

**ON-CALL WINTER WEATHER EMERGENCY SERVICES AGREEMENT  
BY AND BETWEEN THE CITY OF NORTH BEND AND FURY SITE WORKS, INC.**

THIS SERVICES AGREEMENT (“Agreement”) is entered into this \_\_\_\_ day of March 2019, by and between the City of North Bend, a municipal corporation of the State of Washington (“the City”) and Fury Site Works, Inc., a Washington corporation, (“Contractor”) in consideration of the mutual benefits and conditions contained herein.

WHEREAS, the City has experienced high levels of winter weather activities that resulted in the need for snow removal and other winter emergency services; and

WHEREAS, winter conditions present a real and immediate threat to the proper performance of essential functions and pose an immediate danger to drivers and the public and may result in material loss or damage to property, bodily injury, or loss of life without immediate action; and

WHEREAS, beginning on or around February 4, 2019, the City experienced several severe winter weather incidents, resulting in an overwhelming amount of snow and ice within the City and the surrounding community; and

WHEREAS, the City lacks sufficient equipment to perform snow removal services without assistance from other entities, especially in cases of extreme levels of snowfall and ice; and

WHEREAS, Contractor is in the business of performing such services, which are described below; and

WHEREAS, RCW 39.04.280 provides that the City may waive competitive bidding requirements in the event of an emergency; and

WHEREAS, on February 12, 2019, pursuant to the City’s Comprehensive Emergency Plan, the Mayor Pro Tem officially declared a local emergency within the City of North Bend;

NOW, THEREFORE, the parties hereby agree as follows:

1. **Scope of Services.** Contractor shall perform those services described on **Exhibit A** attached hereto, which is incorporated by this reference as if fully set forth. In performing such services, Contractor shall at all times comply with all federal, state, and local statutes, rules, and ordinances applicable to the performance of such services and the handling of any funds used in connection therewith.
  
2. **Compensation and Method of Payment.** Contractor will invoice the City monthly based upon the rate set forth in Exhibit A. Contractor shall be paid a total amount not to exceed Seventy Five Thousand Dollars (\$75,000) without written modification of this Agreement signed by the City. The City shall pay Contractor for services rendered under this Agreement within ten (10) days after City Council voucher approval. Contractor agrees to complete and

return the attached **Exhibit B** (Taxpayer Identification Number) to the City prior to or along with the first invoice.

3. **Duration of Agreement.** This Agreement shall be in full force and effect for a period commencing February 9, 2019 and ending February 21, 2019 unless earlier terminated in accordance with Section 11 herein or extended by written amendment in accordance with Section 14 herein.
4. **Independent Contractor.** The City and Contractor agree that Contractor is an independent contractor with respect to the services provided pursuant to this Agreement. Nothing in this Agreement shall be considered to create an employer-employee relationship between the parties hereto. Neither Contractor nor any of Contractor's employees shall be entitled, by virtue of the services provided under this Agreement, to any benefits afforded to City employees. The City shall not be responsible for paying, withholding, or otherwise deducting any customary state or federal payroll deductions, including but not limited to FICA, FUTA, state industrial insurance, state workers' compensation, or for otherwise assuming the duties of an employer with respect to Contractor or Contractor's employees.
5. **Indemnification.** Contractor shall indemnify, defend, and hold harmless the City, its officers, officials, employees and volunteers from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or resulting from the acts, errors or omissions of Contractor in performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Contractor and the City, its officers, officials, employees, and volunteers, the Contractor's liability hereunder shall be only to the extent of the Contractor's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Contractor's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

6. **Insurance.** Contractor shall be licensed, bonded and insured to use equipment for winter weather services. Contractor shall procure and maintain for the duration of this Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by Contractor, its agents, representatives, or employees. Contractor's maintenance of insurance as required by this Agreement shall not be construed to limit Contractor's liability to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.
  - A. **Scope of Required Insurance.** Contractor shall maintain insurance of the types and coverage described below:

