

CITY OF VANCOUVER

CONTRACT # _____

ITB #19-01: Water Station 1 Phase 2

THIS CONTRACT, effective this ____ day of _____, 2019, is entered into by and between Rotschy, Inc., 9210 NE 62nd Ave, Vancouver, WA 98665, hereinafter referred to as the Contractor, and the City of Vancouver, a municipal corporation of the State of Washington, hereinafter referred to as the Owner.

1. **Contractor's Obligation:** The Contractor, for and in consideration of the sum to be paid to it by the Owner in the manner and at the times provided, hereinafter and in the Specifications, and in consideration of the covenants and agreements herein contained, which documents are incorporated into and made a part of this contract, hereby agrees to furnish all materials, labor, tools, machinery and implements of every description necessary for construction and installation of the following improvements:

The completed Work will provide the Owner with two new 4-million gallon pre-stressed post tensioned concrete reservoirs, a new 1-million gallon welded steel standpipe, and improved site security and access. The project replaces two existing concrete water reservoirs and an elevated steel water tower, and includes; demolition, earthwork, utility relocations, large diameter water pipelines, drainage systems, roadways, paved pedestrian paths, tree removal, landscaping, site lighting, heavy duty security fencing, security cameras, decorative features, and other construction activities, all in accordance with the Contract Documents. All construction activities are to be accomplished in a way that allows the City to maintain operation of the critical water supply facility throughout construction.

The project Work required to relocate public utilities co-located on the site shall commence immediately after given Notice to Proceed. Coordination with CenturyLink and the project Work related to supporting CenturyLink in raising the existing utility vault shall be performed prior to May 15th, 2019.

All Work shall be physically complete by October 1, 2021.

The Contractor agrees to perform the work and furnish the materials in a most substantial and workmanlike manner and within the time limits stated in this Contract. The Contractor agrees that it will make all necessary arrangements for the obtaining of permits from the United States, State of Washington, and/or any of its agencies as may be necessary to do the work required and covered by this Contract.

2. **E-Verify Program:** Contractor shall register and enter into a Memorandum of Understanding (MOU) with the Department of Homeland Security E-Verify program within sixty (60) days after execution of this Agreement. Contractor shall ensure all

Contractor employees and any sub-contractor(s) assigned to perform work under this Agreement are eligible to work in the United States. Contractor shall provide verification of compliance upon City request. Failure by Contractor to comply with this subsection shall be considered a material breach.

3. **Subcontractor Responsibility:** The Contractor shall include the language of this section in each of its first tier subcontracts, and shall require each of its subcontractors to include the same language of this section in each of their subcontracts, adjusting only as necessary the terms used for the contracting parties. The requirements of this section apply to all subcontractors regardless of tier.

At the time of subcontract execution, the Contractor shall verify that each of its first tier subcontractors meets the following bidder responsibility criteria:

1. Have a current certificate of registration in compliance with chapter 18.27 RCW, which must have been in effect at the time of subcontract bid submittal;
 2. Have a current Washington Unified Business Identifier (UBI) number;
 3. If applicable, have:
 - i. Have Industrial Insurance (workers' compensation) coverage for the subcontractor's employees working in Washington, as required in Title 51 RCW;
 - ii. A Washington Employment Security Department reference number, as required in Title 50 RCW;
 - iii. A Washington Department of Revenue state excise tax registration number, as required in Title 82 RCW;
 - iv. An electrical contractor license, if required by Chapter 19.28 RCW;
 - v. An elevator contractor license, if required by Chapter 70.87 RCW.
 4. Not be disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065 (3).
4. **City of Vancouver Business & Occupational License:** Contractors will be required to get a business license when contracting with the City of Vancouver, unless allowable exemptions apply. Businesses/Contractors shall contact the State of Washington Business License Service (BLS) at 800-451-7985, or go to www.bls.dor.wa.gov/cities/vancouver.aspx or www.cityofvancouver.us/businesslicense, to determine whether a business license is required pursuant to VMC Ch. 5.04.
5. **Owner's Obligation:** 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 to the satisfaction of the Vancouver City Council, the Owner agrees to pay to the Contractor in the manner and at the times provided hereinafter and in the Contract Documents, and in accordance with the ordinances of the City of Vancouver and the laws of the State of Washington, the following sum as indicated, which amount does includes 8.4% Washington State Sales Tax (if applicable):

