

Cascade Water Alliance
Contract No. : 20210401
Title: Administration Building
Heat Pump Replacement

SMALL WORKS CONTRACT

THIS SMALL WORKS CONTRACT (this "Contract") is made between CASCADE WATER ALLIANCE ("OWNER"), a municipal corporation and MMCS, LLC, a Washington limited liability corporation ("CONTRACTOR").

In consideration of the terms and conditions contained in this Contract and attached to it, the parties agree as follows:

1. Effective Date. The Effective Date of this Agreement is April 22 2021.
2. Project. Contractor shall perform and complete all Work and furnish all tools, materials, and equipment for the Owner's public works project known as Administration Building Heat Pump Replacement ("Project") in accordance with and as more fully described in the Contract Documents listed in Exhibit 1 and incorporated herein by reference.
3. Work. The term Work, as used in this Contract, means the construction and services necessary or incidental to fulfill Contractor's obligations in conformance with this Contract. Contractor shall have sole and exclusive control over the means and methods of its Work and shall be solely responsible for planning, scheduling, coordinating, executing and completing the Work in accordance with its chosen means and methods.
4. Project Cost. The Owner shall pay Contractor Seventeen Thousand Seven Hundred Seventy-Nine Dollars (\$17,779.00) plus applicable Washington State sales tax ("Project Cost"). The Project Cost includes all costs associated with the Project, including, but not limited to labor (inclusive of overtime), materials, profit, fee, taxes (other than WSST), mobilization, travel, overhead, administrative, and permit and regulatory costs required for or incurred in connection with the completion of this Work, unless otherwise agreed to by the parties in writing.
5. Payment Terms. The Project Cost shall be payable in the following manner: On or before the 26th day of each month, Contractor shall submit a detailed monthly invoice for all services provided describing in reasonable and understandable detail the work completed during the previous month, the progress of the work, and the requested payment in an amount proportionate to the work completed. The Owner shall pay the invoice within thirty (30) days after approval of the invoice, pursuant to the terms below:
 - a. In cases of single payment, the Owner shall make payment only after all appropriate releases are submitted.
 - b. In cases of multiple payments, the Owner shall retain monies as required by RCW 60.28 and pay the retainage as provided therein.

6. Equitable Adjustments. If the Contractor seeks to request any adjustment to the Project Cost or any extension of the Contract time specified in Section 7, it must provide an initial written notice for any equitable adjustment within twenty-four (24) hours of the act, omission or event by the Owner that gives rise to the request written change order. The initial notice must provide a concise description of the potential change and an initial estimate of the impact to the Project Cost or Time. No more than five (5) days thereafter, Contractor shall then file a written claim with the Owner, stating the amount claimed, supported by appropriate documentation. Failure to provide written notice and claim under the terms of this Contract constitutes waiver of such claim. In no case, shall a claim for equitable adjustment be allowed if submitted after the Project has reached Final Acceptance (as defined herein) by the Owner.

7. Force Majeure. The term, "Force Majeure," as used in this Contract, shall mean the following: (a) the global coronavirus pandemic generally known as COVID-19 or (b) an event that is unforeseeable at the time of Contract Execution and that is beyond the reasonable control of the Contractor and Cascade and is limited to the following: natural disasters declared by the governor of Washington or President of the United States, including but not limited to earthquakes; acts or omissions of any government entity acting within its governmental capacity; fire or other casualty for which a Contractor or its Subcontractors and/or Suppliers party are not responsible; quarantine, pandemic or epidemic; strike or defensive lockout; and, unusually severe weather conditions (any of the following that stops the Work from progressing as scheduled: daily rainfall equal to, or greater than, 2.0 inches in a 24 hour period; ice; snow; and other adverse weather conditions).
 - a. Contractor must provide an initial written notice within twenty-four (24) hours of the Force Majeure event that gives rise to the request written change order. The initial notice must provide a concise description of the potential change and an initial estimate of the impact to Substantial Completion. No more than five (5) days thereafter, Contractor shall then file a written claim with the Owner, stating the amount claimed, supported by appropriate documentation. Failure to provide written notice and claim under the terms of this Contract constitutes waiver of such claim.
 - b. When Contractor experiences a delay caused by an act of Force Majeure, Contractor shall only be entitled to an extension to the Contract time. No change to Project Cost shall be allowed as a result of an act of Force Majeure.
 - c. Notwithstanding anything herein to the contrary, the Contract time will not be adjusted on account of impacts or delays caused by COVID-19 rules, regulations or government orders in existence at the time of bid submission. The Contract time will be adjusted if compliance with any new rule, regulation or government order not in existence at bid submission causes an unavoidable delay to Substantial Completion. In no case shall the Project Cost be adjusted for delays resulting from COVID-19 rules, regulations or government orders.