1. **Automobile liability insurance**, with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident, covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage.
  2. **Commercial general liability insurance**, written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate, which shall be at least as broad as ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors, stop gap liability, personal injury and advertising injury. The City shall be named as an additional insured under Contractor's Commercial General Liability insurance policy with respect to the work performed for the City, using an additional insured endorsement at least as broad as ISO CG 20 26.
  3. **Workers' compensation coverage** as required by the Industrial Insurance laws of the State of Washington.
- B. Additional Insurance Provisions. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII. Contractor's automobile liability and commercial general liability insurance policies are to contain, or be endorsed to contain, that they shall be primary insurance as respects the City. Any insurance, self-insurance, or self-insured pool coverage maintained by the City shall be excess of Contractor's insurance and shall not contribute with it. Contractor shall provide the City with written notice of any policy cancellation within two (2) business days of Contractor's receipt of such notice.
- C. Certificates of Insurance. Within fifteen (15) days of the execution of this Agreement, Contractor shall deliver original certificates and a copy of amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance coverage required by this Section 6.
- D. Failure to Maintain Insurance. Contractor's failure to maintain insurance as required shall constitute a material breach of this Agreement, upon which the City may, after giving five (5) business days' notice to the Contractor to correct the breach, immediately terminate this Agreement or, at its sole discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City on demand, or at the sole discretion of the City, offset against funds due Contractor from the City.
- E. Full Availability of Contractor Limits. If Contractor maintains higher insurance limits than the minimums shown above, the City shall be insured for the full available limits of Commercial General and excess or umbrella liability maintained by Contractor, irrespective of whether such limits maintained by Contractor are greater than those required by this Agreement or whether any certificate of insurance furnished to the City evidences limits of liability lower than those maintained by Contractor.

**7. Taxes, Licenses and Permits.**

- A. Contractor shall procure and maintain a City business license in accordance with Chapter 5.04 NBMC, *Business Occupations and Tax Code*, prior to beginning work under this Agreement. Contractor assumes responsibility for and ensures that all contractors, subcontractors and suppliers shall also obtain a City business license.
- B. Contractor acknowledges that it is responsible for the payment of all charges and taxes applicable to the services performed under this Agreement, including taxes and fees assessed pursuant to Chapter 5.04 NBMC, and Contractor agrees to comply with all applicable laws regarding the reporting of income and maintenance of records, and with all other requirements and obligations imposed pursuant to applicable law. If the City does not receive, or is assessed, made liable, or responsible in any manner for such charges or taxes, Contractor shall reimburse and hold the City harmless from such costs, including attorneys' fees. Contractor shall also require all contractors, subcontractors and suppliers to pay all charges and taxes in accordance with this Section 9.
- C. In the event Contractor fails to pay any taxes, assessments, penalties, or fees imposed by the City or any other governmental body, then Contractor authorizes the City to deduct and withhold and/or pay over to the appropriate governmental body those unpaid amounts upon demand by the governmental body. This provision shall, at a minimum, apply to taxes and fees imposed by City ordinance. Any such payments shall be deducted from the Contractor's total compensation.

**8. Audits and Inspections.** The records and documents with respect to all matters covered by this Agreement shall be subject at all times to inspection, review, or audit by law during the term of this Agreement. The City shall have the right to conduct an audit of Contractor's financial statement and condition and to a copy of the results of any such audit or other examination performed by or on behalf of Contractor.

**9. Termination.** This Agreement may be terminated by the City at any time upon seven (7) days' written notice; provided, that if Contractor's insurance coverage is canceled for any reason, the City shall have the right to terminate this Agreement as provided in Subsection 6(D) herein.

**10. Discrimination Prohibited.** Contractor shall comply with all Equal Employment Opportunity regulations and shall not discriminate against any employee, applicant for employment, or any person seeking the services of the Contractor on the basis of race, color, religion, creed, sex, age, national origin, marital status or the presence of any sensory, mental or physical handicap.

**11. Assignment and Subcontract.** Contractor shall not assign or subcontract any portion of the services contemplated by this Agreement without the prior written consent of the City.

**12. Entire Agreement; Modification.** This Agreement contains the entire agreement between the parties hereto, and no other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or bind any of the parties hereto. Proposed changes which are mutually agreed upon shall be incorporated by written amendments or addenda signed by both parties.

