

EMERGENCY PUBLIC WORKS ON-CALL AGREEMENT

The **CITY OF BELLINGHAM**, a first-class municipal corporation of the State of Washington (hereinafter the "City"); and _____ (hereinafter the "Contractor"), in recognition of the mutual covenants and consideration contained herein, hereby agree to enter into this Emergency Public Works On-Call Agreement ("Agreement") under the terms and conditions that follow:

I. THE PROJECT: The City has established an emergency contractor on-call list to allow the City to quickly enter into contracts during emergency situations. During these emergency situations, the City will be unable to comply with normal purchasing, bidding, and contracting requirements but will nevertheless have a need to quickly and efficiently contract for emergency public works to protect the public's health, safety, and welfare. Therefore, the objective of this Agreement is for the Contractor to provide such work as further designated herein on an emergency basis until such time as the City can resume its normal purchasing, bidding, and contracting procedures. The Contractor agrees to provide work on the designated project, utilizing the best available materials and labor, and in accordance with bid specifications and contractor's proposal (if any), project plans and technical specifications as provided in a separate Task Order.

II. GENERAL CONDITIONS: The General Conditions of this Agreement are the Standard Specifications for Road, Bridge and Municipal Construction, most current edition, issued by the State of Washington and the APWA, modified as follows:

A. Definitions and Terms

1. Whenever the terms "Washington State Transportation Commission", "State Department of Transportation", or variations of same are used in the Standard Specifications, they shall be construed to mean "City of Bellingham" or "Owner".
2. Where references are made to the "State Treasurer", the term shall be construed to mean the City's "Finance Director".
3. Where the term "Secretary of Transportation" or "District Administrator" are used, the terms shall be construed to mean the duly authorized representative of the City.

B. Project Manager: The term "Engineer" is understood to be the City's Project Manager, who is the City's representative to the Contractor for all purposes under this Agreement. The City designates ___ as its Project Manager. Contractor designates ___ as its Project Manager.

C. Business License: A City Business and Occupation License is required, and Contractor is responsible for payment of the taxes imposed thereunder.

D. Equal Employment Opportunity Responsibilities: The Contractor agrees that it will comply with all State and local non-discrimination laws and regulations in

effect at the time this Agreement is executed. The Contractor shall comply with all Federal non-discrimination laws and regulations if any of this Agreement is financed with Federal funds. This subparagraph replaces section 1-07.11(1) through (10) of the General Conditions.

- E. Taxes: Contractor is responsible for payment of all applicable taxes, including state sales tax on those projects subject to it. Taxes are deemed to be included in the amounts invoiced to the City.
- F. Bonding Requirements: The City requires the following bonds:
 - 1. Bid or Quote bond: 5%, if the work is subject to bid procedures;
 - 2. Contract bond in the form made a part of this Agreement. In lieu thereof for projects of \$25,000 or less, at the Contractor's option, retainage of 50% will be held until releasable under RCW 39.08.010. If Contractor does not submit a contract bond to the City concurrently with the signed contract for projects of \$25,000 or less, Contractor agrees that the City can hold retainage of 50% in the manner selected by Contractor on the attached Retainage Investment Option form.
 - 3. Contract bonds shall be based upon the project amount as identified in the separate Task Order and shall be submitted with the signed Task Order.
- G. Insurance: Contractor agrees to obtain liability insurance naming the City as an additional insured in amounts and in the form acceptable to the City, and to provide a Certificate of Insurance to this effect together with any required endorsement.
- H. Traffic Control: The Contractor shall furnish all flagging and maintain all temporary traffic control signs and devices necessary to control traffic during construction operations at all locations. Traffic control plans and traffic control signs and devices shall conform to the Manual on Uniform Traffic Control Devices as adopted by the State of Washington, and shall be approved in advance by the Traffic Engineer. Unless provided for specifically in this Agreement, no additional compensation will be made for traffic control.
- I. Contractor agrees to perform such emergency services for the City as requested and as designated by separate Task Order. If an emergency situation arises, as determined in the City's discretion, a City representative may contact contractors on the City's on-call emergency public works list to obtain information regarding Contractor's availability and price. Upon notification by the City of the scope of a given project, Contractor shall deliver, in writing or by fax, a signed quote ("Quote") indicating (a) Contractor's availability to perform the work requested, (b) the not-to-exceed price (and basis for same) to perform the work, and (c) the estimated time for performance. If selected to perform the work, a Task Order will be executed by Contractor and the appropriate City Department, which document shall incorporate by reference all applicable provisions of this Agreement.

