
**PUBLIC WORKS
CONTRACT**

This Contract is made and entered into in duplicate this **8th day of September, 2016** by and between the **City of Stanwood**, a non-charter code city of the State of Washington, hereinafter referred to as "the City", and **Taylor's Excavators, Inc.**, a Washington corporation, hereinafter referred to as ("the Contractor").

WITNESSETH:

Whereas, the City desires to have certain public work performed as hereinafter set forth, requiring specialized skills and other supportive capabilities; and

Whereas, the Contractor represents that it is qualified and possesses sufficient skills and the necessary capabilities to perform the services set forth in this Contract.

NOW, THEREFORE, in consideration of the terms, conditions, and agreements contained herein, the parties hereto agree as follows:

1. Scope of Work.

The Contractor shall do all work and furnish all tools, materials, and equipment in order to accomplish the following project:

270th Street Improvements (94th – 97th), Project STA 410.082.01.101

in accordance with and as described in

- A. this Contract, and
- B. the Project Manual, which include the attached plans, Specifications, Special Provisions, submittal requirements, attachments, addenda (if any), Bid Form, Performance and Payment Bond, and
- C. the Standard Specifications for Road, Bridge, and Municipal Construction prepared by the Washington State Department of Transportation, as may be specifically modified in the attached Specifications and/or Special Provisions, hereinafter referred to as "the standard specifications",
- D. City of Stanwood Public Works Standards and Standard Specifications (referenced but not attached)
- E. Other _____
- F. Addenda No. 1 – Subcontractor List

and shall perform any alterations in or additions to the work provided under this Contract and every part thereof.

The Contractor shall provide and bear the expense of all equipment, work, and labor of any sort whatsoever that may be required for the transfer of materials and for constructing and completing the work provided for in this Contract, except as may otherwise be provided in the Project Manual.

2. Time for Performance and Liquidated Damages / Termination of Contract.

- A. Time is of the essence in the performance of this Contract and in adhering to the time frames specified herein. The Contractor shall commence work within ten (10) calendar days after notice to proceed from the City, and said work shall be physically completed within **50 working days** after said notice to proceed, unless a different time frame is expressly provided in writing by the City.
- B. If said work is not completed within the time for physical completion, the Contractor may be required at the City's sole discretion to pay to the City liquidated damages as set forth in the Project Manual, for each and every day said work remains uncompleted after the expiration of the specified time.
- C. Termination of Contract.
 - 1. Except as otherwise provided under this Contract, either party may terminate this Contract upon ten (10) working days' written notice to the other party in the event that said other party is in default and fails to cure such default within that ten-day period, or such longer period as provided by the non-defaulting party. The notice of termination shall state the reasons therefore and the effective date of the termination.
 - 2. The City may also terminate this Contract in accordance with the provisions of Section 1-08.10 of the Standard Specifications.

3. Compensation and Method of Payment.

- A. The City shall pay the Contractor for work performed under this Contract as detailed in the bid, as incorporated in the Project Manual.
- B. Payments for work provided hereunder shall be made following the performance of such work, unless otherwise permitted by law and approved in writing by the City. No payment shall be made for any work rendered by the Contractor except as identified and set forth in this Contract.

- C. Progress payments shall be based on the timely submittal by the Contractor of the City's standard payment request form.
- D. Payments for any alterations in or additions to the work provided under this Contract shall be in accordance with the Request For Information (RFI) and/or Construction Change Order (CCO) process as set forth in the Project Manual. Following approval of the RFI and/or CCO, the Contractor shall submit the standard payment request form(s).
- E. The Contractor shall submit payment requests with a completed Application for Payment form, an example of which is included in the Attachments to this Contract. This form includes a lien waiver certification and shall be notarized before submission. Applications for payment not signed or notarized shall be considered incomplete and ineligible for payment consideration. The City shall initiate authorization for payment after receipt of a satisfactorily completed payment request form and shall make payment to the Contractor within approximately thirty (30) days thereafter.

