

## **APPENDIX D**

### **CONTRACT DOCUMENTS**

#### **INCLUDING:**

**Contract Form**

**Performance Bond**

**ARRA Contract Requirements**



## CONTRACT

THIS AGREEMENT, made and entered into this \_\_ day of \_\_\_\_\_, 2009, between the BOARD OF COUNTY COMMISSIONERS of LEWIS COUNTY, State of Washington, acting under and by virtue of RCW 36.77.040, hereinafter called

the Board, and \_\_\_\_\_ of \_\_\_\_\_

for \_\_\_sel\_\_\_, heirs, executors, administrators, successors and assigns, hereinafter called the Contractor.

WITNESSETH:

That in consideration of the payments, covenants and agreements hereinafter mentioned to be made and performed by the parties hereto; the parties hereto covenant and agree as follows:

### DESCRIPTION OF WORK:

1. The Contractor shall do all work and furnish all material necessary for the construction of **a new well complete with submersible pump, pitless adaptor, valves, piping and appurtenances; 15 lf of 3-inch, 1,500 lf of 6-inch, 120 lf of 6-inch, 45 lf of 8-inch, 10 lf of 10-inch and 20 lf of 12-inch ductile iron water transmission, suction and discharge lines complete with valves, gages and flowmeters; a booster pump station building complete with power, lighting, ventilation, drainage, pipe supports, two booster pumps, chemical treatment system, testing, spare parts, control equipment and system, owner's manuals for the new water system improvements;** and other incidentals needed in accordance with and as described in the attached plans and specifications, and in full compliance with the terms, conditions and stipulations herein set forth and attached, now referred to and by such reference incorporated herein and made a part hereof as fully for all purposes as if here set forth at length, and shall perform any alterations in or additions to the work covered by this contract and every part thereof and any extra work which may be ordered as provided in this contract and every part thereof.

The Contractor shall provide and be at the expense of all materials, labor, carriage, tools, implements, conveniences and things of every description that may be requisite for the transfer of materials and for constructing and completing the work provided for in this contract and every part thereof.

2. The County hereby promises and agrees with the Contractor to hire and does hire the Contractor to provide the materials and to do and cause to be done the above described work and to complete and furnish the same according to the attached plans and specifications and the terms and conditions herein contained, and hereby contracts to pay for the same according to the schedule of unit or itemized prices at the time and in the manner and upon the conditions provided for in this contract and every part thereof. The County further agrees to hire the Contractor to perform any alterations in or conditions to the work covered by this contract and every part thereof and any force account work that may be ordered and to pay for the same under the terms of this contract and the attached plans and specifications.

3. The Contractor for himself, and for his heirs, executors, administrators, successors and assigns, does hereby agree to the full performance of all the covenants herein contained upon the part of the Contractor.

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4. It is further provided that no liability shall attach to the County by reason of entering into this contract, except as expressly provided herein.

5. CANCELLATION OF CONTRACT FOR VIOLATION OF STATE POLICY

This contract, pursuant to RCW 49.28.040 to RCW 49.28.060, may be canceled by the officers or agents of the Owner authorized to contract for or supervise the execution of such work, in case such work is not performed in accordance with the policy of the State of Washington.

6. DOCUMENTS COMPRISING CONTRACT

All documents hereto attached, including but not being limited to the advertisement for bids, information for bidders, bid proposal form, general conditions (if any), special conditions (if any), complete specifications and the complete plans, are hereby made a part of this contract.

IN WITNESS WHEREOF, the said Contractor has executed this instrument, and the said Board of County Commissioners of aforesaid County, pursuant to resolution duly adopted, has caused this instrument to be executed by and in the name of said Board by its Chairman, duly attested by its Clerk, the day and year first above written, and the seal of said Board to be hereunto affixed on the date in this instrument first above written.

By: \_\_\_\_\_

Contractor

Performance of foregoing contract assured in accordance with the terms of the accompanying bond.