\$20,501,041.60

Twenty Million, Five Hundred One Thousand Forty One Dollars 60/100

The amount finally to be paid is, however, variable upon the work actually performed and final payment will be made upon the basis of the amount of work performed and the materials furnished, and at the lump sum or unit prices fixed in the Contractor's Proposal and as modified by any and all approved Change Orders.

5. **Contractor's Insurance:** The Contractor agrees to procure insurance coverage as required by Article 6 of the Standard General Conditions and as modified by the Supplemental Conditions.
6. **Contractor's Bond:** The Contractor agrees that before it undertakes performance of this Contract, it will file with the City of Vancouver a Contract Performance Bond and Payment Bond, in the forms prescribed by the City of Vancouver, in the full amount of the Contract price executed by itself as principal and by a surety company authorized to do business in the State of Washington as surety. The bonds shall comply with the laws of the State of Washington, and especially with the provisions of Chapter 39.08 RCW.
7. **Employment of Labor:** The Contractor agrees that all persons employed by Contractor and by any of its subcontractors and any of their lower tier contractors in work performed pursuant to this Contract shall not be employed in excess of eight (8) hours in any one day, except as provided or allowed by law.
8. **Payment of Labor:** The Contractor agrees that all laborers, workers, or mechanics employed by it or by any subcontractor in the performance of this Contract will be paid not less than the prevailing rate of wage for an hours work, in accordance with the provisions of the Chapter 39.12 RCW, and all rules and regulations promulgated pursuant thereto. The State of Washington prevailing wage rates applicable for this public works project, which is located in Clark County, may be found at the following website address of the Department of Labor and Industries: <https://fortress.wa.gov/lni/wagelookup/prvWagelookup.aspx>. Based on the Bid submittal deadline for this project, the applicable effective date for prevailing wages for this project is **March 19, 2019**.

In case any dispute arises as to what the prevailing rates of wages for work of a similar nature are and such dispute cannot be adjusted by the parties involved, the matter shall be referred to the director of the Department of Labor and Industries of the State of Washington for arbitration, and the director's decision shall be final, conclusive and binding on all parties involved in the dispute.

9. **Payment to the Contractor:** Payment to the Contractor of the Contract price by the Owner shall be made in checks drawn on the fund provided therefore. Payment shall be

in the manner provided below and as defined in Article 15 of the Standard General Conditions and as modified in the Supplementary Conditions.

Progress payments to the Contractor shall be made within 30 days of receipt of the signed progress payment request, as approved by the Owner, for work completed during the previous month. There will be reserved and retained from monies earned by the Contractor on estimates during the progress of the improvements of work, a sum equal to 5 percent of all such estimates. Said retained amount shall be held in trust in accordance with the Specifications and Chapter 60.28 RCW.

Payment of the retained percentage shall be withheld, by the owner, for a period of 45 days following the completion of all Contract work, as defined in the Standard General Conditions, Article 15, and shall be paid the Contractor at the expiration of 60 days per Chapter 39.12 RCW and Chapter 60.28 RCW, in the event no claims, as provided by law, have been filed against such funds; and provided further, that releases or certificates have been obtained from the State Department of Labor and Industries, from the State Department of Revenue, and the Employment Security Department and all other departments and agencies having jurisdiction over the activities of the Contractor. In the event such claims are filed, the Contractor shall be paid such retained percentages less an amount sufficient to pay any such claims, together with a sum sufficient to defray the cost of foreclosure action and to cover attorney fees as determined by the Owner.

