

**SECTION IV
CONTRACT
BID NUMBER 210801**

THIS AGREEMENT made and entered into as of the last date written below, by and between PUBLIC UTILITY DISTRICT NO. 1 OF CLALLAM COUNTY (hereinafter called the "District") and _____, located at _____ (hereinafter called the "Contractor").

WITNESSETH: That the District and the Contractor, for and in consideration of the mutual covenants contained hereinafter, agree as follows:

**ARTICLE I -
CONTRACT DOCUMENTS**

The complete contract includes the Invitation for Bids, Notice and Instructions to Bidders, the Proposal, Specifications, Contract, Exhibits "A" through "SS1-1", 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 Contractor 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 Contractor, the District shall give a written interpretation thereof, which interpretation shall govern.

**ARTICLE II -
CONTRACT COST**

The Contractor agrees to provide to the District, and the District agrees to purchase from the Contractor, the following services in accordance with the Contract Documents and the provisions of the Contractor's proposal attached hereto and made a part hereof:

For all required labor, equipment, services, and materials for the Forks Substation Construction located at 441 West E Street, Forks, WA, as outlined in Section I and Section III and within Exhibits, Maps, and Specifications:

**TOTAL PROJECT COST
(Do not include WSST)** \$ _____

Starting Date: No later than June 1, 2022

Completion Date: No later than September 1, 2022

LIQUIDATED DAMAGES

Time is of the essence of this Contract. Construction of the Project shall be completed no later than September 1, 2022. As liquidated damages, and not as a penalty, the District will deduct \$200.00 from the quoted cost for each calendar day after September 1, 2022, that Project completion is delayed.

Any alternative or exceptions to the Contract Documents:

**ARTICLE III -
INDEMNITY AND HOLD HARMLESS AGREEMENT**

The Contractor agrees to indemnify, defend, and hold harmless the District and its agents and employees from liability, loss, damage, injury, or death arising out of or resulting from performance by the Contractor under the terms of this Contract, injuring or damaging the person or property of any other person or corporation, except as otherwise limited in this paragraph. In the event of concurrent negligence or fault of the Contractor, its agents, employees, or subcontractors and the District, its agents or employees, the Contractor shall indemnify, defend, and hold harmless the District and its agents or employees to the extent that liability, loss, damage, injury, or death is caused by the negligence or fault of the Contractor, its agents, employees, or subcontractors.

It is understood that the Contractor assumes the risk of the condition of the property of the District to be worked upon or about, and Contractor agrees to indemnify the District or its agents and employees against any loss, damage, injury, or death to the person or property of Contractor, its agents, employees, representatives, licensees, or invitees, resulting from any defective condition of said property, while the Contractor is engaged in the performance of this contract.

Contractor also agrees to indemnify, defend, and hold harmless the District from any and all liens, claims, or damage of any kind or nature against or to any property of the District and resulting from or arising out of the performance by the Contractor under the terms of this contract.

In all claims against the District or its agents and employees, or the Contractor, any subcontractor, anyone directly or indirectly employed by the Contractor or any subcontractor, or anyone for whose acts the Contractor or any subcontractor may be liable, the indemnification obligation under this paragraph shall not be affected by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Contractor or any subcontractor under any worker's compensation act, including Title 51 RCW, any disability benefit acts, or any other employee benefit acts. The Contractor and any subcontractor hereby waive, for themselves and their successors, any right to claim any such limitation as a defense, set off, or other reduction of the District's right to indemnification under this paragraph.

**ARTICLE IV -
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.

**ARTICLE V -
PAYMENTS/RETAINAGE**

Progress payments will be made by the District to the Contractor within 30 days of receipt of a billing statement, provided that the District Representative verifies the accuracy of the billing or corrects it as mutually agreeable to the District and the Contractor. All invoices shall have the agreement number on the invoice and be mailed to Clallam County Public Utility District No. 1, Attention: Contracts Coordinator, P.O. Box 1000, Carlsborg, WA 98324.

In accordance with the Revised Code of Washington, Chapter 60.28, public improvement contracts shall provide, and public bodies shall reserve, a contract retainage not to exceed five percent of the moneys earned by the Contractor as a trust fund for the protection and payment of: (a) the claims of any person

arising under this quotation, and (b) the State with respect to taxes imposed pursuant to Title 82 RCW which may be due from such Contractor.

**ARTICLE VI -
PAYMENT OF PREVAILING WAGES**

In accordance with Chapter 39.12 RCW, there shall be paid to all laborers, workers, or mechanics employed on the Project, a wage not less than the prevailing rate of wage as set forth in Chapter 39.12 RCW and **Exhibit A** of the Invitation to Bid, incorporated herein by this reference, for an hour's work in the same trade or occupation in the area of work regardless of any contractual relationship which may exist, or be alleged to exist, between the Contractor and any laborers, workers, mechanics, or subcontractors.

