

Material Procurement Contract & Specification  
Public Utility District #1  
of  
Okanogan County

Hydrogen Fuel Cell  
&  
Hydrogen Storage Unit

January 2024

BID 460-24

Prepared by:

**Scott Abrahamson**  
**System Tech**  
1331 Second Ave. N  
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(509)422-8424

## 1. Overview & Executive Summary

It is the intent of the Okanogan Public Utility District to procure and install a Hydrogen storage and 100 KW fuel cell generation system at the Okanogan 13.2 kV Substation. The purpose of this project is to prove the concept of fuel cell integration with the utility grid and the viability of long term hydrogen storage. The system will integrate with the Utility grid through a 277/480 grounded wye electrical connection. Multiple vendors are invited to submit a joint application, however, both vendors must confirm integration between their respective products.

The hydrogen storage unit must use metal hydride storage technology using inert, non-explosive metals. The storage technology must have less than 1% loss over a 12 month period. The infrastructure is not in place to accommodate high pressure or cryogenically cooled storage systems.

The fuel cell generator is intended for peak shaving purposes. Full load generation ramping times must be within 10 minutes with expected run times of 4 to 6 hours on a daily basis. Ideally, Proton Exchange Membrane (PEM) technology will be well suited for this application. Provisions for grid synchronization shall be within the fuel cell inverter. Due to the small size of the fuel cell, load following provisions are not required.

This specification outlines the requirements for manufacture and delivery of each new Hydrogen Storage unit and fuel cell generation system. The system shall have a design life of 30 years, that includes a minimum 5-year warranty on the product.

The hydrogen storage system and fuel cell generator must meet all applicable local, state, ANSI and NFPA codes.

## 2. Identification of Parties

### 2.1. Owner:

#### Contractual Issues

PUD No.1 of Okanogan County

1331 Second Ave. N.

P. O. Box 912

Okanogan, WA 98840

Attention: **Roy Schwilke, Purchasing Manager**

**Email: roys@okpud.org**

Telephone: (509)422-8484

Fax: (509)422-8478

## 2.2. Engineer/Technical Issues:

Scott Abrahamson  
System Tech  
1331 Second Ave. N  
P.O. Box 912  
Okanogan, WA 98840  
Email: [scotta@okpud.org](mailto:scotta@okpud.org)  
Telephone: (509) 422-8424

Alternate:  
Dan Simpson P.E.  
Chief Engineer  
1331 Second Ave N.  
P.O. Box 912  
Okanogan WA 98840  
Email: [dans@okpud.org](mailto:dans@okpud.org)  
Telephone: (509) 422-8426

## 2.3. Manufacture:

The manufacturing firm that the Owner shall select to supply the equipment specified in this document.

## 2.4. Bid Terms & Conditions

- 2.4.1. All bids shall be firm and remain valid for 60 days from the bid due date. All bids shall be complete with regard to these specifications.
- 2.4.2. Alternate bids as well as optional equipment and/or services recommended by manufacture shall be delineated and priced separately.
- 2.4.3. Field installation services shall be priced or bid separately. If priced, price schedule shall include all costs including test equipment costs, shipping and complete travel expenses.
- 2.4.4. Standard Manufacture's Terms & Conditions do not apply unless agreed to by letter or other written form by Owner.

**2.5. Bid Technical Data Requirement:** These requirements are found in the Bid Proposal data sheets to be filled out by Manufacturer.

**2.6. Equipment Guarantee:** Without limiting any other provisions of this specification regarding guarantees, the Manufacturer(s) shall guarantee that the complete storage and fuel cell system, together with all parts included in the original purchase is free of defect in workmanship and materials, and is capable of continuous and satisfactory performance when operated in accordance with the instructions provided by the Manufacture at the specified rating and capacity.

### **3.1 General**

3.1.1. This specification covers a hydrogen storage unit and fuel cell generator for outdoor application.

3.1.2. The units shall be designed and manufactured to the latest ANSI/IEEE standards. If this specification indicates stricter performance requirements than ANSI/IEEE, this specification shall prevail.

