**MASTER CONTRACT**

**NO. 05620-11**

**IT CABLING**

**CATEGORY 1 -SERVICES AND INSTALLATION**

*For Use by Eligible Purchasers*

By and Between

**STATE OF WASHINGTON**
**DEPARTMENT OF ENTERPRISE SERVICES**

and

**MILNE ELECTRIC, INC.**

Dated November 12, 2021

**MASTER CONTRACT**

**NO. 05620-11**

**IT CABLING – CATEGORY 1- SERVICES AND INSTALLATION**
**NORTH PUGET SOUND REGION**
**(INSIDE AND OUTSIDE)**

This Master Contract ("Master Contract") is made and entered into by and between the State of Washington acting by and through the Department of Enterprise Services, a Washington State governmental agency ("Enterprise Services") Milne Electric, Inc. a Washington corporation ("Contractor") and is dated and effective as of November 12, 2021.

**R E C I T A L S**

A. Pursuant to Legislative authorization, Enterprise Services, on behalf of the State of Washington, is authorized to develop, solicit, and establish master contracts for goods and/or services to support Washington state agencies. *See* RCW 39.26.050(1). The Washington State Legislature also has authorized Enterprise Services to make these master contracts available, pursuant to an agreement in which Enterprise Services ensures full cost recovery, to other local or federal government agencies or entities, public benefit nonprofit organizations, and any tribes located in the State of Washington. *See* RCW 39.26.050(1) & (2).

B. The State of Washington, through various state agencies, purchases IT Cabling goods and services for new and previously installed Local Area Networks (LANs) and Wide Area Networks (WANs) and other voice, data, or video systems (Category 1 – IT Cabling Services and Installation). This Master Contract is designed to provide a competitively solicited and awarded procurement solution for such agencies and other eligible purchasers to cost-effectively and efficiently purchase Category 1 – IT Cabling Services and Installation (Goods and/or Services).

C. On behalf of the State of Washington, Enterprise Services, as part of a competitive governmental procurement, issued Competitive Solicitation No. 05620 dated June 24, 2021. The Competitive Solicitation was structured to meet purchaser needs and designed to result in Master Contract awards, by geographic area, in which the State of Washington was divided into six regions.

D. Enterprise Services evaluated all responses to the Competitive Solicitation and identified Contractor as an apparent successful bidder.

E. Enterprise Services has determined that entering into this Master Contract will meet the identified needs and be in the best interest of the State of Washington.

F. The purpose of this Master Contract is to enable eligible purchasers to purchase the Goods and/or Services as set forth herein.

## A G R E E M E N T

**NOW THEREFORE**, in consideration of the mutual promises, covenants, and conditions set forth herein, the parties hereto hereby agree as follows:

**1. TERM**. The term of this Master Contract is thirty-six (36) months, commencing November 12, 2021 and ending November 11, 2024; *Provided*, however, that:

If Contractor is not in default and if, by May 11, 2024, in Enterprise Services' reasonable judgment, Contractor satisfactorily has met the performance-based goals for contract extension, Enterprise Services shall extend the term of this Master Contract, by written amendment, for up to thirty-six (36) additional months. Such extension amendment, however, must be agreed and executed on or before June 11, 2024 and shall be on the same terms and conditions as set forth in this Master Contract. To earn the performance-based Master Contract term extension, Contractor must achieve the following performance-based metrics:

| PERFORMANCE METRIC | PERFORMANCE REQUIREMENT FOR CONTRACT EXTENSION |
|---|---|
| Annual Master Contract Sales Report: | Timely provide to Enterprise Services at the designated address, annual reports required by this Master contract at no less than 80% on time rate over the contract term. *See § 13.3 Annual Master Contract Sales Report.* |
| Contractor Representations and Warranties | Maintain 100% compliance with all representations and warranties as listed in § 4 of this Master Contract. |
| Insurance Endorsements: | Timely provide to Enterprise Services at the designated address, without exception, annual insurance endorsements for the insurance coverages required by this Master Contract. *See Exhibit C – Insurance Requirements* at § 4. |
| Vendor Management Fee: | Timely remit to Enterprise Service, with no less than a 75% on time rate over the contract term, the applicable Vendor Management Fee (VMF).<br>*Note*: Contractor must pay the VMF within thirty (30) days of invoice from Enterprise Services. If Contractor is delinquent in timely paying the VMF for three (3) or more quarters within the first nine (9) quarters of the Master Contract term, Contractor will not be eligible for a performance-based extension. |
| Master Contract Quarterly Sales Reports: | Timely provide to Enterprise Services, with no less than a 75% on time rate over the contract term, the required Master Contract quarterly sales reports.<br>*Note*: Contractor must provide the quarterly sales reports to Enterprise Services within thirty (30) days of the quarter's end. If Contractor is delinquent in providing the quarterly sales reports for three (3) or more quarters within the first nine (9) quarters of the Master Contract term, Contractor will not be eligible for a performance-based extension. |

**2. ELIGIBLE PURCHASERS**. This Master Contract may be utilized by any of the following types of entities (each an eligible "Purchaser"):

2.1. WASHINGTON STATE AGENCIES. All Washington state agencies, departments, offices, divisions, boards, and commissions.

2.2. WASHINGTON STATE INSTITUTIONS OF HIGHER EDUCATION (COLLEGES). Any the following institutions of higher education in Washington:

- State universities – i.e., University of Washington & Washington State University;
- Regional universities – i.e., Central Washington University, Eastern Washington University, & Western Washington University
- Evergreen State College;
- Community colleges; and
- Technical colleges.

2.3. MCUA PARTIES. Any of the following types of entities that have executed a Master Contract Usage Agreement with Enterprise Services:

- Political subdivisions (e.g., counties, cities, school districts, public utility districts) in the State of Washington;
- Federal governmental agencies or entities;
- Public-benefit nonprofit corporations (i.e., § 501(c)(3) nonprofit corporations that receive federal, state, or local funding); and
- Federally-recognized Indian Tribes located in the State of Washington.

**3. SCOPE – INCLUDED GOODS/SERVICES AND PRICE**.

3.1. CONTRACT SCOPE. Pursuant to this Master Contract, Contractor is authorized to sell and provide only those Goods and/or Services set forth in *Exhibit A – Included Goods/Services* for the prices set forth in *Exhibit B – Prices*. Contractor shall not represent to any Purchaser under this Master Contract that Contractor has contractual authority to sell or provide any Goods and/or Services beyond those set forth in *Exhibit A – Included Goods/Services*.

(a) Goods. For purposes of this Master Contract, "Goods" means all equipment, materials, supplies, ancillary parts, accessories, components and other items purchased by Purchaser pursuant to this Master Contract and as identified in the Purchase Order.

(b) Services. For purposes of this Master Contract, "Services" means all services of any nature ordered by Purchaser pursuant to this Master Contract and as identified in the Purchase Order.

(c) Specifications. Where applicable, specifications for Goods and/or Services are detailed in the Purchase Order. Unless otherwise specified in the Purchase Order, all Goods and/or Services provided shall be new, unused and of the latest model or design.

3.2. STATE'S ABILITY TO MODIFY SCOPE OF MASTER CONTRACT. Subject to mutual agreement between the parties, Enterprise Services reserves the right to modify the Goods and/or Services included in this Master Contract; *Provided*, however, that any such modification shall be effective only upon thirty (30) days advance written notice; and *Provided further*, that any such modification must be within the scope of the Competitive Solicitation for this Master Contract.

3.3. PRICE CEILING. Although Contractor may offer lower prices to Purchasers, during the term of this Master Contract, Contractor guarantees to provide the Goods/Services at no greater than the prices set forth in *Exhibit B – Prices for Goods/Services*.

3.4. E-RATE DISCOUNT PROGRAM. For qualifying Purchasers, Contractor agrees to participate in the Federal Communication Commission's E-rate discount program established pursuant to the Telecommunications Act of 1996, in accordance with the Schools and Libraries Division (SLD) of the Universal Service Administration Corporation (USAC) requirements and provide applicable discounts.

3.5. MASTER CONTRACT INFORMATION. Enterprise Services shall maintain and provide to eligible Purchasers information regarding this Master Contract, including scope, pricing, and lowest responsive, responsible bidder designation. In addition, Enterprise Services identifies awarded contractors who qualify as Washington Small Businesses, Certified Veteran-Owned Businesses, or that, pursuant to the Master Contract provide Goods/Services that meet specified state procurement priorities as set forth in the Competitive Solicitation.

**4. CONTRACTOR REPRESENTATIONS AND WARRANTIES.** Contractor makes each of the following representations and warranties as of the effective date of this Master Contract and at the time any order is placed pursuant to this Master Contract. If, at the time of any such order, Contractor cannot make such representations and warranties, Contractor shall not process any orders and shall, within three (3) business days notify Enterprise Services, in writing, of such breach.

4.1. QUALIFIED TO DO BUSINESS. Contractor represents and warrants that Contractor is (a) in good standing; (b) qualified to do business in the State of Washington; and (c) registered with the Washington State Department of Revenue and the Washington Secretary of State.

4.2. TAXES. Contractor represents and warrants that Contractor is current, in full compliance, and has paid all applicable taxes owed to the State of Washington.

4.3. LICENSES; CERTIFICATIONS; AUTHORIZATIONS; & APPROVALS. Contractor represents and warrants that Contractor possesses and shall keep current during the term of this Master Contract all required licenses, certifications, permits, authorizations, and approvals necessary for Contractor's proper performance of this Master Contract.

4.4. SUSPENSION & DEBARMENT. Contractor represents and warrants as previously certified in Contractor's Bidder's Certification, that neither Contractor nor its principals or affiliates presently are nor have ever been debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in any governmental contract by any governmental department or agency within the United States.

4.5. WAGE VIOLATIONS. Contractor represents and warrants as previously certified in Contractor's Bidder's Certification, that during the term of this Master Contract and the three (3) year period immediately preceding the award of the Master Contract, Contractor has not been determined, by a final and binding citation and notice of assessment issued by the Washington Department of Labor and Industries or through a civil judgment entered by a court of limited or general jurisdiction, to be in willful violation of any provision of Washington state wage laws set forth in RCW 49.46, 49.48, or 49.52.

4.6. EXECUTIVE ORDER 18-03 – WORKERS' RIGHTS. Contractor represents and warrants, as previously certified in Contractor's Bidder's Certification, that Contractor does NOT require its employees, as a condition of employment, to sign or agree to mandatory individual arbitration clauses or class or collective action waivers. Contractor further represents and warrants that, during the term of this Contract, Contractor shall not, as a condition of employment, require its employees to sign or agree to mandatory individual arbitration clauses or class or collective action waivers.

4.7. PUBLIC CONTRACTS AND PROCUREMENT FRAUD. Contractor represents and warrants that, within the three (3) year period prior to this Master Contract, neither Contractor nor its principals or affiliates: (a) have been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offence in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) contract or Purchase Order under a public contract; (b) have been in 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 presently indicted for or otherwise criminally or civilly charged by a government entity (federal, state or local) with commission of any of the offense enumerated in subsection (b) of this provision; or (d) had one or more public contracts (federal, state or local) terminated for cause or default.

4.8. PROCUREMENT ETHICS & PROHIBITION ON GIFTS. Contractor represents and warrants that Contractor complies fully with all applicable procurement ethics restrictions including, but not limited to, restrictions against Contractor providing gifts or anything of economic value, directly or indirectly, to Enterprise Services and Purchasers' employees.

4.9. WASHINGTON'S ELECTRONIC BUSINESS SOLUTION (WEBS). Contractor represents and warrants that Contractor is registered in Washington's Electronic Business Solution (WEBS), Washington's contract registration system and that, all of Contractor's information therein is current and accurate and that throughout the term of this Master Contract, Contractor shall maintain an accurate profile in WEBS.

4.10. WASHINGTON'S STATEWIDE PAYEE DESK. Contractor represents and warrants that Contractor is registered with Washington's Statewide Payee Desk, which registration is a condition to payment.

4.11. MASTER CONTRACT PROMOTION; ADVERTISING AND ENDORSEMENT. Contractor represents and warrants that Contractor shall use commercially reasonable efforts both to promote and market the use of this Master Contract with eligible Purchasers and to ensure that those entities that utilize this Master Contract are eligible Purchasers. Contractor understands and acknowledges that neither Enterprise Services nor Purchasers are endorsing Contractor's Goods and/or Services or suggesting that such Goods and/or Services are the best or only solution to their needs. Accordingly, Contractor further represents and warrants that Contractor shall make no reference to Enterprise Services, any Purchaser, or the State of Washington in any promotional material without the prior written consent of Enterprise Services.

4.12. CIVIL RIGHTS. Contractor represents and warrants that Contractor complies with all applicable requirements regarding civil rights. Such requirements prohibit discrimination against individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, or national origin.

4.13. CONTINGENT FEES. Contractor represents and warrants that no person or selling agent has been employed or retained to solicit or secure this Master Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established agents as defined in the Federal Acquisition Regulations.

4.14. FINANCIALLY SOLVENT. Contractor represents and warrants that Contractor has not commenced bankruptcy proceedings and that there are no judgment, liens, or encumbrances of any kind affecting title to any Goods or Services that are the subject of this Master Contract.

4.15. MASTER CONTRACT TRANSITION. Contractor represents and warrants that, in the event this Master Contract or a similar contract, is transitioned to another contractor (e.g., Master Contract expiration or termination), Contractor shall use commercially reasonable efforts to assist Enterprise Services (including the Purchasers hereunder) for a period of sixty (60) days to effectuate a smooth transition to another contractor to minimize disruption of service and/or costs to the State of Washington and such Purchasers; *Provided*, however, that, if costs are incurred, Contractor shall be compensated for such costs consistent with the terms and conditions pertaining to this Master Contract for the sixty (60) day period immediately before such transition.

4.16. OSHA/WISHA. Contractor represents and warrants, as previously certified in Contractor's Bidder's Certification, that Contractor complies with the federal Occupational Safety and Health Administration (OSHA) and the Washington Industrial Safety and Health Act (WISHA) Additionally, all services provided and materials furnished pursuant to this Master Contract shall conform to and comply with said laws, standards, and regulations.

4.17. ELECTRICAL CODE. Contractor represents and warrants, as previously certified in Contractor's Bidder's Certification, that Contractor complies with applicable electrical code requirements.

4.18. COVID-19 VACCINATION VERIFICATION. Contractor represents and warrants that Contractor has a current COVID-19 Contractor Vaccination Verification Plan to ensure that Contractor's personnel (including subcontractors) who perform this Master Contract on-site at Washington state agency premises or at the premises of any Purchaser who so requests, unless properly excepted or exempted by the Proclamation, are fully vaccinated for COVID-19 as of October 18, 2021 as set forth in the Governor's Proclamation, *Proclamation 21-14 – COVID-19 Vaccination Requirement* (dated August 9, 2021) as amended by *Proclamation 21-14.1 – COVID-19 Vaccination Requirement* (dated August 20, 2021). Contractor further represents and warrants that Contractor:

(a) Has reviewed and understands Contractor's obligations as set forth in *Proclamation 21-14 – COVID-19 Vaccination Requirement (dated August 9, 2021), as amended by Proclamation 21-14.1 – COVID-19 Vaccination Requirement (dated August 20, 2021);*

(b) Has developed a COVID-19 Vaccination Verification Plan for Contractor's personnel (including subcontractors) that complies with the above-referenced Proclamation;

(c) Has obtained a copy or visually observed proof of full vaccination against COVID-19 for Contractor personnel (including subcontractors) who are subject to the vaccination requirement in the above-referenced Proclamation;

(d) Complies with the requirements for granting disability and religious accommodations for Contractor personnel (including subcontractors) who are subject to the vaccination requirement in the above-referenced Proclamation;

(e) Has operational procedures in place to ensure that any contract activities that occur on-site at Washington state agency premises or at the premises of any Purchaser who so requests (other than only for a short period of time during a given day and where any moments of close proximity to others on-site will be fleeting – e.g., a few minutes for deliveries) that are performed by Contractor personnel (including subcontractors) will be performed by personnel who are fully vaccinated or properly excepted or exempted as required by the above-referenced Proclamation;

(f) Has operational procedures in place to enable Contractor personnel (including subcontractors) who perform contract activities on-site at Washington state agency premises or at the premises of any Purchaser who so requests to provide compliance documentation that such personnel are in compliance with the above-referenced Proclamation; and

(g) Will provide to Enterprise Services or Purchaser, upon request, Contractor's COVID-19 Vaccination Verification Plan and related records, except as prohibited by law, and will cooperate with any investigation or inquiry pertaining to the same.

**5. QUALITY; WARRANTY; REMEDIES.**

5.1. GOODS WARRANTY. Contractor warrants that, for a minimum period of twelve (12) months from the date when the Goods are put into use, the Goods: (a) are free from defects in design, material, and workmanship; (b) are fit and safe for the intended purposes and appropriate for the specified application(s) (if any); (c) are consistent with recognized industry quality standards; (d) comply with the requirements, specifications, drawings, standards, and descriptions included in this Master Contract; and (e) are produced and delivered in full compliance with applicable law ("Goods Warranty"). Goods Warranty can be increased by the Purchase Order/SOW which must start on the "Acceptance Date." Contractor further warrants that it has good and marketable title to the Goods and shall keep Purchaser's property free of liens. If Purchaser receives notice of a lien caused by Contractor, Purchaser may withhold any payment otherwise due Contractor until Contractor submits proof, in a form satisfactory to Purchaser, that all lienable claims have been fully paid or waived.

5.2. GOODS REMEDY. If Goods do not comply with the Goods Warranty or any defects develop during the Goods Warranty Period under normal use, at Purchaser's election, Contractor promptly shall remedy the defect by removing, repairing, correcting, or replacing, and/or reinstalling any defective Goods. Contractor's Goods Warranty support shall include, at Contractor's sole expense, all technical support, parts, materials and equipment, and labor, including freight and "in/out" costs required to address the defect. If, in Purchaser's judgment, repair or replacement is inadequate, or fails of its essential purpose, Contractor shall refund the full amount of any payments that have been made. The rights and remedies of the parties under this warranty are in addition to any other rights and remedies of the parties provided by law or equity, including, without limitation, actual damages, and, as applicable and awarded under the law, to a prevailing party, reasonable attorneys' fees and costs.

5.3. SERVICES WARRANTY. Contractor warrants that: (a) Services will be performed in a timely, efficient, professional, and workmanlike manner; (b) all Contractor personnel assigned to perform Services will have the necessary skill and training; and (c) Services will be performed in a manner consistent with the standard of care in the industry ("Services Warranty"). The Services Warranty will survive for a period of a minimum of twelve (12) months after the date when Services are completed ("Services Warranty Period") as noted in Exhibit A Requirement 15.5.

5.4. SERVICES REMEDY. If Services do not comply with the Services Warranty or are in any manner found to be nonconforming during the Services Warranty Period, Contractor promptly shall remedy the non-conformance, or at Purchaser's election, Contractor shall re-perform or correct the nonconforming Services at no additional cost to Purchaser or refund the amounts paid for the Services.

5.5. IT WARRANTY. Contractor warrants, that all hardware, software, and firmware associated with Goods or Services ("IT Goods" and "IT Services", respectively) will not: (a) contain any viruses, malicious code, Trojan horse, worm, time bomb, self-help code, back door, or other software code or routine designed to: (i) damage, destroy, or alter any software or hardware; (ii) reveal, damage, destroy, or alter any data; (iii) disable any computer program automatically; or (d) permit unauthorized access to any software or hardware; (b) contain any third party software (including software that may be considered free software or open source software) that (i) may require any software to be published, accessed, or otherwise made available without the consent of Purchaser, or (ii) may require distribution, copying, or modification of any software free of charge; and (c) infringe on any patent, copyright, trademark, or other proprietary or intellectual property right of any third party or misappropriate any trade secret of any third party ("IT Warranty"). The IT Warranty will expire twelve (12) months after the date IT Goods are delivered or IT Services are complete, as applicable.

5.6. IT REMEDY. If IT Goods or IT Services do not comply with the IT Warranty, or if any defect or non-conformance develops during the IT Warranty Period, Contractor, at Purchaser's election, promptly will: (a) remedy the defect by removing, repairing, correcting or replacing, and/or reinstalling any defective IT Goods; (b) re-perform or correct the non-conforming IT Services at no additional cost to Purchaser; or (c) refund the amounts paid for IT Services and IT Goods.

