



HWY 106 TO SUNNYSIDE (S48-S64) UNDERGROUND CIVIL WORK

Bid Binder

Date: April 11, 2025

Revision: 0

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Bid Documents and Forms

Project Overview

Summary

A section of overhead line on Hwy 101 between Hwy 106 and Sunnyside Road sits normally de-energized. The reason for this underutilization is partly due to the vegetation management required to maintain the canopy in this heavily treed area. The section of line will be converted to underground. This project will focus on installing conduit and vaults in preparation for the PUD crew to pull in cable at a later date. This trench will be a joint trench shared with Hood Canal Communications, and Mason PUD 3 fiber. The joint users will supply all their required materials. PUD 1 will supply the stick conduit and the vaults. There are several planned bores on this project. The contractor is expected to supply PUD 1 bore conduit.

Project Storage

Storage of materials and equipment is at the will of the Contractor. Approximately 2.5 miles away from the project, Mason County PUD 1 has a campus that provides 2+ acres of lay-down area that is locked after operating hours. PUD 1 anticipates the majority consumables and equipment will be stored.

For technical questions regarding this project, please contact Jeremiah Waugh, PE, Engineering Manager, at (360) 877-5249 or email jeremiahw@mason-pud1.org.

All electronic communications sent to Jeremiah Waugh shall include a cc: to Kristin Masteller, General Manager at kristinm@mason-pud1.org.

Invitation to Bid

April 11, 2025

Engineer's Estimate: \$800,000 - \$980,000

Notice is hereby given for the submittal of sealed bids for construction of the Hwy 106 To Sunnyside (S48 To S64) Underground Civil Work S48 to S64 Underground Civil Work project for Mason County PUD No. 1 (Owner). The Contractor will provide all labor, equipment, testing, consumable parts, and 3" boring conduit necessary to complete the project. The PUD will provide stick conduit and vaults.

Proposed project timeline: April 11 – August 15, 2025

April 11	Bid documents available online/Advertisement
April 24	MANDATORY Pre-Bid walkthrough, 10:00 am PST (Meet at PUD1 and drive to site)
April 30	Cutoff for Addenda questions 4:30 pm PST
May 2	Final addenda issued
May 6	Sealed Bids Due at District Office by 12:00 pm PST
May 6	Bid Opening @ 12:15 pm PST via Zoom https://us02web.zoom.us/j/82674337058
May 13	Bid Awarded
May 14	Notice to Proceed
TBD	Pre-Construction Meeting
August 15	Substantial Completion of Project

For questions concerning bid documents, submittal requirements, or technical project information contact Jeremiah Waugh, Engineering Manager at (360) 877-5249 or jeremiahw@mason-pud1.org.

All electronic communications sent to Jeremiah Waugh shall include a cc: to Kristin Masteller, General Manager at kristinm@mason-pud1.org.

Draft Contract

The Effective Date of this Contract is:	
<u>The Parties to this Contract are:</u>	
The “Owner”	Mason County Public Utility District No. 1
The “Contractor”	
Project Name:	Hwy 106 To Sunnyside (S48 To S64) Underground Civil Work
The “Architect” or “Engineer:”	Mason PUD 1
The “Work:”	See “Scope of Work,” Exhibit A
Alternates included in the Contract Sum:	
Contract Sum for the Work: <i>(not including sales tax)</i>	\$ _____
Payments: <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"/> Contractor will submit for monthly progress payments. <input type="checkbox"/> See Supplemental Conditions
Date of Substantial Completion of the Work:	
Date of Final Completion of the Work:	<u> 7 </u> days after Substantial Completion
Liquidated Damages:	\$ <u>500</u> per day for each business day beyond the Contract Time that Substantial Completion is not achieved.
Owner’s Permit Responsibilities:	All applicable permits.
Unit Prices:	
<u>Minimum Required Insurance:</u>	
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:	N/A
Watercraft Liability:	N/A
Property Insurance:	Full insurable value
Boiler and Machinery Insurance:	N/A
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. Supplement Conditions
3. Prevailing Wage Rates
4. General Conditions
5. Scope of Work
6. Project Documents

7. Performance and Payment Bond
8. FEMA Funding Requirements
(Appendix A)
9. Certification Regarding Lobbying
(Appendix B)

OWNER

By _____
(Signature)

CONTRACTOR

By _____
(Signature)

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

6.1 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.

6.2 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.

6.2.1 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.

6.2.2 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.

6.2.3 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.

6.3 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.

6.4 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.

6.5 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.

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

6.7 Indemnification.

6.7.1 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.

6.7.2 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.

6.8 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.

6.9 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.

