

PUBLIC WORKS AGREEMENT

THIS AGREEMENT is entered into the date last below written between Okanogan County ("County"), and, _____ ("Contractor").

The parties agree as follows:

1) Contractor Services.

1.1 *The Contractor shall perform the following services for the County:*

See the attached general specifications **Exhibit A** and additional information in Exhibits B, C, D, E, F, H.

1.2 *The Contractor shall furnish at its own cost and expense all labor, tools, equipment and materials required.* The Contractor shall construct and complete in a good workmanlike manner, and to the satisfaction of the County, the work designated, described and required by the applicable plans, specifications and approved proposal for construction of the improvements, all of which documents are a part of this Agreement.

2) Time of Completion. The Contractor shall commence work on _____ ~~(or _____ within 7 days after issuance of Notice to Proceed by the County)~~, and shall complete the work within _____ calendar days from the commencement date listed above (_____ or from the County's issuance of the Notice to Proceed).

3) Compensation. The County shall pay the Contractor the total amount of \$_____, including applicable sales tax, for all work and services covered by this Agreement. The Contractor shall submit monthly invoices for work and services performed in a previous calendar month in a format acceptable to the County. The County shall pay for the portion of the work described in the invoice that has been completed by the Contractor and approved by the County. The County's payment shall not constitute a waiver of the County's right to final inspection and acceptance of the work.

3.1 *Performance Bond/Retainage.*

XX Contracts \$150,000 or less: Pursuant to RCW 39.08.010(3) at the option of the contractor, the County may, in lieu of a performance bond, retain ten percent of the contract amount for a period of thirty days after date of final acceptance, or until receipt of all necessary releases from the department of revenue, the employment security department, and the department of labor and industries and settlement of any liens, whichever is later.

_____ Contracts over \$150,000 Pursuant to RCW 39.08.010, the Contractor shall provide the County a performance bond for the full contract amount to be in effect until 60 days after the date of final acceptance, or until receipt of all necessary releases from

the State Department of Revenue and the State Department of Employment Securities, and until settlement of any liens filed under Chapter 60.28 RCW, whichever is later.

3.2 *Defective or Unauthorized Work.* The County reserves the right to withhold payment from the Contractor for any defective or unauthorized work. Defective or unauthorized work includes, without limitation: work and materials that do not conform to the requirements of this Agreement, and extra work and materials furnished without the County's written approval. If the Contractor is unable, for any reason, to satisfactorily complete any portion of the work, the County may complete the work by contract or otherwise, and the Contractor shall be liable to the County for any additional costs incurred by the County. "Additional costs" means all reasonable costs incurred by the County, including legal costs and attorneys' fees, beyond the maximum contract price under this Agreement. The County further reserves the right to deduct the cost to complete the work, including any additional costs, from any amounts due or to become due to the Contractor.

3.3 *Final Payment; Waiver of Claim.* THE CONTRACTOR'S ACCEPTANCE OF FINAL PAYMENT (EXCLUDING WITHHELD RETAINAGE) SHALL CONSTITUTE A WAIVER OF CLAIMS, EXCEPT THOSE PREVIOUSLY AND PROPERLY MADE AND IDENTIFIED BY THE CONTRACTOR AS UNSETTLED AT THE TIME REQUEST FOR FINAL PAYMENT IS MADE.

4) Termination.

4.1 *This County may terminate this Agreement for good cause.* "Good cause" shall include, without limitation, any one or more of the following events:

4.1.1. The Contractor's refusal or failure to supply a sufficient number of properly skilled workers or proper materials for completion of the work.

4.1.2 The Contractor's failure to complete the work within the time specified in this Agreement.

4.1.3 The Contractor's failure to make full and prompt payment to subcontractors or for material or labor.

4.1.4 The Contractor's failure to comply with any federal, state, or local laws, regulations, rules, or ordinances.

4.1.5 The Contractor's filing for bankruptcy or being adjudged bankrupt. If the County terminates this Agreement for good cause, the Contractor shall not receive any further monies due under this Agreement until the Contract work is completed.

5) Independent Contractor. The Contractor is and shall be at all times during the term of this Agreement an independent contractor.

6) Prevailing Wages. Prevailing wages shall be paid in accordance with Chapter 39.12 RCW, and the Contractor shall comply with all requirements of Chapter 39.12 RCW.

