

**A G E N D A**  
**GRANT COUNTY PUBLIC UTILITY DISTRICT**  
**14353 Highway 243 South - Hydro Office Building**  
**Beverly, Washington**  
**COMMISSION MEETING**  
**Tuesday, March 25, 2025**

An Executive Session may be called at any time for purposes authorized  
by the Open Public Meetings Act

- 8:30 a.m.** Executive Session
- 9:00 a.m.** Commission Convenes  
Review and Sign Vouchers  
Calendar Review
- 9:30 a.m.** Reports from staff
- 12:00 Noon** Lunch
- 1:00 p.m.** Safety Briefing  
Pledge of Allegiance  
Attendance  
Public requests to discuss agenda items/non-agenda items  
Correspondence – *(Does not include anonymous letters)*  
Business Meeting

**1. Consent Agenda**

Approval of Vouchers

Meeting minutes of March 11, 2025

**2. Regular Agenda**

9086 - Resolution Accepting a Bid and Awarding Contract 170-12475, for Furnishing Steel Structures for the Quincy Transmission Expansion Project.

Motion authorizing the General Manager/CEO, on behalf of Grant PUD, to execute new Contract Agreement 430-12302R-A HDR Engineering, Inc. in the amount not to exceed \$600,000.00 for services to support Energy Supply Management (ESM) Research Department. (3514)

Motion authorizing the General Manager/CEO, on behalf of Grant PUD, to execute new Contract Agreement 430-12302R-B with Stantec Consulting Services, Inc. in the amount not to exceed \$600,000.00 for services to support Energy Supply Management (ESM) Research Department. (3515)

### **3. Review Items For Next Business Meeting**

XXXX – Resolution Accepting a Bid and Awarding Contract 170-12697 for Supplying Substation Shaped Steel Structures.

Motion authorizing the General Manager/CEO, on behalf of Grant PUD, to execute new Contract Agreement 110-12821 for a 20-year Purchase Power Agreement with Quincy Solar for a 120 MW solar development, commencing by October 31, 2027.

### **4. Reports from Staff (if applicable)**

### **Adjournment**

# **CONSENT AGENDA**

# Draft – Subject to Commission Review

## REGULAR MEETING OF PUBLIC UTILITY DISTRICT NO. 2 OF GRANT COUNTY

March 11, 2025

The Commission of Public Utility District No. 2 of Grant County, Washington, convened at 8:30 a.m. at Grant PUD's Main Headquarters Building, 30 C Street SW, Ephrata, Washington and via Microsoft Teams Meeting / +1 509-703-5291 Conference ID: 614 157 417# with the following Commissioners present: Terry Pyle, President; Larry Schaapman, Vice-President; Judy Wilson, Secretary; Nelson Cox, Commissioner and Tom Flint, Commissioner.

An executive session was announced at 8:30 a.m. to last until 8:55 a.m. to review performance of a public employee pursuant to RCW 42.30.110(1)(g), to discuss pending litigation pursuant to RCW 42.30.110(1)(i) and to discuss lease or purchase of real estate if disclosure would increase price pursuant to RCW 42.30.110(1)(b). The executive session concluded at 8:55 a.m. and the regular session resumed.

The Commission convened to review vouchers and calendar.

The Commission recessed at 9:23 a.m.

An executive session was announced at 9:25 a.m. to last until 9:30 a.m. to review performance of a public employee pursuant to RCW 42.30.110(1)(g). The executive session concluded at 9:35 a.m.

The Commission recessed at 9:35 a.m.

The Commission resumed at 9:40 a.m.

A round table discussion was held regarding the following topics: Willie Stone Service Recognition for 50 years of service at Grant County PUD.

The Finance/Business Services Quarterly Financial Reports (QFR) for Labor, O&M and Capital were shared by the following Budget Managers:

- Finance/Business Services – Jennifer Sager
- Energy Supply Management – Craig Kunz
- Enterprise Technology – Matt Johnson
- Human Resources – Tod Ayers
- Executive – Rhiannon Fronsman

- Internal Services – Brian Barrows
- Protective Services – Craig Bressan
- Chief Admin Office – Krissy Mackenzie
- Customer Affairs – Chuck Allen
- External Affairs/Pricing – Chuck Allen
- Telecom & Fiber Services – Terry Mckenzie
- Power Delivery – Ron Alexander
- Power Production – Rey Pulido
- Environmental Affairs/Cultural Resources – Rey Pulido
- Asset Management – Ron Alexander

The Commission recessed at 10:40 a.m.

The Commission resumed at 10:50 a.m.

Angelina Johnson, Senior Manager Treasury and Finance, presented the Treasury Report.

Bryndon Ecklund, Lead Financial Analyst, gave the Financial Forecast Report.

An executive session was announced at 12:05 p.m. to last until 12:55 p.m. to discuss pending litigation pursuant to RCW 42.30.110(1)(i) with legal counsel present pursuant to RCW 42.30.110(1)(g). An executive session extension from 12:55 p.m. to 1:05 p.m., then resuming the regular session.

Fredrick Slough, Soap Lake, Washington addressed the concern regarding a damaged sewer line on personal property along with costs associated with damage.

Evaan Solomon, Soap Lake, Washington addressed the concern regarding a damaged sewer line on personal property along with costs associated with damage.

Consent agenda motion was made Commissioner Schaapman and seconded by Commissioner Cox to approve the following consent agenda items:

Payment Number	152290	through	152593	\$8,485,475.26
Payroll Direct Deposit	7646	through	8495	\$2,643,135.74
Payroll Tax and Garnishments	20250225A	through	20250305B	\$1,152,759.35

Meeting minutes of February 25, 2025.

After consideration, the above consent agenda items were approved by unanimous vote of the Commission.

Resolution No. 9083 relative to establishing a letter of credit was presented to the Commission. Motion was made by Commissioner Cox and seconded by Commissioner Wilson to approve Resolution No. 9083. After consideration, the motion passed by unanimous vote of the Commission.

## RESOLUTION NO. 9083

- A RESOLUTION OF THE COMMISSION OF PUBLIC UTILITY DISTRICT NO. 2 OF GRANT COUNTY, WASHINGTON, AMENDING RESOLUTION NO. 9046 OF THE DISTRICT (ESTABLISHING A LETTER OF CREDIT AND LINE OF CREDIT FACILITY AND PROVIDING FOR THE ISSUANCE AND SALE OF THE DISTRICT'S ELECTRIC SYSTEM REVENUE NOTES, SERIES 2024-W (REVOLVING LINE OF CREDIT)); AUTHORIZING A FIRST AMENDMENT TO CREDIT AGREEMENT; AND AUTHORIZING OTHER MATTERS RELATED THERETO.

WHEREAS, Public Utility District No. 2 of Grant County, Washington (the "District") owns and operates an electric utility system (as further defined herein, the "Electric System") for the transmission and distribution of electric energy; and

WHEREAS, RCW 54.16.070 provides that a public utility district may contract indebtedness or borrow money for any corporate purpose on its credit or on the revenues of its public utilities; and

WHEREAS, pursuant to Resolution No. 9046 adopted by the Commission of the District (the "Commission") on March 12, 2024 (the "Original Resolution"), and a Credit Agreement dated March 27, 2024, between the District and JPMorgan Chase Bank, National Association (the "Bank"), as it may be amended from time to time (the "Original Credit Agreement"), the District established a revolving line of credit for the purposes set forth therein; and

WHEREAS, the District's obligations under the Original Credit Agreement and the associated revolving line of credit are evidenced by the District's Electric System Revenue Notes, Series 2024-W (Revolving Line of Credit) (the "Notes"), issued on March 27, 2024, in the principal amount of not to exceed \$20,000,000 (which may be increased to \$50,000,000 pursuant to the terms of the Original Resolution and the Original Credit Agreement); and

WHEREAS, the Commission has determined that it is in the best interest of the District that it enter into an agreement with Southwest Power Pool, Inc., an Arkansas nonprofit corporation ("SPP"), and other participating entities, in order to develop and implement Phase 2 of Markets+, a centralized day-ahead and real-time marketplace; and

WHEREAS, once established, Markets+ is expected to enhance reliability, increase value, allow for more efficient use of the existing grid (transmission) resulting in lower overall prices for participants, and provide a lower cost, liquid, and transparent market for energy, capacity and ancillary activities, among other benefits to the District; and

WHEREAS, in order to participate in Phase II of the development and implementation of Markets+, the District and other participants are required to provide collateral in the form of a letter of credit or available funds; and

WHEREAS, the District now desires to amend the Original Resolution and the Original Credit Agreement to allow letters of credit for the purpose of satisfying its obligations under the agreement with SPP, among other purposes, as provided herein;

NOW, THEREFORE, BE IT RESOLVED by the Commission of Public Utility District No. 2 of Grant County, Washington, as follows:

Section 1. Definitions. Unless otherwise defined in the recitals and elsewhere in this resolution, capitalized terms used herein shall have the meanings set forth in the Original Resolution.

Section 2. Amendments to Original Resolution. The following sections of the Original Resolution are hereby amended as follows (deletions are ~~stricken~~ and additions are double underlined):

Section 2. Findings

- (a) Gross Revenue Sufficient. The Commission hereby finds that the Gross Revenue to be derived by the District from the operation of the Electric System at the rates to be charged for the electricity furnished thereby will be sufficient in the judgment of the Commission to meet all expenses of operation and maintenance, and to make all necessary repairs, replacements and renewals thereof, and to permit the setting aside out of such Gross Revenue and money in the Revenue Fund into the bond funds for the Subordinate Lien Bonds and Parity Bonds of such amounts as may be required to pay the principal of and interest on the Subordinate Lien Bonds and Parity Bonds as the same become due and payable.
- (b) Due Regard. The Commission hereby finds that due regard has been given to the cost of the operation and maintenance of the Electric System and that it has not obligated the District to set aside into the bond funds for the account of the Parity Bonds and the Subordinate Lien Bonds a greater amount of the revenues and proceeds of the Electric System than in its judgment will be available over and above such cost of operation and maintenance.
- (c) Best Interests of the District. The Commission hereby finds and determines that it is in the best interests of the District that the District issue the Notes authorized herein for the purpose of establishing a line of credit to (1) obtain the delivery of letters of credit to satisfy the District's collateral obligations under power purchase contracts, energy hedge agreements and other contracts of the District in connection with its operations, including but not limited to, the purchase and sale of electric energy, and the development, implementation, and participation in the market design, distribution, and transmission of electric energy, and (2) to be available to provide loans to the District.

Section 3. Authorization of Notes; Request for Draw or Request for Letter of Credit; Payment, Registration and Transfer.

- (a) Issuance of Notes. For the purpose of (1) providing liquidity for District purposes, and (2) providing support for Letters of Credit to be issued by the Bank in support of power purchase contracts, energy hedge agreements and other contracts of the District ~~within the District's primary~~

~~business of~~ in connection with its operations, including but not limited to the purchase, generation, transmission, distribution and sale of electric energy, the District hereby establishes a revolving credit facility. To evidence such revolving credit facility, the District authorizes the issuance of one or more series of its subordinate lien electric system revenue notes as described herein (the "Notes").

The Notes shall be issued in one or more series in the aggregate principal amount of not to exceed \$20,000,000 outstanding at any time to evidence the District's obligations under this resolution and the Credit Agreement; provided, however, the aggregate principal amount of the Notes may be increased to an amount not to exceed \$50,000,000 outstanding at any time upon agreement by the District and the Bank, and upon satisfaction of the terms and conditions set forth in the Credit Agreement. The Commission authorizes each Designated Representative to increase the available aggregate principal amount of the Notes to an amount not to exceed \$50,000,000. Such increase shall not require additional Commission approval so long as it is consistent with the terms of this resolution and the Credit Agreement.

Except as otherwise provided herein and in the Credit Agreement, the amount available for loans outstanding at any time under the Line of Credit and the Letter of Credit Amounts is \$20,000,000. Interest on a particular principal amount so advanced shall be determined from the date of the advance of Note proceeds pursuant to a Request for Draw by the District, or from the date of any advance on a Letter of Credit.

The Notes shall be designated as "Public Utility District No. 2 of Grant County, Washington, Electric System Revenue Notes, Series 2024-W (Revolving Line of Credit)," with additional series or other description as determined by a Designated Representative, shall be dated as of the date of delivery thereof to the Bank, and shall mature on the Maturity Date (as defined in the Credit Agreement), subject to the terms and conditions of the Credit Agreement. The maturity date of the Notes may be extended upon agreement by the District and the Bank, and upon satisfaction of the terms and conditions set forth in the Credit Agreement. The Commission authorizes each Designated Representative to extend the maturity date for the Notes as provided in the Credit Agreement. Such extension shall not require additional Commission approval so long as it is consistent with the terms of this resolution and the Credit Agreement.

A Note of a series or a draw on a Note may be issued as a Taxable Note if determined to be issued or drawn, as applicable, on a taxable basis. A Note of a series or a draw on a Note may be issued as a Tax-Exempt Note if determined to be issued or drawn, as applicable, on a tax-exempt basis under the Code. Any such determination shall be set forth in the Note certificate or in the Request for Draw, as applicable.



Each draw pursuant to a Request for Draw shall bear interest at the applicable rates set forth in the Credit Agreement, subject to the Default Rate upon the occurrence and during the continuation of an Event of Default until the date on which such Event of Default is cured or otherwise waived by the Registered Owner. Interest on the Notes shall accrue from the date money is drawn, pursuant to the applicable Request for Draw, until paid and shall be computed on the principal amount outstanding on the basis of a 360-day year and the actual days elapsed (or such other basis as set forth in the Credit Agreement). The principal amount of each loan pursuant to a Request for Draw, and interest thereon, shall be paid as provided in the Credit Agreement.

(b) *Procedures for Request for Draw or Request for Letter of Credit.* A Request for Draw or a Request for Letter of Credit may be made by a Designated Representative in writing as provided in the Credit Agreement. The District hereby delegates to each Designated Representative the authority to make a written Request for Draw or Request for Letter of Credit in accordance with the terms and provisions of this resolution and the Credit Agreement in the amounts, in the interest rate modes, and at the times as such Designated Representative may determine. Proceeds of draws on the Notes shall be deposited into the appropriate District account determined by a Designated Representative and used for lawful District purposes.

(d) *Registration.* The Notes shall be issued in fully registered form. Both the principal of and interest on the Notes shall be payable in immediately available lawful money of the United States of America by wire transfer or automatic clearinghouse funds or such other manner, in each case, as set forth in the Credit Agreement. The Treasurer or the fiscal agent for the State of Washington, as determined by the District, shall act as Registrar.

(e) *Assignment.* The Notes may only be assigned or transferred by the Bank as provided in the Credit Agreement.

Section 3. Execution of Amendment to Original Credit Agreement. Each Designated Representative is hereby authorized to approve the terms of an amendment to the Original Credit Agreement (an "Amendment to Credit Agreement") in order to incorporate therein the terms of this resolution, and to execute and implement the Amendment to Credit Agreement (including the payment of any financing costs associated with the delivery of the Amendment to Credit Agreement) and any other certificates or other documents in connection therewith.

Section 4. Amendment to Notes. The amendments contained in Section 2 of this resolution to the allowable purpose of the Notes are hereby incorporated into the Notes as if fully set forth therein.

Section 5. Ratification of Prior Acts. Any action taken consistent with the authority and prior to the effective date of this resolution is ratified, approved, and confirmed.

Section 6 Effective Date of Resolution. This resolution shall be in effect from and after its adoption in accordance with law.

ADOPTED by the Commission of Public Utility District No. 2 of Grant County, Washington, at a regular meeting thereof this 11<sup>th</sup> day of March, 2025.

Resolution No. 9084 relative to awarding personal leave hours was presented to the Commission. Motion was made by Commissioner Cox and seconded by Commissioner Schaapman to approve Resolution No. 9084. After consideration, the motion passed by unanimous vote of the Commission.

RESOLUTION NO. 9084

A RESOLUTION AWARDING THE GENERAL MANAGER/CHIEF EXECUTIVE OFFICER PERSONAL LEAVE HOURS

Recitals

1. The Commission desires to award the General Manager/Chief Executive Officer additional Personal Leave (PL) hours as set forth herein.

NOW, THEREFORE, BE IT RESOLVED by the Commission of Public Utility District No. 2 of Grant County, Washington, as follows:

Section 1. The Commission adds a contribution to the personal leave (PL) bank of the General Manager / Chief Executive Officer as follows:

- Twelve (12) days at eight (8) hours per day

PASSED AND APPROVED by the Commission of Public Utility District No. 2 of Grant County, Washington, this 11<sup>th</sup> day of March, 2025.

Resolution No. 9085 relative to appointing General Manager/Chief Executive Officer was presented to the Commission. Motion was made by Commissioner Cox and seconded by Commissioner Schaapman to approve Resolution No. 9085. After consideration, the motion passed by unanimous vote of the Commission.

RESOLUTION NO. 9085

A RESOLUTION APPOINTING JOHN MERTLICH AS GENERAL MANAGER/CHIEF EXECUTIVE OFFICER OF GRANT PUD

Recitals

1. Grant PUD’s Commission is of the opinion that John Mertlich possesses the requisite knowledge, skills, leadership, and personal qualities to serve as Grant PUD’s General Manager (GM)/Chief Executive Officer (CEO); and

2. Mr. Mertlich is willing to serve as Grant PUD GM/CEO subject to the conditions set forth below.

NOW THEREFORE, BE IT RESOLVED by the Board of Commissioners of Public Utility District No. 2 of Grant County, Washington, as follows:

Section 1. Mr. Mertlich is hereby appointed as GM/CEO of Grant PUD effective March 12, 2025.

Section 2. Mr. Mertlich as required by statute shall serve in the capacity of GM/CEO at the pleasure of Grant PUD's Board of Commissioners.

PASSED AND APPROVED by the Board of Commissioners of Public Utility District No. 2 of Grant County, Washington, this 11<sup>th</sup> day of March, 2025.

Motion Was made by Commissioner Schaapman and seconded by Commissioner Flint authorizing the General Manager/CEO to execute Change Order No. 6 to Contract 430-09222 with UKG Inc., increasing the not-to-exceed contract amount by \$150,826.56 through November 20, 2026 and resetting the delegated authority levels to the authority granted to the General Manager/CEO per Resolution No. 8609 for charges incurred as a result of Change Order No. 6.

Motion was made by Commissioner Schaapman and seconded by Commissioner Cox authorizing the General Manager/CEO, on behalf of Grant PUD, to execute new Contract Agreement 430-HFA 602-83H with Methow Salmon Recovery Foundation in the amount not to exceed \$1,250,200.00 for purchase of 7.86 acres of land adjacent to the Twisp River for habitat conservation purposes.

Angelina Johnson, Senior Manager Treasury and Finance, and Jennifer Sager, Senior Manager of Accounting, provided the Treasury/Accounting Business Report.

The Commission recessed at 2:25 p.m.

An executive session was announced at 2:35 p.m. to last until 3:35 p.m. to review performance of a public employee with legal counsel present pursuant to RCW 42.30.110(1)(g). The executive session concluded at 3:35 p.m. and the regular session resumed.

There being no further business to discuss, the Commission adjourned at 3:35 p.m. on March 11 and reconvened on Tuesday, March 18 at 8:30 a.m. at Grant PUD's Main Headquarters Building, 30 C ST SW, Ephrata, Washington for the purpose of holding a Commission Workshop and any other business that may come before the Commission with the following Commissioners present: Tom Flint, Terry Pyle, Larry Schaapman, Judy Wilson, and Nelson Cox. A copy of the notice of adjournment was posted to the Grant PUD website.

There being no further business to discuss, the March 11, 2025 meeting officially adjourned at 3:30 p.m. on Tuesday, March 18, 2025.

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Terry Pyle, President

ATTEST:

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Judy Wilson, Secretary

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Larry Schaapman, Vice President

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Nelson Cox, Commissioner

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Tom Flint, Commissioner

# **REGULAR AGENDA**

RESOLUTION NO. 9086

A RESOLUTION ACCEPTING A BID AND AWARDING CONTRACT 170-12475, FOR  
FURNISHING STEEL STRUCTURES FOR THE QUINCY TRANSMISSION EXPANSION PROJECT

Recitals

1. Bids were publicly opened on January 29, 2025 for Contract 170-12475, for Furnishing Steel Structures for the Quincy Transmission Expansion Project;
2. Bid proposals were received from the following suppliers/contractors and evaluated by Grant PUD's staff;

• Western Utility Telecom	\$3,758,418.00
• Valmont Industries	\$3,783,280.00
• MVA Power	\$4,086,832.28
• TransAmerican Power Products	\$4,228,623.00

3. The low bid, submitted by Western Utility Telecom is both commercially and technically compliant with Grant PUD's contract requirements;
4. The bid is less than the Engineer's Estimate of \$10,000,000.00; and
5. Grant PUD's Managing Director of Power delivery concurs with staff and recommends award to Western Utility Telecom as the lowest responsible and best bid based on Grant PUD's plan and specifications.

NOW, THEREFORE, BE IT RESOLVED by the Commission of Public Utility District No. 2 of Grant County, Washington, that the General Manager is authorized to enter into a contract, Contract 170-12475, for Furnishing Steel Structures for the Quincy Transmission Expansion Project with Western Utility Telecom of Salem, Oregon in the amount of \$3,758,418.00 plus applicable sales tax, upon receipt of the required payment and performance bond in a manner satisfactory to Grant PUD's Counsel.

PASSED AND APPROVED by the Commission of Public Utility District No. 2 of Grant County, Washington, this 25<sup>th</sup> day of March, 2025.

\_\_\_\_\_  
President

ATTEST:

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
Vice President

\_\_\_\_\_  
Commissioner

\_\_\_\_\_  
Commissioner

MEMORANDUM

02/20/2025

**TO:** Rich Wallen, General Manager/Chief Executive Officer

**VIA:** Jeff Grizzel, Chief Operating Officer Jeff Grizzel  
Jeff Grizzel (Feb 20, 2025 13:15 PST)  
Ron Alexander, Director of Power Delivery Ron Alexander  
Ron Alexander (Feb 20, 2025 13:39 PST)  
Angel Barahona-Sanchez, TSA Engineering Manager Angel Barahona-Sanchez  
Angel Barahona-Sanchez (Feb 20, 2025 09:28 PST)

**FROM:** Derek Mashburn, District Representative Derek Mashburn  
Derek Mashburn (Feb 20, 2025 08:44 PST)

**SUBJECT:** Award of Contract 170-12475 - Furnishing Steel Structures for the Quincy Transmission Expansion Project

**Purpose:** To request Commission approval to award Contract 170-12475 to Western Utility Telecom, to supply steel structures for a Contract Price of \$3,758,418.00, plus sales tax.

**Discussion:** The District advertised in the Columbia Basin Herald newspaper and on the District's ProcureWare site, with a sealed bid opening scheduled on January 29, 2025, at 2:00 PM. The District received four bids:

Manufacturer	Bid Price
Western Utility Telecom	\$ 3,758,418.00
Valmont Industries	\$ 3,783,280.00
MVA Power	\$ 4,086,832.28
Trans American Power Products	\$ 4,228,623.00
Engineering Estimate	\$10,000,000.00

The contract aims to supply the District with steel structures for the QTEP projects Columbia – Mountain View 230kV, Mountain View Loop 1, and the Western portion of Mountain View – Monument Hill 230kV transmission lines. The District will procure the projects on the Eastern side of Quincy once the designs finalize in the coming months. The steel structures will support the transmission line conductor, helping to break up the single transmission line into Mountain View substation and establish a local area transmission line loop.

After contract award, the District will be purchasing Thirty-Six (36) steel structures for Columbia – Mountain View 230kV transmission line segment, Twenty-Four (24) steel structures for Mountain View Loop 1 transmission line, and Five (5) steel structures for the Western portion of Mountain View – Monument Hill 230kV transmission line segment. In total, the District will procure Sixty-Five (65) steel structures.

The District evaluated the bid for both technical and commercial compliance and determined that Western Utility Telecom is the lowest compliant bidder in both categories.

**Justification:** These steel structures aim to break apart the Columbia – Rocky Ford 230kV transmission line into smaller sections and allow the Mountain View substation to have two different transmission line sources into it. Currently, Mountain View substation has a single transmission line from the existing Columbia – Rocky Ford 230kV transmission line. By having a second transmission line into the Mountain View substation, reliability will increase minimizing outages and their duration to the customers sourced off the substations connected to these transmission lines.

The local transmission line loop also aims to provide alternate paths for customers served by them. If one side of the loop takes an outage, the other side of the loop can source power for the customer up to the isolation point of the loop.

These steel poles are on the critical path schedule for this portion of QTEP. Completing this contract will support the continued success of QTEP and the goal of providing more reliable power to the area upon completion of the project.

**Financial Considerations:** The District will pay at most \$3,758,418.00 (plus tax) to acquire these structures.

The deviation of Western Utility Telecom’s bid from the Engineer’s Estimate is due to assumed instability in the steel market, coupled with discussions of possible high steel prices. Recent contracts for other tapered tubular structures have also shown higher steel prices. This fact coupled with the criticality of the structures to QTEP gave means to utilize a higher estimate.

QTEP’s material procurement budget accounted for these structures and will have them charged to the following PIDs.

Project	PID
Col to MTV 230kv Line	103637
Mountain View Loop No. 1	103638
MTV-MH 230KV Line	103636

**Contract Specifics:** This contract is mostly in line with our standard material contracts, with the main exception being the inclusion of a requested delivery date on the Bid Form. Although similar requests have been made in different formats in the past, adding it to the Bid Form for each structure enables the District to better understand the impact of supply chain delays for each individual structure.

**Recommendation:** Requesting Commission approval to award Contract 170-12475 to Western Utility Telecom, to supply steel structures for a not-to-exceed Contract Price of \$3,758,418.00, plus sales tax.

**Legal Review:** See attached e-mail(s).














# 170-12475 Commission Memo Final

Final Audit Report

2025-02-23


Created:	2025-02-20
By:	Sharon Lucas (slucas@gcpud.org)
Status:	Signed
Transaction ID:	CBJCHBCAABAAo2lbtG37hzY7tcJJbGoSvcVBnTrTX7tX

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 Document e-signed by Jeff Grizzel (jgrizzel@gcpud.org)

Signature Date: 2025-02-23 - 11:15:02 PM GMT - Time Source: server

 Agreement completed.

2025-02-23 - 11:15:02 PM GMT

Contract Documents 170-12475

Furnishing Steel Structures for the Quincy Transmission Expansion Project

for

Public Utility District No. 2  
of Grant County, Washington

Bid Due Date: January 14, 2025

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## INSTRUCTIONS TO BIDDERS

### 1. SUBMISSION OF BID

Sealed Bids shall be received by Public Utility District No. 2 of Grant County, Washington at the District's contracting offices at 154 A Street SE Building E, Ephrata, Washington no later than 2:00 p.m. on January 14, 2025 for Furnishing Steel Structures for the Quincy Transmission Expansion Project as specified in Contract Documents 170-12475. Bids received after that time shall be rejected as non-responsive. **Bid opening shall follow the Bid submittal deadline via Microsoft Teams video conference. The video conference will be the only manner by which the public can participate in the Bid opening. To participate in the Bid opening, please join the Teams meeting below:**

Microsoft Teams [Need help?](#)

[Join the meeting now](#)

Meeting ID: 273 561 959 955

Passcode: NE2zM3Gw

Dial in by phone

[+1 509-703-5291,,144878544#](#) United States, Spokane

[Find a local number](#)

Phone conference ID: 144 878 544#

The original and one copy of the Bid and all required Bidder's Data shall be delivered in a completely sealed opaque envelope properly addressed to:

Emilie DeLong, Procurement Officer  
Public Utility District No. 2  
of Grant County, Washington  
154 A Street SE Building E  
Ephrata, Washington 98823

Phone: (509) 754-5088 Ext. 2469

E-mail: [Edelong@gcpud.org](mailto:Edelong@gcpud.org)

with the name of the Bidder written on the outside of the envelope and outer shipping container with the following:

Contract Documents: 170-12475

Bid for: Furnishing Steel Structures for the Quincy Transmission Expansion Project

Bid due date: January 14, 2025

Bid opening: January 15, 2025

Each Bid submitted shall constitute an offer to the District and shall be irrevocable for a period of 60 days following Bid opening. Contract Award, if any, shall be made within 60 days from the date of Bid opening.

2. COMPLIANCE WITH BID DOCUMENTS/BIDDER'S EXCEPTIONS

Bids shall be submitted on the Bid Form (see Exhibit "A") provided with the Contract Documents. All Bid proposals must be quoted in U.S. dollars. Any submittals or data which may be required by the Contract Documents to support a Bid shall be attached to the Bid Form. The Bid Form must be properly executed and all blanks must be filled in. All Bids shall be submitted in strict compliance with the Contract Documents, Technical Specifications, and commercial requirements contained herein. Bids which do not comply with these specifications and requirements or which contain or are conditioned upon different terms provided by the Bidder may be rejected. Any Bid which attempts to disclaim liability for the Bidder's negligence or to disclaim liability for damage, which arises from Bidder's acts, to person or property, may be deemed a non-responsive Bid.

Bidder shall specifically identify by paragraph and page number and describe in detail in its Bid proposal each variation or departure from the Contract Document. If, in the District's opinion, the Bid proposal contains material variations in or departures from the commercial terms or functional design requirements, it may be rejected as being non-responsive.

3. DISCREPANCIES OR OMISSIONS IN CONTRACT DOCUMENTS

If a Bidder finds discrepancies in or omissions from the District's requirements, or if Bidder is in doubt as to the meaning of any provision in the Contract Documents, Bidder shall, at once, notify the District's Procurement Officer. If appropriate, a notice of addendum shall be posted to the District's ProcureWare site, mailed, e-mailed, or otherwise delivered to each person obtaining a set of Contract Documents. Each person requesting an interpretation shall be responsible for the delivery of their request to the District. The District shall not be bound by, nor responsible for, any other explanations or interpretations of the proposed documents other than those given in writing as set forth in this paragraph. Oral instructions, interpretations or representations shall not be binding upon the District.

4. DISTRICT'S RIGHT TO MODIFY CONTRACT DOCUMENTS

The District reserves the right to revise the Contract Documents by addendum prior to the date set for receiving Bids. The Bidder shall acknowledge the receipt of each addendum on the Bid Form to substantiate that its Bid is in accordance with the revised Contract Documents.

5. BIDDER'S WITHDRAWAL OR MODIFICATION OF BID

The Bidder may, without prejudice to itself, withdraw, modify or correct a proposal after it has been deposited with the District; provided such withdrawal, modification, or correction is filed with the District in writing, before the time set for receiving Bids. The original Bid, as modified, will be considered as the proposal submitted by the Bidder.

6. BID DELIVERY RESPONSIBILITY

It shall be the Bidder's responsibility to deliver the original copy of its properly executed Bid and Bid documents prior to the time for Bid receipt stated above. Bids will only be accepted via United Parcel Service, Federal Express, Bidder walk-in, or other carrier or courier service to the address

referenced in Section 1 above; no Bids sent by United States Postal Service will be allowed. The District shall not accept or consider Bids transmitted by any electronic method. No Bid shall be considered which is received after the time stated above and shall be returned unopened. It shall be the sole responsibility of the Bidder to ensure that Bids are delivered at the Bid due date and time established in Section 1 above or by addendum. It shall also be the sole responsibility of the Bidder to ensure that Bids are properly addressed and labeled in accordance with Section 1 above.

7. BID EVALUATION

For the purposes of evaluating Bids, the District will consider a number of factors and will not evaluate based on cost alone. The District may let the Contract to the lowest responsible Bidder or Bidders based upon the plans and specifications, price and any other factors considered. Consideration will be given to the following:

- A. Total Bid Price.
- B. Bidder's Data (See Instruction No. 8 which follows). NOTE: Any Bid which does not contain all Bidder's Data indicated in Section 8 as "required", if any, shall be rejected.
- C. Bidder's compliance with the requirements of Section SR-2. **Bids that take exception to these requirements shall be rejected.**
- D. All elements or factors which will affect the final cost to or benefits to be derived by the District which may include, but not be limited to:
  - 1. The ability, capacity, and experience of the Bidder to perform the Contract or provide the material/equipment required;
  - 2. Whether the Bidder can deliver the required material/equipment within the time specified; and
  - 3. The quality of the Bidder's performance on previous contracts.
- E. For Bid Evaluation purposes only, the District shall add \$350.00 to the Bid Unit Price of Bid Item Nos. 1 through 34 for each additional calendar week (seven days) the Bidder proposes beyond the date outlined in Section SR-2. Bid Items that are proposed to arrive before the date outlined in Section SR-2 will be excluded from the increased evaluation. Bidder shall identify on the Bid Form the proposed delivery duration for each Bid Item listed above and the quantities of each Bid Item that the Bidder can commit to delivering.

8. BIDDER'S DATA

The Bidder shall submit the following information with their sealed Bid:

- A. The Bidder shall have had a minimum of three years' experience in the successful delivering, servicing and maintenance of the type of equipment/material specified by these Contract Documents prior to submission of its Bid. Bidder shall provide a representative user's list with addresses, phone contacts, and material delivery dates to document the experience requirement. The Bidder shall be a factory franchised new equipment/material dealer with full parts, service and warranty capacity.
- B. **Required or Bid will be rejected.** Bidder shall submit with their Bid, design calculations, including pole properties, connections, loads and factors. Design calculations shall be



finite element analysis from a program such as PLS-POLE. Bidder shall provide an analysis report for each structure including all input and output data. Such data shall be provided electronically on a USB compatible drive.

- C. Bidder shall provide instructions for the handling and erection of structures.
- D. Bidder shall provide the manufacturer's routine inspection and test plan.
- E. In addition to the information required in Instructions to Bidders Section 8.A, Bidder shall provide with their Bid, a list of six recent projects of similar scope that confirms the Bidder's qualifications. Provided information for each project shall include: Scope of Bidder's responsibility.
  - 1. Description of items designed, manufactured and installed, including dates of installation.
  - 2. Customer contact name, phone number, and email address.
  - 3. Dollar value of work.
- F. Manufacturer and place of manufacture.

9. BID BOND

Each Bid shall be accompanied by a certified or cashier's check payable to the order of Public Utility District No. 2 of Grant County, Washington for a sum not less than 5% of the amount of the Total Bid Price, or accompanied by a Bid Bond on the form provided as Exhibit "B", in an amount not less than 5% of the Total Bid Price with a corporate surety licensed to do business in the State of Washington, conditioned that the Bidder shall pay the District as liquidated damages the amount specified in the bond, unless Bidder enters into a Contract in accordance with their Bid and furnishes the Payment and Performance Bond hereinafter mentioned within 10 days from Contract Award. If a Bid is rejected, or if a Bid is accepted and a Contract Form executed, any check shall be returned in each instance within a period of 10 days to the Bidder furnishing the same. If the Bid is one of the three low Bids, such check or bond shall be held by the District until Contract Documents are fully executed by the District and successful Bidder and the Payment and Performance Bond provided per Section 13. If a Bid Bond was provided, 30 days following this period, the original Bid Bond shall be destroyed unless the Surety or Contractor requests the return of the bond, in writing, prior to destruction. The Bidder's failure to submit its Bid Bond on the form attached to the Contract Documents may result in rejection of the Bid.

10. WAIVE MINOR ERRORS

The District reserves the right to waive minor errors or irregularities in any Bid if it appears to the District that such errors or irregularities in any Bid were made through inadvertence and are not material. Any errors or irregularities so waived must be corrected on the Bid on which they occur prior to the execution of any Contract Form which may be awarded thereon. No Bidder may withdraw their Bid after the hour set for the opening thereof, unless and until Contract Award has been delayed for a period exceeding 60 days after the date of Bid opening.

11. DISTRICT'S RIGHT TO REJECT BIDS

The District reserves the right to reject any and all Bids or to accept the Bid which in its sole and absolute judgment will under all circumstances best serve the interest of the District.

12. REFUSAL TO EXECUTE CONTRACT

Should the successful Bidder fail or refuse to execute a Contract Form and furnish a Payment and Performance Bond within 10 days following receipt of notification of Contract Award, the Bidder shall be considered to have abandoned the Bid and the check or Bid Bond in the amount of not less than 5% of the Bid delivered with the Bid shall thereupon be due and owing to the District as liquidated damages for such failure or refusal, and the District may thereupon award the Contract to any other Bidder.

13. PAYMENT AND PERFORMANCE BOND

To assure compliance with the terms of the Contract, the Contractor shall furnish a Payment and Performance Bond in an amount equal to 25% of the amount of the Contract Price, excluding Washington State Sales Tax, with surety or sureties who are acceptable to the District. This Payment and Performance Bond shall remain in force for a period of 365 days after final payment. Thirty days following this expiration, the original Payment and Performance Bond shall be destroyed unless the Surety or Contractor requests the return of the bond, in writing, prior to destruction. The Payment and Performance Bond must be on the form provided with these Contract Documents as Exhibit "D". The cost of the Payment and Performance Bond shall be included in the Total Bid Price.

14. PUBLIC RECORDS ACT

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

15. CONTRACT DOCUMENTS

The Contract Documents consist of the documents listed in the Table of Contents.

The Contract shall bind both the District and the Contractor to all requirements set forth in the components of the Contract Documents stated above.

16. BIDDER QUESTIONS OR CLARIFICATIONS

Bidders are to submit questions or requests for clarification in writing to the District's Procurement Officer. If appropriate, response to Bidder's questions will be posted to the District's ProcureWare web site. The deadline to submit questions or request for clarification to the District shall be five business days prior to the time and date that Bids are due.

## GENERAL CONDITIONS

### GC-1. FORM OF CONTRACT

The form of the Contract shall be unit price type.

### GC-2. DEFINITIONS

Whenever these words occur in the Contract Documents, they shall have the following meanings:

“BID” - The written proposal submitted by the Bidder on the Bid Form provided as Exhibit “A” in these Contract Documents.

“BID EVALUATION” - The criteria for determining the lowest responsive Bid received in response to the Contract Documents.

“BID ITEM” - A line item on the Bid Form which is included in these Contract Documents as Exhibit “A”.

“BID ITEM PRICE” - The correctly calculated (extended) price of all units of each Bid Item (Bid Unit Price times Quantity).

“BID UNIT PRICE” - The price per unit on a specific Bid Item.

“BIDDER” - Any person or entity who submits a Bid.

“CONTRACT AWARD” - Contract Award is defined as the date the successful Bidder is first notified in writing that the District has accepted the Contractor's Bid. Contract Award, if any, shall be made within 60 days after the date of Bid opening.

“CONTRACT DOCUMENTS” - The Contract Documents shall include all sections listed in the Table of Contents.

“CONTRACT PRICE” - The Total Bid Price plus any optional Bid Items included in the Contract Award and any properly approved Change Orders approved subsequent to Contract Award.

“CONTRACTOR” - The successful Bidder who is awarded the Contract to supply the materials or equipment covered by these Contract Documents.

“DISTRICT” OR “OWNER” - Public Utility District No. 2 of Grant County, Washington.

“DISTRICT REPRESENTATIVE” - The employee designated by the District as its representative during the term of this Contract.

“PROMPT PAYMENT DISCOUNT” - As provided for on the Bid Form, Contractor may accept the prompt payment discount of 2% 10 days, which shall mean, if the District issues payment within 10 days, the payment due shall be reduced by 2%. A payment is considered made on the day it is mailed or is sent through electronic or wire transfer.

“SUBCONTRACTOR” - A contractor/supplier hired by the Contractor to supply materials, equipment or services related to these Contract Documents, if any.

“TOTAL BID PRICE” - The properly calculated total of the Bid Items on the Bid Form.

GC-3. SUSPENSION OF CONTRACT OTHER THAN FOR DEFAULT

The District may, at its sole option, by notice in writing to the Contractor suspend or terminate at any time the performance of any portion or this entire Contract. The Contractor shall use its best efforts to minimize costs associated with suspension or termination.

- A. Upon receipt of any such notice, the Contractor shall:
  - 1. Immediately discontinue work as specified in the notice;
  - 2. Place no further orders or subcontracts for material, services, or equipment with respect to suspended or terminated portion of the Contract;
  - 3. Promptly suspend or terminate all orders, subcontracts, and rental agreements to the extent they relate to performance of the portion of the Contract suspended or terminated;
  - 4. Assist District Representative or District in the maintenance, protection, and disposition of work in progress, plant, tools, equipment property, and materials acquired by Contractor or furnished by Contractor under this Contract; and
  - 5. Complete performance of the portion of the Contract which is not terminated.
- B. As full compensation for such suspension the Contractor shall be reimbursed for the following costs, reasonably incurred, without duplication of any item, to the extent that such costs directly result from such suspension of work:
  - 1. A standby charge, as determined to be equitable by the District Representative, to be paid to the Contractor during a period of suspension of work sufficient to compensate the Contractor for keeping, to the extent required in the notice, its organization and equipment committed to the work in a standby status;
  - 2. All reasonable costs, as determined to be equitable by the District Representative, associated with any demobilization and remobilization of the Contractor's plant, forces, and equipment;
  - 3. Any claim on the part of the Contractor for additional time or compensation shall be made within 10 days after receipt, by Contractor, of a notice to suspend work. Failure to submit a claim within the 10 day period shall constitute a waiver of any such claim; and
  - 4. In no event shall the amount to be paid the Contractor pursuant to this section exceed the Contract Price.
- C. Upon receipt of notice to resume suspended work, the Contractor shall immediately resume performance of the suspended portion of the Contract to the extent required in the notice. Any claim on the part of the Contractor for time or compensation shall be made within 10 days after receipt of notice to resume work and the Contractor shall submit a revised project schedule for review.
- D. Upon delivery of a written notice to the Contractor, the District may, without cause and without prejudice to any other right or remedy, elect to terminate the Contract. Upon receipt of any such notice, the Contractor shall take all appropriate steps in part A of this Section GC-3.

Upon any such termination, Contractor shall waive any claims for damages including Contractor's overhead, loss of anticipated profits, and all other inconvenience, expenses, damages, costs and lost profits whatsoever.

If such termination is effected after Contract Award, the District shall pay the reasonable, verifiable and directly attributable costs incurred by the Contractor in the preparation of Bidder's Bid plus 15% of such costs. If Contractor has commenced performance hereunder, the District shall pay the reasonable, verifiable and directly attributable costs incurred by the Contractor as determined by the physical progress of the work satisfactorily completed to date, plus 10% of the sum of all such costs; provided, said payment shall not in any event exceed the Contract Price hereunder. The payment of the District shall constitute full and complete satisfaction and settlement for the Contractor's overhead, anticipated profits, and all other inconvenience, expenses, damages, costs and lost profits whatsoever. The Contractor shall be entitled to no further payments whatsoever for the work.

Contractor shall submit within 30 days after receipt of notice of termination, a request for adjustment to the Contract Price in accordance with the above provisions. District Representative shall review, analyze, and verify such request, and upon District Representative's approval, the Contract shall be amended in writing accordingly.

Those provisions of the Contract that by their nature survive the Contract shall remain in full force and effect after such termination.

#### GC-4. TERMINATION FOR DEFAULT/NONCOMPLIANCE

##### A. Acts of Default

If Contractor fails in any material way to comply with any of the conditions or provisions of the Contract Documents or is unable to pay its debts as they mature or authorizes or takes any action under bankruptcy or reorganization, readjustment of debt, insolvency, liquidation or other similar laws or proceedings it shall be considered an act of default.

##### B. Consequences of Default

In the event of default, the District may immediately, without limiting any other remedy available to it in law or equity, withhold any amount otherwise due under the Contract. The District shall provide written notice of default. In the event the default can be cured, and Contractor fails to correct the default within 10 days after written notice of default, the District may terminate the Contractor's right to proceed with all or any portion of the work. The District's right to liquidated damages shall not in any manner limit any other remedy available to the District, including but not limited to, the District's right to terminate the Contractor's right to proceed.

##### C. Noncompliance

The Contractor shall, upon receipt of written notice of noncompliance with any provision of this Contract and the action to be taken, immediately correct the conditions to which attention has been directed. Such notice, when served on the Contractor or Contractor's representative, shall be deemed sufficient. If the Contractor fails or refuses to comply promptly, the District Representative may issue an order to suspend all or any part of the

work. When satisfactory corrective action is taken, an order to resume work shall be issued. No part of the time lost due to any such suspension order shall entitle the Contractor to any extension of time for the performance of the Contract or to reimbursement for excess costs or damages.

GC-5. ASSIGNMENT

The Contractor shall not assign this Contract or any interest in or part thereof, or any monies due or to become due hereunder, without the prior written approval of the District. Any costs to the District associated with the assignment may be deducted from amounts due to the Contractor.

GC-6. INDEMNITY

- A. Contractor shall defend, indemnify and hold harmless the District and its representatives (which shall be deemed to include the District's directors, officers, employees and agents) from and against any and all liabilities, claims, losses, damages or expenses of any type or kind, including reasonable legal fees, and expert witness fees, which may be incurred or sustained by the District or its representatives by reason of any act, omission, misconduct, negligence, or default on the part of the Contractor or arising in connection with the supplies, material or equipment to be furnished pursuant to these Contract Documents.
- B. Contractor's indemnification obligation shall not apply to liability for damages arising out of bodily injury to persons or damage to property caused by the negligence of the District or its agents or employees and not attributable to any act or omission on the part of the Contractor. In the event of damages to person or property caused by or resulting from the concurrent negligence of District or its agents or employees and the Contractor or its agents or employees, the Contractor's indemnity obligation shall apply only to the extent of the Contractor's (including that of its agents and employees) negligence.
- C. Contractor acknowledges that by entering into a contract with the District, Contractor has mutually negotiated the above indemnity provisions with the District. Contractor's indemnity and defense obligations shall survive the termination or completion of the Contract and remain in full force and effect until satisfied in full.

GC-7. LAWS, REGULATIONS, PERMITS

The Contractor represents that it is familiar with, and shall be governed by and comply with, all federal, state and local statutes, laws, ordinances, and regulations including amendments and changes as they occur. The Contractor and any Subcontractors shall be responsible for ensuring that its employees fully comply with the District's Code of Ethics, a copy of which is available at the District's offices.

All written instruments, agreements, specifications and other writing of whatsoever nature which relate to or are a part of this Contract 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 District and Contractor shall be governed by the laws of the State of Washington. Venue of any action filed to enforce or interpret the provisions of this Contract shall be exclusively in the Superior Court, County of Grant, State of Washington or the Federal District Court for the Eastern District of Washington at the District's sole option. In the event of litigation to enforce the provisions of this Contract, the prevailing party shall be entitled to reasonable legal fees in addition to any other relief allowed.

GC-8. DAMAGES

Any claims arising under the Contract by the Contractor shall be made in writing to the District Representative no later than 10 days after the beginning of the event or occurrence giving rise to the claim. Failure to make written claim prior to the time specified in the Contract Documents shall constitute waiver of any such claim.

GC-9. WARRANTY

The Contractor agrees that all materials and equipment furnished pursuant to the Contract shall be free from all inherent defects in design, workmanship and material and shall give proper and continuous service under all conditions of service required and specified or which may be reasonably inferred from the Contract Documents. The Contractor shall immediately upon receiving notice from the District repair or replace any materials or equipment which, under normal and proper use, prove defective within one year from the date of delivery to the District. The warranty provided herein is in addition to and not in lieu of manufacturer's standard warranty normally provided.

If at any time prior to the expiration of the warranty period, Contractor or District discovers any defect in such design, materials or workmanship, the Contractor shall, upon written notice from the District given within a reasonable time after discovery, correct such defects to the satisfaction of the District by redesigning, repairing or replacing the defective work at a time acceptable to District. All costs incidental to such corrective action including but not limited to removal, disassembly, reinstallation, reconstruction, re-testing and re-inspection as may be necessary to correct the defect or demonstrate that the previously defective work conforms to the requirements of the Contract shall be borne by the Contractor.

Contractor shall not be liable to the District either in contract or in tort (including negligence or strict liability) for consequential damages consisting of the District's loss of profits, its loss of revenue or its cost of replacement power.

The warranty requirements in this section are the minimum requirements for materials or equipment under this Contract. Any other warranty requirements specified in the Contract, including the Technical Specifications, are in addition to, and not in lieu of the minimum requirements specified herein.

GC-10. CHANGES IN WORK

Without invalidating the Contract, the District may make changes by altering, adding or deducting from the work, and/or make changes in the Contract Drawings and Technical Specifications requiring changes in the work and/or materials and equipment to be furnished under this Contract; provided such additions, deductions or changes are within the general scope of the Contract. Except as provided herein, no official, employee, agent or representative of the District is authorized to approve any change in this Contract and it shall be the responsibility of the Contractor before proceeding with any change, to satisfy itself that the execution of the written Change Order has been properly authorized on behalf of the District. The District's management has limited authority to approve Change Orders. The current level and limitations of such authority are set forth in District Resolution No. 8609 which may be amended from time to time. Otherwise, only the District's Board of Commissioners may approve changes to this Contract.

Charges or credits for the work covered by the approved changes shall be determined by one or more, or a combination of the following methods, at the District's option:

- A. Unit prices specified in the Bid Form.
- B. An agreed lump sum. When requested, Contractor shall provide a detailed proposal for evaluation by the District, including, as applicable:
  - 1. Detailed proposed labor categories, hours, and rates.
  - 2. Specific materials and quantities.
  - 3. Equipment and equipment hours.
  - 4. Administrative cost and profit.
- C. The actual cost related to the change of:
  - 1. Labor, including foreman, only for employees who will work directly on the work covered by the Change Order.
  - 2. Materials entering permanently into the work.
  - 3. The ownership or rental cost of plant and equipment during the time of use on the project.
  - 4. Power and consumable supplies for the operation of power equipment.
  - 5. Insurance.
  - 6. Social Security and old age and unemployment contributions.
  - 7. To the sum of Items 1, 2, 4, 5, and 6 inclusive, there shall be added a fixed fee of 15%. The fee shall be compensation to cover the cost of supervision, overhead, bond, profit and any other general expenses.

When a change is ordered by the District, as provided herein, a Change Order shall be executed by the District and the Contractor before any Change Order work is performed. The District shall not be liable for any payment to Contractor, or claims arising therefrom, for Change Order work which is not first authorized in writing as set forth in this section. All terms and conditions contained in the Contract Documents shall be applicable to Change Order work. Change Orders shall be issued on the form attached as Exhibit "E" and shall specify any change in time required for completion of the work caused by the Change Order and, to the extent applicable, the amount of any increase or decrease in the Contract Price.

The District Representative may instruct the Contractor to make minor changes in the work where such changes are not inconsistent with the purposes of the Contract, do not involve any additional cost and shall not require an extension of the Contract completion date. The Contractor shall make no such changes without receipt of a District Instruction, Exhibit "J", setting forth the changes to be made. Contractor's compliance therewith shall constitute its acknowledgment that such changes shall not result in any claim for additional payment or extension of the Contract completion date. District Instructions, when issued, shall be in writing and signed by the District Representative.

If the Contractor believes the instruction shall result in additional costs or time extensions, Contractor shall promptly notify the District of the same and not proceed with the changes.



No waiver of any provision of the Contract, and no consent to departure there from, by either party, shall be effective unless in writing and signed by the waiving or consenting party, and no such waiver or consent shall extend beyond the particular case and purpose involved.

If Contractor believes that any requirement, direction, instruction, interpretation, determination, or decision of the District described in a Change Order entitles Contractor to an adjustment in the Contract Price or time for performance and Contractor refuses to execute the Change Order, then Contractor shall submit a claim as provided in Section GC-8 of this Contract. Notwithstanding the submission of any such claim, Contractor shall proceed without delay to perform the work described in the Change Order.

#### GC-11. PAYMENT

The Contractor may submit an invoice for payment following delivery of the specified equipment/material, which conforms to the Contract Documents. The invoice shall contain detailed information identifying the number of units of each Bid Item actually furnished multiplied by the applicable Bid Unit Price. The invoice shall be submitted for District verification and approval. Payment will be made to the Contractor within 30 days after the District has inspected the equipment/material and has determined that it is in conformance with the Contract Documents. Contractor understands and agrees that by executing this Contract with the District, the District shall make payment(s) by automated clearing house (ACH). If accepted by the Contractor on the Bid Form and the District issues payment within 10 days, the payment due shall be reduced by 2%.

Invoices shall include the Contract number 170-12475 and be addressed as follows:

Public Utility District No. 2  
of Grant County, Washington  
Attn: Accounts Payable  
PO Box 878  
Ephrata, WA 98823  
  
Phone: (509) 793-1450  
E-mail: [AccountsPayable@gcpud.org](mailto:AccountsPayable@gcpud.org)

#### GC-12. PAYMENTS WITHHELD

The District may withhold the whole or part of any certificate for payment to such extent as may be reasonably necessary to protect itself from loss on account of:

- A. Defective or damaged work not remedied or warranties not met.
- B. Claims filed or reasonable evidence indicating filing of claims against the Contractor.
- C. Failure of the Contractor to make payments properly to Subcontractors or for materials, labor, or equipment.
- D. A reasonable doubt that the Contract can be completed for the balance then unpaid.
- E. Damage to or loss of District-furnished materials or District property.

- F. Contractor's failure to meet any performance warranties required by the Contract Documents.

The Contractor shall provide a contact name, address, and email address to facilitate notification if any payment, or portion of any payment, is withheld for any of the reasons above, or for missing documentation or items incorrectly invoiced. Notification shall be made via email, or shall be mailed, properly addressed and stamped with the required postage to the person designated by the Contractor.

#### GC-13. INSPECTION

The District Representative, assistants and inspectors shall have access to all places where materials are being manufactured or prepared for use under these Contract Documents and they shall have full access to facilities for unrestricted inspection during working hours of such materials, equipment and work. The District Representative, assistants and inspectors shall be authorized to record their observations in any manner reasonable, including but not limited to recording by photographs.

The District Representative shall be kept informed of the production schedules so that inspections may be adequately performed. The Contractor shall give timely notice of any changes to the production schedule requiring inspection. Examination of questioned work may be ordered by the District Representative, and, if so ordered, the work must be uncovered or made accessible by the Contractor. If such work is found to be in accordance with the Contract Documents, the District shall pay the costs of examination and restoration. If such work is found not to be in accordance with the Contract Documents, the Contractor shall bear such cost and expedite such necessary corrections.

#### GC-14. CONFLICT AND PRECEDENCE/INTENT

- A. In the event there are any conflicting provisions or requirements in the component parts of the Contract, the several Contract Documents shall take precedence in the following order:

1. Change Orders
2. Contract Form
3. Addenda
4. Specific Requirements
5. General Conditions
6. Technical Specifications
7. Contract Drawings
8. Instructions to Bidders
9. Payment and Performance Bond
10. Bid Proposal

- B. The intent of the Contract Documents is to prescribe a complete work. Contractor shall furnish all labor, tools, equipment, transportation, supplies and incidentals required to provide the materials or equipment to be supplied under this Contract. The Contract Price shall be full pay for all materials or equipment required to be provided under this Contract.

#### GC-15. TAXES

- A. Except for the Washington State retail sales and use taxes as may be levied upon the Contract, pursuant to RCW Chapters 82.08 and 82.12, the Contract Price includes and the Contractor shall have the full exclusive liability for the payment of all taxes, levies, duties and assessments of every nature due and payable in connection with this Contract or its employees and Subcontractors performing work related to this Contract.
- B. Washington State retail sales tax and use taxes levied upon this Contract pursuant to RCW Chapters 82.08 and 82.12 are excluded from the rates and if applicable will be reimbursed as follows:
  - 1. If the Contractor has, or is required to have a valid Washington State sales tax identification number, the identification number shall be furnished to the District upon request. The Contractor shall make payment of any Washington State retail sales and use taxes due and Contractor shall be reimbursed by the District for the same. Contractor shall be solely responsible for any interest or penalties arising from late or untimely payment of said taxes.
  - 2. If the Contractor is not required to have a valid Washington State sales tax identification number, it shall notify the District of the same. In such event, the District, after receiving proper invoices from Contractor, shall make payment of said Washington State retail sales and use taxes levied upon this Contract to the Washington State Department of Revenue.

#### GC-16. NON-WAIVER

No waiver of any provision of this Contract, or any rights or obligations of either party under this Contract, shall be effective, except pursuant to a written instrument signed by the party or parties waiving compliance, and any such waiver shall be effective only in the specific instance and for the specific purpose stated in such writing. The failure of either party to require the performance of any term of this Contract or the waiver of either party of any breach under this Contract shall not operate or be construed as a waiver of any other provision hereof, nor shall it be construed as a waiver of any subsequent breach by the other party hereto.

#### GC-17. DISTRICT REPRESENTATIVE'S STATUS, AUTHORITY AND PROTEST PROCEDURE

The District Representative shall represent the District. The District Representative has authority to stop the work whenever such stoppage may be necessary to ensure the proper execution of the Contract. The District Representative shall also have authority to reject all work, equipment, and materials which do not conform to the Contract and to decide questions which arise in the execution of the work.

Approval by the District Representative signifies favorable opinion and qualified consent. It does not carry with it certification, assurance of completeness, assurance of quality, nor assurance of accuracy concerning details, dimensions, and quantities. It is not an acceptance by the District or certification that Contractor has performed the Contract work correctly or according to Contract Documents. Such approval shall not relieve the Contractor from responsibility for errors or for deficiencies within its control.

All claims of the Contractor and all questions relating to the interpretation of the Contract, including all questions as to the acceptable fulfillment of the Contract on the part of the Contractor and all

questions as to compensation, shall be submitted in writing to the District Representative for determination within the applicable time period specified in the Contract Documents.

All such determination and other instructions of the District Representative shall be final unless the Contractor shall file with the District Representative a written protest, stating clearly and in detail the basis thereof, within 10 days after the District Representative notifies the Contractor of such determination or instruction. The protest shall be forwarded by the District Representative to the District's General Manager, who shall issue a decision upon each such protest, and its decision shall be final. Pending such decision, the Contractor, if required by the District Representative, shall proceed with the work in accordance with the determination or instructions of the District Representative.

The District Representative may appoint assistants and inspectors to assist in determining that the work performed and materials furnished comply with Contract requirements. Such assistants and inspectors shall have authority to reject defective material and suspend any work that is being done improperly, subject to the final decisions of the District Representative, or to exercise such additional authority as may be delegated to them by the District Representative. All work done and all materials furnished shall be subject to inspections by the District Representative or inspector at all times during the work.

The District Representative and contact information for this Contract is listed below.

Derek Mashburn  
Public Utility District No. 2  
of Grant County, Washington  
PO Box 878  
Ephrata, WA 98823

(509) 754-5088 Ext. 2240  
Dmashburn@gcpud.org

#### GC-18. ACTIVITIES ON DISTRICT PREMISES

If Contractor or any of its Subcontractors or suppliers of any tier performs any activities on premises owned, leased, possessed or controlled by the District, Contractor shall:

- A. Take all precautions which are necessary to prevent injury to persons and damage to any property or the environment in connection with such activities;
- B. Release, defend, indemnify and hold harmless the District and its officers, agents, and employees from all claims, losses, harm, liabilities, damages, costs and expenses, including but not limited to reasonable attorney's fees that may arise in connection with such activities; and
- C. Maintain in effect at all times during performance of such activities Commercial General Liability insurance (including blanket contractual) with limits not less than \$1,000,000 per occurrence; automobile liability for all vehicles used under the contract for bodily injury, and property damage with limits not less than \$1,000,000 per accident; statutory workers' compensation; and employer's liability with limits not less than \$1,000,000. Without limiting the generality of the foregoing, Contractor assumes potential liability for acts brought by Contractor's employees, Subcontractors, or suppliers of any tier.

- D. Upon request, the Contractor shall promptly furnish to District such certificates of insurance and other evidence of the insurance required under this section naming the District as Additional Insured. The District shall have the right but not the obligation of prohibiting the Contractor or its Subcontractors from entering District premises until such certificates have been provided as evidence of compliance with these requirements.

GC-19. WAGES PAID BY THE CONTRACTOR

**This Section applies only to material manufactured in the State of Washington.** Contractor and its Subcontractors shall comply with all provisions of R.C.W. Chapter 39.12 and Section 2.5 of the Collective Bargaining Agreement (hereinafter referred to as Section 2.5) between the District and IBEW Local No. 77. A copy of Section 2.5 is attached hereto as Exhibit “H”. Contractor and its Subcontractor shall pay all laborers, workmen, or mechanics employed by it or them in the performance of this Contract the greater of: (1) the applicable state prevailing wage rate required by (R.C.W. Chapter 39.12); or (2) the applicable wage rate required by Section 2.5. In the event the applicable wage rate(s) required to be paid by the Contractor or its Subcontractors change during the performance of this Contract, Contractor and its Subcontractors shall make any required adjustment so as to fully comply with any applicable state prevailing wage rate law (R.C.W. Chapter 39.12) and Section 2.5. Notwithstanding the foregoing, the District shall not be required to make any adjustment in the Contract Price as a result of changes in either the state prevailing wage rate law or Section 2.5, except as provided in W.A.C. 296-127-023.

Prior to any payments being made to Contractor, the Contractor and each and every Subcontractor shall file a "Statement of Intent to Pay Prevailing Wages" which has been approved by the Department of Labor and Industries as required by R.C.W. 39.12.040.

Washington State hourly prevailing wage rates are located at <http://www.lni.wa.gov/TradesLicensing/PrevWage/WageRates/default.asp>. It shall be the Contractor’s responsibility to determine the locality of the work.

GC-20. ACCEPTANCE AND FINAL PAYMENT

**This Section applies only to material manufactured in the State of Washington.** When the Contractor has delivered all materials/equipment and completed all work in accordance with the terms of the Contract Documents, the Contractor shall properly execute and submit final invoice to the Procurement Officer. Once final invoice has been processed, the District’s Procurement Department will issue the Certificate of Completion and Release (see Exhibit “G”) to be executed by the Contractor and returned to the Procurement Officer. The Certificate of Completion and Release shall constitute a waiver of all claims by the Contractor except for unsettled claims specifically stated, if any.

The Certificate of Completion and Release shall warrant that the Contractor has fully completed its work included in the Contract and has fully paid for labor, materials, equipment, services, taxes and all other costs and expenses of every nature and kind whatsoever resulting from this Contract. If any dispute exists between the Contractor and any person, firm or corporation to which the Contractor might be obligated in connection with this Contract, the Contractor shall state the name of claimant and amount and general nature of claim against the Contractor. The Certificate of Completion and Release shall state the amount and nature of all present and future claims that the Contractor may have against the District relative to this Contract. The Contract work shall not be complete until after the Contractor has returned to the Procurement Officer a properly completed Certificate of Completion and Release.

Upon receipt of Certificate of Completion and Release by the Procurement Officer, the District Representative provides a recommendation relative to Final Acceptance. The District shall, within a reasonable time, take action on Final Acceptance. Such action shall be subject to the condition of the Payment and Performance Bond, legal rights of the District, required warranties, and correction of faulty work discovered after final payment. The District shall have the right to retain from any payment then due the Contractor, so long as any bills or claims remain unsettled and outstanding, a sum sufficient, in the opinion of the District, to provide for the payment of the same. It is also understood and agreed that, in the case of any breach or damage by the Contractor of the provisions hereof, the District may retain from any payment or payments a sufficient sum in the opinion of the District which may become due under any obligation of the District.

Sixty days after Final Acceptance, retainage may be released to the Contractor; provided, however, that there are no claims filed of materialmen or laborers and that the District has received the certificate of the Washington State Department of Revenue of payment in full of all taxes, Employment Security Department release, the approved Washington State Department of Labor and Industries Certificate of Release of the State's Lien on Public Works Contracts form and the approved affidavit showing payment of prevailing wages for the Contractor and any Subcontractors. If any liens remain unsatisfied from the retainage, the Contractor shall refund to the District such amounts as the District may have been compelled to pay in discharging such liens including all costs and reasonable legal fees.

#### GC-21. BOND IN LIEU OF RETAINAGE

**This Section applies only to material manufactured in the State of Washington.** Pursuant to RCW Chapter 60.28, the Contractor may submit a bond in lieu of the retainage that the District would otherwise keep under the terms of this Contract and pursuant to applicable law. Any such bond submitted in lieu of retainage must be on the form provided with these Contract Documents (see Exhibit "I"). In the event the Contractor fails at any time to pay persons protected under RCW Chapter 60.28 or the District has reason to believe that the District or other obligee under the bond has a claim against the retainage or for other good cause, the District may, at its option, resume retaining from monies earned by the Contractor in such amount as it would otherwise be entitled to retain had the bond not been accepted. Notwithstanding the District's resuming such retainage, said bond shall remain in full force and effect to the extent of its penal sum, limited to the amount of retainage released to the Contractor. After the Contractor has paid protected persons or otherwise cured any default, the District may, at its option, again release retainage pursuant to the terms of the Bond. Not less than 30 days following Final Acceptance, District receipt of an Affidavit of Wages Paid approved by the Washington State Department of Labor & Industries, and District receipt of the proper releases from Washington State Department of Revenue, Employment Security Department, and Washington State Department of Labor and Industries, the original Bond in Lieu of Retainage shall be destroyed unless the Surety or Contractor requests the return of the bond, in writing, prior to destruction. Any costs associated with the Bond in Lieu of Retainage shall be included in the Total Bid Price.

## **SPECIFIC REQUIREMENTS**

### **SR-1. SCOPE OF SUPPLY**

The Contractor shall supply Steel Structures manufactured in accordance with these Contract Documents.

### **SR-2. DELIVERY/LIQUIDATED DAMAGES**

The Contractor shall not commence any work under this Contract until after all of the following: (1) receipt of notification of Contract Award; (2) full execution of the Contract Form; (3) providing the required Payment and Performance Bond; and (4) receipt of the District issued purchase order.

Delivery of the Steel Structures shall be no later than April 10, 2026 or the date specified on the Bid Form pursuant to the conditions detailed in Instructions to Bidders Section 7.E. Delivery shall be F.O.B. to the Grant County, WA location identified on the District's in the purchase order(s). This shall mean that the Contractor will pay the cost of transportation to have the Steel Structures delivered "free on board" to the identified address as well as the offloading of the steel poles. It also shall mean that the title and risk of loss do not pass until the Steel Structures have been inspected, unloaded, and moved from the conveyance.

Contractor may propose an alternative delivery date which the District will evaluate pursuant to Instruction to Bidders Section 7.

The Contractor shall deliver all materials/equipment by the delivery date specified in its Bid. Failure to do so may result in damage to the District. It is agreed that the Contractor shall pay to the District as liquidated damages and not as a penalty, a sum equal to \$350.00 for each calendar week (seven days) the delivery of any unit of any Bid Item is delayed beyond the delivery date quoted with the Bid. Such amount shall be deducted from any money due the Contractor. In no event shall the amount of liquidated damages for late delivery of all quantities of any Bid Item exceed 20% of the Bid Item Price.

The liquidated damages have been specifically negotiated by and between the Contractor and District because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages the District would in such event sustain, and said amount has been determined to be a reasonable estimate of the amount of damages which the District would sustain in the event of late delivery of the materials/equipment.

If the Contractor's performance of this Contract is prevented or delayed by any cause which is beyond the reasonable control and without the fault or negligence of the Contractor, and which condition was not foreseeable by the Contractor at the time this Contract was entered into, the Contract time shall be extended for such reasonable time as the District Representative shall determine. The Contractor agrees to complete performance within the Contract time as thus extended. Such extensions shall postpone the beginning of period for payment of liquidated damages but they and the events producing them shall not be grounds for claim by the Contractor of damages or for additional costs, expenses, overhead or profit or other compensation. Except for delays caused by the acts or omissions of the District or persons acting for it, extensions of time granted by the District Representative to the Contractor shall be the Contractor's sole and exclusive remedy for any delays due to causes beyond the control of the Contractor.

All claims for extension of time shall be made in writing to the District no more than three days after the Contractor knows or by reasonable diligence should know of the event causing or likely to cause the delay; otherwise, they shall be waived. In the case of a continuing cause of delay only one claim is necessary. Contractor's failure to give such notice promptly and within such time limit shall be deemed sufficient reason by the District Representative for denial of any time extension request.

Avoidable delays in the performance of this Contract, for which no time extension shall be granted, shall include all delays which in the opinion of the District Representative could have been avoided by the exercise of care, prudence, foresight and diligence on the part of the Contractor or his Subcontractors.

All changes in the delivery schedule shall be made by Change Orders to the Contract pursuant to Section GC-10.

**SR-3. SHIPPING AND NOTIFICATION INSTRUCTIONS**

All materials and equipment shall be suitably packed to ensure against damage from weather or transportation and in accordance with the requirements of common carriers. The delivery address and Contract number shall be clearly marked on the outside of all packaging. Each shipment must be accompanied by a packing list, which shall reference the Contract number, the purchase order number and include item descriptions, part numbers, and quantities. Any bills of lading, shipping order or the like shall also contain the above listed information.

Advance notification of shipment of the equipment/material is required. Contractor shall notify each of the District's contacts below, 48 hours prior to delivery of shipment. Failure by the Contractor to provide the advance notification specified herein may result in delays in unloading and receipt. The costs of all such delays shall be charged to the Contractor's account.

Name	Phone Number	E-Mail
Derek Mashburn, District Representative	(509) 754-5088 ext. 2240	<a href="mailto:Dmashburn@gcpud.org">Dmashburn@gcpud.org</a>
Angel Barahona-Sanchez, Manager Engineering	(509) 754-5088 ext. 2212	<a href="mailto:Abaraho@gcpud.org">Abaraho@gcpud.org</a>
Gus Mihelich, Ephrata Warehouse Foreman	(509) 754-5088 ext. 2268	<a href="mailto:Amihelich@gcpud.org">Amihelich@gcpud.org</a>
Gary Carpenter, Moses Lake Warehouse Foreman	(509) 754-5088 ext. 3212	<a href="mailto:Gcarpen@gcpud.org">Gcarpen@gcpud.org</a>

District receiving hours are Monday through Thursday, 6:30 a.m. – 12:00 p.m. and 12: 30 p.m. – 3:30 p.m. No deliveries will be received on District observed holidays or during any other times unless specific prior arrangements have been made with the District's Warehouse Foreman. District observed holidays are as follows: New Year's Day, Martin Luther King Jr. Day, President’s Day, Memorial Day, Juneteenth Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving Day, Native American Heritage Day, and Christmas Day. If a holiday falls on Saturday, it will be observed on the previous Friday. If a holiday falls on a Sunday, it will be observed on the following Monday.



## SR-4. PHYSICAL SECURITY

If any performance under this Contract is to be conducted on District facilities or worksites, it shall be the responsibility of the Contractor to ensure that its employees and those of its Subcontractors are informed of and abide by the District's Security Policies as if fully set out herein a copy of which shall be provided to the Contractor by the District Representative at the preconstruction meeting or prior to beginning work. Without limiting the foregoing, Contractor and its employees shall be required to:

- A. Keep all external gates and doors locked at all times and interior doors as directed.
- B. Visibly display ID badges on their person at all times.
- C. Stay out of unauthorized areas or in authorized areas outside of authorized work hours, without express authorization from the District.
- D. Provide proper notification to the appropriate parties, and sign in and out upon entry and exit to secured locations. If unsure of who to notify, Contractor shall contact the District Representative.
- E. Immediately notify the District if any of Contractor's employees no longer need access or have left the Contractor's employment.
- F. Immediately report any lost or missing access device to the District Representative. A minimum charge will be assessed the Contractor in the amount of \$50.00 per badge and the fee for lost or non-returned keys may include the cost to re-key the plant facilities. The Contractor is strictly prohibited from making copies of keys.
- G. Not permit 'tailgating' through any controlled access point (i.e. person(s), authorized or unauthorized, following an authorized person through an entry point without individual use of their issued ID badge or key).
- H. Return all District property, including but not limited to keys and badges, to the District Representative when an individual's access to the facility is no longer needed.
- I. Guest Wireless: The District provides Guest Wireless Internet access to contractors and vendors that need to conduct business in support of the District from personally owned mobile devices such as laptops and smart phones. Contractor personnel are responsible for exercising good judgment regarding appropriate use of information, electronic devices, and network resources.

The Contractor and any Subcontractors shall comply with the safety requirements of these Contract Documents and all District policies pertaining to COVID-19 located at <https://www.grantpud.org/for-contractors>.

The District reserves the right to conduct or to require Contractor to conduct criminal background checks on its employee(s) before granting such individuals access to restricted areas of District facilities or Protected Information. Criminal background checks may be conducted in such depth as the District reasonably determines to be necessary or appropriate for the type of access to be granted. The cost of such background checks shall be borne by the Contractor.

Contractor's personnel accepting clearances, superintendents and foreman will be required to attend a safe clearance procedure training class and Contractor's orientation class prior to starting field work. Classes may last up to two hours.

SR-5. SECURITY, SAFETY AWARENESS TRAINING, DAM SAFETY AWARENESS TRAINING, AND TRANSMISSION AND DISTRIBUTION ACCESS TRAINING

Prior to receiving access to any District facilities, all Contractors, Contractor's employees, Subcontractors and Subcontractor's employees, material suppliers and material supplier's employees, or any person who will be engaged in the work under this Contract that requires access to District facilities, shall be required to take and pass the District's Security and Safety Awareness training before being issued a security access badge to access District facilities. Under no circumstances will the failure of any Contractor or Subcontractor employee to pass the required training, be grounds for any claim for delay or additional compensation.

The Safety and Security Awareness training is available online and is a 20-30 minute training. The training is located at: <https://www.grantpud.org/for-contractors>. All contractors and their employees are required to successfully complete Safety and Security Awareness training before coming onsite. The Security and Safety certificates should be emailed directly to SecurityTrainingCerts@gcpud.org.

District Representative shall ensure that Contractor's employees, subcontractor's and subcontractor's employees have completed and submitted the certificate of completion for the training in a timely manner to avoid any delay in execution of the work. All such certificates shall be submitted before any security access badges will be issued.

If applicable, Dam Safety Awareness Training is required for Contractors who are performing work in and around Priest Rapids and Wanapum Dams and are badged. The training is available online only and is a 20-30 minute training. Contractor shall ensure that its employees, Subcontractors and Subcontractor's employees have completed, passed and printed the certificate of completion for the training in a timely manner to avoid any delay in execution of the work. All such certificates shall be submitted to the District Representative before any security access badges will be issued.

If applicable, Transmission and Distribution Access Training is required for Contractors, or their Subcontractors, who may hold a clearance or hotline hold order as part of performance of work under this Contract. The training is available online only and is a 20-30 minute training. Contractor shall ensure that its employees, Subcontractors and Subcontractor's employees have completed, passed and printed the certificate of completion for the training in a timely manner to avoid any delay in execution of the work. All such certificates shall be submitted to the District Representative before any security access badges will be issued.

If you are uncertain which of the above courses you or your employees must complete, please contact your District Representative.

SR-6. UNLOADING

Contractor shall be responsible for the unloading of the steel poles at the designated project staging area (see Section SR-2). Steel poles shall be placed on appropriate cribbing.

SR-7. CODES AND STANDARDS

Design and manufacture of the specified steel poles shall be in accordance with applicable sections of the latest revision of the codes and standards denoted in the Technical Specifications. See Section TS-3.

**TECHNICAL SPECIFICATIONS**

The Technical Specifications will be posted as a separate document on the District's ProcureWare website.

**EXHIBIT “A” - BID FORM**

COMPANY NAME OF BIDDER: \_\_\_\_\_  
 (Full Legal Name)

MANUFACTURER: \_\_\_\_\_

TO: Public Utility District No. 2  
 of Grant County, Washington  
 154 A Street SE Building E  
 Ephrata, Washington 98823

Having carefully examined Contract Documents, including any Technical Specifications and Contract Drawings as well as the premises and conditions affecting the delivery, the undersigned hereby proposes to furnish and deliver the specified equipment/material in strict accordance with these Contract Documents for the price(s) indicated below.

As evidence of good faith, a certified check, Cashier's Check or a Bid Bond in an amount not less than 5% of Total Bid Price is attached hereto. The undersigned understands and hereby agrees that should the following offer be accepted and the undersigned should fail or refuse to enter into a Contract and furnish the required Payment and Performance Bond, the undersigned's Certified Check, Cashier's Check or an amount equal to 5% of the total amount Bid shall be forfeited to the District as liquidated damages.

The Total Bid Price (calculated total of Bid Item Prices 1 through 34) shall be used in the Bid Evaluation. A price must be placed on each blank or the Bid shall not be considered. In case of an error in addition, the correctly calculated total of the Bid Item Prices (Quantity times Bid Unit Price) shall prevail.

Bid Item No.	Description	Unit Type	Quantity	Bid Unit Price	Bid Item Price
1	COMT 10/1 See Drawings COMT230-04.00, COMT230-04.01	Each	1	\$	\$
2	COMT 10/2 See Drawings COMT230-04.02, COMT230-04.03	Each	1	\$	\$
3	COMT 10/3 See Drawings COMT230-04.04, COMT230-04.05	Each	1	\$	\$
4	COMT 10/4 See Drawings COMT230-04.06, COMT230-04.07	Each	1	\$	\$
5	COMT 132' Tangent Braced Post See Drawings COMT230-04.08, COMT230-04.09  Relates to: 10/5, 10/6, 10/8, 10/9, 11/7	Each	5	\$	\$

Bid Item No.	Description	Unit Type	Quantity	Bid Unit Price	Bid Item Price
6	COMT 122' Tangent Braced Post See Drawings COMT230-04.08, COMT230-04.09  Relates to: 10/7, 11/1, 11/5, 12/5, 12/7, 12/8, 12/9	Each	7	\$	\$
7	COMT 126.5' Tangent Braced Post See Drawings COMT230-04.08, COMT230-04.09  Relates to: 10/10, 10/11, 11/6, 11/8, 11/9, 11/10, 11/11, 12/1, 12/2, 12/10	Each	10	\$	\$
8	COMT 116.5' Tangent Braced Post See Drawings COMT230-04.08, COMT230-04.09  Relates to: 11/4, 13/1	Each	2	\$	\$
9	COMT 100' 76 Deg. Deadend See Drawings COMT230-04.10, COMT230-04.11  Relates to: 11/2	Each	1	\$	\$
10	COMT 95' 76 Deg. Deadend See Drawings COMT230-04.10, COMT230-04.11  Relates to: 11/3	Each	1	\$	\$
11	COMT 12/3 See Drawings COMT230-04.12, COMT230-04.13	Each	1	\$	\$
12	COMT 12/4 See Drawings COMT230-04.14, COMT230-04.15	Each	1	\$	\$
13	COMT 95' 96 Deg Deadend See Drawings COMT230-04.16, COMT230-04.17  Relates to: 12/6	Each	1	\$	\$
14	COMT 105' 96 Deg Deadend See Drawings COMT230-04.16, COMT230-04.17  Relates to: 12/11	Each	1	\$	\$
15	COMT 90' 96 Deg Deadend See Drawings COMT230-04.16, COMT230-04.17  Relates to: 13/2	Each	1	\$	\$

Bid Item No.	Description	Unit Type	Quantity	Bid Unit Price	Bid Item Price
16	COMT 85' 96 Deg Deadend See Drawings COMT230-04.16, COMT230-04.17  Relates to: 13/3	Each	1	\$	\$
17	MTL1 3/2 See Drawings MTLOOP230-04.18, MTLOOP230-04.19	Each	1	\$	\$
18	MTL1 3/3 See Drawings MTLOOP230-04.20, MTLOOP230-04.21	Each	1	\$	\$
19	MTL1 3/4 See Drawings MTLOOP230-04.22, MTLOOP230-04.23	Each	1	\$	\$
20	MTL1 3/5 See Drawings MTLOOP230-04.24, MTLOOP230-04.25	Each	1	\$	\$
21	MTL1 Tangent Braced Post See Drawings MTLOOP230-04.26, MTLOOP230-04.27  Relates to: 3/6, 3/7, 3/8, 3/9, 3/10, 3/11, 3/12, 3/13, 3/14, 3/15, 3/17, 4/1	Each	12	\$	\$
22	MTL1 3/16 See Drawings MTLOOP230-04.28, MTLOOP230-04.29	Each	1	\$	\$
23	MTL1 4/2 See Drawings MTLOOP230-04.30, MTLOOP230-04.31	Each	1	\$	\$
24	MTL1 4/3 See Drawings MTLOOP230-04.32, MTLOOP230-04.33	Each	1	\$	\$
25	MTL1 4/4 See Drawings MTLOOP230-04.34, MTLOOP230-04.35	Each	1	\$	\$
26	MTL1 TBD-2 See Drawings MTLOOP230-04.36, MTLOOP230-04.37	Each	1	\$	\$
27	MTL1 TBD-6 See Drawings MTLOOP230-04.38, MTLOOP230-04.39	Each	1	\$	\$
28	MTL1 TBD-7 See Drawings MTLOOP230-04.40, MTLOOP230-04.41	Each	1	\$	\$
29	MTL1 TBD-8 See Drawings MTLOOP230-04.42, MTLOOP230-04.43	Each	1	\$	\$
30	MTMH 1/1 See Drawings MTMH230-04.73, MTMH230-04.74	Each	1	\$	\$

Bid Item No.	Description	Unit Type	Quantity	Bid Unit Price	Bid Item Price
31	MTMH 1/2 See Drawings MTMH230-04.75, MTMH230-04.76	Each	1	\$	\$
32	MTMH 2/4 See Drawings MTMH230-04.77, MTMH230-04.78	Each	1	\$	\$
33	MTMH 2/5 See Drawings MTMH230-04.79, MTMH230-04.80	Each	1	\$	\$
34	MTMH 2/6 See Drawings MTMH230-04.81, MTMH230-04.82	Each	1	\$	\$
<b>TOTAL BID PRICE</b>					\$

Prices are F.O.B. the location specified in the Contract Documents. The Total Bid Price includes the cost of the Payment and Performance Bond required by Contract Documents but do not include Washington State and Local Taxes.

The above quantities are final quantities and shall be interpreted as the Contract Price. Payment shall be made by Bid Item for material and equipment delivered which conforms to these Contract Documents.

Prompt Payment Discount of 2% 10 days (see Section GC-2). Bidder understands and accepts the Prompt Payment Discount. Yes  No

Bidder has enclosed a Cashier's Check, Certified Check or Bid Bond in accordance with Instructions to Bidders Section 9. Yes  No

Bidder shall deliver all materials/equipment in accordance with Section SR-2. Yes  No

If "No" is checked above, all materials/equipment shall be delivered by \_\_\_\_\_. If proposing an alternate date of delivery, please see Instructions to Bidders Section 7, Bid Evaluation for Bids specifying delivery later than the date stated in Section SR-2.