6.9.1 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 and Jefferson Counties, may be found at the following website address of the L&I: <https://www.lni.wa.gov/licensing-permits/public-works-projects/prevailing-wage-rates/> The Contractor shall keep a paper copy at the Project site. The fiber installation portion of Schedule A will be solely owned and operated by Hood Canal Communications, and not by the District, therefore that portion of the work is not applicable to state prevailing wage.

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

6.9.3 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.

Waiver and Release of Lein

The undersigned, _____
NAME OF MANUFACTURER, SUPPLIER, OR SUBCONTRACTOR

has furnished to _____
NAME OF CONTRACTOR

the following _____
KIND OF MATERIAL AND/OR SERVICES FURNISHED

for use in the construction of a project owned by _____
NAME OF PROJECT OWNER

and known as _____
NAME OF PROJECT

For and in consideration of \$_____, and other good and valuable consideration, the receipt of which is hereby acknowledged, the undersigned does hereby waive and release any and all liens, or right to claim of lien, on the above described project and premises, under any law, common or statutory, on account of labor or materials, or both, heretofore or hereafter furnished by the undersigned to or for the account of said Contractor for said project.

Given under my (our) hand(s) and seal(s) this _____ day of _____, 20____.

NAME OF MANUFACTURER, SUPPLIER, OR SUBCONTRACTOR

By _____
PRESIDENT, VICE PRESIDENT, PARTNER OR OWNER (USE DESIGNATION APPLICABLE)

Intent to Pay Prevailing Wages

RCW [39.04.260](#) Private construction performed pursuant to contract for rental, lease, or purchase by state—Must comply with prevailing wage law.

Any work, construction, alteration, repair, or improvement, other than ordinary maintenance, that the state or a municipality causes to be performed by a private party through a contract to rent, lease, or purchase at least fifty percent of the project by one or more state agencies or municipalities shall comply with chapter [39.12](#) RCW.

Notes to the Bidder:

- The prevailing wage rate in effect on the bid due date are the prevailing wage rates that apply to that construction contract project, unless the award was delayed more than 6 months. In that case, the prevailing wage rates in effect on the date of the award shall apply for the duration of the contract.
- Prevailing wage rates are published twice per year—on the First business day of February and August—and are effective 30 days after publication.
- [Prevailing Wage Rates](#)
- Historically, prevailing wages were required to be included in the Contract Document set.
- Bid specifications now may provide the required prevailing wage rate information in this alternate format:
 - Provide the URL to the Dept of L&I's prevailing wage rates
 - Identify the exact wage publication date to use
 - State the county in which the public works project is located
 - Specify a copy is available for viewing in the agency office
 - Explain that the agency will mail a hard copy upon request
 - Retain a printed version of the rates for records

RCW 39.12.040 Statement of Intent to pay prevailing wages, affidavit of wages paid - Alternative Procedure *Required for ALL subcontractors too.*

(1)(a) Except as provided in subsection (2) of this section, before payment is made by or on behalf of the state, or any county, municipality, or political subdivision created by its laws, of any sum or sums due on account of a public works contract, it is the duty of the officer or person charged with the custody and disbursement of public funds to require the contractor and each and every subcontractor from the contractor or a subcontractor to submit to such officer a "Statement of Intent to Pay Prevailing Wages". For a contract in excess of ten thousand dollars, the statement of intent to pay prevailing wages must include:

- (i) The contractor's registration certificate number; and
- (ii) The prevailing rate of wage for each classification of workers entitled to prevailing wages under RCW [39.12.020](#) and the estimated number of workers in each classification.

(b) Each statement of intent to pay prevailing wages must be approved by the industrial statistician of the department of labor and industries before it is submitted to the disbursing officer. Unless otherwise authorized by the department of labor and industries, each voucher claim submitted by a contractor for payment on a project estimate must state that the prevailing wages have been paid in accordance with the prefilled statement or statements of intent to pay prevailing wages on file with the public agency. Following the

final acceptance of a public works project, it is the duty of the officer charged with the disbursement of public funds, to require the contractor and each and every subcontractor from the contractor or a subcontractor to submit to such officer an affidavit of wages paid before the funds retained according to the provisions of RCW [60.28.011](#) are released to the contractor. On a public works project where no retainage is withheld, the affidavit of wages paid must be submitted to the state, county, municipality, or other public body charged with the duty of disbursing or authorizing disbursement of public funds prior to final acceptance of the public works project. If a subcontractor performing work on a public works project fails to submit an affidavit of wages paid form, the contractor or subcontractor with whom the subcontractor had a contractual relationship for the project may file the forms on behalf of the nonresponsive subcontractor. Affidavit forms may only be filed on behalf of a nonresponsive subcontractor who has ceased operations or failed to file as required by this section. The contractor filing the affidavit must accept responsibility for payment of prevailing wages unpaid by the subcontractor on the project pursuant to RCW [39.12.020](#) and [39.12.065](#). Intentionally filing a false affidavit on behalf of a subcontractor subjects the filer to the same penalties as are provided in RCW [39.12.050](#). Each affidavit of wages paid must be certified by the industrial statistician of the department of labor and industries before it is submitted to the disbursing officer.

