



**PUBLIC UTILITY DISTRICT NO. 1**  
**OF MASON COUNTY**  
N. 21971 Hwy. 101  
Shelton, Washington 98584

**BOARD OF COMMISSIONERS**  
MIKE SHEETZ, Commissioner  
JACK JANDA, Commissioner  
RON GOLD, Commissioner

## **Request for Proposals**

### **Potable Water Reservoir/Tank Inspection and Cleaning**

**NOTICE IS HEREBY GIVEN THAT PUBLIC UTILITY DISTRICT No. 1 OF MASON COUNTY, WASHINGTON,** does hereby invite bids from qualified, responsible bidders specializing in tank inspection and cleaning for potable water reservoirs. **Inspections and cleanings shall be completed by October 31, 2019. Final reports shall be submitted to Mason PUD 1 by November 28, 2019.**

#### **SUBMISSION DEADLINE:**

Bids must be submitted to Brandy Milroy, electronically at [brandym@mason-pud1.org](mailto:brandym@mason-pud1.org) or in person or by mail to 21971 N. US Hwy 101, Shelton, WA 98584, no later than **Friday, April 12, 2019 at 4:00 p.m.** Bids received after deadline will not be considered. The District's email will serve as the official date/time stamp for submittals.

Questions may also be submitted to Brandy Milroy via email and answers will be posted on the District's website [www.mason-pud1.org/bids/](http://www.mason-pud1.org/bids/) next to the bid announcement so all bidders receive the same information.

All bidders must be registered on the District's small works roster online at MRSC Rosters [www.mrscrosters.org](http://www.mrscrosters.org).

#### **DISTRICT OPTION TO REJECT ALL BID PROPOSALS:**

The District may, at its sole discretion, reject any or all bid proposals submitted. The District shall not be liable for any costs incurred in connection with the preparation and submittal of any bid proposal. The District reserves the right to waive any informality in a submitted proposal.

#### **SCOPE OF WORK:**

Please see Attachment A.

#### **PREPARATION AND CONTENT OF THE PROPOSAL:**

Proposal submissions should be transmitted electronically **via email** in either MS Word or Adobe PDF format and contain the following information:

- Scope of work for inspection and cleaning including standard sediment level removal
- Inspection procedure including video recording format and final report format
- Method of reservoir cleaning including underwater operations
- Total number of days to inspect and clean all the tanks
- Price for inspection and cleaning each tank including prevailing wages



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- ❑ Total price for all services including applicable sales tax and prevailing wages
- ❑ Hourly price for additional labor and repairs
  
- ❑ Additional costs for:
  - Per hour for additional labor and/or repairs
  - Per tube of epoxy or other sealant for sealing minor cracks
  - per inch for removing additional sediment

Per hour for dichlorination.

**PREVAILING WAGE:**

All contractors and subcontractors are required to pay Washington State prevailing wages. View prevailing wage rates at <http://www.lni.wa.gov/TradesLicensing/PrevWage/WageRates/default.asp>, rates, or view a copy at Mason County PUD No. 1's offices at N. 21971 Hwy 101, Shelton, WA.

**DISADVANTAGED BUSINESS ENTERPRISE:**

Mason County PUD No. 1 is an equal opportunity employer; small business, minority and women owned firms are strongly encouraged to apply.

**PROPOSAL SELECTION AND EVALUATION:**

**SELECTION PROCESS**

The District reserves the right to act as sole judge of the contents of the proposals and for selection of a contractor. The award of a contract will be based on the lowest responsive proposal submitted from a responsible contractor.

***Adherence to Form***

All proposals submitted in response to this RFP must adhere to the format set forth in this RFP. Failure of the contractor to adhere to this format may eliminate their proposal from any further consideration.

***Required Additional Material***

All bidders shall submit a brief statement of their proposed work schedule and work objective to achieve the required scope of work, description of qualifications with the total number of employees available to service this contract, and list a minimum of three (3) client references; and any other information which would be beneficial to the District for purposes of evaluating this proposal.

**EVALUATION PROCESS**

Evaluation of the proposals and their cost effectiveness to the District will be made by the District's management team. The management team will evaluate all information provided in the proposal documents to determine the



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compliance to requirements set forth in this RFP, and responsible qualifications of the individual(s) or firm(s) submitting a proposal.

**EVALUATION CRITERIA**

The evaluation and determination of the fulfillment of the following requirements will be made by the District and its judgment will be final. False, incomplete, or unresponsive statements in connection with a proposal may be sufficient cause for its rejection. Criteria to be used in the selection process will include, but may not be limited to, the following considerations;

- **Cost-** To be considered cost effective, a proposal shall provide the required services at the lowest cost to the District.
- **Contractor's Experience** - Of particular interest will be those services provided to projects of similar size and scope of service.
- **Contractor's Capability** - Contractor's proposed scope of work, suggested materials, and visual enhancements.
- **Contractor's Understanding of the Work** - Demonstration of the Contractor's understanding of the magnitude and complexity of the maintenance services and expertise required to perform successfully under the contract. Ability to comply with minimum specifications as set forth in scope of work.

**INVOICING:**

Contractor shall provide time and material invoices for each project to the District at the completion of each project in a format acceptable to the District for work performed to the date of the invoice.

**ATTACHMENTS:**

A – Scope of Work

B- Reservoir RFP Quotation Sheet & Map of Site Locations

C- Sample Service Contract



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**Attachment A - SCOPE OF WORK**

The Contractor shall:

- Inspect all reservoirs for sediment and defects.
- Inspect and possibly clean PVC tanks.
- Clean as necessary to remove all sediment, debris, and bacteria harboring media.
- Record all procedures using cameras capable of focusing on the entire interior surface with high resolution video to include narration. Video record shall play back in Microsoft Media Player.
- Provide live video feed and live voice communication for monitoring of entire procedure.
- Defects shall be noted on inspection report, with owner option for repair.
- Final report of inspection findings and recommendations to be provided in Adobe PDF format and sent on USB drive, compact disc, or by electronic mail (email).
- Inspections and cleanings shall be completed by **October 31, 2019**.
- Final reports shall be submitted to Mason PUD 1 by **November 28, 2019**.

Reservoirs will be left in service during cleaning, if possible. Inspection and cleaning procedures shall not create any visible turbidity in water column. Preferred cleaning equipment 'scrubs' the interior surface utilizing a rotating brush, or approved equal method or equipment.

