

**SECTION IV
CONTRACT**

Contract Number 240808

THIS AGREEMENT made and entered into as of the last date written below, by between PUBLIC UTILITY DISTRICT NO. 1 OF CLALLAM COUNTY (hereinafter called the "District") and _____, located at _____ (hereinafter called the "Contractor").

WITNESSETH: That the District and the Contractor, in consideration of the mutual covenants contained hereinafter, agree as follows:

**ARTICLE I -
CONTRACT DOCUMENTS**

The complete Contract includes the Invitation for Bids, Notice and Instructions to Bidders, the Proposal, Specifications for Material, Contract, and all modifications incorporated in these Documents before their execution. The foregoing documents shall hereinafter be called "Contract Documents". All obligations of the District and the Contractor are fully set forth and described herein.

In the event of a discrepancy between any of the Contract Documents, as above defined, at the request of the Contractor, the District shall give a written interpretation thereof, which interpretation shall govern.

**ARTICLE II -
CONTRACT COST**

The Contractor agrees to sell and deliver to the District, at the delivery point specified in Section I - Notice and Instructions to Bidders and Section II – Proposal, and the District agrees to purchase from the Contractor, the following Material in accordance with the Contract Documents and the provisions of the Contractor's Proposal attached hereto and made a part hereof:

Twelve (12) quantity 3ph, 15kV, 1200 AMP Siemens SDV7 Vacuum Power Circuit Breakers

Total firm price for twelve (12) breakers, as specified,
(f.o.b. destination, excluding Washington State Sales Tax) \$ _____

Washington State Sales Tax 8.6% \$ _____

Cost of field engineer at the job site for two (2) eight (8)
hour days (including all expenses). \$ _____

Cost of field engineer for additional eight (8) hour day
(including all expenses) on the same trip. \$ _____

Total firm price for heavy duty exterior paint option. \$ _____

DELIVERY

Shipping is scheduled after receipt of order. _____ Weeks

Shipping is scheduled after drawing approval. _____ Weeks

DRAWINGS AND INSTRUCTION BOOKS

Approval schematics, outline and general assembly drawings will be sent _____ weeks ARO

Final Construction drawings will be sent _____ weeks ARO

Installation, spare parts list, operation and maintenance instruction books will be sent _____ weeks ARO

PRICE ADDER

Price adder for one (1) breaker with 304L Stainless Steel, Galvanized Steel, or Marine Grade Aluminum Enclosure (f.o.b. destination, excluding Washington State Sales Tax) \$ _____

Total price adder for five (5) breakers with 304L Stainless Steel, Galvanized Steel, or Marine Grade Aluminum Enclosure (f.o.b. destination, excluding Washington State Sales Tax) \$ _____

Washington State Sales Tax: 8.6% \$ _____

Alternate Bid Provisions and Specifications:

ARTICLE III - PERFORMANCE/PAYMENT BONDS

The Contractor agrees to furnish a bond(s) in the penal sum not less than the bid cost of the Material, on an appropriate form(s), with a Surety or Sureties acceptable to the District. In the event that the Surety or Sureties on the bond(s) delivered to the District shall at any time become unsatisfactory to the District, the Contractor agrees to deliver to the District another or an additional bond(s). Should the successful Bidder fail or refuse to execute such counterparts or to furnish a Bond(s) within ten (10) days after written notification of the acceptance of the Proposal by the District, the Bidder will be considered to have abandoned the Proposal. In such event, the District shall be entitled (a) to enforce the bid bond in accordance with its terms, or (b) if a certified check has been delivered with the Proposal, to retain from the proceeds of the certified check the difference (not exceeding the amount of the certified check) between the amount of the Proposal and such larger amount for which the District may in good faith contract with another party to furnish the Material. The term "successful" Bidder shall be deemed to include any Bidder whose Proposal is accepted after another Bidder has previously refused or has been unable to execute the Bond.

ARTICLE IV - SUBMITTAL DRAWINGS, INSPECTION, AND TESTING

Within twenty-one (21) days after execution of this Contract, the Contractor shall furnish to the District three (3) copies each of the detail dimensional drawings and design specifications for the construction of the Material to be furnished under this Contract. The Contractor shall keep the District informed of the

construction and test schedule of the Material to be furnished such that the District may at any time and at its own discretion make inspection and witness tests of the Material. The Contractor shall furnish three (3) copies each of the complete and detailed Operation and Maintenance Manual, Inspection Manual, and Test Data for the materials under this Contract prior to shipment of the Material to the District.

**ARTICLE V -
SHIPMENT AND DELIVERY**

Upon the shipment of any Material hereunder, the Contractor shall submit to the District a detailed statement of the Materials shipped and scheduled arrival date. The District shall, upon receipt of such Materials, make final payment therefor to the Contractor not later than thirty (30) days after delivery and acceptance of the Materials.

The District will provide unloading equipment; therefore, arrival date shall be specified two (2) business days prior to arrival. Contact the warehouse foreman, Mike Gould at 360-565-3503. Provision shall be made for carrier to deliver on a weekday(s) between Monday and Thursday, except District recognized holidays, between 7:30 a.m. and 3:30 p.m., Pacific Time.

The District reserves the right to deduct the following amounts from the bid price after the quoted delivery date: first thirty (30) days after required delivery date, \$100 each calendar day; each succeeding calendar date thereafter, \$200 per calendar day.

