GENERAL TERMS AND CONDITIONS

1. DEFINITIONS

A. District

"*District*" shall mean Public Utility District No. 1 of Okanogan County, a municipal Corporation of the State of Washington.

B. Contractor

"*Contractor*" shall mean the person, firm, partnership or corporation who has executed this Agreement.

C. Subcontractor

A person, firm, partnership or corporation having a contract with *Contractor* or with a Subcontractor to any tier of *Contractor* for the performance of any part of the work.

2. AGREEMENT

This Agreement represents and incorporates the entire understanding of the parties hereto concerning the statement of work, and each party acknowledges that there are no warranties, representations, covenants or understandings of any kind, manner or description whatsoever by either party to the other except as expressly set forth and herein above written.

3. INDEPENDENT CONTRACTOR

In performing services under this Agreement, *Contractor* shall operate as, and have the status of, an independent Contractor and shall not act as or be an agent or employee of the *District*. For this reason, all of the *Contractor's* activities will be at its own risk.

4. PROFESSIONAL CONDUCT

Contractor agrees to perform its consulting services with that standard of care, skill and diligence normally provided by a professional person in the performance of such consulting services in respect to work similar to that hereunder. *Contractor* is hereby given notice that the *District* will be relying on the accuracy, competence and completeness of *Contractor's* services hereunder in utilizing the results of such services.

5. INDEMNIFICATION

Contractor shall protect, hold free and harmless, defend and pay on behalf of the *District* (including its managers, commissioners and employees) all liability, penalties, costs, losses, damages, expenses, causes of action, claims or judgments (including attorney's fees) resulting from injury or death, sustained by any person (including *Contractor's* employees), or damage to property of any kind, which injury, death or damage is to the extent caused by *Contractor's* negligent performance of this contract. *Contractor's* hold harmless agreement shall apply to any negligent act or omission, or willful misconduct, whether passive or active, on the part of *Contractor* (its agents or employees); except that this Agreement shall not be applicable to injury, death, or damage to property or persons arising from the negligence or the willful misconduct of Public Utility District No. 1 of Okanogan County, it's managers, commissioners and employees.

6. INSURANCE

General Liability and Automobile Liability Insurance carried by the *Contractor* shall be primary insurance irrespective of any coverages carried by the *District*. The *Contractor* shall have, and maintain throughout the Contract period, insurance and benefits in the following minimum requirements:

(a) Worker's Compensation Insurance, Social Security, Federal Income Tax deductions, and any other taxes or payroll deductions required by law for, or on behalf of, its employees.

(b) Employer's Liability, Professional Liability, Commercial General Liability (bodily injury and property damage) and Comprehensive Automobile Liability (bodily injury and property damage) insurance, with each policy having maximum limits of not less than $1,000,000. Contractor shall provide

an endorsement on the Commercial General Liability and Property Damage policy naming the District as additional insured and add a separation of insured clause or a cross liability endorsement.

Contractor shall deliver to the *District*, no later than ten (10) days after award of the Agreement, but in any event prior to execution of the Agreement by the *District* and prior to commencing work, Certificates of Insurance, identified on their face as the Agreement number to which applicable, as evidence that policies providing such coverage and limits of insurance are in full force and effect, which Certificates shall provide that not less than thirty (30) days' notice will be given in writing to the *District* prior to cancellation, termination or alteration of said policies of insurance. Such advance notice of cancellation, termination or alteration of said policies shall be delivered to the *District*.

District and *Contractor* waive all rights against each other and their officers, directors, agents and employees for damage covered by property insurance during and after the completion of *Contractor's* services. To the extent possible, if the services result in a construction phase, a provision similar to this shall be incorporated into all construction phase contracts entered into by *District*, and all construction Contractors shall be required to provide waivers of subrogation in favor of *District* and *Contractor* for damage or liability covered by any construction Contractor's policy of insurance.

7. DISCOVERY OF CONFLICTS, ERRORS, OMISSIONS OR DISCREPANCIES

In case of conflict or discrepancies, errors, or omissions among various parts of the Agreement, the matter shall be submitted immediately by *Contractor* to the *District* for clarification. Any work affected by such conflicts, discrepancies, errors or omissions that is performed by *Contractor* prior to clarification by the *District* shall be at *Contractor's* risk.