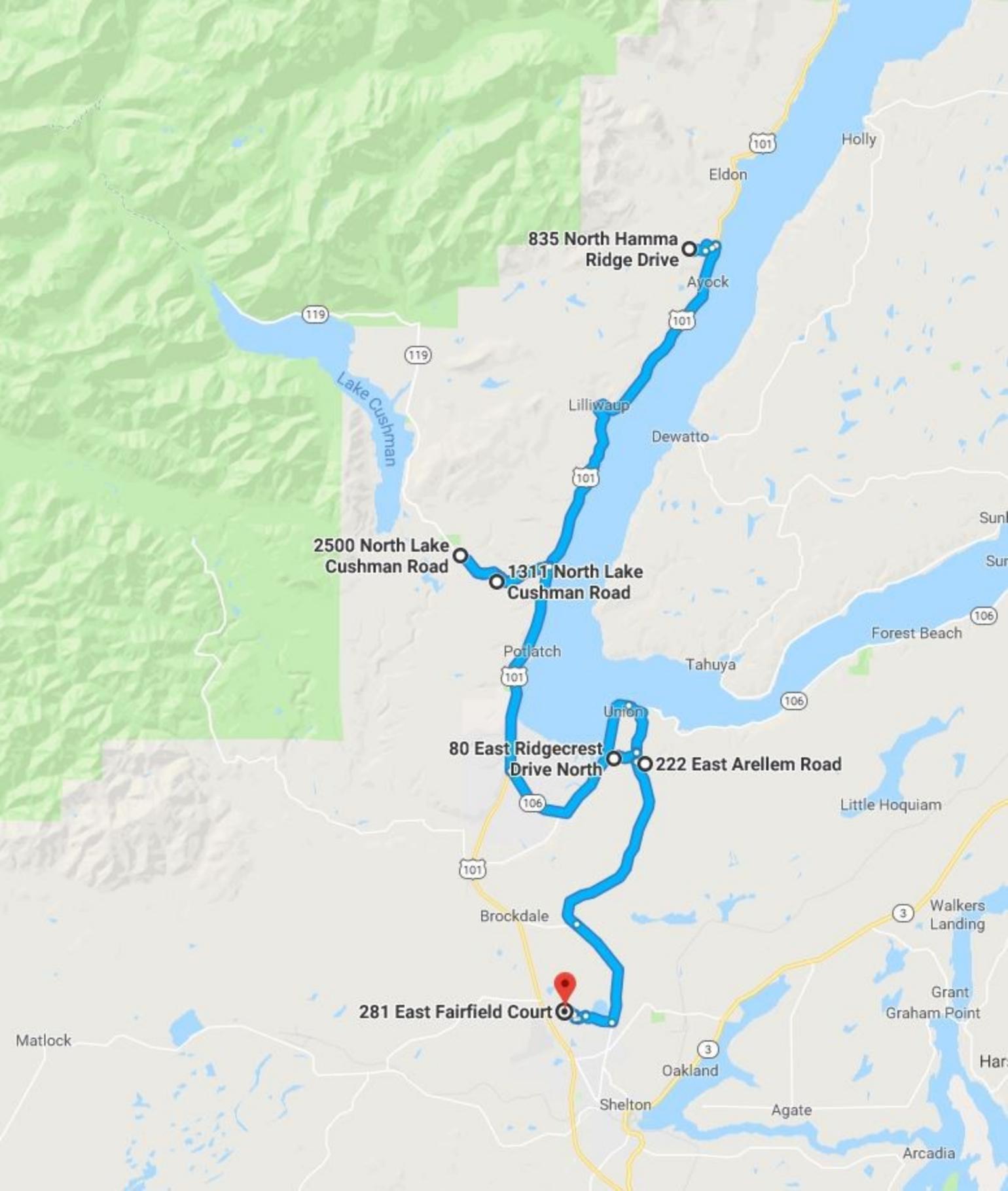
All divers entering reservoirs/tanks must wear a disinfected vulcanized rubber dry suit and hard hat or helmet dedicated for use in potable water. SCUBA and full face mask gear is not acceptable.

All dive equipment and procedures must meet WISHA, OSHA, ANSI, and ACDE regulations and guidelines. Additionally, procedures for potable water reservoir cleaning (including disinfection) must meet AWWA C652-02 and Washington State Department of Health established guidelines.

**Attachment B - QUOTATION SHEET**

**Mason County PUD No. 1 2019  
Reservoir Inspection & Cleaning**

System Name	Height	Diameter	Volume	Hatch Size	Material	Style	Vehicle Access	Power On Site	Last Inspected	Unit Bid Price
Hamma Ridge 835 N Hamma Ridge Dr, Lilliwaup	21'	15'	38,842	39"x33"	concrete	stand pipe	yes	yes	unknown	
413 N Hamma Ridge Dr, Lilliwaup	9'	6'	3,300	24" diameter	PVC	stand pipe	Inside a building	yes	unknown	
	9'	6'	3,300	24" diameter	PVC	stand pipe	Inside a building	yes	unknown	
Cushman Inc 2500 N Lake Cushman Rd, Hoodsport	6'	8'	2,000		PVC	stand pipe	Inside pump house	yes	2013	
Hoodsport 1311 N Lake Cushman Rd, Hoodsport	25'	25'	91,793	24"x36"	concrete	stand pipe	yes	yes	2013	
Vuecrest 80 E Ridgecrest Dr S, Union	10'	15'	13,218	24"x24"	concrete	stand pipe	yes	yes	2013	
Highland Park 222 E Arellem Rd, Union	10'	20'x15'	22,440	24"x24"	concrete	rectangle	yes	yes	2013	
Island Lake Manor 281 E Fairfield Ct, Shelton	16'	7'	4,603	30" diameter	steel	stand pipe	yes	yes	unknown	
Lake Arrowhead 71 W Star Lake Dr, Elma	20'	30'	105,746	24"x36"	concrete	stand pipe	yes	yes	2013	
Madrona Park 191 W Freedom Ln, Shelton	12'	25'	21,138	36"x40"	steel	stand pipe	yes	yes	unknown	
Harstene Retreat 20 E Fox Ln, Shelton	15'	15'	19,827	24"x24"	concrete	stand pipe	yes	yes	2013	
Bellwood A 10 E Kelley Ln, Allyn	14'	15'	18,496	32"x26"	concrete	stand pipe	yes	yes	unknown	