- J. In the event that funding is withdrawn, reduced or limited in any way due to City budgetary constraints after the parties sign the Task Order, and prior to its normal completion, the City may summarily terminate the Task Order as to the funds withdrawn, reduced or limited notwithstanding any other termination provisions of this Agreement. If the level of funding withdrawn, reduced or limited is so great that the City deems that the continuation of the services covered by the Task Order is no longer in the best interest of the City, the City may summarily terminate the Task Order in whole notwithstanding any other termination provision of this Agreement. Termination under this Section shall be effective upon receipt of written notice thereof. Nothing herein prevents Contractor from being paid sums, duly documented, for work performed prior to termination.

III. PAYMENT:

- A. The maximum payable hereunder shall be designated in the Task Order.
- B. Contractor will be paid on the basis of invoices for work satisfactorily completed. Invoices shall be submitted to the Project Manager for approval prior to payment. No final payment shall be made until the project is accepted by the City. Payments will be made on a periodic basis for work done during the previous billing period. To the extent feasible under the circumstances, a narrative progress report shall accompany each invoice, which report shall discuss any problems or potential causes for delay with the status of the project, amount of work completed, and other relevant information.
- C. Contractor acknowledges that the purpose of this Agreement is for emergency services and, therefore, agrees that payment may not be on a regular basis or in as timely a manner as usual due to the emergency situation. Contractor also agrees not to institute a lawsuit or refuse to continue working hereunder solely based on the City's inability to timely pay an invoice due to the emergency; however, this shall not relieve the City of its legal obligation to pay a proper invoice based upon work satisfactorily completed.
- D. Prior to any payment hereunder, Contractor is responsible for complying with applicable Department of Labor and Industries and Department of Revenue requirements and procedures. (General conditions section 1-07.9. If Federal Funds, Davis-Bacon Act and Department of Labor requirements.) This includes obtaining and timely filing of Intent to Pay Prevailing Wages, Affidavit of Wages Paid, Notice of Completion of Public Works Contract, and any other required documents.
- E. Retainage will be administered in accordance with RCW 60.28.010(1).

IV. SCOPE OF PROJECT, TECHNICAL SPECIFICATIONS AND CONDITIONS OF WORK:

- A. Term of Contract: Notwithstanding the dates of signatures hereto, the term of this

Agreement shall begin when directed by the City in writing and shall continue until the City determines in its sole discretion that the City is capable of using its normal purchasing, bidding, and contracting procedures or until the project identified in the Task Order is completed, or for a period of eight weeks, unless otherwise terminated sooner as provided for in this Agreement. Contractor shall begin work as soon as possible under the circumstances after being notified by the City to proceed.

- B. To the extent not inconsistent with this Agreement, this Agreement includes the Invitation to Bid and Proposal or the quote submitted under section II(I), and contract plans and specifications, all incorporated herein by this reference.
- C. Scope of Project: See Task Order(s), which is/are attached and incorporated herein by this reference.
- D. Contractor acknowledges that work it completes under this Agreement shall not provide it with any right to obtain any follow on work that may required, even if the follow on work is a continuation of work begun by the Contractor under a Task Order issued under this Agreement.

EXECUTED, this _____ day of _____, 2007, for the Contractor:

EXECUTED, this _____ day of _____, 2007, for the **CITY OF BELLINGHAM**:

Departmental Approval:

Department Head

Mayor

Attest:

Approved as to Form:

Finance Director

Office of the City Attorney

CONTRACT BOND
to the
CITY OF BELLINGHAM

KNOW ALL MEN BY THESE PRESENTS:

That we, the undersigned _____

as principal, and _____, a
corporation organized and existing under the laws of the State of _____,
as a surety corporation, and qualified under the laws of the State of Washington to become
surety upon bonds of contractors with municipal corporations, as surety, are jointly and
severally held and firmly bound to the CITY OF BELLINGHAM in the penal sum of \$ _____
for the payment of which sum on demand we bind ourselves and our successors, heirs,
administrators or personal representatives, as the case may be.

This obligation is entered into in pursuance of the statutes of the State of Washington, and
the Ordinances of the CITY OF BELLINGHAM.

DATED at _____, Washington, this ___ day of _____, 2007.

