required in Title 51, RCW, an Employment Security Department number as required in Title 50 RCW; and a state excise tax registration number as required in Title 82 RCW, unless proof is provided that these items are not required of the bidder, and
- (d) the bidder must not be disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065(3).

Contractor agrees to notify the District upon any change in status relating to the above noted criteria and provide proof of continuing fulfillment upon demand during the performance of this contract.

Contractor further agrees and acknowledges that it will verify subcontractor fulfillment of statutorily required “responsibility” criteria at all times during the performance of the contract. At the time of execution of all subcontracts, written proof of verification of fulfillment of the following “responsibility” criteria shall be required by Contractor who agrees to provide copies to the District before the next scheduled disbursement of funds.

As noted by chapter 36.06 RCW, this verification requirement must be included in all public works contracts and subcontracts and Contractor agrees to include the required verification notice in all subcontracts. Contractor shall require all subcontractors to provide proof and verify the following:

- (a) that the subcontractor has a certificate of registration in compliance with Chapter 18.27 RCW;
- (b) that the subcontractor has a current state Unified Business Number;
- (c) that the subcontractor has industrial insurance coverage for the subcontractor’s employees working in Washington as required in Title 51, RCW, an Employment Security Department number as required in Title 50 RCW; and a state excise tax registration number as required in Title 82 RCW, unless proof is provided that these items are not otherwise required of the subcontractor;

(d) that the subcontractor is not be disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065(3) ; and in addition

(e) that the subcontractor has an electrical contractor license, if required by Chapter 19.28 RCW, or an elevator contractor license, if required by Chapter 70.87 RCW.

### **38. SUSPENSION AND DEBARMENT**

The Contractor hereby certifies, warrants, and represents that neither the Contractor nor any of its subcontractors are presently under any debarment, suspension, or any other type of ineligibility to contract with the United States Department of Energy, United States Department of Commerce or with any other federal department, division, or agency as of the date of this Agreement; and further, the Contractor agrees to immediately notify the District, in writing, of any change in its eligibility status, or, if known, in the status of any subcontractor, which occurs during the term of the contract.

### **39. CHANGES AND MODIFICATIONS**

The District may, at any time, by written notification to the Contractor, make changes in the general scope of the services to be performed under this contract. If any such changes cause an increase or decrease in the cost of, or the time required for the performance of this contract, an equitable adjustment may be made in the contract price or period of performance, or both, and the contract shall be modified in writing accordingly. This contract may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

### **40. ADVANCE PAYMENTS PROHIBITED**

No advance payment shall be made for services furnished by the Contractor prior to execution of this contract.

### **41. DELAY**

A. Any delay in or failure of performance by Contracting Agency or Contractor shall not constitute a default hereunder if and to the extent the cause for such delay or failure of performance was unforeseeable and beyond the control of the party ("Force Majeure"). Acts of Force Majeure include, but are not limited to:

1. Acts of God or the public enemy;
2. Fire or other casualty for which Contractor is not responsible;
3. Quarantine or epidemic;
4. Strike or defensive lockout;
5. Unusually severe weather conditions which could not have been reasonably anticipated;  
and
6. Unusual delay in receipt of supplies or products which were ordered and expedited and for which no substitute reasonably acceptable to Contracting Agency was available.

B. Contractor shall be entitled to an equitable adjustment in the Contract Time for changes in the time of performance directly and solely attributable to an act of Force Majeure, except delay caused

by a labor dispute, provided Contractor makes a request for equitable adjustment. Contractor shall not be entitled to an adjustment in the Contract Cost resulting from an act of Force Majeure.

C. Contractor shall be entitled to an equitable adjustment in Contract Time, and may be entitled to an equitable adjustment in Contract Cost, if the cost or time of Contractor's performance is changed due to the fault or negligence of Contracting Agency, provided the Contractor makes a request in accordance with specified procedures.

D. Contractor shall not be entitled to an adjustment in Contract Time or in the Contract Cost for any delay or failure of performance to the extent such delay or failure was caused by Contractor, any Subcontractor, or anyone for whose acts Contractor is responsible.

E. To the extent any delay or failure of performance was concurrently caused by the Contracting Agency and Contractor, Contractor shall be entitled to an adjustment in the Contract Time for that portion of the delay or failure of performance that was concurrently caused, provided it makes a request for equitable adjustment according to the Standard Specifications, but shall not be entitled to an adjustment in the Contract Cost.

F. Contractor shall make all reasonable efforts to prevent and mitigate the effects of any delay, whether occasioned by an act of Force Majeure or otherwise.