### **3.2. Service Conditions**

3.2.1. Continuous Duty.

3.2.2. Ambient temperature - The average temperature of the air for any 24 hour period shall not exceed 40<sup>0</sup> C or be less than -30<sup>0</sup> C for the purpose of this specification.

3.2.3. Altitude - The altitude of the existing Okanogan Substation is approximately 900 feet above sea level.

3.2.4. The units and all the associated components shall be braced for operation in Seismic Zone 2B.

### **3.3. Electrical Ratings**

3.3.1. Utility service will be three phase 277/480 volt grounded wye. Manufacture must provide provisions such as stepdown transformers for Ancillary equipment.

3.3.2. Service fault duty will not exceed 12,000 amps at 480 volts.

3.3.3. Fuel cell generation must be capable of 100 KW at 97% power factor for up to 6 hours continuous.

3.3.4. Fuel cell inverter shall be capable of underfrequency, overfrequency, undervoltage and overvoltage protection. Pickup limits time delays shall be user configurable or be set for compliance with WECC regulations.

- 3.3.5. Fuel cell inverter shall be capable of synchronizing to the utility grid.
- 3.3.6. Fuel cell inverter shall limit fault contribution to 1.4 per unit of nameplate.
- 3.3.7. Fuel cell inverter shall meet or exceed IEEE 519 limits on Harmonic Distortion.
- 3.3.8. Manufacturer shall provide provisions for proper grounding of equipment.
- 3.3.9. The system shall be equipped with a UPS that will supply power for at least 30 minutes if power is lost.

#### **3.4. SCADA integration, remote monitoring and control.**

- 3.4.1. Units shall be compatible with DNP or modbus protocols. Acceptable communications medium shall be RS-232 or ethernet standards. RS-485 communications are not acceptable. Copper or Fiberoptic connections are acceptable. Wireless connections (802.11x, 802.15 or 802.16) are not acceptable.
- 3.4.2. 4-20 ma Analog transducers and dry contacts are acceptable alternatives to digital protocols.
- 3.4.3. Units shall be capable of producing an audible alarm in the event fire detection.

#### **3.5. Hydrogen Storage**

- 3.5.1. The hydrogen Storage Unit shall have a hydrogen capacity of at least 250 kg
- 3.5.2. The vendor shall include the instrumentation for heating and cooling required for the metal hydride storage technology.
- 3.5.3. Metal hydride storage must use an inert, non-explosive medium.
- 3.5.4. Storage unit must meet or exceed NFPA2 safety standards.
- 3.5.5. Hydrogen extraction must yield a purity compatible with the PEM fuel cell. The district does not have the equipment to perform additional processing of the Hydrogen gas before it is used in the fuel cell.

### **3.6. Fuel Cell:**

- 3.6.1. The Fuel Cell shall be capable of start times of less than 10 minutes.
- 3.6.2. The fuel cell generation process shall not produce any product that requires additional processing or transportation of waste byproducts.
- 3.6.3. Fuel cell must meet or exceed NFPA2 safety standards.

### **3.7. Product Integration:**

- 3.7.1. If the fuel cell and storage unit are from separate manufactures, the Manufactures will work to integrate their products for operational efficiencies. This includes but is not limited to network protocols, instrumentation signals, start / stop protocols, and emergency shut down procedures.

### **3.8. Piping connections**

- 3.8.1. Gas piping shall be outdoor rated and have little thermal losses under ambient temperatures of -40°C to 50°C
- 3.8.2. Piping pressure shall follow ASME standards.

### **3.9. Spare Equipment:**

- 3.9.1. The manufacturer shall provide the following spares included in bid. Manufacturer shall also provide a list of additional spares recommended by Manufacturer at extra cost to Owner.

### **3.10. Inspection and Tests - General**

- 3.10.1. Engineer shall be present during any tests made on the Units. Manufacturer shall notify Owner in writing 21 days prior to any and all tests or inspections required as part of this specification.
- 3.10.2. Two copies of each test and inspection reports shall be delivered to the Owner within 10 days of completion of the test. Additionally, a complete set of test and inspection reports and results shall be submitted upon project completion. Electronic PDF files are acceptable.

