



**PRE-QUALIFICATION CONTRACT**

No. \_\_\_\_\_

On this \_\_\_\_ day of \_\_\_\_\_, 201\_\_, **PUBLIC UTILITY DISTRICT NO.1 of CLALLAM COUNTY** (District) and \_\_\_\_\_ (Contractor) agree to be bound by the following terms and conditions:

1. The Contractor agrees to perform the work and furnish labor, equipment, and required/agreed upon materials in accordance with the plans and specifications for each project.
2. The Contractor, in the performance of the work herein specified, shall be considered an independent contractor solely responsible for the performance of said work and any damage resulting there from.
3. The Contractor will not sublet any of the work to be performed by him under the terms of this agreement and will not assign this contract or any rights hereunder, without first obtaining written approval of the District.
4. The Contractor agrees to furnish a bid bond in the amount of 5 percent and a performance and payment bond in the sum not less than 100 percent of the bid for each project of estimated value over \$60,000, on an appropriate form, with a surety or sureties acceptable to the District. After receiving the performance and payment bond, the Contractor will be given a Notice to Proceed. Should the Contractor fail or refuse to execute such counterparts, or to furnish a performance and payment bond, 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, at which time the Contractor will forfeit the bid surety held by the District, as liquidated damages.
5. Payments to the Contractor for work performed shall be made thirty days after receipt of invoice for the project or portions of a project certified complete by a District Representative. Payments shall be as follows:
  - For a contract with a completion schedule of forty-five calendar days or less the payment shall be made after the work is completed and has been accepted by the District.
  - For a contract with a completion schedule greater than forty-five calendar days, the District will make progress payments for work performed. It is the Contractors responsibility to indicate the progress percentage complete on each invoice.

The District shall make payment to the Contractor for work accomplished during the preceding calendar month on the basis of progress invoices certified by the Contractor and approved by the District's representative solely for the purpose of payment. **All invoices MUST list labor and material/equipment as separate line items and must also reference the contract number. All invoices must be sent to Attention: Karen Abbott, P.O. Box 1000, Carlsborg, WA 98324. If there are any questions on invoicing requirements please contact Karen Abbott at 360-565-3279 or via email at [karena@clallampud.net](mailto:karena@clallampud.net).**

6. The Contractor shall comply with Revised Code of Washington (RCW) Section 39.12, which explains payment of prevailing wages. No workman, laborer, or mechanic employed in the performance of any part of this contract shall be paid less than the prevailing rate of wage as determined by the Department of Labor and Industries. The schedule of the prevailing wage rates for the locality or localities where this contract will be performed is, by reference only, made a part of this contract. It will be the responsibility of the Contractor to confirm the most current prevailing wage rates, file the required forms for projects with an estimated value over \$2,500 with the State of Washington, and pay all filing fees necessary to comply with RCW 39.12. **Invoices submitted for agency payment must include a statement that prevailing wages have been paid by the contractor in accordance with the prefiled statement or statements of Intent to pay prevailing wages on file (RCW 39.12.040(1)(b)).**

Contracts up to \$2,500 - No payment shall be made until the Contractor has submitted a "Combination Intent and Affidavit" form to the District for each project with an estimated value of \$2,500 or less. The District shall pay the Contractor within thirty days of receipt of each invoice provided the form has been filled out by the Contractor and submitted to the District with the invoice.

Contracts over \$2,500 up to \$10,000 - No payment shall be made until the Contractor's and Subcontractor's "Statement of Intent to Pay Prevailing Wages" and "Affidavit of Wages Paid" has been certified by the Department of labor and Industries and Department of Revenue and Employment Security and a copy so certified has been made available to the District.

Contracts over \$10,000 up to \$35,000 – Contracts with a completion schedule of less than forty-five calendar days, after being accepted as complete by the District, shall have 5 percent of the invoice amount retained and held for a period of not more than thirty days, as provided by law; from the date payment is made and until: The Contractor's and Subcontractor's "Affidavit of Wages Paid" has been certified by the Department of Labor and Industries and a copy so certified has been furnished the District by the Contractor and all Subcontractors. The retained funds will be returned to the Contractor after the thirty day period, providing no liens have been filed against the retained funds.

Contracts over \$35,000 – Contracts with a completion schedule of over forty-five days, shall have 5 percent retained from each payment until final acceptance of the completed contract by the District and the expiration of the thirty-day period for filing of liens as provided by the law and until: (1) the Contractor's and Subcontractor's "Affidavit of Wages Paid" has been certified by the Department of Labor and Industries and a copy so certified has been furnished the District by the Contractor and all Subcontractors, (2) a certificate is received from the Audit section of the State Department of Revenue and Employment Security Department on (contracts over \$35,000) authorizing the payment of the retained fund, and (3) a certificate of release from the Department of Labor and Industries has been furnished to the District. A notice of Completion of Public Works Contract will be filed with the State Department of Revenue by the District upon acceptance of the Contract by the District. It will be the responsibility of the Contractor to notify the Department of Labor and Industries of contract completion.