Bidder shall comply with the requirements of Section SR-2. Yes  No

**Please see Instructions to Bidders Section 7 for Bids that take exception to these requirements.**



**To help the District better understand the impacts of delivery and supply chain delays, please indicate what the Bidder can commit to for the quantities listed in Section SR-1 with consideration of the anticipated order dates listed in Section SR-2.**

<b>Bid Item No.</b>	<b>Requested Date</b>	<b>Unit Type</b>	<b>Qty.</b>	<b>Can Bidder deliver all units by Requested Date?</b>	<b>If no, can any quantities be delivered by Requested Date?</b>	<b>What combination of dates/quantities can Bidder commit to for supplying requested units?</b>
1	April 10, 2026	Each	1			
2	April 10, 2026	Each	1			
3	April 10, 2026	Each	1			
4	April 10, 2026	Each	1			
5	April 10, 2026	Each	5			
6	April 10, 2026	Each	7			
7	April 10, 2026	Each	10			
8	April 10, 2026	Each	2			
9	April 10, 2026	Each	1			
10	April 10, 2026	Each	1			
11	April 10, 2026	Each	1			
12	April 10, 2026	Each	1			
13	April 10, 2026	Each	1			
14	April 10, 2026	Each	1			
15	April 10, 2026	Each	1			

<b>Bid Item No.</b>	<b>Requested Date</b>	<b>Unit Type</b>	<b>Qty.</b>	<b>Can Bidder deliver all units by Requested Date?</b>	<b>If no, can any quantities be delivered by Requested Date?</b>	<b>What combination of dates/quantities can Bidder commit to for supplying requested units?</b>
16	April 10, 2026	Each	1			
17	April 10, 2026	Each	1			
18	April 10, 2026	Each	1			
19	April 10, 2026	Each	1			
20	April 10, 2026	Each	1			
21	April 10, 2026	Each	12			
22	April 10, 2026	Each	1			
23	April 10, 2026	Each	1			
24	April 10, 2026	Each	1			
25	April 10, 2026	Each	1			
26	April 10, 2026	Each	1			
27	April 10, 2026	Each	1			
28	April 10, 2026	Each	1			
29	April 10, 2026	Each	1			
30	April 10, 2026	Each	1			
31	April 10, 2026	Each	1			
32	April 10, 2026	Each	1			

Bid Item No.	Requested Date	Unit Type	Qty.	Can Bidder deliver all units by Requested Date?	If no, can any quantities be delivered by Requested Date?	What combination of dates/quantities can Bidder commit to for supplying requested units?
33	April 10, 2026	Each	1			
34	April 10, 2026	Each	1			

Bidder (full legal name):	
Street Address:	
Mailing Address:	
City, State, and Zip Code:	
Phone:	
Email:	
<p>The District uses DocuSign to sign the final Contract Form following Contract Award. Please provide the following information for the person who will be signing the final Contract Form in the event you are the successful Bidder.</p> <p>Name: _____ Title: _____ Email: _____</p>	
Washington State Unified Business Identifier (UBI) No.	
Washington State Sales Tax ID Number	

We hereby certify that we are not required to have a Washington State Sales Tax Identification Number for this work:

Attached hereto is the Bid proposal and all Bidder's Data required in support of this Bid.

Addendum Nos. (list all) \_\_\_\_\_ have been received and have been considered in preparing this Bid.

Signature: \_\_\_\_\_ Title: \_\_\_\_\_

Name (Print): \_\_\_\_\_ Date: \_\_\_\_\_  
 Authorized Representative

Location or Place Executed (City and State): \_\_\_\_\_

**Note: Failure to sign the Bid Form above shall result in rejection of the Bid. Digital signatures are not allowed on the Bid Form.**

**EXHIBIT "B" - BID BOND**

**KNOW ALL MEN BY THESE PRESENTS:** That we \_\_\_\_\_ (hereinafter called "the Principal"), as Principal, and \_\_\_\_\_ duly licensed for the purpose of making, guaranteeing or becoming sole surety upon bonds or undertakings required or authorized by the laws of the State of Washington, as Surety, are held and firmly bound unto PUBLIC UTILITY DISTRICT NO. 2 OF GRANT COUNTY, WASHINGTON (hereinafter called "the Obligee") in the penal sum of \$ \_\_\_\_\_ lawful money of the United States of America, for the payment of which, well and truly to be made, we hereby bind ourselves and each of our successors and assigns, jointly and severally, firmly by these presents.

**THE CONDITION OF THIS OBLIGATION IS SUCH THAT,** if the Obligee shall make any award to the Principal for \_\_\_\_\_ according to the terms of the proposal or Bid made by the Principal therefore, and the Principal shall duly make and enter into a contract with the Obligee in accordance with the terms of said proposal or Bid and award and shall give bond for the faithful performance thereof with the \_\_\_\_\_, as Surety, or with other Surety or Sureties approved by the Obligee, or if the principal shall, in case of failure so to do, pay to the Obligee the penal amount of the deposit specified in the call for Bids, then this obligation shall be null and void; otherwise it shall be and remain in full force and effect, and the Surety shall forthwith pay and forfeit to the Obligee, as penalty and liquidated damages, the amount of this bond.

**IN WITNESS WHEREOF,** said Principal and said Surety have caused these presents to be duly signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

PRINCIPAL

SURETY

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

\* Bidder shall attach Power of Attorney for person signing on behalf of Surety.

**EXHIBIT "C" - CONTRACT FORM**

This Agreement, effective upon full execution, is by and between Public Utility District No. 2 of Grant County, Washington ("District") and Full Legal Name of Contractor ("Contractor");

**WITNESSETH:**

That parties hereto for the considerations set forth in the Contract Documents agree as follows:

1. **SCOPE OF WORK** - The Contractor agrees to furnish Steel Structures in the manner and form provided by the Contract Documents 170-12475 made a part hereof, entitled Furnishing Steel Structures for the Quincy Transmission Expansion Project.
2. **DELIVERY** - The Contractor shall deliver the equipment/materials, F.O.B. the District's specified location within Grant County, WA. The Contractor shall deliver the equipment/materials on or before the dates specified in these Contract Documents; failure to do so shall result in damage to the District. Liquidated damages for late delivery shall be applicable as provided in Section SR-2. Any such liquidated damages shall be deducted from any money due the Contractor.
3. **PAYMENT** - The District agrees to pay the Contractor for the equipment/materials to be provided the sum of \$ \_\_\_\_\_, subject to the Prompt Payment Discount provision (see Section GC-2), plus applicable Washington State Sales Tax in accordance with the Contract Documents.
4. **PAYMENT AND PERFORMANCE BOND** - The Contractor shall furnish in favor of the District, a Payment and Performance Bond as required by the Contract Documents, and this Contract shall not obligate the District until such Payment and Performance Bond has been tendered.

The parties to this Agreement have caused it to be executed on the dates indicated below. This Agreement may be executed in counterparts, each of which shall be deemed to be an original but all of which taken together shall constitute one and the same agreement.

Public Utility District No. 2  
of Grant County, Washington

Full Legal Name of Contractor

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

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

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT "D" - PAYMENT AND PERFORMANCE BOND**

KNOW ALL MEN BY THESE PRESENTS, That \_\_\_\_\_  
of \_\_\_\_\_  
, (hereinafter called the "Principal"), and \_\_\_\_\_,  
as Surety, are jointly and severally held and bound unto PUBLIC UTILITY DISTRICT NO. 2 OF GRANT  
COUNTY, WASHINGTON (hereinafter called the "District"), in the sum of \$\_\_\_\_\_ for the  
payment of which we jointly and severally bind ourselves, our heirs, executors, administrators and assigns,  
and successors and assigns, firmly by these presents.

This bond is executed pursuant to and compliance with Chapter 39.08, Revised Code of  
Washington, and all rights and remedies under this bond shall be determined in accordance therewith.

THE CONDITION of this bond is such that, WHEREAS, the said Principal herein, executed a  
certain contract with the District, by the terms, conditions and provisions of which contract the said  
Principal herein, agrees to furnish all material and do certain work, to--wit:  
\_\_\_\_\_ per the  
Contract Documents made a part of said contract, which contract as so executed is hereunto attached, is  
now referred to and by reference is incorporated herein and made a part hereof as fully for all purposes as  
if here set forth at length.

NOW, THEREFORE, if the Principal herein shall faithfully and truly observe and comply with the  
terms, conditions and provisions of said contract in all respects, including all guarantees and warranties  
arising thereunder, and shall well and truly do and perform all matters and things by it undertaken  
to be performed under said contract, upon the terms proposed therein and within the time prescribed therein,  
or within such extensions of time as may be granted under said contract and shall hold the District harmless  
from all costs and damages (including reasonable legal fees) which it may incur by reason of any failure to  
do so, and shall fully reimburse and repay the District for all expense which it may incur in making good  
any such failure of performance on the part of the Principal, and shall pay all laborers, mechanics, and  
subcontractors and material suppliers, and all persons who supply such person or persons, or subcontractors,  
with provisions and supplies for the carrying on of such work and shall fully reimburse the District for any  
excess in cost of construction over the cost set in the contract and any amendments thereto, occasioned by  
any default of the Principal under the contract and any amendments thereto, then this obligation shall be  
null and void, but otherwise shall remain in full force and effect.

No prepayment or delay in payment and no change, extension, addition, or alteration of any  
provision of the Contract agreed to between the Contractor and the District, and no forbearance on the part  
of the District, shall operate to relieve surety from any liability on this bond, and consent to make these  
alterations without further notice to or consent by the surety is hereby given.

The Surety for value received agrees that no change, extension of time, alteration or addition to the  
terms of the Contract, the specifications accompanying the Contract, or to the work to be performed under  
the Contract shall in any way affect its obligation on this bond, except as provided herein, and waives notice  
of any change, extension of time, alteration or addition to the terms of the Contract or to the work performed.  
The Surety agrees that modifications and changes to the terms and conditions of the Contract that increase  
the total amount to be paid to the Principal shall automatically increase the obligation of the Surety on the  
bond and notice to Surety is not required for such increased obligation.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

"PRINCIPAL"

\_\_\_\_\_  
Full legal company name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print name

"SURETY"

\_\_\_\_\_  
Full legal company name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print name

Address of local office and agent, and home  
offices of Surety Company:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\* Contractor shall attach Power of Attorney for person signing on behalf of Surety.

**EXHIBIT "E" - CHANGE ORDER**

NO. \_\_

Pursuant to Section GC-10, the following changes are hereby incorporated into this Contract:

- A. Description of Change:
  
- B. Time of Completion: The revised delivery date shall be \_\_\_\_\_. Liquidated damages, if any, shall be assessed based on the revised completion date.  
*OR*  
 The delivery date shall remain \_\_\_\_\_.
  
- C. Contract Price Adjustment: As a result of this Change Order, the Contract Price shall remain unchanged (be increased/decreased by the sum of \$\_\_\_\_\_ plus sales tax). This Change Order shall not provide any basis for any other payments to or claims by the Contractor as a result of or arising out of the performance of the work described herein. The new total revised Contract Price is \$\_\_\_\_\_, including changes incorporated by this Change Order.
  
- D. Except as specifically provided herein, all other Contract terms and conditions shall remain unchanged.

Public Utility District No. 2  
of Grant County, Washington

Full Legal Name of Contractor

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

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

Name of Authorized Signature  
Title

Name of Authorized Signature  
Title

Date: \_\_\_\_\_

Date: \_\_\_\_\_



**EXHIBIT “F” – CONTRACT DRAWINGS**

The Contract Drawings will be posted as a separate document on the District’s ProcureWare web site.

**EXHIBIT "G" – CERTIFICATE OF COMPLETION AND RELEASE**

FROM: \_\_\_\_\_  
(Contractor)

TO: Public Utility District No. 2 of Grant County, Washington  
(District)

Contract No. \_\_\_\_\_, entered into the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Between Public Utility District No. 2 of Grant County, Washington and  
\_\_\_\_\_ of \_\_\_\_\_,  
\_\_\_\_\_ for \_\_\_\_\_,  
\_\_\_\_\_  
\_\_\_\_\_

**Sample Only**

**KNOW ALL MEN BY THESE PRESENTS:**

1. The undersigned hereby certifies that there is due from and payable by the District to the Contractor under the Contract and duly approved Change Orders and modifications the balance of \$ \_\_\_\_\_.

2. The undersigned further certifies that in addition to the amount set forth in paragraph 1, there are outstanding and unsettled the following items which he claims are just and due and owing by the District to the Contractor:

- a. \_\_\_\_\_
- b. \_\_\_\_\_
- c. \_\_\_\_\_
- d. \_\_\_\_\_

**(Itemize claims and amounts due - If none, so state)**

3. The undersigned further certifies that all work required under this Contract including work required under Change Orders numbered \_\_\_\_\_ has been performed in accordance with the terms thereof, and that there are no unpaid claims for materials, supplies, or equipment and no claims of laborers or mechanics for unpaid wages arising out of the performance of this Contract, and that the wage rates paid by the Contractor and all Subcontractors were in conformity with the Contract provisions relating to said wage rates.

4. Except for the amounts stated under paragraphs 1 and 2, hereof, the undersigned has received from the District all sums of money payable to the undersigned under or pursuant to the above mentioned Contractor or any modification or change thereof.

Certificate of Completion and Release  
Page 2

5. That in consideration of the payment of the amount stated in paragraph 1 hereof the undersigned does hereby release the District from any and all claims arising under or by virtue of this Contract, except the amount listed in paragraph 2 hereof; provided however, that if for any reason the District does not pay in full the amount stated in paragraph 1 hereof, said deduction shall not affect the validity of this release, but the amount so deducted shall be automatically included under paragraph 2 as an amount which the Contractor has not released but shall release upon payment thereof. The Contractor further certifies that upon the payment of the amount listed in paragraph 1, hereof, he shall release the District from any and all claims of any nature whatsoever arising out of said Contractor or modification thereof, and shall execute such further released or assurances as the District may request.

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Name: \_\_\_\_\_

Date: \_\_\_\_\_

Authorized Representative

Location or Place Executed (City and State): \_\_\_\_\_

**EXHIBIT “H” – COLLECTIVE BARGAINING AGREEMENT, SECTION 2.5**

2.5 Contracting and Job Security

2.5.1

The District shall make appropriate provisions in any agreement entered into with any building trades, electrical or mechanical contractor or subcontractor, for the furnishing of work to the District, that such contractor or subcontractor shall conform to the Contract provisions of Washington State law affecting Public Utility District at the time of the contract award, except that contracts let in accordance with Section 2.5.2 shall require adherence to current wage rates. The District shall require contractors to furnish the District with the rates of wages and other employee benefits.

2.5.2

For purposes of the preceding paragraph with respect to contracts for line and substation maintenance and construction, including pole testing and tree trimming, current and prevailing wage rates, employee benefits and working conditions shall be defined as the equivalent of those expressed through collective bargaining for the Union's construction membership. Verification of payment shall be furnished to the Union by way of Contractor certified payroll documents upon request. It is agreed by the parties hereto that this requirement can be fulfilled by the contractors having an agreement with Local 77.

2.5.3

Written notice shall be given to the Union prior to the start of pending contract work.

2.5.4

It is recognized by both the Union and the District that a stable total work force is desirable. To this end, the District shall not use contracting as a reason for reduction of force. In the case of lack of work because of automation or technological change, reductions shall be made by attrition when reassignment is not feasible. Employees so affected shall not lose their established pay rate.

**EXHIBIT "I" – BOND IN LIEU OF RETAINAGE**

KNOW ALL MEN BY THESE PRESENTS, that we \_\_\_\_\_, as Principal, and \_\_\_\_\_, as Surety, are held and firmly bound unto Public Utility District No. 2 of Grant County, Washington (hereinafter "District"), and to any claimants eligible to file a lien or claim against monies retained by the District pursuant to RCW 60.28 (hereinafter collectively designated as "Obligees"), from monies earned by Principal in the sum stated below, to the payment of which, well and truly to be paid, we bind ourselves, or heirs, executors and successors jointly and severally, firmly by these presents.

The condition of the obligations is such that, whereas, the Principal and the District entered into a Contract for public improvement for \_\_\_\_\_ and, whereas, the Principal requested the District to accept this bond in lieu of all of the Contract retainage which the District would otherwise be required to withhold pursuant to Chapter 60.28 RCW; and whereas, the Principal has submitted to the District this bond executed by itself and the Surety, a corporation authorized to issue surety bonds in the State of Washington, in the penal sum of, \$ \_\_\_\_\_ lawful money of the United States of America, which is 5% of the Contract Price, and the Principal has requested the District, within 30 days of delivery of the bond to the District, to release the monies that would otherwise be retained; and the District has consented to permit Principal to file this bond in lieu hereof.

NOW, THEREFORE, if the Principal shall indemnify the Obligees from all loss which Obligees may suffer by virtue of the release of retainage to Principal on monies earned or to be earned, and shall pay any sum which Obligees may recover on their claims, together with costs of suit, reasonable legal fees, and interest to which the claimants may be entitled consistent with law and any claims, costs of suit and reasonable legal fees incurred by the District, then this obligation to be null and void, otherwise to be in full force and effect.

Provided: however, it is expressly understood and agreed:

1. This bond is given and accepted under and in accordance with the provisions of RCW 60.28 and is subject to all claims and liens and in the same manner and priority as set forth for retained percentages contained therein.
2. The laws of the State of Washington shall be applicable in the determination of the rights and obligations of the parties hereunder.
3. No right of action shall accrue upon or by reason hereof to, or for the use or benefit of anyone other than the Obligees herein identified.
4. The aggregate liability of the Surety under this bond for claims against this bond shall not exceed the penal sum of this bond unless change orders, changes in quantities of work or materials provided or other amendments to the Public improvement Contract increase the amount the District is required to retain, in which event the aggregate liability of the Surety shall increase by a sum equaling the increase in the Contract Price multiplied by 5%.
5. The Surety acknowledges that increases in Contract Price may occur as identified in the preceding paragraph. The Surety hereby waives any defense of lack of notice of said increases and the consequent increases in retainage released to the Principal against claims by the Obligees, or any of them.

- 6. In the event Principal fails at any time to pay persons protected under Washington law, RCW Chapter 60.28, or the District has reason to believe that the District or other Obligee has a claim against the retainage or for other good cause, the District claim against the retainage may, at its option, resume retaining from monies earned by Principal such amount as it would otherwise be entitled to retain had this bond not been accepted. Notwithstanding the District's resuming such retainage, this bond shall remain in full force and effect to the extent of its penal sum, limited to the amount of retainage released to the Principal. After Principal has paid protected persons or otherwise cured any default, the District may, at its option, again release retainage pursuant to this agreement. Notwithstanding any action the District may take pursuant to this section, Surety shall remain liable as set forth above. It shall be no defense, by Surety or Principal, against any claim under this bond that the District should have resumed retaining monies.

IN WITNESS WHEREOF, said Principal and Surety have hereunto set their hands and seal this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

"PRINCIPAL"

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Attorney in Fact

"SURETY"

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Attorney in Fact

Address of local office and agent, and home offices of Surety Company:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\* Contractor shall attach Power of Attorney for person signing on behalf of Surety.

**EXHIBIT "J" – DISTRICT INSTRUCTIONS**

No. \_\_\_\_\_

Contract No.:	170-12475	Drawing No. (if applicable):	
Project Name:			

This Instruction is issued in accordance with the terms and conditions of the Contract Documents as:

- 1. An interpretation of Contract Documents, or
- 2. An order to proceed immediately with minor changes not affecting Contract Price or time for completion of the work.

INSTRUCTION:

Sample Only

DO NOT PROCEED with the Instruction 1 or 2 above if you believe this Instruction shall provide the basis for a claim or increase in the Contract Price or time for completion of the work. By signing this Instruction, Contractor hereby agrees that as a result thereof, there shall be no change in Contract Price or time of completion and waives any claim relating thereto.

RECEIPT ACKNOWLEDGED AND INSTRUCTION ACCEPTED:

Public Utility District No. 2  
of Grant County, Washington

Full Legal Name of Contractor

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

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

Name of Authorized Signature  
Title

Name of Authorized Signature  
Title

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## COMMERCIAL EVALUATION

<b>Contract No.:</b>	170-12475	<b>Contract Title:</b>	Furnishing Steel Structures for the Quincy Transmission Expansion Project
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<b>Bid Opening Date</b>		1/29/2025	
<b>Total No. of Bidders:</b>		4	
<b>Was prequalification required for bidding?</b>		No	
<b>No. of potential Bidders who obtained the Bid documents:</b>		59	
<b>Was this Bid advertised in the newspaper?</b>	Yes	<b>If yes, where?</b>	Columbia Basin Herald
<b>Addenda issued?</b>	Yes	<b>If yes, how many</b>	2

Additional Information

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<b>Cost Estimate:</b>	<b>\$10,000,000.00</b>
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**Bidders**

<b>Name of Bidder:</b>	Western Utility Telecom		
<b>Total Bid Price:</b>	\$3,758,418.00	<b>Bid Security:</b>	Bid Bond
<b>Signature Certification:</b>	NA	<b>Delivery / Completion:</b>	As required
<b>Addendum Received:</b>	Yes	<b>Bidder's Data Provided:</b>	Yes
<b>Commercially Compliant?</b>	Yes	<b>Technically Compliant?</b>	Yes

Additional Information:

*Commercially compliant pending Derek's confirmation Bidder is compliant with Bidders Data requirements.
----------------------------------------------------------------------------------------------------------

<b>Name of Bidder:</b>	Valmont Industries		
<b>Total Bid Price:</b>	\$3,783,280.00	<b>Bid Security:</b>	Bid Bond
<b>Signature Certification:</b>	NA	<b>Delivery / Completion:</b>	As required
<b>Addendum Received:</b>	Yes	<b>Bidder's Data Provided:</b>	No
<b>Commercially Compliant?</b>	No (see below)	<b>Technically Compliant?</b>	No (see add'l information)

Additional Information:

Bid Form not complete – Quote details provided separately. Exceptions – Cancellation Clause provided and Valmont T&Cs Exception to SR-2 – Automatic rejection
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<b>Name of Bidder:</b>	MVA Power		
<b>Total Bid Price:</b>	\$4,086,832.28	<b>Bid Security:</b>	Bid Bond
<b>Signature Certification:</b>	NA	<b>Delivery / Completion:</b>	As required
<b>Addendum Received:</b>	Yes	<b>Bidder's Data Provided:</b>	Yes
<b>Commercially Compliant?</b>	Yes	<b>Technically Compliant?</b>	N/A

Additional Information:

<p>*Derek – Please confirm they are compliant with Technical requirements of Section ITB. 8 – Bidders Data</p> <p>*See note from Bidder on page 49/203 regarding Summary of Design of Steel Poles document – No access to USB Drive – Could send separately.</p>
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<b>Name of Bidder:</b>	TransAmerican Power Products (TAPP)		
<b>Total Bid Price:</b>	\$4,228,623.00	<b>Bid Security:</b>	Bid Bond
<b>Signature Certification:</b>	NA	<b>Delivery / Completion:</b>	As required
<b>Addendum Received:</b>	Yes	<b>Bidder's Data Provided:</b>	Yes
<b>Commercially Compliant?</b>	Yes	<b>Technically Compliant?</b>	No (see add'l information)

Additional Information:

<p>*See delivery exceptions in Table on pages 32, 33, and 34</p> <p>*Derek – please confirm all of Bidders Data requirements have been met</p>
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Motion authorizing the General Manager/CEO, on behalf of Grant PUD, to execute new Contract Agreement 430-12302R-A HDR Engineering, Inc. with HDR Engineering, Inc. in the amount not to exceed \$600,000 for services to support Energy Supply Management (ESM) Research Department.

## MEMORANDUM

February 26, 2025

**TO:** Rich Wallen, General Manager/Chief Executive Officer

**VIA:** John Mertlich, Chief Commercial Officer JM  
Andrew Munro, Senior Manager – ESM Industry & Market Research AM  
Dawn Van Diest, Attorney ESM DVD  
Dawn Van Diest

**FROM:** Kevin Marshall, Project Specialist X KM  
David Dempsey, Engineer IV DTD  
DTD  
Bryce Greenfield, Engineer IV BG

**SUBJECT:** Award of Contracts 430-12302R-A and 430-12302R-B for Engineering Services

**Purpose:** To request Commission approval to award Engineering Contracts 430-12302R-A and 430-12302R-B.

### **Background:**

- Contract 430-12302R-A is recommended to be awarded to HDR, Inc. for engineering services to support the Energy Supply Management (ESM) Research Department in the amount of \$600,000.
- Contract 430-12302R-B is recommended to be awarded to Stantec Consulting Services, Inc. for engineering services to support the ESM Research Department in the amount of \$600,000.
- These engineering contracts are essential to support the District's ongoing discovery work to identify the most commercially viable and economically feasible energy generation and energy storage projects. These efforts are critical to meeting the growing energy demand in Grant County and ensuring future energy security for our customers.
- A third contract for additional engineering services is currently under negotiation. Assuming that the negotiations are successful, this contract will also be awarded in the amount of \$600,000 (Contract 430-12302R-C).

### **Discussion:**

A Request for Proposals (RFP) was initially issued in early 2024 to support the ESM Research Department in evaluating potential energy generation and energy storage projects. However, the RFP was withdrawn when it was determined Grant PUD may seek federal funding for these services in the future. As a result, the procurement processes were revised to align with the federal procurement standards of 2 CFR 200, and the RFP was reissued as a Request for Qualifications (RFQ) accordingly.

The RFQ scope covers broad engineering services, reflecting the anticipated need for multiple engineering companies to adequately cover all necessary services for energy generation exploration. The RFQ includes the following service categories:

- **Category A:** Engineering support for technical evaluation of energy generation and energy storage technologies. The following eight technologies are included for evaluation:
  - Solar generation technologies.
  - Wind generation technologies.
  - Utility-scale battery technologies.
  - Hydrogen-based electrical generation technologies.
  - Natural gas generation technologies.
  - Pumped storage technologies/project evaluations.
  - Other generation technologies that the District may want to research.
  - Nuclear/Small Modular Reactor (SMR) Technologies.
  
- **Category B:** Engineering support services for technical evaluation of demand-side management.
  
- **Category C:** Engineering support services for site evaluations.
  
- **Category D:** Engineering support services for conceptual design and cost estimating.
  
- **Category E:** Support services for land and easement acquisitions.
  
- **Category F:** Miscellaneous Engineering support services for other research and evaluation needs.

The contracts are expected to be in effect until 12/31/2029.

The District has not needed to procure additional generation and capacity resources for decades. The Priest Rapids Project (PRP) has historically met these needs. However, due to increases in load demand and the limitations of the PRP, these contracts are vital for assessing and implementing new energy projects to meet both short-term and long-term energy generation and capacity requirements. Four firms submitted proposals on this RFQ. Staff determined the fourth firm was not qualified for this RFQ.

**Justification:**

- These contracts will provide essential assessments for potential energy generation projects, and engineering services to support approved projects.
- Without these contracts, internal staff lack the necessary expertise and support to evaluate and implement new generation and capacity projects. The District would have to solely rely on market purchases and external RFP responses for additional generation and capacity.
- Performing this work internally would require significant hiring, which would be both costly and inefficient. Engineering support contracts can provide subject matter expertise on an as-needed basis, reducing downtime and ensuring specialized expertise when required. Hiring staff internally to cover the full range of needed expertise would be impractical and

cost prohibitive. The research provided by these contracts will help the District establish the lowest cost options to meet our increasing load.

- These contracts are needed as utilities across the U.S. are facing similar challenges with new generation and capacity. Equipment suppliers already have significant backlogs and delays in initiating projects, which will push their timelines further out.
- This approach is consistent with the practices of other utilities in assessing and implementing new generation projects.

**Financial Considerations:**

- These contracts will help the District identify the least-cost options to meet growing load.
- These are cost plus fixed fee contracts. An Independent Cost Estimate has been performed, and the proposed consultant rates align within an acceptable range of 6 percent of the estimate.
- These contracts will be awarded for a five-year period.
- The rates in these contracts are aligned with previous contracts, accounting for inflation.
- This work is budgeted in the O&M budget within the ESM Research Department.
- Cost Center: KA5000, Budget Years: 2025-2029.
- Total cost to the District: \$1,800,000

**Recommendation:** It is recommended that the Commission approve the award of Engineering Contracts 430-12302R-A and 430-12302R-B to HDR, Inc. and Stantec Engineering Services, Inc., respectively, in the amount of \$600,000 each.

**Legal Review:** See attached e-mail(s).

cc: Patrick Bishop  
Lori Englehart-Jewell  
Kristin Fleisher  
Leah Mauceri  
Beau Schwab

Signature: John Mertlich  
Email: [jmertlich@gcpud.org](mailto:jmertlich@gcpud.org)

Signature: Andrew Munro  
Andrew Munro (Feb 26, 2025 15:56 PST)  
Email: [Amunro@gcpud.org](mailto:Amunro@gcpud.org)

Signature: DvD  
Dawn Van Diest (Feb 26, 2025 16:13 PST)  
Email: [dvandiest@gcpud.org](mailto:dvandiest@gcpud.org)

Signature: Kevin Marshall  
Email: [kmarsha@gcpud.org](mailto:kmarsha@gcpud.org)

Signature: Dave Dempsey  
Dave Dempsey (Feb 26, 2025 16:00 PST)  
Email: [ddempsey@gcpud.org](mailto:ddempsey@gcpud.org)

Signature: BGreenfield  
Brian Greenfield (Feb 26, 2025 15:59 PST)  
Email: [bgreenfield@gcpud.org](mailto:bgreenfield@gcpud.org)

## PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (“Agreement” or “Contract”), effective upon the date of the last signature below (“Effective Date”), is by and between Public Utility District No. 2 of Grant County, Washington (“District”) and HDR Engineering, Inc. (“Contractor”);

### Recitals:

The District desires to obtain professional consulting engineering services as needed to support the District’s Energy Supply Management (ESM) Research Group; and

The District's Chief Commercial Officer believes the Contractor will provide subject matter expertise and resources where the District may not have expertise in-house or does not have adequate internal resources to support the projects of; and

The Contractor, through an established review procedure as specified by RCW Chapter 39.80 and 2 CFR 200.320(b)(2)(iv), has been selected and is willing to provide services on the terms and conditions hereinafter stated.

NOW, THEREFORE, in consideration of the mutual covenants herein, the parties hereto agree as follows:

#### 1. Scope of Services

The Contractor shall function as a key techno-economic advisor to District leadership to ensure a sound business, engineering, and project management program is developed and executed and will augment the District’s technical and managerial capabilities. The Contractor shall provide technical knowledge, project management, project execution expertise, and risk management capabilities in support of the District’s project success.

The District may, at the District’s discretion, authorize the Contractor to perform specific tasks by means of a Task Authorization for Professional Services (Appendix “C”) to be signed by both the District and the Contractor. Such authorization may be issued by the District Representative. The authorization will define the scope of the task, any time requirements and budget limitations.

The initial scope of services for this Agreement is anticipated to include, but not necessarily be limited to, the following:

- A. Provide engineering support services for technical and economic evaluation of generation and energy storage technologies including, but not limited to:
  - 1. Solar generation technologies.
  - 2. Wind generation technologies.
  - 3. Utility scale battery technologies.
  - 4. Hydrogen electrical generation technologies.
  - 5. Natural gas generation technologies.
  - 6. Pumped storage technologies/project evaluations.
  - 7. Other generation technologies that the District may want to research.
  - 8. Small Modular Reactor Technologies.

The Contractor shall assist in identifying potential risks and mitigation recommendations.

- B. Provide engineering support services for technical and economic evaluation of demand side management including but not limited to:
1. Smart Grid.
  2. Evaluation of the District's existing AMI and fiber optic systems for use in demand side management.
  3. Other technologies as determined by the District.

The Contractor shall assist in identifying potential risks and mitigation recommendations.

- C. Provide engineering support services for site evaluations including, but not limited to:
1. Site Characterization studies (access, permitting, geotechnical, seismic, cultural, fish & wildlife, etc.).
  2. Evaluation of permitting requirements based on technologies being considered.
  3. Transmission connectivity requirements.
  4. Project planning and estimating.
- D. Provide engineering support services for conceptual design and estimating. This work potentially includes all technologies identified.
- E. Provide support services for land and easement acquisition including, but not limited to:
1. Determination of ownership for land and improvements.
  2. Determination of existing easements, permits, etc.
  3. Preparation of appraisals for parcels and, if appropriate, affected improvements.
  4. Preparation of recommendations to District for offers to be made on appropriate easements.
  5. Negotiation with owners; secure appropriate acquisition options and easements in properly recordable form with necessary signatures; and pay consideration.
- F. Miscellaneous engineering support services for other research and evaluation needs
1. Risk identification and mitigation.
  2. Research into emerging technologies as directed by the District.
  3. Future District identified needs for engineering support.

Additional work to be performed under future phases may include developing final designs, providing plans, specifications, construction cost estimates, construction schedules, and services during construction for the projects.

The District makes no guarantee as to the actual amount of work to be done. The District reserves the right to suspend or terminate any authorized task at any time or to extend the Contract beyond the initial term by issuance of a Change Order in accordance with Section 6 to complete any work already initiated and/or authorized under the original term and scope of the Contract.

## 2. Applicability of Federal Requirements

This Agreement may be funded using federal funds and subject to one or more financial assistance agreements between the District and a federal awarding agency. The provisions of Appendix "F", Federal Requirements, are required and applied when the District utilizes federal funds to pay for a contractor's performance under any contract. Accordingly, the Contractor agrees that the terms

and conditions in Appendix "F" apply to this Agreement between the District and the Contractor in all situations where the Contractor has been paid or will be paid with federal funds.

3. Independent Contractor

- A. The Contractor shall operate as, and have the status of, an independent Contractor and will not be an agent or employee of the District nor will it be entitled to any employee benefits provided by the District. All the Contractor's activities will be conducted at its own risk and be in compliance with all federal, state and local laws.
- B. The Contractor shall perform its services with the level of skill, care and diligence normally provided by and expected of professional persons performing services similar to or like those to be performed hereunder. Contractor understands that the District will be relying upon the accuracy, competency, credibility and completeness of the services provided by the Contractor hereunder and that the District and its customers will be utilizing the results of such services.

4. Term - Schedule

This Agreement shall remain in full force and effect until December 31, 2029 or until terminated pursuant to Section 18.

5. Compensation and Payment

- A. Compensation for services rendered and all reimbursable costs shall be per the rates set forth in Appendix "A.1", Rate Schedule, which rates and costs shall not be subject to change until two years after the Effective Date of this Agreement. Any changes to rates and costs shall only be on a prospective basis and shall occur no more frequently than once every 12 months thereafter. Each such change shall not exceed the lesser of i.) 5% or ii.) the percentage increase in the Bureau of Labor Statistics Consumer Price Index (CPI-U) for the West Urban region occurring during the immediately preceding 12 month period for which CPI-U data is available. Contractor shall notify the District in writing at least 30 days prior to any such rate increase going into effect. A payment is considered made on the day it is mailed or is sent through electronic or wire transfer.

In no event however, shall the total amount paid to Contractor for services and all reimbursable costs exceed the sum of \$600,000.00 USD unless a Change Order authorizing the same is issued in accordance with Section 6 below.

- B. Contractor shall submit monthly invoices to the attention of:

Public Utility District No. 2  
of Grant County, Washington  
Attn: Accounts Payable  
PO Box 878  
Ephrata, WA 98823  
Or [AccountsPayable@gcpud.org](mailto:AccountsPayable@gcpud.org)

- C. Invoices shall include the Contract number, a detailed description of the work performed, and a report of what percentage of total labor hours by Contractor and each and every Subcontractor/Subconsultant of the Contractor were performed by small and diverse businesses during the billing period. Any Labor Categories or reimbursable expenses shall be included on the invoice (see Appendix "A.1" and "A.2").



- D. Payment will be made by the District upon completion of work following District approval of Contractor's invoices. Invoice shall be subject to the review and approval of the District. Invoice shall be in a detailed and clear manner supported by such information the District may require. The District will make payment to Contractor within 30 days after District's receipt and approval of said invoice. Contractor understands and agrees that by executing this Contract with the District, the District shall make payment(s) by automated clearing house (ACH).
- E. The District Representative may approve additional Contractor employees, personnel categories, and/or equipment rates to be added to the Rate Schedule, if applicable, provided that any additional employees have at least equivalent training and skills and are compensated at the same or lower rates than those listed on the current approved Rate Schedule for similar work. There shall be no change in the total Contract not to exceed amount. All additions must be approved in writing prior to performing services under the Contract.

6. Change Orders

Except as provided herein, no official, employee, agent or representative of the District is authorized to approve any change in this Contract and it shall be the responsibility of the Contractor before proceeding with any change, to satisfy itself that the execution of the written Change Order has been properly authorized on behalf of the District. The District's management has limited authority to approve Change Orders. The current level and limitations of such authority are set forth in District Resolution No. 8609 which may be amended from time to time. Otherwise, only the District's Board of Commissioners may approve changes to this Contract.

Charges or credits for the work covered by the approved changes shall be determined by written agreement of the parties and shall be made on Change Order form as reflected on Appendix "B".

When a change is ordered by the District, as provided herein, a Change Order shall be executed by the District and the Contractor before any Change Order work is performed. When requested, Contractor shall provide a detailed proposal for evaluation by the District, including details on proposed cost. The District shall not be liable for any payment to Contractor, or claims arising there from, for Change Order work which is not first authorized in writing. All terms and conditions contained in the Contract Documents shall be applicable to Change Order work. Change Orders shall be issued on the form attached as Appendix "B" and shall specify any change in time required for completion of the work caused by the Change Order and, to the extent applicable, the amount of any increase or decrease in the Contract Price.

7. Taxes

- A. Except for the Washington State retail sales and use taxes as may be levied upon the Contract, pursuant to RCW Chapters 82.08 and 82.12, the Contract Price includes and the Contractor shall have the full exclusive liability for the payment of all taxes, levies, duties and assessments of every nature due and payable in connection with this Contract or its employees and subcontractors performing work related to this Contract.
- B. Washington State retail sales tax and use taxes levied upon this Contract pursuant to RCW Chapters 82.08 and 82.12 are excluded from the rates and if applicable will be reimbursed as follows:
  - 1. If the Contractor has, or is required to have a valid Washington State sales tax identification number, the identification number shall be furnished to the District upon request. The Contractor shall make payment of any Washington State retail

sales and use taxes due and Contractor shall be reimbursed by the District for the same. Contractor shall be solely responsible for any interest or penalties arising from late or untimely payment of said taxes.

2. If the Contractor is not required to have a valid Washington State sales tax identification number, it shall notify the District of the same. In such event, the District, after receiving proper invoices from Contractor, shall make payment of said Washington State retail sales and use taxes levied upon this Contract to the Washington State Department of Revenue.

8. Hold Harmless and Indemnification

Contractor shall, at its sole expense, indemnify, defend, save, and hold harmless the District, its officers, agents, and employees from all actual or potential claims or losses, including costs and legal fees at trial and on appeal, and damages or claims for damages to property or persons, suffered by anyone whomsoever, including the District, to the extent caused by any negligent act of or omission of the Contractor or its subcontractors, excluding damages caused by the negligence of the District, in the administration or performance of this Agreement or any subcontracts, and for which either of the parties, their officers, agents, or employees may or shall be liable. In situations where liability for damages arises from claims of bodily injury to persons or damage to property, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the Contractor or its subcontractors. Contractor waives its immunity under industrial insurance, Title 51 RCW, to the extent necessary to effectuate this indemnification/hold harmless agreement. Contractor's indemnification obligation shall not apply to liability for damages arising out of bodily injury to a person or damage to property caused by the negligence of the District or its agents or employees and not attributable to any act or omission on the part of the Contractor. In the event of damages to a person or property caused by or resulting from the concurrent negligence of District or its agents or employees and the Contractor or its agents or employees, the Contractor's indemnity obligation shall apply only to the extent of the Contractor's (including that of its agents and employees) negligence.

Contractor acknowledges that by entering into this Contract with the District, it has mutually negotiated the above indemnity provision with the District. Contractor's indemnity and defense obligations shall survive the termination or completion of the Contract and shall remain in full force and effect until satisfied in full.

9. Insurance

Prior to the commencement of any work under this Agreement, and at all times during the term of this Agreement, Contractor shall obtain and maintain continuously, at its own expense, a policy or policies of insurance with insurance companies rated A- VII or better by A. M. Best or A by S&P, as enumerated below. Any deductible, self-insured retention or coverage via captive \$25K or above must be disclosed and is subject to approval by the District's Risk Manager. The cost of any claim payments falling within the deductible or self-insured retention shall be the responsibility of the Contractor and not recoverable under any part of this Contract.

A. Contractor Required Insurance

1. **General Liability Insurance:** Commercial general liability insurance, covering all operations by or on behalf of Contractor against claims for bodily injury (including death) and property damage (including loss of use). Such insurance shall provide coverage for:
  - a. Premises and Operations;

- b. Products and Completed Operations;
- c. Contractual Liability;
- d. Personal Injury Liability (with deletion of the exclusion for liability assumed under Contract);

with the following **minimum limits**:

- e. \$1,000,000 Each Occurrence
- f. \$1,000,000 Personal Injury Liability
- g. \$2,000,000 General Aggregate (per project)
- h. \$2,000,000 Products and Completed Operations Aggregate

Commercial general liability insurance will include the District as additional insured on a primary and non-contributory basis. A waiver of subrogation will apply in favor of the District.

2. **Workers' Compensation and Stop Gap Employers Liability:** When applicable, Workers' Compensation Insurance as required by law for all employees. Employer's Liability Insurance, including Occupational Disease coverage, in the amount of **\$1,000,000 for Each Accident, Each Employee, and Policy Limit.** Employer's Liability may be procured as an endorsement to the commercial general liability via the Stop Gap Coverage endorsement. The Contractor expressly agrees to comply with all provisions of the Workers' Compensation Laws of the states or countries where the work is being performed, including the provisions of Title 51 of the Revised Code of Washington for all work occurring in the State of Washington.
3. **Automobile Liability Insurance:** Automobile Liability insurance against claims of bodily injury (including death) and property damage (including loss of use) covering all owned (if any), rented, leased, non-owned, and hired vehicles used in the performance of the work, with a minimum limit of \$1,000,000 per accident for bodily injury, property damage, or death combined and containing appropriate uninsured motorist and No-Fault insurance provision, where applicable.

Automobile liability insurance will include the District as additional insured on a primary and non-contributory basis. A waiver of subrogation will apply in favor of the District.

4. **Excess Insurance:** Excess (or Umbrella) Liability insurance with a **minimum limit of \$2,000,000 per occurrence and in the aggregate.** This insurance shall provide coverage in excess of the underlying primary liability limits, terms, and conditions for each category of liability insurance in the foregoing subsections 1, 2 (Employer's Liability only) and 3. If this insurance is written on a claims-made policy form, then the policy shall be endorsed to include an automatic extended reporting period of at least five years or the statute of repose.

Umbrella/Excess liability insurance will include the District as additional insured on a primary and non-contributory basis. A waiver of subrogation will apply in favor of the District.

5. **Professional Liability:** Contractor shall provide professional liability insurance with a **minimum limit of \$5,000,000 per claim.**

If such policy is written on a claims made form, the retroactive date shall be prior to or coincident with the Effective Date of this Agreement. Claims made form coverage shall be maintained by the Contractor for a minimum of five years following the termination of this Agreement, and the Contractor shall annually provide the District with proof of renewal. If renewal of the claims made form of coverage becomes unavailable, or economically prohibitive, the Contractor shall purchase an Extended Reporting Period Tail or execute another form of guarantee acceptable to the District to assure financial responsibility for liability for services performed.

If Contractor shall hire subcontractor for all operations and risk involving professional services exposure, this requirement may be satisfied by subcontractor's policies. Contractor shall impute the insurance requirements stated in this section to subcontractor by written contract or written agreement. Any exceptions must be mutually agreed in writing with the District.

- B. Evidence of Insurance - Prior to performing any services, and within 10 days after receipt of the Contract Award, then annually thereafter, the Contractor shall file with the District a Certificate of Insurance showing the Insuring Companies, policy numbers, effective dates, limits of liability and deductibles with copies of the endorsements or redacted policy documents where policy terms required under Section A are met.

Failure of the District to demand such certificate or other evidence of compliance with these insurance requirements or failure of the District to identify a deficiency from the provided evidence shall not be construed as a waiver of the Contractor's obligation to maintain such insurance. Acceptance by the District of any certificate or other evidence of compliance does not constitute approval or agreement by the District that the insurance requirements have been met or that the policies shown in the certificates or other evidence are in compliance with the requirements.

The District shall have the right but not the obligation of prohibiting the Contractor or subcontractor from entering the project site until such certificates or other evidence of insurance has been provided in full compliance with these requirements. If the Contractor fails to maintain insurance as set forth above, the District may purchase such insurance at the Contractor's expense. The Contractor's failure to maintain the required insurance may result in termination of this Contract at the District's option.

- C. Subcontractors - Contractor shall ensure that each subcontractor meets the applicable insurance requirements and specifications of this Agreement. All coverage for subcontractors shall be subject to all the requirements stated herein and applicable to their profession. Contractor shall furnish the District with copies of certificates of insurance evidencing coverage for each subcontractor upon request.
- D. Cancellation of Insurance - The Contractor shall not cause any insurance policy to be canceled or permit any policy to lapse. Insurance companies, to the extent commercially available, or Contractor shall provide 30 days advance written notice to the District for cancellation or any material change in coverage or condition, except 10 days advance written notice for cancellation due to non-payment of premium. Should the Contractor receive any notice of cancellation or notice of nonrenewal from its insurer(s), Contractor shall provide immediate notice to the District no later than two days following receipt of such notice from the insurer. Notice to the District shall be delivered by facsimile or email.

Contractor may not assign this Agreement, in whole or in part, voluntarily or by operation of law, unless approved in writing by the District.

11. Records - Audit

- A. The results of all work and services performed by the Contractor hereunder shall become the property of the District upon completion of the work herein performed and shall be delivered to the District prior to final payment.
- B. Until the expiration of three years after final acceptance by District of all the work, Contractor shall keep and maintain complete and accurate records of its costs and expenses related to the work or this Contract in accordance with sound and generally accepted accounting principles applied on a consistent basis. To the extent this Contract provided for compensation on a cost-reimbursable basis or whenever such records may, in the opinion of the District, be useful in determining any amounts payable to Contractor or District (e.g., the nature of a refund, credit or otherwise), Contractor shall provide District access to all such records for examination, copying and audit.

12. Nondisclosure

Contractor agrees that it will not divulge to third parties, without the written consent of the District, any information obtained from or through District in connection with the performance of this Contract. Contractor further agrees that it will not, without the prior written consent of District, disclose to any third party any information developed or obtained by the Contractor in the performance of this Contract and, if requested by District, to require its subcontractors, if any, to execute a nondisclosure agreement prior to performing any services under this Contract. Nothing in this section shall apply to:

- A. Information which is already in the Contractor's possession not subject to any existing confidentiality provisions,
- B. Information which, at the time of disclosure, is in the public domain by having been printed and published and available to the public libraries or other public places where such data is usually collected, and
- C. Information required to be disclosed by court order or by an agency with appropriate jurisdiction.

13. Public Records Act

The District is subject to the disclosure obligations of the Washington Public Records Act of RCW 42.56. The Contractor expressly acknowledges and agrees that any information Contractor submits is subject to public disclosure pursuant to the Public Records Act or other applicable law and the District may disclose Contractor's proposal and/or information at its sole discretion in accordance with its obligations under applicable law.

14. Applicable Law

Contractor shall comply with all applicable federal, state and local laws and regulations including amendments and changes as they occur. All written instruments, agreements, specifications and other writing of whatsoever nature which relate to or are a part of this Agreement 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 District and Contractor shall be governed by the laws of the State of Washington. Venue of any action filed to enforce or interpret the provisions of

this Agreement shall be exclusively in the Superior Court, County of Grant, State of Washington or the Federal District Court for the Eastern District of Washington at the District’s sole option. In the event of litigation to enforce the provisions of this Agreement, the prevailing party shall be entitled to reasonable legal fees in addition to any other relief allowed.

15. Subcontracts/Purchases

- A. The Contractor is authorized to enter into subcontracts required for the work. Any subcontracts shall be approved in advance by the District Representative and Procurement Officer. The Contractor is not authorized to make any purchases of materials or equipment other than those specified as other direct costs in Appendix “A.1” and mutually agreed to on the execution date of this Agreement.
- B. The Contractor shall consider that this Contract may be federally funded in whole or in part and may therefore be subject to certain federal provisions. Further, a federal awarding agency may require that certain terms and conditions of this Contract be included in all subcontracts. The Contractor shall be responsible for ensuring all applicable mandatory federal awarding agency provisions are included in all subcontracts. These mandatory provisions are set forth in Appendix “F”, Federal Requirements. The Contractor shall bear full responsibility for delays in performing the work if subcontractor agreements fail to include all applicable provisions.
- C. In the event subcontracts other than those specified in Appendix “A.1” are required for the work, Contractor shall obtain three quotes and submit to the District Representative and Procurement Officer for approval prior to entering into such subcontracts. The District Representative and Procurement Officer may request copies of the subcontractor agreements from the Contractor. Subcontracted work approved in accordance with this section shall be invoiced at cost. A copy of the invoice showing actual cost must be submitted with the Contractor’s invoice to the District.

16. Notices

Any notice or other communication under this Contract given by either party shall be sent via email to the email address listed below, or mailed, properly addressed and stamped with the required postage, to the intended recipient at the address and to the attention of the person specified below and shall be deemed served when received and not mailed. Either party may from time to time change such address by giving the other party notice of such change.

<p><u>District</u>                  Kevin Marshall                  Public Utility District No. 2                  of Grant County, Washington PO Box 878                  154 A Street SE, Ephrata, WA 98823                  509-760-9046  <a href="mailto:kmarsha@gcpud.org">kmarsha@gcpud.org</a></p>	<p><u>Contractor</u>                  Mark Jones                  HDR Engineering, Inc.                  1050 SW 6<sup>th</sup> Ave., Suite 1800                  Portland, OR 97204-1134                  503-423-3810  <a href="mailto:mark.jones@hdrinc.com">mark.jones@hdrinc.com</a></p>
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For purposes of technical communications and work coordination only, the District designates Kevin Marshall as its representative. Said individual shall have no authority to authorize any activity which will result in any change in the amount payable to Contractor. Such changes, if any, must be by written Change Order issued in accordance with Section 6 to be valid and binding on the District.

17. License and Delivery of Works Subject to Copyright and Data Rights

The Contractor grants to the District, a paid-up, royalty-free, nonexclusive, irrevocable, worldwide license in data first produced in the performance of this Contract to reproduce, publish, or otherwise use, including prepare derivative works, distribute copies to the public, and perform publicly and display publicly such data. For data required by the Contract but not first produced in the performance of this Contract, the Contractor will identify such data and grant to the District or acquire on its behalf a license of the same scope as for data first produced in the performance of this Contract. Data, as used herein, shall include any work subject to copyright under 17 U.S.C. § 102, for example, any written reports or literary works, software and/or source code, music, choreography, pictures or images, graphics, sculptures, videos, motion pictures or other audiovisual works, sound and/or video recordings, and architectural works. Upon or before the completion of this Contract, the Contractor will deliver to the District data first produced in the performance of this Contract and data required by the Contract but not first produced in the performance of this Contract in formats acceptable by the District. Any modification or reuse of such data by District for purposes other than those intended by this Agreement shall be at District's sole risk and without liability to the Contractor.

18. Termination

- A. District may, at any time, for any reason, terminate Contractor's services in connection with this Agreement, or any part thereof, by designating that portion of the services to be terminated. In case of termination pursuant to this Section A, District will make payment at the rates specified in this Agreement for services properly performed up to the date of termination. However, in no event shall Contractor be entitled to any other payment to or any anticipated fee or profit on unperformed work.
- A. In the event of Contractor's breach or abandonment of this Contract, the District may, after providing Contractor written notice of the breach and a period of 10 days to cure, terminate this Agreement. The District without waiving any other remedies available to it, may retain any monies otherwise due Contractor under this Agreement to the extent such sums are required to compensate District, in whole or in part, for any loss or damage caused by Contractor's breach or abandonment.

19. Non-Waiver

No waiver of any provision of this Agreement, or any rights or obligations of either Party under this Agreement, shall be effective, except pursuant to a written instrument signed by the Party or Parties waiving compliance, and any such waiver shall be effective only in the specific instance and for the specific purpose stated in such writing. The failure of either Party to require the performance of any term of this Agreement or the waiver of either Party of any breach under this Agreement shall not operate or be construed as a waiver of any other provision hereof, nor shall it be construed as a waiver of any subsequent breach by the other Party hereto.

20. Project Documentation Transfer Methods

- A. The District requires use of the District O365 SharePoint site for all letters, requests for information, safety reports, submittals (except samples), transmittals, and test reports. The requirement to use the District O365 SharePoint site for delivery of these documents supersedes any other requirements for document delivery in the Contract Documents.
- B. The District and Contractor shall mutually agree on the user list for the O365 SharePoint site. All users shall be set up with an individual user name and password after the Contractor has provided a signed "Remote Access Application Form and Computer System Remote Access User Security Agreement" for each user.

- C. All files shall be placed in the correct library corresponding to the subject matter of the file. The following libraries shall be setup by the District: Change Order, Change Order Proposal, District Instruction, Invoices, Letters from Contractor, Letters from District, Meeting Minutes, Request for Information, Safety Reports-Accidents, Schedules, Signed Documents, Submittal, Test Reports, Transmittals, Task Authorization. Original signed Change Orders must also be physically sent to the attention of the Procurement Officer. The District reserves the right to create or delete libraries based on the project documentation requirements. Files stored on the District's O365 SharePoint site shall remain on the O365 SharePoint site for the duration of the project.
  
- D. File names shall be as follows, where Y indicates a sequential number starting with 1, A indicates a sequential alpha character for each revision – A = first revision, B = second revision, etc. The following abbreviations may be used: "RFI" for "Request for Information".
  - 1. Change Order Proposals: "Change Order Proposal Y"
  - 2. Letters: "Letter from Contractor Y"
  - 3. Requests for Information: "Request for Information Y" or "RFI Y"
  - 4. Resubmitted Requests for Information: "Request for Information YA" or "RFI YA"
  - 5. Safety/Accident Reports: "Safety Report Y"
  - 6. Submittals: "Submittal Y"
  - 7. Resubmitted Submittals: "Submittal YA"
  - 8. Test Reports: "Test Report Y"
  
- E. The receipt date for all documents shall be the same date as indicated by the District O365 SharePoint file posting date unless the documents are placed on the District O365 SharePoint site after 2 p.m. Pacific Standard Time, then the document receipt date shall be set as the following business day.
  
- F. If for any reason the District O365 SharePoint site is not functional, then the Contractor shall send hard copies for review; see Technical Specifications for number of copies required. No extensions or claims shall be granted if the District's O365 SharePoint site is not functional.
  
- 21. Environmentally Preferable Products, Services, and Practices
  - A. In the performance of work under this Contract, the Contractor shall exert its best efforts to provide its services in a manner that will promote the natural environment and protect the health and wellbeing of District employees, contracted service providers, the public, and visitors using District facilities.
  
  - B. Definitions as used in this Section 21:
 

*"Environmentally preferable"* means products or services that have a reduced effect on human health and the environment when compared with competing products or services that serve the same purpose.



“Green Purchasing” means making thoughtful, strategic decisions to buy goods and services that have less negative environmental and health impacts than similar products or services.

- C. Green purchasing and environmentally preferable products and services include several interconnected initiatives which are subject to and are described by the following government and industry procurement programs:
1. Products containing recovered material designated by the U.S. Environmental Protection Agency (EPA) under the Comprehensive Procurement Guidelines ([42 U.S.C. 6962](#)) ([40 CFR Part 247](#)) ([Comprehensive Procurement Guideline \(CPG\) Program | US EPA](#)).
  2. Energy- and water-efficient products that are ENERGY STAR® certified or Federal Energy Management Program (FEMP)-designated products ([42 U.S.C 8259b](#)) ([10 CFR part 436, subpart C](#)) (<https://www.energy.gov/femp/search-energy-efficient-products> and <https://www.energystar.gov/products?s=mega>).
  3. Acceptable chemicals, products, and manufacturing processes listed under EPA's Significant New Alternatives Policy (SNAP) program, which ensures a safe and smooth transition away from substances that contribute to the depletion of stratospheric ozone ([42 U.S.C. 76711](#)) ([40 CFR part 82, subpart G](#)) (<https://www.epa.gov/snap>).
  4. WaterSense® labeled (water efficient) products and services (<https://www.epa.gov/watersense/watersense-products>).
  5. Safer Choice-certified products (products that contain safer chemical ingredients) (<https://www.epa.gov/saferchoice/products>).
  6. Product and services that meet EPA Recommendations of Specifications, Standards, and Ecolabels in effect as of October 2023 (<https://www.epa.gov/greenerproducts/recommendations-specifications-standards-and-ecolabels-federal-purchasing>).
- The Green Procurement Compilation (GPC) available at <https://sftool.gov/greenprocurement> provides a comprehensive list of sustainable products and services and sustainable procurement guidance. The Contractor should review the GPC when determining which programs apply to a specific product or service.
- D. To the extent that design services provided by the Contractor require the specification of any of these types of products, the Contractor is expected to specify the environmentally preferable type of product unless that type of product is not available competitively within a reasonable time, at a reasonable price, is not life cycle cost efficient in the case of energy consuming products or does not meet reasonable performance standards.
- E. The Contractor shall use recycled paper for the production of all printed and photocopied documents related to the fulfillment of this Contract. If the cost of recycled paper is more than 15 percent higher than the cost of non-recycled paper, the Contractor shall notify the District Representative, who may waive the recycled paper requirement.

The Contractor agrees to use both sides of paper for copying and printing, and to use recycled and/or recyclable products wherever practical.

22. Utilization of Small and Diverse Businesses

- A. The Contractor has committed to the aspirational goals identified in its Subcontractor/Subconsultant Inclusion Plan (SIP) & Commitment Form executed as part of the RFQ process (RFQ Attachment C) and incorporated herein by reference.
- B. For purposes of award and performance of the Contract, the aspirational goals are expressed as a percentage of the total Contract Price to be performed by small and diverse businesses over the life of this Agreement.
- C. The Contractor shall make good faith efforts to meet or exceed its aspirational goals in the performance of this Contract. The Contractor may count their own participation and any participation from subcontractors and/or subconsultants, as applicable, towards aspirational goals in this Contract.
- D. Certification Requirements: Small and diverse businesses proposed in the Contractor's SIP must meet, at the time Statements of Qualifications are due, the requirements under RCW 39.26.010(22), or be registered in the federal government's System for Award Management (SAM) as a Small Business Administration (SBA) certified business eligible for contracts that are reserved for small businesses, or be located in an area designated in the current U.S. Department of Labor (DOL) Labor Surplus Area (LSA) list (see <https://www.dol.gov/agencies/eta/lsa>).
- E. Upon Contract award, and if applicable, the Contractor shall provide District Supplier Diversity Program staff, copies of the Contractor's and subcontractors and/or subconsultants, as applicable, business certifications from the Washington State Office of Minority and Women's Business Enterprises (OMWBE) or SBA. If the Contractor's, a subcontractor's, or a subconsultant's business is not certified through OMWBE, SBA, or it is self-certified, the Contractor shall provide the District's Supplier Diversity Program staff verifying tax documentation for audit purposes in order to count the business towards the small and diverse business goal commitment.
- F. If, during the progress of the work, a business listed by the Contractor in its SIP is determined not to meet the small and diverse business eligibility criteria, the utilization of said business will not be counted toward the fulfillment of the Contractor's SIP. The Contractor shall substitute another business that meets the small and diverse business eligibility provisions outlined above to maintain its commitment to small and diverse business participation. Such substitution shall be at no additional cost to the District.
- G. During Contract performance, if the Contractor is not meeting its aspirational goals or making satisfactory progress towards the objectives identified in its SIP, the District may request submission of a corrective action plan. The Contractor shall submit a corrective action plan within ten days of a written request from the District. The correction action plan shall contain the following elements:
  - 1. An explanation of the circumstances contributing to the aspirational goal shortfall.
  - 2. A summary of the impacts to small and diverse businesses on the project due to the

shortfall.

3. A detailed list of actions that the Contractor will take to correct the shortfall and meet the aspirational goals for small and diverse participation for the project.
4. A summary of the status of activities and actions identified in its SIP and the effectiveness of each one toward meeting the aspirational goals.

If the District determines that the corrective action plan submitted by the Contractor is unsatisfactory, the District may withhold payments, or terminate the contract for default.

- H. The obligation of the Contractor is to make Good Faith Efforts to meet its aspirational goals for small and diverse business participation.

For purpose of this clause:

“Good Faith Efforts” means efforts to achieve a goal or other elements of the Contractor’s SIP that, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to meet the SIP requirements.

The Contractor can demonstrate that it has achieved this objective by either meeting its aspirational goals or documenting its Good Faith Efforts. If the Contractor does not meet its aspirational goals, the District will make a determination on whether the Contractor made adequate Good Faith Efforts to meet the stated goals. The District will consider the quality, quantity, and intensity of the documented Good Faith Efforts made by the Contractor. The District will not consider mere pro forma efforts as Good Faith Efforts.

23. Project Management Contractor Participation

- A. The District utilizes a standard approach to implementing projects by using well-defined internal standard frameworks for both project management and organizational change management. The framework procedures and associated tools and templates are required to be used for all projects as defined by the District’s Enterprise Project Management Office. The Contractor shall, as directed by the District, utilize and/or actively participate in the District’s application of its project management and organization change management frameworks to guide the implementation of projects and/or change events that this Contract contributes towards. To the extent applicable, the Contractor shall ensure that all workers, subcontractors, and suppliers also comply with these requirements.
- B. The Contractor shall provide upon request by the project team key project information required to properly manage the project. Requested information may include but is not limited to delivery and completion dates, resource estimates and availability, quality inspection and testing plans, cost estimates and forecasts, safety metrics, and any known risks or constraints associated with these. The Contractor shall provide requested project information as required to not delay project reporting or project progress, cause witness or hold points to be missed, or cause any scope or cost increases.

The Contractor shall attend the appropriate project meetings as requested by the project team to provide key input to project parameters pertaining to this Contract. These meetings may include but are not limited to project kickoff meetings, preconstruction meetings, Job Site Reviews, Root Cause Evaluations, Steering Committee and Commission updates, and Monthly Business Reviews. Meetings may be in-person or

virtual depending on the needs of the project. The Contractor shall make a judicious effort to attend meetings at the appropriate dates and times as required to not delay any portion of the project progress or cause any scope or cost increases.

The Contractor agrees to provide requested project closeout information with the detail and in the format requested by the project team. This information may include but is not limited to record drawings, testing and commissioning data, operation and maintenance (O&M) manuals, training information, quality history, etc. Failure to provide all requested documentation that is acceptable to the project team shall delay acceptance and final payment by the District.

24. Physical Security

If any performance under this Contract is to be conducted on District facilities or worksites, it shall be the responsibility of the Contractor to ensure that its employees and those of its Subcontractors are informed of and abide by the District's Security Policies as if fully set out herein a copy of which shall be provided to the Contractor by the District Representative at the preconstruction meeting or prior to beginning work. Without limiting the foregoing, Contractor and its employees shall be required to:

- A. Keep all external gates and doors locked at all times and interior doors as directed.
- B. Visibly display ID badges on their person at all times.
- C. Stay out of unauthorized areas or in authorized areas outside of authorized work hours, without express authorization from the District.
- D. Provide proper notification to the appropriate parties, and sign in and out upon entry and exit to secured locations. If unsure of who to notify, Contractor shall contact the District Representative.
- E. Immediately notify the District if any of Contractor's employees no longer need access or have left the Contractor's employment.
- F. Immediately report any lost or missing access device to the District Representative. A minimum charge will be assessed to the Contractor in the amount of \$50.00 per badge and the fee for lost or non-returned keys may include the cost to re-key the plant facilities. The Contractor is strictly prohibited from making copies of keys.
- G. Not permit 'tailgating' through any controlled access point (i.e. person(s), authorized or unauthorized, following an authorized person through an entry point without individual use of their issued ID badge or key).
- H. Return all District property, including but not limited to keys and badges, to the District Representative when an individual's access to the facility is no longer needed.
- I. Guest Wireless: The District provides Guest Wireless Internet access to contractors and vendors that need to conduct business in support of the District from personally owned mobile devices such as laptops and smart phones. Contractor personnel are responsible for exercising good judgment regarding appropriate use of information, electronic devices, and network resources.

The Contractor and any Subcontractors shall comply with the safety requirements of these Contract Documents and all District policies pertaining to COVID-19 located at

<https://www.grantpud.org/for-contractors>.

The District reserves the right to conduct or to require Contractor to conduct criminal background checks on its employee(s) before granting such individuals access to restricted areas of District facilities or Protected Information. Criminal background checks may be conducted in such depth as the District reasonably determines to be necessary or appropriate for the type of access to be granted. The cost of such background checks shall be borne by the Contractor.

25. Security, Safety Awareness Training, Dam Safety Awareness Training, and Transmission and Distribution Access Training

Prior to receiving access to any District facilities, all Contractors, Contractor's employees, subcontractors and subcontractor's employees, material suppliers and material supplier's employees, or any person who will be engaged in the work under this Contract that requires access to District facilities, shall be required to take and pass the District's Security and Safety Awareness training before being issued a security access badge to access District facilities. Under no circumstances will the failure of any Contractor or subcontractor employee to pass the required training, be grounds for any claim for delay or additional compensation.

The Safety and Security Awareness training is available online and is a 20-30 minute training. The training is located at: <https://www.grantpud.org/for-contractors>. All contractors and their employees are required to successfully complete Safety and Security Awareness training before coming onsite. The Security and Safety certificates should be emailed directly to [SecurityTrainingCerts@gcpud.org](mailto:SecurityTrainingCerts@gcpud.org).

District Representative shall ensure that Contractor's employees, subcontractor's and subcontractor's employees have completed and submitted the certificate of completion for the training in a timely manner to avoid any delay in execution of the work. All such certificates shall be submitted before any security access badges will be issued.

If applicable, Dam Safety Awareness Training is required for Contractors who are performing work in and around Priest Rapids and Wanapum Dams and are badged. The training is available online only and is a 20-30 minute training. Contractor shall ensure that its employees, Subcontractors and Subcontractor's employees have completed, passed and printed the certificate of completion for the training in a timely manner to avoid any delay in execution of the work. All such certificates shall be submitted to the District Representative before any security access badges will be issued.

If applicable, Transmission and Distribution Access Training is required for Contractors, or their Subcontractors, who may hold a clearance or hotline hold order as part of performance of work under this Contract. The training is available online only and is a 20-30 minute training. Contractor shall ensure that its employees, Subcontractors and Subcontractor's employees have completed, passed and printed the certificate of completion for the training in a timely manner to avoid any delay in execution of the work. All such certificates shall be submitted to the District Representative before any security access badges will be issued.

If you are uncertain which of the above courses you or your employees must complete, please contact your District Representative.

26. Protected Information

The State of Washington, Federal Energy Regulatory Commission (FERC) and/or North American Reliability Corporation (NERC) has established regulations for the protection of sensitive plans, drawings and records defined as Security Sensitive Information (SSI), Critical Energy Infrastructure Information (CEII) and/or Bulk Electric System Cyber System Information (BCSI),

reference Appendix “E”. In accordance with the Revised Code of Washington (RCW), FERC and NERC regulations, and using them as guidance, the District has identified and designated certain information as SSI, CEII, and/or BCSI (hereinafter referred to collectively as “Protected Information”). Because of the sensitive nature of certain District Protected Information that could be used in this Contract, Contractor is bound by the terms and conditions set forth in the Non-Disclosure Agreement (NDA) executed at the time of this Agreement (Appendix “D”).

27. Background Checks

The District reserves the right to conduct or to require Contractor to conduct criminal background checks on its employee(s) before the District will grant such individuals access to secure areas of District facilities or electronic access to Bulk Electric System Cyber Assets or Protected Information. Criminal background checks may be conducted in such depth as the District reasonably determines to be necessary or appropriate for the type of access to be granted.

In the event the District determines in its sole discretion that an individual is unsatisfactory to the District or fails to provide a background check as requested by the District, the District reserves the right to require the Contractor to remove such individual from the job site and/or to exclude such individual from having any access to SSI, Bulk Electric System Cyber Assets, CEII, or BCSI.

28. Qualification of Contractor’s Access and Personnel Change Approval

The District reserves the right to deny any Contractor or employee thereof access to District facilities or Protected Information at the District’s sole discretion. The District will be the sole judge of such effect. All Contractors and employees thereof shall be subject to the nondisclosure provisions of this Contract.

The District reserves the right to conduct or to require Contractor to conduct criminal background checks, provide an identity validation document (I-9, Social Security card, driver’s license) and complete the District provided training for its employee(s) before the District will grant such individuals access to secure areas of District facilities. Criminal background checks may be conducted in such depth as the District reasonably determines to be necessary or appropriate for the type of access to be granted. Contractor shall execute one certification for each employee requiring a background check on the form provided by the District and attached hereto as Appendix “E”. The cost of such background checks shall be borne by the Contractor. For access to Protected Information relating to Critical Infrastructure Protection, the District reserves the right to require certificate of completion from the District-provided training for each employee before the District will grant access to such individuals.

In the event the District determines in its sole discretion that an individual or Contractor is unsatisfactory or fails to provide a background check as requested by the District, or fails to provide the information listed above, the District reserves the right to exclude such individual or Contractor from secure areas and/or from having any access to Protected Information.

29. CIP Training

All persons receiving Protected Information or having access to secured sites shall complete CIP training prior to receiving such access and periodically, but no less than annually, thereafter. CIP training is conducted by the Reliability Compliance (RC) Department through a learning management system. The learning management system privileges will be coordinated between the District Representative and the RC Department.

30. Contractor Safety Requirements

The following applies if Contractor, or any of its sub-consultants, subcontractors, or suppliers of any tier, performs any activities on premises owned, leased, possessed, or controlled by the District. The Contractor Safety Requirements shall be required when applicable as determined by the District Representative based upon the scope of work. To the extent applicable, the Contractor shall ensure that all workers, sub-consultants, subcontractors, and suppliers comply with these requirements. In fulfilling these requirements, the Contractor shall also comply with material and equipment manufacturer instructions, and safety and health requirements in accordance with WAC 296-126-094 and this Agreement where applicable. If there are conflicts between any of the requirements referenced in the Contract Documents, the more stringent requirement shall prevail.

A. General

Initial/Warning Notice: Any District employee may notify the Contractor of any safety or health concern. The notice may be delivered verbally to any Contractor employee or subcontractor and the District employee shall notify the District Representative of the Notice. Written notification may be provided to the Contractor at the discretion of the District Representative. The notice shall have the same effect on the Contractor regardless of format or recipient. The Contractor shall take immediate action to mitigate the safety and health concerns identified in the District's notice.

B. Stop Work Order: District employees also have the authority to immediately stop a work activity without issuing the Initial/Warning Notice. The District employee will immediately notify the District Representative of the Stop Work Order. The District Representative may direct the Contractor to stop work due to safety and health concerns. The Stop Work Order may cover all work on the Contract or only a portion of the work. After the District issues a Stop Work Order, the Contractor shall meet with District Representatives (as determined by the District Representative) to present a written statement outlining specific changes and/or measures the Contractor will make to work procedures and/or conditions to improve safety and health. A Stop Work Order can be rescinded only with the written approval of the District Representative.

1. The Contractor shall not be entitled to any adjustment of the Contract price or schedule when the District stops a work activity due to safety and health concerns that occurred under the Contractor's, Subcontractor's, or supplier's control.
2. The District's conduct does not alter or waive the Contractor's safety and health obligations.
3. Contractor shall provide an onsite Safety Professional as directed by the District Representative based upon number and/or severity of identified safety infractions.
4. Non-compliance with safety requirements could lead to termination of the contract in accordance with Section 18.

C. The Contractor shall maintain an accurate record of, and shall immediately report to the District Representative all cases of near miss or recordable injury as defined by OSHA, damage to District or public property, or occupational diseases arising from, or incident to, performance of work under this Contract.

1. The record and report shall include where the incident occurred, the date of the incident, a brief description of what occurred, and a description of the preventative measures to be taken to avoid recurrence, any restitution or settlement made, and the status of these items. A written report shall be delivered to the District Representative within five business days of any such incident or occurrence.
2. In the event of a serious incident, injury or fatality the immediate group shall stop

work. The Contractor/subcontractor shall secure the scene from change until released by the authority having jurisdiction. The Contractor shall collect statements of the crew/witnesses as soon as practical. The District reserves the right to perform an incident investigation in parallel with the Contractor. The Contractor, subcontractor, and their workers shall fully cooperate with the District in this investigation.

3. All cases of death, serious incidents, injuries or other incidents, as determined by the District Representative, shall be investigated by the Contractor to identify all causes and to recommend hazard control measures. A written report of the investigation shall be delivered to the District Representative within 30 calendar days of any such incident or occurrence.
  4. For situations that meet the reporting requirements of WAC 296-800, the Contractor shall self-report and notify the District Representative. The District Representative shall notify the District's Safety personnel.
- D. The Contractor/subcontractor shall conduct and document job briefings each morning with safety as an integral part of the briefing. The Contractor/Subcontractor shall provide an equivalent job briefing to personnel and/or visitors entering the job site after the original job briefing has been completed for work within their scope. Immediately upon request, the Contractor shall provide copies of the daily job briefing and any other safety meeting notes to the District Representative. The notes, at a minimum, shall include date, time, topics, and attendees and shall be retained by the Contractor for three years after completion of all work.
- E. Job Site Reviews Performed by the District: The Contractor Site Representative or other lead personnel, if requested by the District, shall be required to participate in District job briefs and/or District job site reviews that pertain to other work being performed that may impact the Contractor's work.
- F. The Contractor's Safety Information submitted during the RFQ process (see RFQ Attachment "B") is incorporated herein by reference. The District reserves the right to request updated Contractor safety information at any time during the performance of this Contract.
31. Contractor's observation or monitory portions of the work performed under construction contracts shall no relieve the construction contract from its responsibility for performing work in accordance with applicable contract documents. Contractor shall not control or have charge of, and shall not be responsible for, construction means, methods, techniques, sequences, procedures of construction, health or safety programs precautions connected with the work and shall not manage, supervise, control or have charge of construction. Contractor shall not be responsible for acts or omissions of the construction contractor or other parties on the project.
  32. Contractor shall not be liable to the District either in contract or in tort (including negligence or strict liability) for consequential damages consisting of the Districts loss of profits, its loss of revenue or its cost of replacement power. Contractor's total liability to the District with respect to (a) any breach of contract or default, (b) negligence, or (c) strict liability shall not exceed \$5,000,000.00 provided that this total liability limit shall not apply to damages covered by Contractor's insurance coverages, nor from insurance claims, as required in Section 8 with the exception of Professional Liability.



IN WITNESS WHEREOF, the Contractor and the District have executed this Agreement each by its proper respective officers and officials thereunto duly authorized the day and year first above written.

Public Utility District No. 2  
of Grant County, Washington

HDR Engineering, Inc.

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

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

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**APPENDIX "A.1"**  
**RATE SCHEDULE**

Reference RFQ Attachment "I" Price Proposal dated November 19, 2024.

**APPENDIX “A.2”  
DIRECT, REIMBURSABLE EXPENSES, & OTHER DIRECT COSTS**

**DIRECT EXPENSES:**

Fixed hourly billing rates shall be in US Dollars and include all i) payroll, payroll taxes and fringe benefits; ii) all reproduction and printing costs including electronic media; iii) communications costs including all phones, faxes, internet, postage, shipping, delivery, couriers; iv) computer, software, printers, scanners, office machines and related costs of operations including consumables; v) insurance costs; vi) indirect and overhead burden; and vii) profit.

**REIMBURSABLE EXPENSES:**

Reimbursable expenses are those reasonable and necessary costs incurred on or directly for the District’s project, including necessary transportation costs, meals and lodging. Any actual expenses in non-US dollars will be converted using the conversion tables at [www.x-rates.com](http://www.x-rates.com) for the applicable period. Reimbursement will be subject to the following limitations:

Meals and Incidental Expenses: Meals and incidental expenses will be limited to the Federal Per Diem rate for meals and incidentals established for the location where lodging is obtained. Federal Per Diem guidelines which includes the meal breakdown and Federal Per Diem rates for other locations can be found at [www.gsa.gov](http://www.gsa.gov).

Lodging: Lodging will be billed at cost, including applicable taxes, not to exceed 200% of the Federal Per Diem maximum lodging rate for the location where the work is being performed. The District Representative may increase this limit in writing when circumstances require.

Travel: Air travel (at coach class or equivalent), airport shuttles, etc. billed at cost. Ground transportation by privately owned vehicle, if utilized, billed at the Internal Revenue Service mileage rate for privately owned vehicles in effect at the time of travel. Expenses for a rental car, at cost, in the ratio of one mid-size class rental car for each three Contractor’s personnel directly engaged in performance of the work at the prevailing rental rates then in effect. Rental car options such as refueling fees, GPS, collision & liability insurance, etc. will not be reimbursed by the District unless such options are approved in advance by the District Representative. **Appropriate insurance coverage should be included in the Contractor’s insurance policies.**

Sub-consultants/Subcontractors: Services requested by the District, verifiable by applicable supporting documentation or at specified rates, will be reimbursed to Contractor at cost.

Other: All other expenses will be based on actual costs and include appropriate documentation.

**Notes:**

- 1. When applicable, monthly invoices will be reviewed to confirm allowability, reasonableness, and proper allocability according to federal cost/price principles in accordance with 2 CFR 200, Subpart E and the Appendix “A.1” Rate Schedule, mutually agreed to on the execution date of this Agreement.**
- 2. Reimbursable expenses must be accompanied by receipts for airfare, hotel, and rental car, and any other support documentation as the District may require.**

**APPENDIX "B"**  
**CHANGE ORDER NO. \_**

Pursuant to Section 6, the following changes are hereby incorporated into this Contract:

- A. Description of Change:
  
- B. Time of Completion: The revised completion date shall be \_\_\_\_\_.  
*OR*  
 The completion date shall remain \_\_\_\_\_.
  
- C. Contract Price Adjustment: As a result of this Change Order, the not to exceed Contract Price shall remain unchanged (be increased/decreased by the sum of \$\_\_\_\_\_ plus applicable sales tax). This Change Order shall not provide any basis for any other payments to or claims by the Contractor as a result of or arising out of the performance of the work described herein. The new total revised maximum Contract Price is \$\_\_\_\_\_, including changes incorporated by this Change Order.
  
- D. Except as specifically provided herein, all other Contract terms and conditions shall remain unchanged.

Public Utility District No. 2  
of Grant County, Washington

HDR Engineering, Inc.

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

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

Name of Authorized Signature  
Title

Name of Authorized Signature  
Title

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**APPENDIX "C"**  
**TASK AUTHORIZATION FOR PROFESSIONAL SERVICES**

Contract No.:	430-12302R	Task Authorization No.:		Amendment No.:	
Project Name:					

The Scope of Services covered by this authorization shall be performed in accordance with all the terms and conditions in the above referenced Contract Documents which are incorporated herein by this reference.

The District hereby requests and authorizes the Contractor to perform the following services:

Compensation is to be paid in accordance with and subject to the limitations in Section 5.A of the Contract Documents. In addition, the total cost of the above described work shall not exceed \$\_\_\_ without advance amendment of this Task Authorization by the District.

Public Utility District No. 2  
of Grant County, Washington

HDR Engineering, Inc.

Approved for District

Accepted by Contractor

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

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

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: District Representative

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**APPENDIX "D"**  
**NON-DISCLOSURE AGREEMENT**

This Non-Disclosure Agreement ("NDA") is entered into on the date shown on the signature page between Public Utility District No. 2 of Grant County, Washington ("District"), and HDR Engineering, Inc., ("Contractor"), sometimes collectively referred to as the "Parties."

**RECITALS**

The District has identified and designated certain information as confidential. For purposes of this Agreement, "Protected Information" includes:

- District customer information protected under RCW 19.29A, Consumers of Electricity;
- District employee information;
- District vendor information;
- All technical and business information or material that has or could have commercial value or other interest in the business or prospective business of the District;
- All information and material provided by the District which is not an open public record subject to disclosure under RCW 42.56, Public Records Act;
- All information of which unauthorized disclosure could be detrimental to the interests of the District or its customers, whether or not such information is identified as Protected Information; and
- Any information identified and designated by the District as Security Sensitive Information (SSI), Critical Energy Infrastructure Information (CEII), and/or Critical Infrastructure Protection (CIP) Protected Information in accordance with the State of Washington, Federal Energy Regulatory Commission (FERC) and/or North American Reliability Corporation (NERC), which have established regulations for the protection of sensitive plans, drawings, and records defined as SSI, CEII, and/or CIP Protected Information. SSI, CEII, and CIP Protected Information are further defined in Exhibit "A".

Because of the sensitive nature of such information that may be provided to the Contractor, Contractor must execute and deliver this NDA to the District prior to receiving such Protected Information from the District.

NOW, THEREFORE, the Parties agree as follows:

1. **Incorporation by Reference.** The recitals set forth above are incorporated herein as if fully set forth.
2. **Protected Information Disclosure.** All information and drawings that are disclosed by the District to the Contractor, which are designated as confidential, SSI, CEII, and/or CIP Protected Information, shall be protected hereunder as Protected Information.
3. **Non-Disclosure.** Subject to the provisions of Section 4 and unless the parties agree otherwise, this non-disclosure obligation shall survive the termination of this NDA. Contractor shall not disclose or disseminate Protected Information and shall:
  - A. Restrict disclosure of Protected Information solely to its agents and employees with a need to know and not disclose such Protected Information to any others; and

- B. Advise and require all of its officers, agents, employees, representatives, prospective and successful subcontractors, consultants and employees thereof with access to the Protected Information to execute an NDA in this same form with the District prior to allowing them access to the Protected Information, provided that employees who are required to maintain confidentiality pursuant to corporate policy are not required to execute an NDA; and
  - C. Use the Protected Information provided hereunder only for purposes directly related to performance of the work Contract 430-12302R-A.
  - D. In the event third parties attempt to obtain the Protected Information by legal process, the Contractor agrees that it will not release or disclose any Protected Information until the District has received notice of the legal process and has been given reasonable opportunity to contest such release of information and/or to assert the confidentiality privilege.
4. **Ownership and Return of Protected Information.** All Protected Information shall remain the property of the District. Contractor is responsible for safeguarding and returning all Protected Information or shall certify, by signed, statement delivered to the District, the destruction of all original Protected Information provided along with any copies made by the Contractor. Such delivery shall be to the District, Attention: Beau Schwab, PO Box 878, Ephrata, WA 98823.
5. **Compliance Audit.** The District may audit Contractor's compliance with this NDA.
6. **Applicable Law.** This NDA is made under, and shall be construed according to, the laws of the State of Washington and the Federal Energy Regulatory Commission regulations. Venue for any action brought pursuant to this NDA shall, at the District's option, be in Grant County Superior Court, Grant County, Washington or in the United States District Court for the Eastern District of Washington.
7. **Assignment.** This NDA may not be assigned.
8. **Violations.** Contractor understands and agrees that the District is providing the Protected Information to Contractor in reliance upon this NDA, and Contractor will be fully responsible to the District for any damages or harm caused to the District by a breach of this NDA by Contractor or any of its officers, directors, agents, employees, subcontractors, consultants or affiliates. Contractor acknowledges and agrees that a breach of any of its promises or agreements contained herein will may result in irreparable injury to the District for which there may be no adequate remedy at law, and the District shall be entitled to apply for equitable relief, including injunction and specific performance, in the event of any breach or threatened breach or intended breach of this NDA by Contractor. Such remedies, however, shall not be deemed to be the exclusive remedies for any breach of the Agreement but shall be in addition to all other remedies available at law or in equity. In addition to injunctive relief, civil or criminal penalties may be imposed for each violation of this NDA.
9. **Attorney's Fees.** In the event it is necessary for the District to utilize the services of an attorney to enforce any of the terms of this NDA, it shall be entitled to compensation for its reasonable attorney's fees and costs. In the event any legal action becomes necessary to enforce the provisions of the NDA, the substantially prevailing party shall be entitled to reasonable attorney's fees and costs in addition to any other relief allowed, regardless of whether the dispute is settled by trial, trial and appeal, arbitration, mediation, negotiation or otherwise, and regardless of whether suit is formally filed.
10. **Corporate Authority; Binding Signatures.** The individual executing this NDA on behalf of Contractor warrants that he or she is an authorized signatory of the entity for which they are signing,

and have sufficient institutional authority to execute this NDA.

