

**NOTICE TO CONTRACTORS**

**OKANOGAN CONSERVATION DISTRICT  
OKANOGAN, WASHINGTON**

**CALL FOR BIDS**

**NOTICE IS HEREBY GIVEN** that sealed bids will be received by the Okanogan Conservation District (hereinafter the District), 1251 South 2<sup>nd</sup> Ave, Room 102, Okanogan, Washington until 2:00 P.M. (Pacific Daylight Time), Thursday, May 21, 2015 for the following:

**2015 OKANOGAN CONSERVATION DISTRICT EMERGENCY WATERSHED  
PROTECTION PROJECT**

Bid proposals submitted by mail shall be addressed to:

Okanogan Conservation District  
1251 South 2<sup>nd</sup> Ave, Room 102  
Okanogan, Washington 98840

**Bid proposals can also be submitted in person at the above address or via email at [bob@okanogancd.org](mailto:bob@okanogancd.org)**

The Okanogan Conservation District Board of Supervisors did declare a state of emergency exists due to the impacts of the Carlton Complex Fire. This threat extends to the imminent threat of flash floods, mud slides, and other such hydrologic emergencies that could cause severe damage and destruction to lives and property. This declaration was made through Okanogan Conservation District resolution 2014-04 which is on file at the District office. Solicitations for the work described in this request for bids are made under and by this declaration.

All bid proposals submitted by a contractor ("Bidder") shall be accompanied by a bid proposal deposit in certified check, cashier's check or surety bond in an amount equal to five percent (5%) of the amount of such bid proposal. Should successful bidder fail to enter into a contract within the time stated, the bid proposal deposit shall be forfeited to the District.

Each bidder will be provided a free copy of the Contract Documents for bidding purposes. Informational copies of the Contract Documents are on file for inspection at the District office in Okanogan, Washington, 1251 South 2<sup>nd</sup> Ave, Room 102, (509) 422-0855 and on the District website at <http://www.okanogancd.org/>

The award of contract, if awarded, will be made to the lowest responsible bidder deemed responsive by the District, whose bid conforms to the requirements of the Contract Documents, and whose past record of performance on work of similar complexity and magnitude indicates that said bidder is qualified to carry out the obligations of the contract and to complete the work contemplated therein. Specifically, the amount of the bid, as well as the responsiveness and responsibility criteria will be reviewed. There are both required criteria and supplemental criteria established by the District. Compliance with both required and supplemental responsibility criteria may be requested in writing by the District and is due within 2 days of the bid date and time. In addition, as a condition of the award, the bidder must agree to verify that all subcontractors are also in compliance with the “responsibility” criteria as specified in RCW 36.06.

As a condition of submitting a bid for the project, bidders and sub bidders, as applicable, agree to comply fully with requirements for nondiscrimination and employment of minorities per the laws of the State of Washington and other applicable State and Federal laws.

The work description for which bids will be received is found in the attached Bids, Schedule, Drawing, and Specs document. The Engineer’s cost estimate for the project is \$175,000 to \$225,000.

This project is considered protection of life and property project. Portions of this project are funded by groups or agencies whose focus is conservation of natural resources and efforts of the Contractor on this project shall be mindful of these interests. Quality and timely completion of the finished project is of high value to the District and the funding groups and agencies, and the property owners. Time is of the essence to this agreement. The Contractor is expected to make every effort possible to meet the requirements of the permits previously obtained, or work with the District on necessary modifications. Failure to do so can be grounds for termination of this contract.

DATED this 7th Day of May, 2015 at Okanogan, Washington.

(Original signature in file)



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District Manager, Okanogan Conservation District, Contracting Officer

Mandatory Pre-Bid Conference:

**A mandatory pre bid conference** and site visits are scheduled for Thursday, May 14, 2015 at 9 a.m. at the OKANOGAN CONSERVATION DISTRICT office (1251 South 2<sup>nd</sup> Ave, Room 102, Okanogan, WA 98840).

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**ATTACHMENT B: *Plans***

**ATTACHMENT C: *Schedule of Federal Prevailing Wage***

**ATTACHMENT D: *Permits***

## **BIDDING & GENERAL PROJECT DESCRIPTION**

The project provides for the installation of various protective structures, including berms, raised roads, and drivable dips as well as installations of ecology blocks.

### **1. BID PROCEDURE**

Bids will be received by the Okanogan Conservation District at the reception desk located as follows:

**Okanogan Conservation District  
1251 South 2<sup>nd</sup> Avenue Room 102  
Okanogan, WA 98840**

Bids shall be received until 2:00 PM on Thursday, May 21, 2015. Bids will be opened and publicly read at that time.

To be eligible for consideration, sealed bids must include:

- A completed Bid Proposal Tabulation Sheet
- A bid proposal deposit in cash, certified check, cashier's check, or surety bond in an amount equal to five percent (5%) of the amount of such bid proposal.
- A completed Proposal Signature Page
- Subcontractors List (if applicable) (page 13)

### **2. BID DEPOSIT**

A deposit of at least 5 percent of the total Bid shall accompany each Bid. This deposit may be a certified check, cashier's check, or a proposal bond (Surety bond). Any proposal bond shall be on a form acceptable to the District and shall be signed by the Bidder and the Surety. A proposal bond shall not be conditioned in any way to modify the minimum 5 percent required. The Surety shall: (1) be registered with the Washington State Insurance Commissioner, and (2) appear on the current Authorized Insurance List in the State of Washington published by the Office of the Insurance Commissioner.

The failure to furnish a Bid deposit of a minimum of 5 percent with the Bid shall make the Bid nonresponsive and shall cause the Bid to be rejected by the District.

### **3. CONSIDERATION OF BIDS**

No orally or telephonically submitted bids or modifications to bids shall be accepted. Bids must arrive at the designated place of opening prior to bid opening time. Late bids, for whatever cause, will not be accepted.

After opening and reading Proposals, the District will check them for correctness of extensions of the prices per unit and the total price. If a discrepancy exists between the price per unit and the extended amount of any Bid item, the price per unit will control. The total of extensions, corrected where necessary, will be used by the District for Award purposes and to fix the amount of the Payment and Performance Bonds.

The right is reserved by the District to waive informalities in the bidding, accept a Proposal of the lowest responsible Bidder, reject any or all Bids, republish the call for Bids, revise or cancel the Work, or require the Work to be done in another way if the best interest of the District is served.

#### **4. BASIS OF AWARD**

The award of contract, if awarded, will be made to the lowest responsible bidder deemed responsive by the District, whose bid conforms to the requirements of these specifications, and whose past record of performance on work of similar complexity and magnitude indicates that said bidder is qualified to carry out the obligations of the contract and to complete the work contemplated therein. Specifically, the amount of the bid, as well as the responsiveness and responsibility criteria will be reviewed.

In addition, as a condition of the award the bidder must agree to verify that all subcontractors are also in compliance with the “responsibility” criteria as specified in RCW 36.06.

##### **A. RESPONSIVENESS CRITERIA**

A bidder’s responsiveness will be determined in part by a review of the completeness of the proposal as well as its compliance with all bid package requirements, whether or not it includes all required information, and whether or not there are any conditions noted in the bid which modify the bid proposal.

##### **B. RESPONSIBILITY CRITERIA AND APPEALS**

The responsibility of the bidder is evaluated applying required and supplemental criteria.

1) **REQUIRED CRITERIA.** Pursuant to the directives contained in RCW 39.04, proof of compliance with the following criteria must be provided by the bidder for there to be a determination that the bid is acceptable as being a “responsible” bid:

- (a) Have a certificate of registration in compliance with Chapter 18.27 RCW, which must have been in effect at the time of bid submittal;
- (b) Have a current Washington Unified Business Number;
- (c) If applicable:

1) Have industrial insurance coverage for the bidder's employees working in Washington as required in Title 51 RCW;

2) Have an Employment Security Department number as required in Title 50 RCW;

3) Have a state excise tax registration number as required in Title 82 RCW;

(d) Not be disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065(3).

(e) If bidding on a public works project subject to the apprenticeship utilization requirements in RCW 39.04.320, not have been found out of compliance by the Washington state apprenticeship and training council for working apprentices out of ratio, without appropriate supervision, or outside their approved work processes as outlined in their standards of apprenticeship under chapter 49.04 RCW for the one-year period immediately preceding the date of the bid solicitation; and

(f) Until December 31, 2015, not have violated RCW 39.04.370 more than one time as determined by the Department of Labor and Industries.

2) SUPPLEMENTAL CRITERIA: RCW 39.04.350(2). In addition to the mandatory bidder responsibility criteria above, the bidder must also meet the supplemental bidder responsibility criteria listed below. Due to the emergency and expedited nature of this projects, **the bidder must submit with their bid the supplemental documentation listed below.** The qualification information provided shall be limited exclusively to the scope of work similar to this project. Do not provide information for work performed by your company for other scopes of work.

(a) Completion of Similar Projects.

1. Criteria:

a) The BIDDER shall have successfully completed at least three (3) public works projects in the State of Washington, each such project to have a contract value in excess of \$100,000, within the last three (3) years.

1) "Successfully completed" when specified for Contracting means that the projects listed were satisfactorily completed with no fines levied or shutdowns instituted and did not require the Surety company or the Owner to complete the project.

2) In evaluating whether these criteria are met, the District may check references for the previous projects and may



evaluate the project owner's satisfaction with the Bidder's performance, including but not limited to the following areas:

- Quality control;
- Safety record;
- Timeliness of performance;
- Use of skilled personnel;
- Availability of and use of appropriate equipment;
- Compliance with contract documents;
- Management of submittals process, change orders, and close-out.

2. Documentation: The Bidder shall submit a list of projects meeting the criteria stated above. The information about each project shall include the following

- Quality of project and quality control
- Management of safety and safety record;
- Timeliness of performance
- Use of skilled personnel
- Management of subcontractors
- Availability and use of appropriate equipment
- Compliance with contract documents;
- Management of Schedule, submittals process, and change order and close out.

(b) Project Personnel

1. Criterion: The Bidder shall assign project field superintendents with experience completing similar projects (as defined in Supplemental Criteria (a) above).

2. Documentation: The Bidder/Subcontractor shall submit the name, resume, and experience summary of at least two project field superintendents who will be available for this assignment and whose experience includes completion of similar projects.

One of the proposed project field superintendents must be assigned to the project and may not be substituted unless approved in advance by the District. Substitute personnel must meet the experience requirements of this section.

(c) Delinquent State Taxes

1. Criterion: The Bidder shall not owe delinquent taxes to the Washington State Department of Revenue without a payment plan approved by the Department of Revenue.
2. Documentation: The Bidder shall not be listed on the Washington State Department of Revenue's "Delinquent Taxpayer List" website: <http://dor.wa.gov/content/fileandpaytaxes/latefiling/dtleast.aspx#> and <http://dor.wa.gov/content/fileandpaytaxes/latefiling/dtlwest.aspx>

(d) Federal Debarment

1. Criterion: The Bidder and all sub-contractors shall not currently be debarred or suspended by the Federal government.
2. Documentation: The Bidder and all sub-contractors shall not be listed as a current debarred or suspended Bidder on the U.S. General Services Administration's "System for Award Management" website: <http://www.sam.gov/>.

(e) Apprenticeship

1. Criterion: The Bidder shall have complied with apprenticeship utilization goals on public works projects with such requirements that were completed by the Bidder within three years from the bid submittal deadline.
2. Documentation: For each public works project with an apprenticeship utilization goal that was completed by the Bidder within three years of the bid submittal date for this project, the Bidder shall submit the following:
  - A list of such projects;
  - The owner and contact information for the owner's representative;
  - The apprenticeship utilization percentage goal for the project;
  - The actual percentage of utilization by the Bidder;
  - An explanation of any extenuating circumstances that contributed to the Bidder not meeting the goals.

The District may contact previous owners to validate information provided by the bidder and shall consider whether the goals were mandatory or voluntary, and the validity of any explanation of extenuating circumstances.

(f) Public Bidding Crime

1. Criterion: The Bidder shall not have been convicted of a crime involving bidding on a public works contract within five years from the

bid submittal deadline. For the purpose of this criterion, "Bidder" shall include the registered construction company submitting the bid, as well as the owner(s) of the company and any other construction companies the owner(s) may currently or previously have owned.

2. Documentation: The Bidder shall sign a statement (on a form to be provided by the District) that the Bidder and owners have not been convicted of a crime involving bidding on a public works contract. The District may also use independent sources of information to demonstrate whether the Bidder is in compliance with this criterion.