8. Completion Deadline/Final Acceptance. Contractor shall commence Work under this Contract upon receipt of notice to proceed from Cascade. The Project must be completed no later than July 31, 2021. The Owner will declare "Final Acceptance" when the Contractor has completed all of its obligations under the Contract, inclusive of submission of all documentation by law or by the Contract. Any obligations of Contractor to indemnify the Owner and/or provide insurance shall survive Final Acceptance.
9. Warranty. Contractor warrants that all materials and equipment shall be new unless otherwise specified, of good quality, and free from defective workmanship and materials. Contractor further warrants that the Work shall be free from defects in workmanship and material, and shall transfer to the Owner all written warranties related to the Work performed and equipment installed. Contractor guarantees payment of all obligations incurred in this Work. The warranty period shall be for a period of one (1) years from Final Acceptance.
10. Prevailing Wages. The Contractor shall pay prevailing wages as required and shall comply with RCW 39.12 and RCW 49.28. Notice of intent to pay prevailing wages and prevailing wage rates for the Project must be posted for the benefit of workers. At the completion of the Project, the Contractor and its subcontractors shall submit Affidavits of Wages Paid to the Department of Labor and Industries for certification. Final payment on the Contract shall be withheld until the Owner receives certification from the Department of Labor and Industries that prevailing wage requirements have been satisfied.
11. Bond. Contractor shall provide a performance and payment bond for the faithful performance and payment of all its obligations under this Contract and in accordance with RCW 39.08.010. The performance bond shall remain in effect to guarantee the repair and replacement of defective equipment, materials, and workmanship and payment of damages sustained by the Owner on account of such defects, discovered within one (1) year after Final Acceptance by the Owner. If this Contract is for less than \$150,000, then at the option of the Contractor the Owner may retain 10% of the Contract amount, in lieu of a bond, for a period of thirty days after the date of Final Acceptance or as provided for under RCW 39.08.010.
12. Indemnification. Contractor shall defend, indemnify, and hold harmless the Owner, its board of directors, officers, managers, employees, engineers, agents, and volunteers from and against all demands, claims, losses, injuries, damages, liabilities, suits, judgment, attorneys' fees and costs, and other expenses of any kind (including any suits or claims made by or for the benefit of Contractor's employees or their survivors) on account of, relating to, or arising out of Contractor's Work under this Contract, except to the extent such injuries or damages are caused by the sole negligence of the Owner.

For the purposes of this indemnification, Contractor specifically and expressly waives any immunity granted under the Washington Industrial Insurance Act, Title 51 RCW. This waiver has been mutually negotiated and agreed to by the parties. Contractor further agrees to require its consultants, subcontractors, and suppliers and their consultants, subcontractors and suppliers to similarly indemnify and hold Contractor harmless and waive immunity under Title 51 solely for the purposes of this indemnification.

Pursuant to RCW 4.24.115, to the extent liability for Indemnified Claims (including defense obligations) were caused or result from the concurrent negligence of (a) the Indemnified Parties and (b) Contractor or the Contractor's agents or employees, the indemnity and defense obligations under this Agreement shall be limited to the extent of the Contractor's negligence.

The provisions of this paragraph shall survive the expiration or termination of this Contract.