Dated: \_\_\_\_\_, 2009

By: \_\_\_\_\_

Surety

By: \_\_\_\_\_

Attorney-in-fact

APPROVED AS TO FORM:

MICHAEL GOLDEN Prosecuting Attorney

By: \_\_\_\_\_

Civil Deputy

APPROVED:

\_\_\_\_\_  
County Engineer

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**PERFORMANCE BOND FOR  
LEWIS COUNTY, WASHINGTON**

**Bond No.** \_\_\_\_\_

WE, \_\_\_\_\_ d/b/a \_\_\_\_\_  
(Insert legal name of Contractor) (Insert trade name of Contractor, if any)

(hereinafter "Principal"), and \_\_\_\_\_ (hereinafter "Surety"), are held and firmly bound unto **LEWIS COUNTY, WASHINGTON** (hereinafter "County"), as Obligee, in an amount (in lawful money of the United States of America) equal to the total compensation and expense reimbursement payable to Principal for satisfactory completion of Principal's work under Contract No. \_\_\_\_\_ between Principal and County, which total is *initially* \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), for the payment of which sum Principal and Surety bind themselves, their executors, administrators, legal representatives, successors and assigns, jointly and severally, firmly by these presents.. Said contract (hereinafter referred to as "the Contract") is for \_\_\_\_\_ and is made a part hereof by this reference. The Contract includes the original agreement as well as all documents attached thereto or made a part thereof and amendments, change orders, and any other document modifying, adding to or deleting from said Contract any portion thereof.

This Bond is executed in accordance with the laws of the State of Washington, and is subject to all provisions thereof and the ordinances of County insofar as they are not in conflict therewith, and is entered into for the use and benefit of County, and all laborers, mechanics, subcontractors, and materialmen, and all persons who supply such person or persons, or subcontractors, with provisions or supplies for the carrying on of the work covered by Contract No. \_\_\_\_\_ between the below-named Contractor and County for \_\_\_\_\_, a copy of which Contract, by this reference is made a part hereof and is hereinafter referred to as "the Contract." (The Contract as defined herein includes the aforesaid agreement together with all of the Contract documents including addenda, exhibits, attachments, modifications, alterations, and additions thereto, deletions therefrom, amendments and any other document or provision attached to or incorporated into the Contract)

**THE CONDITION OF THIS OBLIGATION** is such that if Contractor shall promptly and faithfully perform the Contract, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

**THE PARTIES FURTHER ACKNOWLEDGE & AGREE AS FOLLOWS:**

- (1) Surety hereby consents to, and waives notice of, any alteration, change order, or other modification of the Contract and any extension of time made by County, except that any single or cumulative change order amounting to more than twenty-five percent (25%) of the penal sum of this bond shall require Surety's written consent.
- (2) Surety recognizes that the Contract includes provisions for additions, deletions, and modifications to the work or Contract Time and the amounts payable to Contractor. Subject to the limitations contained in paragraph (1) above, no such change or any combination thereof, shall void or impair Surety's obligation hereunder.
- (3) Surety is subject to the provisions contained in Section 1-03.4, "Contract Bond," of the Washington State Department of Transportation (WSDOT) Standard Specifications for Road, Bridge, and Municipal Construction, and such provisions are incorporated by reference. A copy may be viewed at WSDOT's website [www.wsdot.wa.gov/fasc/EngineeringPublications/Manuals/](http://www.wsdot.wa.gov/fasc/EngineeringPublications/Manuals/).
- (4) Whenever County has declared Contractor to be in default and County has given Surety written notice of such declaration, Surety shall promptly (in no event more than thirty [30] days following receipt of such notice), specify, in written notice to County, which of the following actions Surety intends to take to remedy such default, and thereafter shall:
  - (a) Remedy the default within fifteen (15) days after its notice to County, as stated in such notice; or
  - (b) Assume within fifteen (15) days following its notice to County, full responsibility for the completion of the Contract in accordance with all of its provisions, as stated in such notice, and become entitled to payment of the balance of the Contract sum as provided in the Contract; or
  - (c) Pay County upon completion of the Contract, in cash, the cost of completion together with all other reasonable costs and expenses incurred by County as a result of Contractor's default, including but not limited to those incurred by County to mitigate its losses, which may include but are not limited to attorneys' fees and the cost of efforts to complete the work prior to Surety's exercising any option available to it under this Bond; or

(d) Obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon a determination by County and Surety jointly of the lowest responsible bidder, arrange for one or more agreements between such bidder and County, and make available as work progresses (even though there is a default or a succession of defaults under such agreement(s) for completion arranged for under this paragraph) sufficient funds to pay the cost of completion less the balance of the Contract price, but not exceeding, including other costs and damages for which Surety may be liable hereunder, the penal sum of this Bond. The term "balance of the Contract price," as used in this paragraph, shall mean the total amount payable by County to Contractor under the Contract, less the amount properly paid by County to Contractor.