Every person performing labor or furnishing supplies toward the completion of said improvement of work shall have a lien upon said monies so reserved; provided, that such notice of the lien of such claimant shall be given in the manner provided in RCW 39.08.030 and within the time provided in Chapter 60.28 RCW as now existing and in accordance with any amendments that may hereafter be made thereto.

No payment shall be made to the Contractor, however, until the Contractor and all subcontractors who have performed work shall have filed, with Procurement Services, the Labor and Industries executed Statement of Intent to Pay Prevailing Wage as required by RCW 39.12.040. Said Contractor and all subcontractors shall also keep accurate payroll records for three years from the date of acceptance as described in WAC 296-127-320 *Payroll*. A Contractor and all subcontractors shall, within ten days after it receives a written request, as defined by RCW 39.12.010(4) file a certified copy of the payroll records with the Owner. A Contractor's noncompliance with this section shall constitute a violation of RCW 39.12.050.

10. **Indemnity**: Contractor agrees to indemnify, defend, save and hold harmless the City, its officials, employees and agents from any and all liability, demands, claims, causes of action, suits or judgments, including costs, attorney fees and expenses incurred in connection therewith, or whatsoever kind or nature, arising out of, or in connection with, or incident to, the performance of services by Contractor pursuant to this Agreement.

In the event that any suit based on such a claim, demand, loss, damage, cost, or cause of action is brought against the Contractor, the City retains the right to participate in said suit.

This indemnity and hold harmless shall include any claim made against the City by an employee of Contractor or subcontractor or agent of the Contractor, even if Contractor is thus otherwise immune from liability pursuant to the workers' compensation statute, Title 51 RCW. To the extent that such liability arises from the concurrent negligence of both the City and the Contractor, such cost, fees and expenses shall be shared between the City and the Contractor in proportion to their relative degrees of negligence. This indemnity and hold harmless shall NOT apply in the case where liability arises from the sole negligence of the City. Contractor specifically acknowledges that the provisions contained herein have been mutually negotiated by the parties and it is the intent of the parties that Contractor provide the broadest scope of indemnity permitted by RCW 4.24.115.

11. **Ownership of Records and Documents – Public Disclosure:** All materials, writings and products produced by the Contractor in the course of performing this Contract shall immediately become the property of the City. In consideration of the compensation provided for by this Contract, the Contractor hereby further assigns all copyright interests in such materials, writings and products to the City. A copy may be retained by the Contractor. In the event the City receives a public record request for such materials, writings of products the City may, in its discretion, notify the Contractor of such request and withholds disclosure of such information for not less than five (5) business days to permit the Contractor to seek judicial protection of such information, provided that the Contractor shall be responsible for attorney fees and costs in such action and shall save and hold harmless the City from any costs, attorney fees, or penalty assessment under Chapter 42.56 RCW.
12. **Amendments:** All changes to this Agreement, including changes to the statement of work and compensation, must be made by written amendment and signed by all parties to this Agreement.
13. **Jurisdiction/Venue:** In the event that any litigation should arise concerning the construction or interpretation of any of the terms of this Agreement, the venue of such action of litigation shall be in the Superior Court of the State of Washington in and for the County of Clark. This Agreement shall be governed by the law of the State of Washington.
14. **Assignment:** This Contract is binding on each party, its successors, assigns, and legal representatives and may not, under any circumstances, be assigned or transferred by either party without express written authorization.

15. **Termination for Convenience:** The City, at its sole discretion, may terminate this Contract for convenience at any time for any reason deemed appropriate. Termination is effective immediately upon notice of termination given by the City.

16. **Termination for Cause:** In the event the Contractor is, or has been, in violation of the terms of this Contract, including the Invitation to Bid, the Owner reserves the right, upon written notice to the Contractor, to cancel, terminate, or suspend this contract in whole or in part for default. Termination shall be effected by serving a notice of termination on the Contractor setting forth the manner in which the Contractor is in default. The Contractor will be paid only the contract price for services performed in accordance with the manner of performance set forth in the Contract.

