

ATTACHMENT A

San Diego County Water Authority (Water Authority) Purchase Order Terms and Conditions

- A. **GOVERNING LAW.** This Contract shall be governed by the laws of the state of California.
- B. **ASSIGNMENTS/CHANGES.** This Contract shall not be assigned or transferred without the written consent of the Water Authority. An approved change or addition, along with payment adjustment, if any, will be effective upon an amendment to this Contract executed by both parties.
- C. **AUDITS.** Contractor agrees to permit the Water Authority to audit, at any reasonable time during the term of this Contract and for four (4) years thereafter, Contractor records pertaining to matters covered by this Contract. Contractor further agrees to maintain such record for at least four (4) years after the term of this Contract.
- D. **NO IMPLIED WAIVER.** No payment, partial payment, acceptance, or partial acceptance by the Water Authority shall operate as a waiver on the part of the Water Authority of any of its rights under this Contract.
- E. **WATER AUTHORITY'S PROPERTY.** Any reports, information, data, or other material given to or prepared or assembled by, Contractor or its subcontractors, if any, under this Contract will become the property of the Water Authority and will not be made available to any individual or organization by Contractor or its subcontractors, if any, without prior written approval by the Water Authority.
- F. **QUALIFICATIONS AND STANDARD OF WORK.** Contractor warrants that it is fully qualified to perform the work, and holds all applicable licenses, permits, and other necessary qualifications. Contractor shall perform and complete in a good and worker-like manner all the work pertaining thereto described in the Scope of Work, to furnish at its cost and expense all tools, equipment, labor and materials necessary therefore, except such materials as are specifically stipulated in the Contract documents to be furnished by the Water Authority, and to do everything required by this Contract.
- Contractor will perform the work personally or through Contractor's employees. Contractor may subcontract work only upon prior approval of the Water Authority and in compliance with provisions of the Water Authority's Small Contractor Outreach and Opportunities (SCOOP) Program, if the Water Authority determines that the program provisions are applicable (or insert full participation clause).
- G. **NON-DISCRIMINATION.** No discrimination shall be made in the employment of persons under this Contract because of race, color, national origin, age, ancestry, religion or sex of such person. Contractor agrees to meet all requirements of the San Diego County Water Authority Administrative Code pertaining to nondiscrimination in employment.
- H. **COMPLIANCE WITH LAWS.** Contractor agrees that it will comply with all federal, state and local laws, ordinances, regulations and orders that affect those engaged or employed under this Contract, any materials used in Contractor's performance under this Contract, or the performance of services provided in completing the work.
- I. **INDEPENDENT CONTRACTOR.** It is understood and agreed that in the performance of this Contract, Contractor shall at all times be considered an independent contractor and not an employee of the Water Authority. Contractor shall be responsible for employing and engaging all persons necessary to complete the work required under this Contract.
- J. **TERMINATION/SUSPENSION.** The Water Authority may suspend the performance of this Contract in whole or in part, or terminate this Contract, with or without cause, by giving ten (10) days' prior written notice thereof to Contractor. Upon receipt of such notice, Contractor shall immediately discontinue its performance. Upon such suspension or termination by the Water Authority, the Water Authority shall pay Contractor for its services actually rendered to the Water Authority on or before the effective date of the suspension or termination provided, if this Contract is suspended or terminated on account of a default by Contractor, the Water Authority will be obligated to compensate Contractor only for that portion of the services which are of direct and immediate benefit to the Water Authority, in the reasonable determination of the Water Authority. Upon suspension or termination, Contractor shall immediately deliver to the Water Authority any and all copies of studies, sketches, drawings, computations and other material or products, whether or not completed, prepared by Contractor or given to Contractor, in connection with this Contract. Such materials shall become property of the Water Authority. The rights of the Water Authority under this section to suspend or terminate this Contract shall be in addition to any and all rights or remedies the Water Authority may have available to it under law, in the case of a breach of this Contract by Contractor.
- K. **CONFLICT OF INTEREST.** In accepting this Contract, Contractor covenants that it presently has no interest, and will not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of this Contract. Contractor further covenants that in the performance of this Contract, it will not employ any person having such an interest. Contractor certifies that no person who has or will have any financial interest under this Contract is an officer or an employee of the Water Authority.
- L. **ENTIRE CONTRACT.** This Contract, including all attachments, represents the entire contract between the parties with respect to the services which may be the subject of this Contract. Any variance in the attachments does not affect the validity of the Contract and the Contract itself controls. All prior contracts, representations, statements, negotiations and undertakings whether oral or written are superseded hereby.
- M. **INVOICES.** Mail invoices to the attention of the Water Authority Contract Manager at 4677 Overland Avenue, San Diego, CA 92123.