- 11. **Electronic Signatures.** Signatures transmitted electronically shall be deemed valid execution of this NDA, binding on the parties.
- 12. **Effective Date and Term.** This NDA shall become effective immediately and remain in full force and effect until Contractor has returned all Protected Information to the District provided, however, the obligations contained in Section 3 shall survive the termination of this NDA.

CONTRACTOR:      Name: \_\_\_\_\_

                         Address: \_\_\_\_\_

                         \_\_\_\_\_

                         Phone: \_\_\_\_\_

                         Email: \_\_\_\_\_

                         \_\_\_\_\_

                         Signature: \_\_\_\_\_

                         Print Name: \_\_\_\_\_

                         Title: \_\_\_\_\_

                         \_\_\_\_\_

                         Date: \_\_\_\_\_



**EXHIBIT "A"**  
**DEFINITIONS OF PROTECTED INFORMATION**

**Definition of Critical Infrastructure Protection (CIP)**

Pursuant to section 215 of the Federal Power Act (FPA), the Federal Energy Regulatory Commission (FERC) approved the Critical Infrastructure Protection (CIP) Reliability Standards. The CIP Reliability Standards require certain users, owners, and operators of the Bulk-Power System to comply with specific requirements (CIP-002 through CIP-014) to safeguard critical cyber assets. Penalties for non-compliance with NERC CIP can include fines, sanctions or other actions against covered entities.

**Definition of Critical Energy Infrastructure Information (CEII)**

The Critical Energy Infrastructure Information (CEII) guidelines of the Federal Energy Regulatory Commission (FERC) define CEII as specific engineering, vulnerability, operational or detailed design information about proposed or existing critical energy infrastructure (physical or virtual) that relates to the production, generation, transportation, transmission or distribution of energy, could be useful to a person planning an attack on critical infrastructure, is exempt from mandatory disclosure, and gives strategic information beyond the location of the critical infrastructure. 18 CFR §388.113 and RCW 42.56.520.

**Definition of Bulk Electric System Cyber System Information (BCSI)**

The North American Electric Reliability Corporation (NERC) has been designated by the FERC, through the Energy Policy Act of 2005, to establish and enforce standards and requirements for the reliable operation of the Bulk Electric System. The Bulk Electric System includes the District's electrical generation resources, transmission lines, and interconnections with neighboring electric systems. Information related to the District's Bulk Electric System Cyber Systems (BCS) is required to be protected due to the sensitive security nature of such information, and the need to protect public safety (hereinafter referred to as "CIP Protected Information"). BCSI generally (not exclusively) is defined as information about the BCS that could be used to gain unauthorized access or pose a security threat to the BCS and affect the reliable operations of the Bulk Electric System. The District is required to protect this information including, but not limited to, network topology/diagrams; floor plans for computing centers; equipment layouts; security configuration information and other information as defined in the NERC standards. FERC Order No. 706, issued January 18, 2008; 18 CFR Part 40; and RCW 42.56.070.

**Definition of Security Sensitive Information (SSI)**

Security Sensitive Information is those portions of records assembled, prepared, or maintained to prevent, mitigate, or respond to criminal or terrorist acts, which are acts that significantly disrupt the ability of the District to fulfill its mission and goals and that manifest an extreme indifference to human life, the public disclosure of which would have a substantial likelihood of threatening public safety. SSI includes: (a) Specific and unique vulnerability assessments or specific and unique response or deployment plans, including compiled underlying data collected in preparation of or essential to the assessments, or to the response or deployment plans; (b) Records not subject to public disclosure under federal law that are shared by federal or international agencies, and information prepared from national security briefings provided to state or local government officials related to domestic preparedness for acts of terrorism; and (c) Information regarding the infrastructure and security of computer and telecommunications networks, consisting of security passwords, security access codes and programs, access codes for secure software applications, security and service recovery plans, security risk assessments, and security test results to the extent that they identify specific system vulnerabilities.

### **Bulk Electric System (BES)**

Unless modified by the lists shown below, all Transmission Elements operated at 100 kV or higher and Real Power and Reactive Power resources connected at 100 kV or higher. This does not include facilities used in the local distribution of electric energy. Inclusions:

- I1 - Transformers with the primary terminal and at least one secondary terminal operated at 100 kV or higher unless excluded by application of Exclusion E1 or E3.
- I2 – Generating resource(s) including the generator terminals through the high-side of the step-up transformer(s) connected at a voltage of 100 kV or above with: a) Gross individual nameplate rating greater than 20 MVA. Or, b) Gross plant/facility aggregate nameplate rating greater than 75 MVA.
- I3 - Blackstart Resources identified in the Transmission Operator's restoration plan
- I4 - Dispersed power producing resources that aggregate to a total capacity greater than 75 MVA (gross nameplate rating), and that are connected through a system designed primarily for delivering such capacity to a common point of connection at a voltage of 100 kV or above. Thus, the facilities designated as BES are: a) The individual resources, and b) The system designed primarily for delivering capacity from the point where those resources aggregate to greater than 75 MVA to a common point of connection at a voltage of 100 kV or above.
- I5 –Static or dynamic devices (excluding generators) dedicated to supplying or absorbing Reactive Power that are connected at 100 kV or higher, or through a dedicated transformer with a high-side voltage of 100 kV or higher, or through a transformer that is designated in Inclusion I1 unless excluded by application of Exclusion E4.

### **Bulk Electric System (BES) Cyber Asset**

A Cyber Asset that if rendered unavailable, degraded, or misused would, within 15 minutes of its required operation, misoperation, or non-operation, adversely impact one or more Facilities, systems, or equipment, which, if destroyed, degraded, or otherwise rendered unavailable when needed, would affect the reliable operation of the Bulk Electric System. Redundancy of affected Facilities, systems, and equipment shall not be considered when determining adverse impact. Each BES Cyber Asset is included in one or more BES Cyber Systems.



**APPENDIX "E"**  
**BACKGROUND CHECK/IDENTITY VERIFICATION BY CONTRACTOR/VENDOR**

Contractor Name: HDR Engineering, Inc. \_\_\_\_\_ Date: \_\_\_\_\_  
 Contract Number: 430-12302R-A Procurement Officer: \_\_\_\_\_  
 Project Manager: \_\_\_\_\_

In accordance with NERC Reliability Standards CIP 002-011, we are providing Public Utility District No. 2 of Grant County, Washington certification of background checks performed on personnel who will require authorized Unescorted Physical Access and/or Electronic Access to District High or Medium Impact BES Cyber Systems, and their associated EACMS and PACS.

Accordingly, we certify that:

1. A background check has been conducted on the following employee(s) that includes a seven year criminal history records check, a current residence check and a residence check at other locations where, during the seven years immediately prior to the date of the criminal history records check, the employee has resided for six consecutive months or more; and the assessment of the employee is consistent with the safe and efficient performance of the services and meets the minimum standard for criminal checks as set forth by the attached Evaluation Criteria.
  
2. Employment eligibility identity verification has been completed to ensure employee is legally permitted to work in the United States. (Citizenship, Federal I-9 form verification)

Employee Name	Background Check Completion Date	Indicate Pass (P) or Fail (F)	Identity Verification Completion Date	PRA Completion Date (District use only)

**(Do not send actual background check documents)**

Name of company where background check was performed: \_\_\_\_\_

Certified by: \_\_\_\_\_ Title: \_\_\_\_\_

Phone No.: \_\_\_\_\_ Email: \_\_\_\_\_

Return this form to: [CIPDocuments@gcpud.org](mailto:CIPDocuments@gcpud.org)

**\*\*\*Access will not be granted until this Background Check has been completed and training taken\*\*\***

**These are sub-sections of the “Grant County PUD Personnel Risk Assessment Program” relevant to Vendor(s) and/or Contractor(s). For the complete program please contact [rcstaff@gcpud.org](mailto:rcstaff@gcpud.org)**

**Evaluation Criteria:**

Contractors with physical or electronic access to District High or Medium Impact BES Cyber Systems and their associated EACMS and PACS, shall certify a background check was met using the following criteria:

Whether the individual has ever been convicted of any of the following FELONIES: Murder

Kidnapping Manslaughter

Fraud, theft, and/or robbery

Criminal sexual conduct Arson

Whether the individual has ever been convicted of the following MISDEMEANORS: Violence related

Honesty related

Whether the individual has ever been convicted of a single misdemeanor, other than minor traffic offenses, which are generally defined as traffic offenses that did not involve property damage and/or personal injury.

Individual is not currently awaiting adjudication on any criminal charge other than minor traffic offenses, which, again, are generally defined as traffic offenses that did not involve property damage and/or personal injury.

In the event the individual has been convicted of a felony or misdemeanor, the Contractor shall not assign such individual to a District location without first discussing such conviction with the District and obtaining the approval of the District’s PRA Committee for such assignment in accordance with the District’s Personnel Risk Assessment Program. The District reserves the right to refuse the assignment of an individual who does not pass the above Evaluation Criteria after review and consideration of the extenuating circumstances by the District’s PRA Committee.

**FOR GRANT PUD USE ONLY**

If Background Check failed enter date of PRA Committee Review: \_\_\_\_\_ Pass \_\_\_ Fail \_\_\_  
(Check one)

Signature of PRA Committee member: \_\_\_\_\_

**APPENDIX "F"**  
**FEDERAL REQUIREMENTS**

1. Termination for Cause
  - A. Any violation or breach of terms of this Contract on the part of the Contractor or the Contractor's subcontractors or subconsultants may result in the suspension or termination of this Contract in accordance with Section 18 or such other action that may be necessary to enforce the rights of the District, including but not limited to debarment as a contractor and a subcontractor.
  - B. Subcontracts or subconsultant agreements exceeding the federal simplified acquisition threshold, currently set at \$250,000, must contain a clause addressing administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms and provide for sanctions and penalties as appropriate. See 2 C.F.R. Part 200, Appendix II(A).
  - C. All subcontracts or subrecipient agreements in excess of \$10,000 must address termination for cause by the subcontractor and/or subconsultant, including the manner by which it will be affected and the basis for settlement. See 2 C.F.R. Part 200, Appendix II(B).
2. Termination for Convenience
  - A. The District reserves the right to terminate this Contract for convenience in accordance with Section 18 if the District believes, in its sole discretion, that it is in the best interest of the District to do so.
  - B. All subcontracts or subrecipient agreements in excess of \$10,000 must address termination for convenience by the subcontractor and/or subconsultant, including the manner by which it will be affected and the basis for settlement. See 2 C.F.R. Part 200, Appendix II(B).
3. Mediation. In the event a dispute arises between the parties regarding this Agreement, either party (first party) may submit the issue to mediation by selecting a mediator and notifying the other party (second party) of the selection. The second party shall either approve such mediator and proceed to mediation or select an alternate mediator. Second party shall notify the first party of such acceptance or selection within seven days of the first notification. Upon receiving notification of the selection of an alternate mediator, the first party shall then approve the mediator and proceed to mediation or reject the alternate mediator. First party shall notify second party of such approval or rejection within seven days of receipt of the notice from second party. In the case of rejection, the first two selected mediators shall select a third mediator. The third mediator shall mediate the dispute. The mediator shall be familiar with design and construction of electrical utilities, electrical generation plants, and commercial transactions in Grant County, Washington. The mediator shall not be related to either party by blood or marriage to a principal or owner of either party and shall have no economic interest direct or indirect with either party. Mediation shall take place within as soon as possible after the mediator has been selected. The parties shall split the cost of mediation.
4. Arbitration. In the event that a dispute is not resolved by mediation pursuant to the terms of preceding paragraph, either party (first party) may submit the issue to arbitration by selecting an arbitrator and notifying the other party (second party) of the selection. The second party shall either approve such arbitrator and proceed to arbitration or select an alternate arbitrator. Second party shall notify the first party of such acceptance or selection within seven days of the first notification. Upon receiving notification of the selection of an alternate arbitrator, the first party shall then approve the arbitrator and proceed to arbitration or reject the alternate arbitrator. First party shall notify second party of such approval or rejection within seven days of receipt of the notice from second party. In the case of rejection, the first two selected arbitrators shall select a third arbitrator. The third arbitrator shall arbitrate the dispute. The arbitrator shall be familiar with design and construction of electrical utilities, electrical generation plants, and commercial transactions in Grant County, Washington. The arbitrator shall not be related to either party by blood or marriage to a principal or owner of either party and shall have no economic interest direct or indirect with either party. The arbitration hearing shall take place as soon as possible after the arbitrator

has been named. The decision of the arbitrator shall be made within seven days after the arbitration hearing and shall be binding upon the parties. The parties shall split the cost of arbitration.

5. Conflict of Interest

By submission of its SOQ, and consistent with the District’s Code of Ethics, the Contractor certifies (and shall require each Subcontractor and/or Subconsultant to certify) that it has no direct or indirect financial or proprietary interest, and that it shall not acquire any such interest, which conflicts in any manner or degree with the work, services or materials required to be performed and/or provided under this Contract and that it shall not employ any person or agent having any such interest (see Conflict of Interest Certification executed as part of the RFQ process (RFQ Attachment “E”), which is incorporated herein by reference). In the event that the Contractor or its agents, employees or representatives hereafter acquires such a conflict of interest, the Contractor shall immediately disclose such interest in writing to the District and take action immediately to eliminate the conflict or to withdraw from this Contract, as the District may require. The Contractor shall not employ any consultant who is concurrently employed by the District or by the District’s consultants (including, but not limited to, surveyors, engineers, architects, and testing laboratories), without first obtaining the District’s approval in writing.

6. Rights to Inventions Made Under a Contract or Agreement

STANDARD PATENT RIGHTS

**(a) Definitions**

(1) Invention means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code, or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. 2321 et seq.).

(2) Subject invention means any invention of the contractor conceived or first actually reduced to practice in the performance of work under this Contract, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) must also occur during the period of contract performance.

(3) Practical Application means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or government regulations, available to the public on reasonable terms.

(4) Made when used in relation to any invention means the conception or first actual reduction to practice of such invention.

(5) Small Business Firm means a small business concern as defined at section 2 of Pub. L. 85–536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standards for small business concerns involved in government procurement and subcontracting at 13 CFR 121.3–8 and 13 CFR 121.3–12, respectively, will be used.

(6) Nonprofit Organization means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c) and exempt from taxation under section 501(a) of the Internal Revenue Code (25 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

(7) Statutory period means the one-year period before the effective filing date of a claimed invention in a patent application during which exceptions to prior art exist per 35 U.S.C. 102(b) as amended by the Leahy-Smith America Invents Act, Public Law 112–29.

(8) Contractor means any person, small business firm, or nonprofit organization, or, as set forth in section 1, paragraph (b)(4) of Executive Order 12591, as amended, any business firm regardless of size, which is a party to a funding agreement.

**(b) Allocation of Principal Rights**

The Contractor may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any subject invention in which the Contractor retains title, the Federal government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

**(c) Invention Disclosure, Election of Title and Filing of Patent Application by Contractor**

(1) The Contractor will disclose each subject invention to the Federal agency within two months after the inventor discloses it in writing to Contractor personnel responsible for patent matters. The disclosure to the agency shall be in the form of a written report and shall identify the contract under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention, and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the agency, the Contractor will promptly notify the agency of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Contractor. If required by the Federal agency, the Contractor will provide periodic (but no more frequently than annual) listings of all subject inventions which were disclosed to the agency during the period covered by the report, and will provide a report prior to the close-out of a funding agreement listing all subject inventions or stating that there were none.

(2) The Contractor will elect in writing whether or not to retain title to any such invention by notifying the Federal agency within two years of disclosure to the Federal agency. However, in any case where a patent, a printed publication, public use, sale, or other availability to the public has initiated the one-year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by the agency to a date that is no more than 60 days prior to the end of the statutory period.

(3)(i) The Contractor will file its initial patent application on a subject invention to which it elects to retain title within one year after election of title or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use.

(ii) If the Contractor files a provisional application as its initial patent application, it shall file a nonprovisional application within 10 months of the filing of the provisional application. So long as there is a pending patent application for the subject invention and the statutory period wherein valid patent protection can be obtained in the United States has not expired, additional provisional applications may be filed within the initial 10 months or any extension period granted under paragraph (c)(5) of this clause. If an extension(s) is granted under paragraph (c)(5) of this clause, the Contractor shall file a nonprovisional patent application prior to the expiration of the extension(s) or notify the agency of any decision not to file a nonprovisional application prior to the expiration of the extension(s), or if earlier, 60 days prior to the end of any statutory period wherein valid patent protection can be obtained in the United States.

(iii) The Contractor will file patent applications in additional countries or international patent offices within either ten months of the first filed patent application or six months from the date permission is granted by the Commissioner of Patents to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(iv) If required by the Federal agency, the Contractor will provide the filing date, patent application number and title; a copy of the patent application; and patent number and issue date for any subject invention in any country in which the Contractor has applied for a patent.

(4) For any subject invention with Federal agency and Contractor co-inventors, where the Federal agency employing such co-inventor determines that it would be in the interest of the government, pursuant to 35 U.S.C. 207(a)(3), to file an initial patent application on the subject invention, the Federal agency employing such co-inventor, at its discretion and in consultation with the Contractor, may file such application at its own expense, provided that the Contractor retains the ability to elect title pursuant to 35 U.S.C. 202(a).

(5) Requests for extension of the time for disclosure, election, and filing under paragraphs (1), (2), and (3) of this clause may, at the discretion of the Federal agency, be granted. When a Contractor has requested an extension for filing a non-provisional application after filing a provisional application, a one-year extension will be granted unless the Federal agency notifies the Contractor within 60 days of receiving the request.

(6) In the event a subject invention is made under funding agreements of more than one agency, at the request of the Contractor or on their own initiative the agencies shall designate one agency as responsible for administration of the rights of the government in the invention.

**(d) Conditions When the Government May Obtain Title**

(1) A Federal agency may require the Contractor to convey title to the Federal agency of any subject invention -

(i) If the Contractor fails to disclose or elect title to the subject invention within the times specified in paragraph (c) of this clause or elects not to retain title.

(ii) In those countries in which the contractor fails to file patent applications within the times specified in paragraph (c) of this clause; provided, however, that if the Contractor has filed a patent application in a country after the times specified in paragraph (c) of this clause, but prior to its receipt of the written request of the Federal agency, the Contractor shall continue to retain title in that country.

(iii) In any country in which the contractor decides not to continue the prosecution of any nonprovisional patent application for, to pay a maintenance, annuity or renewal fee on, or to defend in a reexamination or opposition proceeding on, a patent on a subject invention.

(2) A Federal agency, at its discretion, may waive the requirement for the Contractor to convey title to any subject invention.

**(e) Minimum Rights to Contractor and Protection of the Contractor Right to File**

(1) The Contractor will retain a nonexclusive royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the Contractor fails to disclose the invention within the times specified in (c), above. The Contractor's license extends to its domestic subsidiary and affiliates, if any, within the corporate structure of which the Contractor is a party and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of the Federal agency except when transferred to the successor of that party of the Contractor's business to which the invention pertains.

(2) The Contractor's domestic license may be revoked or modified by the funding Federal agency to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR part 404 and agency licensing regulations (if any). This license will not be revoked in that field of use or the geographical areas in which the Contractor has achieved practical application and continues to make the benefits of the invention



reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the funding Federal agency to the extent the Contractor, its licensees, or the domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, the funding Federal agency will furnish the Contractor a written notice of its intention to revoke or modify the license, and the contractor will be allowed thirty days (or such other time as may be authorized by the funding Federal agency for good cause shown by the Contractor) after the notice to show cause why the license should not be revoked or modified. The Contractor has the right to appeal, in accordance with applicable regulations in 37 CFR part 404 and agency regulations (if any) concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of the license.

**(f) Contractor Action to Protect the Government's Interest**

(1) The Contractor agrees to execute or to have executed and promptly deliver to the Federal agency all instruments necessary to (i) establish or confirm the rights the Government has throughout the world in those subject inventions to which the contractor elects to retain title, and (ii) convey title to the Federal agency when requested under paragraph (d) above and to enable the government to obtain patent protection throughout the world in that subject invention.

(2) The Contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor each subject invention made under Contract in order that the Contractor can comply with the disclosure provisions of paragraph (c) of this clause, to assign to the Contractor the entire right, title and interest in and to each subject invention made under Contract, and to execute all papers necessary to file patent applications on subject inventions and to establish the government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by paragraph (c)(1) of this clause. The Contractor shall instruct such employees through employee agreements or other suitable educational programs on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) For each subject invention, the Contractor will, no less than 60 days prior to the expiration of the statutory deadline, notify the Federal agency of any decision: Not to continue the prosecution of a non-provisional patent application; not to pay a maintenance, annuity or renewal fee; not to defend in a reexamination or opposition proceeding on a patent, in any country; to request, be a party to, or take action in a trial proceeding before the Patent Trial and Appeals Board of the U.S. Patent and Trademark Office, including but not limited to post-grant review, review of a business method patent, *inter partes* review, and derivation proceeding; or to request, be a party to, or take action in a non-trial submission of art or information at the U.S. Patent and Trademark Office, including but not limited to a pre-issuance submission, a post-issuance submission, and supplemental examination.

(4) The Contractor agrees to include, within the specification of any United States patent applications and any patent issuing thereon covering a subject invention, the following statement, "This invention was made with government support under (identify the contract, when applicable) awarded by (identify the Federal agency, when applicable). The government has certain rights in the invention."

**(g) Subcontracts**

(1) The Contractor will include this clause, suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental or research work to be performed by a subcontractor. The subcontractor will retain all rights provided for the Contractor in this clause, and the Contractor will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(2) The Contractor will include in all other subcontracts, regardless of tier, for experimental developmental

or research work the patent rights clause required by (cite section of agency implementing regulations or FAR).

(3) In the case of subcontracts, at any tier, when the prime award with the Federal agency was a contract (but not a grant or cooperative agreement), the agency, subcontractor, and the Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and the Federal agency with respect to the matters covered by the clause; provided, however, that nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes Act in connection with proceedings under paragraph (j) of this clause.

**(h) Reporting on Utilization of Subject Inventions**

The Contractor agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Contractor or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the contractor, and such other data and information as the agency may reasonably specify. The Contractor also agrees to provide additional reports as may be requested by the agency in connection with any march-in proceeding undertaken by the agency in accordance with paragraph (j) of this clause. As required by 35 U.S.C. 202(c)(5), the agency agrees it will not disclose such information to persons outside the government without permission of the Contractor.

**(i) Preference for United States Industry**

Notwithstanding any other provision of this clause, the Contractor agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject inventions in the United States unless such person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by the Federal agency upon a showing by the contractor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

**(j) March-in Rights**

The Contractor agrees that with respect to any subject invention in which it has acquired title, the Federal agency has the right in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of the agency to require the Contractor, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the contractor, assignee, or exclusive licensee refuses such a request the Federal agency has the right to grant such a license itself if the Federal agency determines that:

- (1) Such action is necessary because the Contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use.
- (2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Contractor, assignee or their licensees;
- (3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Contractor, assignee or licensees; or
- (4) Such action is necessary because the agreement required by paragraph (i) of this clause has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

**(k) Special Provisions for Contracts with Nonprofit Organizations**

If the Contractor is a nonprofit organization, it agrees that:

- (1) Rights to a subject invention in the United States may not be assigned without the approval of the Federal agency, except where such assignment is made to an organization which has as one of its primary functions the management of inventions, provided that such assignee will be subject to the same provisions as the Contractor;
- (2) The Contractor will share royalties collected on a subject invention with the inventor, including Federal employee co-inventors (when the agency deems it appropriate) when the subject invention is assigned in accordance with 35 U.S.C. 202(e) and 37 CFR 401.10;
- (3) The balance of any royalties or income earned by the Contractor with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions, will be utilized for the support of scientific research or education; and
- (4) It will make efforts that are reasonable under the circumstances to attract licensees of subject inventions that are small business firms and that, when appropriate, it will give a preference to a small business firm when licensing a subject invention;
- (5) The Federal agency may review the Contractor's licensing program and decisions regarding small business applicants, and the Contractor will negotiate changes to its licensing policies, procedures, or practices with the Federal agency when the Federal agency's review discloses that the Contractor could take reasonable steps to more effectively implement the requirements of paragraph (k)(4) of this clause; and
- (6) The Federal agency may take into consideration concerns presented by small businesses in making such determinations in paragraph (k)(5) of this clause.

**(l) Communication**

The District Representative is the central point of contact for communications on matters relating to the clause. Contact information for this person is listed below.

Kevin Marshall  
Public Utility District No. 2  
of Grant County, Washington  
PO Box 878  
Ephrata, WA 98823  
509-760-9046  
kmarsha@gcpud.org

**(m) Electronic Filing**

- (1) Unless otherwise requested or directed by the Federal agency -
  - (i) The written disclosure required in (c)(1) of this clause shall be electronically filed;
  - (ii) The written election required in (c)(2) of this clause shall be electronically filed; and
  - (iii) If required by the agency to be submitted, the close-out report in paragraph (c)(1) of this clause and the patent information and periodic reporting identified in paragraph (c)(3) of this clause shall be electronically filed.

(2) Other written notices required in this clause may be electronically delivered to the agency or the Contractor through an electronic database used for reporting subject inventions, patents, and utilization reports to the funding agency.

7. Clean Air Act and Federal Water Pollution Control Act

“Clean Air Act”

The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

The Contractor agrees to report each violation to the District and understands and agrees that the District will, in turn, report each violation as required to assure notification to the federal awarding agency, and the appropriate Environmental Protection Agency Regional Office.

The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance provided by the federal awarding agency.

“Federal Water Pollution Control Act”

The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 et seq.

The Contractor agrees to report each violation to the District and understands and agrees that the District will, in turn, report each violation as required to assure notification to the pass-through entity, if applicable and the appropriate Environmental Protection Agency Regional Office.

The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance provided by the federal awarding agency.

8. Debarment and Suspension

This Contract is a covered transaction for purposes of 2 C.F.R. Part 180 and 2 C.F.R. Part 3000. As such, the Contractor is required to verify that none of the Contractor’s principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

The Contractor must comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

Contractor’s certification, executed as part of the RFQ process (RFQ Attachment “F”) and incorporated herein by reference, is a material representation of fact relied upon by the District. If it is later determined that the Contractor did not comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C, in addition to remedies available to the District, the federal government may pursue available remedies, including but not limited to suspension and/or debarment.

9. Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended)

Contractors who apply or bid for an award of more than \$100,000 shall file the required certification with Grant PUD as part of the RFQ process (RFQ Attachment “D”), which is incorporated herein by reference. Each tier certifies to the tier above that it will not and has not used federally appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also

disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the federal awarding agency.

10. Procurement of Recovered Materials

In the performance of this Contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired:

- A. Competitively within a timeframe providing for compliance with the Contract performance schedule,
- B. Meeting Contract performance requirements, or
- C. At a reasonable price.

Information about this requirement, along with the list of EPA-designated items, is available at EPA's webpage, [Comprehensive Procurement Guideline \(CPG\) Program | US EPA](#).

The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

11. Affirmative Socioeconomic Steps

If subcontracts are to be let, the Contractor is required to take all necessary steps identified in 2 CFR part 200.321(b)(1)-(5) to ensure that small and minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

12. Access to Records

A. General

The Contractor agrees to provide the federal awarding agency, pass-through entity, if applicable, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts, and transcriptions.

The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

The Contractor agrees to provide the federal awarding agency, pass-through entity, if applicable or their authorized representatives access to construction or other work sites pertaining to the work being completed under the Contract.

B. Under a Major Disaster or Emergency Declaration

In compliance with section 1225 of the Disaster Recovery Reform Act of 2018, and when applicable, the District and the Contractor acknowledge and agree that no language in this Contract is intended to prohibit audits or internal reviews by the federal awarding agency, FEMA Administrator, or the Comptroller General of the United States.

13. Compliance with Federal Law, Regulations, and Executive Orders and Acknowledgement of Federal Funding

Contractor acknowledges that the federal awarding agency financial assistance will be used to fund all or a portion of the Contract. The Contractor will comply with all applicable federal law, regulations, executive

orders, federal awarding agency policies, procedures, and directives.

14. No Obligation by Federal Government

The Federal government is not a party to this Contract and is not subject to any obligations or liabilities to the District, contractor, or any other party pertaining to any matter resulting from the Contract.

15. Program Fraud and False or Fraudulent Statements or Related Acts

The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this Contract.

## PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (“Agreement” or “Contract”), effective upon the date of the last signature below (“Effective Date”), is by and between Public Utility District No. 2 of Grant County, Washington (“District”) and Stantec Consulting Services, Inc. (“Contractor”);

### Recitals:

The District desires to obtain professional consulting engineering services as needed to support the District’s Energy Supply Management (ESM) Research Group; and

The District's Chief Commercial Officer believes the Contractor will provide subject matter expertise and resources where the District may not have expertise in-house or does not have adequate internal resources to support the projects of; and

The Contractor, through an established review procedure as specified by RCW Chapter 39.80 and 2 CFR 200.320(b)(2)(iv), has been selected and is willing to provide services on the terms and conditions hereinafter stated.

NOW, THEREFORE, in consideration of the mutual covenants herein, the parties hereto agree as follows:

#### 1. Scope of Services

The Contractor shall function as a key techno-economic advisor to District leadership to ensure a sound business, engineering, and project management program is developed and executed and will augment the District’s technical and managerial capabilities. The Contractor shall provide technical knowledge, project management, project execution expertise, and risk management capabilities in support of the District’s project success.

The District may, at the District’s discretion, authorize the Contractor to perform specific tasks by means of a Task Authorization for Professional Services (Appendix “C”) to be signed by both the District and the Contractor. Such authorization may be issued by the District Representative. The authorization will define the scope of the task, any time requirements and budget limitations. When funded in whole or in part with federal funds, a Task Authorization will also include documentation of any applicable financial assistance agreement/s between the District and a federal awarding agency.

The initial scope of services for this Agreement is anticipated to include, but not necessarily be limited to, the following:

#### A. Provide engineering support services for technical and economic evaluation of generation and energy storage technologies including, but not limited to:

1. Solar generation technologies.
2. Wind generation technologies.
3. Utility scale battery technologies.
4. Hydrogen electrical generation technologies.
5. Natural gas generation technologies.
6. Pumped storage technologies/project evaluations.
7. Other generation technologies that the District may want to research.
8. Small Modular Reactor Technologies.

The Contractor shall assist in identifying potential risks and mitigation recommendations.

- B. Provide engineering support services for technical and economic evaluation of demand side management including but not limited to:
1. Smart Grid.
  2. Evaluation of the District's existing AMI and fiber optic systems for use in demand side management.
  3. Other technologies as determined by the District.
- The Contractor shall assist in identifying potential risks and mitigation recommendations.
- C. Provide engineering support services for site evaluations including, but not limited to:
1. Site Characterization studies (access, permitting, geotechnical, seismic, cultural, fish & wildlife, etc.).
  2. Evaluation of permitting requirements based on technologies being considered.
  3. Transmission connectivity requirements.
  4. Project planning and estimating.
- D. Provide engineering support services for conceptual design and estimating. This work potentially includes all technologies identified.
- E. Provide support services for land and easement acquisition including, but not limited to:
1. Determination of ownership for land and improvements.
  2. Determination of existing easements, permits, etc.
  3. Preparation of appraisals for parcels and, if appropriate, affected improvements.
  4. Preparation of recommendations to District for offers to be made on appropriate easements.
  5. Negotiation with owners; secure appropriate acquisition options and easements in properly recordable form with necessary signatures; and pay consideration.
- F. Miscellaneous engineering support services for other research and evaluation needs
1. Risk identification and mitigation.
  2. Research into emerging technologies as directed by the District.
  3. Future District identified needs for engineering support.

Additional work to be performed under future phases may include developing final designs, providing plans, specifications, construction cost estimates, construction schedules, and services during construction for the projects.

The District makes no guarantee as to the actual amount of work to be done. The District reserves the right to suspend or terminate any authorized task at any time or to extend the Contract beyond the initial term by issuance of a Change Order in accordance with Section 6 to complete any work already initiated and/or authorized under the original term and scope of the Contract.

## 2. Applicability of Federal Requirements

This Agreement may be funded using federal funds and subject to one or more financial assistance agreements between the District and a federal awarding agency. The provisions of Appendix "F", Federal Requirements, are required and applied when the District utilizes federal funds to pay for a contractor's performance under any contract. Accordingly, the Contractor agrees that the terms and conditions in Appendix "F" apply to this Agreement between the District and the Contractor



in all situations where the Contractor has been paid or will be paid with federal funds.

3. Independent Contractor

- A. The Contractor shall operate as, and have the status of, an independent Contractor and will not be an agent or employee of the District nor will it be entitled to any employee benefits provided by the District. All the Contractor's activities will be conducted at its own risk and be in compliance with all applicable federal, state and local laws.
- B. The Contractor shall perform its services with the level of skill, care and diligence normally provided by and expected of professional persons performing services similar to or like those to be performed hereunder. Contractor understands that the District will be relying upon the accuracy, competency, credibility and completeness of the services provided by the Contractor hereunder and that the District and its customers will be utilizing the results of such services.

4. Term - Schedule

This Agreement shall remain in full force and effect until December 31, 2029 or until terminated pursuant to Section 18.

5. Compensation and Payment

- A. Compensation for services rendered and all reimbursable costs shall be per the rates set forth in Appendix "A.1", Rate Schedule, which rates and costs shall not be subject to change until two years after the Effective Date of this Agreement. Any changes to rates and costs shall only be on a prospective basis and shall occur no more frequently than once every 12 months thereafter. Each such change shall not exceed the lesser of i.) 5% or ii.) the percentage increase in the Bureau of Labor Statistics Consumer Price Index (CPI-U) for the West Urban region occurring during the immediately preceding 12 month period for which CPI-U data is available. Contractor shall notify the District in writing at least 30 days prior to any such rate increase going into effect. If accepted by the Contractor in the RFP process, if the District issues payment within 10 days, the payment due shall be reduced by 2%. A payment is considered made on the day it is mailed or is sent through electronic or wire transfer.

In no event however, shall the total amount paid to Contractor for services and all reimbursable costs exceed the sum of \$600,000.00 USD unless a Change Order authorizing the same is issued in accordance with Section 6 below.

- B. Contractor shall submit monthly invoices to the attention of:

Public Utility District No. 2  
of Grant County, Washington  
Attn: Accounts Payable  
PO Box 878  
Ephrata, WA 98823  
Or [AccountsPayable@gcpud.org](mailto:AccountsPayable@gcpud.org)

- C. Invoices shall include the Contract number, a detailed description of the work performed, and a report of what percentage of total labor hours by Contractor and each and every Subcontractor/Subconsultant of the Contractor were performed by small and diverse businesses during the billing period. Any Labor Categories or reimbursable expenses shall be included on the invoice (see Appendix "A.1" and "A.2").

- D. Payment will be made by the District upon completion of work following District approval of Contractor's invoices. Invoice shall be subject to the review and approval of the District. Invoice shall be in a detailed and clear manner supported by such information the District may require. The District will make payment to Contractor within 30 days after District's receipt and approval of said invoice. Contractor understands and agrees that by executing this Contract with the District, the District shall make payment(s) by automated clearing house (ACH).
- E. The District Representative may approve additional Contractor employees, personnel categories, and/or equipment rates to be added to the Rate Schedule, if applicable, provided that any additional employees have at least equivalent training and skills and are compensated at the same or lower rates than those listed on the current approved Rate Schedule for similar work. There shall be no change in the total Contract not to exceed amount. All additions must be approved in writing prior to performing services under the Contract.

6. Change Orders

Except as provided herein, no official, employee, agent or representative of the District is authorized to approve any change in this Contract and it shall be the responsibility of the Contractor before proceeding with any change, to satisfy itself that the execution of the written Change Order has been properly authorized on behalf of the District. The District's management has limited authority to approve Change Orders. The current level and limitations of such authority are set forth in District Resolution No. 8609 which may be amended from time to time. Otherwise, only the District's Board of Commissioners may approve changes to this Contract.

Charges or credits for the work covered by the approved changes shall be determined by written agreement of the parties and shall be made on Change Order form as reflected on Appendix "B".

When a change is ordered by the District, as provided herein, a Change Order shall be executed by the District and the Contractor before any Change Order work is performed. When requested, Contractor shall provide a detailed proposal for evaluation by the District, including details on proposed cost. The District shall not be liable for any payment to Contractor, or claims arising there from, for Change Order work which is not first authorized in writing. All terms and conditions contained in the Contract Documents shall be applicable to Change Order work. Change Orders shall be issued on the form attached as Appendix "B" and shall specify any change in time required for completion of the work caused by the Change Order and, to the extent applicable, the amount of any increase or decrease in the Contract Price.

7. Taxes

- A. Except for the Washington State retail sales and use taxes as may be levied upon the Contract, pursuant to RCW Chapters 82.08 and 82.12, the Contract Price includes and the Contractor shall have the full exclusive liability for the payment of all taxes, levies, duties and assessments of every nature due and payable in connection with this Contract or its employees and subcontractors performing work related to this Contract.
- B. Washington State retail sales tax and use taxes levied upon this Contract pursuant to RCW Chapters 82.08 and 82.12 are excluded from the rates and if applicable will be reimbursed as follows:
  - 1. If the Contractor has, or is required to have a valid Washington State sales tax identification number, the identification number shall be furnished to the District upon request. The Contractor shall make payment of any Washington State retail

sales and use taxes due and Contractor shall be reimbursed by the District for the same. Contractor shall be solely responsible for any interest or penalties arising from late or untimely payment of said taxes.

2. If the Contractor is not required to have a valid Washington State sales tax identification number, it shall notify the District of the same. In such event, the District, after receiving proper invoices from Contractor, shall make payment of said Washington State retail sales and use taxes levied upon this Contract to the Washington State Department of Revenue.

## 8. Hold Harmless and Indemnification

Contractor shall, at its sole expense, indemnify, defend, save, and hold harmless the District, its officers, agents, and employees from all actual or potential claims or losses, including costs and legal fees at trial and on appeal, and damages or claims for damages to property or persons, suffered by anyone whomsoever, including the District, to the extent caused by any negligent act of or omission of the Contractor or its subcontractors, excluding damages caused by the negligence of the District, in the administration or performance of this Agreement or any subcontracts, and for which either of the parties, their officers, agents, or employees may or shall be liable. In situations where liability for damages arises from claims of bodily injury to persons or damage to property, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the Contractor or its subcontractors. Contractor waives its immunity under industrial insurance, Title 51 RCW, to the extent necessary to effectuate this indemnification/hold harmless agreement. Contractor's indemnification obligation shall not apply to liability for damages arising out of bodily injury to a person or damage to property caused by the negligence of the District or its agents or employees and not attributable to any act or omission on the part of the Contractor. In the event of damages to a person or property caused by or resulting from the concurrent negligence of District or its agents or employees and the Contractor or its agents or employees, the Contractor's indemnity obligation shall apply only to the extent of the Contractor's (including that of its agents and employees) negligence.

Contractor acknowledges that by entering into this Contract with the District, it has mutually negotiated the above indemnity provision with the District. Contractor's indemnity and defense obligations shall survive the termination or completion of the Contract and shall remain in full force and effect until satisfied in full.

## 9. Insurance

- A. Prior to the commencement of any work under this Agreement, and at all times during the term of this Agreement, Contractor shall obtain and maintain continuously, at its own expense, a policy or policies of insurance with insurance companies rated A- VII or better by A. M. Best or A by S&P, as enumerated below. Any deductible, self-insured retention or coverage via captive \$25K or above must be disclosed and is subject to approval by the District's Risk Manager. The cost of any claim payments falling within the deductible or self-insured retention shall be the responsibility of the Contractor and not recoverable under any part of this Contract.

### Contractor Required Insurance

1. **General Liability Insurance:** Commercial general liability insurance, covering all operations by or on behalf of Contractor against claims for bodily injury (including death) and property damage (including loss of use). Such insurance shall provide coverage for:

- a. Premises and Operations;
- b. Products and Completed Operations;
- c. Contractual Liability;
- d. Personal Injury Liability (with deletion of the exclusion for liability assumed under Contract);

with the following **minimum limits**:

- e. \$1,000,000 Each Occurrence
- f. \$1,000,000 Personal Injury Liability
- g. \$2,000,000 General Aggregate
- h. \$2,000,000 Products and Completed Operations Aggregate

Commercial general liability insurance will include the District as additional insured on a primary and non-contributory basis. A waiver of subrogation will apply in favor of the District.

2. **Workers' Compensation and Stop Gap Employers Liability:** When applicable, Workers' Compensation Insurance as required by law for all employees. Employer's Liability Insurance, including Occupational Disease coverage, in the amount of **\$1,000,000 for Each Accident, Each Employee, and Policy Limit.** Employer's Liability may be procured as an endorsement to the commercial general liability via the Stop Gap Coverage endorsement. The Contractor expressly agrees to comply with all provisions of the Workers' Compensation Laws of the states or countries where the work is being performed, including the provisions of Title 51 of the Revised Code of Washington for all work occurring in the State of Washington.

If there is an exposure of injury or illness under the U.S. Longshore and Harbor Workers (USL&H) Act, Jones Act, or under U.S. laws, regulations or statutes applicable to maritime employees, coverage shall be included for such injuries or claims. Such coverage shall include USL&H and/or Maritime Employer's Liability (MEL).

3. **Automobile Liability Insurance:** Automobile Liability insurance against claims of bodily injury (including death) and property damage (including loss of use) covering all owned (if any), rented, leased, non-owned, and hired vehicles used in the performance of the work, with a **minimum limit of \$1,000,000 per accident** for bodily injury, property damage, or death combined and containing appropriate uninsured motorist and No-Fault insurance provision, where applicable.

Automobile liability insurance will include the District as additional insured on a primary and non-contributory basis. A waiver of subrogation will apply in favor of the District.

4. **Excess Insurance:** Excess (or Umbrella) Liability insurance with a **minimum limit of \$2,000,000 per occurrence and in the aggregate.** This insurance shall provide coverage in excess of the underlying primary liability limits, terms, and conditions for each category of liability insurance in the foregoing subsections 1, 2 (Employer's Liability only) and 3. If this insurance is written on a claims-made policy form, then the policy shall be endorsed to include an automatic extended reporting period of at least five years or the statute of repose.

Umbrella/Excess liability insurance will include the District as additional insured on a primary and non-contributory basis. A waiver of subrogation will apply in favor of the District.

5. **Professional Liability:** Contractor shall provide professional liability insurance with a **minimum limit of \$5,000,000 per claim.**

If such policy is written on a claims made form, the retroactive date shall be prior to or coincident with the Effective Date of this Agreement. Claims made form coverage shall be maintained by the Contractor for a minimum of five years following the termination of this Agreement, and the Contractor shall annually provide the District with proof of renewal. If renewal of the claims made form of coverage becomes unavailable, or economically prohibitive, the Contractor shall purchase an Extended Reporting Period Tail or execute another form of guarantee acceptable to the District to assure financial responsibility for liability for services performed.

If Contractor shall hire subcontractor for all operations and risk involving professional services exposure, this requirement may be satisfied by subcontractor's policies. Contractor shall impute the insurance requirements stated in this section to subcontractor by written contract or written agreement. Any exceptions must be mutually agreed in writing with the District.

- B. Evidence of Insurance - Prior to performing any services, and within 10 days after receipt of the Contract Award, then annually thereafter, the Contractor shall file with the District a Certificate of Insurance showing the Insuring Companies, policy numbers, effective dates, limits of liability and deductibles with copies of the endorsements or policy documents where policy terms required under Section A are met.

Failure of the District to demand such certificate or other evidence of compliance with these insurance requirements or failure of the District to identify a deficiency from the provided evidence shall not be construed as a waiver of the Contractor's obligation to maintain such insurance. Acceptance by the District of any certificate or other evidence of compliance does not constitute approval or agreement by the District that the insurance requirements have been met or that the policies shown in the certificates or other evidence are in compliance with the requirements.

The District shall have the right but not the obligation of prohibiting the Contractor or subcontractor from entering the project site until such certificates or other evidence of insurance has been provided in full compliance with these requirements. If the Contractor fails to maintain insurance as set forth above, the District may purchase such insurance at the Contractor's expense. The Contractor's failure to maintain the required insurance may result in termination of this Contract at the District's option.

- C. Subcontractors - Contractor shall ensure that each subcontractor meets the applicable insurance requirements and specifications of this Agreement. All coverage for subcontractors shall be subject to all the requirements stated herein and applicable to their profession. Contractor shall furnish the District with copies of certificates of insurance evidencing coverage for each subcontractor upon request.
- D. Cancellation of Insurance - The Contractor shall not cause any insurance policy to be canceled or permit any policy to lapse. Insurance companies, to the extent commercially available, or Contractor shall provide 30 days advance written notice to the District for cancellation or any reduction in coverage or condition, except 10 days advance written

notice for cancellation due to non-payment of premium. Should the Contractor receive any notice of cancellation or notice of nonrenewal from its insurer(s), Contractor shall provide immediate notice to the District no later than two days following receipt of such notice from the insurer. Notice to the District shall be delivered by facsimile or email.

10. Assignment

Contractor may not assign this Agreement, in whole or in part, voluntarily or by operation of law, unless approved in writing by the District.

11. Records - Audit

A. The results of all work and services performed by the Contractor hereunder shall become the property of the District upon completion of the work herein performed and shall be delivered to the District prior to final payment.

B. Until the expiration of three years after final acceptance by District of all the work, Contractor shall keep and maintain complete and accurate records of its costs and expenses related to the work or this Contract in accordance with sound and generally accepted accounting principles applied on a consistent basis. To the extent this Contract provided for compensation on a cost-reimbursable basis or whenever such records may, in the opinion of the District, be useful in determining any amounts payable to Contractor or District (e.g., the nature of a refund, credit or otherwise), Contractor shall provide District access to all such records for examination, copying and audit. Notwithstanding the foregoing, the District's right to inspect, copy and audit shall not extend to the composition of the Contractor's rates and fees, percentage mark-ups or multipliers but shall apply only to their application to the applicable units.

12. Nondisclosure

Contractor agrees that it will not divulge to third parties, without the written consent of the District, any information obtained from or through District in connection with the performance of this Contract. Contractor further agrees that it will not, without the prior written consent of District, disclose to any third party any information developed or obtained by the Contractor in the performance of this Contract and, if requested by District, to require its employees and subcontractors, if any, to execute a nondisclosure agreement prior to performing any services under this Contract. Nothing in this section shall apply to:

A. Information which is already in the Contractor's possession not subject to any existing confidentiality provisions,

B. Information which, at the time of disclosure, is in the public domain by having been printed and published and available to the public libraries or other public places where such data is usually collected, and

C. Information required to be disclosed by court order or by an agency with appropriate jurisdiction.

13. Public Records Act

The District is subject to the disclosure obligations of the Washington Public Records Act of RCW 42.56. The Contractor expressly acknowledges and agrees that any information Contractor submits is subject to public disclosure pursuant to the Public Records Act or other applicable law and the District may disclose Contractor's proposal and/or information at its sole discretion in accordance

with its obligations under applicable law.

14. Applicable Law

Contractor shall comply with all applicable federal, state and local laws and regulations including amendments and changes as they occur. All written instruments, agreements, specifications and other writing of whatsoever nature which relate to or are a part of this Agreement 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 District and Contractor shall be governed by the laws of the State of Washington. Venue of any action filed to enforce or interpret the provisions of this Agreement shall be exclusively in the Superior Court, County of Grant, State of Washington or the Federal District Court for the Eastern District of Washington at the District's sole option. In the event of litigation to enforce the provisions of this Agreement, the prevailing party shall be entitled to reasonable legal fees in addition to any other relief allowed.

15. Subcontracts/Purchases

- A. The Contractor is authorized to enter into subcontracts required for the work. Any subcontracts shall be approved in advance by the District Representative and Procurement Officer. The Contractor is not authorized to make any purchases of materials or equipment other than those specified as other direct costs in Appendix "A.1" and mutually agreed to on the execution date of this Agreement.
- B. The Contractor shall consider that this Contract may be federally funded in whole or in part and may therefore be subject to certain federal provisions. Further, a federal awarding agency may require that certain terms and conditions of this Contract be included in all subcontracts. The Contractor shall be responsible for ensuring all applicable mandatory federal awarding agency provisions are included in all subcontracts. These mandatory provisions are set forth in Appendix "F", Federal Requirements. The Contractor shall bear full responsibility for delays in performing the work if subcontractor agreements fail to include all applicable provisions.
- C. In the event subcontracts other than those specified in Appendix "A.1" are required for the work, Contractor shall obtain three quotes and submit to the District Representative and Procurement Officer for approval prior to entering into such subcontracts. The District Representative and Procurement Officer may request copies of the subcontractor agreements from the Contractor. Subcontracted work approved in accordance with this section shall be invoiced at cost. A copy of the invoice showing actual cost must be submitted with the Contractor's invoice to the District.

16. Notices

Any notice or other communication under this Contract given by either party shall be sent via email to the email address listed below, or mailed, properly addressed and stamped with the required postage, to the intended recipient at the address and to the attention of the person specified below and shall be deemed served when received and not mailed. Either party may from time to time change such address by giving the other party notice of such change.

District  
Dave Dempsey  
Public Utility District No. 2  
of Grant County, Washington  
PO Box 878, 154 A Street SE  
Ephrata, WA 98823

Contractor  
Greg Rollins  
Stantec Consulting Services, Inc.  
PO Box 842728  
7237 Church Ranch Blvd, Ste 410  
Los Angeles, CA 90084-2728

Ph: 509-289-0290  
ddempsey@gcpud.org

Ph: 503-220-5414  
gregory.rollins@stantec.com

For purposes of technical communications and work coordination only, the District designates Kevin Marshall as its representative. Said individual shall have no authority to authorize any activity which will result in any change in the amount payable to Contractor. Such changes, if any, must be by written Change Order issued in accordance with Section 6 to be valid and binding on the District.

17. License and Delivery of Works Subject to Copyright and Data Rights

Contractor grants to the District, a paid-up, royalty-free, nonexclusive, irrevocable, worldwide license in data first produced in the performance of this Contract to reproduce, publish, or otherwise use, including prepare derivative works, distribute copies to the public, and perform publicly and display publicly such data. For data required by the Contract but not first produced in the performance of this Contract, the Contractor will identify such data and grant to the District or acquire on its behalf a license of the same scope as for data first produced in the performance of this Contract. Data, as used herein, shall include any work subject to copyright under 17 U.S.C. § 102, for example, any written reports or literary works, software and/or source code, music, choreography, pictures or images, graphics, sculptures, videos, motion pictures or other audiovisual works, sound and/or video recordings, and architectural works. Upon or before the completion of this Contract, the Contractor will deliver to the District data first produced in the performance of this Contract and data required by the Contract but not first produced in the performance of this Contract in formats acceptable by the District.

18. Termination

- A. District may, at any time, for any reason, terminate Contractor's services in connection with this Agreement, or any part thereof, by designating that portion of the services to be terminated. In case of termination pursuant to this Section A, District will make payment at the rates specified in this Agreement for services properly performed up to the date of termination. However, in no event shall Contractor be entitled to any other payment to or any anticipated fee or profit on unperformed work.
- B. In the event of Contractor's breach or abandonment of this Contract, the District may, after providing Contractor written notice of the breach and a period of seven days to cure, thereupon and without further notice, terminate this Agreement. The District without waiving any other remedies available to it, may retain any monies otherwise due Contractor under this Agreement to the extent such sums are required to compensate District, in whole or in part, for any loss or damage caused by Contractor's breach or abandonment.

Non-payment of undisputed amounts by the District to the Contractor in accordance with Section 5.D is agreed to constitute a material breach of this Agreement and, upon written notice as prescribed above, the duties, obligations, and responsibilities of the Contractor are terminated.

19. Non-Waiver

No waiver of any provision of this Agreement, or any rights or obligations of either Party under this Agreement, shall be effective, except pursuant to a written instrument signed by the Party or Parties waiving compliance, and any such waiver shall be effective only in the specific instance and for the specific purpose stated in such writing. The failure of either Party to require the performance of any term of this Agreement or the waiver of either Party of any breach under this Agreement shall not operate or be construed as a waiver of any other provision hereof, nor shall it



be construed as a waiver of any subsequent breach by the other Party hereto.

20. Project Documentation Transfer Methods

- A. The District requires use of the District O365 SharePoint site for all letters, requests for information, safety reports, submittals (except samples), transmittals, and test reports. The requirement to use the District O365 SharePoint site for delivery of these documents supersedes any other requirements for document delivery in the Contract Documents.
- B. The District and Contractor shall mutually agree on the user list for the O365 SharePoint site. All users shall be set up with an individual user name and password after the Contractor has provided a signed “Remote Access Application Form and Computer System Remote Access User Security Agreement” for each user.
- C. All files shall be placed in the correct library corresponding to the subject matter of the file. The following libraries shall be setup by the District: Change Order, Change Order Proposal, District Instruction, Invoices, Letters from Contractor, Letters from District, Meeting Minutes, Request for Information, Safety Reports-Accidents, Schedules, Signed Documents, Submittal, Test Reports, Transmittals, Task Authorization. Original signed Change Orders must also be physically sent to the attention of the Procurement Officer. The District reserves the right to create or delete libraries based on the project documentation requirements. Files stored on the District’s O365 SharePoint site shall remain on the O365 SharePoint site for the duration of the project.
- D. File names shall be as follows, where Y indicates a sequential number starting with 1, A indicates a sequential alpha character for each revision – A = first revision, B = second revision, etc. The following abbreviations may be used: “RFI” for “Request for Information”.
  - 1. Change Order Proposals: “Change Order Proposal Y”
  - 2. Letters: “Letter from Contractor Y”
  - 3. Requests for Information: “Request for Information Y” or “RFI Y”
  - 4. Resubmitted Requests for Information: “Request for Information YA” or “RFI YA”
  - 5. Safety/Accident Reports: “Safety Report Y”
  - 6. Submittals: “Submittal Y”
  - 7. Resubmitted Submittals: “Submittal YA”
  - 8. Test Reports: “Test Report Y”
- E. The receipt date for all documents shall be the same date as indicated by the District O365 SharePoint file posting date unless the documents are placed on the District O365 SharePoint site after 2 p.m. Pacific Standard Time, then the document receipt date shall be set as the following business day.
- F. If for any reason the District O365 SharePoint site is not functional, then the Contractor shall send hard copies for review; see Technical Specifications for number of copies required. No extensions or claims shall be granted if the District’s O365 SharePoint site is

not functional.

21. Environmentally Preferable Products, Services, and Practices

A. In the performance of work under this Contract, the Contractor shall exert its best efforts to provide its services in a manner that will promote the natural environment and protect the health and wellbeing of District employees, contracted service providers, the public, and visitors using District facilities.

B. Definitions as used in this Section 21:

*“Environmentally preferable”* means products or services that have a reduced effect on human health and the environment when compared with competing products or services that serve the same purpose.

*“Green Purchasing”* means making thoughtful, strategic decisions to buy goods and services that have less negative environmental and health impacts than similar products or services.

C. Green purchasing and environmentally preferable products and services include several interconnected initiatives which are subject to and are described by the following government and industry procurement programs:

1. Products containing recovered material designated by the U.S. Environmental Protection Agency (EPA) under the Comprehensive Procurement Guidelines ([42 U.S.C. 6962](#)) ([40 CFR Part 247](#)) ([Comprehensive Procurement Guideline \(CPG\) Program | US EPA](#)).
2. Energy- and water-efficient products that are ENERGY STAR® certified or Federal Energy Management Program (FEMP)-designated products ([42 U.S.C 8259b](#)) ([10 CFR part 436, subpart C](#)) (<https://www.energy.gov/femp/search-energy-efficient-products> and <https://www.energystar.gov/products?s=mega>).
3. Acceptable chemicals, products, and manufacturing processes listed under EPA's Significant New Alternatives Policy (SNAP) program, which ensures a safe and smooth transition away from substances that contribute to the depletion of stratospheric ozone ([42 U.S.C. 76711](#)) ([40 CFR part 82, subpart G](#)) (<https://www.epa.gov/snap>).
4. WaterSense® labeled (water efficient) products and services (<https://www.epa.gov/watersense/watersense-products>).
5. Safer Choice-certified products (products that contain safer chemical ingredients) (<https://www.epa.gov/saferchoice/products>).
6. Product and services that meet EPA Recommendations of Specifications, Standards, and Ecolabels in effect as of October 2023 (<https://www.epa.gov/greenerproducts/recommendations-specifications-standards-and-ecolabels-federal-purchasing>).

The Green Procurement Compilation (GPC) available at

<https://sftool.gov/greenprocurement> provides a comprehensive list of sustainable products and services and sustainable procurement guidance. The Contractor should review the GPC when determining which programs apply to a specific product or service.

- D. To the extent that design services provided by the Contractor require the specification of any of these types of products, the Contractor is expected to specify the environmentally preferable type of product unless that type of product is not available competitively within a reasonable time, at a reasonable price, is not life cycle cost efficient in the case of energy consuming products or does not meet reasonable performance standards.
- E. The Contractor shall use recycled paper for the production of all printed and photocopied documents related to the fulfillment of this Contract. If the cost of recycled paper is more than 15 percent higher than the cost of non-recycled paper, the Contractor shall notify the District Representative, who may waive the recycled paper requirement.

The Contractor agrees to use both sides of paper for copying and printing, and to use recycled and/or recyclable products wherever practical.

22. Utilization of Small and Diverse Businesses

- A. The Contractor has committed to the aspirational goals identified in its Subcontractor/Subconsultant Inclusion Plan (SIP) & Commitment Form executed as part of the RFQ process (RFQ Attachment C) and incorporated herein by reference.
- B. For purposes of award and performance of the Contract, the aspirational goals are expressed as a percentage of the total Contract Price to be performed by small and diverse businesses over the life of this Agreement.
- C. The Contractor shall make good faith efforts to meet or exceed its aspirational goals in the performance of this Contract. The Contractor may count their own participation and any participation from subcontractors and/or subconsultants, as applicable, towards aspirational goals in this Contract.
- D. Certification Requirements: Small and diverse businesses proposed in the Contractor's SIP must meet, at the time Statements of Qualifications are due, the requirements under RCW 39.26.010(22), or be registered in the federal government's System for Award Management (SAM) as a Small Business Administration (SBA) certified business eligible for contracts that are reserved for small businesses, or be located in an area designated in the current U.S. Department of Labor (DOL) Labor Surplus Area (LSA) list (see <https://www.dol.gov/agencies/eta/lsa>).
- E. Upon Contract award, and if applicable, the Contractor shall provide District Supplier Diversity Program staff, copies of the Contractor's and subcontractors and/or subconsultants, as applicable, business certifications from the Washington State Office of Minority and Women's Business Enterprises (OMWBE) or SBA. If the Contractor's, a subcontractor's, or a subconsultant's business is not certified through OMWBE, SBA, or it is self-certified, the Contractor shall provide the District's Supplier Diversity Program staff verifying tax documentation for audit purposes in order to count the business towards the small and diverse business goal commitment.
- F. If, during the progress of the work, a business listed by the Contractor in its SIP is

determined not to meet the small and diverse business eligibility criteria, the utilization of said business will not be counted toward the fulfillment of the Contractor's SIP. The Contractor shall substitute another business that meets the small and diverse business eligibility provisions outlined above to maintain its commitment to small and diverse business participation. Such substitution shall be at no additional cost to the District.

- G. During Contract performance, if the Contractor is not meeting its aspirational goals or making satisfactory progress towards the objectives identified in its SIP, the District may request submission of a corrective action plan. The Contractor shall submit a corrective action plan within ten days of a written request from the District. The correction action plan shall contain the following elements:
1. An explanation of the circumstances contributing to the aspirational goal shortfall.
  2. A summary of the impacts to small and diverse businesses on the project due to the shortfall.
  3. A detailed list of actions that the Contractor will take to correct the shortfall and meet the aspirational goals for small and diverse participation for the project.
  4. A summary of the status of activities and actions identified in its SIP and the effectiveness of each one toward meeting the aspirational goals.

If the District determines that the corrective action plan submitted by the Contractor is unsatisfactory, the District may withhold payments, or terminate the contract for default.

- H. The obligation of the Contractor is to make Good Faith Efforts to meet its aspirational goals for small and diverse business participation.

For purpose of this clause:

“Good Faith Efforts” means efforts to achieve a goal or other elements of the Contractor’s SIP that, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to meet the SIP requirements.

The Contractor can demonstrate that it has achieved this objective by either meeting its aspirational goals or documenting its Good Faith Efforts. If the Contractor does not meet its aspirational goals, the District will make a determination on whether the Contractor made adequate Good Faith Efforts to meet the stated goals. The District will consider the quality, quantity, and intensity of the documented Good Faith Efforts made by the Contractor. The District will not consider mere pro forma efforts as Good Faith Efforts.

## 23. Project Management Contractor Participation

- A. The District utilizes a standard approach to implementing projects by using well-defined internal standard frameworks for both project management and organizational change management. The framework procedures and associated tools and templates are required to be used for all projects as defined by the District’s Enterprise Project Management Office. The Contractor shall, as directed by the District, utilize and/or actively participate in the District’s application of its project management and organization change management frameworks to guide the implementation of projects and/or change events that

this Contract contributes towards. To the extent applicable, the Contractor shall ensure that all workers, subcontractors, and suppliers also comply with these requirements.

- B. The Contractor shall provide upon request by the project team key project information required to properly manage the project. Requested information may include but is not limited to delivery and completion dates, resource estimates and availability, quality inspection and testing plans, cost estimates and forecasts, safety metrics, and any known risks or constraints associated with these. The Contractor shall provide requested project information as required to not delay project reporting or project progress, cause witness or hold points to be missed, or cause any scope or cost increases.

The Contractor shall attend the appropriate project meetings as requested by the project team to provide key input to project parameters pertaining to this Contract. These meetings may include but are not limited to project kickoff meetings, preconstruction meetings, Job Site Reviews, Root Cause Evaluations, Steering Committee and Commission updates, and Monthly Business Reviews. Meetings may be in-person or virtual depending on the needs of the project. The Contractor shall make a judicious effort to attend meetings at the appropriate dates and times as required to not delay any portion of the project progress or cause any scope or cost increases.

The Contractor agrees to provide requested project closeout information with the detail and in the format requested by the project team. This information may include but is not limited to record drawings, testing and commissioning data, operation and maintenance (O&M) manuals, training information, quality history, etc. Failure to provide all requested documentation that is acceptable to the project team shall delay acceptance and final payment by the District.

#### 24. Physical Security

If any performance under this Contract is to be conducted on District facilities or worksites, it shall be the responsibility of the Contractor to ensure that its employees and those of its Subcontractors are informed of and abide by the District's Security Policies as if fully set out herein a copy of which shall be provided to the Contractor by the District Representative at the preconstruction meeting or prior to beginning work. Without limiting the foregoing, Contractor and its employees shall be required to:

- A. Keep all external gates and doors locked at all times and interior doors as directed.
- B. Visibly display ID badges on their person at all times.
- C. Stay out of unauthorized areas or in authorized areas outside of authorized work hours, without express authorization from the District.
- D. Provide proper notification to the appropriate parties, and sign in and out upon entry and exit to secured locations. If unsure of who to notify, Contractor shall contact the District Representative.
- E. Immediately notify the District if any of Contractor's employees no longer need access or have left the Contractor's employment.
- F. Immediately report any lost or missing access device to the District Representative. A minimum charge will be assessed to the Contractor in the amount of \$50.00 per badge and the fee for lost or non-returned keys may include the cost to re-key the plant facilities. The Contractor is strictly prohibited from making copies of keys.

- G. Not permit 'tailgating' through any controlled access point (i.e. person(s), authorized or unauthorized, following an authorized person through an entry point without individual use of their issued ID badge or key).
- H. Return all District property, including but not limited to keys and badges, to the District Representative when an individual's access to the facility is no longer needed.
- I. Guest Wireless: The District provides Guest Wireless Internet access to contractors and vendors that need to conduct business in support of the District from personally owned mobile devices such as laptops and smart phones. Contractor personnel are responsible for exercising good judgment regarding appropriate use of information, electronic devices, and network resources.

The Contractor and any Subcontractors shall comply with the safety requirements of these Contract Documents and all District policies pertaining to COVID-19 located at <https://www.grantpud.org/for-contractors>.

The District reserves the right to conduct or to require Contractor to conduct criminal background checks on its employee(s) before granting such individuals access to restricted areas of District facilities or Protected Information. Criminal background checks may be conducted in such depth as the District reasonably determines to be necessary or appropriate for the type of access to be granted. The cost of such background checks shall be borne by the Contractor.

25. Security, Safety Awareness Training, Dam Safety Awareness Training, and Transmission and Distribution Access Training

Prior to receiving access to any District facilities, all Contractors, Contractor's employees, subcontractors and subcontractor's employees, material suppliers and material supplier's employees, or any person who will be engaged in the work under this Contract that requires access to District facilities, shall be required to take and pass the District's Security and Safety Awareness training before being issued a security access badge to access District facilities. Under no circumstances will the failure of any Contractor or subcontractor employee to pass the required training, be grounds for any claim for delay or additional compensation.

The Safety and Security Awareness training is available online and is a 20-30 minute training. The training is located at: <https://www.grantpud.org/for-contractors>. All contractors and their employees are required to successfully complete Safety and Security Awareness training before coming onsite. The Security and Safety certificates should be emailed directly to [SecurityTrainingCerts@gcpud.org](mailto:SecurityTrainingCerts@gcpud.org).

District Representative shall ensure that Contractor's employees, subcontractor's and subcontractor's employees have completed and submitted the certificate of completion for the training in a timely manner to avoid any delay in execution of the work. All such certificates shall be submitted before any security access badges will be issued.

If applicable, Dam Safety Awareness Training is required for Contractors who are performing work in and around Priest Rapids and Wanapum Dams and are badged. The training is available online only and is a 20-30 minute training. Contractor shall ensure that its employees, Subcontractors and Subcontractor's employees have completed, passed and printed the certificate of completion for the training in a timely manner to avoid any delay in execution of the work. All such certificates shall be submitted to the District Representative before any security access badges will be issued.

If applicable, Transmission and Distribution Access Training is required for Contractors, or their Subcontractors, who may hold a clearance or hotline hold order as part of performance of work

under this Contract. The training is available online only and is a 20-30 minute training. Contractor shall ensure that its employees, Subcontractors and Subcontractor's employees have completed, passed and printed the certificate of completion for the training in a timely manner to avoid any delay in execution of the work. All such certificates shall be submitted to the District Representative before any security access badges will be issued.

If you are uncertain which of the above courses you or your employees must complete, please contact your District Representative.

26. Protected Information

The State of Washington, Federal Energy Regulatory Commission (FERC) and/or North American Reliability Corporation (NERC) has established regulations for the protection of sensitive plans, drawings and records defined as Security Sensitive Information (SSI), Critical Energy Infrastructure Information (CEII) and/or Bulk Electric System Cyber System Information (BCSI), reference Appendix "D". In accordance with the Revised Code of Washington (RCW), FERC and NERC regulations, and using them as guidance, the District has identified and designated certain information as SSI, CEII, and/or BCSI (hereinafter referred to collectively as "Protected Information"). Because of the sensitive nature of certain District Protected Information that could be used in this Contract, Contractor is bound by the terms and conditions set forth in the Non-Disclosure Agreement (NDA) executed at the time of this Agreement (Appendix "D").

27. Background Checks

The District reserves the right to conduct or to require Contractor to conduct criminal background checks on its employee(s) before the District will grant such individuals access to secure areas of District facilities or electronic access to Bulk Electric System Cyber Assets or Protected Information. Criminal background checks may be conducted in such depth as the District reasonably determines to be necessary or appropriate for the type of access to be granted.

In the event the District determines in its sole discretion that an individual is unsatisfactory to the District or fails to provide a background check as requested by the District, the District reserves the right to require the Contractor to remove such individual from the job site and/or to exclude such individual from having any access to SSI, Bulk Electric System Cyber Assets, CEII, or BCSI.

28. Qualification of Contractor's Access and Personnel Change Approval

The District reserves the right to deny any Contractor or employee thereof access to District facilities or Protected Information at the District's sole discretion. The District will be the sole judge of such effect. All Contractors and employees thereof shall be subject to the nondisclosure provisions of this Contract.

The District reserves the right to conduct or to require Contractor to conduct criminal background checks, provide an identity validation document (I-9, Social Security card, driver's license) and complete the District provided training for its employee(s) before the District will grant such individuals access to secure areas of District facilities. Criminal background checks may be conducted in such depth as the District reasonably determines to be necessary or appropriate for the type of access to be granted. Contractor shall execute one certification for each employee requiring a background check on the form provided by the District and attached hereto as Appendix "E". The cost of such background checks shall be borne by the Contractor. For access to Protected Information relating to Critical Infrastructure Protection, the District reserves the right to require a Non-Disclosure Agreement and a certificate of completion from the District-provided training for each employee before the District will grant access to such individuals.

In the event the District determines in its sole discretion that an individual or Contractor is unsatisfactory or fails to provide a background check as requested by the District, or fails to provide the information listed above, the District reserves the right to exclude such individual or Contractor from secure areas and/or from having any access to Protected Information.

29. CIP Training

All persons receiving Protected Information or having access to secured sites shall complete CIP training prior to receiving such access and periodically, but no less than annually, thereafter. CIP training is conducted by the Reliability Compliance (RC) Department through a learning management system. The learning management system privileges will be coordinated between the District Representative and the RC Department.

30. Contractor Safety Requirements

The following applies if Contractor, or any of its sub-consultants, subcontractors, or suppliers of any tier, performs any activities on premises owned, leased, possessed, or controlled by the District. The Contractor Safety Requirements shall be required when applicable as determined by the District Representative based upon the scope of work. To the extent applicable, the Contractor shall ensure that all workers, sub-consultants, subcontractors, and suppliers comply with these requirements. In fulfilling these requirements, the Contractor shall also comply with material and equipment manufacturer instructions, and safety and health requirements in accordance with WAC 296-126-094 and this Agreement where applicable. If there are conflicts between any of the requirements referenced in the Contract Documents, the more stringent requirement shall prevail.

A. General

Initial/Warning Notice: Any District employee may notify the Contractor of any safety or health concern. The notice may be delivered verbally to any Contractor employee or subcontractor and the District employee shall notify the District Representative of the Notice. Written notification may be provided to the Contractor at the discretion of the District Representative. The notice shall have the same effect on the Contractor regardless of format or recipient. The Contractor shall take immediate action to mitigate the safety and health concerns identified in the District's notice.

B. Stop Work Order: District employees also have the authority to immediately stop a work activity without issuing the Initial/Warning Notice. The District employee will immediately notify the District Representative of the Stop Work Order. The District Representative may direct the Contractor to stop work due to safety and health concerns. The Stop Work Order may cover all work on the Contract or only a portion of the work. After the District issues a Stop Work Order, the Contractor shall meet with District Representatives (as determined by the District Representative) to present a written statement outlining specific changes and/or measures the Contractor will make to work procedures and/or conditions to improve safety and health. A Stop Work Order can be rescinded only with the written approval of the District Representative.

1. The Contractor shall not be entitled to any adjustment of the Contract price or schedule when the District stops a work activity due to safety and health concerns that occurred under the Contractor's, Subcontractor's, or supplier's control.
2. The District's conduct does not alter or waive the Contractor's safety and health obligations.
3. Contractor shall provide an onsite Safety Professional as directed by the District Representative based upon number and/or severity of identified safety infractions.



4. Non-compliance with safety requirements could lead to termination of the contract in accordance with Section 18.
- C. The Contractor shall maintain an accurate record of, and shall immediately report to the District Representative all cases of near miss or recordable injury as defined by OSHA, damage to District or public property, or occupational diseases arising from, or incident to, performance of work under this Contract.
1. The record and report shall include where the incident occurred, the date of the incident, a brief description of what occurred, and a description of the preventative measures to be taken to avoid recurrence, any restitution or settlement made, and the status of these items. A written report shall be delivered to the District Representative within five business days of any such incident or occurrence.
  2. In the event of a serious incident, injury or fatality the immediate group shall stop work. The Contractor/subcontractor shall secure the scene from change until released by the authority having jurisdiction. The Contractor shall collect statements of the crew/witnesses as soon as practical. The District reserves the right to perform an incident investigation in parallel with the Contractor. The Contractor, subcontractor, and their workers shall fully cooperate with the District in this investigation.
  3. All cases of death, serious incidents, injuries or other incidents, as determined by the District Representative, shall be investigated by the Contractor to identify all causes and to recommend hazard control measures. A written report of the investigation shall be delivered to the District Representative within 30 calendar days of any such incident or occurrence.
  4. For situations that meet the reporting requirements of WAC 296-800, the Contractor shall self-report and notify the District Representative. The District Representative shall notify the District's Safety personnel.
- D. The Contractor/subcontractor shall conduct and document job briefings each morning with safety as an integral part of the briefing. The Contractor/Subcontractor shall provide an equivalent job briefing to personnel and/or visitors entering the job site after the original job briefing has been completed for work within their scope. Immediately upon request, the Contractor shall provide copies of the daily job briefing and any other safety meeting notes to the District Representative. The notes, at a minimum, shall include date, time, topics, and attendees and shall be retained by the Contractor for three years after completion of all work.
- E. Job Site Reviews Performed by the District: The Contractor Site Representative or other lead personnel, if requested by the District, shall be required to participate in District job briefs and/or District job site reviews that pertain to other work being performed that may impact the Contractor's work.
- F. The Contractor's Safety Information submitted during the RFQ process (see RFQ Attachment "B") is incorporated herein by reference. The District reserves the right to request updated Contractor safety information at any time during the performance of this Contract.
31. Right to Rely

The District shall furnish to the Contractor all applicable information and technical data in the District's possession or control reasonably required for the proper performance of the Services. The Contractor shall be entitled to reasonably rely upon the information and data provided by District or obtained from

generally acceptable sources within the industry without independent verification except to the extent such verification is expressly included in the Services.

32. Limitation of Liability

The total amount of all claims the District may have against the Contractor under this Agreement or arising from the performance or non-performance of the Services under any theory of law, including but not limited to claims for negligence, negligent misrepresentation and breach of contract, shall be strictly limited to an amount equal to the fees paid to Contractor under the applicable Task Authorization. As the District's sole and exclusive remedy under this Agreement any claim, demand or suit shall be directed and/or asserted only against the Contractor and not against any of the Contractor's employees, officers or directors.

Neither the District nor the Contractor shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of or connected to this Agreement or the performance of the services on this Project. This mutual waiver includes, but is not limited to, damages related to loss of use, loss of profits, loss of income, unrealized energy savings, diminution of property value or loss of reimbursement or credits from governmental or other agencies.

The limitation of liability set forth above shall not apply to claims or damages resulting from or in conjunction with any breach of any indemnification obligation set forth in this Agreement and/or claims made under any insurance placed or provided pursuant to this Agreement up to the full amount payable under such insurance policy(ies).

IN WITNESS WHEREOF, the Contractor and the District have executed this Agreement each by its proper respective officers and officials thereunto duly authorized the day and year first above written.

Public Utility District No. 2  
of Grant County, Washington

Stantec Consulting Services, Inc.

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

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

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**APPENDIX "A.1"**  
**RATE SCHEDULE**

Reference RFQ Attachment "I" Price Proposal dated November 19, 2024.

**APPENDIX "A.2"****DIRECT, REIMBURSABLE EXPENSES, & OTHER DIRECT COSTS****DIRECT EXPENSES:**

Fixed hourly billing rates shall be in US Dollars and include all i) payroll, payroll taxes and fringe benefits; ii) all reproduction and printing costs including electronic media; iii) communications costs including all phones, faxes, internet, postage, shipping, delivery, couriers; iv) computer, software, printers, scanners, office machines and related costs of operations including consumables; v) insurance costs; vi) indirect and overhead burden; and vii) profit.

**REIMBURSABLE EXPENSES:**

Reimbursable expenses are those reasonable and necessary costs incurred on or directly for the District's project, including necessary transportation costs, meals and lodging. Any actual expenses in non-US dollars will be converted using the conversion tables at [www.x-rates.com](http://www.x-rates.com) for the applicable period. Reimbursement will be subject to the following limitations:

Meals and Incidental Expenses: Meals and incidental expenses will be limited to the Federal Per Diem rate for meals and incidentals established for the location where lodging is obtained. Federal Per Diem guidelines which includes the meal breakdown and Federal Per Diem rates for other locations can be found at [www.gsa.gov](http://www.gsa.gov).

Lodging: Lodging will be billed at cost, including applicable taxes, not to exceed 200% of the Federal Per Diem maximum lodging rate for the location where the work is being performed. The District Representative may increase this limit in writing when circumstances require.

Travel: Air travel (at coach class or equivalent), airport shuttles, etc. billed at cost. Ground transportation by privately owned vehicle, if utilized, billed at the Internal Revenue Service mileage rate for privately owned vehicles in effect at the time of travel. Expenses for a rental car, at cost, in the ratio of one mid-size class rental car for each three Contractor's personnel directly engaged in performance of the work at the prevailing rental rates then in effect. Rental car options such as refueling fees, GPS, collision & liability insurance, etc. will not be reimbursed by the District unless such options are approved in advance by the District Representative. **Appropriate insurance coverage should be included in the Contractor's insurance policies.**

Sub-consultants/Subcontractors: Services requested by the District, verifiable by applicable supporting documentation or at specified rates, will be reimbursed to Contractor at cost.

Other: All other expenses will be based on actual costs and include appropriate documentation.

**Notes:**

**When applicable, monthly invoices will be reviewed to confirm allowability, reasonableness, and proper allocability according to federal cost/price principles in accordance with 2 CFR 200, Subpart E and the Rate Schedule, mutually agreed to on the execution date of this Agreement and/or the associated Task Authorization/s.**

- 1. Reimbursable expenses must be accompanied by receipts for airfare, hotel, and rental car, and any other support documentation as the District may require.**

**APPENDIX "B"**  
CHANGE ORDER NO.

Pursuant to Section 6, the following changes are hereby incorporated into this Contract:

- A. Description of Change:
  
- B. Time of Completion: The revised completion date shall be \_\_\_\_\_.  
*OR*  
 The completion date shall remain \_\_\_\_\_.
  
- C. Contract Price Adjustment: As a result of this Change Order, the not to exceed Contract Price shall remain unchanged (be increased/decreased by the sum of \$\_\_\_\_\_ plus applicable sales tax). This Change Order shall not provide any basis for any other payments to or claims by the Contractor as a result of or arising out of the performance of the work described herein. The new total revised maximum Contract Price is \$\_\_\_\_\_, including changes incorporated by this Change Order.
  
- D. Except as specifically provided herein, all other Contract terms and conditions shall remain unchanged.

Public Utility District No. 2  
of Grant County, Washington

Stantec Consulting Services, Inc.

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

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

Name of Authorized Signature  
Title

Name of Authorized Signature  
Title

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**APPENDIX "C"**  
**TASK AUTHORIZATION FOR PROFESSIONAL SERVICES**

Contract No.:	430-12302R	Task Authorization No.:		Amendment No.:	
Project Name:					

The Scope of Services covered by this authorization shall be performed in accordance with all the terms and conditions in the above referenced Contract Documents which are incorporated herein by this reference.

The District hereby requests and authorizes the Contractor to perform the following services:

Compensation is to be paid in accordance with and subject to the limitations in Section 5.A of the Contract Documents. In addition, the total cost of the above described work shall not exceed \$\_\_\_ without advance amendment of this Task Authorization by the District.

Public Utility District No. 2  
of Grant County, Washington

Stantec Consulting Services, Inc.

Approved for District

Accepted by Contractor

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

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

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: District Representative

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**APPENDIX "D"**  
**NON-DISCLOSURE AGREEMENT**

This Non-Disclosure Agreement ("NDA") is entered into on the date shown on the signature page between Public Utility District No. 2 of Grant County, Washington ("District"), and Stantec Consulting Services, Inc., ("Contractor"), sometimes collectively referred to as the "Parties."

**RECITALS**

The District has identified and designated certain information as confidential. For purposes of this Agreement, "Protected Information" includes:

- District customer information protected under RCW 19.29A, Consumers of Electricity;
- District employee information;
- District vendor information;
- All technical and business information or material that has or could have commercial value or other interest in the business or prospective business of the District;
- All information and material provided by the District which is not an open public record subject to disclosure under RCW 42.56, Public Records Act;
- All information of which unauthorized disclosure could be detrimental to the interests of the District or its customers, whether or not such information is identified as Protected Information; and
- Any information identified and designated by the District as Security Sensitive Information (SSI), Critical Energy Infrastructure Information (CEII), and/or Critical Infrastructure Protection (CIP) Protected Information in accordance with the State of Washington, Federal Energy Regulatory Commission (FERC) and/or North American Reliability Corporation (NERC), which have established regulations for the protection of sensitive plans, drawings, and records defined as SSI, CEII, and/or CIP Protected Information. SSI, CEII, and CIP Protected Information are further defined in Exhibit "A".

Because of the sensitive nature of such information that may be provided to the Contractor, Contractor must execute and deliver this NDA to the District prior to receiving such Protected Information from the District.