(2) As an alternate to the procedures provided for in subsection (1) of this section, for public works projects of \$5,000 or less as allowed under RCW [39.04.152](#) is followed:

(a) An awarding agency may authorize the contractor or subcontractor to submit the statement of intent to pay prevailing wages directly to the officer or person charged with the custody or disbursement of public funds in the awarding agency without approval by the industrial statistician of the department of labor and industries. The awarding agency must retain such statement of intent to pay prevailing wages for a period of not less than three years.

(b) Upon final acceptance of the public works project, the awarding agency must require the contractor or subcontractor to submit an affidavit of wages paid. Upon receipt of the affidavit of wages paid, the awarding agency may pay the contractor or subcontractor in full, including funds that would otherwise be retained according to the provisions of RCW [60.28.011](#). Within thirty days of receipt of the affidavit of wages paid, the awarding agency must submit the affidavit of wages paid to the industrial statistician of the department of labor and industries for approval.

(c) A statement of intent to pay prevailing wages and an affidavit of wages paid must be on forms approved by the department of labor and industries.

(d) In the event of a wage claim and a finding for the claimant by the department of labor and industries where the awarding agency has used the alternative process provided for in this subsection (2), the awarding agency must pay the wages due directly to the claimant. If the contractor or subcontractor did not pay the wages stated in the affidavit of wages paid, the awarding agency may take action at law to seek reimbursement from the contractor or subcontractor of wages paid to the claimant, and may prohibit the contractor or subcontractor from bidding on any public works contract of the awarding agency for up to one year.

(e) Nothing in this section may be interpreted to allow an awarding agency to subdivide any public works project of more than \$5,000 for the purpose of circumventing the procedures required by subsection (1) of this section.

Division of Responsibilities

Overview

Underground Installation: This project is primarily concerned with installing the conduit, vaults, cabinets and stubs for future (risers and pad mount transformers).

Mason County PUD No. 1

- Respond to information requests regarding the project
- Attend construction meetings

Contractor Responsibilities

- Obtain locates of all utilities through one call
- Provide all materials, labor, clearing, equipment, concrete, fasteners, adhesives, bolts, nuts, washers, etc. to complete the project. This is not an exhaustive list
- Comply with easements and landowner requests
- Construct the transmission and distribution build according to project plans and specifications
- Maintain a tidy work environment
- Keep a safe work environment for crews and support staff
- Work closely with the inspector and notify Owner and Engineer of any discrepancies in the plan or unexpected issues that arise
- Promptly notify inspector and engineer of any discrepancies or issues
- Send an electronic certified payroll to Katie Arnold (PUD 1), karnold@mason-pud1.org
- Initial set up of staging areas prior to construction and then clean up and restoration of the site and staging areas after construction
- Provide all tools, manpower, and equipment necessary for construction
- Maintain erosion that occurs from construction activities. Sediment to not leave project site when conducting earthwork activities
- Maintain, protect, and store all Contract Drawings, Specifications, Addenda, Reviewed Shop Drawings, Change Orders, Other Modifications to Contract, and Field Test Records on the job site and make available to the Project Engineer and PUD1
- Maintain a current red-line as-built drawing on the job site. Provide a clean copy of all project documents to PUD 1 at the end of the project
- Coordinate with an independent testing laboratory to obey all testing and inspection requirements as mentioned in the Project Plans and Specifications
- Respond to information requests regarding the project
- Facilitate the bidding process
- Inspection including final approval

Instructions to Bidders

Scope of Work

The intent of Mason County PUD 1's Hwy 106 To Sunnyside (S48 To S64) Underground Civil Work is to install underground facilities along Highway 101 between Hwy 106 and Sunnyside Rd in preparation for a future project.

Obtaining of Documents

- Bidders are required to attend a pre-bid walk through and must be prequalified prior to receiving documents
- Pre-qualification was solicited, completed, and approved by bid date
- All necessary forms are available for bidders and may be obtained on the Mason County PUD 1 website located at <https://mason-pud1.org/bids/>