Before payment is made of any sum or sums due hereunder, the Contractor and each and every subcontractor shall submit to the District a "Statement of Intent to Pay Prevailing Wages," which statement shall include:

- 1) The Contractor's registration certificate number; and
- 2) The prevailing rate of wage for each classification of workers entitled to prevailing wages under RCW 39.12.020 and the estimated number of workers in each classification.

Each Statement of Intent to Pay Prevailing Wages must be approved by the Industrial Statistician of the Department of Labor and Industries before it is submitted to the District.

Unless otherwise authorized by the Department of Labor and Industries, each voucher claim submitted by the Contractor for payment shall state that the prevailing wages have been paid in accordance with the prefiled Statement or Statements of Intent to Pay Prevailing Wages on file. Following the final acceptance of the Project, the Contractor and each and every subcontractor shall submit to the District an "Affidavit of Wages Paid" before the funds retained according to the provisions of RCW 60.28.010 are released to the Contractor. Each affidavit of wages paid must be certified by the Industrial Statistician of the Department of Labor and Industries before it is submitted to the District.

**ARTICLE VII -
INSURANCE**

The Contractor shall, at his own expense and cost, carry in an insurance company or companies and under policies of insurance, acceptable to and approved by the District, the following insurance with limits not less than shown on the respective items:

- a. Worker's Compensation
To the limit required by the laws of the State of Washington.
- b. Comprehensive General Liability and Property Damage Insurance

This insurance shall include coverage for contractor's contingency liability Insurance covering subcontractor's liability, contractual liability insurance, completed operations liability insurance, and automobile liability insurance covering owned, non-owned, and hired units.

Minimum Limits:

Bodily Injury	\$1,000,000 each person
Property Damage	\$1,000,000 each occurrence
	\$2,000,000 aggregate

Umbrella Coverage \$2,000,000

- c. All policies of insurance providing coverages required under paragraph "b" above shall name the Public Utility District No. 1 of Clallam County as additional named insured with a cross liability clause and provide that no cancellation or material changes in the policies shall become effective unless thirty (30) days prior notice of such cancellation or change shall be furnished the District by registered mail.

Prior to commencement of any work hereunder, the Contractor shall provide the District with evidence of Workers' Compensation insurance required under "a" above, and with a Certificate of Insurance showing the District named as additional insured as required under "b" above.

**ARTICLE VIII -
PERFORMANCE AND PAYMENT BOND(S)**

The Contractor shall furnish performance and payment bond(s) in the penal sum not less than one hundred percent (100%) of the bid cost of the Project, on an appropriate form, with a surety or sureties acceptable to the District. When the performance and payment bond(s) requirement has been met, the Contractor will be given a notice to proceed. 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 Contractor shall, upon request by the District, 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(s) 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 construct the project. 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).

**ARTICLE IX -
COMPLIANCE WITH STATUTES AND REGULATIONS**

The Contractor, and all workers and equipment engaged in work on the Project, shall comply with all applicable statutes, ordinances, rules, and regulations pertaining to the work, including, without limitation, the rules and regulations set forth by the Washington Industrial Safety and Health Act of 1973, the Williams-Steiger Occupational Safety and Health Act of 1970, and 29 CFR 1910.269 (concerning the operation and maintenance of electric power generation, control, transformation, transmission and distribution lines and equipment).

**ARTICLE X -
DEFAULT**

If, in the sole judgment of the District, the Contractor, in connection with any work performed hereunder, fails in any respect to carry on the work with promptness and diligence or violates any of the terms or conditions of this Contract, such refusal, failure, or violation shall constitute a default by the Contractor under this Contract and, in such event, the District may give the Contractor twenty-four (24) hours notice to remedy such default. Upon the failure of the Contractor to remedy such default within such time, the District will be relieved of any further obligations hereunder and in addition to all other rights and remedies in law or equity may cancel this Contract without any obligation or liability on the District whatsoever except as to payment for work already performed by the Contractor.

**ARTICLE XI -
CHANGES IN CONTRACT DOCUMENTS**

The District may, from time to time during the progress of the project, make such changes in, additions to, or subtractions from, the Plans, Specifications, Drawings, and/or Exhibits as conditions may warrant. Provided, however, that if the cost to the Contractor shall be materially increased by any such change or addition, the District shall pay the Contractor for the reasonable cost thereof in accordance with a contract amendment or change order agreement signed by the District and the Contractor. No claim for additional compensation for any such change or addition will be considered unless the Contractor shall have made a written request therefor to the District prior to the commencement of work in connection with such change or addition. If the cost to the Contractor shall be materially decreased by any such change or subtractions, the District shall deduct an appropriate amount in accordance with a contract amendment or change order agreement signed by the District and the Contractor.

**ARTICLE XII -
TERMINATION OF CONTRACT**

In the event that any of the provisions of this contract or any federal, state, or local laws or regulations are violated by the Contractor or by any of the Contractor's subcontractors, the District may serve written notice of intention to terminate such contract upon the Contractor, which notice shall specify the reasons therefor. Unless within ten (10) days after serving such notice upon the Contractor such violation shall cease and an arrangement for the correction thereof satisfactory to the District be made, the Contract shall, upon the expiration of the said ten (10) days, cease and terminate. In the event of any such termination, the District may purchase the materials necessary for complete performance of this contract for the account and at the expense of the Contractor, and the Contractor shall be liable to the District for any excess cost occasioned thereby.