ATTACHMENT B Insurance and Indemnification

1. INSURANCE:

(a) Requirement. Contractor shall procure and maintain during the period of performance of this Contract and for _____ months following completion, insurance from insurance companies authorized to do business in the State of California, as set forth in this section. These policies shall be primary insurance as to the Water Authority so that any other coverage held by the Water Authority shall not contribute to any loss under Contractor's insurance.

General liability: (with coverage at least as broad as ISO form CG 00 01 10 01) coverage in an amount not less than **[\$2,000,000]** general aggregate and **[\$1,000,000]** per occurrence for general liability, bodily injury, personal injury, and property damage.

Automobile liability: (with coverage at least as broad as ISO form CA 00 01 10 01, for "any auto") coverage in an amount not less than **[\$1,000,000]** per accident for personal injury, including death, and property damage.

Workers' compensation and employer's liability: coverage shall comply with the laws of the State of California, but not less than an employer's liability limit of **[\$1,000,000.]**.

A deductible or retention may be utilized, subject to approval by the Water Authority. All policies that include a self-insured retention shall include a provision that payments of defense costs and damages (for bodily injury, property damage, personal injury or any other coverages included in the policy) by any party including additional insureds or insurers, shall satisfy the self-insured retention limits.

(b) Endorsements. The insurance policies shall be endorsed as follows:

For the commercial general liability insurance, the Water Authority (including its directors, officers, employees, and agents) shall be named as additional insured, and the policy shall be endorsed with a form equivalent to ISO form CG 20 10 10 93, that contains the provisions required by this Contract.

Contractor's insurance is primary to any other insurance available to the Water Authority with respect to any claim arising out of this Agreement. Any insurance maintained by the Water Authority shall be excess of the Contractor's insurance and shall not contribute with it. The Contractor's endorsement of insurance shall include a waiver of any rights of subrogation against the Water Authority, and its directors, officers, employees and agents.

Contractor's insurance will not be canceled, limited, amended, reduced in coverage amount, or allowed to expire without renewal until after 30 days' written notice has been given to the Water Authority, or after 10 days' written notice in the case of cancellation for non-payment of premium.

(c) Qualifications of Insurer. The insurance shall be provided by an acceptable insurance provider, as determined by the Water Authority, which satisfies the following minimum requirements: An insurance carrier admitted to do business in California and maintaining an agent for process within the state. Such insurance carrier shall maintain a current A.M. Best rating classification of "A-" or better and a financial size of "\$10 million to \$24 million (Class V) or better", or A Lloyds of London program provided by syndicates of Lloyds of London and other London insurance carriers, providing all participants are qualified to do business in California and the policy provides for an agent for process in the state. Workers' Compensation and Employer's Liability shall be provided by an A-V rated carrier or by the California State Compensation Fund. If provided by a carrier other than California State Compensation Fund, Contractor shall provide proof of the carrier's A-V rating to Water Authority.

(d) Provision of Insurance Prior to Commencement of Services. Before commencing any services, Contractor shall furnish certificates of insurance and endorsements affecting coverage on forms provided by Water Authority, or on equivalent ISO forms that contain provisions required by this Contract.

2. INDEMNIFICATION:

[Option 1 – Type II (default)](a) To the fullest extent permitted by law, the Contractor shall (1) immediately defend, and (2) indemnify the Water Authority, and its directors, officers, and employees from and against all liabilities regardless of nature or type arising out of or resulting from Contractor's performance of services under this contract, or any negligent or wrongful act or omission of the Contractor or Contractor's officers, employees, agents, or subcontractors. Liabilities subject to the duties to defend and indemnify include, without limitation all claims, losses, damages, penalties, fines, and judgments; associated investigation and administrative expenses; defense costs, including but not limited to reasonable attorneys' fees; court costs; and costs of alternative dispute resolution. The Contractor's obligation to indemnify applies unless it is adjudicated that its liability was caused by the sole active negligence or sole willful misconduct of an indemnified party. If it is finally adjudicated that liability is caused by the comparative active negligence or willful misconduct of an indemnified party, the Contractor's indemnification obligation shall be reduced in proportion to the established comparative liability of the indemnified party.