4. Independent Contractor Relationship.

The relationship created by this Contract is that of independent contracting entities. No agent, employee, servant, or representative of the Contractor shall be deemed to be an employee, agent, servant, or representative of the City, and the employees of the Contractor are not entitled to any of the benefits the City provides for its employees. The Contractor shall be solely and entirely responsible for its acts and the acts of its agents, employees, servants, subcontractors, or representatives during the performance of this Contract. The Contractor shall assume full responsibility for payment of all wages and salaries and all federal, state, and local taxes or contributions imposed or required, including, but not limited to, unemployment insurance, workers compensation insurance, social security, and income tax withholding.

5. Prevailing Wage Requirements.

The Contractor shall comply with applicable prevailing wage requirements of the Washington State Department of Labor & Industries, as set forth in Chapter 39.12 RCW and Chapter 296-127 WAC. The Contractor shall document compliance with said requirements and shall file with the City appropriate affidavits, certificates, and/or statements of compliance with the State prevailing wage requirements. The Washington State Prevailing Wage Rates For Public Works Contracts, Snohomish County, incorporated in this Contract have been established by the Department of Labor & Industries and are included as an Attachment to this Contract. The Contractor shall also ensure that any subcontractors or agents of the Contractor shall comply with the prevailing wage and documentation requirements as set forth herein.

6. Indemnification and Hold Harmless.

-
- A. The Contractor shall defend, indemnify, and hold harmless the City, its officers, officials, employees, and volunteers against and from any and all claims, injuries, damages, losses, or suits, including attorney fees, arising out of or in connection with the performance of this Contract, except for injuries and damages caused by the sole negligence of the City.
- B. The Contractor's duty to indemnify the City shall not apply to liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the sole negligence of the City or its elected officials, agents, officers and/or employees.
- C. The Contractor's duty to indemnify the City for liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the concurrent negligence of (a) the City and/or its elected officials, agents, officers and/or employees, and (b) the Contractor and/or its directors, officers, agents, employees, consultants, and/or subcontractors, shall apply only to the extent of negligence of Contractor and/or its directors, officers, agents, employees, consultants, and/or subcontractors
- D. Should a court of competent jurisdiction determine that this Contract is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Contractor and the City, its officers, officials, employees, and volunteers, the Contractor's liability hereunder shall be only to the extent of the Contractor's negligence.

It is further specifically and expressly understood that the indemnification provided herein constitutes the Contractor's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties.

- E. Nothing contained in this section or Contract shall be construed to create a liability or a right of indemnification by any third party.
- F. The provisions of this section shall survive the expiration or termination of this Contract.
7. Insurance.

A. Insurance Term.

The Contractor shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise, as required in this Section, without interruption from or in connection with the performance commencement of the Contractor's work through the term of the work hereunder by the Contractor, their agents, representatives, employees or subcontractors contract and for thirty (30) days after the Physical Completion date, unless otherwise indicated herein.

B. No Limitation

Contractor's maintenance of insurance, its scope of coverage and limits as required herein shall not be construed to limit the liability of the Contractor to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

C. Minimum Scope of Insurance.

Contractors required insurance shall be of the types and coverage as stated below:

1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on at least as broad as Insurance Services Office (ISO) form CA Automobile 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.

2. Commercial General Liability insurance shall be written on at least as broad as ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, stop gap liability, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract. The Commercial General Liability insurance shall be endorsed to provide the per project general aggregate limit using ISO form CG 25 03 05 09 or an equivalent endorsement. There shall be no exclusion for liability arising from explosion, collapse or underground property damage. The City shall be named as an additional insured under the Contractor's Commercial General Liability insurance policy with respect to the work performed for the City using ISO Additional Insured endorsement CG 20 10 10 01 and Additional Insured- Completed Operations endorsement CG 20 37 10 01 or substitute endorsements providing at least as broad of coverage.

3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington

4. Builders Risk insurance covering interests of the City, the Contractor, Subcontractors, and Sub-contractors in the work. Builders Risk insurance shall be on a special perils policy form and shall insure against the perils of fire and extended coverage and physical loss or damage including flood, earthquake, theft, vandalism, malicious mischief, and collapse. The Builders Risk insurance shall include coverage for temporary buildings, debris removal and damage to materials in transit or stored off-site. This Builders Risk insurance covering the work will have a deductible of \$5,000 for each occurrence, which will be the responsibility of the Contractor. Higher deductibles for flood and earthquake perils may be accepted by the City upon written request by the Contractor and written acceptance by the City. Any increased deductibles accepted by the City will remain the responsibility of the Contractor. The Builders Risk insurance shall be maintained until final acceptance of the work by the City.