**ARTICLE XIII –
DISTRICT’S RIGHT TO AUDIT**

The District shall have the right to audit all contractor records pertaining to the work performed at any time during a project and within one year after the completion of the work. At the District’s discretion, prior to awarding a project, contractors may be removed from the list of approved bidders if exception is taken to the District’s auditing requirements. Should a contractor refuse to allow the District to audit their records during the course of a project, the District may terminate the contract or agreement and deny the opportunity to bid on future District projects.

**ARTICLE XIV –
CONSTRUCTION NOT IN SPECIFICATIONS OR PLANS**

The Contractor also agrees that when it is necessary to construct units not shown in the Specifications or Plans, it will construct such units for a price proposed in writing by the Contractor to the District and approved by the District prior to such work being done.

No payment shall be made to the Contractor for correcting errors or omissions on the part of the Contractor that result in construction not in accordance with the Plans and Specifications.

**ARTICLE XV –
DEFECTIVE WORKMANSHIP**

The acceptance of any workmanship by the District shall not preclude the subsequent rejection thereof if such workmanship shall be found to be defective after installation; and any such workmanship found defective before final acceptance of the work or within one year after completion shall be remedied or

replaced, as the case may be, by and at the expense of the Contractor. In the event of failure by the Contractor so to do, the District may remedy such defective workmanship and in such event the Contractor shall pay to the District the cost and expense thereof. The Contractor shall not be entitled to any payment hereunder so long as any defective workmanship, in respect of the project, of which the Contractor shall have had notice, shall not have been remedied or replaced, as the case may be.

**ARTICLE XVI –
CLAIMS AND LIENS**

The Contractor shall promptly pay all claims for labor done for the performance of the Project work and shall keep all said work free from all liens arising from labor done thereto. The District's Auditing Officer may require the Contractor to furnish payroll records for the District's inspection.

**ARTICLE XVII –
DEBARMENT, SUSPENSION AND OTHER**

Contractor certifies to the best of their knowledge and belief that they and their principals:

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

**ARTICLE XVIII–
CONTRACTOR OR THIRD-PARTY WORKER RETIREMENT STATUS VERIFICATION**

The parties hereto acknowledge that under Title 41 of the Revised Code of Washington, the District is obligated to report to the Washington Department of Retirement Systems any retirees in its employ, including contractors and subcontractors and their workers, who retired from certain Washington State retirement systems. Failure to report could result in a financial liability to the District. Accordingly, Contractor agrees to and shall report to the District the retirement status of all of its workers, subcontractors, and subcontractors' workers who will be performing services for the District under this Agreement. Contractor shall be responsible to pay any financial liability imposed upon the District by the Washington Department of Retirement Systems for pension overpayments resulting from Contractor's failure to properly report to the District such retirement status. In the alternative, Contractor may provide to the District the Social Security numbers of all its workers, subcontractors, and subcontractors' workers who will be performing services for the District under this Agreement, and the District shall undertake to verify the retirement status of those workers. In such event, Contractor shall be responsible to pay any financial liability imposed upon the District by the Washington Department of Retirement Systems for pension overpayments resulting from Contractor's failure to provide proper Social Security numbers for each such worker.

**ARTICLE XIX –
DISPUTE RESOLUTION**

Any dispute that arises out of the interpretation, performance, enforcement, or any other aspect of this Contract shall be resolved by submitting the same to binding arbitration, which shall proceed according to the Washington arbitration act, Chapter 7.04A RCW, and shall be conducted within Clallam County, Washington; provided, however, that each party shall select a nominating person within ten (10) days of notice of the dispute from one party to the other. The two nominating persons shall then meet and promptly select the arbitrator. If, within thirty (30) days after receipt of the notice of the dispute, the nominating persons are unable to select an arbitrator, the arbitrator shall be selected by a Superior Court Judge of Clallam County. The parties shall require a written decision by the arbitrator as a condition of the selection of the arbitrator. The prevailing party as determined by the arbitrator shall be entitled to its reasonable attorney fees and costs associated with the arbitration. The parties shall share equally the arbitrator's fee and costs. Venue for any action brought on the arbitration award, including enforcement of such award, shall be in the Superior Court of Clallam County, and such action shall be governed by application of the laws of the state of Washington. The prevailing party in any such action on the arbitration award shall be entitled to its reasonable attorney fees and costs associated with such action. This Agreement shall be governed by and construed and enforced in accordance with the laws of the state of Washington without application of the principals of conflicts of laws.

(CONTRACTOR)

By _____
(Signature)

Dated _____

(Typed)

Title _____

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

By _____
(Signature)

Dated _____

(Typed)

Title _____