(b) The duty to defend is a separate and distinct obligation from the Contractor's duty to indemnify. The Contractor shall be obligated to defend, in all legal, equitable, administrative, or special proceedings, with counsel approved by the Water Authority, the Water Authority and its directors, officers, and employees, immediately upon tender to the Contractor of the claim in any form or at any stage of an action or proceeding, whether or not liability is established. An allegation or determination of comparative active negligence or willful misconduct by an indemnified party does not relieve the Contractor from its separate and distinct obligation to defend

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Water Authority. The obligation to defend extends through final judgment, including exhaustion of any appeals. The defense obligation includes an obligation to provide independent defense counsel if the Contractor asserts that liability is caused in whole or in part by the negligence or willful misconduct of the indemnified party. If it is finally adjudicated that liability was caused by the sole active negligence or sole willful misconduct of an indemnified party, Contractor may submit a claim to the Water Authority for reimbursement of reasonable attorneys' fees and defense costs.

(c) The review, acceptance or approval of the Contractor's work or work product by any indemnified party shall not affect, relieve or reduce the Contractor's indemnification or defense obligations. This Section survives completion of the services or the termination of this contract. The provisions of this Section are not limited by and do not affect the provisions of this contract relating to insurance.

[Option 2 – Type I (White Book)]

(a) To the fullest extent permitted by law, the Contractor shall (1) immediately defend and (2) indemnify the Water Authority, and its directors, officers, and employees from and against all liabilities regardless of nature, type, or cause, arising out of or resulting from or in connection with the performance of the Contract. Liabilities subject to the duties to defend and indemnify include, without limitation, all claims, losses, damages, penalties, fines, and judgments; associated investigation and administrative expenses; defense costs, including but not limited to reasonable attorneys' fees; court costs; and costs of alternative dispute resolution. The Contractor's obligation to indemnify applies regardless of whether a liability is a result of the negligence of any other person, unless it is adjudicated that the liability is caused by the sole active negligence or sole willful misconduct of an indemnified party.

(b) The duty to defend is a separate and distinct obligation from the Contractor's duty to indemnify. The Contractor shall be obligated to defend, in all legal, equitable, administrative, or special proceedings, with counsel approved by the Water Authority, the Water Authority and its directors, officers, and employees, immediately upon submittal to the Contractor of the claim in any form or at any stage of an action or proceeding, whether or not liability is established. A determination of comparative active negligence or willful misconduct by an indemnified party does not relieve the Contractor from its separate and distinct obligation to defend Water Authority. The obligation to defend extends through final judgment, including exhaustion of any appeals. The defense obligation includes an obligation to provide independent defense counsel if Contractor asserts that liability is caused in whole or in part by the negligence or willful misconduct of the indemnified party. If it is finally adjudicated that liability was caused by the sole active negligence or sole willful misconduct of an indemnified party, Contractor may submit a claim to the Water Authority for reimbursement of reasonable attorneys' fees and defense costs.

(c) The review, acceptance or approval of the Contractor's work or work product by any indemnified party shall not affect, relieve or reduce the Contractor's indemnification or defense obligations. This Section survives completion of the services or the termination of this contract. The provisions of this Section are not limited by and do not affect the provisions of this contract relating to insurance.

(d) Liabilities subject to this Section include any claim of discrimination or harassment, including but not limited to sexual harassment, arising from the conduct of the Contractor or any of the Contractor's officers, employees, agents, licensees, or subcontractors. In the event of a discrimination or harassment complaint against any employee, agent, licensee or subcontractor of the Contractor or its subcontractors, the Contractor shall take immediate and appropriate action in response to such complaint, including, but not limited to termination or appropriate discipline of any responsible employee, agent, licensee or subcontractor.

EXHIBIT C

Prevailing Wages

PREVAILING WAGES:

(a) A determination of the general prevailing rates of per diem wages and holiday and overtime work where the work is to be performed is available for review upon request at the Water Authority's offices located at 4677 Overland Avenue, San Diego, and 610 West Fifth Avenue, Escondido. Contractor and subcontractors will not pay less than the prevailing rates of wages. Contractor will post one copy of the prevailing rates of wages at the job site.