5. Required. Contractors Pollution Liability insurance covering losses caused by pollution conditions that arise from the operations of the Contractor. Contractors Pollution Liability insurance shall be written in an amount of at least \$1,000,000 per loss, with an annual aggregate of at least \$1,000,000. Contractors Pollution Liability shall cover bodily injury, property damage, cleanup costs and defense including costs and expenses incurred in the investigation, defense, or settlement of claims.

If the Contractors Pollution Liability insurance is written on a claims-made basis, the Contractor warrants that any retroactive date applicable to coverage under the policy precedes the effective date of this contract; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of three (3) years beginning from the time that work under the contract is completed.

The City shall be named by endorsement as an additional insured on the Contractors Pollution Liability insurance policy.

If the scope of services as defined in this contract includes the disposal of any hazardous materials from the job site, the Contractor must furnish to the City evidence of Pollution Liability insurance maintained by the disposal site operator for losses arising from the insured facility accepting waste under this contract. Coverage certified to the City under this paragraph must be maintained in minimum amounts of \$1,000,000 per loss, with an annual aggregate of at least \$1,000,000.

Pollution Liability coverage at least as broad as that provided under ISO Pollution Liability-Broadened Coverage for Covered Autos Endorsement CA 99 48 shall be provided, and the Motor Carrier Act Endorsement (MCS 90) shall be attached.

D. Minimum Amounts of Insurance.

The Contractor shall maintain the following insurance limits:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.

2. Commercial General Liability insurance shall be written with limits no less than \$3,000,000 each occurrence, \$3,000,000 general aggregate and a \$2,000,000 products-completed operations aggregate limit.

3. Required. Builders Risk insurance shall be written in the amount of the completed value of the project with no coinsurance provisions.

4. Required. Contractors Pollution Liability shall be written in the amounts set forth above.

E. City Full Availability of Contractor Limits

If the Contractor maintains higher insurance limits than the minimums shown above, the City shall be insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by the Contractor, irrespective of whether such limits maintained by the Contractor are greater than those required by this contract or whether any certificate of insurance furnished to the City evidences limits of liability lower than those maintained by the Contractor.

F. Other Insurance Provisions.

The Contractor's insurance coverage shall be primary insurance with respect to the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be in excess of the Contractor's insurance and shall not contribute with it.

G. Acceptability of Insurers.

Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

H. Verification of Coverage.

The Contractor shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the Automobile Liability and Commercial General Liability insurance of the Contractor before commencement of the work. Throughout the term of this Contract, upon request by the City, the Contractor shall furnish certified copies of all required insurance policies, including endorsements, required in this contract and evidence of all subcontractors' coverage.

Required. Before any exposure to loss may occur, the Contractor shall file with the City a copy of the Builders Risk insurance policy that includes all applicable conditions, exclusions, definitions, terms and endorsements related to this Project.

Required. Before any exposure to loss may occur, the Contractor shall file with the City a copy of the Pollution Liability insurance that includes all applicable conditions, exclusions, definitions, terms and endorsements related to this Project.

I. Contractor's Insurance for Other Losses.

The Contractor shall assume full responsibility for all loss or damage from any cause whatsoever to any tools, Contractor's employee owned tools, machinery, equipment, or motor vehicles owned or rented by the Contractor, or the Contractor's agents, suppliers or subcontractors as well as to any temporary structures, scaffolding and protective fences.

J. Subcontractors.

The Contractor shall include all subcontractors as insured under its policies or shall furnish separate certifications and endorsements for each subcontractor. All coverage for

subcontractors shall be subject to all of the same insurance requirements as stated herein for the Contractor.

The Contractor shall cause each and every Subcontractor to provide insurance coverage that complies with all applicable requirements of the Contractor-provided insurance as set forth herein. The Contractor shall ensure that the City is an additional insured on each and every Subcontractor's Commercial General liability insurance policy using an endorsement at least as broad as ISO Additional Insured endorsement CG 20 38 04 13.

K. Waiver of Subrogation.

The Contractor and the City waive all rights against each other, any of their subcontractors, lower tier subcontractors, agents and employees, each of the other, for damages caused by fire or other perils to the extent covered by Builders Risk insurance or other property insurance obtained pursuant to the Insurance Requirements Section of this Contract or other property insurance applicable to the work. The policies shall provide such waivers by endorsement or otherwise.