**281 East Fairfield Court**

**80 East Ridgecrest Drive North**

**222 East Arellem Road**

**1311 North Lake Cushman Road**

**2500 North Lake Cushman Road**

**835 North Hamma Ridge Drive**

119

119

101

101

101

101

106

101

106

106

3

3

Matlock

Brockdale

Oakland

Shelton

Agate

Arcadia

Potlatch

Union

Tahuya

Dewatto

Lilliwaup

Eldon

Ayock

Holly

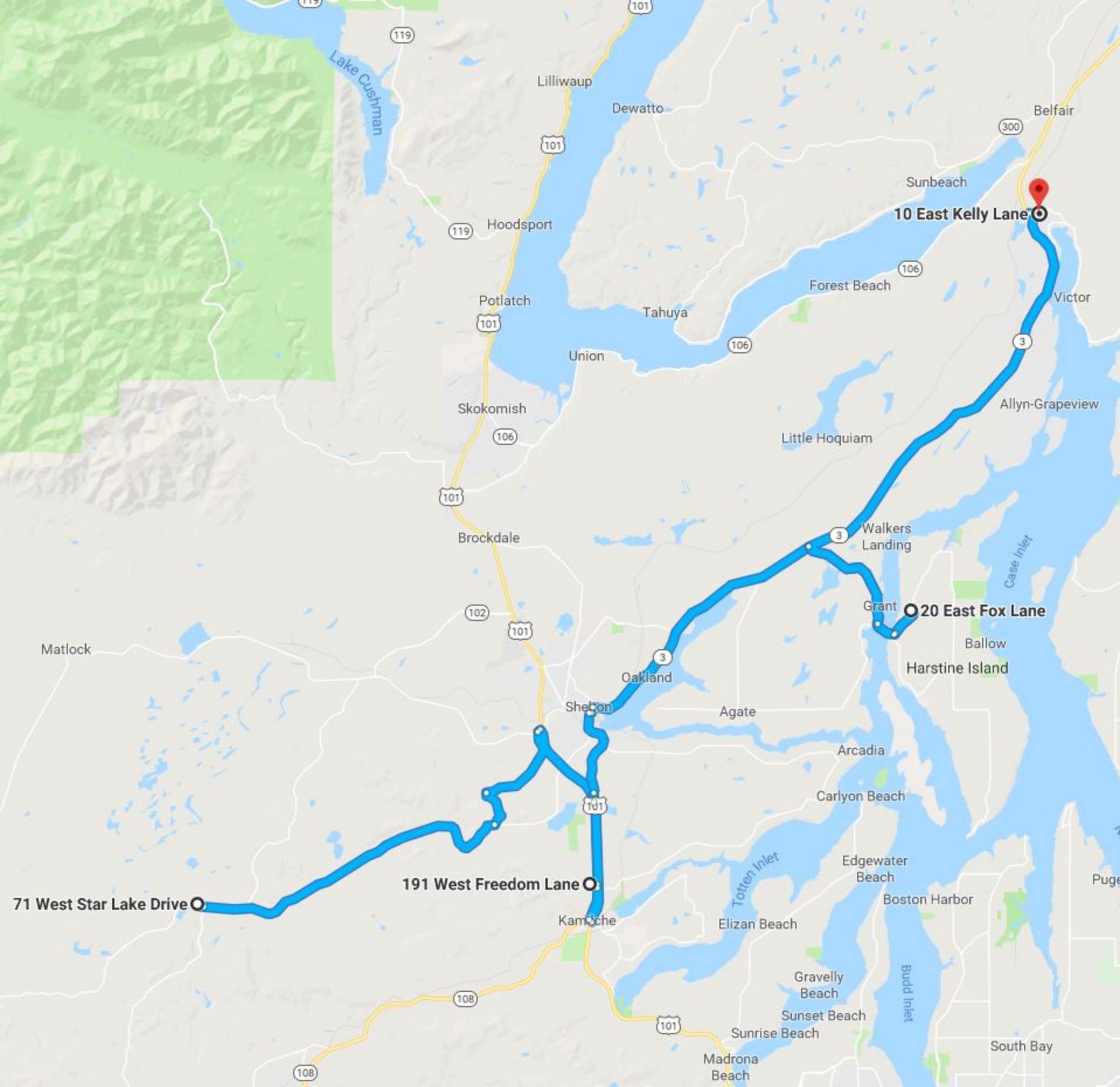
Forest Beach

Little Hoquiam

Walkers Landing

Grant Graham Point

Har



71 West Star Lake Drive

191 West Freedom Lane

20 East Fox Lane

10 East Kelly Lane

Matlock

Lake Cushman

Lilliwaup

Dewatto

Belfair

Sunbeach

Hoodsport

10 East Kelly Lane

Forest Beach

Victor

Tahuya

Union

Potlatch

Allyn-Grapeview

Skokomish

Little Hoquiam

Brockdale

Walkers Landing

Case Inlet

Grant

20 East Fox Lane

Ballow

Harstine Island

Oakland

Agate

Matlock

Shelton

Arcadia

Carlyon Beach

Edgewater Beach

Boston Harbor

191 West Freedom Lane

Kamache

Elizan Beach

Gravelly Beach

Sunset Beach

Sunrise Beach

Madrona Beach

South Bay

108

108

101

101

102

101

106

106

101

119

101

101

300

106

106

3

3

3

101

Puget

**Attachment C – SAMPLE CONTRACT**



**AGREEMENT BETWEEN  
OWNER AND CONTRACTOR**

<b>The Effective Date of this Contract is:</b>	
<b><u>The Parties to this Contract are:</u></b>	
<b>The “Owner”</b>	Mason County Public Utility District No. 1
<b>The “Contractor”</b>	
<b>Project Name:</b>	
<b>The “Architect” or “Engineer:”</b>	
<b>The “Work:”</b>	See “Scope of Work,” Exhibit ____
<b>Alternates included in the Contract Sum:</b>	
<b>Contract Sum for the Work:</b> <i>(not including sales tax)</i>	\$ _____
<b>Payments:</b> <i>(check one)</i>	<input type="checkbox"/> The Owner will make a single payment to the Contractor within thirty (30) days of Final Acceptance. <input type="checkbox"/> See Supplemental Conditions
<b>Date of Substantial Completion of the Work:</b>	
<b>Date of Final Completion of the Work:</b>	_____ days after Substantial Completion
<b>Liquidated Damages:</b>	\$__per day for each calendar day beyond the Contract Time that Substantial Completion is not achieved.
<b>Owner’s Permit Responsibilities:</b>	
<b>Unit Prices:</b>	
<b><u>Minimum Required Insurance:</u></b>	
Commercial General Liability:	At least \$1 million per occurrence and general aggregate.
Automobile Liability:	At least \$1 million
Workers’ Compensation (industrial insurance):	At least the State statutory amount
Employer’s Liability:	At least \$1 million
Aircraft Liability:	At least \$5 million
Watercraft Liability:	At least \$1 million
Property Insurance:	Full insurable value
Boiler and Machinery Insurance:	
Additional Insureds:	Mason County PUD No. 1

*The Owner and Contractor agree as set forth below.*

**ARTICLE 1: THE WORK.** The Contractor shall fully execute and complete the entire Work described in the Contract Documents, including the Alternates listed above.

**ARTICLE 2: COMMENCEMENT AND SUBSTANTIAL AND FINAL COMPLETION.**

**2.1** The date of commencement of the Work is the date of this Agreement. The Contract Time is measured from the date of commencement to the date of Substantial Completion specified above, as it may be adjusted under the Contract Documents.

**2.2** The Contractor shall achieve Substantial Completion and Final Completion of the entire Work within the dates specified above, subject to adjustments of the Contract Time as provided in the Contract Documents.

**ARTICLE 3: THE CONTRACT SUM.** The Owner shall pay the Contractor the Contract Sum for the Contractor's performance of this Contract, subject to additions and deductions as provided in the Contract Documents. Sales tax is not included in the Contract Sum.

**ARTICLE 4: PAYMENT.** The Owner will pay the Contractor within *thirty (30) days* of receipt of an approved Application for Payment in accordance with this Contract. Retainage will be released in accordance with statutory requirements.

**ARTICLE 5: PERMITS AND FEES.**

**5.1** The Owner will secure and pay for only those governmental permits, approvals, fees, licenses, inspections, governmental charges and inspection fees listed on the cover page.

**5.2** The Contractor shall secure and pay for all other governmental permits, approvals, fees, licenses, inspections, governmental charges and inspection fees required for the prosecution of the Work.

**ARTICLE 6: ENUMERATION OF CONTRACT DOCUMENTS.**

**6.1** The Contract Documents form this Contract. This Contract represents the entire and integrated agreement between the parties and supersedes prior negotiations, representations or agreements, either written or oral. The Contract Documents shall not be construed to create a contractual relationship of any kind between the Owner and a Subcontractor of any tier, between any Architect and the Contractor, or between any persons or entities other than the Owner and the Contractor.

**6.2** The Contract Documents are enumerated as follows and, in the event of a conflict or discrepancy among or in the Contract Documents, interpretation shall be governed in the following order of priority:

1. Agreement
2. Prevailing wage rates set by L&I as of the bid date for Mason County (available at <http://www.lni.wa.gov/TradesLicensing/PrevWage/WageRates/default.asp>)
3. General Conditions
4. Scope of Work (See **Exhibit A**)
5. Drawings and Specifications (Refer to Bid Package)

**OWNER**

By \_\_\_\_\_  
*(Signature)*

\_\_\_\_\_  
*(Printed name and title)*

**CONTRACTOR**

By \_\_\_\_\_  
*(Signature)*

\_\_\_\_\_  
*(Printed name and title)*

# GENERAL CONDITIONS

## ARTICLE 7

### THE CONTRACT DOCUMENTS

**7.1** The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contractor's performance shall be consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the intended results.

**7.2** "Work" means the construction and services required by the Contract Documents and includes all labor, materials, equipment and services to be provided by the Contractor to fulfill its obligations.

**7.3** If the Contractor finds a conflict, error or discrepancy in the Contract Documents, the Contractor shall report it to the Owner in writing at once. The Contractor shall not proceed with the affected Work until it receives a written interpretation or clarification from the Owner.

## ARTICLE 8

### ADMINISTRATION OF THE CONTRACT

**8.1** The Owner will provide administration of the Contract. If an Architect or Engineer is also involved, its duties beyond those addressed in these General Conditions will be described in an attachment to this Contract.

**8.2 Authority.** The Owner must approve in writing all changes in the Contract Sum or Contract Time as well as all Change Orders, Construction Change Directives, and payments to the Contractor. The Owner will make any modification or release of any requirement of the Contract Documents, or any approval or acceptance of any portion of the Work, whether or not executed in accordance with the Contract Documents, exclusively in writing.