5.7. FAILURE TO REMEDY. If Contractor does not remedy a defect or nonconformity within ten (10) calendar days after receipt of written notice from Purchaser, or if an emergency exists rendering it impossible or impractical for Purchaser to have Contractor provide a remedy, Purchaser may, without prejudice to any other rights or remedies available to it, make or cause to be made required modifications, adjustments, or repairs, or may replace Goods, Services, IT Goods, or IT Services, in which case Contractor shall reimburse Purchaser for its actual costs or, at Purchaser's option, Purchaser will offset the costs incurred from amounts owing to Contractor.

5.8. TECHNICAL SUPPORT. During any applicable warranty period, Contractor shall provide all warranty service and telephone support, including after-hour technical support, at its own cost. Contractor shall maintain a technical support hotline to address breakdowns and safety incidents. Technical Support Services can be reached, as noted in Exhibit A Section 15.6.

**6. SAFETY; SECURITY**. Contractor's failure to comply with any of the requirements in this Section shall be cause for termination.

6.1. REGULATORY REQUIREMENTS/SAFETY. Goods/Services supplied by Contractor shall meet all OSHA and other safety-related federal, state, and/or local regulatory agency requirements applicable to the Goods/Services.

6.2. MATERIAL SAFETY DATA SHEETS. As applicable, Contractor shall provide Purchaser with all appropriate Material Safety Data Sheets ("MSDS") at the time of delivery of each shipment of Goods which requires such compliance and/or and for materials used by Contractor while performing Services and any updates of the same.

6.3. CLEAN-UP. If Contractor, its agents, employees, or subcontractors perform onsite Services, Contractor, at its cost, will remove all excess materials, equipment, packaging, and garbage within the scope of its performance of Services and leave that portion of the premises in which the work was performed in a clean condition. Should Contractor fail to clean up a Site after completion of work, Purchaser will have the right to remove the materials and set off the cost of clean up against amounts owed to Contractor.

6.4. ACCIDENT AND INJURY REPORTING. If Contractor, its agents, employees, or subcontractors are present at Purchaser's premises, Contractor promptly will report in writing all injuries, accidents, property damage, near-miss incidents, or any claims regarding damages or injury involving Contractor, its agents, employees, or subcontractors occurring at such premises. Contractor agrees to cooperate and assist in any Purchaser investigation of incidents. Purchaser reserves the right to require Contractor to repair any damage caused during installation or provide full compensation as determined by Purchaser.

6.5. ON SITE REQUIREMENTS. While on Purchaser's premises, Contractor, its agents, employees, or subcontractors shall comply, in all respects, with Purchaser's physical, fire, access, safety, and other security requirements and not interfere with Purchaser's operations. Contractor represents and warrants that Contractor, its agents, employees, or subcontractors who access Purchaser's premises will be adequately trained and at all times comply with Purchaser's requirements.

6.6. IT SECURITY POLICIES. Contractor, its agents, employees, or subcontractors shall comply with all Washington State IT security policies and standards which will be made available to Contractor upon request.

**7. SUBCONTRACTORS.**

7.1. CONTRACTOR RESPONSIBILITY. Notwithstanding any provision to the contrary, in the event Contractor elects to utilize subcontractors to perform this Master Contract, Contractor shall: (a) incorporate Contractor's responsibilities under this Master Contract into its subcontracts; (b) be fully responsible for the performance of any such subcontractors (regardless of tier) and ensure that subcontractors comply with each and every Contractor obligation set forth in this Master Contract; (c) be the sole point of contact for Enterprise Services and any Purchasers regarding all contractual matters; and (d) defend, indemnify, and hold Enterprise Services and Purchasers harmless in case of negligence, other tortious fault, or intentional misconduct by any such subcontractors (regardless of tier). In the event Contractor elects to change subcontractors from those previously identified in Contractor's Bidder Profile (included in bid submission), Contractor must notify DES before commencing any work with new subcontractors. DES reserves the right to approve or deny any subcontractors.

7.2. REPORTING. If Contractor is required to report to Purchaser and/or Enterprise Services, such report(s) will include subcontractor data, by subcontractor, for any data that Contractor is required to report as well as a consolidated 'rollup' report combining Contractor and subcontractor data.

7.3. SUBCONTRACTOR REPRESENTATIONS AND CERTIFICATIONS. Any Contractor representations or certifications set forth in this Master Contract shall apply to subcontractors (at any tier) and Contractor shall not utilize any subcontractors (at any tier) who cannot provide such representations or certifications, excepting the certification to be registered with Washington's Statewide Payee Desk, unless Purchaser will pay such subcontractor directly.

## 8. USING THE MASTER CONTRACT – PURCHASES.

8.1. ORDERING REQUIREMENTS. Eligible Purchasers shall order Goods and/or Services from this Master Contract, consistent with the terms hereof and by using any ordering mechanism agreeable both to Contractor and Purchaser but including, at a minimum, a purchase order, or Statement of Work (SOW). When practicable, Contractor and Purchaser also shall use telephone orders, email orders, web-based orders, and similar procurement methods (collectively "Purchaser Order"). All Purchase Orders must reference the Master Contract number. The terms of this Master Contract shall apply to any Purchase Order or SOW and, in the event of any conflict, the terms of this Master Contract shall prevail. Notwithstanding any provision to the contrary, in no event shall any 'click-agreement,' software or web-based application terms and conditions, or any other agreement modify the terms and conditions of this Master Contract.

8.2. FEDERAL FUNDS. To the extent that any Purchaser uses federal funds to purchase Goods and/or Services pursuant to this Master Contract, such Purchaser, at the time the order is placed with Contractor, shall attach the most current version of the applicable federal funding requirements (e.g., FTA requirements, sample attached as Exhibit D) to the Purchase Order/SOW, and specify any applicable requirement or certification that Contractor must satisfy for such Purchase Order/SOW.

8.3. DELIVERY REQUIREMENTS. Contractor must ensure that the Goods/Services are delivered or provided as required by this Master Contract, the Purchase Order used by Purchaser, and as otherwise mutually agreed in writing between Purchaser and Contractor. The following apply to all deliveries:

(a) Contractor shall make all deliveries to the applicable delivery location specified in the Purchase Order. Such deliveries shall occur during Purchaser's normal work hours and within the time period mutually agreed in writing between Purchaser and Contractor.

(b) Contractor shall ship all Goods and/or Services purchased pursuant to this Master Contract, freight charges prepaid by Contractor, FOB Purchaser's specified destination with all transportation and handling charges included. Contractor shall bear all risk of loss, damage, or destruction of the Goods and/or Services ordered hereunder that occurs prior to delivery, except loss or damage attributable to Purchaser's fault or negligence.

(c) All packing lists, packages, instruction manuals, correspondence, shipping notices, shipping containers, and other written materials associated with this Master Contract shall be identified by the Master Contract number set forth on the cover of this Master Contract and the applicable Purchaser's Purchase Order number. Packing lists shall be enclosed with each shipment and clearly identify all contents and any backorders.

8.4. RECEIPT AND INSPECTION OF GOODS AND/OR SERVICES. Goods and/or Services purchased under this Master Contract are subject to Purchaser's reasonable inspection, testing, and approval at Purchaser's destination. Purchaser reserves the right to reject and refuse acceptance of Goods and/or Services that are not in accordance with this Master Contract and Purchaser's Purchase Order. If there are any apparent defects in the Goods and/or Services at the time of delivery, Purchaser promptly will notify Contractor. At Purchaser's option, and without limiting any other rights, Purchaser may require Contractor to repair or replace, at Contractor's expense, any or all of the damaged Goods and/or Services or, at Purchaser's option, Purchaser may note any such damage on the receiving report, decline acceptance, and deduct the cost of rejected Goods and/or Services from final payment. Payment for any Goods and/or Services under such Purchase Order shall not be deemed acceptance.

8.5. INSTALLATION. Installation shall be performed by Contractor in a professional manner in accordance with industry standard best practices. The premises shall be left in a neat, clean, and undamaged condition. Purchaser reserves the right to require Contractor to repair any damage caused during installation or provide full compensation as determined by Purchaser.

**9. INVOICING & PAYMENT.**

9.1. CONTRACTOR INVOICE. Contractor shall submit to Purchaser's designated invoicing contact properly itemized invoices for Goods and/or Services delivered under this Master Contract. Such invoices shall itemize the following:

(a) Master Contract No. 05620;

(b) Contractor name, address, telephone number, and email address for billing issues (i.e., Contractor Customer Service Representative);

(c) Contractor's Federal Tax Identification Number;

(d) Date(s) of delivery (if applicable)

(e) Description of Services and Installation provided, including hourly rate and total hours for each labor category, if applicable. Pricing for Labor categories must be clearly structured in same manner as contract pricing ($/hr., and PW + %)

(f) Description of Parts and Materials provided. Pricing for Parts and Materials must be clearly structured in same manner as contract pricing (cost + % markup)

(g) Invoice amount; and

(h) Payment terms, including any available prompt payment discounts.

Contractor's invoices for payment must reflect accurate Master Contract prices. Invoices will not be processed for payment until receipt of a complete invoice as specified herein.

9.2. PAYMENT. Payment is the sole responsibility of, and will be made by, the Purchaser. Purchaser's obligation to pay invoices is subject to receipt of a timely and accurate invoice and conforming Goods and/or Services. Unless Contractor has provided a prompt payment discount set forth in *Exhibit B – Prices*, Purchaser's payment is due within thirty (30) days of invoice. Purchaser retains the right of setoff for any amount due or owing to Purchaser. Purchaser may make payments electronically (e.g., ACH payments). Contractor shall provide information necessary to facilitate electronic payments. If Purchaser fails to make timely payment(s), Contractor may invoice Purchaser in the amount of one percent (1%) per month on the amount overdue or a minimum of $1. Payment will not be considered late if a check or warrant is mailed within the time specified.

9.3. OVERPAYMENTS. Contractor promptly shall refund to Purchaser the full amount of any erroneous payment or overpayment. Such refunds shall occur within thirty (30) calendar days of written notice to Contractor; *Provided*, however, that Purchaser shall have the right to elect to have either direct payments or written credit memos issued. If Contractor fails to make timely refunds of overpayment(s) (either directly or by credit memo), Contractor shall pay Purchaser interest at the rate of one percent (1%) per month on the amount overdue thirty (30) calendar days after notice to Contractor.

9.4. ADVANCE PAYMENT PROHIBITED. Except as authorized by law, Contractor shall not request or receive advance payment for any Goods and/or Services furnished by Contractor pursuant to this Master Contract.

9.5. NO ADDITIONAL CHARGES. Unless otherwise specified herein, Contractor shall not include or impose any additional charges including, but not limited to, charges for shipping, handling, insurance, or payment processing.

9.6. TAXES/FEES. Contractor promptly shall pay all applicable taxes on its operations and activities pertaining to this Master Contract. Failure to do so shall constitute breach of this Master Contract. Unless otherwise agreed, Purchaser shall pay applicable sales tax imposed by the State of Washington on purchased Goods and/or Services. Contractor's invoices shall separately state (a) taxable and non-taxable charges and (b) sales/use tax due by jurisdiction. In regard to federal excise taxes, Contractor shall include federal excise taxes only if, after thirty (30) calendar days written notice to Purchaser, Purchase has not provided Contractor with a valid exemption certificate from such federal excise taxes.

**10.** OWNERSHIP IN DATA. Purchaser and Contractor agree that all data and work products (collectively called "Work Product") produced pursuant to this Contract shall be considered work made for hire under the U.S. Copyright Act, 17 U.S.C. §101 et seq, and shall be owned by Purchaser. Contractor is hereby commissioned to create the Work Product. Work Product includes, but is not limited to, discoveries, formulae, ideas, improvements, inventions, methods, models, processes, techniques, findings, conclusions, recommendations, reports, designs, plans, diagrams, drawings, Software, databases, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions, to the extent provided by law. Ownership includes the right to copyright, patent, register and the ability to transfer these rights and all information used to formulate such Work Product. If for any reason the Work Product would not be considered a work made for hire under applicable law, Contractor assigns and transfers to Purchaser the entire right, title and interest in and to all rights in the Work Product and any registrations and copyright applications relating thereto and any renewals and extensions thereof. Contractor shall not use or in any manner disseminate any Work Product to any third party, or represent in any way Contractor ownership in any Work Product, without the prior written permission of Purchaser. Contractor shall take all reasonable steps necessary to ensure that its agents, employees, or Subcontractors shall not copy or disclose, transmit or perform any Work Product or any portion thereof, in any form, to any third party.

**11. PROTECTION OF PURCHASER'S CONFIDENTIAL INFORMATION.**

11.1. CONFIDENTIAL INFORMATION. Contractor acknowledges that some of the material and information that may come into its possession or knowledge in connection with this Master Contract or its performance may consist of information that is exempt from disclosure to the public or other unauthorized persons under either Chapter 42.56 RCW or other state or federal statutes ("Confidential Information"). Confidential Information includes, but is not limited to, names, addresses, Social Security numbers, e-mail addresses, telephone numbers, financial profiles, credit card information, driver's license numbers, medical data, law enforcement records, Purchaser source code or object code, or Purchaser or State security information.

11.2. PROTECTION OF CONFIDENTIAL INFORMATION. Contractor agrees to hold Confidential Information in strictest confidence and not to make use of Confidential Information for any purpose other than the performance of this Master Contract, to release it only to authorized employees or Subcontractors requiring such information for the purposes of carrying out this Master Contract, and not to release, divulge, publish, transfer, sell, disclose, or otherwise make the information known to any other party without Purchaser's express written consent or as provided by law. Contractor agrees to release such information or material only to employees or Subcontractors who have signed a nondisclosure agreement, the terms of which have been previously approved by Purchaser. Contractor agrees to implement physical, electronic, and managerial safeguards to prevent unauthorized access to Confidential Information. Immediately upon expiration or termination of the Purchase Order, Contractor shall, at Purchaser's option: (i) certify to Purchaser that Contractor has destroyed all Confidential Information; or (ii) return all Confidential Information to Purchaser; or (iii) take whatever other steps Purchaser requires of Contractor to protect Purchaser's Confidential Information.

**12. CONTRACT MANAGEMENT.**

12.1. CONTRACT ADMINISTRATION & NOTICES. Except for legal notices, the parties hereby designate the following contract administrators as the respective single points of contact for purposes of this Master Contract. Enterprise Services' contract administrator shall provide Master Contract oversight. Contractor's contract administrator shall be Contractor's principal contact for business activities under this Master Contract. The parties may change contract administrators by written notice as set forth below.

Any notices required or desired shall be in writing and sent by U.S. mail, postage prepaid, or sent via email, and shall be sent to the respective addressee at the respective address or email address set forth below or to such other address or email address as the parties may specify in writing:

| **Enterprise Services** | **Contractor** |
|---|---|
| Attn: Contract Administrator – Master Contract No. 05620<br>Washington Dept. of Enterprise Services<br>PO Box 41411<br>Olympia, WA 98504-1411<br>Tel: (360) 407-2218<br>Email: DESContractsTeamCypress@des.wa.gov | Attn: Debbie Dickey<br>Milne Electric Inc.<br>14582 172nd Dr. SE Suite #1<br>Monroe, WA 98272<br>Tel: (425)-595-3655<br>Email: Debbie.Dickey@milneelectric.com |

Notices shall be deemed effective upon the earlier of receipt, if mailed, or, if emailed, upon transmission to the designated email address of said addressee.

12.2. CONTRACTOR CUSTOMER SERVICE REPRESENTATIVE. Contractor shall designate a customer service representative (and inform Enterprise Services of the same) who shall be responsible for addressing Purchaser issues pertaining to this Master Contract.

12.3. LEGAL NOTICES. Any legal notices required or desired shall be in writing and delivered by U.S. certified mail, return receipt requested, postage prepaid, or sent via email, and shall be sent to the respective addressee at the respective address or email address set forth below or to such other address or email address as the parties may specify in writing:

| **Enterprise Services** | **Contractor** |
|---|---|
| Attn: Legal Services Manager<br>Washington Dept. of Enterprise Services<br>PO Box 41411<br>Olympia, WA 98504-1411<br>Email: greg.tolbert@des.wa.gov | Attn: Margie Schwan<br>Milne Electric Inc.<br>14582 172nd Dr. SE Suite #1<br>Monroe, WA 98272<br>Email margie@milneelectric.com |

Notices shall be deemed effective upon the earlier of receipt when delivered, or, if mailed, upon return receipt, or, if emailed, upon transmission to the designated email address of said addressee.

**13. CONTRACTOR SALES REPORTING; VENDOR MANAGEMENT FEE; & CONTRACTOR REPORTS.**

13.1. MASTER CONTRACT SALES REPORTING. Contractor shall report total Master Contract sales quarterly to Enterprise Services, as set forth below.

(a) Master Contract Sales Reporting System. Contractor shall report quarterly Master Contract sales in Enterprise Services' Master Contract Sales Reporting System. Enterprise Services will provide Contractor with a login password and a vendor number. The password and vendor number will be provided to the Sales Reporting Representative(s) listed on Contractor's Bidder Profile.

(b) Data. Each sales report must identify every authorized Purchaser by name as it is known to Enterprise Services and its total combined sales amount invoiced during the reporting period (i.e., sales of an entire agency or political subdivision, not its individual subsections). The "Miscellaneous" option may be used only with prior approval by Enterprise Services. Upon request, Contractor shall provide contact information for all authorized Purchasers specified herein during the term of the

Master Contract. If there are no Master Contract sales during the reporting period, Contractor must report zero sales.

(c) Due dates for Master Contract Sales Reporting. Quarterly Master Contract Sales Reports must be submitted electronically by the following deadlines for all Master Contract sales invoiced during the applicable calendar quarter:

| QUARTER | FOR SALES MADE IN CALENDAR QUARTER ENDING | MASTER CONTRACT SALES REPORT | |
|---|---|---|---|
| | | DUE BY | PAST DUE |
| 1 | January 1 – March 31 | April 30 | May 1 |
| 2 | April 1 – June 30 | July 31 | August 1 |
| 3 | July 1 – September 30 | October 31 | November 1 |
| 4 | October 1 – December 31 | January 31 | February 1 |

13.2. VENDOR MANAGEMENT FEE. Contractor shall pay to Enterprise Services a vendor management fee ("VMF") of 1.5 percent on the purchase price for all Master Contract sales (the purchase price is the total invoice price less applicable sales tax).

(a) The sum owed by Contractor to Enterprise Services as a result of the VMF is calculated as follows:

> Amount owed to Enterprise Services = Total Master Contract sales invoiced (not including sales tax) x .015.

(b) The VMF must be rolled into Contractor's current pricing. The VMF must not be shown as a separate line item on any invoice unless specifically requested and approved by Enterprise Services.

(c) Enterprise Services will invoice Contractor quarterly based on Master Contract sales reported by Contractor. Contractor is not to remit payment until Contractor receives an invoice from Enterprise Services. Contractor's VMF payment to Enterprise Services must reference this Master Contract number, the year and quarter for which the VMF is being remitted, and Contractor's name as set forth in this Master Contract, if not already included on the face of the check.

(d) Contractor's failure to report accurate total net Master Contract sales, to submit a timely Master Contract sales report, or to remit timely payment of the VMF to Enterprise Services, may be cause for Enterprise Services to suspend Contractor or terminate this Master Contract or exercise remedies provided by law. Without limiting any other available remedies, the parties agree that Contractor's failure to remit to Enterprise Services timely payment of the VMF shall obligate Contractor to pay to Enterprise Services, to offset the administrative and transaction costs incurred by the State to identify, process, and collect such sums, the sum of $200.00 or twenty-five percent (25%) of the outstanding amount, whichever is greater, or the maximum allowed by law, if less.

(e) Enterprise Services reserves the right, upon thirty (30) days advance written notice, to increase, reduce, or eliminate the VMF for subsequent purchases, and reserves the right to renegotiate Master Contract pricing with Contractor when any subsequent adjustment of the VMF might justify a change in pricing.

13.3. ANNUAL MASTER CONTRACT SALES REPORT. Contractor shall provide to Enterprise Services a detailed annual Master Contract sales report. Such report shall include, at a minimum:

- Number of inquiries received from Purchasers;
- Number of jobs accepted from inquiries;
- Number of jobs NOT accepted from such inquiries and the reason(s) for not accepting such jobs; and
- For each PO/SOW:
  - Did Contractor meet the target completion date? If not, why?
  - Did Contractor complete the project below the target budget? If not, why?
  - Did Contractor recycle old cabling that was removed? If so, how much?

This report must be provided in an electronic format that can be read by Microsoft (MS) Excel. Such report is due within thirty (30) calendar days of the annual anniversary of the effective date of this Master Contract.

