

**LIMITED PUBLIC WORKS CONTRACT**

THIS CONTRACT ("Contract") is made this 18 day of May, 2015, between North Beach Water District ("District") and \_\_\_\_\_ **Bison Well Drilling & Septic, LLC.** ("Contractor").

In consideration of the terms and conditions contained herein and attached and made a part of this Contract, the parties herein covenant and agree as follows:

**1. Project.** The Contractor shall do all work and furnish all tools, materials and equipment for the District's public works project known as the **North Wellfield Septic System Installation** ("Project") in accordance with and as described in the Contract Documents including addenda (if any) described in the Bid Documents which are by this reference incorporated herein and made a part thereof, and shall perform any alterations in or additions to the Project provided under this Contract and every part thereof.

**2. Project Cost.** The amount of the Contract is **Seven Thousand Eight Hundred Ninety & 00/100 Dollars** (**\$7,890.00**) plus applicable Washington State Slakes Tax. The Total Project cost includes all cost associated with the Project work, including but not limited to, labor, materials, overhead, administrative, permits, subcontractors, and regulatory costs unless otherwise agreed in writing. The District will pay sales tax at the rate assessed for unincorporated Pacific County to the Contractor for those portions of the Project that are subject to sales tax. The Contractor shall make sales tax and other tax payments to the State of Washington as provided by Washington State Law.

**3. District Contract.** The District hereby promises and agrees with the Contractor to employ and does employ the Contractor to provide the materials and to do and cause to be done the Project work required by the Contract Documents and to complete and finish same according to the Contract Documents.

**4. Contractor Contract.** The Contractor hereby agrees to fully perform the Project work in accord with the Contract Documents.

**5. Liability.** It is further provided that no liability shall attach to the District by reason of entering into this Contract except as expressly provided herein.

**6. Completion Deadline/Liquidated Damages.** The Project must be commenced

no later than **Ten ( 10 )** working days from the date of mailing of the Notice to Proceed to the Contractor and must be finished no later than **Fifteen ( 15 )** working days from the date of such mailing; if the Project is not completed within such time period, then because of the difficulty of computing the actual damages to the District arising from any delay in completing the Contract, the parties determine in advance and agree that the Contractor shall pay the District the amount of **One Hundred Dollars ( \$100.00 )** per work day that the work remains incomplete after expiration of the specified time for completion as liquidated damages, which the District will suffer by failure of the Contractor to complete the work within the agreed time. The execution of this Contract constitutes acknowledgement by the Contractor that Contractor has ascertained and agrees that the District will actually suffer damages of at least the amount herein fixed.

**7. Contractor Responsibilities.** The Contractor represents that Contractor is fully experienced and possesses all of the necessary expertise for performance of all work specified herein. The Contractor warrants to the District that any materials and equipment furnished under this Contract will be new and of good quality unless otherwise required or permitted by the Contract Documents, that the work will be free from defects, and that the work will conform to the requirements of the Contract Documents. Contractor shall return to the project and repair or replace all defects in workmanship and material discovered within one year after Final Acceptance of the Work. Contractor shall start work to remedy any such defects within seven (7) calendar days of receiving the District's written notice of a defect and shall complete such work within reasonable and mutually agreed time frame. In case of an emergency, where damage may result from delay or where loss of services may result, such corrections may be made by Owner's own forces or another contractor, in which case the cost of corrections shall be paid by Contractor. In the event Contractor does not accomplish corrections within the time specified, the work will be otherwise accomplished and the cost of same shall be paid by Contractor. When corrections of defects are made, Contractor shall then be responsible for correcting all defects in workmanship and materials in the corrected work for one year after acceptance of the corrections by the District. This guarantee is supplemental to and does not limit or affect the requirements that Contractor's work comply with the requirements of the Contract Documents or any other legal rights or remedies of the District.

**8. Equitable Adjustments.** Should the Contractor desire an equitable adjustment to the Project Cost, on the basis of a written change order or an oral order from the District, Contractor shall file a written notice of that fact with the District within 48 hours of the written or oral order. No later than seven days thereafter, Contractor shall file a written claim with the District stating the amount claimed supported by appropriate documentation. By not protesting or following procedures as this section

provides, the Contractor waives any additional entitlement or claims for protested work, and accepts from the District any written or oral order (including directions, instructions, interpretations, and determinations). In spite of any protest, the Contractor shall proceed to promptly complete work that the District has ordered. THE CONTRACTOR'S ACCEPTANCE OF FINAL PAYMENT SHALL CONSTITUTE A WAIVER OF CLAIMS, EXCEPT THOSE PREVIOUSLY AND PROPERLY MADE AND IDENTIFIED BY THE CONTRACTOR IN WRITING AS UNSETTLED AT THE TIME REQUEST FOR FINAL PAYMENT IS MADE.