(g) Subcontractor Responsibility

1. Criterion: The Bidder's standard subcontract form shall include the subcontractor responsibility language required by RCW 39.06.202, and the Bidder shall have an established procedure which it utilizes to validate the responsibility of each of its subcontractors. The Bidder's subcontract form shall also include a requirement that each of its subcontractors shall have and document a similar procedure to determine whether the sub tier subcontractors with whom it contracts are also "responsible" subcontractors as defined by RCW 39.06.020.

2. Documentation: The Bidder shall submit a copy of its standard subcontract form for review by the District, and a written description of its procedure for validating the responsibility of subcontractors with which it contracts.

(h) Claims Against Retainage and Bonds

1. Criterion: The Bidder shall not have a record of excessive claims filed against the retainage or payment bonds for public works projects during the previous three years, that demonstrate a lack of effective management by the Bidder of making timely and appropriate payments to its subcontractors, suppliers, and workers, unless there are extenuating circumstances and such circumstances are deemed acceptable to the District. For the purpose of this criterion, "Bidder" shall include the registered construction company submitting the bid, as well as the owner(s) of the company and any other construction companies the owner(s) may currently or previously have owned.

2. Documentation: The Bidder shall submit a list of the public works projects completed within the previous three years and include for each project the following information:

- The owner and contact information for the owner
- A list of claims filed against the retainage and/or payment bond for any of the projects listed;
- A written explanation of the circumstances surrounding each claim and the ultimate resolution of the claim.

(i) Termination for Cause

1. Criterion: The Bidder shall not have had any contract terminated for cause on a government agency project during the five year period immediately preceding the date of Bid opening, unless there are extenuating circumstances acceptable to the District. For the purpose of this criterion, "Bidder" shall include the registered construction company submitting the bid, as well as the owner(s) of the company and any other construction companies the owner(s) may currently or previously have owned.

2. Documentation: The Bidder shall submit a written statement in a form acceptable to the District that the Bidder has not had any contract terminated for cause on a government agency project during the five year period immediately preceding the date of Bid opening. The District may also use independent sources of information that may be available to demonstrate whether the Bidder is in compliance with this criterion.

(j) Lawsuits

1. Criterion: The Bidder shall not have lawsuits with judgments entered against it within five years of the bid submittal date that demonstrate a pattern of failing to meet the terms of contracts, unless there are extenuating circumstances and such circumstances are deemed acceptable to the District. For the purpose of this criterion, "Bidder" shall include the registered construction company submitting the bid, as well as the owner(s) of the company and any other construction companies the owner(s) may currently or previously have owned.

2. Documentation: The Bidder shall submit a list of lawsuits with judgments entered against the Bidder within five years of the bid submittal date. The District may also use independent sources of information that may be available to demonstrate whether the Bidder is in compliance with this criterion.

(k) Prevailing Wages

1. Criterion: The Bidder shall not have a record of prevailing wage complaints filed against it within five years of the bid submittal date that demonstrate a pattern of failing to pay workers prevailing wages, unless there are extenuating circumstances and such circumstances are deemed acceptable to the District. For the purpose of this criterion, "Bidder" shall include the registered construction company submitting the bid, as well as the owner(s) of the company and any other construction companies the owner(s) may currently or previously have owned.

2. Documentation: The Bidder shall submit a list of prevailing wage complaints files against it within five years of the bid submittal date along with an explanation of each complaint and how it was resolved.

The District shall evaluate these explanations and the resolution of each complaint to determine whether the complaints demonstrate a pattern of failing to pay workers prevailing wages. The District may also use independent sources of information that may be available to demonstrate whether the Bidder is in compliance with this criterion.

### 3) APPEALS

If the District determines the Bidder does not meet the bidder responsibility criteria in Section (2) above and is therefore not a responsible bidder, the District shall notify the Bidder in writing with the reasons for its determination. If the Bidder disagrees with this determination, it may appeal the determination within 2 hours of receipt of the District's determination by presenting additional information to the District. The District will consider the additional information before issuing its final determination. If the final determination affirms that the Bidder is not responsible, the District will not execute a contract with any other Bidder until one business day after the Bidder determined to be not responsible has been notified of the final determination.

## 5. INTERPRETATIONS

Questions regarding plans and specifications should be directed to the Engineer, Ryan Roberts, located at the Kittitas Conservation District office (509-925-3352 Ext. 3). Questions requiring written answers (necessitating addenda) received less than forty-eight (48) hours before bids close cannot be answered. All addenda issued during the time of bidding shall be incorporated into the Contract Documents.

# BID PROPOSAL TABULATION FORM

Okanogan Conservation District -- EWP PROJECT

Item	Description	Construction Specification	Material Specification	Total Bid
1	Earth Fill	As provided in Attachment A	As provided in Attachment A	= \$ _____
SUBTOTAL (Items 1-8)				\$ _____
Sales Tax @ 7.7%				\$ _____
TOTAL AMOUNT BID				\$ _____

**PROPOSAL-SIGNATURE PAGE**

The bidder is hereby advised that by signature of this proposal he/she is deemed to have acknowledged all requirements and signed all certificates contained herein.

<b>ENTER TOTAL BID AMOUNT HERE:</b> \$ _____ (from last line of Bid Proposal Tabulation Sheet)
---

A bid proposal deposit in the amount of 5% of the total bid based on approximate estimate of quantities at above prices and in the form as indicated below, is attached hereto:

- CASHIERS CHECK**                  PAYABLE TO THE DISTRICT
- CERTIFIED CHECK**              PAYABLE TO THE DISTRICT
- PROPOSAL BOND**

Bidder has examined copies of all the Contract Documents including the following addenda (receipt of all which is hereby acknowledged):

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

Failure to acknowledge addenda shall render the bid non-responsive and shall be cause for its rejection.

Signature of Authorized Official(s)

**Proposal Must be Signed**

_____ →	
Firm Name	
Address	
State of Washington Contractor’s License No.	
Federal ID No.	
Unified Business No.	

- Note:**
- (1) This proposal form is not transferable and any alteration of the firm’s name entered hereon will be cause for considering the proposal irregular and subsequent rejection of the bid.
  - (2) The Okanogan Conservation District reserves the right to waive informalities in the bids; and reserves the right to reject all bids.

**PROPOSAL BOND**

KNOW ALL MEN BY THESE PRESENTS,

That we, \_\_\_\_\_

Of \_\_\_\_\_

as principal, \_\_\_\_\_

and the \_\_\_\_\_

a corporation duly organized under the laws of the state of \_\_\_\_\_ and authorized to do business in the State of Washington, as surety, are held and firmly bound unto the Okanogan Conservation District in the full and penal sum of five (5) percent of the total amount of the bid proposal of said principal for the work hereinafter described, for the payment of which, well and truly to be made, we bind our heirs, executors, administrators and assigns, and successors and assigns, firmly by these presents.

The condition of this bond is such, that whereas the principal herein is herewith submitting his or its sealed proposal for the following construction project, to wit:

**OKANOGAN CONSERVATION DISTRICT EWP PROJECT**

said bid and proposal, by reference thereto, being made a part hereof.

NOW, THEREFORE, If the said proposal bid by said principal be accepted, and the contract be awarded to said principal, and if said principal shall duly make and enter into and execute said contract and shall furnish bond as required by the Okanogan Conservation District within a period of twenty (20) days from and after said award, exclusive of the day of such award, then this obligation shall be null and void, otherwise it shall remain and be in full force and effect.

IN TESTIMONY WHEREOF, The principal and surety have caused these presents to be signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_

\_\_\_\_\_  
(Principal)

\_\_\_\_\_  
(Surety)

\_\_\_\_\_  
(Attorney-in-fact)



## **NON-COLLUSION DECLARATION**

I, by signing the proposal, hereby declare, under penalty of perjury under the laws of the United States that the following statements are true and correct:

1. That the undersigned persons(s), firm, association, or corporation has (have) not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the project for this proposal is submitted.
2. That by signing the signature page of this proposal, I am deemed to have signed and have agreed to the provisions of this declaration, at the date noted and at the principle place of business of the signing entity or person.

### **NOTICE TO ALL BIDDERS 1-800-424-9071**

To report rigging activities call:

The U.S. Department of Transportation (USDOT) operates the above toll-free “hotline” Monday through Friday, 8:00 a.m. to 5:00 p.m., Eastern Time. Anyone with knowledge of possible bid rigging, bidder collusion, or other fraudulent activities should use the “hotline” to report such activities.

The “hotline” is part of USDOT’s continuing effort to identify and investigate highway construction contract fraud and abuse and is operated under the direction of the USDOT Inspector General. All information will be treated confidentially and caller anonymity will be respected.

**OKANOGAN CONSERVATION DISTRICT**

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND  
OTHER RESPONSIBILITY MATTERS - PRIMARY COVERED  
TRANSACTIONS**

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 7 CFR Part 3017, Section 3017.510, Participants' responsibilities. The regulations were published as Part IV of the January 30, 1989 Federal Register (pages 4722-4733). Copies of the regulations may be obtained by contacting the Department of Agriculture agency offering the proposed covered transaction.

**(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON NEXT PAGE)**

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

---

Organization Name

---

PR/Award Number or Project Name

---

Name(s) and Title(s) of Authorized Representative(s)

---

Signature(s)

---

Date

**Instructions for Certification**

1. By signing and submitting this form, the prospective primary participant is providing the certification set out on the reverse side in accordance with these instructions.
2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out on this form. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.
4. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.
6. The prospective primary participant agrees by submitting this form that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
7. The prospective primary participant further agrees by submitting this form that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.
9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

**OKANOGAN CONSERVATION DISTRICT**

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION,  
INELIGIBILITY AND VOLUNTARY EXCLUSION - LOWER TIER  
COVERED TRANSACTIONS**

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 7 CFR part 3017, Section 3017.510, Participants' responsibilities. The regulations were published as Part IV of the January 30, 1989, Federal Register (pages 4722-4733). Copies of the regulations may be obtained by contacting the Department of Agriculture agency with which this transaction originated.

**(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON NEXT PAGE)**

- (1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

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Organization Name

---

PR/Award Number or Project Name

---

Name(s) and Title(s) of Authorized Representative(s)

---

Signature(s)

---

Date

### **Instructions for Certification**

1. By signing and submitting this form, the prospective lower tier participant is providing the certification set out on the reverse side in accordance with these instructions.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this form that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this form that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction," without modification, in all lower tier covered transaction and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

## PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS: that \_\_\_\_\_ (Name of Contractor) \_\_\_\_\_ (Address of Contractor) a \_\_\_\_\_, (Corporation, Partnership or Individual) hereinafter called PRINCIPAL and \_\_\_\_\_ (Name of Surety) \_\_\_\_\_ (Address of Surety)

hereinafter called SURETY, are held and firmly bound unto OKANOGAN CONSERVATION DISTRICT, 1251 South 2<sup>nd</sup> Avenue, Room 102, Okanogan, Washington 98840, hereinafter called OWNER in the total aggregate penal sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) in lawful money of the United State, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that whereas, the PRINCIPAL entered into a certain contract with the OWNER, dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, a copy of which is hereto attached and made a part hereof for the construction of:

\_\_\_\_\_

\_\_\_\_\_

NOW, THEREFORE, if the PRINCIPAL shall well truly and faithfully perform its duties, all the undertakings, covenants, terms, conditions, and agreements of said contract during the original term thereof, and any extensions thereof which may be granted by the OWNERS, with or without notice to the SURETY and during the one year guaranty period and if the PRINCIPAL shall satisfy all claims and demands incurred under such contract, and shall fully indemnify and save harmless the OWNER from all costs and damages which it may suffer by reason of failure to do so, and shall reimburse and repay the OWNER all outlay and expense which the OWNER may incur in making good any default, then this obligation shall be void, otherwise to remain in full force and effect.

PROVIDED, FURTHER, that the said SURETY, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to WORK to be performed thereunder or the SPECIFICATIONS accompanying same shall in any way affect its obligation 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 SPECIFICATIONS.

PROVIDED, FURTHER, that it is expressly agreed that the BOND shall be deemed amended automatically and immediately, without formal and separate amendments hereto, upon amendment to the Contract not increasing the contract price more than 20 percent, so as to bind the PRINCIPAL and the SURETY to the full and faithful performance of the CONTRACT as so amended. The term "Amendment", whenever used in is BOND, and whether referring to this BOND, the Contract or the Loan Documents shall include any alteration, addition, extension, or modification of any character whatsoever.