**14. RECORDS RETENTION & AUDITS.**

14.1. RECORDS RETENTION. Contractor shall maintain books, records, documents, and other evidence pertaining to this Master Contract and orders placed by Purchasers under it to the extent and in such detail as shall adequately reflect contract performance and administration of purchases, payments, taxes, and fees. Contractor shall retain such records for a period of six (6) years following expiration or termination of this Master Contract or final payment for any order placed by a Purchaser against this Master Contract, whichever is later; *Provided*, however, that if any litigation, claim, or audit is commenced prior to the expiration of this period, such period shall extend until all such litigation, claims, or audits have been resolved.

14.2. AUDIT. Enterprise Services reserves the right to audit, or have a designated third party audit, applicable records to ensure that Contractor properly has invoiced Purchasers and that Contractor has paid all applicable vendor management fees to Enterprise Services. Accordingly, Contractor shall permit Enterprise Services, any Purchaser, and any other duly authorized agent of a governmental agency, to audit, inspect, examine, copy and/or transcribe Contractor's books, documents, papers and records directly pertinent to this Master Contract or Purchase Orders placed by a Purchaser under this Master Contract for the purpose of making audits, examinations, excerpts, and transcriptions. This right shall survive for a period of six (6) years following expiration or termination of this Master Contract or final payment for any order placed by a Purchaser against this Master Contract, whichever is later; *Provided*, however, that if any litigation, claim, or audit is commenced prior to the expiration of this period, such period shall extend until all such litigation, claims, or audits have been resolved.

14.3. OVERPAYMENT OF PURCHASES OR UNDERPAYMENT OF FEES. Without limiting any other remedy available to any Purchaser, Contractor shall (a) reimburse Purchasers for any overpayments inconsistent with the terms of this Master Contract or Purchase Orders placed thereunder, at a rate of 125% of any such overpayments, found as a result of the examination of Contractor's records; and (b) reimburse Enterprise Services for any underpayment of vendor management fees, at a rate of 125% of such fees found as a result of the examination of Contractor's records (e.g., if Contractor underpays the Vendor Management Fee by $500, Contractor would be required to pay to Enterprise Services $500 x 1.25 = $625); *Provided*, however, that, in the event Contractor timely discovers and corrects any Purchaser overpayment or Contractor underpayment of vendor management fees and does so prior to the initiation of

any audit, Contractor shall be entitled to reimburse Purchaser or pay to Enterprise Services the actual amount of such Purchaser overpayment or such underpayment of vendor management fees.

**15. INSURANCE.**

15.1. REQUIRED INSURANCE. Contractor, at its expense, shall maintain in full force and effect the insurance coverages set forth in *Exhibit C – Insurance Requirements*. All costs for insurance, including any payments of deductible amounts, shall be considered incidental to and included in the prices for Goods/Services and no additional payment shall be made to Contractor.

15.2. WORKERS COMPENSATION. Contractor shall comply with applicable workers compensation statutes and regulations (e.g., RCW Title 51, Industrial Insurance). If Contractor fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees as may be required by law, Enterprise Services may terminate this Master Contract. This provision does not waive any of the Washington State Department of Labor and Industries (L&I) rights to collect from Contractor. If Contractor performs Services on Purchaser's behalf in the State of Washington, and only to the extent of claims against Contractor by Purchaser under the Indemnity obligations in this Master Contract, Contractor expressly waives any immunity it may be granted under the Washington State Industrial Insurance Act, Title 51 RCW. Contractor's indemnification obligation will not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable to or for any third party under workers' compensation acts, disability benefit acts, or other employee benefit acts. The parties expressly acknowledge and certify that the waiver of immunity under Title 51 RCW was mutually negotiated and agreed upon.

**16. CLAIMS.**

16.1. ASSUMPTION OF RISKS; CLAIMS BETWEEN THE PARTIES. Contractor assumes sole responsibility and all risks of personal injury or property damage to itself and its employees and agents in connection with its operations under this Master Contract. Enterprise Services has made no representations regarding any factor affecting Contractor's risks. Contractor shall pay for all damage to any Purchaser's property resulting directly or indirectly from Contractor's acts or omissions under this Master Contract, even if not attributable to negligence by Contractor or its agents.

16.2. THIRD-PARTY CLAIMS; GENERAL INDEMNITY. To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold Enterprise Services and any Purchaser and their employees and agents harmless from and against all claims, demands, judgments, assessments, damages, penalties, fines, costs, liabilities, or losses including, without limitation, sums paid in settlement of claims, attorneys' fees, consultant fees, and expert fees (collectively "Claims") arising out of Contractor's or its successors', agents', or subcontractors' negligence, other tortious fault, or intentional misconduct under this Master Contract; *Provided*, however, that no right to indemnity will exist as to that portion of a Claim resulting from the sole negligence, tortious fault, or intentional misconduct of Enterprise Services or Purchaser. The parties agree that if there are any limitations of Contractor's liability, including a limitation of liability clause for anyone for whom the Contractor is responsible, such limitations of liability shall not apply to injuries to persons, including death, or to damages to property. Contractor shall take all steps needed to keep Purchaser's property free of liens arising from Contractor's activities, and promptly obtain or bond the release of any such liens that may be filed.

16.3. INTELLECTUAL PROPERTY INDEMNITY. To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold Enterprise Services and any Purchaser and their employees and agents harmless from against any and all Claims resulting from allegations of infringement of any patents, copyrights, trade secret, or similar intellectual property rights covering the Goods or Services provided, or the use of the Goods or Services under this Master Contract. If Purchaser's use of Goods or Services provided by Contractor is enjoined based on an intellectual property infringement Claim, Contractor shall, at its own expense, either procure for Purchaser the right to continue using the Goods or Services or, after consulting with Purchaser and obtaining Purchaser's consent, replace or modify the Goods or Services with substantially similar and functionally equivalent non-infringing Goods or Services.

**17. DISPUTE RESOLUTION**. The parties shall cooperate to resolve any dispute pertaining to this Master Contract efficiently, as timely as practicable, and at the lowest possible level with authority to resolve such dispute. If, however, a dispute persists and cannot be resolved, it may be escalated within each organization. In such situation, upon notice by either party, each party, within five (5) business days shall reduce its description of the dispute to writing and deliver it to the other party. The receiving party then shall have three (3) business days to review and respond in writing. In the event that the parties cannot then agree on a resolution of the dispute, the parties shall schedule a conference between the respective senior managers of each organization to attempt to resolve the dispute. In the event the parties cannot agree, either party may resort to court to resolve the dispute.

**18. TERMINATION; EXPIRATION; SUSPENSION; & REMEDIES**.

18.1. TERMINATION. This Master Contract may be terminated: (a) upon the mutual written agreement of the parties; (b) by the non-breaching party where the breach is not cured within thirty (30) calendar days after written notice of breach is delivered to the breaching party, unless a different time for cure is otherwise stated in this Master Contract; and (c) as otherwise expressly provided for in this Master Contract. This Master Contract shall terminate automatically and without further action if a party becomes insolvent or is placed in receivership, reorganization, liquidation, or bankruptcy. In addition to any other available remedies, the non-breaching party may terminate this Master Contract as provided in subsection (b) above without further liability by written notice to the breaching party. A termination for breach will not affect rights or obligations accrued or owed before the effective date of the termination notice.

18.2. TERMINATION FOR NONAPPROPRIATION OR REDUCTION OF FUNDS OR CHANGES IN LAW. Enterprise Services may suspend or terminate this Master Contract and Purchasers may suspend or terminate applicable Purchase Orders, in whole or in part, at the sole discretion of Enterprise Services or, as applicable, Purchaser, if Enterprise Services or, as applicable, Purchaser reasonably determines that: (a) a change in Federal or State legislation or applicable laws materially affects the ability of either party to perform under the terms of this Master Contract or applicable Purchase Order; or (b) that a change in available funds affects Purchaser's ability to pay under the applicable Purchase Order. A change of available funds as used in this section includes, but is not limited to a change in Federal or State funding, whether as a result of a legislative act or by order of the President or the Governor. If a written notice is delivered under this provision, Purchaser will reimburse Contractor for Goods properly ordered and/or Services properly performed until the effective date of said notice. Except as stated in this provision, in the event of termination for nonappropriation or reduction of funds or changes in law, Purchaser will have no obligation or liability to Contractor.

18.3. TERMINATION FOR PUBLIC CONVENIENCE. Enterprise Services, for public convenience, may terminate this Master Contract; *Provided*, however, that such termination for public convenience must, in Enterprise Services' judgment, be in the best interest of the State of Washington; and *Provided further*, that such termination for public convenience shall only be effective upon sixty (60) days prior written notice; and *Provided further*, that such termination for public convenience shall not relieve any Purchaser from payment for Goods/Services already ordered as of the effective date of such notice. Except as stated in this provision, in the event of such termination for public convenience, neither Enterprise Services nor any Purchaser shall have any obligation or liability to Contractor.

18.4. EXPIRATION – OBLIGATIONS. Upon expiration of this Master Contract, Purchaser shall accept and take delivery of all outstanding and not yet fulfilled orders and pay Contractor the price as set out in the Master Contract.

18.5. CONTRACTOR OBLIGATIONS – EXPIRATION OR TERMINATION. Upon expiration or termination of this Master Contract, Contractor shall: (a) continue to fulfill its warranty obligations with respect to any Goods or Services sold hereunder and all provisions of the Master Contract that, by their nature, would continue beyond the expiration, termination, or cancellation of the Master Contract shall so continue and survive; and (b) promptly return to Purchaser all keys, badges, and other materials supplied by Purchaser for the performance of any Purchase Order entered into pursuant to this Master Contract.

18.6. DEFAULT. Any of the following events shall constitute cause for Enterprise Services to declare Contractor in default of this Master Contract:

(a) Contractor fails to perform or comply with any of the terms or conditions of this Master Contract

(b) Contractor fails to timely report contract sales;

(c) Contractor fails to timely pay the vendor management fees when due; or

(d) Contractor breaches any representation or warranty provided herein.

18.7. SUSPENSION & TERMINATION FOR DEFAULT. Enterprise Services may suspend Contractor's operations under this Master Contract immediately by written cure notice of any default. Suspension shall continue until the default is remedied to Enterprise Services' reasonable satisfaction; *Provided*, however, that, if after thirty (30) days from such a suspension notice, Contractor remains in default, Enterprise Services may terminate Contractor's rights under this Master Contract. All of Contractor's obligations to Enterprise Services and Purchasers survive termination of Contractor's rights under this Master Contract, until such obligations have been fulfilled.

18.8. REMEDIES FOR DEFAULT.

(a) Enterprise Services' rights to suspend and terminate Contractor's rights under this Master Contract are in addition to all other available remedies.

(b) In the event of termination for default, Enterprise Services may exercise any remedy provided by law including, without limitation, the right to procure for all Purchasers replacement Goods and/or Services. In such event, Contractor shall be liable to Enterprise Services for damages as authorized by law including, but not limited to, any price difference between the Master Contract price and the replacement or cover price as well as any administrative and/or transaction costs directly related to such replacement procurement – e.g., the cost of the competitive procurement.

18.9. LIMITATION ON DAMAGES. Notwithstanding any provision to the contrary, the parties agree that in no event shall any party or Purchaser be liable to the other for exemplary or punitive damages; *Provided*, however, that nothing contained in this Section will in any way exclude or limit: (a) a party's liability for all damages arising out of that party's intentional acts or omissions; (b) the operation of any Goods or Services warranty provided in this Master Contract; or (c) damages subject to the Intellectual Property Indemnity section of this Master Contract. Any limitation of either party's obligations under this Master Contract, by delivery slips or other documentation is void.

18.10. SUSPENSION/TERMINATION PROCEDURE. Regardless of basis, in the event of suspension or termination (in full or in part), the parties shall cooperate to ensure an orderly and efficient suspension or termination. Accordingly, Contractor shall deliver to Purchasers all Goods and/or Services that are complete (or with approval from Enterprise Services, substantially complete) and Purchasers shall inspect, accept, and pay for the same in accordance with this Master Contract and the applicable Purchase Order. Unless directed by Enterprise Services to the contrary, Contractor shall not process any orders after notice of suspension or termination inconsistent therewith.

**19. PUBLIC INFORMATION & PUBLIC RECORDS DISCLOSURE REQUESTS.**

19.1. WASHINGTON'S PUBLIC RECORDS ACT. Unless statutorily exempt from public disclosure, this Master Contract and all related records are subject to public disclosure as required by Washington's Public Records Act, RCW 42.56.

19.2. CONTRACTOR OBLIGATION. Contractor shall identify and mark the precise portion(s) of the relevant page(s) of any records provided to Enterprise Services that Contractor believes are statutorily exempt from disclosure and identify the precise statutory basis for exemption from disclosure. In addition, if, in Contractor's judgment, certain portions of such records are not statutorily exempt from disclosure but are sensitive because particular portions of Contractor's records (NOT including pricing) include highly confidential, proprietary, or trade secret information (or the equivalent) that Contractor protects through the regular use of confidentiality or similar agreements and routine enforcements through court enforcement actions, Contractor shall identify and mark the precise portion(s) of the relevant page(s) of any records that include such sensitive information.

19.3. ENTERPRISE SERVICES' OBLIGATION. In the event that Enterprise Services receives a public records disclosure request pertaining to records that Contractor has submitted and marked either as (a) statutorily exempt from disclosure; or (b) sensitive, Enterprise Services, prior to disclosure, will do the following: Enterprise Services' Public Records Officer will review any records marked by Contractor as statutorily exempt from disclosure. In those situations, where the designation comports with the stated statutory exemption from disclosure, Enterprise Services will redact or withhold the record(s) as appropriate. For records marked 'sensitive' or for records where Enterprise Services determines that no statutory exemption to disclosure applies or is unable to determine whether the stated statutory exemption to disclosure properly applies, Enterprise Services will notify Contractor, at the address provided in the Master Contract, of the public records disclosure request and identify the date that Enterprise Services intends to release the record(s) (including records marked 'sensitive' or exempt from disclosure) to the requester unless Contractor, at Contractor's sole expense, timely obtains a court order enjoining Enterprise Services from such disclosure. In the event Contractor fails to timely file a motion for a court order enjoining such disclosure, Enterprise Services will release the requested record(s) on the date specified. Contractor's failure properly to identify exempted or sensitive information or timely respond after notice of request for public disclosure has been given shall be deemed a waiver by Contractor of any claim that such records are exempt or protected from public disclosure.

**20. PREVAILING WAGES**. Depending on the Purchaser and anticipated project, certain work performed under this Master Contract is subject to Washington's Prevailing Wage on Public Works Act, RCW 39.12. Accordingly, for such work, Contractor (including any subcontractors), unless exempt, shall pay all workers employed in the performance of any part of the work in accordance with RCW 39.12 and the rules promulgated by the Washington State Department of Labor and Industries and comply with the following as pertaining to such work:

20.1. WAGE RATES. Contractor, and any subcontractor or other person doing any portion of the work covered by this Master Contract, shall not pay any laborer, worker, or mechanic less than the applicable and most current prevailing hourly wage rates and fringe benefits for said worker's classification to all laborers workers or mechanics who perform any work pursuant to any resulting contract, in conformance with the scope or work description of the Industrial Statistician of the Washington State Department of Labor and Industries. Contractor shall have sole responsibility to ascertain the applicable prevailing rate of wage for such classification, as set forth by the State of Washington for the County in which the work is performed. The applicable prevailing wage rates are set forth on the website for the Washington State Department of Labor and Industries. Prevailing wage rates are updated twice a year, on the first business day in February and August, and take effect thirty (30) days after publication.

20.2. STATEMENT OF INTENT TO PAY PREVAILING WAGES. Before commencing any work under this Master Contract, Contractor (and all subcontractors) shall file with the Washington State Department of Labor and Industries, for approval, a statement, under oath, certifying its Intent to Pay Prevailing Wages. Contractor also shall provide a copy of the Intent to Pay Prevailing Wages to Enterprise Services.

20.3. INVOICES & CONTRACT PAYMENTS. Contractor understands and agrees that each invoice for payment submitted to Enterprise Services shall state that prevailing wages have been paid in accordance with the pre-filed Statement(s) of Intent, as approved. Copies of the Intent to Pay Prevailing Wages shall be posted on the work site with the address and telephone number of the Industrial Statistician of the Washington State Department of Labor and Industries where a complaint or inquiry regarding prevailing wages may be made.

20.4. AFFIDAVIT OF WAGES PAID. Upon completion of the work under this Master Contract, Contractor (and each subcontractor) shall file with the Washington State Department of Labor and Industries the approved Affidavit of Wages Paid. Enterprise Services shall condition final payment to Contractor on the submittal of such Affidavit of Wages Paid.

20.5. LABOR & INDUSTRIES FEES. Contractor shall pay to the Washington State Department of Labor and Industries any applicable fees for the Statement of Intent and/or Affidavit of Wages Paid that are to be submitted to the Washington State Department of Labor and Industries for certification.

20.6. PAYROLL RECORDS. Contractor shall retain payroll records pertaining to work performed for this Master Contract for three (3) years following expiration or termination of this Master Contract and, upon request, provide certified copies of such payroll records to Enterprise Services.

**21. PUBLIC WORKS**. This Master Contract was solicited and awarded pursuant to Washington's procurement code for goods and services, RCW 39.26. It was not solicited and awarded pursuant to Washington's procurement code for public works, RCW 39.04. Accordingly, Contractor shall not represent to any Purchaser that this Master Contract is a public works contract and Purchasers shall determine whether this Master Contract is an appropriate procurement solution for their needs. Purchasers must determine whether their anticipated work qualifies as a public work. Notwithstanding any provision to the contrary, this Master Contract does not exempt Contractor or Purchasers from complying with applicable public works requirements including, without limitation, requirements to pay prevailing wage for public works, retainage, and/or bonding requirements.

**22. GENERAL PROVISIONS**.

22.1. TIME IS OF THE ESSENCE. Time is of the essence for each and every provision of this Master Contract.

22.2. COMPLIANCE WITH LAW. Contractor shall comply with all applicable law. Contractor shall obtain all necessary permits and approvals and give all stipulations, certifications, and representations that may be required for it to perform this Master Contract.

22.3. ENTIRE AGREEMENT. This Master Contract constitutes the entire agreement and understanding of the parties with respect to the subject matter and supersedes all prior negotiations, representations, and understandings between them. There are no representations or understandings of any kind not set forth herein.

22.4. AMENDMENT OR MODIFICATION. Except as set forth herein, this Master Contract may not be amended or modified except in writing and signed by a duly authorized representative of each party.

22.5. AUTHORITY. Each party to this Master Contract, and each individual signing on behalf of each party, hereby represents and warrants to the other that it has full power and authority to enter into this Master Contract and that its execution, delivery, and performance of this

Master Contract has been fully authorized and approved, and that no further approvals or consents are required to bind such party.

22.6. NO AGENCY. The parties agree that no agency, partnership, or joint venture of any kind shall be or is intended to be created by or under this Master Contract. Neither party is an agent of the other party nor authorized to obligate it.

22.7. INDEPENDENT CONTRACTOR. The parties intend that an independent contractor relationship is created by this Master Contract. Contractor and its employees or agents performing under this Master Contract are not employees or agents of Enterprise Services. Contractor shall not have authorization, express or implied, to bind Enterprise Services to any agreement, liability, or understanding, except as expressly set forth herein. Contractor and its employees and agents are not entitled to unemployment insurance or worker's compensation benefits through Enterprise Services or the State of Washington and Enterprise Services and the State of Washington will not pay for or otherwise provide such coverage for Contractor and its employees and agents.

22.8. ASSIGNMENT. Contractor may not assign its rights under this Master Contract without Enterprise Services' prior written consent and Enterprise Services may consider any attempted assignment without such consent to be void; *Provided*, however, that, if Contractor (a) provides written notice to Enterprise Services within thirty (30) days of such event and (b) timely executes Enterprise Services' Assignment, Assumption, and Consent Agreement, Contractor may assign its rights under this Master Contract in full to any parent, subsidiary, or affiliate of Contractor that controls or is controlled by or under common control with Contractor, is merged or consolidated with Contractor, or purchases a majority or controlling interest in the ownership or assets of Contractor. Unless otherwise agreed, Contractor guarantees prompt performance of all obligations under this Master Contract notwithstanding any prior assignment of its rights.