**8.3 Rejection of Work.** The Owner may reject Work that, in its opinion, does not conform to the Contract Documents. If the Contractor fails to correct Work that is not in accordance with the Contract Documents or fails to carry out the Work in accordance with the Contract Documents, the Owner may order the Contractor in writing to stop the Work, or any portion thereof, until the cause for that order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right.

**8.4 Site Access.** The Owner shall have access to and may visit the Work site at intervals it considers appropriate to the stage of the Work to become generally familiar with the progress and quality of the completed Work, but the Owner will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work.

**8.5 Submittals.** The Contractor shall review, approve and submit to the Owner with reasonable promptness shop drawings, product data, samples and similar submittals required by the Contract Documents. The Owner will review and approve or take other appropriate action upon the Contractor's submittals for the limited purpose of checking for conformance with information given and the design concept expressed by the Contract Documents. The Work shall be in accordance with approved submittals. The Owner's review and approval does not relieve the Contractor of responsibility for compliance with the Contract Documents. The Contractor shall submit to the Owner any proposed change to or deviation from previously approved documents or submittals.

## ARTICLE 9

### THE CONTRACTOR

**9.1** Using its best skill and attention, the Contractor shall perform, supervise and direct the Work. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, procedures and personnel, for safety, and for coordinating all portions of the Work under this Contract. The Contractor shall provide and pay for all labor, materials, equipment, tools and machinery, water, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

**9.2 Subcontractors.** A "Subcontractor" is a person or entity that has a direct contract with the Contractor to perform a portion of the Work at the site or to supply materials or equipment. A "Subcontractor of any tier" includes Subcontractors and lower-level subcontractors and suppliers.

**9.2.1 Identification.** As soon as practicable and no later than *fourteen (14) days* after award of this Contract, the Contractor shall confirm to the Owner in writing the names of the Subcontractors for each portion of the Work.

**9.2.2 Subcontracts.** Contracts between the Contractor and Subcontractors shall require each Subcontractor to be bound to the Contractor by the terms of the Contract Documents for the Work to be performed by the Subcontractor and to assume toward the Contractor all the obligations and responsibilities that the Contractor, by the Contract Documents, assumes toward the Owner.

9.2.3 **Payment.** The Contractor shall promptly pay (and secure the discharge of any liens asserted by) all persons properly furnishing labor, equipment, materials or other items in connection with the performance of the Work for which the Owner has paid (including, but not limited to, workers and Subcontractors). The Contractor shall furnish to the Owner releases of liens and claims and other documents that the Owner requests from time to time to evidence such payment (and discharge). Nothing in the Contract Documents shall obligate the Owner to pay or to cause the payment of any moneys due to any Subcontractor of any tier or other person or entity, except as may otherwise be required by law or regulation.

9.3 **Workers.** The Contractor shall enforce strict discipline and good order among persons carrying out the Work and shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. At no change to the Contract Sum or Contract Time, the Owner may provide written notice requiring the Contractor to remove from the Work any employee or other person carrying out the Work that the Owner considers objectionable.

9.4 **Warranty.** The Contractor warrants that materials and equipment furnished under this Contract will be of good quality and new, that the Work will be performed in a workmanlike manner, free from defects not inherent in the quality required, and that the Work will conform with the requirements of the Contract Documents.

9.5 **Progress Schedule.** Within *fourteen (14) days* of execution of this Contract, the Contractor shall submit a schedule of the Work to the Owner ("Progress Schedule"). The Contractor will be responsible for planning, scheduling, managing, and reporting the progress of the Work in accordance with all of the specific methods and submittals described in the Contract Documents. The Contractor shall use the Progress Schedule (as updated) to plan, coordinate, and prosecute the Work in an orderly and expeditious manner.

9.6 **Clean-Up.** The Contractor shall keep the site and surrounding area free from accumulation of waste materials caused by operations under the Contract.

9.7 **Indemnification.**

9.7.1 Subject to the following conditions and to the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the Owner and its agents, employees, consultants, successors and assigns (together, the "Indemnified Parties") from and against all claims, damages, losses and expenses, direct and indirect, or consequential, including but not limited to costs, attorneys' fees, and other litigation expenses incurred on such claims and in proving the right to indemnification, arising out of or resulting from the performance of the Work by or any act or omission of the Contractor, its agents, any Subcontractor of any tier, and anyone directly or indirectly employed by them (together, the "Indemnitor").

.1 The Contractor will fully indemnify and defend the Indemnified Parties for the sole negligence of the Indemnitor.

.2 The Contractor will indemnify and defend the Indemnified Parties for the concurrent negligence of the Indemnitor only to the extent of the Indemnitor's negligence. The Contractor agrees to being added by the Owner as a party to any mediation, arbitration or litigation with third parties in which the Owner alleges indemnification or contribution from the Indemnitor. The Contractor agrees that all of its Subcontractors of any tier will similarly stipulate in their subcontracts. To the extent a court or arbitrator strikes any portion of this indemnification provision for any reason, all remaining provisions shall retain their vitality and effect.

9.7.2 After mutual negotiation of the parties, the indemnification obligation shall not be limited by the amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts in claims by an employee of the Contractor or a Subcontractor of any tier against any person or entity indemnified under this Paragraph 9.7. For the sole purpose of effecting the indemnification obligations under this Contract and not for the benefit of any third parties unrelated to the Owner, the Contractor specifically and expressly waives any immunity that may be granted it under Title 51 RCW, "Industrial Insurance." IF THE CONTRACTOR DOES NOT AGREE WITH THIS WAIVER, IT MUST PROVIDE A WRITTEN NOTICE TO THE OWNER PRIOR TO THE DATE FOR THE RECEIPT OF BIDS, OR THE CONTRACTOR WILL BE DEEMED TO HAVE NEGOTIATED AND WAIVED THIS IMMUNITY.

9.8 **Records.** The Contractor shall maintain and preserve books, ledgers, records, estimates, correspondence, logs, schedules, electronic data and other documents relating or pertaining to the costs and/or performance of the Contract ("records"). Within *seven (7) days* of the Owner's request, the Contractor shall make available at the Contractor's office all records for inspection, audit and reproduction (including electronic reproduction) by the Owner's representatives. These requirements apply to each Subcontractor of any tier. The Contractor agrees, on behalf of itself and Subcontractors of any tier, that the invocation of any rights under RCW 42.56 shall initiate an equivalent right to disclosures from the Contractor and Subcontractors of any tier for the benefit of the Owner.

9.9 **Compliance with Law.** The Contractor, its employees, Subcontractors of any tier and representatives, shall comply with all applicable laws, ordinances, statutes, rules and regulations, federal and state, county and municipal.

9.9.1 Prevailing Wages. The Contractor shall comply with all applicable provisions of RCW 39.12, including but not limited to submission of approved “Statements of Intent to Pay Prevailing Wage,” payment of all Labor & Industries’ fees, submission and posting of approved “Statements of Intent to Pay Prevailing Wages” and payment of prevailing wages. The State of Washington prevailing wage rates applicable for this public works project, which is located in Mason County, may be found at the following website address of the L&I: <http://www.lni.wa.gov/TradesLicensing/PrevWage/WageRates/default.asp>. The Contractor shall keep a paper copy at the Project site.

9.9.2 Hours of Labor. The Contractor shall comply with all applicable provisions of RCW 49.28.

9.9.3 Worker’s Right to Know. The Contractor shall comply with RCW 49.70 and WAC 296-62-054 regarding workplace surveys and material safety data sheets for “hazardous” chemicals at the Project site.

## ARTICLE 10 CONSTRUCTION BY THE OWNER OR BY SEPARATE CONTRACTORS

**10.1** The Owner may perform construction or operations related to the Project with its own forces and may award separate contracts in connection with other portions of the Project or other construction or operations on the site under contractual conditions consistent with those of the Contract Documents.