(5) If County commences suit and obtains judgment against Surety for recovery hereunder, then Surety, in addition to such judgment, shall pay all costs and attorneys' fees incurred by County in enforcement of County's rights hereunder. The venue for any action arising out of or in connection with this bond shall be in Lewis County, Washington.

(6) No right or action shall accrue on this Bond to or for the use of any person or corporation other than Lewis County, except as herein provided.

(7) No rider, amendment or other document modifies this Bond except as follows, which by this reference is incorporated herein:

**SURETY'S QUALIFICATIONS:** Every Surety named on this bond must appear on the United States Treasury Department's most current list (Circular 570 as amended or superseded) and be authorized by the Washington State Insurance Commissioner to transact business as a surety in the State of Washington. In addition, the Surety must have a current rating of at least A-VII in A. M. Best's Key Rating Guide.

**INSTRUCTIONS FOR SIGNATURES:** This bond must be signed by the president or a vice-president of a corporation; the managing general partner of a partnership; managing joint venturer of a joint venture; manager of a limited liability company or, if no manager has been designated, a member of such LLC; a general partner of a limited liability partnership; or the owner(s) of a sole proprietorship. If the bond is signed by any other representative, the Principal must attach currently-dated, written proof of that signer's authority to bind the Principal, identifying and quoting the provision in the corporate articles of incorporation, bylaws, Board resolution, partnership agreement, certificate of formation, or other document authorizing delegation of signature authority to such signer, and confirmation acceptable to the County that such delegation was in effect on the date the bond was signed. **A NOTARY PUBLIC MUST ACKNOWLEDGE EACH SIGNATURE BELOW.**

**FOR THE SURETY:**

By \_\_\_\_\_  
(Signature of Attorney-in-Fact)

\_\_\_\_\_  
(Type or print name of Attorney-in-Fact)

\_\_\_\_\_  
(Type or print telephone number for Attorney-in-Fact)

**FOR THE PRINCIPAL:**

By: \_\_\_\_\_  
(Signature of authorized signer for Contractor)

\_\_\_\_\_  
(Type or print name of signer for Contractor)

\_\_\_\_\_  
(Type or print title of signer for Contractor)

STATE OF \_\_\_\_\_ )  
 ) ss: **ACKNOWLEDGMENT FOR CONTRACTOR**  
 COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_, before me a notary public in and for the State of \_\_\_\_\_, duly commissioned and sworn, personally appeared \_\_\_\_\_, the person described in and who executed the foregoing bond, and acknowledged to me that \_\_\_\_\_ signed and sealed said bond as the free and voluntary act and deed of the Contractor so identified in the foregoing bond for the uses and purposes therein mentioned, and on oath stated that \_\_\_\_\_ is authorized to execute said bond for the Contractor named therein. WITNESS my hand and official seal hereto affixed the day and year in this certificate first above written.

\_\_\_\_\_  
 (Signature of Notary Public) (Print or type name of Notary Public)

Notary Public in and for the State of \_\_\_\_\_ residing at \_\_\_\_\_  
 My commission expires \_\_\_\_\_. **SEAL →**

STATE OF \_\_\_\_\_ )  
 ) ss: **ACKNOWLEDGMENT FOR SURETY**  
 COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_, before me a notary public in and for the State of \_\_\_\_\_, duly commissioned and sworn, personally appeared \_\_\_\_\_, Attorney-in-Fact for the Surety that executed the foregoing bond, and acknowledged said bond to be the free and voluntary act and deed of the Surety for the uses and purposes therein mentioned, and on oath stated that \_\_\_\_\_ is authorized to execute said bond on behalf of the Surety, and that the seal affixed on said bond or the annexed Power of Attorney is the corporate seal of said Surety. WITNESS my hand and official seal hereto affixed the day and year in this certificate first above written.