### 3.11. Delivery and Shipment:

3.11.1. All bids shall include Freight On Board (F.O.B.), Pre-Paid, delivery shall be Okanogan 13.2 kV substation in Okanogan, Okanogan County, USA at 53 Rodeo Trail, Okanogan, WA 98840. All bids must be clearly marked BID 460-24.

Attention: **Roy Schwilke, Purchasing Manager**

Telephone: (509)422-8484

Fax: (509)442-8478

3.11.2. **The units shall be shipped to the Okanogan 13.2 kV substation site by Manufacturer and set on concrete pad.** A complete set of picking and rigging instructions shall be submitted by Manufacturer for the safe off loading of the equipment at the Owner's site.

3.11.3. Manufacture is responsible for testing and commissioning.

3.11.4. Manufacture will provide training in the operation of their equipment to district personnel

3.11.5. Manufacture will provide safety training and safety protocols to local fire departments and first responders.

**BID FORMS – Part I**

**BID DOCUMENT NO. 460-24**

**FOR**

**Hydrogen Fuel Cell & Hydrogen Storage Unit**

**PROPOSAL**

TO: Public Utility District No. 1 of Okanogan County  
1331 Second Avenue North  
Post Office Box 912  
Okanogan, Washington 98840

Subject: Bid Document 460-24

The undersigned proposes and agrees to furnish all plant, labor, materials, tools, supplies, equipment, transportation, supervision, design, services, goods and other things in strict conformity with the above Bid Document and addenda, if any, for the prices listed in the attached Bid Pricing Data Form.

The undersigned represents and warrants that:

1. This bid constitutes a firm offer which cannot be withdrawn for sixty (60) consecutive calendar days after the District's opening of the bids.
2. It has carefully examined the Bid Document, which includes the Call for Bids, Bid Forms, General Conditions, Specifications and any addenda.
3. By careful examination of the Bid Document and any addenda, all applicable federal, state, tribal and local statutes, regulations and codes, and all other pertinent general and local conditions and matters, it has satisfied itself as to the nature, location, character, quality and quantity of the Work and as to the conditions and other matters which may be encountered or which may affect performance of the Work or its cost.
4. It is thoroughly experienced in and competent to fully perform all tasks specified in the Bid Document in full conformity with that document.
5. It has carefully checked all words and figures shown in the attached Bid Pricing Data Form.



6. Its bid meets or exceeds the requirements of and fully complies with the Call for Bids, Bid Forms, General Conditions and Specifications, including any addenda.

7. If awarded the contract, it will execute and deliver to the District the written contract, with the required Payment and Performance Bond, Certificates of Insurance (if applicable) and proof of proper submittal to the Washington State Department of Labor & Industries of its Statement of Intent to Pay Prevailing Wages (if applicable), within ten (10) calendar days after the written notice of award.

Enclosed is a Bid Bond or certified or cashier's check payable to the District in an amount of not less than five percent (5%) of the amount of the Total for Bid Comparison.

The amount of the Bid Bond or the certified check or cashier's check of the successful Bidder shall be and remain the property of the District in the event that the undersigned, if the successful Bidder, fails to execute the Contract Agreement and supply the required Performance and Payment Bond, Certificates of Insurance (if applicable) and proof of proper submittal of the Statement of Intent to Pay Prevailing Wages (if applicable). It is understood that the failure of the successful Bidder to enter into the Contract and give the required bonds, Certificates of Insurance and proof of proper submittal of the Statement of Intent to Pay Prevailing Wages within ten (10) calendar days after written notice of award will cause substantial damage to the District, including delay in its operations, which damage is not easily reduced to monetary terms. It is therefore agreed that this sum is proper liquidated damages for the damage.

