

**COMMERCIAL INSTALLER AGREEMENT**

THE PUBLIC UTILITY DISTRICT NO. 1 OF CLARK COUNTY, a municipal corporation under the laws of the State of Washington, hereinafter referred to as the "District," and \_\_\_\_\_, a duly licensed and registered contractor in the State of Washington, hereinafter referred to as the "Installer," for good and sufficient consideration as more fully described below, hereby enter into this Agreement this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**WITNESSETH:**

WHEREAS, the District encourages its commercial customers to install certain conservation measures in their business properties; and

WHEREAS, these conservation measures may include, but are not limited to, the installation of energy efficient lights, windows, weather proofing, structural insulation or energy efficient heating equipment ("Conservation Measures"); and

WHEREAS, in order to encourage its customers to install Conservation Measures, the District has created a Conservation Loan Program to loan money to its customers for this type of work; and

WHEREAS, the District has determined that only authorized contractors may perform the Conservation Measures funded by District and under its Conservation Loan Program.

NOW, WHEREFORE, in and for the consideration of the promises herein made between the parties, each to the other, and of the covenants and agreements hereinafter set forth, it is agreed as follows:

### **A. Term of Agreement**

This Agreement shall become effective on the date signed and shall continue in force until the District or the Installer terminates such agreement giving thirty (30) days written notice.

### **B. Relationship of Parties**

It is agreed that the Installer is an independent contractor of the District and not an employee. Conduct and control of the work performed under this agreement will remain with the Installer. Installer will be entirely and solely responsible for all of its acts and the acts of its agents, employees and subcontractors, while performing the work herein. It is further agreed that the Installer is not to be considered an agent of the District for any purpose.

### **C. Description and Scope of Work**

Installer shall furnish all labor and material for the construction, installation and completion of the work proposed under this agreement and as set forth in the bid documents. A copy of the scope of work shall be provided to the District and the customer for each project. Installer shall supply, install and complete the work in a thorough and workmanlike manner to the satisfaction and approval of the customer and the District. Installer agrees to comply with any and all applicable building codes and District materials and installation standards. Installer shall provide the customer with a written contract detailing the work to be performed as set forth in the said standard bid, together with the cost thereof. In addition, Contractor will provide to the customer a certificate of compliance with all installation and material standards.

### **D. Liability for Damages**

The work to be performed under this contract will be performed entirely at the Installers risk. The Installer shall assume all responsibility for the condition of tools and equipment used in the performance of this agreement. The District, its directors, officers, agents and/or employees, shall not in any manner be answerable, liable or responsible for any loss or damage to the work or to any part thereof; to any materials, equipment or other property that may be used or placed on the worksite during the progress of the work; for any injury done or damages or compensation required to be paid under any present or future law, to any person, whether an employee of the Installer or otherwise; or for any damage to any property occurring during or resulting from the work. Installer and its successors shall indemnify, defend and hold harmless the District, its directors, officers, agents and/or employees, absolutely and without limit, against all claims,

damages, losses, liability, demands, suits, actions and expenses, including attorney fees, arising from or based upon the actions or omissions of said Installer, Installer's employees or sub-contractors, their officers, agents or employees, or based upon any violation of a statute, ordinance, building code or regulation, except to the extent of the negligence of the District.

#### **E. Inspection of Work**

The Installer shall notify the District upon completion of the installation of program measures. Thereafter, the District may perform a post-installation inspection. Any materials or workmanship found to be defective shall be replaced or remedied by the Installer immediately, at no cost to the customer or the District.

IN ANY AND ALL CLAIMS AGAINST THE DISTRICT BY ANY EMPLOYEE OF INSTALLER, THE INDEMNIFICATION AND HOLD-HARMLESS OBLIGATION HEREIN SHALL NOT BE LIMITED IN ANY WAY BY ANY LIMITATION ON THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION, OR BENEFITS PAYABLE BY OR FOR THE INSTALLER UNDER WORKERS COMPENSATION ACTS, DISABILITY ACTS, OR OTHER EMPLOYEE BENEFITS ACTS, AND THE INSTALLER SPECIFICALLY AND EXPRESSLY WAIVES ANY IMMUNITY UNDER SUCH ACTS.

#### **F. License and Insurance**

Installer shall furnish and maintain the District with an on-going Certificate of Insurance naming Clark Public Utilities as an additional insured with the additional insured endorsement form. The policy must include General and Automobile Liability insurance written by an insurance company authorized to conduct business in the State of Washington with limits of not less than \$1,000,000 Bodily Injury to one or more persons and \$1,000,000 Property Damage or \$1,000,000 Combined Single limit for bodily injury, property damage, and personal injury. The maximum deductible allowed under all insurance policies required of Installers shall be \$1000 per occurrence and Contractor will be responsible for all required deductibles. All policies and certificates must be signed copies and shall contain a clause agreeing that such insurance cannot be materially altered, amended, reduced, restricted, modified or canceled without first giving thirty (30) days written notice to the District. All policies must be on an occurrence basis. A valid copy of Installer's Washington State contractor license shall be delivered to the District. Upon notification of cancellation of such license or bond, appropriate action will be initiated in accordance with delisting procedures set forth in this agreement.