#### **42. TERMINATION FOR CONVENIENCE**

Except as otherwise provided in this contract, the District may, by five (5) days written notice, beginning on the second day after the mailing, terminate this contract, in whole or in part, when it is in the best interests of the District. If this contract is so terminated, the District shall be liable only for payment in accordance with the terms of this contract for services rendered prior to the effective date of termination.

#### **43. TERMINATION FOR DEFAULT**

By written notice, the District may terminate this contract, in whole or in part, for failure of the Contractor to perform any of the provisions of the contract. In such event, the Contractor shall be liable for damages as authorized by law including, but not limited to, any cost difference between the original contract and the replacement contract, e.g. cost of the competitive bidding, mailing, advertising and staff time; provided, that if (i) it is determined for any reason the Contractor was not in default, or (ii) the Contractor's failure to perform is not the Contractor's and/or Subcontractor's fault or due to Contractor negligence, then the termination shall be deemed to be a "Termination for Convenience".

#### **44. TERMINATION PROCEDURES**

Upon termination of this contract, the District, in addition to any other rights provided in this contract, may require the Contractor to deliver to the District any property specifically produced or acquired for the performance of such part of this contract as has been terminated. The provisions of the "Treatment of Assets" clause shall apply in such property transfer.

The District shall pay to the Contractor the agreed upon price, if separately stated, for completed work and services accepted by the District, and the amount agreed upon by the Contractor and the District for (i) completed work and services for which no separate price is stated, (ii) partially

completed work and services, (iii) other property or services which are accepted by the District, and (iv) the protection and preservation of property, unless the termination is for default, in which case the District shall determine the extent of the liability. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause of this contract. The District may withhold from any amounts due the Contractor such sum as the District determines to be necessary to protect the District against potential loss or liability.

The rights and remedies of the District provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

After receipt of a notice of termination, and except as otherwise directed by the District, the Contractor shall:

1. Stop work under the contract on the date, and to the extent specified, in the notice;
2. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the contract that is not terminated;
3. Assign to the District, in the manner, at the times, and to the extent directed by the District, all of the rights, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the District has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.
4. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the District to the extent the District may require, which approval or ratification shall be final for all the purposes of this clause;
5. Transfer title to the District and deliver in the manner, at the times, and to the extent directed by the District any property which, if the contract had been completed, would have been required to be furnished to the District;
6. Complete performance of such part of the work as shall not have been terminated by the District; and
7. Take such action as may be necessary, or as the District may direct, for the protection and preservation of the property related to this contract which is in the possession of the Contractor and in which the District has or may acquire an interest.

#### **45. CONFLICT OF INTEREST**

The District may terminate this contract, by written notice to the Contractor, if it is found after examination that there is a violation by the Contractor of:

- A. Ethics in Public Service Act, Chapter 42.52 RCW; or,
- B. Any similar statute involving the Contractor in the procurement of, or performance of services under this contract.

In the event this contract is terminated as provided above, the District shall be entitled to pursue the same remedies against the Contractor as it could pursue in the event of a breach of the contract by the Contractor. The rights and remedies of the District provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law.

#### **46. ACCESS TO DATA**

In compliance with chapter 39.29 RCW, the Contractor shall provide access to data generated under this contract to the District. This includes access to all information that supports the findings, conclusions, and recommendations of the Contractor's reports, including computer models and methodology for those models.

#### **47. AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336, also referred to as the "ADA" 28 CFR Part 35 --**

The Contractor must comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.

#### **48. ASSIGNMENT**

Neither the District nor the Contractor shall assign this contract, either in whole or in part, without prior written consent of the other party, which shall not be unreasonably withheld. Such assignment shall not relieve either party from its duties or obligations under this contract.

#### **49. COVENANT AGAINST CONTINGENT FEES**

The Contractor warrants that no person or selling agent has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established agents maintained by the Contractor for the purpose of securing business. The District shall have the right, in the event of breach of this clause by the Contractor, to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration or recover by other means the full amount of such commission, percentage, brokerage or contingent fee.

#### **50. GOVERNING LAW**

This contract shall be governed by the laws of the State of Washington. In the event of a lawsuit involving this contract, venue shall be proper only in Kittitas County. The Contractor, by execution of this contract, acknowledges the jurisdiction of the courts of the State of Washington in this matter.

#### **51. INDEMNIFICATION**

The Contractor shall defend, indemnify and hold harmless the Project engineers, the State of Washington, and the District, its officers, agents, employees, from and against any and all claims, demands, losses and liabilities to or by third parties arising from, resulting from, or connected with, services performed or to be performed under this contract by Contractor or Contractor's agents, employees, subcontractors, and suppliers to the fullest extent permitted by law, whether arising from contract liability(ies) or otherwise.

