

AGREEMENT TO PERFORM GOVERNMENTAL ACTIVITIES
Between
THURSTON COUNTY
And
CITY OF LACEY

THIS AGREEMENT is entered into in duplicate originals between Thurston County, hereinafter "County," and the City of Lacey, hereinafter "City."

WHEREAS, the County is planning a road project entitled Marvin Rd Upgrade Phase 1 (22nd Ave to Union Mills Rd), CP# 61478, hereinafter "County Project;" and

WHEREAS, within the limits of the County Project, the City desires the County to include certain utility work, including water and sewer main installation and other associated appurtenances, hereinafter "Utility Work"; and

WHEREAS, the Utility Work shall include all materials, equipment, labor administration and any other efforts required to perform the construction of the Utility Work; and

WHEREAS, the City is solely responsible for all costs associated with the Utility Work; and

WHEREAS, the County and the City have negotiated the Scope of Work and Cost Estimate for the Utility Work to be included in the County Project as set forth in this Agreement; and

WHEREAS, it is to the mutual advantage of the County and the City to cooperate in the County Project, as described herein, in order to make the most efficient use of their powers to provide services and facilities needed by the citizens residing within their respective jurisdictions; and

WHEREAS, RCW 39.34.080 authorizes a public agency to contract with another public agency to perform any governmental activity that each public agency is authorized by law to perform; and

WHEREAS, it is deemed to be in the best public interest for the County to include the items of Utility Work in the County's Project;

NOW, THEREFORE, pursuant to chapter 39.34 RCW and in consideration of the terms, conditions, covenants, and performances contained herein, or attached and incorporated and made a part hereof,

IT IS MUTUALLY AGREED BY THE COUNTY AND THE CITY AS FOLLOWS:

1. PLANS AND SPECIFICATIONS

- 1.1. The County, through its selected contractor, agrees to perform the Utility Work, in accordance with the Scope of Work set out in Exhibit A, Cost Estimate set out in Exhibit B, and Plans and Specifications set out in Exhibit C, all of which are attached hereto and by this reference incorporated into this Agreement.
- 1.2. The Plans and Specifications for the Utility Work have been prepared by the City and reviewed and approved by the City and stamped by the City. The County will incorporate these Plans and Specifications in the County Project.

2. CONSTRUCTION, INSPECTION, AND WORK ACCEPTANCE

- 2.1. The County shall require its contractor to construct the Utility Work in accordance with the City approved and City stamped Work Plans and Specifications.
- 2.2. The City shall furnish an inspector for the Utility Work. The inspector shall be available during the entire construction phase of the Utility Work. Any costs for such inspections shall be borne solely by the City. The City agrees to follow the inspection process as provided in Exhibit A.
- 2.3. The County shall promptly notify the City in writing when the Utility Work is started and completed.
- 2.4. The City shall, within ninety (90) calendar days of being notified that the Utility Work is completed: (a) deliver a letter of acceptance to the County which shall include a release and waiver of all future claims or demands, of any nature, resulting from the County's performance of the Utility Work under this Agreement, or (b) deliver to the County written notification, listing all reasons for withholding acceptance.
- 2.5. If the City does not respond within ninety (90) calendar days, the Utility Work will be deemed accepted by the City, and the County shall be released from all future claims and demands resulting from its performance of the Utility Work under this Agreement.
- 2.6. The City and the County will respond in writing within five (5) business days to each other's written inquiries and requests, unless otherwise specified in Exhibit A.

3. COST LIABILITY AND PAYMENT

- 3.1. The City agrees that it shall be responsible for the actual direct and related indirect costs, including contract administration and overhead costs, associated with the Utility Work. The Cost Estimate for the Utility Work is \$1,693,636.50, as provided in Exhibit B. The County and the City agree to comply with all federal, state and local laws, ordinances, regulations, and rules applicable to the tasks to be performed under this Agreement.
- 3.2. The City agrees that the Cost Estimate is an estimate only and summarizes the anticipated costs for both the County and the contractor and may not be sufficient to complete the Utility Work.

- 3.3. The City agrees that it is responsible for the bid price for the Utility Work, including, but not limited to, any increased costs resulting from differing site conditions, delays, inaccurate utility location information, and other circumstances beyond the control of either the County or the Contractor. If the Contractor has a right to additional compensation under the contract as it relates to the Utility Work, the City is responsible for payment of the additional compensation.
- 3.4. The City shall be responsible for any damages incurred or costs incurred by the County resulting from Project delay claims by the Contractor due to issues pertaining to the Utility Work.
- 3.5. The City, in consideration of the faithful performance of the Utility Work to be done, agrees to pay the County the bid price for the Utility Work, including any change orders and any increased costs as provided in section 3.3. The County shall invoice the City on a monthly basis and provide supporting documentation therefore, and the City agrees to make payment to the County within thirty (30) days of receipt of an invoice. The Parties agree that any payment will not constitute agreement as to the appropriateness of any item and that, at the time of final invoice, the Parties will resolve any discrepancies.
- 3.6. Should the City fail to make payment according to the terms of this Agreement, the County shall have right to terminate this Agreement, charging the City for all associated costs of termination, including non-cancellable items, as well as associated Project delay and contractor claims.

4. FRANCHISE

- 4.1. The City shall apply for and work in good faith to execute a franchise, in accordance with chapter 36.55 RCW, to use County right-of-way for City water and sewer facilities.

5. RIGHT OF ENTRY; OWNERSHIP, OPERATION, MAINTENANCE AND REPAIR

- 5.1. The City hereby grants to the County and its Contractor a right of entry upon all land in which the City has an interest for the purposes of performing the Utility Work.
- 5.2. Upon physical completion of the County Project, all ownership, operation, maintenance, and repair of the City's facilities (water and sewer improvements) shall be the sole responsibility of the City at the sole cost of the City and without expense to the County.
- 5.3. The County shall ensure the City has access to the Utility Work during construction.

6. RELATIONSHIP OF THE PARTIES

- 6.1. The employees or agents of each Party who are engaged in the performance of this Agreement shall continue to be employees or agents of that Party and shall not be considered for any purpose to be employees or agents of the other Party. This agreement is for the benefit of the Parties, and no third party beneficiary relationship is intended unless specifically set forth herein. No separate legal entity is created by this Agreement. No joint organization is created. No common budget is to be established. No personal or real property is to be jointly acquired or held.

7. DURATION

- 7.1. This Agreement shall commence upon its date of execution and shall continue until the County Project is completed and the Utility Work is completed and accepted, unless terminated sooner by the City or the County.

8. INDEMNIFICATION AND HOLD HARMLESS

- 8.1. The City and the County shall indemnify and hold harmless one another and their officers, officials, and employees from and shall process and defend at its own expense any and all claims, demands, suits at law or equity, actions, penalties, losses, damages (both to persons and/or property), or costs, of whatsoever kind or nature, brought against the one Party arising out of, in connection with, or incident to the other Party's performance or failure to perform any aspect of this Agreement; provided, however, that if such claims are caused by or result from the concurrent negligence of (a) the City and (b) the County, their officers, officials, and/or employees, or involves those actions covered by RCW 4.24.115, this indemnity and hold harmless provision shall be valid and enforceable only to the extent of the negligence of the City or the County; and provided further, that nothing herein shall require the City or the County to hold harmless or defend the other or its officers, officials, and/or employees from any claims arising from that Party's sole negligence or that of its officers, officials, and/or employees. The terms of this section shall survive the termination of this Agreement and completion of the Utility Work. This indemnification and hold harmless provision only applies to third party claims.

9. GENERAL PROVISIONS

- 9.1. Dispute Resolution: Should disputes arise between the County and the City, the County Engineer and the City Engineer shall meet to resolve said disputes. This dispute resolution clause is not intended to waive any right either Party may have to pursue redress in the courts.
- 9.2. Governance: This Agreement is entered into pursuant to and under the authority granted by the laws of the State of Washington. The provisions of this Agreement shall be construed to conform to those laws, and shall be governed by those laws as to interpretation and performance. Any action at law, suit in equity, or judicial proceeding arising out of this Agreement shall be instituted and maintained only in any of the courts of competent jurisdiction in Thurston County, Washington. Each Party shall be responsible for its own attorneys' fees and costs.
- 9.3. Termination: This Agreement may be terminated upon sixty (60) days written notice given by either the City or the County. If this Agreement is so terminated prior to the fulfillment of the terms stated herein, the County shall be reimbursed for all actual direct and related indirect expenses and costs, including construction engineering, contract administration and overhead costs incurred up to the date of termination, as well as the cost of non-cancellable obligations and/or contractor claims relating to the termination of the Utility Work incurred by the County or its contractor.
- 9.4. Records and Audit: During the progress of the Utility Work and for a period of not less than seven (7) years from the date of final payment, both Parties shall maintain the records and accounts pertaining to the Utility Work and shall make them available for inspection and audit by the other

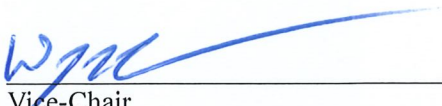
Party and/or funding agencies, and copies of all records, accounts, documents or other data pertaining to the Utility Work will be furnished upon request. If any litigation, claim or audit is commenced, the records and accounts along with supporting documentation shall be retained until all litigation, claim or audit finding has been resolved even though such litigation, claim or audit continues past the seven-year retention period.

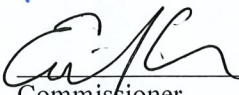
- 9.5. Amendment: This Agreement may be amended by the mutual agreement of the Parties. Such amendments or modifications shall not be binding unless put in writing and signed by persons authorized to bind each of the Parties.
- 9.6. Waiver: A failure by either Party to exercise its rights under this Agreement shall not preclude that Party from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this Agreement unless stated to be such in a writing signed by an authorized representative of the Party.
- 9.7. Severability: If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision, if such remainder conforms to the requirements of applicable law and the fundamental purpose of this Agreement, and to this end the provisions of this Agreement are declared to be severable.
- 9.8. Entire Agreement: This Agreement, together with those documents incorporated herein by reference, sets forth all terms and conditions agreed upon by the City and the County and supersede any prior agreements oral or otherwise with respect to the subject matter addressed herein.
- 9.9. Recording: Prior to its entry into force, this Agreement shall be filed in accordance with RCW 39.34.040.
- 9.10. Notice: Any notice required under this Agreement shall be to the Party at the address listed below and shall become effective three (3) days following the date of deposit in the United States Postal Service:
- | | |
|--------------------------|----------------------------|
| CITY OF LACEY | THURSTON COUNTY |
| Attention: City Engineer | Attention: County Engineer |
| 420 College St SE | 9605 Tilley Rd Suite C |
| Lacey, WA 98503 | Olympia, WA 98512 |
- 9.11. Preamble: The preamble to this Agreement is not a mere recital of facts, but consists of binding and agreed upon statements that form the basis of this Agreement.

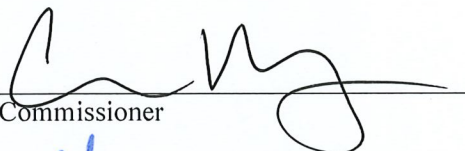
IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed on the date of the last authorizing signature below.

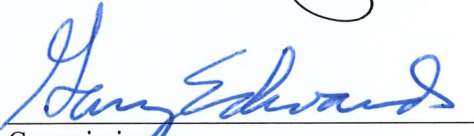
Board of County Commissioners
Thurston County, Washington


Chair


Vice-Chair



Commissioner


Commissioner


Commissioner

Date: February 6, 2024

ATTEST:



Clerk of the Board

Approved as to Form:

JON TUNHEIM
PROSECUTING ATTORNEY

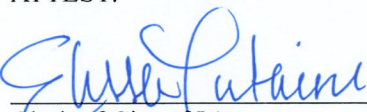
By: 
Deputy Prosecuting Attorney

City of Lacey


City Manager

Date: 1/4/2024

ATTEST:


Clerk of City of Lacey

Approved as to form:


By: 
City Attorney

EXHIBIT A – SCOPE OF WORK

CITY UTILITY WORK

The Utility Work shall consist of the water and sewer work shown and detailed in the project plans and specifications. Work includes installation of new water and sewer mains, laterals and services as well as abandonment of portions of existing mains, laterals and services.

CITY RESPONSIBILITIES

1. Any direction the City wishes to give the Contractor shall be relayed only to the County Project Manager or County Inspector. The County will consult with the City to determine the appropriate action to be taken with the Contractor.
2. The City will have an inspector available at all times during the construction of the Utility Work, and the County will consult with the inspector on said Work. The City Inspector will be provided an opportunity to review the County Inspector's Individual Daily Report form on a daily basis. The City's Inspector will be given the opportunity to provide additional written comments. The City will provide the County with the opportunity to examine and provide additional written comments on City's inspection documentation. The City will apprise the County Inspector of any issue involving the Utility Work upon the City becoming aware of the issue.
3. The City Inspector will work with the County Inspector to develop weekly quantity calculations for Utility Work that will be used to calculate the monthly pay estimate to generate the monthly payment to the Contractor.
4. The City agrees that it shall be responsible for all costs associated with Utility Work:
 - A. Trench restoration for water and sewer construction including, but not limited to, pipe bedding, trench backfill, excavation, and necessary road reconstruction up to and including the asphalt leveling course of the road, and all other work necessary for a complete installation, including traffic control.
 - B. Permanent hot mix asphalt trench patch and/or temporary asphalt and its maintenance for temporary roads or temporary trench patches to keep traffic flowing through the work zone due to the Utility Work and relocations of new and/or existing water and sewer utilities for the final road improvements.
 - C. All costs for materials and compaction testing and acceptance attributable to the installation of the Utility Work together with all trench compaction and materials testing.
5. The City shall work with the County on the Utility Work to establish dates of "substantial completion," "physical completion," and "completion date" as defined in the County Road Project contract documents.
6. The City shall prepare punch list items for all walk throughs in a timely manner.
7. The City shall provide a direct contact for responding to citizens' questions and requests for information that is related to the Utility Work.

COUNTY RESPONSIBILITIES

1. The County will seek instruction from the City Inspector on any questions the Contractor or County may have on the Utility Work. The County will apprise the City Inspector of any issue involving the Utility Work upon the County becoming aware of the issue.
2. The County will prepare a single bid packet for the County Road Project that includes the Utility Work and will be responsible for bidding and award of the County Road Project.
3. The County will submit the County Road Project Plans, Specifications, and the cost Estimate to the City for review and approval prior to finalizing the bid documents.
4. The County will enter into a contract with a contractor for construction of the County Road Project that includes the Utility Work and will administer the contract with the contractor.
5. The County will invite the City to all construction meetings and to all substantial completion and final completion walk throughs. The County will incorporate City punch list comments in an overall County Road Project punch list, as appropriate for each schedule of the County Road Project.
6. The County Inspector will give copies of the Individual Daily Reports and weekly quantity calculations for the Utility Work to the City Inspector.
7. The County will include in the bid documents an item for a one-year warranty covering materials and workmanship for the Utility Work.
8. The County will include in the bid documents that the Contractor will be responsible for obtaining all applicable permits.
9. The County shall keep construction red line drawings for the Utility Work and provide them to the City for record drawing creation. All costs associated with work provided by the County for creation of record drawings shall be paid by the City.

GENERAL PROVISIONS APPLICABLE TO BOTH CITY AND COUNTY

1. Change Orders

The County will advise the City of any proposed change order to the Utility Work soon as possible and will provide the City with an opportunity to review and approve the change order as provided below. The City and County recognize two types of change orders: (A) Required and (B) Elective.

A. *Required* change orders involve such changes in the work, work methods, working days, or quantities necessary to satisfactorily complete the scope of the advertised Project. All other change orders shall be considered elective. The County reserves the right to direct the Contractor prior to City approval of a required change order when, in the opinion of the County, direction is needed to address an emergency, there is a safety issue, or when the failure to make an immediate decision will result in undue added contract costs. Required change orders shall require the prior written approval of the City before execution unless one or more of the

conditions listed above apply. In such cases, written concurrence from the City may be obtained after execution.

B. *Elective* change orders are anything other than required change orders that impact City costs and/or Utility Work. Elective change orders shall require the prior written approval of the City before execution.

2. Progress Reports, Pay Estimates, and Invoicing

A. Monthly Progress Updates. The County will provide the City with three week look ahead updates to the construction schedule.

B. Monthly Pay Estimates/Review. The County will prepare a monthly Pay Estimate and will provide a copy to the City Inspector for review. For Utility Work, the Pay Estimate will be broken into separate schedules for sewer and for water, with unit bid items. The Pay Estimate will show the estimated material quantities and the actual material quantities. The City will have five (5) business days to review the Pay Estimate before the County processes it. If the City and/or Contractor have issues with the City's portion of the Pay Estimate, the County will facilitate a discussion. Any dispute shall be resolved according to the Dispute Resolution provision.

C. Monthly Invoicing. The County shall invoice the City on a monthly basis and provide supporting documentation. Supporting documentation shall include a breakdown of City costs, County costs to be reimbursed by the City, and costs reimbursable through the Transportation Improvement Board (TIB). The City agrees to make payment to the County within thirty (30) calendar days of receipt of an approved invoice.

EXHIBIT B - COST ESTIMATE

CITY OF LACEY Marvin Road Utility Relocation 2023



Project Construction Estimate

Lacey Contract Number: PW 2023-24

Prepared By: Ryan Jewell

Federal Aid Project Number:

Engineer: Ryan Jewell

WSDOT Contract Number:

Bid Date: 12/12/2023

TIB Contract Number:

B Sewer

Quantity	Unit	Item ID	Item Description	Unit Price	Extended Price
35000	MC	104-010	Minor Change	\$1.00	\$35,000.00
1	LS	105-010	Record Drawing	\$2,500.00	\$2,500.00
1	LS	109-010	Mobilization	\$50,000.00	\$50,000.00
1	LS	110-010	Project Temporary Traffic Control	\$37,500.00	\$37,500.00
750	HR	110-040	Flaggers	\$72.00	\$54,000.00
1440	HR	110-070	Portable Changeable Message Sign	\$4.50	\$6,480.00
1	LS	202-510	Removal of Structures and Obstructions	\$30,000.00	\$30,000.00
1	LS	205-510	Trench Safety System	\$7,500.00	\$7,500.00
37	CY	209-080	Controlled Density Fill	\$215.00	\$7,955.00
1	FA	214-506	Dewatering	\$15,000.00	\$15,000.00
171	TN	404-010	Crushed Surfacing Base Course	\$65.00	\$11,115.00
43	TN	404-020	Crushed Surfacing Top Course	\$65.00	\$2,795.00
38	TN	504-011	HMA Cl. 1/2" PG 58H-22	\$450.00	\$17,100.00
86	TN	504-110	Commercial HMA	\$275.00	\$23,650.00
1	EA	705-960	Low Point Drain 60-Inch Diam	\$15,000.00	\$15,000.00
707	TN	708-610	Bank Run Gravel for Trench Backfill	\$25.00	\$17,675.00
386	TN	708-620	Imported Pipe Bedding	\$25.00	\$9,650.00
20	HR	708-810	Utility Potholing	\$250.00	\$5,000.00
100	LF	708-918	18 Inch Pipe Encasement	\$250.00	\$25,000.00
3	EA	709-960	Pipe Abandonment	\$3,500.00	\$10,500.00
4	EA	712-910	Adjust Valve Box	\$550.00	\$2,200.00
1	EA	717-660	2 Inch Air and Vacuum Release Valve - Sewer	\$3,500.00	\$3,500.00
5	LF	717-702	2 Inch Diameter Force Main Sewer Pipe	\$250.00	\$1,250.00
22	LF	717-704	4 Inch Diameter Force Main Sewer Pipe	\$300.00	\$6,600.00
169	LF	717-708	8 Inch Diameter Force Main Sewer Pipe	\$175.00	\$29,575.00
1135	LF	717-710	10 Inch Diameter Force Main Sewer Pipe	\$250.00	\$283,750.00
1	EA	717-750	Pig Launch Port Assembly	\$8,500.00	\$8,500.00

Lacey Contract Number: PW 2023-24

Prepared By: Ryan Jewell

Federal Aid Project Number:

Engineer: Ryan Jewell

WSDOT Contract Number:

Bid Date: 12/12/2023

TIB Contract Number:

1	EA	717-804	4 Inch Plug Valve	\$3,000.00	\$3,000.00
11	EA	717-810	10 Inch Plug Valve	\$3,500.00	\$38,500.00
1	EA	717-852	Side Sewer Connections - Force Main	\$3,500.00	\$3,500.00
2	EA	717-856	Side Sewer Stub - Force Main	\$5,000.00	\$10,000.00
1	EA	717-862	2 Inch Ball Valve	\$500.00	\$500.00
5	EA	717-960	Connect to Existing Sanitary Sewer Force Main	\$5,000.00	\$25,000.00
1	LS	723-510	Bypass Pumping	\$50,000.00	\$50,000.00
1	LS	801-680	Erosion/Water Pollution Control	\$2,500.00	\$2,500.00
1	LS	805-510	Lawn and Landscape Restoration	\$5,000.00	\$5,000.00
4	SY	814-510	Cement Conc. Sidewalk	\$350.00	\$1,400.00
1	LS	850-792	Project Closeout	\$2,500.00	\$2,500.00

Schedule B Subtotal: \$860,695.00

Schedule B Tax Rate (%) : 9.50 Tax: \$81,766.03

Schedule B Total: \$942,461.03

Lacey Contract Number: PW 2023-24

Prepared By: Ryan Jewell

Federal Aid Project Number:

Engineer: Ryan Jewell

WSDOT Contract Number:

Bid Date: 12/12/2023

TIB Contract Number:

C Water

Quantity	Unit	Item ID	Item Description	Unit Price	Extended Price
35000	MC	104-010	Minor Change	\$1.00	\$35,000.00
1	LS	105-010	Record Drawing	\$2,500.00	\$2,500.00
1	LS	109-010	Mobilization	\$50,000.00	\$50,000.00
1	LS	110-010	Project Temporary Traffic Control	\$37,500.00	\$37,500.00
750	HR	110-040	Flaggers	\$72.00	\$54,000.00
1440	HR	110-070	Portable Changeable Message Sign	\$4.50	\$6,480.00
1	LS	202-510	Removal of Structures and Obstructions	\$30,000.00	\$30,000.00
1	LS	205-510	Trench Safety System	\$7,500.00	\$7,500.00
1	FA	214-506	Dewatering	\$15,000.00	\$15,000.00
88	TN	404-010	Crushed Surfacing Base Course	\$65.00	\$5,720.00
22	TN	404-020	Crushed Surfacing Top Course	\$65.00	\$1,430.00
46	TN	504-110	Commercial HMA	\$275.00	\$12,650.00
1	EA	705-405	Adjust Manhole	\$1,250.00	\$1,250.00
253	TN	708-610	Bank Run Gravel for Trench Backfill	\$25.00	\$6,325.00
242	TN	708-620	Imported Pipe Bedding	\$25.00	\$6,050.00
20	HR	708-810	Utility Potholing	\$250.00	\$5,000.00
100	LF	708-924	24 Inch Pipe Encasement	\$500.00	\$50,000.00
35	LF	709-507	6 Inch D.I. Water Main	\$250.00	\$8,750.00
178	LF	709-509	8 Inch D.I. Water Main	\$350.00	\$62,300.00
278	LF	709-512	12 Inch D.I. Water Main	\$650.00	\$180,700.00
8	EA	709-950	Connect to Existing Water Main	\$4,500.00	\$36,000.00
3	EA	709-960	Pipe Abandonment	\$2,500.00	\$7,500.00
2	EA	712-512	12 Inch Gate Valve	\$5,000.00	\$10,000.00
2	EA	712-556	6 Inch Tapping Valve with Tapping Sleeve	\$8,000.00	\$16,000.00
1	EA	712-610	2 Inch Air and Vacuum Release Valve	\$6,500.00	\$6,500.00
7	EA	712-910	Adjust Valve Box	\$550.00	\$3,850.00
2	EA	714-510	Hydrant Assembly	\$9,500.00	\$19,000.00
2	EA	715-510	5/8 Inch Single Meter Service Connected to Existing Water Main	\$2,000.00	\$4,000.00
1	LS	801-680	Erosion/Water Pollution Control	\$2,500.00	\$2,500.00
1	LS	850-792	Project Closeout	\$2,500.00	\$2,500.00
Schedule C Subtotal:					\$686,005.00
Schedule C Tax Rate (%) : 9.50 Tax:					\$65,170.48
Schedule C Total:					\$751,175.48

Lacey Contract Number: PW 2023-24

Prepared By: Ryan Jewell

Federal Aid Project Number:

Engineer: Ryan Jewell

WSDOT Contract Number:

Bid Date: 12/12/2023

TIB Contract Number:

Project Summary

Contract Subtotal:	\$1,546,700.00
Contract Total Tax:	\$146,936.50
Contract Total:	\$1,693,636.50
Preliminary Engineering:	\$108,269.00
Construction Engineering:	\$123,736.00
Contingencies:	\$0.00
City Furnished Materials:	\$0.00
Other:	\$0.00
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Project Total:	\$1,925,641.50

EXHIBIT C - PLANS AND SPECIFICATIONS

The final approved project plans and specifications will be kept in the office of the Thurston County Engineer.