



## SMALL WORKS CONTRACT

THIS AGREEMENT is made on this \_\_\_\_\_, 20\_\_\_\_, by and between Northwest Open Access Network, herein after called the "Owner" or "NOANET", a nonprofit open-access broadband network provider, and \_\_\_\_\_ ("CONTRACTOR") shall be kept on file and considered valid through August 31, 2019.

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

### GENERAL CONDITIONS:

#### GC-1 FORM OF CONTRACT

The form of the Contract shall be lump sum type unless specified otherwise.

#### GC-2 DEFINITIONS

Whenever these words occur in the Contract Documents or Small Works Bid Documents, they shall have the following meanings:

"BID" The written proposal submitted by the Bidder on the Bid Form provided in the Small Works Bid Documents, a sample of which is provided as Exhibit "A" in these Contract Documents.

"BIDDER" Any person or entity who submits a Bid.

"BID EVALUATION" The criteria for determining the lowest responsive Bid received in response to the Small Works Bid Documents.

"BID ITEM" A line item on the Bid Form provided in the Small Works Bid Documents, a sample of which is included in these Contract Documents as Exhibit "A"

"BID UNIT PRICE" The price per unit on a specific Bid Item, if applicable.

"CONTRACT DOCUMENTS" The Contract Documents shall include all sections of these Small Works Contract Documents.

“CONTRACT AWARD” Contract Award is defined as the date the successful Bidder is first notified verbally or in writing by issuance of the Small Works Notice to Proceed, a sample of which is attached as Exhibit “B”, that NOANET has accepted the Contractor's Bid. Contract Award, if any, shall be made within forty-five (45) days after the date of Bid opening.

“CONTRACTOR” The successful Bidder who is awarded the Contract to perform the work covered by these Contract Documents.

“CONTRACT PRICE” The Total Bid Price plus any optional Bid Items included in the Contract Award and any properly approved Change Orders approved subsequent to Contract Award.

“NOANET (or NOANET’S) REPRESENTATIVE” The employee designated by NOANET as its representative during the progress of the work.

“FINAL ACCEPTANCE” Acceptance of the work by NOANET in writing. Final Acceptance shall not constitute an acceptance by NOANET of any work performed or goods supplied which are not in strict compliance with the Contract Documents.

“SMALL WORKS BID DOCUMENT” A request for Bids on a Small Works Project issued pursuant to the Small Works Roster Procedure.

“SMALL WORKS PROJECT” Work as described in a Small Works Bid Document for a Public Works project.

“SUBCONTRACTOR” A contractor hired by the CONTRACTOR to perform a portion of the work covered by the Small Works Bid Documents.

“TOTAL BID PRICE” The properly calculated total of the Bid Items on the Bid Form.

#### GC-3 PROJECT

The Contractor agrees to do the work and furnish the materials in a most substantial and workmanlike manner within the time limits according to the Small Works Project.

No work shall be performed by Contractor until receipt of a NOANET Notice to Proceed accompanied by the Small Works Project plans and specifications, and setting forth the cost of, and the completion date of the work.

#### GC-4 RIGHT TO REJECT BIDS

For each individual Bid, NOANET reserves the right to reject any all bids.

#### GC-5 SCOPE OF WORK

The Scope of Work for each bid is described in the Small Works Bid Document for any Public Works project. Upon Award any adjustments to the Scope of Work will be outlined in the Notice to Proceed provided to the contractor upon award.

#### GC-6 CONTRACTOR'S OBLIGATIONS

The Contractor agrees that for each Bid it is awarded through the Small Works Roster, it will furnish all materials, labor, tools, machinery, and implements of every description necessary for completing such work as more fully described in the Small Works Project. All work shall be done in accordance with the Small Works Project and in accordance with all the state, federal and local laws and regulation, including but not limited to the ordinances of each governing city in which a Small Works Project is taking place.

#### GC-7 NOANET RESPONSIBILITY

In consideration of the promises and agreements of the Contractor as set forth herein, and in consideration of the faithful performance and furnishing of the work and materials required by this Contract, NOANET agrees to pay the Contractor the total amount not to exceed the Contract Price. If the work and services to be performed are for work as defined in WAC 458-20-171, then the applicable Washington State retail Sales Tax on this contract shall be governed by WAC 458-20-171 and its related rules for the work completed in the Contract. The Contractor shall invoice NOANET monthly unless otherwise stated in the bid documents.

#### GC-8 SUSPENSION/TERMINATION OF WORK OTHER THAN DEFAULT

NOANET may, at its sole option, by notice in writing to the Contractor, and without cause given by Contractor, suspend or terminate at any time the performance of all or any portion of work to be performed under the Small Works Bid Documents. Upon such notice of suspension or termination of work, NOANET shall designate the amount and type of plant, labor, and equipment to be committed to the work site during the period of suspension or termination. The Contractor shall use its best efforts to utilize its plant, labor, and equipment in such a manner as to minimize costs associated with suspension or termination.

A. Upon receipt of any such notice, the Contractor shall:

1. Immediately discontinue work as specified in the notice;
2. Place no further orders or subcontracts for material, services, or equipment with respect to suspended or terminated work;
3. Promptly suspend or terminate all orders, subcontracts, and rental agreements to the extent they relate to performance of work suspended or terminated; and
4. Continue to protect and maintain the work, including those portions on which work has been suspended;

5. Assist NOANET Representative or NOANET in the maintenance, protection, and disposition of work in progress, plant, tools, equipment property, and materials acquired by Contractor or furnished by Contractor under the Small Works Bid Documents; and
  6. Complete performance of the work which is not terminated.
- B. Suspension: As full compensation for such suspension the Contractor shall be reimbursed for the following costs, reasonably incurred, without duplication of any item, to the extent that such costs directly result from such suspension of work:
1. A standby charge, as determined to be equitable by the NOANET Representative, to be paid to the Contractor during a period of suspension of work sufficient to compensate the Contractor for keeping, to the extent required in the notice, its organization and equipment committed to the work in a standby status;
  2. All reasonable costs, as determined to be equitable by NOANET'S Representative, associated with any demobilization and remobilization of the Contractor's plant, forces, and equipment;
  3. Any claim on the part of the Contractor for additional time or compensation shall be made within ten (10) calendar days after receipt, by Contractor, of a notice to suspend work. Failure to submit a claim within the ten (10) day period shall constitute a waiver of any such claim;
  4. In no event however, shall the amount to be paid the Contractor pursuant to this section exceed the Contract Price.

Upon receipt of notice to resume suspended work, the Contractor shall immediately resume performance of the suspended work to the extent required in the notice. Any claim on the part of the Contractor for time or compensation shall be made within ten calendar days after receipt of notice to resume work and the Contractor shall submit a revised project schedule for review.

- C. TERMINATION: Upon delivery of a written notice to the Contractor, NOANET may, without cause and without prejudice to any other right or remedy, elect to terminate the Small Works Project. Upon receipt of any such notice, the Contractor shall take all appropriate steps in part A of this section.