7) Changes. The County may issue a written change order for any change in the work during the performance of this Agreement. If the Contractor determines, for any reason, that a change order is necessary, the Contractor must submit a written change order request to the County within 14 calendar days of the date the Contractor knew or should have known of the facts and events giving rise to the requested change. If the County determines that the change increases or decreases the Contractor's costs or time for performance, the County will make an equitable adjustment. The County will attempt, in good faith, to reach agreement with the Contractor on all equitable adjustments. If the parties are unable to agree, the County will determine the equitable adjustment as it deems appropriate. The Contractor shall proceed with the change order work upon receiving the written change order. If the Contractor fails to require a change order within the time frame allowed the Contractor waives its right to make any claim or submit subsequent change order requests for that portion of the work. If the Contractor disagrees with the equitable adjustment, the Contractor must complete the change order work; however, the Contractor may elect to protest the adjustment as provided below.

7.1 Procedure and Protest by Contractor. If the Contractor disagrees with anything required by a change order, another written order, or an oral order from the County, including any direction, instruction, interpretation, or determination by the County, the Contractor shall, within 14 calendar days, provide a signed written notice of protest to the County that states the date of the notice of protest, the nature and circumstances that caused the protest, the provisions in the agreement that support the protest, the estimated dollar cost, if any, of the protested work and how the estimate was determined, and an analysis of the progress schedule showing the schedule change or disruption, if applicable. The Contractor shall keep complete records of extra costs and time incurred as a result of the protested work. The County shall have access to any of the Contractor's records needed to evaluate the protest. If the County determines that a protest is valid, the County will adjust the payment for work or time by an equitable adjustment.

7.2 Contractor's Duty to Complete Protested Work. In spite of any protest, the Contractor shall proceed to promptly complete work that the County has ordered.

7.3 Contractor's Acceptance of Changes. The Contractor accepts all requirements of a change order by: (1) endorsing the change order; (2) writing a separate acceptance; or (3) not protesting in the manner this section provides. A change order that is accepted by the Contractor as provided in this section shall constitute full payment and final settlement of all claims for contract time and for direct, indirect, and consequential costs, including costs of delays related to any work, either covered or affected by the change.

7.4 Failure to Protest or Follow Procedures Constitutes Waiver. By not protesting or following procedures as this section provides, the Contractor waives any additional

entitlement or claims for protested work, and accepts from the County any written or oral order (including directions, instructions, interpretations, and determinations).

8) Claims. The Contractor shall give written notice to the County of all claims other than change orders within 14 calendar days of the occurrence of events giving rise to the claim. Any claim for damages, additional payment for any reason, or extension of time, shall be conclusively deemed to have been waived by the Contractor unless a timely written claim is made in strict accordance with the applicable provisions of this Agreement. At a minimum, a Contractor's written claim must include the information required in Paragraph 7.1 regarding protests. FAILURE TO PROVIDE A COMPLETE, WRITTEN NOTIFICATION OF CLAIM WITHIN THE TIME ALLOWED SHALL BE AN ABSOLUTE WAIVER OF ANY CLAIMS ARISING IN ANY WAY FROM THE FACTS OR EVENTS SURROUNDING THAT CLAIM. The Contractor must, in any event, file any claim or bring any suit arising from or connected with this Agreement within 120 calendar days from the date the work is completed.

9) Warranty. The Contractor shall correct all defects in workmanship and materials within the specified period for the type of work from the date of the County's acceptance of the work. When defects are corrected, the warranty for that portion of the work shall extend for one year from the date such correction is completed and accepted by the County. The Contractor shall begin to correct any defects within 7 days of its receipt of notice from the County of the defect. If the Contractor does not accomplish the corrections within a reasonable time, the County may complete the correction and the Contractor shall pay all costs incurred by the County to accomplish the correction.

10) Indemnification and Hold Harmless.

10.1 *Indemnification by Contractor*. To the fullest extent permitted by law, the Contractor agrees to indemnify, defend and hold the County and its departments, elected and appointed officials, employees, agents and volunteers, harmless from and against any and all claims, damages, losses and expenses, including but not limited to court costs, attorney's fees and alternative dispute resolution costs, for any personal injury, for any bodily injury, sickness, disease or death and for any damage to or destruction of any property (including the loss of use resulting therefrom) which 1) are caused in whole or in part by any act or omission, negligent or otherwise, of the Contractor, its employees, agents or volunteers or Contractor's subcontractors and their employees, agents or volunteers; or 2) are directly or indirectly arising out of, resulting from, or in connection with performance of this Agreement; or 3) are based upon the Contractor's or its subcontractors' use of, presence upon or proximity to the property of the County. This indemnification obligation of the Provider shall not apply in the limited circumstance where the claim, damage, loss or expense is caused by the sole negligence of the County. In the event of the concurrent negligence of the Contractor, its subcontractors, employees or agents, and the County, its employees or agents, this indemnification obligation of the Contractor shall be valid and enforceable only to the extent of the negligence of the Contractor, its subcontractors, employees and agents. This

