

## SMALL WORKS CONTRACT

**Project Number**

**Project Name**

THIS AGREEMENT is made on this \_\_\_\_\_, 20\_\_, between ALDERWOOD WATER AND WASTEWATER DISTRICT ("DISTRICT"), a municipal corporation and \_\_\_\_\_ ("CONTRACTOR").

In consideration of the terms and conditions contained in this Contract and attached to it, the parties agree as follows:

1. Project. Contractor shall do all work and furnish all tools, materials, and equipment for the District's public works project known as \_\_\_\_\_ ("Project") in accordance with and as more fully described in Attachment A.
2. Work. The term Work, as used in this Contract, means the construction and services necessary or incidental to fulfill Contractor's obligations in conformance with this Contract.
3. Project Cost. The District shall pay Contractor \_\_\_\_\_ (\$\_\_\_\_\_) plus Washington State sales tax of 8.9 percent for a total of \_\_\_\_\_ \$\_\_\_\_\_. ("Project Cost"). The Project Cost includes all costs associated with the Project, including, but not limited to labor, materials, overhead, administrative, and permit and regulatory costs, unless otherwise agreed to by the parties in writing.
4. Payment Terms. The Project Cost shall be payable in the following manner: On or before the 26<sup>th</sup> day of each month, Contractor shall submit a detailed monthly pay application for all services provided describing in reasonable and understandable detail the work completed during the previous month, the progress of the work, and the requested payment in an amount proportionate to the work completed. The District shall pay the pay application within thirty (30) days after approval of the pay application, pursuant to the terms below:
  - a. In cases of single payment, the District shall make payment only after all appropriate releases are submitted.
  - b. In cases of multiple payments, the District shall retain monies as required by RCW 60.28 and pay the retainage as provided therein.
5. Equitable Adjustments. Contractor shall file a written notice for any equitable adjustment to the Project Cost within twenty-four (24) hours of the District's written change order or oral change order. No more than five (5) days thereafter, Contractor shall then file a written claim with the District, stating the amount claimed, supported by appropriate documentation. Failure to provide written notice and claim under the terms of this Contract constitutes waiver of such claim. In no case, shall a claim for equitable adjustment be allowed if submitted after the Project has reached final acceptance by the District.

6. Completion Deadline/Liquidated Damages. Contractor shall commence work under this Contract upon receipt of notice to proceed from the District. The Project must be completed no later than \_\_\_\_\_. If the Project is not completed by such date, then, because of the difficulty in computing the actual damages to the District arising from any delay in completing the Project work, the parties determine in advance, it is agreed by the parties that Contractor shall pay the District \$\_\_\_\_\_ for each calendar day that the work remains incomplete after expiration of the specified completion date. The parties agree that such amount represents a reasonable forecast of the actual damages the District will suffer by failure of the Contractor to complete the work within the agreed upon time. The execution of this Contract constitutes acknowledgement by the Contractor that the Contractor has ascertained and agrees that the District will actually suffer damages in the above amount.
7. Warranty. Contractor warrants that all materials and equipment shall be new unless otherwise specified, of good quality, and free from defective workmanship and materials. Contractor further warrants that the Work shall be free from defects in workmanship and material, and shall transfer to the District all written warranties related to the Work performed and equipment installed. Contractor guarantees payment of all obligations incurred in this Work until final acceptance of the Work and for one (1) year thereafter.
8. Prevailing Wages. The Contractor shall pay prevailing wages as required and shall comply with RCW 39.12 and RCW 49.28. Notice of intent to pay prevailing wages and prevailing wage rates for the Project must be posted for the benefit of workers. At the completion of the Project, the Contractor and its subcontractors shall submit Affidavits of Wages Paid to the Department of Labor and Industries for certification. Final payment on the Contract shall be withheld until the District receives certification from the Department of Labor and Industries that prevailing wage requirements have been satisfied.
9. Bond. Contractor shall provide a performance and payment bond for the faithful performance and payment of all its obligations under this Contract and in accordance with RCW 39.08.010. The performance bond shall remain in effect to guarantee the repair and replacement of defective equipment, materials, and workmanship and payment of damages sustained by the District on account of such defects, discovered within one (1) year after final acceptance by the District. If this Contract is for less than \$25,000, Contractor authorizes the District, in lieu of a bond, to retain 50% of the Contract amount for a period of thirty days after the date of final acceptance as provided for under RCW 39.08.010.
10. Indemnification. Contractor shall defend, indemnify, and hold harmless the District, its commissioners, officers, managers, employees, engineers, agents, and volunteers from and against all demands, claims, losses, injuries, damages, liabilities, suits, judgment, attorneys' fees and costs, and other expenses of any kind on account of, relating to, or arising out of Contractor's work under this Contract, except to the extent such injuries or damages are caused by the negligence of the District. For the purposes of this indemnification, Contractor specifically and expressly waives any immunity granted under the Washington Industrial Insurance Act, Title 51 RCW. This waiver has been mutually negotiated and agreed to by the parties. If a court of competent jurisdiction determines that this contract is subject to RCW 4.24.115, Contractor's obligation to defend, indemnify, and hold harmless the District, its officers, employees, agents and volunteers shall be limited to the extent of the District's