(b) The Contractor and any subcontractor under the Contractor shall, as a penalty to the Water Authority, forfeit not more than two hundred dollars (\$200) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rates as determined by the director for the work or craft in which the worker is employed for any public work done under the contract by the Contractor or, except as provided in the subdivision (b) of Labor Code Section 1775, by any subcontractor under the Contractor.

TRAVEL AND SUBSISTENCE PAYMENTS: Travel and subsistence payments shall be paid to each worker as defined in the applicable collective bargaining agreements filed with the Department of Industrial Relations for the particular craft, classification or type of work.

HOURS OF WORK:

(a) Eight hours labor constitutes a legal day's work. Workers shall be paid at a rate of one and one-half times the basic rate of pay for work in excess of eight hours during a calendar day or forty hours during a calendar week of the foregoing hours.

(b) Contractor shall keep and make available an accurate record showing the name each worker and hours worked each day and each week by each worker.

(c) As a penalty to the Water Authority, Contractor shall forfeit twenty-five dollars (\$25.00) for each worker, including subcontractors' workers, for each calendar day during which the worker is required or permitted to work more than eight hours in any one calendar day and 40 hours in any one calendar week in violation of Labor Code Sections 1810 through 1815.

APPRENTICES: Contractor shall comply with the Labor Code concerning the employment of apprentices.

PAYROLL RECORDS:

(a) Pursuant to California Labor Code Section 1776, Contractor and each subcontractor shall keep accurate records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:

(1) The information contained in the payroll record is true and correct.

(2) The employer has complied with the requirements of Labor Code Sections 1771, 1811, and 1815 for any work performed by his or her employees on the public work project.

(b) The payroll records enumerated under paragraph (a) shall be certified and shall be available for inspection at all reasonable hours at the principal office of the Contractor on the following basis:

(1) A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or his or her authorized representative on request.

(2) A certified copy of all payroll records enumerated on paragraph (a) shall be made available for inspection or furnished upon request to the Water Authority, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the Department of Industrial Relations.

(3) A certified copy of all payroll records enumerated in paragraph (a) shall be made available upon request by the public for inspection or for copies thereof. However, a request by the public shall be made through either the Water Authority, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to paragraph (b)(2), the requesting party shall, prior to being provided the records, reimburse the costs of preparation by the Contractor, subcontractors, and the entity through which the request was made. The public shall not be given access to the records at the principal office of the Contractor.

(c) The certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information as provided by the division.

(d) The Contractor or subcontractor shall file a certified copy of the records enumerated in paragraph (a) with the entity that requested the records within ten days after receipt of a written request.

(e) Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the Water Authority, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address, and social security number. The name and address of the Contractor awarded the contract or the subcontractor performing the contract shall not be marked or obliterated. Any copy of records made available for inspection by, or furnished to, a multiemployer Taft-Hartley trust fund (29 U.S.C. Sec. 186(c)(5)) that requests the records for the purposes of allocating contributions to participants shall be marked or obliterated only to prevent disclosure of an individual's full social security number, but shall provide the last four digits of the social security number. Any copy of records made available for inspection by, or furnished to, a joint labor-management committee established pursuant to the federal Labor Management Cooperation Act of 1978 (29 U.S.C. Sec. 175a) shall be marked or obliterated only to prevent disclosure of an individual's social security number.

(f) Agencies that are included in the Joint Enforcement Strike Force on the Underground Economy established pursuant to Section 329 of

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the Unemployment Insurance Code and other law enforcement agencies investigating violations of law shall, upon request, be provided nonredacted copies of certified payroll records. Any copies of records or certified payroll made available for inspection and furnished upon request to the public by an agency included in the Joint Enforcement Strike Force on the Underground Economy or to a law enforcement agency investigating a violation of law shall be marked or redacted to prevent disclosure of an individual's name, address, and social security number.

(g) The Contractor shall inform the Water Authority of the location of the records enumerated under paragraph (a), including the street address, city and county, and shall, within five working days, provide a notice of change of location and address.

(h) The Contractor or subcontractor shall have ten days in which to comply subsequent to receipt of written notice requesting the records enumerated in paragraph (a). In the event that the Contractor or subcontractor fails to comply within the 10-day period, he or she shall, as a penalty to the Water Authority, forfeit \$100 for each calendar day, or portion thereof, for each worker until strict compliance is effectuated. Upon the request of the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due. The Contractor is not subject to a penalty assessment pursuant to this section due to a failure of a subcontractor to comply with this section.