

SILVER LAKE WATER DISTRICT

RESOLUTION No. 533

A RESOLUTION of the Board of Commissioners of the Silver Lake Water District establishing standards and forms for acceptance of a bond in lieu of retainage on construction contracts for the District.

WHEREAS, the Silver Lake Water District contracts for water and sewer construction work under the authority of Title 39 RCW and is required under Chapter 60.28 to retain five percent of the contract price as a trust fund to assure payment of taxes, subcontractors, materialmen and laborers; and

WHEREAS, Chapter 60.28 has been amended to allow the contractor to post a bond in lieu of retainage with the District; and

WHEREAS, retainage of 5% of the contract price is provided for the protection and payment of (a) claims of any persons or entities (including the District) arising under the contract or RCW Chapter 60.28, (b) State of Washington taxes pursuant to RCW Title 82 that may be due from Principal, and (3) claims of any person or entity for prevailing wages under the Contract as set forth in RCW chapter 39.12; and

WHEREAS, to better secure the protection and payment of any and all such claimants in circumstances where the contractor has posted a bond in lieu of retainage, it is reasonable to set minimum requirements for such bond since the payments would otherwise be paid by money in the retainage trust.

NOW THEREFORE, THE BOARD OF COMMISSIONERS OF THE SILVER LAKE WATER DISTRICT RESOLVES THAT:

1. The form attached hereto and incorporated herein as Exhibit A is adopted as the District's bond in lieu of retainage and the District's staff is authorized to accept such bonds in lieu of retainage in the event the requirements of this resolution are satisfied.

2. Surety issuing the bond must have an A.M. Best rating of A VII or higher.

3. The contractor posting the bond must contract with the District to assure that the bond is maintained throughout the

contract and that beneficiaries of the retainage trust are protected. The form of said contract is attached hereto as Exhibit B and adopted as the District's assurance agreement.

Adopted this 24 day of Sept., 2001

Rael Kuppel
President and Commissioner

Bill Anderson
Commissioner

Bill Anderson
Acting Secretary and Commissioner

CERTIFICATION

I, the undersigned, Secretary of the Board of Water Commissioners of Silver Lake Water District, Snohomish County, Washington (the "Water District"), hereby certify as follows:

1. The attached copy of Resolution No. 533 (the "Resolution") is a full, true and correct copy of a resolution duly adopted at a regular meeting of the Board of Water Commissioners (the "Board") of the Water District held at the regular meeting place thereof on September 24, 2001, as that resolution appears on the minute book of the District; and the Resolution is now in full force and effect; and

2. A quorum of the members of the Board was present throughout the meeting and a majority of those members present voted in the proper manner for the adoption of the Resolution.

IN WITNESS WHEREOF, I have hereunto set my hand this 24th day of September, 2001.

SILVER LAKE WATER DISTRICT,
SNOHOMISH COUNTY, WASHINGTON

Bill Anderson
~~ROGER SUMMY~~, Secretary
Acting

RESOLUTION NO.

Exhibit A form

BOND IN LIEU OF RETAINED FUNDS

Bond No. _____

KNOW ALL BY THESE PRESENTS, that _____,
a corporation organized under the laws of the State of Washington or authorized to
do business in the State of Washington, as Principal (hereinafter referred to as
"Principal"), has contracted with the Silver Lake Water District (the "District") in
the amount of \$ _____ for or relating to _____

(No. _____)
(Date _____) (the "Contract") which Contract is hereby incorporated
herein by reference.

The Contract and Chapter 60.28 RCW require the District to withhold from the
Principal a sum (the "retainage") in an amount not to exceed five percent (5%) of
all monies earned by Principal on estimates paid during the progress of work under
the Contract as a trust fund for the protection and payment of (a) claims of any
persons or entities (including the District) arising under the contract or RCW
Chapter 60.28, (b) State of Washington taxes pursuant to RCW Title 82 that may be
due from Principal, and (c) claims of any person or entity for prevailing wages
under the Contract as set forth in RCW chapter 39.12. Principal has requested that
the District release all of the retainage currently withheld, if any, or which would
otherwise be withheld under RCW 60.28 and the Contract, in exchange for this
bond, as allowed under RCW 60.28.011(6).

NOW THEREFORE, the conditions of this obligation are as follows:

_____, a corporation
organized and existing under the laws of the State of _____ and
authorized to transact business in the State of Washington, as Surety, and Principal
are jointly and severally held and bound unto the District and other beneficiaries of
the trust fund created by Chapter 60.28 RCW, as obligees, in a penal sum equal to
five percent (5%) of the final Contract price, including adjustments for change
orders, in lawful money of the United States of America, for the payment of which
the Principal and Surety bind themselves, their heirs, executors, administrators,
successors and assigns, jointly and severally.

This Bond, including any proceeds therefrom, is subject to all existing and future
claims and liens arising out of the Contract (including claims of the District) in the
same manner and to the same extent and priority as set forth for the retainage

Exhibit B Form

AGREEMENT

**THIS AGREEMENT between the Silver Lake Water District (the "District") and
_____ (the "Contractor") witnesses:**

1. BACKGROUND. The District has awarded to the Contractor a public works contract, and the Contractor has requested that a bond in lieu of retainage be accepted by the District. The District is willing to accept such bond provided that the Contractor assure that such bond is maintained and that the District is indemnified from a failure to maintain the bond.

2. AGREEMENT. The District authorizes that the Contractor post a bond in lieu of retainage for the following public work _____ in a form approved by the District. The contractor agrees that the bond will be maintained in full force and effect until the District authorizes its release. In the event the surety cancels the bond or the surety falls below the District's required rating or the Surety files for bankruptcy or bankruptcy protection or a receivership under the laws of any state, Contractor agrees that said Bond shall be replaced immediately. Until such replacement the District shall reinstate statutory retainage on any payments due the Contractor and on payments due more than two weeks after notice of cancellation or failure to meet said conditions the District may retain additional amounts sufficient to fund the retainage to its legal limits if an acceptable bond is not tendered to the District.

3. INDEMNIFICATION. Contractor agrees to defend and indemnify the District from any claim, suit, judgment, or damages, including reasonable attorneys fees, related to or arising out of the District's agreement to accept a bond in lieu of retainage.

Date _____

Silver Lake Water District

Contractor:

By _____

By _____

Its _____

Its _____