negligence. The provisions of this paragraph shall survive the expiration or termination of this Contract.

11. Insurance. Contractor shall obtain, and keep in force during the term of this Contract, insurance policies as follows:

- a. Commercial General Liability. Limits no less than \$1,000,000.00 combined single limit per occurrence and \$2,000,000.00 aggregate for personal injury, bodily injury and property damage. Coverage shall be as broad as Insurance Services Office form number (CG 00 01) covering Commercial General Liability.
- b. Automobile Liability Insurance. Limits no less than \$1,000,000.00 combined single limit per accident for bodily injury and property damage. Coverage shall be as broad as Insurance Services Office form number (CA 00 01) covering Business Auto Coverage, symbol 1 "any auto"; or the combination of symbols 2, 8, and 9.
- c. Workers' Compensation. Statutory requirements of the State of residency. Coverage shall be at least as broad as Workers' Compensation coverage, as required by the Industrial Insurance Act of the State of Washington, as well as any similar coverage required for this work by applicable Federal or "other States" State Law;
- d. Employer's Liability or "Stop Gap". Coverage shall be at least as broad as the protection provided by the Workers Compensation policy Part 2 (Employers Liability) or, in states with monopolistic state funds, the protection provided by the "Stop Gap" endorsement to the general liability policy;
- e. The insurance policies shall specifically name the District, its elected or appointed officials, officers, employees, and volunteers as insureds with regard to damages and defense of claims arising from (1) activities performed by or on half of the Contractor; or (2) products and completed operations of the Contractor; or (3) premises owned, leased, or used by the Contractor.
- f. The insurance policies (1) shall state that coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability; (2) shall be primary insurance with regard to the District; and (3) shall state that the District will be given at least 30 days' prior written notice of any cancellation, suspension or material change in coverage.
- g. Before commencing work and services, Contractor shall provide to the District a Certificate of Insurance evidencing the required insurance accompanied by endorsements as are necessary to comply with the requirements of this paragraph. The District reserves the right to request and receive a certified copy of all required insurance policies.
- h. Any payment of deductible or self-insured retention shall be the sole responsibility of Contractor.