PROVIDED, FURTHER, that no final settlement between the OWNER and the PRINCIPAL shall abridge the right of the other beneficiary hereunder, whose claim may be unsatisfied. The OWNER is the only beneficiary hereunder.

WITNESS WHEREOF, this instrument is executed in 0 counterparts, each of which shall be deemed an original, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

*Okanogan C.D. EWP Project  
Notice to Contractors  
Performance Bond*

ATTEST:

\_\_\_\_\_  
(Principal) Secretary

(SEAL)

\_\_\_\_\_  
Witness to Principal

\_\_\_\_\_  
Address

ATTEST:

\_\_\_\_\_  
Witness to Surety

\_\_\_\_\_  
Address

\_\_\_\_\_  
Address

\_\_\_\_\_  
Principal

By \_\_\_\_\_ (s)

\_\_\_\_\_  
Address

By \_\_\_\_\_  
Attorney-in-Fact

\_\_\_\_\_  
Address

\_\_\_\_\_  
Address

## PAYMENT BOND

KNOW ALL PERSONS BY THESE PRESENTS: that \_\_\_\_\_ (Name of Contractor) \_\_\_\_\_ (Address of Contractor) a \_\_\_\_\_ (Corporation, Partnership or Individual), hereinafter called PRINCIPAL and \_\_\_\_\_ (Name of Surety) \_\_\_\_\_ (Address of Surety) hereinafter called SURETY, are held and firmly bound unto 1251 South 2<sup>nd</sup> Avenue, Room 102, Okanogan, Washington 98840, hereinafter called OWNER and unto all persons, firms, and corporations who or which may furnish labor, or who furnish materials to perform as described under the contract and to their successors and assigns in the total aggregate penal sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that whereas, the PRINCIPAL entered into a certain contract with the OWNER, dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, a copy of which is hereto attached and made a part hereof for the construction of:

\_\_\_\_\_

\_\_\_\_\_

NOW, THEREFORE, if the PRINCIPAL shall promptly make payment to all persons, firms, and corporations furnishing materials for or performing labor in the prosecution of the WORK provided for in such contract, and any authorized extensions or modification thereof, including all amounts due for material, lubricants, oil gasoline, coal and coke, repairs on machinery, equipment and tools, consumed or used in connection with the construction of such WORK, and for all labor cost incurred in such WORK including that by a SUBCONTRACTOR, and to any mechanic or materialman lienholder whether it acquires its lien by operation of State of Federal law; then this obligation shall be void, otherwise to remain in full force and effect.

PROVIDED, that beneficiaries or claimants hereunder shall be limited to the SUBCONTRACTORS, and persons, firms, and corporations having a direct contract with the PRINCIPAL or its SUBCONTRACTORS.

PROVIDED, FURTHER, that the said SURETY for 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 obligation on this BOND, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of this contract or to the WORK or to the SPECIFICATIONS.

PROVIDED, FURTHER, that no suit or action shall be commenced hereunder by any claimant: (a) Unless claimant, other than one having a direct contract with the PRINCIPAL shall have given written notice to any two of the following: The PRINCIPAL, the OWNER, or the SURETY above named within ninety (90) days after such claimant did or performed the last of the work or labor, or furnished the last of the materials for which said claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished, or for whom the work or labor was done or performed. Such notice shall be served by mailing the same by registered mail or certified mail, postage prepaid, in an envelope addressed to the PRINCIPAL, OWNER, OR SURETY, at any place where an office is regularly maintained for the transaction of business, or served in any manner in which legal process may be a public officer. (b) After the expiration of one (1) year following the date of which PRINCIPAL ceased work on said CONTRACT, is being understood, however, that if any limitation embodied in the BOND is prohibited by any law controlling the construction hereof, such limitation shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.



*Okanogan C.D. EWP Project  
Notice to Contractors  
Payment Bond*

PROVIDED, FURTHER, that it is expressly agreed that this BOND shall be deemed amended automatically and immediately, without formal and separate amendments hereto upon amendment to the Contract not increasing the contract price more than 20 percent, so as to bind the PRINCIPAL and the SURETY to the full and faithful performance of the Contract as so amended. The term "Amendment", wherever used in this BOND and whether referring to this BOND, the contract or the load Documents shall include and alteration, addition, extension or modification of any character whatsoever.

PROVIDED, FURTHER, that no final settlement between the OWNER and the CONTRACTOR shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

WHITNESS WHEREOF, this instrument is executed in \_\_\_\_\_ counterparts, each of which shall be deemed an original, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

ATTEST:

\_\_\_\_\_  
(Principal) Secretary

(SEAL)

\_\_\_\_\_  
Witness to Principal

\_\_\_\_\_  
Address

ATTEST:

\_\_\_\_\_  
Witness to Surety

\_\_\_\_\_  
Address

\_\_\_\_\_  
Address

\_\_\_\_\_  
Principal

By \_\_\_\_\_(s)

\_\_\_\_\_  
Address

By \_\_\_\_\_  
Attorney-in-Fact

\_\_\_\_\_  
Address

\_\_\_\_\_  
Address

NOTE: Date of Bond must not be prior to date of Contract.  
If CONTRACTOR is partnership, all partners should execute BOND.  
IMPORTANT: Surety companies executing BONDS must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the State where the Project is located.

**CONSTRUCTION CONTRACT  
FOR  
OKANOGAN CONSERVATION DISTRICT EWP PROJECT**

**CONTRACT # 2015-01**

THIS AGREEMENT, made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2015,  
between the OKANOGAN CONSERVATION DISTRICT, hereinafter called the District,  
under and by virtue of Title 47 RCW, as amended, and \_\_\_\_\_,  
a Washington for-profit  
corporation and hereinafter called the Contractor.

Contact Name \_\_\_\_\_

Address \_\_\_\_\_

City, State, ZIP \_\_\_\_\_

Phone \_\_\_\_\_

FAX \_\_\_\_\_

Washington State  
Contractor's License No. \_\_\_\_\_

Washington State UBI No. \_\_\_\_\_

Federal Tax ID: \_\_\_\_\_

**WITNESSETH:**

That in consideration of the terms and conditions contained herein and attached and made a part of this agreement, the parties hereto covenant and agree as follows:

- I. The Contractor shall do all work and furnish all tools, materials, and equipment for the:

**OKANOGAN CONSERVATION DISTRICT EWP PROJECT**

in accordance with and as described in the Contract Documents which are by this reference incorporated herein and made part hereof and, shall perform any changes in the work in accord with the CONTRACT DOCUMENTS.

The Contractor will commence the work required by the Contract Documents within 5 calendar days after the Notice To Proceed, and will complete the same before June 19, 2015 unless the period for completion is extended otherwise by change order. Time is of the essence in this Contract.

The Contractor agrees to perform all of the work described in this Contract and comply with the terms therein for the sum of \$\_\_\_\_\_, including sales tax.

The Contractor shall provide and bear the expense of all equipment, work and labor, of any sort whatsoever that may be required for the transfer of materials and for constructing and completing the work provided for in these Contract Documents except those items mentioned herein to be furnished by other parties under separate agreements.

- II. The District hereby promises and agrees with the Contractor to employ, and does employ the Contractor to provide the materials and to do and cause to be done the above and herein described work and to complete and finish the same in accord with the Contract Documents and the terms and conditions herein contained and hereby contracts to pay for the same according to the attached Contract Documents and the schedule of unit or itemized prices at the time and in the manner and upon the conditions provided for in this contract.
- III. The Contractor for himself/herself, and for his/her heirs, executors, administrators, successors, and assigns, does hereby agree to full performance of all covenants required of the Contractor in the contract.
- IV. It is further provided that no liability shall attach to the District by reason of entering into this contract, except as provided herein.

# CONTRACT CLAUSES

## 1. DEFINITIONS

As used throughout this contract, the following terms shall have the meaning set forth below:

### A. Addendum

A written or graphic document issued to all Bidders and identified as an Addendum prior to Bid opening, which modifies or supplements the Bid Documents and becomes a part of the Contract.

### B. Award

The formal decision of the District to accept the lowest responsible and responsive Bidder for the Work.

### C. Bid Tabulation Form

The form provided to Bidders by the District for submittal of a Proposal or Bid to the District for a specific project. The form may include the item number, estimated plan quantity, and item description of the Bid items along with blank spaces to be completed by the Bidder for the unit prices and/or fixed price and the total Bid amount,.

### D. Change Order

A Change Order is a written order signed by the District and the Contractor after execution of this agreement, indicating changes in the scope of work, the Contract Price or Contract Time, including substitutions proposed by the Contractor and accepted by the District.

### E. Starting and Completion Date

**Work must commence no sooner than May 26<sup>th</sup>. All work must be completed by June 24<sup>th</sup>, end of business day.** Completion Date is the day all the Work specified in the Contract is completed and all the obligations of the Contractor under the Contract are fulfilled by the Contractor. All documentation required by the Contract and required by law must be furnished by the Contractor on the Completion Date.

### F. Construction Observer (CO)

The Contracting Officer also designates a Construction Observer (CO) to provide daily observation of the status of project construction, as well as facilitating necessary communication between the Engineer and TR(s) and the Contractor. The CO maintains a job diary, consisting of daily reports that document project status, and photos taken from established photo points and at the discretion of the CO. The CO has no authority to give advice, accept or reject materials, accept work or suspend work.

G. Contractor

The Contractor is the individual or firm that entered into a contractual agreement with the District for the project installation as set forth in the Contract Documents. The Contractor shall not make changes to the construction plan without District review and approval. The Contractor shall comply with all applicable permits and conduct the work in a safe manner and ensure construction is in accordance with the requirements as set forth in the Contract Documents.

H. Bond

The approved form of security furnished by the Contractor and the Contractor's Surety as required by the Contract that guarantees performance of all the Work required by the Contract and payment to anyone who provides supplies or labor for the performance of the Work.

I. Contract Documents

The Contract Documents, as itemized in Exhibit A, consist of the Agreement, the plans (drawings), technical specifications, prevailing minimum hourly wage rates, addenda, issued prior to the execution of this Agreement, the schedule of unit values, project permits, other documents listed in this Agreement and any modifications issued after execution of the Construction Contract.

J. Contracting Officer

Contracting Officer means a person with authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes certain authorized representatives of the Contracting Officer acting within the limits of their authority as delegated by the Contracting Officer. For the purposes of this contract, the Contracting Officer is Craig Nelson, District Manager. The Contracting Officer is the sole person who can authorize any changes during construction that incur financial obligations or modify the Contract Documents in any way.

K. Day

The term day shall mean calendar day unless otherwise specifically defined.

L. District Cooperators and Landowners

The District completes projects on behalf of individual Cooperators or groups of Cooperators, who will accept ownership of the project after final completion. District Cooperators are generally landowners, land managers and/or water right holders at the project site. The District Cooperators for this project report and provide input to the District but have no contractual authority. The Landowners for this project may report and provide input to the District but have no contractual authority.

M. Engineer

The Engineer is the person(s) designated by the Contracting Officer as the representative(s) who shall make observations and inspections to evaluate whether the work is being done in accordance with the Contract Documents. The Engineer prepares the plans, specifications and as-builts upon completion of the project. The Engineer has the authority to review the practice during construction and make necessary tests to monitor compliance with the Contract Documents. The Engineer for this project is Ryan Roberts, PE of Kittitas Conservation District.

N. Okanogan Conservation District

The Okanogan Conservation District (hereinafter referred to as the “District”) is the contracting agency for installation of the project. The District administers all funding for the project, coordinates with the District Cooperators, and secures access to the project site.

O. Subcontractor

A Subcontractor is a person or entity retained by the Contractor as an independent contractor to provide the labor, materials, equipment or services necessary to complete a specific portion of the Work.

P. Technical Representative (TR)

Technical Representatives (TR) are appointed by the Contracting Officer and the Engineer. TR(s) have the authority to reject defective material and/or suspend work that is being done improperly, subject to final decision of the Engineer. TR(s) are not authorized to accept work, to accept materials, to issue instructions, or to give advice that is contrary to the Contract. Work done or material furnished which does not meet the Contract requirements shall be at the Contractor’s risk and shall not be a basis for a claim even if the TR(s) purport to change the Contract. TR(s) may advise the Contractor of any faulty work or materials or infringements of the terms of the Contract; however, failure of the Engineer or TR(s) to advise the Contractor does not constitute acceptance or approval.

