

**SECTION IV
CONTRACT
BID NUMBER 240802**

THIS AGREEMENT made and entered into as of the date of the last signature below, between **PUBLIC UTILITY DISTRICT NO. 1 OF CLALLAM COUNTY** (herein-after called the "District") and CONTRACTOR, located in City, State (hereinafter called the "Contractor").

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

1. CONTRACT DOCUMENTS

The complete contract includes the Advertisement for Bids; Notice and Instructions to Bidders; Proposal; Specifications, together with Exhibits "A" through "F"; Contract; and all modifications incorporated in these documents before their execution. The foregoing documents shall hereinafter be referred to collectively as "Contract Documents." All obligations of the District and the Contractor are fully set forth and described in the Contract Documents.

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

2. CONTRACT COST

The Contractor agrees to provide to the District, and the District agrees to purchase from the Contractor, the following services (hereinafter called the "Project") in accordance with the Contract Documents:

Item "A":
Good Pole - Inspected, Treated, Reported. UNIT PRICE \$ _____

Item "B":
Reject Pole - Inspected, Treated, Reported and Recommended UNIT PRICE: \$ _____

Item "C":
Reject Pole – Inspected, photographed and Reported: UNIT PRICE: \$ _____

Item "D":
Reported Only. UNIT PRICE: \$ _____

Item "E":
Fumigate Only. UNIT PRICE: \$ _____

Item "F":
For Transmission Poles in Categories A, B, or C the Contractor shall add the following: UNIT PRICE: \$ _____

Item "G":
Install Plant Unit Numbers. UNIT PRICE: \$ _____

Item "H":
Install Guy Guards UNIT PRICE: \$ _____

Item "I":
Report GPS Latitude and Longitude of each pole locations UNIT PRICE: \$ _____

Tax Rate: 8.6% (Unincorporated areas of Clallam County and City of Forks)
8.9% City of Port Angeles

Starting Date: Upon issuance of the Notice-to-Proceed or as soon thereafter as weather permits

Completion Date: On or before November 5, 2024

NOTE: This project has a not-to-exceed amount of \$145,488.00 (not including WSST).

3. DAILY WORK REPORTS

The Contractor shall fill out and return each week to the District Representative, a Weekly Work Report, including any and all photographs take of entire reject poles. This report must be sent to these three District representatives; Mike Hill (mikeh@clallampud.net), Bill Decker (bdecker@clallampud.net), and Greg Thompson (gthompson@clallampud.net).

4. ROAD REPAIR GUARANTEE

If required by private, county, state, or other road authorities, the successful bidder will furnish to such authorities a bond or meet other guaranty requirements to assure prompt repair of all damages to highways and roads and their associated rights-of-way caused by the Contractor during work on this Project. This requirement is in addition to and independent of the Contractor's performance bond required under this contract. The acceptance of the bid from any bidder is not to be construed as approval of the bidder's equipment or proposed construction methods by or on behalf of private, county, state, or other road authorities. Bidders may obtain information concerning the requirements of highway and road authorities by communicating with the Clallam County Road Department and the Washington State Department of Transportation.

5. ACCIDENT REPORTS

The Contractor shall submit to the District monthly reports in duplicate of all accidents, giving such data as may be prescribed by the District.

6. SAFETY REQUIREMENTS

The Contractor shall comply at all times with the Contractor's Safety Plan attached hereto as **Exhibit G**.

7. 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.

8. LIQUIDATED DAMAGES

The time of completion of this Project is of the essence of the contract. Should the Contractor neglect, refuse, or fail to complete wood pole inspections and treatments 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 Contractor, \$50 per day for the first thirty (30) days beyond the specified completion date and \$100 per day thereafter as liquidated damages and not as a penalty; if the amount due and to become due from the District to the Contractor is insufficient to pay in full any such liquidated damages, the Contractor shall pay to the District the amount necessary to effect such payment in full. Provided, however, that the District shall promptly notify the Contractor in writing of the manner in which the amount retained, deducted, or claimed as liquidated damages was computed. Extensions of time may be granted by the District for causes beyond the control of the Contractor, provided a request for extension is received in writing by the District within ten (10) days of such occurrence.

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: provided, however, that the provisions of this Paragraph 4 shall be the exclusive measure of damages for failure by the Contractor to complete the construction of the Project within the time herein agreed upon.