Bidder acknowledges receipt, understanding, and full consideration of the following addenda issued prior to the date for receipt of bids: \_\_\_\_\_

**DATE:** \_\_\_\_\_

**NAME OF BIDDER:** \_\_\_\_\_

**FOR CORPORATIONS/LIMITED LIABILITY COMPANIES, STATE OF INCORPORATION/FORMATION:** \_\_\_\_\_

**FOR PARTNERSHIPS, FULL NAMES OF ALL PARTNERS:** \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

**BY:** \_\_\_\_\_

**TITLE:** \_\_\_\_\_

**ADDRESS:** \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

**WA State Contractor Reg. #** \_\_\_\_\_

**UBI #** \_\_\_\_\_

**BID FORMS – Part II**

**BID DOCUMENT NO. 460-24**

**FOR**

**Hydrogen Fuel Cell & Hydrogen Storage Unit**

**SUBCONTRACTOR'S LIST**

To be Submitted with the Bid Proposal if Bid Exceeds \$100,000 and is for  
Construction, Alteration or Repair of a Building or for Work,  
Construction, Alteration, Repair or Improvement.  
(RCW 39.30.060)

If Contractor's bid is such that the provisions of RCW 39.30.060 (Subcontractor Listing Statute) apply, Contractor must complete this form.

**Subcontractor Name:** \_\_\_\_\_  
**Categories of Work:** \_\_\_\_\_  
(Heating, Ventilation, \_\_\_\_\_  
and/or Air Conditioning) \_\_\_\_\_

**Subcontractor Name:** \_\_\_\_\_  
**Categories of Work:** \_\_\_\_\_  
(Plumbing) \_\_\_\_\_

**Subcontractor Name:** \_\_\_\_\_  
**Categories of Work:** \_\_\_\_\_  
(Electrical, Mechanical) \_\_\_\_\_

**Subcontractor Name:** \_\_\_\_\_  
**Categories of Work:** \_\_\_\_\_

**BID FORMS – Part III**  
**BID DOCUMENT NO. 460-24**  
**FOR**  
**Hydrogen Fuel Cell & Hydrogen Storage Unit**  
**DATA TO BE SUBMITTED WITH BID**

*(Items (1), (2) and (3) need not be filled in by a bidder which is already currently pre-qualified with the District in accordance with RCW 54.04.085.)*

(  
(1) Bidder's experience in this type and magnitude of Work: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(2) Bidder's qualifications, including technical qualifications, to perform the Work described herein: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(3) Bidder's References:  
(a) Financial: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(b) Work (name and provide the addresses and phone numbers of two entities whom the District may contact regarding Contractor's prior work of this type):  
(i) \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
(ii) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(4) Performance Schedule:

(a) Start/manufacture date: \_\_\_\_\_

(b) Completion/delivery date: \_\_\_\_\_

(c) Any factors which will preclude Bidder from meeting the schedule \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(5) Facilities/equipment to be used in completing the Work: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The Bid Proposal Data Form is to be filled out by the Manufacture and submitted with the Manufacture's Bid Package:

<b>Bid Pricing Data Form</b>		
<b>Item</b>		<b>Cost Total</b>
P-A	<b>Base bid price Hydrogen Storage System;</b> as per specifications above, delivered in 2025, to District Substation Okanogan, WA	
P-B	<b>Base bid price Hydrogen fuel cell System;</b> as per specifications above, delivered in 2025, to District Substation Okanogan, WA	
P-C	Owner progress payments computed as a percentage of base bid: 15% upon order 20% at 4 months ARO 20% at 8 months ARO 20% upon successful completion of testing 25% upon final acceptance by Owner <b>Total percent deduction offered by Manufacture for progress payments:</b>	
P-D	<b>Cancellation Fee</b> 2 months ARO: 4 months ARO: 6 months ARO:	
P-E	<b>Warranty Period</b> Standard Warranty period from date of energization: 3 year extended: 5 year extended: 10 year extended if available:	
P-F	<b>Field Service Representative:</b> Representative is offered at the following rate including all expenses	
P-G	<b>Formal Factory Interview:</b> Should Manufacturer be selected for an Owner's representative site visit and capability discussion at Manufacturer's facility (2 people), cost:	
P-G	<b>Design Conference at Owner's Facility:</b> Cost for Manufacturer to provide design conference at Owner's facility prior to any award by Owner to any Manufacture:	
P-I	<b>Identification of Point of Manufacture, City and Country</b>	
P-J	<b>Itemized cost of optional equipment (per section 3.9)</b>	

**Additional Information Required with Proposal:** The bid shall be complete and submitted along with the other information itemized below. Any exceptions taken by the Manufacturer to this specification shall be itemized in a separate letter of transmittal and made part of the proposal. The two (2) complete copies of the information shall be submitted in hard copy and electronic format.