Upon any such termination, Contractor shall waive any claims for damages including Contractor's overhead, loss of anticipated profits, and all other inconvenience, expenses, damages, costs and lost profits whatsoever. If such termination is effected after Contract Award but prior to NOANET issuing Notice to Proceed to the Contractor, NOANET shall pay the reasonable, verifiable and directly attributable costs incurred by the Contractor in the preparation of Their Bid plus fifteen percent of such costs. If such termination is effected after NOANET has issued Notice to Proceed and the Contractor has commenced

performance hereunder, NOANET shall pay the reasonable, verifiable and directly attributable costs incurred by the Contractor as determined by the physical progress of the work satisfactorily completed to date plus costs of removing equipment and materials and otherwise demobilizing, plus ten percent of the sum of all such costs; provided, said payment shall not in any event exceed the Contract Price of the Small Works Bid Documents. The payment of NOANET shall constitute full and complete satisfaction and settlement for the Contractor's overhead, anticipated profits, and all other inconvenience, expenses, damages, costs and lost profits whatsoever. The Contractor shall be entitled to no further payments whatsoever for the work. Amounts retained and accumulated under RCW Chapter 60.28 shall be held and disbursed as provided therein.

Contractor shall submit within 30 days after receipt of notice of termination, a request for adjustment to the Contract Price in accordance with the above provisions. A NOANET Representative shall review, analyze, and verify such request, and upon a NOANET Representative's approval, the Small Works Bid Documents shall be amended in writing accordingly.

Those provisions of the Contract or Small Works Bid Documents that by their nature survive Final Acceptance under the Contract Documents shall remain in full force and effect after such termination.

#### GC-9 TERMINATION FOR DEFAULT/NONCOMPLIANCE

##### A. Acts of Default

If Contractor fails in any material way to comply with any of the conditions or provisions of these Contract Documents or any Small Works Bid Documents or is unable to pay its debts as they mature or fails to provide a sufficient number of properly skilled workers or a sufficient quantity of suitable materials or adequate equipment or fails to diligently prosecute work according to the Project schedule or causes, by act or omission, stoppage, delay, or interference of the Work or fails to correct or repair any damaged or defective work or materials or authorizes or takes any action under bankruptcy or reorganization, readjustment of debt, insolvency, liquidation or other similar laws or proceedings it shall be considered an act of default.

##### B. Consequences of Default

In the event of default, NOANET may immediately, without limiting any other remedy available to it in law or equity, withhold any amount otherwise due under any Small Works Bid Documents. NOANET shall provide written notice of default. In the event Contractor fails to correct the default within ten (10) calendar days after written notice of default, NOANET may terminate the Contractor's right to proceed with all or any portion of the work. NOANET'S right to liquidated damages shall not in any manner limit any other remedy available to NOANET, including but not limited to, NOANET'S right to terminate the Contractor's right to proceed.

##### C. Noncompliance

The Contractor shall, upon receipt of written notice of noncompliance with any provision of this Contract, or any Small Works Bid Documents and the action to be taken, immediately correct the conditions to which attention has been directed. Such notice, when served on the Contractor or their representative at the site of the work, shall be deemed sufficient. If the Contractor fails or refuses to comply promptly, a NOANET Representative may issue an order to suspend all or any part of the work. When satisfactory corrective action is taken, an order to resume work shall be issued. No part of the time lost due to any such suspension order shall entitle the Contractor to any extension of time for the performance of any Small Works Bid Documents or to reimbursement for excess costs or damages.

#### GC-10 ASSIGNMENT

The Contractor shall not assign this Contract, or any Small Works Bid Documents they may be awarded, or any interest in or part thereof, or any monies due or to become due hereunder, without the prior written approval of NOANET. Any costs to NOANET associated with the assignment may be deducted from amounts due to the Contractor.

#### GC-11 INDEMNITY

- A. Contractor shall be responsible for any and all damage, loss or injury of any kind or nature whatsoever, direct or indirect, to person or property arising out of or in any manner connected with or caused by or resulting from or suffered in connection with the execution of the work provided for in this Contract, any Small Works Bid Documents or in connection therewith. Contractor agrees to defend, indemnify and hold harmless NOANET and its representatives (which terms shall be deemed to include directors, officers, members, employees, agents, and servants, and any other persons directly or indirectly engaged in any activity connected with the performance of the work under any Small Works Bid Documents) from and against any and all liabilities, claims, losses, damages or expenses, including reasonable attorney's fees, and expert witness fees, which may be incurred or sustained by NOANET or any of its representatives (as defined above), by reason of any act, omission, misconduct, negligence, or default on the part of the Contractor or any Subcontractor of the Contractor, and any employees of the Contractor or Subcontractor and except as may otherwise be provided by applicable law. Contractor specifically assumes liability for actions brought by Contractor's own employees against NOANET and its representatives and for that purpose Contractor specifically waives any immunity under the Workers Compensation Act, RCW Title 51. The indemnification obligation under this Contract shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable to or for any third party under workers' compensation acts, disability benefits acts, or other employee benefits acts; provided Contractor's waiver of immunity by the provisions of this paragraph extends only to claims against Contractor by NOANET, and does not include, or extend to, any claims by Contractor's employees directly against Contractor.
- B. NOANET shall not be responsible or be held liable for any damage to person or property consequent upon the use, misuse or failure of any crane, hoist, rigging, blocking, scaffolding or any other equipment used by the Contractor or any of their Subcontractors, even though the said crane, hoist, rigging, blocking, scaffolding, or any other equipment be furnished or loaned to the Contractor by NOANET. The acceptance and/or use of any such crane, hoist,

rigging, blocking, scaffolding or other equipment by the Contractor or their Subcontractors shall be construed to mean that the Contractor accepts all responsibility for any claims for damages whatsoever resulting from the use, misuse or failure of such apparatus whether such damages are incurred by Contractor's own employees or property or to the employees or property of other contractors, NOANET, or otherwise.

- C. Contractor's indemnification obligation shall not apply to liability for damages arising out of bodily injury to persons or damage to property caused by the negligence of NOANET or its agents or employees and not attributable to any act or omission on the part of the Contractor or Contractor's employees or agent's. In the event of damages to person or property caused by or resulting from the concurrent negligence of NOANET or its agents or employees and the Contractor or its agents or employees, the Contractor's indemnity obligation shall apply only to the extent of the Contractor's (including that of its agents and employees) negligence.
- D. Contractor acknowledges that by entering into a contract with NOANET, he has mutually negotiated the above indemnity provisions with NOANET. Contractor's indemnity and defense obligations shall survive the termination or completion of this Contract or any Small Works Bid Documents and remain in full force and effect until satisfied in full.

#### GC-12 LAWS, REGULATIONS, PERMITS

The Contractor represents that it is familiar with, and shall be governed by and comply with, all Federal, State and local statutes, laws, ordinances, and regulations including amendments and changes as they occur.

All written instruments, agreements, specifications and other writing of whatsoever nature which relate to or are a part of this Agreement shall be construed, for all purposes, solely and exclusively in accordance and pursuant to the laws of the State of Washington. The rights and obligations of NOANET and Contractor shall be governed by the laws of the State of Washington. Venue of any action filed to enforce or interpret the provisions of this Agreement shall be exclusively in the Superior Court, County of King, State of Washington or at NOANET'S sole option. In the event of litigation to enforce the provisions of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and costs in addition to any other relief allowed.

Contractor shall comply with all applicable sanitation and safety regulations and shall supply and maintain such equipment and facilities as are deemed necessary for such compliance, including traffic control, barricades and warning devices. Coordination must and shall be responsibility of the Contractor.

Unless the Small Works Bid Documents provide otherwise, all permits and licenses necessary to for the execution of the work shall be secured by the Contractor at its own expense, and Contractor shall give all notices necessary and incident to the due and lawful execution of the work.