### **G. Warranty**

The Installer will provide a written 2 (two) year warranty with each bid submitted to a customer which states that all materials to be used and/or equipment to be furnished by the Installer will be without defect and that the installation of Conservation Measures and all work performed by the Installer will meet or exceed the specifications and standards required by law, the standard of Installer's industry and those of the District. The Installer acknowledges that by requesting its name to be placed upon the District's list of Conservation Installers, such Installer is representing to Customers that it has particular skill and expertise with respect to the installation of Conservation Measures and that any Customer dealing with the Installer will be relying upon the Installer's skill and judgment to select and furnish suitable Conservation Measures and to properly install them in a manner, for the purposes, for which such Conservation Measures are intended or used.

### **H. Correcting Defects**

Under the warranty described above, Installer will correct any defects (including deviation from code, District specifications, or industry standards) in material, equipment, installation, or other work performed under an agreement with the Customer, which are either discovered or with reasonable diligence could have been discovered within 2 (two) years after installation or performance, and that such correction of defects will be completed within a reasonable period of time without charge to the Customer or the District.

### **I. Enforcement of Contract by Customer**

The Installer agrees that the covenants and representations made therein by the Installer are also for the benefit of Customers who participate in the Conservation Loan Program, and further agrees that those Customers doing business with Installer pursuant to the Conservation Loan Program are entitled to rely upon and have the benefit of the covenants and representations made by the Installer herein. Customers must pursue their claims, rights and remedies directly against the Installer. This provision shall not be construed to limit or impair the claims, rights and remedies of the District.

### **J. Customer's Obligation to Pay Installer**

The Customer's contract for the installation of Conservation Measures is with the Installer, and the Customer is solely obligated to pay the Installer. The District is not liable or responsible if the amount of proceeds which the Customer obtains from a loan is not sufficient to satisfy the Customer's obligation to the Installer. The District has no contractual obligation, nor duty of any kind, to pay the Installer. The Installer is not to be considered as a third party beneficiary of any commitment by the District to make a loan to a Customer, for such commitment is for the benefit of the Customer, not for the benefit of the Installer.

#### **K. Enforcement of Contract by Installer**

The Installer has the right to enforce its contract with the Customer because the Customer is the only party obligated to pay and otherwise perform on that contract. In doing so, the Installer may foreclose its statutory lien upon the business unit(s) and, in addition, sue the Customer for damages, specific performance, or any other remedy authorized by law.

#### **L. Responsibility of Installer**

Installer shall comply with all applicable federal, state and local laws and ordinances, including those regarding, energy code compliance, indoor air quality code compliance, building, egress, plumbing, mechanical and electrical codes, employee wages and compensation, and the rules, regulations, and/or orders of all public authorities relating to the performance of the work herein, including but not limited to any other law. Installer and its successors or assignee agrees to and shall indemnify the District, its directors, officers, agents and/or employees, absolutely and without limit, against all claims, losses, liability and demands in connection with, and shall assume full responsibility for, payment of all federal, state and local taxes or contributions imposed or required under unemployment insurance, workmen's compensation, social security, and federal, state and income tax laws, with respect to the Installer's employees engaged in performance of the work referred to herein. Upon completion of the work, Installer agrees to remove all waste material and rubbish, together with all tools, equipment, machinery, and surplus materials from the job site.

#### **M. Program Violations**

Program violations will result in removal of the Installer's business from the contractor list, and no bids will be accepted from said Installer in the future. Installers may not receive additional work authorizations after the violation date until at the discretion of the District or its agents the

violation has been rectified. Continued violations will result in the Installer being barred from future work und District conservation programs. Work initiated prior to the violation date will be completed by Installer. Program violations included, but are not limited to:

- Non-compliance with Commercial Installer Agreement or Professional Services Criteria.
- Failure to provided license or insurance documentation.
- Use of false or misleading advertising, research or testing results.
- Use of bid sheets that have intentional untruths or inaccuracies.
- Use of pressure/scare sale tactics or illegal referral/selling schemes of any kind.
- Failure to complete installation within 90 days of standard bid date, unless an extension is granted. Material delays, scheduling delays, or Customer delays may be considered as reason for extension to this rule, but all extensions must be approved in writing by Energy Services staff.
- A specific job fails three post-installation inspections.
- Items approved by the Installer on the Installer's certification or inspection checklist are found not to be in compliance with weatherization specifications in force at the time of installation.
- Installer refuses to or fails to correct unsatisfactory installations within thirty (30) days of inspection turn down.
- Any violation of the terms of this agreement.

#### **N. Waiver**

Any waiver of the terms of the Agreement shall only be valid if evidenced in writing, signed by both parties. Failure of the District to insist upon strict performance of, or waiver by the District of any breach of any terms, condition, covenant or obligation, or of any subsequent default or breach of same or any other term, condition, covenant or obligation herein contained.

#### **O. Assignment**

This Agreement and the performance of the work hereunder may only be assigned by the Installer with the written consent of the District.

#### **P. Prior Agreements**

All Agreements whether written or oral are superseded by this Agreement and shall be deemed by the District and the Installer to be null and void upon execution of this Agreement.

**Q. Venue and Choice of Law**

This Agreement shall be deemed to have been executed and delivered within the State of Washington, and the rights and obligations of the parties hereunder shall be construed and enforced in accordance with, and governed by, the laws of the State of Washington without regard to the principles of conflict of laws. Any action or suit brought in connection with this Agreement shall be filed in the Superior Court of Clark County, Washington.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first written above.

**PUBLIC UTILITY DISTRICT NO.1 OF  
CLARK COUNTY**

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

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

**INSTALLER (Principal)**

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

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

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

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