**9. Payment Terms.**

**9.1. Payments.** The District shall pay the Contractor on a monthly basis for all work and services satisfactorily completed during the preceding month. A detailed application for payment shall be submitted by the Contractor to the District on or before the 30 day of each month, showing the progress of the work and requesting payment in an amount proportionate to the work completed. In cases of single payment, the District shall make payment only after all appropriate releases are submitted. In cases of multiple payments, the District shall retain monies as required by RCW 60.28 and pay the retainage as provided therein. Payment to the Contractor shall be made within 30 days after approval of the application for payment.

**9.2. Defective or Unauthorized Work.** The District reserves the right to withhold payment from the 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, and extra work and materials furnished without the District's written approval. If the Contractor is unable, for any reason, to satisfactorily complete any portion of the work, the District may complete the work by contract or otherwise, and the Contractor shall be liable to the District for any additional costs incurred by the District. "Additional costs" means all reasonable costs incurred by the District, including legal costs and attorneys' fees, beyond the maximum contract price under this Contract. The District further reserves the right to deduct the cost to complete the work, including any additional costs, from any amounts due or to become due to the Contractor. The provisions of this subsection 8.2 shall be in addition to any other remedies available under this Contract.

**10. Prevailing Wages Requirement.** The Contractor shall pay prevailing wages in accord with RCW 39.12 and RCW 49.28. A statement of prevailing wages applicable to the Project is included in the specifications. Notice of intent to pay prevailing wages and prevailing wage rates for the project must be posted for the benefit of workers. The Contractor shall provide an "Affidavit of Industrial Insurance Compliance" for himself and each subcontractor upon acceptance of the Project by the District. Final payment will be made in accordance with the requirements of RCW 39.12.

**11. Indemnification.** The Contractor shall defend, indemnify, and

save the District and its officers and employees harmless from any and all claim and risk and all losses, damages, demands, suits, judgments, and attorneys' fees or other costs, penalties, fees or expenses of any kind on account of injury to or death of any and all persons, on account of all property damage of any kind, or loss of use resulting therefrom, or on account of liability under any federal, state or local laws, ordinances or regulations (including, but not limited to, those laws set forth in Section 17 below) governing the disposal of waste or debris accumulated and/or generated during the course of performance of the work under this Contract, that is in any manner connected with, the work performed under this Contract, or caused in whole or in part by reason of the presence of the contractor, the subcontractors, or their property, employees, or agents, upon or in proximity to the property of the District during performance of the work or at any time before final acceptance, except only for those losses resulting from and to the extent of the negligence of the District with regard to activities within the Contractor's scope of work. The Contractor specifically waives any immunity granted under the State Industrial Insurance Law, RCW Title 51, which is specifically acknowledged by the Contractor. \_\_\_\_\_  
 (Contractor's Initials)

12. **Authority to Execute.** The undersigned warrant and represent they have full authority to execute this Contract for their respective entities and are fully authorized to do so.

13. **Insurance.** The Contractor shall obtain and keep in force during the term of the Contract, insurance in the following amounts:

	<b>General</b>	<b>Automobile</b>	<b>Property</b>	<b>Completed Operations</b>
<b>Occurrence</b>	\$2,000,000	\$2,000,000	\$2,000,000	\$2,000,000
<b>Aggregate</b>	\$2,000,000	\$2,000,000	\$2,000,000	\$2,000,000

The Contractor shall obtain endorsement forms CG 2010 07 04, CG 2032 07 04 and CG 2037 07 04 or the equivalent of each, naming the District and Gray & Osborne, Inc. as Additional Insured(s) and showing the policy number. If the Contractor is unsuccessful in securing these endorsements after exerting commercially reasonable efforts, the Contractor shall obtain other endorsements providing equivalent protection to the Additional Insured. A statement of additional insured status on an ACORD Certificate of Insurance shall not satisfy this requirement. Commercially reasonable efforts shall be evidenced by a signed statement by the Contractor's insurance broker indicating that endorsement forms CG 2010 07 04, CG 2032 07 04 and CG 2037 07 04 are not available and the endorsements submitted provide equivalent protection to the Additional Insured. A Certificate of Insurance and endorsement shall be executed and delivered to the District at the time of

execution of this Contract.

The following listed entities shall be named Additional Insured on all insurance policies:

- The District and its officers, elected officials, employees, agents and volunteers.