7. Contractor agrees to release, indemnify, defend, and hold harmless the District, 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, 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 or properties to be worked upon or about. Contractor agrees to release, indemnify, defend, and hold harmless the District, 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, its agents, and employees, or the Contractor, any subcontractor, anyone directly or indirectly employed by the Contractor, 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.

8. 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 project completion. 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 to do so, the District or its assigns may remedy such defective workmanship. 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.

9. Any and all subcontractors to be employed on the project are to be listed on the each proposal. The Contractor understands that any subcontractor not listed in the proposal will be denied access to the project unless such change or substitution has been approved in advance by the District.

10. The Contractor shall, at its 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 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

c. All policies of insurance providing coverage 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 days prior notice of such cancellation or change shall be furnished the District by registered mail.

d. 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 named insured.

**11.** The project from the commencement of work to completion, or to such earlier date or dates when the District may take possession and control in whole or in part as hereinafter provided, shall be under the charge and control of the Contractor. During such period of control by the Contractor, all risks in connection with the construction of the project and the materials to be used therein shall be borne by the Contractor. The Contractor shall make good and fully repair all injuries and damages to the project or any portion thereof under the control of the Contractor, by reason of any act of God, or other casualty or cause, whether or not the same shall have occurred by reason of the Contractor's negligence. 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.

**12.** Upon written request of the District, the Contractor will deliver to the District full possession and control of any portion of the project, provided the Contractor shall have been paid at least 90 percent of the cost of construction of such portion. Upon such delivery of possession and control to the District, the risks and obligations of the Contractor as set forth in Paragraph 10 above, with respect to such portion so delivered to the District, shall be terminated; provided, however, that nothing herein contained shall relieve the Contractor of any liability with respect to defective workmanship as set forth in Paragraph 6 above.

**13.** If default shall be made by the Contractor or by any subcontractor in the performance of any of the terms of this proposal, the District without any manner limiting its legal and equitable remedies in the circumstances, may serve upon the Contractor and the surety, if any, a written notice requiring the Contractor to cause such default to be corrected forthwith. Unless within twenty days after the service of such notice upon the Contractor and the surety, if any, such default shall be corrected or arrangements for the correction thereof satisfactory to the District shall be made, the District may take over the construction of the project and prosecute the same to completion by contract or otherwise for the account and at the expense of the Contractor; and the Contractor shall be liable to the District for any cost or expense in excess of the contract price occasioned thereby. In such event, the District may take possession of and utilize in completing the construction of the project any materials, tools, supplies, equipment, appliance, and plant belonging to the Contractor or any of its subcontractors which may be situated at the site of the project. The District, in such contingency, may exercise any rights, claims, or demands which the Contractor may have against third persons in connection with this proposal; and for such purpose the Contractor does hereby assign, transfer, and set over unto the District all such rights, claims, and demands.

No payment shall be due while the Contractor is in default in respect of any of the provision of this contract. 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.

**14.** 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 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 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 project and at the expense of the Contractor, and the Contractor shall be liable to the District for any excess cost occasioned thereby.

**15.** 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 records for his/her inspection.

**16.** The Contractor shall submit to the District all advertising, sales promotion, press releases, and other publicity matters relating to the services performed by the Contractor wherein the District's name or marks are mentioned or language from which the connection of said names or marks may be inferred or implied. The Contractor further agrees not to publish or use such advertising, sales promotion, press releases, and publicity matters without the District's written approval.

**17.** 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, roads, and their associated rights-of-way caused by the Contractor during construction of the 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 Contractor is not to be construed as approval of the Contractor's equipment, or proposed construction methods by or on behalf of private, county, state, or other road authorities. Contractors 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.

**18.** The Contractor shall at all times take all reasonable precautions for the safety of employees and the public in the work on the project and shall comply with all applicable provisions of federal, state, and municipal safety laws, and building and construction codes. The Contractor shall submit to the District monthly reports, in duplicate, of all accidents giving such data as may be prescribed by the District.

**19.** This contract and the performance thereof shall be governed, interpreted, construed, and regulated according to the laws of the State of Washington. 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.

**20.** 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.

**21.** 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. This contract shall be in effect for three years. Financial information submitted with your application will be held on file for three years. Affidavits of "no changes" will need to be signed by the Contractor and kept on file with the District for the second and third years.

22. The District is subject to the disclosure obligations of the Washington Public Records Act of RCW 42.56. The Contractor expressly acknowledges and agrees that its bid and any information Contractor submits with its bid is subject to public disclosure pursuant to the Public Records act or other applicable law and the District may disclose Contractor's proposal and/or accompanying information at its sole discretion in accordance with its obligations under applicable law.

**By entering into this contract the contractor verifies that they are not in a suspended status or on any State or Federal debarment lists.**

Authorized Signature \_\_\_\_\_ Date: \_\_\_\_\_

**PUD NUMBER 1 of CLALLAM COUNTY**

Authorized Signature \_\_\_\_\_ Date: \_\_\_\_\_

SAMPLE