

**SECTION IV
CONTRACT
BID NUMBER 210802**

THIS AGREEMENT is made and entered into between **PUBLIC UTILITY DISTRICT NO. 1 OF CLALLAM COUNTY** (hereinafter called the "District") and _____ (hereinafter called the "Vendor").

WITNESSETH: That the District and the Vendor, in consideration of the payments hereinafter mentioned, agree as follows:

1. CONTRACT DOCUMENTS

The complete Contract includes the Advertisement for Bids, Section I - Notice and Instructions to Bidders, Section II - Proposal, Section III - Specifications for Equipment, Contract, and all modifications incorporated in these Documents before their execution. The foregoing documents shall hereinafter be called "Contract Documents." All obligations of the District and the Vendor are fully set forth and described herein.

In the event of a discrepancy between any of the Contract Documents, as above defined, at the request of the Vendor, the District shall give a written interpretation thereof, which interpretation shall govern.

2. SALE OF EQUIPMENT

The Vendor agrees to sell and deliver to the District, at the delivery point and in the manner set forth herein, and the District agrees to receive and purchase from the Vendor, as conditioned herein, the following equipment, hereinafter called the "Equipment," in accordance with the Contract Documents:

One (1) New Sherman Reilly, Diesel Engine, Trailer Mounted Underground Puller DDHXA-75 – 7,500 lb., per specifications as set forth in the Section III - Specifications for Equipment.

PRICE: \$ _____

(Does not include Washington State Sales Tax 8.8%)

Delivery Date: _____

3. PERFORMANCE AND PAYMENT BOND(S)

The Vendor agrees to furnish a bond(s) in the penal sum not less than the bid cost of the Equipment, on an appropriate form, with a surety or sureties acceptable to the District. In the event that the surety or sureties on the performance and payment bond(s) delivered to the District shall at any time become unsatisfactory to the District, the Vendor agrees to deliver to the District another or an additional bond(s). Should the successful bidder fail or refuse to execute such counterparts or to furnish a performance and payment bond(s) within ten (10) days after written notification of the acceptance of the proposal by the District, the bidder will be considered to have abandoned the proposal. In such event, the District shall be entitled (a) to enforce the bid bond in accordance with its terms, or (b) if a

certified check has been delivered with the proposal, to retain from the proceeds of the certified check the difference (not exceeding the amount of the certified check) between the amount of the proposal and such larger amount for which the District may in good faith contract with another party to furnish the Equipment. The term "successful" bidder shall be deemed to include any bidder whose proposal is accepted after another bidder has previously refused or has been unable to execute the bond(s).

4. SHIPMENT AND DELIVERY

The Vendor shall deliver the Equipment F.O.B. to the District's Port Angeles Operations Center at 1936 West 18th Street, Port Angeles, Washington 98363. The Vendor shall bear the risk of any loss, deterioration, or damage until the Equipment is delivered and accepted by the District as herein required.

Upon shipment of any Equipment hereunder, the Vendor shall submit to the District a detailed statement of the Equipment shipped. The District shall make final payment therefore to the Vendor not later than thirty (30) days after acceptance of the Equipment.

5. RIGHT OF INSPECTION; REJECTION OF EQUIPMENT

The District shall have five (5) business days after receipt of the Equipment to inspect the Equipment and either accept or reject it. If the Equipment is rejected, the District shall provide written notice to the Vendor in such time so that such notice will be received no later than ten (10) business days after the District's receipt of the Equipment (such inspection and notification shall in no way negate the terms and conditions as set forth in section six (6) "Warranty" and section seven (7) "Manufacturers' Guarantees"). The Vendor may modify the rejected Equipment as to bring it into conformance with the Contract Documents or replace it with equipment conforming to the Contract Documents, to be delivered F.O.B. the destination stated in Section 4 above. No payment shall be made for such rejected equipment until it has been modified or replaced by the Vendor to the satisfaction of the District.

Should the Vendor fail to replace or modify the rejected Equipment to the satisfaction of the District, the District may cancel this contract and recover any and all damages available at law or in equity or by statute, including incidental and consequential damages.