#### GC- 13 CLAIM FOR DAMAGES

Any claims arising under any Small Works Bid Documents by the Contractor shall be made in writing to the NOANET Representative no later than ten calendar days after the beginning of the event or occurrence giving rise to the claim. Failure to make written claim prior to the time specified in the Small Works Bid Document shall constitute waiver of any such claim.

#### GC-14 INDEPENDENT CONTRACTOR, SUPERINTENDENT, AND EMPLOYEES

It is understood and agreed that in all work covered by any Small Works Bid Documents, the Contractor shall act as an independent contractor, maintaining complete control over their employees and all of their Subcontractors. The Contractor shall perform the work in accordance with their own methods, subject to compliance with the Small Works Bid Documents. The Contractor shall perform the work in an orderly and workmanlike manner, enforce strict discipline and order among their employees and assure strict discipline and order by their Subcontractors, and shall not employ or permit to be employed on the work any unfit person or anyone unskilled in the work assigned to him.

The Contractor shall designate in writing before starting work competent, authorized site representative(s) who shall be authorized to represent and act for the Contractor in all matters relating to the Small Works Bid Documents. The Contractor's letter designating representative(s) shall clearly define the scope of the representatives(s) authority to act for the Contractor and define any limitations of this authority. Said authorized representative(s) shall be present at the site of the work at all times when work is in progress. Arrangements acceptable to NOANET shall be made for any emergency work which may be required. The Contractor's authorized representative(s) shall be supported by competent assistants as necessary, and the authorized representative(s) and assistants shall all be satisfactory to NOANET. All directions given to the authorized representative(s) by NOANET shall be binding as if given to the Contractor.

The Contractor and their Subcontractors shall employ only orderly workers. Employees deemed by NOANET to be incompetent, subversive, or disorderly shall be removed from the performance of the work, and such removal shall not form the basis of any claim for compensation or damage upon NOANET.

The Contractor and Subcontractor shall be responsible for insuring that its employee's fully comply with the all applicable federal, state, and local laws, including without limitation, all applicable provisions of the Drug Free Workplace Act of 1988. Unless otherwise required by law, the Contractor and Subcontractor shall immediately remove any employee from further work if it is determined by NOANET, at its discretion, that the employee is not fit for duty for any reason. Failure on the part of the Contractor or Subcontractor to comply with any of the above referenced policies shall be considered an act of default in accordance with GC-9.

#### GC-15 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.

- A. No work shall be performed by Contractor until receipt of a NOANET Notice to Proceed accompanied by the project plans and specifications, and setting forth the cost of, and the completion date of the work.



- B. Contractor shall perform the Work in a diligent, efficient and skillful manner, as the Work or any portion thereof becomes available, to allow NOANET to promote the general progress of the entire construction and so that the Work shall not interfere with, hinder or delay other work.
- C. Should Contractor delay the progress of the Work or of the Project, Contractor shall take necessary action as required to meet and maintain job progress, without additional compensation, and shall be liable to and reimburse NOANET for damages resulting from such delay.
- D. Contractor shall be solely responsible for protection of the Work and for loss or damage to materials, tools, equipment or other personal property, owned or rented or used by Contractor in performance of the Work.
- E. When as-built drawing are required by the Contract Documents, Contractor shall record as-built conditions on the Drawings and Detail Drawings in a form acceptable to NOANET, on a weekly basis or as determined by the Project Manager, during performance of the Work.

#### GC-16 CORRECTION OF WORK/WARRANTY

All materials and equipment incorporated into any work under the Small Works Bid Documents shall be new and of the most suitable grade of their respective kinds for their intended uses unless otherwise specified. All workmanship shall be in accordance with highest standard practices acceptable NOANET Representative. Contractor warrants all materials, equipment, design and work it furnishes or performs under the Small Works Bid Documents against defects in design, materials, and workmanship. Contractor's warranty shall remain in effect for a period of three hundred sixty-five (365) calendar days after Final Acceptance.

If at any time prior to the expiration of the warranty period, Contractor or NOANET discovers any defect in such materials, equipment, design and work, the Contractor shall, upon written notice from NOANET given within a reasonable time after discovery, correct such defects to the satisfaction of NOANET by redesigning, repairing or replacing the defective materials, equipment, design and work at a time acceptable to NOANET. All costs incidental to such corrective action including removal, disassembly, reinstallation, re-work, re-testing and re-inspection as may be necessary to correct the defect or demonstrate that the previously defective work conforms to the requirements of the Contract shall be borne by the Contractor.

Contractor warrants any and all corrective action against defects in design, materials, and workmanship for a period of twelve (12) months following acceptance NOANET of the corrected work.

If, after due notice, the Contractor shall refuse or persistently neglect to make corrections so as to meet the requirements of the Contract or bid documents, NOANET may proceed to make such corrections as they may be required and Contractor shall reimburse NOANET for all cost and expenses incurred in connection therewith.

The warranty requirements in this section are the minimum requirements for materials, equipment, design and work under this Contract. Any other warranty requirements specified in the Small Works Bid Documents, including the Technical Specifications, are in addition to, and not in lieu of the minimum requirements specified herein.

#### GC-17 CHANGES IN WORK

Without invalidating the Contract, NOANET may make changes by altering, adding or deducting from the work, and/or make changes in the drawings and specifications requiring changes in the work and/or materials and equipment to be furnished under any Small Works Bid Documents; provided such additions, deductions or changes are within the general scope of the Documents. Except as provided herein, no official, employee, agent or representative of NOANET is authorized to approve any change in the Contract Award and it shall be the responsibility of the Contractor before proceeding with any change, to satisfy himself that the execution of the written Change Order has been properly authorized on behalf of NOANET.

Charges or credits for the work covered by the approved changes shall be determined by one or more, or a combination of the following methods, at NOANET'S option:

- A. Unit prices specified in the unit prices for changes in work submitted with the Contractor's Bid proposal, if any.
  
- B. An agreed lump sum.
  
- D. The actual cost of:
  - 1. Labor, including foreman.
  - 2. Materials entering permanently into the work.
  - 3. The ownership or rental cost of plant and equipment during the time of use on the project.
  - 4. Power and consumable supplies for the operation of power equipment.
  - 5. Insurance.
  - 6. Social Security and old age and unemployment contributions.
  - 7. To the sum of Items 1, 2, 4, 5, and 6 inclusive, there shall be added a fixed fee of fifteen percent (15%). The fee shall be compensation to cover the cost of supervision, overhead, bond, profit and any other general expenses.

When a change is ordered by NOANET, as provided herein, a Change Order shall be executed by NOANET and the Contractor before any Change Order work is performed. NOANET shall not be liable for any payment to Contractor, or claims arising therefrom, for Change Order work which is not first authorized in writing as set forth in this section. All terms and conditions contained in the Contract Documents and Small Works Bid Documents shall be applicable to Change Order work. Change Orders shall be issued on the form attached as Exhibit "D" and shall specify any change in time required for completion of the work caused by the Change Order and, to the extent applicable, the amount of any increase or decrease in the Contract Price.

If any such change or alteration in the work shall result in a decrease of the work to be performed or materials, equipment, and apparatus to be furnished, no allowance shall be made

to the Contractor in computing any resulting decrease in the Contract Price for loss of anticipated profits, but if the Contractor, before receiving NOANET'S notice of intention pursuant to this Section, shall have incurred any expense in connection with the proper performance of the Small Works Bid Documents which shall be rendered unnecessary by such change or alteration, such allowance shall be made therefore to the Contractor as NOANET shall determine to be fair and reasonable.