8. ROYALTIES, PATENTS AND LICENSES

The *District* shall have a permanent, assignable, non-exclusive royalty-free license to use any concept, product or process, patentable or otherwise, furnished or supplied to the *District* by *Contractor*, or otherwise conceived and/or developed by *Contractor* in the performance of this Agreement. If requested by the *District*, *Contractor* agrees to do all things necessary, at the *District's* sole cost and expense, to obtain patents or copyrights of any processes, products or writings conceived and/or developed or produced by *Contractor* in the performance of this Agreement, to the extent that the same may be patented or copyrighted, and further agrees to execute such documents as may be necessary to implement and carry out the provisions of this paragraph. All materials prepared or developed by *Contractor* hereunder, including documents, calculations, maps, sketches, notes, reports, data, models and samples, shall become the property of the *District* when prepared, whether delivered to the *District* or not, and shall, together with any materials furnished *Contractor* by the *District* hereunder, be delivered to the *District* upon request and, in any event, upon termination of this Agreement. *Contractor* shall not be liable for use by the *District* of any of the above-mentioned material that was prepared by *Contractor* on projects other than that specifically covered by this Agreement.

9. NONDISCLOSURE

Contractor agrees that he will not divulge to third parties, without the written consent of the *District*, any information which relates to the technical or business activities of the *District* obtained from or through the *District* in connection with the performance of this Agreement unless: (i) the information is known to *Contractor* prior to obtaining the same from the *District*, (ii) the information is, at the time of disclosure by *Contractor*, then in the public domain; or (iii) the information is obtained by *Contractor* from a third party who did not receive the same, directly or indirectly, from the *District* and who has no obligation of nondisclosure with respect thereto; or (iv) *Contractor* is required to disclose information pursuant to any law, subpoena, court order or government directive. *Contractor* further agrees that he will not, without the prior written consent of the *District*, disclose to any third party any information developed or obtained by *Contractor* in the performance of this Agreement except to the extent that such information falls within one of the categories described in (i), (ii), (iii) or (iv) above.

If so requested by the *District*, *Contractor* further agrees to require its employees to execute a Nondisclosure Agreement prior to performing any services under this Agreement.

10. SUBCONTRACTS

Any contract entered into by *Contractor* with any subcontractor or any person or organization for the performance of this Agreement, or any portion thereof, without prior written consent of *District* shall be void. Consent will not be given to any proposed contract, as mentioned above, which would relieve *Contractor* or its surety of their responsibilities under this Agreement.

11. COMPLIANCE WITH LAWS

This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. The venue of any action involving the Contractor and the District shall be exclusively in a court of competent jurisdiction of the State of Washington, County of Okanogan.

Contractor shall promptly give all notices and comply strictly with all laws, codes, ordinances, rules, orders and regulations applicable to the work. *Contractor* shall hold the *District* harmless as a result of any infractions thereof by it or any of its Subcontractors.

Without limitation on the foregoing, the *Contractor* shall comply with (i) the Washington Industrial Safety and Health Act (WISHA); (ii) if required, Executive Order No. 11246, dated September 24, 1965, as amended by Executive Order No. 11375, including posting of notices, filing of reports, and initiation of programs; and, if required, the *Contractor* also will contract with all of its vendors, subcontractors, and/or agents to comply with the foregoing Executive Orders.

The *Contractor* agrees that 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 industrial statistician of the Department of Labor and Industries. The *Contractor* shall provide a Statement of Intent to Pay Prevailing Wage.

12. TERMINATION

The *District* may, by written notice to the *Contractor*, terminate this Agreement in whole or in part any time, either for the *District's* convenience or for the default of *Contractor*. Upon such termination, all data, drawings, specifications, reports, estimates, summaries, and such other information and materials as may have been accumulated by the *Contractor* in the exclusive performance of this Agreement shall, in the manner and to the extent determined by the *District*, become the property of and be delivered to the *District*. Such materials are not intended or represented to be suitable for reuse by the *District* or others for the completion of the project covered by this Agreement by others, on extensions of this project or on any other project, without written verification or adaptations by *Contractor*. Any reuse other than for the specific purpose intended will be at the *District's* sole risk and without liability or legal exposure to *Contractor*.

If the termination is for the convenience of the *District*, an equitable adjustment in the agreement price shall be made by agreement between *Contractor* and *District* in the compensation to be paid *Contractor* under this Agreement, including reasonable termination expenses, but no amount shall be allowed for anticipated profit or unperformed services.

If, after notice of termination for failure to fulfill Agreement obligation, it is determined that the *Contractor* had not so failed, the termination shall be deemed to have been effected for the convenience of the *District*. In such event, adjustment in the Agreement price shall be made as provided in the paragraph above.

The rights and remedies of the *District* provided in this Article are in addition to any other rights and remedies provided by law or under this Agreement.