Q. Work

Work means the construction and services necessary or incidental to fulfill the Contractor’s obligations for the project in conformance with this Agreement and the other Contract Documents. The Work may refer to the whole Project or only a part of the Project if Work is also being performed by the District or others.

## **2. CONTRACT WORK**

The work consists of furnishing all labor, equipment, and material for the installation of various protective structures, including berms, raised roads, and drivable dips as well as installations of ecology blocks as further described in the following Contract Document and includes warranties.

This entire Contract Document sets forth the requirements for this installation. The project shall be constructed at the location and to the lines and grades as shown on the drawings in accordance with the local and state regulations.

The Contractor acknowledges that it has had ample and adequate opportunity to review the drawings, construction and material specification, and has also inspected the subject location, including lines and grades shown, and based upon its own inspection of the premises, warrants that it can fully perform its obligations in accordance herewith.

### **3. ORDER OF PRECEDENCE**

Any inconsistency in this contract shall be resolved by giving precedence in the following order: (a) Change Orders (b) Addenda; (c) Schedule of Unit Prices; (d) Technical Specifications; (e) Plans; (f) Contract Clauses; and (g) other documents, exhibits, and attachments.

On the contract documents, figured dimensions shall take precedence over scaled dimensions.

This order of precedence shall not apply when work is required by one part of the Contract Documents but omitted from another part or parts of the Contract Documents. The work required in one part must be furnished even if not mentioned in other parts of the Contract Documents.

### **4. TYPE OF CONTRACT**

This contract is a FIXED PRICE contract.

The Contractor agrees to construct the project for the fixed price amount stated in the Contract.

A schedule of unit prices is included in Exhibit B. Specification Sections referenced in the schedule contain requirements for materials described under each unit price.

### **5. PERFORMANCE AND PAYMENT BONDS -- CONSTRUCTION**

A. Definitions. As used in this clause—Original contract price means the sum of the contract at the time it is executed.. Original contract price does not include the price of any options exercised at the time of contract award.

B. Amount of required bonds. The Contractor shall furnish performance and payment bonds to the Contracting Officer as follows:

(1) Performance bonds (provided). The penal amount of performance bonds at the time of contract award shall be 100 percent of the original contract price, which includes Washington State Sales Tax.

(2) Payment bonds (provided). The penal amount of the payment bonds at the time of contract award shall be 100 percent of the original contract price, which includes Washington State Sales Tax.

(3) Additional bond protection.

i. The District requires additional performance and payment bond protection if the contract price is increased. The increased protection will equal 100 percent of the increase in contract price, inclusive of Washington State Sales Tax.

- ii. The District may secure the additional protection by directing the Contractor to increase the penal amount of the existing bond or obtain an additional bond.
- C. Notice of subcontractor waiver of protection (40 U.S.C. 27b(c)). Any waiver of the right to sue on the payment bond is void unless it is in writing, signed by the person whose right is waived, and executed after such person has first furnished labor or material for use in performance of the contract.
- D. On contracts of \$35,000 or less, the district may, where 50 percent of the contract amount is retained for a period of 30 days after date of final acceptance (providing all necessary releases from the Department of Revenue and the Department of Labor and Industries and settlement of any liens filed under chapter 60.28 RCW have been received) dispense with the requirements of the Performance and Payment bonds, as permitted by state law.
- E. The Contractor shall provide an executed Payment and Performance Bonds for the full Contract amount, inclusive of Washington State Sales Tax. The Bonds shall:
  1. Be on a District-furnished form or other acceptable form;
  2. Be signed by an approved Surety (or Sureties) that:
    - a. Is registered with the Washington State Insurance Commissioner; and
    - b. Appears on the current Authorized Insurance List in the State of Washington published by the Office of the Insurance Commissioner,
  3. Be conditioned upon the faithful performance of the Contract by the Contractor within the prescribed time; and
  4. Guarantee that the Surety shall indemnify, defend, and protect the District against any claim of direct or indirect loss resulting from the failure:
    - a. Of the Contractor (or any of the employees, Subcontractors, or lower tier subcontractors of the Contractor) to faithfully perform the Contract; or
    - b. Of the Contractor (or the Subcontractors or lower tier subcontractors of the Contractor) to pay all laborers, mechanics, Subcontractors, lower tier subcontractors, materialperson, or any other person who provides supplies or provisions for carrying out the Work.

The District may require Sureties or Surety companies on the Bond to appear and qualify themselves. Whenever the District deems the Surety or Sureties to be inadequate, it may, upon written demand, require the Contractor to furnish additional Surety to cover any remaining Work. Until the added Surety is furnished, payments on the Contract will stop.

## **6. PAYMENTS UNDER FIXED —PRICE CONSTRUCTION CONTRACTS**



- A. Payment of price. The District shall pay the Contractor the contract price as provided in this contract. The basis of payment will be the estimates of work performed according to the contract and as specified for payment.
- B. Progress payments. The District shall make progress payments monthly as the work proceeds, or at more frequent intervals as determined by the Contracting Officer, on estimates of work accomplished which meets the standards of quality established under the contract, as approved by the Contracting officer.
  - (1) The Contractor's request for progress payments shall include the following substantiation:
    - i. An itemization of the amounts requested, related to the various elements of work required by the contract covered by the payment requested.
    - ii. Additional supporting data in a form and detail required by the Contracting Officer.
- C. Failure to perform any of the obligations under the contract by the Contractor may be decreed by the District to be adequate reason for withholding any payments until compliance is achieved.
- D. The Contractor shall receive payment from progress payments approximately thirty (30) days after submittal of valid progress payment requests, or as determined necessary by the Contracting Officer. Notwithstanding the foregoing, Contractor acknowledges that the funds for the project are from state and federal grants that will be disbursed by the granting agency on a progress basis, and in the event the granting agency does not make any progress payment within the 30-day period, the Contracting Officer and the District shall not be in breach of this Contract provided the Contracting Officer diligently and in good faith pursues such progress payments from the granting agency. Progress payments shall only be made upon completion of all specified work at an individual site.
- E. **The Contractor shall submit all bills, expenses, and invoices for payment for work completed under this contract before June 26, 2015 by 5:00 PM (Pacific Daylight Time). Expenses submitted after this time will NOT be paid by the District.**

## **7. INVOICE SUBMITTAL**

Original to:

**Okanogan Conservation District  
1251 South 2<sup>nd</sup> Ave, Room 102  
Okanogan, WA 98840**

## **8. RETAINAGE**

- A. The District will comply with the requirements of RCW 60.28.011 and withhold retainage in the amount of 5% of the funds due the Contractor for construction of this project until completion of the Work. Release of the retainage will occur 60 days following the completion date pursuant to RCW 39.12 and RCW 60.28, provided all conditions are met:

## **9. INSURANCE – WORK ON A DISTRICT PROJECT**

Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries or damages to persons or property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees or subcontractors. The cost of such insurance shall be included in the Contractor's bid.

A. Coverage shall be at least as broad as:

1. Insurance Services Office form number GL0404 covering Broad Form Comprehensive General Liability; or Insurance Services Office Commercial General Liability coverage ("occurrence" form CG0025).
2. Insurance Services Office form number CAS001 (Ed 178) covering Automobile Liability code 1 "any auto" and endorsement CA0025.
3. Workers' Compensation insurance as required by the State of Washington.

The Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

The Contractor shall cause the District, its officers, and employees; the Engineer; private landowners at the project site; and District Cooperators to be named as additional insured in all policies called for herein. The Contractor shall provide the District with a copy of said additional insured endorsement, form CG 2010, 11/85, or its equivalent at the time of execution of a contract with the District. The procuring of such insurance shall not be construed to fulfill the indemnification provisions and requirements of this Contract.

B. Contractor shall maintain limits no less than:

1. General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability: \$1,000,000 combined single limit per occurrence for bodily injury and property damage.
3. Worker's Compensation; limits as required by the State of Washington.

C. Deductibles And Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the District. At the option of the District, either: the insured shall reduce or eliminate such deductibles or self-insured retentions as respects the District, its officers, officials, employees and volunteers; or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

D. Other Insurance Provisions

1. The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:
  - a. The District, its officer, officials, and employees are to be covered as insured as respects: liability arising out of activities performed by or on behalf of the Contractor; products and completed operations of the Contractor; premises owned, occupied or used by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the District, its officers, officials, and employees.
2. The Contractor's insurance coverage shall be primary insurance as respects the District, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the District, its officers, officials, employees and volunteers shall be in excess of the Contractor's insurance and shall not contribute to it.
3. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the District, its officers, officials, employees or volunteers.
4. The Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
5. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits, except after 30 days prior written notice by certified mail, return receipt requested, has been given to the District.

E. Acceptability Of Insurers

Insurance is to be placed with insurers with a Best's rating of no less than A:VII.

F. Verification Of Coverage

A. Contractor shall furnish the District with a copy of all insurance policies and endorsements as required and a worker's compensation status letter affecting required coverage. The policy(ies), certificates and endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates, endorsements and letters are to be received and approved by the District before the contract will be signed by District.

G. Subcontractors

All coverage for subcontractors shall be subject to all the requirements stated herein.

**10. MATERIAL AND WORKMANSHIP**

A. All equipment, material, and articles incorporated into the work covered by this contract shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in this contract. References in the specifications to equipment, material, articles, or

patented processes by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. The Contractor may, at its option, use any equipment, material, article, or process that, in the judgment of the Contracting Officer, is equal to that named in specifications, unless otherwise specifically provided in this contract. The materials named in the Contract Documents are to be utilized from owners stock subject to final inspections by Contractor and Contracting Officer.

- B. The Contractor shall obtain the Contracting Officer's approval of the machinery and mechanical and other equipment to be incorporated into the work. When requesting approval, the Contractor shall furnish to the Contracting Officer the name of the manufacturer, the model number, and other information concerning the performance, capacity, nature, and rating of the machinery and mechanical and other equipment. When required by this contract or by the Contracting Officer, the contractor shall also obtain the Contracting Officer's approval of the material or articles which the Contractor contemplates incorporating into the work. When requesting approval, the Contractor shall provide full information concerning the material or articles. When directed to do so, the Contractor shall submit samples for approval at the Contractor's expense, with all shipping charges prepaid. Machinery, equipment, material, and articles that do not have the required approval shall be installed or used at the risk of subsequent rejection.
- C. All work under this contract shall be performed in a skillful and workmanlike manner. The Contracting Officer may require, in writing, that the Contractor remove from the work any employee the Contracting Officer deems incompetent, careless, or otherwise objectionable.

## **11. SUPERINTENDENCE BY THE CONTRACTOR**

At all times during performance of this contract and until the work is completed and accepted, the Contractor shall directly superintend the work or assign and have on the worksite a competent superintendent who is satisfactory to the Contracting Officer and has authority to act for the Contractor. At all times, the Contractor shall keep at the work site a set of the Contract Documents.

## **12. PRECONSTRUCTION CONFERENCE**

If the Contracting Officer decides to conduct a preconstruction conference, the Contractor will be notified and will be required to attend. The Contracting Officer's notification will include specific details regarding the date, time, and location of the conference, any need for attendance by subcontractors, and information regarding the items to be discussed.

## **13. COMMENCEMENT, PROSECUTION, AND COMPLETION OF WORK**

- A. The Contractor shall be required to (a) commence work under this contract on or about 5 calendar days after notice to proceed, (b) prosecute the work diligently, and (c) complete the entire work ready for use by 5:00 PM (Pacific Daylight Time) June 19, 2015. The time stated for final completion shall include final cleanup of the premises.
- B. Voluntary shutdown or slowing of operations by the Contractor shall not relieve the Contractor of the responsibility to complete the work within the time(s) specified in the contract.

## **14. SCHEDULES FOR CONSTRUCTION CONTRACTS**

- A. The Contractor shall, within three (3) business days after receiving a notice to proceed on the contract or another period of time determined by the Contracting Officer, prepare and submit to the Contracting Officer for approval three copies of a schedule showing the order in which the Contractor proposes to perform the work, and the dates on which the Contractor contemplates starting and completing the work (including acquiring materials and equipment). The schedule shall be in the form of a progress chart of suitable scale to indicate appropriately the percentage of work scheduled for completion by any given date during the period. If the Contractor fails to submit a schedule within the time prescribed, the Contracting Officer may withhold approval of progress payments until the Contractor submits the required schedule.
- B. The Contractor shall enter the actual progress on the chart weekly as directed by the Contracting Officer, and upon doing so shall immediately deliver the annotated schedule to the Contracting Officer. If, in the opinion of the Contracting Officer, the Contractor falls behind the approved schedule, the Contractor shall take steps necessary to improve its progress, including those that may be required by the Contracting Officer, without additional cost to the District. In this circumstance, the Contracting Officer may require the Contractor to increase the number of shifts, overtime operations, days of work, and/or the amount of construction plant, and to submit for approval any supplementary schedule or schedules in chart form as the Contracting Officer deems necessary to demonstrate how the approved rate of progress will be regained.
- C. Failure of the Contractor to comply with the requirements of the Contracting Officer under this clause shall be ground for a determination by the Contracting Officer that the Contractor is not prosecuting the work with sufficient diligence to ensure completion within the time specified in the contract. Upon making this determination, the Contracting Officer may terminate the Contractor's right to proceed with the work, or any separable part of it, in accordance with the default terms of this contract.