A NOANET Representative may instruct the Contractor to make minor changes in the work where such changes are not inconsistent with the purposes of the Small Works Bid Documents, do not involve any additional cost and shall not require an extension of the Small Works Bid Document completion date. The Contractor shall make no such changes without receipt of a NOANET Instruction, Exhibit "E", setting forth the changes to be made. Contractor's compliance therewith shall constitute its acknowledgment that such changes shall not result in any claim for additional payment or extension of the Small Works Bid Document completion date. If the Contractor believes the instruction shall result in additional costs or time extensions, Contractor shall promptly notify NOANET of the same and not proceed with the changes. NOANET'S Instructions, when issued, shall be in writing and signed by a NOANET Representative.

No waiver of any provision of this Contract or the Small Works Bid Documents, and no consent to departure there from, by either party, shall be effective unless in writing and signed by the waiving or consenting party, and no such waiver or consent shall extend beyond the particular case and purpose involved.

#### GC-19 PAYMENT/RETAINAGE

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. NOANET shall pay the pay application within thirty (30) days after approval of the pay application, pursuant to the terms below:

- A. Prior to the release of any payment NoaNet must receive from Contractor a current Approved Statement of Intent to Pay Prevailing Wage filed per project (RCW 39.12.040).for all contractors and subcontractors
- B. NOANET shall hold back a retainage as required by RCW 60.28 for labor and material in the amount of five percent (5%), of any and all payments made to contractor for a period of sixty (60) days after the date of final acceptance, or until receipt of all necessary releases from the State Department of Revenue, State Employment Security Division and the State Department of Labor and Industries and until settlement of any liens filed under Chapter 60.28 RCW. If Contractor plans to submit a bond in lieu of the retainage specified above, the bond must be in a form acceptable to NOANET and submitted within 30 days upon entering into this Contract, through a bonding company meeting standards established by NOANET.
- C. NOANET shall pay the Contractor as full consideration for the performance of the contract, an amount equal to the unit and lump sum prices as set forth in the bid. The Contractor will submit request for Progress payments on a monthly basis and NOANET will make payment within 30 days after receipt of the Contractor's request until the work is complete and

accepted by NOANET. NOANET payment shall not constitute a waiver of NOANET's right to final inspection and acceptance of the project.

- D. NOANET reserves its right to withhold payment from Contractor for any defective or unauthorized work. Defective or unauthorized work includes, without limitation: work and materials that do not conform to the requirements of this Contract or as more fully detailed in the project specification agreement and/or purchase; and extra work and materials furnished without NOANET'S written approval. If Contractor is unable, for any reason, to satisfactorily complete any portion of the work, NOANET may complete the work by contract or otherwise, and Contractor shall be liable for any additional costs incurred by NOANET. "Additional costs" shall mean all reasonable costs, including legal costs and attorney fees, incurred by NOANET beyond the maximum Contract price specified above. NOANET further reserves its right to deduct the cost to complete the Contract work, including any Additional Costs, from any and all amounts due or to become due the Contractor. Notwithstanding the terms of this section, NOANET'S payment to contractor for work performed shall not be a waiver of any claims NOANET may have against Contractor for defective or unauthorized work.
- E. Prior to submitting its first application for payment, Contractor shall submit a schedule of values allocating the Subcontract Price to the full Scope of Work, prepared in such form and supported by such data to substantiate its accuracy as NOANET may require, which schedule shall be used as a basis for reviewing Contractor's applications for payment. The schedule of values will be used for payment purposes only and shall not relieve Contractor from its obligation to perform all of the Work and provide all labor and material required by the Agreement. When approved by NOANET, the schedule of values may be modified by Contractor to incorporate executed change orders.
- F. Payments shall not be acceptance of improper, faulty, defective or non-conforming Work or material and shall not release Contractor of any of its obligations under the Agreement and shall not constitute a waiver of any right or provision hereof by NOANET. Beneficial use or occupancy by NoaNet is not acceptance of the work.

#### GC-20 PAYMENTS WITHHELD

In addition to the above percentage retained, NOANET may withhold the whole or part of any certificate for payment to such extent as may be reasonably necessary to protect itself from loss on account of:

- A. Defective or damaged work not remedied or warranties not met.
- B. Claims filed or reasonable evidence indicating filing of claims against the Contractor.
- C. Failure of the Contractor to make payments properly to Subcontractors or for materials, labor, or equipment.
- D. A reasonable doubt that the work in the Small Works Bid Document can be completed for the balance then unpaid.

- E. Damage to another Contractor.
- F. Damage to or loss of NOANET -furnished materials or NOANET property.
- G. Contractor's failure to meet any performance warranties required by the Contract Documents or the Small Works Bid Documents.

The Contractor shall provide a contact name, address, and email address to facilitate notification if any payment, or portion of any payment, is withheld for any of the reasons above, or for missing documentation or items incorrectly invoiced. Notification shall be made via email, or shall be mailed, properly addressed and stamped with the required postage to the person designated by the Contractor.

#### GC-21 ACCEPTANCE AND FINAL PAYMENT

When the Contractor has completed all work in accordance with the terms of the Small Works Bid Documents, the Contractor shall properly execute and submit to a NOANET Representative a request for final payment and the Certificate of Completion and Release (exhibit F) The Certificate of Completion and Release shall constitute a waiver of all claims by the Contractor except for unsettled claims specifically stated. NOANET shall not process Contractor's request for final payment until after the Contractor furnishes the Certificate of Completion and Release.

The Certificate of Completion and Release shall warrant that the Contractor has fully completed its work included in the Small Works Bid Documents and has fully paid for labor, materials, equipment, services, taxes and all other costs and expenses of every nature and kind whatsoever resulting from the Small Works Bid Document. If any dispute exists between the Contractor and any person, firm or corporation to whom the Contractor might be obligated in connection with any Small Works Bid Document, the Contractor shall state the name of claimant and amount and general nature of claim against the Contractor. The Certificate of Completion and Release shall state the amount and nature of all present and future claims that the Contractor may have against NOANET shall not be complete until after the Contractor has delivered to a NOANET Representative a properly completed Certificate of Completion and Release.

After receipt of a properly completed Certificate of Completion and Release and request for final payment, a NOANET Representative shall, within a reasonable time, make a recommendation to NOANET relative to acceptance of the Contractor's work. Such a recommendation shall not constitute a recommendation of acceptance of any work or materials not furnished in accordance with the terms of this Contract and the Small Works Bid Document.

Upon receipt of: (1) request for final payment and Certificate of Completion and Release, and (2) the NOANET Representative's recommendation relative to acceptance of work, NOANET shall, within a reasonable time, take action on the Contractor's final request for payment, and on acceptance of work. Such action shall be subject to the condition of the Performance Bond, legal rights of NOANET, required warranties, and correction of faulty work discovered after final payment. NOANET shall have the right to retain from any payment then due the Contractor, so long as any bills or claims remain unsettled and outstanding, a sum sufficient, in the opinion of NOANET, to provide for the payment of the same. It is also understood and agreed that, in the

case of any breach by the Contractor of the provisions hereof, NOANET may retain from any payment or payments which may become due hereunder, a sum sufficient, in the opinion of NOANET, to compensate for all damages occasioned by such breach including any such damages arising out of any delay on the part of the Contractor.