Proposal Submittals

- Bids will be received by Mason County PUD 1, 21971 N. Highway 101, Shelton, WA 98584 until 12:00 p.m. PST on May 6, 2024, (postmarks will not be recognized). All complying bids shall be publicly opened and read out loud at the PUD 1 office via virtual bid opening on Zoom at 12:15 p.m. on May 6, 2024
<https://us02web.zoom.us/j/82674337058>
- Bids shall be submitted on the [Bid Proposal form](#) contained in the Bid Documents, then addressed and mailed, or delivered in a sealed envelope plainly marked *"CONFIDENTIAL SEALED BID: Mason PUD No. 1 - HWY 106 to Sunnyside RD"* along with the name and address of the bidder. The District's server clock will serve as the official date and time stamp
- Proposals and all supporting instruments must be submitted on the forms furnished by the Owner and must be delivered as stated above. Bids will be publicly opened at the designated time; call-in information is provided in this bid document. Any bidders who are unable to attend virtually may request a reasonable accommodation 24 hours in advance of the bid opening

Examination of Contract Documents

It is the responsibility of each Bidder before submitting a Proposal; to make and shall be deemed to have made a careful and thorough examination of the project site and Plans, Specifications, Reports, Permits, and forms of Contractor's Proposal and Contractor's Bond, and shall review the location and nature of the proposed construction, the transportation facilities, the type and character of soil and terrain to be encountered, the type of facilities required before and during project construction, general local conditions, environmental and historic preservation considerations, and all other matters that may affect the cost and time of project completion.

In addition, each Bidder must:

- Consider federal, state, and local laws and regulations that may affect cost, progress, performance or furnishings of the material
- Study and carefully correlate Bidder's knowledge and observations with the contract documents and such other related data
- Promptly notify Mason County PUD 1 (hereinafter referred to as the "Engineer") of any conflicts, errors, ambiguities or discrepancies which Bidder has discovered in or between the contract documents and such other related documents
- Comply with rules, and regulations applicable to its performance, including those pertaining to the licensing of contractors, and the Anti Kick-Back Act of 1986 (41 U.S.C. 51 et seq)

Bid Proposal

- Bid Proposals will only be accepted by those prequalified bidders
- The Bid Proposal form is included
- All blanks on the Bid Proposal form must be completed by typing or printing in ink. In case of discrepancy between written amounts and figures, the written amounts shall govern
- Any signature must be by an authorized agent of the Bidder. All names must be typed or printed in ink below the signature
- The Bid shall contain an acknowledgment of receipt of all addenda (the numbers of which must be filled in on the Bid Proposal form) and a copy of the addenda attached to the Bid Proposal form
- The address, telephone and e-mail address (if available) for communications regarding the Bid must be shown
- Evidence of authority to conduct business as an out-of-state corporation in the state of Washington shall be provided if applicable.

The undersigned Bidder offers to enter into a contract with Mason County Public Utility District No. 1, hereinafter referred to as the District, to provide all qualified professional personnel, labor, supervision, construction equipment, materials, equipment and tools for the earthwork and construction, as shown on, or called for, by the Contract Documents (including the Instructions to Bidders, Division of Responsibility, and Construction Contract documents) and specified herein including all addenda, and according to the requirements of the Engineer for the "S48 to S64 Underground Civil Work" project.

The following prices are submitted with the understanding that the amount of the bid covers all work including labor, equipment, and tools to complete the work specified in the Contract Documents.

All bidders are required to furnish the Owner, as part of the bid proposal, any required submittals that are to be valued as part of the bid award process.

The undersigned agrees not to withdraw the proposal for a period of forty-five (45) calendar days after the bid opening date. The Bidder agrees to complete the work for the sum of:

JOINT TRENCHES/BORES	QTY	LABOR COST	MATERIAL (BORE CONDUIT)	EXTENDED COST
S48 - V1	LS			
V2 - V3	LS			
V3 - V4	LS			
V4 - V5	LS			
V5 - V6	LS			
V6 - V7	LS			
V7 - V8	LS			
V8 - V9	LS			
V9 - C1	LS			
T1 - S61	LS			
C1 - V10	LS			
V10 - S64	LS			
SUBTOTAL				
INSTALL VAULTS	QTY	LABOR COST	MATERIAL COST	EXTENDED COST
VAULT INSTALLATION	LS			
SUBTOTAL				
SITE WORK	QTY	LABOR COST	MATERIAL COST	EXTENDED COST
ROUTE CLEARING, GRADING & RESTORATION	LS			
SUBTOTAL				
CONSTRUCTION SUBTOTAL				
GENERAL				
FLAGGING (AUTOMATED FLAGGING ACCEPTABLE)			LS	
GENERAL MOBILIZATION (SHALL NOT EXCEED 10% OF TOTAL)			LS	
GENERAL MOBILIZATION SUBTOTAL				

CONSTRUCTION SUBTOTAL	
GENERAL SUBTOTAL	
PROJECT SUBTOTAL (CONSTRUCTION + GENERAL)	
TAXES (8.6%)	
PROJECT TOTAL	

Total bid amount in words: _____

Bidders Proposal Form

Bidder's guaranteed project completion date, based on Notice to Proceed date given in Invitation to Bid:

Please attach a proposed construction schedule.