22.9. BINDING EFFECT; SUCCESSORS & ASSIGNS. This Master Contract shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

22.10. ASSIGNMENT OF ANTITRUST RIGHTS REGARDING PURCHASED GOODS/SERVICES. Contractor irrevocably assigns to Enterprise Services, on behalf of the State of Washington, any claim for relief or cause of action which Contractor now has or which may accrue to Contractor in the future by reason of any violation of state or federal antitrust laws in connection with any Goods and/or Services provided in Washington for the purpose of carrying out Contractor's obligations under this Master Contract, including, at Enterprise Services' option, the right to control any such litigation on such claim for relief or cause of action.

22.11. SEVERABILITY. If any provision of this Master Contract is held to be invalid or unenforceable, such provision shall not affect or invalidate the remainder of this Master Contract, and to this end the provisions of this Master Contract are declared to be severable. If such invalidity becomes known or apparent to the parties, the parties agree to negotiate promptly in good faith in an attempt to amend such provision as nearly as possible to be consistent with the intent of this Master Contract.

22.12. WAIVER. Failure of either party to insist upon the strict performance of any of the terms and conditions hereof, or failure to exercise any rights or remedies provided herein or by law, or to notify the other party in the event of breach, shall not release the other party of any of its obligations under this Master Contract, nor shall any purported oral modification or rescission of this Master Contract by either party operate as a waiver of any of the terms hereof. No

waiver by either party of any breach, default, or violation of any term, warranty, representation, contract, covenant, right, condition, or provision hereof shall constitute waiver of any subsequent breach, default, or violation of the same or other term, warranty, representation, contract, covenant, right, condition, or provision.

22.13. SURVIVAL. All representations, warranties, covenants, agreements, and indemnities set forth in or otherwise made pursuant to this Master Contract shall survive and remain in effect following the expiration or termination of this Master Contract, *Provided*, however, that nothing herein is intended to extend the survival beyond any applicable statute of limitations periods.

22.14. GOVERNING LAW. The validity, construction, performance, and enforcement of this Master Contract shall be governed by and construed in accordance with the laws of the State of Washington, without regard to any choice of law principles that would provide for the application of the laws of another jurisdiction.

22.15. JURISDICTION & VENUE. In the event that any action is brought to enforce any provision of this Master Contract, the parties agree to exclusive jurisdiction in Thurston County Superior Court for the State of Washington and agree that in any such action venue shall lie exclusively at Olympia, Washington.

22.16. ATTORNEYS' FEES. In the event of litigation or other action brought to enforce this Master Contract, each party shall bear its own attorneys' fees and costs.

22.17. FAIR CONSTRUCTION & INTERPRETATION. The provisions of this Master Contract shall be construed as a whole according to their common meaning and not strictly for or against any party and consistent with the provisions contained herein in order to achieve the objectives and purposes of this Master Contract. Each party hereto and its counsel has reviewed and revised this Master Contract and agrees that the normal rules of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be construed in the interpretation of this Master Contract. Each term and provision of this Master Contract to be performed by either party shall be construed to be both a covenant and a condition.

22.18. FURTHER ASSURANCES. In addition to the actions specifically mentioned in this Master Contract, the parties shall each do whatever may reasonably be necessary to accomplish the transactions contemplated in this Master Contract including, without limitation, executing any additional documents reasonably necessary to effectuate the provisions and purposes of this Master Contract.

22.19. EXHIBITS. All exhibits referred to herein are deemed to be incorporated in this Master Contract in their entirety.

22.20. CAPTIONS & HEADINGS. The captions and headings in this Master Contract are for convenience only and are not intended to, and shall not be construed to, limit, enlarge, or affect the scope or intent of this Master Contract nor the meaning of any provisions hereof.

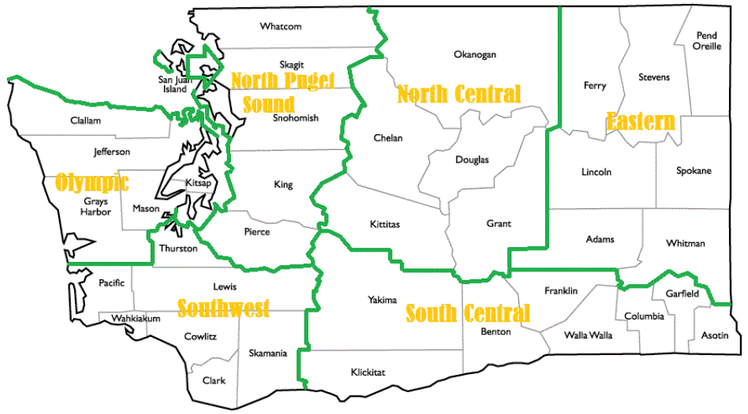
22.21. ELECTRONIC SIGNATURES. An electronic signature or electronic record of this Master Contract or any other ancillary agreement shall be deemed to have the same legal effect as delivery of an original executed copy of this Master Contract or such other ancillary agreement for all purposes.

22.22. COUNTERPARTS. This Master Contract may be executed in any number of counterparts, each of which shall be deemed an original and all of which counterparts together shall constitute the same instrument which may be sufficiently evidenced by one counterpart. Execution of this Master Contract at different times and places by the parties shall not affect the validity thereof so long as all the parties hereto execute a counterpart of this Master Contract.

**EXECUTED** as of the date and year first above written.

| **STATE OF WASHINGTON**<br>**Department of Enterprise Services** | **Milne Electric, Inc.**<br>**a Washington corporation** |
|---|---|
| By: _____ | By: _____ |
| Kim Kirkland | ~~Ralph Autore~~ DAVID R. MILNE |
| Its: IT Contracts Supervisor | Its: PRESIDENT |

**EXHIBIT A**
**INCLUDED GOODS/SERVICES**
**IT CABLING – CATEGORY 1 – IT CABLING & INSTALLATION**




Contractor will provide contract services in the following regions and subcategories:

| Region | Sub Category |
|---|---|
| North Puget Sound | Inside<br>Outside |

| Solicitation NO.: 05620- IT Cabling Category 1- Services and Installation | BIDDER: | Milne Electric Inc |
|---|---|---|

**Exhibit B - Category 1 Performance Requirements (Revised 7.30.21)**

**Scope:** Information technology (IT) cabling goods and services for new and previously installed Local Area Networks (LANs) and Wide Area Networks (WANs) and other voice, data, or video systems.

For purposes of this Competitive Solicitation, IT cabling is defined as including outside aerial and underground cables and inside riser, distribution, and station cabling. Copper twisted pair, coaxial cable and fiber-optic cables and other types of low-voltage signaling cables installed within buildings or campus environments also are included in the scope of this Competitive Solicitation.

This category includes Inside and Outside work, and all parts and materials required to complete the service and installation. Inside work involves IT cabling installation in new buildings, major renovated buildings and additions to existing cabling networks. Outside work will be for inter-building connectivity. Outside work may include digging and trenching as well as installing cabling.

**Instructions:**

**1. Review Requirements.**

**2. Review Priority and the provided definitions:**

- **"MANDATORY":** Bidder response must comply with the requirement and the Bidder's response will be evaluated on a "Pass/Fail" basis. Selecting "Fully Meets" for mandatory requirements will be considered "Pass". All other responses will be considered "Fail".
- **"MANDATORY SCORED":** Bidder response will be evaluated and assigned a score based on how well Bidder's response meets the requirement. Maximum points possible is 10 points for each requirement. Not meeting any of the requirements will be evaluated as a "Fail".
- **"HIGHLY DESIRABLE":** Bidder response will be evaluated and assigned a score based on how well Bidder's response meets the requirement. Maximum points possible is 5 points for each requirement. Highly Desirable Requirements support necessary purchaser operations and the Bidder response is less effective if such requirements are not met.

**3. How Bidder Meets Requirements:**

- Select and indicate using the pulldown button if bidder Fully Meets, or Does Not Meet a requirement in How Bidder Meets Requirement column.

**4. Written Response:**

- Bidder must respond in the Written Response column for every requirement that indicates a "Written Response Required".
- Bidders are asked to explain how they meet the requirement, and may also express specific exceptions and list any alternative certificates, licenses or qualifications for requirements not specifically met.
- Evaluators will consider the totality of Bidders' experience or alternative qualifications in scoring Bidder responses.
- All requested certifications/documentation required for Exhibit B must be titled: "ExhibitB1.*filename.filetype*", for example, Exhibit B1.*certification.pdf*"

**5. Attachments:**

- Only attachments that are requested/required in the Written response column, will be considered in evaluation.

• NO attached or additional information outside of those required attachments will be evaluated.
• All written response answers MUST be included inside this document to be considered for evaluation.

**6. Outside Work:**
• If Bidder is submitting proposal for Inside Work AND Outside Work, they must complete all sections marked with * for Outside work.
• Bidders who only wish to submit a bid for Inside Work do NOT need to complete sections marked with *.

Limited responses may receive lower scoring than those that demonstrate understanding and mastery of the subject matter.

| Outside Work | Req ID | Category | Functional Requirements | Priority | How Bidder Meets Requirement | Written Response |
|---|---|---|---|---|---|---|
| | **1.0** | **Gen.** | **GENERAL BIDDER REQUIREMENTS:** | | | |
| | 1.1 | Gen. | The Bidder must furnish all necessary labor, supervision, tools, materials, and testing required to complete the project as specified in each Purchase Order or Statement of Work (SOW) entered into with a Purchaser under the Master Contract. | MANDATORY | Fully Meets | [redacted] |
| | **2.0** | **Stds. Comp.** | **STANDARDS COMPLIANCE:** | | | |
| | 2.1 | Stds. Comp. | All work and materials covered by this Solicitation and resulting Master Contract(s) shall be performed in compliance with Chapter 19.28.410 Revised Code of Washington, Chapter 296-46B-010 Washington Administrative Code, and the most current versions of the following mandatory standards:<br>• NFPA-70 National Electrical Code<br>• ANSI\TIA\EIA 568 series, Commercial Building Telecommunications Cabling Standard<br>• ANSI\TIA\EIA 569-E , Commercial Building Standard for Telecommunications Pathways and Spaces,<br>o Ex. Pathways, Work area outlets, Patch panels, Racks and cabinets, Ports, Grounding, busbars, Cabling, Firestop locations, Telecommunications space, Data center room grid<br>• ANSI\TIA\EIA 606-C Commercial Building Telecommunication standard for Labeling<br>• ANSI-J-STD-607-C, Commercial Building Grounding (Earthing) and Bonding Requirements for Telecommunications<br>• ANSI\EIA\TIA 862-B Structured Cabling infrastructure Standard for Intelligent building Systems (Building Automation standard)<br>• ANSI\EIA\TIA 942-B Telecommunications standard for Data centers<br>• OSHA/WISHA Construction and safety standards<br>Any additional codes/standards required under a Purchaser's Purchase Order/SOW or by state or federal regulation. Bidder will be held responsible for compliance with the most recent versions of the specified codes/standards/regulations and any revisions or updates. Should conflicts arise with the foregoing, the Department of Enterprise Services will have responsibility for making final interpretation. | MANDATORY | Fully Meets | [redacted] |

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| | **3.0** | **Cert.** | **CERTIFICATION:** | | | |
| | 3.1 | Cert. | COMPANY CERTIFICATIONS. Bidder must maintain certification from the Manufacturer(s) that provides structured cabling system twenty-five (25) year or more warranties as identified in Bidder's response to this RFQQ.<br><br>Written Response Required. *List the Manufacturer(s) Certifications you maintain that meet this requirement.* | MANDATORY SCORED | Fully Meets | Commscope and Ortronics certificiations attached. |
| | 3.2 | Cert. | COMPANY CERTIFICATIONS. The Bidder response must provide documentation that the company is certified by at least one (1) manufacturer that provides structured cabling-system 20-year-or-more warranties in Washington state. For example:<br>• Commscope (Systimax) Ortronics, Inc. (Certified Installer-Plus Program);<br>• AMP (Netconnect Design and Installation Program);<br>• Leviton (Certified Cabling System);<br>• Belden (IBDN).<br>These manufacturers are examples only – the list is not all-inclusive.<br><br>Written Response Required. *Bidder must identify the certified warranty manufacturer and provide a photocopy of said certification(s).If Bidder has more than one manufacturer certification, please submit any additional certifications.* | MANDATORY SCORED | Fully Meets | Commscope and Ortronics certificiations attached |
| | 3.3 | Cert. | COMPANY CERTIFICATIONS. Bidder must have employed staff or subcontractors that meet the certification criteria for installation for each Manufacturer upon which award of this Master Contract is predicated. | MANDATORY | Fully Meets | [redacted] |
| | 3.4 | Cert. | COMPANY CERTIFICATIONS. Bidder installation personnel that work onsite must have International, or Manufacturer certification in accordance with industry standards and best practice methodologies and must be proficient with the installation and termination of all equipment that is to be installed onsite. Upon request Bidder will furnish a copy of such certification to Purchaser or DES. | MANDATORY | Fully Meets | [redacted] |
| | 3.5 | Cert. | EMPLOYEE CERTIFICATION/TRAINING. Any person working on the installation or maintenance of purchaser-owned equipment must be manufacturer-certified by the equipment manufacturer, to maintain a manufacturer warrantied solution. Manufacturer Certification is defined as attendance and successful completion of certification-requirement training within a manufacturer's program. Any person working on the installation or maintenance of purchaser-owned equipment that does NOT have a new or existing manufacturer warranty, must be international professional telecommunications society certified [ex. Bicsi (Building Industry Consulting Services International), TIA (Telecommunications Industry Association), ETA International, FOA (The Fiber Optic Association)]. **Certificates for all persons working on the installation or maintenance of purchaser-owned equipment must be submitted to Purchaser with a quote or Statement of Work (SOW) BEFORE starting any work.**<br><br>Written Response Required. | MANDATORY SCORED | Fully Meets | Commscope and Ortronics certificiations attached |
| | 3.6 | Cert. | FIBER OPTIC CERTIFICATION. Please describe any certification/training by the Fiber Optic Association (FOA) or any qualified Industry training certification organization(s) specifically for fiber-optic or premises cabling.<br><br>*Written Response Required. Attach copies of any Fiber Optic or premises certifications.* | HIGHLY DESIRABLE | Fully Meets | Commscope certificate provided upon request. |
| | **4.0** | **Lic & Staff** | **LICENSING AND STAFFING:** | | | |

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| | 4.1 | Lic & Staff. | PROJECT MANAGER: Bidder must assign a project manager for each Purchaser project. Purchaser must have approval rights over the project manager, or any replacements thereof. The project manager must be the principal point of contact for Purchaser and must coordinate Bidder's activities. The project manager must produce and maintain a complete plan for all Bidder-related activities concerning the Purchaser's order document/statement of work.<br><br>Written Response Required. *Provide the name(s) and a brief description of experience for key personnel who might perform the job of Bidder Project Manager.* | MANDATORY SCORED | Fully Meets | Ralph Autore - Ralph has over 30 years of experience in the structured cabling industry. Projects include both inside and outside plant (fiber and copper infrastructure), DAS PS/Cell, CATV and Campus WiFi indoor/outdoor.<br>Matt Wood - Matt has 26 years experience in installation, estimating and project managing inside cabling, outside plant backbone cabling, wiress access points and network equipment.<br>George Hatland - Outside Plant Specility. George has over 40 years experiance in both underground and aerial plant placement for communications infrstructure including the coordination of fiber optic fusion splicing and termination, copper splicing and required protective termination, and all bonding and grounding requirements. |
| | 4.2 | Lic & Staff. | ELECTRICIANS. Bidder must have employed staff or subcontractors that meet the Licensed Electricians licensing requirements of chapter 19.28 RCW. | MANDATORY | Fully Meets | [redacted] |
| | 4.3 | Lic & Staff. | ELECTRICIANS. Bidder must have at least one (1) employed staff or subcontractor that holds certificates of competency as at least a Journey Level Electrician per requirements of RCW 19.28.161.<br><br>Written Response Required. *Provide the name(s) of any such person(s) and photocopy(s) of certificate(s).* | MANDATORY SCORED | Fully Meets | ○ Jeff Dews (Milne Employee) |
| | 4.4 | Lic & Staff. | REGISTERED COMMUNICATIONS DISTRIBUTION DESIGNERS. Bidder must maintain one or more full-time Registered Communications Distribution Designers (RCDD) on staff. A subcontractor cannot fulfill this requirement.<br><br>Written Response Required. *List Name of RCDD, status (part-time, or full-time) and years of experience. Describe a job where an RCDD provided a design for your business in Exhibit D1 Work History by Region. Attach photocopies of all certificates for RCDD(s).* | HIGHLY DESIRABLE | Does Not Meet | The RCDD that Milne Electric Inc had in employment has recently retired and we currently have a Project Manager studying the BICSI 14th Edition Telecommunications Distribution Methods Manual and we currently have him scheduled to take the RCDD exam and certification by the 4th quarter of 2021. |
| | 4.5 | Lic & Staff. | TELECOMMUNICATIONS ADMINISTRATORS. Bidder must employ at least one (1) individual who possesses a Telecommunications Administrator certificate that meets the requirements of RCW 19.28.430.<br><br>Written Response Required. *Provide the name of such person(s) and photocopy(s) of certificate(s).* | HIGHLY DESIRABLE | Fully Meets | Dave Milne |
| ***** | **5.0** | **Ungd & Aerial (OUT)** | **UNDERGROUND AND AERIAL EXPERTISE – OUTSIDE CATEGORY ONLY:** | | | |
| * | 5.1 | Ungd & Aerial | Bidders must employ staff or subcontractors with expertise and equipment to conduct outside plant projects that are underground or aerial.<br><br>Written Response Required. *Provide a list of key outside plant employees or subcontractors and a brief description of their experience with outside plant projects.* | MANDATORY SCORED | Fully Meets | Northwest Utilities (NWU) Contractor - NWU have been in operation since 1949 working for all major communication utilities to install, maintain and upgrade underground infrastructure<br>Diversified Northwest Contractor - Diversified supports both the instalation, maintenance and rearrangement of aerial plant Diversified also has direction bore equipment for the installation of 6", 4" and 2" HDPE pipe. |
| | **6.0** | **PO/SOW** | **PURCHASE ORDERS/ STATEMENT OF WORK (SOW)** | | | |
| | 6.1 | PO/SOW | ORDERING REQUIREMENTS. Eligible Purchasers shall order goods and/or services from any resulting Master Contract, consistent with the terms hereof and by using any ordering mechanism agreeable both to Bidder and Purchaser but, at a minimum, including the use of a Purchase Order, or Statement of Work (SOW). When practicable, Bidder and Purchaser also shall use telephone orders, email orders, web-based orders, and similar procurement methods (collectively "Purchaser Order"). All order documents must reference the Master Contract number. The terms of any resulting Master Contract shall apply to any Purchase Order or SOW and, in the event of any conflict, the terms of the resulting Master Contract shall prevail. Notwithstanding any provision to the contrary, in no event shall any 'click-agreement,' software or web-based application terms and conditions, or other agreement modify the terms and conditions of any resulting Master Contract. | MANDATORY | Fully Meets | [redacted] |
| | 6.2 | PO/SOW | PURCHASE ORDERS/STATEMENT OF WORK (SOW). Bidder shall, in accordance with all terms and conditions of this Master Contract, fully perform and shall be obligated to comply with all Purchase Orders/SOW received by the Bidder prior to the expiration hereof, unless otherwise directed in writing by the Contract Administrator, including, without limitation, all Purchase Orders/SOW received prior to but not fully performed and satisfied at the expiration of this Contract. | MANDATORY | Fully Meets | |