**10.2** The Contractor shall afford the Owner and separate contractors reasonable opportunity for the introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor’s construction and operations.

## ARTICLE 11 CHANGES IN THE WORK

**11.1** The Owner, without invalidating this Contract, may order changes in the Work consisting of additions, deletions or modifications (“Changes”), and the Contract Sum and Contract Time will be adjusted accordingly. Changes in the Work, in the Contract Sum and/or in the Contract Time shall be authorized only by written Change Order signed by the Owner and the Contractor or by written Construction Change Directive signed by the Owner.

11.1.1 Change Orders. A Change Order is a written instrument signed by the Owner and the Contractor stating their agreement upon a change in the Work, the amount of any adjustment in the Contract Sum, and the extent of any adjustment in the Contract Time.

11.1.2 Construction Change Directives. A Construction Change Directive is a written order prepared and signed by the Owner that directs a change in the Work and states a proposed basis for any adjustment in the Contract Sum and/or Contract Time. It is used in the absence of total agreement on the terms of a Change Order. The Contractor shall promptly proceed with the change in the Work described in the Construction Change Directive. As soon as possible, and within *seven (7) days* of receipt, the Contractor shall advise the Owner in writing of the Contractor’s agreement or disagreement with the cost or the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

**11.2 Costs of Changes and Claims.** If the parties cannot agree on the cost or credit to the Owner from a Construction Change Directive or other Change in the Work, the Contractor and all affected Subcontractors of any tier shall keep and present an itemized accounting with supporting data. The total cost of any Change or Claim shall be limited to the reasonable value of the direct labor costs, material costs, construction equipment usage costs for the actual time equipment appropriate for the Work is used solely on the Change in the Work, the cost of any change in insurance, Subcontractor costs, and a fee for all combined overhead and profit, including impact costs of any kind, limited to twelve percent (12%) of the cost for any materials or work performed by the forces of the Contractor or a Subcontractor and eight percent (8%) of amounts due to Subcontractors.

**11.3 Claims for Concealed or Unknown Conditions.** If conditions are encountered at the site that are (1) concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found and generally recognized as inherent in activities of the character provided for in the Contract Documents, then the Contractor shall give written notice to the Owner promptly before conditions are disturbed and in no event later than *seven (7) days* after the first observance of the conditions. The Contractor shall make any Claim arising from such condition in accordance with the dispute resolution procedures of Article 19.

## ARTICLE 12 TIME

**12.1 Delay.**

12.1.1 Time. If the Work is delayed by changes ordered in the Work, unanticipated general labor disputes, fire, unusual delay in deliveries, abnormal adverse weather conditions not reasonably anticipatable, unavoidable casualties or any other causes

beyond the Contractor's control, then the Contract Time shall be extended by Change Order to the extent the critical path is affected.

12.1.2 **Damages.** The Contractor and Sub-contractors shall be entitled to damages for delay only where the Owner's actions or inactions were the actual, substantial cause of the delay and where the Contractor could not have reasonably avoided the delay by the exercise of due diligence.

12.1.3 **Contractor Delay.** If a delay was caused by the Contractor, a Subcontractor of any tier, or anyone acting on behalf of any of them, the Contractor is not entitled to an increase in the Contract Time or in the Contract Sum.

**12.2 Completion and Liquidated Damages.** The timely completion of the Project is essential to the Owner. The Owner will incur serious and substantial damages if Substantial Completion of the Work does not occur within the Contract Time. The Contractor is responsible for actual damages for delay unless an amount is inserted on the cover page for liquidated damages, in which case the liquidated damage amount shall apply. Liquidated damages shall not be affected by partial completion, occupancy, or beneficial occupancy.

## **ARTICLE 13**

### **PAYMENTS AND COMPLETION**

**13.1 Payments.** Payment shall be made as provided in this Contract, including any Supplemental Conditions.

**13.2 Withheld Payment.** The Owner may withhold payment in whole or in part, or it may nullify the whole or part of a payment previously issued, on account of (1) defective Work not remedied, (2) claims or liens filed by third parties, (3) failure of the Contractor to make payments due to Subcontractors or for labor, materials or equipment, (4) damage to the Owner or another contractor, (5) reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum, (6) reasonable evidence that the unpaid balance would not be adequate to cover actual or liquidated damages for delay for which the Contractor is responsible, (7) failure to carry out the Work in accordance with the Contract Documents, or (8) liquidated damages. The Owner will provide the Contractor with written notice of its intent to implement this provision and provide details supporting the Owner's intention. The Contractor will be afforded reasonable time following receipt of such notice to respond to or correct the circumstances provoking this action by the Owner.

**13.3 Substantial Completion.**

13.3.1 Substantial Completion is the stage in the progress of the Work when the construction is sufficiently complete, in accordance with the Contract Documents, so the Owner can fully utilize the Work (or a designated portion) for its intended use. All Work other than incidental corrective or punchlist work and final cleaning shall have been completed. The Work is not Substantially Complete if all systems and parts affected by the Work are not usable, any required occupancy or use permit has not been issued, or if utilities affected by the Work are not connected and operating normally. The fact that the Owner may use or occupy some or all of the Work does not indicate that the Work is Substantially Complete, nor does it toll or change any liquidated damages due the Owner.

13.3.2 When the Contractor believes that the Work has achieved Substantial Completion, it shall notify the Owner in writing. When the Owner agrees, it will issue a Certificate of Substantial Completion.

13.3.3 Immediately before any occupancy, the Owner will schedule an inspection tour of the area to be occupied. Representatives of the Owner and the Contractor will jointly tour the area and record items still remaining to be finished and/or corrected. The Contractor shall promptly supply and install any such items as well as items missed by the inspection but required or necessary for Final Completion as a part of the Contract Sum.

**13.4 Final Completion.** After the Contractor has notified the Owner that the Work has been concluded, and the Contractor has submitted the items listed below as may be required at the discretion of the Owner, the Owner will determine in writing that Final Completion has occurred.

- .1 A final Application for Payment.
- .2 An affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or its property might in any way be responsible or encumbered, have been paid or otherwise satisfied.
- .3 Consent of surety to final payment.
- .4 A certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be cancelled or allowed to expire until at least thirty (30) days' prior written notice has been given to the Owner.
- .5 A written statement that the Contractor knows of no substantial reason why the insurance will not be renewable to cover the period required by the Contract Documents.

.6 Other data establishing payment or satisfaction of or protection (satisfactory to the Owner) against all obligations, such as receipts, releases and waivers of liens and claims.

.7 Pursuant to RCW 39.12.040, an "Affidavit of Wages Paid" from the Contractor and from each Subcontractor certified by the Industrial Statistician of the Department of Labor and Industries, with the fees paid by the Contractor or Subcontractor.

.8 A certified statement that the Contractor has closed all necessary permits or otherwise met the requirements of all governing jurisdictions related to this Project.

.9 Pursuant to RCW 60.28.020, certificates from the Department of Revenue and the Department of Labor and Industries.

.10 Pursuant to RCW 50.24, a certificate from the Department of Employment Security.

.11 All deliverables required by the Contract Documents.

.12 A certification that the materials in the Work are "lead-free" and "asbestos free."

.13 A legible hard copy of the as-built drawings.

### **13.5 Final Acceptance and Final Payment.**

13.5.1 Pursuant to RCW 60.28, completion of the contract Work shall occur after Final Completion has been achieved and the Owner has formally accepted the Project ("Final Acceptance"). Final Payment shall not become due until after Final Acceptance.

13.5.2 If any Subcontractor of any tier refuses to furnish a release or waiver required by the Owner, the Owner may retain an amount to defray the cost of foreclosing the liens of such claims and to pay attorneys' fees, the total of which shall be no less than one hundred fifty percent (150%) of the claimed amount. If any such lien remains unsatisfied after all payments are made, the Contractor shall refund to the Owner all moneys that the latter may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

### **13.6 Waivers.**

13.6.1 Final Payment by the Owner. The making of final payment constitutes a waiver of claims by the Owner except those arising from (1) liens, claims, security interests, or encumbrances arising out of the Contract and unsettled; (2) failure of the Work to comply with the requirements of the Contract Documents; (3) Work subsequently found to be substandard and/or deficient; or (4) terms of warranties required by the Contract Documents or law.