The undersigned Bidder declares that he/she has carefully examined the Contract Documents, and addendum(s) that he/she has made an examination of the plans for the proposed work and has made such investigations necessary to determine the conditions to be encountered independently of those indicated on the drawings; that if his/her proposal is accepted he/she will furnish all necessary bonds required by the specifications and will contract with the Owner, in the forms bound herein, to provide all materials, equipment, tools and labor required to complete the work according to these Contract Documents; that he/she will comply with all laws of the state in which the project resides, even though such laws may not have been quoted or referred to in the specifications, that he/she will do all the work as required by the Contract Documents and this Proposal.

Respectively submitted:

Signature: _____

Title: _____

Date: _____

Bidder's Name (printed): _____

Bidder's Company Name: _____

Bidder's Address: _____

Federal Tax Identification No.: _____

Bidder's Telephone Number: _____

Bidder's E-mail Address: _____

The Bidder Acknowledges receipt of addenda numbers: _____

Bidder is (check applicable classification):

☐ Resident Bidder ☐ Non-Resident Bidder, Resident State

Bidder's License Number: _____

List of Subcontractors:

Name of Company	Type of Work

List of Three (3) References:

Name/Description of Project	Utility	Contact Information	Constructed Date

Bid Bond

Each Proposal must be accompanied by a Bid Bond in the form attached hereto or a certified check on a bank that is a member of the Federal Deposit Insurance Corporation, payable to the order of the Owner, in an amount equal to five percent (5%) of the maximum bid price. Each Bidder agrees, provided its Proposal is one of three Proposals that are identified by the owner as receiving and considering as most qualified Proposals, said Proposal shall be firm and binding upon each such Bidder and such Bid Bond or check shall be held by the Owner until a Proposal is accepted and a satisfactory contractors Bond is furnished (where required) by the successful Bidder and such acceptance has been approved by the Administrator, or for a period not to exceed sixty (60) days from the date hereinbefore set for the opening of Proposals, whichever period shall be the shorter. If such Proposal is not one of the three qualified Proposals, the Bid Bond or check will be returned in each instance within a period of fifteen (15) days to the Bidder furnishing same.

Bid Bond Form

KNOW ALL MEN BY THESE PRESENTS, that _____

Hereinafter called the PRINCIPAL and, _____

A corporation duly organized under the laws of the State of _____

Having its principal places of business at _____

In the State of _____, and authorized to do business in the State of Washington, as SURETY, and held and firmly bound unto Mason County Public Utility District No. 1 (PUD), a Municipal Utility of the County of Mason, hereinafter call the OBLIGEE, in the penal sum of

_____ Dollars (\$ _____) for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS BOND IS SUCH THAT:

NOW, THEREFORE, if the Bid Proposal submitted by the PRINCIPAL is accepted, and the Contract awarded to the PRINCIPAL, and if the PRINCIPAL shall execute the proposed Contract and shall furnish such Performance Bond as required by the Contract Documents within the time fixed by the Documents, then this obligation shall be void; if the PRINCIPAL shall fail to execute the proposed Contract and furnish the bond, the SURETY hereby agrees to pay to the OBLIGEE the penal sum as liquidated damages, within ten (10) days of such failure.

Signed and sealed this _____ day of _____ 20 ____

Principal

Countersigned:

Resident Agent

Surety

Opening of Bids

All Bids received prior to the scheduled closing time, which are not returned unopened for failure to meet the Bid requirements and which are not withdrawn as above provided, will be publicly opened and read aloud even though there may be irregularities or informalities therein.

All times and deadlines are noted in the [Invitation to Bid](#) section.

Award of Contract

Owner reserves the right to reject any or all bids, including without limitation the right to reject any or all nonconforming, nonresponsive, unbalanced, or conditional bids. Owner reserves the right to waive minor irregularities or minor errors in any bid, if it appears to the Owner that such irregularities or errors were made through inadvertence.

In evaluating bids, Owner will consider the history, price, and most qualified Contractor.

Interpretation of Documents

If any person contemplating submitting a Proposal is in doubt as to the true meaning of any part of the Bid Documents, or finds discrepancies in or omissions from the drawings or specifications, he/she may submit to the Engineer a written request for an interpretation or correction thereof. To be given consideration, such request must be received at least five (5) days prior to the date fixed for opening Proposals. The person submitting the request will be responsible for its prompt delivery. Any interpretation or correction of the documents will be made only by addendum duly issued, and a copy of the addendum will be posted to the online Bid Center. Neither Owner nor the Engineer will be responsible for any other explanation or interpretation of the Bid Documents. Failure on the Bidder's part to request clarification on any part of the contract documents shall obligate the Bidder to abide by the Owner's decision as to the intended meaning of any part of the specifications.