Nevertheless, the conditions of the above obligation are such that:

WHEREAS, under and pursuant to Bid Award of the Bellingham City Council, the Mayor of
said City has let or is about to let to the said bounded Principal, a certain contract, for the
said (which contract is referred to herein and is made a part hereof as though attached
hereto), and

NOW, THEREFORE, if the said Principal shall faithfully perform all of the provisions of said
contract in the manner and within the time therein set forth, or within such extension of time
as may be granted under said contract (notice of which extension being hereby waived by
the Surety), and shall pay all laborers, mechanics, subcontractors and materialmen, and all
persons who shall supply said principal or subcontractors with provisions and supplies for the

carrying on of said work, and shall hold said City harmless from any loss or damage occasioned to any person or property by reason of any carelessness or negligence of the said principal, or any subcontractor in the performance of said work, and shall indemnify and hold the City harmless from any direct or indirect damage or expense by reason or failure of performance as specified in said contract or from defects appearing or developing in the material or workmanship provided or performed under said contract, then and in that event this obligation shall be void; but otherwise it shall be and remain in full force and effect.

For the Surety:

Principal

Title

Name

Title

Address

Mayor

Department Head

Attest:

Approved as to Form:

Finance Director

Office of the City Attorney

RETAINAGE INVESTMENT OPTION

Contractor: _____ Project Name: _____

Date: _____ Project Number: _____

Pursuant to RCW 60.28.010, as amended, you may exercise an option as to how retainage under this contract will be invested. Please complete and sign this form indicating your preference. If you fail to do so, the City will deposit the funds in a Guarantee Deposit account, and you will miss the benefit of any interest earned. Select one of the following options:

- 1. **Savings Account:** Money will be placed in an interest-bearing account. The interest will be paid to you directly, rather than kept on deposit. Please state the name of your bank. _____
- 2. **Escrow/Investments:** The City will deliver retainage checks to a selected bank, pursuant to an escrow agreement. The bank will then invest the funds in securities or bonds selected by you, and interest will be paid to you as it accrues.
Preferred bank: _____
Securities/bonds: _____
- 3. **Guarantee Deposit:** Retainage will be deposited in a manner selected by the City. No interest is payable to the Contractor.

Retainage is normally released 45 days after final acceptance of the work, or following receipt of Labor and Industries/Department of Revenue clearance, whichever date is the later. Retainage on landscaping work may be retained longer, due to its seasonal nature.

State law allows for limited early release of retainage in certain circumstances.

Contractor's Signature

Title

ESCROW AGREEMENT

TO BANK: _____ ESCROW NO.: _____

BANK'S ADDRESS: _____

AGENCY: CITY OF BELLINGHAM
210 Lottie Street, Bellingham, Washington, 98225

CONTRACT NO.: _____

PROJECT TITLE:

The estimated completion date of contract is: _____

The undersigned, _____, herein referred to as the CONTRACTOR, has directed the CITY OF BELLINGHAM, Washington, hereinafter referred to as the AGENCY, to deliver to you its warrants which shall be payable to you and the CONTRACTOR jointly. Such warrants are to be held and disposed of by you in accordance with the following instructions and upon the terms and conditions hereinafter set forth.

INSTRUCTIONS

1. Warrants or checks made payable to you and the CONTRACTOR jointly upon delivery to you shall be endorsed by you and forwarded for collection. The moneys will then be used by you to purchase, as directed by the CONTRACTOR, bonds or other securities chosen by the CONTRACTOR and approved by the AGENCY. Attached is a list of such bonds, or other securities approved by the AGENCY. Other bonds or securities, except stocks may be selected by the CONTRACTOR, subject to express written approval of the AGENCY. Purchase of such bonds or other securities shall be in a form which shall allow you alone to reconvert such bonds or other securities into money if you are required to do so by the AGENCY as provided in Paragraph 4 of this Escrow Agreement.
2. When and as interest on the securities held by you pursuant to this agreement accrues and is paid, you shall collect such interest and forward it to the CONTRACTOR at its address designated below unless otherwise directed by the CONTRACTOR.
3. You are not authorized to deliver to the CONTRACTOR all or any part of the securities held by you pursuant to this agreement (or any moneys derived from the sale of such securities, or the negotiation of the AGENCY'S warrants) except in accordance with written instructions from the AGENCY. Compliance with such instructions shall relieve you of any further liability related thereto.
4. In the event the AGENCY orders you to do so in writing, you shall, within thirty-five (35) days of receipt of such order, reconvert into money the securities held by you

pursuant to this agreement and return such money together with any other moneys held by you hereunder, to the AGENCY.

5. The CONTRACTOR agrees to pay you as compensation for your services hereunder as follows:

Payment of all fees shall be the sole responsibility of the CONTRACTOR and shall not be deducted from any property placed with you pursuant to this agreement until and unless the AGENCY directs the release to the CONTRACTOR of the securities and moneys held hereunder whereupon you shall be granted a first lien upon such property released and shall be entitled to reimburse yourself from such property for the entire amount of your fees as provided for herein above. In the event that you are made a party to any litigation with respect to the property held by you hereunder, or in the event that the conditions of this escrow are not promptly fulfilled or that you are required to render any service not provided for in these instructions, or that there is any assignment of the interests of this escrow or any modification hereof, you shall be entitled to reasonable compensation for such extraordinary services from the CONTRACTOR and reimbursement from the CONTRACTOR for all costs and expenses, including attorney fees occasioned by such default, delay, controversy or litigation.