13.6.2 Final Payment to the Contractor. Acceptance of final payment by the Contractor constitutes a waiver of Claims except those previously made in writing and specifically identified as unsettled on the final Application for Payment.

13.6.3 Change Orders. The execution of a Change Order constitutes a waiver of Claims by the Contractor arising out of the Work to be performed or deleted pursuant to the Change Order, except as specifically described in the Change Order.

13.6.4 Reservation of Rights. If the Contractor adds to a Change Order, a Construction Change Directive, or any other document a reservation of rights that has not been initialed by the Owner, any amounts previously agreed shall be considered disputed and not yet payable unless the costs are re-negotiated or the reservation is withdrawn or changed in a manner satisfactory to and initialed by the Owner.

13.6.5 Failure to Exercise. The Owner's failure to exercise any of its rights under this Contract shall not constitute a waiver of any past, present or future right or remedy. Any waiver by the Owner of any right or remedy under this Contract must be in writing and shall apply only to the right or remedy specified.

**13.7 Warranty of Title.** The Contractor warrants and guarantees that title to the Work, materials and equipment covered by an Application for Payment, whether or not incorporated in the Project, will pass to the Owner no later than the time of payment, free and clear of liens.

## **ARTICLE 14** **PROTECTION OF PERSONS AND PROPERTY**

**14.1** The Contractor shall be solely responsible, and the Owner shall not have responsibility, for all aspects of safety related to this Contract or the Work, including initiating, maintaining, and supervising all safety precautions and programs in connection with

the performance of the Contract. The Contractor shall take reasonable precautions for the safety of, and shall provide reasonable protection to prevent damage, injury or loss to, persons or property.

**14.2** The Contractor shall promptly remedy to the Owner's satisfaction damage or loss to property at the site caused in whole or in part by the Contractor, a Subcontractor of any tier, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable, except for damage or loss attributable to acts or omissions of the Owner or by anyone for whose acts the Owner may be liable that are not attributable to the fault or negligence of the Contractor or a Subcontractor of any tier.

**14.3** The Contractor shall not be required to perform without consent any Work relating to asbestos or polychlorinated biphenyl, unless identified as such in the Contract Documents.

## **ARTICLE 15 INSURANCE AND BONDS**

**15.1** The Contractor shall, at its own cost, purchase from a company or companies authorized to do business in the State of Washington possessing a Best's policyholder's rating of A- or better and a financial rating of no less than VII, and reasonably acceptable to the Owner, and maintain during the life of this Contract, at least the following insurance. The Contractor shall also cause its Subcontractors of any tier to secure and maintain at least the following insurance. The insurance shall be in force at the time the Work is commenced and shall remain in force until Substantial Completion, unless a later date is specified below.

**15.1.1** Contractor's Liability Insurance. The Contractor shall purchase and maintain an occurrence-based Commercial General Liability Insurance Policy and such other insurance as will provide protection from claims set forth below which may arise out of or result from Contractor's operations under the Contract Documents, whether to be performed or furnished by Contractor, by any Subcontractor, by anyone directly or indirectly employed by any of them to perform or furnish any of the Work, or by anyone for whose acts any of them may be liable:

.1 Claims under workers' compensation, disability benefits and other similar employee benefit acts, as required by the laws of the state of Washington, including Contingent Employers Liability (Stop Gap) for all employees of the Contractor and Subcontractors;

.2 If there is an exposure for injury to Contractor's or subcontractors' employees under the United States Longshoremen's and Harbor Workers' Compensation Act, the Jones Act or under laws, regulations or statutes applicable to maritime employees, or any similar laws, regulations or statutes, coverage shall be included for such injuries or claims.

.3 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees and of any person other than the Contractor's employees;

.4 Claims for damages insured by personal injury liability coverage that are sustained (a) by any person as a result of an offense directly or indirectly related to the employment of such person by Contractor, or (b) by any other person for any other reason.

.5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom;

.6 Claims arising out of operation of laws or regulations for damages because of bodily injury or death of any person or for damage to property;

.7 Claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle, including coverage for Owned Motor Vehicles, Non Owned Motor Vehicles and Hired or Borrowed Motor Vehicles; and

.8 The comprehensive general liability insurance required by this paragraph must include contractual liability insurance applicable to Contractor's obligations under Paragraph 9.7.

**15.1.2** Property Insurance. Unless otherwise provided in the Contract Documents, the Contractor shall purchase and maintain property insurance upon the Work at the site to the full insurable value thereof (subject to any deductible amounts that may be provided in the Contract Documents). This insurance shall include the interest in the Work of the Owner, Contractor, Subcontractors of any tier, any Architect and consultants, all of whom shall be listed as insureds or primary, non-contributing additional insured parties. Additional insured status shall be evidenced by internal policy provision or by separate external endorsement. This insurance shall insure against the perils of fire and extended coverage and shall include "all risk" insurance for physical loss and damage including, without duplication of coverage, theft, vandalism and malicious mischief, collapse, false work and water damage, temporary buildings and debris removal (including demolition occasioned by enforcement of any applicable legal requirements), and such other perils as may be provided in the Contract Documents, and shall include damages, losses and expenses arising out of or resulting from any insured loss or incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers, architects, attorneys and other professionals). If not covered under the "all risk" insurance or otherwise provided in the Contract Documents, the Contractor shall purchase and maintain similar property insurance on portions of

the Work stored on and off the site or in transit when such portions of the Work are to be included in an Application for Payment. The Owner shall bear no responsibility for such portions of the Work or the consequences of their damage or loss.

15.1.3 **Boiler and Machinery Insurance.** The Contractor shall purchase and maintain such boiler and machinery insurance for applicable equipment utilized or contained in the Work, which will include the interests in the Work of the Owner, Contractor, Subcontractors, any Architect, and consultants, all of whom shall be listed as insured or additional insured parties.

15.1.4 **Aircraft/Watercraft Insurance.** If the performance of the Work requires the use of any aircraft that are owned, leased, rented, or chartered by the Contractor or any of its Subcontractors, the Contractor shall secure and maintain Aircraft Liability Insurance for property damage and bodily injury, including passengers and crew. If the performance of the Work requires the use of any watercraft that are owned, leased, rented or chartered by the Contractor or any of its subcontractors, the Contractor shall secure and maintain Watercraft Liability insurance for property damage and bodily injury.

15.3 The Owner's specification or approval of insurance in this Contract or of its amount shall not relieve, limit or decrease the liability of the Contractor under the Contract Documents or otherwise. Coverages are the minimum to be provided and are not limitations of liability under the Contract, indemnification, or applicable law provisions. The Contractor may, at its expense, purchase larger coverage amounts or additional insurance.

#### 15.4 **Waiver of Rights**

15.4.1 The Owner and Contractor waive all rights against each other for losses and damages caused by any of the perils covered by the policies of insurance provided in response to Paragraphs 15.1.2 and 15.1.3 and any other property insurance applicable to the Work, and also waive such rights against the Subcontractors, Architect, consultants and other parties named as insureds in such policies for losses and damages so caused. Each subcontract between the Contractor and a Subcontractor will contain similar waiver provisions by the Subcontractor in favor of the Owner, Contractor, Architect, consultants and all other parties named as insureds. None of these waivers shall extend to the rights that any of the insured parties may have to the proceeds of insurance held by the Owner as Trustee or otherwise payable under any policy so issued.