12. Job Safety/Housekeeping. All work done shall be done in a manner that minimizes interruptions or inconvenience to the public and/or District staff. All work shall be carried on

with due regard for the safety of the public, and Contractor shall maintain strict compliance with the appropriate provisions relating to control of traffic and pedestrians through work areas as set forth in the Manual on Uniform Traffic and Control Devices (current edition) as adopted by the Washington State Department of Highways. Property and streets adjacent to the Project site shall be kept free and clear at all times from accumulations of mud, dirt, gravel, rock, and other matter. Contractor will be responsible for daily and final clean up and disposal of refuse, waste and debris produced by its operation. Refuse shall not be permitted to accumulate to the extent that it interferes with free access to the Project site. Should the District determine Contractor is not fulfilling its obligation in this regard, the District reserves the right to take such action as may be necessary, and to charge Contractor with any costs that may be incurred in such remedial action.

13. Compliance with Codes and Regulations. Contractor is expected to comply with all applicable statutes in performing Project Work, including, but not limited to all state and local laws, regulations, codes and standards that are applicable at the time Contractor performs work.
14. Permits, Taxes, Temporary Functions. Contractor shall secure and pay for all permits, fees and licenses necessary for the performance of this Contract. Contractor shall pay any and all federal, state and municipal taxes, including sales taxes, if any, for which Contractor may be liable in carrying out this Contract. Contractor shall be responsible for all temporary functions associated with its work, including but not limited to, lighting, wiring, protection, hoisting, scaffolding, rigging, flagman, drinking water, storage, ventilation and heat.
15. Termination. If Contractor: (1) fails to provide a sufficient number of properly skilled workers or a sufficient quantity of suitable materials or adequate equipment; (2) fails to diligently prosecute work according to the Project schedule; (3) causes, by act or omission, stoppage, delay, or interference of the Work; (4) fails to correct or repair any damaged or defective work or materials; (5) fails to comply with any provisions of this Contract; (6) become insolvent or adjudged bankrupt; or (7) fails to make prompt payment to lower tier subcontractors or suppliers, then the District may terminate this Contract upon written notice to the Contractor.
16. General Provisions.
  - a. Notices. Any notice or demand desired or required to be given under this Contract shall be in writing and deemed given when personally delivered, sent by facsimile machine, or deposited in the United States Mail (or with an express courier), postage prepaid, sent certified or registered mail, and addressed to the parties as set forth below or to such other address as either party shall have previously designated by such a notice:

District:

Contractor:

Alderwood Water and Wastewater District  
3626 – 156<sup>th</sup> Street SW  
Lynnwood, WA 98087  
Attn: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

- b. Entire Agreement. This Contract and its attachments contain the entire understanding between the District and Contractor relating to the Project which is the subject of this Contract. This Contract merges all prior discussions, negotiations, letters of understanding or other promises whether oral or in writing. Subsequent modification or amendment of this Contract shall be in writing and signed by the parties to this Contract.
- c. Modification. No modification of this Contract and no waiver of rights under this Contract shall be valid or binding on the parties unless the same is in writing.
- d. Waiver. Waiver of any breach or default hereunder shall not constitute a continuing waiver or a waiver of any subsequent breach either of the same or of another provision of this Contract.
- e. Assignment. Neither party shall assign, transfer or otherwise dispose of this Contract in whole or in part to any individual, firm or corporation without the prior written consent of the other party. Subject to the provisions of the preceding sentence, this Contract shall be binding upon and endure to the benefit of the respective successors and assigns of the parties hereto: This Contract is made only for the benefit of the District and the Contractor and successors in interest and no third party or person shall have any rights hereunder whether by agency or as a third party beneficiary.
- f. Severability. If any term, covenant or condition of this Contract is held by a court of competent jurisdiction to be invalid, the remainder of this Contract shall remain in effect.
- g. Dispute Resolution. If any dispute, controversy, or claim arises out of this Contract, the parties agree to first try to settle the dispute, controversy, or claim in non-binding mediation with the assistance of a recognized professional mediation service. The parties shall each designate a representative with full settlement authority who will participate in the mediation. The parties shall bear all expenses associated with the mediation equally, except for attorneys' fees.
- h. Jurisdiction/Law. This Contract shall be governed by and construed in accordance with the laws of the State of Washington. Any suit to enforce or relating to this Contract shall be brought in Snohomish County Superior Court, Snohomish County, Washington.
- i. Attorneys' Fees. In the event that any party commences litigation against the other party relating to the performance, enforcement or breach of this Contract, the prevailing party

in such action shall be entitled to all costs, including attorneys' fees and costs and any such fees or costs incurred on appeal.