Sixty (60) days after Final Acceptance, including Contractor's delivery of a properly completed Certificate of Completion and Release to a NOANET Representative, retainage may be claimed by the Contractor; provided, however, that there are no claims filed for material or laborers and that NOANET has received the certificate of the Washington State Department of Revenue of payment in full of all taxes, the Employment Security Department, and the approved Washington State Department of Labor and Industries Request for Contract Release form and the approved affidavit showing payment of prevailing wages. If any liens remain unsatisfied after final payment is made, the Contractor shall refund to NOANET such amounts as NOANET may have been compelled to pay in discharging such liens including all costs and reasonable attorney's fees.

#### GC-22 NOANET REPRESENTATIVE'S STATUS, AUTHORITY AND PROTEST PROCEDURE

A NOANET Representative shall represent NOANET. The Representative has authority to stop the work whenever such stoppage may be necessary to insure the proper execution of the Contract. The Representative shall also have authority to reject all work, equipment, and materials which do not conform to the Contract and to answer questions which arise in the execution of their work.

Written Approval by the NOANET Representative signifies favorable opinion and qualified consent. It does not carry with it certification, assurance of completeness, assurance of quality, nor assurance of accuracy concerning details, dimensions, and quantities. It is not an acceptance by NOANET or certification that Contractor has performed the Contract work correctly or according to Contract

Documents and the Small Works Bid Document. Such approval shall not relieve the Contractor from responsibility for errors or for deficiencies within their control.

All claims of the Contractor and all questions relating to the interpretation of the Small Works Bid Document, including all questions as to the acceptable fulfillment of the Contract on the part of the Contractor and all questions as to compensation, shall be submitted in writing to the NOANET Representative for determination within the applicable time period specified in the Small Works Bid Document.

All such determination and other instructions of the NOANET Representative shall be final unless the Contractor shall file with the NOANET Representative a written protest, stating clearly and in detail the basis thereof, within ten (10) calendar days after the NOANET Representative notifies the Contractor of such determination or instruction. The protest shall be forwarded by the NOANET Representative to NOANET'S Contract Manger, who shall issue a decision upon each such protest, and its decision shall be final. Pending such decision, the Contractor, if required by the NOANET Representative, shall proceed with the work in accordance with the determination or instructions of the NOANET Representative.

The NOANET Representative may appoint assistants and inspectors to assist him in determining that the work performed and materials furnished comply with contract requirements. Such assistants and inspectors shall have authority to reject defective material and suspend any work that is being done improperly, subject to the final decisions of the NOANET Representative, or to exercise such additional authority as may be delegated to them by the NOANET Representative. All work done and all materials furnished shall be subject to inspections by the NOANET Representative or their inspectors at all times during the work.

#### GC-23 COOPERATION WITH OTHERS

There may be other contractors or forces of NOANET working the same area where work under the Small Works Bid Document shall be performed. The Contractor shall fully cooperate with such other contractors and NOANET'S employees and carefully fit their work with the other work consistent with orderly and expeditious performance and completion of the project as a whole.

#### GC-24 INSURANCE

Contractor shall obtain, and keep in force during the term of this Contract, insurance policies with insurers licensed to do business in the state of Washington 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 NOANET, it's elected or appointed officials, officers, employees, and volunteers as insured 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 NOANET; and (3) shall state that NOANET 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 NOANET a Certificate of Insurance evidencing the required insurance accompanied by endorsements as are necessary to comply with the requirements of this paragraph. NOANET 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.

#### GC-25 JOB SAFETY/HOUSEKEEPING

All work done shall be done in a manner that minimizes interruptions or inconvenience to the public and/or NOANET 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 Transportation. 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 NOANET determine Contractor is not fulfilling its obligation in this regard, NOANET 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.

#### GC-26 COMPLIANCE

Contractor is expected to comply with all applicable statutes in performing Small Works Project, including, but not limited to all state and local laws, regulations, ordinances, codes and standards that are applicable at the time Contractor performs work.

#### GC-27 PRE-WORK CONFERENCE

The Contractor, upon notification by NOANET, may be required to attend a pre-work conference prior to starting any work. The purpose of the conference is to discuss, among other considerations, the responsibility of the Contractor and their Subcontractors in the execution and progress of the work. The conference, if any, shall be held on a date mutually agreed upon by the Contractor and the NOANET Representative.

#### GC-28 HOURS OF WORK



The Contractor agrees that all persons employed by it and by any of its subcontractors in work done pursuant to this Contract shall not be employed in excess of eight hours in any one day, except as in accordance with RCW 49.28.

#### GC-29 PROGRESS MEETINGS

Progress review meetings shall be held at regular intervals as deemed necessary by the NOANET Representative. Progress meetings shall be utilized to review the work schedule and discuss any delays, unusual conditions, or critical items which have affected or could affect the progress of the work.

Time is of the essence of any Small Works Project. If at any time during the progress of work, the Contractor's actual progress, in the opinion of a NOANET Representative, is inadequate to meet the Contract completion dates, NOANET may issue a written notice of noncompliance to the Contractor who shall thereupon take such steps as may be necessary to improve its progress. If within a reasonable period as determined by the NOANET Representative, the Contractor does not improve performance to meet the work schedule, NOANET may direct the Contractor to accelerate the work through an increase in the Contractor's labor force, the number of shifts, overtime operations, additional days of work per week and/or an increase in the amount of plant; all without additional cost to NOANET. Neither such notice by NOANET nor NOANET'S failure to issue such notice shall relieve the Contractor of its obligation to achieve the quality of work and rate of progress required by the Small Works Bid Document.

Failure of the Contractor to comply with the instructions of NOANET may be grounds for determination by NOANET that the Contractor is not prosecuting its work with such diligence as shall assure completion within the times specified. Upon such determination, NOANET may terminate the Contractor's right to proceed with the performance of the Small Works Bid Document, or any separable part thereof in accordance with GC-9.

#### GC-30 PAYMENT OF SUPPLIERS

The Contractor agrees to pay in a timely manner all suppliers of labor, materials, and equipment utilized in operations under the contract.

#### GC-31 PAYMENT OF LABOR

The Contractor, and its Subcontractors shall fully comply with all applicable provisions of RCW Chapter 39.12, concerning payment of prevailing wages, including the filing and payment of fees for all required statements and affidavits, and shall pay and provide wages and benefits to their employees employed in the performance of this Contract which are not less than those fixed by the Washington Department of Labor and Industries for work of like character. It shall be the responsibility of the Contractor to ensure that the appropriate classification of work and prevailing wage rate is paid for the county in which the Work is performed. The State of Washington prevailing wage rates applicable to Small Works Projects may be found at the following website address of the Department of Labor and Industries:  
<https://fortress.wa.gov/lni/wagelookup/prvWagelookup.aspx> Questions regarding Prevailing Wage should be directed to the Prevailing Wage section of the Department of Labor & Industries, ESAC Division, P.O. Box 44540, Olympia, Washington 98504-4540 by calling (360)

902-5335 or on their web site at:

<http://lni.wa.gov/TradesLicensing/PrevWage/WageRates/default.asp>. It is the Contractor's responsibility to ensure with the Washington Department of Labor and Industries prior to bid opening that the most current version of the prevailing wage rates are utilized in the preparation of its Bid.NoaNet does not guarantee that labor can be procured for the minimum wages shown on the referenced schedules. The rates listed are minimum only, below which the Contractor cannot pay. The Contractor may be required to furnish to NoaNet at any time acceptable evidence of wage rates paid by it or its Subcontractors.