- 1 Manufacturer’s supplemental descriptive data for all proposed equipment and accessories.
- 2 Outline drawing showing plan and elevations with descriptions of all devices and accessories.
- 3 Outline drawing and base detail showing lifting, grounding, and anchoring provisions.
- 4 Detailed point to point wiring diagram
- 5 Spare parts list
- 6 Installation, operating, and maintenance instruction manual which covers all the equipment furnished
- 7 Factory test procedures for all tests specified and any additional factory recommended tests.
- 8 Minimum and maximum operating temperatures
- 9 Proposed Warranty.

Information on Bid Proposal Data form is guaranteed by manufacture:

Manufacturer: \_\_\_\_\_

Manufacturer’s Officer: \_\_\_\_\_

Officer’s Title: \_\_\_\_\_

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

**Bid shall be valid for 30 days from Owner’s submission deadline**

## GENERAL TERMS AND CONDITIONS

### 1. DEFINITIONS

#### A. District

“*District*” shall mean Public Utility District No. 1 of Okanogan County, a municipal Corporation of the State of Washington.

#### B. Contractor

“*Contractor*” shall mean the person, firm, partnership or corporation who has executed this Agreement.

#### C. Subcontractor

A person, firm, partnership or corporation having a contract with *Contractor* or with a Subcontractor to any tier of *Contractor* for the performance of any part of the work.

### 2. AGREEMENT

This Agreement represents and incorporates the entire understanding of the parties hereto concerning the statement of work, and each party acknowledges that there are no warranties, representations, covenants or understandings of any kind, manner or description whatsoever by either party to the other except as expressly set forth and herein above written.

### 3. INDEPENDENT CONTRACTOR

In performing services under this Agreement, *Contractor* shall operate as, and have the status of, an independent Contractor and shall not act as or be an agent or employee of the *District*. For this reason, all of the *Contractor's* activities will be at its own risk.

### 4. PROFESSIONAL CONDUCT

*Contractor* agrees to perform its consulting services with that standard of care, skill and diligence normally provided by a professional person in the performance of such consulting services in respect to work similar to that hereunder. *Contractor* is hereby given notice that the *District* will be relying on the accuracy, competence and completeness of *Contractor's* services hereunder in utilizing the results of such services.

### 5. INDEMNIFICATION

*Contractor* shall protect, hold free and harmless, defend and pay on behalf of the *District* (including its managers, commissioners and employees) all liability, penalties, costs, losses, damages, expenses, causes of action, claims or judgments (including attorney's fees) resulting from injury or death, sustained by any person (including *Contractor's* employees), or damage to property of any kind, which injury, death or damage is to the extent caused by *Contractor's* negligent performance of this contract. *Contractor's* hold harmless agreement shall apply to any negligent act or omission, or willful misconduct, whether passive or active, on the part of *Contractor* (its agents or employees); except that this Agreement shall not be applicable to injury, death, or damage to property or persons arising from the negligence or the willful misconduct of Public Utility District No. 1 of Okanogan County, it's managers, commissioners and employees.

### 6. INSURANCE

General Liability and Automobile Liability Insurance carried by the *Contractor* shall be primary insurance irrespective of any coverages carried by the *District*. The *Contractor* shall have, and maintain throughout the Contract period, insurance and benefits in the following minimum requirements:



(a) Worker's Compensation Insurance, Social Security, Federal Income Tax deductions, and any other taxes or payroll deductions required by law for, or on behalf, of its employees.