6. This agreement shall not be binding until executed by the CONTRACTOR and the AGENCY and accepted by you.

7. This instrument contains the entire agreement between you, the CONTRACTOR and the AGENCY with respect to this escrow and you are not a party to nor bound by any instrument or agreement other than this; you shall not be required to take notice of any default or any other matter nor be bound by nor required to give notice or demand, nor required to take any action whatever except as herein expressly provided; you shall not be liable for any loss or damage not caused by your own negligence or willful misconduct.

The foregoing provisions shall be binding upon the assigns, successors, personal representatives and heir of the parties hereto.

Contractor

By:

Title

Address:

Date

CITY OF BELLINGHAM

Agency

By:

Finance Director

Date

The above escrow agreement and instructions received and accepted this _____ day of _____, 2007.

Bank Name

Authorized Officer

SECURITIES AUTHORIZED BY AGENCY

1. Bills, certificates, notes or bonds of the United States;
2. Other obligations of the United States or its agencies;
3. Obligations of any corporation wholly-owned by the government of the United States;
4. Indebtedness of the Federal Nation Mortgage Association; and
5. Time deposits in commercial banks.

SAVINGS ACCOUNT AGREEMENT

TO BANK: _____ SAVINGS ACCOUNT NO.: _____

BANK'S ADDRESS: _____

AGENCY: CITY OF BELLINGHAM
210 Lottie Street, Bellingham, Washington, 98225

CONTRACT NO.: _____

PROJECT TITLE:

The estimated completion date of contract is: _____

The undersigned, _____, herein referred to as the CONTRACTOR, has directed the CITY OF BELLINGHAM, Washington, hereinafter referred to as the AGENCY, to deliver to you its warrants which shall be payable to you and the CONTRACTOR jointly. Such warrants are to be held and disposed of by you in accordance with the following instructions and upon the terms and conditions hereinafter set forth.

INSTRUCTIONS

1. Warrants or checks made payable to you and the CONTRACTOR jointly upon delivery to you shall be endorsed by you and forwarded for collection. The moneys will then be placed by you in an interest-bearing savings account.
2. When and as interest on the savings account accrues and is paid, you shall collect such interest and forward it to the CONTRACTOR at its address designated below unless otherwise directed by the CONTRACTOR.
3. You are not authorized to deliver to the CONTRACTOR all or any part of the principal held by you pursuant to this agreement, except in accordance with written instructions from the AGENCY. Compliance with such instructions shall relieve you of any further liability related thereto.
4. The CONTRACTOR agrees to pay you as compensation for your services hereunder as follows:

Payment of all fees shall be the sole responsibility of the CONTRACTOR and shall not be deducted from any moneys placed with you pursuant to this agreement until and unless the AGENCY directs the release to the CONTRACTOR, whereupon you shall be granted a first lien upon such moneys released and shall be entitled to reimburse yourself from such moneys for the entire amount of your fees as provided for herein above. In the event that you are made a party to any litigation with respect to the moneys held by you hereunder, or in the event that the conditions of this agreement are not promptly fulfilled, or that you are required to render any

service not provided for in these instructions, or that there is any assignment of the interests of this agreement, or any modification hereof, you shall be entitled to reasonable compensation for such extraordinary services for the CONTRACTOR and reimbursement from the CONTRACTOR for all costs and expenses, including attorney fees occasioned by such default, delay, controversy or litigation.

5. This agreement shall not be binding until executed by the CONTRACTOR and the AGENCY and accepted by you.
6. This instrument contains the entire agreement between you, the CONTRACTOR and the AGENCY. You are not a party to nor bound by any instrument or agreement other than this. You shall not be required to take notice of any default or any other matter nor be bound by nor required to give notice or demand, nor required to take any action whatever except as herein expressly provided. You shall not be liable for any loss or damage not caused by your own negligence or willful misconduct.
7. The foregoing provisions shall be binding upon the assigns, successors, personal representatives and heir of the parties hereto.

_____	CITY OF BELLINGHAM
<i>Contractor</i>	<i>Agency</i>
By: _____	By: _____
_____	<i>Finance Director</i>
<i>Title</i>	_____
Address: _____	<i>Date</i>

<i>Date</i>	

The above savings account agreement and instructions received and accepted this _____ day of _____, 2007.

Bank Name

Authorized Officer