Substitution of Material

Any addenda issued during the time of Bidding will be in the form of written addenda to the specifications and will whenever a material, article, or piece of equipment is identified on the Proposal form by reference to manufacturer or vendor names, trade names, catalog numbers, part numbers, or the like, it is so identified for the purpose of establishing a standard, and any material, article, or piece of equipment of other manufacturers or vendors which will perform adequately the duties imposed by the general design will be considered equally acceptable, provided the material, article, or piece of equipment so proposed is, in the opinion of the Engineer and the Owner, of equal substance, performance, and function. It shall not be purchased or provided by the Seller without the Engineer's prior written approval.

Any proposed substitution shall include the proposed manufacturer's catalog number and strength rating of the proposed substitution if a strength rating has been listed in the

approved plans or specifications. Proposed substitutions must be clearly identified on the Proposal form where space has been made available, the item description, cut sheets and a catalog page describing comparable replacement and substitution must be included.

Addenda

Any addenda issued during the time of bidding will be in the form of written addenda to the specifications and will be posted to the PUD's website. All registered Bidders will receive a notification that new documents have been posted for download. All addenda so issued shall become a part of the Contract Documents.

IT SHALL BE THE PROSPECTIVE BIDDER'S RESPONSIBILITY TO ENSURE THAT THEY HAVE RECEIVED ALL ADDENDA TO THE BID DOCUMENTS PRIOR TO THE BID OPENING BY ACKNOWLEDGING RECEIPT OF THE ADDENDA IN THE SPACES PROVIDED ON THE PROPOSAL FORM AND INCLUDING ALL ADDENDA SIGNED BY THE BIDDER IN THE BID SUBMITTAL.

Performance and Payment Bond

Washington Performance and Payment Bond

Bond No. _____

Amount: \$ _____

KNOW ALL MEN BY THESE PRESENT, that _____

As CONTRACTOR (Principal), and _____

A corporation, duly authorized to do a general surety business in the State of Washington, as SURETY, are jointly and severally held bound unto

The OWNER (Obligee) herein, in the sum of _____

_____ Dollars (\$ _____),

for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

This bond is executed under the authority of RCW Title 39, Chapter 39.08 of the State of Washington, the provisions of which are hereby incorporated into this bond and made a part hereof.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT:

WHEREAS, _____

The CONTRACTOR entered into a certain Contract with

For _____

IN WITNESS:

NOW, THEREFORE, if the CONTRACTOR shall faithfully perform all the provisions of such Contract for the duration thereof, including the guarantee period, and promptly pay all laborers, mechanics, subcontractors, material men, and all persons who shall supply such work and services, and save harmless the OWNER, its officers, agents, and employees from all

claims therefor, or from any claim for damages or injury to property or persons arising by reason of the work; and shall, in the time and manner, and under the terms and conditions prescribed, well and faithfully do, perform, and furnish all matters and things as by them in the Contract undertaken, and as by law, local, state, and federal, prescribed, then this obligation shall be void; otherwise it shall remain in full force and effect.

PROVIDED, HOWEVER:

In no event shall the SURETY be liable for a greater sum than the obligation of this bond.

The SURETY for the value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Contract, or to the work to be performed thereunder, or the Specifications accompanying the same, shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration, or addition to the terms of the Contract, or to the work, or to the Contract Documents.

Signed and sealed this _____ day of _____, 20_____.

_____(SEAL)

Contractor

Surety

By _____

Attorney-In-Fact

END OF SECTION

Non-Collusion Affidavit

Mason County PUD No. 1

HWY 106 to Sunnyside

Underground Civil Work

NON-COLLUSION AFFIDAVIT

STATE OF WASHINGTON)
COUNTY OF MASON) SS.

_____(name), being first duly sworn upon his/her oath, says that he/she is the
_____(title) of the Bidder submitting the above Bid, and that the Bid above
submitted is genuine and not a sham or collusive Bid, or made in the interest of any person
not therein named; and he/she further says that the said Bidder has not directly or indirectly
induced or solicited any Bidder on the above work or supplies to put in a sham Bid, or any
other person or corporation to refrain from bidding; and that said Bidder has not in any
manner sought by collusion to secure to _____(him/her/it) self an advantage over any
other Bidder or Bidders.

(Firm Name of Contractor)

(Signature of Contractor)

SUBSCRIBED AND SWORN TO before me this _____day of_____, 20 _____.

Notary Public in and for the State

Of _____, residing at

(Notary Seal)

My commission expires: _____

THIS FORM MUST BE COMPLETED AND INCLUDED IN THE BID ENVELOPE.

END OF NON-COLLUSION AFFIDAVIT

Sample Addendum

Project :

Date :

To :

From :

Cc :

ADDENDUM

Bidder shall sign and attach a copy of this Addendum with Bid Proposal.

1.