(b) Employer's Liability, Professional Liability, Commercial General Liability (bodily injury and property damage) and Comprehensive Automobile Liability (bodily injury and property damage) insurance, with each policy having maximum limits of not less than \$1,000,000. Contractor shall provide an endorsement on the Commercial General Liability and Property Damage policy naming the District as additional insured and add a separation of insured clause or a cross liability endorsement.

*Contractor* shall deliver to the *District*, no later than ten (10) days after award of the Agreement, but in any event prior to execution of the Agreement by the *District* and prior to commencing work, Certificates of Insurance, identified on their face as the Agreement number to which applicable, as evidence that policies providing such coverage and limits of insurance are in full force and effect, which Certificates shall provide that not less than thirty (30) days' notice will be given in writing to the *District* prior to cancellation, termination or alteration of said policies of insurance. Such advance notice of cancellation, termination or alteration of said policies shall be delivered to the *District*.

*District* and *Contractor* waive all rights against each other and their officers, directors, agents and employees for damage covered by property insurance during and after the completion of *Contractor's* services. To the extent possible, if the services result in a construction phase, a provision similar to this shall be incorporated into all construction phase contracts entered into by *District*, and all construction Contractors shall be required to provide waivers of subrogation in favor of *District* and *Contractor* for damage or liability covered by any construction Contractor's policy of insurance.

#### **7. DISCOVERY OF CONFLICTS, ERRORS, OMISSIONS OR DISCREPANCIES**

In case of conflict or discrepancies, errors, or omissions among various parts of the Agreement, the matter shall be submitted immediately by *Contractor* to the *District* for clarification. Any work affected by such conflicts, discrepancies, errors or omissions that is performed by *Contractor* prior to clarification by the *District* shall be at *Contractor's* risk.

#### **8. ROYALTIES, PATENTS AND LICENSES**

The *District* shall have a permanent, assignable, non-exclusive royalty-free license to use any concept, product or process, patentable or otherwise, furnished or supplied to the *District* by *Contractor*, or otherwise conceived and/or developed by *Contractor* in the performance of this Agreement. If requested by the *District*, *Contractor* agrees to do all things necessary, at the *District's* sole cost and expense, to obtain patents or copyrights of any processes, products or writings conceived and/or developed or produced by *Contractor* in the performance of this Agreement, to the extent that the same may be patented or copyrighted, and further agrees to execute such documents as may be necessary to implement and carry out the provisions of this paragraph. All materials prepared or developed by *Contractor* hereunder, including documents, calculations, maps, sketches, notes, reports, data, models and samples, shall become the property of the *District* when prepared, whether delivered to the *District* or not, and shall, together with any materials furnished *Contractor* by the *District* hereunder, be delivered to the *District* upon request and, in any event, upon termination of this Agreement. *Contractor* shall not be liable for use by the *District* of any of the above-mentioned material that was prepared by *Contractor* on projects other than that specifically covered by this Agreement.

#### **9. NONDISCLOSURE**

*Contractor* agrees that he will not divulge to third parties, without the written consent of the *District*, any information which relates to the technical or business activities of the *District* obtained from or

through the *District* in connection with the performance of this Agreement unless: (i) the information is known to *Contractor* prior to obtaining the same from the *District*, (ii) the information is, at the time of disclosure by *Contractor*, then in the public domain; or (iii) the information is obtained by *Contractor* from a third party who did not receive the same, directly or indirectly, from the *District* and who has no obligation of nondisclosure with respect thereto; or (iv) *Contractor* is required to disclose information pursuant to any law, subpoena, court order or government directive. *Contractor* further agrees that he will not, without the prior written consent of the *District*, disclose to any third party any information developed or obtained by *Contractor* in the performance of this Agreement except to the extent that such information falls within one of the categories described in (i), (ii), (iii) or (iv) above.

If so requested by the *District*, *Contractor* further agrees to require its employees to execute a Nondisclosure Agreement prior to performing any services under this Agreement.

