

Section 00 05 00 AGREEMENT

WRF PHASE 3 IMPROVEMENTS

THIS AGREEMENT is made on this _____, 2023 between the City of Snoqualmie ("City"), a municipal corporation located in the State of Washington and **Prospect Construction, Inc.**, ("Contractor").

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

1. The Contractor shall do all of the work and furnish all of the labor, materials, tools and equipment for the construction of the improvements and shall perform any changes in the work (the "Work"), all in full compliance with the Contract Documents, which include the following documents entitled: "Water Reclamation Facility Phase 3 Improvements: Bid Proposal, Contract Documents and Specifications, Vol. I of II", and including Appendices A-D to Vol. I, this Agreement (Section 00 05 00), Contractor's executed Bid Schedule (Section 00 03 00), executed Performance and Payment Bond (Section 00 04 20), executed Retainage Forms (Section 00 05 10), Technical Provisions, including those portions of the Washington State Department of Transportation (WSDOT) *Standard Specifications for Road, Bridge and Municipal Construction*, 2023 edition specifically referenced therein, and the documents entitled "Water Reclamation Facility Phase 3 Improvements: Plans, Vol. II of II". All of the foregoing are collectively incorporated by this reference and made a part of the Contract Documents.
2. The City hereby promises and agrees with the Contractor to employ, and does employ the Contractor to furnish the labor, materials, tools and equipment, and to do and cause to be done the above-described Work, and to complete and finish the same in accordance with the said contract documents and the terms and conditions herein contained, and hereby contracts to pay for the same, according to the said documents, including the schedule of estimated quantities, and unit and lump sum prices in the Form of Bid, the sum of \$ **\$11,079,950**, subject to the actual quantity of Work performed, at the time and in the manner and upon the conditions provided for in this contract.
3. The Contractor hereby promises and agrees to diligently prosecute and obtain the following Contract Milestones for completion of the project (the "Contract Time") accounting for all requirements and restrictions within Technical Division 1.70 Execution and Closeout Requirements.
 - (a) Substantial Completion shall be met within 460 working days from the date of issuance of the Notice to Proceed.
 - (i) Substantial Completion of Construction Milestone A, as identified within Technical Division 1.72 Scheduling and Sequencing, shall be met within 235 working days from the date of issuance of the Notice to Proceed.
 - (ii) Any project work associated with Construction Milestone B, as identified within Technical Division 1.72 Scheduling and Sequencing, must not occur until Substantial Completion of Construction Milestone A has been issued by the City. The City will issue a Notice to Proceed to begin the Construction Milestone B project work. Substantial Completion of Construction Milestone B, as identified within Technical Division 1.72 Scheduling and Sequencing, shall be met within 80 working days from the date of issuance of the Construction Milestone B Notice to Proceed.

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- (iii) Upon the Substantial Completion of Construction Milestone B, as identified within Technical Division 1.72 Scheduling and Sequencing, any project work associated with the oxidation ditches shall be paused in order for the City to start up the biological processes for the first converted basin. This pause of oxidation ditch work shall have a maximum duration of 40 working days to allow the City to adjust the treatment processes and ensure the converted activated sludge basin is fully functional. The details for startup are identified within Technical Division 1.72 Scheduling and Sequencing.
 - (iv) Any project work associated with Construction Milestone C, as identified within Technical Division 1.72 Scheduling and Sequencing, must not occur until Substantial Completion of Construction Milestone B has been issued by the City. The City will issue a Notice to Proceed to begin the Construction Milestone C project work. Substantial Completion of Construction Milestone C, as identified within Technical Division 1.72 Scheduling and Sequencing, shall be met within 80 working days from the date of issuance of the Construction Milestone C Notice to Proceed.
 - (b) Physical Completion and Final Acceptance of all project work shall be completed within 40 working days of the Substantial Completion date.
 - (c) The Contractor agrees that Liquidated Damages shall be assessed in the amount of \$5,000 (excluding WA state sales tax) per calendar day following any milestone date for any failure to complete the Work within the Contract Time, for any failure to meet a Construction Milestone, and for any failure to achieve Physical Completion and Final Acceptance within the time and as required in the Contract Documents.
4. The Contractor for himself, and for his agents, successors, assigns, subcontractors and/or employees, does hereby agree to the full performance of all the covenants herein contained upon the part of the Contractor.
 5. The City hereby appoints and the Contractor hereby accepts the Parks & Public Works Director, as the City's representative for the purpose of administering the provisions of this Contract, including the City's right to receive and act on all reports and documents related to this Contract, to request and receive additional information from the Contractor.
 6. This Contract contains terms and conditions agreed upon by the parties. The parties agree that there are no other understandings, oral or otherwise, regarding the subject matter of this Contract.
 7. The Contractor agrees to comply with all applicable Federal, State, City or municipal standards for the licensing, certification, operation of facilities and programs, and accreditation and licensing of individuals.
 8. The Contractor shall not assign or subcontract any portion of the work provided for under the terms of this Contract without obtaining prior written approval of the City. All terms and conditions of this Contract shall apply to any approved subcontract or assignment related to this Contract.
 9. The parties intend that an independent Contractor-City relationship will be created by this Contract. The City is interested only in the results to be achieved, and the implementation of the work will lie solely with the Contractor. No agent, employee, servant, or representative of the Contractor shall be deemed to be an employee, agent, servant, or representative of the City for any purpose. Employees of the Contractor are not entitled to any of the benefits the City provides for City employees. The Contractor will be solely and entirely responsible for its acts