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| | 6.3 | PO/SOW | CHANGE ORDERS: All modifications, additions or revisions to the Purchase Order/SOW MUST be agreed to, and must be approved by Purchaser in writing before proceeding with any additions or revisions to services or materials provided by Bidder. | MANDATORY | Fully Meets | [redacted] |
| | **7.0** | **Ste Seq & Access** | **SITE SECURITY AND ACCESS:** | | | |
| | 7.1 | Ste Seq & Access | While on Purchaser's premises, Bidder, its agents, employees, or subcontractors must conform in all respects with physical, fire, and security regulations. Bidder understands that all Purchaser's building entrances are controlled for access. Bidder agrees to become familiar with Purchaser's building and security policies, and further agrees to observe and comply with all Purchaser's building and security policies or procedures. Bidder understands that in order to obtain access to Purchaser's premises, Bidder must be issued a security badge by Purchaser. Bidder must provide certain personal information, including valid government issued photo identification, prior to obtaining a security badge. Bidder further understands that Purchaser will collect and retain such personal information for so long as the contract is in effect and such individual(s) has access to the premises. Purchaser reserves the right to deny an application for a security badge. Failure of Bidder to comply with Purchaser's security and safety policies and procedures is sufficient grounds for revoking, modifying, suspending or terminating access to Purchaser's facilities. | MANDATORY | Fully Meets | [redacted] |
| | **8.0** | **Ship & Risk of Loss** | **SHIPPING AND RISK OF LOSS:** | | | |
| | 8.1 | Ship & Risk of Loss | SHIPPING. Bidder must ship all materials purchased pursuant to this Contract, freight prepaid, FOB Purchaser's destination. The method of shipment must be consistent with the nature of the materials and hazards of transportation. | MANDATORY | Fully Meets | [redacted] |
| | 8.2 | Ship & Risk of Loss | RISK OF LOSS. Regardless of FOB point, Bidder agrees to bear all risks of loss, damage, or destruction of the materials ordered hereunder that occurs prior to Acceptance, except loss or damage attributable to Purchaser's fault or negligence; and such loss, damage, or destruction must not release Bidder from any obligation hereunder. After Acceptance, the risk of loss or damage must be borne by Purchaser, except loss or damage attributable to Bidder's fault or negligence. | MANDATORY | Fully Meets | |
| | **9.0** | **Const. Coord.** | **CONSTRUCTION COORDINATION:** | | | - |
| | 9.1 | Const. Coord. | Coordinating With Purchaser. The Bidder is responsible for coordinating with the Purchaser for specific needs or requirements such as facility access, security, and work hours. Bidder must coordinate with Purchaser to schedule project work to allow maximum access to the Bidder while minimizing disruption of Purchaser's business. Accordingly, the Bidder will frequently be required to work after normal business hours (Monday through Friday, 8 a.m. to 5 p.m.) and on weekends. | MANDATORY | Fully Meets | [redacted] - |
| | 9.2 | Const. Coord. | NEW CONSTRUCTION. When the project is for new construction or renovation, the Bidder must coordinate with the Purchaser's project manager to ensure that all work is performed in coordination with ongoing construction activities in such a manner as to cause the least possible disruption to other Bidders, finished surfaces, and facilitate the most efficient method for completion of the work. | MANDATORY | Fully Meets | - |
| | 9.3 | Const. Coord. | SAFETY REQUIREMENTS. Bidder must observe and comply with OSHA/WISHA regulations, all applicable safety and environmental laws and regulations, and all Purchaser's rules, guidelines, policies and procedures relating to safety, workplace conditions, health and the environment, including physical, fire, evacuation, accidents, hazardous materials or situations, or other safety regulations and policies during all work operations. OSHA/WISHA guidelines and rules must be followed and Bidder's adherence is subject to review by the State.<br>· All debris generated by the Bidder must be picked up and lawfully disposed of at the conclusion of each work day.<br>· Hallways must be kept free of debris, scaffolds, etc., during peak use.<br>· Traffic control devices, safety barricades, and other such devices must be utilized where necessary.<br>· Where performing work at a construction site, the Bidder will be required to abide by the Purchaser's primary Bidder's additional safety requirements.<br>· Whenever project requires Bidder to transit a firewall, the Bidder must meet all codes and requirements for proper fire-stop materials and methods | MANDATORY | Fully Meets | - |

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| | 9.4 | Const. Coord. | DELIVERY AND STORAGE.<br>· Bidder must be responsible for making the arrangements for delivery, unloading, and storage of materials for each project.<br>· Purchaser will assume no responsibility for receiving any materials shipped to Purchaser's facility by or on behalf of the Bidder.<br>· No storage area will be available at Purchaser's facility for long-term storage of Bidder's materials or supplies unless so stated in the Purchaser's SOW.<br>· If providing any storage for the convenience of the Bidder, the Purchaser assumes no responsibility for any items that may be lost, stolen, damaged, or destroyed, and will not take possession of or title to any items prior to installation and Acceptance.<br>· All materials purchased under this Contract must be completely installed and ready to begin Acceptance Testing within the time period specified in the Purchase Order or SOW after Bidder's receipt of an Order. Extensions will be granted at the sole option of the Purchaser. Time is of the essence with respect to delivery and Bidder may be subject to liquidated damages or termination of a Purchase Order/SOW or of this Master Contract and/or other damages available under law for failure to deliver on time.<br>· All deliveries made pursuant to this Contract must be complete. Unless Bidder has obtained prior written approval from Purchaser, which must not be withheld unreasonably, incomplete deliveries or backorders will not be accepted. All<br>packages must be accompanied by a packing slip that identifies all items included with the shipment and the Purchaser's<br>Purchase Order/SOW number. Bidder's delivery receipt must be signed by an authorized representative of Purchaser for all deliveries made hereunder. | MANDATORY | Fully Meets | [redacted] |
| | 9.5 | Const. Coord. | Pathway Access. The Bidder will be responsible for providing equipment necessary to access the vertical and lateral pathways to place specified cables and support work. | MANDATORY | Fully Meets | [redacted] |
| | 9.6 | Const. Coord. | Care Of Purchaser Facilities And Equipment. The Bidder is responsible for replacing, restoring and/or bringing to original condition all floors, ceilings, walls, furniture, grounds, pavement, utilities, etc. damaged by Bidder's personnel and operations. The Bidder is responsible for care of the Purchaser's affected equipment during installation/maintenance. The Bidder must notify the Purchaser if additional equipment is needed to complete the project. The Bidder is responsible for modifying, as needed, existing Equipment to ensure compatibility with any new Equipment being installed. | MANDATORY | Fully Meets | [redacted] |
| | 9.7 | Const. Coord. | Permits. The Bidder is responsible for obtaining applicable permits, unless otherwise specified by the Purchaser. | MANDATORY | Fully Meets | [redacted] |
| | 9.8 | Const. Coord. | Performance Bonds. The Bidder is responsible for obtaining performance bonds when required by the Purchaser. | MANDATORY | Fully Meets | [redacted] |
| | 9.9 | Const. Coord. | Hazardous Materials Remediation. It is the Bidder's responsibility to meet all state/federal rules and regulations pertaining to the presence of asbestos or other hazardous materials. Purchaser does not contemplate work in any area that contains hazardous materials, unless specified in writing in the SOW. Bidder must cease all work in any area where hazardous materials are discovered and must immediately notify Purchaser in writing. The Purchaser must be responsible for determining the disposition of hazardous materials identified by the Bidder. | MANDATORY | Fully Meets | [redacted] |
| | 9.10 | Const. Coord. | Removal of Old Cabling. Upon Purchaser request in SOW/Work Order, Bidder must be responsible for removing old cabling while installing new. | MANDATORY | Fully Meets | [redacted] |
| * | **10.0** | **Const. Coord (OUT)** | **CONSTRUCTION COORDINATION (Additional)- Outside Work Bidders Only:** | | | [redacted] |
| * | 10.1 | Const. Coord (OUT) | Utilities. The location of all existing buried facilities must be located and marked prior to any digging by the Bidder. The Bidder must be responsible for damage to any existing buried utilities. | MANDATORY | Fully Meets | [redacted] |
| * | 10.2 | Const. Coord (OUT) | Aerial Placement. The Bidder must utilize standard industry hardware to attach aerial cable at pole locations (strand vices, guy hooks, cable suspension clamps, corner suspension clamps, etc.) | MANDATORY | Fully Meets | [redacted] |

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|---|---|---|---|---|---|---|
| * | 10.3 | Const. Coord (OUT) | Equipment. All gas/diesel motorized equipment must have proper mufflers and meet any other environmental/safety requirements. | MANDATORY | Fully Meets | - |
| * | 10.4 | Const. Coord (OUT) | Trenching/Digging/Boring. Any trenching/digging/boring sites must be backfilled to contours and elevations of undisturbed surrounding terrain. Sidewalks restoration must match the sidewalk being removed. Driveway and roadway restoration must match the driveway and/or roadway being removed. To the extent necessary trench excavation must meet the requirements of RCW 39.04.180. | MANDATORY | Fully Meets | - |
| * | 10.5 | Const. Coord (OUT) | Work In Maintenance Holes. Before work commences in conduit system maintenance holes, the Bidder must follow industry standards and WA State Regulations (WAC 296-809 – Confined Spaces) for atmospheric testing, ventilation, barricading and signage of each manhole that will be entered by the Bidder as applicable. Bidder must maintain proper ventilation throughout the work process. | MANDATORY | Fully Meets | - |
| * | 10.6 | Const. Coord (OUT) | OutSide Plant (OSP) Optical Fiber Construction. All optic fiber cables utilized for outside plant applications must be suitable for outside use between buildings in a campus environment. It must be suitable for runs in buried conduits and aerial runs. The outer jacket must be smooth and free from holes, blisters, splits, and other surface flaws. | MANDATORY | Fully Meets | - |
| | **11.0** | **Doc.** | **DOCUMENTATION:** | | | - |
| | 11.1 | Doc. | The Bidder must prepare and maintain records in accordance with the State and Purchaser's documentation requirements. If the Purchaser has a cabling management system, the Bidder is responsible for working with the Purchaser's cabling management personnel to provide a format compatible with this system. For remodeling projects, the Bidder is responsible for updating appropriate records. | MANDATORY | Fully Meets | - |
| | 11.2 | Doc. | AS-BUILT DRAWINGS. Bidder must maintain a working copy of an as-built drawing of the Bidder's current project that shows the progress/changes of the work completed and the location of all the cabling, outlets, etc. This working document must be updated as often as specified in the Purchase Order/SOW. | MANDATORY | Fully Meets | - |
| | 11.3 | Doc. | In addition, the Bidder may be required to provide up to three (3) complete sets of as-built drawings following project completion. These drawings must, at a minimum, show all distribution cable runs utilized, number of pairs added, all distribution frames affected, and the location of all instruments and outlets installed. All outlets must be physically labeled according to Purchaser specifications and these labels must be used in the as-built drawings to indicate outlet locations. All voice and data cable paths and terminations must be coded according to the Purchaser's requirements. The Purchaser is responsible for providing the Bidder with building plans that will be used to prepare the as-built drawings. | MANDATORY | Fully Meets | - |
| | 11.4 | Doc. | TESTING DOCUMENTATION. Bidder must provide the results of all testing done on installed cable to the Purchaser, in either hard copy or by email, as directed by the Purchaser. | MANDATORY | Fully Meets | - |
| | 11.5 | Doc. | LABELING. Labeling of jacks, wiring, panels, cross connect blocks and any other installed items that would regularly be labeled, is required for all installations, and must comply with the labeling requirements of EIA/TIA 606-CB unless otherwise specified by the Purchaser. As-built drawings are to reflect this labeling methodology. | MANDATORY | Fully Meets | - |
| | 11.6 | Doc. | Labeling must be permanent and legible. Labeling must be installed at cabling points identified within the specifications in the RFQQ and Purchase Order/SOW. Unless specified differently by Purchasers, all cable labels must comply with the labeling requirements of EIA/TIA 606-B. | MANDATORY | Fully Meets | - |
| | 11.7 | Doc. | Bidder must work with Purchaser to identify and flag/label abandoned cable that is available to be used at a future date. | MANDATORY | Fully Meets | - |
| | **12.0** | **Compat & Specs** | **MATERIAL COMPATIBILITY, SPECIFICATIONS AND CONFIGURATIONS:** | | | - |
| | 12.1 | Compat & Specs | Bidder must be responsible to notify Purchaser of the existence of any compatibility issues between Bidder's materials and Purchaser's already existing or planned for hardware, software or cabling. Purchaser will provide Bidder access in a timely fashion to necessary areas and equipment sites and must provide Bidder with a list of any existing or planned for hardware, software and cabling, as necessary. | MANDATORY | Fully Meets | - |

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| | 12.2 | Compat & Specs | Materials delivered hereunder will conform to that item's detailed specifications in all respects including, but not limited to; physical characteristics, operating characteristics, space requirements, power requirements, maintenance or warranty characteristics, modularity, compatibility, and the like, as may be modified in writing and agreed to by the parties. | MANDATORY | Fully Meets | [redacted] |
| | **13.0** | **Inst. & Set Up** | **INSTALLATION AND SET-UP:** | | | |
| | 13.1 | Inst. & Set Up | Bidder must separately itemize all installation and physical requirements for materials as listed below:<br>• Ventilation or Air conditioning<br>• Electrical requirement<br>• Special grounding<br>• Cabling requirement<br>• Weight (floor loading)<br>• Space requirements<br>• Humidity and temperature limits<br>• Noise level | MANDATORY | Fully Meets | [redacted] |
| | 13.2 | Inst. & Set Up | When installing materials, Bidder will provide, at no additional charge:<br>• A written installation support plan and schedule addressing staffing, site preparation requirements, resource allocation,<br>testing procedures.<br>• Site surveys.<br>• Station reviews to identify user requirements.<br>• An on-site Manufacturer certified technician during and after the Project until the Materials operate properly. | MANDATORY | Fully Meets | [redacted] |
| | 13.3 | Inst. & Set Up | Bidder installation personnel that work onsite must have International, or Manufacturer certification in accordance with industry standards and best practice methodologies and must be proficient with the installation and termination of all equipment that is to be installed onsite. Upon request Bidder will furnish a copy of such certification to Purchaser or DES. | MANDATORY | Fully Meets | [redacted] |
| | 13.4 | Inst. & Set Up | Purchaser must have access to the work site at all times during installation. | MANDATORY | Fully Meets | [redacted] |
| | 13.5 | Inst. & Set Up | Purchaser must prepare the environment to house the Materials based upon written requirements provided by Bidder in its installation plan, as modified in writing and agreed to by the parties. Bidder's specialists must be available to provide required consultation related to environment preparation at no extra cost to Purchaser apart from the costs presented in Bidder's Response. Any requirements for the environment not disclosed in Bidder's installation plan will be completed by Bidder at no additional cost to Purchaser. Purchaser will provide standard commercial power. Bidder must install an external, Manufacturer recommended surge protector between the power source and each major system. | MANDATORY | Fully Meets | [redacted] |
| | 13.6 | Inst. & Set Up | Bidder must be responsible for acquiring any required permits. | MANDATORY | Fully Meets | [redacted] |
| | 13.7 | Inst. & Set Up | Bidder must replace, restore and/or return all floors, ceilings, walls, grounds, pavement, etc., damaged by Bidder personnel to their original condition at no additional cost to Purchaser. | MANDATORY | Fully Meets | [redacted] |
| | 13.8 | Inst. & Set Up | All debris generated by Bidder must be picked up and lawfully disposed of at the conclusion of each work day. Hallways must be kept free of debris, scaffolds, etc., during peak use. Traffic control devices, safety barricades, and other such devices must be utilized where necessary. | MANDATORY | Fully Meets | [redacted] |
| | 13.9 | Inst. & Set Up | Bidder is hereby notified that fiber optic, communications, control systems, and other types of cable (collectively called "cabling") may be located within or on Purchaser's grounds and facilities. | MANDATORY | Fully Meets | [redacted] |
| | 13.10 | Inst. & Set Up | Before beginning work on or about Purchaser's premises, Bidder must contact Purchaser's communications network control center to determine if Purchaser's cabling systems will be impacted and to make necessary arrangements. Prior to the commencement of any work that may impact underground utilities not owned by Purchaser, Bidder agrees to notify affected owners under the requirements of chapter 19.122 RCW, Underground Utilities. | MANDATORY | Fully Meets | [redacted] |

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| | 13.11 | Inst. & Set Up | Purchaser hereby permits Bidder to interface with such cabling and design engineering systems in support of the delivery of the Materials and Services ordered under this Master Contract. | MANDATORY | Fully Meets | [redacted] |
| | 13.12 | Inst. & Set Up | Bidder must install the materials, with all features, options, parts and wiring ordered by Purchaser, ready for Acceptance Testing, on or before the Installation Date(s) specified in the Purchase Order/SOW. Failure to meet the Installation Date(s) may subject Bidder to liquidated damages or termination of a Purchase Order or of this Master Contract and damages available under law, unless such failure is caused by acts or omissions of Purchaser. | MANDATORY | Fully Meets | |
| | 13.13 | Inst. & Set Up | After installing the materials, Bidder must provide Purchaser with documentation of a successful system audit using Bidder's diagnostic routines, as approved by Purchaser, demonstrating that the materials meet or exceed the Specifications. Bidder must certify to Purchaser in writing that the materials are ready for Acceptance Testing. If after reviewing such documentation Purchaser agrees that the materials are ready for Acceptance Testing, Purchaser must begin Acceptance Testing, as set forth in the section titled Standard of Performance and Acceptance. | MANDATORY | Fully Meets | |
| | **14.0** | **Std Perf & Acc.** | **STANDARD OF PERFORMANCE AND ACCEPTANCE:** | | | |
| | 14.1 | Std Perf & Acc. | This section establishes a Standard of Performance that must be met before Acceptance. This Standard of Performance is also applicable to any additional, replacement, or substitute materials and any materials that are modified by or with the written approval of Bidder after having been accepted. | MANDATORY | Fully Meets | |
| | 14.2 | Std Perf & Acc. | MATERIALS TESTING. All installation, wiring, and cabling requirements identified in the Purchase Order/ SOW must be satisfied. All materials must be tested, functional and certified, based on ANSI/TIA/EIA installation standards and best practices and be approved by the Purchaser and/or Purchaser's on-site coordinator prior to acceptance for payment. Minimum testing of copper cable is to include Wire Map, continuity, NEXT and attenuation in accordance with the most current ANSI/TIA/EIA-568 standard. Minimum testing for fiber cable is to include testing the attenuation and Optical Return Loss of the installed cable plant to meet TIA standard loss levels. This will be accomplished by providing passing test results from the following test equipment an optical loss test set (OLTS)(Tier 1 test) and an Optical Time Domain Reflectometer (OTDR) (Tier 2 test). Complete test results whether they be for copper or fiber will be provided digitally for each terminated fiber strand and each copper pair at the end of the project. When performing a Tier 1 test on laser optimized multimode fiber (OM3, 4 or 5) the use of encircled flux reference cables shall be used for proper test results. When performing a Tier 2 test on fiber optic strands that have splices or that splice between two different cable manufacture's glass, testing on an OTDR will be done in both directions and loss values will be averaged and recorded in the test results. When testing and certifying copper or fiber cables, all test equipment must have a calibration date not to exceed 1 year from the date of the test. | MANDATORY | Fully Meets | |
| | 14.3 | Std Perf & Acc. | RESPONSIBILITY FOR COMPLIANCE. Inspections, tests, measurements or other acts or functions performed by State of Washington personnel must in no manner be construed as relieving the Bidder from full compliance with requirements. Upon Purchaser notification of defective or unauthorized equipment or materials, and unacceptable installation/repair practices, the Bidder will immediately replace or modify affected practices or parts at no additional cost to the Purchaser. | MANDATORY | Fully Meets | |
| | 14.4 | Std Perf & Acc. | ACCEPTANCE. Acceptance of materials and services will be based as follows or as detailed in Purchaser's Purchase Order/SOW. Fifteen (15) consecutive days of one-hundred percent (100 percent) trouble-free performance where:<br>• 100 percent of all terminations are operational and the Effectiveness Level is 100 percent;<br>• 100 percent of all ancillary equipment is operational and the Effectiveness Level is 100 percent;<br>• Labeling and as-built drawings have been completed according to Purchaser's specifications and provided to the Purchaser. | MANDATORY | Fully Meets | |