15.4.2 The Owner and Contractor intend that any policies provided in response to Paragraphs 15.1.2 and 15.1.3 shall protect the parties insured and provide primary coverage for losses and damages caused by the perils covered thereby. Accordingly, such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurer will have no rights of recovery against any of the parties named as insureds or additional insureds, and if the insurers require separate waiver forms to be signed by the Architect or its consultant, the Owner will obtain the same, and if such waiver forms are required of any Subcontractor, the Contractor will obtain the same.

15.5 Any insured loss under the policies of insurance required by Paragraphs 15.1.2 and 15.1.3 will be adjusted with the Owner and made payable to the Owner as Trustee for the insureds, as their interests may appear, subject to the requirements of any applicable mortgage clause. The Owner shall deposit in a separate account any money so received, and shall distribute it in accordance with such agreement as the parties in interest may reach. If no agreement is reached, the damaged Work shall be repaired or replaced, the moneys so received applied on account thereof, and the Work and the cost thereof covered by an appropriate Contract Modification or Written Amendment, or be a separate contract, at the Owner's option.

#### 15.6 **Endorsements.**

15.6.1 The Owner, its officer and employees shall be named as a primary, non-contributing additional insured and coverage shall apply on a primary and non-contributory basis on such policies other than Workers' Compensation. Additional insured status shall be evidenced by internal policy provision or by separate external endorsement. Policies shall contain a provision that the Owner shall be given *thirty (30) days'* written notice by certified mail before cancellation of any insurance or reduction of the amount thereof, or any alteration, modification, restriction or material change thereto. No such cancellation, reduction, alteration, modification, restriction or material change in any policy shall relieve the Contractor of its obligation to maintain coverages in accordance with the Contract Documents.

15.6.2 All insurance policies to be maintained by the Contractor shall provide for Waiver of Subrogation in favor of the Owner.

15.6.3 All insurance policies, except Workers' Compensation, to be maintained by the Contractor shall provide Severability of Interests or Cross Liability Clause and provide that the insurance shall be primary and not excess to or contributing with any insurance or self-insurance maintained by the Owner.

15.7 Certificates evidencing that satisfactory coverage of the type and limits set forth in the Contract Documents shall be furnished to the Owner in a form acceptable to the Owner and shall contain provisions consistent with Paragraph 15.6.

15.8 Irrespective of the requirements of the Contract Documents as to insurance to be carried by the Contractor, insolvency, bankruptcy or failure of any insurance company to pay all claims accruing, shall not be held to relieve the Contractor of any of its obligations.

**15.9** The Contractor shall defend, indemnify and hold the Owner harmless from any failure of the Contractor or its Subcontractors of any tier to secure and maintain insurance as required by this Contract.

#### ARTICLE 16 CORRECTION OF WORK

**16.1** The Contractor shall promptly correct Work rejected or failing to conform to the requirements of the Contract Documents at any time through a period of *one (1) year* from the date of Substantial Completion of this Contract or by terms of a longer manufacturer's warranty or an applicable special warranty required by the Contract Documents.

**16.2** If the Contractor fails to carry out or correct Work that is not in accordance with the Contract Documents, the Owner may, by written order, require the Contractor to stop the Work or any portions thereof until the cause for the order has been eliminated, and the Owner may take over and correct some or all of the non-conforming Work at the Contractor's cost.

**16.3** Nothing in this Article shall be construed to establish a period of limitation with respect to other obligations that the Contractor might have under the Contract Documents.

#### ARTICLE 17 MISCELLANEOUS PROVISIONS

**17.1 Applicable Law.** This Contract shall be governed by the internal law of the State of Washington, without regard to its choice-of-law provisions.

**17.2 Compliance with Law.** The Contractor shall give notices and comply with applicable laws, rules, regulations and orders of public authorities, including but not limited to RCW 39.06 and RCW 18.27 (Registration), RCW 49.60 (Discrimination), RCW 70.92 (Aged and Handicapped Persons), WAC 296-155 (Safety Standards), RCW 50.24 (Unemployment Compensation), RCW 51 (Industrial Insurance); RCW 82 (State Excise Tax Registration), RCW 39.12.065(3) (prevailing wage violations), Drug-Free Workplace Act of 1988 (Drug-Free Workplace) and RCW 49.26 (any asbestos removal).

**17.3 Assignment.** The Contractor shall not let, assign or transfer this Contract, or any interest in it or part of it, without the written consent of the Owner.

**17.4 The Owner's Site Rules.** The Contractor shall comply with the Owner's site and conduct rules.

**17.5 Survival of Clauses.** The warranty, dispute resolution, and indemnification provisions of this Contract shall survive the termination, cancellation or expiration of this Contract.

**17.6 Writing Required.** No addition to or modification of this Contract or waiver of any provisions of this Contract shall be binding on either Party unless explicitly made in writing and executed by the Contractor and the Owner.

#### ARTICLE 18 TERMINATION OF THE CONTRACT

**18.1 Termination for Cause by the Contractor.** If the Owner fails to make payment of undisputed amounts for a period of *sixty (60) days* through no fault of the Contractor, the Contractor may, upon *seven (7) additional days'* written notice (during which time the Owner has the right to cure), terminate the Contract and recover from the Owner payment for all Work executed in accordance with the Contract Documents.

**18.2 Termination for Cause by the Owner.** The Owner may, upon *seven (7) days'* written notice to the Contractor, terminate without prejudice the whole or any portion of the Work for cause, including but not limited to the Contractor's material breach of this Contract; failure to prosecute the Work or any portion thereof with sufficient diligence to ensure the Substantial Completion of the Work within the Contract Time; failure to supply a sufficient number of properly skilled workers or proper materials; material disregard of laws, ordinances, rules, regulations or orders of any public authority having jurisdiction; or being adjudged bankrupt, making a general assignment for the benefit of its creditors, or having a receiver appointed on account of the Contractor's insolvency.

**18.3 Termination for Convenience by the Owner.** The Owner may, at any time upon *seven (7) days'* written notice to the Contractor, terminate (without prejudice to any right or remedy of the Owner) the whole or any portion of the Work for the convenience of the Owner. The Owner shall be liable to Contractor only for the amount reasonably incurred to date and due under Article 13 for the performance of the Work terminated and other pre-approved costs, consistent with the Paragraph 11.2, necessary and reasonably incurred in connection with the termination of the Work.

**18.4 Effects of Termination.**

18.4.1 The total sum to be paid to the Contractor under this Article 18 shall not exceed the Contract Sum as reduced by the amount of payments otherwise made.

18.4.2 Unless the Owner directs otherwise, after receipt of a notice of termination by the Owner, the Contractor shall promptly stop Work as specified in the notice of termination; place no further orders or subcontracts, except as necessary for completion of non-terminated Work; procure cancellation of all orders and subcontracts to the extent related to the performance of terminated Work; assign to the Owner all of the right, title and interest of the Contractor under all orders and subcontracts; with the Owner's approval, settle outstanding liabilities and claims arising out of such termination of orders and subcontracts not assigned to the Owner; transfer title and deliver to the entity or entities designated by the Owner the fabricated or unfabricated parts, Work in process, partially completed supplies and equipment, materials, parts, tools, dies, jigs and other fixtures, completed Work, supplies and other material produced as part of, or acquired in connection with the performance of, the Work terminated, and the completed or partially completed plans, drawings, information and other property related to the Work; take such action as may be necessary or as directed by the Owner to preserve and protect the Work and property related to the Project in the possession of the Contractor in which the Owner has an interest; and continue performance only to the extent not terminated.

**18.5 Suspension.** The Owner may, at its option and at any time, suspend the Contractor's performance of some or all of the Work. The Owner will give the Contractor notice of any such suspension, including the scope of the suspension and the Owner's estimate of the duration of such suspension. During the period of suspension, the Contractor shall use its best efforts to minimize costs associated with such suspension and to protect and maintain the Work. As full compensation for any such suspension, the Contractor will be eligible for an equitable adjustment, which shall not include consequential or indirect damages. Upon receipt of the Owner's notice to resume the suspended performance, the Contractor shall immediately resume performance to the extent required in the notice.

