

**SECTION IV
CONTRACT
BID NUMBER 171005**

THIS AGREEMENT made and entered into this ____ day of _____, 2017, 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, in consideration of the payments hereinafter mentioned, 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 "L" (as outlined below), 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.

- Exhibit "A" – Prevailing Wage Rates
- Exhibit "B" – Contractor Safety Plan
- Exhibit "C" – Contractor Job Briefing
- Exhibit "D" – Construction Standards
- Exhibit "E" – 3M 270 ACCR and Damper Instructions
- Exhibit "F" – Fiber Specifications and Instructions
- Exhibit "G" – Materials
- Exhibit "H" – One-Line Drawings
- Exhibit "I" – Plan, Profile and Vicinity Map Drawings
- Exhibit "J" – RS Pole and PUPD Drawings
- Exhibit "K" – RS Poles Instructions
- Exhibit "L" – SAG Chart

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:

Project in accordance with Section I, Notice and Instructions to Bidders, Item 2, "Scope of Bid" for Transmission Line Rebuild-Elwha River Crossing, W.O. #12-0112

Fiber Installation Cost: \$ _____

Transmission/Distribution Cost: \$ _____

TOTAL COST
(Do not include WSST 8.4%)

\$ _____

Unit Prices

Price to install each additional plate anchor
at a depth of 5 feet:

\$ _____

TOTAL COST
(Do not include WSST 8.4%)

\$ _____

Starting Date: _____

Completion Date: _____

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 - 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 be mailed to Attention: Karen Abbott, P.O. Box 1090, Port Angeles, WA 98362.

The District is a public agency subject to the requirements of Washington State Law, Revised Code of Washington, Chapter 60.28, which states in part: ". . . there shall be reserved by the public body from the moneys earned by the Contractor on estimates during the progress of the improvement or work, a sum not to exceed five percent, said sum to be retained by the state, county, city, town, district, board, or other public body, as a trust fund for the protection and payment of any person or persons, mechanic, subcontractor or materialman who shall perform any labor upon such contract or the doing of said work, and all persons who shall supply such person or persons or subcontractors with provisions and supplies for the carrying on of such work, and the state with respect to taxes imposed pursuant to Title 82 RCW which may be due from such contractor. Every person performing labor or furnishing supplies toward the completion of said improvement or work shall have a lien upon said moneys so reserved: Provided, That such notice of the lien of such claimant shall be given in the manner and within the time provided in RCW 39.08.030 as now existing and in accordance with any amendments that may hereafter be made thereto: Provided further, that the board, council, commission, trustees, officer or body acting for the state, county or municipality or other public body; (a) at any time after fifty percent of the original contract work has been completed, if it finds that satisfactory progress is being made, may make any of the partial payments which would otherwise be subsequently made in full; but in no event shall the amount to be retained be reduced to less than five percent of the amount of the moneys earned by the contractor; provided, that the contractor may request that retainage be reduced to one hundred percent of the value of the work remaining on the project; and (b) thirty days after completion and acceptance of all contract work other than landscaping, may release and pay in full the amounts retained during the performance of the contract (other than continuing retention of five percent of the moneys earned for landscaping) subject to the provisions of RCW 60.28.020. . ."

ARTICLE V - PAYMENT OF PREVAILING WAGES

- a. In accordance with the Revised Code of Washington, Chapter 39.12, there shall be paid to all laborers, workers, or mechanics employed on this contract, the prevailing rate of wage 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.
- b. The "prevailing rate of wage" shall be the rate of hourly wage, usual benefits, and overtime paid in the locality, as hereinafter defined, to the majority of workers, laborers, or mechanics, in the same trade or occupation (see Exhibit "A"). In the event that there is not a majority in the same trade or occupation paid at the same rate, then the average rate of hourly wage and overtime paid to such laborers, workers, or mechanics in the same trade or occupation shall be the prevailing rate. If the wage paid by any

Contractor or subcontractor to laborers, workers, or mechanics on any public work is based on some period of time other than an hour, the hourly wage shall be mathematically determined by the number of hours worked in such period of time.

The "locality" shall be the largest city in the county wherein the physical work is being performed.

The "usual benefits" shall include the amount of:

- 1) The rate of contribution irrevocably made by the Contractor or subcontractor to a trustee or to a third person pursuant to a fund, plan, or program; and
 - 2) The rate of costs to the Contractor or subcontractor which may be reasonably anticipated in providing benefits to workers, laborers, and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan or program which was communicated in writing to the workers, laborers, and mechanics affected, for medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, for unemployment benefits, life insurance, disability and sickness insurance, or accident insurance, for vacation and holiday pay, for defraying costs of apprenticeship or other similar programs, or for other bona fide fringe benefits, but only where the Contractor or subcontractor is not required by other federal, state, or local laws to provide any of such benefits.
- c. Before payment is made of any sum or sums due on account of a public works contract, it shall be the duty of the officer or person charged with the custody and disbursement of public funds to require the Contractor and each and every subcontractor to submit to such officer a "Statement of Intent to Pay Prevailing Wages." For a contract in excess of twenty-five hundred dollars, the statement of intent to pay prevailing wages 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 said officer.

Unless otherwise authorized by the Department of Labor and Industries, each voucher claim submitted by a contractor for payment on a project estimate 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 a public works project, it shall be the duty of the officer charged with the disbursement of public funds to require the Contractor and each and every subcontractor to submit to such officer 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 officer.

- d. In case any dispute arises as to what are the prevailing rates of wages for work of a similar nature and such dispute cannot be adjusted by the parties in interest, including

labor and management representatives, the matter shall be referred for arbitration to the Director of the Department of Labor and Industries of the State of Washington; and his decision therein shall be final and conclusive and binding on all parties involved in the dispute.

ARTICLE VI - 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 worker's compensation insurance required under "a" above.

ARTICLE VII - 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 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 VIII - 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 IX – 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 X – 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 XI –
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.

(CONTRACTOR)

By _____
(Signature)

Dated _____ (Typed)

Title _____

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

By _____
(Signature)

Dated _____
(Typed)

Title _____