Contractor's duty to indemnify shall not apply to liability from damages arising out of bodily injury to persons or damages to the property caused by, or resulting from, the sole negligence of either the Project Engineer and/or the District, its officers, agents and employees.

Contractor's duty to indemnify for liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of Contractor's, the Project Engineers, and/or the District's agents or employees shall apply only to the extent of negligence of Contractor's, Project Engineers, or the District's agents, employees, subcontractors and suppliers.

Contractor specifically and expressly waives any immunity that may be granted under the Washington State Industrial Act, Title **51**, RCW. Further, the indemnification obligation under this Contract shall not be limited in any way by any limitation on the amount of type of damages, compensation, benefits payable to or by any third party under Worker's Compensation Acts, Disability Benefits Acts, or other employee benefit acts.

Contractor's duty to defend, indemnify, and hold harmless shall include all related costs, reasonable attorney fees, court costs and related expenses asserted against or incurred by the Project Engineers, the State of Washington, and/or the District, its officers, agents, and employees.

The parties hereby certify that these indemnification provisions were mutually negotiated and agreed to by the parties.

## **52. INDEPENDENT CAPACITY OF THE CONTRACTOR**

The Contractor and his or her employees, agents, representatives or subcontractors performing under this contract are not employees or agents of the District. The Contractor, his/her employees, agents, representatives or subcontractors, will not hold themselves out as nor claim to be an officer or employee of the District or of the State of Washington by reason hereof, nor will the Contractor make any claim of right, privilege or benefit which would accrue to an employee under Chapter 41.06 RCW or Chapter 28B.16 RCW.

## **53. INDUSTRIAL INSURANCE COVERAGE**

Prior to performing work under this contract, the Contractor shall provide or purchase industrial insurance coverage for the Contractor's employees, as may be required of an "employer" as defined in Title 51 RCW, and shall maintain full compliance with Title 51 RCW during the course of this contract. Should the Contractor fail to secure industrial insurance coverage or fail to pay premiums, as may be required under Title 51 RCW, the District may deduct the amount of premiums and any penalties owing from the amounts payable to the Contractor under the contract and transmit the same to the Department of Labor and Industries, Division of Industrial Insurance. This provision does not waive any right under RCW 51.12.050 to collect from the Contractor amounts paid by the District.

The District will not be responsible for payment of industrial insurance premiums or for any other claim or benefit for this Contractor, or any Subcontractor or employee of the Contractor, which might arise under the industrial insurance laws during performance of duties and service(s) under this contract. If the Washington State Department of Labor and Industries, upon audit, determines that industrial insurance payments are due and owing as a result of work performed under this contract, those payments shall be made by the Contractor; the Contractor shall indemnify the District and guarantee payment of such amounts.

Industrial insurance coverage through the Department of Labor & Industries is optional for sole proprietors, partners, corporate officers and others, per RCW 51.12.020.

#### **54. RECORDS, DOCUMENTS, AND REPORTS**

The Contractor shall maintain complete financial records relating to this contract and the services rendered including all books, records, documents, magnetic media, receipts, invoices and all other evidence of accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this contract. These records shall be subject at all reasonable times to inspection, review, or audit by personnel duly authorized by the District, the Office of the State Auditor, and state and federal officials so authorized by law, rule, regulation, or agreement. The Contractor will retain all books, records, documents, and other materials relevant to this contract for six years after the date of final payment by the District, and make them available for inspection by persons authorized under this provision.

If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

#### **55. REGISTRATION WITH DEPARTMENT OF REVENUE**

The Contractor shall complete registration with the Washington State Department of Revenue and be responsible for payment of all taxes due on payments made under this contract.

#### **56. NON-DISCRIMINATION**

##### **EQUAL EMPLOYMENT OPPORTUNITY REQUIREMENTS**

##### **A. General**

Notwithstanding any other provisions in the Contract Documents, this Contract does not require any specific levels of utilization of minorities or women in the Contractor's workforce, except as may be specified in any federal regulations or statutes included or referenced in the Contract Documents. The District encourages the Contractor to employ a workforce reflective of the region's diversity. The Contractor shall adhere to all non-discrimination requirements as set forth in Federal and State laws.

The Contractor and all subcontractors (not including materialmen) holding subcontracts of \$1,000 or more shall comply with the following minimum specific requirement activities of equal employment opportunity. The Contractor shall include these requirements in every subcontract of \$1,000 or more with such modification of language as is necessary to make them binding on the subcontractor.