## 10. SUBCONTRACTS

Any contract entered into by *Contractor* with any subcontractor or any person or organization for the performance of this Agreement, or any portion thereof, without prior written consent of *District* shall be void. Consent will not be given to any proposed contract, as mentioned above, which would relieve *Contractor* or its surety of their responsibilities under this Agreement.

## 11. COMPLIANCE WITH LAWS

This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. The venue of any action involving the Contractor and the District shall be exclusively in a court of competent jurisdiction of the State of Washington, County of Okanogan.

*Contractor* shall promptly give all notices and comply strictly with all laws, codes, ordinances, rules, orders and regulations applicable to the work. *Contractor* shall hold the *District* harmless as a result of any infractions thereof by it or any of its Subcontractors.

Without limitation on the foregoing, the *Contractor* shall comply with (i) the Washington Industrial Safety and Health Act (WISHA); (ii) if required, Executive Order No. 11246, dated September 24, 1965, as amended by Executive Order No. 11375, including posting of notices, filing of reports, and initiation of programs; and, if required, the *Contractor* also will contract with all of its vendors, subcontractors, and/or agents to comply with the foregoing Executive Orders.

The *Contractor* agrees that no workman, laborer or mechanic employed in the performance of any part of this Contract shall be paid less than the 'prevailing rate of wage' as determined by the industrial statistician of the Department of Labor and Industries. The *Contractor* shall provide a Statement of Intent to Pay Prevailing Wage.

*Contractor* shall comply with RCW 41.50 & WAC 415-02-325 (statutory requirements of Washington State Department of Retirement Systems) and agrees to report to the *District*, if any employee who performs a service for the *District* as the owner or employee of the *Contractor*, is a 2008 ERF (Early Reduction Factor) retiree and receiving a retirement disbursement. If the *District* incurs an overpayment liability from WA State DRS as a result of non-disclosure, the *Contractor* will be held liable for costs incurred by the *District*. The *Contractor* may request a Retirement Status Form from WA State DRS.

## 12. TERMINATION

The *District* may, by written notice to the *Contractor*, terminate this Agreement in whole or in part any time, either for the *District's* convenience or for the default of *Contractor*. Upon such termination, all

data, drawings, specifications, reports, estimates, summaries, and such other information and materials as may have been accumulated by the *Contractor* in the exclusive performance of this Agreement shall, in the manner and to the extent determined by the *District*, become the property of and be delivered to the *District*. Such materials are not intended or represented to be suitable for reuse by the *District* or others for the completion of the project covered by this Agreement by others, on extensions of this project or on any other project, without written verification or adaptations by *Contractor*. Any reuse other than for the specific purpose intended will be at the *District's* sole risk and without liability or legal exposure to *Contractor*.

If the termination is for the convenience of the *District*, an equitable adjustment in the agreement price shall be made by agreement between *Contractor* and *District* in the compensation to be paid *Contractor* under this Agreement, including reasonable termination expenses, but no amount shall be allowed for anticipated profit or unperformed services.

If, after notice of termination for failure to fulfill Agreement obligation, it is determined that the *Contractor* had not so failed, the termination shall be deemed to have been effected for the convenience of the *District*. In such event, adjustment in the Agreement price shall be made as provided in the paragraph above.

The rights and remedies of the *District* provided in this Article are in addition to any other rights and remedies provided by law or under this Agreement.

### **13. CHANGES**

The *District* may at any time, by written order, make changes within the Statement of Work of the Agreement in the services to be performed. If such changes cause an increase or decrease in the cost or time required for performance of any services under this Agreement, an equitable adjustment shall be made and the Agreement shall be modified in writing accordingly. Any claim for adjustment under this Article must be asserted in writing within thirty (30) days from the date of receipt by the *Contractor* of the notification of change, unless the *District* grants a further period of time before the date of final payment under the Agreement.

No services for which an additional cost or fee will be charged by the *Contractor* shall be furnished without the prior written authorization of the *District*.

### **14. PROGRESS REVIEW**

The services performed under this Agreement shall be subject to review by the *District*. This periodic review shall not relieve the *Contractor* of responsibility for proper performance of the services.