NOW, THEREFORE, the Parties agree as follows:

1. **Incorporation by Reference.** The recitals set forth above are incorporated herein as if fully set forth.
2. **Protected Information Disclosure.** All information and drawings that are disclosed by the District to the Contractor, which are designated as confidential, SSI, CEII, and/or CIP Protected Information, shall be protected hereunder as Protected Information.
3. **Non-Disclosure.** Subject to the provisions of Section 4 and unless the parties agree otherwise, this non-disclosure obligation shall survive the termination of this NDA. Contractor shall not disclose or disseminate Protected Information and shall:
  - A. Restrict disclosure of Protected Information solely to its agents and employees with a need to know and not disclose such Protected Information to any others; and

- B. Advise and require all of its officers, agents, employees, representatives, prospective and successful subcontractors, consultants and employees thereof with access to the Protected Information to execute an NDA in this same form with the District prior to allowing them access to the Protected Information; and
  - C. Use the Protected Information provided hereunder only for purposes directly related to performance of the work Contract 430-12302R.
  - D. In the event third parties attempt to obtain the Protected Information by legal process, the Contractor agrees that it will not release or disclose any Protected Information until the District has received notice of the legal process and has been given reasonable opportunity to contest such release of information and/or to assert the confidentiality privilege.
4. **Ownership and Return of Protected Information.** All Protected Information shall remain the property of the District. Contractor is responsible for safeguarding and returning all Protected Information or shall certify, by signed, statement delivered to the District, the destruction of all original Protected Information provided along with any copies made by the Contractor. Such delivery shall be to the District, Attention: Beau Schwab, PO Box 878, Ephrata, WA 98823.
- Except for Confidential Information constituting SSI, CEII, CIP and/or BCSI, Contractor may retain one copy of all Confidential Information in its confidential project file for archival and insurance purposes. Contractor will only be required to use commercially reasonable efforts to return or destroy Confidential Information stored electronically, and will not be required to return or destroy any electronic copy of Confidential Information created pursuant to its standard electronic backup and archival procedures.
5. **Compliance Audit.** The District may audit Contractor's compliance with this NDA.
6. **Applicable Law.** This NDA is made under, and shall be construed according to, the laws of the State of Washington and the Federal Energy Regulatory Commission regulations. Venue for any action brought pursuant to this NDA shall, at the District's option, be in Grant County Superior Court, Grant County, Washington or in the United States District Court for the Eastern District of Washington.
7. **Assignment.** This NDA may not be assigned.
8. **Violations.** Contractor understands and agrees that the District is providing the Protected Information to Contractor in reliance upon this NDA, and Contractor will be fully responsible to the District for any damages or harm caused to the District by a breach of this NDA by Contractor or any of its officers, directors, agents, employees, subcontractors, consultants or affiliates. Contractor acknowledges and agrees that a breach of any of its promises or agreements contained herein may result in irreparable injury to the District for which there may be no adequate remedy at law, and the District shall be entitled to apply for equitable relief, including injunction and specific performance, in the event of any breach or threatened breach or intended breach of this NDA by Contractor. Such remedies, however, shall not be deemed to be the exclusive remedies for any breach of the Agreement but shall be in addition to all other remedies available at law or in equity. In addition to injunctive relief, civil or criminal penalties may be imposed for each violation of this NDA.
9. **Attorney's Fees.** In the event it is necessary for the District to utilize the services of an attorney to enforce any of the terms of this NDA, it shall be entitled to compensation for its reasonable attorney's fees and costs. In the event any legal action becomes necessary to enforce the provisions of the NDA, the prevailing party shall be entitled to reasonable attorney's fees and costs in addition



to any other relief allowed, regardless of whether the dispute is settled by trial, trial and appeal, arbitration or, mediation.

- 10. **Corporate Authority; Binding Signatures.** The individual executing this NDA on behalf of Contractor warrants that he or she is an authorized signatory of the entity for which they are signing, and have sufficient institutional authority to execute this NDA.
- 11. **Electronic Signatures.** Signatures transmitted electronically shall be deemed valid execution of this NDA, binding on the parties.
- 12. **Effective Date and Term.** This NDA shall become effective immediately and remain in full force and effect until Contractor has returned all Protected Information to the District provided, however, the obligations contained in Section 3 shall survive the termination of this NDA.

CONTRACTOR:      Name: \_\_\_\_\_

                                 Address: \_\_\_\_\_

                                 \_\_\_\_\_

                                 Phone: \_\_\_\_\_

                                 Email: \_\_\_\_\_

                                 \_\_\_\_\_

                                 Signature: \_\_\_\_\_

                                 Print Name: \_\_\_\_\_

                                 Title: \_\_\_\_\_

                                 Date: \_\_\_\_\_

**EXHIBIT "A"**  
**DEFINITIONS OF PROTECTED INFORMATION**

**Definition of Critical Infrastructure Protection (CIP)**

Pursuant to section 215 of the Federal Power Act (FPA), the Federal Energy Regulatory Commission (FERC) approved the Critical Infrastructure Protection (CIP) Reliability Standards. The CIP Reliability Standards require certain users, owners, and operators of the Bulk-Power System to comply with specific requirements (CIP-002 through CIP-014) to safeguard critical cyber assets. Penalties for non-compliance with NERC CIP can include fines, sanctions or other actions against covered entities.

**Definition of Critical Energy Infrastructure Information (CEII)**

The Critical Energy Infrastructure Information (CEII) guidelines of the Federal Energy Regulatory Commission (FERC) define CEII as specific engineering, vulnerability, operational or detailed design information about proposed or existing critical energy infrastructure (physical or virtual) that relates to the production, generation, transportation, transmission or distribution of energy, could be useful to a person planning an attack on critical infrastructure, is exempt from mandatory disclosure, and gives strategic information beyond the location of the critical infrastructure. 18 CFR §388.113 and RCW 42.56.520.

**Definition of Bulk Electric System Cyber System Information (BCSI)**

The North American Electric Reliability Corporation (NERC) has been designated by the FERC, through the Energy Policy Act of 2005, to establish and enforce standards and requirements for the reliable operation of the Bulk Electric System. The Bulk Electric System includes the District's electrical generation resources, transmission lines, and interconnections with neighboring electric systems. Information related to the District's Bulk Electric System Cyber Systems (BCS) is required to be protected due to the sensitive security nature of such information, and the need to protect public safety (hereinafter referred to as "CIP Protected Information"). BCSI generally (not exclusively) is defined as information about the BCS that could be used to gain unauthorized access or pose a security threat to the BCS and affect the reliable operations of the Bulk Electric System. The District is required to protect this information including, but not limited to, network topology/diagrams; floor plans for computing centers; equipment layouts; security configuration information and other information as defined in the NERC standards. FERC Order No. 706, issued January 18, 2008; 18 CFR Part 40; and RCW 42.56.070.

**Definition of Security Sensitive Information (SSI)**

Security Sensitive Information is those portions of records assembled, prepared, or maintained to prevent, mitigate, or respond to criminal or terrorist acts, which are acts that significantly disrupt the ability of the District to fulfill its mission and goals and that manifest an extreme indifference to human life, the public disclosure of which would have a substantial likelihood of threatening public safety. SSI includes: (a) Specific and unique vulnerability assessments or specific and unique response or deployment plans, including compiled underlying data collected in preparation of or essential to the assessments, or to the response or deployment plans; (b) Records not subject to public disclosure under federal law that are shared by federal or international agencies, and information prepared from national security briefings provided to state or local government officials related to domestic preparedness for acts of terrorism; and (c) Information regarding the infrastructure and security of computer and telecommunications networks, consisting of security passwords, security access codes and programs, access codes for secure software applications, security and service recovery plans, security risk assessments, and security test results to the extent that they identify specific system vulnerabilities.

### **Bulk Electric System (BES)**

Unless modified by the lists shown below, all Transmission Elements operated at 100 kV or higher and Real Power and Reactive Power resources connected at 100 kV or higher. This does not include facilities used in the local distribution of electric energy. Inclusions:

- I1 - Transformers with the primary terminal and at least one secondary terminal operated at 100 kV or higher unless excluded by application of Exclusion E1 or E3.
- I2 – Generating resource(s) including the generator terminals through the high-side of the step-up transformer(s) connected at a voltage of 100 kV or above with: a) Gross individual nameplate rating greater than 20 MVA. Or, b) Gross plant/facility aggregate nameplate rating greater than 75 MVA.
- I3 - Blackstart Resources identified in the Transmission Operator’s restoration plan
- I4 - Dispersed power producing resources that aggregate to a total capacity greater than 75 MVA (gross nameplate rating), and that are connected through a system designed primarily for delivering such capacity to a common point of connection at a voltage of 100 kV or above. Thus, the facilities designated as BES are: a) The individual resources, and b) The system designed primarily for delivering capacity from the point where those resources aggregate to greater than 75 MVA to a common point of connection at a voltage of 100 kV or above.
- I5 –Static or dynamic devices (excluding generators) dedicated to supplying or absorbing Reactive Power that are connected at 100 kV or higher, or through a dedicated transformer with a high-side voltage of 100 kV or higher, or through a transformer that is designated in Inclusion I1 unless excluded by application of Exclusion E4.

### **Bulk Electric System (BES) Cyber Asset**

A Cyber Asset that if rendered unavailable, degraded, or misused would, within 15 minutes of its required operation, misoperation, or non-operation, adversely impact one or more Facilities, systems, or equipment, which, if destroyed, degraded, or otherwise rendered unavailable when needed, would affect the reliable operation of the Bulk Electric System. Redundancy of affected Facilities, systems, and equipment shall not be considered when determining adverse impact. Each BES Cyber Asset is included in one or more BES Cyber Systems.



**APPENDIX “E”**  
**BACKGROUND CHECK/IDENTITY VERIFICATION BY CONTRACTOR/VENDOR**

Contractor Name: Stantec Consulting Services, Inc. Date: \_\_\_\_\_

Contract Number: 430-12302R-B Procurement Officer: \_\_\_\_\_

Project Manager: \_\_\_\_\_

In accordance with NERC Reliability Standards CIP 002-011, we are providing Public Utility District No. 2 of Grant County, Washington certification of background checks performed on personnel who will require authorized Unescorted Physical Access and/or Electronic Access to District High or Medium Impact BES Cyber Systems, and their associated EACMS and PACS.

Accordingly, we certify that:

1. A background check has been conducted on the following employee(s) that includes a seven year criminal history records check, a current residence check and a residence check at other locations where, during the seven years immediately prior to the date of the criminal history records check, the employee has resided for six consecutive months or more; and the assessment of the employee is consistent with the safe and efficient performance of the services and meets the minimum standard for criminal checks as set forth by the attached Evaluation Criteria.
  
2. Employment eligibility identity verification has been completed to ensure employee is legally permitted to work in the United States. (Citizenship, Federal I-9 form verification)

Employee Name	Background Check Completion Date	Indicate Pass (P) or Fail (F)	Identity Verification Completion Date	PRA Completion Date (District use only)

**(Do not send actual background check documents)**

Name of company where background check was performed: \_\_\_\_\_

Certified by: \_\_\_\_\_ Title: \_\_\_\_\_

Phone No.: \_\_\_\_\_ Email: \_\_\_\_\_

Return this form to: [CIPDocuments@gcpud.org](mailto:CIPDocuments@gcpud.org)

**\*\*\*Access will not be granted until this Background Check has been completed and training taken\*\*\*  
These are sub-sections of the “Grant County PUD Personnel Risk Assessment Program” relevant to  
Vendor(s) and/or Contractor(s). For the complete program please contact [rcstaff@gcpud.org](mailto:rcstaff@gcpud.org)**

**Evaluation Criteria:**

Contractors with physical or electronic access to District High or Medium Impact BES Cyber Systems and their associated EACMS and PACS, shall certify a background check was met using the following criteria:

Whether the individual has ever been convicted of any of the following FELONIES:

- Murder
- Kidnapping
- Manslaughter
- Fraud, theft, and/or robbery
- Criminal sexual conduct
- Arson

Whether the individual has ever been convicted of the following MISDEMEANORS:

- Violence related
- Honesty related

Whether the individual has ever been convicted of a single misdemeanor, other than minor traffic offenses, which are generally defined as traffic offenses that did not involve property damage and/or personal injury.

Individual is not currently awaiting adjudication on any criminal charge other than minor traffic offenses, which, again, are generally defined as traffic offenses that did not involve property damage and/or personal injury.

In the event the individual has been convicted of a felony or misdemeanor, the Contractor shall not assign such individual to a District location without first discussing such conviction with the District and obtaining the approval of the District’s PRA Committee for such assignment in accordance with the District’s Personnel Risk Assessment Program. The District reserves the right to refuse the assignment of an individual who does not pass the above Evaluation Criteria after review and consideration of the extenuating circumstances by the District’s PRA Committee.

<b>FOR GRANT PUD USE ONLY</b>	
If Background Check failed enter date of PRA Committee Review: _____	Pass ___ Fail ___ (Check one)
Signature of PRA Committee member: _____	

**APPENDIX "F"**  
**FEDERAL REQUIREMENTS**

1. Termination for Cause
  - A. Any violation or breach of terms of this Contract on the part of the Contractor or the Contractor's subcontractors or subconsultants may result in the suspension or termination of this Contract in accordance with Section 18 or such other action that may be necessary to enforce the rights of the District, including but not limited to debarment as a contractor and a subcontractor.
  - B. Subcontracts or subconsultant agreements exceeding the federal simplified acquisition threshold, currently set at \$250,000, must contain a clause addressing administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms and provide for sanctions and penalties as appropriate. See 2 C.F.R. Part 200, Appendix II(A).
  - C. All subcontracts or subrecipient agreements in excess of \$10,000 must address termination for cause by the subcontractor and/or subconsultant, including the manner by which it will be affected and the basis for settlement. See 2 C.F.R. Part 200, Appendix II(B).
2. Termination for Convenience
  - A. The District reserves the right to terminate this Contract for convenience in accordance with Section 18 if the District believes, in its sole discretion, that it is in the best interest of the District to do so.
  - B. All subcontracts or subrecipient agreements in excess of \$10,000 must address termination for convenience by the subcontractor and/or subconsultant, including the manner by which it will be affected and the basis for settlement. See 2 C.F.R. Part 200, Appendix II(B).
3. Mediation. In the event a dispute arises between the parties regarding this Agreement, either party (first party) may submit the issue to mediation by selecting a mediator and notifying the other party (second party) of the selection. The second party shall either approve such mediator and proceed to mediation or select an alternate mediator. Second party shall notify the first party of such acceptance or selection within seven days of the first notification. Upon receiving notification of the selection of an alternate mediator, the first party shall then approve the mediator and proceed to mediation or reject the alternate mediator. First party shall notify second party of such approval or rejection within seven days of receipt of the notice from second party. In the case of rejection, the first two selected mediators shall select a third mediator. The third mediator shall mediate the dispute. The mediator shall be familiar with design and construction of electrical utilities, electrical generation plants, and commercial transactions in Grant County, Washington. The mediator shall not be related to either party by blood or marriage to a principal or owner of either party and shall have no economic interest direct or indirect with either party. Mediation shall take place within as soon as possible after the mediator has been selected. The parties shall split the cost of mediation.
4. Arbitration. In the event that a dispute is not resolved by mediation pursuant to the terms of preceding paragraph, either party (first party) may submit the issue to arbitration by selecting an arbitrator and notifying the other party (second party) of the selection. The second party shall either approve such arbitrator and proceed to arbitration or select an alternate arbitrator. Second party shall notify the first party of such acceptance or selection within seven days of the first

notification. Upon receiving notification of the selection of an alternate arbitrator, the first party shall then approve the arbitrator and proceed to arbitration or reject the alternate arbitrator. First party shall notify second party of such approval or rejection within seven days of receipt of the notice from second party. In the case of rejection, the first two selected arbitrators shall select a third arbitrator. The third arbitrator shall arbitrate the dispute. The arbitrator shall be familiar with design and construction of electrical utilities, electrical generation plants, and commercial transactions in Grant County, Washington. The arbitrator shall not be related to either party by blood or marriage to a principal or owner of either party and shall have no economic interest direct or indirect with either party. The arbitration hearing shall take place as soon as possible after the arbitrator has been named. The decision of the arbitrator shall be made within seven days after the arbitration hearing and shall be binding upon the parties. The parties shall split the cost of arbitration.

5. Conflict of Interest

By submission of its SOQ, and consistent with the District's Code of Ethics, the Contractor certifies (and shall require each Subcontractor and/or Subconsultant to certify) that it has no direct or indirect financial or proprietary interest, and that it shall not acquire any such interest, which conflicts in any manner or degree with the work, services or materials required to be performed and/or provided under this Contract and that it shall not employ any person or agent having any such interest (see Conflict of Interest Certification executed as part of the RFQ process (RFQ Attachment "E"), which is incorporated herein by reference). In the event that the Contractor or its agents, employees or representatives hereafter acquires such a conflict of interest, the Contractor shall immediately disclose such interest in writing to the District and take action immediately to eliminate the conflict or to withdraw from this Contract, as the District may require. The Contractor shall not employ any consultant who is concurrently employed by the District or by the District's consultants (including, but not limited to, surveyors, engineers, architects, and testing laboratories), without first obtaining the District's approval in writing.

6. Rights to Inventions Made Under a Contract or Agreement

STANDARD PATENT RIGHTS

(a) **Definitions**

(1) Invention means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code, or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. 2321 et seq.).

(2) Subject invention means any invention of the contractor conceived or first actually reduced to practice in the performance of work under this Contract, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) must also occur during the period of contract performance.

(3) Practical Application means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or government regulations, available to the public on reasonable terms.

(4) Made when used in relation to any invention means the conception or first actual reduction to practice of such invention.

(5) Small Business Firm means a small business concern as defined at section 2 of Pub. L. 85-

536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standards for small business concerns involved in government procurement and subcontracting at 13 CFR 121.3–8 and 13 CFR 121.3–12, respectively, will be used.

(6) Nonprofit Organization means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c) and exempt from taxation under section 501(a) of the Internal Revenue Code (25 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

(7) Statutory period means the one-year period before the effective filing date of a claimed invention in a patent application during which exceptions to prior art exist per 35 U.S.C. 102(b) as amended by the Leahy-Smith America Invents Act, Public Law 112–29.

(8) Contractor means any person, small business firm, or nonprofit organization, or, as set forth in section 1, paragraph (b)(4) of Executive Order 12591, as amended, any business firm regardless of size, which is a party to a funding agreement.

**(b) Allocation of Principal Rights**

The Contractor may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any subject invention in which the Contractor retains title, the Federal government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

**(c) Invention Disclosure, Election of Title and Filing of Patent Application by Contractor**

(1) The Contractor will disclose each subject invention to the Federal agency within two months after the inventor discloses it in writing to Contractor personnel responsible for patent matters. The disclosure to the agency shall be in the form of a written report and shall identify the contract under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention, and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the agency, the Contractor will promptly notify the agency of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Contractor. If required by the Federal agency, the Contractor will provide periodic (but no more frequently than annual) listings of all subject inventions which were disclosed to the agency during the period covered by the report, and will provide a report prior to the close-out of a funding agreement listing all subject inventions or stating that there were none.

(2) The Contractor will elect in writing whether or not to retain title to any such invention by notifying the Federal agency within two years of disclosure to the Federal agency. However, in any case where a patent, a printed publication, public use, sale, or other availability to the public has initiated the one-year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by the agency to a date that is no more than 60 days prior to the end of the statutory period.

(3)(i) The Contractor will file its initial patent application on a subject invention to which it



elects to retain title within one year after election of title or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use.

(ii) If the Contractor files a provisional application as its initial patent application, it shall file a nonprovisional application within 10 months of the filing of the provisional application. So long as there is a pending patent application for the subject invention and the statutory period wherein valid patent protection can be obtained in the United States has not expired, additional provisional applications may be filed within the initial 10 months or any extension period granted under paragraph (c)(5) of this clause. If an extension(s) is granted under paragraph (c)(5) of this clause, the Contractor shall file a nonprovisional patent application prior to the expiration of the extension(s) or notify the agency of any decision not to file a nonprovisional application prior to the expiration of the extension(s), or if earlier, 60 days prior to the end of any statutory period wherein valid patent protection can be obtained in the United States.

(iii) The Contractor will file patent applications in additional countries or international patent offices within either ten months of the first filed patent application or six months from the date permission is granted by the Commissioner of Patents to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(iv) If required by the Federal agency, the Contractor will provide the filing date, patent application number and title; a copy of the patent application; and patent number and issue date for any subject invention in any country in which the Contractor has applied for a patent.

(4) For any subject invention with Federal agency and Contractor co-inventors, where the Federal agency employing such co-inventor determines that it would be in the interest of the government, pursuant to 35 U.S.C. 207(a)(3), to file an initial patent application on the subject invention, the Federal agency employing such co-inventor, at its discretion and in consultation with the Contractor, may file such application at its own expense, provided that the Contractor retains the ability to elect title pursuant to 35 U.S.C. 202(a).

(5) Requests for extension of the time for disclosure, election, and filing under paragraphs (1), (2), and (3) of this clause may, at the discretion of the Federal agency, be granted. When a Contractor has requested an extension for filing a non-provisional application after filing a provisional application, a one-year extension will be granted unless the Federal agency notifies the Contractor within 60 days of receiving the request.

(6) In the event a subject invention is made under funding agreements of more than one agency, at the request of the Contractor or on their own initiative the agencies shall designate one agency as responsible for administration of the rights of the government in the invention.

**(d) Conditions When the Government May Obtain Title**

(1) A Federal agency may require the Contractor to convey title to the Federal agency of any subject invention -

(i) If the Contractor fails to disclose or elect title to the subject invention within the times specified in paragraph (c) of this clause or elects not to retain title.

(ii) In those countries in which the contractor fails to file patent applications within the times specified in paragraph (c) of this clause; provided, however, that if the Contractor has filed a patent application in a country after the times specified in paragraph (c) of this clause, but prior to its receipt of the written request of the Federal agency, the Contractor shall continue

to retain title in that country.

(iii) In any country in which the contractor decides not to continue the prosecution of any nonprovisional patent application for, to pay a maintenance, annuity or renewal fee on, or to defend in a reexamination or opposition proceeding on, a patent on a subject invention.

(2) A Federal agency, at its discretion, may waive the requirement for the Contractor to convey title to any subject invention.

**(e) Minimum Rights to Contractor and Protection of the Contractor Right to File**

(1) The Contractor will retain a nonexclusive royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the Contractor fails to disclose the invention within the times specified in (c), above. The Contractor's license extends to its domestic subsidiary and affiliates, if any, within the corporate structure of which the Contractor is a party and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of the Federal agency except when transferred to the successor of that party of the Contractor's business to which the invention pertains.

(2) The Contractor's domestic license may be revoked or modified by the funding Federal agency to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR part 404 and agency licensing regulations (if any). This license will not be revoked in that field of use or the geographical areas in which the Contractor has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the funding Federal agency to the extent the Contractor, its licensees, or the domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, the funding Federal agency will furnish the Contractor a written notice of its intention to revoke or modify the license, and the contractor will be allowed thirty days (or such other time as may be authorized by the funding Federal agency for good cause shown by the Contractor) after the notice to show cause why the license should not be revoked or modified. The Contractor has the right to appeal, in accordance with applicable regulations in 37 CFR part 404 and agency regulations (if any) concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of the license.

**(f) Contractor Action to Protect the Government's Interest**

(1) The Contractor agrees to execute or to have executed and promptly deliver to the Federal agency all instruments necessary to (i) establish or confirm the rights the Government has throughout the world in those subject inventions to which the contractor elects to retain title, and (ii) convey title to the Federal agency when requested under paragraph (d) above and to enable the government to obtain patent protection throughout the world in that subject invention.

(2) The Contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor each subject invention made under Contract in order that the Contractor can comply with the disclosure provisions of paragraph (c) of this clause, to assign to the Contractor the entire right,

title and interest in and to each subject invention made under Contract, and to execute all papers necessary to file patent applications on subject inventions and to establish the government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by paragraph (c)(1) of this clause. The Contractor shall instruct such employees through employee agreements or other suitable educational programs on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) For each subject invention, the Contractor will, no less than 60 days prior to the expiration of the statutory deadline, notify the Federal agency of any decision: Not to continue the prosecution of a non-provisional patent application; not to pay a maintenance, annuity or renewal fee; not to defend in a reexamination or opposition proceeding on a patent, in any country; to request, be a party to, or take action in a trial proceeding before the Patent Trial and Appeals Board of the U.S. Patent and Trademark Office, including but not limited to post-grant review, review of a business method patent, *inter partes* review, and derivation proceeding; or to request, be a party to, or take action in a non-trial submission of art or information at the U.S. Patent and Trademark Office, including but not limited to a pre-issuance submission, a post-issuance submission, and supplemental examination.

(4) The Contractor agrees to include, within the specification of any United States patent applications and any patent issuing thereon covering a subject invention, the following statement, "This invention was made with government support under (identify the contract, when applicable) awarded by (identify the Federal agency, when applicable). The government has certain rights in the invention."

**(g) Subcontracts**

(1) The Contractor will include this clause, suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental or research work to be performed by a subcontractor. The subcontractor will retain all rights provided for the Contractor in this clause, and the Contractor will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(2) The Contractor will include in all other subcontracts, regardless of tier, for experimental developmental or research work the patent rights clause required by (cite section of agency implementing regulations or FAR).

(3) In the case of subcontracts, at any tier, when the prime award with the Federal agency was a contract (but not a grant or cooperative agreement), the agency, subcontractor, and the Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and the Federal agency with respect to the matters covered by the clause; provided, however, that nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes Act in connection with proceedings under paragraph (j) of this clause.

**(h) Reporting on Utilization of Subject Inventions**

The Contractor agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Contractor or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the contractor, and such other data and information as the agency may reasonably specify. The Contractor also agrees to provide additional reports as may be requested by the agency in connection with any march-in proceeding undertaken by the agency in accordance with

paragraph (j) of this clause. As required by 35 U.S.C. 202(c)(5), the agency agrees it will not disclose such information to persons outside the government without permission of the Contractor.

**(i) Preference for United States Industry**

Notwithstanding any other provision of this clause, the Contractor agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject inventions in the United States unless such person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by the Federal agency upon a showing by the contractor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

**(j) March-in Rights**

The Contractor agrees that with respect to any subject invention in which it has acquired title, the Federal agency has the right in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of the agency to require the Contractor, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the contractor, assignee, or exclusive licensee refuses such a request the Federal agency has the right to grant such a license itself if the Federal agency determines that:

- (1) Such action is necessary because the Contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use.
- (2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Contractor, assignee or their licensees;
- (3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Contractor, assignee or licensees; or
- (4) Such action is necessary because the agreement required by paragraph (i) of this clause has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

**(k) Special Provisions for Contracts with Nonprofit Organizations**

If the Contractor is a nonprofit organization, it agrees that:

- (1) Rights to a subject invention in the United States may not be assigned without the approval of the Federal agency, except where such assignment is made to an organization which has as one of its primary functions the management of inventions, provided that such assignee will be subject to the same provisions as the Contractor;
- (2) The Contractor will share royalties collected on a subject invention with the inventor, including Federal employee co-inventors (when the agency deems it appropriate) when the subject invention is assigned in accordance with 35 U.S.C. 202(e) and 37 CFR 401.10;

(3) The balance of any royalties or income earned by the Contractor with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions, will be utilized for the support of scientific research or education; and

(4) It will make efforts that are reasonable under the circumstances to attract licensees of subject inventions that are small business firms and that, when appropriate, it will give a preference to a small business firm when licensing a subject invention;

(5) The Federal agency may review the Contractor's licensing program and decisions regarding small business applicants, and the Contractor will negotiate changes to its licensing policies, procedures, or practices with the Federal agency when the Federal agency's review discloses that the Contractor could take reasonable steps to more effectively implement the requirements of paragraph (k)(4) of this clause; and

(6) The Federal agency may take into consideration concerns presented by small businesses in making such determinations in paragraph (k)(5) of this clause.

**(l) Communication**

The District Representative is the central point of contact for communications on matters relating to the clause. Contact information for this person is listed below.

Kevin Marshall  
Public Utility District No. 2  
of Grant County, Washington  
PO Box 878  
Ephrata, WA 98823  
509-760-9046  
kmarsha@gcpud.org

**(m) Electronic Filing**

(1) Unless otherwise requested or directed by the Federal agency -

(i) The written disclosure required in (c)(1) of this clause shall be electronically filed;

(ii) The written election required in (c)(2) of this clause shall be electronically filed; and

(iii) If required by the agency to be submitted, the close-out report in paragraph (c)(1) of this clause and the patent information and periodic reporting identified in paragraph (c)(3) of this clause shall be electronically filed.

(2) Other written notices required in this clause may be electronically delivered to the agency or the Contractor through an electronic database used for reporting subject inventions, patents, and utilization reports to the funding agency.

7. Clean Air Act and Federal Water Pollution Control Act

“Clean Air Act”

The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

The Contractor agrees to report each violation to the District and understands and agrees that the District will, in turn, report each violation as required to assure notification to the federal awarding agency, and the appropriate Environmental Protection Agency Regional Office.

The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance provided by the federal awarding agency.

“Federal Water Pollution Control Act”

The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 et seq.

The Contractor agrees to report each violation to the District and understands and agrees that the District will, in turn, report each violation as required to assure notification to the pass-through entity, if applicable and the appropriate Environmental Protection Agency Regional Office.

The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance provided by the federal awarding agency.

8. Debarment and Suspension

This Contract is a covered transaction for purposes of 2 C.F.R. Part 180 and 2 C.F.R. Part 3000. As such, the Contractor is required to verify that none of the Contractor’s principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

The Contractor must comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

Contractor’s certification, executed as part of the RFQ process (RFQ Attachment “F”) and incorporated herein by reference, is a material representation of fact relied upon by the District. If it is later determined that the Contractor did not comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C, in addition to remedies available to the District, the federal government may pursue available remedies, including but not limited to suspension and/or debarment.

9. Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended)

Contractors who apply or bid for an award of more than \$100,000 shall file the required certification with Grant PUD as part of the RFQ process (RFQ Attachment “D”), which is incorporated herein by reference. Each tier certifies to the tier above that it will not and has not used federally appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the federal awarding agency.

10. Procurement of Recovered Materials

In the performance of this Contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired:

- A. Competitively within a timeframe providing for compliance with the Contract performance schedule,
- B. Meeting Contract performance requirements, or
- C. At a reasonable price.

Information about this requirement, along with the list of EPA-designated items, is available at EPA's webpage, [Comprehensive Procurement Guideline \(CPG\) Program | US EPA](#).

The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

11. Affirmative Socioeconomic Steps

If subcontracts are to be let, the Contractor is required to take all necessary steps identified in 2 CFR part 200.321(b)(1)-(5) to ensure that small and minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

12. Access to Records

A. General

The Contractor agrees to provide the federal awarding agency, pass-through entity, if applicable, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts, and transcriptions.

The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

The Contractor agrees to provide the federal awarding agency, pass-through entity, if applicable or their authorized representatives access to construction or other work sites pertaining to the work being completed under the Contract.

B. Under a Major Disaster or Emergency Declaration

In compliance with section 1225 of the Disaster Recovery Reform Act of 2018, and when applicable, the District and the Contractor acknowledge and agree that no language in this Contract is intended to prohibit audits or internal reviews by the federal awarding agency, FEMA Administrator, or the Comptroller General of the United States.

13. Compliance with Federal Law, Regulations, and Executive Orders and Acknowledgement of Federal Funding

Contractor acknowledges that the federal awarding agency financial assistance will be used to fund all or a portion of the Contract. The Contractor will comply with all applicable federal law, regulations, executive orders, federal awarding agency policies, procedures, and directives.

14. No Obligation by Federal Government

The Federal government is not a party to this Contract and is not subject to any obligations or liabilities to the District, contractor, or any other party pertaining to any matter resulting from the

Contract.

15. Program Fraud and False or Fraudulent Statements or Related Acts

The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this Contract.



Motion authorizing the General Manager/CEO, on behalf of Grant PUD, to execute new Contract Agreement 430-12302R-B with HDR Engineering, Inc. in the amount not to exceed \$600,000 for services to support Energy Supply Management (ESM) Research Department.

## MEMORANDUM

February 26, 2025

**TO:** Rich Wallen, General Manager/Chief Executive Officer

**VIA:** John Mertlich, Chief Commercial Officer JM  
Andrew Munro, Senior Manager – ESM Industry & Market Research AM  
Dawn Van Diest, Attorney ESM DVD  
Dawn Van Diest

**FROM:** Kevin Marshall, Project Specialist X KM  
David Dempsey, Engineer IV DTD  
DTD  
Bryce Greenfield, Engineer IV BG

**SUBJECT:** Award of Contracts 430-12302R-A and 430-12302R-B for Engineering Services

**Purpose:** To request Commission approval to award Engineering Contracts 430-12302R-A and 430-12302R-B.

### **Background:**

- Contract 430-12302R-A is recommended to be awarded to HDR, Inc. for engineering services to support the Energy Supply Management (ESM) Research Department in the amount of \$600,000.
- Contract 430-12302R-B is recommended to be awarded to Stantec Consulting Services, Inc. for engineering services to support the ESM Research Department in the amount of \$600,000.
- These engineering contracts are essential to support the District's ongoing discovery work to identify the most commercially viable and economically feasible energy generation and energy storage projects. These efforts are critical to meeting the growing energy demand in Grant County and ensuring future energy security for our customers.
- A third contract for additional engineering services is currently under negotiation. Assuming that the negotiations are successful, this contract will also be awarded in the amount of \$600,000 (Contract 430-12302R-C).

### **Discussion:**

A Request for Proposals (RFP) was initially issued in early 2024 to support the ESM Research Department in evaluating potential energy generation and energy storage projects. However, the RFP was withdrawn when it was determined Grant PUD may seek federal funding for these services in the future. As a result, the procurement processes were revised to align with the federal procurement standards of 2 CFR 200, and the RFP was reissued as a Request for Qualifications (RFQ) accordingly.

The RFQ scope covers broad engineering services, reflecting the anticipated need for multiple engineering companies to adequately cover all necessary services for energy generation exploration. The RFQ includes the following service categories:

- **Category A:** Engineering support for technical evaluation of energy generation and energy storage technologies. The following eight technologies are included for evaluation:
  - Solar generation technologies.
  - Wind generation technologies.
  - Utility-scale battery technologies.
  - Hydrogen-based electrical generation technologies.
  - Natural gas generation technologies.
  - Pumped storage technologies/project evaluations.
  - Other generation technologies that the District may want to research.
  - Nuclear/Small Modular Reactor (SMR) Technologies.
- **Category B:** Engineering support services for technical evaluation of demand-side management.
- **Category C:** Engineering support services for site evaluations.
- **Category D:** Engineering support services for conceptual design and cost estimating.
- **Category E:** Support services for land and easement acquisitions.
- **Category F:** Miscellaneous Engineering support services for other research and evaluation needs.

The contracts are expected to be in effect until 12/31/2029.

The District has not needed to procure additional generation and capacity resources for decades. The Priest Rapids Project (PRP) has historically met these needs. However, due to increases in load demand and the limitations of the PRP, these contracts are vital for assessing and implementing new energy projects to meet both short-term and long-term energy generation and capacity requirements. Four firms submitted proposals on this RFQ. Staff determined the fourth firm was not qualified for this RFQ.

**Justification:**

- These contracts will provide essential assessments for potential energy generation projects, and engineering services to support approved projects.
- Without these contracts, internal staff lack the necessary expertise and support to evaluate and implement new generation and capacity projects. The District would have to solely rely on market purchases and external RFP responses for additional generation and capacity.
- Performing this work internally would require significant hiring, which would be both costly and inefficient. Engineering support contracts can provide subject matter expertise on an as-needed basis, reducing downtime and ensuring specialized expertise when required. Hiring staff internally to cover the full range of needed expertise would be impractical and

cost prohibitive. The research provided by these contracts will help the District establish the lowest cost options to meet our increasing load.

- These contracts are needed as utilities across the U.S. are facing similar challenges with new generation and capacity. Equipment suppliers already have significant backlogs and delays in initiating projects, which will push their timelines further out.
- This approach is consistent with the practices of other utilities in assessing and implementing new generation projects.

**Financial Considerations:**

- These contracts will help the District identify the least-cost options to meet growing load.
- These are cost plus fixed fee contracts. An Independent Cost Estimate has been performed, and the proposed consultant rates align within an acceptable range of 6 percent of the estimate.
- These contracts will be awarded for a five-year period.
- The rates in these contracts are aligned with previous contracts, accounting for inflation.
- This work is budgeted in the O&M budget within the ESM Research Department.
- Cost Center: KA5000, Budget Years: 2025-2029.
- Total cost to the District: \$1,800,000

**Recommendation:** It is recommended that the Commission approve the award of Engineering Contracts 430-12302R-A and 430-12302R-B to HDR, Inc. and Stantec Engineering Services, Inc., respectively, in the amount of \$600,000 each.

**Legal Review:** See attached e-mail(s).

cc: Patrick Bishop  
Lori Englehart-Jewell  
Kristin Fleisher  
Leah Mauceri  
Beau Schwab

Signature: John Mertlich  
Email: [jmertlich@gcpud.org](mailto:jmertlich@gcpud.org)

Signature: Andrew Munro  
Andrew Munro (Feb 26, 2025 15:56 PST)  
Email: [Amunro@gcpud.org](mailto:Amunro@gcpud.org)

Signature: DvD  
Dawn Van Diest (Feb 26, 2025 16:13 PST)  
Email: [dvandiest@gcpud.org](mailto:dvandiest@gcpud.org)

Signature: Kevin Marshall  
Email: [kmarsha@gcpud.org](mailto:kmarsha@gcpud.org)

Signature: Dave Dempsey  
Dave Dempsey (Feb 26, 2025 16:00 PST)  
Email: [ddempsey@gcpud.org](mailto:ddempsey@gcpud.org)

Signature: BGreenfield  
Brian Greenfield (Feb 26, 2025 15:59 PST)  
Email: [bgreenfield@gcpud.org](mailto:bgreenfield@gcpud.org)

**PROFESSIONAL SERVICES AGREEMENT**

This Professional Services Agreement (“Agreement” or “Contract”), effective upon the date of the last signature below (“Effective Date”), is by and between Public Utility District No. 2 of Grant County, Washington (“District”) and HDR Engineering, Inc. (“Contractor”);

**R e c i t a l s :**

The District desires to obtain professional consulting engineering services as needed to support the District’s Energy Supply Management (ESM) Research Group; and

The District's Chief Commercial Officer believes the Contractor will provide subject matter expertise and resources where the District may not have expertise in-house or does not have adequate internal resources to support the projects of; and

The Contractor, through an established review procedure as specified by RCW Chapter 39.80 and 2 CFR 200.320(b)(2)(iv), has been selected and is willing to provide services on the terms and conditions hereinafter stated.

NOW, THEREFORE, in consideration of the mutual covenants herein, the parties hereto agree as follows:

1. **Scope of Services**

The Contractor shall function as a key techno-economic advisor to District leadership to ensure a sound business, engineering, and project management program is developed and executed and will augment the District’s technical and managerial capabilities. The Contractor shall provide technical knowledge, project management, project execution expertise, and risk management capabilities in support of the District’s project success.

The District may, at the District’s discretion, authorize the Contractor to perform specific tasks by means of a Task Authorization for Professional Services (Appendix “C”) to be signed by both the District and the Contractor. Such authorization may be issued by the District Representative. The authorization will define the scope of the task, any time requirements and budget limitations.

The initial scope of services for this Agreement is anticipated to include, but not necessarily be limited to, the following:

- A. Provide engineering support services for technical and economic evaluation of generation and energy storage technologies including, but not limited to:
  - 1. Solar generation technologies.
  - 2. Wind generation technologies.
  - 3. Utility scale battery technologies.
  - 4. Hydrogen electrical generation technologies.
  - 5. Natural gas generation technologies.
  - 6. Pumped storage technologies/project evaluations.
  - 7. Other generation technologies that the District may want to research.
  - 8. Small Modular Reactor Technologies.

The Contractor shall assist in identifying potential risks and mitigation recommendations.

- B. Provide engineering support services for technical and economic evaluation of demand side management including but not limited to:
1. Smart Grid.
  2. Evaluation of the District's existing AMI and fiber optic systems for use in demand side management.
  3. Other technologies as determined by the District.

The Contractor shall assist in identifying potential risks and mitigation recommendations.

- C. Provide engineering support services for site evaluations including, but not limited to:
1. Site Characterization studies (access, permitting, geotechnical, seismic, cultural, fish & wildlife, etc.).
  2. Evaluation of permitting requirements based on technologies being considered.
  3. Transmission connectivity requirements.
  4. Project planning and estimating.
- D. Provide engineering support services for conceptual design and estimating. This work potentially includes all technologies identified.
- E. Provide support services for land and easement acquisition including, but not limited to:
1. Determination of ownership for land and improvements.
  2. Determination of existing easements, permits, etc.
  3. Preparation of appraisals for parcels and, if appropriate, affected improvements.
  4. Preparation of recommendations to District for offers to be made on appropriate easements.
  5. Negotiation with owners; secure appropriate acquisition options and easements in properly recordable form with necessary signatures; and pay consideration.
- F. Miscellaneous engineering support services for other research and evaluation needs
1. Risk identification and mitigation.
  2. Research into emerging technologies as directed by the District.
  3. Future District identified needs for engineering support.

Additional work to be performed under future phases may include developing final designs, providing plans, specifications, construction cost estimates, construction schedules, and services during construction for the projects.

The District makes no guarantee as to the actual amount of work to be done. The District reserves the right to suspend or terminate any authorized task at any time or to extend the Contract beyond the initial term by issuance of a Change Order in accordance with Section 6 to complete any work already initiated and/or authorized under the original term and scope of the Contract.

## 2. Applicability of Federal Requirements

This Agreement may be funded using federal funds and subject to one or more financial assistance agreements between the District and a federal awarding agency. The provisions of Appendix "F", Federal Requirements, are required and applied when the District utilizes federal funds to pay for a contractor's performance under any contract. Accordingly, the Contractor agrees that the terms

and conditions in Appendix "F" apply to this Agreement between the District and the Contractor in all situations where the Contractor has been paid or will be paid with federal funds.

3. Independent Contractor

- A. The Contractor shall operate as, and have the status of, an independent Contractor and will not be an agent or employee of the District nor will it be entitled to any employee benefits provided by the District. All the Contractor's activities will be conducted at its own risk and be in compliance with all federal, state and local laws.
- B. The Contractor shall perform its services with the level of skill, care and diligence normally provided by and expected of professional persons performing services similar to or like those to be performed hereunder. Contractor understands that the District will be relying upon the accuracy, competency, credibility and completeness of the services provided by the Contractor hereunder and that the District and its customers will be utilizing the results of such services.

4. Term - Schedule

This Agreement shall remain in full force and effect until December 31, 2029 or until terminated pursuant to Section 18.

5. Compensation and Payment

- A. Compensation for services rendered and all reimbursable costs shall be per the rates set forth in Appendix "A.1", Rate Schedule, which rates and costs shall not be subject to change until two years after the Effective Date of this Agreement. Any changes to rates and costs shall only be on a prospective basis and shall occur no more frequently than once every 12 months thereafter. Each such change shall not exceed the lesser of i.) 5% or ii.) the percentage increase in the Bureau of Labor Statistics Consumer Price Index (CPI-U) for the West Urban region occurring during the immediately preceding 12 month period for which CPI-U data is available. Contractor shall notify the District in writing at least 30 days prior to any such rate increase going into effect. A payment is considered made on the day it is mailed or is sent through electronic or wire transfer.

In no event however, shall the total amount paid to Contractor for services and all reimbursable costs exceed the sum of \$600,000.00 USD unless a Change Order authorizing the same is issued in accordance with Section 6 below.

- B. Contractor shall submit monthly invoices to the attention of:

Public Utility District No. 2  
of Grant County, Washington  
Attn: Accounts Payable  
PO Box 878  
Ephrata, WA 98823  
Or [AccountsPayable@gcpud.org](mailto:AccountsPayable@gcpud.org)

- C. Invoices shall include the Contract number, a detailed description of the work performed, and a report of what percentage of total labor hours by Contractor and each and every Subcontractor/Subconsultant of the Contractor were performed by small and diverse businesses during the billing period. Any Labor Categories or reimbursable expenses shall be included on the invoice (see Appendix "A.1" and "A.2").

- D. Payment will be made by the District upon completion of work following District approval of Contractor's invoices. Invoice shall be subject to the review and approval of the District. Invoice shall be in a detailed and clear manner supported by such information the District may require. The District will make payment to Contractor within 30 days after District's receipt and approval of said invoice. Contractor understands and agrees that by executing this Contract with the District, the District shall make payment(s) by automated clearing house (ACH).
- E. The District Representative may approve additional Contractor employees, personnel categories, and/or equipment rates to be added to the Rate Schedule, if applicable, provided that any additional employees have at least equivalent training and skills and are compensated at the same or lower rates than those listed on the current approved Rate Schedule for similar work. There shall be no change in the total Contract not to exceed amount. All additions must be approved in writing prior to performing services under the Contract.

6. Change Orders

Except as provided herein, no official, employee, agent or representative of the District is authorized to approve any change in this Contract and it shall be the responsibility of the Contractor before proceeding with any change, to satisfy itself that the execution of the written Change Order has been properly authorized on behalf of the District. The District's management has limited authority to approve Change Orders. The current level and limitations of such authority are set forth in District Resolution No. 8609 which may be amended from time to time. Otherwise, only the District's Board of Commissioners may approve changes to this Contract.

Charges or credits for the work covered by the approved changes shall be determined by written agreement of the parties and shall be made on Change Order form as reflected on Appendix "B".

When a change is ordered by the District, as provided herein, a Change Order shall be executed by the District and the Contractor before any Change Order work is performed. When requested, Contractor shall provide a detailed proposal for evaluation by the District, including details on proposed cost. The District shall not be liable for any payment to Contractor, or claims arising there from, for Change Order work which is not first authorized in writing. All terms and conditions contained in the Contract Documents shall be applicable to Change Order work. Change Orders shall be issued on the form attached as Appendix "B" and shall specify any change in time required for completion of the work caused by the Change Order and, to the extent applicable, the amount of any increase or decrease in the Contract Price.

7. Taxes

- A. Except for the Washington State retail sales and use taxes as may be levied upon the Contract, pursuant to RCW Chapters 82.08 and 82.12, the Contract Price includes and the Contractor shall have the full exclusive liability for the payment of all taxes, levies, duties and assessments of every nature due and payable in connection with this Contract or its employees and subcontractors performing work related to this Contract.
- B. Washington State retail sales tax and use taxes levied upon this Contract pursuant to RCW Chapters 82.08 and 82.12 are excluded from the rates and if applicable will be reimbursed as follows:
  - 1. If the Contractor has, or is required to have a valid Washington State sales tax identification number, the identification number shall be furnished to the District upon request. The Contractor shall make payment of any Washington State retail



sales and use taxes due and Contractor shall be reimbursed by the District for the same. Contractor shall be solely responsible for any interest or penalties arising from late or untimely payment of said taxes.

2. If the Contractor is not required to have a valid Washington State sales tax identification number, it shall notify the District of the same. In such event, the District, after receiving proper invoices from Contractor, shall make payment of said Washington State retail sales and use taxes levied upon this Contract to the Washington State Department of Revenue.

8. Hold Harmless and Indemnification

Contractor shall, at its sole expense, indemnify, defend, save, and hold harmless the District, its officers, agents, and employees from all actual or potential claims or losses, including costs and legal fees at trial and on appeal, and damages or claims for damages to property or persons, suffered by anyone whomsoever, including the District, to the extent caused by any negligent act of or omission of the Contractor or its subcontractors, excluding damages caused by the negligence of the District, in the administration or performance of this Agreement or any subcontracts, and for which either of the parties, their officers, agents, or employees may or shall be liable. In situations where liability for damages arises from claims of bodily injury to persons or damage to property, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the Contractor or its subcontractors. Contractor waives its immunity under industrial insurance, Title 51 RCW, to the extent necessary to effectuate this indemnification/hold harmless agreement. Contractor's indemnification obligation shall not apply to liability for damages arising out of bodily injury to a person or damage to property caused by the negligence of the District or its agents or employees and not attributable to any act or omission on the part of the Contractor. In the event of damages to a person or property caused by or resulting from the concurrent negligence of District or its agents or employees and the Contractor or its agents or employees, the Contractor's indemnity obligation shall apply only to the extent of the Contractor's (including that of its agents and employees) negligence.

Contractor acknowledges that by entering into this Contract with the District, it has mutually negotiated the above indemnity provision with the District. Contractor's indemnity and defense obligations shall survive the termination or completion of the Contract and shall remain in full force and effect until satisfied in full.

9. Insurance

Prior to the commencement of any work under this Agreement, and at all times during the term of this Agreement, Contractor shall obtain and maintain continuously, at its own expense, a policy or policies of insurance with insurance companies rated A- VII or better by A. M. Best or A by S&P, as enumerated below. Any deductible, self-insured retention or coverage via captive \$25K or above must be disclosed and is subject to approval by the District's Risk Manager. The cost of any claim payments falling within the deductible or self-insured retention shall be the responsibility of the Contractor and not recoverable under any part of this Contract.

A. Contractor Required Insurance

1. **General Liability Insurance:** Commercial general liability insurance, covering all operations by or on behalf of Contractor against claims for bodily injury (including death) and property damage (including loss of use). Such insurance shall provide coverage for:
  - a. Premises and Operations;

- b. Products and Completed Operations;
- c. Contractual Liability;
- d. Personal Injury Liability (with deletion of the exclusion for liability assumed under Contract);

with the following **minimum limits**:

- e. \$1,000,000 Each Occurrence
- f. \$1,000,000 Personal Injury Liability
- g. \$2,000,000 General Aggregate (per project)
- h. \$2,000,000 Products and Completed Operations Aggregate

Commercial general liability insurance will include the District as additional insured on a primary and non-contributory basis. A waiver of subrogation will apply in favor of the District.

- 2. **Workers' Compensation and Stop Gap Employers Liability:** When applicable, Workers' Compensation Insurance as required by law for all employees. Employer's Liability Insurance, including Occupational Disease coverage, in the amount of **\$1,000,000 for Each Accident, Each Employee, and Policy Limit.** Employer's Liability may be procured as an endorsement to the commercial general liability via the Stop Gap Coverage endorsement. The Contractor expressly agrees to comply with all provisions of the Workers' Compensation Laws of the states or countries where the work is being performed, including the provisions of Title 51 of the Revised Code of Washington for all work occurring in the State of Washington.
- 3. **Automobile Liability Insurance:** Automobile Liability insurance against claims of bodily injury (including death) and property damage (including loss of use) covering all owned (if any), rented, leased, non-owned, and hired vehicles used in the performance of the work, with a minimum limit of \$1,000,000 per accident for bodily injury, property damage, or death combined and containing appropriate uninsured motorist and No-Fault insurance provision, where applicable.

Automobile liability insurance will include the District as additional insured on a primary and non-contributory basis. A waiver of subrogation will apply in favor of the District.

- 4. **Excess Insurance:** Excess (or Umbrella) Liability insurance with a **minimum limit of \$2,000,000 per occurrence and in the aggregate.** This insurance shall provide coverage in excess of the underlying primary liability limits, terms, and conditions for each category of liability insurance in the foregoing subsections 1, 2 (Employer's Liability only) and 3. If this insurance is written on a claims-made policy form, then the policy shall be endorsed to include an automatic extended reporting period of at least five years or the statute of repose.

Umbrella/Excess liability insurance will include the District as additional insured on a primary and non-contributory basis. A waiver of subrogation will apply in favor of the District.

- 5. **Professional Liability:** Contractor shall provide professional liability insurance with a **minimum limit of \$5,000,000 per claim.**

If such policy is written on a claims made form, the retroactive date shall be prior to or coincident with the Effective Date of this Agreement. Claims made form coverage shall be maintained by the Contractor for a minimum of five years following the termination of this Agreement, and the Contractor shall annually provide the District with proof of renewal. If renewal of the claims made form of coverage becomes unavailable, or economically prohibitive, the Contractor shall purchase an Extended Reporting Period Tail or execute another form of guarantee acceptable to the District to assure financial responsibility for liability for services performed.

If Contractor shall hire subcontractor for all operations and risk involving professional services exposure, this requirement may be satisfied by subcontractor's policies. Contractor shall impute the insurance requirements stated in this section to subcontractor by written contract or written agreement. Any exceptions must be mutually agreed in writing with the District.

- B. Evidence of Insurance - Prior to performing any services, and within 10 days after receipt of the Contract Award, then annually thereafter, the Contractor shall file with the District a Certificate of Insurance showing the Insuring Companies, policy numbers, effective dates, limits of liability and deductibles with copies of the endorsements or redacted policy documents where policy terms required under Section A are met.

Failure of the District to demand such certificate or other evidence of compliance with these insurance requirements or failure of the District to identify a deficiency from the provided evidence shall not be construed as a waiver of the Contractor's obligation to maintain such insurance. Acceptance by the District of any certificate or other evidence of compliance does not constitute approval or agreement by the District that the insurance requirements have been met or that the policies shown in the certificates or other evidence are in compliance with the requirements.

The District shall have the right but not the obligation of prohibiting the Contractor or subcontractor from entering the project site until such certificates or other evidence of insurance has been provided in full compliance with these requirements. If the Contractor fails to maintain insurance as set forth above, the District may purchase such insurance at the Contractor's expense. The Contractor's failure to maintain the required insurance may result in termination of this Contract at the District's option.

- C. Subcontractors - Contractor shall ensure that each subcontractor meets the applicable insurance requirements and specifications of this Agreement. All coverage for subcontractors shall be subject to all the requirements stated herein and applicable to their profession. Contractor shall furnish the District with copies of certificates of insurance evidencing coverage for each subcontractor upon request.
- D. Cancellation of Insurance - The Contractor shall not cause any insurance policy to be canceled or permit any policy to lapse. Insurance companies, to the extent commercially available, or Contractor shall provide 30 days advance written notice to the District for cancellation or any material change in coverage or condition, except 10 days advance written notice for cancellation due to non-payment of premium. Should the Contractor receive any notice of cancellation or notice of nonrenewal from its insurer(s), Contractor shall provide immediate notice to the District no later than two days following receipt of such notice from the insurer. Notice to the District shall be delivered by facsimile or email.

Contractor may not assign this Agreement, in whole or in part, voluntarily or by operation of law, unless approved in writing by the District.

11. Records - Audit

- A. The results of all work and services performed by the Contractor hereunder shall become the property of the District upon completion of the work herein performed and shall be delivered to the District prior to final payment.
- B. Until the expiration of three years after final acceptance by District of all the work, Contractor shall keep and maintain complete and accurate records of its costs and expenses related to the work or this Contract in accordance with sound and generally accepted accounting principles applied on a consistent basis. To the extent this Contract provided for compensation on a cost-reimbursable basis or whenever such records may, in the opinion of the District, be useful in determining any amounts payable to Contractor or District (e.g., the nature of a refund, credit or otherwise), Contractor shall provide District access to all such records for examination, copying and audit.

12. Nondisclosure

Contractor agrees that it will not divulge to third parties, without the written consent of the District, any information obtained from or through District in connection with the performance of this Contract. Contractor further agrees that it will not, without the prior written consent of District, disclose to any third party any information developed or obtained by the Contractor in the performance of this Contract and, if requested by District, to require its subcontractors, if any, to execute a nondisclosure agreement prior to performing any services under this Contract. Nothing in this section shall apply to:

- A. Information which is already in the Contractor's possession not subject to any existing confidentiality provisions,
- B. Information which, at the time of disclosure, is in the public domain by having been printed and published and available to the public libraries or other public places where such data is usually collected, and
- C. Information required to be disclosed by court order or by an agency with appropriate jurisdiction.

13. Public Records Act

The District is subject to the disclosure obligations of the Washington Public Records Act of RCW 42.56. The Contractor expressly acknowledges and agrees that any information Contractor submits is subject to public disclosure pursuant to the Public Records Act or other applicable law and the District may disclose Contractor's proposal and/or information at its sole discretion in accordance with its obligations under applicable law.

14. Applicable Law

Contractor shall comply with all applicable federal, state and local laws and regulations including amendments and changes as they occur. All written instruments, agreements, specifications and other writing of whatsoever nature which relate to or are a part of this Agreement 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 District and Contractor shall be governed by the laws of the State of Washington. Venue of any action filed to enforce or interpret the provisions of

this Agreement shall be exclusively in the Superior Court, County of Grant, State of Washington or the Federal District Court for the Eastern District of Washington at the District's sole option. In the event of litigation to enforce the provisions of this Agreement, the prevailing party shall be entitled to reasonable legal fees in addition to any other relief allowed.

15. Subcontracts/Purchases

- A. The Contractor is authorized to enter into subcontracts required for the work. Any subcontracts shall be approved in advance by the District Representative and Procurement Officer. The Contractor is not authorized to make any purchases of materials or equipment other than those specified as other direct costs in Appendix "A.1" and mutually agreed to on the execution date of this Agreement.
- B. The Contractor shall consider that this Contract may be federally funded in whole or in part and may therefore be subject to certain federal provisions. Further, a federal awarding agency may require that certain terms and conditions of this Contract be included in all subcontracts. The Contractor shall be responsible for ensuring all applicable mandatory federal awarding agency provisions are included in all subcontracts. These mandatory provisions are set forth in Appendix "F", Federal Requirements. The Contractor shall bear full responsibility for delays in performing the work if subcontractor agreements fail to include all applicable provisions.
- C. In the event subcontracts other than those specified in Appendix "A.1" are required for the work, Contractor shall obtain three quotes and submit to the District Representative and Procurement Officer for approval prior to entering into such subcontracts. The District Representative and Procurement Officer may request copies of the subcontractor agreements from the Contractor. Subcontracted work approved in accordance with this section shall be invoiced at cost. A copy of the invoice showing actual cost must be submitted with the Contractor's invoice to the District.

16. Notices

Any notice or other communication under this Contract given by either party shall be sent via email to the email address listed below, or mailed, properly addressed and stamped with the required postage, to the intended recipient at the address and to the attention of the person specified below and shall be deemed served when received and not mailed. Either party may from time to time change such address by giving the other party notice of such change.

District  
Kevin Marshall  
Public Utility District No. 2  
of Grant County, Washington PO Box 878  
154 A Street SE, Ephrata, WA 98823  
509-760-9046  
[kmarsha@gcpud.org](mailto:kmarsha@gcpud.org)

Contractor  
Mark Jones  
HDR Engineering, Inc.  
1050 SW 6<sup>th</sup> Ave., Suite 1800  
Portland, OR 97204-1134  
503-423-3810  
[mark.jones@hdrinc.com](mailto:mark.jones@hdrinc.com)

For purposes of technical communications and work coordination only, the District designates Kevin Marshall as its representative. Said individual shall have no authority to authorize any activity which will result in any change in the amount payable to Contractor. Such changes, if any, must be by written Change Order issued in accordance with Section 6 to be valid and binding on the District.

17. License and Delivery of Works Subject to Copyright and Data Rights

The Contractor grants to the District, a paid-up, royalty-free, nonexclusive, irrevocable, worldwide license in data first produced in the performance of this Contract to reproduce, publish, or otherwise use, including prepare derivative works, distribute copies to the public, and perform publicly and display publicly such data. For data required by the Contract but not first produced in the performance of this Contract, the Contractor will identify such data and grant to the District or acquire on its behalf a license of the same scope as for data first produced in the performance of this Contract. Data, as used herein, shall include any work subject to copyright under 17 U.S.C. § 102, for example, any written reports or literary works, software and/or source code, music, choreography, pictures or images, graphics, sculptures, videos, motion pictures or other audiovisual works, sound and/or video recordings, and architectural works. Upon or before the completion of this Contract, the Contractor will deliver to the District data first produced in the performance of this Contract and data required by the Contract but not first produced in the performance of this Contract in formats acceptable by the District. Any modification or reuse of such data by District for purposes other than those intended by this Agreement shall be at District's sole risk and without liability to the Contractor.

18. Termination

- A. District may, at any time, for any reason, terminate Contractor's services in connection with this Agreement, or any part thereof, by designating that portion of the services to be terminated. In case of termination pursuant to this Section A, District will make payment at the rates specified in this Agreement for services properly performed up to the date of termination. However, in no event shall Contractor be entitled to any other payment to or any anticipated fee or profit on unperformed work.
- A. In the event of Contractor's breach or abandonment of this Contract, the District may, after providing Contractor written notice of the breach and a period of 10 days to cure, terminate this Agreement. The District without waiving any other remedies available to it, may retain any monies otherwise due Contractor under this Agreement to the extent such sums are required to compensate District, in whole or in part, for any loss or damage caused by Contractor's breach or abandonment.

19. Non-Waiver

No waiver of any provision of this Agreement, or any rights or obligations of either Party under this Agreement, shall be effective, except pursuant to a written instrument signed by the Party or Parties waiving compliance, and any such waiver shall be effective only in the specific instance and for the specific purpose stated in such writing. The failure of either Party to require the performance of any term of this Agreement or the waiver of either Party of any breach under this Agreement shall not operate or be construed as a waiver of any other provision hereof, nor shall it be construed as a waiver of any subsequent breach by the other Party hereto.

20. Project Documentation Transfer Methods

- A. The District requires use of the District O365 SharePoint site for all letters, requests for information, safety reports, submittals (except samples), transmittals, and test reports. The requirement to use the District O365 SharePoint site for delivery of these documents supersedes any other requirements for document delivery in the Contract Documents.
- B. The District and Contractor shall mutually agree on the user list for the O365 SharePoint site. All users shall be set up with an individual user name and password after the Contractor has provided a signed "Remote Access Application Form and Computer System Remote Access User Security Agreement" for each user.

- C. All files shall be placed in the correct library corresponding to the subject matter of the file. The following libraries shall be setup by the District: Change Order, Change Order Proposal, District Instruction, Invoices, Letters from Contractor, Letters from District, Meeting Minutes, Request for Information, Safety Reports-Accidents, Schedules, Signed Documents, Submittal, Test Reports, Transmittals, Task Authorization. Original signed Change Orders must also be physically sent to the attention of the Procurement Officer. The District reserves the right to create or delete libraries based on the project documentation requirements. Files stored on the District's O365 SharePoint site shall remain on the O365 SharePoint site for the duration of the project.
  
- D. File names shall be as follows, where Y indicates a sequential number starting with 1, A indicates a sequential alpha character for each revision – A = first revision, B = second revision, etc. The following abbreviations may be used: "RFI" for "Request for Information".
  - 1. Change Order Proposals: "Change Order Proposal Y"
  - 2. Letters: "Letter from Contractor Y"
  - 3. Requests for Information: "Request for Information Y" or "RFI Y"
  - 4. Resubmitted Requests for Information: "Request for Information YA" or "RFI YA"
  - 5. Safety/Accident Reports: "Safety Report Y"
  - 6. Submittals: "Submittal Y"
  - 7. Resubmitted Submittals: "Submittal YA"
  - 8. Test Reports: "Test Report Y"
  
- E. The receipt date for all documents shall be the same date as indicated by the District O365 SharePoint file posting date unless the documents are placed on the District O365 SharePoint site after 2 p.m. Pacific Standard Time, then the document receipt date shall be set as the following business day.
  
- F. If for any reason the District O365 SharePoint site is not functional, then the Contractor shall send hard copies for review; see Technical Specifications for number of copies required. No extensions or claims shall be granted if the District's O365 SharePoint site is not functional.
  
- 21. Environmentally Preferable Products, Services, and Practices
  - A. In the performance of work under this Contract, the Contractor shall exert its best efforts to provide its services in a manner that will promote the natural environment and protect the health and wellbeing of District employees, contracted service providers, the public, and visitors using District facilities.
  
  - B. Definitions as used in this Section 21:
    - "*Environmentally preferable*" means products or services that have a reduced effect on human health and the environment when compared with competing products or services that serve the same purpose.

“Green Purchasing” means making thoughtful, strategic decisions to buy goods and services that have less negative environmental and health impacts than similar products or services.

- C. Green purchasing and environmentally preferable products and services include several interconnected initiatives which are subject to and are described by the following government and industry procurement programs:
1. Products containing recovered material designated by the U.S. Environmental Protection Agency (EPA) under the Comprehensive Procurement Guidelines ([42 U.S.C. 6962](#)) ([40 CFR Part 247](#)) ([Comprehensive Procurement Guideline \(CPG\) Program | US EPA](#)).
  2. Energy- and water-efficient products that are ENERGY STAR® certified or Federal Energy Management Program (FEMP)-designated products ([42 U.S.C 8259b](#)) ([10 CFR part 436, subpart C](#)) (<https://www.energy.gov/femp/search-energy-efficient-products> and <https://www.energystar.gov/products?s=mega>).
  3. Acceptable chemicals, products, and manufacturing processes listed under EPA's Significant New Alternatives Policy (SNAP) program, which ensures a safe and smooth transition away from substances that contribute to the depletion of stratospheric ozone ([42 U.S.C. 76711](#)) ([40 CFR part 82, subpart G](#)) (<https://www.epa.gov/snap>).
  4. WaterSense® labeled (water efficient) products and services (<https://www.epa.gov/watersense/watersense-products>).
  5. Safer Choice-certified products (products that contain safer chemical ingredients) (<https://www.epa.gov/saferchoice/products>).
  6. Product and services that meet EPA Recommendations of Specifications, Standards, and Ecolabels in effect as of October 2023 (<https://www.epa.gov/greenerproducts/recommendations-specifications-standards-and-ecolabels-federal-purchasing>).
- The Green Procurement Compilation (GPC) available at <https://sftool.gov/greenprocurement> provides a comprehensive list of sustainable products and services and sustainable procurement guidance. The Contractor should review the GPC when determining which programs apply to a specific product or service.
- D. To the extent that design services provided by the Contractor require the specification of any of these types of products, the Contractor is expected to specify the environmentally preferable type of product unless that type of product is not available competitively within a reasonable time, at a reasonable price, is not life cycle cost efficient in the case of energy consuming products or does not meet reasonable performance standards.
- E. The Contractor shall use recycled paper for the production of all printed and photocopied documents related to the fulfillment of this Contract. If the cost of recycled paper is more than 15 percent higher than the cost of non-recycled paper, the Contractor shall notify the District Representative, who may waive the recycled paper requirement.



The Contractor agrees to use both sides of paper for copying and printing, and to use recycled and/or recyclable products wherever practical.

22. Utilization of Small and Diverse Businesses

- A. The Contractor has committed to the aspirational goals identified in its Subcontractor/Subconsultant Inclusion Plan (SIP) & Commitment Form executed as part of the RFQ process (RFQ Attachment C) and incorporated herein by reference.
- B. For purposes of award and performance of the Contract, the aspirational goals are expressed as a percentage of the total Contract Price to be performed by small and diverse businesses over the life of this Agreement.
- C. The Contractor shall make good faith efforts to meet or exceed its aspirational goals in the performance of this Contract. The Contractor may count their own participation and any participation from subcontractors and/or subconsultants, as applicable, towards aspirational goals in this Contract.
- D. Certification Requirements: Small and diverse businesses proposed in the Contractor's SIP must meet, at the time Statements of Qualifications are due, the requirements under RCW 39.26.010(22), or be registered in the federal government's System for Award Management (SAM) as a Small Business Administration (SBA) certified business eligible for contracts that are reserved for small businesses, or be located in an area designated in the current U.S. Department of Labor (DOL) Labor Surplus Area (LSA) list (see <https://www.dol.gov/agencies/eta/lisa>).
- E. Upon Contract award, and if applicable, the Contractor shall provide District Supplier Diversity Program staff, copies of the Contractor's and subcontractors and/or subconsultants, as applicable, business certifications from the Washington State Office of Minority and Women's Business Enterprises (OMWBE) or SBA. If the Contractor's, a subcontractor's, or a subconsultant's business is not certified through OMWBE, SBA, or it is self-certified, the Contractor shall provide the District's Supplier Diversity Program staff verifying tax documentation for audit purposes in order to count the business towards the small and diverse business goal commitment.
- F. If, during the progress of the work, a business listed by the Contractor in its SIP is determined not to meet the small and diverse business eligibility criteria, the utilization of said business will not be counted toward the fulfillment of the Contractor's SIP. The Contractor shall substitute another business that meets the small and diverse business eligibility provisions outlined above to maintain its commitment to small and diverse business participation. Such substitution shall be at no additional cost to the District.
- G. During Contract performance, if the Contractor is not meeting its aspirational goals or making satisfactory progress towards the objectives identified in its SIP, the District may request submission of a corrective action plan. The Contractor shall submit a corrective action plan within ten days of a written request from the District. The correction action plan shall contain the following elements:
  - 1. An explanation of the circumstances contributing to the aspirational goal shortfall.
  - 2. A summary of the impacts to small and diverse businesses on the project due to the

shortfall.

3. A detailed list of actions that the Contractor will take to correct the shortfall and meet the aspirational goals for small and diverse participation for the project.
4. A summary of the status of activities and actions identified in its SIP and the effectiveness of each one toward meeting the aspirational goals.

If the District determines that the corrective action plan submitted by the Contractor is unsatisfactory, the District may withhold payments, or terminate the contract for default.

- H. The obligation of the Contractor is to make Good Faith Efforts to meet its aspirational goals for small and diverse business participation.

For purpose of this clause:

“Good Faith Efforts” means efforts to achieve a goal or other elements of the Contractor’s SIP that, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to meet the SIP requirements.

The Contractor can demonstrate that it has achieved this objective by either meeting its aspirational goals or documenting its Good Faith Efforts. If the Contractor does not meet its aspirational goals, the District will make a determination on whether the Contractor made adequate Good Faith Efforts to meet the stated goals. The District will consider the quality, quantity, and intensity of the documented Good Faith Efforts made by the Contractor. The District will not consider mere pro forma efforts as Good Faith Efforts.

23. Project Management Contractor Participation

- A. The District utilizes a standard approach to implementing projects by using well-defined internal standard frameworks for both project management and organizational change management. The framework procedures and associated tools and templates are required to be used for all projects as defined by the District’s Enterprise Project Management Office. The Contractor shall, as directed by the District, utilize and/or actively participate in the District’s application of its project management and organization change management frameworks to guide the implementation of projects and/or change events that this Contract contributes towards. To the extent applicable, the Contractor shall ensure that all workers, subcontractors, and suppliers also comply with these requirements.
- B. The Contractor shall provide upon request by the project team key project information required to properly manage the project. Requested information may include but is not limited to delivery and completion dates, resource estimates and availability, quality inspection and testing plans, cost estimates and forecasts, safety metrics, and any known risks or constraints associated with these. The Contractor shall provide requested project information as required to not delay project reporting or project progress, cause witness or hold points to be missed, or cause any scope or cost increases.

The Contractor shall attend the appropriate project meetings as requested by the project team to provide key input to project parameters pertaining to this Contract. These meetings may include but are not limited to project kickoff meetings, preconstruction meetings, Job Site Reviews, Root Cause Evaluations, Steering Committee and Commission updates, and Monthly Business Reviews. Meetings may be in-person or

virtual depending on the needs of the project. The Contractor shall make a judicious effort to attend meetings at the appropriate dates and times as required to not delay any portion of the project progress or cause any scope or cost increases.

The Contractor agrees to provide requested project closeout information with the detail and in the format requested by the project team. This information may include but is not limited to record drawings, testing and commissioning data, operation and maintenance (O&M) manuals, training information, quality history, etc. Failure to provide all requested documentation that is acceptable to the project team shall delay acceptance and final payment by the District.

24. Physical Security

If any performance under this Contract is to be conducted on District facilities or worksites, it shall be the responsibility of the Contractor to ensure that its employees and those of its Subcontractors are informed of and abide by the District's Security Policies as if fully set out herein a copy of which shall be provided to the Contractor by the District Representative at the preconstruction meeting or prior to beginning work. Without limiting the foregoing, Contractor and its employees shall be required to:

- A. Keep all external gates and doors locked at all times and interior doors as directed.
- B. Visibly display ID badges on their person at all times.
- C. Stay out of unauthorized areas or in authorized areas outside of authorized work hours, without express authorization from the District.
- D. Provide proper notification to the appropriate parties, and sign in and out upon entry and exit to secured locations. If unsure of who to notify, Contractor shall contact the District Representative.
- E. Immediately notify the District if any of Contractor's employees no longer need access or have left the Contractor's employment.
- F. Immediately report any lost or missing access device to the District Representative. A minimum charge will be assessed to the Contractor in the amount of \$50.00 per badge and the fee for lost or non-returned keys may include the cost to re-key the plant facilities. The Contractor is strictly prohibited from making copies of keys.
- G. Not permit 'tailgating' through any controlled access point (i.e. person(s), authorized or unauthorized, following an authorized person through an entry point without individual use of their issued ID badge or key).
- H. Return all District property, including but not limited to keys and badges, to the District Representative when an individual's access to the facility is no longer needed.
- I. Guest Wireless: The District provides Guest Wireless Internet access to contractors and vendors that need to conduct business in support of the District from personally owned mobile devices such as laptops and smart phones. Contractor personnel are responsible for exercising good judgment regarding appropriate use of information, electronic devices, and network resources.

The Contractor and any Subcontractors shall comply with the safety requirements of these Contract Documents and all District policies pertaining to COVID-19 located at

<https://www.grantpud.org/for-contractors>.

The District reserves the right to conduct or to require Contractor to conduct criminal background checks on its employee(s) before granting such individuals access to restricted areas of District facilities or Protected Information. Criminal background checks may be conducted in such depth as the District reasonably determines to be necessary or appropriate for the type of access to be granted. The cost of such background checks shall be borne by the Contractor.

25. Security, Safety Awareness Training, Dam Safety Awareness Training, and Transmission and Distribution Access Training

Prior to receiving access to any District facilities, all Contractors, Contractor's employees, subcontractors and subcontractor's employees, material suppliers and material supplier's employees, or any person who will be engaged in the work under this Contract that requires access to District facilities, shall be required to take and pass the District's Security and Safety Awareness training before being issued a security access badge to access District facilities. Under no circumstances will the failure of any Contractor or subcontractor employee to pass the required training, be grounds for any claim for delay or additional compensation.

The Safety and Security Awareness training is available online and is a 20-30 minute training. The training is located at: <https://www.grantpud.org/for-contractors>. All contractors and their employees are required to successfully complete Safety and Security Awareness training before coming onsite. The Security and Safety certificates should be emailed directly to [SecurityTrainingCerts@gcpud.org](mailto:SecurityTrainingCerts@gcpud.org).

District Representative shall ensure that Contractor's employees, subcontractor's and subcontractor's employees have completed and submitted the certificate of completion for the training in a timely manner to avoid any delay in execution of the work. All such certificates shall be submitted before any security access badges will be issued.

If applicable, Dam Safety Awareness Training is required for Contractors who are performing work in and around Priest Rapids and Wanapum Dams and are badged. The training is available online only and is a 20-30 minute training. Contractor shall ensure that its employees, Subcontractors and Subcontractor's employees have completed, passed and printed the certificate of completion for the training in a timely manner to avoid any delay in execution of the work. All such certificates shall be submitted to the District Representative before any security access badges will be issued.

If applicable, Transmission and Distribution Access Training is required for Contractors, or their Subcontractors, who may hold a clearance or hotline hold order as part of performance of work under this Contract. The training is available online only and is a 20-30 minute training. Contractor shall ensure that its employees, Subcontractors and Subcontractor's employees have completed, passed and printed the certificate of completion for the training in a timely manner to avoid any delay in execution of the work. All such certificates shall be submitted to the District Representative before any security access badges will be issued.

If you are uncertain which of the above courses you or your employees must complete, please contact your District Representative.

26. Protected Information

The State of Washington, Federal Energy Regulatory Commission (FERC) and/or North American Reliability Corporation (NERC) has established regulations for the protection of sensitive plans, drawings and records defined as Security Sensitive Information (SSI), Critical Energy Infrastructure Information (CEII) and/or Bulk Electric System Cyber System Information (BCSI),

reference Appendix “E”. In accordance with the Revised Code of Washington (RCW), FERC and NERC regulations, and using them as guidance, the District has identified and designated certain information as SSI, CEII, and/or BCSI (hereinafter referred to collectively as “Protected Information”). Because of the sensitive nature of certain District Protected Information that could be used in this Contract, Contractor is bound by the terms and conditions set forth in the Non-Disclosure Agreement (NDA) executed at the time of this Agreement (Appendix “D”).

27. Background Checks

The District reserves the right to conduct or to require Contractor to conduct criminal background checks on its employee(s) before the District will grant such individuals access to secure areas of District facilities or electronic access to Bulk Electric System Cyber Assets or Protected Information. Criminal background checks may be conducted in such depth as the District reasonably determines to be necessary or appropriate for the type of access to be granted.

In the event the District determines in its sole discretion that an individual is unsatisfactory to the District or fails to provide a background check as requested by the District, the District reserves the right to require the Contractor to remove such individual from the job site and/or to exclude such individual from having any access to SSI, Bulk Electric System Cyber Assets, CEII, or BCSI.

28. Qualification of Contractor’s Access and Personnel Change Approval

The District reserves the right to deny any Contractor or employee thereof access to District facilities or Protected Information at the District’s sole discretion. The District will be the sole judge of such effect. All Contractors and employees thereof shall be subject to the nondisclosure provisions of this Contract.

The District reserves the right to conduct or to require Contractor to conduct criminal background checks, provide an identity validation document (I-9, Social Security card, driver’s license) and complete the District provided training for its employee(s) before the District will grant such individuals access to secure areas of District facilities. Criminal background checks may be conducted in such depth as the District reasonably determines to be necessary or appropriate for the type of access to be granted. Contractor shall execute one certification for each employee requiring a background check on the form provided by the District and attached hereto as Appendix “E”. The cost of such background checks shall be borne by the Contractor. For access to Protected Information relating to Critical Infrastructure Protection, the District reserves the right to require certificate of completion from the District-provided training for each employee before the District will grant access to such individuals.

In the event the District determines in its sole discretion that an individual or Contractor is unsatisfactory or fails to provide a background check as requested by the District, or fails to provide the information listed above, the District reserves the right to exclude such individual or Contractor from secure areas and/or from having any access to Protected Information.

29. CIP Training

All persons receiving Protected Information or having access to secured sites shall complete CIP training prior to receiving such access and periodically, but no less than annually, thereafter. CIP training is conducted by the Reliability Compliance (RC) Department through a learning management system. The learning management system privileges will be coordinated between the District Representative and the RC Department.

30. Contractor Safety Requirements

The following applies if Contractor, or any of its sub-consultants, subcontractors, or suppliers of any tier, performs any activities on premises owned, leased, possessed, or controlled by the District. The Contractor Safety Requirements shall be required when applicable as determined by the District Representative based upon the scope of work. To the extent applicable, the Contractor shall ensure that all workers, sub-consultants, subcontractors, and suppliers comply with these requirements. In fulfilling these requirements, the Contractor shall also comply with material and equipment manufacturer instructions, and safety and health requirements in accordance with WAC 296-126-094 and this Agreement where applicable. If there are conflicts between any of the requirements referenced in the Contract Documents, the more stringent requirement shall prevail.

A. General

Initial/Warning Notice: Any District employee may notify the Contractor of any safety or health concern. The notice may be delivered verbally to any Contractor employee or subcontractor and the District employee shall notify the District Representative of the Notice. Written notification may be provided to the Contractor at the discretion of the District Representative. The notice shall have the same effect on the Contractor regardless of format or recipient. The Contractor shall take immediate action to mitigate the safety and health concerns identified in the District's notice.

B. Stop Work Order: District employees also have the authority to immediately stop a work activity without issuing the Initial/Warning Notice. The District employee will immediately notify the District Representative of the Stop Work Order. The District Representative may direct the Contractor to stop work due to safety and health concerns. The Stop Work Order may cover all work on the Contract or only a portion of the work. After the District issues a Stop Work Order, the Contractor shall meet with District Representatives (as determined by the District Representative) to present a written statement outlining specific changes and/or measures the Contractor will make to work procedures and/or conditions to improve safety and health. A Stop Work Order can be rescinded only with the written approval of the District Representative.

1. The Contractor shall not be entitled to any adjustment of the Contract price or schedule when the District stops a work activity due to safety and health concerns that occurred under the Contractor's, Subcontractor's, or supplier's control.
2. The District's conduct does not alter or waive the Contractor's safety and health obligations.
3. Contractor shall provide an onsite Safety Professional as directed by the District Representative based upon number and/or severity of identified safety infractions.
4. Non-compliance with safety requirements could lead to termination of the contract in accordance with Section 18.

C. The Contractor shall maintain an accurate record of, and shall immediately report to the District Representative all cases of near miss or recordable injury as defined by OSHA, damage to District or public property, or occupational diseases arising from, or incident to, performance of work under this Contract.

1. The record and report shall include where the incident occurred, the date of the incident, a brief description of what occurred, and a description of the preventative measures to be taken to avoid recurrence, any restitution or settlement made, and the status of these items. A written report shall be delivered to the District Representative within five business days of any such incident or occurrence.
2. In the event of a serious incident, injury or fatality the immediate group shall stop

work. The Contractor/subcontractor shall secure the scene from change until released by the authority having jurisdiction. The Contractor shall collect statements of the crew/witnesses as soon as practical. The District reserves the right to perform an incident investigation in parallel with the Contractor. The Contractor, subcontractor, and their workers shall fully cooperate with the District in this investigation.

3. All cases of death, serious incidents, injuries or other incidents, as determined by the District Representative, shall be investigated by the Contractor to identify all causes and to recommend hazard control measures. A written report of the investigation shall be delivered to the District Representative within 30 calendar days of any such incident or occurrence.
  4. For situations that meet the reporting requirements of WAC 296-800, the Contractor shall self-report and notify the District Representative. The District Representative shall notify the District's Safety personnel.
- D. The Contractor/subcontractor shall conduct and document job briefings each morning with safety as an integral part of the briefing. The Contractor/Subcontractor shall provide an equivalent job briefing to personnel and/or visitors entering the job site after the original job briefing has been completed for work within their scope. Immediately upon request, the Contractor shall provide copies of the daily job briefing and any other safety meeting notes to the District Representative. The notes, at a minimum, shall include date, time, topics, and attendees and shall be retained by the Contractor for three years after completion of all work.
- E. Job Site Reviews Performed by the District: The Contractor Site Representative or other lead personnel, if requested by the District, shall be required to participate in District job briefs and/or District job site reviews that pertain to other work being performed that may impact the Contractor's work.
- F. The Contractor's Safety Information submitted during the RFQ process (see RFQ Attachment "B") is incorporated herein by reference. The District reserves the right to request updated Contractor safety information at any time during the performance of this Contract.
31. Contractor's observation or monitory portions of the work performed under construction contracts shall no relieve the construction contract from its responsibility for performing work in accordance with applicable contract documents. Contractor shall not control or have charge of, and shall not be responsible for, construction means, methods, techniques, sequences, procedures of construction, health or safety programs precautions connected with the work and shall not manage, supervise, control or have charge of construction. Contractor shall not be responsible for acts or omissions of the construction contractor or other parties on the project.
  32. Contractor shall not be liable to the District either in contract or in tort (including negligence or strict liability) for consequential damages consisting of the Districts loss of profits, its loss of revenue or its cost of replacement power. Contractor's total liability to the District with respect to (a) any breach of contract or default, (b) negligence, or (c) strict liability shall not exceed \$5,000,000.00 provided that this total liability limit shall not apply to damages covered by Contractor's insurance coverages, nor from insurance claims, as required in Section 8 with the exception of Professional Liability.

IN WITNESS WHEREOF, the Contractor and the District have executed this Agreement each by its proper respective officers and officials thereunto duly authorized the day and year first above written.

Public Utility District No. 2  
of Grant County, Washington

HDR Engineering, Inc.