##### **B. Equal Employment Opportunity Policy. During the performance of this contract, the contractor agrees as follows:**

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, religion, creed, color, sex, marital status, sexual orientation, political ideology, ancestry, national origin, or the presence of any sensory, mental or physical handicap, unless based upon a bona fide occupational qualification. The contractor will

take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their creed, religion, race, color, sex, national origin, or the presence of any sensory, mental or physical handicap. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer, recruitment, or recruitment advertising, layoff or termination rates of pay or other forms of compensation, and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

- (2) If upon investigation the Contracting Agency finds probable cause to believe that the contractor has failed to comply with any of the terms of these provisions, the contractor and the contracting authority shall be so notified in writing. The Contracting Agency shall give the contractor an opportunity to be heard, after ten-(10) days' notice. The Contracting Agency may suspend the contract and/or withhold any funds due or to become due to the contractor, pending compliance by the contractor with the terms of these provisions.
- (3) Failure to comply with any of the terms of these provisions shall be a material breach of this contract.
- (4) The foregoing provisions will be inserted in all subcontracts for work covered by this contract. The Contractor shall not discriminate and shall take affirmative action to ensure equal employment opportunity. These, and other requirements, which may be set forth in the Contract Documents, shall constitute the specific Affirmative Action requirements for the work.

## **57. RIGHT OF INSPECTION**

The Contractor shall provide right of access to its facilities to the District, or any of its officers, or to any other authorized agent or official of the State of Washington or the federal government, at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this contract.

## **58. RIGHTS IN DATA**

Unless otherwise provided, data which originates from this contract shall be "works for hire" as defined by the U.S. Copyright Act of 1976 and shall be owned by the District. Data shall include, but not be limited to, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, sound reproductions, and all information that supports the findings, conclusions and recommendations of the consultant's reports, including computer models and the methodology for those models. Ownership includes the right to copyright, patent, register and the ability to transfer these rights.

Data which is delivered under the contract, but which does not originate therefrom, shall be transferred to the District with a nonexclusive, royalty-free, irrevocable license to publish, translate, reproduce, deliver, perform, dispose of, and to authorize others to do so, provided, that such license shall be limited to the extent to which the Contractor has a right to grant such a license. The Contractor shall exert all reasonable effort to advise the District, at the time of delivery of data furnished under this contract, of all known or potential invasions of privacy contained therein and

of any portion of such document which was not produced in the performance of this contract. The District shall receive prompt written notice of each notice or claim of copyright infringement received by the Contractor with respect to any data delivered under this contract. The District shall have the right to modify or remove any restrictive markings placed upon the data by the Contractor.

#### **59. SAFEGUARDING OF INFORMATION**

The use or disclosure by any party of any information concerning the District, for any purpose not directly connected with the administration of the District's or the Contractor's responsibilities with respect to services provided under this contract, is prohibited except by prior written consent of the District.

#### **60. SAVINGS**

In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this contract and prior to normal completion, the District may terminate the contract under the "Termination for Convenience" clause, without the five day notice requirement, subject to renegotiation under those new funding limitations and conditions.

#### **61. SEVERABILITY**

If any provision of this contract or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this contract which can be given effect without the invalid provision, and to this end the provisions of this contract are declared to be severable.

#### **62. SUBCONTRACTING**

Neither the Contractor nor any subcontractor shall enter into subcontracts for any of the work contemplated under this contract without obtaining prior written approval of the District. In no event shall the existence of the subcontract operator release or reduce the liability of the Contractor to the District for any breach in the performance of the Contractor's duties. This clause does not include contracts of employment between the Contractor and personnel assigned to work under this Contract.

**63. TREATMENT OF ASSETS**

A. Title to all property furnished by the Contractor, for the cost of which the Contractor is entitled to be reimbursed as a direct item of cost under this contract, shall pass to and vest in the District upon delivery of such property by the Contractor. Title to other property, the cost of which is reimbursable to the Contractor under this contract, shall pass to and vest in the District upon (i) issuance for use of such property in the performance of this contract, or (ii) commencement of use of such property in the performance of this contract, or (iii) reimbursement of the cost thereof by the District in whole or in part, whichever first occurs.

B. Any property of the District furnished to the Contractor shall, unless otherwise provided herein or approved by the District, be used only for the performance of this contract.

C. The Contractor shall be responsible for any loss or damage to property of the District which results from the negligence of the Contractor or which results from the failure on the part of the Contractor to maintain and administer that property in accordance with sound management practices.

D. Upon loss or destruction of, or damage to, any District property, the Contractor shall notify the District thereof and shall take all reasonable steps to protect that property from further damage.

E. The Contractor shall surrender to the District all property of the District prior to settlement upon completion, termination or cancellation of this contract.

F. All reference to the Contractor under this clause shall also include Contractor's employees, agents or Subcontractors