2.

3.

Acknowledgement of receipt of Addendum: _____

Signature of Bidder

Project Documents

2.1 Plan Drawings

CV - Cover Sheet

C1 - Underground Civil Vaults 1 - 5

C2 - Underground Civil Vaults 6 - 10

2.2 Staking Sheets

Cover Sheet

Staking Sheets

2.3 Construction Unit Drawings

POLE-STUB - Pole Riser Stub Details

X-RIS-NON - Pad Mount Transformer 'Tpad' Stub Details

UP7.04 - Conduit Elbow

US1.PJ - 1-Phase Cabinet

V57/VC57 - 575 Vault and Cover

2.4 Specifications

Conduit Installation

Trench Details

WSDOT Min Cover for Pipe Installation Figure 120-3

WSDOT Open Trench Detail Figure 120-4b

Erosion Control Details

2.5 Inadvertent Discovery Plan (IDP)

On file with the District.

2.6 Permits

On file with the District.

APPENDIX A: FEMA FUNDING REQUIREMENTS

EQUAL EMPLOYMENT OPPORTUNITY:

"During the performance of this contract, the Contractor agrees as follows:

1. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:
Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
2. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
3. The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
4. The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided Contract Provisions Guide 11 advising the said labor union or workers' representatives of the Contractor's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
5. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

6. The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
7. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
8. The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter such litigation to protect the interests of the United States.

The Applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, that if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The Applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Contract Provisions Guide 12 Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The Applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government

contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the Applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings."

CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

"Compliance with the Contract Work Hours and Safety Standards Act.

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages and interest from the date of the underpayment. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchpersons and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$32 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1).
3. Withholding for unpaid wages and liquidated damages—
 - i. Withholding Process. Mason County PUD No. 1 may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for any unpaid wages; monetary relief, including interest; and liquidated damages required by the

clauses set forth in this paragraph (1) on this contract, any other federal contract with the same prime contractor, or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act that is held by the same prime contractor (as defined in § 5.2). The necessary funds may be withheld from the contractor under this contract, any other federal contract with the same prime contractor, or any other federally assisted contract that is subject to the Contract Work Hours and Safety Standards Act and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld.

- ii. Priority to withheld funds. The Department has priority to funds withheld or to be withheld in accordance with paragraph (a)(2)(i) or (b)(3)(i) of this section, or both, over claims to those funds by:
 - A. A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;
 - B. A contracting agency for its procurement costs;
 - C. A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;
 - D. A contractor's assignee(s);
 - E. A contractor's successor(s); or
 - F. A claim asserted under the Prompt Payment Act, 31 U.S.C. 3901-3907.
- 4. Subcontracts. The contractor or subcontractor must insert in any subcontracts the clauses set forth in paragraphs (1) through (5) of this section and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor is responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (5). In the event of any violations of these clauses, the prime contractor, and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and associated liquidated damages and may be subject to debarment, as appropriate.
- 5. Anti-retaliation. It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:
 - i. Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the Contract Work Hours and Safety Standards Act (CWHSSA) or its implementing regulations in this part;
 - ii. Filing any complaint, initiating, or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under CWHSSA or this part;

- iii. Cooperating in any investigation or other compliance action, or testifying in any proceeding under CWHSSA or this part; or
- iv. Informing any other person about their rights under CWHSSA or this part."

CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

Clean Air Act.

The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

The contractor agrees to report each violation to them Mason County PUD No. 1 and understands and agrees that Mason County PUD No. 1 will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance provided by FEMA.

Federal Water Pollution Control Act

The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 et seq. The contractor agrees to report each violation to Mason County PUD No. 1 and understands and agrees that Mason County PUD No. 1 will, in turn, report each violation as required to assure notification to the Washington State Emergency Management, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance provided by FEMA."

SUSPENSION AND DEBARMENT

This contract is a covered transaction for purposes of 2 C.F.R. Part 180 and 2 C.F.R. Part 3000. As such, the contractor is required to verify that none of the contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

The contractor must comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters.

This certification is a material representation of fact relied upon by Mason County PUD No. 1. If it is later determined that the contractor did not comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C, in addition to remedies available to Mason County PUD No. 1, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

The bidder or proposer agrees to comply with the requirements of 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions."

BYRD ANTI-LOBBYING AMENDMENT

"Byrd Anti-Lobbying Amendment, as amended, 31 U.S.C. § 1352.

Contractors who apply or bid for an award of more than \$100,000 shall file the required certification. Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the federal agency."

If applicable, contractors must sign and submit the following certification to the recipient or subrecipient with each bid or offer exceeding \$100,000:

"APPENDIX A, 44 C.F.R. PART 18 - CERTIFICATION REGARDING LOBBYING.

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a

Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure."