\_\_\_\_\_  
 (Signature of Notary Public) (Print or type name of Notary Public)

Notary Public in and for the State of \_\_\_\_\_ residing at \_\_\_\_\_  
 My commission expires \_\_\_\_\_. **SEAL**

## **ARRA CONTRACT REQUIREMENTS**

### **NONDISCRIMINATION PROVISION**

The General Contractor/Subcontractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this Contract. The General Contractor/Subcontractor shall carry out applicable requirements of 40 CFR part 33 in the award and administration of contracts awarded under Environmental Protection Agency financial agreements. Failure by the General Contractor/Subcontractor to carry out these requirements is a material breach of this Contract which may result in termination of this Contract.

### **PROTECTION OF WHISTLEBLOWERS**

In accordance with Section 1553 of the American Recovery and Reinvestment Act of 2009 (ARRA), the borrower, its general contractor, and subcontractors agree that during the performance of this project, their employees may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee's duties, to the Public Works Board, an inspector general, the Comptroller General, a member of Congress, a State or Federal regulatory or law enforcement agency, a person with supervisory authority over the employee (or such other person working for the employer who has the authority to investigate, discover, or terminate misconduct), a court of grand jury, the head of a Federal agency, or their representatives, information that the employee reasonably believes is evidence of:

1. Gross mismanagement of an agency contract or grant relating to covered funds.
2. A gross waste of covered funds.
3. A substantial and specific danger to public health or safety related to the implementation or use of covered funds.
4. An abuse of authority related to the implementation or use of covered funds.
5. A violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) or grant, awarded or issued relating to covered funds.

### **PROHIBITION STATEMENT**

Pursuant to Section 106 of the Trafficking Victims Protection Act of 2009, as amended, borrowers (non-municipals only), all general contractors, and subcontractors employees may not engage in severe forms of trafficking in persons during the period of time their contract is in effect, procure a commercial sex act during the period of time their contract is in effect, or use forced labor during the performance of their contract.

## BUY AMERICAN

The Contractor understands the goods and services under this contract are being funded with monies made available by the federal ARRA that contains provisions commonly known as “Buy American”; that requires all of the iron, steel, and manufactured goods used in the project be produced in the United States (“Buy American Requirements”) including iron, steel, and manufactured goods provided by the Contractor pursuant to this contract.

The Contractor hereby represents and warrants to and for the benefit of the ARRA Recipient and the State that (a) the Contractor has reviewed and understands the Buy American Requirements; (b) all of the iron, steel, and manufactured goods used in the project will be and have been produced in the United States in a manner that complies with the Buy American Requirements, unless a waiver of the requirements is approved; and (c) the Contractor will provide any further verified information, certification or assurance of compliance with this section, or information necessary to support a waiver of the Buy American Requirements, as may be requested by the ARRA Recipient or the State.

Notwithstanding any other provision of this contract, any failure to comply with this section by the Contractor shall permit the ARRA Recipient or State to recover as damages against the Contractor any loss, expense or cost (including without limitation attorney’s fees) incurred by the ARRA Recipient or State resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part, from the State or any damaged owed to the State by the ARRA Recipient). While the Contractor has no direct contractual privity with the State, as a lender to the ARRA Recipient for the funding of its project, the ARRA Recipient and the Contractor agree that the State is a third-party beneficiary and neither this paragraph shall be amended or waived without prior written consent of the State.

## REPORTING REQUIREMENTS

This contract is funded with federal stimulus funds (ARRA), which has strict reporting requirements for funds spent and jobs created or retained. All job openings created by the Contractor for this project must be listed with the WorkSource system (an affiliate of the Employment Security Department) before hiring; all hiring decisions also must be reported to WorkSource. In addition, all sub-contractors hired by the contractor also must list jobs and report hiring results to WorkSource. Existing contractor or sub-contractor employees who are retained using funds from this project also must report to WorkSource.

WorkSource will pre-screen and refer qualified job candidates for the contractor’s consideration. The Contractor also has the discretion to use other additional recruitment systems, and retains the right to make all hiring decisions.

To begin the listing and reporting process, contact the ARRA Business Unit at 877-453-5906 (toll-free), 360-438-4849 or [ARRA@esd.wa.gov](mailto:ARRA@esd.wa.gov).

Name and Address of Contractor	
Name and Title of Signer (please print)	
Signature	Date