If it is later determined by the Owner that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, or events which are not the fault of or are beyond the control of the Contractor, the City after setting up a new delivery or performance schedule, may allow the Contractor to continue work or treat the termination as a termination for convenience.

17. **Opportunity to Cure:** The Owner at its sole discretion may in lieu of a termination allow the Contractor to cure the defect(s), by providing a “Notice to Cure” to Contractor setting forth the remedies sought by Owner and the deadline to accomplish the remedies. If the Contractor fails to remedy to the Owner’s satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within the time stated time, the Owner shall have the right to terminate the Contract without any further obligation to the Contractor. Any such termination for default shall not in any way operate to preclude the Owner from also pursuing all available remedies against the Contractor and it’s sureties for said breach or default, including but not limited to termination of this Contract for convenience.

18. **Liquidated Damages:** Time is of the essence of the Contract. Delays inconvenience the public and interfere with the operations of Public Works. Delays also cost tax payers undue sums of money adding time needed for administration, engineering, inspection, and supervision.

Because the Owner finds it impractical to calculate the actual cost of delays, the Owner has adopted the following formula to calculate liquidated damages for failure to complete the physical Work of a Contract on time.

Accordingly, the Contractor agrees:

1. To pay (according to the following formula) liquidated damages for each calendar day beyond the established completion date for Physical Completion, and
2. To authorize the Engineer to deduct these liquidated damages from any money due or coming due to the Contractor.

Liquidated Damages Formula

$$LD = \$1,500 \times T$$

Where:

LD = Liquidated Damages

T = Number of calendar days beyond the established completion date until physical completion.

Physical Completion Date is the day all Work is physically completed on the project. All documentation required by the Contract and required by law does not necessarily need to be furnished by the Contractor by this date

When the Contract Work has progressed to the extent that the Owner has full use and benefit of the facilities, both from an operation and safety standpoint, all the initial plantings are completed and only minor incidental Work, replacement of temporary substitute facilities, plant establishment periods, or correction of repair remains to physically complete the total Contract, the Engineer may determine the Contract Work is substantially complete. The Engineer will notify the Contractor in writing of the Substantial Completion Date. For overruns in Contract time occurring after the date so established for Substantial Completion, the formula for liquidated damages shown above will not apply and liquidated damages will be assessed on the basis of direct engineering and related costs assignable to the project until the actual Physical Completion Date of all the Contract Work. The Contractor shall complete the remaining Work as promptly as possible. Upon request by the Project Engineer, the Contractor shall furnish a written schedule for completing the physical Work on the Contract.

The Contractor is solely responsible to ensure all employed agents, subagents, and subcontractors working to complete the Work perform in a timely manner as necessary to meet the established completion date while working within the project constraints outlined in the Specifications.

Liquidated damages will not be assessed for any days for which an extension of time is granted. No deduction or payment of liquidated damages will in any degree release the Contractor from further obligations and liabilities to complete the entire Contract.

19. Contract Documents & Order of Precedence: The complete Contract includes these parts and any inconsistency in the parts of the contract shall be resolved by following this order of precedence (e.g., 1 presiding over 2, 2 over 3, 3 over 4, and so forth):

1. Amendments to this Contract,
2. This Contract,
3. The Invitation to Bid and any Addenda thereto,
4. Bid Form,
5. Technical Specifications,
6. Supplementary Conditions,
7. Standard General Conditions of the Construction Contract (EJCDC),

- 8. Contract Plan Set,
- 9. Owner Standard Details.

20. Notices: Whenever in this written Contract written notices are to be given or made, they may be sent by certified mail to the following people at the addresses as shown herein unless a different address is designated in writing or delivered to the respective party hereto:

Owner:

Anna Vogel
City of Vancouver
415 W 6th St.
P O Box 1995
Vancouver WA 98668-1995

Contractor:

Original signed at Vancouver, Washington, on the dates listed below.