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

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

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_



**APPENDIX "A.1"**  
**RATE SCHEDULE**

Reference RFQ Attachment "I" Price Proposal dated November 19, 2024.

**APPENDIX “A.2”  
DIRECT, REIMBURSABLE EXPENSES, & OTHER DIRECT COSTS**

**DIRECT EXPENSES:**

Fixed hourly billing rates shall be in US Dollars and include all i) payroll, payroll taxes and fringe benefits; ii) all reproduction and printing costs including electronic media; iii) communications costs including all phones, faxes, internet, postage, shipping, delivery, couriers; iv) computer, software, printers, scanners, office machines and related costs of operations including consumables; v) insurance costs; vi) indirect and overhead burden; and vii) profit.

**REIMBURSABLE EXPENSES:**

Reimbursable expenses are those reasonable and necessary costs incurred on or directly for the District’s project, including necessary transportation costs, meals and lodging. Any actual expenses in non-US dollars will be converted using the conversion tables at [www.x-rates.com](http://www.x-rates.com) for the applicable period. Reimbursement will be subject to the following limitations:

Meals and Incidental Expenses: Meals and incidental expenses will be limited to the Federal Per Diem rate for meals and incidentals established for the location where lodging is obtained. Federal Per Diem guidelines which includes the meal breakdown and Federal Per Diem rates for other locations can be found at [www.gsa.gov](http://www.gsa.gov).

Lodging: Lodging will be billed at cost, including applicable taxes, not to exceed 200% of the Federal Per Diem maximum lodging rate for the location where the work is being performed. The District Representative may increase this limit in writing when circumstances require.

Travel: Air travel (at coach class or equivalent), airport shuttles, etc. billed at cost. Ground transportation by privately owned vehicle, if utilized, billed at the Internal Revenue Service mileage rate for privately owned vehicles in effect at the time of travel. Expenses for a rental car, at cost, in the ratio of one mid-size class rental car for each three Contractor’s personnel directly engaged in performance of the work at the prevailing rental rates then in effect. Rental car options such as refueling fees, GPS, collision & liability insurance, etc. will not be reimbursed by the District unless such options are approved in advance by the District Representative. **Appropriate insurance coverage should be included in the Contractor’s insurance policies.**

Sub-consultants/Subcontractors: Services requested by the District, verifiable by applicable supporting documentation or at specified rates, will be reimbursed to Contractor at cost.

Other: All other expenses will be based on actual costs and include appropriate documentation.

**Notes:**

- 1. When applicable, monthly invoices will be reviewed to confirm allowability, reasonableness, and proper allocability according to federal cost/price principles in accordance with 2 CFR 200, Subpart E and the Appendix “A.1” Rate Schedule, mutually agreed to on the execution date of this Agreement.**
- 2. Reimbursable expenses must be accompanied by receipts for airfare, hotel, and rental car, and any other support documentation as the District may require.**

**APPENDIX "B"**  
**CHANGE ORDER NO. \_**

Pursuant to Section 6, the following changes are hereby incorporated into this Contract:

- A. Description of Change:
  
- B. Time of Completion: The revised completion date shall be \_\_\_\_\_.  
*OR*  
 The completion date shall remain \_\_\_\_\_.
  
- C. Contract Price Adjustment: As a result of this Change Order, the not to exceed Contract Price shall remain unchanged (be increased/decreased by the sum of \$\_\_\_\_\_ plus applicable sales tax). This Change Order shall not provide any basis for any other payments to or claims by the Contractor as a result of or arising out of the performance of the work described herein. The new total revised maximum Contract Price is \$\_\_\_\_\_, including changes incorporated by this Change Order.
  
- D. Except as specifically provided herein, all other Contract terms and conditions shall remain unchanged.

Public Utility District No. 2  
of Grant County, Washington

HDR Engineering, Inc.

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

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

Name of Authorized Signature  
Title

Name of Authorized Signature  
Title

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**APPENDIX "C"**  
**TASK AUTHORIZATION FOR PROFESSIONAL SERVICES**

Contract No.:	430-12302R	Task Authorization No.:		Amendment No.:	
Project Name:					

The Scope of Services covered by this authorization shall be performed in accordance with all the terms and conditions in the above referenced Contract Documents which are incorporated herein by this reference.

The District hereby requests and authorizes the Contractor to perform the following services:

Compensation is to be paid in accordance with and subject to the limitations in Section 5.A of the Contract Documents. In addition, the total cost of the above described work shall not exceed \$\_\_\_ without advance amendment of this Task Authorization by the District.

Public Utility District No. 2  
of Grant County, Washington

HDR Engineering, Inc.

Approved for District

Accepted by Contractor

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

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

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: District Representative

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**APPENDIX "D"**  
**NON-DISCLOSURE AGREEMENT**

This Non-Disclosure Agreement ("NDA") is entered into on the date shown on the signature page between Public Utility District No. 2 of Grant County, Washington ("District"), and HDR Engineering, Inc., ("Contractor"), sometimes collectively referred to as the "Parties."

**RECITALS**

The District has identified and designated certain information as confidential. For purposes of this Agreement, "Protected Information" includes:

- District customer information protected under RCW 19.29A, Consumers of Electricity;
- District employee information;
- District vendor information;
- All technical and business information or material that has or could have commercial value or other interest in the business or prospective business of the District;
- All information and material provided by the District which is not an open public record subject to disclosure under RCW 42.56, Public Records Act;
- All information of which unauthorized disclosure could be detrimental to the interests of the District or its customers, whether or not such information is identified as Protected Information; and
- Any information identified and designated by the District as Security Sensitive Information (SSI), Critical Energy Infrastructure Information (CEII), and/or Critical Infrastructure Protection (CIP) Protected Information in accordance with the State of Washington, Federal Energy Regulatory Commission (FERC) and/or North American Reliability Corporation (NERC), which have established regulations for the protection of sensitive plans, drawings, and records defined as SSI, CEII, and/or CIP Protected Information. SSI, CEII, and CIP Protected Information are further defined in Exhibit "A".

Because of the sensitive nature of such information that may be provided to the Contractor, Contractor must execute and deliver this NDA to the District prior to receiving such Protected Information from the District.

NOW, THEREFORE, the Parties agree as follows:

1. **Incorporation by Reference.** The recitals set forth above are incorporated herein as if fully set forth.
2. **Protected Information Disclosure.** All information and drawings that are disclosed by the District to the Contractor, which are designated as confidential, SSI, CEII, and/or CIP Protected Information, shall be protected hereunder as Protected Information.
3. **Non-Disclosure.** Subject to the provisions of Section 4 and unless the parties agree otherwise, this non-disclosure obligation shall survive the termination of this NDA. Contractor shall not disclose or disseminate Protected Information and shall:
  - A. Restrict disclosure of Protected Information solely to its agents and employees with a need to know and not disclose such Protected Information to any others; and

- B. Advise and require all of its officers, agents, employees, representatives, prospective and successful subcontractors, consultants and employees thereof with access to the Protected Information to execute an NDA in this same form with the District prior to allowing them access to the Protected Information, provided that employees who are required to maintain confidentiality pursuant to corporate policy are not required to execute an NDA; and
  - C. Use the Protected Information provided hereunder only for purposes directly related to performance of the work Contract 430-12302R-A.
  - D. In the event third parties attempt to obtain the Protected Information by legal process, the Contractor agrees that it will not release or disclose any Protected Information until the District has received notice of the legal process and has been given reasonable opportunity to contest such release of information and/or to assert the confidentiality privilege.
4. **Ownership and Return of Protected Information.** All Protected Information shall remain the property of the District. Contractor is responsible for safeguarding and returning all Protected Information or shall certify, by signed, statement delivered to the District, the destruction of all original Protected Information provided along with any copies made by the Contractor. Such delivery shall be to the District, Attention: Beau Schwab, PO Box 878, Ephrata, WA 98823.
5. **Compliance Audit.** The District may audit Contractor's compliance with this NDA.
6. **Applicable Law.** This NDA is made under, and shall be construed according to, the laws of the State of Washington and the Federal Energy Regulatory Commission regulations. Venue for any action brought pursuant to this NDA shall, at the District's option, be in Grant County Superior Court, Grant County, Washington or in the United States District Court for the Eastern District of Washington.
7. **Assignment.** This NDA may not be assigned.
8. **Violations.** Contractor understands and agrees that the District is providing the Protected Information to Contractor in reliance upon this NDA, and Contractor will be fully responsible to the District for any damages or harm caused to the District by a breach of this NDA by Contractor or any of its officers, directors, agents, employees, subcontractors, consultants or affiliates. Contractor acknowledges and agrees that a breach of any of its promises or agreements contained herein will may result in irreparable injury to the District for which there may be no adequate remedy at law, and the District shall be entitled to apply for equitable relief, including injunction and specific performance, in the event of any breach or threatened breach or intended breach of this NDA by Contractor. Such remedies, however, shall not be deemed to be the exclusive remedies for any breach of the Agreement but shall be in addition to all other remedies available at law or in equity. In addition to injunctive relief, civil or criminal penalties may be imposed for each violation of this NDA.
9. **Attorney's Fees.** In the event it is necessary for the District to utilize the services of an attorney to enforce any of the terms of this NDA, it shall be entitled to compensation for its reasonable attorney's fees and costs. In the event any legal action becomes necessary to enforce the provisions of the NDA, the substantially prevailing party shall be entitled to reasonable attorney's fees and costs in addition to any other relief allowed, regardless of whether the dispute is settled by trial, trial and appeal, arbitration, mediation, negotiation or otherwise, and regardless of whether suit is formally filed.
10. **Corporate Authority; Binding Signatures.** The individual executing this NDA on behalf of Contractor warrants that he or she is an authorized signatory of the entity for which they are signing,

and have sufficient institutional authority to execute this NDA.

- 11. **Electronic Signatures.** Signatures transmitted electronically shall be deemed valid execution of this NDA, binding on the parties.
- 12. **Effective Date and Term.** This NDA shall become effective immediately and remain in full force and effect until Contractor has returned all Protected Information to the District provided, however, the obligations contained in Section 3 shall survive the termination of this NDA.

CONTRACTOR:      Name: \_\_\_\_\_

                         Address: \_\_\_\_\_

                         \_\_\_\_\_

                         Phone: \_\_\_\_\_

                         Email: \_\_\_\_\_

                         \_\_\_\_\_

                         Signature: \_\_\_\_\_

                         Print Name: \_\_\_\_\_

                         Title: \_\_\_\_\_

                         Date: \_\_\_\_\_

**EXHIBIT "A"**  
**DEFINITIONS OF PROTECTED INFORMATION**

**Definition of Critical Infrastructure Protection (CIP)**

Pursuant to section 215 of the Federal Power Act (FPA), the Federal Energy Regulatory Commission (FERC) approved the Critical Infrastructure Protection (CIP) Reliability Standards. The CIP Reliability Standards require certain users, owners, and operators of the Bulk-Power System to comply with specific requirements (CIP-002 through CIP-014) to safeguard critical cyber assets. Penalties for non-compliance with NERC CIP can include fines, sanctions or other actions against covered entities.

**Definition of Critical Energy Infrastructure Information (CEII)**

The Critical Energy Infrastructure Information (CEII) guidelines of the Federal Energy Regulatory Commission (FERC) define CEII as specific engineering, vulnerability, operational or detailed design information about proposed or existing critical energy infrastructure (physical or virtual) that relates to the production, generation, transportation, transmission or distribution of energy, could be useful to a person planning an attack on critical infrastructure, is exempt from mandatory disclosure, and gives strategic information beyond the location of the critical infrastructure. 18 CFR §388.113 and RCW 42.56.520.

**Definition of Bulk Electric System Cyber System Information (BCSI)**

The North American Electric Reliability Corporation (NERC) has been designated by the FERC, through the Energy Policy Act of 2005, to establish and enforce standards and requirements for the reliable operation of the Bulk Electric System. The Bulk Electric System includes the District's electrical generation resources, transmission lines, and interconnections with neighboring electric systems. Information related to the District's Bulk Electric System Cyber Systems (BCS) is required to be protected due to the sensitive security nature of such information, and the need to protect public safety (hereinafter referred to as "CIP Protected Information"). BCSI generally (not exclusively) is defined as information about the BCS that could be used to gain unauthorized access or pose a security threat to the BCS and affect the reliable operations of the Bulk Electric System. The District is required to protect this information including, but not limited to, network topology/diagrams; floor plans for computing centers; equipment layouts; security configuration information and other information as defined in the NERC standards. FERC Order No. 706, issued January 18, 2008; 18 CFR Part 40; and RCW 42.56.070.

**Definition of Security Sensitive Information (SSI)**

Security Sensitive Information is those portions of records assembled, prepared, or maintained to prevent, mitigate, or respond to criminal or terrorist acts, which are acts that significantly disrupt the ability of the District to fulfill its mission and goals and that manifest an extreme indifference to human life, the public disclosure of which would have a substantial likelihood of threatening public safety. SSI includes: (a) Specific and unique vulnerability assessments or specific and unique response or deployment plans, including compiled underlying data collected in preparation of or essential to the assessments, or to the response or deployment plans; (b) Records not subject to public disclosure under federal law that are shared by federal or international agencies, and information prepared from national security briefings provided to state or local government officials related to domestic preparedness for acts of terrorism; and (c) Information regarding the infrastructure and security of computer and telecommunications networks, consisting of security passwords, security access codes and programs, access codes for secure software applications, security and service recovery plans, security risk assessments, and security test results to the extent that they identify specific system vulnerabilities.



### **Bulk Electric System (BES)**

Unless modified by the lists shown below, all Transmission Elements operated at 100 kV or higher and Real Power and Reactive Power resources connected at 100 kV or higher. This does not include facilities used in the local distribution of electric energy. Inclusions:

- I1 - Transformers with the primary terminal and at least one secondary terminal operated at 100 kV or higher unless excluded by application of Exclusion E1 or E3.
- I2 – Generating resource(s) including the generator terminals through the high-side of the step-up transformer(s) connected at a voltage of 100 kV or above with: a) Gross individual nameplate rating greater than 20 MVA. Or, b) Gross plant/facility aggregate nameplate rating greater than 75 MVA.
- I3 - Blackstart Resources identified in the Transmission Operator's restoration plan
- I4 - Dispersed power producing resources that aggregate to a total capacity greater than 75 MVA (gross nameplate rating), and that are connected through a system designed primarily for delivering such capacity to a common point of connection at a voltage of 100 kV or above. Thus, the facilities designated as BES are: a) The individual resources, and b) The system designed primarily for delivering capacity from the point where those resources aggregate to greater than 75 MVA to a common point of connection at a voltage of 100 kV or above.
- I5 –Static or dynamic devices (excluding generators) dedicated to supplying or absorbing Reactive Power that are connected at 100 kV or higher, or through a dedicated transformer with a high-side voltage of 100 kV or higher, or through a transformer that is designated in Inclusion I1 unless excluded by application of Exclusion E4.

### **Bulk Electric System (BES) Cyber Asset**

A Cyber Asset that if rendered unavailable, degraded, or misused would, within 15 minutes of its required operation, misoperation, or non-operation, adversely impact one or more Facilities, systems, or equipment, which, if destroyed, degraded, or otherwise rendered unavailable when needed, would affect the reliable operation of the Bulk Electric System. Redundancy of affected Facilities, systems, and equipment shall not be considered when determining adverse impact. Each BES Cyber Asset is included in one or more BES Cyber Systems.



**APPENDIX “E”**  
**BACKGROUND CHECK/IDENTITY VERIFICATION BY CONTRACTOR/VENDOR**

Contractor Name: HDR Engineering, Inc. \_\_\_\_\_ Date: \_\_\_\_\_  
 Contract Number: 430-12302R-A Procurement Officer: \_\_\_\_\_  
 Project Manager: \_\_\_\_\_

In accordance with NERC Reliability Standards CIP 002-011, we are providing Public Utility District No. 2 of Grant County, Washington certification of background checks performed on personnel who will require authorized Unescorted Physical Access and/or Electronic Access to District High or Medium Impact BES Cyber Systems, and their associated EACMS and PACS.

Accordingly, we certify that:

1. A background check has been conducted on the following employee(s) that includes a seven year criminal history records check, a current residence check and a residence check at other locations where, during the seven years immediately prior to the date of the criminal history records check, the employee has resided for six consecutive months or more; and the assessment of the employee is consistent with the safe and efficient performance of the services and meets the minimum standard for criminal checks as set forth by the attached Evaluation Criteria.
  
2. Employment eligibility identity verification has been completed to ensure employee is legally permitted to work in the United States. (Citizenship, Federal I-9 form verification)

Employee Name	Background Check Completion Date	Indicate Pass (P) or Fail (F)	Identity Verification Completion Date	PRA Completion Date (District use only)

**(Do not send actual background check documents)**

Name of company where background check was performed: \_\_\_\_\_

Certified by: \_\_\_\_\_ Title: \_\_\_\_\_

Phone No.: \_\_\_\_\_ Email: \_\_\_\_\_

Return this form to: [CIPDocuments@gcpud.org](mailto:CIPDocuments@gcpud.org)

**\*\*\*Access will not be granted until this Background Check has been completed and training taken\*\*\***

**These are sub-sections of the “Grant County PUD Personnel Risk Assessment Program” relevant to Vendor(s) and/or Contractor(s). For the complete program please contact [rcstaff@gcpud.org](mailto:rcstaff@gcpud.org)**

**Evaluation Criteria:**

Contractors with physical or electronic access to District High or Medium Impact BES Cyber Systems and their associated EACMS and PACS, shall certify a background check was met using the following criteria:

Whether the individual has ever been convicted of any of the following FELONIES: Murder

- Kidnapping
- Manslaughter
- Fraud, theft, and/or robbery
- Criminal sexual conduct
- Arson

Whether the individual has ever been convicted of the following MISDEMEANORS: Violence related

Honesty related

Whether the individual has ever been convicted of a single misdemeanor, other than minor traffic offenses, which are generally defined as traffic offenses that did not involve property damage and/or personal injury.

Individual is not currently awaiting adjudication on any criminal charge other than minor traffic offenses, which, again, are generally defined as traffic offenses that did not involve property damage and/or personal injury.

In the event the individual has been convicted of a felony or misdemeanor, the Contractor shall not assign such individual to a District location without first discussing such conviction with the District and obtaining the approval of the District’s PRA Committee for such assignment in accordance with the District’s Personnel Risk Assessment Program. The District reserves the right to refuse the assignment of an individual who does not pass the above Evaluation Criteria after review and consideration of the extenuating circumstances by the District’s PRA Committee.

**FOR GRANT PUD USE ONLY**

If Background Check failed enter date of PRA Committee Review: \_\_\_\_\_ Pass \_\_\_ Fail \_\_\_  
(Check one)

Signature of PRA Committee member: \_\_\_\_\_

**APPENDIX "F"**  
**FEDERAL REQUIREMENTS**

1. Termination for Cause
  - A. Any violation or breach of terms of this Contract on the part of the Contractor or the Contractor's subcontractors or subconsultants may result in the suspension or termination of this Contract in accordance with Section 18 or such other action that may be necessary to enforce the rights of the District, including but not limited to debarment as a contractor and a subcontractor.
  - B. Subcontracts or subconsultant agreements exceeding the federal simplified acquisition threshold, currently set at \$250,000, must contain a clause addressing administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms and provide for sanctions and penalties as appropriate. See 2 C.F.R. Part 200, Appendix II(A).
  - C. All subcontracts or subrecipient agreements in excess of \$10,000 must address termination for cause by the subcontractor and/or subconsultant, including the manner by which it will be affected and the basis for settlement. See 2 C.F.R. Part 200, Appendix II(B).
2. Termination for Convenience
  - A. The District reserves the right to terminate this Contract for convenience in accordance with Section 18 if the District believes, in its sole discretion, that it is in the best interest of the District to do so.
  - B. All subcontracts or subrecipient agreements in excess of \$10,000 must address termination for convenience by the subcontractor and/or subconsultant, including the manner by which it will be affected and the basis for settlement. See 2 C.F.R. Part 200, Appendix II(B).
3. Mediation. In the event a dispute arises between the parties regarding this Agreement, either party (first party) may submit the issue to mediation by selecting a mediator and notifying the other party (second party) of the selection. The second party shall either approve such mediator and proceed to mediation or select an alternate mediator. Second party shall notify the first party of such acceptance or selection within seven days of the first notification. Upon receiving notification of the selection of an alternate mediator, the first party shall then approve the mediator and proceed to mediation or reject the alternate mediator. First party shall notify second party of such approval or rejection within seven days of receipt of the notice from second party. In the case of rejection, the first two selected mediators shall select a third mediator. The third mediator shall mediate the dispute. The mediator shall be familiar with design and construction of electrical utilities, electrical generation plants, and commercial transactions in Grant County, Washington. The mediator shall not be related to either party by blood or marriage to a principal or owner of either party and shall have no economic interest direct or indirect with either party. Mediation shall take place within as soon as possible after the mediator has been selected. The parties shall split the cost of mediation.
4. Arbitration. In the event that a dispute is not resolved by mediation pursuant to the terms of preceding paragraph, either party (first party) may submit the issue to arbitration by selecting an arbitrator and notifying the other party (second party) of the selection. The second party shall either approve such arbitrator and proceed to arbitration or select an alternate arbitrator. Second party shall notify the first party of such acceptance or selection within seven days of the first notification. Upon receiving notification of the selection of an alternate arbitrator, the first party shall then approve the arbitrator and proceed to arbitration or reject the alternate arbitrator. First party shall notify second party of such approval or rejection within seven days of receipt of the notice from second party. In the case of rejection, the first two selected arbitrators shall select a third arbitrator. The third arbitrator shall arbitrate the dispute. The arbitrator shall be familiar with design and construction of electrical utilities, electrical generation plants, and commercial transactions in Grant County, Washington. The arbitrator shall not be related to either party by blood or marriage to a principal or owner of either party and shall have no economic interest direct or indirect with either party. The arbitration hearing shall take place as soon as possible after the arbitrator

has been named. The decision of the arbitrator shall be made within seven days after the arbitration hearing and shall be binding upon the parties. The parties shall split the cost of arbitration.

## 5. Conflict of Interest

By submission of its SOQ, and consistent with the District's Code of Ethics, the Contractor certifies (and shall require each Subcontractor and/or Subconsultant to certify) that it has no direct or indirect financial or proprietary interest, and that it shall not acquire any such interest, which conflicts in any manner or degree with the work, services or materials required to be performed and/or provided under this Contract and that it shall not employ any person or agent having any such interest (see Conflict of Interest Certification executed as part of the RFQ process (RFQ Attachment "E"), which is incorporated herein by reference). In the event that the Contractor or its agents, employees or representatives hereafter acquires such a conflict of interest, the Contractor shall immediately disclose such interest in writing to the District and take action immediately to eliminate the conflict or to withdraw from this Contract, as the District may require. The Contractor shall not employ any consultant who is concurrently employed by the District or by the District's consultants (including, but not limited to, surveyors, engineers, architects, and testing laboratories), without first obtaining the District's approval in writing.

## 6. Rights to Inventions Made Under a Contract or Agreement

### STANDARD PATENT RIGHTS

#### (a) Definitions

(1) Invention means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code, or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. 2321 et seq.).

(2) Subject invention means any invention of the contractor conceived or first actually reduced to practice in the performance of work under this Contract, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) must also occur during the period of contract performance.

(3) Practical Application means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or government regulations, available to the public on reasonable terms.

(4) Made when used in relation to any invention means the conception or first actual reduction to practice of such invention.

(5) Small Business Firm means a small business concern as defined at section 2 of Pub. L. 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standards for small business concerns involved in government procurement and subcontracting at 13 CFR 121.3-8 and 13 CFR 121.3-12, respectively, will be used.

(6) Nonprofit Organization means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c) and exempt from taxation under section 501(a) of the Internal Revenue Code (25 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

(7) Statutory period means the one-year period before the effective filing date of a claimed invention in a patent application during which exceptions to prior art exist per 35 U.S.C. 102(b) as amended by the Leahy-Smith America Invents Act, Public Law 112-29.

(8) Contractor means any person, small business firm, or nonprofit organization, or, as set forth in section 1, paragraph (b)(4) of Executive Order 12591, as amended, any business firm regardless of size, which is a party to a funding agreement.

**(b) Allocation of Principal Rights**

The Contractor may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any subject invention in which the Contractor retains title, the Federal government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

**(c) Invention Disclosure, Election of Title and Filing of Patent Application by Contractor**

(1) The Contractor will disclose each subject invention to the Federal agency within two months after the inventor discloses it in writing to Contractor personnel responsible for patent matters. The disclosure to the agency shall be in the form of a written report and shall identify the contract under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention, and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the agency, the Contractor will promptly notify the agency of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Contractor. If required by the Federal agency, the Contractor will provide periodic (but no more frequently than annual) listings of all subject inventions which were disclosed to the agency during the period covered by the report, and will provide a report prior to the close-out of a funding agreement listing all subject inventions or stating that there were none.

(2) The Contractor will elect in writing whether or not to retain title to any such invention by notifying the Federal agency within two years of disclosure to the Federal agency. However, in any case where a patent, a printed publication, public use, sale, or other availability to the public has initiated the one-year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by the agency to a date that is no more than 60 days prior to the end of the statutory period.

(3)(i) The Contractor will file its initial patent application on a subject invention to which it elects to retain title within one year after election of title or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use.

(ii) If the Contractor files a provisional application as its initial patent application, it shall file a nonprovisional application within 10 months of the filing of the provisional application. So long as there is a pending patent application for the subject invention and the statutory period wherein valid patent protection can be obtained in the United States has not expired, additional provisional applications may be filed within the initial 10 months or any extension period granted under paragraph (c)(5) of this clause. If an extension(s) is granted under paragraph (c)(5) of this clause, the Contractor shall file a nonprovisional patent application prior to the expiration of the extension(s) or notify the agency of any decision not to file a nonprovisional application prior to the expiration of the extension(s), or if earlier, 60 days prior to the end of any statutory period wherein valid patent protection can be obtained in the United States.

(iii) The Contractor will file patent applications in additional countries or international patent offices within either ten months of the first filed patent application or six months from the date permission is granted by the Commissioner of Patents to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(iv) If required by the Federal agency, the Contractor will provide the filing date, patent application number and title; a copy of the patent application; and patent number and issue date for any subject invention in any country in which the Contractor has applied for a patent.

(4) For any subject invention with Federal agency and Contractor co-inventors, where the Federal agency employing such co-inventor determines that it would be in the interest of the government, pursuant to 35 U.S.C. 207(a)(3), to file an initial patent application on the subject invention, the Federal agency employing such co-inventor, at its discretion and in consultation with the Contractor, may file such application at its own expense, provided that the Contractor retains the ability to elect title pursuant to 35 U.S.C. 202(a).

(5) Requests for extension of the time for disclosure, election, and filing under paragraphs (1), (2), and (3) of this clause may, at the discretion of the Federal agency, be granted. When a Contractor has requested an extension for filing a non-provisional application after filing a provisional application, a one-year extension will be granted unless the Federal agency notifies the Contractor within 60 days of receiving the request.

(6) In the event a subject invention is made under funding agreements of more than one agency, at the request of the Contractor or on their own initiative the agencies shall designate one agency as responsible for administration of the rights of the government in the invention.

**(d) Conditions When the Government May Obtain Title**

(1) A Federal agency may require the Contractor to convey title to the Federal agency of any subject invention -

(i) If the Contractor fails to disclose or elect title to the subject invention within the times specified in paragraph (c) of this clause or elects not to retain title.

(ii) In those countries in which the contractor fails to file patent applications within the times specified in paragraph (c) of this clause; provided, however, that if the Contractor has filed a patent application in a country after the times specified in paragraph (c) of this clause, but prior to its receipt of the written request of the Federal agency, the Contractor shall continue to retain title in that country.

(iii) In any country in which the contractor decides not to continue the prosecution of any nonprovisional patent application for, to pay a maintenance, annuity or renewal fee on, or to defend in a reexamination or opposition proceeding on, a patent on a subject invention.

(2) A Federal agency, at its discretion, may waive the requirement for the Contractor to convey title to any subject invention.

**(e) Minimum Rights to Contractor and Protection of the Contractor Right to File**

(1) The Contractor will retain a nonexclusive royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the Contractor fails to disclose the invention within the times specified in (c), above. The Contractor's license extends to its domestic subsidiary and affiliates, if any, within the corporate structure of which the Contractor is a party and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of the Federal agency except when transferred to the successor of that party of the Contractor's business to which the invention pertains.

(2) The Contractor's domestic license may be revoked or modified by the funding Federal agency to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR part 404 and agency licensing regulations (if any). This license will not be revoked in that field of use or the geographical areas in which the Contractor has achieved practical application and continues to make the benefits of the invention

reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the funding Federal agency to the extent the Contractor, its licensees, or the domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, the funding Federal agency will furnish the Contractor a written notice of its intention to revoke or modify the license, and the contractor will be allowed thirty days (or such other time as may be authorized by the funding Federal agency for good cause shown by the Contractor) after the notice to show cause why the license should not be revoked or modified. The Contractor has the right to appeal, in accordance with applicable regulations in 37 CFR part 404 and agency regulations (if any) concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of the license.

**(f) Contractor Action to Protect the Government's Interest**

(1) The Contractor agrees to execute or to have executed and promptly deliver to the Federal agency all instruments necessary to (i) establish or confirm the rights the Government has throughout the world in those subject inventions to which the contractor elects to retain title, and (ii) convey title to the Federal agency when requested under paragraph (d) above and to enable the government to obtain patent protection throughout the world in that subject invention.

(2) The Contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor each subject invention made under Contract in order that the Contractor can comply with the disclosure provisions of paragraph (c) of this clause, to assign to the Contractor the entire right, title and interest in and to each subject invention made under Contract, and to execute all papers necessary to file patent applications on subject inventions and to establish the government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by paragraph (c)(1) of this clause. The Contractor shall instruct such employees through employee agreements or other suitable educational programs on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) For each subject invention, the Contractor will, no less than 60 days prior to the expiration of the statutory deadline, notify the Federal agency of any decision: Not to continue the prosecution of a non-provisional patent application; not to pay a maintenance, annuity or renewal fee; not to defend in a reexamination or opposition proceeding on a patent, in any country; to request, be a party to, or take action in a trial proceeding before the Patent Trial and Appeals Board of the U.S. Patent and Trademark Office, including but not limited to post-grant review, review of a business method patent, *inter partes* review, and derivation proceeding; or to request, be a party to, or take action in a non-trial submission of art or information at the U.S. Patent and Trademark Office, including but not limited to a pre-issuance submission, a post-issuance submission, and supplemental examination.

(4) The Contractor agrees to include, within the specification of any United States patent applications and any patent issuing thereon covering a subject invention, the following statement, "This invention was made with government support under (identify the contract, when applicable) awarded by (identify the Federal agency, when applicable). The government has certain rights in the invention."

**(g) Subcontracts**

(1) The Contractor will include this clause, suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental or research work to be performed by a subcontractor. The subcontractor will retain all rights provided for the Contractor in this clause, and the Contractor will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(2) The Contractor will include in all other subcontracts, regardless of tier, for experimental developmental



or research work the patent rights clause required by (cite section of agency implementing regulations or FAR).

(3) In the case of subcontracts, at any tier, when the prime award with the Federal agency was a contract (but not a grant or cooperative agreement), the agency, subcontractor, and the Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and the Federal agency with respect to the matters covered by the clause; provided, however, that nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes Act in connection with proceedings under paragraph (j) of this clause.

**(h) Reporting on Utilization of Subject Inventions**

The Contractor agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Contractor or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the contractor, and such other data and information as the agency may reasonably specify. The Contractor also agrees to provide additional reports as may be requested by the agency in connection with any march-in proceeding undertaken by the agency in accordance with paragraph (j) of this clause. As required by 35 U.S.C. 202(c)(5), the agency agrees it will not disclose such information to persons outside the government without permission of the Contractor.

**(i) Preference for United States Industry**

Notwithstanding any other provision of this clause, the Contractor agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject inventions in the United States unless such person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by the Federal agency upon a showing by the contractor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

**(j) March-in Rights**

The Contractor agrees that with respect to any subject invention in which it has acquired title, the Federal agency has the right in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of the agency to require the Contractor, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the contractor, assignee, or exclusive licensee refuses such a request the Federal agency has the right to grant such a license itself if the Federal agency determines that:

- (1) Such action is necessary because the Contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use.
- (2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Contractor, assignee or their licensees;
- (3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Contractor, assignee or licensees; or
- (4) Such action is necessary because the agreement required by paragraph (i) of this clause has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

**(k) Special Provisions for Contracts with Nonprofit Organizations**

If the Contractor is a nonprofit organization, it agrees that:

- (1) Rights to a subject invention in the United States may not be assigned without the approval of the Federal agency, except where such assignment is made to an organization which has as one of its primary functions the management of inventions, provided that such assignee will be subject to the same provisions as the Contractor;
- (2) The Contractor will share royalties collected on a subject invention with the inventor, including Federal employee co-inventors (when the agency deems it appropriate) when the subject invention is assigned in accordance with 35 U.S.C. 202(e) and 37 CFR 401.10;
- (3) The balance of any royalties or income earned by the Contractor with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions, will be utilized for the support of scientific research or education; and
- (4) It will make efforts that are reasonable under the circumstances to attract licensees of subject inventions that are small business firms and that, when appropriate, it will give a preference to a small business firm when licensing a subject invention;
- (5) The Federal agency may review the Contractor's licensing program and decisions regarding small business applicants, and the Contractor will negotiate changes to its licensing policies, procedures, or practices with the Federal agency when the Federal agency's review discloses that the Contractor could take reasonable steps to more effectively implement the requirements of paragraph (k)(4) of this clause; and
- (6) The Federal agency may take into consideration concerns presented by small businesses in making such determinations in paragraph (k)(5) of this clause.

**(l) Communication**

The District Representative is the central point of contact for communications on matters relating to the clause. Contact information for this person is listed below.

Kevin Marshall  
Public Utility District No. 2  
of Grant County, Washington  
PO Box 878  
Ephrata, WA 98823  
509-760-9046  
kmarsha@gcpud.org

**(m) Electronic Filing**

- (1) Unless otherwise requested or directed by the Federal agency -
  - (i) The written disclosure required in (c)(1) of this clause shall be electronically filed;
  - (ii) The written election required in (c)(2) of this clause shall be electronically filed; and
  - (iii) If required by the agency to be submitted, the close-out report in paragraph (c)(1) of this clause and the patent information and periodic reporting identified in paragraph (c)(3) of this clause shall be electronically filed.

(2) Other written notices required in this clause may be electronically delivered to the agency or the Contractor through an electronic database used for reporting subject inventions, patents, and utilization reports to the funding agency.

7. Clean Air Act and Federal Water Pollution Control Act

“Clean Air Act”

The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

The Contractor agrees to report each violation to the District and understands and agrees that the District will, in turn, report each violation as required to assure notification to the federal awarding agency, and the appropriate Environmental Protection Agency Regional Office.

The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance provided by the federal awarding agency.

“Federal Water Pollution Control Act”

The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 et seq.

The Contractor agrees to report each violation to the District and understands and agrees that the District will, in turn, report each violation as required to assure notification to the pass-through entity, if applicable and the appropriate Environmental Protection Agency Regional Office.

The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance provided by the federal awarding agency.

8. Debarment and Suspension

This Contract is a covered transaction for purposes of 2 C.F.R. Part 180 and 2 C.F.R. Part 3000. As such, the Contractor is required to verify that none of the Contractor’s principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

The Contractor must comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

Contractor’s certification, executed as part of the RFQ process (RFQ Attachment “F”) and incorporated herein by reference, is a material representation of fact relied upon by the District. If it is later determined that the Contractor did not comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C, in addition to remedies available to the District, the federal government may pursue available remedies, including but not limited to suspension and/or debarment.

9. Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended)

Contractors who apply or bid for an award of more than \$100,000 shall file the required certification with Grant PUD as part of the RFQ process (RFQ Attachment “D”), which is incorporated herein by reference. Each tier certifies to the tier above that it will not and has not used federally appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also

disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the federal awarding agency.

10. Procurement of Recovered Materials

In the performance of this Contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired:

- A. Competitively within a timeframe providing for compliance with the Contract performance schedule,
- B. Meeting Contract performance requirements, or
- C. At a reasonable price.

Information about this requirement, along with the list of EPA-designated items, is available at EPA's webpage, [Comprehensive Procurement Guideline \(CPG\) Program | US EPA](#).

The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

11. Affirmative Socioeconomic Steps

If subcontracts are to be let, the Contractor is required to take all necessary steps identified in 2 CFR part 200.321(b)(1)-(5) to ensure that small and minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

12. Access to Records

A. General

The Contractor agrees to provide the federal awarding agency, pass-through entity, if applicable, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts, and transcriptions.

The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

The Contractor agrees to provide the federal awarding agency, pass-through entity, if applicable or their authorized representatives access to construction or other work sites pertaining to the work being completed under the Contract.

B. Under a Major Disaster or Emergency Declaration

In compliance with section 1225 of the Disaster Recovery Reform Act of 2018, and when applicable, the District and the Contractor acknowledge and agree that no language in this Contract is intended to prohibit audits or internal reviews by the federal awarding agency, FEMA Administrator, or the Comptroller General of the United States.

13. Compliance with Federal Law, Regulations, and Executive Orders and Acknowledgement of Federal Funding

Contractor acknowledges that the federal awarding agency financial assistance will be used to fund all or a portion of the Contract. The Contractor will comply with all applicable federal law, regulations, executive

orders, federal awarding agency policies, procedures, and directives.

14. No Obligation by Federal Government

The Federal government is not a party to this Contract and is not subject to any obligations or liabilities to the District, contractor, or any other party pertaining to any matter resulting from the Contract.

15. Program Fraud and False or Fraudulent Statements or Related Acts

The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this Contract.

## PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (“Agreement” or “Contract”), effective upon the date of the last signature below (“Effective Date”), is by and between Public Utility District No. 2 of Grant County, Washington (“District”) and Stantec Consulting Services, Inc. (“Contractor”);

### Recitals:

The District desires to obtain professional consulting engineering services as needed to support the District’s Energy Supply Management (ESM) Research Group; and

The District's Chief Commercial Officer believes the Contractor will provide subject matter expertise and resources where the District may not have expertise in-house or does not have adequate internal resources to support the projects of; and

The Contractor, through an established review procedure as specified by RCW Chapter 39.80 and 2 CFR 200.320(b)(2)(iv), has been selected and is willing to provide services on the terms and conditions hereinafter stated.

NOW, THEREFORE, in consideration of the mutual covenants herein, the parties hereto agree as follows:

#### 1. Scope of Services

The Contractor shall function as a key techno-economic advisor to District leadership to ensure a sound business, engineering, and project management program is developed and executed and will augment the District’s technical and managerial capabilities. The Contractor shall provide technical knowledge, project management, project execution expertise, and risk management capabilities in support of the District’s project success.

The District may, at the District’s discretion, authorize the Contractor to perform specific tasks by means of a Task Authorization for Professional Services (Appendix “C”) to be signed by both the District and the Contractor. Such authorization may be issued by the District Representative. The authorization will define the scope of the task, any time requirements and budget limitations. When funded in whole or in part with federal funds, a Task Authorization will also include documentation of any applicable financial assistance agreement/s between the District and a federal awarding agency.

The initial scope of services for this Agreement is anticipated to include, but not necessarily be limited to, the following:

#### A. Provide engineering support services for technical and economic evaluation of generation and energy storage technologies including, but not limited to:

1. Solar generation technologies.
2. Wind generation technologies.
3. Utility scale battery technologies.
4. Hydrogen electrical generation technologies.
5. Natural gas generation technologies.
6. Pumped storage technologies/project evaluations.
7. Other generation technologies that the District may want to research.
8. Small Modular Reactor Technologies.

The Contractor shall assist in identifying potential risks and mitigation recommendations.

B. Provide engineering support services for technical and economic evaluation of demand side management including but not limited to:

1. Smart Grid.
2. Evaluation of the District's existing AMI and fiber optic systems for use in demand side management.
3. Other technologies as determined by the District.

The Contractor shall assist in identifying potential risks and mitigation recommendations.

C. Provide engineering support services for site evaluations including, but not limited to:

1. Site Characterization studies (access, permitting, geotechnical, seismic, cultural, fish & wildlife, etc.).
2. Evaluation of permitting requirements based on technologies being considered.
3. Transmission connectivity requirements.
4. Project planning and estimating.

D. Provide engineering support services for conceptual design and estimating. This work potentially includes all technologies identified.

E. Provide support services for land and easement acquisition including, but not limited to:

1. Determination of ownership for land and improvements.
2. Determination of existing easements, permits, etc.
3. Preparation of appraisals for parcels and, if appropriate, affected improvements.
4. Preparation of recommendations to District for offers to be made on appropriate easements.
5. Negotiation with owners; secure appropriate acquisition options and easements in properly recordable form with necessary signatures; and pay consideration.

F. Miscellaneous engineering support services for other research and evaluation needs

1. Risk identification and mitigation.
2. Research into emerging technologies as directed by the District.
3. Future District identified needs for engineering support.

Additional work to be performed under future phases may include developing final designs, providing plans, specifications, construction cost estimates, construction schedules, and services during construction for the projects.

The District makes no guarantee as to the actual amount of work to be done. The District reserves the right to suspend or terminate any authorized task at any time or to extend the Contract beyond the initial term by issuance of a Change Order in accordance with Section 6 to complete any work already initiated and/or authorized under the original term and scope of the Contract.

## 2. Applicability of Federal Requirements

This Agreement may be funded using federal funds and subject to one or more financial assistance agreements between the District and a federal awarding agency. The provisions of Appendix "F", Federal Requirements, are required and applied when the District utilizes federal funds to pay for a contractor's performance under any contract. Accordingly, the Contractor agrees that the terms and conditions in Appendix "F" apply to this Agreement between the District and the Contractor

in all situations where the Contractor has been paid or will be paid with federal funds.

3. Independent Contractor

- A. The Contractor shall operate as, and have the status of, an independent Contractor and will not be an agent or employee of the District nor will it be entitled to any employee benefits provided by the District. All the Contractor's activities will be conducted at its own risk and be in compliance with all applicable federal, state and local laws.
- B. The Contractor shall perform its services with the level of skill, care and diligence normally provided by and expected of professional persons performing services similar to or like those to be performed hereunder. Contractor understands that the District will be relying upon the accuracy, competency, credibility and completeness of the services provided by the Contractor hereunder and that the District and its customers will be utilizing the results of such services.

4. Term - Schedule

This Agreement shall remain in full force and effect until December 31, 2029 or until terminated pursuant to Section 18.

5. Compensation and Payment

- A. Compensation for services rendered and all reimbursable costs shall be per the rates set forth in Appendix "A.1", Rate Schedule, which rates and costs shall not be subject to change until two years after the Effective Date of this Agreement. Any changes to rates and costs shall only be on a prospective basis and shall occur no more frequently than once every 12 months thereafter. Each such change shall not exceed the lesser of i.) 5% or ii.) the percentage increase in the Bureau of Labor Statistics Consumer Price Index (CPI-U) for the West Urban region occurring during the immediately preceding 12 month period for which CPI-U data is available. Contractor shall notify the District in writing at least 30 days prior to any such rate increase going into effect. If accepted by the Contractor in the RFP process, if the District issues payment within 10 days, the payment due shall be reduced by 2%. A payment is considered made on the day it is mailed or is sent through electronic or wire transfer.

In no event however, shall the total amount paid to Contractor for services and all reimbursable costs exceed the sum of \$600,000.00 USD unless a Change Order authorizing the same is issued in accordance with Section 6 below.

- B. Contractor shall submit monthly invoices to the attention of:

Public Utility District No. 2  
of Grant County, Washington  
Attn: Accounts Payable  
PO Box 878  
Ephrata, WA 98823  
Or [AccountsPayable@gcpud.org](mailto:AccountsPayable@gcpud.org)

- C. Invoices shall include the Contract number, a detailed description of the work performed, and a report of what percentage of total labor hours by Contractor and each and every Subcontractor/Subconsultant of the Contractor were performed by small and diverse businesses during the billing period. Any Labor Categories or reimbursable expenses shall be included on the invoice (see Appendix "A.1" and "A.2").



- D. Payment will be made by the District upon completion of work following District approval of Contractor's invoices. Invoice shall be subject to the review and approval of the District. Invoice shall be in a detailed and clear manner supported by such information the District may require. The District will make payment to Contractor within 30 days after District's receipt and approval of said invoice. Contractor understands and agrees that by executing this Contract with the District, the District shall make payment(s) by automated clearing house (ACH).
- E. The District Representative may approve additional Contractor employees, personnel categories, and/or equipment rates to be added to the Rate Schedule, if applicable, provided that any additional employees have at least equivalent training and skills and are compensated at the same or lower rates than those listed on the current approved Rate Schedule for similar work. There shall be no change in the total Contract not to exceed amount. All additions must be approved in writing prior to performing services under the Contract.

6. Change Orders

Except as provided herein, no official, employee, agent or representative of the District is authorized to approve any change in this Contract and it shall be the responsibility of the Contractor before proceeding with any change, to satisfy itself that the execution of the written Change Order has been properly authorized on behalf of the District. The District's management has limited authority to approve Change Orders. The current level and limitations of such authority are set forth in District Resolution No. 8609 which may be amended from time to time. Otherwise, only the District's Board of Commissioners may approve changes to this Contract.

Charges or credits for the work covered by the approved changes shall be determined by written agreement of the parties and shall be made on Change Order form as reflected on Appendix "B".

When a change is ordered by the District, as provided herein, a Change Order shall be executed by the District and the Contractor before any Change Order work is performed. When requested, Contractor shall provide a detailed proposal for evaluation by the District, including details on proposed cost. The District shall not be liable for any payment to Contractor, or claims arising there from, for Change Order work which is not first authorized in writing. All terms and conditions contained in the Contract Documents shall be applicable to Change Order work. Change Orders shall be issued on the form attached as Appendix "B" and shall specify any change in time required for completion of the work caused by the Change Order and, to the extent applicable, the amount of any increase or decrease in the Contract Price.

7. Taxes

- A. Except for the Washington State retail sales and use taxes as may be levied upon the Contract, pursuant to RCW Chapters 82.08 and 82.12, the Contract Price includes and the Contractor shall have the full exclusive liability for the payment of all taxes, levies, duties and assessments of every nature due and payable in connection with this Contract or its employees and subcontractors performing work related to this Contract.
- B. Washington State retail sales tax and use taxes levied upon this Contract pursuant to RCW Chapters 82.08 and 82.12 are excluded from the rates and if applicable will be reimbursed as follows:
  - 1. If the Contractor has, or is required to have a valid Washington State sales tax identification number, the identification number shall be furnished to the District upon request. The Contractor shall make payment of any Washington State retail

sales and use taxes due and Contractor shall be reimbursed by the District for the same. Contractor shall be solely responsible for any interest or penalties arising from late or untimely payment of said taxes.

2. If the Contractor is not required to have a valid Washington State sales tax identification number, it shall notify the District of the same. In such event, the District, after receiving proper invoices from Contractor, shall make payment of said Washington State retail sales and use taxes levied upon this Contract to the Washington State Department of Revenue.

## 8. Hold Harmless and Indemnification

Contractor shall, at its sole expense, indemnify, defend, save, and hold harmless the District, its officers, agents, and employees from all actual or potential claims or losses, including costs and legal fees at trial and on appeal, and damages or claims for damages to property or persons, suffered by anyone whomsoever, including the District, to the extent caused by any negligent act of or omission of the Contractor or its subcontractors, excluding damages caused by the negligence of the District, in the administration or performance of this Agreement or any subcontracts, and for which either of the parties, their officers, agents, or employees may or shall be liable. In situations where liability for damages arises from claims of bodily injury to persons or damage to property, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the Contractor or its subcontractors. Contractor waives its immunity under industrial insurance, Title 51 RCW, to the extent necessary to effectuate this indemnification/hold harmless agreement. Contractor's indemnification obligation shall not apply to liability for damages arising out of bodily injury to a person or damage to property caused by the negligence of the District or its agents or employees and not attributable to any act or omission on the part of the Contractor. In the event of damages to a person or property caused by or resulting from the concurrent negligence of District or its agents or employees and the Contractor or its agents or employees, the Contractor's indemnity obligation shall apply only to the extent of the Contractor's (including that of its agents and employees) negligence.

Contractor acknowledges that by entering into this Contract with the District, it has mutually negotiated the above indemnity provision with the District. Contractor's indemnity and defense obligations shall survive the termination or completion of the Contract and shall remain in full force and effect until satisfied in full.

## 9. Insurance

- A. Prior to the commencement of any work under this Agreement, and at all times during the term of this Agreement, Contractor shall obtain and maintain continuously, at its own expense, a policy or policies of insurance with insurance companies rated A- VII or better by A. M. Best or A by S&P, as enumerated below. Any deductible, self-insured retention or coverage via captive \$25K or above must be disclosed and is subject to approval by the District's Risk Manager. The cost of any claim payments falling within the deductible or self-insured retention shall be the responsibility of the Contractor and not recoverable under any part of this Contract.

### Contractor Required Insurance

1. **General Liability Insurance:** Commercial general liability insurance, covering all operations by or on behalf of Contractor against claims for bodily injury (including death) and property damage (including loss of use). Such insurance shall provide coverage for:

- a. Premises and Operations;
- b. Products and Completed Operations;
- c. Contractual Liability;
- d. Personal Injury Liability (with deletion of the exclusion for liability assumed under Contract);

with the following **minimum limits**:

- e. \$1,000,000 Each Occurrence
- f. \$1,000,000 Personal Injury Liability
- g. \$2,000,000 General Aggregate
- h. \$2,000,000 Products and Completed Operations Aggregate

Commercial general liability insurance will include the District as additional insured on a primary and non-contributory basis. A waiver of subrogation will apply in favor of the District.

2. **Workers' Compensation and Stop Gap Employers Liability:** When applicable, Workers' Compensation Insurance as required by law for all employees. Employer's Liability Insurance, including Occupational Disease coverage, in the amount of **\$1,000,000 for Each Accident, Each Employee, and Policy Limit.** Employer's Liability may be procured as an endorsement to the commercial general liability via the Stop Gap Coverage endorsement. The Contractor expressly agrees to comply with all provisions of the Workers' Compensation Laws of the states or countries where the work is being performed, including the provisions of Title 51 of the Revised Code of Washington for all work occurring in the State of Washington.

If there is an exposure of injury or illness under the U.S. Longshore and Harbor Workers (USL&H) Act, Jones Act, or under U.S. laws, regulations or statutes applicable to maritime employees, coverage shall be included for such injuries or claims. Such coverage shall include USL&H and/or Maritime Employer's Liability (MEL).

3. **Automobile Liability Insurance:** Automobile Liability insurance against claims of bodily injury (including death) and property damage (including loss of use) covering all owned (if any), rented, leased, non-owned, and hired vehicles used in the performance of the work, with a **minimum limit of \$1,000,000 per accident** for bodily injury, property damage, or death combined and containing appropriate uninsured motorist and No-Fault insurance provision, where applicable.

Automobile liability insurance will include the District as additional insured on a primary and non-contributory basis. A waiver of subrogation will apply in favor of the District.

4. **Excess Insurance:** Excess (or Umbrella) Liability insurance with a **minimum limit of \$2,000,000 per occurrence and in the aggregate.** This insurance shall provide coverage in excess of the underlying primary liability limits, terms, and conditions for each category of liability insurance in the foregoing subsections 1, 2 (Employer's Liability only) and 3. If this insurance is written on a claims-made policy form, then the policy shall be endorsed to include an automatic extended reporting period of at least five years or the statute of repose.

Umbrella/Excess liability insurance will include the District as additional insured on a primary and non-contributory basis. A waiver of subrogation will apply in favor of the District.

5. **Professional Liability:** Contractor shall provide professional liability insurance with a **minimum limit of \$5,000,000 per claim.**

If such policy is written on a claims made form, the retroactive date shall be prior to or coincident with the Effective Date of this Agreement. Claims made form coverage shall be maintained by the Contractor for a minimum of five years following the termination of this Agreement, and the Contractor shall annually provide the District with proof of renewal. If renewal of the claims made form of coverage becomes unavailable, or economically prohibitive, the Contractor shall purchase an Extended Reporting Period Tail or execute another form of guarantee acceptable to the District to assure financial responsibility for liability for services performed.

If Contractor shall hire subcontractor for all operations and risk involving professional services exposure, this requirement may be satisfied by subcontractor's policies. Contractor shall impute the insurance requirements stated in this section to subcontractor by written contract or written agreement. Any exceptions must be mutually agreed in writing with the District.

- B. Evidence of Insurance - Prior to performing any services, and within 10 days after receipt of the Contract Award, then annually thereafter, the Contractor shall file with the District a Certificate of Insurance showing the Insuring Companies, policy numbers, effective dates, limits of liability and deductibles with copies of the endorsements or policy documents where policy terms required under Section A are met.

Failure of the District to demand such certificate or other evidence of compliance with these insurance requirements or failure of the District to identify a deficiency from the provided evidence shall not be construed as a waiver of the Contractor's obligation to maintain such insurance. Acceptance by the District of any certificate or other evidence of compliance does not constitute approval or agreement by the District that the insurance requirements have been met or that the policies shown in the certificates or other evidence are in compliance with the requirements.

The District shall have the right but not the obligation of prohibiting the Contractor or subcontractor from entering the project site until such certificates or other evidence of insurance has been provided in full compliance with these requirements. If the Contractor fails to maintain insurance as set forth above, the District may purchase such insurance at the Contractor's expense. The Contractor's failure to maintain the required insurance may result in termination of this Contract at the District's option.

- C. Subcontractors - Contractor shall ensure that each subcontractor meets the applicable insurance requirements and specifications of this Agreement. All coverage for subcontractors shall be subject to all the requirements stated herein and applicable to their profession. Contractor shall furnish the District with copies of certificates of insurance evidencing coverage for each subcontractor upon request.
- D. Cancellation of Insurance - The Contractor shall not cause any insurance policy to be canceled or permit any policy to lapse. Insurance companies, to the extent commercially available, or Contractor shall provide 30 days advance written notice to the District for cancellation or any reduction in coverage or condition, except 10 days advance written

notice for cancellation due to non-payment of premium. Should the Contractor receive any notice of cancellation or notice of nonrenewal from its insurer(s), Contractor shall provide immediate notice to the District no later than two days following receipt of such notice from the insurer. Notice to the District shall be delivered by facsimile or email.

10. Assignment

Contractor may not assign this Agreement, in whole or in part, voluntarily or by operation of law, unless approved in writing by the District.

11. Records - Audit

A. The results of all work and services performed by the Contractor hereunder shall become the property of the District upon completion of the work herein performed and shall be delivered to the District prior to final payment.

B. Until the expiration of three years after final acceptance by District of all the work, Contractor shall keep and maintain complete and accurate records of its costs and expenses related to the work or this Contract in accordance with sound and generally accepted accounting principles applied on a consistent basis. To the extent this Contract provided for compensation on a cost-reimbursable basis or whenever such records may, in the opinion of the District, be useful in determining any amounts payable to Contractor or District (e.g., the nature of a refund, credit or otherwise), Contractor shall provide District access to all such records for examination, copying and audit. Notwithstanding the foregoing, the District's right to inspect, copy and audit shall not extend to the composition of the Contractor's rates and fees, percentage mark-ups or multipliers but shall apply only to their application to the applicable units.

12. Nondisclosure

Contractor agrees that it will not divulge to third parties, without the written consent of the District, any information obtained from or through District in connection with the performance of this Contract. Contractor further agrees that it will not, without the prior written consent of District, disclose to any third party any information developed or obtained by the Contractor in the performance of this Contract and, if requested by District, to require its employees and subcontractors, if any, to execute a nondisclosure agreement prior to performing any services under this Contract. Nothing in this section shall apply to:

A. Information which is already in the Contractor's possession not subject to any existing confidentiality provisions,

B. Information which, at the time of disclosure, is in the public domain by having been printed and published and available to the public libraries or other public places where such data is usually collected, and

C. Information required to be disclosed by court order or by an agency with appropriate jurisdiction.

13. Public Records Act

The District is subject to the disclosure obligations of the Washington Public Records Act of RCW 42.56. The Contractor expressly acknowledges and agrees that any information Contractor submits is subject to public disclosure pursuant to the Public Records Act or other applicable law and the District may disclose Contractor's proposal and/or information at its sole discretion in accordance

with its obligations under applicable law.

14. Applicable Law

Contractor shall comply with all applicable federal, state and local laws and regulations including amendments and changes as they occur. All written instruments, agreements, specifications and other writing of whatsoever nature which relate to or are a part of this Agreement 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 District and Contractor shall be governed by the laws of the State of Washington. Venue of any action filed to enforce or interpret the provisions of this Agreement shall be exclusively in the Superior Court, County of Grant, State of Washington or the Federal District Court for the Eastern District of Washington at the District's sole option. In the event of litigation to enforce the provisions of this Agreement, the prevailing party shall be entitled to reasonable legal fees in addition to any other relief allowed.

15. Subcontracts/Purchases

- A. The Contractor is authorized to enter into subcontracts required for the work. Any subcontracts shall be approved in advance by the District Representative and Procurement Officer. The Contractor is not authorized to make any purchases of materials or equipment other than those specified as other direct costs in Appendix "A.1" and mutually agreed to on the execution date of this Agreement.
- B. The Contractor shall consider that this Contract may be federally funded in whole or in part and may therefore be subject to certain federal provisions. Further, a federal awarding agency may require that certain terms and conditions of this Contract be included in all subcontracts. The Contractor shall be responsible for ensuring all applicable mandatory federal awarding agency provisions are included in all subcontracts. These mandatory provisions are set forth in Appendix "F", Federal Requirements. The Contractor shall bear full responsibility for delays in performing the work if subcontractor agreements fail to include all applicable provisions.
- C. In the event subcontracts other than those specified in Appendix "A.1" are required for the work, Contractor shall obtain three quotes and submit to the District Representative and Procurement Officer for approval prior to entering into such subcontracts. The District Representative and Procurement Officer may request copies of the subcontractor agreements from the Contractor. Subcontracted work approved in accordance with this section shall be invoiced at cost. A copy of the invoice showing actual cost must be submitted with the Contractor's invoice to the District.

16. Notices

Any notice or other communication under this Contract given by either party shall be sent via email to the email address listed below, or mailed, properly addressed and stamped with the required postage, to the intended recipient at the address and to the attention of the person specified below and shall be deemed served when received and not mailed. Either party may from time to time change such address by giving the other party notice of such change.

District  
Dave Dempsey  
Public Utility District No. 2  
of Grant County, Washington  
PO Box 878, 154 A Street SE  
Ephrata, WA 98823

Contractor  
Greg Rollins  
Stantec Consulting Services, Inc.  
PO Box 842728  
7237 Church Ranch Blvd, Ste 410  
Los Angeles, CA 90084-2728

Ph: 509-289-0290  
ddempsey@gcpud.org

Ph: 503-220-5414  
gregory.rollins@stantec.com

For purposes of technical communications and work coordination only, the District designates Kevin Marshall as its representative. Said individual shall have no authority to authorize any activity which will result in any change in the amount payable to Contractor. Such changes, if any, must be by written Change Order issued in accordance with Section 6 to be valid and binding on the District.

17. License and Delivery of Works Subject to Copyright and Data Rights

Contractor grants to the District, a paid-up, royalty-free, nonexclusive, irrevocable, worldwide license in data first produced in the performance of this Contract to reproduce, publish, or otherwise use, including prepare derivative works, distribute copies to the public, and perform publicly and display publicly such data. For data required by the Contract but not first produced in the performance of this Contract, the Contractor will identify such data and grant to the District or acquire on its behalf a license of the same scope as for data first produced in the performance of this Contract. Data, as used herein, shall include any work subject to copyright under 17 U.S.C. § 102, for example, any written reports or literary works, software and/or source code, music, choreography, pictures or images, graphics, sculptures, videos, motion pictures or other audiovisual works, sound and/or video recordings, and architectural works. Upon or before the completion of this Contract, the Contractor will deliver to the District data first produced in the performance of this Contract and data required by the Contract but not first produced in the performance of this Contract in formats acceptable by the District.

18. Termination

- A. District may, at any time, for any reason, terminate Contractor's services in connection with this Agreement, or any part thereof, by designating that portion of the services to be terminated. In case of termination pursuant to this Section A, District will make payment at the rates specified in this Agreement for services properly performed up to the date of termination. However, in no event shall Contractor be entitled to any other payment to or any anticipated fee or profit on unperformed work.
- B. In the event of Contractor's breach or abandonment of this Contract, the District may, after providing Contractor written notice of the breach and a period of seven days to cure, thereupon and without further notice, terminate this Agreement. The District without waiving any other remedies available to it, may retain any monies otherwise due Contractor under this Agreement to the extent such sums are required to compensate District, in whole or in part, for any loss or damage caused by Contractor's breach or abandonment.

Non-payment of undisputed amounts by the District to the Contractor in accordance with Section 5.D is agreed to constitute a material breach of this Agreement and, upon written notice as prescribed above, the duties, obligations, and responsibilities of the Contractor are terminated.

19. Non-Waiver

No waiver of any provision of this Agreement, or any rights or obligations of either Party under this Agreement, shall be effective, except pursuant to a written instrument signed by the Party or Parties waiving compliance, and any such waiver shall be effective only in the specific instance and for the specific purpose stated in such writing. The failure of either Party to require the performance of any term of this Agreement or the waiver of either Party of any breach under this Agreement shall not operate or be construed as a waiver of any other provision hereof, nor shall it

be construed as a waiver of any subsequent breach by the other Party hereto.

20. Project Documentation Transfer Methods

- A. The District requires use of the District O365 SharePoint site for all letters, requests for information, safety reports, submittals (except samples), transmittals, and test reports. The requirement to use the District O365 SharePoint site for delivery of these documents supersedes any other requirements for document delivery in the Contract Documents.
- B. The District and Contractor shall mutually agree on the user list for the O365 SharePoint site. All users shall be set up with an individual user name and password after the Contractor has provided a signed “Remote Access Application Form and Computer System Remote Access User Security Agreement” for each user.
- C. All files shall be placed in the correct library corresponding to the subject matter of the file. The following libraries shall be setup by the District: Change Order, Change Order Proposal, District Instruction, Invoices, Letters from Contractor, Letters from District, Meeting Minutes, Request for Information, Safety Reports-Accidents, Schedules, Signed Documents, Submittal, Test Reports, Transmittals, Task Authorization. Original signed Change Orders must also be physically sent to the attention of the Procurement Officer. The District reserves the right to create or delete libraries based on the project documentation requirements. Files stored on the District’s O365 SharePoint site shall remain on the O365 SharePoint site for the duration of the project.
- D. File names shall be as follows, where Y indicates a sequential number starting with 1, A indicates a sequential alpha character for each revision – A = first revision, B = second revision, etc. The following abbreviations may be used: “RFI” for “Request for Information”.
  - 1. Change Order Proposals: “Change Order Proposal Y”
  - 2. Letters: “Letter from Contractor Y”
  - 3. Requests for Information: “Request for Information Y” or “RFI Y”
  - 4. Resubmitted Requests for Information: “Request for Information YA” or “RFI YA”
  - 5. Safety/Accident Reports: “Safety Report Y”
  - 6. Submittals: “Submittal Y”
  - 7. Resubmitted Submittals: “Submittal YA”
  - 8. Test Reports: “Test Report Y”
- E. The receipt date for all documents shall be the same date as indicated by the District O365 SharePoint file posting date unless the documents are placed on the District O365 SharePoint site after 2 p.m. Pacific Standard Time, then the document receipt date shall be set as the following business day.
- F. If for any reason the District O365 SharePoint site is not functional, then the Contractor shall send hard copies for review; see Technical Specifications for number of copies required. No extensions or claims shall be granted if the District’s O365 SharePoint site is



not functional.

21. Environmentally Preferable Products, Services, and Practices

A. In the performance of work under this Contract, the Contractor shall exert its best efforts to provide its services in a manner that will promote the natural environment and protect the health and wellbeing of District employees, contracted service providers, the public, and visitors using District facilities.

B. Definitions as used in this Section 21:

*“Environmentally preferable”* means products or services that have a reduced effect on human health and the environment when compared with competing products or services that serve the same purpose.

*“Green Purchasing”* means making thoughtful, strategic decisions to buy goods and services that have less negative environmental and health impacts than similar products or services.

C. Green purchasing and environmentally preferable products and services include several interconnected initiatives which are subject to and are described by the following government and industry procurement programs:

1. Products containing recovered material designated by the U.S. Environmental Protection Agency (EPA) under the Comprehensive Procurement Guidelines ([42 U.S.C. 6962](#)) ([40 CFR Part 247](#)) ([Comprehensive Procurement Guideline \(CPG\) Program | US EPA](#)).
2. Energy- and water-efficient products that are ENERGY STAR® certified or Federal Energy Management Program (FEMP)-designated products ([42 U.S.C 8259b](#)) ([10 CFR part 436, subpart C](#)) (<https://www.energy.gov/femp/search-energy-efficient-products> and <https://www.energystar.gov/products?s=mega>).
3. Acceptable chemicals, products, and manufacturing processes listed under EPA's Significant New Alternatives Policy (SNAP) program, which ensures a safe and smooth transition away from substances that contribute to the depletion of stratospheric ozone ([42 U.S.C. 76711](#)) ([40 CFR part 82, subpart G](#)) (<https://www.epa.gov/snap>).
4. WaterSense® labeled (water efficient) products and services (<https://www.epa.gov/watersense/watersense-products>).
5. Safer Choice-certified products (products that contain safer chemical ingredients) (<https://www.epa.gov/saferchoice/products>).
6. Product and services that meet EPA Recommendations of Specifications, Standards, and Ecolabels in effect as of October 2023 (<https://www.epa.gov/greenerproducts/recommendations-specifications-standards-and-ecolabels-federal-purchasing>).

The Green Procurement Compilation (GPC) available at

<https://sftool.gov/greenprocurement> provides a comprehensive list of sustainable products and services and sustainable procurement guidance. The Contractor should review the GPC when determining which programs apply to a specific product or service.

- D. To the extent that design services provided by the Contractor require the specification of any of these types of products, the Contractor is expected to specify the environmentally preferable type of product unless that type of product is not available competitively within a reasonable time, at a reasonable price, is not life cycle cost efficient in the case of energy consuming products or does not meet reasonable performance standards.
- E. The Contractor shall use recycled paper for the production of all printed and photocopied documents related to the fulfillment of this Contract. If the cost of recycled paper is more than 15 percent higher than the cost of non-recycled paper, the Contractor shall notify the District Representative, who may waive the recycled paper requirement.

The Contractor agrees to use both sides of paper for copying and printing, and to use recycled and/or recyclable products wherever practical.

## 22. Utilization of Small and Diverse Businesses

- A. The Contractor has committed to the aspirational goals identified in its Subcontractor/Subconsultant Inclusion Plan (SIP) & Commitment Form executed as part of the RFQ process (RFQ Attachment C) and incorporated herein by reference.
- B. For purposes of award and performance of the Contract, the aspirational goals are expressed as a percentage of the total Contract Price to be performed by small and diverse businesses over the life of this Agreement.
- C. The Contractor shall make good faith efforts to meet or exceed its aspirational goals in the performance of this Contract. The Contractor may count their own participation and any participation from subcontractors and/or subconsultants, as applicable, towards aspirational goals in this Contract.
- D. Certification Requirements: Small and diverse businesses proposed in the Contractor's SIP must meet, at the time Statements of Qualifications are due, the requirements under RCW 39.26.010(22), or be registered in the federal government's System for Award Management (SAM) as a Small Business Administration (SBA) certified business eligible for contracts that are reserved for small businesses, or be located in an area designated in the current U.S. Department of Labor (DOL) Labor Surplus Area (LSA) list (see <https://www.dol.gov/agencies/eta/lsa>).
- E. Upon Contract award, and if applicable, the Contractor shall provide District Supplier Diversity Program staff, copies of the Contractor's and subcontractors and/or subconsultants, as applicable, business certifications from the Washington State Office of Minority and Women's Business Enterprises (OMWBE) or SBA. If the Contractor's, a subcontractor's, or a subconsultant's business is not certified through OMWBE, SBA, or it is self-certified, the Contractor shall provide the District's Supplier Diversity Program staff verifying tax documentation for audit purposes in order to count the business towards the small and diverse business goal commitment.
- F. If, during the progress of the work, a business listed by the Contractor in its SIP is

determined not to meet the small and diverse business eligibility criteria, the utilization of said business will not be counted toward the fulfillment of the Contractor's SIP. The Contractor shall substitute another business that meets the small and diverse business eligibility provisions outlined above to maintain its commitment to small and diverse business participation. Such substitution shall be at no additional cost to the District.

- G. During Contract performance, if the Contractor is not meeting its aspirational goals or making satisfactory progress towards the objectives identified in its SIP, the District may request submission of a corrective action plan. The Contractor shall submit a corrective action plan within ten days of a written request from the District. The correction action plan shall contain the following elements:
1. An explanation of the circumstances contributing to the aspirational goal shortfall.
  2. A summary of the impacts to small and diverse businesses on the project due to the shortfall.
  3. A detailed list of actions that the Contractor will take to correct the shortfall and meet the aspirational goals for small and diverse participation for the project.
  4. A summary of the status of activities and actions identified in its SIP and the effectiveness of each one toward meeting the aspirational goals.

If the District determines that the corrective action plan submitted by the Contractor is unsatisfactory, the District may withhold payments, or terminate the contract for default.

- H. The obligation of the Contractor is to make Good Faith Efforts to meet its aspirational goals for small and diverse business participation.

For purpose of this clause:

“Good Faith Efforts” means efforts to achieve a goal or other elements of the Contractor’s SIP that, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to meet the SIP requirements.

The Contractor can demonstrate that it has achieved this objective by either meeting its aspirational goals or documenting its Good Faith Efforts. If the Contractor does not meet its aspirational goals, the District will make a determination on whether the Contractor made adequate Good Faith Efforts to meet the stated goals. The District will consider the quality, quantity, and intensity of the documented Good Faith Efforts made by the Contractor. The District will not consider mere pro forma efforts as Good Faith Efforts.

23. Project Management Contractor Participation

- A. The District utilizes a standard approach to implementing projects by using well-defined internal standard frameworks for both project management and organizational change management. The framework procedures and associated tools and templates are required to be used for all projects as defined by the District’s Enterprise Project Management Office. The Contractor shall, as directed by the District, utilize and/or actively participate in the District’s application of its project management and organization change management frameworks to guide the implementation of projects and/or change events that

this Contract contributes towards. To the extent applicable, the Contractor shall ensure that all workers, subcontractors, and suppliers also comply with these requirements.

- B. The Contractor shall provide upon request by the project team key project information required to properly manage the project. Requested information may include but is not limited to delivery and completion dates, resource estimates and availability, quality inspection and testing plans, cost estimates and forecasts, safety metrics, and any known risks or constraints associated with these. The Contractor shall provide requested project information as required to not delay project reporting or project progress, cause witness or hold points to be missed, or cause any scope or cost increases.

The Contractor shall attend the appropriate project meetings as requested by the project team to provide key input to project parameters pertaining to this Contract. These meetings may include but are not limited to project kickoff meetings, preconstruction meetings, Job Site Reviews, Root Cause Evaluations, Steering Committee and Commission updates, and Monthly Business Reviews. Meetings may be in-person or virtual depending on the needs of the project. The Contractor shall make a judicious effort to attend meetings at the appropriate dates and times as required to not delay any portion of the project progress or cause any scope or cost increases.

The Contractor agrees to provide requested project closeout information with the detail and in the format requested by the project team. This information may include but is not limited to record drawings, testing and commissioning data, operation and maintenance (O&M) manuals, training information, quality history, etc. Failure to provide all requested documentation that is acceptable to the project team shall delay acceptance and final payment by the District.

#### 24. Physical Security

If any performance under this Contract is to be conducted on District facilities or worksites, it shall be the responsibility of the Contractor to ensure that its employees and those of its Subcontractors are informed of and abide by the District's Security Policies as if fully set out herein a copy of which shall be provided to the Contractor by the District Representative at the preconstruction meeting or prior to beginning work. Without limiting the foregoing, Contractor and its employees shall be required to:

- A. Keep all external gates and doors locked at all times and interior doors as directed.
- B. Visibly display ID badges on their person at all times.
- C. Stay out of unauthorized areas or in authorized areas outside of authorized work hours, without express authorization from the District.
- D. Provide proper notification to the appropriate parties, and sign in and out upon entry and exit to secured locations. If unsure of who to notify, Contractor shall contact the District Representative.
- E. Immediately notify the District if any of Contractor's employees no longer need access or have left the Contractor's employment.
- F. Immediately report any lost or missing access device to the District Representative. A minimum charge will be assessed to the Contractor in the amount of \$50.00 per badge and the fee for lost or non-returned keys may include the cost to re-key the plant facilities. The Contractor is strictly prohibited from making copies of keys.

- G. Not permit 'tailgating' through any controlled access point (i.e. person(s), authorized or unauthorized, following an authorized person through an entry point without individual use of their issued ID badge or key).
- H. Return all District property, including but not limited to keys and badges, to the District Representative when an individual's access to the facility is no longer needed.
- I. Guest Wireless: The District provides Guest Wireless Internet access to contractors and vendors that need to conduct business in support of the District from personally owned mobile devices such as laptops and smart phones. Contractor personnel are responsible for exercising good judgment regarding appropriate use of information, electronic devices, and network resources.

The Contractor and any Subcontractors shall comply with the safety requirements of these Contract Documents and all District policies pertaining to COVID-19 located at <https://www.grantpud.org/for-contractors>.

The District reserves the right to conduct or to require Contractor to conduct criminal background checks on its employee(s) before granting such individuals access to restricted areas of District facilities or Protected Information. Criminal background checks may be conducted in such depth as the District reasonably determines to be necessary or appropriate for the type of access to be granted. The cost of such background checks shall be borne by the Contractor.

25. Security, Safety Awareness Training, Dam Safety Awareness Training, and Transmission and Distribution Access Training

Prior to receiving access to any District facilities, all Contractors, Contractor's employees, subcontractors and subcontractor's employees, material suppliers and material supplier's employees, or any person who will be engaged in the work under this Contract that requires access to District facilities, shall be required to take and pass the District's Security and Safety Awareness training before being issued a security access badge to access District facilities. Under no circumstances will the failure of any Contractor or subcontractor employee to pass the required training, be grounds for any claim for delay or additional compensation.

The Safety and Security Awareness training is available online and is a 20-30 minute training. The training is located at: <https://www.grantpud.org/for-contractors>. All contractors and their employees are required to successfully complete Safety and Security Awareness training before coming onsite. The Security and Safety certificates should be emailed directly to [SecurityTrainingCerts@gcpud.org](mailto:SecurityTrainingCerts@gcpud.org).

District Representative shall ensure that Contractor's employees, subcontractor's and subcontractor's employees have completed and submitted the certificate of completion for the training in a timely manner to avoid any delay in execution of the work. All such certificates shall be submitted before any security access badges will be issued.

If applicable, Dam Safety Awareness Training is required for Contractors who are performing work in and around Priest Rapids and Wanapum Dams and are badged. The training is available online only and is a 20-30 minute training. Contractor shall ensure that its employees, Subcontractors and Subcontractor's employees have completed, passed and printed the certificate of completion for the training in a timely manner to avoid any delay in execution of the work. All such certificates shall be submitted to the District Representative before any security access badges will be issued.

If applicable, Transmission and Distribution Access Training is required for Contractors, or their Subcontractors, who may hold a clearance or hotline hold order as part of performance of work

under this Contract. The training is available online only and is a 20-30 minute training. Contractor shall ensure that its employees, Subcontractors and Subcontractor's employees have completed, passed and printed the certificate of completion for the training in a timely manner to avoid any delay in execution of the work. All such certificates shall be submitted to the District Representative before any security access badges will be issued.

If you are uncertain which of the above courses you or your employees must complete, please contact your District Representative.

26. Protected Information

The State of Washington, Federal Energy Regulatory Commission (FERC) and/or North American Reliability Corporation (NERC) has established regulations for the protection of sensitive plans, drawings and records defined as Security Sensitive Information (SSI), Critical Energy Infrastructure Information (CEII) and/or Bulk Electric System Cyber System Information (BCSI), reference Appendix "D". In accordance with the Revised Code of Washington (RCW), FERC and NERC regulations, and using them as guidance, the District has identified and designated certain information as SSI, CEII, and/or BCSI (hereinafter referred to collectively as "Protected Information"). Because of the sensitive nature of certain District Protected Information that could be used in this Contract, Contractor is bound by the terms and conditions set forth in the Non-Disclosure Agreement (NDA) executed at the time of this Agreement (Appendix "D").

27. Background Checks

The District reserves the right to conduct or to require Contractor to conduct criminal background checks on its employee(s) before the District will grant such individuals access to secure areas of District facilities or electronic access to Bulk Electric System Cyber Assets or Protected Information. Criminal background checks may be conducted in such depth as the District reasonably determines to be necessary or appropriate for the type of access to be granted.

In the event the District determines in its sole discretion that an individual is unsatisfactory to the District or fails to provide a background check as requested by the District, the District reserves the right to require the Contractor to remove such individual from the job site and/or to exclude such individual from having any access to SSI, Bulk Electric System Cyber Assets, CEII, or BCSI.

28. Qualification of Contractor's Access and Personnel Change Approval

The District reserves the right to deny any Contractor or employee thereof access to District facilities or Protected Information at the District's sole discretion. The District will be the sole judge of such effect. All Contractors and employees thereof shall be subject to the nondisclosure provisions of this Contract.

The District reserves the right to conduct or to require Contractor to conduct criminal background checks, provide an identity validation document (I-9, Social Security card, driver's license) and complete the District provided training for its employee(s) before the District will grant such individuals access to secure areas of District facilities. Criminal background checks may be conducted in such depth as the District reasonably determines to be necessary or appropriate for the type of access to be granted. Contractor shall execute one certification for each employee requiring a background check on the form provided by the District and attached hereto as Appendix "E". The cost of such background checks shall be borne by the Contractor. For access to Protected Information relating to Critical Infrastructure Protection, the District reserves the right to require a Non-Disclosure Agreement and a certificate of completion from the District-provided training for each employee before the District will grant access to such individuals.

In the event the District determines in its sole discretion that an individual or Contractor is unsatisfactory or fails to provide a background check as requested by the District, or fails to provide the information listed above, the District reserves the right to exclude such individual or Contractor from secure areas and/or from having any access to Protected Information.

29. CIP Training

All persons receiving Protected Information or having access to secured sites shall complete CIP training prior to receiving such access and periodically, but no less than annually, thereafter. CIP training is conducted by the Reliability Compliance (RC) Department through a learning management system. The learning management system privileges will be coordinated between the District Representative and the RC Department.

30. Contractor Safety Requirements

The following applies if Contractor, or any of its sub-consultants, subcontractors, or suppliers of any tier, performs any activities on premises owned, leased, possessed, or controlled by the District. The Contractor Safety Requirements shall be required when applicable as determined by the District Representative based upon the scope of work. To the extent applicable, the Contractor shall ensure that all workers, sub-consultants, subcontractors, and suppliers comply with these requirements. In fulfilling these requirements, the Contractor shall also comply with material and equipment manufacturer instructions, and safety and health requirements in accordance with WAC 296-126-094 and this Agreement where applicable. If there are conflicts between any of the requirements referenced in the Contract Documents, the more stringent requirement shall prevail.

A. General

Initial/Warning Notice: Any District employee may notify the Contractor of any safety or health concern. The notice may be delivered verbally to any Contractor employee or subcontractor and the District employee shall notify the District Representative of the Notice. Written notification may be provided to the Contractor at the discretion of the District Representative. The notice shall have the same effect on the Contractor regardless of format or recipient. The Contractor shall take immediate action to mitigate the safety and health concerns identified in the District's notice.

B. Stop Work Order: District employees also have the authority to immediately stop a work activity without issuing the Initial/Warning Notice. The District employee will immediately notify the District Representative of the Stop Work Order. The District Representative may direct the Contractor to stop work due to safety and health concerns. The Stop Work Order may cover all work on the Contract or only a portion of the work. After the District issues a Stop Work Order, the Contractor shall meet with District Representatives (as determined by the District Representative) to present a written statement outlining specific changes and/or measures the Contractor will make to work procedures and/or conditions to improve safety and health. A Stop Work Order can be rescinded only with the written approval of the District Representative.

1. The Contractor shall not be entitled to any adjustment of the Contract price or schedule when the District stops a work activity due to safety and health concerns that occurred under the Contractor's, Subcontractor's, or supplier's control.
2. The District's conduct does not alter or waive the Contractor's safety and health obligations.
3. Contractor shall provide an onsite Safety Professional as directed by the District Representative based upon number and/or severity of identified safety infractions.

4. Non-compliance with safety requirements could lead to termination of the contract in accordance with Section 18.
- C. The Contractor shall maintain an accurate record of, and shall immediately report to the District Representative all cases of near miss or recordable injury as defined by OSHA, damage to District or public property, or occupational diseases arising from, or incident to, performance of work under this Contract.
1. The record and report shall include where the incident occurred, the date of the incident, a brief description of what occurred, and a description of the preventative measures to be taken to avoid recurrence, any restitution or settlement made, and the status of these items. A written report shall be delivered to the District Representative within five business days of any such incident or occurrence.
  2. In the event of a serious incident, injury or fatality the immediate group shall stop work. The Contractor/subcontractor shall secure the scene from change until released by the authority having jurisdiction. The Contractor shall collect statements of the crew/witnesses as soon as practical. The District reserves the right to perform an incident investigation in parallel with the Contractor. The Contractor, subcontractor, and their workers shall fully cooperate with the District in this investigation.
  3. All cases of death, serious incidents, injuries or other incidents, as determined by the District Representative, shall be investigated by the Contractor to identify all causes and to recommend hazard control measures. A written report of the investigation shall be delivered to the District Representative within 30 calendar days of any such incident or occurrence.
  4. For situations that meet the reporting requirements of WAC 296-800, the Contractor shall self-report and notify the District Representative. The District Representative shall notify the District's Safety personnel.
- D. The Contractor/subcontractor shall conduct and document job briefings each morning with safety as an integral part of the briefing. The Contractor/Subcontractor shall provide an equivalent job briefing to personnel and/or visitors entering the job site after the original job briefing has been completed for work within their scope. Immediately upon request, the Contractor shall provide copies of the daily job briefing and any other safety meeting notes to the District Representative. The notes, at a minimum, shall include date, time, topics, and attendees and shall be retained by the Contractor for three years after completion of all work.
- E. Job Site Reviews Performed by the District: The Contractor Site Representative or other lead personnel, if requested by the District, shall be required to participate in District job briefs and/or District job site reviews that pertain to other work being performed that may impact the Contractor's work.
- F. The Contractor's Safety Information submitted during the RFQ process (see RFQ Attachment "B") is incorporated herein by reference. The District reserves the right to request updated Contractor safety information at any time during the performance of this Contract.
31. Right to Rely

The District shall furnish to the Contractor all applicable information and technical data in the District's possession or control reasonably required for the proper performance of the Services. The Contractor shall be entitled to reasonably rely upon the information and data provided by District or obtained from



generally acceptable sources within the industry without independent verification except to the extent such verification is expressly included in the Services.

32. Limitation of Liability

The total amount of all claims the District may have against the Contractor under this Agreement or arising from the performance or non-performance of the Services under any theory of law, including but not limited to claims for negligence, negligent misrepresentation and breach of contract, shall be strictly limited to an amount equal to the fees paid to Contractor under the applicable Task Authorization. As the District's sole and exclusive remedy under this Agreement any claim, demand or suit shall be directed and/or asserted only against the Contractor and not against any of the Contractor's employees, officers or directors.

Neither the District nor the Contractor shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of or connected to this Agreement or the performance of the services on this Project. This mutual waiver includes, but is not limited to, damages related to loss of use, loss of profits, loss of income, unrealized energy savings, diminution of property value or loss of reimbursement or credits from governmental or other agencies.

The limitation of liability set forth above shall not apply to claims or damages resulting from or in conjunction with any breach of any indemnification obligation set forth in this Agreement and/or claims made under any insurance placed or provided pursuant to this Agreement up to the full amount payable under such insurance policy(ies).

IN WITNESS WHEREOF, the Contractor and the District have executed this Agreement each by its proper respective officers and officials thereunto duly authorized the day and year first above written.

Public Utility District No. 2  
of Grant County, Washington

Stantec Consulting Services, Inc.

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

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

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**APPENDIX "A.1"**  
**RATE SCHEDULE**

Reference RFQ Attachment "I" Price Proposal dated November 19, 2024.

**APPENDIX "A.2"**

**DIRECT, REIMBURSABLE EXPENSES, & OTHER DIRECT COSTS**

**DIRECT EXPENSES:**

Fixed hourly billing rates shall be in US Dollars and include all i) payroll, payroll taxes and fringe benefits; ii) all reproduction and printing costs including electronic media; iii) communications costs including all phones, faxes, internet, postage, shipping, delivery, couriers; iv) computer, software, printers, scanners, office machines and related costs of operations including consumables; v) insurance costs; vi) indirect and overhead burden; and vii) profit.

**REIMBURSABLE EXPENSES:**

Reimbursable expenses are those reasonable and necessary costs incurred on or directly for the District's project, including necessary transportation costs, meals and lodging. Any actual expenses in non-US dollars will be converted using the conversion tables at [www.x-rates.com](http://www.x-rates.com) for the applicable period. Reimbursement will be subject to the following limitations:

Meals and Incidental Expenses: Meals and incidental expenses will be limited to the Federal Per Diem rate for meals and incidentals established for the location where lodging is obtained. Federal Per Diem guidelines which includes the meal breakdown and Federal Per Diem rates for other locations can be found at [www.gsa.gov](http://www.gsa.gov).

Lodging: Lodging will be billed at cost, including applicable taxes, not to exceed 200% of the Federal Per Diem maximum lodging rate for the location where the work is being performed. The District Representative may increase this limit in writing when circumstances require.

Travel: Air travel (at coach class or equivalent), airport shuttles, etc. billed at cost. Ground transportation by privately owned vehicle, if utilized, billed at the Internal Revenue Service mileage rate for privately owned vehicles in effect at the time of travel. Expenses for a rental car, at cost, in the ratio of one mid-size class rental car for each three Contractor's personnel directly engaged in performance of the work at the prevailing rental rates then in effect. Rental car options such as refueling fees, GPS, collision & liability insurance, etc. will not be reimbursed by the District unless such options are approved in advance by the District Representative. **Appropriate insurance coverage should be included in the Contractor's insurance policies.**

Sub-consultants/Subcontractors: Services requested by the District, verifiable by applicable supporting documentation or at specified rates, will be reimbursed to Contractor at cost.

Other: All other expenses will be based on actual costs and include appropriate documentation.

**Notes:**

**When applicable, monthly invoices will be reviewed to confirm allowability, reasonableness, and proper allocability according to federal cost/price principles in accordance with 2 CFR 200, Subpart E and the Rate Schedule, mutually agreed to on the execution date of this Agreement and/or the associated Task Authorization/s.**

- 1. Reimbursable expenses must be accompanied by receipts for airfare, hotel, and rental car, and any other support documentation as the District may require.**

**APPENDIX "B"**  
CHANGE ORDER NO.

Pursuant to Section 6, the following changes are hereby incorporated into this Contract:

- A. Description of Change:
  
- B. Time of Completion: The revised completion date shall be \_\_\_\_\_.  
*OR*  
 The completion date shall remain \_\_\_\_\_.
  
- C. Contract Price Adjustment: As a result of this Change Order, the not to exceed Contract Price shall remain unchanged (be increased/decreased by the sum of \$\_\_\_\_\_ plus applicable sales tax). This Change Order shall not provide any basis for any other payments to or claims by the Contractor as a result of or arising out of the performance of the work described herein. The new total revised maximum Contract Price is \$\_\_\_\_\_, including changes incorporated by this Change Order.
  
- D. Except as specifically provided herein, all other Contract terms and conditions shall remain unchanged.

Public Utility District No. 2  
of Grant County, Washington

Stantec Consulting Services, Inc.

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

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

Name of Authorized Signature  
Title

Name of Authorized Signature  
Title

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**APPENDIX "C"**  
**TASK AUTHORIZATION FOR PROFESSIONAL SERVICES**

Contract No.:	430-12302R	Task Authorization No.:		Amendment No.:	
Project Name:					

The Scope of Services covered by this authorization shall be performed in accordance with all the terms and conditions in the above referenced Contract Documents which are incorporated herein by this reference.

The District hereby requests and authorizes the Contractor to perform the following services:

Compensation is to be paid in accordance with and subject to the limitations in Section 5.A of the Contract Documents. In addition, the total cost of the above described work shall not exceed \$\_\_\_ without advance amendment of this Task Authorization by the District.

Public Utility District No. 2  
of Grant County, Washington

Stantec Consulting Services, Inc.

Approved for District

Accepted by Contractor

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

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

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: District Representative

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**APPENDIX "D"**  
NON-DISCLOSURE AGREEMENT

This Non-Disclosure Agreement ("NDA") is entered into on the date shown on the signature page between Public Utility District No. 2 of Grant County, Washington ("District"), and Stantec Consulting Services, Inc., ("Contractor"), sometimes collectively referred to as the "Parties."

**RECITALS**

The District has identified and designated certain information as confidential. For purposes of this Agreement, "Protected Information" includes:

- District customer information protected under RCW 19.29A, Consumers of Electricity;
- District employee information;
- District vendor information;
- All technical and business information or material that has or could have commercial value or other interest in the business or prospective business of the District;
- All information and material provided by the District which is not an open public record subject to disclosure under RCW 42.56, Public Records Act;
- All information of which unauthorized disclosure could be detrimental to the interests of the District or its customers, whether or not such information is identified as Protected Information; and
- Any information identified and designated by the District as Security Sensitive Information (SSI), Critical Energy Infrastructure Information (CEII), and/or Critical Infrastructure Protection (CIP) Protected Information in accordance with the State of Washington, Federal Energy Regulatory Commission (FERC) and/or North American Reliability Corporation (NERC), which have established regulations for the protection of sensitive plans, drawings, and records defined as SSI, CEII, and/or CIP Protected Information. SSI, CEII, and CIP Protected Information are further defined in Exhibit "A".

Because of the sensitive nature of such information that may be provided to the Contractor, Contractor must execute and deliver this NDA to the District prior to receiving such Protected Information from the District.

NOW, THEREFORE, the Parties agree as follows:

1. **Incorporation by Reference.** The recitals set forth above are incorporated herein as if fully set forth.
2. **Protected Information Disclosure.** All information and drawings that are disclosed by the District to the Contractor, which are designated as confidential, SSI, CEII, and/or CIP Protected Information, shall be protected hereunder as Protected Information.
3. **Non-Disclosure.** Subject to the provisions of Section 4 and unless the parties agree otherwise, this non-disclosure obligation shall survive the termination of this NDA. Contractor shall not disclose or disseminate Protected Information and shall:
  - A. Restrict disclosure of Protected Information solely to its agents and employees with a need to know and not disclose such Protected Information to any others; and

- B. Advise and require all of its officers, agents, employees, representatives, prospective and successful subcontractors, consultants and employees thereof with access to the Protected Information to execute an NDA in this same form with the District prior to allowing them access to the Protected Information; and
  - C. Use the Protected Information provided hereunder only for purposes directly related to performance of the work Contract 430-12302R.
  - D. In the event third parties attempt to obtain the Protected Information by legal process, the Contractor agrees that it will not release or disclose any Protected Information until the District has received notice of the legal process and has been given reasonable opportunity to contest such release of information and/or to assert the confidentiality privilege.
4. **Ownership and Return of Protected Information.** All Protected Information shall remain the property of the District. Contractor is responsible for safeguarding and returning all Protected Information or shall certify, by signed, statement delivered to the District, the destruction of all original Protected Information provided along with any copies made by the Contractor. Such delivery shall be to the District, Attention: Beau Schwab, PO Box 878, Ephrata, WA 98823.
- Except for Confidential Information constituting SSI, CEII, CIP and/or BCSI, Contractor may retain one copy of all Confidential Information in its confidential project file for archival and insurance purposes. Contractor will only be required to use commercially reasonable efforts to return or destroy Confidential Information stored electronically, and will not be required to return or destroy any electronic copy of Confidential Information created pursuant to its standard electronic backup and archival procedures.
5. **Compliance Audit.** The District may audit Contractor's compliance with this NDA.
6. **Applicable Law.** This NDA is made under, and shall be construed according to, the laws of the State of Washington and the Federal Energy Regulatory Commission regulations. Venue for any action brought pursuant to this NDA shall, at the District's option, be in Grant County Superior Court, Grant County, Washington or in the United States District Court for the Eastern District of Washington.
7. **Assignment.** This NDA may not be assigned.
8. **Violations.** Contractor understands and agrees that the District is providing the Protected Information to Contractor in reliance upon this NDA, and Contractor will be fully responsible to the District for any damages or harm caused to the District by a breach of this NDA by Contractor or any of its officers, directors, agents, employees, subcontractors, consultants or affiliates. Contractor acknowledges and agrees that a breach of any of its promises or agreements contained herein may result in irreparable injury to the District for which there may be no adequate remedy at law, and the District shall be entitled to apply for equitable relief, including injunction and specific performance, in the event of any breach or threatened breach or intended breach of this NDA by Contractor. Such remedies, however, shall not be deemed to be the exclusive remedies for any breach of the Agreement but shall be in addition to all other remedies available at law or in equity. In addition to injunctive relief, civil or criminal penalties may be imposed for each violation of this NDA.
9. **Attorney's Fees.** In the event it is necessary for the District to utilize the services of an attorney to enforce any of the terms of this NDA, it shall be entitled to compensation for its reasonable attorney's fees and costs. In the event any legal action becomes necessary to enforce the provisions of the NDA, the prevailing party shall be entitled to reasonable attorney's fees and costs in addition

to any other relief allowed, regardless of whether the dispute is settled by trial, trial and appeal, arbitration or, mediation.

- 10. **Corporate Authority; Binding Signatures.** The individual executing this NDA on behalf of Contractor warrants that he or she is an authorized signatory of the entity for which they are signing, and have sufficient institutional authority to execute this NDA.
- 11. **Electronic Signatures.** Signatures transmitted electronically shall be deemed valid execution of this NDA, binding on the parties.
- 12. **Effective Date and Term.** This NDA shall become effective immediately and remain in full force and effect until Contractor has returned all Protected Information to the District provided, however, the obligations contained in Section 3 shall survive the termination of this NDA.

CONTRACTOR:      Name: \_\_\_\_\_

                                 Address: \_\_\_\_\_

                                 \_\_\_\_\_

                                 Phone: \_\_\_\_\_

                                 Email: \_\_\_\_\_

                                 \_\_\_\_\_

                                 Signature: \_\_\_\_\_

                                 Print Name: \_\_\_\_\_

                                 Title: \_\_\_\_\_

                                 Date: \_\_\_\_\_



**EXHIBIT “A”**  
DEFINITIONS OF PROTECTED INFORMATION

**Definition of Critical Infrastructure Protection (CIP)**

Pursuant to section 215 of the Federal Power Act (FPA), the Federal Energy Regulatory Commission (FERC) approved the Critical Infrastructure Protection (CIP) Reliability Standards. The CIP Reliability Standards require certain users, owners, and operators of the Bulk-Power System to comply with specific requirements (CIP-002 through CIP-014) to safeguard critical cyber assets. Penalties for non-compliance with NERC CIP can include fines, sanctions or other actions against covered entities.

**Definition of Critical Energy Infrastructure Information (CEII)**

The Critical Energy Infrastructure Information (CEII) guidelines of the Federal Energy Regulatory Commission (FERC) define CEII as specific engineering, vulnerability, operational or detailed design information about proposed or existing critical energy infrastructure (physical or virtual) that relates to the production, generation, transportation, transmission or distribution of energy, could be useful to a person planning an attack on critical infrastructure, is exempt from mandatory disclosure, and gives strategic information beyond the location of the critical infrastructure. 18 CFR §388.113 and RCW 42.56.520.

**Definition of Bulk Electric System Cyber System Information (BCSI)**

The North American Electric Reliability Corporation (NERC) has been designated by the FERC, through the Energy Policy Act of 2005, to establish and enforce standards and requirements for the reliable operation of the Bulk Electric System. The Bulk Electric System includes the District’s electrical generation resources, transmission lines, and interconnections with neighboring electric systems. Information related to the District’s Bulk Electric System Cyber Systems (BCS) is required to be protected due to the sensitive security nature of such information, and the need to protect public safety (hereinafter referred to as “CIP Protected Information”). BCSI generally (not exclusively) is defined as information about the BCS that could be used to gain unauthorized access or pose a security threat to the BCS and affect the reliable operations of the Bulk Electric System. The District is required to protect this information including, but not limited to, network topology/diagrams; floor plans for computing centers; equipment layouts; security configuration information and other information as defined in the NERC standards. FERC Order No. 706, issued January 18, 2008; 18 CFR Part 40; and RCW 42.56.070.

**Definition of Security Sensitive Information (SSI)**

Security Sensitive Information is those portions of records assembled, prepared, or maintained to prevent, mitigate, or respond to criminal or terrorist acts, which are acts that significantly disrupt the ability of the District to fulfill its mission and goals and that manifest an extreme indifference to human life, the public disclosure of which would have a substantial likelihood of threatening public safety. SSI includes: (a) Specific and unique vulnerability assessments or specific and unique response or deployment plans, including compiled underlying data collected in preparation of or essential to the assessments, or to the response or deployment plans; (b) Records not subject to public disclosure under federal law that are shared by federal or international agencies, and information prepared from national security briefings provided to state or local government officials related to domestic preparedness for acts of terrorism; and (c) Information regarding the infrastructure and security of computer and telecommunications networks, consisting of security passwords, security access codes and programs, access codes for secure software applications, security and service recovery plans, security risk assessments, and security test results to the extent that they identify specific system vulnerabilities.

**Bulk Electric System (BES)**

Unless modified by the lists shown below, all Transmission Elements operated at 100 kV or higher and Real Power and Reactive Power resources connected at 100 kV or higher. This does not include facilities used in the local distribution of electric energy. Inclusions:

- I1 - Transformers with the primary terminal and at least one secondary terminal operated at 100 kV or higher unless excluded by application of Exclusion E1 or E3.
- I2 – Generating resource(s) including the generator terminals through the high-side of the step-up transformer(s) connected at a voltage of 100 kV or above with: a) Gross individual nameplate rating greater than 20 MVA. Or, b) Gross plant/facility aggregate nameplate rating greater than 75 MVA.
- I3 - Blackstart Resources identified in the Transmission Operator’s restoration plan
- I4 - Dispersed power producing resources that aggregate to a total capacity greater than 75 MVA (gross nameplate rating), and that are connected through a system designed primarily for delivering such capacity to a common point of connection at a voltage of 100 kV or above. Thus, the facilities designated as BES are: a) The individual resources, and b) The system designed primarily for delivering capacity from the point where those resources aggregate to greater than 75 MVA to a common point of connection at a voltage of 100 kV or above.
- I5 –Static or dynamic devices (excluding generators) dedicated to supplying or absorbing Reactive Power that are connected at 100 kV or higher, or through a dedicated transformer with a high-side voltage of 100 kV or higher, or through a transformer that is designated in Inclusion I1 unless excluded by application of Exclusion E4.

**Bulk Electric System (BES) Cyber Asset**

A Cyber Asset that if rendered unavailable, degraded, or misused would, within 15 minutes of its required operation, misoperation, or non-operation, adversely impact one or more Facilities, systems, or equipment, which, if destroyed, degraded, or otherwise rendered unavailable when needed, would affect the reliable operation of the Bulk Electric System. Redundancy of affected Facilities, systems, and equipment shall not be considered when determining adverse impact. Each BES Cyber Asset is included in one or more BES Cyber Systems.



APPENDIX "E"
BACKGROUND CHECK/IDENTITY VERIFICATION BY CONTRACTOR/VENDOR

Contractor Name: Stantec Consulting Services, Inc. Date: \_\_\_\_\_

Contract Number: 430-12302R-B Procurement Officer: \_\_\_\_\_

Project Manager: \_\_\_\_\_

In accordance with NERC Reliability Standards CIP 002-011, we are providing Public Utility District No. 2 of Grant County, Washington certification of background checks performed on personnel who will require authorized Unescorted Physical Access and/or Electronic Access to District High or Medium Impact BES Cyber Systems, and their associated EACMS and PACS.

Accordingly, we certify that:

- 1. A background check has been conducted on the following employee(s) that includes a seven year criminal history records check, a current residence check and a residence check at other locations where, during the seven years immediately prior to the date of the criminal history records check, the employee has resided for six consecutive months or more; and the assessment of the employee is consistent with the safe and efficient performance of the services and meets the minimum standard for criminal checks as set forth by the attached Evaluation Criteria.
2. Employment eligibility identity verification has been completed to ensure employee is legally permitted to work in the United States. (Citizenship, Federal I-9 form verification)

Table with 5 columns: Employee Name, Background Check Completion Date, Indicate Pass (P) or Fail (F), Identity Verification Completion Date, PRA Completion Date (District use only). The table contains 7 empty rows for data entry.

(Do not send actual background check documents)

Name of company where background check was performed: \_\_\_\_\_

Certified by: \_\_\_\_\_ Title: \_\_\_\_\_

Phone No.: \_\_\_\_\_ Email: \_\_\_\_\_

Return this form to: [CIPDocuments@gcpud.org](mailto:CIPDocuments@gcpud.org)

**\*\*\*Access will not be granted until this Background Check has been completed and training taken\*\*\*  
These are sub-sections of the “Grant County PUD Personnel Risk Assessment Program” relevant to Vendor(s) and/or Contractor(s). For the complete program please contact [rcstaff@gcpud.org](mailto:rcstaff@gcpud.org)**

**Evaluation Criteria:**

Contractors with physical or electronic access to District High or Medium Impact BES Cyber Systems and their associated EACMS and PACS, shall certify a background check was met using the following criteria:

Whether the individual has ever been convicted of any of the following FELONIES:

- Murder
- Kidnapping
- Manslaughter
- Fraud, theft, and/or robbery
- Criminal sexual conduct
- Arson

Whether the individual has ever been convicted of the following MISDEMEANORS:

- Violence related
- Honesty related

Whether the individual has ever been convicted of a single misdemeanor, other than minor traffic offenses, which are generally defined as traffic offenses that did not involve property damage and/or personal injury.

Individual is not currently awaiting adjudication on any criminal charge other than minor traffic offenses, which, again, are generally defined as traffic offenses that did not involve property damage and/or personal injury.

In the event the individual has been convicted of a felony or misdemeanor, the Contractor shall not assign such individual to a District location without first discussing such conviction with the District and obtaining the approval of the District’s PRA Committee for such assignment in accordance with the District’s Personnel Risk Assessment Program. The District reserves the right to refuse the assignment of an individual who does not pass the above Evaluation Criteria after review and consideration of the extenuating circumstances by the District’s PRA Committee.

<b>FOR GRANT PUD USE ONLY</b>	
If Background Check failed enter date of PRA Committee Review: _____	Pass ___ Fail ___ (Check one)
Signature of PRA Committee member: _____	

**APPENDIX "F"**  
**FEDERAL REQUIREMENTS**

1. Termination for Cause
  - A. Any violation or breach of terms of this Contract on the part of the Contractor or the Contractor's subcontractors or subconsultants may result in the suspension or termination of this Contract in accordance with Section 18 or such other action that may be necessary to enforce the rights of the District, including but not limited to debarment as a contractor and a subcontractor.
  - B. Subcontracts or subconsultant agreements exceeding the federal simplified acquisition threshold, currently set at \$250,000, must contain a clause addressing administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms and provide for sanctions and penalties as appropriate. See 2 C.F.R. Part 200, Appendix II(A).
  - C. All subcontracts or subrecipient agreements in excess of \$10,000 must address termination for cause by the subcontractor and/or subconsultant, including the manner by which it will be affected and the basis for settlement. See 2 C.F.R. Part 200, Appendix II(B).
2. Termination for Convenience
  - A. The District reserves the right to terminate this Contract for convenience in accordance with Section 18 if the District believes, in its sole discretion, that it is in the best interest of the District to do so.
  - B. All subcontracts or subrecipient agreements in excess of \$10,000 must address termination for convenience by the subcontractor and/or subconsultant, including the manner by which it will be affected and the basis for settlement. See 2 C.F.R. Part 200, Appendix II(B).
3. Mediation. In the event a dispute arises between the parties regarding this Agreement, either party (first party) may submit the issue to mediation by selecting a mediator and notifying the other party (second party) of the selection. The second party shall either approve such mediator and proceed to mediation or select an alternate mediator. Second party shall notify the first party of such acceptance or selection within seven days of the first notification. Upon receiving notification of the selection of an alternate mediator, the first party shall then approve the mediator and proceed to mediation or reject the alternate mediator. First party shall notify second party of such approval or rejection within seven days of receipt of the notice from second party. In the case of rejection, the first two selected mediators shall select a third mediator. The third mediator shall mediate the dispute. The mediator shall be familiar with design and construction of electrical utilities, electrical generation plants, and commercial transactions in Grant County, Washington. The mediator shall not be related to either party by blood or marriage to a principal or owner of either party and shall have no economic interest direct or indirect with either party. Mediation shall take place within as soon as possible after the mediator has been selected. The parties shall split the cost of mediation.
4. Arbitration. In the event that a dispute is not resolved by mediation pursuant to the terms of preceding paragraph, either party (first party) may submit the issue to arbitration by selecting an arbitrator and notifying the other party (second party) of the selection. The second party shall either approve such arbitrator and proceed to arbitration or select an alternate arbitrator. Second party shall notify the first party of such acceptance or selection within seven days of the first

notification. Upon receiving notification of the selection of an alternate arbitrator, the first party shall then approve the arbitrator and proceed to arbitration or reject the alternate arbitrator. First party shall notify second party of such approval or rejection within seven days of receipt of the notice from second party. In the case of rejection, the first two selected arbitrators shall select a third arbitrator. The third arbitrator shall arbitrate the dispute. The arbitrator shall be familiar with design and construction of electrical utilities, electrical generation plants, and commercial transactions in Grant County, Washington. The arbitrator shall not be related to either party by blood or marriage to a principal or owner of either party and shall have no economic interest direct or indirect with either party. The arbitration hearing shall take place as soon as possible after the arbitrator has been named. The decision of the arbitrator shall be made within seven days after the arbitration hearing and shall be binding upon the parties. The parties shall split the cost of arbitration.

5. Conflict of Interest

By submission of its SOQ, and consistent with the District’s Code of Ethics, the Contractor certifies (and shall require each Subcontractor and/or Subconsultant to certify) that it has no direct or indirect financial or proprietary interest, and that it shall not acquire any such interest, which conflicts in any manner or degree with the work, services or materials required to be performed and/or provided under this Contract and that it shall not employ any person or agent having any such interest (see Conflict of Interest Certification executed as part of the RFQ process (RFQ Attachment “E”), which is incorporated herein by reference). In the event that the Contractor or its agents, employees or representatives hereafter acquires such a conflict of interest, the Contractor shall immediately disclose such interest in writing to the District and take action immediately to eliminate the conflict or to withdraw from this Contract, as the District may require. The Contractor shall not employ any consultant who is concurrently employed by the District or by the District’s consultants (including, but not limited to, surveyors, engineers, architects, and testing laboratories), without first obtaining the District’s approval in writing.

6. Rights to Inventions Made Under a Contract or Agreement

STANDARD PATENT RIGHTS

(a) **Definitions**

(1) Invention means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code, or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. 2321 et seq.).

(2) Subject invention means any invention of the contractor conceived or first actually reduced to practice in the performance of work under this Contract, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) must also occur during the period of contract performance.

(3) Practical Application means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or government regulations, available to the public on reasonable terms.

(4) Made when used in relation to any invention means the conception or first actual reduction to practice of such invention.

(5) Small Business Firm means a small business concern as defined at section 2 of Pub. L. 85–

536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standards for small business concerns involved in government procurement and subcontracting at 13 CFR 121.3–8 and 13 CFR 121.3–12, respectively, will be used.

(6) Nonprofit Organization means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c) and exempt from taxation under section 501(a) of the Internal Revenue Code (25 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

(7) Statutory period means the one-year period before the effective filing date of a claimed invention in a patent application during which exceptions to prior art exist per 35 U.S.C. 102(b) as amended by the Leahy-Smith America Invents Act, Public Law 112–29.

(8) Contractor means any person, small business firm, or nonprofit organization, or, as set forth in section 1, paragraph (b)(4) of Executive Order 12591, as amended, any business firm regardless of size, which is a party to a funding agreement.

**(b) Allocation of Principal Rights**

The Contractor may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any subject invention in which the Contractor retains title, the Federal government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

**(c) Invention Disclosure, Election of Title and Filing of Patent Application by Contractor**

(1) The Contractor will disclose each subject invention to the Federal agency within two months after the inventor discloses it in writing to Contractor personnel responsible for patent matters. The disclosure to the agency shall be in the form of a written report and shall identify the contract under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention, and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the agency, the Contractor will promptly notify the agency of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Contractor. If required by the Federal agency, the Contractor will provide periodic (but no more frequently than annual) listings of all subject inventions which were disclosed to the agency during the period covered by the report, and will provide a report prior to the close-out of a funding agreement listing all subject inventions or stating that there were none.

(2) The Contractor will elect in writing whether or not to retain title to any such invention by notifying the Federal agency within two years of disclosure to the Federal agency. However, in any case where a patent, a printed publication, public use, sale, or other availability to the public has initiated the one-year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by the agency to a date that is no more than 60 days prior to the end of the statutory period.

(3)(i) The Contractor will file its initial patent application on a subject invention to which it

elects to retain title within one year after election of title or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use.

(ii) If the Contractor files a provisional application as its initial patent application, it shall file a nonprovisional application within 10 months of the filing of the provisional application. So long as there is a pending patent application for the subject invention and the statutory period wherein valid patent protection can be obtained in the United States has not expired, additional provisional applications may be filed within the initial 10 months or any extension period granted under paragraph (c)(5) of this clause. If an extension(s) is granted under paragraph (c)(5) of this clause, the Contractor shall file a nonprovisional patent application prior to the expiration of the extension(s) or notify the agency of any decision not to file a nonprovisional application prior to the expiration of the extension(s), or if earlier, 60 days prior to the end of any statutory period wherein valid patent protection can be obtained in the United States.

(iii) The Contractor will file patent applications in additional countries or international patent offices within either ten months of the first filed patent application or six months from the date permission is granted by the Commissioner of Patents to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(iv) If required by the Federal agency, the Contractor will provide the filing date, patent application number and title; a copy of the patent application; and patent number and issue date for any subject invention in any country in which the Contractor has applied for a patent.

(4) For any subject invention with Federal agency and Contractor co-inventors, where the Federal agency employing such co-inventor determines that it would be in the interest of the government, pursuant to 35 U.S.C. 207(a)(3), to file an initial patent application on the subject invention, the Federal agency employing such co-inventor, at its discretion and in consultation with the Contractor, may file such application at its own expense, provided that the Contractor retains the ability to elect title pursuant to 35 U.S.C. 202(a).

(5) Requests for extension of the time for disclosure, election, and filing under paragraphs (1), (2), and (3) of this clause may, at the discretion of the Federal agency, be granted. When a Contractor has requested an extension for filing a non-provisional application after filing a provisional application, a one-year extension will be granted unless the Federal agency notifies the Contractor within 60 days of receiving the request.

(6) In the event a subject invention is made under funding agreements of more than one agency, at the request of the Contractor or on their own initiative the agencies shall designate one agency as responsible for administration of the rights of the government in the invention.

**(d) Conditions When the Government May Obtain Title**

(1) A Federal agency may require the Contractor to convey title to the Federal agency of any subject invention -

(i) If the Contractor fails to disclose or elect title to the subject invention within the times specified in paragraph (c) of this clause or elects not to retain title.

(ii) In those countries in which the contractor fails to file patent applications within the times specified in paragraph (c) of this clause; provided, however, that if the Contractor has filed a patent application in a country after the times specified in paragraph (c) of this clause, but prior to its receipt of the written request of the Federal agency, the Contractor shall continue



to retain title in that country.

(iii) In any country in which the contractor decides not to continue the prosecution of any nonprovisional patent application for, to pay a maintenance, annuity or renewal fee on, or to defend in a reexamination or opposition proceeding on, a patent on a subject invention.

(2) A Federal agency, at its discretion, may waive the requirement for the Contractor to convey title to any subject invention.

**(e) Minimum Rights to Contractor and Protection of the Contractor Right to File**

(1) The Contractor will retain a nonexclusive royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the Contractor fails to disclose the invention within the times specified in (c), above. The Contractor's license extends to its domestic subsidiary and affiliates, if any, within the corporate structure of which the Contractor is a party and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of the Federal agency except when transferred to the successor of that party of the Contractor's business to which the invention pertains.

(2) The Contractor's domestic license may be revoked or modified by the funding Federal agency to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR part 404 and agency licensing regulations (if any). This license will not be revoked in that field of use or the geographical areas in which the Contractor has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the funding Federal agency to the extent the Contractor, its licensees, or the domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, the funding Federal agency will furnish the Contractor a written notice of its intention to revoke or modify the license, and the contractor will be allowed thirty days (or such other time as may be authorized by the funding Federal agency for good cause shown by the Contractor) after the notice to show cause why the license should not be revoked or modified. The Contractor has the right to appeal, in accordance with applicable regulations in 37 CFR part 404 and agency regulations (if any) concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of the license.

**(f) Contractor Action to Protect the Government's Interest**

(1) The Contractor agrees to execute or to have executed and promptly deliver to the Federal agency all instruments necessary to (i) establish or confirm the rights the Government has throughout the world in those subject inventions to which the contractor elects to retain title, and (ii) convey title to the Federal agency when requested under paragraph (d) above and to enable the government to obtain patent protection throughout the world in that subject invention.

(2) The Contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor each subject invention made under Contract in order that the Contractor can comply with the disclosure provisions of paragraph (c) of this clause, to assign to the Contractor the entire right,

title and interest in and to each subject invention made under Contract, and to execute all papers necessary to file patent applications on subject inventions and to establish the government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by paragraph (c)(1) of this clause. The Contractor shall instruct such employees through employee agreements or other suitable educational programs on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) For each subject invention, the Contractor will, no less than 60 days prior to the expiration of the statutory deadline, notify the Federal agency of any decision: Not to continue the prosecution of a non-provisional patent application; not to pay a maintenance, annuity or renewal fee; not to defend in a reexamination or opposition proceeding on a patent, in any country; to request, be a party to, or take action in a trial proceeding before the Patent Trial and Appeals Board of the U.S. Patent and Trademark Office, including but not limited to post-grant review, review of a business method patent, *inter partes* review, and derivation proceeding; or to request, be a party to, or take action in a non-trial submission of art or information at the U.S. Patent and Trademark Office, including but not limited to a pre-issuance submission, a post-issuance submission, and supplemental examination.

(4) The Contractor agrees to include, within the specification of any United States patent applications and any patent issuing thereon covering a subject invention, the following statement, "This invention was made with government support under (identify the contract, when applicable) awarded by (identify the Federal agency, when applicable). The government has certain rights in the invention."

**(g) Subcontracts**

(1) The Contractor will include this clause, suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental or research work to be performed by a subcontractor. The subcontractor will retain all rights provided for the Contractor in this clause, and the Contractor will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(2) The Contractor will include in all other subcontracts, regardless of tier, for experimental developmental or research work the patent rights clause required by (cite section of agency implementing regulations or FAR).

(3) In the case of subcontracts, at any tier, when the prime award with the Federal agency was a contract (but not a grant or cooperative agreement), the agency, subcontractor, and the Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and the Federal agency with respect to the matters covered by the clause; provided, however, that nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes Act in connection with proceedings under paragraph (j) of this clause.

**(h) Reporting on Utilization of Subject Inventions**

The Contractor agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Contractor or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the contractor, and such other data and information as the agency may reasonably specify. The Contractor also agrees to provide additional reports as may be requested by the agency in connection with any march-in proceeding undertaken by the agency in accordance with

paragraph (j) of this clause. As required by 35 U.S.C. 202(c)(5), the agency agrees it will not disclose such information to persons outside the government without permission of the Contractor.

**(i) Preference for United States Industry**

Notwithstanding any other provision of this clause, the Contractor agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject inventions in the United States unless such person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by the Federal agency upon a showing by the contractor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

**(j) March-in Rights**

The Contractor agrees that with respect to any subject invention in which it has acquired title, the Federal agency has the right in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of the agency to require the Contractor, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the contractor, assignee, or exclusive licensee refuses such a request the Federal agency has the right to grant such a license itself if the Federal agency determines that:

- (1) Such action is necessary because the Contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use.
- (2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Contractor, assignee or their licensees;
- (3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Contractor, assignee or licensees; or
- (4) Such action is necessary because the agreement required by paragraph (i) of this clause has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

**(k) Special Provisions for Contracts with Nonprofit Organizations**

If the Contractor is a nonprofit organization, it agrees that:

- (1) Rights to a subject invention in the United States may not be assigned without the approval of the Federal agency, except where such assignment is made to an organization which has as one of its primary functions the management of inventions, provided that such assignee will be subject to the same provisions as the Contractor;
- (2) The Contractor will share royalties collected on a subject invention with the inventor, including Federal employee co-inventors (when the agency deems it appropriate) when the subject invention is assigned in accordance with 35 U.S.C. 202(e) and 37 CFR 401.10;

(3) The balance of any royalties or income earned by the Contractor with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions, will be utilized for the support of scientific research or education; and

(4) It will make efforts that are reasonable under the circumstances to attract licensees of subject inventions that are small business firms and that, when appropriate, it will give a preference to a small business firm when licensing a subject invention;

(5) The Federal agency may review the Contractor's licensing program and decisions regarding small business applicants, and the Contractor will negotiate changes to its licensing policies, procedures, or practices with the Federal agency when the Federal agency's review discloses that the Contractor could take reasonable steps to more effectively implement the requirements of paragraph (k)(4) of this clause; and

(6) The Federal agency may take into consideration concerns presented by small businesses in making such determinations in paragraph (k)(5) of this clause.

**(l) Communication**

The District Representative is the central point of contact for communications on matters relating to the clause. Contact information for this person is listed below.

Kevin Marshall  
Public Utility District No. 2  
of Grant County, Washington  
PO Box 878  
Ephrata, WA 98823  
509-760-9046  
kmarsha@gcpud.org

**(m) Electronic Filing**

(1) Unless otherwise requested or directed by the Federal agency -

(i) The written disclosure required in (c)(1) of this clause shall be electronically filed;

(ii) The written election required in (c)(2) of this clause shall be electronically filed; and

(iii) If required by the agency to be submitted, the close-out report in paragraph (c)(1) of this clause and the patent information and periodic reporting identified in paragraph (c)(3) of this clause shall be electronically filed.

(2) Other written notices required in this clause may be electronically delivered to the agency or the Contractor through an electronic database used for reporting subject inventions, patents, and utilization reports to the funding agency.

7. Clean Air Act and Federal Water Pollution Control Act

“Clean Air Act”

The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

The Contractor agrees to report each violation to the District and understands and agrees that the District will, in turn, report each violation as required to assure notification to the federal awarding agency, and the appropriate Environmental Protection Agency Regional Office.

The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance provided by the federal awarding agency.

“Federal Water Pollution Control Act”

The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 et seq.

The Contractor agrees to report each violation to the District and understands and agrees that the District will, in turn, report each violation as required to assure notification to the pass-through entity, if applicable and the appropriate Environmental Protection Agency Regional Office.

The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance provided by the federal awarding agency.

8. Debarment and Suspension

This Contract is a covered transaction for purposes of 2 C.F.R. Part 180 and 2 C.F.R. Part 3000. As such, the Contractor is required to verify that none of the Contractor’s principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

The Contractor must comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

Contractor’s certification, executed as part of the RFQ process (RFQ Attachment “F”) and incorporated herein by reference, is a material representation of fact relied upon by the District. If it is later determined that the Contractor did not comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C, in addition to remedies available to the District, the federal government may pursue available remedies, including but not limited to suspension and/or debarment.

9. Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended)

Contractors who apply or bid for an award of more than \$100,000 shall file the required certification with Grant PUD as part of the RFQ process (RFQ Attachment “D”), which is incorporated herein by reference. Each tier certifies to the tier above that it will not and has not used federally appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the federal awarding agency.

10. Procurement of Recovered Materials

In the performance of this Contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired:

- A. Competitively within a timeframe providing for compliance with the Contract performance schedule,
- B. Meeting Contract performance requirements, or
- C. At a reasonable price.

Information about this requirement, along with the list of EPA-designated items, is available at EPA's webpage, [Comprehensive Procurement Guideline \(CPG\) Program | US EPA](#).

The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

11. Affirmative Socioeconomic Steps

If subcontracts are to be let, the Contractor is required to take all necessary steps identified in 2 CFR part 200.321(b)(1)-(5) to ensure that small and minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

12. Access to Records

A. General

The Contractor agrees to provide the federal awarding agency, pass-through entity, if applicable, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts, and transcriptions.

The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

The Contractor agrees to provide the federal awarding agency, pass-through entity, if applicable or their authorized representatives access to construction or other work sites pertaining to the work being completed under the Contract.

B. Under a Major Disaster or Emergency Declaration

In compliance with section 1225 of the Disaster Recovery Reform Act of 2018, and when applicable, the District and the Contractor acknowledge and agree that no language in this Contract is intended to prohibit audits or internal reviews by the federal awarding agency, FEMA Administrator, or the Comptroller General of the United States.

13. Compliance with Federal Law, Regulations, and Executive Orders and Acknowledgement of Federal Funding

Contractor acknowledges that the federal awarding agency financial assistance will be used to fund all or a portion of the Contract. The Contractor will comply with all applicable federal law, regulations, executive orders, federal awarding agency policies, procedures, and directives.

14. No Obligation by Federal Government

The Federal government is not a party to this Contract and is not subject to any obligations or liabilities to the District, contractor, or any other party pertaining to any matter resulting from the

Contract.

15. Program Fraud and False or Fraudulent Statements or Related Acts

The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this Contract.

# For Commission Review – 03/25/2025

## RESOLUTION NO. XXXX

### A RESOLUTION ACCEPTING A BID AND AWARDING CONTRACT 170-12697, FOR SUPPLYING SUBSTATION SHAPED STEEL STRUCTURES

#### Recitals

1. Bids were publicly opened on February 27, 2025 for Contract 170-12697, for Supplying Substation Shaped Steel Structures;
2. Bid proposals were received from the following suppliers/contractors and evaluated by Grant PUD's staff;

• Enterprise Fabricators Co., Inc.	\$1,183,136.00
• Northwest Steel Fab., Inc.	\$1,192,668.00
• Klute	\$1,295,659.49
• Blackwater Industries, LLC	\$1,392,680.37
• Border States	\$1,520,606.00
• Techline	\$1,614,300.00
• MVA Power	\$1,833,812.86
• Western Utility Telecom	\$1,839,714.00
• Dis-Tran	\$2,060,162.00
3. The low bid, submitted by Enterprise Fabricators Co., Inc. is both commercially and technically compliant with Grant PUD's contract requirements;
4. The bid is less than the Engineer's Estimate of \$2,402,518.00; and
5. Grant PUD's Managing Director of Power Delivery concurs with staff and recommends award to Enterprise Fabricators Co., Inc. as the lowest responsible and best bid based on Grant PUD's plan and specifications.

NOW, THEREFORE, BE IT RESOLVED by the Commission of Public Utility District No. 2 of Grant County, Washington, that the General Manager is authorized to enter into a contract, Contract 170-12697, for Supplying Substation Shaped Steel Structures with Enterprise Fabricators Co., Inc. of Portland, Oregon in the amount of \$1,183,136.00 plus applicable sales tax, upon receipt of the required payment and performance bond in a manner satisfactory to Grant PUD's Counsel.

PASSED AND APPROVED by the Commission of Public Utility District No. 2 of Grant County, Washington, this 8<sup>th</sup> day of April, 2025.



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President

ATTEST:

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Secretary

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Vice President

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Commissioner

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Commissioner

**MEMORANDUM**

**3/13/2025**

**TO:** John Mertlich, General Manager

**VIA:** Jeff Grizzel, Chief Operating Officer *Jeff Grizzel*  
Jeff Grizzel (Mar 13, 2025 17:12 PDT)  
Ron Alexander, Managing Director of Power Delivery *Ron Alexander*  
Ron Alexander (Mar 13, 2025 16:46 PDT)  
Angel Barahona-Sanchez, TSA Engineering Manager *Angel Barahona-Sanchez*  
Angel Barahona-Sanchez (Mar 13, 2025 12:06 PDT)

**FROM:** Chris Johnson, District Representative *Chris Johnson*

**SUBJECT:** Award of Contract 170-12697 – Supply Substation Shaped Steel Structures

**Purpose:** To request Commission approval to award Contract 170-12697 to Enterprise Fabricators Co., Inc, to supply substation shaped steel structures for a not to exceed Contract Price of \$1,183,136, plus sales tax.

**Discussion:** Advertisements were placed in two newspapers located in Grant County and Seattle, WA, in addition to the District's ProcureWare site. The District opened sealed bids on February 27th, 2025, at 2:00 PM. Only nine bids were received:

- Enterprise Fabricators Co., Inc - \$1,183,136.00
- Northwest Steel Fab., Inc - \$1,192,668.00
- Klute - \$1,295,659.49
- Blackwater Industries, LLC - \$1,392,680.37
- Border States - \$1,520,606.00
  - Bidding Pacific Steel Structures
- Techline - \$1,614,300.00
  - Bidding Grid Structures
- MVA Power - \$1,833,812.86
- Western Utility Telecom - \$1,839,714.00
- Dis-Tran - \$2,060,162.00
  
- Engineer's Estimate - \$2,402,518.00

The bid was evaluated for technical and commercial compliance. District staff concludes that the bid submitted by Enterprise Fabricators Co., Inc. is both commercially and technically compliant.

**Justification:** This steel is required to complete the Mountain View Substation Expansion as part of the QTPE Program.

This steel will allow us to extend the substation north by four rungs, providing eight more bays. Two of these bays are designated for the Columbia-Mountain View Line and the Mountain View-Monument Hill Line. It will also complete the last southern rung that provides two more bays, one designated for the Mountain View Loop #1 Line.

**Financial Considerations:** The bid submitted by Enterprise Fabricators Co., Inc was the lowest commercially and technically compliant bid.

The Districted budgeted for this material as part of the QTEP Mountain View Substation Expansion project.

**Contract Specifics:** Contract 170-112697 consists of seven bid items for different steel structures. These make up a total of 163 structures weighing nearly 200 tons of steel.

**Recommendation:** Commission approval to award contract 170-12697 to Enterprise Fabricators Co., Inc, to supply substation shaped steel structures for a not to exceed Contract Price of \$1,183,136.00, plus sales tax.

**Legal Review:** See attached e-mail(s).

Contract Documents 170-12697

Supply Substation Shaped Steel Structures

for

Public Utility District No. 2  
of Grant County, Washington

Bid Due Date: February 26, 2025

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## INSTRUCTIONS TO BIDDERS

### 1. SUBMISSION OF BID

Sealed Bids shall be received by Public Utility District No. 2 of Grant County, Washington at the District's contracting offices at 154 A Street SE Building E, Ephrata, Washington no later than 2:00 p.m. on February 26, 2025 for Supply Substation Shaped Steel Structures as specified in Contract Documents 170-12697. Bids received after that time shall be rejected as non-responsive. **Bid opening shall follow the Bid submittal deadline via Microsoft Teams video conference. The video conference will be the only manner by which the public can participate in the Bid opening. To participate in the Bid opening, please join the Teams meeting below:**

**Microsoft Teams** [Need help?](#)

[Join the meeting now](#)

Meeting ID: 278 724 239 724

Passcode: ZB2F265H

**Dial in by phone**

[+1 509-703-5291,,530593651#](#) United States, Spokane

[Find a local number](#)

Phone conference ID: 530 593 651#

The original and one copy of the Bid and all required Bidder's Data shall be delivered in a completely sealed opaque envelope properly addressed to:

Niconia Butler, Procurement Officer  
Public Utility District No. 2  
of Grant County, Washington  
154 A Street SE Building E  
Ephrata, Washington 98823

Phone: (509) 906-6933

E-mail: [Nbutler@gcpud.org](mailto:Nbutler@gcpud.org)

with the name of the Bidder written on the outside of the envelope and outer shipping container with the following:

Contract Documents: 170-12697

Bid for: Supply Substation Shaped Steel Structures

Bid due date: February 26, 2025 at 2:00 PM

**Bid opening date: February 26, 2027 at 2:00 PM**

Each Bid submitted shall constitute an offer to the District and shall be irrevocable for a period of 60 days following Bid opening. Contract Award, if any, shall be made within 60 days from the date of Bid opening.

### 2. COMPLIANCE WITH BID DOCUMENTS/BIDDER'S EXCEPTIONS

Bids shall be submitted on the Bid Form (see Exhibit "A") provided with the Contract Documents. All Bid proposals must be quoted in U.S. dollars. Any submittals or data which may be required by the Contract Documents to support a Bid shall be attached to the Bid Form. The Bid Form must

be properly executed and all blanks must be filled in. All Bids shall be submitted in strict compliance with the Contract Documents, Technical Specifications, and commercial requirements contained herein. Bids which do not comply with these specifications and requirements or which contain or are conditioned upon different terms provided by the Bidder may be rejected. Any Bid which attempts to disclaim liability for the Bidder's negligence or to disclaim liability for damage, which arises from Bidder's acts, to person or property, may be deemed a non-responsive Bid.

Bidder shall specifically identify by paragraph and page number and describe in detail in its Bid proposal each variation or departure from the Contract Document. If, in the District's opinion, the Bid proposal contains material variations in or departures from the commercial terms or functional design requirements, it may be rejected as being non-responsive.

3. DISCREPANCIES OR OMISSIONS IN CONTRACT DOCUMENTS

If a Bidder finds discrepancies in or omissions from the District's requirements, or if Bidder is in doubt as to the meaning of any provision in the Contract Documents, Bidder shall, at once, notify the District's Procurement Officer. If appropriate, a notice of addendum shall be posted to the District's ProcureWare site, mailed, e-mailed, or otherwise delivered to each person obtaining a set of Contract Documents. Each person requesting an interpretation shall be responsible for the delivery of their request to the District. The District shall not be bound by, nor responsible for, any other explanations or interpretations of the proposed documents other than those given in writing as set forth in this paragraph. Oral instructions, interpretations or representations shall not be binding upon the District.

4. DISTRICT'S RIGHT TO MODIFY CONTRACT DOCUMENTS

The District reserves the right to revise the Contract Documents by addendum prior to the date set for receiving Bids. The Bidder shall acknowledge the receipt of each addendum on the Bid Form to substantiate that its Bid is in accordance with the revised Contract Documents.

5. BIDDER'S WITHDRAWAL OR MODIFICATION OF BID

The Bidder may, without prejudice to itself, withdraw, modify or correct a proposal after it has been deposited with the District; provided such withdrawal, modification, or correction is filed with the District in writing, before the time set for receiving Bids. The original Bid, as modified, will be considered as the proposal submitted by the Bidder.

6. BID DELIVERY RESPONSIBILITY

It shall be the Bidder's responsibility to deliver the original copy of its properly executed Bid and Bid documents prior to the time for Bid receipt stated above. Bids will only be accepted via United Parcel Service, Federal Express, Bidder walk-in, or other carrier or courier service to the address referenced in Section 1 above; no Bids sent by United States Postal Service will be allowed. The District shall not accept or consider Bids transmitted by any electronic method. No Bid shall be considered which is received after the time stated above and shall be returned unopened. It shall be the sole responsibility of the Bidder to ensure that Bids are delivered at the Bid due date and time established in Section 1 above or by addendum. It shall also be the sole responsibility of the Bidder to ensure that Bids are properly addressed and labeled in accordance with Section 1 above.



7. BID EVALUATION

For the purposes of evaluating Bids, the District will consider a number of factors and will not evaluate based on cost alone. The District may let the Contract to the lowest responsible Bidder or Bidders based upon the plans and specifications, price and any other factors considered. Consideration will be given to the following:

- A. Total Bid Price.
- B. Bidder's Data (See Instruction No. 8 which follows). NOTE: Any Bid which does not contain all Bidder's Data indicated in Section 8 as "required", if any, shall be rejected.
- C. All elements or factors which will affect the final cost to or benefits to be derived by the District which may include, but not be limited to:
  - 1. The ability, capacity, and experience of the Bidder to perform the Contract or provide the material/equipment required;
  - 2. Whether the Bidder can deliver the required material/equipment within the time specified; and
  - 3. The quality of the Bidder's performance on previous contracts.

8. BIDDER'S DATA

The Bidder shall submit the following information with their sealed Bid:

- A. The Bidder shall have had a minimum of three years' experience in the successful delivering, servicing and maintenance of the type of equipment/material specified by these Contract Documents prior to submission of its Bid. Bidder shall provide a representative user's list with addresses, phone contacts, and material delivery dates to document the experience requirement. The Bidder shall be a factory franchised new equipment/material dealer with full parts, service and warranty capacity.
- B. Manufacturer, model and place of manufacture.
- C. Bidder shall provide documentation of the manufacturer's standard warranty, if applicable, in accordance with Section GC-9.

9. BID BOND

Each Bid shall be accompanied by a certified or cashier's check payable to the order of Public Utility District No. 2 of Grant County, Washington for a sum not less than 5% of the amount of the Total Bid Price, or accompanied by a Bid Bond on the form provided as Exhibit "B", in an amount not less than 5% of the Total Bid Price with a corporate surety licensed to do business in the State of Washington, conditioned that the Bidder shall pay the District as liquidated damages the amount specified in the bond, unless Bidder enters into a Contract in accordance with their Bid and furnishes the Payment and Performance Bond hereinafter mentioned within 10 days from Contract Award. If a Bid is rejected, or if a Bid is accepted and a Contract Form executed, any check shall be returned in each instance within a period of 10 days to the Bidder furnishing the same. If the Bid is one of the three low Bids, such check or bond shall be held by the District until Contract Documents are fully executed by the District and successful Bidder and the Payment and

Performance Bond provided per Section 13. If a Bid Bond was provided, 30 days following this period, the original Bid Bond shall be destroyed unless the Surety or Contractor requests the return of the bond, in writing, prior to destruction. The Bidder's failure to submit its Bid Bond on the form attached to the Contract Documents, or a certified or cashier's check in accordance with this section shall result in rejection of the Bid.

10. WAIVE MINOR ERRORS

The District reserves the right to waive minor errors or irregularities in any Bid if it appears to the District that such errors or irregularities in any Bid were made through inadvertence and are not material. Any errors or irregularities so waived must be corrected on the Bid on which they occur prior to the execution of any Contract Form which may be awarded thereon. No Bidder may withdraw their Bid after the hour set for the opening thereof, unless and until Contract Award has been delayed for a period exceeding 60 days after the date of Bid opening.

11. DISTRICT'S RIGHT TO REJECT BIDS

The District reserves the right to reject any and all Bids or to accept the Bid which in its sole and absolute judgment will under all circumstances best serve the interest of the District.

12. REFUSAL TO EXECUTE CONTRACT

Should the successful Bidder fail or refuse to execute a Contract Form and furnish a Payment and Performance Bond within 10 days following receipt of notification of Contract Award, the Bidder shall be considered to have abandoned the Bid and the check or Bid Bond in the amount of not less than 5% of the Bid delivered with the Bid shall thereupon be due and owing to the District as liquidated damages for such failure or refusal, and the District may thereupon award the Contract to any other Bidder.

13. PAYMENT AND PERFORMANCE BOND

To assure compliance with the terms of the Contract, the Contractor shall furnish a Payment and Performance Bond in an amount equal to 25% of the amount of the Contract Price, excluding Washington State Sales Tax, with surety or sureties who are acceptable to the District. This Payment and Performance Bond shall remain in force for a period of 365 days after final payment. Thirty days following this expiration, the original Payment and Performance Bond shall be destroyed unless the Surety or Contractor requests the return of the bond, in writing, prior to destruction. The Payment and Performance Bond must be on the form provided with these Contract Documents as Exhibit "D". The cost of the Payment and Performance Bond shall be included in the Total Bid Price.

14. PUBLIC RECORDS ACT

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

15. CONTRACT DOCUMENTS

The Contract Documents consist of the documents listed in the Table of Contents.

The Contract shall bind both the District and the Contractor to all requirements set forth in the components of the Contract Documents stated above.

16. BIDDER QUESTIONS OR CLARIFICATIONS

Bidders are to submit questions or requests for clarification in writing to the District's Procurement Officer. If appropriate, response to Bidder's questions will be posted to the District's ProcureWare web site. The deadline to submit questions or request for clarification to the District shall be five calendar days prior to the time and date that Bids are due.

## GENERAL CONDITIONS

### GC-1. FORM OF CONTRACT

The form of the Contract shall be unit price type.

### GC-2. DEFINITIONS

Whenever these words occur in the Contract Documents, they shall have the following meanings:

“BID” - The written proposal submitted by the Bidder on the Bid Form provided as Exhibit “A” in these Contract Documents.

“BID EVALUATION” - The criteria for determining the lowest responsive Bid received in response to the Contract Documents.

“BID ITEM” - A line item on the Bid Form which is included in these Contract Documents as Exhibit “A”.

“BID ITEM PRICE” - The correctly calculated (extended) price of all units of each Bid Item (Bid Unit Price times Quantity).

“BID UNIT PRICE” - The price per unit on a specific Bid Item.

“BIDDER” - Any person or entity who submits a Bid.

“CONTRACT AWARD” - Contract Award is defined as the date the successful Bidder is first notified in writing that the District has accepted the Contractor's Bid. Contract Award, if any, shall be made within 60 days after the date of Bid opening.

“CONTRACT DOCUMENTS” - The Contract Documents shall include all sections listed in the Table of Contents.

“CONTRACT PRICE” - The Total Bid Price plus any optional Bid Items included in the Contract Award and any properly approved Change Orders approved subsequent to Contract Award.

“CONTRACTOR” - The successful Bidder who is awarded the Contract to supply the materials or equipment covered by these Contract Documents.

“DISTRICT” OR “OWNER” - Public Utility District No. 2 of Grant County, Washington.

“DISTRICT REPRESENTATIVE” - The employee designated by the District as its representative during the term of this Contract.

“PROMPT PAYMENT DISCOUNT” - As provided for on the Bid Form, Contractor may accept the prompt payment discount of 2% 10 days, which shall mean, if the District issues payment within 10 days, the payment due shall be reduced by 2%. A payment is considered made on the day it is mailed or is sent through electronic or wire transfer.

“SUBCONTRACTOR” - A contractor/supplier hired by the Contractor to supply materials, equipment or services related to these Contract Documents, if any.

“TOTAL BID PRICE” - The properly calculated total of the Bid Items on the Bid Form.

GC-3. SUSPENSION OF CONTRACT OTHER THAN FOR DEFAULT

The District may, at its sole option, by notice in writing to the Contractor suspend or terminate at any time the performance of any portion or this entire Contract. The Contractor shall use its best efforts to minimize costs associated with suspension or termination.

- A. Upon receipt of any such notice, the Contractor shall:
  - 1. Immediately discontinue work as specified in the notice;
  - 2. Place no further orders or subcontracts for material, services, or equipment with respect to suspended or terminated portion of the Contract;
  - 3. Promptly suspend or terminate all orders, subcontracts, and rental agreements to the extent they relate to performance of the portion of the Contract suspended or terminated;
  - 4. Assist District Representative or District in the maintenance, protection, and disposition of work in progress, plant, tools, equipment property, and materials acquired by Contractor or furnished by Contractor under this Contract; and
  - 5. Complete performance of the portion of the Contract which is not terminated.
- B. As full compensation for such suspension the Contractor shall be reimbursed for the following costs, reasonably incurred, without duplication of any item, to the extent that such costs directly result from such suspension of work:
  - 1. A standby charge, as determined to be equitable by the District Representative, to be paid to the Contractor during a period of suspension of work sufficient to compensate the Contractor for keeping, to the extent required in the notice, its organization and equipment committed to the work in a standby status;
  - 2. All reasonable costs, as determined to be equitable by the District Representative, associated with any demobilization and remobilization of the Contractor's plant, forces, and equipment;
  - 3. Any claim on the part of the Contractor for additional time or compensation shall be made within 10 days after receipt, by Contractor, of a notice to suspend work. Failure to submit a claim within the 10 day period shall constitute a waiver of any such claim; and
  - 4. In no event shall the amount to be paid the Contractor pursuant to this section exceed the Contract Price.
- C. Upon receipt of notice to resume suspended work, the Contractor shall immediately resume performance of the suspended portion of the Contract to the extent required in the notice. Any claim on the part of the Contractor for time or compensation shall be made within 10 days after receipt of notice to resume work and the Contractor shall submit a revised project schedule for review.
- D. Upon delivery of a written notice to the Contractor, the District may, without cause and without prejudice to any other right or remedy, elect to terminate the Contract. Upon receipt of any such notice, the Contractor shall take all appropriate steps in part A of this Section GC-3.

Upon any such termination, Contractor shall waive any claims for damages including Contractor's overhead, loss of anticipated profits, and all other inconvenience, expenses, damages, costs and lost profits whatsoever.

If such termination is effected after Contract Award, the District shall pay the reasonable, verifiable and directly attributable costs incurred by the Contractor in the preparation of Bidder's Bid plus 15% of such costs. If Contractor has commenced performance hereunder, the District shall pay the reasonable, verifiable and directly attributable costs incurred by the Contractor as determined by the physical progress of the work satisfactorily completed to date, plus 10% of the sum of all such costs; provided, said payment shall not in any event exceed the Contract Price hereunder. The payment of the District shall constitute full and complete satisfaction and settlement for the Contractor's overhead, anticipated profits, and all other inconvenience, expenses, damages, costs and lost profits whatsoever. The Contractor shall be entitled to no further payments whatsoever for the work.

Contractor shall submit within 30 days after receipt of notice of termination, a request for adjustment to the Contract Price in accordance with the above provisions. District Representative shall review, analyze, and verify such request, and upon District Representative's approval, the Contract shall be amended in writing accordingly.

Those provisions of the Contract that by their nature survive the Contract shall remain in full force and effect after such termination.

#### GC-4. TERMINATION FOR DEFAULT/NONCOMPLIANCE

##### A. Acts of Default

If Contractor fails in any material way to comply with any of the conditions or provisions of the Contract Documents or is unable to pay its debts as they mature or authorizes or takes any action under bankruptcy or reorganization, readjustment of debt, insolvency, liquidation or other similar laws or proceedings it shall be considered an act of default.

##### B. Consequences of Default

In the event of default, the District may immediately, without limiting any other remedy available to it in law or equity, withhold any amount otherwise due under the Contract. The District shall provide written notice of default. In the event the default can be cured, and Contractor fails to correct the default within 10 days after written notice of default, the District may terminate the Contractor's right to proceed with all or any portion of the work. The District's right to liquidated damages shall not in any manner limit any other remedy available to the District, including but not limited to, the District's right to terminate the Contractor's right to proceed.

##### C. Noncompliance

The Contractor shall, upon receipt of written notice of noncompliance with any provision of this Contract and the action to be taken, immediately correct the conditions to which attention has been directed. Such notice, when served on the Contractor or Contractor's representative, shall be deemed sufficient. If the Contractor fails or refuses to comply promptly, the District Representative may issue an order to suspend all or any part of the

work. When satisfactory corrective action is taken, an order to resume work shall be issued. No part of the time lost due to any such suspension order shall entitle the Contractor to any extension of time for the performance of the Contract or to reimbursement for excess costs or damages.

GC-5. ASSIGNMENT

The Contractor shall not assign this Contract or any interest in or part thereof, or any monies due or to become due hereunder, without the prior written approval of the District. Any costs to the District associated with the assignment may be deducted from amounts due to the Contractor.

GC-6. INDEMNITY

- A. Contractor shall defend, indemnify and hold harmless the District and its representatives (which shall be deemed to include the District's directors, officers, employees and agents) from and against any and all liabilities, claims, losses, damages or expenses of any type or kind, including reasonable legal fees, and expert witness fees, which may be incurred or sustained by the District or its representatives by reason of any act, omission, misconduct, negligence, or default on the part of the Contractor or arising in connection with the supplies, material or equipment to be furnished pursuant to these Contract Documents.
- B. Contractor's indemnification obligation shall not apply to liability for damages arising out of bodily injury to persons or damage to property caused by the negligence of the District or its agents or employees and not attributable to any act or omission on the part of the Contractor. In the event of damages to person or property caused by or resulting from the concurrent negligence of District or its agents or employees and the Contractor or its agents or employees, the Contractor's indemnity obligation shall apply only to the extent of the Contractor's (including that of its agents and employees) negligence.
- C. Contractor acknowledges that by entering into a contract with the District, Contractor has mutually negotiated the above indemnity provisions with the District. Contractor's indemnity and defense obligations shall survive the termination or completion of the Contract and remain in full force and effect until satisfied in full.

GC-7. LAWS, REGULATIONS, PERMITS

The Contractor represents that it is familiar with, and shall be governed by and comply with, all federal, state and local statutes, laws, ordinances, and regulations including amendments and changes as they occur. The Contractor and any Subcontractors shall be responsible for ensuring that its employees fully comply with the District's Code of Ethics, a copy of which is available at the District's offices.

All written instruments, agreements, specifications and other writing of whatsoever nature which relate to or are a part of this Contract 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 District and Contractor shall be governed by the laws of the State of Washington. Venue of any action filed to enforce or interpret the provisions of this Contract shall be exclusively in the Superior Court, County of Grant, State of Washington or the Federal District Court for the Eastern District of Washington at the District's sole option. In the event of litigation to enforce the provisions of this Contract, the prevailing party shall be entitled to reasonable legal fees in addition to any other relief allowed.

GC-8. DAMAGES

Any claims arising under the Contract by the Contractor shall be made in writing to the District Representative no later than 10 days after the beginning of the event or occurrence giving rise to the claim. Failure to make written claim prior to the time specified in the Contract Documents shall constitute waiver of any such claim.

GC-9. WARRANTY

The Contractor agrees that all materials and equipment furnished pursuant to the Contract shall be free from all inherent defects in design, workmanship and material and shall give proper and continuous service under all conditions of service required and specified or which may be reasonably inferred from the Contract Documents. The Contractor shall immediately upon receiving notice from the District repair or replace any materials or equipment which, under normal and proper use, prove defective within one year from the date of delivery to the District. In lieu of this warranty, the Contractor may submit with their Bid a manufacturer's standard warranty that equals or exceeds the warranty above.

If at any time prior to the expiration of the warranty period, Contractor or District discovers any defect in such design, materials or workmanship, the Contractor shall, upon written notice from the District given within a reasonable time after discovery, correct such defects to the satisfaction of the District by redesigning, repairing or replacing the defective work at a time acceptable to District. All costs incidental to such corrective action including but not limited to removal, disassembly, reinstallation, reconstruction, re-testing and re-inspection as may be necessary to correct the defect or demonstrate that the previously defective work conforms to the requirements of the Contract shall be borne by the Contractor.

Contractor shall not be liable to the District either in contract or in tort (including negligence or strict liability) for consequential damages consisting of the District's loss of profits, its loss of revenue or its cost of replacement power.

The warranty requirements in this section are the minimum requirements for materials or equipment under this Contract. Any other warranty requirements specified in the Contract, including the Technical Specifications, are in addition to, and not in lieu of the minimum requirements specified herein.

GC-10. CHANGES IN WORK

Without invalidating the Contract, the District may make changes by altering, adding or deducting from the work, and/or make changes in the Contract Drawings and Technical Specifications requiring changes in the work and/or materials and equipment to be furnished under this Contract; provided such additions, deductions or changes are within the general scope of the Contract. Except as provided herein, no official, employee, agent or representative of the District is authorized to approve any change in this Contract and it shall be the responsibility of the Contractor before proceeding with any change, to satisfy itself that the execution of the written Change Order has been properly authorized on behalf of the District. The District's management has limited authority to approve Change Orders. The current level and limitations of such authority are set forth in District Resolution No. 8609 which may be amended from time to time. Otherwise, only the District's Board of Commissioners may approve changes to this Contract.



Charges or credits for the work covered by the approved changes shall be determined by one or more, or a combination of the following methods, at the District's option:

- A. Unit prices specified in the Bid Form.
- B. An agreed lump sum. When requested, Contractor shall provide a detailed proposal for evaluation by the District, including, as applicable:
  - 1. Detailed proposed labor categories, hours, and rates.
  - 2. Specific materials and quantities.
  - 3. Equipment and equipment hours.
  - 4. Administrative cost and profit.
- C. The actual cost related to the change of:
  - 1. Labor, including foreman, only for employees who will work directly on the work covered by the Change Order.
  - 2. Materials entering permanently into the work.
  - 3. The ownership or rental cost of plant and equipment during the time of use on the project.
  - 4. Power and consumable supplies for the operation of power equipment.
  - 5. Insurance.
  - 6. Social Security and old age and unemployment contributions.
  - 7. To the sum of Items 1, 2, 4, 5, and 6 inclusive, there shall be added a fixed fee of 15%. The fee shall be compensation to cover the cost of supervision, overhead, bond, profit and any other general expenses.

When a change is ordered by the District, as provided herein, a Change Order shall be executed by the District and the Contractor before any Change Order work is performed. The District shall not be liable for any payment to Contractor, or claims arising therefrom, for Change Order work which is not first authorized in writing as set forth in this section. All terms and conditions contained in the Contract Documents shall be applicable to Change Order work. Change Orders shall be issued on the form attached as Exhibit "E" and shall specify any change in time required for completion of the work caused by the Change Order and, to the extent applicable, the amount of any increase or decrease in the Contract Price.

The District Representative may instruct the Contractor to make minor changes in the work where such changes are not inconsistent with the purposes of the Contract, do not involve any additional cost and shall not require an extension of the Contract completion date. The Contractor shall make no such changes without receipt of a District Instruction, Exhibit "J", setting forth the changes to be made. Contractor's compliance therewith shall constitute its acknowledgment that such changes shall not result in any claim for additional payment or extension of the Contract completion date. District Instructions, when issued, shall be in writing and signed by the District Representative.

If the Contractor believes the instruction shall result in additional costs or time extensions, Contractor shall promptly notify the District of the same and not proceed with the changes.

No waiver of any provision of the Contract, and no consent to departure there from, by either party, shall be effective unless in writing and signed by the waiving or consenting party, and no such waiver or consent shall extend beyond the particular case and purpose involved.

If Contractor believes that any requirement, direction, instruction, interpretation, determination, or decision of the District described in a Change Order entitles Contractor to an adjustment in the Contract Price or time for performance and Contractor refuses to execute the Change Order, then Contractor shall submit a claim as provided in Section GC-8 of this Contract. Notwithstanding the submission of any such claim, Contractor shall proceed without delay to perform the work described in the Change Order.

#### GC-11. PAYMENT

The Contractor may submit an invoice for payment following delivery of the specified equipment/material, which conforms to the Contract Documents. The invoice shall contain detailed information identifying the number of units of each Bid Item actually furnished multiplied by the applicable Bid Unit Price. The invoice shall be submitted for District verification and approval. Payment will be made to the Contractor within 30 days after the District has inspected the equipment/material and has determined that it is in conformance with the Contract Documents. Contractor understands and agrees that by executing this Contract with the District, the District shall make payment(s) by automated clearing house (ACH). If accepted by the Contractor on the Bid Form and the District issues payment within 10 days, the payment due shall be reduced by 2%.

Invoices shall include the Contract number 170-12697 and be addressed as follows:

Public Utility District No. 2  
of Grant County, Washington  
Attn: Accounts Payable  
PO Box 878  
Ephrata, WA 98823  
  
Phone: (509) 793-1450  
E-mail: [AccountsPayable@gcpud.org](mailto:AccountsPayable@gcpud.org)

**The following two paragraphs apply only to material manufactured in the State of Washington:** The District shall withhold the sum of 5% of the amount of each payment to the Contractor as retainage in accordance with R.C.W. Chapter 60.28 of the Revised Code of the State of Washington.

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 R.C.W. Chapter 60.28. However, any payments made to the Contractor hereunder shall not relieve the Contractor from responsibility under provision of the Contract 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 Contract Documents.

GC-12. PAYMENTS WITHHELD

In addition to the above percentage retained, if any, the District may withhold the whole or part of any certificate for payment to such extent as may be reasonably necessary to protect itself from loss on account of:

- A. Defective or damaged work not remedied or warranties not met.
- B. Claims filed or reasonable evidence indicating filing of claims against the Contractor.
- C. Failure of the Contractor to make payments properly to Subcontractors or for materials, labor, or equipment.
- D. A reasonable doubt that the Contract can be completed for the balance then unpaid.
- E. Damage to or loss of District-furnished materials or District property.
- F. Contractor's failure to meet any performance warranties required by the Contract Documents.

The Contractor shall provide a contact name, address, and email address to facilitate notification if any payment, or portion of any payment, is withheld for any of the reasons above, or for missing documentation or items incorrectly invoiced. Notification shall be made via email, or shall be mailed, properly addressed and stamped with the required postage to the person designated by the Contractor.

GC-13. CONFLICT AND PRECEDENCE/INTENT

- A. In the event there are any conflicting provisions or requirements in the component parts of the Contract, the several Contract Documents shall take precedence in the following order:
  - 1. Change Orders
  - 2. Contract Form
  - 3. Addenda
  - 4. Specific Requirements
  - 5. General Conditions
  - 6. Technical Specifications
  - 7. Contract Drawings
  - 8. Instructions to Bidders
  - 9. Payment and Performance Bond
  - 10. Bid Proposal
- B. The intent of the Contract Documents is to prescribe a complete work. Contractor shall furnish all labor, tools, equipment, transportation, supplies and incidentals required to provide the materials or equipment to be supplied under this Contract. The Contract Price shall be full pay for all materials or equipment required to be provided under this Contract.

#### GC-14. RIGHT TO OPERATE UNSATISFACTORY EQUIPMENT

The District shall have the right to operate all equipment as soon and as long as it is in operating condition, whether or not such equipment has been accepted as complete and satisfactory, except that this shall not be construed to permit operating of any equipment which may be materially damaged by such operation before any required alterations or repairs have been made. All repairs or alterations required of the Contractor shall be made by the Contractor at such times as directed and in such manner as will cause the minimum interruption in the use of the equipment by the District.

#### GC-15. TAXES

- A. Except for the Washington State retail sales and use taxes as may be levied upon the Contract, pursuant to RCW Chapters 82.08 and 82.12, the Contract Price includes and the Contractor shall have the full exclusive liability for the payment of all taxes, levies, duties and assessments of every nature due and payable in connection with this Contract or its employees and Subcontractors performing work related to this Contract.
- B. Washington State retail sales tax and use taxes levied upon this Contract pursuant to RCW Chapters 82.08 and 82.12 are excluded from the rates and if applicable will be reimbursed as follows:
  - 1. If the Contractor has, or is required to have a valid Washington State sales tax identification number, the identification number shall be furnished to the District upon request. The Contractor shall make payment of any Washington State retail sales and use taxes due and Contractor shall be reimbursed by the District for the same. Contractor shall be solely responsible for any interest or penalties arising from late or untimely payment of said taxes.
  - 2. If the Contractor is not required to have a valid Washington State sales tax identification number, it shall notify the District of the same. In such event, the District, after receiving proper invoices from Contractor, shall make payment of said Washington State retail sales and use taxes levied upon this Contract to the Washington State Department of Revenue.

#### GC-16. NON-WAIVER

No waiver of any provision of this Contract, or any rights or obligations of either party under this Contract, shall be effective, except pursuant to a written instrument signed by the party or parties waiving compliance, and any such waiver shall be effective only in the specific instance and for the specific purpose stated in such writing. The failure of either party to require the performance of any term of this Contract or the waiver of either party of any breach under this Contract shall not operate or be construed as a waiver of any other provision hereof, nor shall it be construed as a waiver of any subsequent breach by the other party hereto.

#### GC-17. DISTRICT REPRESENTATIVE'S STATUS, AUTHORITY AND PROTEST PROCEDURE

The District Representative shall represent the District. The District Representative has authority to stop the work whenever such stoppage may be necessary to ensure the proper execution of the Contract. The District Representative shall also have authority to reject all work, equipment, and materials which do not conform to the Contract and to decide questions which arise in the execution of the work.

Approval by the District Representative signifies favorable opinion and qualified consent. It does not carry with it certification, assurance of completeness, assurance of quality, nor assurance of accuracy concerning details, dimensions, and quantities. It is not an acceptance by the District or certification that Contractor has performed the Contract work correctly or according to Contract Documents. Such approval shall not relieve the Contractor from responsibility for errors or for deficiencies within its control.

All claims of the Contractor and all questions relating to the interpretation of the Contract, including all questions as to the acceptable fulfillment of the Contract on the part of the Contractor and all questions as to compensation, shall be submitted in writing to the District Representative for determination within the applicable time period specified in the Contract Documents.

All such determination and other instructions of the District Representative shall be final unless the Contractor shall file with the District Representative a written protest, stating clearly and in detail the basis thereof, within 10 days after the District Representative notifies the Contractor of such determination or instruction. The protest shall be forwarded by the District Representative to the District's General Manager, who shall issue a decision upon each such protest, and its decision shall be final. Pending such decision, the Contractor, if required by the District Representative, shall proceed with the work in accordance with the determination or instructions of the District Representative.

The District Representative may appoint assistants and inspectors to assist in determining that the work performed and materials furnished comply with Contract requirements. Such assistants and inspectors shall have authority to reject defective material and suspend any work that is being done improperly, subject to the final decisions of the District Representative, or to exercise such additional authority as may be delegated to them by the District Representative. All work done and all materials furnished shall be subject to inspections by the District Representative or inspector at all times during the work.

The District Representative and contact information for this Contract is listed below.

Chris Johnson  
Public Utility District No. 2  
of Grant County, Washington  
PO Box 878  
Ephrata, WA 98823  
(509) 793-1502  
Cjohnson@gcpud.org

#### GC-18. ACTIVITIES ON DISTRICT PREMISES

If Contractor or any of its Subcontractors or suppliers of any tier performs any activities on premises owned, leased, possessed or controlled by the District, Contractor shall:

- A. Take all precautions which are necessary to prevent injury to persons and damage to any property or the environment in connection with such activities;
- B. Release, defend, indemnify and hold harmless the District and its officers, agents, and employees from all claims, losses, harm, liabilities, damages, costs and expenses, including but not limited to reasonable attorney's fees that may arise in connection with such activities; and

- C. Maintain in effect at all times during performance of such activities Commercial General Liability insurance (including blanket contractual) with limits not less than \$1,000,000 per occurrence; automobile liability for all vehicles used under the contract for bodily injury, and property damage with limits not less than \$1,000,000 per accident; statutory workers' compensation; and employer's liability with limits not less than \$1,000,000. Without limiting the generality of the foregoing, Contractor assumes potential liability for acts brought by Contractor's employees, Subcontractors, or suppliers of any tier.
- D. Upon request, the Contractor shall promptly furnish to District such certificates of insurance and other evidence of the insurance required under this section naming the District as Additional Insured. The District shall have the right but not the obligation of prohibiting the Contractor or its Subcontractors from entering District premises until such certificates have been provided as evidence of compliance with these requirements.

GC-19. WAGES PAID BY THE CONTRACTOR

**This Section applies only to material manufactured in the State of Washington.** Contractor and its Subcontractors shall comply with all provisions of R.C.W. Chapter 39.12 and Section 2.5 of the Collective Bargaining Agreement (hereinafter referred to as Section 2.5) between the District and IBEW Local No. 77. A copy of Section 2.5 is attached hereto as Exhibit "H". Contractor and its Subcontractor shall pay all laborers, workmen, or mechanics employed by it or them in the performance of this Contract the greater of: (1) the applicable state prevailing wage rate required by (R.C.W. Chapter 39.12); or (2) the applicable wage rate required by Section 2.5. In the event the applicable wage rate(s) required to be paid by the Contractor or its Subcontractors change during the performance of this Contract, Contractor and its Subcontractors shall make any required adjustment so as to fully comply with any applicable state prevailing wage rate law (R.C.W. Chapter 39.12) and Section 2.5. Notwithstanding the foregoing, the District shall not be required to make any adjustment in the Contract Price as a result of changes in either the state prevailing wage rate law or Section 2.5, except as provided in W.A.C. 296-127-023.

Prior to any payments being made to Contractor, the Contractor and each and every Subcontractor shall file a "Statement of Intent to Pay Prevailing Wages" which has been approved by the Department of Labor and Industries as required by R.C.W. 39.12.040.

Washington State hourly prevailing wage rates are located at <http://www.lni.wa.gov/TradesLicensing/PrevWage/WageRates/default.asp>. It shall be the Contractor's responsibility to determine the locality of the work.

GC-20. ACCEPTANCE AND FINAL PAYMENT

**This Section applies only to material manufactured in the State of Washington.** When the Contractor has delivered all materials/equipment and completed all work in accordance with the terms of the Contract Documents, the Contractor shall properly execute and submit final invoice to the Procurement Officer. Once final invoice has been processed, the District's Procurement Department will issue the Certificate of Completion and Release (see Exhibit "G") to be executed by the Contractor and returned to the Procurement Officer. The Certificate of Completion and Release shall constitute a waiver of all claims by the Contractor except for unsettled claims specifically stated, if any.

The Certificate of Completion and Release shall warrant that the Contractor has fully completed its work included in the Contract and has fully paid for labor, materials, equipment, services, taxes

and all other costs and expenses of every nature and kind whatsoever resulting from this Contract. If any dispute exists between the Contractor and any person, firm or corporation to which the Contractor might be obligated in connection with this Contract, the Contractor shall state the name of claimant and amount and general nature of claim against the Contractor. The Certificate of Completion and Release shall state the amount and nature of all present and future claims that the Contractor may have against the District relative to this Contract. The Contract work shall not be complete until after the Contractor has returned to the Procurement Officer a properly completed Certificate of Completion and Release.

Upon receipt of Certificate of Completion and Release by the Procurement Officer, the District Representative provides a recommendation relative to Final Acceptance. The District shall, within a reasonable time, take action on Final Acceptance. Such action shall be subject to the condition of the Payment and Performance Bond, legal rights of the District, required warranties, and correction of faulty work discovered after final payment. The District shall have the right to retain from any payment then due the Contractor, so long as any bills or claims remain unsettled and outstanding, a sum sufficient, in the opinion of the District, to provide for the payment of the same. It is also understood and agreed that, in the case of any breach or damage by the Contractor of the provisions hereof, the District may retain from any payment or payments a sufficient sum in the opinion of the District which may become due under any obligation of the District.

Sixty days after Final Acceptance, retainage may be released to the Contractor; provided, however, that there are no claims filed of materialmen or laborers and that the District has received the approved affidavit showing payment of prevailing wages for the Contractor and any Subcontractors. If any liens remain unsatisfied from the retainage, the Contractor shall refund to the District such amounts as the District may have been compelled to pay in discharging such liens including all costs and reasonable legal fees.

#### GC-21. BOND IN LIEU OF RETAINAGE

**This Section applies only to material manufactured in the State of Washington.** Pursuant to RCW Chapter 60.28, the Contractor may submit a bond in lieu of the retainage that the District would otherwise keep under the terms of this Contract and pursuant to applicable law. Any such bond submitted in lieu of retainage must be on the form provided with these Contract Documents (see Exhibit "I"). In the event the Contractor fails at any time to pay persons protected under RCW Chapter 60.28 or the District has reason to believe that the District or other obligee under the bond has a claim against the retainage or for other good cause, the District may, at its option, resume retaining from monies earned by the Contractor in such amount as it would otherwise be entitled to retain had the bond not been accepted. Notwithstanding the District's resuming such retainage, said bond shall remain in full force and effect to the extent of its penal sum, limited to the amount of retainage released to the Contractor. After the Contractor has paid protected persons or otherwise cured any default, the District may, at its option, again release retainage pursuant to the terms of the Bond. Not less than 30 days following Final Acceptance, District receipt of an Affidavit of Wages Paid approved by the Washington State Department of Labor & Industries, and District receipt of the proper releases from Washington State Department of Revenue, Employment Security Department, and Washington State Department of Labor and Industries, the original Bond in Lieu of Retainage shall be destroyed unless the Surety or Contractor requests the return of the bond, in writing, prior to destruction. Any costs associated with the Bond in Lieu of Retainage shall be included in the Total Bid Price.

**SPECIFIC REQUIREMENTS**

**SR-1. SCOPE OF SUPPLY**

The Contractor shall supply Substation Shaped Steel Structures manufactured in accordance with these Contract Documents.

**SR-2. DELIVERY**

The Contractor shall not commence any work under this Contract until after all of the following: (1) receipt of notification of Contract Award; (2) full execution of the Contract Form; (3) providing the required Payment and Performance Bond; and (4) receipt of the District issued purchase order.

Delivery of the Substation Shaped Steel Structures shall be no later than December 31, 2025. Delivery shall be F.O.B. the District's jobsite, located at the Mountain View Substation, 10095 Road S NW, Quincy Washington. 98848. This shall mean that the Contractor will pay the cost of transportation to have the Substation Shaped Steel Structure delivered "free on board" to the District's jobsite located at the Mountain View Substation, 10095 Road S NE, Quincy, Washington. It also shall mean that the title and risk of loss do not pass until the Substation Shaped Steel Structures have been inspected and moved from the conveyance.

**SR-3. SHIPPING AND NOTIFICATION INSTRUCTIONS**

All materials and equipment shall be suitably packed to ensure against damage from weather or transportation and in accordance with the requirements of common carriers. The delivery address and Contract number shall be clearly marked on the outside of all packaging. Each shipment must be accompanied by a packing list, which shall reference the Contract number, the purchase order number and include item descriptions, part numbers, and quantities. Any bills of lading, shipping order or the like shall also contain the above listed information.

Advance notification of shipment of the equipment/material is required. Contractor shall notify the contacts below, 48 hours prior to delivery of shipment. Failure by the Contractor to provide the advance notification specified herein may result in delays in unloading and receipt. The costs of all such delays shall be charged to the Contractor's account.

Name	Phone Number	E-Mail
Gus Mihelich Warehouse Foreman	(509) 754-5088 Ext. 2268	Amihelich@gcpud.org
Chris Johnson, District Representative	(509) 754-5088 Ext. 2345	Cjohnson@gcpud.org

District receiving hours are Monday through Thursday, 6:30 a.m. – 12:00 p.m. and 12: 30 p.m. – 3:30 p.m. No deliveries will be received on District observed holidays or during any other times unless specific prior arrangements have been made with the District's Warehouse Foreman. District observed holidays are as follows: New Year's Day, Martin Luther King Jr. Day, President's Day, Memorial Day, Juneteenth Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving Day, Native American Heritage Day, and Christmas Day. If a holiday falls on Saturday, it will be observed on the previous Friday. If a holiday falls on a Sunday, it will be observed on the following Monday.



**TECHNICAL SPECIFICATIONS**

The Technical Specifications will be posted as a separate document on the District's ProcureWare website.

**EXHIBIT “A” - BID FORM**

COMPANY NAME OF BIDDER: \_\_\_\_\_  
 (Full Legal Name)

MANUFACTURER: \_\_\_\_\_

TO: Public Utility District No. 2  
 of Grant County, Washington  
 154 A Street SE Building E  
 Ephrata, Washington 98823

Having carefully examined Contract Documents, including any Technical Specifications and Contract Drawings as well as the premises and conditions affecting the delivery, the undersigned hereby proposes to furnish and deliver the specified equipment/material in strict accordance with these Contract Documents for the price(s) indicated below.

As evidence of good faith, a certified check, Cashier's Check or a Bid Bond in an amount not less than 5% of Total Bid Price is attached hereto. The undersigned understands and hereby agrees that should the following offer be accepted and the undersigned should fail or refuse to enter into a Contract and furnish the required Payment and Performance Bond, the undersigned's Certified Check, Cashier's Check or an amount equal to 5% of the total amount Bid shall be forfeited to the District as liquidated damages.

The Total Bid Price (calculated total of Bid Item Prices 1 through 9) shall be used in the Bid Evaluation. A price must be placed on each blank or the Bid shall not be considered. In case of an error in addition, the correctly calculated total of the Bid Item Prices (Quantity times Bid Unit Price) shall prevail.

Bid Item No.	Description	Unit Type	Quantity	Bid Unit Price	Bid Item Price
1	230kV 3 Phase Bus Support (STLBPD)	EA	18	\$	\$
2	230kV 3 Phase 45Deg Bus Support (STLBPE)	EA	14	\$	\$
3	230kV Low Switch Structure (STLSW230D)	EA	21	\$	\$
4	230kV PT and CT Structure (STLCCVT)	EA	66	\$	\$
5	230kV High Switch Structure (STLSW230E)	EA	14	\$	\$
6	230kV Single Phase Low Bus Support Pedestal (STLBPJ)	EA	6	\$	\$

Bid Item No.	Description	Unit Type	Quantity	Bid Unit Price	Bid Item Price
7	230kV 3 Phase High Bus Support Structure (STLBPK)	EA	24	\$	\$
8	B1 Anchor Bolt Cage	EA	242	\$	\$
9	B3 Anchor Bolt Cage	EA	48	\$	\$
<b>TOTAL BID PRICE</b>					\$

Prices are F.O.B. the location specified in the Contract Documents. The Total Bid Price includes the cost of the Payment and Performance Bond required by Contract Documents but do not include Washington State and Local Taxes.

The above quantities are final quantities and shall be interpreted as the Contract Price. Payment shall be made by Bid Item for material and equipment delivered which conforms these Contract Documents.

Prompt Payment Discount of 2% 10 days (see Section GC-2). Bidder understands and accepts the Prompt Payment Discount. Yes  No

Bidder has enclosed a Cashier's Check, Certified Check or Bid Bond in accordance with Instructions to Bidders Section 9. Yes  No

Bidder shall deliver all materials/equipment in accordance with Section SR-2. Yes  No

Bidder (full legal name):	
Street Address:	
Mailing Address:	
City, State, and Zip Code:	
Phone:	
Email:	
<p>The District uses DocuSign to sign the final Contract Form following Contract Award. Please provide the following information for the person who will be signing the final Contract Form in the event you are the successful Bidder.</p> <p>Name: _____ Title: _____ Email: _____</p>	
Washington State Unified Business Identifier (UBI) No.	
Washington State Sales Tax ID Number	

We hereby certify that we are not required to have a Washington State Sales Tax Identification Number for this work:

Attached hereto is the Bid proposal and all Bidder's Data required in support of this Bid.

Addendum Nos. (list all) \_\_\_\_\_ have been received and have been considered in preparing this Bid.

Signature: \_\_\_\_\_ Title: \_\_\_\_\_

Name (Print): \_\_\_\_\_ Date: \_\_\_\_\_  
Authorized Representative

Location or Place Executed (City and State): \_\_\_\_\_

**Note: Failure to sign the Bid Form above shall result in rejection of the Bid. Digital signatures are not allowed on the Bid Form.**

**EXHIBIT "B" - BID BOND**

**KNOW ALL MEN BY THESE PRESENTS:** That we \_\_\_\_\_ (hereinafter called "the Principal"), as Principal, and \_\_\_\_\_ duly licensed for the purpose of making, guaranteeing or becoming sole surety upon bonds or undertakings required or authorized by the laws of the State of Washington, as Surety, are held and firmly bound unto PUBLIC UTILITY DISTRICT NO. 2 OF GRANT COUNTY, WASHINGTON (hereinafter called "the Obligee") in the penal sum of \$ \_\_\_\_\_ lawful money of the United States of America, for the payment of which, well and truly to be made, we hereby bind ourselves and each of our successors and assigns, jointly and severally, firmly by these presents.

**THE CONDITION OF THIS OBLIGATION IS SUCH THAT,** if the Obligee shall make any award to the Principal for \_\_\_\_\_ according to the terms of the proposal or Bid made by the Principal therefore, and the Principal shall duly make and enter into a contract with the Obligee in accordance with the terms of said proposal or Bid and award and shall give bond for the faithful performance thereof with the \_\_\_\_\_, as Surety, or with other Surety or Sureties approved by the Obligee, or if the principal shall, in case of failure so to do, pay to the Obligee the penal amount of the deposit specified in the call for Bids, then this obligation shall be null and void; otherwise it shall be and remain in full force and effect, and the Surety shall forthwith pay and forfeit to the Obligee, as penalty and liquidated damages, the amount of this bond.

**IN WITNESS WHEREOF,** said Principal and said Surety have caused these presents to be duly signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

PRINCIPAL

SURETY

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

\* Bidder shall attach Power of Attorney for person signing on behalf of Surety.

**EXHIBIT "C" - CONTRACT FORM**

This Agreement, effective upon full execution, is by and between Public Utility District No. 2 of Grant County, Washington ("District") and Full Legal Name of Contractor ("Contractor");

**WITNESSETH:**

That parties hereto for the considerations set forth in the Contract Documents agree as follows:

1. **SCOPE OF WORK** - The Contractor agrees to furnish Substation Shaped Steel Structures in the manner and form provided by the Contract Documents 170-12697 made a part hereof, entitled Supply Substation Shaped Steel Structures.
2. **DELIVERY** - The Contractor shall deliver the equipment/materials, F.O.B. the District's jobsite. The Contractor shall deliver the equipment/materials on or before the dates specified in these Contract Documents; failure to do so may result in damage to the District.
3. **PAYMENT** - The District agrees to pay the Contractor for the equipment/materials to be provided the not to exceed sum of \$ \_\_\_\_\_, subject to the Prompt Payment Discount provision (see Section GC-2), plus applicable Washington State Sales Tax in accordance with the Contract Documents.
4. **PAYMENT AND PERFORMANCE BOND** - The Contractor shall furnish in favor of the District, a Payment and Performance Bond as required by the Contract Documents, and this Contract shall not obligate the District until such Payment and Performance Bond has been tendered.

The parties to this Agreement have caused it to be executed on the dates indicated below. This Agreement may be executed in counterparts, each of which shall be deemed to be an original but all of which taken together shall constitute one and the same agreement.

Public Utility District No. 2  
of Grant County, Washington

Full Legal Name of Contractor

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

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

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT "D" - PAYMENT AND PERFORMANCE BOND**

KNOW ALL MEN BY THESE PRESENTS, That \_\_\_\_\_  
of \_\_\_\_\_  
, (hereinafter called the "Principal"), and \_\_\_\_\_,  
as Surety, are jointly and severally held and bound unto PUBLIC UTILITY DISTRICT NO. 2 OF GRANT  
COUNTY, WASHINGTON (hereinafter called the "District"), in the sum of \$\_\_\_\_\_ for the  
payment of which we jointly and severally bind ourselves, our heirs, executors, administrators and assigns,  
and successors and assigns, firmly by these presents.

This bond is executed pursuant to and compliance with Chapter 39.08, Revised Code of  
Washington, and all rights and remedies under this bond shall be determined in accordance therewith.

THE CONDITION of this bond is such that, WHEREAS, the said Principal herein, executed a  
certain contract with the District, by the terms, conditions and provisions of which contract the said  
Principal herein, agrees to furnish all material and do certain work, to-wit:  
\_\_\_\_\_ per the  
Contract Documents made a part of said contract, which contract as so executed is hereunto attached, is  
now referred to and by reference is incorporated herein and made a part hereof as fully for all purposes as  
if here set forth at length.

NOW, THEREFORE, if the Principal herein shall faithfully and truly observe and comply with the  
terms, conditions and provisions of said contract in all respects, including all guarantees and warranties  
arising thereunder, and shall well and truly and fully do and perform all matters and things by it undertaken  
to be performed under said contract, upon the terms proposed therein and within the time prescribed therein,  
or within such extensions of time as may be granted under said contract and shall hold the District harmless  
from all costs and damages (including reasonable legal fees) which it may incur by reason of any failure to  
do so, and shall fully reimburse and repay the District for all expense which it may incur in making good  
any such failure of performance on the part of the Principal, and shall pay all laborers, mechanics, and  
subcontractors and material suppliers, and all persons who supply such person or persons, or subcontractors,  
with provisions and supplies for the carrying on of such work and shall fully reimburse the District for any  
excess in cost of construction over the cost set in the contract and any amendments thereto, occasioned by  
any default of the Principal under the contract and any amendments thereto, then this obligation shall be  
null and void, but otherwise shall remain in full force and effect.

No prepayment or delay in payment and no change, extension, addition, or alteration of any  
provision of the Contract agreed to between the Contractor and the District, and no forbearance on the part  
of the District, shall operate to relieve surety from any liability on this bond, and consent to make these  
alterations without further notice to or consent by the surety is hereby given.

The Surety for value received agrees that no change, extension of time, alteration or addition to the  
terms of the Contract, the specifications accompanying the Contract, or to the work to be performed under  
the Contract shall in any way affect its obligation on this bond, except as provided herein, and waives notice  
of any change, extension of time, alteration or addition to the terms of the Contract or to the work performed.  
The Surety agrees that modifications and changes to the terms and conditions of the Contract that increase  
the total amount to be paid to the Principal shall automatically increase the obligation of the Surety on the  
bond and notice to Surety is not required for such increased obligation.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

"PRINCIPAL"

\_\_\_\_\_  
Full legal company name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print name

"SURETY"

\_\_\_\_\_  
Full legal company name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print name

Address of local office and agent, and home  
offices of Surety Company:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\* Contractor shall attach Power of Attorney for person signing on behalf of Surety.



**EXHIBIT "E" - CHANGE ORDER**

NO. \_\_

Pursuant to Section GC-10, the following changes are hereby incorporated into this Contract:

- A. Description of Change:
  
- B. Time of Completion: The revised delivery date shall be \_\_\_\_\_.  
*OR*  
 The delivery date shall remain \_\_\_\_\_.
  
- C. Contract Price Adjustment: As a result of this Change Order, the not to exceed Contract Price shall remain unchanged (be increased/decreased by the sum of \$\_\_\_\_\_ plus sales tax). This Change Order shall not provide any basis for any other payments to or claims by the Contractor as a result of or arising out of the performance of the work described herein. The new total revised maximum Contract Price is \$\_\_\_\_\_, including changes incorporated by this Change Order.
  
- D. Except as specifically provided herein, all other Contract terms and conditions shall remain unchanged.

Public Utility District No. 2  
of Grant County, Washington

Full Legal Name of Contractor

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

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

Name of Authorized Signature  
Title

Name of Authorized Signature  
Title

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT “F” – CONTRACT DRAWINGS**

The Contract Drawings will be posted as a separate document on the District’s ProcureWare website.

**EXHIBIT "G" – CERTIFICATE OF COMPLETION AND RELEASE**

FROM: \_\_\_\_\_  
(Contractor)

TO: Public Utility District No. 2 of Grant County, Washington  
(District)

Contract No. \_\_\_\_\_, entered into the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Between Public Utility District No. 2 of Grant County, Washington and  
\_\_\_\_\_ of \_\_\_\_\_,  
\_\_\_\_\_ for \_\_\_\_\_,  
\_\_\_\_\_  
\_\_\_\_\_

Sample Only

**KNOW ALL MEN BY THESE PRESENTS:**

1. The undersigned hereby certifies that there is due from and payable by the District to the Contractor under the Contract and duly approved Change Orders and modifications the balance of \$ \_\_\_\_\_.

2. The undersigned further certifies that in addition to the amount set forth in paragraph 1, there are outstanding and unsettled the following items which he claims are just and due and owing by the District to the Contractor:

- a. \_\_\_\_\_
- b. \_\_\_\_\_
- c. \_\_\_\_\_
- d. \_\_\_\_\_

**(Itemize claims and amounts due - If none, so state)**

3. The undersigned further certifies that all work required under this Contract including work required under Change Orders numbered \_\_\_\_\_ has been performed in accordance with the terms thereof, and that there are no unpaid claims for materials, supplies, or equipment and no claims of laborers or mechanics for unpaid wages arising out of the performance of this Contract, and that the wage rates paid by the Contractor and all Subcontractors were in conformity with the Contract provisions relating to said wage rates.

4. Except for the amounts stated under paragraphs 1 and 2, hereof, the undersigned has received from the District all sums of money payable to the undersigned under or pursuant to the above mentioned Contractor or any modification or change thereof.

Certificate of Completion and Release  
Page 2

5. That in consideration of the payment of the amount stated in paragraph 1 hereof the undersigned does hereby release the District from any and all claims arising under or by virtue of this Contract, except the amount listed in paragraph 2 hereof; provided however, that if for any reason the District does not pay in full the amount stated in paragraph 1 hereof, said deduction shall not affect the validity of this release, but the amount so deducted shall be automatically included under paragraph 2 as an amount which the Contractor has not released but shall release upon payment thereof. The Contractor further certifies that upon the payment of the amount listed in paragraph 1, hereof, he shall release the District from any and all claims of any nature whatsoever arising out of said Contractor or modification thereof, and shall execute such further released or assurances as the District may request.

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Name: \_\_\_\_\_

Date: \_\_\_\_\_

Authorized Representative

Location or Place Executed (City and State): \_\_\_\_\_

**EXHIBIT “H” – COLLECTIVE BARGAINING AGREEMENT, SECTION 2.5**

2.5 Contracting and Job Security

2.5.1

The District shall make appropriate provisions in any agreement entered into with any building trades, electrical or mechanical contractor or subcontractor, for the furnishing of work to the District, that such contractor or subcontractor shall conform to the Contract provisions of Washington State law affecting Public Utility District at the time of the contract award, except that contracts let in accordance with Section 2.5.2 shall require adherence to current wage rates. The District shall require contractors to furnish the District with the rates of wages and other employee benefits.

2.5.2

For purposes of the preceding paragraph with respect to contracts for line and substation maintenance and construction, including pole testing and tree trimming, current and prevailing wage rates, employee benefits and working conditions shall be defined as the equivalent of those expressed through collective bargaining for the Union's construction membership. Verification of payment shall be furnished to the Union by way of Contractor certified payroll documents upon request. It is agreed by the parties hereto that this requirement can be fulfilled by the contractors having an agreement with Local 77.

2.5.3

Written notice shall be given to the Union prior to the start of pending contract work.

2.5.4

It is recognized by both the Union and the District that a stable total work force is desirable. To this end, the District shall not use contracting as a reason for reduction of force. In the case of lack of work because of automation or technological change, reductions shall be made by attrition when reassignment is not feasible. Employees so affected shall not lose their established pay rate.

**EXHIBIT "I" – BOND IN LIEU OF RETAINAGE**

KNOW ALL MEN BY THESE PRESENTS, that we \_\_\_\_\_,  
as Principal, and \_\_\_\_\_, as Surety, are held and firmly bound  
unto Public Utility District No. 2 of Grant County, Washington (hereinafter "District"), and to any claimants  
eligible to file a lien or claim against monies retained by the District pursuant to RCW 60.28 (hereinafter  
collectively designated as "Obligees"), from monies earned by Principal in the sum stated below, to the  
payment of which, well and truly to be paid, we bind ourselves, or heirs, executors and successors jointly  
and severally, firmly by these presents.

The condition of the obligations is such that, whereas, the Principal and the District entered into a  
Contract for public improvement for \_\_\_\_\_  
and, whereas, the Principal requested the District to accept this bond in lieu of all of the Contract retainage  
which the District would otherwise be required to withhold pursuant to Chapter 60.28 RCW; and whereas,  
the Principal has submitted to the District this bond executed by itself and the Surety, a corporation  
authorized to issue surety bonds in the State of Washington, in the penal sum of, \$ \_\_\_\_\_  
lawful money of the United States of America, which is 5% of the Contract Price, and the Principal has  
requested the District, within 30 days of delivery of the bond to the District, to release the monies that  
would otherwise be retained; and the District has consented to permit Principal to file this bond in lieu  
hereof.

NOW, THEREFORE, if the Principal shall indemnify the Obligees from all loss which Obligees  
may suffer by virtue of the release of retainage to Principal on monies earned or to be earned, and shall pay  
any sum which Obligees may recover on their claims, together with costs of suit, reasonable legal fees, and  
interest to which the claimants may be entitled consistent with law and any claims, costs of suit and  
reasonable legal fees incurred by the District, then this obligation to be null and void, otherwise to be in  
full force and effect.

Provided: however, it is expressly understood and agreed:

1. This bond is given and accepted under and in accordance with the provisions of RCW 60.28 and is subject to all claims and liens and in the same manner and priority as set forth for retained percentages contained therein.
2. The laws of the State of Washington shall be applicable in the determination of the rights and obligations of the parties hereunder.
3. No right of action shall accrue upon or by reason hereof to, or for the use or benefit of anyone other than the Obligees herein identified.
4. The aggregate liability of the Surety under this bond for claims against this bond shall not exceed the penal sum of this bond unless change orders, changes in quantities of work or materials provided or other amendments to the Public improvement Contract increase the amount the District is required to retain, in which event the aggregate liability of the Surety shall increase by a sum equaling the increase in the Contract Price multiplied by 5%.
5. The Surety acknowledges that increases in Contract Price may occur as identified in the preceding paragraph. The Surety hereby waives any defense of lack of notice of said increases and the consequent increases in retainage released to the Principal against claims by the Obligees, or any of them.

- 6. In the event Principal fails at any time to pay persons protected under Washington law, RCW Chapter 60.28, or the District has reason to believe that the District or other Obligee has a claim against the retainage or for other good cause, the District claim against the retainage may, at its option, resume retaining from monies earned by Principal such amount as it would otherwise be entitled to retain had this bond not been accepted. Notwithstanding the District's resuming such retainage, this bond shall remain in full force and effect to the extent of its penal sum, limited to the amount of retainage released to the Principal. After Principal has paid protected persons or otherwise cured any default, the District may, at its option, again release retainage pursuant to this agreement. Notwithstanding any action the District may take pursuant to this section, Surety shall remain liable as set forth above. It shall be no defense, by Surety or Principal, against any claim under this bond that the District should have resumed retaining monies.

IN WITNESS WHEREOF, said Principal and Surety have hereunto set their hands and seal this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

"PRINCIPAL"

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Attorney in Fact

"SURETY"

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Attorney in Fact

Address of local office and agent, and home offices of Surety Company:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\* Contractor shall attach Power of Attorney for person signing on behalf of Surety.

**EXHIBIT "J" – DISTRICT INSTRUCTIONS**

No. \_\_\_\_\_

Contract No.:	170-12697	Drawing No. (if applicable):	
Project Name:			

This Instruction is issued in accordance with the terms and conditions of the Contract Documents as:

- 1. An interpretation of Contract Documents, or
- 2. An order to proceed immediately with minor changes not affecting Contract Price or time for completion of the work.

INSTRUCTION:

DO NOT PROCEED with the Instruction 1 or 2 above if you believe this Instruction shall provide the basis for a claim or increase in the Contract Price or time for completion of the work. By signing this Instruction, Contractor hereby agrees that as a result thereof, there shall be no change in Contract Price or time of completion and waives any claim relating thereto.

RECEIPT ACKNOWLEDGED AND INSTRUCTION ACCEPTED:

Public Utility District No. 2  
of Grant County, Washington

Full Legal Name of Contractor

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

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

Name of Authorized Signature  
Title

Name of Authorized Signature  
Title

Date: \_\_\_\_\_

Date: \_\_\_\_\_



### COMMERCIAL EVALUATION

<b>Contract No.:</b>	170-12697	<b>Contract Title:</b>	Supply Substation Shaped Steel Structures
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<b>Bid Opening Date</b>		2/27/2025	
<b>Total No. of Bidders:</b>		9	
<b>Was prequalification required for bidding?</b>		No	
<b>No. of potential Bidders who obtained the Bid documents:</b>		38	
<b>Was this Bid advertised in the newspaper?</b>	Yes	<b>If yes, where?</b>	Columbia Basin Herald
<b>Addenda issued?</b>	No	<b>If yes, how many</b>	

Additional Information

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<b>Cost Estimate:</b>	<b>\$2,402,518.00</b>
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**Bidders**

<b>Name of Bidder:</b>	Enterprise Fabricator's Co.		
<b>Total Bid Price:</b>	\$1,183,136.00	<b>Bid Security:</b>	Bid Bond
<b>Signature Certification:</b>	Yes	<b>Delivery / Completion:</b>	As required
<b>Addendum Received:</b>	N/A	<b>Bidder's Data Provided:</b>	No, but not required
<b>Commercially Compliant?</b>	Yes	<b>Technically Compliant?</b>	Yes

Additional Information:

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<b>Name of Bidder:</b>	Northwest Steel Fab Inc.		
<b>Total Bid Price:</b>	\$1,192,668.00	<b>Bid Security:</b>	Bid Bond
<b>Signature Certification:</b>	Yes	<b>Delivery / Completion:</b>	As required
<b>Addendum Received:</b>	N/A	<b>Bidder's Data Provided:</b>	Yes
<b>Commercially Compliant?</b>	Yes	<b>Technically Compliant?</b>	Yes

Additional Information:

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<b>Name of Bidder:</b>	Klute		
<b>Total Bid Price:</b>	\$1,295,659.49	<b>Bid Security:</b>	Bid Bond
<b>Signature Certification:</b>	No	<b>Delivery / Completion:</b>	As required
<b>Addendum Received:</b>	N/A	<b>Bidder's Data Provided:</b>	No, but not required
<b>Commercially Compliant?</b>	No (see below)	<b>Technically Compliant?</b>	Yes

Additional Information:

*Bid Form not signed *Envelope not marked with Contract number
-------------------------------------------------------------------

<b>Name of Bidder:</b>	Blackwater Ind.		
<b>Total Bid Price:</b>	\$1,392,680.37	<b>Bid Security:</b>	Cashier's Check
<b>Signature Certification:</b>	Yes	<b>Delivery / Completion:</b>	As required
<b>Addendum Received:</b>	N/A	<b>Bidder's Data Provided:</b>	No, but not required
<b>Commercially Compliant?</b>	Yes	<b>Technically Compliant?</b>	Yes

Additional Information:

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<b>Name of Bidder:</b>	Border States		
<b>Total Bid Price:</b>	\$1,520,606.00	<b>Bid Security:</b>	Bid Bond
<b>Signature Certification:</b>	Yes	<b>Delivery / Completion:</b>	As required
<b>Addendum Received:</b>	N/A	<b>Bidder's Data Provided:</b>	Yes
<b>Commercially Compliant?</b>	Yes	<b>Technically Compliant?</b>	Yes

Additional Information:

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<b>Name of Bidder:</b>	Techline		
<b>Total Bid Price:</b>	\$1,614,300.00	<b>Bid Security:</b>	Bid Bond
<b>Signature Certification:</b>	Yes	<b>Delivery / Completion:</b>	As required
<b>Addendum Received:</b>	N/A	<b>Bidder's Data Provided:</b>	Yes
<b>Commercially Compliant?</b>	Yes	<b>Technically Compliant?</b>	Yes

Additional Information:

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<b>Name of Bidder:</b>	MVA Power		
<b>Total Bid Price:</b>	\$1,833,812.86	<b>Bid Security:</b>	Bid Bond
<b>Signature Certification:</b>	Yes	<b>Delivery / Completion:</b>	As required
<b>Addendum Received:</b>	N/A	<b>Bidder's Data Provided:</b>	Yes
<b>Commercially Compliant?</b>	Yes	<b>Technically Compliant?</b>	Choose an item.

Additional Information:

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<b>Name of Bidder:</b>	Western Utility Telecom		
<b>Total Bid Price:</b>	\$1,839,714.00	<b>Bid Security:</b>	Bid Bond
<b>Signature Certification:</b>	Yes	<b>Delivery / Completion:</b>	As required
<b>Addendum Received:</b>	N/A	<b>Bidder's Data Provided:</b>	Yes
<b>Commercially Compliant?</b>	Yes	<b>Technically Compliant?</b>	Choose an item.

Additional Information:

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<b>Name of Bidder:</b>	Dis-Tran		
<b>Total Bid Price:</b>	\$2,060,162.00	<b>Bid Security:</b>	Did not provide
<b>Signature Certification:</b>	No	<b>Delivery / Completion:</b>	No (see add'l information)
<b>Addendum Received:</b>	N/A	<b>Bidder's Data Provided:</b>	No, but not required
<b>Commercially Compliant?</b>	No (see below)	<b>Technically Compliant?</b>	No (see add'l information)

Additional Information:

**Did not submit on our Bid Form or supply Bid Security
---------------------------------------------------------


# **For Commission Review – 03/25/2025**

Motion authorizing the General Manager/CEO, on behalf of Grant PUD, to execute new Contract Agreement 110-12821 for a 20-year Purchase Power Agreement with Quincy Solar for a 120 MW solar development, commencing by October 31, 2027.

xxxx

**MEMORANDUM**

**Date 3/12/2025**

**TO:** John Mertlich, General Manager   
**FROM:** Rich Flanigan, Sr. Manager Trading and Commercial Operations *RF*  
**SUBJECT:** Proposed 20-Year Purchase Power Agreement with Quincy Solar

**Purpose:** To request Commission approval for the General Manger to execute Contract 110-12821 for the proposed 20-year Purchase Power Agreement (PPA) with Quincy Solar for a 120 MW solar development, commencing by October 31, 2027.

**Discussion:** Grant PUD staff recommends entering into a PPA with Quincy Solar, LLC (Quincy Solar) for the output of their 120 MW solar development for a 20-year term beginning no earlier than October 31, 2027. Quincy Solar participated in Grant’s recent All Source Request For Proposal (RFP). The RFP was performed to help Grant identify resources that will help meet its Integrated Resource Planning needs related to capacity planning for joining the Western Resource Adequacy Program (WRAP) and clean energy needs to help meet Washington state’s Clean Energy Transformation Act (CETA).

*The Product.* Grant will receive 100% of the energy and capacity output from the Quincy Solar solar development. Quincy Solar is a 120 MW solar facility, located east of the Rocky Ford substation, in Grant County. The energy output from Quincy Solar will be contracted at the busbar, with no need for additional transmission as the project is in Grant’s Balancing Area.

*The Process.* In the fall of 2023, Grant issued an All-Source Energy and Capacity Request For Proposal intended to help Grant meet three primary objectives; 1) get a better understanding of a very competitive market for power supply, 2) focus on finding long-term clean energy solutions to meet Grant’s growing retail load, and 3) let developers know that Grant was looking for capacity and energy to help meet its Integrated Resource Planning needs.

Grant received a strong response to the RFP with 82 proposals submitted. The RFP team scored these proposals using the following evaluation criteria; 70% based on the economic value, 15% on the risk assessment, and 15% on the strategic fit. From this evaluation, the Quincy Solar solar project scored in the top quartile and was chosen to be short-listed for further review. During this review, it was determined to move forward into the contracting phase for the project.

*Contract Review:* An extensive internal review process was again used to construct the final agreement. There was an internal review by subject matter experts from Finance, Accounting, Dispatch, Control Systems Engineering, Compliance, and Risk. In addition, internal and external legal have reviewed the final contract.

**Justification:** The proposed PPA helps meet two of Grant’s Strategic Pillars; Strategic Pillar #2, Develop and Execute Strategies that help prepare the PUD for the changing electric power utility industry inclusive of the risk considerations and Strategic Pillar #4, Develop an Intentional Demand Strategy. In addition, the Quincy Solar PPA helps Grant in sourcing appropriate and sufficient power to provide reliable service and positions Grant PUD in meeting future clean energy standards outlined in Grant’s 2024 Integrated Resource Plan (IRP).

**Recommendation:** Commission gives approval to the General Manger to execute Contract 110-12821 for the proposed 20-year Purchase Power Agreement (PPA) with Quincy Solar solar development.

**Legal Review:** See attached e-mail(s).

**Signature:** *John Mertlich*

**Email:** jmertlich@gcpud.org

**Signature:** *RFLANIG*

**Email:** rflanig@gcpud.org

## **SOLAR RENEWABLE ENERGY PURCHASE AGREEMENT**

This Renewable Energy Purchase Agreement (this “Agreement”) is entered into this [DAY] day of [MONTH], [YEAR] (the “Effective Date”), by and between Quincy Solar Energy LLC, a limited liability company organized under the laws of Delaware (“Seller”), and Grant County Public Utility District, a public utility district organized under the laws of Washington (“Buyer”). Buyer and Seller are collectively defined as the “Parties” and each individually as a “Party.”

**WHEREAS**, Seller is developing, and intends to own and operate, a renewable energy generation facility located in Grant County, Washington, as further described in ANNEX II (the “Facility”);

**WHEREAS**, Buyer provides retail electric service to consumers located in and around Grant County, Washington; and

**WHEREAS**, the Parties desire to enter into this Agreement, pursuant to which Seller shall sell and transfer to Buyer, and Buyer shall purchase and receive from Seller, all of the Energy generated by the Facility during the Settlement Term, along with all Facility Attributes and Environmental Attributes related thereto, in accordance with and subject to the terms and conditions set forth in this Agreement.

**NOW, THEREFORE**, in consideration of the mutual promises, representations, warranties, covenants, and other terms and conditions set forth below, the Parties, intending to be legally bound, hereby agree as follows:

**1. Definitions; Interpretation.**

Capitalized terms used in this Agreement are defined in, and the rules of interpretation relating to such terms and this Agreement are set forth in, ANNEX I attached hereto. Other terms used but not defined in this Agreement shall have meanings as commonly used in the English language.

**2. Term.**

This Agreement is effective as of the Effective Date and, subject to the earlier termination of this Agreement in accordance with its terms, shall continue in full force and effect until the end of HE 2400 PT on the last day of the Settlement Term (the “Term”); provided, however, that neither the termination nor expiration of this Agreement shall relieve either Party of any: (i) undischarged liability of such Party incurred prior to such termination or expiration (including for unpaid amounts due and owing under this Agreement in respect of the period prior to such termination or expiration); (ii) liability for breach by such Party of this Agreement prior to such termination or expiration; or (iii) obligations or liabilities arising out of any such termination.

**3. Commercial Operation Date; Obligation to Complete.**

(a) Construction. Seller shall design and construct the Facility to meet the characteristics set forth in ANNEX II; provided, however, that Seller may deviate from the



characteristics set forth in ANNEX II if such deviation does not result in a change to: (i) the Interconnection Point; or (ii) subject to Section 3(e) and Section 3(g), a change to the Anticipated Nameplate Capacity. Following the Notice of Commercial Operation, if Seller has deviated from the characteristics set forth in ANNEX II, Seller shall provide to Buyer an updated Annex II to reflect the as-built Facility after such diagrams become available.

(b) Commercial Operation Date. Seller shall provide periodic updates to Buyer of progress toward Commercial Operation and shall formally notify Buyer once the Facility achieves Commercial Operation by issuing the Notice of Commercial Operation. In addition to Seller's rights pursuant to Section 3(g) and subject to payment of Delay Damages pursuant to Section 3(c), if, as of the Commercial Operation Date, the Installed Nameplate Capacity of the Facility is less than the Anticipated Nameplate Capacity, then Seller shall retain the right to increase the Installed Nameplate Capacity of the Facility to an amount equal to the Anticipated Nameplate Capacity. Upon any such increase in the Installed Nameplate Capacity, Seller shall issue a Notice of Supplemental Commercial Operation setting forth the increased Installed Nameplate Capacity of the Facility.

(c) Delay Damages. If Commercial Operation does not occur with respect to [REDACTED] of the Anticipated Nameplate Capacity on or before the Guaranteed Commercial Operation Date, then Seller shall continue using Commercially Reasonable Efforts to ensure that the Commercial Operation occurs with respect to [REDACTED] of the Anticipated Nameplate Capacity as soon as practical thereafter. In such case, Seller shall pay to Buyer as liquidated damages for such delay, and not as a penalty, for each day after the Guaranteed Commercial Operation Date until the Commercial Operation Date for [REDACTED] of the Anticipated Nameplate Capacity, an amount equal to: (i) [REDACTED] per MW, multiplied by (ii) the Anticipated Nameplate Capacity reduced by the Installed Nameplate Capacity (if any) as of such day (the "Delay Damages"). In the event that Delay Damages are owed by Seller to Buyer, Seller shall calculate the Delay Damages due each month and issue with its invoice a statement for such Delay Damages in accordance with Section 11. Buyer acknowledges and agrees that Seller's liability for Delay Damages during the Term shall in no event exceed, in the aggregate, the Maximum Delay Damages.

(d) Early Termination for Failure to Complete. In the event that the Commercial Operation Date has not occurred within one hundred and eighty (180) days after the Guaranteed Commercial Operation Date (the "Outside Commercial Operation Date"), then either Party may elect, in its sole discretion, to terminate this Agreement (the "Early Termination Right"). Upon any such termination, Seller shall pay to Buyer as liquidated damages for such delay, and not as a penalty, an amount equal to: (i) the Maximum Delay Damages less (ii) all Delay Damages previously paid to Buyer (the "Early Termination Payment"). Neither Party shall have any financial or other liability to the other Party arising out of such termination; provided, however, the Early Termination Payment shall not exceed Seller's Performance Assurance Amount. Notwithstanding the foregoing, the Early Termination Right will expire (and no longer apply) thirty (30) days after the Outside Commercial Operation Date. In the event that either Party terminates this Agreement pursuant to this Section 3(d), then the Delay Damages set forth in Section 3(c) shall cease to accrue on the date of such termination. If the Commercial Operation Date occurs within one (1) year following early termination of this Agreement by Seller pursuant

to this Section 3(d), then Buyer shall have a right of first offer to purchase all of the Energy generated by the Facility, along with all Facility Attributes and Environmental Attributes generating by the Facility, on the terms and conditions set forth in this Agreement taking into account the Early Termination Payment and documented change in Seller's costs to comply with any or all of its obligations under this Agreement, if any, that contributed to such early termination. Buyer shall have thirty (30) days to accept or reject any offer issued by Seller pursuant to this Section 3(d), after which, if Buyer has not accepted such offer, Seller may pursue a sale with any third party at a price no less than the price offered to Buyer within the one (1) year period following the early termination of this Agreement.

(e) Reduction in Anticipated Nameplate Capacity. If at any time after the Guaranteed Commercial Operation Date, but prior to the Outside Commercial Operation Date, Commercial Operation has not been achieved, then Seller may, at its option by written notice to Buyer, reduce the Anticipated Nameplate Capacity by not more than [REDACTED] and pay to Buyer, as liquidated damages and not as a penalty, an amount (the "Buy Down Amount") equal to [REDACTED] per MW of such reduction in Anticipated Nameplate Capacity (the "Adjusted Nameplate Capacity") If the payment of the Buy Down Amount causes the condition in clause (a) of the defined term "Commercial Operation" to be satisfied (and all other conditions to Commercial Operation have been satisfied) with respect to one hundred percent of the Adjusted Nameplate Capacity, then, upon such payment and notwithstanding anything in Section 3(c) to the contrary, Commercial Operation shall be achieved and no further Delay Damages shall accrue as of and from the date of such payment.

(f) Delay Damages, Early Termination Payment and Buy Down Amount are Sole and Exclusive Remedy. Subject to the other terms of this Section 3, the payment of (i) Delay Damages shall be Buyer's sole and exclusive remedy, and Seller's sole and exclusive liability and obligation to Buyer, for any failure or delay in achieving Commercial Operation with respect to [REDACTED] of the Anticipated Nameplate Capacity or, if applicable, the Adjusted Nameplate Capacity, on or before the Guaranteed Commercial Operation Date; (ii) the Buy Down Amount shall be Buyer's sole and exclusive remedy for Seller's election to reduce the Anticipated Nameplate Capacity to the Adjusted Nameplate Capacity in order to reach Commercial Operation on or before the Outside Commercial Operation Date; and (iii) the Early Termination Right and related Early Termination Payment shall be Buyer's sole and exclusive remedy, and Seller's sole and exclusive liability and obligation to Buyer, for any failure to achieve or for delay in achieving the Commercial Operation Date by the Outside Commercial Operation Date or for any termination of this Agreement by Seller in accordance with Section 3(d). The Parties acknowledge and agree that the terms, conditions, and amounts determined according to this Section 3(f) for the payment of Delay Damages, the Early Termination Payment, and the Buy Down Amount are a good faith estimate and are reasonable considering the Damages that Buyer would be expected to sustain related to the matters described in the immediately preceding sentence. The Parties have agreed upon and established the amounts of the Delay Damages, Early Termination Payment, and Buy Down Amount because of the difficulty of ascertaining the exact amount of such Damages in such event and because otherwise obtaining an adequate remedy would be difficult or inconvenient. The Delay Damages, Early Termination Payment, and Buy Down Amount are not penalties and shall be paid regardless of the amount of Damages that Buyer actually sustains.

(g) Additional Nameplate Capacity. Notwithstanding anything to the contrary contained herein, Seller reserves the right to, at its option, increase the Installed Nameplate Capacity of the Facility to an amount no more than [REDACTED] greater than the Anticipated Nameplate Capacity (the “Expanded Capacity”). In such event, and upon Commercial Operation of such Expanded Capacity, Buyer shall purchase all of the Energy, Environmental Attributes, and Facility Attributes related to such Expanded Capacity on the terms and conditions set forth in this Agreement.

**4. Delivery of Energy.**

(a) Delivery of Energy. During the Settlement Term, Seller shall deliver all Energy produced by the Facility to the Interconnection Point. Title to Energy, and risk of loss with respect thereto, shall pass from Seller to Buyer at the Interconnection Point.

(b) Characteristics. Energy to be furnished hereunder shall be in the form of three-phase, sixty (60) Hertz alternating current and at a normal voltage determined by mutual agreement of Seller and the Connecting Utility.

**5. Payment of Settlement Amount.**

With respect to each Monthly Settlement Period, Seller shall calculate the Settlement Amount. If the Settlement Amount is greater than zero Dollars (\$0), the Settlement Amount shall be payable by Buyer to Seller according to Section 11. If the Settlement Amount is less than zero Dollars (\$0), the absolute value of the Settlement Amount shall be payable by Seller to Buyer according to Section 11. If the Settlement Amount equals zero Dollars (\$0), no amount shall be payable by either Party.

**6. Reserved.**

**7. Facility Attributes.**

(a) Transfer of Facility Attributes. Throughout the Settlement Term, Seller shall, subject to the satisfaction of Buyer’s payment obligations hereunder, transfer to Buyer, and Buyer shall accept from Seller, all of Seller’s right and title to, and interest in, the Facility Attributes; provided that, in lieu of transferring Facility Attributes to Buyer, at Buyer’s request Seller shall take Commercially Reasonable actions to secure for Buyer the benefits of the Facility Attributes (including offering, scheduling or auctioning such Facility Attributes to the Western Power Pool or any other third party, if any); and provided further that: (i) such actions (and any resulting requirements and other results thereof) do not: (A) require modifications to the Facility (or the design thereof) or upgrades or other modifications to any interconnection or transmission facilities, or (B) require Seller to reduce (or restrict Seller’s flexibility in offering, bidding, planning and scheduling) the generation of Energy from the Facility and delivery thereof to the Interconnection Point; (ii) Buyer shall reimburse Seller for all costs, including penalties and other charges, incurred in respect of such actions; and (iii) such actions are permitted by (and capable of being implemented pursuant to) Applicable Laws (and any applicable Environmental Attribute program(s) and associated monitoring, tracking, certification or trading system(s)).

(b) Resource Adequacy. Seller shall (i) assist Buyer with Buyer's reasonable efforts to receive, and provide Buyer with such files and materials as are in Seller's possession or control as are required for Buyer to be issued, a Qualifying Capacity Contribution from the Western Power Pool in respect of the Facility, and (ii) cooperate with Buyer in connection with Buyer's reasonable efforts to obtain and maintain such Qualifying Capacity Contribution in accordance with the procedures then prescribed by Western Power Pool; provided that: (i) such assistance and cooperation (and any resulting requirements and other results thereof) do not: (A) require modifications to the Facility (or the design thereof) or upgrades or other modifications to any interconnection or transmission facilities, or (B) require Seller to reduce (or restrict Seller's flexibility in offering, bidding, planning and scheduling) the generation of Energy from the Facility and delivery thereof to the Interconnection Point; (ii) Buyer shall reimburse Seller for all costs, including penalties and other charges, incurred in respect of such assistance and cooperation; and (iii) such assistance and cooperation are permitted by (and capable of being implemented pursuant to) Applicable Laws (and any applicable Environmental Attribute program(s) and associated monitoring, tracking, certification or trading system(s)). Buyer shall have the sole right to claim a Qualifying Capacity Contribution in respect of the Facility during the Term.

(c) Facility Attribute Revenues. Buyer shall be entitled to all revenues (net of losses, charges, and other costs) actually received from the Western Power Pool or any other third party, if any, attributable to the Facility Attributes generated by the Facility during the Settlement Term (the "Facility Attribute Revenues"). Upon receipt by Seller, Seller shall pay over to Buyer all such Facility Attribute Revenues as a credit on the next invoice issued to Buyer under Section 11.

(d) No Event of Default. Notwithstanding any provision of this Agreement to the contrary, each Party agrees that an Event of Default, default, breach, termination event, or similar event shall not occur, and Seller shall have no liability, under this Agreement or any other contract between the Parties, solely on the basis of Seller's inability to obtain Facility Attribute Revenues in accordance with Section 7(a) so long as Seller is taking Commercially Reasonable actions to do so.

## **8. Environmental Attributes.**

(a) Transfer of Environmental Attributes. Throughout the Settlement Term, Seller shall, subject to the satisfaction of Buyer's payment obligations hereunder, transfer to Buyer, and Buyer shall accept from Seller, all of Seller's right and title to, and interest in, the Environmental Attributes. For the avoidance of doubt, all Environmental Attributes delivered to Buyer hereunder shall be deemed to be "bundled" with the associated Energy delivered to Buyer. Notwithstanding the forgoing, if the Energy output of the Facility is curtailed for any reason whatsoever, then Seller shall not under any circumstances be obligated to transfer any Environmental Attributes to Buyer associated with any Energy that was curtailed. Seller's obligation to transfer Environmental Attributes hereunder shall be deemed satisfied at such time as Seller electronically initiates the transfer of such Environmental Attributes to Buyer's account, whether or not Buyer electronically (or otherwise) accepts such transfer.

(b) Title. At the time of transfer of any Environmental Attributes as provided herein: (i) Seller shall have good and marketable title to such Environmental Attributes; and (ii) such Environmental Attributes shall not have been sold by Seller to any other Person or used by Seller to meet compliance requirements of any other regulatory or voluntary renewable Energy program or standard, including any greenhouse gas reduction requirements.

(c) Tracking and Trading System. For the transfer of Environmental Attributes, Seller shall, upon sufficient prior written request of Buyer, take Commercially Reasonable actions to register with (i) the REC Trading Program or (ii) an alternative reasonable, desired tracking or trading system; provided that any such request by Buyer with respect to Seller's registration with an alternative tracking or trading system may be made only once during the Settlement Term; provided further that: (i) neither such actions nor any resulting requirements nor other results thereof: (A) require modifications to the Facility (or the design thereof) or upgrades or other modifications to any interconnection or transmission facilities; or (B) require Seller to reduce (or restrict Seller's flexibility in offering, bidding, planning, and scheduling) the generation of Energy from the Facility and delivery thereof to the Interconnection Point; (ii) Buyer shall reimburse Seller for all third-party fees, charges, and costs in respect of such actions (including any resulting requirements and other results thereof), except to the extent otherwise provided in Section 8(g); and (iii) such actions are permitted by (and capable of being implemented pursuant to) Applicable Laws (and any applicable Environmental Attribute program(s) and associated tracking or trading system(s)).

(d) Acceptance of Environmental Attributes. Buyer shall be responsible for all fees, charges, costs, arrangements, and other actions necessary to establish and maintain any Buyer accounts necessary to receive Environmental Attributes from Seller. Notwithstanding anything to the contrary contained herein, in the event Buyer fails to establish and maintain any Buyer accounts or take any other action necessary to receive Environmental Attributes from Seller, then Seller shall not be liable for any delay in transferring Environmental Attributes to Buyer hereunder until Buyer has taken all actions necessary to receive Environmental Attributes. Title and risk of loss to Environmental Attributes shall transfer from Seller to Buyer: (i) at such time as Seller electronically initiates the transfer of such Environmental Attributes to Buyer's account, whether or not Buyer electronically (or otherwise) accepts such transfer; or (ii) upon such other time and place as may be agreed by the Parties.

(e) Failure to Transfer Environmental Attributes. If, with respect to any Monthly Settlement Period, Seller is required to transfer Environmental Attributes to Buyer according to this Section 8, but Seller fails to transfer to Buyer all or part of such Environmental Attributes by the Environmental Attribute Transfer Deadline, then, by the fifth (5th) Business Day following the Environmental Attribute Transfer Deadline, Seller shall for each such Environmental Attribute, either: (i) transfer to Buyer, Comparable Environmental Attributes; or (ii) pay to Buyer an amount equal to the Average Environmental Attribute Value for such Environmental Attributes (the "Environmental Attribute Damages"). In addition, if (i) Seller fails to transfer to Buyer at least [REDACTED] of the Environmental Attributes associated with the aggregate Energy produced by the Facility for any CETA Compliance Period and (ii) Buyer incurs any penalties pursuant to Section 4(7) of CETA that are directly attributable to such failure as reasonably demonstrated and documented by Buyer, then Seller shall [REDACTED].

(f) Environmental Attribute Damages are Sole and Exclusive Remedy. Except in the case where Seller has intentionally sold or transferred Environmental Attributes to any person other than Buyer or has intentionally claimed Environmental Attributes for its own account, the transfer of Comparable Environmental Attributes or payment of Environmental Attribute Damages shall be Buyer's sole and exclusive remedy, and Seller's sole and exclusive liability, for Seller's failure to comply with this Section 8. The Parties acknowledge and agree that the terms, conditions, and amounts determined according to Section 8(e) for the payment of Environmental Attribute Damages are a good faith estimate and are reasonable considering the Damages that Buyer would be expected to sustain related to the matters described in the immediately preceding sentence. The Parties have agreed upon and established the amounts of the Environmental Attribute Damages because of the difficulty of ascertaining the exact amount of such Damages in such event and because otherwise obtaining an adequate remedy would be difficult or inconvenient. The Environmental Attribute Damages are not penalties and shall be paid regardless of the amount of Damages that Buyer actually sustains.

(g) Fees and Charges. Seller shall be responsible for all fees, charges, and costs assessed against Seller (which excludes the fees, charges, and costs associated with registering and maintaining Buyer's account pursuant to Section 8(d) and any fees, charges, and costs assessed against Buyer pursuant to Section 8(c)) associated with so qualifying such Environmental Attributes and obtaining and transferring such Environmental Attributes to Buyer via the REC Trading Program.

#### **9. Mechanical Availability Guarantee.**

(a) Guaranteed Mechanical Availability Percentage. Seller guarantees that: (i) as calculated at the beginning of the [REDACTED], the Facility shall have achieved a Mechanical Availability Percentage for the prior Contract Year equal to [REDACTED]; and (ii) as calculated at the beginning of the third Contract Year, and at the beginning of each Contract Year thereafter, the Facility shall have achieved a Mechanical Availability Percentage for the prior Contract Year equal to [REDACTED] (such percentage in clause (i) and (ii), as applicable, the "Guaranteed Mechanical Availability Percentage"). For any Contract Year during which Seller fails to meet the Guaranteed Mechanical Availability Percentage, Seller shall pay to Buyer as liquidated damages, and not a penalty, an amount equal [REDACTED] for each one percentage point (1%) (or a fraction of such amount for every fractional percentage below the Guaranteed Mechanical Availability Percentage) by which the Mechanical Availability Percentage for such Contract Year is less than the Guaranteed Mechanical Availability Percentage (the "Availability Damages"). Notwithstanding anything to the contrary herein, Buyer and Seller agree that Buyer's sole and exclusive damage and remedies for Seller's failure to achieve the Guaranteed Mechanical Availability Percentage shall be the Availability Damages provided for in this Section 9(a).

(b) Payment of Availability Damages. Upon determination by the Parties of any Availability Damages owed for any such Contract Year, the Availability Damages shall be included on the next invoice issued pursuant to Section 11; provided that, for purposes of clarity, under no circumstances shall Buyer be liable to Seller for Availability Damages.

(c) Limitation of Availability Damages. Buyer acknowledges and agrees that, notwithstanding anything contained herein to the contrary, Seller's liability for Availability Damages during the Term shall in no event exceed, in the aggregate, the Maximum Availability Damages.

(d) Availability Damages are Sole and Exclusive Remedy. The payment of Availability Damages shall be Buyer's sole and exclusive remedy, and Seller's sole and exclusive liability, for any failure by Seller to achieve the Guaranteed Mechanical Availability Percentage for any Contract Year. Notwithstanding the forgoing, Buyer may elect to terminate this Agreement within sixty (60) days following the end of the first Contract Year (if any) in which the Availability Damages that would be payable hereunder for such Contract Year is limited by the Maximum Availability Damages pursuant to Section 9(c); provided that Buyer shall not have such termination right so long as Seller continues to pay in accordance with Section 9(b) any Availability Damages for which Seller would be liable under Section 9(a) if Seller's liability for Availability Damages were not limited by the Maximum Availability Damages. The Buyer's election to terminate this Agreement pursuant to this Section 9(d) would be a one-time election only, and would expire if not exercised within such sixty (60) day period. The Parties acknowledge and agree that the terms, conditions, and amounts determined according to Section 9(a) for the payment of Availability Damages are a good faith estimate and are reasonable considering the Damages that Buyer would be expected to sustain in the event that Seller fails to achieve the Guaranteed Mechanical Availability Percentage for any Contract Year. The Parties have agreed upon and established the amounts of the Availability Damages because of the difficulty of ascertaining the exact amount of such Damages in such event or circumstance and because otherwise obtaining an adequate remedy would be difficult or inconvenient. The Availability Damages are not penalties and shall be paid regardless of the amount of Damages that Buyer actually sustains.

#### 10. **Seller Covenants.**

(a) Facility Ownership. Seller shall at all times: (i) own or control the Facility; (ii) own, control, or lease all other personal property related to the Facility; and (iii) own, lease, or otherwise hold all real property rights associated with the Facility (provided that this Section 10(a) shall only apply to such personal property and real property rights as are reasonably needed to operate the Facility in accordance with Prudent Electrical Practices and shall not apply to any personal property and real property owned by the Connecting Utility).

(b) Operation and Maintenance. Seller shall operate and maintain the Facility in accordance with Prudent Electrical Practices at all times. In addition, during the months of June through September inclusive, Seller shall not schedule any maintenance unless: (i) such outage is required to avoid damage to the Facility; (ii) such maintenance is necessary to maintain equipment warranties and cannot be scheduled outside the months of June through September; (iv) such outage is occurring in non-daylight hours; or (v) the Parties agree otherwise in writing.

(c) Facility Control. For avoidance of doubt, Seller shall control the operation of the Facility, including any voluntary curtailment, dispatch, and generation.

(d) Meters. The Energy generated by the Facility shall be metered by Seller at the Interconnection Point.

**11. Calculation of Payments; Procedures for Payments.**

(a) Calculation of Payments. With respect to each Monthly Settlement Period, Seller shall calculate:

(i) the “Fixed Price Payment” for the Monthly Settlement Period, which shall be equal to the sum over all Calculation Intervals in such Monthly Settlement Period of the product of (X) the Fixed Price for each such Calculation Interval, and (Y) the sum of all Interval Quantity and Economic Interruption Energy for each such Calculation Interval, plus, with respect to such Economic Interruption Energy, (i) the dollar amount equal to the Production Tax Credit to the extent Seller would have been entitled to receive such Production Tax Credit if Energy had been produced during such Calculation Interval plus (ii) a gross up amount to take into account the federal, state and local income tax to Seller or its Affiliates or Tax Equity Investors on such payment in lieu of the Production Tax Credit.

(ii) the “Settlement Amount” for the Monthly Settlement Period, shall be equal to the difference resulting from the subtraction of (X) the credit for Facility Attribute Revenues pursuant to Section 7(c), if any, from (Y) the Fixed Price Payment.

(b) Procedures for Payments.

(i) Invoicing. Within fifteen (15) Business Days after the end of each Monthly Settlement Period, Seller shall deliver an invoice to Buyer reflecting the Settlement Amount due by each Party, if any, Seller’s calculations supporting the Settlement Amount, and any other amounts due by either Party under this Agreement, if any. To the extent that any information required to prepare an invoice is not available to Seller at the time of Seller’s invoice, Seller may issue such invoice on an estimated basis using the best available information that it has at that time; provided that Seller shall include an adjustment pursuant to Section 11(c) to reflect the actual information in the next invoice after such information becomes available to Seller. With each invoice, Seller shall provide Buyer with a statement of the actual or estimated Interval Quantity, Interval Availability, and calculations thereof for each Calculation Interval where such quantities are used by Seller in the determination of the Settlement Amount for such Monthly Settlement Period. Invoices shall be sent to Buyer as specified in ANNEX VII or as otherwise specified according to Section 17.

(ii) Payment. Payments due by either Party shall be made on or before the Due Date by electronic funds transfer, or by wire transfer, to the account of the receiving Party, as provided in ANNEX VII or as otherwise specified by the receiving Party in a written notice delivered to the other Party pursuant to Section 17, without deduction or set-off (except as permitted in Section 11(c)). If Seller and Buyer each owe an amount to the other on the same invoice for obligations incurred under this Agreement, the undisputed portion of such amounts shall be aggregated, and the Parties shall satisfy



the applicable portion of their payment obligations through netting. For the avoidance of doubt, such aggregation of amounts associated with obligations owed by the Parties under this Agreement shall not be deemed to constitute a set-off pursuant to Section 11(c).

(c) Adjustments to Invoices. In the event that: (i) either Party to this Agreement discovers an error in billings or payments under this Agreement due to metering, billing, or other errors; or (ii) a prior invoice was prepared on an estimated basis pursuant to Section 11(b), each Party shall, subject to Section 11(e), be entitled to an adjustment of the amount payable hereunder to reflect such revised price, error discovery, or the availability of actual (as opposed to estimated) invoicing information. A Party that seeks an adjustment to invoices as described in this Section 11(c) must provide the other Party with notice and a description of the desired adjustment within two (2) years of the date the invoice that is to be adjusted was received by Buyer. Such notice shall include a calculation of the payment necessary to correct the prior invoice. Any invoice that has not been challenged pursuant to this Section 11(c) within two (2) years of the date it was received by Buyer shall be deemed final and not subject to adjustment under this Section 11(c). Any amounts determined to be due and payable by a Party as a result of an adjustment under this Section 11(c) shall be included in the next invoice issued in accordance with Section 11(c); provided, however, that any amounts determined to be due and payable by a Party as a result of an adjustment under this Section 11(c) after the expiration or termination of this Agreement shall be due and payable within thirty (30) days after the Parties agree to the amount of such adjustment (it being acknowledged and agreed that, for purposes of determining interest under Section 11(d), the Due Date related to such adjustment shall be the Due Date of the invoice on which such adjustment is included or thirty (30) days after the Parties agree to the amount of such adjustment, as applicable).

(d) Interest. Any payments under this Agreement not received by the Due Date shall bear interest from, and including, the Due Date to, but excluding, the date of payment at a rate equal to 2% over the per annum rate of interest from time to time published in *The Wall Street Journal* under “Money Rates” as the prime lending rate (the applicable rate, the “Interest Rate”); provided, however, that in no event shall the Interest Rate exceed the maximum lawful rate permitted by Applicable Law.

(e) Disputed Amounts. Either Party may, in good faith, dispute the correctness of any invoice rendered under this Agreement (including any adjustment to an invoice under Section 11(c)). In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of such invoice shall be required to be made when due, with notice of the objection given to the other Party in writing and stating the basis for the dispute, including all supporting calculations. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment plus interest thereon accrued at the Interest Rate from, and including, the Due Date to, but excluding, the date of payment shall be included in the next invoice issued in accordance with Section 11(b).

(f) Taxes. Unless otherwise agreed to in writing by the Parties or specifically expressed in this Agreement, neither Party is liable for any of the taxes of the other Party that the other Party is legally obligated to pay and that are incurred or arise in connection with or are related

to income generated by the transactions contemplated under this Agreement or arise from ownership of property subject to the transactions contemplated by this Agreement, and all such taxes (including net income taxes, franchise taxes, and property taxes) shall be the financial responsibility of the Party who is obligated by operation of law to pay such tax. Buyer shall provide to Seller a valid exemption certificate executed by Buyer. Each Party agrees to indemnify, defend, and hold harmless the other Party and its Affiliates and their respective owners and the respective directors, officers, members, managers, employees, and representatives of any of the foregoing from and against any taxes for which the Indemnifying Party is responsible under this Section 11(f).

## 12. **Performance Assurance.**

(a) Seller's Performance Assurance. During the period commencing within thirty (30) days after the Effective Date, and ending upon the first date that both the Term has ended and Seller has satisfied all of its payment obligations to Buyer hereunder (such date, subject to extension pursuant to Section 12(c)(vii), the "Seller's Performance Assurance Release Date"), Seller shall deliver to and maintain with (subject to Section 12(c)(iv)) Buyer security (the "Seller's Performance Assurance") in the form of (i) Cash Collateral, (ii) a Guaranty, (iii) a Letter of Credit, (iv) a Performance Bond, (v) such other form of security as is mutually agreed to by the Parties, or (vi) any combination thereof, as determined by Seller in its sole discretion, in the aggregate amount equal to Seller's Performance Assurance Amount. Seller shall not be required to replenish the drawn amount of Seller's Performance Assurance. Notwithstanding the foregoing, if at any time prior to Seller's Performance Assurance Release Date, Buyer's draws cause the Seller's Performance Assurance to be less than [REDACTED] ("Seller's Minimum Performance Assurance Amount"), then Buyer may elect to terminate this Agreement by giving Seller not less than thirty (30) days' written notice. If, within such thirty (30) day notice period, Seller elects to replenish the Seller's Performance Assurance to at least the Seller's Minimum Performance Assurance Amount, then such termination notice shall be null and void. Seller's Performance Assurance shall not be deemed a limitation of Damages in any event or under any circumstances

### (b) Buyer's Performance Assurance.

(i) Buyer's Performance Assurance. During the period commencing within thirty (30) days after the Effective Date, and ending upon the first date that both the Term has ended and Buyer has satisfied all of its payment obligations to Seller hereunder (such date, subject to extension pursuant to Section 12(c)(vii), the "Buyer's Performance Assurance Release Date"), Buyer shall either (A) maintain an Investment Grade Credit Rating, or (B) deliver to and maintain with (subject to Section 12(c)(iv)) Seller security (the "Buyer's Performance Assurance") in the form of (1) Cash Collateral, (2) a Guaranty, (3) a Letter of Credit, or (4) any combination thereof, as determined by Buyer in its sole discretion, in the aggregate amount equal to the greater of (x) the Replacement Contract Losses, determined by Seller in a Commercially Reasonable manner, that would be due to Seller upon the occurrence of an Event of Default by Buyer as of the date on which Buyer no longer maintains an Investment Grade Credit Rating, and (y) the product of the Fixed Price times the expected generation from the Facility, determined by Seller in a Commercially Reasonable manner, for the five (5) year period commencing on the date on

which Buyer no longer maintains an Investment Grade Credit Rating. If at any time during the period commencing within thirty (30) days after the Effective Date and ending upon Buyer's Performance Assurance Release Date Buyer becomes obligated to deliver and maintain Buyer's Performance Assurance because of a reduction in Buyer's Credit Rating, Buyer shall deliver such Buyer's Performance Assurance no later than five (5) Business Days after such reduction. Buyer shall not be required to replenish the drawn amount of Buyer's Performance Assurance. Notwithstanding the forgoing, if at any time prior to Buyer's Performance Assurance Release Date, Seller's draws cause the Buyer's Performance Assurance to be less than [REDACTED] ("Buyer Minimum Performance Assurance Amount"), then Seller may elect to terminate this Agreement by giving Buyer not less than thirty (30) days' written notice. If, within such thirty (30) day notice period, Buyer elects to replenish the Buyer's Performance Assurance to at least the Buyer's Minimum Performance Assurance Amount, then such termination notice shall be null and void. Buyer's Performance Assurance shall not be deemed a limitation of Damages in any event or under any circumstances.

(ii) Buyer Financial Statements. Buyer's audited financial statements are publicly available on its website.

(iii) Demonstration of Buyer's Credit Rating. Upon Seller's request, Buyer shall from time to time deliver to Seller such information as Seller may reasonably request to confirm Buyer's Credit Rating.

(c) Posting, Maintenance and Drawing of Performance Assurance.

(i) Security Interest. To secure its obligations under this Agreement, Performance Assurance Provider hereby grants to Performance Assurance Beneficiary, as the secured party, a first priority, present, and continuing security interest in, lien on (and right of setoff against), and assignment of, the Performance Assurance posted in the form of cash and all cash obtained by Performance Assurance Beneficiary resulting from a draw on such Performance Assurance, and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of the Performance Assurance Beneficiary, and Performance Assurance Provider agrees to take such action as Performance Assurance Beneficiary reasonably requires to perfect and protect the Performance Assurance Beneficiary's first priority security interest in, and lien on (and right of setoff against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof; provided, however, that the Performance Assurance Beneficiary may exercise its rights as a secured party (including the right of setoff granted pursuant to this sentence) against such cash collateral only upon the terms and conditions of Section 12(c)(ii). Such cash collateral shall constitute Cash Collateral for all purposes of this Agreement (including for the return of such cash collateral to Performance Assurance Provider according to Sections 12(c)(v) and 12(c)(vi)).

(ii) Draw in an Event of Default. If an Event of Default has occurred and is continuing, Performance Assurance Beneficiary shall be entitled to draw upon the Performance Assurance for any Damages that have not been paid when due and that arise

from (i) such Event of Default or (ii) any prior Event of Default to the extent that Damages arising therefrom have not yet been paid in full to the Performance Assurance Beneficiary.

(iii) Draw of an Expiring Letter of Credit. In the case of Performance Assurance in the form of a Letter of Credit, Performance Assurance Beneficiary may draw the full amount of such Letter of Credit within thirty (30) days before the expiration of such Letter of Credit if, as of the date of such drawing, Performance Assurance Beneficiary has not received replacement Performance Assurance meeting the requirements of this Agreement. The proceeds of any such draw shall be held as Cash Collateral unless replaced pursuant to Section 12(c)(iv) and may be drawn upon only as provided in Section 12(c)(ii).

(iv) Replacement. If, at any time during which Performance Assurance is required to be maintained hereunder, a Credit Event occurs with respect to such Performance Assurance, then the Performance Assurance Provider shall, within ten (10) Business Days after such Credit Event, replace the affected Performance Assurance with Performance Assurance that complies with the terms of this Agreement, including having an undrawn capacity in the amount required by the definition of such Performance Assurance at such time. In addition to the replacement of the Performance Assurance that may be required pursuant to the preceding sentence, the Performance Assurance Provider shall, at any time and from time to time, have the right to replace the Performance Assurance in effect at such time with other Performance Assurance, so long as Performance Assurance Provider maintains the Performance Assurance with undrawn capacity in the amount required by the definition thereof at such time. For the avoidance of doubt, Performance Assurance Provider shall not be required to replenish the drawn amount of its Performance Assurance.

(v) Release Upon Replacement. If any Performance Assurance is replaced in accordance with Section 12(c)(iv), then, if the Performance Assurance being replaced is (A) a Guaranty, the applicable Performance Assurance Guarantor shall be deemed released from all obligations under such replaced Performance Assurance, and Performance Assurance Beneficiary shall execute any documents reasonably requested by Performance Assurance Provider or any such Person to confirm such release, (B) Cash Collateral, Performance Assurance Beneficiary shall cause the depository bank to immediately return such Cash Collateral (including any interest earned thereon) to Performance Assurance Provider, (C) a Letter of Credit, Performance Assurance Beneficiary shall promptly return such Letter of Credit to the bank that issued such Letter of Credit and shall execute any documents reasonably requested by Performance Assurance Provider or issuing bank in order to release the Letter of Credit, or (D) another form of security (including a Performance Bond), Performance Assurance Beneficiary shall promptly return such form of security to Performance Assurance Provider or issuing Person and shall execute any documents reasonably requested by Performance Assurance Provider or issuing Person in order to release such other form of security.

(vi) Release Upon Termination. If, upon the Performance Assurance Release Date (subject to Section 12(c)(vii)), any part of the Performance Assurance being released is (A) a Guaranty, the applicable Performance Assurance Guarantor shall be

deemed released from all obligations under the Performance Assurance, and Performance Assurance Beneficiary shall execute any documents reasonably requested by Performance Assurance Provider or any such Person to confirm such release, (B) Cash Collateral, Performance Assurance Beneficiary shall cause the depository bank to immediately return such Cash Collateral (together with any interest earned thereon) to Performance Assurance Provider, (C) a Letter of Credit, Performance Assurance Beneficiary shall return such Letter of Credit to the bank that issued such Letter of Credit and shall execute any documents reasonably requested by Performance Assurance Provider or issuing bank in order to release the Letter of Credit, or (D) another form of security (including a Performance Bond), Performance Assurance Beneficiary shall promptly return such form of security to Performance Assurance Provider or issuing Person and shall execute any documents reasonably requested by Performance Assurance Provider or issuing Person in order to release such other form of security.

(vii) Outstanding Claims. Notwithstanding anything to the contrary contained in this Agreement, if upon the Performance Assurance Release Date, there are outstanding any claims that were validly made prior to such date against the Performance Assurance that would otherwise be released, then, on the Performance Assurance Release Date, (A) the amount of the applicable Performance Assurance shall be deemed reduced to the amount of such outstanding claims, (B) the Performance Assurance Release Date shall be extended until the final resolution and (if applicable) full payment of such outstanding claims, and (C) at the election of Performance Assurance Provider, the scope of such security may be reduced to secure only such outstanding claims. In the event of a reduction in the amount or scope of any Performance Assurance in accordance with clause (A) or clause (C) of the immediately preceding sentence, Performance Assurance Beneficiary shall promptly execute any documents and take any other actions reasonably requested by Performance Assurance Provider or any applicable Performance Assurance Guarantor to effect or confirm such reduction in amount or scope, including by executing and delivering an amendment to such Performance Assurance, by exchanging such Performance Assurance or by other reasonable means.

### 13. **Representations and Warranties.**

Each Party hereby represents and warrants to the other Party as of the Effective Date:

(a) Good Standing. It is duly organized, validly existing, and in good standing under the laws of the jurisdiction of its organization or incorporation and is qualified to do business in the State of Washington.

(b) Authority. It has all necessary company power, authority, and, if applicable, third-party and regulatory consents, needed to execute, deliver, and perform its obligations hereunder, except, in the case of Seller, for any regulatory consents that are not yet required.

(c) No Conflict. Its execution, delivery, and performance of this Agreement (i) has been duly authorized by all necessary corporate action, (ii) does not violate any of the terms or conditions of (A) its governing documents, (B) any contract to which it is a Party (or result in

acceleration of any amounts owed or otherwise adversely affect its rights or obligations under such a contract), or (C) any Applicable Law currently in effect having applicability to such Party or its assets (subject to, in the case of Seller as the representing Party, obtaining any permits or other authorizations for the Facility or its operation that are not yet required), to the extent such violation or creation or imposition would reasonably be expected to have a material adverse effect on its ability to perform its obligations under this Agreement or on its business, operations or financial condition, and (iii) with respect to Seller, does not result in, or require, the creation or imposition of any mortgage, deed of trust, pledge, lien, security interest, or other charge or encumbrance of any nature (other than to a Financing Party or as may otherwise be contemplated by this Agreement) upon or with respect to any of the properties of Seller now owned or hereafter acquired.

(d) Binding Agreement. This Agreement has been validly executed and delivered on behalf of such Party and, assuming the due authorization, execution and delivery of the other Party, constitutes the legal, valid and binding obligation of such Party enforceable against such Party according to its terms, except as the enforceability of this Agreement may be limited by (i) bankruptcy, insolvency, reorganization, or other similar laws affecting the enforcement of creditors' rights generally, and (ii) general principles of equity, whether considered in a proceeding in equity or at law.

(e) Authorizations. All Authorizations and other third party consents that are required to have been obtained by it with respect to its execution, delivery or performance of this Agreement have been obtained and are in full force and effect and all conditions of any such consents have been complied with, except, in the case of Seller, any Authorizations that are not yet required or may otherwise be validly obtained at a later date.

(f) Ability to Perform. There is no pending litigation, arbitration, or administrative proceeding that would reasonably be expected to have a material adverse effect on such Party's ability to perform its obligations under this Agreement or on the business, operations, or financial condition of such Party.

(g) Knowledgeable Participant. It is sophisticated and experienced in matters relating to the subject of this Agreement (or, in the case of Buyer, has been advised by Persons (other than the other Party and its Related Persons) sophisticated and experienced in matters relating to the subject of this Agreement), is acting for its own account, has made its own independent decision to enter into this Agreement based on its own judgment that this Agreement is appropriate and proper for it, and is capable of assessing the merits of and understanding, and has assessed and understands and accepts, the terms, conditions, and risks of entering into this Agreement.

#### **14. Limitation of Liability; Indemnification.**

(a) Partial Waiver of Consequential Damages. EXCEPT FOR BREACHES OF SECTION 18, IN NO EVENT SHALL EITHER PARTY OR ANY OF ITS RELATED PERSONS BE LIABLE TO THE OTHER PARTY OR ANY OF ITS RELATED PERSONS FOR SPECIAL, PUNITIVE, INCIDENTAL, INDIRECT, EXEMPLARY, OR CONSEQUENTIAL

DAMAGES OF ANY NATURE WHATSOEVER, INCLUDING LOSS OF PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT; PROVIDED, HOWEVER, THAT THIS LIMITATION SHALL NOT BE CONSTRUED TO LIMIT A PARTY'S RIGHT TO RECEIVE LIQUIDATED DAMAGES (INCLUDING DELAY DAMAGES, THE EARLY TERMINATION PAYMENT, THE BUY DOWN AMOUNT, AND ANY ENVIRONMENTAL ATTRIBUTE DAMAGES OR AVAILABILITY DAMAGES) AND REPLACEMENT CONTRACT LOSSES AS PROVIDED IN THIS AGREEMENT OR, SUBJECT TO THE OTHER LIABILITY LIMITATIONS, TO RECEIVE "COVER" DAMAGES, INCLUDING UNDER SECTION 16(A). THE PARTIES INTEND THAT, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, THE LIABILITY LIMITATIONS SHALL APPLY EVEN IN THE EVENT OF THE FAULT, NEGLIGENCE (INCLUDING GROSS NEGLIGENCE) (IN WHOLE OR IN PART), STRICT LIABILITY, OR BREACH OF CONTRACT OF THE BENEFICIARY THEREOF AND WHETHER ASSERTED IN CONTRACT, IN WARRANTY, IN TORT, BY STATUTE, OR OTHERWISE. FOR THE AVOIDANCE OF DOUBT, IN THE CASE OF SELLER, ANY LOST, FOREGONE, OR RECAPTURED INVESTMENT TAX CREDITS, PRODUCTION TAX CREDITS, OR OTHER TAX CREDITS OR INCENTIVES SHALL BE CONSIDERED DIRECT, AND NOT INDIRECT OR CONSEQUENTIAL DAMAGES. PRIOR TO THE COMMERCIAL OPERATION DATE, SELLER'S LIABILITY SHALL BE LIMITED TO AN AMOUNT EQUAL TO SELLER'S PERFORMANCE ASSURANCE AMOUNT.

(b) Non-Recourse. EXCEPT AS PROVIDED IN A GUARANTY ISSUED BY A RELATED PARTY, NO RELATED PERSON OF EITHER PARTY SHALL HAVE ANY LIABILITY OR RESPONSIBILITY FOR, RELATING TO, OR IN CONNECTION WITH ITS RELATED PARTY'S FAILURE TO PERFORM OR FAULTY PERFORMANCE OF ANY TERM, COVENANT, CONDITION, OR PROVISION OF THIS AGREEMENT OR ANY OTHER FAILURE, BREACH (INCLUDING BREACH OF ANY DUTY OR STANDARD OF CONDUCT), OR OTHER ACT OR OMISSION OF ITS RELATED PARTY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT AND NO RELATED PERSON OF EITHER PARTY SHALL BE PERSONALLY LIABLE OR BE NAMED AS PARTIES IN ANY ACTION OR CLAIM BETWEEN THE PARTIES. IN PURSUING ANY REMEDY FOR ANY SUCH FAILURE TO PERFORM, FAULTY PERFORMANCE, OR OTHER FAILURE, BREACH, OR OTHER ACT OR OMISSION A PARTY, NEITHER THE OTHER PARTY NOR ANY OF ITS RELATED PERSONS SHALL HAVE ANY RECOURSE AGAINST ANY PERSON OTHER THAN THE FAILING PARTY, NOR AGAINST ANY ASSETS OTHER THAN THE ASSETS OF THE FAILING PARTY, EXCEPT AS OTHERWISE PROVIDED IN A GUARANTY ISSUED BY A RELATED PARTY.

(c) No Warranty. THE PARTIES ACKNOWLEDGE AND AGREE THEY HAVE ENTERED INTO THIS AGREEMENT TO ENGAGE IN AN ENERGY TRANSACTION BASED UPON THE FIXED PRICE OF ENERGY AND THE TRANSFER OF ENVIRONMENTAL ATTRIBUTES AND FACILITY ATTRIBUTES AND (TO THE EXTENT APPLICABLE) THE RIGHT TO RECEIVE FACILITY ATTRIBUTE REVENUES, BASED SOLELY UPON THE EXPRESS REPRESENTATIONS AND WARRANTIES IN THIS AGREEMENT, AND NO IMPLIED WARRANTIES FROM ANY PERSON SHALL BE DEEMED TO APPLY TO THE SAME. THE PARTIES DISCLAIM ANY REPRESENTATION

OR WARRANTY WITH RESPECT TO THE INTERVAL QUANTITY, FACILITY ATTRIBUTES, AND FACILITY ATTRIBUTE REVENUES, AND ENVIRONMENTAL ATTRIBUTES NOT EXPRESSLY SET FORTH IN THIS AGREEMENT, INCLUDING ANY REPRESENTATION OR WARRANTY WITH RESPECT TO MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE.

(d) Indemnification Against Third Party Claims. Each Party (the “Indemnifying Party”) shall indemnify, defend, and hold the other Party, its Affiliates, and their respective representatives, members, officers, directors, managers, agents, successors, and assigns (together, the “Indemnified Party”) harmless from and against any and all Damages for any third party claims (whether arising under contract or tort) that arise out of or are connected with the Indemnifying Party’s performance of or failure to perform its obligations under this Agreement; provided, however, that the Indemnifying Party shall have no obligation to indemnify the Indemnified Party to the extent such third party claims are attributable to the negligence, willful misconduct, or breach of this Agreement by the Indemnified Party or any of its Affiliates.] The limitation of liability set forth in Section 14(a) shall not apply to the Indemnifying Party’s obligations under this Section 14(d) with respect to any applicable third party claims.

(e) Buyer Indemnification Against Damage to Facility. In addition to the mutual indemnity set forth in Section 14(d), Buyer shall also indemnify, defend, and hold the Seller, its Affiliates, and their respective representatives, members, officers, directors, managers, agents, successors, and assigns (together, the “Seller Indemnified Parties”) harmless from and against any and all Damages caused by Buyer, or any of its representatives, directors, managers, agents, or contractors while visiting, inspecting, or otherwise physically accessing the Facility pursuant to this Agreement or otherwise; provided, however, that Buyer shall have no obligation to indemnify the Seller Indemnified Parties to the extent that any such Damages are attributable to the negligence, willful misconduct, or breach of this Agreement by any Seller Indemnified Parties. The limitation of liability set forth in Section 14(a) shall apply to Buyer’s obligations under this Section 14(e).

(f) Survival. This Section 14 shall survive the expiration or termination of this Agreement.

## 15. **Events of Default.**

If any of the following events occur, then an “Event of Default” shall exist as to such Party (the “Defaulting Party”) and the other Party (the “Non-Defaulting Party”) shall be entitled to exercise the remedies set forth in Section 16:

(a) Failure to Pay. A Party fails to make, when due, any payment required pursuant to this Agreement (other than amounts disputed in good faith), and such failure is not remedied within ten (10) Business Days after written notice of such failure from the other Party;

(b) Material Breach. A Party is in material breach of its obligations under this Agreement (other than an obligation that is otherwise specifically set forth in this Section 15 as a separate Event of Default, or an obligation in respect of which this Agreement provides a remedy that is stated to be an exclusive remedy), and such breach is not remedied within thirty (30) days



after written notice of such breach from the other Party (provided, however, that: (i) to the extent such breach is not reasonably capable of being remedied within the thirty (30)-day remedy period specified above, but is reasonably capable of being remedied; and (ii) the breaching Party has commenced and is continuing reasonable efforts to remedy such breach, the breaching Party shall have ninety (90) days after written notice of such breach from the other Party to remedy such breach);

(c) Misrepresentation. A Party's representation or warranty made in this Agreement proves to have been false in any material respect when made, unless: (i) the inaccuracy is not capable of being remedied, or the inaccuracy is capable of being remedied and the underlying facts are corrected or cured so as to make such representation and warranty correct within thirty (30) days after written notice of such misleading or false representation or warranty from the other Party (provided, however, that, to the extent such inaccuracy is not reasonably capable of being remedied within the thirty (30)-day remedy period specified above, but is reasonably capable of being remedied, such Party shall have such additional time as is reasonably necessary to remedy such inaccuracy, so long as such Party promptly commences and diligently pursues such remedy); or (ii) the inaccuracy is not capable of being remedied and does not cause any material Damages to the other Party;

(d) Failure to Maintain Performance Assurance. A Performance Assurance Provider fails to deliver or maintain Performance Assurance when and as required pursuant to Section 12(a) or Section 12(b), as applicable, and such breach is not cured within ten (10) Business Days after written notice of such breach from the Performance Assurance Beneficiary;

(e) Unauthorized Assignment. A Party assigns or transfers this Agreement, or any portion thereof, in violation of Section 20; or

(f) Bankruptcy. A Party (i) admits in writing its inability or unwillingness to pay its debts as they become due, (ii) files a petition or otherwise commences, or authorizes the commencement of, a proceeding or case as debtor under any bankruptcy, insolvency, receivership, or similar law for the protection of creditors, (iii) has such a petition filed or proceeding commenced against it as debtor, which remains un-dismissed for ninety (90) days, (iv) files an answer or pleading admitting or failing to contest the material allegations of any such petition, (v) takes any action for its winding up, liquidation, or dissolution, (vi) is otherwise adjudged bankrupt or insolvent under any bankruptcy, insolvency, receivership, or similar law for the protection of creditors, or (vii) consents to any of the actions described in the preceding clauses (i) through (vi).

## 16. Remedies.

(a) Termination. If an Event of Default occurs and is continuing, the Non-Defaulting Party shall have the right to exercise one or more of the following remedies: (i) to terminate this Agreement by providing notice to the Defaulting Party designating an early termination date that shall be no earlier than the date such notice is effective and not later than twenty (20) days after the date such notice is effective; and (ii) to exercise such remedies as otherwise provided in this Agreement or (subject to the Liability Limitations) available at law or in equity, including, in the case of termination of this Agreement as a result of an Event of Default,

recovery of Damages suffered by the Non-Defaulting Party as a result of the termination, including the Replacement Contract Losses (if any), as reasonably calculated by the Non-Defaulting Party, and any and all other amounts previously accrued under this Agreement and owed to the Non-Defaulting Party. Further, whether or not this Agreement is terminated, either Party may assert any claims available to it under this Agreement or (subject to the Liability Limitations) in a dispute resolution proceeding in accordance with Section 25 so as to recover Damages against the other Party resulting from any breach of or default under this Agreement by such other Party. Each Party shall use Commercially Reasonable Efforts to mitigate its Damages resulting from the other Party's breach of or default under this Agreement, including upon any termination hereof as a result of an Event of Default of the other Party.

(b) Suspension. In addition to (and without limiting) the remedies for an Event of Default set forth in Section 16(a) or (subject to the Liability Limitations) otherwise available at law or in equity, during the existence of an Event of Default, the Non-Defaulting Party may, by notice to the Defaulting Party (the date of such notice, the "Suspension Date"), suspend (in whole or in part) its performance under this Agreement for a period of up to one hundred and twenty (120) days in the aggregate for each Event of Default, without relieving the Defaulting Party of its obligations to pay for performance rendered prior to the Suspension Date or, subject to the Liability Limitations, for Damages arising out of such Event of Default (including, in the case of Seller as the Non-Defaulting Party, any Damages arising out of any resale during the suspension or otherwise out of a suspension pursuant to this Section 16(b), which shall be payable in respect of the entire suspension period notwithstanding that Buyer may cure any Event of Default giving rise to such suspension before the end of the suspension period as provided in the last sentence of this Section 16(b)). After the Defaulting Party's cure of such Event of Default, and provided there is no other Event of Default by such Defaulting Party then occurring, the Non-Defaulting Party will resume performance of its obligations under this Agreement; provided that, in the case of Seller as the Non-Defaulting Party and notwithstanding anything to the contrary, Seller will not be obligated to resume performance of its obligations until it is able to do so consistent with Prudent Electrical Practices and if, after the Suspension Date, Seller has entered into any arrangement with any Person for the sale of the Interval Quantity, Buyer's Facility Attributes, or Buyer's Environmental Attributes, and such arrangement extends beyond the date of such cure, then Seller shall not be obligated to resume performance of its obligations under this Agreement until the termination or expiration of such arrangement (which arrangement may, in any case, not extend longer than one hundred and twenty (120) days from the Suspension Date).

(c) No Termination or Suspension without Cause. Notwithstanding anything to the contrary contained in this Agreement, except for the rights to terminate and suspend expressly set forth in Section 2(c), Section 3(d), Section 22, Section 23, and this Section 16, neither Party shall have any right to terminate this Agreement or suspend its performance for any reason.

(d) Inability to Perform Due to Breach. If a breach by a Party of this Agreement shall wholly or partly prevent the performance (or the ability to perform) of the other Party under this Agreement, then the performance of the Non-Defaulting Party shall be excused to the extent prevented by the Defaulting Party's breach. For clarity, the breach by a Party shall not prevent the performance of the other Party if such performance is limited to the payment of money.

(e) No Cross-Default. Notwithstanding anything to the contrary in this Agreement or in any other agreement or document, this Agreement shall not be affected in any manner by any cross-default or other provision in any other agreement or document (whether between the Parties, any of their Affiliates, or any other Persons and whether entered into before or after the Effective Date).

(f) Remedies Cumulative. Except as expressly provided in this Agreement, all remedies are cumulative and not exclusive of any rights, privileges, and remedies provided by Applicable Law.

#### 17. **Notices and Formal Communications.**

All notices, demands, or other communications that either Party must give to the other under, or in connection with, this Agreement shall be in writing and shall be delivered either by hand, electronic mail, or overnight courier addressed to the relevant Party at the address stated in ANNEX VII, as amended, restated, supplemented, or otherwise modified and in effect from time to time. Notices by hand delivery shall be effective on the Business Day when received, if received before HE 1700 PT, and, if received thereafter, shall be deemed received on the next following Business Day. Notices sent by overnight courier shall be deemed received on the date noted as delivered on the receipt of a reputable courier company, including DHL, OnTrac, FedEx, and UPS, showing the correct address of the addressee. Notices sent by electronic mail shall be effective on the Business Day when received.

#### 18. **Confidentiality.**

(a) Non-Disclosure. Except as provided in this Section 18, neither Party nor its respective employees, agents, partners, affiliates, officers, directors, and advisors shall publish, disclose, or otherwise divulge Confidential Information to any Person at any time during or for two (2) years after the end of the Term (during which the Parties' obligations under this Section 18 shall survive), without the other Party's prior express written consent. Except as may otherwise be required by Applicable Laws (but subject to the remainder of this Section 18), no press release or other similar public announcement or publication in any media concerning this Agreement or the subject matter of this Agreement may be made by either Party without the consent of the other Party.

(b) Publicity. Notwithstanding the foregoing, the Parties are expressly authorized to disclose to third parties: (i) the name of the other Party or the Facility; (ii) the state or country in which the Facility is located; (iii) the size and technology of the Facility; (iv) the fact that it is selling or purchasing Energy, Facility Attributes, and Environmental Attributes from the Facility; (v) the Term of this Agreement; and (vi) the fact that the price is fixed; provided that any such disclosure shall not include any other Confidential Information.

(c) Required Disclosure. A receiving Party may use and disclose Confidential Information where required to do so in litigation, administrative, regulatory, or other legal proceedings or otherwise by Applicable Laws, but only after reasonable notice to the providing Party and, if legally permissible, affording the providing Party an opportunity to seek a protective order or other relief to prevent or limit disclosure of the Confidential Information. In such event,

the receiving Party shall reasonably cooperate, at the providing Party's expense, in connection with the providing Party's efforts to obtain such protective order or other relief. Further, each Party shall use all reasonable efforts to maintain the confidentiality of the Confidential Information in any litigation or administrative or regulatory proceeding or in any other instance where disclosure is required by Applicable Laws, and the receiving Party shall promptly notify the providing Party of any attempt by a third party to obtain the Confidential Information through legal process or otherwise.

(d) Permitted Disclosure. Notwithstanding anything to the contrary herein, each Party may provide any Confidential Information: (i) to the Connecting Utility and any other Governmental Authority or any other Person (including subcontractors, consultants, accountants, financial advisors, experts, legal counsel, and other professional advisors to the Parties) as required for scheduling, settlement and billing, or otherwise to perform under or administer this Agreement; (ii) to its employees, agents, partners, Affiliates, officers, directors, and advisors (including attorneys, accountants, consultants, and rating agencies); provided such Persons agree to preserve the confidentiality of the Confidential Information in accordance with the terms and provisions of this Agreement (it being agreed that the receiving Party shall be responsible and liable for any failure of such Persons to comply with the terms and provisions of this Agreement); (iii) in the case of Seller, to Financing Parties or potential Financing Parties, Affiliates and lessors, owners of and potential bidders and bidders for, and potential purchasers and purchasers of, direct or indirect interests in the Facility (including direct or indirect interests in the equity interests of Seller), and to any credit rating agency that has issued a Credit Rating for Seller or any of its Affiliates; and (iv) in the case of Seller, as Seller reasonably determines to be required to comply with FERC reporting and disclosure requirements for public utilities and market-based rate sellers, including those set forth in 18 C.F.R. §§ 35.1(g), 35.10b, 35.37(a)(1) and 35.42(d). Each Party shall cause its personnel and all Persons to whom it discloses the Confidential Information to treat it confidentially and to not disclose it to any other Person in any manner whatsoever. The obligation to provide confidential treatment to Confidential Information shall not be affected by the inadvertent disclosure of Confidential Information by either Party.

(e) Seller expressly acknowledges its understanding that Buyer is a public entity subject to the public records and public meetings laws of the State of Washington. Notwithstanding any other provision of this Agreement, no disclosure of Confidential Information by Buyer in compliance with its legal obligation under such public records and public meetings laws, as determined by Buyer in its sole discretion, shall be an Event of Default of this Agreement, provided that, to the extent permissible under Applicable Law, Buyer shall (i) provide Seller with reasonable notice prior to any such disclosure, (ii) afford Seller an opportunity to redact confidential or sensitive information or seek a protective order or other relief to prevent or limit such disclosure, and (iii) reasonably cooperate, at Seller's expense, in connection with Seller's efforts to limit the disclosure of Confidential Information through the document production process or through obtaining such protective order or other relief.

#### 19. **Records and Audits; Information Rights.**

(a) Records and Audits. Seller shall create and keep: (i) meter records and other records substantiating amounts due under this Agreement; and (ii) all other records required to be

kept by Seller according to Applicable Law. Seller shall maintain the records that it is required to create and keep under this Section 19(a) according to Applicable Laws, Prudent Electrical Practices and, if applicable, generally accepted accounting practices. Each Party shall keep and maintain records relating to its performance under this Agreement for a period of at least two (2) years after the respective records are created, and the other Party may inspect and audit those records as described herein during normal business hours upon reasonable advance notice. Each Party's costs of inspections and audits under this Section 19(a) shall be borne by such Party requesting the inspection or audit.

(b) Information Rights. Seller shall, within sixty (60) days after written request from Buyer, at Buyer's cost, establish a method to securely and electronically deliver, in real-time, the data from the Facility's SCADA System specified in ANNEX X or as otherwise available and requested, via File Transfer Protocol or another electronic transfer protocol agreed by the Parties in writing.

## 20. **Assignment and Change of Control.**

(a) Permitted Assignment. Neither Party shall be entitled to assign or transfer all or any portion of its interest in this Agreement except as provided herein, without the prior written consent of the non-assigning Party, which consent shall not be unreasonably withheld, delayed, or conditioned. Notwithstanding the foregoing, a Party may make the following assignments without the prior written consent of the other Party, but shall provide written notice of such permissible assignments as soon as practical:

(i) Seller may collaterally assign this Agreement to a Financing Party;

(ii) Either Party may transfer or assign all, but not less than all, of its rights and obligations under this Agreement to an Affiliate, so long as (A) such Affiliate's ability to perform the relevant obligations of this Agreement, directly or through contractors, is equal to or greater than that of such Party at the time of assignment, (B) such Affiliate's Credit Rating is equal to or greater than the Credit Rating of the assigning Party, and (C) such Affiliate either maintains or replaces any Performance Assurance provided by the assigning Party; and

(iii) Either Party may transfer or assign all, but not less than all, of its rights and obligations under this Agreement to any Person succeeding to all or substantially all of its assets (which, in the case of Seller, must include the Facility), so long as (A) such Person's ability to perform the relevant obligations of this Agreement, directly or through contractors, is equal to or higher than that of such Party at the time of assignment, (B) such Party has a Credit Rating equal to or greater than the Credit Rating of the assigning Party, and (C) such Party either maintains or replaces any Performance Assurance provided by the assigning Party.

(b) Release. In no event shall the assigning Party be released from its liabilities and obligations under this Agreement without the consent of the other Party, which consent shall not be unreasonably withheld, conditioned, or delayed; provided, however, if either Party assigns this Agreement as permitted by this Section 20, such assigning Party shall, to the extent the

assignee assumes the liabilities and obligations of such assigning Party under this Agreement, be released from such liabilities and obligations; provided further that such release shall not apply, and the assigning Party shall not be released from its liabilities and obligations relating to, the period prior to the date of assignment with respect to any Event of Default that has occurred and is continuing at the time of such assignment if such Event of Default is not cured by the assignee in accordance with this Agreement.

(c) Subcontractors. Notwithstanding the foregoing, Seller may subcontract its duties or obligations under this Agreement without the prior written consent of Buyer, provided that no such subcontract shall relieve Seller of any of its duties or obligations hereunder.

(d) Assignment to Financing Party. If Seller collaterally assigns this Agreement to a Financing Party pursuant to Section 20(a)(i), Seller shall notify Buyer in writing of the name, address, and telephone numbers of each Financing Party to which Seller's interest under this Agreement has been assigned and the following provisions shall apply:

(i) The Financing Parties shall, at any time, have the right, but not the obligation, to perform any act, duty, or obligation required of Seller under this Agreement and to cure any of Events of Default by Seller;

(ii) Buyer shall not terminate or suspend its performance under this Agreement due to an Event of Default by Seller unless Buyer has first given the Financing Parties: (A) prior written notice of such Event of Default, the applicable cure period related thereto as set forth in this Agreement, and the action to be taken to cure such Event of Default; and (B) the opportunity to cure such Event of Default during the applicable cure period related to such default as set forth in this Agreement *plus* an additional thirty (30) days; provided, however, that if such default reasonably cannot be cured by the Financing Parties within the period provided and the Financing Parties or an assignee commence and continuously pursue cure of such default within that period, the period for cure will be extended for a reasonable period of time under the circumstances, but not to exceed an additional ninety (90) days;

(iii) If an Event of Default by Seller is not susceptible of cure by the Financing Parties, then Buyer shall not exercise its right to terminate or suspend performance under this Agreement so long as the Financing Parties or an assignee (including any purchaser or transferee) assume in writing, prior to the expiration of the cure period set forth in Section 20(d)(ii), Seller's rights and obligations under this Agreement and thereafter cure all then-existing Events of Default that are susceptible of cure by the Financing Parties or an assignee. Upon completion of the foregoing, Buyer agrees that the Financing Parties or the assignee, as applicable, will no longer be in default under this Agreement, and this Agreement will continue in full force and effect;

(iv) If (A) possession or control of the Facility is necessary for the Financing Parties (or an assignee) to cure any Event of Default by Seller or to assume Seller's rights and obligations under this Agreement and the Financing Parties (or an assignee) have commenced, and are diligently pursuing, proceedings, or actions to obtain

possession or control of the Facility or (B) the Financing Parties (or an assignee) are prohibited by any court order or bankruptcy or insolvency proceedings from taking any actions to cure an Event of Default by Seller, then the Financing Parties' (or an assignee's) cure period shall be extended by a period of time reasonably necessary to complete such proceedings or actions, or by the period of such prohibition;

(v) Buyer shall simultaneously deliver to the Financing Parties copies of all material notices delivered by Buyer to Seller under or pursuant to this Agreement;

(vi) Upon the receipt of a written request from Seller or any Financing Party, Buyer shall execute such documents evidencing Buyer's consent and agreement, in form and substance reasonably requested by the Financing Parties and reasonably acceptable to Buyer (such acceptance by Buyer not to be unreasonably withheld, conditioned or delayed) and shall deliver to the Financing Parties and Seller an opinion of counsel, in form and substance reasonably acceptable to the Financing Parties; provided that if requested by Buyer, Seller shall reimburse Buyer for its reasonable and documented third-party legal expenses incurred in reviewing such documents and providing such opinion of counsel.

(e) Change of Control. Neither Party may suffer any Change of Control, whether voluntary or by operation of law, without the other Party's prior written consent, such consent not to be unreasonably withheld, conditioned or delayed.

21. **Reserved.**

22. **Change in Law; No Challenge.**

(a) Change in Law. Except as set forth in Section 22(b), the Parties agree that the Fixed Price and the calculation of the Settlement Amount account for the cost of compliance with Applicable Law in effect as of the Effective Date. Notwithstanding the foregoing, in the event that, after the Effective Date, there is a Change in Law or in any operating standard applicable to Seller or the Facility, and if Seller reasonably determines that, as a result of such change, Seller shall either (X) incur additional costs to comply with any or all of its obligations under this Agreement or (Y) suffer an economic detriment on an after-tax basis (such costs or detriment, collectively, ("Change in Law Costs") that exceed Seller's Change in Law Compliance Cap, then:

(i) Seller may deliver a notice to Buyer (a "Change in Law Notice"), which shall include (i) a reasonably detailed explanation of such Change in Law and (ii) reasonable documentation supporting Seller's Change in Law Costs determination and that such costs or detriment will be in excess of Seller's Compliance Cap in the aggregate during the Term;

(ii) Should Seller provide a Change in Law Notice to Buyer, then for each Million Dollars of Change in Law Costs in excess of Seller's Change in Law Compliance Cap, as stated in such Change in Law Notice, the Fixed Price shall increase [REDACTED]; and

(iii) If the Fixed Price increases by more than [REDACTED]/MWh in aggregate pursuant to the preceding clause (ii), Buyer may either accept such increase to the Fixed Price or elect to terminate this Agreement by giving Seller not less than thirty (30) days' written notice, provided that, if within such thirty (30) day notice period Seller elects to limit the increase to the Fixed Price pursuant to the preceding clause (ii) to [REDACTED]/MWh in aggregate, then such termination notice shall be null and void and the Fixed Price shall be increased by [REDACTED]/MWh in aggregate.

In the event of any termination pursuant to this Section 22(a), the Parties shall be released and discharged from any obligations arising or accruing to each other arising out of this Agreement or such termination, and each Party shall be entitled to the prompt return of its Performance Assurance.

(b) No Challenge. Neither Party shall directly or indirectly challenge the equity, fairness, reasonableness, or lawfulness of any prices, fees, rates, terms, or conditions set forth in or established according to this Agreement, as those prices, fees, rates, terms, or conditions may be at issue before any Governmental Authority or arbitrator, if the successful result of such challenge would be to preclude or excuse the performance of this Agreement in accordance with its terms by either Party or to prospectively or retroactively revise such prices, fees, rates, terms, or conditions; provided, however, that for purposes of clarity nothing in this Section 22(b) shall limit either Party's rights under Section 11(c) or 11(e). To the extent that either Party may be called upon by any Governmental Authority to do so, each Party shall support and defend the effectiveness of this Agreement before such Governmental Authority when the substance, validity, or enforceability of all or any part of this Agreement is challenged or called into question before such Governmental Authority. Without limiting the foregoing, neither Party shall seek (directly or indirectly), nor support any third party in seeking, to revise the prices, fees, rates, terms, or conditions set forth in or established according to this Agreement through application or complaint to FERC or any other Governmental Authority. Further, the Parties agree that the standard of review for changes to the prices, fees, rates, terms, or conditions set forth in or established according to this Agreement proposed by a Party (to the extent that any waiver in this Section 22(b) is unenforceable or ineffective as to such Party), a non-party, or any regulatory agency acting *sua sponte* shall solely be the "public interest" application of the "just and reasonable" standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) and clarified by their progeny, including *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish*, 554 U.S. 527 (2008), and the Parties shall not take a contrary position in any proceeding.

### 23. **Force Majeure and Connecting Utility Delays.**

(a) Effect of Force Majeure. To the extent a Party is prevented by Force Majeure or Connecting Utility Delay from carrying out, in whole or in part, its obligations under this Agreement, then the affected Party shall be excused from performing such obligations hereunder (and shall not be liable for any delay or failure to perform such obligations) in accordance with this Section 23. Notwithstanding the foregoing, in no event shall either Party be relieved of its obligations to make timely payments hereunder as a result of a Force Majeure event.



(b) Notice of Force Majeure Event and Cure Plan. The Party claiming the occurrence of a Force Majeure event that prevents it from performing its obligations under this Agreement shall give the other Party written notice of the Force Majeure event, including the date of its discovery, within a reasonable time after the affected Party becomes aware of such Force Majeure event. The affected Party shall proceed with Commercially Reasonable Efforts to overcome the events or circumstances preventing or delaying its performance and shall prepare a Force Majeure cure plan describing the actions reasonably expected to be necessary to overcome the Force Majeure event and the time reasonably anticipated to perform such actions. Thereafter, such Party shall provide progress reports to the other Party at least every thirty (30) days describing actions taken to remedy the consequences of the Force Majeure event, the schedule for future actions, and the expected date by which performance shall no longer be affected by the Force Majeure event. When such Party has overcome such Force Majeure event and is ready to resume full performance under this Agreement, written notice shall be provided to the other Party and full performance shall resume. Notwithstanding the foregoing, in no event shall a Party's failure to deliver any notices, cure plans, progress reports, or any other information under this Section 23(b) be deemed a waiver of such Party's right to any claim related to such Force Majeure event.

(c) Termination Due to Force Majeure or Connecting Utility Delay.

(i) If any Connecting Utility Delay prior to the Commercial Operation Date prevents the performance of Seller's obligations hereunder in any material respect, for a period of one hundred and eighty (180) days or longer in the aggregate, only Seller may (as long as the excused performance is continuing) terminate this Agreement, without liability of either Party to the other arising out of such termination, upon at least thirty (30) days written notice.

(ii) If any Force Majeure event (A) prior to the Commercial Operation Date, prevents the Facility from achieving Commercial Operation, or (B) following the Commercial Operation Date, prevents substantially all of the Generation Equipment from generating or delivering Energy to the Interconnection Point, for a period of twelve (12) consecutive months or longer, then either Party may (so long as the consecutive days of excused performance are continuing) terminate this Agreement, without liability of either Party to the other arising out of such termination, upon at least thirty (30) days written notice.

For the avoidance of doubt, in the event this Agreement is terminated pursuant to this Section 23(c), Seller shall not be liable for (A) any Delay Damages, Environmental Attribute Damages, or Availability Damages accruing after the occurrence of such Force Majeure event, (B) any Buy Down Amount, or (C) any Early Termination Payment.

**24. Insurance Requirements.**

Seller or its subcontractors shall acquire and maintain at its sole cost and expense, the types and amounts of insurance coverage including, but not limited to, coverages described in ANNEX VI and this Section 24. All such insurance shall be written by a company or companies with a Best's rating of no less than "A minus" or an S&P rating of "A" or better. Buyer shall be

designated as an additional insured as its interests may appear on the commercial general liability policy, and each such policy shall be primary and shall not contribute to any insurance that may otherwise be maintained by, or on behalf of, Buyer. Where necessary, the policies shall also include cross liability coverage for claims that may be brought against Seller by Buyer as additional insured. All insurance required hereunder shall contain provisions waiving the insured's and the insurer's rights of subrogation or recovery of any kind against Buyer, its Affiliates and their respective agents, employees, officers, directors, successors, and assigns. Seller shall be responsible for any liability amounts that may be included within policy deductible limits. Within ten (10) days after the start of construction of the Facility, and thereafter as may be reasonably requested by Buyer, Seller will provide Buyer with certificates of insurance evidencing the required coverage set forth above and in ANNEX VI.

**25. Dispute Resolution.**

(a) In the event of an unresolved dispute, controversy, or claim arising out of or relating to this Agreement (a "Dispute"), within ten (10) Business Days following the delivered date of a written request by either Party, then senior officers of each Party shall meet, negotiate, and attempt in good faith to resolve the Dispute.

(b) If the Dispute is not resolved within thirty (30) days after the referral of the Dispute to senior executives, or if no meeting of senior executives has taken place within fifteen (15) days after such referral, then either Party may seek any available legal and equitable remedies.

**26. Change in Interconnection Costs.**

Seller may provide notice to Buyer of an increase to the costs that Seller is required to bear under the Interconnection Agreement. Should Seller provide such notice to Buyer, then for each million Dollar increase of the direct assigned costs that Seller is required to bear under the Interconnection Agreement above [REDACTED], the Fixed Price shall increase [REDACTED]/MWh.

**27. Miscellaneous.**

(a) Entire Agreement. This Agreement, including all Annexes hereto, each of which are incorporated herein by reference, contains the entire understanding of the Parties with respect to the subject matter hereof and shall completely and fully supersede all prior understandings or agreements, both written and oral, including any term sheet, between the Parties relating to the subject matter hereof and thereof. No representations, inducements, promises, or agreements, oral or otherwise, have been relied upon or made by any Party, or anyone on behalf of a Party, that are not fully expressed in this Agreement.

(b) Section Titles. The section titles in this Agreement are only for purposes of convenience and do not form a part of this Agreement and will not be taken to qualify, explain or affect any provision thereof.

(c) Severability. If any article, section, phrase, or portion of this Agreement is held by a court of law having jurisdiction over the matter to be invalid, illegal, or unenforceable

for any reason, such article, section, phrase, or portion so adjudged will be deemed separate, severable, and independent and replaced automatically by a legal, valid, and enforceable provision which most nearly accomplishes and reflects the original intention of the Parties. This Agreement, as so modified, shall remain in full force and effect and shall not be invalidated or rendered illegal or unenforceable or otherwise affected thereby. If the application of any provision of this Agreement to any Person or circumstance is determined to be void, unlawful, or unenforceable, then that provision shall remain valid, lawful, and enforceable as applied to other Persons and circumstances.

(d) Amendment. This Agreement may not be amended, changed, modified, or altered unless such amendment, change, modification, or alteration is in writing and signed by both of the Parties. This Agreement shall inure to the benefit of and shall be binding upon the Parties and their respective successors and permitted assigns.

(e) Waiver. Unless as otherwise specifically provided for in this Agreement, no delay or omission by a Party in the exercise of any right under this Agreement shall be taken, construed, or considered a waiver or relinquishment thereof, and any such right may be exercised from time to time and as often as may be deemed expedient. If any term and condition hereof is breached and thereafter waived by a Party, such waiver shall be limited to the particular breach so waived and is not deemed to waive any other breach hereunder.

(f) Governing Law; Venue. The validity, interpretation, and performance of this Agreement and each of its provisions shall be governed by the laws of the State of Washington, without regard to its conflicts of law principles. Venue of any action filed to enforce or interpret the provisions of this Agreement shall be exclusively in the Superior Court, King County, State of Washington or the Federal District Court for the Eastern District of Washington. [REDACTED]. In the event of litigation to enforce the provisions of this Agreement, the prevailing party shall be entitled to reasonable legal fees in addition to any other relief allowed.

(g) Waiver of Jury Trial. EACH OF THE PARTIES HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE ARISING OUT OF, IN CONNECTION WITH, RELATED TO, OR INCIDENTAL TO THE RELATIONSHIP BETWEEN THEM BY THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

(h) Bankruptcy Treatment. The Parties acknowledge and agree that: (i) this Agreement constitutes a “forward contract” and that Seller and Buyer are “forward contract merchants” and all payments under this Agreement are “transfers” or “settlement payments” in each case within the meaning of the Bankruptcy Code; and (ii) the Parties are entitled to the rights under, and the protections afforded by, Sections 362(b), 546, 548(c), 556, 560, 561 and 562 of the Bankruptcy Code. In addition to, and not in lieu of, the rights and protection set forth in the preceding sentence, and although the Parties intend that the transactions contemplated herein be sales and purchases and not loans, in order to secure its obligations under this Agreement, to the extent permitted by law, and not otherwise in conflict with any of Buyer’s obligations under any

applicable bond covenants, Teach Party hereby grants the other Party a present and continuing security interest in, lien on, and right (without limiting Section 11(c)) to set-off against, its respective payment obligations to the other Party under this Agreement.

(i) Equitable Relief. Nothing in Section 25 shall prevent either Party from applying to a court of competent jurisdiction (subject to Section 27(f)) for interim measures, specific performance, or other similar relief prior to completion of the procedures in Section 25.

(j) Facility Site Visits. During the Term, Buyer may request of Seller permission to visit the Facility site during normal business hours no more than once per year. Seller shall accommodate all reasonable requests of Buyer with respect to such visits; provided that Buyer shall comply with all Seller health and safety policies and procedures and instructions while present at the Facility site and shall conduct itself in a manner that will not interfere with or disrupt the operation of the Facility or other activities of Seller and its subcontractors.

(k) Further Assurances. Each Party shall deliver or cause to be delivered to the other Party such instruments, documents, statements, and certificates of its officers, accountants, engineers or agents as to matters requested by the other Party as may be Commercially Reasonable. Seller shall make available, upon reasonable request by Buyer, personnel and records relating to the Facility to the extent required for Buyer to carry out the purposes of this Agreement or fulfill any legal obligation or regulatory reporting requirements.

(l) No Rights of Third Parties. This Agreement is intended only for the Parties' benefit, and nothing in this Agreement may be construed to create any duty to, any standard of care concerning, or any liability to, any person not a Party to this Agreement, other than the rights of Persons expressly included in the Liability Limitations to the protection of such Liability Limitations.

(m) Joint Preparation. This Agreement was prepared jointly by the Parties, each Party having had access to advice of its own counsel, and not by either Party to the exclusion of the other Party, and shall not be construed against one Party or the other as a result of the manner in which this Agreement was prepared, negotiated, or executed.

(n) Relationship of the Parties. This Agreement shall not be interpreted or construed to (i) create an association, joint venture, or partnership between the Parties or impose any partnership obligation or liability on either Party, or (ii) create any agency relationship between the Parties or impose any fiduciary duty of any kind on either Party, or (iii) create a trust or impose any trust obligations of any kind on either Party, or (iv) constitute a lease of any properties of any kind. Neither Party shall have any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or act as or be an agent or representative of, or otherwise bind, the other Party. Each Party waives any and all rights that it may otherwise have under Applicable Laws or legal precedents to make any claim or take any action against the other Party or any of its Related Persons in respect of this Agreement based on any theory of agency, fiduciary duty, or other special standard of care.

(o) Counterparts; Electronic Signatures. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together

shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or other electronic transmission shall be effective as delivery of a manually executed counterpart of this Agreement.

(p) Imaged Agreement. Any original executed copy of this Agreement or any other related document may be photocopied and stored on computer tapes and disks (“Imaged Agreement”). If an Imaged Agreement is introduced as evidence in any judicial, arbitration, mediation or administrative proceedings, neither Party shall object to the admissibility of the Imaged Agreement on the basis that such was not originated or maintained in documentary form under the hearsay rule, the best evidence rule, or other rule of evidence.

(q) Survival. All provisions of this Agreement that are expressly or by implication to come into or continue in force and effect after the expiration or termination of this Agreement shall remain in effect and be enforceable following such expiration or termination.

*[Signature Page Follows.]*

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date set forth above.

SELLER: [\_\_\_\_\_]

BUYER: [\_\_\_\_\_]

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

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

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

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

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

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

## ANNEX I – DEFINITIONS AND INTERPRETATION

### I. DEFINITIONS

“Affiliate” shall mean, when used with reference to a specified Person, any other Person that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with the specified Person; provided, however, that the term “Affiliate,” when used with respect to Seller, shall not include any direct or indirect Tax Equity Investor in Seller. For purposes of this definition, “control” shall mean the power or authority, through ownership of voting securities, by contract or otherwise, to direct the management of the specified Person.

“Agreement” shall have the meaning set forth in the introductory paragraph.

“Ancillary Services” shall mean the services capable of being provided by the Facility at the Interconnection Point that are described as “Ancillary Services” in the protocols of any market that Buyer participates in, as applicable, at the applicable time.

“Anticipated Nameplate Capacity” shall mean the 120 MWac, as set forth in ANNEX II.

“Applicable Laws” shall mean all: (a) constitutions, treaties, statutes, laws, ordinances, rules, regulations, judgments, decrees, injunctions, writs, and orders of any Governmental Authority; (b) rules or listing requirements of any stock exchange or trading market on which securities issued by either of the Parties or any of their respective Affiliates are listed or quoted; (c) decisions of and determinations by, and interpretations of, any of the foregoing set forth in clauses (a) and (b) by any Governmental Authority or stock exchange or trading market or arbitrator; and (d) requirements of permits, in the case of each of the items described in clauses (a)-(d), that apply to either or both of the Parties or their Affiliates, the Facility, the terms of this Agreement or otherwise to the Person or matter in question. Applicable Laws includes the requirements of NERC and any applicable regional reliability entity. For the avoidance of doubt, Applicable Law includes any executive order, executive proclamation, executive memoranda, or similar action having or purporting to have the force of law, issued by the executive branch of the federal government or any other Governmental Authority.

“Authorization” shall mean any license, permit, approval, filing, waiver, exemption, variance, clearance, entitlement, allowance, franchise, or other authorization from or by a Governmental Authority.

“Availability Damages” shall have the meaning set forth in Section 9(a).

“Available Resource” shall mean, for each Calculation Interval, the available renewable resource for use by the Facility to generate Energy, as measured by the Plane of Array (“POA”) pyranometers; provided, however, that if a POA pyranometer is unavailable, then the closest POA pyranometer shall apply, and if no POA pyranometers are available, then the Available Resource shall be determined by the Solar Anywhere Clean Power Research satellite modeled dataset.

“Average Environmental Attribute Value” shall mean, with respect to any Environmental Attribute that Seller fails to transfer to Buyer due to Seller’s failure under Section 8(a), the amount (expressed in \$/MWh or \$/MW, as applicable) equal to the average of at least two (2) price quotes

obtained from nationally recognized brokers or exchanges within fifteen (15) days of when the Environmental Attributes were to have been transferred to Buyer, for the sale and delivery of Comparable Environmental Attributes of the same vintage as such Environmental Attribute in lots of approximately the same quantity as the aggregate number of Environmental Attributes not transferred to Buyer.

“Bankruptcy Code” means the Bankruptcy Reform Act of 1978, 11 U.S.C. §§101 et seq., as amended from time to time.

“Best” shall mean A.M. Best Company, a nationally recognized insurance rating agency or its successor in interest.

“Block” shall mean a discrete unit of solar panels, DC collection system, and inverter(s) that are capable of generating solar energy independent from other Blocks at the Facility.

“Business Day” shall mean a day on which Federal Reserve member banks in New York City are open or required to be open for business.

“Buy Down Amount” shall have the meaning set forth in Section 3(e).

“Buyer” shall have the meaning set forth in the introductory paragraph.

“Buyer Due Date” shall mean, with respect to any invoice issued by Seller pursuant to Section 11(b), the later of (a) the thirtieth (30<sup>th</sup>) day after the end of the applicable Monthly Settlement Period or (b) thirty (30) days after such invoice was issued by Seller.

“Buyer’s Performance Assurance” shall have the meaning set forth in Section 12(b)(i).

“Buyer’s Performance Assurance Release Date” shall have the meaning set forth in Section 12(b)(i).

“Calculation Interval” shall mean the period of time utilized by the Connecting Utility as the basis for settlement calculations in the Real-Time Energy Market.

“Capacity” shall mean the continuous load carrying capability of the generating Facility at a given time.

“Capacity Benefits” shall mean any current or future capacity credits or similar accreditations based upon the Capacity of the Facility at the Interconnection Point that may be available under Applicable Laws from time to time, including Qualifying Capacity Contribution, but excluding Environmental Attributes and Incentives.

“Cash Collateral” shall mean cash collateral held in a depository account by a Creditworthy Bank for the benefit of the Performance Assurance Beneficiary under a depository and security agreement that allows disbursement to the Performance Assurance Beneficiary upon the terms and conditions of Section 12(c)(ii) and provide for return thereof to the Performance Assurance Provider according to Sections 12(c)(v) and 12(c)(vi).



“CETA” or the “Clean Energy Transformation Act” shall mean the State of Washington Senate Bill 5116, signed into law on May 7, 2019, and codified at Wash. Rev. Code Ann. § 19.405.

“CETA Compliance Period” shall mean each of the following periods: (i) January 1, 2030, through December 31, 2033; (ii) January 1, 2034, through December 31, 2037; (iii) January 1, 2038, through December 31, 2041; and (iv) January 1, 2042, through December 31, 2044.

“Change in Law” shall mean the occurrence [REDACTED].

“Change in Law Costs” shall have the meaning set forth in Section 22(a)(i).

“Change in Law Notice” shall have the meaning set forth in Section 22(a)(i).

“Change of Control” means, with respect to either Party, any transaction or series of transactions following which the Parent Entity no longer directly or indirectly: (i) remains the owner of more than fifty percent (50%) of the direct or indirect equity or voting interests of such Party which are not otherwise held by a Party’s Lenders (excluding any equity or voting interests held by Tax Equity Investors); or (ii) retains the power to control the management and policies of such Party. Notwithstanding the foregoing, a Change of Control shall not include any Seller Permitted Transfer.

“Commencement Date” shall mean the first day of the month immediately following Commercial Operation.

“Commercial Operation” shall mean when following conditions have been satisfied or waived by the Parties: (a) Generation Equipment with an aggregate Nameplate Capacity equal to or [REDACTED] of the Anticipated Nameplate Capacity have been installed and have been Commissioned, (b) the Facility systems (other than the Generation Equipment) have been completed in all material respects and are capable of delivering Energy to the Interconnection Point in accordance with Prudent Electrical Practices, and (c) Seller has issued the Notice of Commercial Operation.

“Commercial Operation Date” shall mean the date on which the Facility achieves Commercial Operation.

“Commercially Reasonable” or “Commercially Reasonable Efforts” means (a) with respect to Seller, any action required to be made, attempted or taken by Seller under this Agreement, the degree of effort that, under the circumstances, is commercially and technically reasonable for a Person acting in accordance with Prudent Electrical Practices; and (b) with respect to Buyer, any action required to be made, attempted or taken by Buyer under this Agreement, the degree of effort that, under the circumstances, is commercially and technically reasonable for a Person in the United States electric utility industry. “Commercially Reasonable” or “Commercially Reasonable Efforts” will be reviewed and determined based upon the facts and circumstances known, or which should have been known with the exercise of reasonable efforts, at the time that a sale, purchase or other action is taken and will not be based upon a retroactive review of what would have been optimal at such time.

“Commissioned” or “Commissioning” shall mean, as to any portion of the Generation Equipment, the performance of any material start-up or material commissioning activities as reasonably identified by Seller in the manufacturer’s commissioning completion checklist. For the avoidance of doubt, the achievement of Commissioning shall not be considered reversed for any reason once achieved.

“Comparable Environmental Attributes” shall mean any unbundled Renewable Energy Credits generated by an eligible solar generation facility recognized pursuant to the Qualified Program and located in the State of Washington.

“Condition Precedent” shall have the meaning given in Section 2(b).

“Confidential Information” shall mean this Agreement, as amended, restated, supplemented, or otherwise modified and in effect from time to time, and all other information, written or oral, that has been or is disclosed by a disclosing Party, or that otherwise becomes known to the receiving Party, including as a result of visits to the Facility pursuant to Section 27(j), and that: (a) relates to matters such as patents, trade secrets, research and development activities, draft or final contracts or other business arrangements, books and records, solar data and analysis, generation data and analysis, budgets, cost estimates, pro forma calculations, engineering work product, environmental compliance, vendor lists, suppliers, manufacturing processes, energy consumption, pricing information, private processes, and other similar information, as they may exist from time to time; or (b) the disclosing Party expressly designates in writing to be confidential. Notwithstanding the foregoing, the following information does not constitute Confidential Information for purposes of this Agreement: (a) information that is or becomes generally available to the public other than as a result of a disclosure by the receiving Party in violation of this Agreement; (b) information that was already known by the receiving Party on a non-confidential basis prior to this Agreement; (c) information that becomes available to the receiving Party on a non-confidential basis from a source other than the disclosing Party if such source was not subject to any prohibition against disclosing the information to the receiving Party; (d) information that the receiving Party develops independently without using the Confidential Information; and (e) information that the disclosing Party approves for release in writing.

“Connecting Utility” shall mean Buyer.

“Connecting Utility Delay” means: (a) all cancellations, delays, reschedules, stop-work orders, suspensions, or modifications by the Connecting Utility of any activity scheduled, authorized, or required by Seller or the Connecting Utility under the Interconnection Agreement; (b) delays by the Connecting Utility in completion of any facility study or submittals to be made or approved under an Interconnection Agreement; (c) a delay in the completion and energizing of the Interconnection Facilities; or (d) [REDACTED]. Only events that cause a delay in the occurrence or progress of the Facility towards the occurrence of the Commercial Operation Date shall be considered a Connecting Utility Delay under (a), (b), or (c) above.

“Contract Year” shall mean each one-year period during the Settlement Term commencing at the start of the Settlement Term or on one of the anniversaries of the start of the Settlement Term; provided, however, that, if this Agreement is terminated prior to its expiration, the Contract Year in which such termination occurs will begin on the anniversary of the start of the Settlement

Term immediately preceding the termination date (or, if such termination occurs during the first Contract Year, at start of the Settlement Term) and will end on the termination date.

“Credit Event” shall mean, at the applicable time, with respect to any Performance Assurance: (a) if such Performance Assurance is in the form of a Guaranty, the Guarantor fails to meet the standards required in the definition of “Guaranty;” (b) if such Performance Assurance is in the form of a Letter of Credit, the bank issuing such Letter of Credit ceases to have the Credit Rating required in the definition of “Creditworthy Bank;” (c) if such Performance Assurance is in the form of Cash Collateral, the bank holding such Cash Collateral ceases to have the Credit Rating required in the definition of “Creditworthy Bank;” (d) if such Performance Assurance is in the form of a Performance Bond, the issuer of the Performance Bond fails to meet the standards required in the definition of Performance Bond; or (e) in the case of any other Performance Assurance, such Performance Assurance ceases to be in full force and effect at such time.

“Credit Rating” shall mean, for any Person, the senior unsecured and uncredit-enhanced long term debt rating of such Person or, if such Person does not have a senior unsecured and uncredit-enhanced long term debt rating, the issuer rating of such Person, provided that if a Person is rated by both Moody’s and S&P, the lowest rating shall be the Credit Rating. In the case of Buyer, the “Credit Rating” shall be the lowest rating applied by either Moody’s or S&P to any of Buyer’s outstanding revenue bonds.

“Creditworthy Bank” shall mean a U.S. commercial bank, or a U.S. branch of a foreign commercial bank, which U.S. bank, or foreign bank, has and maintains a Credit Rating of “A-” or better from S&P, or “A3” or better from Moody’s.

“Damages” shall mean any and all claims, liabilities, losses, damages, causes of action, fines interest, awards, penalties, litigation, lawsuits, administrative proceedings, administrative investigations, costs, and expenses (including reasonable attorneys’ fees, court costs and other costs of suit, arbitration, dispute resolution, or other similar proceedings), including, without limitation, for injury, illness, or death (whether asserted in contract, in warranty, in tort, by statute, or otherwise).

“Defaulting Party” shall have the meaning set forth in Section 15.

“Delay Damages” shall have the meaning set forth in Section 3(c).

“Dispute” shall have the meaning set forth in Section 25.

“DOGE” shall mean the Department of Government Efficiency.

“Dollars” or “\$” shall mean the lawful currency of the United States of America.

“Due Date” shall mean, for any amount on an invoice issued by Seller pursuant to Section 11(b), (i) if Seller is required to pay such amount, the Seller Due Date or (ii) if Buyer is required to pay such amount, the Buyer Due Date.

“Early Termination Payment” shall have the meaning set for in Section 3(d).

“Early Termination Right” shall have the meaning set for in Section 3(d).

“Economic Interruption” shall mean a mutually agreed upon period of interruption inspired by market conditions. Neither Party shall be obligated to agree to such Economic Interruption regardless of the market conditions.

“Economic Interruption Energy” shall mean that energy that would have been produced during an Economic Interruption.

“Effective Date” shall have the meaning set forth in the introductory paragraph.

“Energy” shall mean three-phase, 60-cycle alternating current electric energy, expressed in units of kilowatt-hours or megawatt-hours.

“Environmental Attribute” shall mean (a) as of the Effective Date, Renewable Energy Credits associated with the Energy delivered to Buyer, and (b) thereafter, to the extent Buyer is in compliance with Section 8(c) and to the extent transferable pursuant to the REC Trading Program or an alternative tracking or trading system selected by Buyer in accordance with Section 8(c), (i) any emissions, air quality or other environmental attribute, aspect, characteristic, claim, credit, benefit, reduction, offset or allowance, howsoever entitled or designated, resulting from, attributable to or associated with the Facility’s benefits to the environment and capable of being measured, verified or calculated; and (ii) the reporting rights related to any such attributes, aspects, characteristics, claims, credits, benefits, reductions, offsets or allowances, including the right of a Person to report the ownership thereof in compliance with federal or state law, if applicable, or otherwise to a federal or state agency, or any other Person, including under any present or future federal, state or local law, regulation or bill or any international or foreign emissions trading program. Environmental Attributes include environmental attribute credits, emissions rate credits, carbon credits, portfolio credits, emissions allowances, green tags, tradable renewable credits, Green-e® eligible products credits, environmental air quality credits and emissions reduction credits, offsets and allowances, howsoever entitled, resulting from the avoidance of the emission of any gas, chemical or other substance attributable to the Contract Quantity of the Facility, including any of the same arising out of legislation or regulation concerned with oxides of nitrogen, sulfur, carbon, particulate matter, soot or mercury or implementing the United Nations Framework Convention on Climate Change or the Kyoto Protocol to the United Nations Framework Convention on Climate Change or crediting “early actions” with a view thereto, or laws or regulations involving or administered by the Clean Air Markets Division of the Environmental Protection Agency or successor administrator. Notwithstanding the foregoing or anything to the contrary, Environmental Attributes do not include (i) any Facility Attributes, or any federal, state and local tax credits, grants or other tax incentives or any other incentives, which are allocated to Seller, or (ii) Green-e® products credits so long as Seller is obligated to register and transfer Environmental Attributes to Buyer via the REC Trading Program pursuant to Section 8.

“Environmental Attribute Damages” shall have the meaning set forth in Section 8(e).

“Environmental Attribute Transfer Deadline” shall mean, with respect to any Environmental Attribute required to be transferred to Buyer according to Section 8(a), the date

that is fifteen (15) days after the applicable monitoring, tracking, certification, or trading system posts such Environmental Attribute in Seller's account.

"Event of Default" shall have the meaning set forth in Section 15.

"Expanded Capacity" shall have the meaning set forth in Section 3(g).

"Facility" shall mean the renewable Energy generation facility described in ANNEX II.

"Facility Attribute Revenues" shall have the meaning set forth in Section 7(c).

"Facility Attributes" shall mean the Capacity Benefits and Ancillary Services that the Facility is capable of producing.

"FERC" shall mean the Federal Energy Regulatory Commission, or its successor in function.

"Financing Party" or "Financing Parties" shall mean lenders or equity investors (including any trustee or agent on behalf of such lenders or equity investors) providing equity or debt financing or refinancing to Seller or any of its Affiliates, whether that financing or refinancing takes the form of private debt or equity, public debt or equity, or any other form.

"Fixed Price" shall mean, for each Contract Year, [REDACTED]/MWh.

"Fixed Price Payment" shall have the meaning set forth in Section 11(a)(i).

"Force Majeure" shall mean an event or circumstance which prevents a Party from performing its obligations under this Agreement, which event or circumstance is not within the reasonable control of, or the result of the negligence of, such Party, and which by the exercise of due diligence, such Party is unable to avoid or cause to be avoided. Force Majeure shall include, provided that the criteria in the first sentence are met, riot, insurrection, war (declared or not), mobilization, explosion, labor dispute, fire, flood, earthquake, storm, lightning, tsunami, backwater caused by flood, vandalism, act of the public enemy, terrorism, epidemic or pandemic (including the ongoing effects related to COVID-19), civil disturbances, strike, labor disturbances, work slowdown or stoppage, blockades, sabotage, national emergency, the amendment, adoption or repeal of or other change in, or the interpretation or application of, any Applicable Laws, and any action by any Governmental Authority. Under no circumstances shall the following constitute a Force Majeure event: (i) a Party's ability to enter into a contract for the hedge, sale, or purchase of Energy, Facility Attributes, or Environmental Attributes at a more favorable price or under more favorable conditions or other economic reasons; or (ii) loss of Buyer's markets, reduction of Buyer's energy usage, or Buyer's inability to use or resell the Environmental Attributes.

"Generation Equipment" shall mean those electric energy generating devices powered by solar energy that are included in the Facility and transform the Available Resource into Energy.

"Governmental Authority" shall mean: (a) any federal, state, local, municipal or other government; or (b) any other governmental, quasi-governmental, regulatory or administrative agency, commission, department, or other authority (including the Connecting Utility, FERC,

NERC, DOGE, and any applicable regional reliability entity) whether lawfully or unlawfully (or purporting to be lawfully, including through apparent authority or otherwise) exercising or entitled to exercise (or with apparent authority to exercise) any administrative, executive, judicial, legislative, police, policy, regulatory or taxing authority or power. Governmental Authority shall include Buyer in its capacity as a connecting utility but not in its capacity as a wholesale power purchaser.

“Guaranteed Commercial Operation Date” shall mean [REDACTED]; provided, however, that the Guaranteed Commercial Operation Date shall be extended on a day-for-day basis (or such longer period as may be appropriate under the circumstances) for any delay in the occurrence or progress towards the occurrence of the Commercial Operation Date as a result of a Force Majeure event or a Connecting Utility Delay.

“Guaranteed Mechanical Availability Percentage” shall have the meaning set forth in Section 9(a).

“Guarantor” shall mean any Person issuing a Guaranty as Performance Assurance pursuant to this Agreement.

“Guaranty” shall mean a guaranty substantially in the form of ANNEX VIII issued by a Person that (i) (a) directly or indirectly controls (as defined for purposes of the definition of “Affiliate” above) the Performance Assurance Provider, and (b) has and maintains an Investment Grade Credit Rating, or (ii) is otherwise acceptable to the Performance Assurance Beneficiary.

“HE” shall mean “hour ending.”

“Imaged Agreement” shall have the meaning set forth in Section 27(p).

“Incentives” shall mean investment or production tax credits based on energy production from any portion of the Facility and any other tax benefits or other financial incentives, whether federal, state or other, resulting from construction, ownership, operation, maintenance, or other use of the Facility, including the Production Tax Credit, the Investment Tax Credit, and similar tax credits.

“Indemnified Party” shall have the meaning set forth in Section 14(d).

“Indemnifying Party” shall have the meaning set forth in Section 14(d).

“Installed Nameplate Capacity” shall mean the aggregate Capacity of the Generation Equipment installed and Commissioned at the Facility at any given time as expressed in MW of alternating current.

“Interconnection Agreement” means that agreement by and between Buyer and Seller for interconnection of the Facility to the Connecting Utility’s system, as such agreement may be amended from time to time according to its terms.

“Interconnection Facilities” shall mean the equipment to be installed by the Connecting Utility at the Interconnection Point to interconnect the Facility with the electrical transmission system of the Connecting Utility.

“Interconnection Point” shall mean the physical point at which the Facility interconnects to the electrical transmission system of the Connecting Utility, as further described in ANNEX II.

“Interest Rate” shall have the meaning set forth in Section 11(d).

“Interval Availability” shall mean, for each Calculation Interval, the percentage of the Generation Equipment ready and available to generate Energy, as measured by the SCADA System.

“Interval Quantity” shall mean, for each Calculation Interval during the Settlement Term, the net electric Energy generation from the Facility delivered at the Interconnection Point during such Calculation Interval (expressed in MWh), as determined according to Section 10(d). For the avoidance of doubt, the Interval Quantity could be zero (0) MWh or reduced to the extent that the Facility (or any portion thereof) is unavailable or curtailed for any reason.

“Investment Grade Credit Rating” shall mean a Credit Rating of “BBB-” or better from S&P and a Credit Rating of “Baa3” or better from Moody’s.

“Investment Tax Credit” shall mean the investment tax credit applicable to electricity produced from certain renewable resources pursuant to (a) 26 U.S.C. §48 and (b) any other U.S. federal tax credits based on Energy investment.

“Letter of Credit” shall mean an irrevocable standby letter of credit substantially in the form of ANNEX IX issued by a Creditworthy Bank.

“Liability Limitations” shall mean the releases, waivers, allocations, and disclaimers of, and limitations on, liabilities or remedies set forth in this Agreement.

“Maximum Availability Damages” shall mean [REDACTED] per MW of Installed Nameplate Capacity.

“Maximum Delay Damages” shall mean [REDACTED] per MW of Anticipated Nameplate Capacity.

“Mechanical Availability Percentage” shall mean a fraction (expressed as a percentage) with respect to any Contract Year the numerator of which is the sum of the number of Operational Intervals during such Contract Year for all Blocks and the denominator of which is the sum of the Calculation Intervals during such Contract Year for each Block that have been Commissioned and which the average irradiance based on all site pyranometers in the plane of array is greater than 50 W/m<sup>2</sup>.

“Modern-Era Retrospective Analysis Dataset” shall mean the Modern-Era Retrospective Analysis Dataset published by the National Aeronautics and Space Administration’s Goddard Earth Sciences Data and Information Services Center, or its successor in function.

“Monthly Settlement Period” shall mean each calendar month during the Settlement Term, commencing HE 0100 PT on the first calendar day of such calendar month and ending HE 2400 PT on the last calendar day of such calendar month; provided, however, that, (i) for the first Monthly Settlement Period, the Monthly Settlement Period shall begin HE 0100 PT on the first day of the Settlement Term and shall end HE 2400 PT on the last calendar day of such calendar month, and (ii) if this Agreement is terminated prior to its expiration, the Monthly Settlement Period in which such termination occurs will begin HE 0100 PT on the first calendar day of the calendar month in which such termination occurs and will end on the termination date.

“Moody’s” shall mean Moody’s Investors Service, Inc.

“MW” shall mean megawatt.

“MWh” shall mean megawatt-hour.

“Nameplate Capacity” shall mean the manufacturer’s rated capacity of the Generation Equipment to generate electricity as measured in MW of alternating current.

“NERC” shall mean the North American Electric Reliability Corporation.

“Non-Defaulting Party” shall have the meaning set forth in Section 15.

“Notice of Commercial Operation” shall mean written notice provided by Seller to Buyer stating that the conditions in clauses (a), (b) and (c) of the definition of “Commercial Operation” have been satisfied or waived by the Parties and specifying the then-current Installed Nameplate Capacity of the Facility, along with substantiating documentation.

“Notice of Supplemental Commercial Operation” shall mean written notice provided by Seller to Buyer stating that the conditions in clauses (a), (b), and (c) of the definition of “Supplemental Commercial Operation” have been satisfied and the then-current Installed Nameplate Capacity of the (i) Supplemental Blocks and (ii) Facility, along with substantiating documentation.

“Operational Intervals” shall mean, for each Block that has been Commissioned and for each applicable Contract Year, the sum of all Calculation Intervals (or portions thereof) in which such Block was producing power and the average irradiance based on all site pyranometers in the plane of array is greater than 50 W/m<sup>2</sup>, including any such Calculation Interval (or portions thereof) during which a Block was capable of producing power when the average irradiance based on all site pyranometers in the plane of array is greater than 50 W/m<sup>2</sup>, but did not produce power due to (i) a Force Majeure event; (ii) a System Emergency; (iii) a System Curtailment; (iv) a Seller-initiated curtailment during periods of time when the Transmission System is unavailable or operating outside the defined voltage, frequency limits, or other operational parameters of the Generation Equipment; (v) a breach by Buyer of any of its obligations under this Agreement; or (vi) during the first two Contract Years of each Block, an original equipment manufacturer Serial Defect.

“Outside Commercial Operation Date” shall have the meaning set forth in Section 3(d); provided, however, that the Outside Commercial Operation Date shall be extended on a day-for-



day basis (or such longer period as may be appropriate under the circumstances) for any delay in the occurrence of or progress towards the occurrence of the Commercial Operation Date as a result of a Force Majeure event, a delay in the completion and energizing of the Interconnection Facilities, or an act or failure to act of Buyer or Connecting Utility.

“Parent Entity” means either Buyer’s Parent Entity or Seller’s Parent Entity, as applicable.

“Party” and “Parties” shall have the respective meanings set forth in the introductory paragraph.

“Performance Assurance” shall mean either Seller’s Performance Assurance or Buyer’s Performance Assurance, as applicable.

“Performance Assurance Beneficiary” shall mean either Seller or Buyer, which is the beneficiary of a Performance Assurance, as applicable.

“Performance Assurance Guarantor” shall mean (a) in respect of any Performance Assurance in the form of a Guaranty, the Guarantor issuing such Guaranty, (b) in respect of any Performance Assurance in the form of a Letter of Credit, the bank issuing such Letter of Credit, and (c) in respect of any Performance Assurance in the form of Cash Collateral, the bank holding such Cash Collateral.

“Performance Assurance Provider” shall mean either Seller or Buyer, which is the provider of a Performance Assurance, as applicable.

“Performance Assurance Release Date” shall mean either Buyer’s Performance Assurance Release Date or Seller’s Performance Assurance Release Date, as applicable.

“Performance Bond” means a performance bond issued by a U.S. insurance company that maintains an insurance rating of at least “A-” from A.M. Best and an adjusted policy holder surplus of Seven Hundred Fifty Million Dollars (\$750,000,000) or greater.

“Person” shall mean an individual, corporation, limited liability company, voluntary association, joint stock company, business trust, partnership, Governmental Authority, or other entity.

“Production Tax Credit” shall mean the production tax credit applicable to electricity produced from certain renewable resources pursuant to (a) 26 U.S.C. §45 or 26 U.S.C. §45Y and (b) any other U.S. federal tax credits based on Energy production in existence as of the Effective Date.

“Prudent Electrical Practices” shall mean those practices, methods, and acts that would be implemented and followed by prudent operators of renewable electric energy generating facilities, similar to the Facility, during the relevant time period, which practices, methods, and acts, in the exercise of prudent and responsible professional judgment in the light of the facts known or that shall reasonably have been known at the time the decision was made, would reasonably have been expected to accomplish the desired result consistent with manufacturers’ warranties, and recommendations, contractual obligations, the requirements or guidance of the Connecting Utility,

the state public utility commission or equivalent regulatory entity, and each other applicable Governmental Authority, Applicable Laws, the requirements of insurers, good business practices, reliability, safety, and economy. Prudent Electrical Practices shall not be limited to the optimum practice, method, technique, or standard to the exclusion of all others, but rather shall be a range of reasonable practices, methods, techniques, or standards. Seller acknowledges that the use of Prudent Electrical Practices by Seller does not exempt Seller from any obligations set forth in this Agreement.

“PT” shall mean the prevailing time at the Facility as observed by the Connecting Utility.

“Qualified Operator” means an operator of generation facilities of a similar type (including solar and wind generation facilities) as the Facility that has, or the Affiliates of which have, a minimum of 3 years’ experience operating at least 500 MW of the applicable type of generation facilities.

“Qualified Program” shall mean a renewable energy program for which Seller is required to qualify the Facility according to Section 8(c).

“Qualifying Capacity Contribution” shall mean that number, as determined by the Western Power Pool, that constitutes the Facility’s Qualifying Capacity Contribution under the Western Regional Adequacy Program.

“Real-Time Energy Market” shall have the meaning ascribed to it by the Connecting Utility.

“Related Persons” shall mean, in respect of a referenced Person, (a) its owners (direct and indirect) and Affiliates, (b) its subcontractors and (c) the respective directors, officers, employees, and agents of the referenced Person and the Persons described in clauses (a) and (b) of this definition.

“Renewable Energy Credit” shall mean (a) with respect to a bundled renewable energy credit associated with the Energy delivered to Buyer, a renewable energy credit that is eligible under Section 4(1)(c) of CETA, and (b) with respect to an unbundled renewable energy credit, an unbundled renewable energy credit that represents electricity generated during the applicable CETA Compliance Period (if any), provided that there is no double counting of any nonpower attributes associated with such renewable energy credit within Washington or programs in other jurisdictions.

“REC Trading Program” means the Western Renewable Energy Generation Information System.

“Replacement Contract Losses” shall mean, with respect to a termination by a Non-Defaulting Party: (i) in the case of Buyer, the present value of all payments that Buyer would have to pay to a third party under a replacement agreement for energy and energy products for the remainder of the Term upon materially similar terms as those set forth herein, less the present value of all payments that Buyer otherwise would have been expected to pay to Seller under this Agreement for Environmental Attributes, and Facility Attributes for the remainder of the Term, and (ii) in the case of Seller, the present value of all payments that Buyer otherwise would have

been expected to pay Seller under this Agreement for Energy, Environmental Attributes and Facility Attributes for the remainder of the Term, less the present value of all payments that Seller would be expected to receive under one or more transactions to replace this Agreement for the remainder of the Term, in each case plus reasonable and documented attorneys' fees and expenses, brokerage fees and commissions, and other third-party transaction costs reasonably incurred by the Non-Defaulting Party in connection with the termination of this Agreement (including costs to unwind or terminate any financial transaction associated with the Facility) or in entering into transaction(s) replacing this Agreement; provided, however, that, if the foregoing amount is negative, the Replacement Contract Losses shall be deemed to be zero.

"S&P" shall mean Standard & Poor's Financial Services LLC.

"SCADA System" shall mean Seller's Supervisory Control and Data Acquisition system in respect of the Facility.

"Seller" shall have the meaning set forth in the introductory paragraph.

"Seller's Change in Law Compliance Cap" shall mean [REDACTED], and for the avoidance of doubt, shall be applied in aggregate to costs or after-tax economic detriments resulting from all Changes in Law that may occur during the Term.

"Seller Due Date" shall mean, with respect to any invoice issued by Seller pursuant to Section 11(b)(i), the forty-fifth (45th) day after the end of the applicable Monthly Settlement Period.

"Seller's Lenders" means any Persons, and their permitted successors and assignees, providing funding in connection with any development (including credit support, letters of credit and related mechanisms), bridge, construction, short- or long-term debt or Tax Equity Financing or refinancing for the Facility, including Tax Equity Investors, and excluding Seller's Affiliates.

"Seller's Parent Entity" means Invenergy Solar Development North America LLC, a Delaware limited liability company; provided that following a Change of Control, "Seller's Parent Entity" shall refer to Seller's ultimate parent following such Change of Control.

"Seller's Performance Assurance" shall have the meaning set forth in Section 12.

"Seller's Performance Assurance Amount" shall mean [REDACTED] per MW of the greater of the Anticipated Nameplate Capacity or Installed Nameplate Capacity.

"Seller's Performance Assurance Release Date" shall have the meaning set forth in Section 12.

"Seller Permitted Transfer" means any of the following: (a) any transaction after which the Seller's Parent Entity, or their Affiliate, is a Qualified Operator or has engaged a Qualified Operator to operate the Facility; (b) the direct or indirect transfer of shares of, or equity interests in, Seller in a single transaction or series of transactions to a Tax Equity Investor so long as such Tax Equity Investor remains a passive owner of such interests and Seller's Parent Entity retains the ability to control the management and policies of Seller; or (c) a transfer of: (i) all or

substantially all of the assets of Seller's Parent Entity in a single transaction; or (ii) all or substantially all of Seller's Parent Entity's renewable energy generation portfolio in a single transaction.

"Serial Defect" shall mean the occurrence of (a) a defect in the same part or component of at [REDACTED] of the Facility, such that Seller has a contractual right to claim that there is a breach of warranty under the applicable documentation between Seller and the module manufacturer, and (b) delivery by Seller to Buyer of written evidence that Seller has submitted a written claim to the component manufacturer in accordance with such applicable documentation between Seller and the component with respect to such defect.

"Settlement Amount" shall have the meaning set forth in Section 11(a)(ii).

"Settlement Term" shall mean twenty-years, beginning at HE 0100 PT on the Commencement Date.

"Supplemental Blocks" shall mean any Blocks that achieve Supplemental Commercial Operation.

"Supplemental Commercial Operation" shall mean the date following the Commercial Operation Date when all of the following conditions have been satisfied or waived by the Parties: (a) additional Nameplate Capacity has entered into Commercial Operation which, when combined with the aggregate Nameplate Capacity that has already achieved Commercial Operation as set forth in the Notice of Commercial Operation, are equal to or less than the Anticipated Nameplate Capacity and (b) the Facility systems have been completed in all material respects and are capable of delivering Energy to the Interconnection Point in accordance with the provisions of this Agreement, (c) Seller has received all Authorizations required to deliver the Interval Quantity to the Interconnection Point and to perform its obligations under this Agreement; and (d) the Seller has issued the Notice of Supplemental Commercial Operation.

"Suspension Date" shall have the meaning set forth in Section 16(b).

"System Curtailment" shall mean a required curtailment of all or any part of the deliveries of Interval Quantity by Connecting Utility not due to actions or omissions of Seller or an Affiliate of Seller.

"System Emergency" shall mean any circumstance or combination of circumstances or any condition of the Facility, the Interconnection Facilities, the Transmission System, or the transmission system of other electric utilities, in which continued operation of the Facility (a) is reasonably likely to endanger life or property and necessitates immediate action to avert injury to persons or serious damage to property, or (b) is reasonably likely to adversely affect, degrade, or impair Transmission System reliability or transmission system reliability of the transmission system of other electric utilities.

"Tax Equity Financing" means with respect to Seller or an upstream equity owner of Seller, any transaction or series of transactions (including, without limitation, any transaction of the type described in this definition that utilizes a lease or inverted lease structure) resulting in a portion of the membership interests in Seller or an upstream equity owner, as applicable, being issued or

otherwise provided to another Person (a “Tax Equity Investor”) in exchange for capital contributions to Seller or such upstream equity owner, as applicable, or the Facility being sold to and leased by Seller from a Tax Equity Investor, in either case for the purpose of raising a portion of the funds needed to finance the construction of the Facility by monetizing the tax credits, depreciation and other tax benefits associated with the Facility; provided the Tax Equity Investor shall only be a Tax Equity Investor during the time period during which such Person is monetizing the tax credits, depreciation and other tax benefits associated with the Facility.

“Tax Equity Investor” is defined in the definition of Tax Equity Financing.

“Term” shall have the meaning set forth in Section 2.

“Transmission System” means the electric transmission system to which the Facility is connected.

“Western Power Pool” means that entity formerly known as the Northwest Power Pool, and that, as of the Effective Date, had offices at 7525 NE Ambassador Place in Portland, Oregon and a website URL of [westernpowerpool.org](http://westernpowerpool.org).

“Western Regional Adequacy Program” means that resource adequacy program administered by the Western Power Pool.

## **II. INTERPRETATION**

In the Agreement, unless otherwise stated:

- A. Any reference to an agreement or document (including those set forth electronically on an internet web site) or a portion or provision thereof shall be construed as a reference to the same as it has been, or may be, amended, supplemented, or otherwise modified and in effect from time to time;
- B. Any reference to Applicable Laws and to terms defined in, and other provisions of, Applicable Laws (including those set forth electronically on an internet web site) shall be references to the same (or a successor to the same) as it has been, or may be, amended, supplemented, or otherwise modified and in effect from time to time during the Term;
- C. Any reference to a Person shall include that Person’s permitted successors and assigns;
- D. Any reference to a Governmental Authority shall be construed as including a reference to any successor Governmental Authority, but only to the extent that successor Governmental Authority succeeds to the original Governmental Authority’s functions and capacities during the Term;
- E. Any reference to a Section or Annex shall be a reference to a Section of, or Annex to, this Agreement;
- F. The words “herein,” “hereafter,” “hereto,” “hereunder,” and similar words shall be construed as a reference to this Agreement as a whole and not to any particular portion or provision of this Agreement;

- G. Words in the singular may be interpreted as referring to the plural and vice versa, and words denoting natural persons may be interpreted as referring to other types of Persons and vice versa;
- H. The word “or” when used in this Agreement includes the meaning “and/or” unless the context unambiguously dictates otherwise;
- I. Whenever this Agreement refers to a number of days, such number shall refer to the number of calendar days unless Business Days are specified. A requirement that a payment be made (or an obligation be performed or a requirement be satisfied) on or by a day that is not a Business Day shall be construed as a requirement that the payment be made (or obligation be performed or requirement be satisfied) on or by the next following Business Day; provided that any calculation required to be made as of a certain day shall be made as of such day, regardless of whether such day is a Business Day; and
- J. Whenever the term “include,” “includes,” or “including” is used herein, such term shall be deemed to be followed by the words “without limitation” and construed as being illustrative and inclusive of but not exhaustive or limited to the items that follow.

## ANNEX II – DESCRIPTION OF FACILITY

**Anticipated Nameplate Capacity: 120 MWac**

**Project:** Quincy Solar Energy Project

**Point of Interconnection:** A new substation on the Rocky Ford to Larson #1 115 kV transmission line.

**Site:** 47.251, -119.383

**Major equipment and components comprising the project:** The project will include inverters, padmount transformers, AC collection system and dedicated project substation with a main power 3 winding transformer with 115 kV high side voltage.

**Interconnection Facilities comprising the project:** Grant PUD's Interconnection Facilities include one of three line terminals within the switchyard and the short line extension between the Point of Change of Ownership and Grant PUD's switchyard.

**Real property description:** Located in the County of Grant, State of Washington, and more particularly described as follows: Section 1, Township 20, Range 27

**ANNEX III – INTENTIONALLY OMITTED**



**ANNEX IV – INTENTIONALLY OMITTED**

**ANNEX V - INTENTIONALLY OMITTED**

## ANNEX VI – INSURANCE REQUIREMENTS

1. Commercial general liability insurance policy in an “occurrence” form or an AEGIS “claims first made” form or equivalent with third party bodily injury and property damage combined liability limits of [REDACTED] per occurrence and which shall include specific coverage for broad form contractual liability including Seller’s indemnification obligations under this Agreement and a separation of insured provision. All such policies shall provide coverage on an “occurrence” basis; provided, however, that coverage may be provided on a “claims made” basis with the provision of a minimum extended reporting period of two (2) years from the termination of this Agreement. The coverage requirements can be met through any combination of primary insurance and follow form excess or umbrella insurance as long as the combined limits meet requirements of this Agreement.
2. All risk property insurance providing coverage for the full replacement value of the Facility or loss limit of not less than the Probable Maximum Loss (PML), subject to industry standard sub-limits, deductibles, and exclusions.

**ANNEX VII – NOTICE ADDRESSES**

All notices, demands, or other communications that either Party may give to the other under or in connection with this Agreement (other than invoices and related communications) shall be sent to the following (unless another address has been notified by the relevant Party to the other Party as its address for notice according to Section 17):

If to Buyer:	If to Seller:
<i>[Buyer]</i> <i>[insert address]</i> <i>[insert address]</i> Attention: <i>[insert name or title]</i> Email: <i>[insert email]</i>	Quincy Solar Energy LLC c/o Invenergy LLC One South Wacker Dr., Suite 1500 Chicago, IL 60606 Attention: Asset Management Email: AssetManagers-Chicago@invenergy.com
with a copy to: <i>[Buyer]</i> <i>[insert address]</i> <i>[insert address]</i> Attention: <i>[insert name or title]</i> Email: <i>[insert email]</i>	with a copy to: Quincy Solar Energy LLC c/o Invenergy LLC One South Wacker Dr., Suite 1500 Chicago, IL 60606 Attention: General Counsel Email: generalcounsel@invenergy.com

All invoices and related communications shall be sent to the following (unless another address has been notified by the relevant Party to the other Party as its address for notice according to Section 17):

If to Buyer:	If to Seller:
<i>[Buyer]</i> <i>[insert address]</i> <i>[insert address]</i> Attention: <i>[insert name or title]</i> Email: <i>[insert email]</i>	Quincy Solar Energy LLC c/o Invenergy LLC One South Wacker Dr., Suite 1500 Attention: <i>Settlements</i> Email: <i>settlements@invenergy.com</i>
with a copy to: <i>[Buyer]</i> <i>[insert address]</i> <i>[insert address]</i> Attention: <i>[insert name or title]</i> Email: <i>[insert email]</i>	with a copy to: Quincy Solar Energy LLC c/o Invenergy LLC One South Wacker Dr., Suite 1500 Chicago, IL 60606 Attention: General Counsel Email: generalcounsel@invenergy.com

Wire Transfer: BANK: <i>[insert]</i> BANK ACCT NAME: <i>[insert]</i> ABA No.: <i>[insert]</i> BANK ACCT No.: <i>[insert]</i> REF: <i>[insert]</i>	Wire Transfer: <sup>1</sup> BANK: <i>[insert]</i> BANK ACCT NAME: <i>[insert]</i> ABA No.: <i>[insert]</i> BANK ACCT No.: <i>[insert]</i> REF: <i>[insert]</i>
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## ANNEX VIII – FORM OF PARENT GUARANTY

[BUYER/SELLER]  
[ADDRESS]  
[ADDRESS]

Attention: [NAME]

Ladies and Gentlemen:

For value received, [GUARANTOR] (the “Guarantor”), a [STATE/CORPORATE TYPE], hereby unconditionally guarantees to [BUYER/SELLER] (together with its successors and permitted assigns under the Agreement (as defined below), the “Performance Assurance Beneficiary”) the prompt and complete payment when due, whether by acceleration or otherwise, of all payment obligations (the “Guaranteed Obligations”), whether now in existence or hereafter arising, of [BUYER/SELLER] (together with its successors, the “Performance Assurance Provider”), to the Performance Assurance Beneficiary pursuant to that certain Renewable Energy Purchase Agreement dated as of [DATE] by and between the Performance Assurance Beneficiary and the Performance Assurance Provider (as amended, supplemented, or otherwise modified from time to time, the “Agreement”). The Guarantor’s obligations and liabilities under this Guaranty shall be limited to payment obligations only, and the Guarantor shall have no obligation to perform (other than with respect to payment) under the Agreement, including to provide any Environmental Attributes. Each capitalized term used but not defined herein shall have the corresponding meaning given to it in the Agreement.

This Guaranty is one of payment and not of collection. Notwithstanding anything to the contrary, the Guarantor’s aggregate liability under this Guaranty is limited to, and shall not exceed, the amount of [INSERT AMOUNT]. For the avoidance of doubt, the Guaranteed Obligations may at any time and from time to time exceed the liability of the Guarantor hereunder without impairing this Guaranty.

[The Guarantor hereby represents and warrants that it is an “eligible contract participant” within the meaning of Section 1a(18)(A)(v) of the Commodity Exchange Act and an “eligible commercial entity” within the meaning of Section 1(a)(17) of the Commodity Exchange Act.]<sup>2</sup>

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<sup>1</sup> Seller to provide information 30-days prior to the Commercial Operations Date.

<sup>2</sup> Remove as necessary (depending upon whether Dodd-Frank Compliance]

The Guarantor hereby waives notice of acceptance of this Guaranty and notice of any obligation or liability to which it may apply, and waives presentment, demand for payment, protest, notice of dishonor or non-payment of any such obligation or liability, suit or the taking of other action by the Performance Assurance Beneficiary against, and any other notice to, the Performance Assurance Provider, the Guarantor, or others.

The Performance Assurance Beneficiary may at any time and from time to time without notice to or consent of the Guarantor and without impairing or releasing the obligations of the Guarantor hereunder: (1) agree with the Performance Assurance Provider to make any change in the terms of any obligation or liability of the Performance Assurance Provider to the Performance Assurance Beneficiary, (2) take or fail to take any action of any kind in respect of any security for any obligation or liability of the Performance Assurance Provider to the Performance Assurance Beneficiary, (3) exercise or refrain from exercising any rights against the Performance Assurance Provider or others, or (4) compromise or subordinate any obligation or liability of the Performance Assurance Provider to the Performance Assurance Beneficiary including any security therefor. Any other suretyship defenses are hereby waived by the Guarantor.

This Guaranty shall continue in full force and effect until the earliest to occur of: (i) the discharge of all of the Guaranteed Obligations; (ii) the aggregate payments made by the Guarantor pursuant to this Guaranty equal the maximum aggregate liability specified in the second paragraph of this Guaranty; or (iii) this Guaranty is replaced by other Performance Assurance in accordance with Section [13/14] of the Agreement. After such earliest date, no claim may be made against the Guarantor hereunder and the Guarantor shall be deemed released from all obligations under this Guaranty (and the Performance Assurance Beneficiary shall execute any documents reasonably requested by the Performance Assurance Provider or the Guarantor to confirm such release), except that (A) in the case of a termination under clause (ii) above, the termination shall be without prejudice to any outstanding claim validly made against the Guarantor hereunder prior to such termination and (B) in the case of a termination under clause (ii) or clause (iii) above, if, on such earliest date, there are outstanding any claims that (1) were validly made prior to such date against the Guarantor hereunder and (2) in the case of a termination under clause (iii) above, are not fully secured by the replacement Performance Assurance, then, on such earliest date, (x) the remaining maximum aggregate liability specified in the second paragraph of this Guaranty shall be deemed automatically reduced to the amount of such outstanding claims (if then in excess thereof), (y) this Guaranty shall be deemed automatically extended until the final resolution and (if applicable) full payment of such outstanding claims and (z) the Guaranteed Obligations shall be deemed automatically reduced to the payment of such outstanding claims.

This Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time any payment of any of the Guaranteed Obligations are annulled, set aside, invalidated, declared to be fraudulent or preferential, rescinded or must otherwise be returned, refunded or repaid by the Performance Assurance Beneficiary upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of the Performance Assurance Provider or any other guarantor, or upon or as a result of the appointment of a receiver or conservator of, or trustee for the Performance Assurance Provider or any other guarantor or any substantial part of its property or otherwise, all as though such payment or payments had not been made; provided that this Guaranty shall not be reinstated for any reason after its termination under clause (iii) of the immediately preceding paragraph.

The Guarantor may not assign its rights or delegate its obligations under this Guaranty, in whole or in part, without prior written consent of the Performance Assurance Beneficiary, and any purported assignment or delegation absent such consent is void, except for an assignment and delegation of all of the Guarantor's rights and obligations hereunder in whatever form the Guarantor determines may be appropriate to a partnership, corporation, trust or other organization in whatever form that succeeds to all or substantially all of the Guarantor's assets and business and that assumes such obligations by contract, operation of law or otherwise. Upon any such delegation and assumption of obligations, the Guarantor shall be relieved of and fully discharged from all obligations hereunder, whether such obligations arose before or after such delegation and assumption.

THIS GUARANTY SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK WITHOUT GIVING EFFECT TO PRINCIPLES OF CONFLICTS OF LAW THAT WOULD RESULT IN APPLICATION OF THE LAWS OF A DIFFERENT JURISDICTION. GUARANTOR AGREES TO THE EXCLUSIVE JURISDICTION OF THE FEDERAL AND STATE COURTS LOCATED IN THE COUNTY OF NEW YORK, STATE OF NEW YORK, UNITED STATES OF AMERICA, OVER ANY DISPUTES ARISING UNDER OR RELATING TO THIS GUARANTY.

[FURTHERMORE, THE GUARANTOR HEREBY APPOINTS [ ] (THE "PROCESS AGENT"), WITH AN OFFICE ON THE DATE HEREOF AT [ ], UNITED STATES, AS ITS AGENT TO RECEIVE, ON ITS BEHALF AND ON BEHALF OF ITS PROPERTY, SERVICE OF COPIES OF THE SUMMONS AND COMPLAINT AND ANY OTHER PROCESS WHICH MAY BE SERVED IN ANY SUCH JUDICIAL ACTION. SUCH SERVICE MAY BE MADE BY MAILING OR DELIVERING A COPY OF SUCH PROCESS TO SUCH PERSON IN CARE OF THE PROCESS AGENT AT THE PROCESS AGENT'S ADDRESS ABOVE, AND THE GUARANTOR HEREBY AUTHORIZES AND DIRECTS THE PROCESS AGENT TO ACCEPT SUCH SERVICE ON ITS BEHALF. IN ADDITION TO SERVICE UPON THE PROCESS AGENT, THE PERFORMANCE ASSURANCE BENEFICIARY ALSO AGREES TO SEND A COPY OF THE PROCESS TO THE GUARANTOR BY FEDERAL EXPRESS, UNITED PARCEL SERVICE, DHL, OR OTHER SIMILAR INTERNATIONAL EXPRESS COURIER SERVICE WITH POSTAGE PREPAID AT THE FOLLOWING ADDRESS: [ ] AND A COPY TO [ ].]<sup>3</sup>

Yours truly,

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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<sup>3</sup>Insert bracketed language only if non-U.S. guarantor.

**ANNEX IX – FORM OF LETTER OF CREDIT**

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [#]

EXPIRATION DATE: [DATE]

Applicant:

Beneficiary:

Dear Sir or Madam:

By order of Applicant, we have established this irrevocable Standby Letter of Credit (this “Letter of Credit”) in your favor for an aggregate amount up to \$[AMOUNT] (as reduced pursuant to this Letter of Credit, the “Maximum Stated Amount”) effective [DATE] and expiring [DATE], with our close of business. We are informed that this Letter of Credit is provided in connection with that certain Renewable Energy Purchase Agreement, dated as of [DATE] (as amended, supplemented or otherwise modified from time to time, the “Agreement”), by and between [BUYER/SELLER], a [STATE/CORPORATE TYPE] (the “Applicant”) and you.

The Maximum Stated Amount shall be immediately and permanently reduced by the amount of each drawing hereunder.

Funds hereunder are available to you, providing all terms and conditions of this Letter of Credit are strictly complied with against your sight draft drawn on us in the form of Exhibit A and when accompanied by the Beneficiary’s statement purportedly signed by an authorized representative of the Beneficiary and reading as follows:

Either:

*“An Event of Default of Applicant has occurred under the Agreement, and the amount that the Beneficiary is drawing under this Letter of Credit is due and owing by Applicant to the Beneficiary.”*

, or

*“The Letter of Credit Number [#] is set to expire on [DATE] [insert expiration date from above] (the “Expiration Date”) Applicant is required to maintain Performance Assurance (as defined in the Agreement) under the Agreement and has failed to provide us with alternative Performance Assurance at least 30 calendar days prior to the Expiration Date, and as of the date of this drawing, has not provided us with such Performance Assurance. As a result of the foregoing, Beneficiary is entitled to draw the Maximum Stated Amount of the Letter of Credit.”*

Except as stated herein this undertaking is not subject to any condition or qualification. Our obligation under this Letter of Credit shall be our individual obligation and is in no way contingent upon reimbursement with respect thereto.

We hereby undertake to honor promptly your sight drafts drawn on us in accordance with this Letter of Credit, indicating our Letter of Credit Number [#], if presented to us on a Business Day occurring on or before the applicable expiration date for an aggregate amount not to exceed the Maximum Stated Amount. If a demand for payment made hereunder does not conform to the



terms and conditions of this Letter of Credit, we shall give you prompt notice in writing (or by telephone promptly confirmed in writing) that your demand for payment was not effected in accordance with the terms and conditions of this Letter of Credit, stating the reasons therefor and that we will upon your instructions hold any documents at your disposal or return the same to you. Upon being notified that the demand for payment was not effected in conformity with this Letter of Credit, you may correct any such non-conforming demand but in no event shall the expiry date of this Letter of Credit be extended from the then applicable expiry date.

We have no duty or right to inquire into the validity of, or the basis for, any draw.

This Letter of Credit shall permit multiple and partial drawings.

As used herein, "Business Day" shall mean any day on which (a) commercial banks are not closed, or authorized or required to close, in New York City, New York or (b) with respect to a certain drawing request, the bank to which funds are requested to be transferred hereunder as set forth in such drawing request is not closed, or authorized or required to close, and may receive such funds by wire transfer as requested hereunder.

Any drawings under this Letter of Credit shall be presented to us at our counters at [ADDRESS] by personal presentation, courier or messenger service.

This Letter of Credit is transferable in its entirety. We shall not recognize any transfer of this Letter of Credit until [insert Issuing Bank's procedure for transfer]. Upon [reference applicable requirement in Issuing Bank's procedure for transfer], we shall endorse the reverse of this Letter of Credit and forward to the transferee.

Should you have occasion to communicate with us regarding this Letter of Credit, kindly direct your communication to the attention of our Letter of Credit Department, making specific reference to our Letter of Credit Number [#].

This Letter of Credit, together with sight drafts submitted in accordance with the terms hereof, sets forth in full the terms of our undertaking and this undertaking shall not in any way be modified, amended, limited or amplified by reference to any document, instrument, or agreement referred to herein, and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement.

This Letter of Credit is subject to Uniform Customs and Practice for Documentary Credits (2007 Revision), International Chamber of Commerce Publication No. 600 (the "UCP") and to matters not governed by and construed in accordance with the UCP, the laws of the State of New York without regard to principles of conflicts of law that may result in the application of the laws of another jurisdiction. Notwithstanding Article 36 of the UCP, if this Letter of Credit expires during an interruption of business as described in Article 36, this Letter of Credit shall be extended automatically for a period of thirty (30) Business Days from the date of resumption of business. We hereby agree to provide you with prompt written notice of such resumption of business.

All payments hereunder shall be made free and clear of, and without deduction or set off for or on account of, any present or future taxes, duties, charges, fees, deductions or withholdings of any nature and by whosoever imposed.

[ISSUING BANK]

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Exhibit A to Form Letter of Credit**  
**Form of Sight Draft**  
IRREVOCABLE STANDBY LETTER OF CREDIT NO. [#]

Date [DATE]

Sight Draft

Pay to the order of [BUYER/SELLER] the amount of \$[AMOUNT] drawn under [ISSUING BANK] Irrevocable Standby Letter of Credit Number [#] dated [DATE].

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

cc:

## ANNEX X – AVAILABLE REAL-TIME DATA

Seller shall make following data available to Buyer in accordance with Section 19(b).

<b>DATA FIELD</b>	<b>MINIMUM FREQUENCY</b>	<b>MAXIMUM TIME DELAY</b>
Available Resource	Fifteen Minute	Fifteen Minutes
Interval Quantity	Fifteen Minute	Fifteen Minutes