## ARTICLE 19 DISPUTE RESOLUTION

**19.1** All claims, disputes and other matters in question of the Contractor, direct or indirect, arising out of, or relating to, the Contract Documents or the breach thereof ("Claims") shall be decided exclusively by the following dispute resolution procedure. Failure to comply with the requirements of this Article 19 shall constitute waiver of the Claim.

**19.2 Notice of Claim.** The Contractor shall submit notice of all Claims to the Owner in writing within *seven (7) days* of the event giving rise to them and shall include a reasonable description of the event and its probable effect.

**19.3 Claim Submission.** Within *thirty (30) days* of the effective date of submitting the notice in Paragraph 19.2, the Contractor shall provide the Owner with a written Claim that includes a clear description of the Claim, all changes in cost and in time (direct, indirect, impact, consequential, and otherwise) to which the Contractor and Subcontractors of any tier are entitled, and data supporting the Claim. No act, omission, or knowledge, actual or constructive, of the Owner or any Architect shall in any way be deemed to be a waiver of the requirement for a timely written notice and a timely written Claim unless the Owner and the Contractor sign an explicit, unequivocal written waiver.

**19.4 Effective Date.** Unless otherwise specified in the Contract Documents, the effective date of any notice or request given in connection with this Contract shall be the date on which it is delivered to the Owner.

**19.5 Informal Resolution.** The Owner will make a determination of the Claim submitted. If the Contractor disagrees with the determination and wishes to pursue the Claim further, the Contractor must, within *fourteen (14) days* of receipt of the determination, provide the Owner with a written request that a representative of the Contractor, any Architect, and the Owner meet, confer, and attempt to resolve the claim. This meeting will then take place at mutually convenient time and place within *fourteen (14) days* of the Contractor's request.

**19.6 Mediation.** The Contractor may not bring any litigation against the Owner unless the Claim is first subject to mediation under the Construction Industry Mediation Procedures of the American Arbitration Association ("AAA"). This requirement cannot be waived except by an explicit written waiver signed by the Owner and the Contractor. To initiate the mediation process, the Contractor shall submit a written mediation request to the Owner within thirty (30) days after the meeting undertaken in Paragraph

19.5. If the parties are unable to agree to a mediator within *thirty (30) days* after the Owner's receipt of the written request for mediation, either party may submit a request for mediation to the AAA. An officer of the Contractor and the General Manager or designee of the Owner, both having full authority to settle the Claim, must attend the mediation session. To the extent there are other parties in interest, such as Subcontractors and insurers, their representatives, with full authority to settle the Claim, shall also attend the mediation session. All unresolved Claims in the Project shall be considered at a single mediation session that shall occur prior to Final Acceptance by Owner.

**19.7 Litigation.** The provisions of Paragraphs 19.1, 19.2, 19.5, and 19.6 are each a condition precedent to the Contractor bringing litigation. All unresolved Claims of the Contractor shall be waived and released unless the Contractor has strictly complied with the time limits of the Contract Documents, and litigation is served and filed within *120 days* after the Date of Substantial

Completion as designated in writing by the Owner. This requirement cannot be waived except by an explicit written waiver signed by the Owner and the Contractor. The pendency of mediation shall toll this filing requirement.

**19.8 Maintenance of Responsibilities.** The parties shall diligently carry on their respective obligations and responsibilities and maintain the Progress Schedule during any dispute resolution proceedings, unless otherwise agreed by both parties in writing.

**19.9 Waiver.** The requirements of this Article 19 cannot be waived except by an explicit written waiver signed by the Owner and the Contractor. The fact that the Owner and the Contractor may continue to discuss or negotiate a Claim that has or may have been defective or untimely under the Contract Documents shall not constitute waiver of the provisions of the Contract Documents unless the Owner and Contractor sign an explicit, unequivocal written waiver approved by the Owner's Board of Commissioners.

## Supplemental Conditions

1. Payments will be in one lump sum, minus retained funds. The District may consider payments in increments of not less than twenty-five percent (25%) of contracted amount. The Contracting Officer will be the final arbiter to set the percentage of work completed for release of any payments.

1. **Progress Payments.** Progress payments shall be made monthly for Work that is duly approved and performed during the calendar month preceding the Application for Payment according to the following procedure.

1.1 **Schedule of Values.** Prior to submitting its first Application for Payment, the Contractor shall submit to the Owner a schedule of values allocating the Contract Sum to the various portions that comprise the Work. The schedule of values shall be prepared in such form and supported by such data as the Owner may require. The schedule of values shall allocate at least three percent (3%) of the original Contract Sum to that portion of the Work between Substantial Completion of the Work and Final Completion, which will be earned upon Final Completion and distributed in the final payment.

1.2 **Draft Application.** Within the first *seven (7) days* of each month, the Contractor shall submit to the Owner a report on the current status of the Work as compared to the Progress Schedule and a draft, itemized Application for Payment for Work performed through the prior calendar month. This shall not constitute a payment request. The Contractor, the Owner and the Architect or Engineer (if any) shall meet within the next *seven (7) days* and confer regarding the current progress of the Work and the amount of payment to which the Contractor is entitled. The Owner may request the Contractor to provide data substantiating the Contractor's right to payment, such as copies of requisitions or invoices from Subcontractors. The Contractor shall not be entitled to make a payment request, nor is any payment due the Contractor, until such data is furnished.

1.3 **Payment Request.** Within *seven (7) days* after the Contractor and the Owner have met and conferred regarding the draft Application for Payment and the Contractor has furnished all data requested, the Contractor may submit a payment request in the agreed-upon amount, in the form of a notarized, itemized Application for Payment for Work performed during the prior calendar month on a form supplied or approved by the Owner. Among other things, the Application shall state that prevailing wages have been paid in accordance with the pre-filed statement(s) of intent to pay prevailing wages on file with the Owner and that all payments due Subcontractors from the Owner's prior payments have been made. The Application shall constitute the Contractor's representation that (1) all payments due Subcontractors from the Owner's prior payments have been made and (2) the Work is current on the Progress Schedule, unless otherwise noted on the Application. If the Contractor believes it is entitled to payment for Work performed during the prior calendar month in addition to the agreed-upon amount, the Contractor may, within the same time period, submit to the Owner a separate written payment request specifying the exact additional amount due, the category in the schedule of values in which the payment is due, the specific Work for which the additional amount is due, and why the additional payment is due.

1.4 **Payments to Subcontractors.** No payment request shall include amounts the Contractor does not intend to pay to a Subcontractor. If, after making a request for payment but before paying a Subcontractor for its performance covered by the payment request, the Contractor discovers that part or all of the payment otherwise due to the Subcontractor is subject to withholding from the Subcontractor for unsatisfactory performance, the Contractor may withhold the amount as allowed under the subcontract, but it shall give the Subcontractor and the Owner written notice of the remedial actions that must be taken as soon as practicable after determining the cause for the withholding but before the due date for the Subcontractor payment, and pay the Subcontractor within *eight (8) working days* after the Subcontractor satisfactorily completes the remedial action identified in the notice.

1.5 **Retainage.** Pursuant to RCW 60.28, the Owner will reserve five percent (5%) from the moneys the Contractor earns on estimates during the progress of the Work, to be retained as a trust fund for the protection and payment of the claims of any person arising under this Contract and the state with respect to taxes imposed pursuant to Title 82 RCW, which may be due from the Contractor. The moneys reserved will be retained in a fund by the Owner until *forty-five (45) days* following formal acceptance of the Project by the Owner ("Final Acceptance"). The Contractor may retain payment of not more than five percent (5%) from the moneys earned by any Subcontractor.

1.6 Upon completion of the Work, Contractor shall submit a Request for Final Payment, Certificate and Release form and itemized invoice to the Owner for approval and payment.