CITY OF VANCOUVER

A municipal corporation

CONTRACTOR:

Eric Holmes, City Manager

Signature:

DATE

By: Printed Name / Title

Attest:

Natasha Ramras, City Clerk

Approved as to form:

E. Bronson Potter, City Attorney

LABOR AND MATERIALS PAYMENT BOND

(NOTE: CONTRACTOR MUST USE THIS FORM, NOT A SURETY COMPANY FORM. MUST BE ACCOMPANIED BY A POWER OF ATTORNEY FOR THE SURETY'S OFFICER AUTHORIZED TO SIGN)

KNOW ALL MEN BY THESE PRESENTS:

We the Undersigned _____ as
PRINCIPAL (Contractor) and _____
_____ a corporation organized and existing under and by virtue of the laws of the state of _____,
and duly authorized to do surety business in the state of
Washington and named on the current list of approved surety companies acceptable on federal
bonds and conforming with the underwriting limitations as published in the Authorized Insurance
List in the State of Washington published by the Office of the Insurance Commissioner and
which carries an "A" rating and is of the appropriate class for the bond amount as determined by
Best's Rating System, as SURETY, hereby hold and firmly bind ourselves, our heirs, executors,
administrators, successors and assigns, jointly and severally, unto CITY OF VANCOUVER, as
OBLIGEE, in the sum of _____
Dollars (\$ _____) in lawful money of the United States of America, for the payment of that
sum for the use and benefit of claimants as defined below.

The condition of this obligation is such that whereas the PRINCIPAL entered into a
contract with CITY OF VANCOUVER dated _____, 20____, which
contract is hereunto annexed and made a part hereof, for accomplishment of the all contract
terms for the project described as follows:

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NOW THEREFORE, if the PRINCIPAL shall promptly make payments to all persons,
firms, subcontractors, corporations and/or others furnishing materials for or performing labor in
the prosecution of the Work provided for in the aforesaid contract, and any authorized extension
or modification thereof, including all amounts due for materials, equipment, mechanical repairs,
transportation, tools and services consumed or used in connection with the performance of such
Work, and for all labor performed in connection with such Work whether by subcontractor or
otherwise, and all other requirements imposed by law, then this obligation shall become null and
void; otherwise this obligation shall remain in full force and effect, subject, however, to the
following condition:

The above-named PRINCIPAL and SURETY hereby jointly and severally agree that
every claimant, who has not been paid in full, may sue on this bond for the use of such claimant,
prosecute the suit to final judgment in for such sum or sums as may be justly due claimant, and
have execution thereon. The OBLIGEE shall not be liable for the payment of any judgment,
costs, expenses or attorneys' fees of any such suit.

PROVIDED, FURTHER, that SURETY for the value received, hereby stipulates and agrees that all changes, extensions of time, alterations to the terms of the contract or to Work to be performed thereunder or the Specifications accompanying the same shall be within the scope of the SURETY's undertaking on this bond, and SURETY does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the Work or to the Specifications. Any such change, extension of time, alteration or addition to the terms of the contract or to the Work or to the Specifications shall automatically increase the obligation of the SURETY hereunder in a like amount, provided that the total of such increases shall not exceed twenty-five percent (25%) of the original amount of the obligation without the consent of the SURETY.

This obligation shall continue to bind the PRINCIPAL and SURETY, notwithstanding successive payments made hereunder, until the full amount of the obligation is exhausted, or if the full amount of the obligation is not exhausted and no claim is pending resolution, until such time as no further claims can be made pursuant to law with regard to the above-described project.

SURETY shall indemnify, defend, and protect the CITY OF VANCOUVER against any claim of direct or indirect loss resulting from the failure of the CONTRACTOR (or any of the employees, subcontractors, or lower tier subcontractors of the CONTRACTOR) to pay all laborers, mechanics, subcontractors, lower tier subcontractors, material persons, or any other person who provides supplies or provisions for carrying out the work.