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| | 14.5 | Std Perf & Acc. | EFFECTIVENESS LEVEL. The Effectiveness Level is the percentage of time in a month that the materials are functioning properly in accordance with its specifications. The Effectiveness Level is determined by dividing the operational use time of the materials by the sum of the operational use time plus the materials failure downtime, all of which must be measured in hours and whole minutes. Operational Use Time for materials is defined as the total time the materials would normally be used. Materials Failure downtime is defined as the accumulated time during Operational Use time when work cannot be processed or accurately completed because of materials Failure. Materials Failure is defined as a malfunction that prevents the accomplishment of the intended function(s) of the materials. | MANDATORY | Fully Meets | [redacted] |
| | 14.6 | Std Perf & Acc. | DOWNTIME. Downtime for each incident must start from the time that Bidder knew or reasonably should have known of the materials failure, or Purchaser makes a bona fide attempt to contact Bidder's designated representative at the prearranged contact point, whichever occurs earlier, until the materials are returned to fully operational status in conformance with its specifications. During periods of materials failure downtime, Purchaser may use operable portions of the materials when such action does not interfere with repair of the inoperable portions. | MANDATORY | Fully Meets | |
| | 14.7 | Std Perf & Acc. | FAILURE TO MEET STANDARD OF PERFORMANCE. If the services and materials do not meet the Standard of Performance during the first period of Acceptance Testing, Purchaser at its sole option may continue on a day-to-day basis until the Standard of Performance has been met, or terminate the Purchase Order/SOW without penalty, or demand replacement materials or services and/or corrections from the Bidder at no additional cost and continue the Acceptance Testing for an additional fifteen (15) consecutive calendar days after receipt of replacement materials. Purchaser's option to terminate the Purchase Order/SOW must remain in effect until exercised or until such time as the Acceptance Testing is successfully completed. Bidder must pay all costs related to the preparation and shipping of materials returned pursuant to this section. Purchaser's option to declare Bidder in breach and terminate this Order must not be waived by Purchaser's decision to continue Acceptance Testing beyond the delineated testing period. | MANDATORY | Fully Meets | |
| | 14.8 | Std Perf & Acc. | WRITTEN NOTICE OF ACCEPTANCE.<br>Purchaser, at its sole discretion, will determine whether the services and materials have successfully completed Acceptance Testing. Bidder must not bill Purchaser until this Standard of Performance is met. Upon successful completion of the Acceptance Testing, Purchaser will provide a written notice of a successful Acceptance Testing to the Bidder's Project Manager. | MANDATORY | Fully Meets | |
| | 14.9 | Std Perf & Acc. | BIDDER SUPPORT.<br>Bidder must provide support for the period up to the issuance of Acceptance by Purchaser. This support must include troubleshooting, the correction of any bugs or deficiencies, and the resolution of any operating problems. During this period, Bidder will provide, at no additional cost, unlimited technical support by telephone. If a problem cannot be resolved within forty-eight (48) hours of Purchaser's initial notification, Bidder must provide at no additional cost onsite service and support to resolve the problem. | MANDATORY | Fully Meets | |
| | 14.10 | Std Perf & Acc. | ESCALATION PROCEDURES<br>Bidder must submit an escalation procedure, providing trouble escalation for normal and emergency events. Bidder is required to submit updated escalation procedures upon any change.<br><br>Written Response Required. *Provide contact names and titles, with appropriate time intervals and point(s) of contact for unresolved service problems. Bidder is required to submit updated escalation procedures upon any change.* | MANDATORY SCORED | Fully Meets | Normal Service: Call our office (360) 863-9617 during normal business hours and ask for the account manager Ralph Autore extension 232 or put in an email request to him at ralph.autore@milneelectric.com. If your request goes unanswered for 24 hours call the office manager Amber Grace Extension 233 at the same number. She will take your request and arrange a service call. If you are unable to reach her for any reason dial 0 for the operator and Laura Person, Manager Assistant, will process your request. For emergency response please email DES@milneelctric.com. |
| | **15.0** | **Wnty.** | **WARRANTY:** | | | |
| | 15.1 | Wnty. | Bidder warrants that the materials must be new, of the latest design, of good quality, free of defects, fit and safe for the intended purposes, free from defects in materials and workmanship, and must be produced and delivered in full compliance with applicable law and in conformance with the Master Contract and Purchase Order/SOW (including EIA/TIA Category Certifications for cables and termination components). All materials and work not in conformance with the Master Contract, and Purchase Order/SOW and EIA/TIA Category Certifications for cables and termination components must be replaced free-of-charge to Purchaser during the base-offer warranty period, commencing upon the first day after the Acceptance Date. | MANDATORY | Fully Meets | [redacted] |

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| | 15.2 | Wnty. | During the Warranty Period, Bidder must adjust, repair, or replace all materials that are defective or not performing in conformance with the specifications. All costs for such adjustments, repairs, or replacements, including all costs for replacing parts or units and their installation and any transportation and delivery fees, must be at Bidder's expense. Any defective materials must be repaired or replaced for Purchaser so that it conforms to the specifications of the Master Contract and Purchase Order/SOW. | MANDATORY | Fully Meets | [redacted] |
| | 15.3 | Wnty. | Bidder agrees that all warranty service provided hereunder must be performed by Manufacturer-trained, certified, and authorized technicians. Bidder further agrees to act as the sole point of contact for warranty service. Bidder warrants that it has or will obtain and pass through to Purchaser any and all warranties obtained or available from the Original Equipment Manufacturer (OEM), including any replacement, upgraded, or additional materials warranties. | MANDATORY | Fully Meets | |
| | 15.4 | Wnty. | Goods Warranty. The base-offer warranty period for the building wiring system must be a minimum of twelve (12) months, and can be increased by the Purchase Order/SOW which must start on the "Acceptance Date." | MANDATORY | Fully Meets | Written Response Required |
| | 15.5 | Wnty. | Services Warranty. Bidder will warranty the services provided under the resulting Master Contract. Bidder will provide a minimum of twelve (12) months Services warranty from the time of acceptance by Purchaser for installed/repaired materials including basic common equipment, terminal equipment and all other ancillary equipment. Bidder provided Services warranty will be carried over into 5.3 of resulting Master Contract.<br><br>Written Response Required: *Please detail warranty provided on services including # months covered in Warranty Period.* | MANDATORY SCORED | Fully Meets | Milne Electric Inc. warranties parts and labor for 12 months commencing upon project completion. |
| | 15.6 | Wnty. | Technical Support. Bidder must provide Technical Support and Service Desk for reporting warranty issues and for trouble-shooting problems. Bidder's Technical Support and Service Desk can be reached at the number identified during normal business hours (8:00-5:00, M-F), at a minimum. After hours Support Services is preferred.<br><br>Written Response Required. *Bidder's Technical Support Services can be reached at (to be filled in by Bidder). Indicate if have after hours phone number, and hours available, that Purchasers can reach Support Services after normal business hours.* | MANDATORY SCORED | Fully Meets | Send email to DES@milneelectric.com during normal business hours (6:00-430, M-F) and after hours including Saturday and Sunday. Milne does not have after hours service support and recommends emailing DES@milneelctric.com or calling the following: Ralph Autore 206-510-6579, George Hatland 425-308-7405, Matt Wood 206-751-2106 or Nick Nettles 206-496-3737. |
| | **16.0** | **Mat. Maint.** | **MATERIALS MAINTENANCE:** | | | |
| | 16.1 | Mat. Maint. | Non-emergency maintenance/repair callback response time during warranty will be within eight (8) Business Hours after notification. On-Site response time to routine maintenance/repair requests such as Moves, Adds, and Changes (MACs) must be within three (3) Business Days of request, unless otherwise negotiated by Purchaser and Bidder. Routine maintenance/repair will be performed during Business Hours. When on-site, Bidder must report to Purchaser's designated coordinator prior to and after each service call.<br><br>Written Response Required | MANDATORY SCORED | Fully Meets | Milne Agknowledges and will comply. |
| | 16.2 | Mat. Maint. | Emergency on-site maintenance/repair response time during warranty will be within two (2) hours, twenty-four (24) hours per day, seven (7) days per week, including holidays. Time to correct an emergency situation must not exceed eight (8) hours after notification. Emergency maintenance applies to: (i) Failure of signaling; (ii) Failure of power supply; and (iii) Failure of any terminals deemed critical by Purchaser to the functioning of Purchaser's business functions.<br><br>Written Response Required | MANDATORY SCORED | Fully Meets | Milne Agknowledges and will comply. |
| | 16.3 | Mat. Maint. | Purchaser may impose liquidated damages as part of their Purchase Order/SOW for each "late" hour or part thereof (prorated in whole minutes) beginning with the time of notification and ending with the time of arrival, if Bidder's maintenance personnel fail to meet response times identified above. | MANDATORY | Fully Meets | [redacted] |
| | 16.4 | Mat. Maint. | Any work or upgrade that may affect service must be coordinated with Purchaser's coordinator a minimum of 48 hours in advance. Maintenance and upgrades that might affect service will not be conducted during Business Hours without Purchaser's prior written approval. | MANDATORY | Fully Meets | |

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| | 16.5 | Mat. Maint. | Purchaser agrees that Bidder will not be liable for any damages caused by Purchaser's actions or failure of Purchaser to fulfill any of its responsibilities for site installation. | MANDATORY | Fully Meets | [redacted] |
| | 16.6 | Mat. Maint. | Bidder personnel responding to maintenance calls, repairing or servicing the system must be Manufacturer-certified to work on the materials. | MANDATORY | Fully Meets | |
| | 16.7 | Mat. Maint. | Bidder must maintain a log on Purchaser's premises that details repairs, maintenance and upgrades to the system. The log must be available for inspection by Purchaser and/or DES upon request. | MANDATORY | Fully Meets | |
| | 16.8 | Mat. Maint. | Purchaser must provide Bidder access to the system to perform maintenance service. | MANDATORY | Fully Meets | |
| | 16.9 | Mat. Maint. | When on-site, Bidder must report to Purchaser's designated coordinator prior to and after each service call. | MANDATORY | Fully Meets | |
| | 16.10 | Mat. Maint. | Upon completion of each maintenance call, Bidder must furnish a maintenance activity report to Purchaser, which must include, as a minimum, the following:<br>• Date and time notified.<br>• Date and time of arrival.<br>• Type and serial number(s) of machine(s).<br>• Time spent for repair.<br>• Description of malfunction.<br>• List of parts replaced.<br>• Additional charges, if applicable. | MANDATORY | Fully Meets | |
| | 16.11 | Mat. Maint. | There must be no additional maintenance charges for:<br>• Replacement parts.<br>• Remedial maintenance required within a forty-eight (48) hour period due to recurrence of the same malfunction.<br>• Time spent by maintenance personnel after arrival at the site awaiting the arrival of additional maintenance personnel and/or delivery of parts, tools or other required material. | MANDATORY | Fully Meets | |
| | 16.12 | Mat. Maint. | In cases where Bidder does not respond within the required time, Purchaser must have the option of acquiring repair from another manufacturer-certified source and Bidder must be responsible for full reimbursement of costs incurred by Purchaser. Maintenance by another manufacturer- certified source when Bidder has failed to respond will not constitute grounds to void the warranty. | MANDATORY | Fully Meets | |
| | **17.0** | **Spare Parts** | **SPARE PARTS:** | | | |
| | 17.1 | Spare Parts | Bidder must make available to Purchaser either a depot repair center and/or an availability guarantee of component parts and sub-assemblies necessary for on-going maintenance and operation of the materials. Bidder guarantees part availability for a minimum of seven (7) years from the Acceptance Date of materials by Purchaser. In addition, Bidder must have a complete on-site "crash kit" of spare parts or a permanent maintenance facility with a full parts inventory within a distance that will meet the specified emergency on-site response times. | MANDATORY SCORED | Fully Meets | Milne Agknowledges and will comply. Milne Electric has a 34,000 square foot warehouse located in Monroe WA<br>and can support the NW region. |
| | **18.0** | **Fed Funds** | **FEDERAL FUNDS:** | | | |
| | 18.1 | Fed Funds | Bidder meets the most current version of the FEDERAL TRANSIT ADMINISTRATION ARTICLES FOR PROCUREMENT CONTRACTS, as listed in the Master Contract Exhibit E1. This will qualify bidder to bid on jobs where Purchaser uses FTA funds for payment. To the extent that any Purchaser uses federal funds to purchase goods and/or services pursuant to any resulting Master Contract, such Purchaser shall attach the most current version of federal funding requirements/articles to purchase order/SOW, and specify any applicable requirement or certification that must be satisfied by Bidder with its order/SOW, at the time the order is placed. Bidder must use best efforts to execute such federal assurances or requirements as may be necessary for Purchaser to utilize such federal funding (e.g., FTA requirements, sample attached as Exhibit D).<br><br>Written Response Required | HIGHLY DESIRABLE | Fully Meets | Milne Agknowledges and will comply. |

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| | **19.0** | **Opt.** | **E-WASTE BUYBACK OR RECYCLING OPTIONS:** | | | |
| | 19.1 | Opt. | Bidder must have E-waste buyback or recycling program option for old cabling. Provide options for E-waste buy back or old cabling recycling to purchasers.<br><br>Written Response Required | HIGHLY DESIRABLE | Fully Meets | Milne Electic Inc. currently utlizes a recycling vendor to reclaim all metals, cabling and paper products for E-waste buy back. |
| | **20.0** | **Inv.** | **INVOICING:** | | | |
| | 20.1 | Inv. | Bidder must submit to Purchaser's designated invoicing contact properly itemized invoices for Goods and/or Services delivered under this Master Contract. Such invoices must itemize the following:<br>(a) Master Contract No. 05620<br>(b) Bidder name, address, telephone number, and email address for billing issues (i.e., Bidder Customer Service Representative)<br>(c) Bidder's Federal Tax Identification Number<br>(d) Date(s) of delivery (if applicable)<br>(e) Description of Services and Installation provided, including hourly rate and total hours for each labor category, if applicable. Pricing for Labor categories must be clearly structured in same manner as contract pricing ($/hr. and PW + %)<br>(f) Description of Parts and Materials provided. Pricing for Parts and Materials must be clearly structured in same manner as contract pricing (cost + % markup)<br>(g) Invoice amount; and<br>(h) Payment terms, including any available prompt payment discounts.<br>Bidder's invoices for payment must reflect accurate Master Contract prices. Invoices will not be processed for payment until receipt of a complete invoice as specified herein. | MANDATORY | Fully Meets | [redacted] |

COMMSCOPE®

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United States
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www.commscope.com

November 4, 2021

To Whom It May Concern:

The purpose of this letter is to confirm that **Milne Electric** is an authorized CommScope PartnerPRO Network for SYSTIMAX & UNIPIRSE Infrastructure Solution Provider.

As an Authorized Solution Provider, they will be able to design, install and provide the SYSTIMAX and Uniprise 25-year warranty for projects within their authorized territory of **Washington**.

They will be considered in "Good Standing" pending the completion of the Recertification course of the Installation & Maintenance.

Using a company that is a member of the CommScope PartnerPRO Network means that our customers can be assured that their structured cabling systems have been properly designed, installed, and tested using quality components and installation practices.

We at CommScope appreciate our partnership with **Milne Electric.** as a member of the CommScope PartnerPRO Network for 2020.

Should you have any questions, feel free to contact us.

Regards,

Ernest Pickens
SVP ISPC & Enterprise Markets

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Legrand acknowledges

# Milne Electric Inc - Monroe, WA

of

Monroe, WA

is Certified at the Certified Installer (CI) Partner tier

for the 2021 calendar year

*This certification allows the installer to offer a 25-Year Warranty for properly registered and approved projects in Washington.*

*Warranty for projects outside Washington must be pre-approved.*

Director of Technology Support & Training

MIL98272

Registration Number

Washington State Department of Enterprise Services

**EXHIBIT B**
**PRICES FOR GOODS/SERVICES**

| Bidder Name: | *Milne Electric, Inc.* |
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**#05620 IT Cabling EXHIBIT B -- Bid Price (Revised 7.30.21)**

# Category 1- Services and Installation / Inside Work

**Scope:** This category includes Inside work and all parts and materials required to complete the service and installation. Inside work involves IT cabling installation in new buildings, major renovated buildings and additions to existing cabling networks.

**Instructions:**
Bidders are requested to offer pricing on this sheet for Inside work for each region they are proposing to seek award. Bid pricing for labor will be expressed as prevailing wage plus percentage for each region bid (PW+%) or as an hourly rate ($X/hr.) as marked. Bid pricing for parts and materials will be expressed as a markup percentage over suppliers' invoiced price (% Markup on Parts and Materials). Contractors must share suppliers' invoices upon request by Purchasers.

**LABOR:** For each region you are bidding, please enter a percentage that represents markup over prevailing wage in the grayed columns under Straight Time for each category of cabling labor that requires prevailing wage: Telecommunications Technician, Electronic Technician, Electrician (Journey Level) and Cable Splicer. For the Project Manager, Foreman and RCDD categories, please bid an hourly rate for Straight Time, Overtime, and Holiday. **All labor categories are for journey level workers.**

**PARTS AND MATERIALS:** Please put a percentage in the grayed box next to "% Markup on parts and materials" for each region you are bidding (markup must include shipping, configuration, kitting, processing, warehousing and any other costs of acquisition or delivery of the parts, supplies and materials).

NOTE 1: Mileage for each region (in company vehicles or employee owned vehicles) MUST be factored into the labor pricing for each labor category. In no case shall travel charges exceed GSA's mileage reimbursement rate or per diem schedule for the locality.

NOTE 2: Costs of permits and performance bonds, as may be required by Purchaser, shall appear on quotes or invoices at cost with no markup. Equipment rented for a specific advertised job must appear on a quote for Purchaser as a separate line item, at cost. Standard equipment and tools used for IT Cabling projects (inside and outside work) are NOT allowed as separate line items.

**"Note: Percentages provided for Straight Time will also apply to Overtime and Holiday labor rates for job classifications governed by prevailing wage**

## North Puget Sound

| Labor Category | Straight Time | Overtime | Holiday |
|---|---|---|---|
| Project Manager (hourly) | $ 102.00 | $ 102.00 | $ 102.00 |
| Inside Foreman (hourly) | $ 86.00 | $ 116.00 | $ 141.00 |
| RCDD (hourly) | $ 138.00 | $ 138.00 | $ 138.00 |
| Telecom technician (PW + %) | 20.00% | | |
| Electronic technician (PW + %) | 20.00% | | |
| Electrician (journey level) (PW + %) | 20.00% | | |
| Cable splicer (inside) (PW +%) | 20.00% | | |
| % Markup on parts and materials | 15.00% | | |

**#05620 IT Cabling EXHIBIT C1 -- Bid Price (Revised 7.30.21)**

| Bidder Name: | *Milne Electric, Inc.* |
|---|---|

# Category 1-Services and Installation / Outside Work

**Scope**: This category includes Outside work, and all parts and materials required to complete the service and installation. Outside work will be for inter-building connectivity. Outside work may include digging and trenching as well as installing cabling.

**Instructions:**
Bidders are requested to offer pricing on this sheet for **Outside work** for each region they are proposing to seek award. Bid pricing for labor will be expressed as prevailing wage plus percentage for each region bid (PW+%) or as an hourly rate ($X/hr.) as marked. Bid pricing for parts and materials will be expressed as a markup percentage over suppliers' invoiced price (% Markup on Parts and Materials). Contractors must share suppliers' invoices upon request by Purchasers.

**LABOR:** For each region you are bidding, please enter a percentage that represents markup over prevailing wage in the grayed columns under Straight Time for each category of cabling labor that requires prevailing wage: Groundperson, Line equipment operator (light), Line equipment operator (heavy), Lineperson, Cable splicer, Operating Engineer, and Laborer. For the Project Manager, Foreman and RCDD categories, please bid an hourly rate for Straight Time, Overtime, and Holiday. **All labor categories are for journey level workers.**

Washington State Department of Enterprise Services

**PARTS AND MATERIALS:** Please put a percentage in the grayed box next to "Markup on parts and materials" for each region you are bidding (markup must include shipping, configuration, kitting, processing, warehousing and any other costs of acquisition or delivery of the parts, supplies and materials)**.**

NOTE 1:-Mileage for each region (in company vehicles or employee owned vehicles) MUST be factored into the labor pricing for each labor category. In no case shall travel charges exceed GSA's mileage reimbursement rate or per diem schedule for the locality.

NOTE 2: Costs of permits and performance bonds, as may be required by Purchaser, shall appear on quotes or invoices at cost with no markup. Equipment rented for a specific advertised job must appear on a quote for Purchaser as a separate line item, at cost.
Owned equipment and tools that are used on an IT Cabling- Outside Work project can be billed at a rate that does NOT exceed the most recent FEMA Schedule of Equipment Rates (2019 Schedule at time of posting). This is intended for equipment used in Outside Work (trenchers, asphalt paver, concrete mixer, etc.) Standard equipment and tools used for IT Cabling projects (inside and outside work) are NOT allowed as separate line items.

* FEMA Schedule of Equipment Rates (2019 Schedule at time of posting).