13. Insurance. Contractor shall obtain, and keep in force during the term of this Contract, insurance policies as follows:

- a. Commercial General Liability. Limits no less than \$2,000,000.00 combined single limit per occurrence and \$4,000,000.00 aggregate for personal injury, bodily injury and property damage. Coverage shall be as broad as Insurance Services Office form number (CG 00 01) covering Commercial General Liability to be maintained for so long as any Work or Service is performed by Contractor, plus an additional six (6) years from completion of such Work or Service.
- b. Automobile Liability Insurance. Limits no less than \$1,000,000.00 combined single limit per accident for bodily injury and property damage. Coverage shall be as broad as Insurance Services Office form number (CA 00 01) covering Business Auto Coverage, symbol 1 "any auto"; or the combination of symbols 2, 8, and 9.
- c. Workers' Compensation. Statutory requirements of the State of residency. Coverage shall be at least as broad as Workers' Compensation coverage, as required by the Industrial Insurance Act of the State of Washington, as well as any similar coverage required for this work by applicable Federal or "other States" State Law;
- d. Employer's Liability or "Stop Gap". Coverage shall be at least as broad as the protection provided by the Workers Compensation policy Part 2 (Employers Liability) or, in states with monopolistic state funds, the protection provided by the "Stop Gap" endorsement to the general liability policy;
- e. The insurance policies shall specifically name the Owner, its elected or appointed officials, officers, employees, and volunteers as insureds with regard to damages and defense of claims arising from (1) activities performed by or on half of the Contractor; or (2) products and completed operations of the Contractor; or (3) premises owned, leased, or used by the Contractor.
- f. The insurance policies (1) shall state that coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability; (2) shall be primary insurance with regard to the Owner; and (3) shall state that the Owner will be given at least 30 days' prior written notice of any cancellation, suspension or material change in coverage.
- g. Before commencing work and services, Contractor shall provide to the Owner a Certificate of Insurance evidencing the required insurance accompanied by endorsements

as are necessary to comply with the requirements of this paragraph. The Owner reserves the right to request and receive a certified copy of all required insurance policies.

h. Any payment of deductible or self-insured retention shall be the sole responsibility of Contractor.

14. Job Safety/Housekeeping. Contractor shall at its cost take all reasonable precautions for the safety of all employees or other persons who may be involved in the Project, as well as visitors and third parties such as government officials. Contractor shall also establish and enforce all reasonable safeguards for safety and protection including posting signs and other warnings against hazards and promulgating safety regulations. Contractor shall designate a qualified and responsible employee at the Project whose duty shall be to supervise plant safety, project safety, prevention of fires and accidents and the coordination of such activities as shall be necessary. In order to protect the lives and health of persons performing work under this Agreement, the Contractor shall comply with the Federal Occupational Safety and Health Act of 1970 (OSHA), including all revisions, amendments and regulations issued thereunder, and the provisions of the Washington Industrial Safety Act of 1973 (WISHA), including all revisions, amendments and regulations issued thereunder by the Washington State Department of Labor and Industries. The WISHA regulations shall apply, without limitation, to all excavation, tunneling, trenching and ditching operations. In case of conflict between any such requirements, the more stringent regulation or requirement shall apply. There is no acceptable deviation from these safety requirements, regardless of practice in the construction industry. Any violation of OSHA, WISHA or other safety requirements applicable to the work may be considered a breach of this Agreement.
15. Compliance with Codes and Regulations. Contractor shall comply with all applicable statutes in performing Project Work, including, but not limited to all state and local laws, regulations, codes and standards that are applicable at the time Contractor performs work.
16. Permits, Taxes, Temporary Functions. Contractor shall secure and pay for all permits, fees and licenses necessary for the performance of this Contract. Contractor shall pay any and all federal, state and municipal taxes, including sales taxes, if any, for which Contractor may be liable in carrying out this Contract. Contractor shall be responsible for all temporary functions associated with its work, including but not limited to, lighting, wiring, protection, hoisting, scaffolding, rigging, flagman, drinking water, storage, ventilation and heat.
17. Suspension of Contract. Cascade reserves the right to suspend this Contract, at any time, with or without cause, by giving ten (10) days prior written notice to Contractor. The time for completion of the remaining Work shall be extended by the number of days the Work is suspended by Cascade, unless both Parties can mutually agree upon a new completion time. In the event the period of suspension exceeds ninety (90) days, the terms of this Contract shall be subject to renegotiation; provided, however, that if such renegotiation of a mutually acceptable replacement contract has not occurred within one hundred eighty (180) days after suspension ("Renegotiation Period"), then either Party may terminate this Contract upon ten (10) days prior written notice, provided further, that the failure to renegotiate this Contract within the Renegotiation Period shall not be construed as a breach of the Contract by either

Party. Contractor shall be entitled to receive just and equitable compensation for any satisfactory Work completed prior to the date of suspension.