Any dispute between the Contractor or any of its Subcontractors and NoaNet over the appropriate wage rate under this provision or RCW 39.12 shall be subject to arbitration pursuant to RCW 39.12.060.

#### GC-32 DELAYS AND EXTENSIONS OF TIME

If the Contractor is delayed at any time in the progress of work by any unforeseeable causes beyond the control of the Contractor, except for shortages in materials and labor, the Contract time shall be extended for such reasonable time as NOANET shall determine.

The Contractor agrees to complete the work within the Small Works Bid Document time as thus extended. Such extensions shall postpone the beginning of period for payment of liquidated damages but they and the events producing them shall not be grounds for claim by the Contractor of damages or for additional costs, expenses, overhead or profit or other compensation. Except for delays caused by the acts or omissions of NOANET or persons acting for it, extensions of time granted by a NOANET Representative to the Contractor shall be the Contractor's sole and exclusive remedy for any delays due to causes beyond the control of the Contractor.

All claims for extension of time shall be made in writing to NOANET no more than 3 days after the Contractor knows or by reasonable diligence should know of the event causing or likely to cause the delay; otherwise, they shall be waived. In the case of a continuing cause of delay only one claim is necessary. Contractor's failure to give such notice promptly and within such time limit shall be deemed sufficient reason by NOANET for denial of any time extension request.

Avoidable delays in the execution or completion of the work, for which no time extension shall be granted, shall include all delays which in the opinion of NOANET could have been avoided by the exercise of care, prudence, foresight and diligence on the part of the Contractor or their Subcontractors. All changes of the time or changes of the schedule shall be made by Change Orders to the Contract.

#### GC-33 COMPLETION DEADLINE/LIQUIDATED DAMAGES

Contractor shall commence work under this Contract upon receipt of notice to proceed from NOANET. If the Small Works Project is not completed by such date as set forth in the Small Works Bid Document., Then the contractor shall pay NoaNet \$250.00 for each calendar day that the work remains incomplete after expiration of the specified completion date, unless otherwise

specified in the Small Works Bid Document. The sum of the Liquidated damages shall not exceed fifteen percent of the Contact Price.

#### GC-34 ENVIRONMENTAL CONTROL

The Contractor and Subcontractors shall comply with all applicable state and federal environmental regulations. Contractor shall take suitable measures and provide suitable facilities to prevent pollution, oil and chemical spills, soil erosion and the introduction of any substances or materials into any stream, river, lake or any other body of water which may pollute or silt the water or constitute substances or materials deleterious to fish or wildlife.

Further, Contractor shall use all reasonable efforts to maintain the site of the work free from fugitive dust (i.e. dust that becomes airborne or visual). Contractor shall be responsible for all cost of corrective measures required as a result of any pollution, erosion or siltation, including its effects on adjacent properties.

#### GC-35 TAXES, PERMIT, TEMPORARY FUNCTIONS

Contractor shall secure and pay for all permits, fees and licenses necessary for the performance of this Contract, unless otherwise specified in the Small Works Bid Document 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.

#### GC-36 NON-WAIVER

No waiver of any provision of this Agreement, or any rights or obligations of either Party under this Agreement, shall be effective, except pursuant to a written instrument signed by the Party or Parties waiving compliance, and any such waiver shall be effective only in the specific instance and for the specific purpose stated in such writing. The failure of either Party to require the performance of any term of this Agreement or the waiver of either Party of any breach under this Agreement shall not operate or be construed as a waiver of any other provision hereof, nor shall it be construed as a waiver of any subsequent breach by the other Party hereto.

#### GC-37 PERFORMANCE 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 NOANET on account of such defects, discovered within one (1) year after final acceptance by NOANET. If this Contract is for less than \$35,000, Contractor authorizes NOANET, in lieu of a bond, to retain 50% of the Contract amount for a period of thirty days after the date of final acceptance, or until receipt of all necessary releases from the department of revenue and the department of labor and industries and settlement of any liens filed under chapter 60.28 RCW, whichever is later: PROVIDED FURTHER, That for contracts of one hundred thousand dollars or less, the public

entity may accept a full payment and performance bond from an individual surety or sureties: AND PROVIDED FURTHER, That the surety must agree to be bound by the laws of the state of Washington and subjected to the jurisdiction of the state of Washington as provided for under RCW 39.08.010., a sample of which is included with these Contract Documents as Exhibit "B".

GC-38 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:

NOANET:

Northwest Open Access Network

422 West Riverside Suite 408

Spokane, WA 99201

Attn: Chris Walker

Contractor:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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

- B. Entire Agreement. This Contract and its attachments contain the entire understanding between NOANET and Contractor relating to the Project which is the subject of this Contract. This Contract supersedes 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 NOANET 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 Kind County Superior Court, King 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.
- J. Contractor acknowledges that by signing below Contractor is expressly agreeing that all terms and conditions contained in this Small Works Contract shall be applicable to any work awarded to Contractor by NOANET pursuant to NOANET'S Small Works Roster Program.

Northwest Open Access Network ("NOANET")

By \_\_\_\_\_  
 Name:  
 Job Title:  
 Date: \_\_\_\_\_

("CONTRACTOR") By Typed Name Job Title Phone: Fax: Date:

By \_\_\_\_\_  
 Typed Name \_\_\_\_\_  
 Job Title \_\_\_\_\_  
 Phone: \_\_\_\_\_  
 Fax: \_\_\_\_\_  
 Date: \_\_\_\_\_  
 WA Contractor's License No. \_\_\_\_\_



**EXHIBIT "A" – SAMPLE BID FORM**

NAME OF BIDDER: \_\_\_\_\_  
(Full Legal Name)

TO: NOANET  
of Pierce County, Washington

Gentlemen:

The aforementioned undersigned has examined the site, plans and specifications, laws and ordinances governing the improvements contemplated. In accordance with the terms and provisions in the foregoing, the following price is tendered as an offer to perform the work, complete in place and ready for satisfactory operation.

The Total Bid Price shall be used in the Bid Evaluation.

<u>Description</u>	<u>Total Bid Price</u>
_____	\$ _____

Prices quoted include the cost of the Performance Bond required by the Small Works Bid Documents but do not include Washington State and Local Taxes.

Payment shall be made upon completion of all work.

NOANET (requires) completion of all work by \_\_\_\_\_.

Contractor shall begin work by \_\_\_\_\_ and complete all work on or before \_\_\_\_\_.

(CHECK ONE) We shall \_\_\_\_\_ shall not \_\_\_\_\_ be using Subcontractors. (Listing of Subcontractors, if any, must be specified on the Supplemental Bid Attachment).

Bidder has been disqualified from Bidding on any public works contracts under RCW 39.06.010 or 39.12.065(3) \_\_\_\_\_ Yes \_\_\_\_\_ No (**MUST BE FILLED IN**)

Attached hereto is a properly executed and notarized Signature Certification Form.

Attached hereto is the Bid Proposal Attachment and all Bidder's data required in support of this Bid.

Addendum Nos. \_\_\_\_\_ have been received and have been considered in preparing this Bid.