## **15. INSPECTIONS**

Inspections will be required periodically during construction to verify compliance with the plans and specifications.

- A. The Contractor must give the Engineer or TR timely notice of their readiness for an inspection.
- B. The Contractor will work to consolidate inspections as is practicable in order to reduce the overall number of site visits required by the Engineer or TR.
- C. The Contractor must provide all materials for testing at its own expense.
- D. Failure of the Engineer or TR to observe a deficiency does not relieve the Contractor of obligation for performance.
- E. Work covered prior to required inspections must be uncovered for inspections and then recovered at the Contractor's expense.
- F. Extra inspections required as the result of a deficiency noted by the Engineer or TR must be paid for by the Contractor.

## **16. ACCEPTANCE**

The Contractor must perform all the obligations under the contract before a completion date and final acceptance can occur. Progress estimates or payments shall not be construed as acceptance of any work under the contract.

The Contractor agrees that neither completion nor final acceptance shall relieve the Contractor of the responsibility to indemnify, defend and protect the District against any claim or loss including those resulting from the failure of the Contractor (or the subcontractors or lower tier subcontractors) to pay all laborers, mechanics, subcontractors, material persons, or any other person who provides labor, supplies or provisions for carrying out the work or for any payments required for unemployment compensation or for industrial insurance and medical aide as required by state law.

Final acceptance shall not constitute acceptance of any unauthorized or defective work or material. The District shall not be barred from requiring the Contractor to remove, replace, repair, or dispose of any unauthorized or defective work or material or from recovering damages for any such work or material.

## **17. EQUITABLE ADJUSTMENTS**

The equitable adjustment provided for elsewhere in the Contract shall be determined in one or more of the following ways:

1. If the parties are able to agree, the price will be determined by using:
  - a. Unit prices; or
  - b. Other agreed upon prices;
2. If the parties cannot agree, the price will be determined by the Engineer using:
  - a. Unit prices; or
  - b. Other means to establish costs.

The following limitations shall apply in determining the amount of the equitable adjustment:

1. The equipment rates shall be actual cost but shall not exceed the rates deemed reasonable at the time the Work is performed, and
2. To the extent any delay or failure of performance was concurrently caused by the District and the Contractor, the Contractor shall be entitled to a time extension for the portion of the delay or failure of performance concurrently caused, provided it make such a request pursuant to Contract Clause 18; however, the Contractor shall not be entitled to any adjustment in Contract price.
3. No claim for anticipated profits on deleted, terminated, or uncompleted Work will be allowed.
4. No claim for consequential damages of any kind will be allowed.

## **18. TIME EXTENSIONS**

**Due to the emergency nature of the work there will NOT be time extension allowed.**

## **19. VARIATION IN ESTIMATED QUANTITY**

If the quantity of a unit-priced item in this contract is an estimated quantity and the actual quantity of the unit priced item varies more than 15 percent above or below the estimated quantity, an equitable adjustment, per Contract Clause #17, in the contract price shall be made upon demand of either party. The equitable adjustment in the contract price shall be based upon any increase or decrease in costs due solely to the variation above 115 percent or below 85 percent of the estimated quantity. If the quantity is such as to cause an increase in the time necessary for completion, the Contractor may request, in writing, an extension in time, to be received by the Contracting Officer within 10 days from the beginning of the delay, or within such further period as may be granted by the Contracting Officer before the date of final settlement of the contract. Upon the receipt of a written request for an extension, the Contracting Officer shall ascertain the facts and make an adjustment for extending the completion date as, in the judgment of the Contracting Officer, is justified.

## **20. DIFFERING SITE CONDITIONS**

During the progress of the Work, if preexisting subsurface or latent physical conditions are encountered at the site, differing materially from those indicated in the Contract, or if preexisting unknown physical conditions of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the Work provided for in the Contract, are encountered at the site, the party discovering such conditions shall promptly notify the other party in writing of the specific differing site conditions before they are disturbed and before the affected Work is performed.

Upon written notification, the Contracting Officer and Engineer will investigate the conditions and if he/she determines that the conditions materially differ and cause an increase or decrease in the cost or time required for the performance of any Work under the Contract, an adjustment, excluding loss of anticipated profits, will be made and the Contract modified in writing accordingly. The Contracting Officer will notify the Contractor of his/her determination whether or not an adjustment of the Contract is warranted.

No Contract adjustment which results in a benefit to the Contractor will be allowed unless the Contractor has provided the required written notice.

The equitable adjustment will be by Change Order with the Contractor. However, if the parties are unable to agree, the Engineer will determine the amount of the equitable adjustment in accordance with Contract Clause 17. Extensions of time will be evaluated in accordance with Contract Clause 18.

If the Contracting Officer and Engineer determine that different site conditions do not exist and no adjustment in costs or time is warranted, such determination shall be final.

If there is a decrease in the costs or time required to perform the Work, failure of the Contractor to notify the Engineer of the differing site conditions shall not affect the Contracting Agency's right to make an adjustment in the costs or time.

No claim by the Contractor shall be allowed unless the Contractor has followed the procedures provided in this Contract Clauses 17, 18 and 20. No claim by the Contractor for an equitable adjustment to the Contract for differing site conditions shall be allowed if made after final payment under this Contract.

## **21. LAYOUT OF WORK**

The Contractor shall lay out its work from District established base lines and bench marks indicated on the contract documents, and shall be responsible for all measurements in connection with the layout. The Contractor shall furnish, at its own expense, all stakes, templates, platforms, equipment, tools, materials, and labor required to lay out any part of the work. The Contractor shall be responsible for executing the work to the lines and grades established or indicated by the Engineer. The Contractor shall also be responsible for maintaining and preserving all stakes and other marks established by the Contracting Officer until authorized to remove them. If such marks are destroyed by the Contractor or through its negligence before their removal is authorized, the Contracting Officer may replace them and deduct the expense of the replacement from any amounts due or to become due to the Contractor.

## **22. SPECIFICATIONS AND DRAWINGS FOR CONSTRUCTION**

- A. The Contractor shall keep on the work site a copy of the Contract Documents and shall at all times give the Contracting Officer access thereto. Anything mentioned in the Technical Specifications and not shown on the Plans, or shown on the Plans and not mentioned in the Technical Specifications, shall be of like effect as if shown or mentioned in both. In case of difference between Plans and Technical Specifications, the Technical Specifications shall govern. In case of discrepancy in the figures, in the drawings, or in the specifications, the matter shall be promptly submitted to the Contracting Officer, who shall promptly make a determination in writing. Any adjustment by the Contractor without such a determination shall be at its own risk and expense. The Contracting Officer shall furnish from time to time such detailed drawings and other information as considered necessary, unless otherwise provided.
- B. Where “as shown”, “as indicated”, “as detailed”, or words of similar import are used, it shall be understood that the reference is made to the drawings accompanying this contract unless stated otherwise. The word “provided” as used herein shall be understood to mean “provide complete in place,” that is “furnished and installed”.
- C. Shop drawings mean drawings, submitted to the District by the Contractor, showing in detail (1) the proposed fabrication and assembly of structural elements, and (2) the installation (i.e., fit, and attachment details) of materials or equipment. It includes drawings, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, and similar materials furnished by the contractor to explain in detail specific portions of the work required by the contract. The District may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under this contract.
- D. If Contract Documents require shop drawings, the Contractor shall coordinate all such drawings, and review them for accuracy, completeness, and compliance with contract requirements and shall indicate its approval thereon as evidence of such coordination and review. Shop drawings submitted to the Contracting Officer without evidence of the Contractor’s approval may be returned for resubmission. The Contracting Officer will indicate an approval or disapproval of the shop drawings and if not approved as submitted shall indicate



the District's reasons therefore. Any work done before such approval shall be at the Contractor's risk. Approval by the Contracting Officer shall not relieve the Contractor from responsibility for any errors and omissions in such drawings, nor from responsibility for complying with the requirements of this contract, except with respect to variations described and approved in accordance with (E) below.

- E. If shop drawings show variations from the contract requirements, the Contractor shall describe such variations in writing, separate from the drawings, at the time of submission. If the Contracting Officer approves any such variation, the Contracting Officer shall issue an appropriate Change Order, except that, if the variation is minor or does not involve a change in price or in time of performance, a Change Order need not be issued.
- F. The Contractor shall submit to the Contracting Officer for approval three copies (unless otherwise indicated) of all shop drawings as called for under the various headings of these specifications. Two sets (unless otherwise indicated) of all shop drawings, will be retained by the Contracting Officer and one set will be returned to the Contractor.

### **23. WARRANTY OF CONSTRUCTION**

- A. In addition to any other warranties in this contract, the Contractor warrants, except as provided in paragraph (I) of this clause, that work performed under this contract conforms to the contract requirements and is free of any defect in equipment, material, or design furnished, or workmanship performed by the Contractor or any subcontractor or supplier at any tier.
- B. This warranty shall continue for a minimum period of 1 year from the date of final acceptance of the work. This warranty may be modified by the Technical Specifications or Special Conditions.
- C. The Contractor shall remedy at the Contractor's expense any failure to conform, or any defect. In addition, the Contractor shall remedy at the Contractor's expense any damage to real or personal property, when that damage is the result of—
  - (1) The Contractor's failure to conform to contract requirements; or
  - (2) Any defect of equipment, material, workmanship, or design furnished.
- D. The Contractor shall restore any work damaged in fulfilling the terms and conditions of this clause. The Contractor's warranty with respect to work repaired will run for 1 year from the date of repair or replacement.
- E. The Contracting Officer shall notify the Contractor, in writing, within a reasonable time after the discovery of any failure, defect, or damage.
- F. If the Contractor fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, the District shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage at the Contractor's expense.
- G. With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this contract, the Contractor shall—

- (1) Obtain all warranties that would be given in normal commercial practice;
  - (2) Require all warranties to be executed, in writing, for the benefit of the District and the District Cooperator(s), if directed by the Contracting Officer; and
  - (3) Enforce all warranties for the benefit of the District and the District Cooperators(s), if directed by the Contracting Officer.
- H. In the event the Contractor's warranty under paragraph (B) of this clause has expired, the District may bring suit at its expense to enforce a subcontractor's, manufacturer's, or supplier's warranty.
- I. Unless a defect is caused by the negligence of the Contractor or subcontractor or supplier at any tier, the Contractor shall not be liable for the repair of any defects of material or design furnished by the District nor for the repair of any damage that results from any defect in District furnished material or design.
- J. This warranty shall not limit the District's rights under the Inspection and Acceptance clauses of the contract with respect to latent defects, gross mistakes, or fraud.

## **24. OTHER CONTRACTS**

The District may undertake or award other contracts for additional work at or near the site of the work under this contract. The contractor shall fully cooperate with the other contractors and with District employees and shall carefully adapt scheduling and performing the work under this contract to accommodate the additional work, heeding any direction that may be provided by the Contracting Officer. The Contractor shall not commit or permit any act that will interfere with the performance of work by any other contractor or by District employees.

## **25. PROTECTION OF EXISTING VEGETATION, STRUCTURES, EQUIPMENT, UTILITIES, AND IMPROVEMENTS**

- A. The Contractor shall preserve and protect all structures, equipment, and vegetation (such as trees, shrubs, and grass) on or adjacent to the work site, which is not to be removed and which does not unreasonably interfere with the work required under this contract. The Contractor shall only remove trees when specifically authorized to do so, and shall avoid damaging vegetation that will remain in place. If any limbs or branches of trees are broken during contract performance, or by the careless operation of equipment, or by workmen, the Contractor shall trim those limbs or branches with a clean cut and paint the cut with a tree-pruning compound as directed by the Contracting Officer.
- B. The Contractor shall protect from damage all existing improvements and utilities
- (1) At or near the work site, and
  - (2) On adjacent property, the locations of which are made known to or should be known by the Contractor. The Contractor shall repair any damage to those facilities, including those that are on adjacent property, resulting from failure to comply with the requirements of this contract or failure to exercise reasonable care in performing the work. If the Contractor fails or refuses to repair the damage promptly, the

Contracting Officer may have the necessary work performed and charge the cost to the Contractor.