13. CHANGES

The *District* may at any time, by written order, make changes within the Statement of Work of the Agreement in the services to be performed. If such changes cause an increase or decrease in the cost of or time required

for performance of any services under this Agreement, an equitable adjustment shall be made and the Agreement shall be modified in writing accordingly. Any claim for adjustment under this Article must be asserted in writing within thirty (30) days from the date of receipt by the *Contractor* of the notification of change, unless the *District* grants a further period of time before the date of final payment under the Agreement.

No services for which an additional cost or fee will be charged by the *Contractor* shall be furnished without the prior written authorization of the *District*.

14. PROGRESS REVIEW

The services performed under this Agreement shall be subject to review by the *District*. This periodic review shall not relieve the *Contractor* of responsibility for proper performance of the services.

15. AUDITS

The *Contractor* shall, during the life of this contract and for a period of three (3) years following the final settlement and close out of the contract, retain sufficient evidence, which shall be freely disclosed to the *District* and its agents to permit verification of proper performance of entitlement to payments for work under this contract.

16. REPORTS AND RECORDS

The *Contractor* shall provide reports submitted in the manner directed by the *District*. The *Contractor* shall maintain on file and have available to the *District* its calculations in legible form for a period of three (3) years following termination of this Agreement. Said files shall also include drawings, specifications, reports and any other documents prepared by the *Contractor* in connection with any or all of the services furnished hereunder, which items shall be the property of the *District* subject to stipulations of paragraph 8 of this agreement.

17. INVOICES

Contractor shall invoice in duplicate referencing this Agreement number and the Work Release Order Number, if any. Invoices shall be itemized and supported by proper documentation. Invoices are to be mailed in duplicate directly to:

<u>Att'n: Roy Schwilke</u>
Okanogan County PUD No. 1
P.O. Box 912
Okanogan, WA 98840

18. NOTICES

Any notice required to be given under this Agreement shall be given by depositing in the U.S. Mail, with registered postage prepaid, to the address of the *District* or *Contractor* respectively, as set forth herein, and shall be effective on the date of mailing as shown by the postmark or shall be given in writing served on an officer of the *Contractor* or on the Technical Representative of the *District*.

19. TITLE

The *District* shall retain title to all *District* furnished property. All *District* property and all property acquired by the *Contractor* or its subcontractors are subject to the provisions of this clause. If this contract contains a provision directing the *Contractor* or its subcontractor to purchase material or equipment for which the *District* will reimburse the *Contractor* or its subcontractors as a direct item of cost under this contract –

(i) Title to material and equipment purchased from a vendor shall pass to and vest in the *District* upon random delivery of such material and equipment, and
(ii) Title to all other material and equipment shall pass to and vest in the *District* upon –
  (a) Issuance of the material and equipment for use in contract performance; or

(b) Commencement of proceedings of the material and equipment or its use in contract performance; or
(c) Reimbursement of the cost of the material and equipment by the *District*, whichever occurs first.

20. ASSIGNMENT OF RIGHTS

The rights of each party under this Agreement are personal to that party and may not be assigned or transferred to any other person, firm, corporation, or other entity without the prior, express, and written consent of the other party.

21. ATTORNEY'S FEES

In the event that any action is filed in relation to this Agreement, the unsuccessful party in the action shall pay to the successful party, in addition to all sums that either party may be called on to pay, a reasonable sum for the successful party's attorney's fees.

22. DISPUTE RESOLUTION

Applicable Law and Dispute Resolution. This Agreement shall be construed and enforced pursuant to the laws of the State of Washington. Any dispute, controversy, breach or other type of claim (collectively referred to as "dispute") arising out of or relating to this Agreement shall be resolved in the following manner.

a. Within seven (7) days after either party determines that an unresolved dispute exists, the party seeking relief shall serve the other party with a written notice specifying the nature of the dispute in detail.

b. Within seven (7) days after receipt of notice of dispute, the parties shall meet and confer in a good faith attempt to resolve the dispute. Participants in the meeting must have the authority to enter into binding resolution on behalf of each party. If an agreement is reached, the parties shall document the resolution of the dispute in writing.

c. If no agreement is reached, either party may request facilitated mediation. A written request for mediation shall be served on the other party within seven (7) days of the meet and confer session. The parties shall within thirty (30) days of receipt of request for mediation agree on a qualified, neutral mediator. In the event a mediator is selected by the parties, the costs shall be born equally between the parties. Each party shall bear its own costs and attorney's fees of the mediation process. The mediation shall conclude within thirty (30) days of the submittal to the mediator.

d. In the event the above methods fail to resolve the dispute, either party may bring legal action for dispute settlement against the other party of which the venue will be in a court of competent jurisdiction in Okanogan County, Washington.