L. Notice of Cancellation of Insurance.

The Contractor shall provide the City and all Additional Insureds for this work with written notice of any policy cancellation within two business days of their receipt of such notice.

M. Failure to Maintain Insurance

Failure on the part of the Contractor to maintain the insurance as required shall constitute a material breach of contract, upon which the City may, after giving five business days' notice to the Contractor to correct the breach, immediately terminate the contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City on demand, or at the sole discretion of the City, offset against funds due the Contractor from the City.

8. Compliance with Laws.

- A. The Contractor shall comply with all applicable federal, state, and local laws, including regulations for licensing, certification, and operation of facilities and programs, and accreditation and licensing of individuals, and any other standards or criteria as set forth in the Project Manual.
- B. The Contractor shall pay any applicable business and permit fees and taxes which may be required for the performance of the work.
- C. The Contractor shall comply with all legal and permitting requirements as set forth in the Project Manual.

9. Non-discrimination.

During the performance of this Contract, the Contractor shall comply with all applicable equal opportunity laws and/or regulations and shall not discriminate on the basis of race, age, color, sex, sexual orientation, religion, national origin, creed, veteran status, marital status, political affiliation, or the presence of any sensory, mental or physical handicap. This provision shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, selection for training, and the provision of work and services under this Contract. The Contractor further agrees to maintain notices, posted in conspicuous places, setting forth the provisions of this nondiscrimination clause. The Contractor understands that violation of this provision shall be cause for immediate termination of this Contract and the Contractor may be barred from performing any services or work for the City in the future unless the Contractor demonstrates to the satisfaction of the City that discriminatory practices have been eliminated and that recurrence of such discriminatory practices is unlikely.

- A. The parties will maintain open hiring and employment practices and will welcome applications for employment in all positions from qualified individuals who are members of the above-stated minorities.
- B. The parties will comply strictly with all requirements of applicable federal, state or local laws or regulations issued pursuant thereto, relating to the establishment of nondiscriminatory requirements in hiring and employment practices and assuring the service of all patrons and customers without discrimination with respect to the above-stated minority status.

10. Assignment and Subcontractors.

- A. The Contractor shall not assign this Contract or any interest herein, nor any money due to or to become due hereunder, without first obtaining the written consent of the City.
- B. The Contractor shall not subcontract any part of the services to be performed hereunder without first obtaining the consent of the City and complying with the provisions of this section.
- C. In the event the Contractor does assign this contract or employ any subcontractor, the Contractor agrees to bind in writing every assignee and subcontractor to the applicable terms and conditions of the contract documents.
- D. The Contractor shall, before commencing any work, notify the Owner in writing of the names of any proposed subcontractors. The Contractor shall not employ any subcontractor or other person or organization (including those who are to furnish the principal items or materials or equipment), whether initially or as a substitute, against whom the Owner may have reasonable objection. Each

subcontractor or other person or organization shall be identified in writing to the Owner by the Contractor prior to the date this Contract is signed by the Contractor. Acceptance of any subcontractor or assignee by the Owner shall not constitute a waiver of any right of the Owner to reject defective work or work not in conformance with the contract documents. If the Owner, at any time, has reasonable objection to a subcontractor or assignee, the Contractor shall submit an acceptable substitute.

- E. The Contractor shall be fully responsible for all acts and omissions of its assignees, subcontractors and of persons and organization directly or indirectly employed by it and of persons and organizations for whose acts any of them may be liable to the same extent that it is responsible for the acts and omissions of person directly employed by it.
- F. The divisions and sections of the specifications and the identifications of any drawings shall not control the Contractor in dividing the work among subcontractors or delineating the work to be performed by any specific trade.
- G. Nothing contained in the contract documents shall create or be construed to create any relationship, contractual or otherwise, between the Owner and any subcontractor or assignee. Nothing in the contract documents shall create any obligation on the part of the Owner to pay or to assure payment of any monies due any subcontractor or assignee.
- H. The Contractor hereby assigns to the City any and all claims for overcharges resulting from antitrust violations as to goods and materials purchased in connection with this Contract, except as to overcharges resulting from antitrust violations commencing after the date of the bid or other event establishing the price of this Contract. In addition, the Contractor warrants and represents that each of its suppliers and subcontractors shall assign any and all such claims for overcharges to the City in accordance with the terms of this provision. The Contractor further agrees to give the City immediate notice of the existence of any such claim.
- I. In addition to all other obligations of the contractor, if the contractor does employ any approved subcontractor, the contractor shall supply to every approved subcontractor a copy of the form, provided in the project manual, to establish written proof that each subcontract and lower-tier subcontract is a written document and contains, as a part, the current prevailing wage rates. The contractor, each approved subcontractor and each approved lower-tier subcontractor shall complete and deliver the form directly to the City.