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and for the acts of its agents, employees, servants, subcontractors, or otherwise during the performance of this Contract. In the performance of the work herein contemplated, the Contractor is an independent Contractor with regard to the performance of the details of the work; however, the components of and the results of the work contemplated herein must meet the approval of the City and shall be subject to the general rights of inspection and review to secure the satisfactory completion thereof.

10. The Contractor agrees and covenants to indemnify, defend, and save harmless, the City and those persons who were, now are, or shall be duly elected or appointed officials or employees thereof, hereinafter referred to as the "City" against and from any loss, damage, costs, charge, expense, liability, claims, demands or judgments, of whatsoever kind or nature, whether to persons or to property, arising wholly or partially out of any act, action, neglect, omission, or default on the part of the Contractor, his agents, successors, assignees, subcontractors and/or employees, except only such injury or damage as shall have been caused by or resulted from the sole negligence of the City. In case any suit or cause of action shall be brought against the City on account of any act, action, neglect, omission, or default on the part of the Contractor, his agents, successors, assignees, subcontractors and/or employees the Contractor hereby agrees and covenants to assume the defense thereof and to pay any and all costs, charges, attorney's fees and other expenses and any and all judgments that may be incurred or obtained against the City. In the event the City is required to institute legal action and/or participate in the legal action to enforce this Indemnification and Hold Harmless Clause, the Contractor agrees to pay the City's legal fees, costs and disbursements incurred in establishing the right to indemnification. If the claim, suit, or action for injuries, death, or damages as provided for in the preceding paragraphs of this specification is caused by or results from the concurrent negligence of (a) the indemnitee or the indemnitee's agents or employees and (b) the indemnitor or the indemnitor's agents for employees the indemnity provisions provided for in the preceding paragraphs of this specification shall be valid and enforceable only to the extent of the indemnitor's negligence. The Contractor expressly waives, as respects the City only, all immunity and limitation on liability under any Industrial Insurance Act, including Title 51 RCW, or other workers compensation act, disability act, or other employees benefits of any act of any jurisdiction which would otherwise be applicable in the case of such a claim. BY INITIALING BELOW THE OWNER AND CONTRACTOR CERTIFY THE WAIVER OF IMMUNITY SPECIFIED BY THIS PROVISION WAS MUTUALLY NEGOTIATED.
11. This Contract has been and shall be construed as having been made and delivered within the State of Washington, and it is mutually understood and agreed by each party hereto that this Contract shall be governed by the laws of the State of Washington, both as to interpretation and performance. Any action in law, suit and equity or judicial proceedings for the enforcement of this contract or any provisions thereof, shall be instituted and maintained in the courts of competent jurisdiction located in King County, Washington.
12. The failure of the City to insist upon strict performance of any of the covenants and agreements of this Contract or to exercise any option herein conferred in any one or more instances shall not be construed to be a waiver or relinquishment of any such obligation, or any other covenants or agreements, but the same shall be and remain in full force and effect.
13. It is understood and agreed by the parties hereto that if any part of this agreement is determined to be illegal, the validity of the remaining portions shall be construed as if the agreement did not contain the particular illegal part.
14. No change or addition to this Contract shall be valid or binding upon either party unless such change or addition shall be in writing, executed by both parties.

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15. The Contractor shall fully comply with all applicable state and federal employment and discrimination laws and regulations. IN WITNESS WHEREOF, the Contractor has executed this instrument, on the day and year first below written and the Mayor has caused this instrument to be executed by and in the name of the said City, the day and year first above written.

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CITY OF SNOQUALMIE ("CITY")

PROSPECT CONSTRUCTION, INC.[CONTRACTOR]

By _____

By _____

Typed Name: Katherine Ross_____

Typed Name _____

Its: Mayor_____

Its _____

Phone: _____

Phone: _____

Fax: _____

Fax: _____

Date: _____

Date: _____

WA Contractor's License No. _____