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Providing coverage in the stated amounts shall not be construed to relieve the Contractor from liability in excess of such limits. The Contractor's insurance policies shall not contain deductibles or any self-insured retention in excess of \$10,000 unless approved by the District.

**14. Safety.** The Contractor shall be solely and completely responsible for safety and safety conditions on the jobsite, including the safety of all persons and property during performance of the Work. Observation of the Work by the District's employees, agents and consultants is not intended to include review of the Contractor's work methods, equipment, bracing, scaffolding or trenching, or safety measures in, on or near the construction site. The Contractor shall provide a safe access for the District and its employees, agents, and consultants to adequately observe the quality of the Work and the Contractor's conformance with the project specifications. The Contractor shall be solely and completely responsible to perform all work and furnish all materials in strict compliance with all applicable state, city, county and federal laws, regulations, ordinances, orders and codes. The Contractor's attention is directed to the requirements of the Washington Industrial Safety and Health Act (WISHA), Chapter 49.17 RCW.

**15. Hours of Work.** Contractor shall conduct all Work between the hours of 7:00 a.m. and 6:00 p.m. Monday through Friday unless stated otherwise under the Project's permit conditions or this Contract. No Work on weekends shall be allowed unless District gives written approval prior to the weekend. Contractor shall give a minimum of 48 hours' notice if Work on the weekend is necessary. Approved Work on the weekends shall be conducted between the hours of 7:00 a.m. and 6:00 p.m. Work hours may be further restricted due to permit conditions.

**16. Specifications.** Contractor shall furnish and install the materials and equipment and perform the work as specified on the Plans and in the Specifications and permits obtained for this Project.

**17. Miscellaneous.**

**17.1. Subletting or Assigning Contract.** The Contractor shall not assign, transfer, or encumber any rights, duties or interest accruing from this Contract without the express prior written consent of the District.

**17.2. Extent of Contract Modification.** This Contract, together with

attachments or addenda, represents the entire and integrated Contract between the parties and supersedes all prior negotiations, representations, or Contracts, either written or oral. This Contract may be amended, modified or added to only by written instrument properly signed by both parties.

**17.3. Work Performed at Contractor's Risk.** The Contractor shall take all precautions necessary and shall be responsible for the safety of its employees, agents, and subcontractors in the performance of work under this Contract. All work shall be done at the Contractor's own risk, and the Contractor shall be responsible for any loss of or damage to materials, tools, or other articles used or held for use in connection with the work.

**17.4. Non-waiver of Breach.** The failure of the District to insist upon strict performance of any of the terms and rights contained in this Contract, or to exercise any option contained in this Contract in one or more instances, shall not be construed to be a waiver or relinquishment of those terms and rights and such terms and rights shall remain in full force and effect.

**17.5. Written Notice.** All communications regarding this Contract shall be sent to the parties at the addresses listed below, unless otherwise notified. Any written notice shall become effective on delivery, but in any event on 3 calendar days after the date of mailing by registered or certified mail, and shall be deemed sufficiently given if sent to the addressee at the address stated in this Contract.

**District**

**PO Box 618**

**Ocean Park, WA 98640**

**Contractor**

**PO Box 5142**

**Spanaway, WA 98387**

**17.6. Discrimination.** The Contractor agrees not to discriminate against any employee or applicant for employment or any other person in the performance of this Contract because of race, creed, color, national origin, marital status, sex, age, disability, or other circumstance prohibited by federal, state or local law or ordinance, except for a bona fide occupational qualification.

**17.7. Compliance with Laws.** The Contractor shall comply with all federal, state and local laws, ordinances, regulations, and rules applicable to the work to be done under this Contract.

**17.8. Severability.** If any provision of this Contract is held invalid, the remainder shall not be affected thereby if such remainder would then continue to conform to the terms and requirements of applicable law, and shall continue in force and effect.

**17.9. Venue and Attorneys' Fees.** This Contract shall be interpreted under and pursuant to the laws of the State of Washington. Venue for any action brought to enforce any of the provisions of this Contract shall be in Pacific County Superior Court, and the substantially prevailing party shall be entitled to recover its reasonable costs, expenses and attorneys' fees incurred in the action.

**EXECUTED THIS** \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_ by our signatures below:

**CONTRACTOR:**

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

Its \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Telephone: \_\_\_\_\_

Legal Entity: \_\_\_\_\_

Cont. License No.: \_\_\_\_\_

\_\_\_\_\_

**DISTRICT:**

By \_\_\_\_\_

Its \_\_\_\_\_