### **15. AUDITS**

The *Contractor* shall, during the life of this contract and for a period of three (3) years following the final settlement and close out of the contract, retain sufficient evidence, which shall be freely disclosed to the *District* and its agents to permit verification of proper performance of entitlement to payments for work under this contract.

### **16. REPORTS AND RECORDS**

The *Contractor* shall provide reports submitted in the manner directed by the *District*. The *Contractor* shall maintain on file and have available to the *District* its calculations in legible form for a period of three (3) years following termination of this Agreement. Said files shall also include drawings, specifications, reports and any other documents prepared by the *Contractor* in connection with any or

all of the services furnished hereunder, which items shall be the property of the *District* subject to stipulations of paragraph 8 of this agreement.

#### 17. INVOICES

*Contractor* shall invoice in duplicate referencing this Agreement number and the Work Release Order Number, if any. Invoices shall be itemized and supported by proper documentation. Invoices are to be mailed in duplicate directly to:

**Att'n: Roy Schwilke**  
**Okanogan County PUD No. 1**  
**P.O. Box 912**  
**Okanogan, WA 98840**

#### 18. NOTICES

Any notice required to be given under this Agreement shall be given by depositing in the U.S. Mail, with registered postage prepaid, to the address of the *District* or *Contractor* respectively, as set forth herein, and shall be effective on the date of mailing as shown by the postmark or shall be given in writing served on an officer of the *Contractor* or on the Technical Representative of the *District*.

#### 19. TITLE

The *District* shall retain title to all *District* furnished property. All *District* property and all property acquired by the *Contractor* or its subcontractors are subject to the provisions of this clause. If this contract contains a provision directing the *Contractor* or its subcontractor to purchase material or equipment for which the *District* will reimburse the *Contractor* or its subcontractors as a direct item of cost under this contract –

- (i) Title to material and equipment purchased from a vendor shall pass to and vest in the *District* upon random delivery of such material and equipment, and
- (ii) Title to all other material and equipment shall pass to and vest in the *District* upon –
  - (a) Issuance of the material and equipment for use in contract performance; or
  - (b) Commencement of proceedings of the material and equipment or its use in contract performance;
  - or
  - (c) Reimbursement of the cost of the material and equipment by the *District*, whichever occurs first.

#### 20. ASSIGNMENT OF RIGHTS

The rights of each party under this Agreement are personal to that party and may not be assigned or transferred to any other person, firm, corporation, or other entity without the prior, express, and written consent of the other party.

#### 21. ATTORNEY'S FEES

In the event that any action is filed in relation to this Agreement, the unsuccessful party in the action shall pay to the successful party, in addition to all sums that either party may be called on to pay, a reasonable sum for the successful party's attorney's fees.

#### 22. DISPUTE RESOLUTION

Applicable Law and Dispute Resolution. This Agreement shall be construed and enforced pursuant to the laws of the State of Washington. Any dispute, controversy, breach or other type of claim (collectively referred to as "dispute") arising out of or relating to this Agreement shall be resolved in the following manner.

- a. Within seven (7) days after either party determines that an unresolved dispute exists, the party seeking relief shall serve the other party with a written notice specifying the nature of the dispute in detail.
- b. Within seven (7) days after receipt of notice of dispute, the parties shall meet and confer in a good faith attempt to resolve the dispute. Participants in the meeting must have the authority to enter into binding resolution on behalf of each party. If an agreement is reached, the parties shall document the resolution of the dispute in writing.
- c. If no agreement is reached, either party may request facilitated mediation. A written request for mediation shall be served on the other party within seven (7) days of the meet and confer session. The parties shall within thirty (30) days of receipt of request for mediation agree on a qualified, neutral mediator. In the event a mediator is selected by the parties, the costs shall be born equally between the parties. Each party shall bear its own costs and attorney's fees of the mediation process. The mediation shall conclude within thirty (30) days of the submittal to the mediator.
- d. In the event the above methods fail to resolve the dispute, either party may bring legal action for dispute settlement against the other party of which the venue will be in a court of competent jurisdiction in Okanogan County, Washington.