11. Contract Administration and Notices.

This Contract shall be administered for the City by **Kevin Hushagen, Public Works Director** and shall be administered for the Contractor by the Contractor's Contract

Representative, **Justin Taylor, General Manager**. Unless stated otherwise herein, all notices and demands shall be in writing and sent or hand-delivered to the parties at their addresses as follows:

To City:

**Kevin Hushagen
City of Stanwood
10220 270th Street NW
Stanwood, WA 98292
360-629-9782**

To Contractor:

**Justin Taylor, General Manager
Taylor's Excavators, Inc.
3134 268th St NW
Stanwood, WA 98292
360-629-3078**

or to such addresses as the parties may hereafter designate in writing. Notices and/or demands shall be sent by registered or certified mail, postage prepaid, or hand-delivered. Such notices shall be deemed effective when mailed or hand-delivered at the addresses specified above.

12. Interpretation and Venue. This Contract shall be interpreted and construed in accordance with the laws of the State of Washington. The venue of any litigation between the parties regarding this Contract shall be Snohomish County, Washington.

13. Severability

A. If a court of competent jurisdiction holds any part, term or provision of this Contract to be illegal or invalid, in whole or in part, the validity of the remaining provisions shall not be affected, and the parties' rights and obligations shall be construed and enforced as if the Contract did not contain the particular provision held to be invalid.

B. If any provision of this Contract is in direct conflict with any statutory provision of the State of Washington, that provision which may conflict shall be deemed inoperative and null and void insofar as it may conflict, and shall be deemed modified to conform to such statutory provision.

14. Non-Waiver.

A waiver by either party hereto of a breach of the other party hereto of any covenant or condition of this Contract shall not impair the right of the party not in default to avail itself of any subsequent breach thereof. Leniency, delay or failure of either party to insist upon strict performance of any Contract, covenant or condition of this Contract, or to exercise any right herein given in any one or more instances, shall not be construed as a waiver or relinquishment of any such Contract, covenant, condition or right.

15. Survival.

Any provision of this Contract which imposes an obligation after termination or expiration of this Contract shall survive the term or expiration of this Contract and shall be binding on the parties to this Contract.

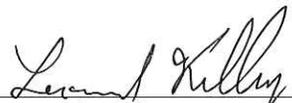
16. Authority.

The person executing this Agreement on behalf of Contractor represents and warrants that he or she has been fully authorized by Contractor to execute this Agreement on its behalf and to legally bind Contractor to all the terms, performances and provisions of this Agreement. The person executing this Contractor on behalf of the City represents and warrants that he or she has been fully authorized by the City to execute this Contractor on its behalf and to legally bind the City to all the terms, performances and provisions of this Contractor.

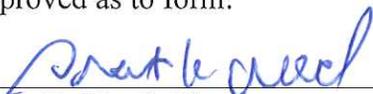
IN WITNESS WHEREOF, the parties hereto have caused this Contract to be executed the day and year first set forth above.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be executed the day and year first hereinabove written.

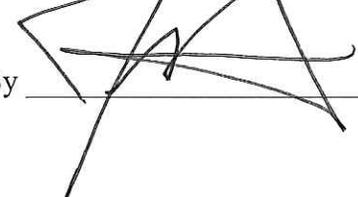
City of Stanwood

By 
Leonard Kelley, Mayor

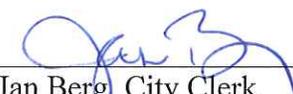
Approved as to form:


Grant K. Weed, City Attorney

Taylor's Excavators, Inc.

By 

Attest:


Jan Berg, City Clerk