## **26. CLEANING UP**

The Contractor shall at all times keep the work area, including storage areas, free from accumulations of waste materials. Before completing the work, the Contractor shall remove from the work and premises any rubbish, tools, scaffolding, equipment, and materials that are not the property of the District. Upon completing the work, the Contractor shall leave the work area in a clean, neat, and orderly condition satisfactory to the Contracting Officer.

## **27. EASEMENTS AND ACCESS**

The Contractor shall secure any temporary construction access and staging areas easements that may be necessary in addition to those permanent and temporary easements already secured and described herein.

## **28. ENVIRONMENTAL PERMITS**

The District has obtained, or will be responsible for timely procurement of, those project permits that are identified herein as applicable for the construction and/or operation of the project facility. These documents are attached and incorporated herein and Contractor acknowledges receipt and review thereof. The Contractor shall work with the District to obtain any necessary modifications to existing permits.

The Contractor shall obtain any permits that may become necessary in addition to those described herein and as are necessitated by approved work differing from that for which the original project permits were obtained. The Contractor shall provide copies of any additional permits obtained.

The Contractor shall notify the District at least 48 hours prior to the start of any earth-moving activities, in-water activities or construction on any and all portions of the project in order to provide proper notice to the permitting agencies.

Throughout the Work, the Contractor shall comply with all current rules of the resource agencies (e.g. Washington Department of Fish & Wildlife, Washington Department of Ecology, US Army Corps of Engineers, etc.) having jurisdiction over the affected areas. The Contractor shall be responsible to immediately report to the Engineer and Contracting Officer any deviation from the contract provisions pertaining to environmental compliance, including but not limited to spills, unauthorized fill in waters of the State including wetlands, water quality standards, noise, air quality, etc.

## **29. CHANGE ORDER – PRICE BREAKDOWN**

A. The Contractor shall furnish a price breakdown, itemized as required and within the time specified by the Contracting Officer, with any proposal for a Change Order, not otherwise subject to Contract Clauses 17, 18, 19, and 20.

B. The price breakdown –

(1) Must include sufficient detail to permit an analysis of profit, and of all costs for –

- a. Material;
- b. Labor;
- c. Equipment;
- d. Subcontracts;
- e. Overhead;
- f. Sales tax; and

(2) Must cover all work involved in the modification, whether the work was deleted, added, or changed.

C. The Contractor shall provide similar price breakdowns to support any amounts claimed for subcontracts.

D. The Contractor's proposal shall include a justification for any time extension proposed.

E. Change Orders are not approved unless signed by the Contracting Officer.

### **30. TIMELY PERFORMANCE AND LIQUIDATED DAMAGES**

Time is of the essence for this project and this agreement. At the District's request, prior to commencement of the Work, Contractor shall prepare and submit to the District a schedule for the Work conforming with the specified dates for commencement and substantial completion, indicating all important milestones and configured in a bar chart or CPM format, as required by the District. Once approved by the District, Contractor shall strictly adhere to such schedule. Contractor shall be liable to the District for any costs, expenses or damages arising from delays in performance or completion of the Work for which Contractor was responsible.

The timely completion of this work is essential to the District. The District will incur serious and substantial special, incidental and consequential damages if the Work is not completed within the Contract Time. Because the actual damages are difficult to ascertain, the parties agree that Contractor shall pay the District (not as a penalty but as liquidated damages to compensate for the delay damages it is reasonably estimated that the District would incur) the amount of \$1000 per day for each additional day beyond the Contract Time that Completion of the Work is delayed for which Contractor bears responsibility. Assessment of liquidated damages does not replace or preclude recovery by the District of other actual damages due to a failure of performance by Contractor.

Liquidated damages will not be assessed for any days for which an extension of time is granted. No deduction or payment of liquidated damages will, in any degree, release the Contractor from further obligations and liabilities to complete the entire Contract.

### **31. WORKER/WORKPLACE SAFETY**

A. Worker Safety

The Contractor shall be responsible for the safety of all workers and shall comply with all appropriate state safety and health standards, codes, rules, and regulations, including, but not limited to, those promulgated under the Washington Industry Safety and Health Act RCW 49.17

(WISHA) and as set forth in Title 296 WAC (Department of Labor and Industries). The Contractor shall likewise be obligated to comply with all federal safety and health standards, codes, rules, and regulations that may be applicable to the Contract Work.

U.S. Mine Safety and Health Administration rules apply when the project includes pit or quarry operations. Among other actions, these regulations require the Contractor to notify the nearest Mine Safety and Health sub district office (1) of the project before it begins, (2) of the starting date, and (3) of the Completion Date.

Without usurping the authority of other agencies, the District will cooperate with them in their efforts to enforce legal requirements. Upon awareness of a violation of a legal requirement, the Engineer and/or Contracting Officer will notify the Contractor in an effort to achieve compliance. The Engineer and/or Contracting Officer may also notify the agency responsible for enforcement if it is deemed that action is necessary to achieve compliance with legal requirements. The Engineer and/or Contracting Officer will also assist the enforcement agency to obtain Contractor compliance to the extent such assistance is consistent with the provisions of the Contract.

#### **B. Public Safety**

The Contractor shall be responsible for providing adequate safeguards, safety devices, protective equipment, and any other needed actions to protect the life, health, and safety of the public, and to protect property in connection with the performance of the Work covered by the Contract. The Contractor shall perform any measures or actions the District may deem necessary to protect the public and property. The responsibility and expense to provide this protection shall be the Contractor's except that which is to be furnished by the District as specified in other sections of the Contract Documents. Nothing contained in this Contract is intended to create any third-party beneficiary rights in favor of the public or any individual utilizing the facilities being constructed or improved under this Contract

### **32. TEMPORARY FACILITIES**

The Contractor shall provide all sanitary facilities, power, telephone, job office, and any other temporary facilities required to do the job.

### **33. HOURS OF WORK**

This project is located in the proximity of residences. For this reason, the working hours for this project shall be limited to daylight hours between 7:00 am and 8:00 pm., Monday through Friday, exclusive of state and federal holidays. Working hours shall be considered hours where any of the following are occurring: Contractor's workers are present; equipment is fueled, repaired, or running; materials and supplies are being delivered. Any exceptions to this requirement must be agreed to in writing by the parties to this agreement. Work on weekends can be conducted with written permission of the landowner and contracting officer.

### **34. ACCESS RESTRICTIONS; BEST MANAGEMENT PRACTICES**

A. GENERAL - Permission to enter on private land for the purposes of performing has been obtained by the District from the District Cooperator(s) and/or landowner(s).

The District may suspend all or any part of the work if it is determined that the ground, stream,

crop, farm or conditions render the site unsuitable for construction. At all times, Contractor shall use Best Management Practices in performing its obligations hereunder.

- B. DESIGNATED ACCESS - The Contractor will maintain the access for the project. The Contractor is expected to not purposefully damage the access. The Contractor has responsibility for checking maximum allowable load on all roads, bridges, and culverts and to maintain and restore all roads, bridges, and culverts to their pre-existing conditions. Snow plowing, snow removal, and access road maintenance are the Contractor's responsibility.
- C. GATES and FENCES - Gates will be closed and fences shall be left in place, or if necessary, removed and replaced to their original condition as approved by the Engineer. The Contractor shall provide and maintain any temporary fencing to prevent pedestrians from entering the worksite and to preserve livestock, crops, or property when working through or adjacent to private property. The Contractor is liable for all damages resulting from not complying with this requirement.
- D. CAMPING - Camping will not be allowed on private property without prior written consent of the owner(s).
- E. FIRE PREVENTION - It will be the responsibility of the Contractor to obtain any necessary permits and comply with all fire regulations and fire precaution schedules.

### **35. ARCHAEOLOGICAL OR HISTORICAL OBJECTS**

Archaeological or historical objects, such as ruins, sites, buildings, artifacts, fossils, or other objects of antiquity that may have significance from a historical or scientific standpoint, which may be encountered by the Contractor, shall not be further disturbed. The Contractor shall immediately notify the Contracting Officer of any such finds. Contractor shall comply with all archeological and historical object permit conditions which may be more detailed and/or restrictive.

The Contracting Officer will determine if the material is to be salvaged. The Contractor may be required to stop Work in the vicinity of the discovery until such determination is made. The Contracting Officer may require the Contractor to suspend Work in the vicinity of the discovery until salvage is accomplished.

If human skeletal remains are encountered by the Contractor, they shall not be further disturbed. The Contractor shall immediately notify the Contracting Officer of any such finds, and shall cease all work adjacent to the discovery, in an area adequate to provide for the total security and protection of the integrity of the skeletal remains. The Contracting Officer may require the Contractor to suspend Work in the vicinity of the discovery until final determinations are made and removal of the skeletal remains is completed.

If the Contracting Officer finds that the suspension of Work in the vicinity of the discovery increases or decreases the cost or time required for performance of any part of the Work under this Contract, the Contracting Officer will make an adjustment in payment or the time required for the performance of the Work in accordance with Contract Clauses #17 and #18.

## **36. PREVAILING WAGES**

### **A. General Requirements**

This Contract is subject to the minimum wage requirements of RCW 39.12 and to RCW 49.28 (as amended or supplemented). On Federally funded projects, Federal wage laws and rules also apply. The hourly minimum rates for wages and fringe benefits are listed in the Contract Provisions. When Federal wage and fringe benefit rates are listed, the rates match those identified by the U.S. Department of Labor's "Decision Number" shown in the Contract Provisions.

The Contractor, any Subcontractor, and all individuals or firms required by RCW 39.12, WAC 296-127, or the Federal Davis-Bacon and Related Acts (DBRA) to pay minimum prevailing wages, shall not pay any worker less than the minimum hourly wage rates and fringe benefits required by RCW 39.12 or the DBRA. Higher wages and benefits may be paid.

By including the hourly minimum rates for wages and fringe benefits in the Contract Provisions, the District does not imply that the Contractor will find labor available at those rates. The Contractor shall be responsible for any amounts above the minimums that will actually have to be paid. The Contractor shall bear the cost of paying wages above those shown in the Contract Provisions.

When the project is subject to both State and Federal hourly minimum rates for wages and fringe benefits and when the two rates differ for similar kinds of labor, the Contractor shall not pay less than the higher rate unless the State rates are specifically preempted by Federal law. When the project involves highway Work, heavy Work, and building Work, the Contract Provisions may list a Federal wage and fringe benefit rate for the highway Work, and a separate Federal wage and fringe benefit rate for both heavy Work and building Work. The area in which the worker is physically employed shall determine which Federal wage and fringe benefit rate shall be used to compare against the State wage and fringe benefit rate.

If employing labor in a class not listed in the Contract Provisions on state funded projects only, the Contractor shall request a determination of the correct wage and benefits rate for that class and locality from the Industrial Statistician, Washington State Department of Labor and Industries (State L&I), and provide a copy of those determinations to the Contracting Officer.

If employing labor in a class not listed in the Contract Provisions on federally funded projects, the Contractor shall request a determination of the correct wage and benefit for that class and locality from the U.S. Secretary of Labor through the Contracting Officer. Generally, the Contractor initiates the request by preparing standard form 1444 Request for Authorization of Additional Classification and Rate, available at [www.wdol.gov/docs/sf1444.pdf](http://www.wdol.gov/docs/sf1444.pdf), and submitting it to the Contracting Officer for further action.

The Contractor shall ensure that any firm (Supplier, Manufacturer, or Fabricator) that falls under the provisions of RCW 39.12 because of the definition "Contractor" in WAC 296-127-010, complies with all the requirements of RCW 39.12.

The Contractor shall be responsible for compliance with the requirements of the DBRA and RCW 39.12 by all firms (Subcontractors, lower tier subcontractors, Suppliers, Manufacturers, or Fabricators) engaged in any part of the Work necessary to complete this Contract. Therefore, should a violation of this Subsection occur by any firm that is providing Work or materials for

completion of this Contract whether directly or indirectly responsible to the Contractor, the District will take action against the Contractor, as provided by the provisions of the Contract, to achieve compliance, including but not limited to, withholding payment on the Contract until compliance is achieved.