indemnification obligation of the Contractor shall not be limited in any way by the Washington State Industrial Insurance Act, RCW Title 51, or by application of any other workmen's compensation act, disability benefit act or other employee benefit act, and the Contractor hereby expressly waives any immunity afforded by such acts. The foregoing indemnification obligations of the Contractor are a material inducement to County to enter into this Agreement, are reflected in the Contractor's compensation, and have been mutually negotiated by the parties.

Contractor's initials acknowledging indemnity terms: _____

10.2 *Participation by County – No Waiver.* The County reserves the right, but not the obligation, to participate in the defense of any claim, damages, losses or expenses and such participation shall not constitute a waiver of Contractor's indemnity obligations under this Agreement.

10.3 *Survival of Contractor's Indemnity Obligations.* The Contractor agrees all Contractor's indemnity obligations shall survive the completion, expiration or termination of this Agreement.

10.4 *Indemnity by Subcontractors.* In the event the Contractor enters into subcontracts to the extent allowed under this Agreement, the Contractor's subcontractors shall indemnify the County on a basis equal to or exceeding Contractor's indemnity obligations to the County.

11) Insurance. Without limiting Contractor's indemnification of County, and prior to commencement of Work, Contractor shall obtain, provide and maintain at its own expense during the term of this Agreement, policies of insurance of the type and amounts described below and, in a form, satisfactory to County.

11. 1 *General liability insurance.* Contractor shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate, for bodily injury, personal injury, and property damage, including without limitation, blanket contractual liability, and \$2,000,000 completed operations aggregate. Automobile liability insurance. Contractor shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of the Contractor arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than \$1,000,000 combined single limit for each accident.

11.2 *Umbrella or excess liability insurance.* Contractor shall obtain and maintain an umbrella or excess liability insurance policy with limits of not less than \$4,000,000 that will provide bodily injury, personal injury and property damage liability coverage at least as broad as the primary coverages set forth above, including commercial general liability and employer's liability. Such policy or policies shall include the following terms and conditions:

- A drop down feature requiring the policy to respond in the event that any primary insurance that would otherwise have applied proves to be uncollectable in whole or in part for any reason;
- Pay on behalf of wording as opposed to reimbursement;
- Concurrency of effective dates with primary policies; and
- Policies shall “follow form” to the underlying primary policies.
- Insureds under primary policies shall also be insureds under the umbrella or excess policies.

11.3 *Workers’ compensation insurance.* Contractor shall maintain Workers’ Compensation Insurance (Statutory Limits) and Employer’s Liability Insurance (with limits of at least \$1,000,000) for Contractor’s employees in accordance with the laws of the State of Washington. In addition, Contractor shall require each subcontractor to similarly maintain Workers’ Compensation Insurance and Employer’s Liability Insurance in accordance with the laws of the State of Washington for all of the subcontractor’s employees.

Contractor shall submit to County, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of County, its officers, agents, employees and volunteers.

11.4 *Other Insurance Provisions*

11.4.1 *Proof of insurance.* Contractor shall provide certificates of insurance to County as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers’ compensation. Insurance certificates and endorsement must be approved by County’s risk manager prior to commencement of performance. Current certification of insurance shall be kept on file with County at all times during the term of this contract. County reserves the right to require complete, certified copies of all required insurance policies, at any time.

11.4.2 *Duration of coverage.* Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the Work hereunder by Contractor, his agents, representatives, employees or subcontractors. Contractor must maintain general liability and umbrella or excess liability insurance for as long as there is a statutory exposure to completed operations claims. County and its officers, officials, employees, and agents shall continue as additional insureds under such policies.

County’s rights of enforcement. In the event any policy of insurance required under this Agreement does not comply with these requirements or is canceled and not replaced, County has the right but not the duty to obtain the insurance it deems necessary and any premium paid by County will be promptly reimbursed by Contractor or County will

withhold amounts sufficient to pay premium from Contractor payments. In the alternative, County may cancel this Agreement.