PROCUREMENT OF RECOVERED MATERIALS

"In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—

- a. Competitively within a timeframe providing for compliance with the contract performance schedule;
- b. Meeting contract performance requirements; or
- c. At a reasonable price.

Information about this requirement, along with the list of EPA-designated items, is available at Comprehensive Procurement Guideline (CPG) Program | US EPA. The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

The Contractor should, to the greatest extent practicable and consistent with the law, purchase, acquire, or use products and services that can be reused, refurbished, or recycled; contain recycled content, are biobased, or are energy and water efficient; and are sustainable."

PROHIBITION ON CONTRACTING FOR COVERED TELECOMMUNICATIONS EQUIPMENT OR SERVICES

"Prohibition on Contracting for Covered Telecommunications Equipment or Services.

- a. Definitions. As used in this clause, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements;

roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy 405-143-1, Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services, as used in this clause—

b. Prohibitions.

1. Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug. 13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.
2. Unless an exception in paragraph (c) of this clause applies, the contractor and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Emergency Management Agency to:
 - i. Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
 - ii. Enter, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
 - iii. Enter, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or
 - iv. Provide, as part of its performance of this contract, subcontract, or other contractual instrument, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

c. Exceptions.

1. This clause does not prohibit contractors from providing—
 - i. A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or
 - ii. Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.
2. By necessary implication and regulation, the prohibitions also do not apply to:
 - i. Covered telecommunications equipment or services that:
 - a. Are not used as a substantial or essential component of any system; and
 - b. Are not used as critical technology of any system.

- ii. Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.
- 3. Reporting requirement.
 - 1. In the event the contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the contractor is notified of such by a subcontractor at any tier or by any other source, the contractor shall report the information in paragraph (d)(2) of this clause to the recipient or subrecipient, unless elsewhere in this contract are established procedures for reporting the information.
 - 2. The Contractor shall report the following information pursuant to paragraph (d)(1) of this clause:
 - i. Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.
 - ii. Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.
- e. Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (e), in all subcontracts and other contractual instruments."

DOMESTIC PREFERENCE FOR PROCUREMENTS

"Domestic Preference for Procurements.

The Contractor should, to the greatest extent practicable and consistent with law, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. This includes, but is not limited to, iron, aluminum, steel, cement, and other manufactured products.

For purposes of this clause:

Produced in the United States means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.”

ACCESS TO RECORDS

“The Contractor agrees to provide Mason County PUD No. 1, Washington State Emergency Managmenet, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

The Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.”

DHS SEAL, LOGO, AND FLAGS

Mason County PUD No. 1 must obtain written permission from DHS prior to using the DHS seals, logos, crests, or reproductions of flags, or likenesses of DHS agency officials. This includes use of DHS component (e.g., FEMA, CISA, etc.) seals, logos, crests, or reproductions of flags, or likenesses of component officials.”

COMPLIANCE WITH FEDERAL LAW, REGULATIONS, AND EXECUTIVE ORDERS

This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract. The contractor will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.

NO OBLIGATION BY FEDERAL GOVERNMENT

“The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the recipient or subrecipient, contractor, or any other party pertaining to any matter resulting from the contract.”

PROGRAM FRAUD AND FALSE OR FAUDULENT STATEMENTS OR RELATED ACTS

"The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor's actions pertaining to this contract."

SOCIOECONOMIC CONTRACTING

"The Contractor is encouraged to take all necessary steps identified in 2 C.F.R. § 200.321(b)(1)- (5) to ensure small businesses, minority businesses, women's business enterprises, veteranowned businesses, and labor surplus area firms are considered when possible."

PROVIDING GOOD, SAFE JOB TO WORKERS

"Creating Good Jobs.

Pursuant to FEMA Information Bulletin No. 520, the contractor will comply with all applicable federal labor and employment laws. To maximize cost efficiency and quality of work, the contractor commits to strong labor standards and protections for the project workforce by creating an effective plan for ensuring high-quality jobs and complying with federal labor and employment laws. The contractor acknowledges applicable minimum wage, overtime, prevailing wage, and health and safety requirements, and will incorporate Good Jobs Principles wherever appropriate and to the greatest extent practicable."

BUY CLEAN

Mason County PUD No. 1 encourages the use of environmentally friendly construction practices in the performance of this Agreement. In particular, Mason County PUD No. 1 encourages that the performance of this agreement include considering the use of low-carbon materials which have substantially lower levels of embodied greenhouse-gas emissions associated with all relevant stages of production, use, and disposal, as compared to estimated industry averages of similar materials or products as demonstrated by their environmental product declaration.

APPENDIX B: 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING

"The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provision of 31 U.S.C. Cap. 38. Administrative Remedies or False Claims Statements, apply to this certification and disclose, if any."

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date

END OF DOCUMENT