6. MUTUAL CYBER SECURITY INDEMNIFICATION

Both parties agree to be responsible for the protection of their own computers, servers, hard drives, information systems, and email accounts from cyber security breaches, including but not limited to malicious software, viruses, hacking, and phishing scams ("Cyber Security Breaches"). Each party shall indemnify the other from any damages, liabilities, or expenses of every kind, including but not limited to reasonable attorney's fees, resulting from or arising out of their own Cyber Security Breaches, including wire fraud attempts directed to the other party resulting from such Cyber Security Breaches.

7. WARRANTY

The Vendor warrants that the Equipment adheres in every respect to the specifications as set forth in the Specifications. Notwithstanding acceptance of the Equipment or any portion thereof by the representative of the District, or any certificate which may have been given, or payment which may have been made by the District, if any defect is discovered within one (1) year after receiving the Equipment, the Vendor shall furnish labor and materials to

remove, replace, and install any such defective part(s) as promptly as possible after notice in writing from the District. If any defective part(s) shall be discovered within thirty-six (36) months after receiving the Equipment, the Vendor shall furnish any replacement part(s) as promptly as possible after notice in writing from the District, to be delivered to F.O.B. the destination stated in Section 4 above. In the event of failure by the Vendor so to do, the District may make such replacement and the cost and the expense thereof shall be paid by and recoverable from the Vendor. Vendor shall warrant 90 days for travel charges.

Warranty on structural integrity for length of ownership by District, including booms, boom articulation links, hydraulic cylinder structures, outrigger weldments, pedestals, sub-bases, and turntables.

8. MANUFACTURERS' GUARANTEES

All manufacturers' guarantees of the Equipment or any portion thereof shall be transferred and assigned to the District upon delivery of the Equipment and before payment is made for such Equipment. Such guarantees shall be in addition to those required of the Vendor by other provisions of this contract. **A copy of the manufacturer's warranty shall be included with the bidder's proposal.**

9. LIQUIDATED DAMAGES

Time is of the essence of this contract. Should the Vendor neglect, refuse, or fail to perform within the time herein proposed, after giving effect to extensions of time, if any, herein provided; then, in that event and in view of the difficulty of estimating with exactness damages caused by such delay, the District shall have the right to deduct from and retain out of such monies which may then be due, or which may become due and payable to the Vendor, the sum of five hundred dollars (\$500.00) per day for each and every day that such performance is delayed beyond the specified time, as liquidated damages and not as a penalty. If the amount due and to become due from the District to the Vendor is insufficient to pay in full any such liquidated damages, the Vendor shall pay to the District the amount necessary to effect such payment in full. Provided, however, that the District shall promptly notify the Vendor in writing of the manner in which the amount retained, deducted, or claimed as liquidated damages was computed.

Every right or remedy herein conferred upon or reserved to the District shall be cumulative, shall be in addition to every right and remedy now or hereafter existing at law or in equity or by statute, and the pursuit of any right or remedy shall not be construed as an election.

10. WAIVER OF DEFAULT

No term or provision of this contract shall be deemed waived and no breach excused unless such waiver or consent is in writing and signed by the party claimed to have provided such waiver or consent. No waiver by either party of any right, failure to perform, or of any breach by the other party hereunder shall constitute a waiver of any other right hereunder or of any other breach or failure by such other party, whether of a similar nature or otherwise.

11. DISPUTE RESOLUTION

This contract and the performance thereof shall be governed, interpreted, construed and regulated according to the provisions of the Uniform Commercial Code as they are in effect in the laws of the State of Washington as of the date of this contract. Venue for any legal

action arising from this contract shall be in the Superior Court of Clallam County. If any claim, at law or otherwise, is made by either party to this contract, the prevailing party shall be entitled to its costs and reasonable attorney fees incurred thereby.

12. GENERAL

This contract represents the entire agreement between the parties hereto and a final expression of their agreement, and supersedes all prior agreements, representations, understandings or negotiations with respect to the matters covered by this contract. If any term, provision, condition or covenant of this contract is held to be invalid, void, or unenforceable, the rest of the contract shall remain in full force and effect and shall in no way be affected, impaired, or invalidated. Neither this contract nor any rights or obligations hereunder shall be assigned or otherwise transferred by the Vendor without the prior written consent of the District.

(CONTRACTOR)

By _____
(Signature)

(Typed)

Title _____

Dated _____

**PUBLIC UTILITY DISTRICT NO. 1
OF CLALLAM COUNTY, WASHINGTON**

By _____
(Signature)

(Typed)

Title _____

Dated _____