18. Termination for Default. If Contractor: (1) fails to provide a sufficient number of properly skilled workers or a sufficient quantity of suitable materials or adequate equipment; (2) fails to diligently prosecute work according to the Project schedule; (3) causes, by act or omission, stoppage, delay, or interference of the Work; (4) fails to correct or repair any damaged or defective work or materials; (5) fails to comply with any provisions of this Contract; (6) becomes insolvent or adjudged bankrupt; or (7) fails to comply with applicable regulations; or (8) fails to make prompt payment to lower tier subcontractors or suppliers, then the Owner may terminate this Contract upon written notice to the Contractor. Contractor shall be entitled to receive just and equitable compensation for any satisfactory Work completed prior to the date of termination.

19. Termination for Convenience. Cascade may terminate this Contract for convenience upon providing Contractor with seven (7) days written notice. Any right of convenience termination shall be in addition to, not in replacement of, any and all rights and remedies a Party may have for breach of the Contract by the other Party. In the event of convenience termination, Contractor shall be entitled to receive only such compensation as is allowed under this Contract for any satisfactory Work completed prior to the date of termination and shall not be paid any costs, fees, markups or profit on the terminated part of the Contract.

20. Additional Work. Cascade may desire to have Contractor perform work or render services in connection with the Project other than that Work provided for by the express intent of this Contract. Any such work or services shall be considered as additional work, supplemental to this Contract. Authorized additional work will be compensated for in accordance with a written supplemental or new contract between Contractor and Cascade.

21. General Provisions.

a. Notices. Any notice or demand desired or required to be given under this Contract shall be in writing and deemed given when personally delivered or deposited in the United States Mail (or with an express courier), postage prepaid, sent certified or registered mail, and addressed to the parties as set forth below or to such other address as either party shall have previously designated by such a notice:

Owner:

Cascade Water Alliance
520 112th Avenue NE, Suite 400
Bellevue, WA 98004
Attn: Jon Shimada

Contractor:

MMCS, LLC
18103 NE 68th St., Suite C-200
Redmond, WA 98052
Attn: Tim Erford

b. Entire Agreement. This Contract and its attachments contain the entire understanding between the Owner and Contractor relating to the Project which is the subject of this Contract. This Contract merges all prior discussions, negotiations, letters of

understanding or other promises whether oral or in writing. Subsequent modification or amendment of this Contract shall be in writing and signed by the parties to this Contract.

- c. Modification. No modification of this Contract and no waiver of rights under this Contract shall be valid or binding on the parties unless the same is in writing.
- d. Waiver. Waiver of any breach or default hereunder shall not constitute a continuing waiver or a waiver of any subsequent breach either of the same or of another provision of this Contract.
- e. Assignment. Neither party shall assign, transfer or otherwise dispose of this Contract in whole or in part to any individual, firm or corporation without the prior written consent of the other party. Subject to the provisions of the preceding sentence, this Contract shall be binding upon and inure to the benefit of the respective successors and assigns of the parties hereto. This Contract is made only for the benefit of the Owner and the Contractor and successors in interest and no third party or person shall have any rights hereunder whether by agency or as a third party beneficiary.
- f. Severability. If any term, covenant or condition of this Contract is held by a court of competent jurisdiction to be invalid, the remainder of this Contract shall remain in effect.
- g. Dispute Resolution. If any dispute, controversy, or claim arises out of this Contract, the parties agree to first try to settle the dispute, controversy, or claim in non-binding mediation with the assistance of a recognized professional mediation service. The parties shall each designate a representative with full settlement authority who will participate in the mediation. The parties shall bear all expenses associated with the mediation equally, except for attorneys' fees.
- h. Jurisdiction/Law. This Contract shall be governed by and construed in accordance with the laws of the State of Washington. Any suit to enforce or relating to this Contract shall be brought in King County Superior Court, King County, Washington.
- i. Attorneys' Fees. In the event that any party commences litigation against the other party relating to the performance, enforcement or breach of this Contract, the prevailing party in such action shall be entitled to all costs, including attorneys' fees and costs and any such fees or costs incurred on appeal.