In the event the District has an error (omissions are not errors) in the listing of the hourly minimum rates for wages and fringe benefits in the Contract Provisions, the Contractor, any Subcontractor, any lower tier subcontractor, or any other firm that is required to pay prevailing wages, shall be required to pay the rates as determined to be correct by State L&I (or by the U.S. Department of Labor when that agency sets the rates). A change order will be prepared to ensure that this occurs. The District will reimburse the Contractor for the actual cost to pay the difference between the correct rates and the rates included in the Contract Provisions, subject to the following conditions:

- (1) The affected firm relied upon the rates included in the Contract Provisions to prepare its Bid and certifies that it did so;
- (2) The allowable amount of reimbursement will be the difference between the rates listed and rates later determined to be correct plus only appropriate payroll markup the employer must pay, such as, social security and other payments the employer must make to the Federal or State Government;
- (3) The allowable amount of reimbursement may also include some overhead cost, such as, the cost for bond, insurance, and making supplemental payrolls and new checks to the employees because of underpayment for previously performed Work; and
- (4) Profit will not be an allowable markup.

Firms that anticipated, when they prepared their Bids, paying a rate equal to, or higher than, the correct rate as finally determined will not be eligible for reimbursement.

#### B. Posting Notices

In a location acceptable to State L&I, the Contractor shall ensure the following is posted:

- (1) One copy of the approved "Statement of Intent to Pay Prevailing Wages" for the Contractor, each Subcontractor, each lower tier subcontractor, and any other firm (Supplier, Manufacturer, or Fabricator) that falls under the provisions of RCW 39.12 because of the definition of "Contractor" in WAC 296-127-010;
- (2) One copy of the prevailing wage rates for the project;
- (3) The address and telephone number of the Industrial Statistician for State L&I (along with notice that complaints or questions about wage rates may be directed there); and
- (4) FHWA 1495/1495A "Wage Rate Information" poster if the project is funded with Federal-aid.

#### C. Required Documents



On forms provided by the Industrial Statistician of State L&I, the Contractor shall submit to the Contracting Officer the following for itself and for each firm covered under [RCW 39.12](#) that provided Work and materials for the Contract:

- (1) A copy of an approved “Statement of Intent to Pay Prevailing Wages” State L&I’s form number F700-029-000. The District will make no payment under this Contract for the Work performed until this statement has been approved by State L&I and a copy of the approved form has been submitted to the Contracting Officer.
- (2) A copy of an approved “Affidavit of Prevailing Wages Paid”, State L&I’s form number F700-007-000. The District will not release to the Contractor any funds retained under [RCW 60.28.011](#) until all of the “Affidavit of Prevailing Wages Paid” forms have been approved by State L&I and a copy of all the approved forms have been submitted to the Contracting Officer.

The Contractor shall be responsible for requesting these forms from State L&I and for paying any approval fees required by State L&I.

Certified payrolls are required to be submitted by the Contractor to the Contracting Officer, for the Contractor and all Subcontractors or lower tier subcontractors, on all Federally funded projects and, when requested in writing by the Contracting Officer, on projects funded with only State funds. If these payrolls are not supplied within 10 calendar days of the end of the preceding weekly payroll period for Federally funded projects or within 10 calendar days from the date of the written request on projects with only State funds, any or all payments may be withheld until compliance is achieved. Also, failure to provide these payrolls could result in other sanctions as provided by State laws ([RCW 39.12.050](#)) and/or Federal regulations (29 CFR 5.12). All certified payrolls shall be complete and explicit. Employee labor descriptions used on certified payrolls shall coincide exactly with the labor descriptions listed on the minimum wage schedule in the Contract unless the Contracting Officer approves an alternate method to identify the labor used by the Contractor to compare with the labor listed in the Contract Provisions. When an apprentice is shown on the certified payroll at a rate less than the minimum prevailing journey wage rate, the apprenticeship registration number for that employee from the State Apprenticeship and Training Council shall be shown along with the correct employee classification code.

#### D. Audits

The Contractor’s wage, payroll, and cost records on this Contract shall be open to inspection or audit by representatives of the District during the life of the Contract and for a period of not less than 3 years after the date of final acceptance of the Contract. The Contractor shall retain these records for that period. The Contractor shall also guarantee that the wage, payroll, and cost records of all Subcontractors and all lower tier Subcontractors shall be retained and open to similar inspection or audit for the same period of time. The audit may be performed by employees of the District or by an auditor under contract with the District. The Contractor, Subcontractors, or lower tier subcontractors shall provide adequate facilities, acceptable to the Contracting Officer, for the audit during normal business hours. The Contractor, Subcontractors, or lower tier subcontractors shall make a good faith effort to cooperate with the auditors. If an audit is to be commenced more than 60 calendar days after the final acceptance date of the Contract, the Contractor will be given 20 calendar days notice of the time when the audit is to begin. If any litigation, claim, or audit arising out of, in connection with, or related to this Contract is initiated, the wage, payroll, and cost records shall be retained until such litigation, claim, or audit involving the records is completed.

### **37. CONTRACTOR'S CONTINUING AGREEMENT TO VERIFY FULFILLMENT OF "RESPONSIBILITY" CRITERIA BY CONTRACTOR AND SUBCONTRACTORS**

At the time of execution of this contract, Contractor was required, pursuant to the directives contained in RCW 39.04, to provide proof of compliance with the following criteria:

- (a) the Contractor must have a certificate of registration in compliance with Chapter 18.27 RCW;
- (b) the Contractor must have a current state Unified Business Number;
- (c) the Contractor must have industrial insurance coverage for the bidder's employees working in Washington as required in Title 51, RCW, an Employment Security Department number as required in Title 50 RCW; and a state excise tax registration number as required in Title 82 RCW, unless proof is provided that these items are not required of the bidder, and
- (d) the Contractor must not be disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065(3).

Contractor agrees to notify the District upon any change in status relating to the above noted criteria and provide proof of continuing fulfillment upon demand during the performance of this contract.

Contractor further agrees and acknowledges that it will verify subcontractor fulfillment of statutorily required "responsibility" criteria at all times during the performance of the contract. At the time of execution of all subcontracts, written proof of verification of fulfillment of the following "responsibility" criteria shall be required by Contractor who agrees to provide copies to the District before the next scheduled disbursement of funds.

As noted by chapter 36.06 RCW, this verification requirement must be included in all public works contracts and subcontracts and Contractor agrees to include the required verification notice in all subcontracts. Contractor shall require all subcontractors to provide proof and verify the following:

- (a) that the subcontractor has a certificate of registration in compliance with Chapter 18.27 RCW;
- (b) that the subcontractor has a current state Unified Business Number;
- (c) that the subcontractor has industrial insurance coverage for the subcontractor's employees working in Washington as required in Title 51, RCW, an Employment Security Department number as required in Title 50 RCW; and a state excise tax registration number as required in Title 82 RCW, unless proof is provided that these items are not otherwise required of the subcontractor;
- (d) that the subcontractor is not be disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065(3) ; and in addition
- (e) that the subcontractor has an electrical contractor license, if required by Chapter 19.28 RCW, or an elevator contractor license, if required by Chapter 70.87 RCW.

### **38. SUSPENSION AND DEBARMENT**

The Contractor hereby certifies, warrants, and represents that neither the Contractor nor any of its subcontractors are presently under any debarment, suspension, or any other type of ineligibility to contract with the United States Department of Energy, United States Department of Commerce or with any other federal department, division, or agency as of the date of this Contract; and further, the Contractor agrees to immediately notify the District, in writing, of any change in its eligibility status, or, if known, in the status of any subcontractor, which occurs during the term of the Contract.

### **39. CHANGES AND MODIFICATIONS**

The District may, at any time, by written notification to the Contractor, make changes in the general scope of the services to be performed under this Contract. If any such changes cause an increase or decrease in the cost of, or the time required for the performance of this Contract, an equitable adjustment may be made in the contract price or period of performance, or both, and the Contract shall be modified by Change Order per Contract Clause 29. This Contract may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

### **40. ADVANCE PAYMENTS PROHIBITED**

No advance payment shall be made for services furnished by the Contractor prior to execution of this contract.

### **41. DELAY**

A. Any delay in or failure of performance by District or Contractor shall not constitute a default hereunder if and to the extent the cause for such delay or failure of performance was unforeseeable and beyond the control of the party ("Force Majeure"). Acts of Force Majeure include, but are not limited to:

1. Acts of God or the public enemy;
2. Fire or other casualty for which Contractor is not responsible;
3. Quarantine or epidemic;
4. Strike or defensive lockout;
5. Unusually severe weather conditions which could not have been reasonably anticipated;  
and
6. Unusual delay in receipt of supplies or products which were ordered and expedited and for which no substitute reasonably acceptable to District was available.

B. Contractor shall be entitled to an equitable adjustment in the Contract Time for changes in the time of performance directly and solely attributable to an act of Force Majeure, except delay caused by a labor dispute, provided Contractor makes a request for equitable adjustment. Contractor shall not be entitled to an adjustment in the Contract Price resulting from an act of Force Majeure.

C. Contractor shall be entitled to an equitable adjustment in Contract Time, and may be entitled to an equitable adjustment in Contract Price, if the cost or time of Contractor's performance is changed due to the fault or negligence of District, provided the Contractor makes a request in accordance with specified procedures.

D. Contractor shall not be entitled to an adjustment in Contract Time or in the Contract Price for any delay or failure of performance to the extent such delay or failure was caused by Contractor, any Subcontractor, or anyone for whose acts Contractor is responsible.

E. To the extent any delay or failure of performance was concurrently caused by the District and Contractor, Contractor shall be entitled to an adjustment in the Contract Time for that portion of the delay or failure of performance that was concurrently caused, provided it makes a request for equitable adjustment according to the Specifications, but shall not be entitled to an adjustment in the Contract Price.

F. Contractor shall make all reasonable efforts to prevent and mitigate the effects of any delay, whether occasioned by an act of Force Majeure or otherwise.

### *TERMINATION FOR CONVENIENCE*

Except as otherwise provided in this contract, the District may, by five (5) days written notice, beginning on the second day after the mailing, terminate this contract, in whole or in part, when it is in the best interests of the District. If this contract is so terminated, the District shall be liable only for payment in accordance with the terms of this contract for services rendered prior to the effective date of termination.

### *TERMINATION FOR DEFAULT*

By written notice, the District may terminate this contract, in whole or in part, for failure of the Contractor to perform any of the provisions of the contract. In such event, the Contractor shall be liable for damages as authorized by law including, but not limited to, any cost difference between the original contract and the replacement contract, e.g. cost of the competitive bidding, mailing, advertising and staff time; provided, that if (i) it is determined for any reason the Contractor was not in default, or (ii) the Contractor's failure to perform is not the Contractor's and/or Subcontractor's fault or due to Contractor negligence, then the termination shall be deemed to be a "Termination for Convenience".

### *TERMINATION PROCEDURES*

Upon termination of this contract, the District, in addition to any other rights provided in this contract, may require the Contractor to deliver to the District any property specifically produced or acquired for the performance of such part of this contract as has been terminated. The provisions of the "Treatment of Assets" clause shall apply in such property transfer.

The District shall pay to the Contractor the agreed upon price, if separately stated, for completed work and services accepted by the District, and the amount agreed upon by the Contractor and the District for (i) completed work and services for which no separate price is stated, (ii) partially completed work and services, (iii) other property or services which are accepted by the District, and (iv) the protection and preservation of property, unless the termination is for default, in which case

the District shall determine the extent of the liability. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause of this contract. The District may withhold from any amounts due the Contractor such sum as the District determines to be necessary to protect the District against potential loss or liability.

The rights and remedies of the District provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

After receipt of a notice of termination, and except as otherwise directed by the District, the Contractor shall:

1. Stop work under the contract on the date, and to the extent specified, in the notice;
2. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the contract that is not terminated;
3. Assign to the District, in the manner, at the times, and to the extent directed by the District, all of the rights, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the District has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.
4. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the District to the extent the District may require, which approval or ratification shall be final for all the purposes of this clause;
5. Transfer title to the District and deliver in the manner, at the times, and to the extent directed by the District any property which, if the contract had been completed, would have been required to be furnished to the District;
6. Complete performance of such part of the work as shall not have been terminated by the District; and
7. Take such action as may be necessary, or as the District may direct, for the protection and preservation of the property related to this contract which is in the possession of the Contractor and in which the District has or may acquire an interest.