11.4.3 *Acceptable insurers.* All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance in the State of Washington, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the County's risk manager.

11.4.4 *Waiver of subrogation.* All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against County, its elected or appointed officers, agents, officials, employees and volunteers or shall specifically allow Contractor or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Contractor hereby waives its own right of recovery against County, and shall require similar written express waivers and insurance clauses from each of its subconsultants.

11.4.5 *Enforcement of contract provisions (non-estoppel).* Contractor acknowledges and agrees that any actual or alleged failure on the part of the County to inform Contractor of non-compliance with any requirement imposes no additional obligations on the County nor does it waive any rights hereunder.

11.4.5 *Requirements not limiting.* Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type.

11.4.6 *Notice of cancellation.* Contractor agrees to oblige its insurance agent or broker and insurers to provide to County with a thirty (30) day notice of cancellation (except for nonpayment for which a ten (10) day notice is required) or nonrenewal of coverage for each required coverage.

11.4.7 *Additional insured status.* General liability policies shall provide or be endorsed to provide that County and its officers, officials, employees, and agents shall be additional insureds under such policies. This provision shall also apply to any excess liability policies.

11.4.8 *County's right to revise requirements.* The County reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving the Contractor a ninety (90)-day advance written notice of such change. If such change results in substantial additional cost to the Contractor, the County and Contractor may renegotiate Contractor's compensation.

11.4.9 *Self-insured retentions.* Any self-insured retentions must be declared to and approved by County. County reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-insurance will not be considered to comply with these specifications unless approved by County.

11.4.10 *Timely notice of claims.* Contractor shall give County prompt and timely notice of claims made or suits instituted that arise out of or result from Contractor's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies.

11.4.11 *Additional insurance.* Contractor shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the Work.

12. Miscellaneous.

12.1 *Subletting or Assigning Contract.* The Contractor shall not assign, transfer, or encumber any rights, duties or interest accruing from this Agreement without the express prior written consent of the County.

12.2 *Extent of Agreement Modification.* This Agreement, together with attachments or addenda, represents the entire and integrated Agreement between the parties and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended, modified or added to only by written instrument properly signed by both parties.

12.3 *Work Performed at Contractor's Risk.* The Contractor shall take all precautions necessary and shall be responsible for the safety of its employees, agents, and subcontractors in the performance of work under this Agreement. All work shall be done at the Contractor's own risk, and the Contractor shall be responsible for any loss of or damage to materials, tools, or other articles used or held for use in connection with the work.

12.4 *Nonwaiver of Breach.* The failure of the County to insist upon strict performance of any of the terms and rights contained in this Agreement, or to exercise any option contained in this Agreement in one or more instances, shall not be construed to be a waiver or relinquishment of those terms and rights and such terms and rights shall remain in full force and effect.

12.5 *Written Notice.* All communications regarding this Agreement shall be sent to the parties at the addresses listed below, unless otherwise notified. Any written notice shall become effective on delivery, but in any event on 3 calendar days after the date of mailing by registered or certified mail, and shall be deemed sufficiently given if sent to the addressee at the address stated in this Agreement.

Okanogan County Sheriff's Office

123 N. 5th Ave, Rm 200

Okanogan, WA 98840

Attention: Mike Worden

Chief Deputy of Communications

509-422-7204 mworden@co.okanogan.wa.us

CONTRACTOR

[Address]

[Address]

Attention:

12.6 *Discrimination*. The Contractor agrees not to discriminate against any employee or applicant for employment or any other person in the performance of this Agreement because of race, creed, color, national origin, marital status, sex, age, disability, or other circumstance prohibited by federal, state or local law or ordinance, except for a bona fide occupational qualification.

12.7 *Compliance with Laws*. The Contractor shall comply with all federal, state and local laws, ordinances, regulations, and rules applicable to the work to be done under this Agreement.

12.7 *A Bidder Responsibility Criteria*. The Contractor agrees to comply with the requirements of Bidder Responsibility Criteria as set forth in RCW 39.04.350 and RCW 39.06.020.

Clerk of the Board
OKANOGAN COUNTY, WASHINGTON
BOARD OF COUNTY
COMMISSIONERS

CONTRACTOR

Chair

By: _____

Commissioner

Name: _____

Title: _____

Vice Chair

APPROVED AS TO FORM:

Chief Civil Deputy Prosecutor

ATTEST: