

TERMS & CONDITIONS FOR MATERIAL

The following terms and conditions may refer to conditions which will not be encountered in the performance of work under the Order and which are not applicable thereto. Any requirements, provisions, or other stipulation of these terms and conditions which pertain to a non-existent condition and are not applicable to the work to be performed hereunder shall have no meaning in the Order. By fulfilling this order, seller is agreeing to Grant PUD's terms and conditions.

1. **Definitions.** Whenever used in the purchase order or direct purchase ("Order"), the following terms shall have the following meanings: (a) "Buyer" or "District" or "Grant PUD" means Public Utility District No. 2 of Grant County, Washington; (b) "Seller" or "Contractor" means the person, partnership, corporation, or other entity specified as the Seller; (c) "Goods" means all the goods, materials, equipment, services, information, drawings, documents, and other items furnished or to be furnished under this Order to Buyer. If Seller is composed of more than one person or entity, then each person or entity shall be jointly and severally liable as Seller under this Order.
2. **Acceptance/Agreement.** This Order must be accepted in writing by Seller. If, for any reason, Seller should fail to accept in writing, any conduct by Seller which recognizes the existence of a contract pertaining to the subject matter hereof shall constitute acceptance by Seller of this Order and all of its terms and conditions. Any terms proposed in Seller's acceptance of Buyer's offer which add to, vary from, or conflict with the terms herein are hereby objected to. Any such proposed terms shall be void and the terms herein shall constitute the complete and exclusive statement of the terms and conditions of the contract between the parties and may hereafter be modified only by written instrument executed by the authorized representatives of both parties.
3. **Price and Payment.** Payment terms shall be Net 30 days from receipt of Seller's invoice. Payment of the purchase prices specified in this Order shall constitute full compensation for the Goods and the satisfactory performance of Seller's obligations under this Order. Such prices shall not be subject to adjustment unless specifically provided for elsewhere in this Order. Unless otherwise specified herein, such prices include assessments and other amounts payable to governmental authorities with the exception of Washington State sales tax, which shall be separately stated on Seller's invoice. Seller understands and agrees that by executing this Order with the District, the District shall make payment(s) by automated clearing house (ACH). The District shall not be liable for fees incurred as a result of changes to Contractor's banking information without proper, separate notification to Accounts Payable via email at apinquiries@gcpud.org. Failure of Contractor to properly notify the District of banking changes as specified above shall result in forfeiture of associated fees. Any time period specified for payment or for accepting any discounts shall commence upon the later of: (a) the date Buyer receives Seller's correct invoice therefor; or (b) the date that Buyer receives and accepts the Goods together with any required documentation at the specified destination.

The following language applies if the material is manufactured in the State of Washington: If prevailing wages apply (see Section 11) and the District has not received an Affidavit approved by L&I, the District shall withhold the sum of 5% of the amount of each progress payment to the Contractor as retainage in accordance with RCW Chapter 60.28 of the Revised Code of the State of Washington. Any retainage withheld will be released to the Contractor upon the District's receipt of the approved Affidavit. If the District is requested in writing by the Contractor, the monies reserved hereunder (retainage) shall be placed in escrow with a mutually agreed upon bank or trust company by the District and interest on such escrowed funds shall be paid to the Contractor as said interest accrues, all as more fully provided in RCW Chapter 60.28. However, any payments made to the Contractor hereunder shall not relieve the Contractor from responsibility under provision of the Order and warranties. Payment is not to be construed as acceptance by District or certification that the Contractor has performed the work correctly or according to the Order.

4. **Delivery.** The obligation of Seller to meet the delivery dates, specifications, and quantities set forth herein is the essence of the Order. Deliveries shall be made both in quantities and at times specified herein. Shipments in greater or lesser quantity than ordered may be rejected and returned at Seller's expense if Seller's deliveries fail to meet the terms of delivery. Buyer, without limiting its other rights or remedies, may either direct expedited routing, or charge excess cost incurred thereby to Seller, or cancel all or part of this Order. Goods which are delivered in advance of schedule are delivered at the risk of Seller and may at Buyer's option, be returned at Seller's expense for proper delivery and/or have payment therefor withheld by Buyer until the date that the Goods are actually scheduled for delivery. Seller shall properly package Goods for protection against damage that may result from shipment, handling, storage, or other causes.
5. **Delays.** Time is of the essence in the performance of Seller's obligations under this Order. However, Seller shall not be liable for delays in delivery due to causes which are not reasonably foreseeable, which are beyond Seller's control, or which cannot be overcome by the exercise of reasonable diligence, provided that Seller gives Buyer prompt written notice of the circumstances giving rise to the delay, the anticipated duration of the delay, and the action being taken by Seller to overcome or mitigate the delay. The specified shipment and delivery dates shall be extended by the period of any such delay.
6. **Inspection/Testing/Rejection.** The Goods shall at all times be subject to inspection, testing, and expediting by Buyer. Payment for the Goods delivered hereunder shall not constitute acceptance thereof. Buyer, without limiting its other rights or remedies, shall have the right to inspect such Goods and to reject any or all of said Goods which are in Buyer's judgment defective. Goods so rejected and Goods supplied in excess of quantities called for herein may be returned to Seller at Seller's expense and in addition to Buyer's other rights. Buyer may charge Seller all expenses of unpacking, examining, repacking, and reshipping such Goods.

7. **Warranty.** Seller warrants that: (a) the Goods shall be free from all defects in design, materials, workmanship, patent, and title; (b) all materials, components, parts, and other items incorporated in the Goods shall be new and of suitable quality for their intended purpose; and (c) the Goods shall conform in all respects with the requirements of this Order. Seller shall promptly correct any Goods that do not comply with warranty. If Buyer requests Seller to make any such correction and Seller thereafter fails or indicates its inability or unwillingness to do so, then Buyer may correct or cause to be corrected the noncompliance or otherwise achieve compliance by the most expeditious means available to it and charge to or otherwise recover from Seller the cost thereof. If Buyer rejects any Goods that do not comply with the foregoing warranty, Seller shall have a reasonable time to correct the noncompliance. If Seller fails to correct the noncompliance within a reasonable time, Buyer may cancel the Order as to the non-complying Goods without any liability or obligations of, or cost to Buyer with respect to such Goods and without prejudice to any other rights or remedies of Buyer with respect to such noncompliance, i.e. to damages or cover.
8. **Activities on Buyer's Premises.** If Seller, or any of its subcontractors or suppliers of any tier, performs any activities on premises owned, leased, possessed, or controlled by Buyer, Seller shall: (a) carry on said work at its own risk until the work is fully completed and accepted. In case of accident, destruction, or injury to the work and/or Goods, before its final completion and acceptance, Seller shall repair or replace forthwith the work and/or Goods so injured, damaged, and destroyed, at its own expense and to the satisfaction of Buyer. When Goods are furnished by others for installation or erection by Seller, Seller shall receive, unload, store and handle the same at the site and become responsible therefor as though such Goods were being furnished by Seller on this Order; (b) at its own expense, provide for the payment of Worker's Compensation benefits to its employees employed on or in connection with the work covered by its Order and/or its dependents in accordance with the laws of the State of Washington. Seller shall also carry an insurance policy with limits of at least \$1,000,000 for any one person and \$1,000,000 for any one accident. In order to be eligible for work on Buyer's premises, Seller must comply with Worker's Compensation laws, including the provisions of Title 51 of the Revised Code of Washington. Seller must also comply with Chapter 46.30 Revised Code of Washington for mandatory auto liability insurance. Upon request, Seller shall file with Buyer a Certificate of Insurance showing the Insuring Company, policy numbers, effective dates, limits of liability, and deductibles with a copy of the endorsement naming the Buyer as an Additional Insured. Seller agrees that such compensation and insurance shall be maintained until after the entire work is completed and accepted. Seller shall likewise require its subcontractors, if any, to provide for such compensation and insurance; and (c) specifically and expressly agrees to release indemnify, save harmless and defend Buyer, its officers, agents, and employees from and against any and all suits, claims, actions, losses, costs, penalties, and damages of whatsoever kind and nature, including attorney's fees and claims arising of and in connection with or incident to Seller's performance of this Order or the Goods to be provided, unless caused by the sole negligence of Buyer.
9. **Archaeological Resources.** In the event the Seller or any of its Subcontractors inadvertently discover archaeological resources at any time during the project, Seller shall immediately notify the Buyer and suspend all excavation activities at the site. "Archaeological Resource" shall mean any material remains of human life or activities which are of interest. This shall include all sites, objects, structures, artifacts, implements, and locations of prehistoric or archaeological interest, whether previously recorded or still unrecognized, including, but not limited to objects pertaining to prehistoric and historic American Indian or aboriginal burials, campsites, dwellings, and their habitation sites, including rock shelters and caves, their artifacts and implements of culture such as projectile points, arrowheads, skeletal remains, grave goods, basketry, pestles, mauls and grinding stones, knives scrapers, rock carvings and paintings, and other implements and artifacts of any material or form. The disturbance of any cairn or Native Indian grave is prohibited by the Indian Graves and Records Act (RCW 27.44).
10. **Patents.** Seller shall, at Seller's own expense, defend all suits or proceedings instituted against Buyer, and shall pay any award of damages and costs assessed against Buyer, and shall pay any award of damages and costs assessed against Buyer in such suits of proceedings, insofar as the same are based on any claim that the Goods furnished under this Order or any part thereof constitutes an infringement of any United States patent or copyright, provided that Buyer shall give to Seller prompt notice of the institution of any such suit or proceeding if such Goods in any such suit or proceeding is held to constitute infringement and its use is enjoined. Seller, within a reasonable time, shall either secure for Buyer at Seller's own expense, the right to continue using said Goods by suspension of the injunction, by procuring for Buyer a license, or otherwise, or shall at Seller's own expense and as Buyer may elect, replace such Goods with non-infringing Goods, or modify it so that it becomes non-infringing, all without damage or injury to any other property of Buyer.
11. **Compliance with Laws.** Seller shall comply and shall ensure that the Goods and Seller's Subcontractors and suppliers of every tier comply with all applicable laws, ordinances, rules, regulations, orders, licenses, permits, and other requirements, now or hereafter in effect of any governmental authority. Seller shall furnish such documents as may be required to effect or evidence such compliance. All laws, ordinances, rules, regulations, and orders required to be incorporated in agreements of this type are hereby incorporated by this reference as set forth in full herein.

Seller shall comply with Executive Order No. 11246, Executive Order No. 11701 the Vietnam Era Veteran's Readjustment Assistance Act of 1972 and the Rehabilitation Act of 1973, and all orders, rules, and regulations promulgated thereunder (including but not limited to, 41 CFR Part 60-1, 41 CFR Part 60-741), all as the same may have been or may be amended. The "Equal Opportunity" clause of 41 CFR Section 60.1.4 (b), the "Affirmative Action Obligations for Disabled Veterans of the Vietnam Era" clause of 41 CFR Section 60-250.4, and the "Affirmative Action for Handicapped Workers" clause of 41 CFR Section 60-7414 are incorporated herein by this reference. Seller certifies that segregated facilities (within the meaning of 41 CFR Section 60.1.8) are not and will not be maintained or provided for Seller's employees and that Seller will not permit its employees to perform work at any location under Seller's control where segregated facilities are maintained. Seller shall obtain similar certification from any of its Support as required by 41 CFR Section 60.1.8.

Seller shall comply with all applicable State of Washington laws governing the payment of prevailing wages (RCW 39.12) and (WAC 296-127). Seller shall defend, indemnify and hold harmless the District and its representatives from and against any and all liabilities, fines, penalties, claims, losses, damages or expenses which may be incurred or sustained by the District or any of its representatives by reason of seller's failure to fully comply with applicable State of Washington laws governing the payment of prevailing wages.

Buyer is subject to the disclosure obligations of the Washington State Public Records Act of RCW 42.56. By submitting a Bid, Seller expressly acknowledges and agrees that its Bid and any information Seller submits with its Bid is subject to public disclosure pursuant to the Public Records Act or other applicable law and the Buyer may disclose Seller's proposal and/or accompanying information at its sole discretion in accordance with its obligations under applicable law.

- A. The Buyer will not contact Seller when records the Buyer has received are responsive to a request for public record that would result in these records being released.
- B. Marking pages "confidential" or "proprietary" does not prevent them from release. The Buyer will review for any records that meet the proprietary exemption in RCW 42.56.270(11). The Buyer will either claim the exemption for Seller, or if there is any question as to its validity, the Buyer may contact Seller about claiming the exemption.
- C. Other items that may be provided with Bid that are NOT exempt from disclosure: Employee wages, equipment and material costs.
- D. Having a Non-Disclosure Agreement (NDA) with the Buyer does not preclude the Buyer from releasing these records. The courts have ruled that not all NDAs are enforceable in response to requests for public records.
- E. Buyer scoring/evaluation forms are not exempt from disclosure once the Bid has been awarded.

12. Changes. Buyer may from time to time make changes in the requirements of this Order (including, but not limited to, additions or deletions of any Goods, changes in quantities, drawings and specifications for the Goods, suspensions of performance, change in schedules, and changes in shipment and delivery dates) by giving Seller written notice of such changes. Such change notices will be in writing by a fully authorized representative of the Buyer. If any such change causes an increase or decrease in the cost of or the time required for performance of the Order, an equitable adjustment in the prices and schedule under this Order shall be made to reflect such increase or decrease.

13. Cancellation/Termination. Buyer, without limiting its other rights or remedies, reserves the right to cancel or suspend all, or from time to time any, undelivered or unexecuted portion of this Order if: (a) Seller fails to make any delivery or to perform any work as scheduled; or (b) Seller breaches any of the terms hereof. If Buyer elects to terminate this Order for its sole convenience, Buyer shall reimburse Seller for Seller's expenses (which shall not include lost profits) resulting directly from any such cancellation or suspension made without cause, which amount shall in no event exceed the applicable pro rata portion of the Order price. The foregoing states Buyer's entire liability and Seller's exclusive remedy for any change and/or cancellation or suspension of all or any part of this Order. Any claims by Seller shall be asserted in writing within 30 days after the change, cancellation, or suspension as ordered, and the amount of such claim must be stated in detail in writing within 30 days thereafter.

14. Successors and Assigns. Seller shall not (by contract, operation of law, or otherwise) assign this Order or any right or interest in this Order, or delegate performance of any of its obligations under this Order, or subcontract any portion of this Order, without the prior written consent of Buyer. Any such assignment or delegation without Buyer's prior written consent shall be voidable at Buyer's option. No such assignment or delegation with or without Buyer's prior written consent shall relieve Seller of any of its obligations under this Order. All claims for monies due or to become due from the Buyer shall be subject to deduction by the Buyer for any setoff or counterclaim arising out of this or any other Order with the Seller.

15. Non Waiver. The failure of Buyer to insist upon or enforce strict performance by Seller of any of the provisions of this Order, or to exercise any rights or remedies under this Order, shall not be construed as a waiver or relinquishment to any extent of its right to assert or rely upon any such provisions, rights, or remedies in that or any other instance; rather, the same shall be and remain in full force and effect.

16. Entire Agreement. This document sets forth the entire agreement and supersedes any and all prior agreements between Buyer and Seller regarding the Goods. No amendment or modification of any provision of this Order (other than any change or termination pursuant to Sections 12 and 13) shall be valid unless set forth in a written instrument signed by the party to be bound thereby.

Buyer shall not be bound by, and hereby specifically object to any term, condition, or other provision which is different from or in addition to the provisions of this Order (whether or not it would materially alter this Order) and which has been proffered by Seller in any quotation, in voice, shipping document, acceptance, confirmation, correspondence or otherwise, unless Buyer specifically agrees to such provision in a written instrument. The rights, remedies, and warranties afforded to Buyer pursuant to any provision of this Order are in addition to and do not in any way limit any rights, remedies, or warranties afforded to Buyer by any other provisions of the Order, by any of Seller's Subcontractors or suppliers of any tier, or by law.

17. Applicable Law. Seller shall comply with all applicable federal, state, and local laws and regulations. All written instruments, agreements, bid documents, specifications, and other writing of whatsoever nature which are part of this Order shall be construed, for all purposes, solely and exclusively in accordance and pursuant to the laws of the State of Washington. The rights and obligations of the Buyer and the Seller shall be governed by the laws of the State of Washington. Venue of any action filed to enforce or interpret the provisions of this Order shall be in the Superior Court of County of Grant, State of Washington. In the event of litigation to interpret or enforce the provisions of the Order, the prevailing party shall be entitled to reasonable attorney's fees in addition to any other relief allowed.
18. Utilization of Small and Diverse Businesses. Consistent with its Policy to promote and encourage the use of small and diverse businesses, the District has developed and administers a Supplier Development Program. The District promotes and encourages participation in its contracts by small and diverse businesses and is committed to enhancing diversification of the District's supply chain.
 - A. If Contractor is certified by the Washington State Office of Minority and Women's Business Enterprises (OMWBE) as a small and/or diverse business (see RCW 39.19.120 and WAC 326-20), is certified by the Washington State Department of Veterans Affairs (WDVA) as a Certified Veteran-Owned Business (see RCW 43.60A.010(7) & RCW 43.60A.190), has certified its Washington Small Business status (see RCW 39.26.010) in Washington's Electronic Business Solution (WEBS), is registered in the federal government's System for Award Management as a Small Business Administration certified business eligible for contracts that are reserved for small businesses, or is a Labor Surplus Area Firm, it shall notify the District of same.
 - B. If Contractor elects to use subcontractors in the performance of work under this Contract, Contractor shall take steps to solicit participation by small and diverse businesses.
 - C. Upon Contract award, and if applicable, the Contractor shall provide District Supplier Development Program staff, copies of the Contractor's, subcontractors and/or sub-consultants, as applicable, business certifications from the OMWBE, WDVA, WEBS, SBA or other verifying documentation in accordance with RCW 39.26.010(22) for audit purposes.