If more than one SURETY is on this bond, each SURETY hereby agrees that it is jointly and severally liable for all obligations of this bond.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this _____ day of _____, 20____.

SURETY

CONTRACTOR

By: _____

By*: _____

Title: _____

Title: _____

Street Address

Street Address

City, State ZIP

City, State ZIP

Phone Number

Phone Number

* Must be signed by president or vice-president of Contractor.

PERFORMANCE BOND

(NOTE: CONTRACTOR MUST USE THIS FORM, NOT A SURETY COMPANY FORM. MUST BE ACCOMPAINED BY A POWER OF ATTORNEY FOR THE SURETY'S OFFICER AUTHORIZED TO SIGN)

KNOW BY ALL MEN BY THESE PRESENTS:

We the undersigned _____ as PRINCIPAL (hereinafter called CONTRACTOR), and _____ a corporation organized and existing under and by virtue of the laws of the state of _____ duly authorized to do surety business in the state of Washington and named on the current list of approved surety companies acceptable on federal bonds and conforming with the underwriting limitations as published in the Authorized Insurance List in the State of Washington published by the Office of the Insurance Commissioner and which carries an "A" rating and is of the appropriate class for the bond amount as determined by Best's Rating System, as SURETY, hereby hold and firmly bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, to pay to CITY OF VANCOUVER as OBLIGEE (hereinafter called CITY OF VANCOUVER), the amount of _____ Dollars (\$ _____) in lawful money of the United States of America.

WHEREAS, the CONTRACTOR entered into a contract with CITY OF VANCOUVER dated _____, 20____, which Contract is hereunto annexed and made a part hereof, for accomplishment of the all contract terms for the project described as follows:

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NOW, THEREFORE, the condition of this obligation is such that if the CONTRACTOR shall promptly, truly and faithfully perform all the undertakings, covenants, terms, conditions, and agreements of the aforesaid contract and having performed its obligations thereunder, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

Whenever CONTRACTOR shall be declared by CITY OF VANCOUVER to be in default under the Contract Documents for the project described herein, the SURETY shall promptly remedy the default by completing the project in accordance with the Contract Documents and the project Specifications with a contractor approved by the CITY OF VANCOUVER. SURETY, for value received, further stipulates and agrees that all changes, extensions of time, alterations, or additions to the terms of the Contract or Specifications for the above described contract are within the scope of the SURETY's undertaking on this bond, and SURETY hereby waives notice of any such change, extension of time, alteration or addition to the terms of the contract or to the Work or to the Specifications. Any such change, extension of time, alteration or addition to the terms of the contract or to the Work or to the Specifications shall automatically increase the obligation of the Surety hereunder in a like amount, provided that such increase shall not exceed twenty-five percent (25%) of the original amount of the obligation without the consent of the Surety.

This obligation shall continue to bind the PRINCIPAL and SURETY, notwithstanding successive payments made hereunder, until the full amount of the obligation is exhausted.

SURETY shall indemnify, defend, and protect the CITY OF VANCOUVER against any claim of direct or indirect loss resulting from the failure of the CONTRACTOR (or any of the employees, subcontractors, or lower tier subcontractors of the CONTRACTOR) to faithfully perform the terms of the contract.

No right of action shall accrue on this bond to or for the use of any person or corporation other than CITY OF VANCOUVER or its heirs, executors, administrators, successors or assigns.

If more than one SURETY is on this bond, each SURETY hereby agrees that it is jointly and severally liable for obligations on this bond.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this _____ day of _____, 20____.

SURETY

CONTRACTOR

By: _____

By*: _____

Title: _____

Title: _____

Street Address

Street Address

City State ZIP

City State ZIP

Phone Number

Phone Number

* Must be signed by president or vice-president of Contractor.