**ARTICLE VI -
INSPECTION AND TESTING**

The Contractor shall keep the District informed of the construction and test schedule of the materials to be furnished such that the District may at any time and at its own discretion make inspection and witness tests of the Materials. The Contractor shall furnish approval documents and final documents, drawings, installation, operation and maintenance instructions and test for the Materials in accordance with the Contract Documents prior to shipment of the Materials to the District. Timely performance by Contractor is contingent upon District's supplying to Contractor, when needed, all required technical information and data, including drawing approvals, and all required commercial documentation. If Contractor suffers delay in performance due to any cause beyond its reasonable control, the time of performance shall be extended a period of time equal to the period of the delay and its consequences. Contractor will give to District notice within a reasonable time after Contractor becomes aware of any such delay.

**ARTICLE VII -
REJECTION OF MATERIALS**

The Materials furnished hereunder shall become the property of the District when delivered at the point to which shipment is to be made; provided, however, that the District may reject any such Materials as do not comply with the Specifications for Materials and Warranties of the Contractor and Manufacturers either before or after incorporation of such Materials into the Project. Upon any such rejection, the Contractor shall replace the rejected Materials with Materials complying with the Specifications for Materials and Warranties, f.o.b. at the destination stated in Contractor's proposal for the item(s). No payment shall be made for such rejected Materials until they have been replaced to the satisfaction of the District's Engineer by the Contractor.

**ARTICLE VIII -
WARRANTY**

Notwithstanding acceptance of any Materials by the Engineer of the District, or any certificate which may have been given, or payment which may have been made by the District, if any defective Materials shall be discovered within eighteen (18) months after receiving the Materials or within one (1) year of being energized, whichever is longer, the Contractor shall replace any such defective Materials as promptly as possible after notice in writing from the District; or in the event of failure by the Contractor so to do, the District may make such replacement and the cost and the expense thereof shall be paid by and recoverable from the Contractor. Contractor shall not warrant third party repair work.

CONTRACTOR HEREBY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, OF MERCHANTABILITY, COURSE OF DEALING AND USAGE OF TRADE.

The District and its successors are limited to the remedies specified in this Article for a nonconformity in the Materials. The District agrees that these remedies provide the District and its successors with a minimum adequate remedy and are their exclusive remedies for any such nonconformity, whether such remedies are based on contract, warranty, tort (including negligence), strict liability, indemnity, or any other legal theory.

**ARTICLE IX -
MANUFACTURERS' GUARANTEES**

All manufacturers' guarantees of Materials shall be transferred and assigned to the District upon delivery of any Materials and before payment is made for such Materials. Such guarantees shall be in addition to those required of the Contractor by other provisions of this Contract.

**ARTICLE X -
STANDARDS**

All breaker hardware, fittings, pipe fittings, bolts, etc. shall meet the requirements of the latest applicable ASTM, IEEE, NEMA, ASME, and ANSI Standards.

**ARTICLE XI -
INDEMNITY**

The Contractor shall defend, hold harmless, and indemnify the District from any and all claims, suits, and proceedings for infringement of any patent or patents covering Materials purchased hereunder.

**ARTICLE XII -
MUTUAL CYBER SECURITY INDEMNIFICATION**

Both parties agree to be responsible for the protection of their own computers, servers, hard drives, information systems, and email accounts from cyber security breaches, including but not limited to malicious software, viruses, hacking, and phishing scams ("Cyber Security Breaches"). Each party shall indemnify the other from any damages, liabilities, or expenses of every kind, including but not limited to reasonable attorney's fees, resulting from or arising out of their own Cyber Security Breaches, including wire fraud attempts directed to the other party resulting from such Cyber Security Breaches.

**ARTICLE XIII -
CONTRACTOR'S PROPRIETARY INFORMATION**

The Contractor acknowledges the District is subject to chapter 42.56 RCW, the Public Disclosure Act, and this Contract shall be a public record as defined in RCW 42.56.040 through 42.56.550. Any specific information submitted to the District and claimed by the Contractor to be confidential or proprietary, must be clearly identified as such by the Contractor. To the extent consistent with chapter 42.56 RCW, the District shall maintain the confidentiality of all such information marked or identified as confidential or proprietary. If a request is made to view the Contractor's proprietary information and the District intends to release the information, the District will notify the Contractor of the request and notify the Contractor of the date that such records will be released to the requester. It will be the responsibility of the Contractor to obtain any necessary court order enjoining that disclosure. If the Contractor fails to obtain the court order enjoining disclosure, the District will release the requested information.

**ARTICLE XIV -
TERMINATION OF CONTRACT**

In the event that any of the provisions of this Contract are violated by the Contractor or by any of the Contractor's subcontractors, the District may serve written notice of intention to terminate such Contract upon the Contractor, which notice shall specify the reasons therefor. Unless within ten (10) days after serving such notice upon the Contractor such violation shall cease and an arrangement for the correction thereof satisfactory to the District be made, the Contract shall, upon the expiration of the said ten (10) days, cease and terminate. In the event of any such termination, the District may purchase the Materials necessary for complete performance of this Contract for the account and at the expense of the Contractor, and the Contractor shall be liable to the District for any excess cost occasioned thereby. District may not cancel or terminate for convenience, or direct the suspension of manufacture, except with Contractor's written consent and then only upon terms that will compensate Contractor for its engineering, fabrication and purchasing charges and any other costs relating to such cancellation, termination or suspension, plus a reasonable amount for profit.

Contractor

By _____
Signature

Date

Typed

Title _____

**PUBLIC UTILITY DISTRICT NO. 1
OF CLALLAM COUNTY**

By _____
Sean Worthington, General Manager

Dated _____