9. INDEMNITY AND HOLD HARMLESS AGREEMENT

The Contractor agrees to release, indemnify, defend, and hold harmless the District and its agents and employees from and against any liability claim for damages for personal injury or loss, including death, and property damage arising out of or resulting from performance by the Contractor under the terms of this contract, 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 to be worked upon or about, and Contractor agrees to release, indemnify, defend, and hold harmless the District or its agents and employees against any liability claim for damages for personal injury, including death, and property damage 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 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.

10. 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.

11. PAYMENTS; RETAINAGE

Monthly progress payments will be made by the District to the Contractor within thirty 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 will be sent to the Clallam County PUD #1, Attention: Contracts Coordinator, P.O. Box 1000, Carlsborg, Washington 98324.** Pursuant to Chapter 60.28 RCW, the District shall reserve a contract retainage not to exceed 5 percent of the moneys earned by the Contractor as a trust fund for the protection and payment of the claims of any person arising under this contract and the State of Washington with respect to any taxes imposed pursuant to Title 82 RCW which taxes may be due from the Contractor.

12. 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.

13. PERFORMANCE AND PAYMENT BOND(S)

The Contractor agrees to furnish a 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 agrees to deliver to the District another or an additional bond(s). Should the Contractor fail or refuse to execute such counterparts or to furnish a performance and payment bond(s) within ten days after written notification of the acceptance of the proposal by the District, the Contractor will be considered to have abandoned the proposal.

14. INSURANCE

The Contractor shall, at its own expense and cost, carry insurance from 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. Commercial General Liability and Property Damage Insurance

Minimum Coverage Limits:

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

Any policy shall have no self-insured retained limits or deductible.

- c. All policies of insurance providing coverage's required under paragraph "b" above shall name Public Utility District No. 1 of Clallam County as additional 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 certified mail. The District shall be named in the policy as an additional insured without reservation or qualification. Blanket Additionally Insured is not acceptable.

Prior to commencement of any work hereunder, the Contractor shall provide the District with evidence of Worker's Compensation Insurance and with a Certificate of Insurance showing the District named as additional insured.

15. INDEPENDENT CONTRACTOR

It is understood that the Contractor is engaged in an independent business and that it will perform the work under this contract as an independent contractor and not as the agent, employee, or servant of the District; that it has and hereby retains the right to exercise control and supervision of the work and full control over the employment, direction, compensation, and discharge of all persons assisting in the work; that it will be solely responsible for the payment of its employees and for the payment of all federal, state, county, and municipal taxes and contributions pertaining thereto, including but not limited to payments for Workmen's Compensation benefits; and that it will be responsible for its own acts and those of its subordinates, employees, and subcontractors during the term of this contract.

16. 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.

17. 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.

No payment shall be due while the Contractor is in default in respect of any of the provisions of this contract; and the District may withhold from the Contractor the amount of any claim by a third party against either the Contractor or the District, based upon an alleged failure of the Contractor to perform work hereunder in accordance with the provisions of this contract.

18. 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 therefore. 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.

19. CLAIMS AND LIENS

The Contractor shall promptly pay all claims for labor done and materials furnished for the performance of said work and shall keep all said work, and any property of the District, free from all liens arising from labor done or materials furnished thereto. The District Auditor may require the Contractor to furnish receipted material bills and payroll record for his/her inspection.

20. 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.

21. 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 Contractor without the prior written consent of the District.

22. CONTRACTOR'S PROPRIETARY INFORMATION

The Contractor acknowledges the District is subject to chapter 42.56 RCW, the Public Disclosure Act, and this Contract shall be a public record as defined in RCW 42.56.040 through 42.56.550. Any specific information submitted to the District and claimed by the Contractor to be confidential or proprietary, must be clearly identified as such by the Contractor. To the extent consistent with chapter 42.56 RCW, the District shall maintain the confidentiality of all such information marked or identified as confidential or proprietary. If a request is made to view the Contractor's proprietary information and the District intends to release the information, the District will notify the Contractor of the request and notify the Contractor of the date that such records will be released to the requester. It will be the responsibility of the Contractor to obtain any necessary court order enjoining that disclosure. If the Contractor fails to obtain the court order enjoining disclosure, the District will release the requested information.

23. 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.

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

Contractor

Sean Worthington, General Manager

Signature

Date

Printed

Title

Date