## North Puget Sound

| Labor Category | Straight Time | Overtime | Holiday |
|---|---|---|---|
| Project Manager (hourly) | $ 102.00 | $ 102.00 | $ 102.00 |
| Inside Foreman (hourly) | $ 98.40 | $ 132.50 | $ 166.61 |
| RCDD (hourly) | $ 138.00 | $ 138.00 | $ 138.00 |
| Groundperson (PW + %) | 20.00% | | |
| Line Equipment Operator (light) (PW +%) | 20.00% | | |
| Line Equipment Operator (heavy) (PW + %) | 20.00% | | |
| Lineperson (PW + %) | 20.00% | | |
| Cable Splicer (outside) (PW + %) | 20.00% | | |
| Operating Engineer (PW + %) | 20.00% | | |
| Laborer (PW + %) | 20.00% | | |
| % Markup on Parts and Materials | 15.00% | | |

Exhibit C
**INSURANCE REQUIREMENTS**

1. **INSURANCE OBLIGATION**. During the Term of this Master Contract, Contractor shall possess and maintain in full force and effect, at Contractor's sole expense, the following insurance coverages:

    a. COMMERCIAL GENERAL LIABILITY INSURANCE. Commercial general liability insurance (and, if necessary, commercial umbrella liability insurance) covering bodily injury, property damage, products/completed operations, personal injury, and advertising injury liability on an 'occurrence form' that shall be no less comprehensive and no more restrictive than the coverage provided by Insurance Services Office (ISO) under the most recent version of form CG 00 01 in the amount of not less than $1,000,000 per occurrence and $2,000,000 general aggregate. This coverage shall include blanket contractual liability coverage. This coverage shall include a cross-liability clause or separation of insured condition.

    b. WORKERS' COMPENSATION INSURANCE. Contractor shall comply with applicable Workers' Compensation or Industrial Accident insurance providing benefits as required by law.

    c. EMPLOYERS' LIABILITY (STOP GAP) INSURANCE. Employers' liability insurance (and, if necessary, commercial umbrella liability insurance) with limits not less than $1,000,000 each accident for bodily injury by accident, $1,000,000 each employee for bodily injury by disease, and $1,000,000 bodily injury by disease policy limit.

    d. COMMERCIAL AUTOMOBILE LIABILITY INSURANCE. Commercial automobile liability insurance covering the ownership, maintenance, and/or use of all owned/leased, non-owned, and hired vehicles used in the performance of the Master Contract, with limits of not less than $1,000,000 per accident, combined single limit for bodily injury and property damage liability. Coverage shall be provided on Insurance Services Office (ISO) form number CA 0001 or an equivalent.

    e. COMMERCIAL UMBRELLA LIABILITY INSURANCE. Commercial umbrella liability insurance coverage in the sum of $3,000,000 shall be provided and shall apply over all liability policies, without exception, including but not limited to Commercial General Liability, Commercial Automobile Liability, Employers Liability, and Professional Liability.

    The insurance coverage limits set forth herein are the minimum. Contractor's insurance coverage shall be no less than the minimum amounts specified. Coverage in the amounts of these minimum limits, however, shall not be construed to relieve Contractor from liability in excess of such limits. Contractor waives all rights against the State of Washington for the recovery of damages to the extent such damages are covered by any insurance required herein.

2. **INSURANCE CARRIER RATING**. Coverages provided by Contractor must be underwritten by an insurance company deemed acceptable to the State of Washington's Office of Risk Management. Insurance coverage shall be provided by companies authorized to do business within the State of Washington and rated A- Class VII or better in the most recently published edition of Best's Insurance Rating. Enterprise Services reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating.

3. **ADDITIONAL INSURED**. Commercial General Liability, Commercial Automobile Liability, and Pollution Liability Insurance shall include the State of Washington and all authorized Purchasers (and their agents, officers, and employees) as Additional Insureds evidenced by copy of the Additional Insured Endorsement attached to the Certificate of Insurance on such insurance policies.

4. **CERTIFICATE OF INSURANCE**. Prior to execution of the Master Contract, Contractor shall furnish to Enterprise Services, as evidence of the insurance coverage required by this Master Contract, a certificate of insurance satisfactory to Enterprise Services that insurance, in the above-stated kinds and minimum amounts, has been secured. In addition, no less than ten (10) days prior to coverage expiration, Contractor shall furnish to Enterprise Services an updated or renewed certificate of insurance, satisfactory to Enterprise Services, that insurance, in the above-stated kinds and minimum amounts, has been secured. Failure to maintain or provide proof of insurance, as required, will result in contract cancellation. **All policies and certificates of insurance shall include the Master Contract number stated on the cover of this Master Contract**. All certificates of Insurance and any related insurance documents shall be delivered to Enterprise Services by U.S. mail, postage prepaid, or sent via email, and shall be sent to the address or email address set forth below or to such other address or email address as Enterprise Services may specify in writing:

   US Mail: Contracts & Procurement – Master Contract Insurance Certificate
   **Master Contract No. 05620 – IT Cabling**
   Attn: Contract Administrator – Master Contract No. 05620
   Washington Dept. of Enterprise Services
   PO Box 41411
   Olympia, WA 98504-141

   Email: DESContractsTeamCypress@des.wa.gov

   *Note*: For Email notice, the Email Subject line must state:
   **Master Contract Insurance Certificate – Master Contract No. 05620 – IT Cabling**

5. **PRIMARY COVERAGE**. Contractor's insurance shall apply as primary and shall not seek contribution from any insurance or self-insurance maintained by, or provided to, the additional insureds listed above including, at a minimum, the State of Washington and/or any Purchaser. All insurance or self-insurance of the State of Washington and/or Purchasers shall be excess of any insurance provided by Contractor or subcontractors.

6. **SUBCONTRACTORS**. Contractor shall include all subcontractors as insureds under all required insurance policies. Alternatively, prior to utilizing any subcontractor, Contractor shall cause any such subcontractor to provide insurance that complies with all applicable requirements of the insurance set forth herein and shall furnish separate Certificates of Insurance and endorsements for each subcontractor. Each subcontractor must comply fully with all insurance requirements stated herein. Failure of any subcontractor to comply with insurance requirements does not limit Contractor's liability or responsibility.

7. **WAIVER OF SUBROGATION**. Contractor waives all rights of subrogation against the State of Washington and any Purchaser for the recovery of damages to the extent such damages are or would be covered by the insurance specified herein.

8. **NOTICE OF CHANGE OR CANCELLATION**. There shall be no cancellation, material change, exhaustion of aggregate limits, or intent not to renew insurance coverage, either in whole or in part, without at least sixty (60) days prior written Legal Notice by Contractor to Enterprise Services. Failure to provide such notice, as required, shall constitute default by Contractor. Any such written notice shall include the Master Contract number stated on the cover of this Master Contract.

**9.** **EXTENDED REPORTING PERIOD**. If any required insurance coverage is on a claims-made basis (rather than occurrence), Contractor shall maintain such coverage for a period of no less than three (3) years following expiration or termination of the Master Contract.

1 Exhibit D

2 # SAMPLE – FEDERAL FUNDING REQUIREMENTS

## EXHIBIT 1

## FEDERAL TRANSIT ADMINISTRATION

## ARTICLES FOR PROCUREMENT CONTRACTS

# EXHIBIT 1

## FEDERAL TRANSIT ADMINISTRATION

## ARTICLES FOR PROCUREMENT CONTRACTS

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# EXHIBIT 1

## FEDERAL TRANSIT ADMINISTRATION ARTICLES

## FOR PROCUREMENT CONTRACTS

### I.

### BUY AMERICA REQUIREMENTS

**49 U.S.C. 5323(j)**
**49 CFR Part 661**

The Buy America requirements apply to the following types of contracts: Construction Contracts and Acquisition of Goods or Rolling Stock (valued at more than $150,000).

The Buy America requirements flow down from FTA recipients and subrecipients to first tier Contractors, who are responsible for ensuring that lower tier contractors and subcontractors are in compliance. The $150,000 threshold applies only to the grantee contract. Subcontracts under that amount are subject to Buy America.

**Buy America**

This Contract is subject to the Federal Transit Administration's (FTA's) Buy America requirements in 49 CFR Part 661 and 49 U.S.C. 5323 (j). The Contractor agrees to abide by its Buy America Certificate submitted with its bid/proposal.

The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, microcomputer

equipment and software. Separate requirements for rolling stock are set out at 5323(j)(2)(C) and 49 CFR 661.11. Rolling stock must be manufactured in the United States and have more than 70 percent domestic content for FFY2020 and beyond.

A bidder/proposer must submit to the State the appropriate Buy America certification (below) with all bids/proposals on FTA-funded contracts, except those subject to a general waiver. A bid/proposal that is not accompanied by a completed Buy America certification must be rejected as non-responsive. This requirement does not apply to lower tier subcontractors.

Compliance with FTA's Buy America requirements shall be deemed to satisfy 2 CFR § 200.322, "Domestic Preferences for Procurements".

The Recipient will comply with the limitation on certain rolling stock procurements at 49 U.S.C. § 5323(u).

## II.

## FLY AMERICA REQUIREMENTS

**49 U.S.C. §40118**
**41 CFR Part 301-10**

The Fly America requirements apply to the transportation of persons or property, by air, between a place in the U.S. and a place outside the U.S., or between places outside the U.S., when the FTA will participate in the costs of such air transportation. Transportation on a foreign air carrier is permissible when provided by a foreign air carrier under a code share agreement when the ticket identifies the U.S. air carrier's designator code and flight number. Transportation by a foreign air carrier is also permissible if there is a bilateral or multilateral air transportation agreement to which the U.S. Government and a foreign government are parties and which the Federal DOT has determined meets the requirements of the Fly America Act.

The Fly America requirements flow down from FTA recipients and subrecipients to first tier contractors, who are responsible for ensuring that lower tier contractors and subcontractors are in compliance.

**Fly America**

1. The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag

air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act.

2. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements.

3. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

## III.

## CARGO PREFERENCE REQUIREMENTS

**46 U.S.C. 55305**

**46 CFR Part 381**

The Cargo Preference requirements apply to all contracts involving equipment, materials, or commodities which may be transported by ocean vessels.

The Cargo Preference requirements apply to all subcontracts when the subcontract may be involved with the transport of equipment, material, or commodities by ocean vessel.

**Cargo Preference**

Use of United States-Flag Vessels - The contractor agrees:

1. to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels;

2. to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of leading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of -lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the contractor in the case of a subcontractor's bill-of-lading.)

3. to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

## IV.

## GOVERNMENT-WIDE DEBARMENT AND SUSPENSION

## 2 CFR Part 180
## 2 CFR Part 1200

2 CFR Parts 180 and 1200 prohibit FTA recipients and sub-recipients from contracting for goods and services from organizations that have been suspended or debarred from receiving Federally-assisted contracts. As part of their applications each year, recipients are required to submit a certification to the effect that they will not enter into contracts over $25,000 with suspended or debarred Contractors and that they will require their Contractors (and their subcontractors) to make the same certification to them. Contractors are also required to confirm whether a prospective lower-tier participant is debarred or suspended.

Contractors are required to pass this requirement on to subcontractors seeking subcontracts over $25,000. Thus, the terms "lower tier covered participant" and "lower tier covered transaction" include both Contractors and subcontractors and contracts and subcontracts over $25,000.

**Debarment and Suspension**

This Contract is subject to the Federal Transit Administration's (FTA's) debarment and suspension requirements in 2 CFR Parts 180 and 1200. The Contractor agrees to abide by the following certifications submitted with its bid/proposal: "Certification of Contractor Regarding Debarment, Suspension, and Other Responsibility Matters"; "Certification of Contractor Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction"; and corresponding certifications for subcontractors. The Contractor also agrees to (i) confirm whether a prospective participant in a lower tier covered transaction is debarred or suspended by checking the exclusion records maintained by the U.S. General Service Administration at https://www.sam.gov/SAM/pages/public/searchRecords/search.jsf; and (ii) pass on the same requirement to prospective lower tier participants.

**V.**

**LOBBYING**

**31 U.S.C. 1352**
**49 CFR Part 19**
**49 CFR Part 20**

The Lobbying requirements apply to Construction/Architectural and Engineering/Acquisition of Rolling Stock/Professional Service Contract/Operational Service Contract/Turnkey contracts.

The Lobbying requirements mandate the maximum flow down, pursuant to Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352(b)(5) and 49 C.F.R. Part 19, Appendix A, § 7.

The Clause and specific language therein are mandated by 49 CFR Part 19, Appendix A. Modifications have been made to the Clause pursuant to Section 10 of the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, *et seq.* ] - Lobbying Certification and Disclosure of Lobbying Activities for Third-Party Contractors are mandated by 31 U.S.C. 1352(b)(5), as amended by Section 10 of the Lobbying Disclosure Act of 1995, and DOT implementing regulation, "New Restrictions on Lobbying," at 49 CFR § 20.110(d) - Language in Lobbying Certification is mandated by 49 CFR Part 19, Appendix A, Section 7, which provides that Contractors file the certification required by 49 CFR Part 20, Appendix A. Modifications have been made to the Lobbying Certification pursuant to Section 10 of the Lobbying Disclosure Act of 1995. - Use of "Disclosure of Lobbying Activities," Standard Form-LLL set forth in Appendix B of 49 CFR Part 20, as amended by "Government wide Guidance For New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96) is mandated by 49 CFR Part 20, Appendix A. **Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.]** - Contractors who apply or bid for an award of $100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

## Lobbying

This Contract is subject to the Federal Transit Administration's (FTA's) Lobbying requirements in 31 U.S.C. 1352, 49 CFR Part 19 and 49 CFR Part 20. The Contractor agrees to abide by its "Certification Regarding Lobbying" submitted with its bid/proposal.

**VI.**

**ACCESS TO RECORDS AND REPORTS**

**49 U.S.C. 5325**
**2 CFR 200.333**
**18 CFR 18.36 (i)**
**49 CFR 633.17**

Reference Chart "Requirements for Access to Records and Reports by Type of Contracts".
FTA does not require the inclusion of these requirements in subcontracts.

## Access to Records

The following access to records requirements apply to this Contract:

1. Where the Purchaser is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C. F. R. 18.36(i), the Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C. F. R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

2. Where the Purchaser is a State and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 633.17, Contractor agrees to provide the Purchaser, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at $250,000.

3. Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, Contractor agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.

4. Where any Purchaser which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

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

6. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11) and 2 CFR 200.333.

7. FTA does not require the inclusion of these requirements in subcontracts.

**Requirements for Access to Records and Reports by Types of Contract**

| **Contract Characteristics** | | Operational Service Contract | Turnkey | Construction | Architectural Engineering | Acquisition of Rolling Stock | Professional Services |
|---|---|---|---|---|---|---|---|
| I State Grantees<br><br>a. Contracts below SAT ($100,000) | | None | Those imposed on state pass thru to Contractor | None | None | None | None |
| b. Contracts above $100,000/Capital Projects | | None unless[1] non-competitive award | | Yes, unless non-competitive award or if | | | |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| | | | | funded thru[2] 5307/5309/5311 | None unless non-competitive award | None unless non-competitive award | None unless non-competitive award |
| | | | | | | | |

Sources of Authority: [1] 49 USC 5325 (a) [2] 49 CFR 633.17 [3] 18 CFR 18.36 (i)

## VII.

## ENERGY CONSERVATION REQUIREMENTS

**42 U.S.C. 6321 et seq.**
**49 CFR Part 18**

The Energy Conservation requirements are applicable to all contracts.

The Energy Conservation requirements extend to all Third-Party contractors and their contracts at every tier and subrecipients and their subagreements at every tier.

**Energy Conservation**

The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

## VIII.

## CLEAN WATER REQUIREMENTS

**33 U.S.C. 1251 - 1387**

The Clean Water requirements apply to each contract and subcontract which exceeds $150,000.

The Clean Water requirements flow down to FTA recipients and subrecipients at every tier.

### Clean Water

1. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to the State and understands and agrees that the State will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

2. The Contractor also agrees to include these requirements in each subcontract exceeding $150,000 financed in whole or in part with Federal assistance provided by FTA.

## IX.

## CLEAN AIR

## 42 U.S.C. 7401 et seq.
## 40 CFR 15.61
## 49 CFR Part 18

The Clean Air requirements apply to all contracts exceeding $150,000, including indefinite quantities where the amount is expected to exceed $150,000 in any year.

The Clean Air requirements flow down to all subcontracts which exceed $150,000.

### Clean Air

1. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to the State and understands and agrees that the State will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

2. The Contractor also agrees to include these requirements in each subcontract exceeding $150,000 financed in whole or in part with Federal assistance provided by FTA.

## X.

## FEDERAL CHANGES

## 49 CFR Part 18

The Federal Changes requirement applies to all contracts.
The Federal Changes requirement flows down appropriately to each applicable changed requirement.

### Federal Changes

The Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the current Master Agreement between the State and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

## XI.

## NO GOVERNMENT OBLIGATION TO THIRD PARTIES

Applicable to all contracts.

Not required by statute or regulation for either primary Contractors or subcontractors, this concept should flow down to all levels to clarify, to all parties to the contract, that the Federal Government does not have contractual liability to third parties, absent specific written consent.

### No Obligation by the Federal Government

1. The State and the Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the State, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

2. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

## XII.

## PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

**31 U.S.C. 3801 et seq.**
**49 CFR Part 31, 18 U.S.C. 1001**
**49 U.S.C. 5323(l)(1)**

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|---|
| These requirements are applicable to all contracts.<br>These requirements flow down to Contractors and subcontractors who make, present, or submit covered claims and statements. |

### Program Fraud and False or Fraudulent Statements or Related Acts

1. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

2. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) on the Contractor, to the extent the Federal Government deems appropriate.

3. The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

## XIII.

## CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

**40 U.S.C. 3701**
**29 C.F.R. § 5.5(b)**
**49 CFR § 18**

29 CFR § 5.5(b), which deals with overtime requirements, applies to: all construction contracts in excess of $100,000.

Applies to Third-Party Contractors and subcontractors.

( These clauses should be used in conjunction with the Davis-Bacon Act clauses.)

1. **Overtime Requirements**
   No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. **Violation; Liability For Unpaid Wages; Liquidated Damages**
   In the event of any violation of the clause set forth in paragraph (1) of this section the Contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph 1 of this section, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph 1 of this section.

3. **Withholding For Unpaid Wages and Liquidated Damages**
   The State shall, upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 2 of this section.

4. **Subcontracts**

The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.

## XIV.

## CIVIL RIGHTS

**29 U.S.C. § 621 et seq., 42 U.S.C. § 2000**
**42 U.S.C. § 6102, 42 U.S.C. § 12101, 42 U.S.C. § 12112**
**42 U.S.C. § 12132, 49 U.S.C. § 5332**
**29 CFR Part 1625 et seq., 41 CFR Parts 60 et seq.**
**49 CFR Part 25 et seq.,**

| |
|---|
| The Civil Rights Requirements apply to all contracts.<br>The Civil Rights requirements flow down to all Third-Party Contractors and subcontractors at every tier.<br>This provision is a restatement of the FTA Master Agreement (2/9/2021), Section 12. |

**a.** **Civil Rights Requirements.** The Recipient agrees that it must comply with applicable federal civil rights laws, regulations, and requirements, and follow applicable federal guidance, except as the Federal Government determines otherwise in writing. Therefore, unless a Recipient or a federal program, including the Indian Tribe Recipient or the Tribal Transit Program, is specifically exempted from a civil rights statute, FTA requires compliance with each civil rights statute, including compliance with equity in service requirements.

**b.** **Nondiscrimination in Federal Public Transportation Programs.** The Recipient agrees to, and assures that it and each Third-Party Participant will:

(1) Prohibit discrimination based on race, color, religion, national origin, sex (including gender identity), disability, or age.

(2) Prohibit the:

(a) Exclusion from participation in employment or a business opportunity for reasons identified in 49 U.S.C. § 5332,

(b) Denial of program benefits in employment or a business opportunity identified in 49 U.S.C. § 5332, or

(c) Discrimination identified in 49 U.S.C. § 5332, including discrimination in employment or a business opportunity identified in 49 U.S.C. § 5332.

(3) Follow:

(a) The most recent edition of FTA Circular 4702.1, "Title VI Requirements and Guidelines for Federal Transit Administration Recipients," to the extent consistent with applicable federal laws, regulations, requirements, and guidance, but

(b) FTA does not require an Indian Tribe to comply with FTA program-specific guidelines for Title VI when administering its Underlying Agreement supported with federal assistance under the Tribal Transit Program.

**c. Nondiscrimination – Title VI of the Civil Rights Act.** The Recipient agrees to, and assures that each Third-Party Participant will:

(1) Prohibit discrimination based on race, color, or national origin,

(2) Comply with:

(a) Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d *et seq*.,

(b) U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964," 49 C.F.R. part 21, and

(c) Federal transit law, specifically 49 U.S.C. § 5332, and

(3) Follow:

(a) The most recent edition of FTA Circular 4702.1, "Title VI Requirements and Guidelines for Federal Transit Administration Recipients," to the extent consistent with applicable federal laws, regulations, requirements, and guidance,

(b) U.S. DOJ, "Guidelines for the enforcement of Title VI, Civil Rights Act of 1964," 28 C.F.R. § 50.3, and

(c) All other applicable federal guidance that may be issued.