ALDERWOOD WATER AND WASTE \_\_\_\_\_  
DISTRICT ("DISTRICT") ("CONTRACTOR")

By \_\_\_\_\_ By \_\_\_\_\_

Typed Name \_\_\_\_\_ Typed Name \_\_\_\_\_

Its \_\_\_\_\_ Its \_\_\_\_\_

Phone: \_\_\_\_\_ Phone: \_\_\_\_\_

Fax: \_\_\_\_\_ Fax: \_\_\_\_\_

Date: \_\_\_\_\_ Date: \_\_\_\_\_

WA Contractor's License No. \_\_\_\_\_

SAMPLE

ATTACHMENT A

**SAMPLE**

## PERFORMANCE, PAYMENT AND GUARANTY BOND

\_\_\_\_\_, as Principal, and \_\_\_\_\_, as Surety, a corporation duly licensed and authorized to do business in the State of Washington, are held and firmly bound unto the ALDERWOOD WATER AND WASTEWATER DISTRICT, hereinafter called "District", in the full sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_), for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Principal has been awarded and has entered into that Contract, dated \_\_\_\_\_ and attached hereto, with District to perform the work as specified or indicated in the Contract documents entitled "\_\_\_\_\_", according to the terms, conditions and covenants specified in the Contract, including all of the Contract documents therein referred to which are hereby referred to and made a part hereof as fully and completely as though set forth in detail herein.

NOW, THEREFORE, if Principal shall perform all of the requirements of the Contract documents required to be performed on its part, at the times and in the manner specified therein; and

If Principal shall pay for all materials, equipment, or other supplies, or for rental of same, used in connection with the performance of work contracted to be done, and for all amounts due under applicable State law for any work or labor thereon; and

If Principal shall pay the sales, use and any other applicable taxes of the State of Washington or any political subdivision of said State relating to the Contract or to the work performed under the Contract, and pay amounts due the State pursuant to Titles 50 and 51 of the Revised Code of Washington; and

If Principal shall indemnify and hold the District harmless from any defects in the workmanship or materials incorporated into the work for a period of **one year** after the final acceptance of the work;

THEN the obligation of Principal and Surety under this Bond shall be void, but otherwise it shall remain in full force and effect.

This Bond shall inure to the benefit of any persons, companies or corporations entitled to file claims under applicable State law.

If suit is brought upon this Bond, a reasonable attorney's fee shall be awarded to the prevailing party.

Any alterations in the work to be done or the materials to be furnished, or changes in the time of completion, which may be made pursuant to the terms of the Contract documents, shall not in any way release Principal or Surety there under, nor shall any extensions of time granted under the provisions of the Contract documents release either Principal or Surety, and notice of such alterations or extension of the Contract is hereby waived by Surety.

IT IS FURTHER AGREED that nothing of any kind or nature that will not discharge the Principal shall operate as a discharge or release of the Surety, regardless of law, rule of equity or usage relating to the liability of sureties to the contrary notwithstanding.

SAMPLE

IT IS FURTHER AGREED that whenever the Contractor shall be, and declared by the District to be, in default under the Contract, the District having performed its obligations hereunder, the Surety at the request of the District shall promptly remedy the default in a manner acceptable to the District.

SIGNED AND SEALED, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

(Seal)

(Seal)

\_\_\_\_\_  
(Principal)

\_\_\_\_\_  
(Principal)

By: \_\_\_\_\_  
(Print Name)

By: \_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

Address: \_\_\_\_\_

\_\_\_\_\_

Telephone No.: \_\_\_\_\_