#### **41. RESPONSIBILITY OF THE CONTRACTOR AND SURETY**

Termination of a Contract shall not relieve the Contractor of any responsibilities under the Contract for Work performed, nor shall termination of the Contract relieve the Surety or Sureties of obligations under the Contract Bond or retainage bond for Work performed.

#### **42. CONFLICT OF INTEREST**

The District may terminate this contract, by written notice to the Contractor, if it is found after examination that there is a violation by the Contractor of:

- A. Ethics in Public Service Act, Chapter 42.52 RCW; or,
- B. Any similar statute involving the Contractor in the procurement of, or performance of services under this contract.

In the event this contract is terminated as provided above, the District shall be entitled to pursue the same remedies against the Contractor as it could pursue in the event of a breach of the contract by the Contractor. The rights and remedies of the District provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law.

#### **43. ACCESS TO DATA**

In compliance with chapter 39.29 RCW, the Contractor shall provide access to data generated under this contract to the District. This includes access to all information that supports the findings, conclusions, and recommendations of the Contractor's reports, including computer models and methodology for those models.

#### **44. AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336, also referred to as the "ADA" 28 CFR Part 35 --**

The Contractor must comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.

#### **45. ASSIGNMENT**

Neither the District nor the Contractor shall assign this contract, either in whole or in part, without prior written consent of the other party, which shall not be unreasonably withheld. Such assignment shall not relieve either party from its duties or obligations under this contract.

#### **46. COVENANT AGAINST CONTINGENT FEES**

The Contractor warrants that no person or selling agent has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established agents maintained by the Contractor for the purpose of securing business. The District shall have the right, in the event of breach of this clause by the Contractor, to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration or recover by other means the full amount of such commission, percentage, brokerage or contingent fee.

#### **47. GOVERNING LAW**

This contract shall be governed by the laws of the State of Washington. In the event of a lawsuit involving this contract, venue shall be proper only in XYZ. The Contractor, by execution of this contract, acknowledges the jurisdiction of the courts of the State of Washington in this matter.

#### **48. INDEMNIFICATION**

The Contractor shall defend, indemnify and hold harmless the Engineers, the State of Washington, the District, its officers, agents, employees, District Cooperators and landowners from and against any and all claims, demands, losses and liabilities to or by third parties arising from, resulting from, or connected with, services performed or to be performed under this contract by Contractor or Contractor's agents, employees, subcontractors, and suppliers to the fullest extent permitted by law, whether arising from contract liability(ies) or otherwise.

Contractor's duty to indemnify shall not apply to liability from damages arising out of bodily injury to persons or damages to the property caused by, or resulting from, the sole negligence of either the Engineer and/or the District, its officers, agents and employees.

Contractor's duty to indemnify for liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of Contractor's, the Engineer, and/or the District's agents or employees shall apply only to the extent of negligence of Contractor's, Engineer, or the District's agents, employees, subcontractors and suppliers.

Contractor specifically and expressly waives any immunity that may be granted under the Washington State Industrial Act, Title 51, RCW. Further, the indemnification obligation under this Contract shall not be limited in any way by any limitation on the amount of type of damages, compensation, benefits payable to or by any third party under Worker's Compensation Acts, Disability Benefits Acts, or other employee benefit acts.

Contractor's duty to defend, indemnify, and hold harmless shall include all related costs, reasonable attorney fees, court costs and related expenses asserted against or incurred by the Engineers; the State of Washington; the District, its officers, agents, and employees; District Cooperators; and/or landowners.

The parties hereby certify that these indemnification provisions were mutually negotiated and agreed to by the parties.

#### **49. INDEPENDENT CAPACITY OF THE CONTRACTOR**

The Contractor and his or her employees, agents, representatives or subcontractors performing under this contract are not employees or agents of the District. The Contractor, his/her employees, agents, representatives or subcontractors, will not hold themselves out as nor claim to be an officer or employee of the District or of the State of Washington by reason hereof, nor will the Contractor make any claim of right, privilege or benefit which would accrue to an employee under Chapter 41.06 RCW or Chapter 28B.16 RCW.

#### **50. INDUSTRIAL INSURANCE COVERAGE**

Prior to performing work under this contract, the Contractor shall provide or purchase industrial insurance coverage for the Contractor's employees, as may be required of an "employer" as defined in Title 51 RCW, and shall maintain full compliance with Title 51 RCW during the course of this contract. Should the Contractor fail to secure industrial insurance coverage or fail to pay premiums, as may be required under Title 51 RCW, the District may deduct the amount of premiums and any penalties owing from the amounts payable to the Contractor under the contract and transmit the same to the Department of Labor and Industries, Division of Industrial Insurance. This provision does not waive any right under RCW 51.12.050 to collect from the Contractor amounts paid by the District.

The District will not be responsible for payment of industrial insurance premiums or for any other claim or benefit for this Contractor, or any Subcontractor or employee of the Contractor, which might arise under the industrial insurance laws during performance of duties and service(s) under this contract. If the Washington State Department of Labor and Industries, upon audit, determines that industrial insurance payments are due and owing as a result of work performed under this

contract, those payments shall be made by the Contractor; the Contractor shall indemnify the District and guarantee payment of such amounts.

Industrial insurance coverage through the Department of Labor & Industries is optional for sole proprietors, partners, corporate officers and others, per RCW 51.12.020.

## **51. RECORDS, DOCUMENTS, AND REPORTS**

The Contractor shall maintain complete financial records relating to this contract and the services rendered including all books, records, documents, magnetic media, receipts, invoices and all other evidence of accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this contract. These records shall be subject at all reasonable times to inspection, review, or audit by personnel duly authorized by the District, the Office of the State Auditor, and state and federal officials so authorized by law, rule, regulation, or agreement. The Contractor will retain all books, records, documents, and other materials relevant to this contract for six (6) years after the date of final payment by the District, and make them available for inspection by persons authorized under this provision.

If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

## **52. REGISTRATION WITH DEPARTMENT OF REVENUE**

The Contractor shall complete registration with the Washington State Department of Revenue and be responsible for payment of all taxes due on payments made under this Contract.

## **53. NON-DISCRIMINATION**

Equal Employment Opportunity Requirements

### **A. General**

Notwithstanding any other provisions in the Contract Documents, this Contract does not require any specific levels of utilization of minorities or women in the Contractor's workforce, except as may be specified in any federal regulations or statutes included or referenced in the Contract Documents. The District encourages the Contractor to employ a workforce reflective of the region's diversity. The Contractor shall adhere to all non-discrimination requirements as set forth in Federal and State laws.

The Contractor and all subcontractors (not including materialmen) holding subcontracts of \$1,000 or more shall comply with the following minimum specific requirement activities of equal employment opportunity. The Contractor shall include these requirements in every subcontract of \$1,000 or more with such modification of language as is necessary to make them binding on the subcontractor.

### **B. Equal Employment Opportunity Policy.** 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, religion, creed, color, sex, marital status, sexual orientation, political ideology, ancestry, national origin, or the presence of any sensory, mental or physical handicap, unless based upon a bona fide occupational qualification. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their creed, religion, race, color, sex, national origin, or the presence of any sensory, mental or physical handicap. 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 by the contracting officer setting forth the provisions of this nondiscrimination clause.
- (2) If upon investigation the District finds probable cause to believe that the contractor has failed to comply with any of the terms of these provisions, the contractor and the contracting authority shall be so notified in writing. The District shall give the contractor an opportunity to be heard, after ten-(10) days' notice. The District may suspend the contract and/or withhold any funds due or to become due to the contractor, pending compliance by the contractor with the terms of these provisions.
- (3) Failure to comply with any of the terms of these provisions shall be a material breach of this contract.
- (4) The foregoing provisions will be inserted in all subcontracts for work covered by this contract. The Contractor shall not discriminate and shall take affirmative action to ensure equal employment opportunity. These, and other requirements, which may be set forth in the Contract Documents, shall constitute the specific Affirmative Action requirements for the work.

#### **54. RIGHT OF INSPECTION**

The Contractor shall provide right of access to its facilities to the District, or any of its officers, or to any other authorized agent or official of the State of Washington or the federal government, at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this contract.

#### **55. RIGHTS IN DATA**

Unless otherwise provided, data which originates from this contract shall be "works for hire" as defined by the U.S. Copyright Act of 1976 and shall be owned by the District. Data shall include, but not be limited to, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, sound reproductions, and all information that supports the findings, conclusions and recommendations of the consultant's reports, including computer models and the methodology for those models. Ownership includes the right to copyright, patent, register and the ability to transfer these rights.

Data which is delivered under the contract, but which does not originate therefrom, shall be transferred to the District with a nonexclusive, royalty-free, irrevocable license to publish, translate, reproduce, deliver, perform, dispose of, and to authorize others to do so, provided, that such license

shall be limited to the extent to which the Contractor has a right to grant such a license. The Contractor shall exert all reasonable effort to advise the District, at the time of delivery of data furnished under this contract, of all known or potential invasions of privacy contained therein and of any portion of such document which was not produced in the performance of this contract. The District shall receive prompt written notice of each notice or claim of copyright infringement received by the Contractor with respect to any data delivered under this contract. The District shall have the right to modify or remove any restrictive markings placed upon the data by the Contractor.

## **56. SAFEGUARDING OF INFORMATION**

The use or disclosure by any party of any information concerning the District, for any purpose not directly connected with the administration of the District's or the Contractor's responsibilities with respect to services provided under this contract, is prohibited except by prior written consent of the District.

## **57. FUNDING**

In the event funding from state, federal, or other grant sources is withdrawn, reduced, or limited in any way after the effective date of this contract and prior to normal completion, the District may terminate the contract under the "Termination for Convenience" clause, without the five day notice requirement, subject to renegotiation under those new funding limitations and conditions.

## **58. SEVERABILITY**

If any provision of this contract or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this contract which can be given effect without the invalid provision, and to this end the provisions of this contract are declared to be severable.

## **59. SUBCONTRACTING**

Neither the Contractor nor any subcontractor shall enter into subcontracts for any of the work contemplated under this contract without obtaining prior written approval of the District. In no event shall the existence of the subcontract operator release or reduce the liability of the Contractor to the District for any breach in the performance of the Contractor's duties. This clause does not include contracts of employment between the Contractor and personnel assigned to work under this Contract.

## **60. TREATMENT OF ASSETS**

A. Title to all property furnished by the Contractor, for the cost of which the Contractor is entitled to be reimbursed as a direct item of cost under this contract, shall pass to and vest in the District upon delivery of such property by the Contractor. Title to other property, the cost of which is reimbursable to the Contractor under this contract, shall pass to and vest in the District upon (i) issuance for use of such property in the performance of this contract, or (ii) commencement of use of such property in the performance of this contract, or (iii) reimbursement of the cost thereof by the District in whole or in part, whichever first occurs.

B. Any property of the District furnished to the Contractor shall, unless otherwise provided herein or approved by the District, be used only for the performance of this contract.

C. The Contractor shall be repair and/or replace any loss of or damage to property of the District which results from the negligence of the Contractor or which results from the failure on the part of the Contractor to maintain and administer that property in accordance with sound management practices.

D. Upon loss or destruction of, or damage to, any District property, the Contractor shall notify the District thereof and shall take all reasonable steps to protect that property from further damage.

E. The Contractor shall surrender to the District all property of the District prior to settlement upon completion, termination or cancellation of this contract.

F. All reference to the Contractor under this clause shall also include Contractor's employees, agents or Subcontractors

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IN WITNESS WHEREOF, the Contractor has executed this instrument, on the day and year first below written and the Chairman of the XYZ Conservation District has caused this instrument to be executed by and in the name of the said State of Washington and the XYZ Conservation District the day and year first above written.

This Contract shall be subject to the approval by of XYZ Conservation District and shall not be binding until so approved. The Contract may be altered, amended or waived only by a written amendment executed by both parties.

THIS CONTRACT, consisting of the pages and attachments, if any, is executed by the persons signing below who warrant that they have the authority to execute the contract.

AAA Contractor

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title Date

OKANOGAN CONSERVATION DISTRICT

\_\_\_\_\_  
Signature

Chair, Board of Supervisors  
\_\_\_\_\_  
Title Date

**EXHIBIT A “Plan and Specifications”  
Confirmation of Documents referenced in Contract**

**CONTRACT DOCUMENTS**

By Initialing next to each listed document below the Contractor hereby acknowledges that said document is made part of the CONTRACT DOCUMENTS as referenced.

- Bid Schedule, Drawings, and Specs: Okanogan Conservation District EWP Project  
Provided bid request, schedule, drawings, and specs on: May 7, 2015

Initial \_\_\_\_\_