BIDDER: \_\_\_\_\_ ADDRESS \_\_\_\_\_  
Full Legal Name

BY: \_\_\_\_\_  
Type or Print Name

TITLE: \_\_\_\_\_

SIGNED: \_\_\_\_\_ Phone (     ) \_\_\_\_\_

DATE: \_\_\_\_\_

**Note: Failure to sign the Bid Form above shall result in rejection of the Bid.**

Washington Registration Certificate No. \_\_\_\_\_

Washington State Unified Business Identifier (UBI) Number \_\_\_\_\_

Washington State Employment Security Department Number \_\_\_\_\_

Washington State Excise Tax Registration Number \_\_\_\_\_

Washington State Sales Tax Identification Number \_\_\_\_\_

We hereby certify that we are not required to have a Washington State Sales Tax Identification Number for this work:

Signed by: \_\_\_\_\_

Name (Typed): \_\_\_\_\_  
Authorized Representative

Title: \_\_\_\_\_



**EXHIBIT "B" – SAMPLE SMALL WORKS NOTICE TO PROCEED**

To: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date of Award: \_\_\_\_\_

Project Name: \_\_\_\_\_

Small Works Bid Document: \_\_\_\_\_

You are hereby notified to commence work on the above referenced project on or before \_\_\_\_\_, 20\_\_\_\_\_, and you are to complete the work within \_\_\_\_\_ consecutive calendar days thereafter. Contractor agrees to furnish all required work, including labor and specified materials, in full compliance with the terms and conditions contained in NOANET'S Small Works Contract and the Project Specific Specifications and Requirements contained in the Small Works Bid Documents referenced above, which are herein incorporated by this reference.

NOANET agrees to pay the Contractor for the work specified herein to be performed, in the sum of \_\_\_\_\_ dollars (\$\_\_\_\_\_) plus applicable Washington State sales tax.

NOANET  
OF PIERCE COUNTY, WASHINGTON

By: \_\_\_\_\_  
Contract Officer

By: \_\_\_\_\_  
NOANET Representative

**ACCEPTANCE**

Contractor acknowledges receipt of this Notice and agrees to perform all work in accordance with the above referenced terms and conditions.

By: \_\_\_\_\_  
Director

By: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: \_\_\_\_\_

**EXHIBIT "C" – SAMPLE PERFORMANCE BOND**

KNOW ALL MEN BY THESE PRESENTS, That \_\_\_\_\_  
Of \_\_\_\_\_, (hereinafter called the "Principal"),  
and \_\_\_\_\_, as Surety, are jointly and severally held  
and bound unto NORTHWEST OPEN ACCESS NETWORK OF PIERCE COUNTY, Washington (hereinafter  
called the "NOANET"), in the sum of \_\_\_\_\_  
Dollars (\$ \_\_\_\_\_) for the payment of which we jointly and severally bind ourselves, our heirs,  
executors, administrators and assigns, and successors and assigns, firmly by these presents.

THE CONDITION of this bond is such that, WHEREAS, on the \_\_\_\_\_ day of \_\_\_\_\_, A.D. 20\_\_\_\_,  
the said Principal herein, executed a certain contract with NOANET, by the terms, conditions and  
provisions of which contract the said Principal herein, agrees to furnish all material and do certain work,  
to--wit: \_\_\_\_\_ per the Contract Documents made a part of said  
contract, which contract as so executed is hereunto attached, is now referred to and by reference is  
incorporated herein and made a part hereof as fully for all purposes as if here set forth at length.

NOW, THEREFORE, if the Principal herein shall faithfully and truly observe and comply with the  
terms, conditions and provisions of said contract in all respects, including all guarantees and warranties  
arising thereunder, and shall well and truly and fully do and perform all matters and things by it  
undertaken to be performed under said contract, upon the terms proposed therein and within the time  
prescribed therein, or within such extensions of time as may be granted under said contract and shall  
hold NOANET harmless from all costs and damages (including reasonable attorney's fees) which it may  
incur by reason of any failure to do so, and shall fully reimburse and repay NOANET for all expense  
which it may incur in making good any such failure of performance on the part of the Principal, and shall  
promptly make payment to all persons, firms, partnerships, corporations or others who shall supply  
labor, materials, services, goods, tools, supplies, equipment, transportation, supervision, utilities or  
other items for use in the Work and shall fully reimburse NOANET for any excess in cost of construction  
over the cost set in the contract and any amendments thereto, occasioned by any default of the  
Principal under the contract and any amendments thereto, then this obligation shall be null and void,  
but otherwise shall remain in full force and effect.

No prepayment or delay in payment and no change, extension, addition, or alteration of any  
provision of the Contract agreed to between the Contractor and NOANET, and no forbearance on the  
part of NOANET, shall operate to relieve surety from any liability on this bond, and consent to make  
these alterations without further notice to or consent by the surety is hereby given.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

"PRINCIPAL" \_\_\_\_\_

Address of local office and agent, and home  
offices of Surety Company:

BY: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

"SURETY" \_\_\_\_\_

BY: \_\_\_\_\_

**EXHIBIT "D" – SAMPLE CHANGE ORDER FORM**

NO. \_\_\_\_\_

Pursuant to Section GC-17, the following changes are hereby incorporated into this Contract:

A. Description of Change:

B. Time of Completion: The time of completion shall be increased (decreased) by \_\_\_\_\_ calendar days. The revised completion date shall be \_\_\_\_\_.

OR

The completion date shall remain \_\_\_\_\_.

C. Contract Price Adjustment: As a result of this Change Order, the (not to exceed) Contract Price shall remain unchanged (be increased/decreased by the sum of \$\_\_\_\_\_ plus sales tax). This Change order shall not provide any basis for any other payments to or claims by the Contractor as a result of or arising out of the performance of the work described herein. The new total revised (maximum) Contract Price is \$\_\_\_\_\_, which amount the Contractor acknowledges is the (maximum) Contract Price for the work including changes incorporated by this Change Order. *Insert the Maximum verbiage when dealing with any contract with a Not to Exceed dollar amount in the Contract Documents.*

D. Except as specifically provided herein, all other Contract terms and conditions shall remain unchanged.

NOANET  
OF PIERCE COUNTY, WASHINGTON

FULL NAME OF CONTRACTOR IN CAPS

Accepted By: \_\_\_\_\_  
*Name of Authorized Signature*

Accepted By: \_\_\_\_\_  
*Name of Authorized Signature*  
*Title*

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

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

**EXHIBIT "E" – SAMPLE NOANET INSTRUCTIONS**

No. \_\_\_\_\_

Project: \_\_\_\_\_

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

Contract No.: \_\_\_\_\_

Drawing No.: \_\_\_\_\_

To: \_\_\_\_\_

(Contractor)

This Instruction is issued in accordance with the terms and conditions of the Contract Documents as:

\_\_\_\_\_ an interpretation of Contract Documents, or

\_\_\_\_\_ an order to proceed immediately with minor change not affecting Contract Price or Time for completion of work.

INSTRUCTION: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

DO NOT PROCEED with this instruction if you believe that this Instruction shall provide the basis for a claim or increase in the Contract Price or time for completion of the work. By following this Instruction, Contractor hereby agrees that as a result thereof, there shall be no change in Contract Price or time of completion and waives any claim relating thereto.