CASCADE:

CASCADE WATER ALLIANCE, a
Washington municipal corporation

By: Ray Hoffman
Ray Hoffman, CEO
Date: 4-22-2021

CONTRACTOR:

MMCS LLC, a
corporation

By: Tim Lange
Name: TIM LANGE
Its: CEO
Date: 4/15/21

EXHIBIT 1

The Contract Documents for the Administration Building Heat Pump Replacement Project shall include the following:

Scope of Work

Contractor will replace the split heat pump at the Cascade Water Alliance Administration Building, located at 2111 East Valley Highway, Sumner, Washington.

Work shall include:

- Remove (1) indoor air handler and dispose of in compliance with federal and state law
- Remove (1) outdoor heat pump unit and dispose of in compliance federal and state
- Provide and install (1) new Carrier FV4CN variable speed air handler/fan coil to be set in the location as old
- Reuse/adapt/transition to existing supply and return ducting
- Provide and install (1) new Carrier High Efficiency 18 SEER 25VNA split heat pump unit to be set outside in same location as old
- Flush and reuse existing refrigerant piping line sets
- Condensate drain to follow same path as old
- Reuse existing thermostat
- Mechanical permit included
- Full start and test of new system
- Convey five-year Compressor Warranty to Owner

PERFORMANCE, PAYMENT AND GUARANTY BOND

_____, as Principal, and _____, as Surety, a corporation authorized and duly licensed to do business in the State of Washington and registered with the Washington State Insurance Commissioner, are held and firmly bound unto CASCADE WATER ALLIANCE, hereinafter called "Owner," in the full sum of Seventeen Thousand Seven Hundred Seventy-Nine Dollars (\$17,779.00), for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Principal has been awarded and has entered into that Contract, dated March ____, 2021 and attached hereto, with Owner to perform the work as specified or indicated in the Contract Documents entitled Administration Building Heat Pump Replacement Project, according to the terms, conditions and covenants specified in the Contract, including all of the Contract Documents therein referred to which are hereby referred to and made a part hereof as fully and completely as though set forth in detail herein.

NOW, THEREFORE, if Principal shall perform all of the requirements of the Contract Documents required to be performed on its part, at the times and in the manner specified therein; and

If Principal shall pay for all materials, equipment, or other supplies, or for rental of same, used in connection with the performance of work contracted to be done, and for all amounts due under applicable State law for any work or labor thereon; and

If Principal shall pay the sales, use and any other applicable taxes of the State of Washington or any political subdivision of said State relating to the Contract or to the work performed under the Contract, and pay amounts due the State pursuant to Titles 50 and 51 of the Revised Code of Washington; and

If Principal shall indemnify and hold the Owner harmless from any defects in the workmanship or materials incorporated into the work for a period of **one year** after the final acceptance of the work;

THEN the obligation of Principal and Surety under this Bond shall be void, but otherwise it shall remain in full force and effect.

This Bond shall inure to the benefit of any persons, companies or corporations entitled to file claims under applicable State law.

Any alterations in the work to be done or the materials to be furnished, or changes in the time of completion, which may be made pursuant to the terms of the Contract documents, shall not in any way release Principal or Surety there under, nor shall any extensions of time granted under the provisions of the Contract documents release either Principal or Surety, and notice of such alterations or extension of the Contract is hereby waived by Surety.

IT IS FURTHER AGREED that nothing of any kind or nature that will not discharge the Principal shall operate as a discharge or release of the Surety, regardless of law, rule of equity or usage relating to the liability of sureties to the contrary notwithstanding.

IT IS FURTHER AGREED that whenever the Contractor shall be, and declared by the Owner to be, in default under the Contract, the Owner having performed its obligations hereunder, the Surety at the request of the Owner shall promptly remedy the default in a manner acceptable to the Owner.

SIGNED AND SEALED, this ____ day of _____, 20__.

(Seal)

(Seal)

(Principal)

(Surety)

By: _____
(Print Name)

By: _____
(Print Name)

Signature

Signature

Title

Title

Address: _____

Note: A dated power of attorney must be provided which appoints the Surety's true and lawful attorney-in-fact to make, execute, seal and deliver this performance and payment bond.