**d. Equal Employment Opportunity.**

(1) Federal Requirements and Guidance. The Recipient agrees to, and assures that each Third-Party Participant will, prohibit discrimination based on race, color, religion, sex, sexual orientation, gender identity, or national origin, and:

(a) Comply with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq*.,

(b) Facilitate compliance with Executive Order No. 11246, "Equal Employment Opportunity" September 24, 1965 (42 U.S.C. § 2000e note,), as amended by any later Executive Order that amends or supersedes it in part and is applicable to federal assistance programs,

(c) Comply with federal transit law, specifically 49 U.S.C. § 5332, as provided in section 12 of this Master Agreement,

(d) FTA Circular 4704.1 "Equal Employment Opportunity (EEO) Requirements and Guidelines for Federal Transit Administration Recipients," and

(e) Follow other federal guidance pertaining to EEO laws, regulations, and requirements, and prohibitions against discrimination on the basis of disability,

(2) Specifics. The Recipient agrees to, and assures that each Third-Party Participant will:

(a) Affirmative Action. Take affirmative action that includes, but is not limited to:

1 Recruitment advertising, recruitment, and employment,

2 Rates of pay and other forms of compensation,

3 Selection for training, including apprenticeship, and upgrading, and

4 Transfers, demotions, layoffs, and terminations, but

(b) Indian Tribe. Recognize that Title VII of the Civil Rights Act of 1964, as amended, exempts Indian Tribes under the definition of "Employer," and

(3) Equal Employment Opportunity Requirements for Construction Activities. Comply, when undertaking "construction" as recognized by the U.S. Department of Labor (U.S. DOL), with:

(a) U.S. DOL regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and

(b) Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note (30 *Fed. Reg.* 12319, 12935), as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note.

**e. Disadvantaged Business Enterprise.** To the extent authorized by applicable federal laws, regulations, or requirements, the Recipient agrees to facilitate, and assures that each Third-Party Participant will facilitate, participation by small business concerns owned and controlled by socially and economically disadvantaged individuals, also referred to as "Disadvantaged Business Enterprises" (DBEs), in the Underlying Agreement as follows:

(1) Statutory and Regulatory Requirements. The Recipient agrees to comply with:

(a) Section 1101(b) of the FAST Act, 23 U.S.C. § 101 note,

(b) U.S. DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 C.F.R. part 26, and

(c) Federal transit law, specifically 49 U.S.C. § 5332, as provided in section 12 of this Master Agreement.

(2) DBE Program Requirements. A Recipient that receives planning, capital and/or operating assistance and that will award prime Third-Party contracts exceeding $250,000 in a federal fiscal year must have a DBE program that is approved by FTA and meets the requirements of 49 C.F.R. part 26.

(3) Special Requirements for a Transit Vehicle Manufacturer (TVM). The Recipient agrees that:

(a) TVM Certification. Each TVM, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, must certify that it has complied with the requirements of 49 C.F.R. part 26, and

(b) Reporting TVM Awards. Within 30 days of any Third-Party contract award for a vehicle purchase, the Recipient must submit to FTA the name of the TVM contractor and the total dollar value of the Third-Party contract, and notify FTA that this information has been attached in TrAMS. The Recipient must also submit additional notifications if options are exercised in subsequent years to ensure that the TVM is still in good standing.

(4) Assurance. As required by 49 C.F.R. § 26.13(a):

(a) Recipient Assurance. The Recipient agrees and assures that:

1 It must not discriminate based on race, color, national origin, or sex in the award and performance of any FTA or U.S. DOT-assisted contract, or in the administration of its DBE program or the requirements of 49 C.F.R. part 26,

2 It must take all necessary and reasonable steps under 49 C.F.R. part 26 to ensure nondiscrimination in the award and administration of U.S. DOT-assisted contracts,

3 Its DBE program, as required under 49 C.F.R. part 26 and as approved by U.S. DOT, is incorporated by reference and made part of the Underlying Agreement, and

4 Implementation of its DBE program approved by U.S. DOT is a legal obligation and failure to carry out its terms shall be treated as a violation of this Master Agreement.

(b) Subrecipient/Third-Party Contractor/Third-Party Subcontractor Assurance. The Recipient agrees and assures that it will include the following assurance in each subagreement and Third-Party contract it signs with a Subrecipient or Third-Party Contractor and agrees to obtain the agreement of each of its Subrecipients, Third-Party Contractors, and Third-Party Subcontractors to include the following assurance in every subagreement and Third-Party contract it signs:

1 The Subrecipient, each Third-Party Contractor, and each Third-Party Subcontractor must not discriminate based on race, color, national origin, or sex in the award and performance of any FTA or U.S. DOT-assisted subagreement, Third-Party contract, and Third-Party subcontract, as applicable, and the administration of its DBE program or the requirements of 49 C.F.R. part 26,

2 The Subrecipient, each Third-Party Contractor, and each Third-Party Subcontractor must take all necessary and reasonable steps under 49 C.F.R. part 26 to ensure nondiscrimination in the award and administration of U.S. DOT-assisted subagreements, Third-Party contracts, and Third-Party subcontracts, as applicable,

3 Failure by the Subrecipient and any of its Third-Party Contractors or Third-Party Subcontractors to carry out the requirements of this subparagraph 12.e(4)(b) is a

material breach of this subagreement, Third-Party contract, or Third-Party subcontract, as applicable, and

4 The following remedies, or such other remedy as the Recipient deems appropriate, include, but are not limited to, withholding monthly progress payments, assessing sanctions, liquidated damages, and/or disqualifying the Subrecipient, Third-Party Contractor, or Third-Party Subcontractor from future bidding as non-responsible.

(5) Remedies. Upon notification to the Recipient of its failure to carry out its approved program, FTA or U.S. DOT may impose sanctions as provided for under 49 C.F.R. part 26, and, in appropriate cases, refer the matter for enforcement under either or both 18 U.S.C. § 1001, and/or the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. § 3801 *et seq*.

**f.** **Nondiscrimination on the Basis of Sex.** The Recipient agrees to comply with federal prohibitions against discrimination based on sex, including: (1) Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 *et seq.*,

(1) U.S. DOT regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 C.F.R. part 25, and

(2) Federal transit law, specifically 49 U.S.C. § 5332.

**g.** **Nondiscrimination on the Basis of Age.** The Recipient agrees to comply with federal prohibitions against discrimination based on age, including: (1) The Age Discrimination in Employment Act, 29 U.S.C. §§ 621 – 634, which prohibits discrimination based on age,

(1) The Age Discrimination in Employment Act, 29 U.S.C. §§621-634, which prohibits discrimination based on age,

(2) U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625,

(3) The Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 *et seq*., which prohibits discrimination against individuals based on age in the administration of Programs, Projects, and related activities receiving federal assistance,

(4) U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. part 90, and

(5) Federal transit law, specifically 49 U.S.C. § 5332.

**h.** **Nondiscrimination on the Basis of Disability.** The Recipient agrees to comply with the following federal prohibitions against discrimination based on disability:

(1) Federal laws, including:

(a) Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination based on disability in the administration of federally assisted Programs, Projects, or activities,

(b) The Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. § 12101 *et seq*., which requires that accessible facilities and services be made available to individuals with disabilities:

1 For FTA Recipients generally, Titles I, II, and III of the ADA apply, but

2 For Indian Tribes, Titles II and III of the ADA apply, but Title I of the ADA does not apply because it exempts Indian Tribes from the definition of "employer,"

(c) The Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 *et seq*., which requires that buildings and public accommodations be accessible to individuals with disabilities,

(d) Federal transit law, specifically 49 U.S.C. § 5332, which now includes disability as a prohibited basis for discrimination, and

(e) Other applicable federal laws, regulations, and requirements pertaining to access for seniors or individuals with disabilities.

(2) Federal regulations and guidance, including:

(a) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. part 37,

(b) U.S. DOT regulations, "Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. part 27,

(c) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB) and U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. part 1192 and 49 C.F.R. part 38,

(d) U.S. DOT regulations, "Transportation for Individuals with Disabilities: Passenger Vessels," 49 C.F.R. part 39,

(e) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. part 35,

(f) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. part 36,

(g) U.S. EEOC, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. part 1630,

(h) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for Persons with Disabilities," 47 C.F.R. part 64, subpart F,

(i) U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. part 1194,

(j) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. part 609,

(k) FTA Circular 4710.1, "Americans with Disabilities Act: Guidance," and

(l) Other applicable federal civil rights and nondiscrimination regulations and guidance.

**i. Drug or Alcohol Abuse – Confidentiality and Other Civil Rights Protections.** The Recipient agrees to comply with the confidentiality and civil rights protections of:

(1) The Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. § 1101 *et seq.*,

(2) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. § 4541 *et seq*., and

(3) The Public Health Service Act, as amended, 42 U.S.C. §§ 290dd – 290dd-2.

**j.** **Access to Services for Persons with Limited English Proficiency.** The Recipient agrees to promote accessibility of public transportation services to persons with limited understanding of English by following:

(1) Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," August 11, 2000, 42 U.S.C. § 2000d-1 note, (65 *Fed. Reg.* 50121,), and

(2) U.S. DOT Notice, "DOT Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficiency (LEP) Persons," 70 *Fed*. *Reg*. 74087, December 14, 2005.

**k.** **Other Nondiscrimination Laws, Regulations, Requirements, and Guidance.** The Recipient agrees to comply with other applicable federal nondiscrimination laws, regulations, and requirements, and follow federal guidance prohibiting discrimination.

**l.** **Remedies.** Remedies for failure to comply with applicable federal Civil Rights laws, regulations, and requirements, and failure to follow guidance may be enforced as provided in those federal laws, regulations, requirements, or guidance.

**m.** **Promoting Free Speech and Religious Liberty**. The recipient shall ensure that Federal funding is expended in full accordance with the U.S. Constitution, Federal Law, and statutory and public policy requirements: including, but not limited to, those protecting free speech, religious liberty, public welfare, the environment, and prohibiting discrimination.

**n.** **Equal Opportunity Clause.** During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

(a). Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in

response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

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

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

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

(d) The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

(9) [Reserved]

(10) *Subcontracts.* Each nonexempt prime contractor or subcontractor shall include the equal opportunity clause in each of its nonexempt subcontracts.

## XV.

## PROMPT PAYMENT ON SUBCONTRACTS AND

## RETURN OF RETAINAGE

**49 CFR § 26.29**
**RCW 39.04.250**

The following procedures shall apply to all subcontracts entered into as a part of this Contract.

**A. Requirements**

1. Upon request, the State's Project Engineer will provide a copy of any or all progress payment estimates, with regard to contract payments to any interested party to the project.

2. The Contractor shall make payment to the Lower Tier Subcontractor not later than ten calendar days after receipt of payment for work satisfactorily completed by the Lower Tier Subcontractor, to the extent of the Lower Tier Subcontractor's interest therein.

3. In the event the Contractor believes they have the right under the Contract or Subcontract to withhold payment in part or whole from a Lower Tier Subcontractor they shall provide immediate notification to that Lower Tier Subcontractor and the Engineer. The notice shall include an accounting of payments to date, the value and reason for the withheld amount, and an explanation of what must be done to have the withheld amount released. The Lower Tier Subcontractor shall be paid within eight calendar days after the Subcontractor completes the remedial action identified.

4. Every subcontract and lower tier subcontract shall have a dispute resolution process incorporated for resolving issues between the parties to the subcontract, or one shall be established as necessary.

5. If the parties agree, the State will make a Third-Party neutral available provided the parties to the dispute agree that the cost of doing so is split between them.

6. The Engineer will withhold the same amount of funds from the Contractor as was withheld if the issue is not resolved by the next progress estimate.

7. Failure by a Contractor or Subcontractor to comply with these requirements may result in one or more of the following:

   a. Reflected in the Prime Contractor's Performance Evaluation.

   b. Cancellation, termination or suspension of the Contract, in whole or in part.

   c. Sanctions as provided by the Contract; subcontract; or by law under applicable prompt payment statutes including RCW 39.04.250.

8. The Subcontractor shall make a written request to the Contractor for the release of the Subcontractor's retainage or retainage bond.

9. Within 10 calendar days of the request, the Contractor shall determine if the subcontract has been satisfactorily completed including any required lien releases, documentation and material testing and shall inform the Subcontractor, in writing, of the Contractor's determination.

10. If the Contractor determines that the subcontract has been satisfactorily completed, the Subcontractor's retainage or retainage bond shall be released by the Contractor within 10 calendar days from the date of the written notice. If the Contractor determines that the Subcontractor has not achieved satisfactory completion of the subcontract, the Contractor must provide the Subcontractor with written notice, stating specifically why the subcontract Work is not satisfactorily completed and what has to be done to achieve completion. The Contractor shall release the Subcontractor's retainage or retainage bond within 10 calendar days after the Subcontractor has satisfactorily completed the Work identified in the notice.

11. In determining whether satisfactory completion has been achieved, the Contractor may require the Subcontractor to provide documentation such as certifications and releases, showing that all laborers, lower-tiered Subcontractors, suppliers of material and equipment, and others involved in the Subcontractor's Work have been paid in full. The Contractor may also require any documentation from the Subcontractor that is required by the subcontract or by the Contract between the Contractor and Contracting Agency or by law such as affidavits of wages paid, and material acceptance certifications to the extent that they relate to the Subcontractor's Work.

12. If the Contractor fails to comply with the requirements of the Specification and the Subcontractor's retainage or retainage bond is wrongfully withheld, the Contractor will be subject to the actions described in No. 7 above. The Subcontractor may also seek recovery against the Contractor under applicable

prompt pay statutes in addition to any other remedies provided for by the subcontract or by law.

**B. Conditions**

1. This clause does not create a contractual relationship between the Contracting Agency and any Subcontractor as stated in the current WSDOT Standard Specifications for Road, Bridge and Municipal Construction (Standard Specifications), Section 1-08.1. Also, it is not intended to bestow upon any Subcontractor, the status of a third-party beneficiary to the Contract between the Contracting Agency and the Contractor.

2. This Section of the Contract does not apply to retainage withheld by the Contracting Agency from monies earned by the Contractor. The Contracting Agency shall continue to process the release of that retainage based upon the Completion Date of the project as defined in the Standard Specifications, Section 1-08.5 Time for Completion and in accordance with the requirements and procedures set forth in RCW 60.28.

**C. Payment**

The Contractor shall be solely responsible for any additional costs involved in paying retainage to the Subcontractors prior to total project completion. Those costs shall be incidental to the respective Bid items.

## XVI.

## RECYCLED PRODUCTS

**42 U.S.C. 6962**

**40 CFR Part 247**

**Executive Order 12873**

The Recycled Products requirements apply to all contracts for items designated by the EPA, when the purchaser or contractor procures $10,000 or more of one of these items during the fiscal year, or has procured $10,000 or more of such items in the previous fiscal year, using Federal funds. New requirements for "recovered materials" became effective May 1, 1996. These new regulations apply to all procurement actions involving items designated by the EPA, where the procuring agency purchases $10,000 or more of one of these items in a fiscal year, or when the cost of such items purchased during the previous fiscal year was $10,000.

Not applicable.

## XVII.
## CONFORMANCE WITH ITS NATIONAL ARCHITECTURE

**23 U.S.C. 517**

The Conformance with ITS National Architecture requirements apply to contracts for Intelligent Transportation System (ITS) projects.

Not applicable.

## XVIII.
## SAFE OPERATION OF MOTOR VEHICLES

**23 U.S.C. 402**
**Executive Order No. 13043**
**Executive Order No. 13513**
**U.S. DOT Order No. 3902.10**

The Safe Operation of Motor Vehicles requirements apply to all federally funded Third-Party contracts.

### Seat Belt Use
The Contractor is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company - owned vehicles, company - rented vehicles, or personally operated vehicles. The terms “company-owned” and “company-leased” refer to vehicles owned or leased either by the Contractor or WSDOT.

### Distracted Driving
The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contactor owns, leases, or rents, or a

privately-owned vehicle when on official business in connection with the work performed under this agreement.

## XIX.

## BREACHES AND DISPUTE RESOLUTION

### Section 39, FTA Master Agreement

### 49 CFR Part 18

### FTA Circular 4220.1F

The Contractor shall comply with the "Termination of Contract", Disputes and Claims", "Claims Resolution" and other applicable Sections of the WSDOT Standard Specifications.

The below is a restatement of the FTA Master Agreement (2/9/2021), Section 39(a) – (b). It applies to all contracts valued at more than $100,000.

(a) *FTA Interest.* FTA has a vested interest in the settlement of any violation of federal law, regulation, or requirement, or any disagreement involving the Award, the accompanying Underlying Agreement, and any Amendments thereto including, but not limited to, a default, breach, major dispute, or litigation, and FTA reserves the right to concur in any settlement or compromise.

(b) *Notification to FTA; Flow Down Requirement.* If a current or prospective legal matter that may affect the Federal Government emerges, the Recipient must promptly notify the FTA Chief Counsel and FTA Regional Counsel for the Region in which the Recipient is located. The Recipient must include a similar notification requirement in its Third Party Agreements and must require each Third Party Participant to include an equivalent provision in its subagreements at every tier, for any agreement that is a "covered transaction" according to 2 C.F.R. §§ 180.220 and 1200.220.

(1) The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.

(2) Matters that may affect the Federal Government include, but are not limited to, the Federal Government's interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government's administration or enforcement of federal laws, regulations, and requirements.

(3) Additional Notice to U.S. DOT Inspector General. The Recipient must promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the Recipient is located, if the Recipient has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729, et seq., or has or may have committed a criminal

or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance. This responsibility occurs whether the Project is subject to this Agreement or another agreement between the Recipient and FTA, or an agreement involving a principal, officer, employee, agent, or Third Party Participant of the Recipient. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a 95 criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Recipient. In this paragraph, "promptly" means to refer information without delay and without change. This notification provision applies to all divisions of the Recipient, including divisions tasked with law enforcement or investigatory functions.

## XX.

## SIMPLIFIED ACQUISITION THRESHOLD

**41 U.S.C. 1908**

**2 C.F.R. §§ 200.317 – 200.326**

| |
|---|
| The simplified acquisition threshold applies to contracts of at least $250,000. |

Contracts for more than the simplified acquisition threshold, currently set at $250,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. § 1908, or otherwise set by law, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. (Note that the simplified acquisition threshold determines the procurement procedures that must be employed pursuant to 2 C.F.R. §§ 200.317–200.326. The simplified acquisition threshold does not exempt a procurement from other eligibility or processes requirements that may apply. For example, Buy America's eligibility and process requirements apply to any procurement in excess of $150,000. 49 U.S.C. § 5323(j)(13).)

## XXI.

## TERMINATION

The Contractor shall comply with the "Termination of Contract" Section of the WSDOT Standard Specifications.

## XXII.

## SPECIAL NOTIFICATION REQUIREMENTS FOR STATES

**Section 37, FTA Master Agreement for**

**agreements authorized by**

**49 U.S.C. chapter 53 and Title 23, U.S.C.**

This provision is a restatement of the FTA Master Agreement (2/9/2021), Section 37.

To the extent required under federal law, the State, as the Recipient, agrees to provide the following information about federal assistance awarded for its State Program, Project, or related activities:

a. Types of Information. The State will provide information including:

(1) The Identification of FTA as the federal agency providing the federal assistance for a State Program or Project,

(2) The Catalog of Federal Domestic Assistance Number of the program from which the federal assistance for a State Program or Project is authorized, and

(3) The amount of federal assistance FTA has provided for a State Program or Project.

b. Documents. The State will provide the information required under this provision in the following documents:

(1) Applications for federal assistance,

(2) Requests for proposals, or Solicitations,

(3) Forms,

(4) Notifications,

(5) Press releases, and

(6) Other publications.

## XXIII.

## INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION TERMS

## FTA Circular 4220.1F

| |
|---|
| The incorporation of FTA terms applies to all contracts.<br>The incorporation of FTA terms has unlimited flow down. |

### Incorporation of Federal Transit Administration (FTA) Terms

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, at Microsoft Word - FTA Circular 4220 1F Third Party Contracting Guidance - 4-14-09 - Final Clean (ny.gov); and the FTA Master Agreement, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any State requests which would cause the State to be in violation of the FTA terms and conditions.

**( END )**

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Final Audit Report 2021-11-10

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| Transaction ID: | CBJCHBCAABAA8nq8DKV8eQvjhTQX-7fTwWiML88OkCN2 |

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2021-11-10 - 11:52:50 PM GMT- IP address: 104.47.65.254

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