RECEIPT ACKNOWLEDGED AND INSTRUCTION ACCEPTED:

NOANET  
OF PIERCE COUNTY, WASHINGTON

*FULL NAME OF CONTRACTOR IN CAPS*

\_\_\_\_\_  
Accepted By: *(print name)*

\_\_\_\_\_  
Accepted By: *(print name)*

Title: NOANET Representative

Title: *print title*

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

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

**CERTIFICATE OF COMPLETION AND RELEASE**

FROM: \_\_\_\_\_  
(Contractor)

OF: NORTHWEST OPEN ACCESS of PIERCE County, Washington  
(NOANET)

Small Works Bid Document No. \_\_\_\_\_

Entered into the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.  
Between NOANET OF PIERCE County, Washington and \_\_\_\_\_ of  
\_\_\_\_\_, \_\_\_\_\_ for \_\_\_\_\_

Located in the County of \_\_\_\_\_ and STATE OF WASHINGTON.

**KNOW ALL MEN BY THESE PRESENTS:**

1. The undersigned hereby certifies that there is due from and payable NOANET to the Contractor under the Contract and duly approved Change Orders and modifications the balance of \$\_\_\_\_\_.

2. The undersigned further certifies that in addition to the amount set forth in paragraph 1, there are outstanding and unsettled the following items which he claims are just and due and owing by NOANET to the Contractor:

- a. \_\_\_\_\_
- b. \_\_\_\_\_
- c. \_\_\_\_\_
- d. \_\_\_\_\_

(Itemize claims and amounts due - If none, so state)

3. The undersigned further certifies that all work required under this Contract including work required under change orders numbered \_\_\_\_\_ has been performed in accordance with the terms thereof, and that there are no unpaid claims for materials, supplies, or equipment and no claims of laborers or mechanics for unpaid wages arising out of the performance of this Contract, and that the wage rates paid by the Contractor and all Subcontractors were in conformity with the Contract provisions relating to said wage rates.

4. Except for the amounts stated under paragraphs 1 and 2, hereof, the undersigned has received from NOANET all sums of money payable to the undersigned under or pursuant to the above mentioned Contractor or any modification or change thereof.

5. That in consideration of the payment of the amount stated in paragraph 1 hereof the undersigned does hereby release NOANET from any and all claims arising under or by virtue of this Contract, except the amount listed in paragraph 2 hereof; provided however, that if for any reason NOANET does not pay in full the amount stated in paragraph 1 hereof, said deduction shall not affect the validity of this release, but the amount so deducted shall be automatically included under paragraph 2 as an amount which the Contractor has not released but shall release upon payment thereof. The Contractor further

certifies that upon the payment of the amount listed in paragraph 1, hereof, he shall release NOANET from any and all claims of any nature whatsoever arising out of said Contractor or modification thereof, and shall execute such further released or assurances as NOANET may request.

IN WITNESS WHEREOF, the undersigned has signed and sealed this instrument this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

\_\_\_\_\_  
(SEAL)

\_\_\_\_\_  
(Signature and Title of Officer)

STATE OF \_\_\_\_\_ )

County of \_\_\_\_\_ )

\_\_\_\_\_, being duly sworn on oath, deposes and says: That he is the \_\_\_\_\_ of the \_\_\_\_\_, that he has read the foregoing Certificate by him subscribed as \_\_\_\_\_ (Title) of the \_\_\_\_\_ (Corporation/Company).

SUBSCRIBED AND SWORN to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_ .

\_\_\_\_\_  
Signature of Notary Public

(Seal or Stamp)

\_\_\_\_\_  
Title

My Appointment Expires \_\_\_\_\_

**EXHIBIT "G" – SAMPLE BOND IN LIEU OF RETAINAGE**

KNOW ALL MEN BY THESE PRESENTS, that we \_\_\_\_\_, as Principal, and \_\_\_\_\_, as Surety, are held and firmly bound unto NORTHWEST OPEN ACCESS OF PIERCE County, Washington (hereinafter "NOANET"), and to any claimants eligible to file a lien or claim against monies retained by NOANET pursuant to RCW 60.28 (hereinafter collectively designated as "Obligees"), from monies earned by Principal in the sum stated below, to the payment of which, well and truly to be paid, we bind ourselves, or heirs, executors and successors jointly and severally, firmly by these presents.

The condition of the obligations is such that, whereas, on \_\_\_\_\_, the Principal and NOANET entered into a Contract for public improvement for and, whereas, the Principal requested NOANET to accept this bond in lieu of all of the Contract retainage which NOANET would otherwise be required to withhold pursuant to Chapter 60.28 RCW; and whereas, the Principal has submitted to NOANET this bond executed by itself and the Surety, a corporation authorized to issue surety bonds in the State of Washington, in the penal sum of \_\_\_\_\_ Dollars, ( \_\_\_\_\_ \$ ) lawful money of the United States of America, which is five (5) percent of the Contract Price, and the Principal has requested NOANET, within thirty (30) days of delivery of the bond to NOANET, to release the monies that would otherwise be retained; and NOANET has consented to permit Principal to file this bond in lieu hereof.

NOW, THEREFORE, if the Principal shall indemnify the Obligees from all loss which Obligees may suffer by virtue of the release of retainage to Principal on monies earned or to be earned, and shall pay any sum which Obligees may recover on their claims, together with costs of suit, reasonable attorney's fees, and interest to which the claimants may be entitled consistent with law and any claims, costs of suit and reasonable attorney's fees incurred by NOANET, then this obligation to be null and void, otherwise to be in full force and effect.

Provided: however, it is expressly understood and agreed:

1. This bond is given and accepted under and in accordance with the provisions of RCW 60.28 and is subject to all claims and liens and in the same manner and priority as set forth for retained percentages contained therein.
2. The laws of the State of Washington shall be applicable in the determination of the rights and obligations of the parties hereunder.
3. No right of action shall accrue upon or by reason hereof to, or for the use or benefit of anyone other than the Obligees herein identified.
4. The aggregate liability of the Surety under this bond for claims against this bond shall no exceed the penal sum of this bond unless change orders, changes in quantities of work or materials provided or other amendments to the Public improvement Contract increase the amount NOANET is required to retain, in which event the aggregate liability of the Surety shall increase by a sum equaling the increase in the Contract Price multiplied by five (5) percent.

5. The Surety acknowledges that increases in Contract Price may occur as identified in the preceding paragraph. The Surety hereby waives any defense of lack of notice of said increases and the consequent increases in retainage released to the Principal against claims by the Obligees, or any of them.
  
6. In the event Principal fails at any time to pay persons protected under Washington law, RCW Chapter 60.28, or NOANET has reason to believe that NOANET or other Obligee has a claim against the retainage or for other good cause, NOANET claim against the retainage may, at its option, resume retaining from monies earned by Principal such amount as it would otherwise be entitled to retain had this bond not been accepted. Notwithstanding NOANET'S resuming such retainage, this bond shall remain in full force and effect to the extent of its penal sum, limited to the amount of retainage released to the Principal. After Principal has paid protected persons or otherwise cured any default, NOANET may, at its option, again release retainage pursuant to this agreement. Notwithstanding any action NOANET may take pursuant to this section, Surety shall remain liable as set forth above. It shall be no defense, by Surety or Principal, against any claim under this bond that NOANET should have resumed retaining monies.

IN WITNESS WHEREOF, said Principal and Surety have hereunto set their hands and seal this day of \_\_\_\_\_, 20\_\_\_\_\_ .

PRINCIPAL: \_\_\_\_\_

SURETY: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Attorney in Fact

\_\_\_\_\_  
Attorney in Fact

Address of local office and agent, and home offices of Surety Company

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