**13. Prevailing Wage.**

- A. This Agreement is subject to the prevailing wage requirements of Chapters 39.04, 39.12 and 49.28 RCW, as adopted or as may be amended. NO WORKER, LABORER OR MECHANIC EMPLOYED OR HIRED IN THE PERFORMANCE OF ANY PART OF THIS AGREEMENT SHALL BE PAID LESS THAN THE PREVAILING RATE OF WAGE as determined by the Industrial Statistician of the Department of Labor and Industries for the State of Washington (“Industrial Statistician”).
- B. The schedule of prevailing wage rates is available online at the Department of Labor and Industries website <https://fortress.wa.gov/lni/wagelookup/prvWagelookup.aspx>. To determine applicable prevailing wage rates, use January 1, 2019 rates for King County.
- C. Contractor is responsible for determining the correct worker classification(s) in order to ensure correct wages are paid. Any dispute arising in relation to this Agreement regarding the prevailing wage rate shall be referred to the director of the Department of Labor and Industries for arbitration in accordance with RCW 39.12.060, and the director’s decision shall be final, conclusive and binding on all parties to the dispute.
- D. Contractor and all subcontractors shall each file a Statement of Intent to Pay Prevailing Wages (“Intent Form”) with the Industrial Statistician and, for projects in excess of \$10,000, shall post an approved copy of the Intent Form(s) at the job site prior to the commencement of work; provided, that if an Intent Form is in still being processed by the Industrial Statistician, Contractor may post the complete listing of prevailing wage rates for King County until the approved Intent Form is received and posted.
- E. Prior to making any payment under this Agreement, the City must receive a copy of the approved Intent Form. Invoices submitted for payment must include a statement certifying that prevailing wages were paid by Contractor and any subcontractors in accordance with the Intent Form(s) on file. Following the City’s final acceptance of work provided hereunder, Contractor shall file an Affidavit of Wages Paid (“Affidavit”) with the Industrial Statistician; the City may not release any contract retainage prior to its receipt of an approved Affidavit.

**14. Notices.** Notices required hereunder shall be delivered via first class U.S. mail to the addresses below:

To the City of North Bend: Mark Rigos, Acting City Administrator  
City of North Bend  
P.O. Box 896

North Bend, WA 98045

To Contractor:

John Day  
Fury Site Works, Inc.  
P.O. Box 2118  
North Bend, WA 98045

**15. Applicable Law; Venue; Attorneys' Fees.** This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. In the event any suit, arbitration, or other proceeding is instituted to enforce any term of this Agreement, the parties specifically understand and agree that venue shall be properly and exclusively in King County, Washington. The prevailing party in any such action shall be entitled to its costs of suit, including attorneys' fees and expert witness fees.

BY THEIR SIGNATURES BELOW, the authorized agents of the parties enter into this Agreement as of the day and year first written above.

**CITY OF NORTH BEND**

**CONTRACTOR**

By: \_\_\_\_\_  
Kenneth G. Hearing, Mayor

By: \_\_\_\_\_  
John Day

**Attest/Authenticated:**

\_\_\_\_\_  
Susie Oppedal, City Clerk

**Approved As To Form:**

\_\_\_\_\_  
Eileen M. Keiffer, City Attorney

**EXHIBIT A:**  
**SCOPE OF SERVICES**

Contractor shall furnish and perform services including, but not limited to, the description of work and indicated below.

1. **Project Title:** On-call tree removal and winter weather services.
  
2. **Supervising Staff.** Contractor's main point of contact at the City will be Tom Mohr, Public Works Project Manager, who can be reached at (425) 888-7653 or tmohr@northbendway.gov, or such other personnel as the City may designate from time to time.
  
3. **Description of Work.** Operate Contractor's equipment to clear snow from City streets and alleys, and address other winter weather conditions as needed.
  
4. **Compensation.**
  - Liebherr L566 Loader \$202.55 per hour.
  - Liebherr L566 Loader \$235.81 per hour overtime.
  - Solo Dump Truck \$161.12 per hour.
  - Solo Dump Truck \$190.77 per hour overtime.
  - CAT 938 Loader \$167.55 per hour.
  - CAT 938 Loader \$200.81 per hour overtime.
  - John Deere 624 Loader \$167.55 per hour.
  - John Deere 624 Loader \$200.81 per hour overtime.
  - Motograder \$203.14 per hour.
  - CAT 289D Loader \$167.55 per hour.
  - Supervisor \$72.55 per hour.
  - Supervisor \$105.81 per hour.

**EXHIBIT B:**  
**TAXPAYER IDENTIFICATION NUMBER**

CITY OF NORTH BEND  
P.O. Box 896  
211 Main Avenue North  
North Bend, WA 98045  
Phone: (206) 888-1211  
FAX: (206) 831-6200

In order for you to receive reimbursement from the City of North Bend, we must have either a Taxpayer Identification Number or a Social Security Number. The Internal Revenue Code requires a Form 1099 for payments to every person or organization other than a corporation for services performed in the course of trade or business. Further, the law requires us to withhold 20% on reportable amounts paid to unincorporated persons who have not supplied us with their correct Tax Identification Number or Social Security Number.

Please complete the following information request form and return it to the City of North Bend before or along the submittal of the first billing voucher.

Please check the appropriate category:

Corporation       Partnership       Government Agency  
 Individual/Sole Proprietor       Other (please explain)

TIN#: 45-2657866

SS#: \_\_\_\_\_

Print Name: John Day

Print Title: President

Business Name: Fury Site Works, Inc.

Business Address: P.O. Box 2118 North Bend, WA 98045

Business Phone: (425) 888-1536